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THE ICSID ARBITRATION IN THE CURRENT CONTEXT OF INTERNATIONAL TRADE

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This article analyses, through a doctrinal legal methodology combined with documentary and institutional analysis, the role of ICSID arbitration in the current context of international trade. The study examines the Washington Convention, the 2022 ICSID Arbitration Rules, Bilateral Investment Treaties concluded by Spain, and ICSID Caseload Statistics up to 2026. Findings indicate that ICSID has consolidated its practical relevance, with over 1,000 cumulative cases and 63 new registrations in 2025, predominantly grounded in BITs (58%), confirming the functional interdependence between the ICSID system and the conventional architecture of international economic law. The 2022 reforms address legitimacy and transparency concerns and respond, alongside critiques relating to regulatory chill and recent denunciations by Latin American States, to evolving demands for systemic adjustment. The article contributes by situating ICSID within the broader public regulatory framework of international trade in a moment of multilateral crisis.

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1. INTRODUCTION

It cannot be overlooked that addressing arbitration under the auspices of the International Centre for Settlement of Investment Disputes (ICSID) of the World Bank Group requires reflection on a subject that has been widely discussed and on which numerous doctrinal and practical considerations exist. This is not only due to its historical background — the Centre was established pursuant to the 1965 Washington Convention¹ — but also because of its practical development, which allows it, without a doubt, to be regarded as a successful mechanism for the resolution of international commercial disputes.

However, this prior experience and the extensive doctrinal treatment of its functioning do not render irrelevant a few brief reflections on its current context. Starting from its instrumental role as a tool for the promotion of investment, the need to adapt to the commercial, economic, and political realities of each moment advises a contemporary treatment and contextualization that aligns with the ever-changing reality of the international society. And this international society is currently undergoing turbulent circumstances that point to a modification of the international order established after the Second World War — not only politically, and consequently in the international relations between States and in the balance of power, but also in the general economic sphere and in commercial activity in particular.

Leaving aside the wartime context and focusing on trade aspects, what has been termed the "tariff war," "tariff escalation," or "trade conflict," euphemistically speaking, is nothing more than the evolution of a latent situation that has persisted for nearly a decade and is more related to the balance of power among preexisting and emerging economic and political powers. The crisis of legitimacy of the World Trade Organization finds its origin in the United States' position regarding its internal functioning and in the blockage of the Appellate Body, a key component of the WTO Dispute Settlement System². In 2018,

¹Convention on the Settlement of Investment Disputes between States and Nationals of Other States, concluded in Washington on 18 March 1965. In force for Spain since 17 September 1994, by virtue of the Instrument of Ratification published in the Official State Gazette (BOE) No. 219, of 13 September 1994, pages 28286 to 28294.

²The Appellate Body of the WTO is composed of seven members, experts in international trade, appointed by consensus of the 166 WTO members. A minimum of three members is required to constitute the panel that decides each specific appeal. By December 2019, only three judges remained in office, the minimum number required for any panel to function. On 11 December

U.S. President Donald Trump announced an increase in tariffs on steel and aluminum, and, considering that his country was being treated unfairly by the Organization, he halted the renewal of the Appellate Body. Although the underlying context of this situation involved the trade confrontation between China and the United States, American mistrust of the multilateral system began well before the Trump administration, during George W. Bush's government between 2001 and 2009, and continued under Barack Obama's administration between 2009 and 2017.

It therefore seems clear that the multilateral trade system, as we know it today, is due for review. Yet, one might still ask to what extent this context also affects the regulatory framework of international investment, and more specifically, the investment protection system based on ICSID arbitration.

Indeed, although the ICSID mechanism has been implemented through Bilateral Investment Treaties (or Bilateral Agreements on the Promotion and Reciprocal Protection of Investments), which frequently refer to arbitration under the Washington Convention [15], in practice it has generated a quasi-multilateral system, similar to that of the World Trade Organization. Nevertheless, it can be observed that both systems evolve in parallel, albeit without institutional coordination, applying different logics (investor protection versus trade liberalization) and potentially entering into tension or normative inconsistency. It may be affirmed that the investment arbitration system has evolved toward a form of substantive multilateralism, yet without the institutional structures of the multilateral trade system, thereby generating fragmentation and inconsistencies in international economic law. As Schill (2009) evidences, the investment arbitration system, despite its bilateral basis, has evolved toward a materially multilateral model, generating common principles through arbitral practice and functionally approximating the WTO system.

In sum, both ICSID and the WTO operate as autonomous yet interdependent regimes, without a clear hierarchy between them, reflecting a fragmentation of international economic law and the need to establish coordination or harmonization mechanisms between investment and trade. [17] This functional interdependence is clearly reflected both in their objectives — both systems aim to provide predictability and legal certainty — and in the common principles they share: fair and equitable treatment (ICSID) and national treatment and most-favored-nation treatment (WTO), thereby generating normative parallels.

of that same year, two of them completed the maximum eight-year term for which they were authorized, thereby rendering the Body inoperative.

From this perspective, the paralysis of the Appellate Body places the WTO's "multilateralism" in serious crisis, which largely relies on the existence of enforcement mechanisms and the appellate function, bringing it closer to the weaknesses of the international investment system. Given the interrelation between the two, the transformation or even potential dismantling of the international trade system designed in Marrakech is likely to directly affect the international regulation of investments.

Against this background, the present study employs a doctrinal legal methodology, complemented by documentary, institutional, and statistical analysis. Doctrinal analysis examines the normative framework of the ICSID system — the 1965 Washington Convention, the 2022 ICSID Arbitration Rules, the ICSID Additional Facility Rules, and a sample of Bilateral Investment Treaties concluded by Spain — alongside the relevant case-law and the specialized scholarship that has developed around the operation of the Centre. The selection of primary sources was guided by three criteria: their direct binding force within the ICSID system, their representativeness of the Spanish position within the broader European Union framework, and their relevance to the current debates on the legitimacy of investor-State dispute settlement.

Documentary and statistical analysis draws on the ICSID Caseload Statistics published by the Centre up to 2026, official publications of the World Bank Group, and reports from UNCTAD, the European Commission, and other public institutions of relevance to the investment-protection framework. These data are used to test the functional relevance of the ICSID system in a context of multilateral trade crisis and to examine the temporal evolution of caseload, treaty basis, and procedural reform.

The temporal scope of the analysis runs from the entry into force of the Washington Convention in 1966 to early 2026, with particular attention to the period following the 2022 reform of the ICSID Rules. The jurisdictional scope is principally focused on Spain and the European Union, with comparative references to selected Latin American States (Bolivia, Ecuador, Venezuela, Honduras), South Africa, Indonesia, India, and China, which have either denounced the Convention, renegotiated bilateral instruments, or proposed structural reforms within UNCITRAL Working Group III. The chosen design does not pursue causal inference but seeks rather a contextualized normative interpretation of the ICSID system within the broader public regulatory framework of international trade. Among the principal limitations of the design are the absence of empirical fieldwork, the dependence on aggregated ICSID statistical data, and the necessarily synthetic treatment of the comparative dimension.

2. THE ICSID MECHANISM AS A MODEL OF INVESTOR-STATE DISPUTE SETTLEMENT (ISDS)

ICSID constitutes an essential element of investment protection, and therefore of the promotion of international investments. In this regard, it is currently considered the principal international arbitration institution in the field of disputes between private investors and host States. It was established through a convention adopted in 1965, known as the Washington Convention, which entered into force on 14 October 1966, once the minimum required number of ratifications (20 States) was achieved, and with its seat established in Washington, D.C. The Convention was drafted by the Executive Directors of the International Bank for Reconstruction and Development as the result of an extensive technical preparatory process. This process built upon prior work conducted by Bank staff, with partial collaboration from legal experts appointed by the governments of member States. Furthermore, several international consultative meetings were held in Addis Ababa, Santiago de Chile, Geneva, and Bangkok, complemented by deliberations of an ad hoc Legal Committee convened in Washington. The drafting process, which extended over four years, aimed to establish a regulatory framework capable of achieving broad acceptance. In this regard, the Convention successfully reconciled the interests of both capital-exporting States and developing countries, and it was also notable for adopting innovative consultation and negotiation methods within an international organization.

Within the international context of the time, characterized by the expansion of global trade and the emerging development of international investment arbitration, the ICSID Convention was configured as an instrument integrated into the international community's efforts to articulate a multilateral normative framework in this field. The consideration of foreign direct investment as a necessary complement to resources derived from bilateral and multilateral official sources, in the implementation of plans adopted to promote the growth of developing economies, formed the basis of the preparatory work for the Convention. Indeed, in order to overcome the obstacles and uncertainties confronting foreign investors, several initiatives emerged, among which the Draft Convention on the Protection of Foreign Property, formulated by the Organization for Economic Co-operation and Development (OECD), and the proposal for the creation of an International Investment Insurance Organization, advocated by the United Nations Conference on Trade and Development (UNCTAD), stood out. While these proposals were not directly linked to, nor did they refer to, ICSID, they were mentioned during the preparatory work for the Convention. [9]

None of these initiatives were entirely disregarded. Despite the apparent failure of the OECD project, which, although approved by the OECD Council in October 1967, did not enter into force as a multilateral treaty due to the lack of necessary ratifications, it exerted a profound influence on Bilateral Investment Treaties (BITs), which incorporated the substantive standards proposed by the OECD. Thus, principles such as fair and equitable treatment, protection against expropriation without adequate compensation, and the free transfer of capital became essential elements of BITs from the late 1960s onwards, especially in those adopted between the 1970s and 1990s. In sum, they constituted the foundation of the contemporary investment protection system.

The initiative promoted by UNCTAD, which sought to create an international mechanism to secure investments against political risks such as expropriation, war, or currency restrictions, did achieve direct institutional materialization through the creation in 1988 of the Multilateral Investment Guarantee Agency (MIGA), incorporated within the World Bank Group.

In this context, ICSID was conceived as an institution specialized in the resolution of disputes between States and foreign investors, thus contributing to the promotion of foreign direct investment. However, its institutional design did not entail the establishment of substantive investment protection norms, nor did it impose a general obligation on the parties to submit their disputes to arbitration or conciliation under its auspices. [18]

The articulation of arbitration as a mandatory mechanism (generally at the investor's choice) emerged later, primarily through its incorporation into the provisions of Bilateral Investment Treaties (BITs) concluded in the 1990s. Originally, ICSID arbitration was designed as a voluntary mechanism, to which the parties could resort upon expressing their consent. Hence the literal text of Article 1(2), which states that "The purpose of the Centre shall be to provide facilities for conciliation and arbitration of investment disputes between Contracting States and nationals of other Contracting States in accordance with the provisions of this Convention." Likewise, Article 25(1) provides that "The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally."

In any case, the possibility of submitting a dispute of this nature to arbitration, avoiding classical mechanisms such as diplomatic protection by the investor's home State or recourse to the administrative

courts of the host State, with the consequent application of its domestic law, represented a significant advance in the field of investment protection.

As already noted, however, the most significant development in the use of the arbitration mechanism under the auspices of the World Bank came through Bilateral Investment Treaties. Both the Investment Treaties and the ICSID mechanism share the same objective: to promote economic development through foreign direct investment. ICSID thus became the standard dispute resolution mechanism in the majority of BITs, consolidating the Investor-State Dispute Settlement (ISDS) model.

As instruments intended to establish a legal framework for the protection of foreign investors within the territory of the host State, BITs incorporate normative standards that prohibit discriminatory treatment and guarantee, among other aspects, compensation in the event of expropriation, the free transfer of capital, and the repatriation of profits. Moreover, these treaties typically provide binding dispute settlement mechanisms, often through international arbitration, applicable to disputes arising from the interpretation or application of their provisions. [16] Collectively, these guarantees help ensure minimum standards of protection for foreign investors, strengthening legal certainty in the host State and promoting the attraction of international investment.

However, the success of ICSID can only be measured empirically. Until the year 2000, international investment arbitration disputes filed with ICSID and under its rules amounted to fewer than ten cases per year. Between 2001 and 2010, the average rose to around twenty registered cases per year. The figure increased significantly during the period 2011–2020, with the annual average of ICSID-registered arbitration cases exceeding forty-six cases per year. The upward trend in ICSID cases (including conciliation and arbitration under the supplementary mechanism) continued in subsequent years, with 66 cases recorded in 2021, 41 in 2022, 57 in 2023, and 55 in 2024. [10]

From an empirical perspective, therefore, ICSID maintains high practical relevance. In 2025, 63 new cases were registered (56 arbitrations under the ICSID Convention, 6 under the supplementary mechanism, and 1 conciliation), surpassing 1,000 cumulative cases, which evidences the consolidation of the system and its growing demand. [10] Furthermore, the majority of cases are based on Bilateral

Investment Treaties (58%), reflecting the interdependence between the ICSID system and the conventional architecture of international economic law³.

Nonetheless, the ICSID dispute settlement mechanism is not without doctrinal criticism. Firstly, the lack of jurisprudential coherence has been questioned, arising from the absence of a binding precedent system or an appellate mechanism, which generates divergent decisions in similar cases and results in a perceived lack of legitimacy. [20]; [6]. In this regard, certain authors have emphasized that, although an appellate mechanism may improve coherence, consistency, and predictability in ISDS jurisprudence, its implementation raises significant institutional challenges, including the need to mitigate financial burdens on developing countries, reduce procedural delays, and ensure a transparent, independent, and geographically diverse composition of adjudicators. [12]

Secondly, the limited transparency of proceedings has been noted, traditionally characterized by confidentiality, although this aspect has been partially mitigated by recent reforms. In particular, the 2022 revision of the ICSID Rules introduced greater publicity of awards, decisions, and hearings, as well as the increasing application of the UNCITRAL Transparency Rules. One measure implemented to enhance transparency concerns the obligation to disclose third-party funding in the proceedings⁴. That is, the possibility that a natural or legal person, initially unrelated to the arbitration, provides the claimant or respondent with financial resources to pursue the claim. In the case of ICSID, and given the actors involved, it is typically the claimant investor who resorts to third-party funding, which will logically be compensated, usually as a percentage of any award obtained in the event of a favorable decision. It is precisely the high cost of ICSID proceedings — another significant criticism of the World Bank institution — that underlies this practice, which has increased over the past decades [14], and which has both positive and negative impacts on arbitration.

On the positive side, third-party funding allows a claimant to obtain the necessary resources to pursue a dispute in cases where such funds are lacking, or even to allocate them according to a schedule

³The remaining categories forming the basis of consent invoked to establish ICSID jurisdiction are investment contracts between investors and host States (15%), the Energy Charter Treaty (10%), host State investment laws (7%), and Free Trade Agreements (NAFTA, USMCA, and CAFTA-DR), as well as bilateral and multilateral agreements containing a provision for dispute settlement under ICSID (10%).

⁴Rule 14 of the 2022 version of the ICSID Arbitration Rules, entitled "Notice of Third-Party Funding."

aligned with the company's financial situation. On the other hand, the use of external funding may raise ethical concerns [4], as it can be employed as a leverage tool to pressure the respondent through claims that are weakly founded (frivolous claims) but sufficient to initiate negotiation, thereby compelling concessions in favor of the claimant and its funder. Added to this is the potential risk to arbitral impartiality, given that many prospective arbitrators provide their services at law firms affiliated with the funders themselves.

A further structural criticism points to how the system may restrict the regulatory space of States, particularly in sensitive areas such as public health, environmental protection, or economic policy, by allowing legitimate regulatory measures to be challenged by foreign investors. This concept has been articulated in the doctrine as the phenomenon of regulatory chill, whereby the threat or existence of ICSID proceedings discourages governments from adopting public policies for fear of costs or litigation. [8]; [11] This tension between investment protection and State sovereignty has fueled the ongoing debate regarding the legitimacy of the ISDS system. Indeed, UNCTAD's 2003 World Investment Report⁵ introduces, for the first time in its analysis, the concept of "national policy space," highlighting the potential tension between market liberalization and the need for States to regulate in order to maximize the benefits and minimize the risks associated with openness. [1];[2] With regard to investment regulatory law, the conclusion of bilateral investment treaties (BITs) may constrain the sovereign prerogatives of the signatory State, giving rise to regulatory chill and potentially subjecting democratically enacted domestic legislation to external review by an international body, such as an arbitral tribunal. This may even extend to areas such as human rights, public health, and environmental protection.

In response to these criticisms, significant reforms have been advanced, such as the 2022 revision of the ICSID Rules mentioned supra, aimed at improving the transparency, efficiency, and accessibility of arbitration, as well as the introduction of alternative mechanisms such as mediation. Parallel to these reforms, certain States have adopted increasingly critical positions vis-à-vis the World Bank system, going so far as to denounce the ICSID Convention, as in the cases of Bolivia (2007), Ecuador (2009, with readmission in 2021), Venezuela (2012), and, more recently, Honduras (2024). This development, at first sight, appears to reflect a broader trend of skepticism toward the ICSID framework among Latin American

⁵UNCTAD. (2003). World Investment Report 2003: FDI Policies for Development — National and International Perspectives. United Nations.

States. In such circumstances, however, it is worth considering whether this phenomenon amounts to a genuine trend or rather constitutes a reaction to specific and context-driven factors.

In this respect, one may once again invoke the argument concerning the evolutionary character of the Convention. The most recent denunciation, that of Honduras, may be better understood as a response to a series of recent developments, particularly the increasing number of investment claims brought against the State⁶, rather than as part of a generalized process of dissatisfaction with the functioning of the system. Furthermore, particular consideration should be given to the Próspera dispute, which appears to have played a significant role in shaping Honduras' decision to denounce the ICSID Convention. The case, *Honduras Próspera Inc. et al. v. Honduras* (ICSID Case No. ARB/23/2)⁷, arises under the Dominican Republic–Central America Free Trade Agreement (DR-CAFTA) and initially involved a claim reportedly amounting to USD 10.775 billion. The dispute stems from the Honduran government's decision to dismantle the legal framework governing the so-called Zones for Employment and Economic Development (ZEDEs), established in 2013, which the current administration of Xiomara Castro has characterized as incompatible with national sovereignty.

In the arbitral proceedings, Honduras raised several procedural objections, alleging that ICSID acted in breach of "law and procedure" by registering the claim without verifying compliance with the requirement to exhaust local remedies, a condition attached to its consent upon ratification of the Convention in 1988⁸. The State also challenged aspects of the tribunal's constitution, including the appointment of arbitrators, invoking concerns over alleged conflicts of interest. For its part, Próspera contends that Honduras has violated several substantive protections under DR-CAFTA, including the standards of fair and equitable treatment, legal stability, protection against expropriation, and the free transfer of funds. Notably, in October 2025, Honduras Próspera Inc. announced a substantial reduction of

⁶Honduras' decision to denounce the ICSID Convention came in the wake of reports indicating its intention to do so as early as August 2023, following the registration by ICSID of a seventh case against the State in that same year.

⁷ICSID. Case Details: ARB/23/2 (ICSID Case Database). <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/23/2> (accessed 13 April 2026).

⁸In a decision issued on 26 February 2025, the arbitral tribunal dismissed the preliminary objection of lack of jurisdiction raised by Honduras, understanding that the claimants were not required to exhaust local remedies as a prerequisite for initiating arbitration.

its claim, reportedly by approximately 85%, bringing the amount in dispute down to USD 1.63 billion. The tribunal, presided over by Juan Fernández-Armesto, is currently seized of the dispute.

The present situation, therefore, cannot be equated with that which arose during the first decade of the twenty-first century.

Other countries, in contrast, have chosen to reform their investment policies by terminating or renegotiating bilateral treaties, such as South Africa, India, or Indonesia, or by developing alternative models, as in the context of the European Union following the *Achmea* case⁹.

Both South Africa and Indonesia have opted to terminate numerous BITs. South Africa did so in order to adopt a domestic investment law prioritizing domestic courts over investment arbitration, based on the view that such treaties limited the State's regulatory capacity in policies of social and economic transformation. Indonesia, for its part, chose to renegotiate BITs under a new model aimed at greater balance and reciprocity, often incorporating clauses that protect the right to regulate. India likewise revised its model by significantly restricting the definition of "investment," limiting fair and equitable treatment clauses, and requiring the exhaustion of local remedies before resorting to international arbitration.

The European Union, for its part, promoted the termination of intra-EU BITs through a multilateral agreement signed by 23 Member States, following the *Achmea* judgment of the Court of Justice of the European Union, which held that investor-State arbitration clauses in intra-EU treaties are incompatible with EU law. Subsequent institutional reform has focused on replacing traditional investor-State arbitration with an Investment Court System (ICS) in new trade and investment agreements, such as those with Canada and Vietnam. The ICS is designed as a permanent judicial mechanism with independently appointed adjudicators and the possibility of appeal, differing from *ad hoc* arbitration and aiming to enhance legitimacy, transparency, and neutrality.

However, the debate on the global reform of the ISDS system remains ongoing within UNCITRAL Working Group III, and it may be appropriate, before concluding this section, to briefly address China's

⁹In the *Achmea* case (CJEU, 6 March 2018, C-284/16), the Court of Justice of the European Union declared that investor-State arbitration clauses contained in bilateral investment treaties between EU Member States (intra-EU BITs) are incompatible with Union law. The Court held that such arbitrations could affect the autonomy of the EU legal order by removing the interpretation of European law from the Union's judicial system. As a consequence, the termination of intra-EU BITs was promoted, and the rejection of ICSID arbitration within the European space was further reinforced.

position in this regard. Notably, China is currently one of the most significant global economic and political actors. This position may be understood within a contextual and evolutionary framework. In contrast to readings that tend to characterize it as ambiguous or merely opportunistic, some authors [7] argue that the Chinese approach reflects a pragmatic rationale, shaped by domestic institutional factors, considerations of sovereignty, and a strategy of gradual integration into global investment governance. This stance is situated between incremental reformism and more ambitious structural proposals, such as the establishment of a multilateral investment court. In sum, it advocates reform, but within the confines of the classical arbitral paradigm.

These trends reflect a growing concern about the impact of investor-State arbitration on regulatory sovereignty and the legitimacy of the system. We may therefore conclude that, although ICSID arbitration continues to be an essential pillar of international investment law, characterized by its effectiveness and wide use, its current evolution is marked by a process of reform and questioning aimed at balancing investor protection with the interests and preservation of States' regulatory space.

3. THE INTERNATIONAL REGIME FOR THE PROTECTION OF FOREIGN INVESTMENTS: BILATERAL INVESTMENT TREATIES SIGNED BY SPAIN

In the preceding sections, we have addressed the key role that BITs play within the investment protection framework. It is now appropriate to consider the public framework for investment protection and the position occupied therein by Investment Protection Treaties, taking into account also the critical aspects, namely the externalities generated by foreign investment. The current economic environment, marked by tariff wars and various armed conflicts, overlays a preexisting context of critical review regarding the manner in which foreign direct investment interacts with host States. Moreover, one of the defining features of contemporary international investment protection law is its decentralized character. From this perspective, it can be stated that, in the current scenario, the consideration of public interest in inter-State relations coexists with economic factors. The need to promote investments to foster economic development in States coexists with the interest (or necessity) to coordinate legal and political systems designed to cover private economic relations. [13]

The economic factor is prominent and links countries that export investment with those that import it, and even countries that import investment among themselves. This conjunction of economic factors

and public interest, together with the scarcity of multilateral international instruments regulating investment, has determined this decentralized character. At present, there are several thousand International Investment Agreements, the majority of which are bilateral, including BITs, but also investment chapters within Free Trade Agreements and international agreements on double taxation. In this context, special attention must be paid to the manner in which States' domestic laws adapt to the obligations undertaken under applicable international instruments. This is so regardless of whether the State follows a monist or dualist model of reception of international law in its constitutional framework, except, of course, in the case of self-executing provisions.

In any event, this situation generates an increasing interconnection among diverse legal and political systems, creating an "interaction space" that is not always harmonious. It is the domestic public law of States — principally administrative and tax law — that is responsible for transposing and regulating internationally assumed commitments at the domestic level. This situation has fostered what some authors have termed the globalization of administrative law [3], and even invoked the crisis of the modern conception of the State, with the emergence, alongside States, of other global actors, namely large corporations, which effectively shrink the world. [5]

At the beginning of this brief study, we referred to the interrelation between the international regulatory system for investments and the multilateral normative framework of the WTO¹⁰. International investment law is situated within the public regulatory framework of international trade alongside the multilateral and plurilateral trade agreements adopted within the World Trade Organization and contained in Annexes 1 and 4 of the Marrakesh Agreement, which allows us to affirm that it will share the same principles and foundations. The same reasoning applies to Sustainable Development Goal (SDG) No. 17 ("Partnerships for the Goals"), in its targets 10, 11, and 12, which refer to the need to promote a universal, rules-based, open, non-discriminatory, and equitable multilateral trading system. In this regard, Target 4 of this same SDG contemplates the need to adopt and implement investment promotion systems in favor of least developed countries.

¹⁰A brief analysis of international trade regulation reveals a clear interrelation between this area and the promotion, and especially the protection, of investments. Within the WTO framework, for example, and in relation to goods, we find the Agreement on Trade-Related Investment Measures (TRIMs Agreement). Preferential trade agreements (PTAs) provide, to a greater or lesser extent, for investment regulation. The same consideration applies with respect to regional trade agreements.

Moreover, the existence of integration processes constitutes one of the essential characteristics of contemporary international society. The economic dimension underlies the genesis of the majority of these processes, which also manage the public interests linked to this area of international law. In the case of the European Union, the transfer of the common commercial policy as an exclusive competence to the Union has implied the subordination of this sector to Union law.

As we explained in the preceding section, the Court of Justice of the European Union held that bilateral investment treaties concluded between Member States (intra-EU BITs), and in particular the investor-State arbitration clauses therein, were contrary to Union law, leading to the conclusion of the aforementioned agreement for the termination of bilateral investment treaties among EU Member States. A total of 190 treaties were affected, of which nine corresponded to Spain as a contracting State (Annex A of the Termination Agreement).

Focusing on Spanish investment policy, and more specifically on the arbitral mechanisms incorporated into our treaties, it can be noted that BITs concluded by Spain typically offer two international arbitration options to the investor: (a) an ad hoc arbitration based on the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); and (b) institutional arbitration administered either by the International Chamber of Commerce in Paris (ICC) or by the International Centre for Settlement of Investment Disputes (ICSID).

However, in some cases an additional option is provided for the investor to bring the dispute before the domestic courts of the respondent State (for example, in bilateral treaties with China and Peru), or an ad hoc arbitration may be designed within the bilateral instrument itself with support from the International Court of Justice (for instance in treaties with Venezuela and Cuba).

In brief, it can be stated that the general content of the investment protection agreements concluded by Spain revolves around the following clauses: (a) standards of fair and equitable treatment, national treatment, and most-favored-nation treatment; (b) a guarantee that measures of expropriation, nationalization, or other measures with effects similar to expropriation may only be adopted in a non-discriminatory manner, for reasons of public interest, and upon prompt, adequate, and effective compensation; (c) the right to the free transfer of capital, profits, and payments related to the investment; (d) assurance of compliance with contractual obligations assumed by the host State toward the investor; and (e) arbitration mechanisms intended to resolve disputes that may arise between the States Parties to the Agreement, as well as between investors and the State concerning any failure by the latter to comply

with obligations under the Agreement. Currently, there are more than 60 BITs in force concluded by Spain, in addition to the EU investment protection agreements with Singapore and Vietnam, and the EU-Canada Comprehensive Economic and Trade Agreement (CETA).

4. ICSID ARBITRATION: BRIEF OVERVIEW OF THE PROCEDURE

Although arbitration is the best-known dispute resolution mechanism, ICSID proceedings also include conciliation, mediation, and fact-finding. They are governed either by the ICSID Convention or the ICSID Additional Facility Rules, and are characterized by being binding, final, and specialized in international investment law.

A particularly important distinction exists between standard or "classic" ICSID arbitration and arbitration under the Additional Facility, which was established in 1978 to extend the Centre's services to situations falling outside the scope of the original Convention. Typically, these are situations in which one or neither party is a Contracting State to ICSID or a national of a Contracting State. The Additional Facility covers both arbitration and conciliation proceedings and is governed by a set of rules known as the "ICSID Additional Facility Rules"¹¹, adopted by the ICSID Administrative Council.

This distinction entails a dual legal regime, whose differentiation is most apparent in the recognition and enforcement of awards. Under standard ICSID arbitration, awards benefit from a unique and simplified enforcement regime, administered pursuant to the Convention rules, and are considered final and binding in any Contracting State, meaning they cannot be reviewed by national courts (they may only be annulled through ICSID's internal annulment procedure). By contrast, under the Additional Facility, awards do not benefit from automatic enforcement and must be recognized and enforced in accordance with domestic law or the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

It should be clarified, however, that in practice the commendable purpose pursued by the World Bank through the Additional Facility was not met with the expected reception. Nonetheless, following the

¹¹The ICSID Additional Facility comprises a core set of rules, namely: the ICSID Additional Facility Rules; the ICSID Additional Facility Administrative and Financial Regulations; the ICSID Additional Facility Conciliation Rules; and the ICSID Additional Facility Arbitration Rules.

2022 reforms, it appears to be gaining relevance as a mechanism for expanding investment arbitration and as a strategic tool for ICSID's adaptation. Historical data from 1972 to December 2025 show that out of a total of 1,085 registered proceedings, 983 followed the standard ICSID arbitration route, representing nearly 91% of all cases, while only 87 were arbitrations administered under the Additional Facility, i.e., barely 8%. The remaining registered proceedings were conciliation cases: 13 under the ICSID Rules and 2 under the Additional Facility. [10]

Since 1 July 2022, arbitration proceedings are governed by the 2022 Registration Rules. Focusing on ICSID arbitration, both for being the most commonly used in practice and as the immediate subject of this study, and more specifically on procedural rules, the ordinary procedure can be divided into seven distinct phases: (i) initiation of the proceeding (request for arbitration and registration); (ii) constitution of the tribunal; (iii) first session; (iv) written submissions phase; (v) oral proceedings; (vi) issuance of the award; and (vii) post-award phase.

The 2022 reform also introduced a new procedural modality called "Expedited Arbitration," subject to shorter deadlines, fewer procedural steps, and which the parties may opt into at any stage of the proceeding. This procedure is particularly useful for small and medium-sized enterprises or for disputes of lower complexity. [22] Expedited arbitration is decided by a sole arbitrator, unless the parties agree in writing that the tribunal shall consist of three members. If the parties do not notify the Secretary-General of their choice within 30 days of the notice of consent to the expedited proceeding, the tribunal will be composed of a sole arbitrator (Rule 76).

In summary, once the tribunal is constituted, the procedure comprises the following steps: (i) holding the first procedural session, which will be conducted virtually (30 days after tribunal constitution); (ii) submission of the first round of pleadings, with a 200-page limit (the memorial for the claimant is due 60 days after the first session, and the response memorial 60 days after the claimant's submission); (iii) submission of the second round of pleadings, with a 100-page limit (the reply is due 40 days after the respondent's submission, and the rejoinder 40 days after the reply); (iv) holding the hearing (within 60 days after the rejoinder submission); (v) cost estimation (within 10 days following the hearing); and (vi) issuance of the award (within 120 days following the hearing).

In the ordinary arbitration procedure, and to expedite the process, there is an obligation to submit filings to the Secretary-General electronically (Rule 4 of the Arbitration Rules), although the Tribunal may also order that documents be submitted in a different format. The request for arbitration must include

information regarding the subject of the dispute, the identity of the parties, and their consent to arbitration, and it will be sent to the Secretary-General, who will forward a copy to the other party and proceed with its registration, unless the dispute is manifestly outside the jurisdiction of the Centre (Art. 36 ICSID Convention). The Rules on Commencement provide more detailed guidance on the steps to be taken from the submission of a request for arbitration or conciliation under the ICSID Convention until the date of registration or denial. They establish a more detailed regulation of the content of the request for arbitration (Rule 2), the documentation to be submitted, the languages in which it may be drafted (English, French, or Spanish), the representation of the parties, recommended additional information, and the registration procedure.

Articles 37 to 40 of the Convention govern the constitution of the Tribunal¹² and the appointment of arbitrators. The timeframe for constitution will be that agreed by the parties, or, failing that, 90 days from the issuance of the registration notice by the Secretary-General. Once constituted, and after resolving any issues concerning its own jurisdiction, the first session will be convened, to be held in person or remotely within 60 days following the constitution, or within any other period agreed by the parties. Prior to this first session, the Tribunal will invite the parties to submit their observations on procedural matters, in particular those described in Rule 29(4) of the Arbitration Rules.

Following the first session, the written proceedings take place, beginning with the submission of the first round of written submissions. The claimant's memorial must contain a statement of relevant facts, the applicable law, arguments, and requests for relief. The respondent's memorial, in turn, must include a statement of relevant facts, including acceptance or denial of the facts set out in the claimant's memorial and any additional relevant facts, a statement of law in response to the memorial, arguments, and the respondent's requests for relief (Rule 30 of the Arbitration Rules). If applicable, a second round will follow, consisting of the reply and rejoinder, which shall be limited to responding to the most recent submission and addressing any new relevant facts that could not have been known before the submission of this second round of written submissions.

¹²According to Article 37 of the Convention, the Tribunal shall be constituted by a sole arbitrator or by an odd number of arbitrators, appointed in accordance with the agreement of the parties. In the absence of such an agreement regarding the number or method of appointment, the Tribunal shall be constituted with three arbitrators: one appointed by each party and the third, who shall preside over the Tribunal, by mutual agreement.

The next phase is that of the oral proceedings. Rule 32 provides that the Tribunal shall hold, unless the parties agree otherwise, one or more hearings, during which any member of the Tribunal may ask questions and request explanations from the parties. The Tribunal's subsequent deliberations are conducted in private and may take place by any means the Tribunal deems appropriate, including in person, by telephone, videoconference, or correspondence. Decisions are adopted by a majority vote (abstentions are considered votes against), although the parties may agree that the President of the Arbitral Tribunal decide without consulting the other members in urgent cases, with the possibility that the decision be reviewed by the full Tribunal.

The Arbitral Tribunal only issues an award within the framework of the procedure, which resolves the entirety of the matter. Other decisions made during the proceedings do not have this status and cannot be appealed under the Convention until the award is rendered. Regarding its content, Rule 59 enumerates in detail the elements to be addressed: a) the identity of the parties; b) that of their representatives; c) a statement that the Tribunal has been constituted in accordance with the provisions of the Convention, as well as a description of the method of its constitution; d) the name of each Tribunal member and who appointed each; e) the date and place of the first session, case management conferences, and hearings; f) a brief summary of the proceedings; g) a statement of facts deemed relevant by the Tribunal; h) a brief summary of the parties' arguments, including their requests for relief; i) the Tribunal's decision on each issue submitted to it, and the reasons on which the award is based; and j) a statement of the costs of the proceedings, including the fees and expenses of each Tribunal member, as well as the reasoned decision regarding those costs.

In the post-award phase, both actions aimed at challenging the award and the enforcement of the award itself are included. Regarding the former, the ICSID Convention addresses, in Articles 50–52, the remedies of clarification, review, and annulment, to which must be added the request for a supplementary decision or correction by the same Tribunal as provided in Article 49.2 of the ICSID Convention (Rule 61.2 of the Arbitration Rules) for cases in which the Tribunal has omitted the resolution of any issue or has made material, arithmetic, or similar errors. As for recognition and enforcement, Article 54 of the Convention grants pecuniary obligations contained in the award the same status as a final judgment of the

courts of the place where enforcement is sought¹³. The award is binding on the parties and must be respected and complied with in all its terms.

We conclude by noting that the latest version of the Arbitration Rules has introduced significant modifications to the ordinary ICSID arbitration procedure, aimed at a more agile and efficient process (Urdaneta Cordido-Freytes, 2022). Not only the introduction of the new expedited procedure available to the parties, but also provisions regarding the electronic submission of documents, the Tribunal's ability to convene one or more case management conferences with the parties to identify uncontested facts, clarify or narrow the dispute, or address procedural or substantive issues (Rule 31), the setting of time limits for issuing awards, supplementary or corrective decisions, and decisions in clarification, review, and annulment proceedings, among other innovations, are intended to have a positive impact on the proceedings and reduce timeframes.

5. FINAL REFLECTIONS

The turbulent and unstable times we are currently experiencing have not interfered with the role that ICSID investment protection mechanisms are called upon to play. Undoubtedly, the current crisis of the multilateral trading system, together with the context of armed conflicts affecting the world today, will impact the environment of international business and its regulation. To that extent, and due to the interrelationship between the multilateral trading system and international investment law, the mechanisms for the promotion and protection of foreign direct investment, particularly ICSID arbitral proceedings, are likely to be affected. International trade has historically been a driving force for the social and economic development of society, evolving in parallel with the international community itself. Consequently, ICSID mechanisms have evolved and continue to evolve in line with the new global social and economic reality.

Throughout this brief work, we have referred in a concise manner to the evolution of arbitration administered by ICSID since the adoption of the 1965 Washington Convention on the Settlement of

¹³Article 54 of the ICSID Convention provides that: "Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and shall enforce within its territories the pecuniary obligations imposed by that award as if it were a final judgment of a court in that State."

Investment Disputes between States and Nationals of Other States. We have also highlighted the importance of its interaction with Bilateral Investment Treaties, specifically referred to in our legal system as Agreements for the Promotion and Reciprocal Protection of Investments (APPRIs), as well as the critical factors that have, in many cases, led to the withdrawal of arbitration clauses by certain States and even by international integration organizations such as the European Union. Indeed, the alleged lack of legitimacy and transparency, together with the phenomenon known as "regulatory chill," based on the externality that the system may restrict States' regulatory space in sensitive areas such as public health or the environment, are factors to be taken into account and should serve as a basis for future regulatory reforms of the system.

These reforms are currently under discussion at the multilateral level within UNCITRAL Working Group III, where a range of divergent positions has emerged, spanning from more far-reaching reformist approaches to more moderate stances, such as that advanced by China. The latter occupies an intermediate position between incremental reformism and more ambitious structural proposals, including those advocating for the establishment of a multilateral investment court.

In line with the work carried out by the International Centre for Settlement of Investment Disputes (ICSID), a brief overview has been provided of the arbitration procedure resulting from the latest amendment of its Rules in 2022, as well as of the innovations introduced with a view to improving its operation. Ultimately, the consideration of foreign direct investment as a driver of States' economic development, which underpinned the adoption of the Washington Convention, remains as relevant today as it was in 1965. The fact that social demands and the socio-economic context have evolved significantly merely entails the necessary development of international investment law in order to adapt to this new reality

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EL ARBITRAJE DEL CIADI EN EL CONTEXTO ACTUAL DEL COMERCIO INTERNACIONAL

RESUMEN

Este artículo analiza, mediante una metodología jurídico-doctrinal combinada con un análisis documental e institucional, el papel del arbitraje del CIADI en el contexto actual del comercio internacional. El estudio examina el Convenio de Washington, el Reglamento de Arbitraje del CIADI de 2022, los Tratados Bilaterales de Inversión (TBI) suscritos por España y las estadísticas de casos del CIADI hasta 2026. Los resultados indican que el CIADI ha consolidado su relevancia práctica, con más de 1.000 casos acumulados y 63 nuevos registros en 2025 —basados predominantemente en TBI (58%)—, lo que confirma la interdependencia funcional entre el sistema del CIADI y la arquitectura convencional del derecho económico internacional. Las reformas de 2022 abordan preocupaciones sobre legitimidad y transparencia y responden, junto con las críticas relativas al efecto disuasorio sobre la regulación (*regulatory chill*) y las recientes denuncias por parte de Estados latinoamericanos, a las demandas cambiantes de ajuste sistémico. El artículo aporta valor al situar al CIADI dentro del marco regulatorio público más amplio del comercio internacional en un momento de crisis multilateral.

Palabras clave: arbitraje de inversión, CIADI, comercio internacional, tratados bilaterales de inversión, inversión extranjera directa

当前国际贸易背景下的ICSID仲裁

摘要

本文结合法学理论研究方法与文献及制度分析，探讨了ICSID仲裁在当前国际贸易背景下的作用。研究考察了《华盛顿公约》、2022年《ICSID仲裁规则》、西班牙缔结的双边投资协定（BITs）以及截至2026年的ICSID案件统计数据。研究表明，ICSID已巩固了其现实重要性：累计案件量超过1000起，且2025年新增立案63起，其中绝大多数（58%）基于双边投资协定；这证实了ICSID体系与国际经济法既有架构之间存在功能上的相互依存关系。2022年的改革回应了关于合法性与透明度的关切，并针对“监管寒蝉效应”的批评及拉美国家近期的退出行动，响应了对体系性调整不断变化的需求。本文的贡献在于，将ICSID置于多边主义危机背景下国际贸易更广泛的公共监管框架中进行考察。

关键词：投资仲裁，ICSID，国际贸易，双边投资协定，外国直接投资