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SETTLEMENT OF INVESTMENT DISPUTES

2.4 Requirements Ratione Personae



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NOTE

The Course on Dispute Settlement in International Trade, Investment and Intellectual Property consists of forty modules.

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OVERVIEW

This Module deals with the question of who may be a party to proceedings under the Convention on the Settlement of Investment Disputes between States and Nationals of other States. These are called the requirements *ratione personae*. Most prominent among these are issues of nationality.

The Convention is designed for the settlement of investment disputes between host States and foreign investors. The Convention allows nationals of Contracting States (i.e. States Parties to the ICSID Convention) to bring claims against other Contracting States. It also allows Contracting States to bring claims against nationals of other Contracting States.

The requirements *ratione personae* are critical for ICSID's jurisdiction. If these requirements are not met there is no jurisdiction. Compliance with these requirements is initially screened by the Secretary-General of ICSID in the process of registering a request for arbitration or conciliation. The final determination of whether these requirements are met is with the tribunal. In actual practice the requirements *ratione personae* have repeatedly led to detailed discussions before the tribunals.

To further encourage settlement of investment disputes, the Additional Facility was created in 1978. It allows the settlement of a dispute between a State and a foreign national even if only the State that is a party to the dispute or the State of the private party's nationality is a Contracting State.

OBJECTIVES

Upon completion of this booklet the reader should be able to:

- Describe the parties to ICSID arbitration.
- Tell who may institute ICSID arbitration.
- Define the role of constituent subdivisions and agencies in ICSID arbitration.
- Compare the nationality requirements for individuals and for corporations.
- Identify the consequences of host State nationality.
- Analyse the situation of a locally incorporated company that is under foreign control.
- Discuss the requirement of ratification of the ICSID Convention for jurisdiction.
- Appreciate the importance of the Additional Facility.

INTRODUCTION

Contracting State and national of another Contracting State

The settlement of investment disputes at ICSID is available to Contracting States of the Convention and to their nationals. Art. 25(1), first sentence, of the ICSID Convention¹ provides in relevant part:

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,...

Therefore, the Convention allows only Contracting States or their nationals to institute proceedings. Also, proceedings may only be brought against Contracting States or their nationals. Proceedings are always mixed, that is between a State and a foreign investor. Therefore, under the Convention, proceedings are always between a Contracting State and a national of another Contracting State.

Constituent subdivision or agency

Some States authorize constituent subdivisions or agencies to deal with foreign investors. The Convention allows these constituent subdivisions or agencies to be parties in ICSID proceedings, provided certain procedural requirements are met.

Nationality

Article 25(2) prescribes the nationality requirements for natural and juridical persons. In both cases, the Convention follows the traditional definitions of nationality which are accepted under both international and most domestic laws.

Local companies under foreign control

In many countries, foreign investments are required to be channeled through locally incorporated companies. This requirement has important implications for foreign investors. If the investment is carried out through a locally incorporated company, a national of the host State, the investor would not normally be eligible to be a party to proceedings before the Centre. The drafters of the Convention recognized this problem and adopted Article 25(2)(b). This provision allows locally incorporated but foreign controlled companies to have access to ICSID provided certain procedural requirements are met.

Additional Facility

Non-Contracting States or their nationals may become parties to proceedings under the Additional Facility. Under the Additional Facility, only one party has to fulfill the Convention's requirements *ratione personae*. The purpose of the Additional Facility is to facilitate the settlement of disputes by expanding the reach of the Convention to non-Contracting States and their nationals.

¹ *Convention on the Settlement of Investment Disputes between States and Nationals of Other States*, 18 March 1965, in force: 14 October 1966; 575 UNTS 159; 4 ILM 532 (1965); 1 ICSID Reports 3 (1993).

1. CONTRACTING STATES

Participation in ICSID Convention

A State becomes a Contracting State by ratification, acceptance or approval of the ICSID Convention. Under Article 68 of the Convention, this status is attained 30 days after depositing the instrument of ratification. Under Article 71, a State may withdraw from the Convention by a written notice to the Centre. A withdrawal becomes effective six months after the written notice. During that period the State remains subject to the Convention. Withdrawal does not affect consent to the Centre's jurisdiction if the State has given its consent prior to its withdrawal.

The Secretary-General of ICSID has to determine whether a State is, in fact, a Contracting Party as part of his screening function under Articles 28(3) and 36(3). This task is easy. A List of Contracting States and Other Signatories of the Convention is maintained and regularly updated by the Centre. It is available as document ICSID/3 and on the Centre's website:

<http://www.worldbank.org/icsid>.

Critical time for participation

The critical time for the status of a State as a Contracting State is the date of the registration of the request for arbitration or conciliation by the Secretary-General of ICSID. A State has to qualify as a Contracting Party at that date if a request for arbitration/conciliation is to be accepted.

A State may give its consent to submit to the Centre's jurisdiction before becoming a Contracting State. This consent becomes effective only once the State satisfies the requirements of a Contracting State.

This point is illustrated by the decision on jurisdiction in the case *Holiday Inns v. Morocco*. Neither Morocco, the host State, nor the investor's State of nationality, Switzerland, was a Contracting State at the time the two parties agreed to consent to the Centre's jurisdiction. Subsequently, both countries ratified the Convention prior to the investor's Request for Arbitration. The Tribunal stated that the consent of Morocco and of the investor became effective when both Morocco and Switzerland had become Contracting Parties and hence met the requirements of the Convention *ratione personae*.²

A State that is not a Contracting State of the Convention, at the time of a request for arbitration or conciliation, will not be subject to the Centre's jurisdiction even if it has given its consent to jurisdiction. If the State party named in the request is not a Contracting State, the Secretary-General of

² *Holiday Inns v. Morocco, Decision on Jurisdiction, 12 May 1974. The Decision is unpublished. A detailed description of the Decision is provided by Lalive, P., The First 'World Bank' Arbitration (Holiday Inns v. Morocco) – Some Legal Problems, 51 British Year Book of International Law 123 at 142/3 (1980).*

ICSID will refuse to register the request since the dispute is manifestly outside the jurisdiction of the Centre.

Summary:

- **A Contracting State or a national thereof may institute proceedings before the Centre. Proceedings may be instituted against a Contracting State or a national thereof.**
- **A State becomes a Contracting State of the ICSID Convention by depositing an instrument of ratification with the Centre.**
- **The critical time for the status of a party as a Contracting State is the date a request for arbitration or conciliation is considered for registration by the Secretary-General of ICSID.**
- **Proceedings are always mixed, that is, between a State and a foreign investor.**

2. CONSTITUENT SUBDIVISION OR AGENCY OF A CONTRACTING STATE

State entities

A State may conduct matters of foreign investment itself through a central organ or through a separate entity. A separate entity may be territorial, such as a province, or may be a governmental agency, such as an investment agency. Foreign investors may conclude investment agreements, often called concession agreements, with any of these, depending on the host State's internal legal system. Not infrequently, these agreements will contain ICSID consent clauses.

If an investment dispute arises, the investor will, typically, only be able to bring a claim against the State entity with which it has concluded the investment agreement containing the ICSID consent clause. The investor will not normally be in a position to bring claims against State entities that are not identified in the agreement. For example, if the ICSID clause is in an agreement with a province, the investor will not normally be able to bring claims against the central government.

Constituent subdivision or agency

The distinction between the State party in the form of the central government and that of a governmental agency or territorial entity is reflected in Article 25(1) of the Convention. In addition to the term "Contracting State", Article 25(1) also refers to "any constituent subdivision or agency of a Contracting State." The precise meaning of the term "constituent subdivision or agency" is not explained in the Convention. It is generally accepted that the term "constituent subdivisions" includes any territorial entity below the State such as a state, province, canton or municipality.³

The term "agency" is determined functionally rather than structurally. This allows for flexibility in ascertaining the status of an agency by looking into the nature of its work rather than being limited to its form. Whether the "agency" is a corporation, whether and to what extent it is government-owned and whether it has separate legal personality are of secondary importance. What matters is that it performs public functions on behalf of the Contracting State.⁴

Designation to the Centre

The ICSID Convention requires that States designate their governmental agencies and constituent subdivisions to the Centre, that is the ICSID Secretariat. Designation of a constituent subdivision or agency is a requirement for ICSID's jurisdiction over it. The Secretary-General of ICSID will refuse to register a request for arbitration or conciliation against a constituent subdivision or agency if the State to which it belongs has failed to make the designation to the Centre. Designation assures investors that the particular agency or entity with which they are dealing has been authorized by the State. In addition, designation to the Centre creates a presumption that the designated entity is a constituent subdivision or agency of the Contracting State in the

³ C. Schreuer, *The ICSID Convention: A Commentary*, Article 25, paras. 145-149, pp. 150-152 (2001).

⁴ Loc. cit.

sense of Article 25(1) of the Convention.

Approval of consent

In addition, Article 25(3) of the ICSID Convention requires that the constituent subdivision or agency's consent to the Centre's jurisdiction be approved by the State to which it belongs.⁵ These two distinct steps, namely designation to the Centre and approval of the constituent subdivision's or agency's consent, are separate but critical to the Centre's jurisdiction to hear disputes involving constituent subdivisions or agencies.

Form of designation

Designation of a constituent subdivision or agency to the Centre need not be made in any particular form. A State may designate its constituent subdivisions or agencies through domestic legislation, bilateral agreement or by directly informing the Centre. Any such designation should always be communicated to the Centre in writing.

The Centre keeps a register of designations. The list is published as document ICSID/8–C. The list is also available on the Centre's website:

<http://www.worldbank.org/icsid/pubs/icsid-8/icsid-8-c.htm>. This list shows that the designations fall into two categories. Some countries have designated territorial entities, in other words, constituent subdivisions. Other countries have designated entities of a non-territorial nature, in other words, agencies.

Time of designation

A Contracting State may designate a constituent subdivision or agency at any time before or after the dispute has arisen, provided such designation exists on the day a request for arbitration or conciliation is made to the Centre. It is open to States to make designations not only in general terms for the future but also on the occasion of specific investment projects or after an investment dispute has arisen. Such an *ad hoc* designation too, must be communicated to the Centre.

Withdrawal of designation

The Convention is silent on whether a State may withdraw the designation of a constituent subdivision or agency to the Centre. Such withdrawal is believed to be possible subject to the last sentence of Article 25(1).⁶ That provision precludes the unilateral withdrawal of consent. This means that once a State has designated a constituent subdivision or agency and has approved its consent to jurisdiction, such consent cannot be terminated by simply withdrawing the designation.

The importance of designation is illustrated by the case *Cable Television v. St. Kitts and Nevis*.⁷ The Claimant entered into an agreement with the Nevis Island Administration (NIA) containing consent to ICSID arbitration. The Tribunal found that the NIA was a constituent subdivision of the Federation of St. Kitts & Nevis. But NIA had not been designated

⁵ This requirement is covered in Module 2.3 dealing with Consent to Arbitration.

⁶ Schreuer, *Commentary, Article 25, para. 164, p. 158.*

⁷ *Cable Television v. St. Kitts and Nevis, Award, 13 January 1997, 13 ICSID Review-Foreign Investment Law Journal 328 (1998).*

to the Centre as a constituent subdivision or agency in accordance with Article 25(1) of the ICSID Convention nor had its consent been approved by the Federation in accordance with Article 25(3). The Tribunal held that in the absence of a designation of the NIA under Art. 25(1) it had no jurisdiction. The Tribunal also rejected the attempted substitution of the Federation for NIA as a party to ICSID proceedings.

Summary:

- **A distinction exists between a State in the form of its central government and a State's territorial entities (constituent subdivisions) or governmental agencies. Territorial entities and governmental agencies can become parties to proceedings before the Centre only if they have been designated by the host State.**
- **Designation to the Centre gives a strong presumption that the entity is a "constituent subdivision or agency of a Contracting State."**
- **In addition to designation, the consent to jurisdiction given by a constituent subdivision or agency is subject to the approval of the State to which it belongs.**
- **A Contracting State may designate its governmental agencies or territorial entities at any time before or after the dispute has arisen. Once the constituent subdivision or agency has given its consent to the Centre's jurisdiction, and this consent has been approved, the State's ability to withdraw a designation will be subject to the last sentence of Article 25(1).**

3. NATIONAL OF ANOTHER CONTRACTING STATE

Positive and negative nationality requirements

In order to gain access to dispute settlement under the ICSID Convention, an investor is required to be a “national of another Contracting State”. Article 25(2) contains the following definition of this term:

(2) “National of another Contracting State” means: (a) any natural person who had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration as well as on the date on which the request was registered pursuant to paragraph (3) of Article 28 or paragraph (3) of Article 36, but does not include any person who on either date also had the nationality of the Contracting State party to the dispute; and (b) any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration and any juridical person which had the nationality of the Contracting State party to the dispute on that date and which, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of this Convention.

Therefore, Article 25(2) defines the term “national of another Contracting State” by distinguishing between a natural person and a juridical person. Investors are required to meet a positive and a negative nationality requirement. To satisfy the positive requirement, investors are required to be nationals of a Contracting State. To satisfy the negative requirement, investors must not have the nationality of the host State. Juridical persons will qualify as nationals of Contracting States through their place of incorporation or seat of business. A juridical person may, however, possess the host State’s nationality and still qualify as a national of another Contracting State under an exception contained in Article 25(2)(b) discussed below.

Critical dates

Article 25(2)(a) states that the nationality requirements for a natural person have to be satisfied at two separate dates. An individual investor has to be a national of a Contracting State at the time the parties consent to submit to the Centre’s jurisdiction and also on the date the request for arbitration or conciliation is registered by the Centre. In addition, the individual investor must not be a national of the host State on these two dates. The individual investor’s possession of other nationalities is irrelevant in the interim period between the date of consent and the date of registration. The Convention does not speak of a requirement for the investor to continuously hold its nationality between these two dates. By contrast, a juridical person has to satisfy the nationality requirements only on the date the parties consented to submit to the Centre’s jurisdiction.

a) Natural Person

Nationality of individuals An individual’s nationality is determined by the domestic legislation of the

State whose nationality is claimed. Two criteria are generally accepted under international and domestic laws in determining the nationality of individuals. The first criterion confers nationality on the individual on the basis of descent from a national of a particular State (*ius sanguinis*). The second criterion emphasizes the territoriality principle under which the nationality is conferred according to the place of birth (*ius soli*). The domestic legislation of most countries adheres to one of or both these criteria in regulating the concept of nationality.⁸ In addition, there are other accepted criteria for the acquisition of a nationality, such as a grant of nationality on the basis of long residence or other ties linking the individual to a State. However, there are instances where a State's rules on nationality may be ignored. This would be the case where a nationality is conferred without regard to any effective link between the State conferring the nationality and the individual.⁹ This is often referred to as "nationality of convenience" which may be obtained from certain countries by the mere compliance with certain procedural steps. These kinds of nationalities may be challenged by host States.

Objective determination of nationality

An agreement between a host State and an investor may specifically state the investor's nationality. Such an agreement creates a presumption that the nationality in question exists. However, if the facts demonstrate that the investor does not qualify as a national under the law of the State whose nationality has been claimed, the agreement will be of little use. An investor's nationality has to be objectively determined irrespective of agreements between the host State and the investor. To that end, an investor must show the possession of the nationality of a Contracting State.

No host State nationality

The purpose of ICSID is to encourage the settlement of disputes that involve States and private foreign investors who are often reluctant to settle disputes in host States' courts. Investors who hold the nationality of the host State are barred from bringing claims before the Centre. The motive behind this prohibition is to exclude disputes that are normally settled locally. This also applies to investors with dual nationality, one of which is that of the host State. This exclusion applies to investors with dual nationality even if the host State's nationality is not the effective one.¹⁰

Only under extreme circumstances may an individual investor with the host State's nationality be allowed to institute proceedings at the Centre. This would be the case if the host State conferred its nationality on an investor involuntarily for the sole purpose of undermining the Centre's jurisdiction. Under these circumstances, the prohibition against the unilateral withdrawal of consent¹¹ would override the negative nationality requirement.

Summary:

- **A natural person must satisfy both a positive and a negative**

⁸ A. Randelzhofer, *Nationality, Encyclopedia of Public International Law, Vol. III, 501 (1997)*.

⁹ *See in general the Nottebohm Case, 1955 ICJ Reports 23.*

¹⁰ Schreuer, *Commentary, Article 25, paras. 440-444.*

¹¹ *Article 25(1), last sentence.*

nationality requirement: the investor must be a national of a Contracting State. In addition, the investor must not be a national of the host State.

- **A natural person must comply with these requirements at two critical dates: on the date when both parties consent to submit the dispute to arbitration or conciliation and also on the date the request for arbitration or conciliation is registered by the Centre.**
- **An agreement between the parties stipulating the nationality of the investor creates a presumption of compliance with the nationality requirements of Article 25(2)(a). However, this presumption is rebuttable.**

b) Juridical Person

Nationality of corporations

Two criteria are decisive in determining the nationality of a corporation. First, the place of incorporation, i.e., the law under which the corporation is formed. Second, the place of its seat (*siège social*), i.e., the State where the headquarters or the centre of its management is located.

Another relevant criterion in determining the nationality of a company is that of foreign control. A foreign investor may exercise control through the holding of equity shares in the company, through managerial control or by having the necessary voting power to affect the decision-making process in the investment. The concept of foreign control is relevant in situations where a company is locally incorporated under the host State's law.

ICSID tribunals have consistently adopted the traditional test of incorporation or seat in determining the nationality of a corporation.¹² The Centre's practice reflects a reluctance to adopt the control test in defining the nationality of a juridical person outside the narrowly defined exception in Article 25(2)(b).

Nationality of a Contracting State

A juridical person must be a national of a Contracting State. A corporation that has the nationality of a non-Contracting State will not be able to institute proceedings before the Centre. A corporation may, however, have more than one nationality. If all nationalities are those of Contracting States, the Centre will have jurisdiction. If one of the nationalities belongs to a non-Contracting State, the juridical person has to demonstrate that it holds the nationality of a Contracting State on the basis of incorporation or seat. The concurrent possession of the nationality of a non-Contracting State, established on the basis of these same criteria, would not exclude jurisdiction.

Agreement on nationality

An agreement on the nationality of the investor between the host State and a corporate investor strongly indicates that the nationality requirement has been fulfilled. Such an agreement will carry much weight, but it cannot create a nationality that does not exist. Therefore, the existence of such an agreement will not preclude the tribunal from examining the compliance with this requirement.

¹² Schreuer, *Commentary, Article 25, paras. 465-468.*

An agreement on an investor's nationality where the juridical person is registered in a non-Contracting State but controlled by a national of a Contracting State may allow for the Centre's jurisdiction. The validity of this agreement would depend on the host State's knowledge of the circumstances underlying the investor's nationality combined with the State's consent to submit to the Centre's jurisdiction. This situation differs from the one where the juridical person is a national of the host State. In the latter case, the agreement is subject to the explicit exception of Article 25(2)(b).¹³

In *MINE v. Guinea*¹⁴, there was an agreement on the nationality of the investor. MINE had concluded an agreement with the Government of Guinea which contained the parties' consent to settle disputes through ICSID. This agreement also stipulated that the investor, MINE, was a Swiss national. Switzerland was (and is) a Contracting State. But MINE was incorporated in Liechtenstein which had not ratified the ICSID Convention. But the company was controlled by a Swiss national. When MINE instituted proceedings with ICSID it argued that it had complied with the nationality requirement since the real interest in the corporation was Swiss. Guinea did not object to the Centre's jurisdiction and the Tribunal did not explicitly refer to the investor's nationality. The Tribunal's assumption of jurisdiction over the case implied that it had accepted MINE's nationality as Swiss. The Tribunal's position seems to have been based on two elements. First, the agreement between the parties stipulated the investor's nationality to be Swiss. Second, Guinea was aware of the circumstances underlying the investor's nationality when it agreed to submit to ICSID's jurisdiction.

Private nature of investor

In principle, investors must be private corporations. The Convention's Preamble refers to private international investment. But this does not necessarily exclude wholly or partly government-controlled companies acting as investors. The decisive criterion is whether the company is acting in a commercial capacity or is discharging governmental functions.¹⁵

In *CSOB v. Slovakia*,¹⁶ the Respondent contested the Tribunal's competence charging that the Claimant was a State agency of the Czech Republic rather than an independent commercial entity and that it was discharging essentially governmental activities. The Tribunal rejected this contention. It held that the concept of "national" under the Convention was not limited to privately owned companies and did not

¹³ Ibid. at paras. 485-489.

¹⁴ *MINE v. Guinea, Award, 6 January 1988, 4 ICSID Reports 61.*

¹⁵ Broches, A., *The Convention on the Settlement of Investment Disputes between States and Nationals of Other States*, 136 *Recueil des Cours* 331, 354/5 (1972-II).

¹⁶ *CSOB v. Slovakia, Decision on Jurisdiction, 24 May 1999, 14 ICSID Review – Foreign Investment Law Journal 251, 257-261 (1999).*

depend upon whether or not the company was partially or wholly owned by the Government. The decisive test was whether the company was discharging an essentially governmental function. CSOB's activities in executing international banking transactions under the State's control had to be judged by their nature and not by their purpose and were hence commercial.

Summary:

- **The Convention is silent on the definition of the nationality of a juridical person. The Centre's practice demonstrates the acceptance of the traditional criteria for the nationality of corporations under international and domestic laws, namely the place of incorporation or seat of business.**
- **A juridical person must be a national of a Contracting State in order to have access to ICSID.**
- **An agreement on the nationality of an investor between a host State and an investor creates a strong presumption of compliance with the nationality requirements.**
- **If the juridical person is a national of a non-Contracting State but is controlled by a national of a Contracting State, an agreement on the nationality of an investor may suffice if the host State is fully aware of the situation.**
- **A State-owned corporation will qualify as an investor if it acts in a commercial rather than in a governmental function.**

4. LOCALLY INCORPORATED COMPANIES UNDER FOREIGN CONTROL

Purpose of Art. 25(2)(b)

The purpose of the Convention is the settlement of investment disputes between States and foreign investors. Disputes between States and their own nationals are to be settled locally. Many host States require that foreign investors operate through locally incorporated companies. The consequence of incorporating under the host State's law is that these companies have the nationality of the host State. In principle, these companies would be excluded from proceedings against the host State since the Convention requires the nationality of an investor to be that of a Contracting State other than the State party to the dispute. However, the drafters of the Convention realized that a sizeable portion of foreign investments would thus be excluded from the Centre's jurisdiction. Therefore, they included the following category among "National of another Contracting State" in Article 25(2)(b):

...any juridical person which had the nationality of the Contracting State party to the dispute on that date and which, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of this Convention.

Article 25(2)(b) applies the principle of foreign control to locally incorporated companies. This guarantees access to ICSID to foreign investors even if they operate through locally incorporated companies. To achieve this result, the Convention requires two elements. There must be an agreement with the host State that reflects its undertaking to treat the locally incorporated company as foreign. In addition, the objective element of foreign control must be present.

a) Agreement to Treat the Investor as a National of Another Contracting State

A request for arbitration or conciliation involving a company having the nationality of the host State must be supported by information concerning an agreement of the parties that it should be treated as a national of another Contracting State for the purposes of the Convention.¹⁷

Explicit agreement

The agreement to treat an investor as a national of another Contracting State may be reached in different ways. Such an agreement may be contained in the instrument recording the consent of the parties to submit to the Centre's jurisdiction. The Model Clauses provided by the Centre suggest the following formula:

Clause 7

It is hereby agreed that, although the Investor is a national of the Host State, it is controlled by nationals of name(s) of other Contracting State(s) and

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¹⁷ Institution Rule 2(1)(d)(iii).

*shall be treated as a national of [that]/[those] State[s] for the purposes of the Convention.*¹⁸

Implicit agreement

The Convention does not prescribe a particular form for an agreement to treat the investor as a national of another Contracting State. Whereas a consent agreement is required to be in writing, no formality is attached to agreements on the nationality of locally incorporated companies that are foreign controlled. The practice of ICSID's tribunals shows flexibility in the determination of whether such an agreement exists.

In *Amco v. Indonesia*,¹⁹ PT Amco, a locally incorporated company, was controlled by its parent foreign company, Amco Asia. The arbitration clause nominated PT Amco as a potential party in any ICSID proceeding. In contesting the Centre's jurisdiction over PT Amco, Indonesia argued that it had not expressed its agreement to treat PT Amco as a foreign corporation. The Tribunal acknowledged the lack of formal requirements for these agreements. This allowed the Tribunal to determine whether an implicit agreement existed between the parties. This was found to be the case. The Tribunal referred to the consent agreement which indicated the Indonesian Government's acknowledgment of PT Amco's status as a locally incorporated but foreign controlled corporation. PT Amco was, in fact, referred to as a "foreign business" in the agreement. In addition, the agreement contained provisions that would normally apply to foreign businesses. Therefore, the Tribunal found an implied agreement between the parties to treat PT Amco as a national of another Contracting State for purposes of the Convention.

Subsequent cases demonstrate that ICSID Tribunals have inferred an agreement to treat the locally incorporated company as a foreign national from the mere existence of an ICSID clause.

In *Klöckner v. Cameroon*,²⁰ the foreign investor had participated in the establishment of a joint venture company, SOCAME, in Cameroon. An agreement between SOCAME and Cameroon (the "Establishment Agreement") contained an ICSID clause. Before the Tribunal, Cameroon sought to challenge the validity of the ICSID clause because SOCAME was a Cameroonian company. The Tribunal held that the mere existence of an ICSID arbitration clause indicated an agreement on foreign nationality: The insertion of an ICSID arbitration clause by itself presupposes and implies that the parties were agreed to consider SOCAME at the time to be a company under foreign control, thus having the capacity to act in ICSID arbitration. This is an acknowledgment

¹⁸ 4 ICSID Reports 362.

¹⁹ *Amco v. Indonesia, Decision on Jurisdiction*, 25 September 1983, 1 ICSID Reports 392-397.

²⁰ *Klöckner v. Cameroon, Award*, 21 October 1983, 2 ICSID Reports 14-18.

which completely excludes a different interpretation of the parties' intent. Inserting this clause in the Establishment Agreement would be nonsense if the parties had not agreed that, by reason of the control then exercised by foreign interests over SOCAMÉ, said Agreement could be made subject to ICSID jurisdiction.²¹

Presumption of agreement

Other decisions of ICSID Tribunals have also demonstrated flexibility in determining the existence of an agreement on nationality.²² In instances where an agreement containing the host State's consent to submit to ICSID's jurisdiction existed with a locally incorporated but foreign controlled company, Tribunals found an implicit agreement to treat that company as foreign. Since consent agreements are only valid if the Convention's nationality requirements are satisfied, such agreements create a presumption that a host State has, in fact, accepted to treat the local corporation as foreign.

Legislation and treaties

Such inferences can only be drawn from consent agreements concluded directly with host States which relate to a particular local company. In cases where a host State's consent to ICSID's jurisdiction is offered in general terms in national legislation or through a bilateral investment treaty (BIT), such a presumption that the host State has agreed to regard a particular local company as foreign cannot be made. But an offer to treat locally incorporated companies as foreign because of foreign control may also be stipulated in national legislation and/or in bilateral investment treaties. This offer becomes part of the general consent offer to submit to the Centre's jurisdiction and becomes binding upon the investor's acceptance of the offer.

The second clause of Art. 25(2)(b) requires an agreement between the parties to the dispute. A clause in national legislation or in a treaty providing for ICSID's jurisdiction is an offer to the investor, which may be accepted by the latter.²³ The proviso that a local company, because of foreign control, would be treated as a national of another Contracting State is part of the terms of the offer made by the host State. When the offer to submit disputes to ICSID is accepted by the investor, that proviso becomes part of the consent agreement between the parties to the dispute.²⁴

Legislation

Some national investment laws providing for ICSID's jurisdiction do, in fact, grant access also to local companies that are under foreign control. Some laws simply extend the right to institute ICSID proceedings to corporations with a majority of foreign capital. Other investment laws contain definitions of foreign investors that include locally established legal persons that are controlled by a majority of foreign capital.²⁵

²¹ At p 16.

²² See also *LETCO v. Liberia, Decision on Jurisdiction, 24 October 1984, 2 ICSID Reports 351-354.*

²³ Generally, see *Module 2.3 on Consent to Arbitration.*

²⁴ Schreuer, *Commentary, Article 25, para. 536.*

²⁵ Schreuer, *Commentary, Article 25, para. 531.*

Treaties

In a similar way, many bilateral investment treaties provide that companies established in one State but controlled by nationals of the other State shall be treated as nationals of the other State for purposes of Art. 25(2)(b).²⁶ For instance, the BITs of the United Kingdom typically include the following clause:

*A company which is incorporated or constituted under the law in force in the territory of one Contracting Party and in which before such a dispute arises the majority of shares are owned by nationals or companies of the other Contracting Party shall in accordance with Article 25(2)(b) of the Convention be treated for the purposes of the Convention as a company of the other Contracting Party.*²⁷

Multilateral treaties providing for ICSID jurisdiction also contain provisions to the same effect.²⁸

b) Foreign Control**Control by nationals of other Contracting States**

The Convention does not define the term “foreign control”, but the drafting history indicates that control must be exercised by nationals of other Contracting States.²⁹ This interpretation excludes control by nationals of non-Contracting States or by nationals of the host State. This interpretation is in line with the objective of the Convention to promote the settlement of disputes between host States and nationals of other Contracting States.

Objective requirement of control

An agreement on an investor’s nationality under Article 25(2)(b) “because of foreign control” implies that such control is an objective requirement that has to be determined by Tribunal. In other words, an agreement on the nationality of an investor creates no more than a presumption that there is “foreign control”. Whereas an agreement on foreign nationality can be inferred from the existence of a consent agreement, no such an inference can be made in respect of foreign control.

ICSID tribunals have invariably examined the actual existence of foreign control over the local company.³⁰ In situations where the element of control is lacking, the Tribunal will find that it has no jurisdiction.

²⁶ Dolzer/Stevens, *Bilateral Investment Treaties* (1995) pp. 142-144; Parra, A. R., *Provisions on the Settlement of Investment Disputes in Modern Investment Laws, Bilateral Investment Treaties and Multilateral Instruments on Investment*, 12 *ICSID Review – Foreign Investment Law Journal* 287, 324 (1997); Peters, P., *Dispute Settlement Arrangements in Investment Treaties*, 22 *Netherlands Yearbook of International Law* 91, 144 (1991).

²⁷ Dolzer/Stevens, *Bilateral Investment Treaties*, p. 234. See also the *United States Model Agreement*, loc. cit. at 248/9.

²⁸ See *Energy Charter Treaty 1994, Article 26(7)*, 34 *ILM* 360, 400 (1995). But contrast *Article 1117 of NAFTA*, 32 *ILM* 605, 643 (1993). For a broader discussion see Schreuer, *Commentary, Article 25, para. 535*.

²⁹ Schreuer, *Commentary, Art. 25, para. 551*.

³⁰ *Amco v. Indonesia, Decision on Jurisdiction*, 25 September 1983, 1 *ICSID Reports* 396/7; *Klöckner v. Cameroon, Award*, 21 October 1983, 2 *ICSID Reports* 15/16; *SOABI v. Senegal, Decision on Jurisdiction*, 1 August 1984, 2 *ICSID Reports* 182/3; *LETCO v. Liberia, Decision on Jurisdiction*, 24 October 1984, 2 *ICSID Reports* 352.

In *Vacuum Salt Products Ltd. v. Ghana*,³¹ there was an agreement between the Ghanaian Government and Vacuum Salt containing an ICSID clause. Vacuum Salt was organized under the law of Ghana. When Vacuum Salt initiated arbitration proceedings before ICSID, the Ghanaian Government objected to the Centre's jurisdiction arguing that Vacuum Salt was its own national and was not controlled by foreign nationals. In addition, the government stated that no agreement had been concluded with the investor to treat Vacuum Salt as a national of another Contracting State.³² The Tribunal noted the practice of previous tribunals to infer an agreement on nationality from the existence of a consent to ICSID's jurisdiction. But it insisted that it had to determine whether foreign control did, in fact, exist:

*... the parties' agreement to treat Claimant as a foreign national "because of foreign control" does not ipso jure confer jurisdiction. The reference in Article 25(2)(b) to "foreign control" necessarily sets an objective Convention limit beyond which ICSID jurisdiction cannot exist and parties therefore lack power to invoke same no matter how devoutly they may have desired to do so.*³³

The Tribunal examined whether Vacuum Salt was effectively controlled by foreign nationals and found that the foreign investor only held 20 per cent of the shares, whereas 80 per cent were in Ghanaian hands. Under these circumstances, the local company did not objectively meet the requirement of foreign control under the Convention. The Tribunal also looked at other elements of control besides shareholding, such as the foreign investor's management role, but was not, in the end, satisfied of the existence of foreign control.³⁴

Elements of control

The consideration of elements other than shareholding demonstrates a differentiated approach to the concept of foreign control. In addition to shareholding, indirect control, voting powers or managerial control were taken into account by ICSID Tribunals.³⁵ The Convention's methodology on this issue has been summarized as follows:

*On the basis of the Convention's preparatory works as well as the published cases, it can be said that the existence of foreign control is a complex question requiring the examination of several factors such as equity participation, voting rights and management. In order to obtain a reliable picture, all these aspects must be looked at in conjunction. There is no simple mathematical formula based on shareholding or votes alone.*³⁶

³¹ *Vacuum Salt v. Ghana*, Award, 16 February 1994, 4 ICSID Reports 329.

³² At p. 331.

³³ At pp. 342/3.

³⁴ At pp. 342-351.

³⁵ *Amco v. Indonesia*, Decision on Jurisdiction, 25 September 1983, 1 ICSID Reports 396; *Klöckner v. Cameroon*, Award, 21 October 1983, 2 ICSID Reports 15/16; *SOABI v. Senegal*; Decision on Jurisdiction, 1 August 1984, 2 ICSID Reports 182/3; *LETCO v. Liberia*, Decision on Jurisdiction, 24 October 1984, 2 ICSID Reports 349, 351; *Vacuum Salt v. Ghana*, Award, 16 February 1994, 4 ICSID Reports 342-351; *Cable TV v. St. Kitts and Nevis*, Award, 13 January 1997, 13 ICSID Review—Foreign Investment Law Journal 366-370 (1998).

Indirect control

The complexity inherent in the concept of foreign control is most evident in connection with indirect control. Indirect control refers to instances where a foreign corporation, controlling the local company in the host State, is itself controlled by nationals of other States. In that situation, the question arises whether a Tribunal should concern itself only with those who directly control the local company or whether it should look beyond the first layer and search for the chain of control that may be exercised by multiple investors. ICSID practice on this point is not uniform.

In *Amco v. Indonesia*, the Tribunal discussed the possibility of examining control beyond the first level. The Indonesian Government argued that PT Amco, the local company, was not controlled by Amco Asia, a company owned by a national of the United States of America, since Amco Asia was, in turn, controlled by a Hong Kong company owned by a Dutch citizen. The Tribunal refused to search for indirect control beyond the first level of control and found that it was restricted to the immediate control exercised by the parent company of the local company.³⁷

The Tribunal in *SOABI v. Senegal* took a different approach. SOABI, a company incorporated in Senegal, was controlled by a Panamanian company, Flexa, which in turn was controlled by Belgian nationals. In this case, it was critical for SOABI to convince the Tribunal to go beyond the first level of control since Panama was not a Contracting State, whereas Belgium was (and is) a Contracting State. The Senegalese Government disputed jurisdiction arguing that Panama was not a Contracting State, hence, the nationality requirements of Article 25 were not met. The Tribunal stated that the Convention was not only concerned with direct control over a locally incorporated company. The Tribunal referred to the purpose of Article 25(2)(b) of the Convention in facilitating foreign investments through locally incorporated companies while still retaining their standing before ICSID. In that spirit, the Tribunal went beyond the direct control exercised by the Panamanian company and found that SOABI was, in fact, controlled by Belgian nationals.³⁸

There is no definitive legal position on the issue of indirect control as ICSID Tribunals have taken differing approaches. Scholarly opinion is also divided. One view is that the correct approach would be to allow a Tribunal to search for control by a national of a Contracting State until jurisdiction can be established.³⁹ Under another view, a Tribunal should look at the true controllers thereby excluding access to the Centre to juridical persons controlled directly

³⁶ Schreuer, *Commentary, Article 25, para. 573*.

³⁷ *Amco v. Indonesia, Decision on Jurisdiction, 25 September 1983, 1 ICSID Reports 396. It should be noted that this finding was an obiter dictum: even if the Tribunal had decided to probe beyond the first level of control, it would have been able to assert jurisdiction because all the relevant nationalities were those of Contracting States.*

³⁸ *SOABI v. Senegal, Decision on Jurisdiction, 1 August 1984, 2 ICSID Reports 182/3.*

or indirectly by nationals of non-Contracting States or nationals of the host State.⁴⁰

Summary:

- **Foreign investments are often channeled through companies incorporated in the host State. Such companies may be parties to ICSID proceedings if the host State has agreed to treat them as foreign nationals because of foreign control.**
- **An agreement on the nationality of a locally incorporated but foreign controlled company may be achieved by different methods. It may be contained in a direct consent agreement to submit to ICSID's jurisdiction. It may also be contained in a host State's national legislation or in a bilateral investment treaty.**
- **A consent agreement to submit to ICSID's jurisdiction in respect of a specific locally incorporated company, implies that the host State has also agreed to treat that company as a foreign national.**
- **A consent to jurisdiction offered by a host State through its national legislation or a BIT in general terms cannot create this effect. Some national investment laws and treaties offer to treat locally incorporated but foreign controlled companies as foreign investors for purposes of jurisdiction.**
- **Foreign control must be exercised by nationals of Contracting States.**
- **Control must be objectively determined and cannot be inferred from an agreement. There is no specific method for ascertaining the existence of foreign control. The Convention allows for a comprehensive approach taking into account factors such as management, voting rights, control by shareholders, etc.**

³⁹ Amerasinghe, C. F., *Interpretation of Article 25(2)(b) of the ICSID Convention*, in: *International Arbitration in the 21st Century: Towards Judicialization and Uniformity?* (Lillich, R. B./Brower, Ch. N. eds.) 223, 240 (1994).

⁴⁰ Schreuer, *Commentary, Article 25, para. 563.*

5. THE ADDITIONAL FACILITY

Nationality requirements under the Additional Facility

Under Article 25(1) of the ICSID Convention the host State and the investor's State of nationality must be Contracting States. If either of these States is not a party to the Convention, the requirements *ratione personae* are not fulfilled and there is no jurisdiction. If only one party fulfills the requirements *ratione personae* the Additional Facility offers a method of dispute settlement. The Administrative Council of ICSID adopted the Additional Facility Rules in September 1978.⁴¹ The Additional Facility provides for dispute settlement in certain situations where ICSID's jurisdiction does not exist because some requirements under the Convention have not been met.

The conditions for access to the Centre under the Additional Facility are described in Art. 2 of its Rules:

Article 2

Additional Facility

*The Secretariat of the Centre is hereby authorized to administer, subject to and in accordance with these Rules, proceedings between a State (or a constituent subdivision or agency of a State) and a national of another State, falling within the following categories: (a) conciliation and arbitration proceedings for the settlement of legal disputes arising directly out of an investment which are not within the jurisdiction of the Centre because either the State party to the dispute or the State whose national is a party to the dispute is not a Contracting State; ...*⁴²

Therefore, the Additional Facility enables a non-Contracting State or a national of a non-Contracting State to the ICSID Convention to participate in dispute settlement proceedings administered by ICSID. Under the Additional Facility, only one party must fulfill the requirements *ratione personae*. In other words, either the host State or the State of the investor's nationality must be a Contracting Party to the Convention. If neither State is a party to the ICSID Convention not even the Additional Facility is available. If both States are parties to the Convention, the parties must use the procedure under the Convention and may not use the Additional Facility. Also, there must be a separate submission to dispute settlement under the Additional Facility.

⁴¹ The Additional Facility Rules together with four schedules are reproduced in 1 ICSID Reports 213-280. Generally on the Additional Facility see Broches, A., *The 'Additional Facility' of the International Centre for Settlement of Investment Disputes (ICSID)*, 4 Yearbook Commercial Arbitration 373 (1979); Toriello, P., *The Additional Facility of the International Centre for Settlement of Investment Disputes*, 4 Italian Yearbook of International Law 59 (1978/79); Schreuer, *Commentary*, Art. 6, para. 25; Art. 11, para. 15; Art. 25, paras. 10-14, 29-33, 69, 111-118, 124, 133-138, 188-189, 270, 294, 310-315, 411; Art. 26, paras. 17, 18, 52, 86, 87; Art. 36, paras. 7, 47, 61; Art. 42, paras. 86, 169; Art. 43, para. 3; Art. 47, para. 6; Art. 52, para. 5; Art. 53, paras. 5-8; Art. 54, paras. 12-22; Art. 62, paras. 7-10.

⁴² 1 ICSID Reports 218. Additionally, the Additional Facility is also available for the settlement of legal disputes that are not subject to the ICSID Convention because they do not arise directly out of an investment and for fact-finding proceedings. These matters relate to jurisdiction *ratione materiae* and are not discussed in this context.

Additional Facility not governed by ICSID Convention

It should be noted that the Additional Facility Rules are not part of the ICSID Convention. Therefore, arbitration proceedings under the Additional Facility are not subject to the Convention's rules not all of which are reflected in the Additional Facility Rules. This applies, for instance, to the Convention's provisions on annulment (Article 52) and on enforcement (Article 54).

NAFTA

The Additional Facility has attained importance in the context of the North American Free Trade Agreement (NAFTA) between Canada, Mexico and the United States of America. The NAFTA contains the consent of the Contracting Parties to submit to ICSID or its Additional Facility.⁴³ The United States is a Contracting State of the ICSID Convention but Canada and Mexico are not. Therefore, the Additional Facility Rules allow a national of the United States to bring claims against Canada or Mexico. The Additional Facility also permits nationals of Canada and Mexico to seek settlement of disputes that arise with the United States. But if a dispute arises between Canada and a Mexican national, or vice versa, the parties cannot even submit the dispute to the Additional Facility. A number of cases have been brought under the Additional Facility on the basis of the NAFTA.

Summary:

- **The Additional Facility is available if only one of the parties meets the *ratione personae* requirements of the ICSID Convention. If both the host State and the investor's State of nationality are not Contracting States, the Additional Facility will not be available.**

⁴³ Article 1122, 32 ILM 644 (1993).

TEST MY UNDERSTANDING

After having studied this Module the reader should be able to answer the following questions. Most answers should go beyond a simple yes/no alternative and would require a brief explanation:

1. Can any State or a national of any State bring a dispute before ICSID?
2. What is the relevant factor in becoming a Contracting State of the Convention?
3. Is it possible for a national of a Contracting State to bring a dispute against the host State if s/he is also a national of the host State?
4. Can a State's constituent subdivision or agency be a party to proceedings before an ICSID Tribunal? If so, what are the requirements for a State's constituent subdivision or agency becoming a party?
5. What effects, if any, does an agreement on the nationality of an investor between the host State and the investor have?
6. What factors are relevant for the nationality of a juridical person?
7. Can a company incorporated in the host State be a party before an ICSID Tribunal?
8. If the answer to question 7 is affirmative, what requirements need to be satisfied for a Tribunal to assert jurisdiction?
9. Under Article 25(2)(b) the parties may agree to treat a locally incorporated company as a national of another Contracting State. Must such an agreement always be explicit? Under what circumstances can it be implied?
10. Under Article 25(2)(b), what elements does a Tribunal look at in determining the existence of foreign control over a locally incorporated company?
11. Is the ICSID mechanism for dispute settlement limited to parties that meet the *ratione personae* requirements under the Convention?
12. If the answer to question 11 is negative, discuss any alternative facility and the requirements to institute proceedings at that facility.

HYPOTHETICAL CASES

Munaco Inc. v. Kotoland

In June 1998, Munaco Inc., a company established under the law of the Republic of Somakistan entered into an investment agreement with the State of Kotoland. In the agreement, both Munaco and Kotoland agreed to submit their dispute to ICSID. In December 2000, Munaco instituted proceedings before an ICSID Tribunal. Somakistan ratified the ICSID Convention in May 1999. Kotoland ratified the ICSID Convention in January 2001.

1. Please advise Munaco of its chances of obtaining a favourable decision on jurisdiction. Alternatively, advise Kotoland on its chances of prevailing in its attempt to have the Tribunal decline jurisdiction.
2. Should Munaco fail in persuading the Tribunal to assert jurisdiction, what advice can you give Munaco to gain access to ICSID for the settlement of this dispute?

Tonoco Inc. v. Republic of Nari

Tonoco Inc., was established under the law of the Republic of Nari in 1995. In the same year, Tonoco concluded an agreement with the Republic of Nari in which the government consented to submit any disputes arising from and relating to Tonoco's investment to be settled at ICSID. The agreement did not make any reference to Tonoco's foreign control. In the agreement, however, the Narian Government offered Tonoco tax incentives that are usually given to foreign investors.

Chris Nice, a national of Airtsua, owns 25 per cent of Tonoco's shares. Roberto Puccini, a national of Ylati, also owns 25 per cent of the shares while the Narian Government owns the remaining 50 per cent. Airtsua is not a Party to the Convention while Ylati ratified the Convention in 1985. Chris Nice is Tonoco's CEO (chief executive officer) and makes all operational and managerial decisions relating to Tonoco.

In 1992 the Republic of Nari adopted Law No. 11 in which the government agreed to treat locally incorporated but foreign controlled companies as foreign. The government, however, did not offer consent to submit to ICSID's jurisdiction as part of Law No. 11. Nari ratified the ICSID Convention in 1994.

In 2002 a dispute arose between Tonoco and the Narian Government and Tonoco instituted arbitration proceedings before ICSID. The Narian Government made the following objections:

1. Tonoco is a national of the Republic of Nari and as such cannot bring a claim against the host State;
2. The Narian Government owns the majority of the shares in Tonoco, therefore, control rests with the host State and not with foreign nationals;
3. The Narian Government has not agreed to treat Tonoco as a locally incorporated but foreign controlled company;
4. The Republic of Nari rejects the contention that Chris Nice exercised effective control. In addition, the Narian Government argues that even if the Tribunal found Chris Nice to have exercised control, the Tribunal should dismiss the case because Chris Nice is a national of a non-Contracting State.

Please discuss the various objections or arguments made by the Republic of Nari. Try to make arguments in favor and against each of them. Try to anticipate the likely decision of the Tribunal.

FURTHER READING

Books

- **Dolzer, R., Stevens, M.**, *Bilateral Investment Treaties* (1995).
- **Schreuer, C.**, *The ICSID Convention: A Commentary* (2001).

Articles

- **Amerasinghe, C. F.**, Jurisdiction Ratione Personae under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, 47 *British Year Book of International Law* 227 (1974/75).
- **Amerasinghe, C. F.**, Interpretation of Article 25(2)(b) of the ICSID Convention, *in: International Arbitration in the 21st Century: Towards Judicialization and Uniformity?* (Lillich, R. B./Brower, Ch. N. eds.) 223 (1994).
- **Broches, A.**, The Convention on the Settlement of Investment Disputes between States and Nationals of Other States, 136 *Recueil des Cours* 331, 351-364 (1972-II).
- **Broches, A.**, The ‘Additional Facility’ of the International Centre for Settlement of Investment Disputes (ICSID), 4 *Yearbook Commercial Arbitration* 373 (1979).
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- **Lalive, P.**, The First ‘World Bank’ Arbitration (Holiday Inns v. Morocco)—Some Legal Problems, 51 *British Year Book of International Law* 123 (1980).
- **Parra, A. R.**, Provisions on the Settlement of Investment Disputes in Modern Investment Laws, Bilateral Investment Treaties and Multilateral Instruments on Investment, 12 *ICSID Review—Foreign Investment Law Journal* 287 (1997).
- **Peters, P.**, Dispute Settlement Arrangements in Investment Treaties, 22 *Netherlands Yearbook of International Law* 91 (1991).
- **Schreuer, C.**, Access to ICSID Dispute Settlement for Locally Incorporated Companies, *in: International Economic Law with a Human Face* (Weiss, F. ed.) 497 (1998).
- **Toriello, P.**, The Additional Facility of the International Centre for Settlement of Investment Disputes, 4 *Italian Yearbook of International Law* 59 (1978/79).

Documents

- Convention on the Settlement of Investment Disputes between States and Nationals of Other States:
<http://www.worldbank.org/icsid/basicdoc/9.htm>
- List of Contracting States and other Signatories of the Convention:
<http://www.worldbank.org/icsid/constate/c-states-en.htm>
- Designations by Contracting States Regarding Constituent Subdivisions or Agencies:
<http://www.worldbank.org/icsid/pubs/icsid-8/icsid-8-c.htm>
- Bilateral Investment Treaties, 1959-1996, Chronological and Country Data:
<http://www.worldbank.org/icsid/treaties/treaties.htm>
- ICSID Model Clauses :
<http://www.worldbank.org/icsid/model-clauses-en/main.htm>
- ICSID Cases:
<http://www.worldbank.org/icsid/cases/cases.htm>
- ICSID Additional Facility:
<http://www.worldbank.org/icsid/facility/facility.htm>

Cases

- *Amco v. Indonesia*, Decision on Jurisdiction, 25 September 1983, 1 ICSID Reports 389, 392-397.
- *Cable TV v. St. Kitts and Nevis*, Award, 13 January 1997, 13 ICSID Review–Foreign Investment Law Journal 328 (1998).
- *CSOB v. Slovakia*, Decision on Jurisdiction, 24 May 1999, 14 ICSID Review – Foreign Investment Law Journal 251, 257-261 (1999).
- *Holiday Inns v. Morocco*, Decision on Jurisdiction, 12 May 1974. Unpublished. For a detailed description see *Lalive, P.*, The First ‘World Bank’ Arbitration (*Holiday Inns v. Morocco*) – Some Legal Problems 51 *British Year Book of International Law* 123 (1980) and 1 ICSID Reports 645.
- *Klöckner v. Cameroon*, Award, 21 October 1983, 2 ICSID Reports 9, 14-18.
- *MINE v. Guinea*, Award, 6 January 1988, 4 ICSID Reports 61.
- *SOABI v. Senegal*, Decision on Jurisdiction, 1 August 1984, 2 ICSID Reports 175, 182/3.
- *Vacuum Salt v. Ghana*, Award, 16 February 1994, 4 ICSID Reports 329.