



**ICSID**

**International Centre for  
Settlement of Investment Disputes**  
WORLD BANK GROUP

## **BACKGROUND PAPER**

# **Compliance with and Enforcement of ICSID Awards**

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\*This paper does not constitute legal advice.

## I. Executive Summary

1. The purpose of this paper is to provide a comprehensive overview of the ICSID Convention's regime governing compliance with, recognition, enforcement and execution of an ICSID Convention Award ("ICSID Award" or "Award"). The paper complements other Background Papers which have examined the functioning of the ICSID Convention, such as the [Background Paper on Annulment](#). It responds to the interests of stakeholders in understanding what happens after an Award has been rendered and any post-award proceedings are concluded. The research includes a study of: (i) compliance with and enforcement of ICSID Awards with pecuniary obligations (Chapter II); and (ii) domestic decisions on recognition, enforcement and execution of ICSID Awards (Chapters VI and VII, Annexes A and B).

### *Key Features of the ICSID Provisions on Compliance, Recognition, Enforcement and Execution*

2. The ICSID Convention establishes a comprehensive and self-contained legal framework for investor-State arbitration, with provisions addressing the institution of proceedings, jurisdiction, the arbitration procedure, post-award remedies, and the recognition and enforcement of the Award. It is a de-localized system, independent of domestic laws.
3. The final and binding nature of ICSID Awards and the provisions on their recognition, enforcement and execution are key features of the Convention. The relevant provisions embody four important principles:
  - ICSID Awards are final and binding, and disputing parties must comply with them. They are not subject to appeal or any other remedy except those provided for in the Convention (Art. 53(1) ICSID Convention).
  - A party may seek recognition and enforcement of an Award in the competent courts or authorities of any ICSID Member State. Each Member State must recognize the Award's binding force and enforce the pecuniary obligations in the Award as if it were a final judgment of that State's courts (Art. 54(1) ICSID Convention).
  - While only pecuniary obligations are enforceable in all Member States, the disputing parties' obligation to comply applies to the Award as a whole (Art. 53(1) ICSID Convention).
  - Execution of Awards is governed by the relevant domestic laws in the Member State where execution is sought (Art. 54(3) ICSID Convention). Immunity from execution may therefore apply, meaning sovereign assets may be immune from execution (Art. 55 ICSID Convention).
4. The ICSID Convention distinguishes between the "recognition," "enforcement" and "execution" of Awards. These terms have different meanings in different legal systems (see Chapter III). When reference is made to "enforcement" in this paper, it denotes the broader concept of all steps involved under Article 54 of the Convention, unless otherwise indicated.

### *No Review of an ICSID Award in Domestic Courts*

5. The ICSID Convention establishes the only remedies available against ICSID Awards, and it excludes any other remedy that is not contained in the Convention (Art. 53 ICSID Convention). For example, an ICSID *ad hoc* committee may annul an Award because the tribunal manifestly exceeded its powers (Art. 52(1)(b) ICSID Convention). [ICSID's Background Paper on Annulment](#) provides a detailed analysis of the grounds for annulment and how they have been interpreted in practice. If annulled, an Award becomes a nullity and cannot be enforced under the ICSID Convention.
6. At the same time, the ICSID Convention establishes the obligation to recognize an ICSID Award and enforce its pecuniary obligations as if it were a final judgment of a court of the enforcing State. It does not provide any ground on which to refuse recognition or enforcement (Art. 54 ICSID Convention).

### *Differences Between Recognition and Enforcement under the ICSID Convention and New York Convention*

7. The ICSID Convention regime for recognition and enforcement of Awards differs from the regime under the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“**New York Convention**”). The New York Convention provides grounds for refusal to recognize and enforce, including the invalidity of an arbitration agreement and violation of public policy (see Chapter VIII).
8. The drafters of the ICSID Convention considered and rejected the idea of including the same grounds to refuse enforcement as those in the New York Convention. They also considered retaining at least the public policy defense against enforcement but, after much discussion, voted against its inclusion (see Chapter IV). By contrast, the Convention specifically provides that it does not derogate from domestic laws regarding immunity from execution with respect to State assets (see Chapter VII).

### *Enforcement of the Award as if It Were a Final Judgment of a Court*

9. The ICSID Convention requires every ICSID Member State to recognize the Award as binding and to enforce the pecuniary obligations imposed by the Award as if it were a final judgment of its courts (Art. 54(1) ICSID Convention). The drafters of the Convention recognized that States use different legal techniques and have different judicial systems, which is why instead of prescribing any particular method to be followed in its domestic implementation, Article 54 requires States to meet the requirements of the Article in accordance with their own legal systems. All that is needed for a party seeking recognition or enforcement is to present a copy of the Award certified by the Secretary-General, for courts to verify its authenticity (Art. 54(2) ICSID Convention) (see Chapter VI).

### *Domestic Courts Recognize and Enforce ICSID Awards*

10. A review of 124 publicly available domestic court decisions and orders shows that an overwhelming majority of courts recognize and enforce ICSID Awards (see Annex A). Courts presented with defenses on sovereign immunity at the enforcement stage have held that sovereign immunity is limited to immunity from execution. Many courts have stated

that ICSID Member States have waived sovereign immunity from jurisdiction by joining the ICSID Convention (Annex B, paras. 7.1 – 7.8).

11. Many courts have also acknowledged that their role is limited to ascertaining the Award's authenticity, recognizing that there is no scope of review of an ICSID Award at the recognition and enforcement stage (Annex B, paras. 6.1 – 6.17).

*Compliance with and Enforcement of ICSID Awards in Practice*

12. In practice, few Awards go to enforcement proceedings, as in the majority of cases parties voluntarily comply with Awards or reach post-award settlements. The ICSID Secretariat has researched all ICSID Awards with pecuniary obligations rendered by December 31, 2021 (see Chapter II).
13. Notably, looking at all 151 Awards in the study that awarded damages to a party ("**Damages Awards**"), award creditors obtained satisfaction through voluntary compliance or post-award settlements in 66% of cases, while 31% went to enforcement and in 3% enforcement was not pursued. Excluding those Damages Awards for which the outcome of enforcement actions was unavailable at the time of the study (either because the enforcement was pending, not pursued or the outcome unavailable), satisfaction was obtained in 97% of Damages Awards.
14. The study also shows that award creditors are less likely to pursue enforcement of Awards that award costs only and not damages ("**Costs Awards**"). Award creditors did not pursue enforcement in relation to 30% of 80 Costs Awards. These awarded significantly lower amounts than the Damages Awards, with 35% of Costs Awards being below USD 1 million. Among other things, the reason for not seeking enforcement was that the cost of enforcement would have been too high relative to the amount awarded. Costs Awards also have a lower rate of voluntary compliance, post-award settlement and successful enforcement than Damages Awards. Considering voluntary compliance, settlement and enforcement data with known outcomes, satisfaction was obtained in 83% of Costs Awards.
15. The ICSID study shows that the ICSID Convention's compliance and enforcement regime is highly effective. Parties voluntarily comply with, or reach post-award settlements of, the majority of Awards. Enforcements in domestic courts are largely successful, subject only to immunity from execution. It is important for the effectiveness of the regime that States and investors voluntarily comply with Awards and that domestic courts continue to enforce them. This is vital to maintaining user confidence and, as a result, a favorable investment climate in ICSID Member States.

## II. Research Examining Compliance with and Enforcement of ICSID Awards

16. An Award rendered under Article 48 of the ICSID Convention can include pecuniary obligations for either disputing party. These pecuniary obligations are enforceable under Article 54(1) of the Convention. They can relate to damages awarded in favor of a party to compensate it for its losses. They can also relate to the costs incurred by the parties in connection with the proceeding. An Award can order the payment of either, or both, damages and costs.
17. To ascertain the rate of compliance and enforcement of Awards rendered under the ICSID Convention, the ICSID Secretariat studied 565 concluded ICSID Convention arbitrations and focused specifically on proceedings that led to Awards with pecuniary obligations. This Background Paper examines 253 Awards with pecuniary obligations rendered by December 31, 2021, out of the total of 383 Awards rendered during that period (the “**ICSID Study**” or “**Study**”).
18. The ICSID Convention does not give the Secretariat a mechanism to monitor compliance with and enforcement of Awards under the Convention. The Secretariat collected data for this Study from public sources and from information provided by award creditors. The Secretariat was able to collect data for 91% of the 253 Awards included in the Study.
19. Scholars have conducted analogous research on aspects of compliance with ICSID and non-ICSID awards in investment arbitrations. One recent study focused on State compliance, in particular by States that have received the highest number of adverse awards rendered prior to July 2023.<sup>1</sup> Another study considered State compliance by examining the 46 least sued States (those with nine or fewer investment arbitration proceedings initiated prior to December 31, 2019).<sup>2</sup> The present ICSID Study examines all ICSID Convention Awards with pecuniary obligations rendered by December 31, 2021, including Costs Awards against investors. It is the most comprehensive study exclusively focused on ICSID Awards.

### A. *Methodology*

20. The ICSID Study reviewed all ICSID Convention Awards rendered by December 31, 2021, and examined the subset of these Awards in which tribunals ordered a party to pay costs and/or damages (details regarding the research data are set out in section B. below). The Study examined whether costs and/or damages were awarded; whether the Award was in favor of the investor(s) or the State party to the dispute; and, for cases where only costs

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<sup>1</sup> See International Law Compliance, ‘Report on Compliance with Investment Treaty Arbitration Awards 2023’ (2nd updated edition), available at: <https://www.internationallawcompliance.com/wp-content/uploads/2023/10/FULL-Report-2023-DEF-25-OCT-.pdf>; see also Gaillard E., Mitrev Penushliski I., ‘State Compliance with Investment Awards’ 35(3) ICSID Rev–FILJ (2021), p. 540.

<sup>2</sup> Chernykh Y., Langford M., Peat D., Fauchald O.K., Gáspár-Szilágyi S., Onyema E., and Puig S., ‘Compliance with ISDS Awards: Empirical Perspectives and Reform Implications’, ISDS Academic Forum Concept Paper 3/2022, available at: <https://www.jus.uio.no/ior/english/research/projects/copiid/academic-forum/papers/compliance-with-isds-awards--empirical-perspectives-and-reform-implications.pdf>.

were awarded, the amount of costs. Any amounts awarded in a currency other than USD were converted to USD based on the exchange rate as of the date of the Award.<sup>3</sup>

21. The ICSID Secretariat researched publicly available information concerning voluntary compliance with these Awards, or enforcement of the Award before a domestic court. Where such information was not publicly available, ICSID contacted the award creditor(s) or its/their counsel.<sup>4</sup> Each case was categorized into one of eight categories:

Voluntary Compliance and Post-Award Settlement	Voluntary compliance by the award debtor and any post-award settlement between the parties, whether before or after the initiation of annulment or enforcement proceedings. No distinction was made between full or partial satisfaction of the Award, if the award creditor considered itself satisfied.
Enforcement Pursued – Successful	Enforcement proceedings that resulted in full or partial satisfaction of the Award through execution on assets of the award debtor, with the award creditor considering itself satisfied.
Enforcement Pursued – Unsuccessful	Enforcement proceedings that concluded (or were otherwise exhausted), and, the Award had not been satisfied by the time of the Study.
Enforcement Pursued – Outcome Not Available	Enforcement proceedings the results of which are unknown or otherwise uncertain, <i>e.g.</i> , enforcement was granted but the outcome of execution proceedings (and thus satisfaction of the Award) is unclear.
Enforcement Pending	Enforcement proceedings that were pending at the time of the Study.
Enforcement Not Pursued	Enforcement was not pursued by the party entitled to recover at the time of the Study, based on information provided by that party.
Under Negotiation	Cases where payment of the awarded amount remained under negotiation between the parties at the time of the Study, based on information provided by the award creditor.

<sup>3</sup> For purposes of such conversion, the OANDA Historical Currency Converter was used (<https://www1.oanda.com/lang/es/currency/converter/>). Any awarded interest was not included in the calculation.

<sup>4</sup> In 2016, the ICSID Secretariat conducted a survey of ICSID Member States regarding compliance with Costs Awards. Some information from the survey was used for the purposes of the Study. The results of the 2016 survey are available at: <https://icsid.worldbank.org/sites/default/files/publications/Report%20on%20ICSID%20Survey.pdf>.

No Information Available	Awards for which no information was obtained concerning voluntary compliance, post-award settlement, or enforcement attempts.
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22. There were certain limitations on the research:

- Time lapse since the rendering of the Award:

Obtaining publicly available information or contacting the award creditor for Awards rendered in the 1970s and 1980s proved challenging.

The cut-off date for the Awards in the Study, December 31, 2021, was selected to allow sufficient time for post-award remedies to conclude, for the award debtors to comply with the Award, or for the award creditor to pursue enforcement proceedings. The data presented in this Study has been collected over a two-year period and has been updated with available information. However, some data relied on may have changed as of the publication of this Study, *e.g.*, for enforcements not pursued if a party subsequently decided to pursue enforcement. ICSID will update the Study in due course with such Awards, including those rendered after December 31, 2021 and to follow up on Awards that were pending enforcement proceedings at the time of this Paper.

- Limited availability of public information:

The Study relied on publicly available information and information from award creditors or their representatives. Relevant information was not always publicly available.<sup>5</sup>

- Global scope of the Study:

The Study involves parties from every geographic region of the world. Some compliance and enforcement data derives from local publications, media reports or court decisions in numerous languages.<sup>6</sup>

#### B. *Research Data*

23. By December 31, 2021, a total of 565 ICSID Convention arbitrations<sup>7</sup> had concluded, of which 68% resulted in an Award and 32% were discontinued.

24. Of the 383 Awards rendered, 66% qualified for the Study because they: (i) involved an Award of damages and/or costs rendered by December 31, 2021; and (ii) no post-award

<sup>5</sup> Other scholars have also faced this problem. *See e.g.*, the 2022 Academic Forum Working Group Paper, p. 3, and Gaillard E. and Mitrev Penushliski I., ‘State Compliance with Investment Awards’ 35(3) ICSID Rev–FILJ (2021), p. 548.

<sup>6</sup> The 2022 Academic Forum Working Group Paper noted “the multilingual documentation of domestic enforcement actions” as a factor that makes it more difficult to track the enforcement of ISDS cases, p. 10.

<sup>7</sup> This number reflects ICSID Convention arbitrations only and excludes ICSID Additional Facility, conciliation and mediation proceedings.

remedy proceeding was pending as of the date of this Paper. Hence, the Study excludes Awards rendered by December 31, 2021: (i) with respect to which post-award remedy proceedings (annulment, revision, supplementary decision or rectification) were pending as of the date of this Paper<sup>8</sup>; (ii) which have been annulled by an *ad hoc* committee; and (iii) without pecuniary obligations.<sup>9</sup>

25. Of the 253 Awards in the ICSID Study, 63% awarded damages or damages and costs (“**Damages Awards**”), and the remaining 37% awarded costs only (“**Costs Awards**”). The ICSID Secretariat obtained information regarding voluntary compliance and post-award settlement as well as enforcement for 231 Awards (91%). No information could be obtained for only 9% of the 253 Awards.

### C. *Summary of Research Results*

26. This section summarizes the data on voluntary compliance and post-award settlement as well as enforcement for the 231 Awards within the scope of the ICSID Study in relation to which such information was obtained. First, the section presents the data for Damages Awards (1), followed by the data analysis relating to Costs Awards (2).

#### (1) Damages Awards in the ICSID Study

27. Damages Awards impose pecuniary obligations on a party to compensate the other party for its losses. Of the 231 Awards in the ICSID Study for which compliance and enforcement information could be obtained, 151 were Damages Awards.

##### *(a) Considering Data on Voluntary Compliance/ Post-Award Settlement and Pursuit of Enforcement in Relation to All Damages Awards in the Study*

28. As to the 151 Damages Awards considered, the research shows that:

- Award debtors voluntarily complied with or reached a post-award settlement in 66% of the Damages Awards.
- Award creditors did not pursue enforcement in respect of less than 3% of Damages Awards at the time of the Study.<sup>10</sup>
- Enforcement was pursued in relation to 31% of Damages Awards.<sup>11</sup> At the time of the Study, the outcome of the enforcement actions was available in relation to 23% of the actions. Of these enforcement actions, 73% were successful (*i.e.*, the Award

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<sup>8</sup> As of the date of this Paper, 11 out of 253 Awards were subject to post-award remedy proceedings and were therefore not included in the Study.

<sup>9</sup> Decisions on annulment issued by *ad hoc* committees and orders taking note of the discontinuance of a proceeding did not form part of the Study.

<sup>10</sup> Post-award remedy proceedings were recently concluded with regard to some of these Awards, *i.e.*, enforcement proceedings may be initiated in due course.

<sup>11</sup> As of the date of this Paper, enforcement proceedings were known to be pending with respect to 33 Damages Awards, 15 of which correspond to Awards rendered in intra-EU arbitrations, see below, para. 124 ff.

creditor considered itself satisfied through payment) (8 Awards), and 27% were unsuccessful (3 Awards).

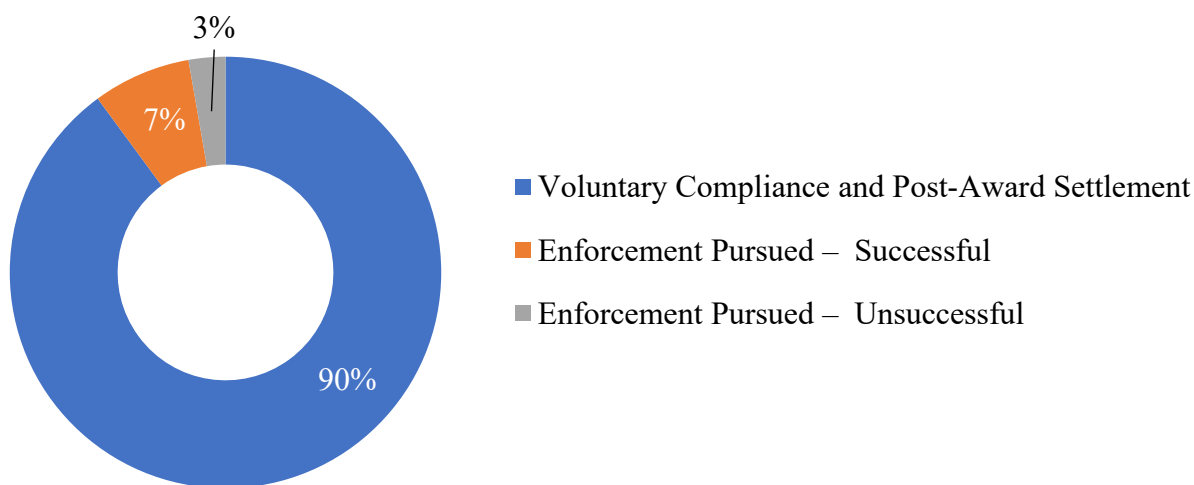
*(b) Considering Data on Voluntary Compliance/ Post-Award Settlement and Known Outcomes in Enforcement Proceedings*

29. Excluding those 40 Damages Awards for which the outcome of enforcement actions was unavailable at the time of the Study (either because the enforcement was pending, not pursued or the outcome unavailable), the research as to the remaining 111 Damages Awards shows that:

- The rate of voluntary compliance and post-award settlement was 90%.
- A further 7% of Damages Awards were satisfied following successful enforcement proceedings.
- Enforcement proceedings were unsuccessful at the time of the Study in relation to 3% of Damages Awards.

In sum, satisfaction was obtained in relation to 97% of Damages Awards where the outcome is known (see Chart 1 below).

**Chart 1: Damages Awards – Voluntary Compliance/ Post-Award Settlement and Enforcement Proceedings for which Outcomes are Known**



**(2) Costs Awards in the ICSID Study**

30. Costs Awards order an award debtor to bear a portion of or all costs incurred by the parties in an arbitration proceeding. Of the 231 Awards in the ICSID Study for which compliance and enforcement information could be obtained, 80 were Costs Awards.

*(a) Considering Data on Voluntary Compliance/ Post-Award Settlement and Pursuit of Enforcement in Relation to All Costs Awards in the Study*

31. As to the 80 Costs Awards considered, the research shows that:

- 35% of the Costs Awards were below USD 1 million.
- Award debtors voluntarily complied with 36% of the Costs Awards. Differentiating Costs Awards by amount awarded, the rate of voluntary compliance and post-award settlement was highest for Costs Awards of USD 5 million or above with a compliance rate of 45%.
- Award creditors did not pursue enforcement in respect of 30% of Costs Awards.
- Enforcement was pursued in relation to 34% of Costs Awards. At the time of the Study, the outcome of the enforcement actions was available in relation to 44% of the enforcement actions. Of these enforcement actions, 42% were successful (*i.e.*, the Award creditor considered itself satisfied through payment) (5 Awards), and 58% were unsuccessful at the time of the Study (7 Awards).

*(b) Costs Awards - Considering Data on Voluntary Compliance/ Post-Award Settlement and Known Outcomes in Enforcement Proceedings*

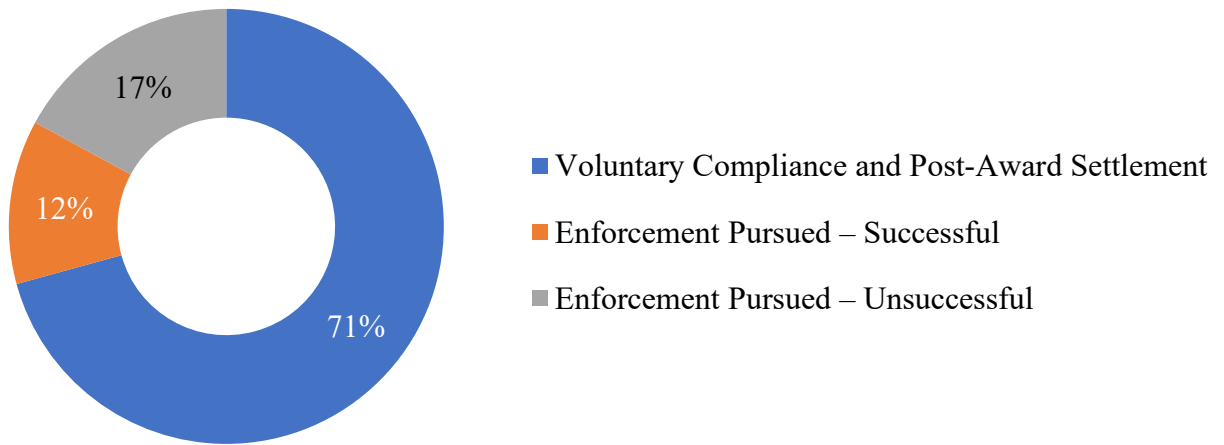
32. Excluding those 39 Costs Awards for which the outcome of enforcement actions was unavailable at the time of the Study (either because the enforcement was pending, not pursued or the outcome unavailable), the research shows that:

- The rate of voluntary compliance and post-award settlement was 71%.
- A further 12% of Costs Awards were satisfied following successful enforcement proceedings.
- Enforcement proceedings were unsuccessful at the time of the Study in relation to 17% of Costs Awards.

In sum, satisfaction was obtained in relation to 83% of Costs Awards where the outcome is known (see Chart 2 below).

33. As to Costs Awards in relation to which enforcement proceedings were not pursued, various factors may explain why award creditors were less inclined to seek enforcement. These include that award creditors may be less inclined to seek enforcement due to the relatively lower amounts awarded compared to Damages Awards, that the award debtor has no enforceable assets, and concern of the parties to pursue enforcement through legal processes before foreign domestic courts, in particular if the expense of pursuing enforcement would outweigh the recoverable amounts.

**Chart 2: Costs Awards – Voluntary Compliance/Post-Award Settlement and Enforcement Proceedings for which Outcomes are Known**



### III. The Distinction between Recognition, Enforcement and Execution

34. Recognition, enforcement, and execution of an award are distinct concepts with differing definitions and practices in different jurisdictions. Overall, there is no uniform interpretation of these terms or consensus regarding their distinction.
35. Broadly speaking, “recognition” is the process of giving the award legal effect, *e.g.*, acknowledging that the award is final and binding and that it is entitled to *res judicata* or preclusive effects.<sup>12</sup>
36. “Enforcement” is typically the process of obtaining an order by a court or authority directing compliance in accordance with the award.<sup>13</sup> In some jurisdictions, enforcement is the process of converting the award to a judgment of the enforcing State so that the award becomes a valid title for execution.<sup>14</sup> The term “recognition” is equated with “enforcement” in some countries.<sup>15</sup>
37. “Execution” is associated with the process of the court or enforcing authority taking control of specific property, *e.g.*, the forcible attachment of assets.<sup>16</sup> In some jurisdictions, the same term is used for “enforcement” and “execution”.<sup>17</sup>
38. In English the ICSID Convention uses three terms: “recognition,” “enforcement,” and “execution,” while the Spanish and French versions only refer to “reconocimiento” and “ejecución,” and “reconnaissance” and “exécution,” respectively. The Spanish and French texts use the same word to refer to enforcement and execution. In addition, the English and Spanish text of Article 54(2) uses “or” in “recognition *or* enforcement” and “reconocimiento *o* ejecución”, while the French text uses “and” in ‘la reconnaissance *et* l’exécution”.
39. The language differences in the ICSID Convention are not addressed in the drafting history of the Convention, though the substance of the distinction is. In response to a question from the representative of the United States, the Chairman stated that “[his] proposal seemed to refer to the technique called in the United States ‘to reduce an award to judgment’ which concept was unknown in several other legal systems. For example, several countries followed the technique of the ‘exequatur’ which is unknown in the United States.” The

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<sup>12</sup> Malintoppi L., Reinisch A., Schreuer C., Sinclair A., eds. *Schreuer’s Commentary on the ICSID Convention: A Commentary on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States*, 3rd ed. Cambridge: Cambridge University Press (2022) (“**Schreuer’s Commentary**”), p. 1485.

<sup>13</sup> Blackaby N., Partasides C., Redfern A. and Hunter, M., *Redfern and Hunter on International Arbitration*, 6th ed., Oxford University Press (2015), para 11.22; *see also* Cohen Smutny A., Smith A. D., and Pitt M., ‘Enforcement of ICSID Convention Arbitral Awards in US Courts’, 43 Pepp. L. Rev. 649 (2016), p. 658.

<sup>14</sup> Cymrot M., ‘Enforcing Sovereign Arbitral Awards – State Defences and Creditor Strategies in an Imperfect World’ in *The Cambridge Handbook of Immunities and International Law* (2019), p. 352.

<sup>15</sup> Cohen Smutny A., Smith A. D., and Pitt M., ‘Enforcement of ICSID Convention Arbitral Awards in US Courts’, 43 Pepp. L. Rev. 649 (2016), p. 658. In the United States, the term “confirmation” is used to refer to the process of recognition and enforcement of an Award; Federal Arbitration Act 1925, 9 USC s207, Cymrot M., ‘Enforcing Sovereign Arbitral Awards – State Defences and Creditor Strategies in an Imperfect World’ in *Cambridge Handbook of Immunities and International Law* (2019), p. 352.

<sup>16</sup> Cohen Smutny A., Smith A. D., and Pitt M., ‘Enforcement of ICSID Convention Arbitral Awards in US Courts’, 43 Pepp. L. Rev. 649 (2016), p. 658.

<sup>17</sup> *Id.*

Chairman indicated that the main difference is between recognition/enforcement and the execution of assets, stating that “enforceability [...] is governed and decreed by the [ICSID] Convention and its implementation by execution [...] is governed by domestic law.”<sup>18</sup> Domestic courts have confirmed this distinction, and that the French and Spanish texts of Articles 53-55 of the Convention do not change the interpretation of the English text.<sup>19</sup> The Federal Court of Australia noted that:

[W]ith reference to only the English text of the Investment Convention, there is a clear distinction drawn between recognition/enforcement and execution. On that basis, Art 54(1) means that an award sounding in money (*i.e.*, having “pecuniary obligations”) shall be recognized as binding and shall be enforced by the courts designated under Art 54(2) as if it were a judgment of the court. Also, it is only the foreign state immunity law in relation to post judgment execution that is preserved by Art 55 and there is no preservation of such immunity in relation to recognition or other forms of pre-execution enforcement – such preservation is inconsistent with the obligation on designated courts to enforce Centre awards under the Investment Convention.<sup>20</sup>

40. The UK High Court agreed with the reasoning of the Federal Court of Australia and referred to the Federal Court’s conclusions on the distinction between these terms as follows:

- (a) The French, Spanish and English texts are equally authentic. Article 33(3) of the Vienna Convention therefore presumes the terms of the treaty to have the same meaning in each text.
- (b) However, the French and Spanish texts have to be understood in the context of the civilian concept of *exequatur* which combines recognition with a declaration of enforceability. The terms *exécution* and *ejecución* thus encompass both recognition and enforcement in the sense of enforceability (Article 54(1)) on the one hand, and enforcement by way of execution on the other (Article 54(3)).
- (c) This is the sense which best reconciles the texts having regard to the object and purpose of the Convention as required by article 33(4) of the Vienna Convention.<sup>21</sup>

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<sup>18</sup> Broches A., ‘Awards Rendered Pursuant to the ICSID Convention: Binding Force, Finality, Recognition, Enforcement, Execution’ 2 ICSID Rev–FILJ (1987) (“**Broches, Awards Rendered Pursuant to the Convention**”), p. 318. Broches noted that Article 54(3) of the Convention which deals with execution makes clear that it was not the intention to include execution in the term “enforce” in Article 54(1) of the Convention.

<sup>19</sup> See *e.g.*, High Court of Australia Decision S43/2022 dated April 12, 2023 concerning the Award dated June 15, 2018 in *Infrastructure Services Luxembourg S.à.r.l. and Energia Termosolar B.V. (formerly Antin Infrastructure Services Luxembourg S.à.r.l. and Antin Energia Termosolar B.V.) v. Kingdom of Spain*, ICSID Case No. ARB/13/31 (“**Antin v. Spain**”), para 77; New Zealand High Court Wellington Judgment CIV-2020-485-734 dated December 10, 2021 concerning the Award dated January 28, 2019 in *Sodexo Pass International SAS v. Hungary*, ICSID Case No. ARB/14/20, para 27; Federal Court of Australia Orders NSD 601 dated February 24, 2020 concerning the Award dated May 4, 2017 in *Eiser Infrastructure Limited and Energía Solar Luxembourg S.à r.l. v. Kingdom of Spain*, ICSID Case No. ARB/13/36.

<sup>20</sup> Federal Court of Australia Orders NSD 601 dated February 24, 2020, concerning the Award dated May 4, 2017 in *Eiser Infrastructure Limited and Energía Solar Luxembourg S.à r.l. v. Kingdom of Spain*, ICSID Case No. ARB/13/36. The Award in this case was later annulled by an ICSID *ad hoc* Committee on June 11, 2020.

<sup>21</sup> UK High Court Decision EWHC 58 dated January 19, 2024, in *Border Timbers Limited, Border Timbers International (Private) Limited, and Hangani Development Co. (Private) Limited v. Republic of Zimbabwe*, ICSID Case No. ARB/10/25, para 45.

41. As a result of this distinction, most courts have distinguished between immunity of a State from jurisdiction in recognition and enforcement proceedings, and immunity of property from execution. Domestic courts have generally held that there is no jurisdictional immunity in recognition and enforcement proceedings relating to an ICSID Award.<sup>22</sup> Aron Broches (Chairman of the Committee of Legal Experts and General Counsel of the World Bank during the drafting of the Convention) also confirmed that the Convention denies immunity from jurisdiction in recognition and enforcement proceedings.<sup>23</sup>
42. Courts have also held that the obligation on each Member State to recognize extends to the full Award, but the obligation to enforce and execute applies solely to pecuniary obligations imposed by the Award (see below, Chapter VI).
43. Some Member States have enacted laws concerning the recognition and enforcement of ICSID Awards, which describe the process and the terms used in their jurisdictions.<sup>24</sup> Such legislative measures have been enacted pursuant to Article 69 of the Convention, which requires Member States to take legislative or other measures necessary to make the Convention effective in their territories. The list of legislative or other measures relating to the Convention is published as document ICSID/8-F.<sup>25</sup>
44. States have adopted different approaches to their implementing legislation. For example, the implementing legislation in some ICSID Member States specifies that Awards must be registered. In Zimbabwe, the Arbitration (International Investment Disputes) Act states that “the High Court shall register an award on the application of any person who seeks

<sup>22</sup> High Court of Australia Decision S43/2022 dated April 12, 2023, and UK Commercial Court Decision CL-2021-000362 dated May 24, 2023, both concerning the Award dated June 15, 2018, in *Antin v. Spain*. However, in the Judgment of the High Court of Justice of the British Virgin Islands dated May 25, 2021 concerning the Award dated July 12, 2019 in *Tethyan Copper Company Pty Limited v. Islamic Republic of Pakistan*, ICSID Case No. ARB/12/1, the judge concluded that Pakistan enjoyed immunity from jurisdiction of the court pursuant to the State Immunity Act 1978 of the United Kingdom and set aside the registration of the Award.

<sup>23</sup> Broches, Awards Rendered Pursuant to the Convention, pp. 325-326, referring to the enforcement proceedings in *Liberia Eastern Timber Corporation (LETCO) v. Government of the Republic of Liberia*, ICSID Case No. ARB/83/2, Award dated March 31, 1986; Judgment of the US District Court for Southern District of New York, December 12, 1986; US District Court for District of Columbia Decision, April 16, 1987. A US District Court enforced and ordered execution of the Award. Liberia moved to vacate the judgment. The court found that it had jurisdiction to enter judgment and referred to sections 1604 and 1605(a)(i) of the Foreign Sovereign Immunities Act (“FSIA”). Broches agreed with the outcome but argued that FSIA section 1604 is qualified by reference to existing international agreements and that “the decision should therefore in my view have been based on the Convention, which as properly analyzed by Judge Weinfeld denies immunity of jurisdiction, followed by a statement that the same result would have obtained under FSIA section 1605.”

<sup>24</sup> See ICSID, ‘Contracting States and Measures Taken by Them for Purposes of the Convention’, Doc. ICSID/8, ‘Legislative or Other Measures Relating to the Convention’ (See ‘[ICSID/8-F](#)’). For instance, Denmark enacted Act No. 466 dated December 15, 1967, on Recognition and Execution of Orders Concerning Certain International Investment Disputes.

<sup>25</sup> ICSID, ‘Contracting States and Measures Taken by Them for Purposes of the Convention’, Doc. ICSID/8, ‘Designations of Courts or Other Authorities Competent for the Recognition and Enforcement of Awards Rendered Pursuant to the Convention’ (See ‘[ICSID/8-E](#)’). In addition, Young ICCA and Jus Mundi have published a guide on enforcement of ICSID Awards across 28 jurisdictions: Jus Mundi, Enforcement of ICSID Awards Around the World: A Guide, (October 2023) available at [https://dailyjus.com/wp-content/uploads/2023/10/2023-Jus-Mundi-Guide-to-Enforcement-of-ICSID-Awards-Around-the-World.pdf?utm\\_source=DJ+PDF&utm\\_medium=DJ&utm\\_campaign=Guide+Enforcement+of+ICSID+Awards+-+PDF](https://dailyjus.com/wp-content/uploads/2023/10/2023-Jus-Mundi-Guide-to-Enforcement-of-ICSID-Awards-Around-the-World.pdf?utm_source=DJ+PDF&utm_medium=DJ&utm_campaign=Guide+Enforcement+of+ICSID+Awards+-+PDF).

recognition and enforcement of the award” and “[a] person applying for the registration of an award ... shall file with his application a copy of the award concerned, certified by the Secretary-General of the Centre.” The registration “shall be of the same effect for the purposes of execution ... as if the registered award were a judgment of the High Court” and “shall have the same effect as a final judgment of the High Court in barring further proceedings between the parties to the award in relation to the issues determined by the Tribunal in the award.”<sup>26</sup>

45. In some jurisdictions ICSID Awards are considered executory titles, which do not require any recognition or enforcement procedure, and may be executed directly. For example, in Belgium, the Court of Appeals in Brussels stated that the Award in the ICSID case *Micula v. Romania* “constitue un titre exécutoire régulier en soi.”<sup>27</sup> In Italy, in relation to the ICSID case *Gavazzi v. Romania*, the Court of Appeals in Milan concluded that the “formula esecutiva” could be granted for an ICSID Award based on Article 54 of the Convention.<sup>28</sup> In Spain, the Awards in *Pey Casado v. Chile* were recognized as executory titles, “siendo el título que se acompaña susceptible de ejecución, de conformidad con el artículo 517 de la L.E.C.”<sup>29</sup> In Argentina, the Award in *Convial Callao v. Peru* was accepted as an executory title not subject to any recognition and enforcement proceeding in Convial Callao’s bankruptcy.<sup>30</sup> In Switzerland, courts distinguish between “Vollstreckbarerklärung” (i.e., the declaration of enforceability) and “Vollstreckung” (the execution of assets).<sup>31</sup> According to the Swiss Federal Supreme Court, an ICSID Award is subject only to the latter.<sup>32</sup>
46. Regardless of the procedures required or courts or authorities involved in the recognition, enforcement and execution of an ICSID Award, under the ICSID Convention, a party seeking these procedures needs only to present a copy of the Award certified by the Secretary-General of ICSID.

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<sup>26</sup> Zimbabwe, Arbitration (International Investment Disputes) Act [Chapter 7:03], available at <https://zimlii.org/akn/zw/act/1995/16/eng@2016-12-31#:~:text=AN%20ACT%20to%20provide%20for,for%20matters%20connected%20therewith%20or>.

<sup>27</sup> English: “constitutes an executory title in itself”, Brussels Court of Appeal Judgment 2019/2134 dated March 12, 2019, concerning the Award dated December 11, 2013, in *Ioan Micula, Viorel Micula and others v. Romania*, ICSID Case No. ARB/05/20 (“*Micula v. Romania*”), p. 19.

<sup>28</sup> The “formula esecutiva” means that the award may be used directly as a title for execution. Court of Appeals of Milan Decree 2513/18 dated September 25, 2018 concerning the Award dated April 18, 2017 in *Marco Gavazzi and Stefano Gavazzi v. Romania*, ICSID Case No. ARB/12/25. The Court did not refer to the provisions normally applicable to domestic or foreign awards, and therefore did not review the Award.

<sup>29</sup> Unofficial translation: “given that the title presented is susceptible to execution, in accordance with article 517 of the LEC”; Madrid Court of First Instance Resolution dated March 6, 2013 concerning the Award dated May 8, 2008 in *Victor Pey Casado and President Allende Foundation v. Republic of Chile*, ICSID Case No. ARB/98/2 (“*Pey Casado v. Chile*”); see also Madrid Court of First Instance Order dated December 7, 2021 concerning the Award dated September 13, 2016 in *Pey Casado v. Chile* (Resubmission).

<sup>30</sup> Buenos Aires Commercial Court of Appeal Decision 8030/2015 dated August 8, 2015, concerning the Award dated May 21, 2013 in *Convial Callao S.A. and CCI – Compañía de Concesiones de Infraestructura S.A. v. Republic of Peru*, ICSID Case No. ARB/10/2.

<sup>31</sup> Swiss Federal Supreme Court Decision 5A 406/2022 dated March 17, 2023, concerning the Award dated September 6, 2019 in *OperaFund Eco-Invest SICAV PLC and Schwab Holding AG v. Kingdom of Spain*, ICSID Case No. ARB/15/36, paras 3.1.1., 3.3.1.

<sup>32</sup> *Id.*, paras 3.2.2, 3.2.3.

#### IV. The Drafting History of the Enforcement Provisions in the ICSID Convention

47. The drafting of the ICSID Convention took over five years of negotiation and consultation among government officials and international legal experts. It involved preparatory work by World Bank staff and Executive Directors in 1961 and 1962, a series of Regional Consultative Meetings of Experts convened by the World Bank in 1963 and 1964, and meetings of a legal committee consisting of representatives of all interested States held at the end of 1964 (the “**Committee of Legal Experts**”). The Committee of Legal Experts was chaired by Aron Broches, Chairman of the Committee of Legal Experts and General Counsel, IBRD (“**Chairman**”). The final text was approved by the Executive Directors on March 18, 1965, and came into force on October 14, 1966.<sup>33</sup>
48. One of the main objectives of the drafters of the ICSID Convention was to ensure the binding force of an Award rendered pursuant to the Convention and its effective recovery. In 1961, when preparatory work on the Convention began, only two international treaties addressed enforcement of foreign arbitral awards: the New York Convention and the 1927 Convention on the Execution of Foreign Arbitral Awards (the “**Geneva Convention**”).<sup>34</sup> Both Conventions provided for review of awards at the enforcement stage by the domestic courts of the State where enforcement was sought.<sup>35</sup>
49. The drafters of the ICSID Convention favored a more innovative approach, creating a self-contained system, independent of domestic laws and domestic court interference, with provisions addressing the arbitration procedure, post-award remedies, and the recognition and enforcement of the Award, all in the Convention.<sup>36</sup> It limited the enforcement stage by treating the Award as a final judgment of the State and not providing grounds for challenging the Award in domestic court, as provided for by the Geneva and the New York Conventions.<sup>37</sup>

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<sup>33</sup> For a summary of steps in drafting the Convention, see ICSID, *History of the ICSID Convention: Documents Concerning the Origin and the Formulation of the Convention on the Settlement of Investment Disputes between States and national of Other States Vol. I-IV* (ICSID Publication 1970) (“**History**”), Vol. I, pp. 2-10.

<sup>34</sup> United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted June 10, 1958, entered into force June 7, 1959), 330 UNTS 38 (the “New York Convention”); The Convention on the Execution of Foreign Arbitral Awards (adopted September 26, 1927, entered into force July 25, 1929 (the “Geneva Convention”) 92 League of Nations Treaty Series 301 (1929–1930). The Geneva Convention governed the enforcement of awards rendered under the Geneva Protocol on Arbitration Clauses of 1923, the main goal of which was to ensure the validity of arbitration agreements, “whether relating to existing or future disputes”: 27 League of Nations Treaty Series 158 (1924); see also Briner R. and Hamilton V., ‘*The History and General Purpose of the Convention: The Creation of an International Standard to Ensure the Effectiveness of Arbitration Agreements and Foreign Arbitral Awards*’, in Gaillard E. and Di Pietro D., *Enforcement of Arbitration Agreements and International Arbitral Awards*, Cameron May: International Law and Policy (2009), pp. 3–38.

<sup>35</sup> New York Convention, Article V(2); Geneva Convention, Article 1.

<sup>36</sup> Musa R. B H and Polasek M., ‘*The Origins and Specificities of the ICSID Enforcement Mechanism*’, in Fouret J., *Enforcement of Investment Treaty Arbitration Award*, Globe Law and Business (2015), p. 13.

<sup>37</sup> During the Sixth Session of the Consultative Meeting of Legal Experts in Geneva, on June 1, 1964, Aron Broches, who at the time of the drafting of the ICSID Convention served as General Counsel of IBRD, acted as the Chairman of the Legal Committee (*History I*, p. 360) and as the Chairman of each of the Consultative Meetings of Legal Experts (*History I*, p. 6), stated: “The question ... was ... of limiting the grounds for attacking awards. Those grounds were limited by the Geneva ‘and New York’ Conventions and the present Convention sought to limit them still further.” *History II*, p. 426; Broches, *Awards Rendered Pursuant to the Convention*, p. 304.

50. The principal concern of the drafters was to balance the rights and obligations of State parties with those of private parties and of other Member States.<sup>38</sup> The drafts of the ICSID Convention do not distinguish between investors and host States when addressing recognition, enforcement and execution, although the main focus at the time was on investor compliance, as the drafters considered it unlikely that a State party would not observe its obligation to comply with an Award.<sup>39</sup>

A. *Binding Force and Finality – Article 53*

51. Article 53 of the ICSID Convention provides that Awards are not subject to appeal and can only be subject to post-award remedies available under the Convention.<sup>40</sup> It also provides that Awards are final and binding, and that disputing parties must comply with them pursuant to the ICSID Convention.
52. Article 53 of the ICSID Convention was based on the principles of *pacta sunt servanda* and *res judicata*, which in themselves are grounded in the principle of good faith.<sup>41</sup> While the drafters considered these doctrines as part of international customary law, States had not always “submitted in good faith to the award”, thereby jeopardizing its binding effect.<sup>42</sup> The main aim of the drafters was therefore to ensure that no party could challenge the validity of the Award once the Convention’s post-award remedies were exhausted.<sup>43</sup>
53. The drafting history of the ICSID Convention suggests that the final and binding character of the Award was never questioned.<sup>44</sup> The main principles were included from the very beginning in the working paper, modelled on texts from the Hague Convention for the Pacific Settlement of International Disputes of 1907<sup>45</sup> and the judgment of the Permanent Court of International Justice in *Socobel*.<sup>46</sup> The drafters were confident that States would comply with Awards, and that enforcement would not be necessary.<sup>47</sup>

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<sup>38</sup> Broches, Awards Rendered Pursuant to the Convention, pp. 301–302; Report of the Executive Directors on the Convention on the Settlement of Investment Disputes between States and Nationals of other States (March 18, 1965).

<sup>39</sup> *History*, II, pp. 58, 59–60, 64, 177, 273, 304, 344, 345, 347, 379, 424, 425, 427, 428, 430, 501, 502, 520, 521, 574, 888, 889, 890, 892, 989, 991; Schreuer’s Commentary, p. 1474.

<sup>40</sup> These remedies are provided for in Article 50 of the ICSID Convention.

<sup>41</sup> Broches, Awards Rendered Pursuant to the Convention, p. 289; Schreuer’s Commentary, p. 1447

<sup>42</sup> Broches, Awards Rendered Pursuant to the Convention, p. 289. *See, for example, Case Concerning a Dispute between Argentina and Chile concerning the Beagle Channel*, UNRIAA, vol xxi (1977).

<sup>43</sup> *History* II, p. 430.

<sup>44</sup> Schreuer’s Commentary, p. 1458, at 42.

<sup>45</sup> *See* Article 37: “Recourse to arbitration implies an engagement to submit in good faith to the Award.”

<sup>46</sup> *Belgium v. Greece* (1939) PCIJ (ser. A/B) No 78 at 175: “Recognition of an award as *res judicata* means nothing else than recognition of the fact that the terms of that award are definitive and obligatory.” *See* Broches, Awards Rendered Pursuant to the Convention, p. 289.

<sup>47</sup> Note by World Bank General Counsel Aron Broches, “*Settlement of Disputes between Governments and Private Parties*” (August 28, 1961), *History* II, p. 304 (“Since any State against which an award was granted would have undertaken in advance a solemn international obligation to comply with the award, the question of enforcement against a State was somewhat academic”).

54. Initially,<sup>48</sup> the obligation to comply with the Award was understood as an obligation anchored in international law between two Member States, as opposed to an obligation of the parties to the dispute.<sup>49</sup> The Chairman stated that it was desirable not only to impose an international legal obligation on States, but also on the private party, to address a perceived imbalance between a State and a private party as award creditors.<sup>50</sup> The provisions were remodeled to recognize the general obligation of all disputing parties to carry out an undertaking to arbitrate in good faith and to comply with an Award.<sup>51</sup>
55. The discussions of the final and binding character of the Award also considered whether there should be a grace period for compliance with the Award as the Preliminary Draft's Article IV, Section 14 provided that each party "shall ... comply ... immediately."<sup>52</sup> The drafters suggested that a grace period could correspond to the period for requesting post-award remedies. It would also avoid difficulties if a party complied with an Award which was subsequently annulled, and "give time to the parties for reflection".<sup>53</sup> The Chairman proposed clarifying the text by requiring compliance with the Award "in accordance with the terms thereof", instead of "immediately".<sup>54</sup> The Committee of Legal Experts incorporated this into the first draft.
56. The draft subsequently specified that an Award could only be subject to the post-award remedies in the Convention, and that any decision interpreting, revising or annulling the Award would be part of the Award. The text of draft Article 56 provided as follows:
- 1) The award shall be binding on the parties and shall not be subject to any appeal or to any other remedy except those provided for in this Convention. Each party shall abide by and comply with the award in accordance with its terms, except during any stay of enforcement under the provisions of this Convention.
  - 2) For the purposes of this Section the term "award" shall include any decisions interpreting, revising or annulling such award pursuant to Articles 53, 54 or 55 respectively.<sup>55</sup>
57. Article 57 of the same draft retained an exception to enforcement if the Award was contrary to public policy, such review being left to domestic courts. However, the Committee of Legal Experts voted against this during its last meeting (see para. 73 below).

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<sup>48</sup> The Executive Directors' Committee of the Whole on Settlement of Investment Disputes held in December 1962 comprised all executive directors and held six initial meetings from December 1962 to June 1963 to discuss the working paper. See Parra A. R, *The History of ICSID* (Oxford University Press, 2017), pp. 30–44.

<sup>49</sup> *History II*, p. 54. See Comment by Mr. Lieftinck (Netherlands). The Hague Convention of 1907 and *Belgium v. Greece (1939) PCIJ (ser. A/B) No 78* considered arbitration agreements between State parties.

<sup>50</sup> *History II*, p. 57.

<sup>51</sup> *History II*, pp. 54-55, 135-136, 188, 611.

<sup>52</sup> Article IV, Section 14 of the Preliminary Draft (Doc. 24) provided that: "The award shall be final and binding on the parties. Each party shall abide by and comply with the award immediately, unless the Tribunal shall have allowed a time limit for the carrying out of the award or any part thereof, or the enforcement of the award shall have been stayed pursuant to Sections 11, 12, or 13 of this Article." *History I*, p. 242.

<sup>53</sup> *History II*, pp. 271–272. See comment by Mr. Bouiti (Congo, Brazzaville); Fouret J., Gerbay R. and Alvarez G. M, 'The ICSID Convention, Regulations and Rules: A Practical Commentary' (2019), para 4.1294; *History II* at 271.

<sup>54</sup> *History II*, p. 519.

<sup>55</sup> *Id.*, pp. 899-900.

58. The final text of draft Article 56, which became Article 53, was adopted with minor changes in wording and met with general approval<sup>56</sup>:

- 1) The award shall be binding on the parties and shall not be subject to any appeal or to any other remedy except those provided for in this Convention. Each party shall abide by and comply with the terms of the award except to the extent that enforcement shall have been stayed pursuant to the relevant provisions of this Convention.<sup>57</sup>
- 2) For the purposes of this Section the term “award” shall include any decisions interpreting, revising or annulling such award pursuant to Articles 50, 51 or 52.

B. *Recognition and Enforcement – Article 54*

59. Article 54 of the ICSID Convention provides that a party may seek recognition and enforcement of an Award in the courts of any ICSID Member State as if it were a final judgment of that State’s courts.

60. The first working paper of the draft treaty envisioned that each Member State would accord Awards rendered under the Convention “the most favorable treatment” given to “foreign arbitral awards whether under their internal law or pursuant to the Geneva Convention ... or the [New York Convention]”.<sup>58</sup> However, the drafters questioned whether such an approach would adequately ensure enforceable Awards in the territory of Member States other than the State party to the dispute.<sup>59</sup> They therefore suggested that each Member State commit to enforcing Awards without reservation.<sup>60</sup> The subsequent working paper specified that “awards would be enforceable in the territories of the countries adhering to the Convention” pursuant to the principle of *pacta sunt servanda*.<sup>61</sup>

61. This idea was formulated as follows in the First Preliminary Draft of a Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “First Preliminary Draft”), Article IV, Section 15:

Each Contracting State shall recognize an award of the Tribunal as binding and enforce it within its territories as if it were a final judgment of the courts of that State.<sup>62</sup>

62. The commentary to the First Preliminary Draft clarified that this provision would be binding on all Contracting States, “whether or not [a State] or its national was a party to

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<sup>56</sup> Broches, Awards Rendered Pursuant to the Convention, p. 293.

<sup>57</sup> *History II*, p. 991.

<sup>58</sup> Working Paper in the form of a Draft Convention prepared by the General Counsel and transmitted to the Executive Directors (June 5, 1962) in *History II*, pp. 19–46, 46.

<sup>59</sup> There was a concern regarding recovery of the Award by a prevailing State party in the investor’s home state or a third state, and whether local laws would assist in enforcing the Award. See Broches, Awards Rendered Pursuant to the Convention, p. 301.

<sup>60</sup> *Id.*; *History II*, pp. 60 and 64.

<sup>61</sup> Broches A., ‘Paper prepared by the general counsel and transmitted to the members of the Committee’ (February 18, 1963) in *History II*, p. 80.

<sup>62</sup> *History II*, p. 161.

the proceedings,” and that Awards would have the same force as a final judgment of domestic courts “irrespective of the treatment under [a Contracting State’s] law of other arbitral awards.”<sup>63</sup>

63. At the subsequent meetings, the drafters considered possible exceptions to recognition and enforcement. This idea arose in the context of discussions related to the possible conflict between the enforcement provisions of the Convention and domestic laws and other international treaties.<sup>64</sup> The drafters therefore considered an exception to enforceability if an Award did not comply with international public policy.<sup>65</sup>
64. During the discussions, some States perceived a lack of balance between the consequences of non-compliance for investors and those for States. They were concerned that, unlike for States, which would be subject to sanctions such as the revival of the right of diplomatic protection of the investor’s State or “more serious indirect sanctions” from capital-exporting countries, such sanctions did not exist against the investor.<sup>66</sup> The drafters emphasized that the enforcement provision was needed to balance the “needs of developing countries in disputes with private investors” where Awards could be rendered against an investor.<sup>67</sup> Hence, to maintain balance between the parties, the drafters considered it important that the grounds to challenge the Award be more restrictive than those in the New York Convention, which includes a public policy exception to enforcement.
65. The drafters noted that if grounds for refusal of enforcement similar to those available pursuant to the New York Convention were included, the Convention would also need to include grounds for refusal to comply with an Award.<sup>68</sup> However, they preferred to make the binding force of the Award as unconditional as possible.<sup>69</sup>
66. There was further discussion of whether Section 15 (see para 62 above) was necessary at all, with some delegates taking the view that Awards should not be enforced in third States (*i.e.*, in other than the host State and the home State of the investor), that enforcement should be subject to domestic court review, and that “serious constitutional and practical difficulties” might ensue.<sup>70</sup> Some delegates favored a system analogous to the New York Convention so as to create uniformity rather than a multiplicity of international rules on enforcement.<sup>71</sup>
67. The drafters noted that Section 15 was necessary for a self-contained system under which there would be no recourse to an outside authority against decisions of tribunals or conciliation commissions.<sup>72</sup> The Award would have the force of *res judicata* and be immune from challenge before domestic courts based on a matter already decided in the

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<sup>63</sup> *History II*, pp. 162 and 346. See comment by Mr. Ratray (Jamaica).

<sup>64</sup> *Id.*, p. 345. See comment by Mr. Palomo (Guatemala).

<sup>65</sup> *Id.*, p. 346. See comment by Mr. Ratray (Jamaica).

<sup>66</sup> *Id.*, p. 425.

<sup>67</sup> *Id.*, p. 424.

<sup>68</sup> *Id.*, p. 427.

<sup>69</sup> *Id.*, p. 522.

<sup>70</sup> *Id.*, pp. 426, 428 and 429; See comments by Mr. Pereira (Portugal) at p. 426, and Mr. Bertram (Germany) at p. 429. See comment by Mr. Monaco (Italy) at p. 426. See comment by Mr. Serb (Yugoslavia) at p. 428.

<sup>71</sup> *Id.*, p. 429. See comments by Mr. Herndl (Austria) and Mr. Bertram (Germany), both on p. 429.

<sup>72</sup> *Id.*, p. 427.

Award. Section 15 would create “the obligation to enforce the award within the territories of the Contracting State ...”, thus insulating the Award from challenges to its enforcement.<sup>73</sup>

68. As most delegates were in favor of keeping Section 15, it was included in the First Draft of the Convention as Article 57, including three new paragraphs addressing enforcement:<sup>74</sup>

- 1) Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce it within its territories as if it were a final judgment of the courts of that State.
- 2) To obtain recognition and enforcement, the applicant shall furnish to the domestic authority which each Contracting State shall designate for this purpose (the Competent Authority) the duly authenticated original award or a duly certified copy thereof. Each Contracting State shall notify the Secretary-General of the designation of the Competent Authority and of any subsequent change in such designation.
- 3) Execution of the award shall be governed by the rules of civil procedure in force in the State in whose territories such execution is sought. The writ of execution shall be issued by the Competent Authority without other review than verification of the authenticity of the award.
- 4) Each Contracting State shall take such action as may be necessary to enable it to carry out its obligations under this Article.<sup>75</sup>

69. The pre-plenary session working group considering written comments on the First Draft received divergent views from five governments regarding enforceability of Awards in third States.<sup>76</sup> One of the proposals concerned enforcement in federal states and another proposed to replace the entire Article 57 with select provisions of the New York Convention.<sup>77</sup> In response, the Legal Committee noted that the proposed grounds for refusal of enforcement, with the exception of public policy, were addressed by the annulment provision. Therefore, they did not need to be provided for on enforcement.<sup>78</sup> To reflect these discussions, the drafters subsequently revised Article 57 of the First Draft to

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<sup>73</sup> *History II*, p. 519, the Chairman stated that: “What was contemplated ... was the force of the award as *res judicata* as a valid defence in resisting an action ... in the ordinary courts of a State, on a matter already determined in arbitral proceedings before the Center.” The Chairman suggested that the words “recognize as enforceable” might better express the intent of the provision. That would articulate the distinction between enforceability, governed by the Convention, and execution, governed by applicable domestic laws. *See Broches, Awards Rendered Pursuant to the Convention*, p. 318; *History II*, p. 428.

<sup>74</sup> The steps for enforcement were modeled on Article 192 of the Treaty of Rome, with a majority of delegates in favor of detailed provisions as to the specific measures to be taken by Contracting States. *History II*, pp. 343-344; Chairman’s Report on Issues Raised and Suggestions Made with Respect to the Preliminary Draft of a Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (July 9, 1964), *History II*, pp. 557-584, at 574.

<sup>75</sup> *History II*, pp. 636–637.

<sup>76</sup> *Id.*, p. 892.

<sup>77</sup> *Id.*, pp 893, 894. *See* comment by Mr Gourevitch (United States), p. 893, and Mr. Matzoulinos (Greece), pp. 894-895.

<sup>78</sup> *Id.*, pp. 893.

provide that domestic courts could refuse to recognize and enforce Awards contrary to public policy.<sup>79</sup>

70. In response to a question raised by the representative from Austria suggesting that for recognition there should at least be proof that the award was in conformity with the Convention and that there was consent of the parties, Broches responded that it would be inconsistent with the procedures devised under the Convention for a national court to review once again the jurisdiction of the Tribunal which rendered the Award.<sup>80</sup> Some delegates expressed concern that a reference to public policy as the only exception was too narrow and, as an example, that cases of fraud would not be covered by this exception.<sup>81</sup> In response, the Chairman noted that the narrow scope of the exception was intentional because equating Awards to court judgments “implied that exceptional grounds only could be invoked to prevent recognition and enforcement.”<sup>82</sup> He further stated that “if a final judgment was open to some extraordinary remedy in the case of fraud or similar occurrence, that would be true for the award as well.”<sup>83</sup>
71. The Committee of Legal Experts proposed further changes and considered the grounds for refusal of enforcement.<sup>84</sup> Some delegates were in favor of keeping the public policy exception in place or even expanding the provision to enable grounds for refusal based on “laws relating to the enforcement of arbitral awards” of each State.<sup>85</sup>
72. As the discussions were inconclusive, the next draft proposed to the Committee added a provision addressing enforcement in a federal state, removed the reference to writs of execution and limited the public policy exception to application only in third States (*i.e.*, other than the host State and the home State of the investor).<sup>86</sup> The Committee considered several proposals and voted on some of them. One proposal in particular suggested that Awards should be enforceable as foreign judgments or foreign arbitral awards. This, however, was rejected.<sup>87</sup> The proposal to retain a public policy exception for enforcement of Awards in third States was defeated by a large majority (25 to 9).<sup>88</sup>
73. Accordingly, the Revised Draft of the Convention eliminated any reference to a public policy exception and Article 54 provided as follows:
  - 1) Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce it within its territories as if it were a final judgment of a court in that State. A Contracting State with a federal constitution may enforce such an award in or through its federal courts and may provide that

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<sup>79</sup>*History II*, pp. 884-885. Article 57(5) of the First Draft provides that: “Recognition and enforcement of an arbitral award ... may also be refused if the competent authority of the State in which recognition and enforcement are sought finds that such recognition or enforcement would be contrary to the public policy of that State”.

<sup>80</sup> *History II*, p. 887.

<sup>81</sup> *Id.*, p. 888. See comment by Mr. Burrows (United Kingdom).

<sup>82</sup> *Id.*, p. 888. See comment by Mr. Broches (Chairman).

<sup>83</sup> *Id.*, p. 889. See comment by Mr. Broches (Chairman).

<sup>84</sup> *Id.*, pp. 884-891.

<sup>85</sup> *Id.*, p. 888. See comment by Mr. Burrows (United Kingdom).

<sup>86</sup> *Id.*, p. 900.

<sup>87</sup> *Id.*, p. 904.

<sup>88</sup> *Id.*, pp. 901, 903.

such courts shall treat the award as if it were a final judgment of the courts of a constituent State.

- 2) A party seeking recognition or enforcement in the territories of a Contracting State shall furnish to a competent court or other authority which such State shall have designated for this purpose a copy of the award certified by the Secretary-General. Each Contracting State shall notify the Secretary-General of the designation of the competent court or other authority for this purpose and of any subsequent change in such designation.
  - 3) Execution of the award shall be governed by the laws concerning the execution of judgments in force in the State in whose territories such execution is sought.<sup>89</sup>
74. Responding further to concerns about the removal of the public policy exception from the Convention, the drafters noted that public policy exceptions were more meaningful in fields of law “such as the law dealing with the status of persons, marriage and divorce, adoption, nationality, the coming of age” as in such fields “it is normal for a State to retain the right to refuse to recognize the law of another country or acts done in another country if they would violate its *ordre public*.”<sup>90</sup> Such exceptions were not considered equally meaningful in the investment context and the drafters expressed difficulty in seeing how a pecuniary obligation was relevant to public policy. Additionally, there was a risk that States might use this notion to refuse to comply with Awards.<sup>91</sup> However, to address this concern, the drafters proposed that enforcement be limited to pecuniary obligations and not include specific performance or restitution.<sup>92</sup> In proposing this, the Chairman stressed that “Article 54 required a Contracting State to recognize and enforce an award in accordance with its laws on the execution of judgments; [and that] no State would be required to provide a type of execution which did not exist in respect of judgments of its own courts.”<sup>93</sup> With support from most of the representatives, the text of Article 54 was further revised and in its final version provided as follows:
- 1) Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State. A Contracting State with a federal constitution may enforce such an award in or through its federal courts and may provide that such courts shall treat the award as if it were a final judgment of the courts of a constituent state.
  - 2) A party seeking recognition or enforcement in the territories of a Contracting State shall furnish to a competent court or other authority which such State shall have designated for this purpose a copy of the award certified by the Secretary-General. Each Contracting State shall notify the Secretary-General of the designation of the competent court or other authority for this purpose and of any subsequent change in such designation.

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<sup>89</sup> *History II*, p. 928.

<sup>90</sup> *Id.*, p. 989.

<sup>91</sup> *Id.*, p. 989.

<sup>92</sup> *Id.*, pp. 990-991.

<sup>93</sup> *Id.*, p. 990.

- 3) Execution of the award shall be governed by the laws concerning the execution of judgments in force in the State in whose territories such execution is sought.<sup>94</sup>

75. The Report of the Executive Directors explains that:

...[b]ecause of the different legal techniques followed in common law and civil law jurisdictions and the different judicial systems found in unitary and federal or other non-unitary States, Article 54 does not prescribe any particular method to be followed in its domestic implementation but requires each Contracting State to meet the requirements of the Article in accordance with its own legal system. [...] Article 54 requires Contracting States to equate an award rendered pursuant to the Convention with a final judgment of its own courts. It does not require them to go beyond that and to undertake forced execution of awards rendered pursuant to the Convention in cases where final judgments could not be executed.<sup>95</sup>

C. *Immunity from Execution – Article 55*

76. The drafting history of Article 55 shows that Member States wished to maintain their sovereign immunity concerning the assets that may be subject to execution to satisfy the Award.
77. Article 55 clarifies that the Convention does not modify the laws of Member States with respect to immunity from execution.<sup>96</sup> Therefore, domestic laws on immunity from execution in the Member State where execution is sought apply to an Award.<sup>97</sup> Regardless of a State's approach to immunity from execution (restrictive or absolute), such approach would apply to the State debtor's assets in the execution of an Award in that jurisdiction.<sup>98</sup>
78. During the drafting of the Convention, the question of immunity from execution was not controversial. Addressing a question from the Austrian delegate as to the certainty of enforceability of Awards in all Member States, the Chairman distinguished between enforceability and forced execution.<sup>99</sup> He stated that the provision equating Awards with final domestic judgments, included in Article IV, Section 15 of the First Preliminary Draft, clearly expressed enforceability.<sup>100</sup> Concerning forced execution against assets of a State, he noted that it "... would depend on the force of a final judgment in the country in which enforcement was sought".<sup>101</sup> However, the Chairman considered that such limitation on

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<sup>94</sup> *History II*, p. 1036.

<sup>95</sup> Report of the Executive Directors, paras 42 and 43.

<sup>96</sup> Broches, Awards Rendered Pursuant to the Convention, p. 330.

<sup>97</sup> Broches A., "The Convention on the Settlement of Investment Disputes between States and Nationals of Other States", 136 *Recueil des Cours*, Hague Academy of International Law (1972), p. 404.

<sup>98</sup> *Id.*

<sup>99</sup> This question was posed by a delegate from Austria, Mr. Oellerer who "... asked whether it was certain that all awards under the Convention would be enforceable in all Contracting States, particularly awards made against a government." *History II*, pp 176, 177; Broches, Awards Rendered Pursuant to the Convention, p. 302.

<sup>100</sup> *History II*, p. 177; Broches, Awards Rendered Pursuant to the Convention, p. 302; Article IV, Section 15 of the First Preliminary Draft provided: "Each Contracting State shall recognize an award of the Tribunal as binding and enforce it within its territories as if it were a final judgment of the courts of that State."

<sup>101</sup> *History II*, p. 177.

forcible execution of assets did not affect the obligation of States to abide by Awards.<sup>102</sup> The question was whether States would accept an Award as valid and binding. There were hardly any cases in which there had been difficulty in obtaining compliance with an Award once its binding character was clearly established.<sup>103</sup>

79. At the regional meetings, a delegate asked whether the draft provision could be interpreted as a derogation from the doctrine of State immunity.<sup>104</sup> Another delegate asked whether Contracting States needed to modify their existing laws on immunity.<sup>105</sup> The delegates from Yugoslavia and Austria suggested clarifying that this was not the case.<sup>106</sup> The Chairman confirmed that this was not the case and stated that an express provision might be inserted to demonstrate that the provision did not intend to modify domestic laws on sovereign immunity.<sup>107</sup>
80. The provision raised no further debate and was adopted as Article 55 with the following final text:<sup>108</sup>

Nothing in Article 54 shall be construed as derogating from the law in force in any Contracting State relating to immunity of that State or of any foreign State from execution.

81. The Report of the Executive Directors accompanying the Convention reassured prospective Member States that State practice as regards immunity from execution would not change.<sup>109</sup>

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<sup>102</sup> Broches, Awards Rendered Pursuant to the Convention, p. 302.

<sup>103</sup> *History II*, p. 177.

<sup>104</sup> *Id.*, p. 43. See comment by Mr. Rattray (Jamaica) and response by Broches.

<sup>105</sup> *Id.*, pp. 428–429. See comments by Mr. Serb (Yugoslavia) and Mr. Herndl (Austria).

<sup>106</sup> *Id.*, p. 343. See pp. 636–637.

<sup>107</sup> *Id.*, p. 428.

<sup>108</sup> *Id.*, p. 1063.

<sup>109</sup> Report of the Executive Directors, para 43.

## V. Compliance with Awards

82. Awards rendered in arbitrations conducted under the ICSID Convention are final and binding, meaning that the disputing parties must comply with them pursuant to Article 53 of the ICSID Convention. This Chapter discusses the obligation to comply with an Award, as well as voluntary compliance with and post-award settlements of Awards in practice.

### A. *The Obligation to Comply with an Award*

83. The obligation to comply with an Award is in Article 53(1) of the ICSID Convention, which provides that “[t]he award shall be binding on the parties [...]” and “[e]ach party shall abide by and comply with the terms of the award [...]”. The preamble of the Convention also states “that mutual consent [...] to arbitration [...] constitutes a binding agreement which requires [...] that any arbitral award be complied with”, underlining the importance of compliance.<sup>110</sup> The importance of the obligation to comply with an Award was recognized throughout the drafting of the Convention (see section IV(A)).
84. The Award is the final decision disposing of the case, and there can only be one Award in an arbitration under the ICSID Convention.<sup>111</sup> Any other ruling before the Award, such as a decision upholding jurisdiction (in whole or in part) or a decision on liability, is not considered an Award, although it forms part of the Award once it is incorporated into the final decision disposing of the case.
85. Only Awards are susceptible to recognition, enforcement, and execution under Articles 54 and 55 of the ICSID Convention. Procedural decisions, such as a decision on provisional measures, are not considered an Award under the ICSID Convention. This includes an order taking note of the discontinuance of the proceeding pursuant to Rules 55-57 of the 2022 ICSID Arbitration Rules and Administrative and Financial Regulation 16(2)(c),<sup>112</sup> with the exception of a settlement recorded in the form of an Award pursuant to Rule 55(2)(b) of the 2022 ICSID Arbitration Rules.<sup>113</sup> Also, decisions on a proposal to disqualify an arbitrator pursuant to Article 58 of the ICSID Convention<sup>114</sup> have not been accepted as Awards.<sup>115</sup>

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<sup>110</sup> Rajput A., ‘Non-Compliance with Investment Arbitration Awards and State Responsibility’, 37(1-2) ICSID Rev—FILJ (2022), pp. 247, 247.

<sup>111</sup> ICSID, Background Paper on Annulment for the Administrative Council of ICSID (August 10, 2012), p. 12, para. 35; see also Schreuer’s Commentary, p. 1121, paras 24, 29.

<sup>112</sup> Rules 43(1) and 44, 2006 ICSID Arbitration Rules.

<sup>113</sup> Rule 43, 2006 ICSID Arbitration Rules.

<sup>114</sup> Rules 8-9, 2006 ICSID Arbitration Rules, Rules 22-24, 2022 ICSID Arbitration Rules.

<sup>115</sup> *Azurix Corp. v. Argentine Republic*, ICSID Case No. ARB/01/12 (Annulment Proceeding), Decision on Annulment (September 1, 2009), para 284: “The Committee understands this argument [by Azurix] to raise the possibility that a decision under Article 58 on a proposal for disqualification might itself be annulled on any of the grounds of annulment in Article 52(1). The Committee notes that this possibility seems at odds with the literal wording of Article 52, which provides only for annulment of the *award*.”; *RSM Production Corporation v. Saint Lucia*, ICSID Case No. ARB/12/10 (Annulment Proceeding), Decision on Annulment (April 29, 2019), para 159 (the *ad hoc* Committee noted that “decisions on challenge are not decisions of the tribunal” in that “it is the unchallenged members of a tribunal who decide on a challenge to an arbitrator”); see also Schreuer’s Commentary, p. 1469, para 82.

86. Any decision by the Tribunal rectifying or supplementing the Award pursuant to Article 49(2) of the ICSID Convention forms part of the Award. In addition, Article 53(2) of the ICSID Convention specifies that the Award includes any decision interpreting, revising, or annulling the Award pursuant to Articles 50, 51, or 52 of the Convention. The Award, as rectified, supplemented, revised or interpreted, can be enforced to the extent it has not been annulled or made subject to a stay of enforcement.
87. The obligation to comply with the Award applies to both parties to an ICSID Convention arbitration, *i.e.*, the investor(s), and the State or the constituent subdivision or agency designated by the State.<sup>116</sup> It encompasses both pecuniary and non-pecuniary obligations such as specific performance.<sup>117</sup>
88. A party's failure to comply with the Award constitutes a breach of Article 53 of the ICSID Convention. For a State that is an award debtor, failure to comply constitutes a breach of its international law obligations. In such circumstances the opposing party may request diplomatic protection from its home State under Article 27(1) of the ICSID Convention. The home State may also initiate State-to-State dispute settlement before the International Court of Justice under Article 64 of the Convention.<sup>118</sup> In any event, either party may seek recognition and enforcement of the Award before the courts of any ICSID Member State in accordance with Article 54 of the ICSID Convention.
89. The drafting history of the ICSID Convention, the Report of the Executive Directors and decisions in ICSID annulment proceedings have confirmed that a prevailing party is not required to initiate enforcement proceedings in the host State courts to trigger the obligation to comply with the Award.<sup>119</sup> Courts have also confirmed this principle, signaling that Article 53 of the ICSID Convention is the "primary provision".<sup>120</sup> Thus, the parties' obligation to comply with an Award is independent and distinct from the obligation on each ICSID Member State to recognize and enforce the Award.<sup>121</sup>

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<sup>116</sup> Tawil G. S., 'Binding Force and Enforcement of ICSID Awards: Untying Articles 53 and 54 of the ICSID Convention' in van den Berg A. J. (ed), 50 Years of the New York Convention: ICCA International Arbitration Conference, Kluwer (2009), pp. 327, 329-330. *See also*, for the discussions in the drafting history regarding constituent subdivisions or agencies, Broches, Awards Rendered Pursuant to the Convention, p. 287.

<sup>117</sup> *History II*, p. 991; "Mr. Broches replied that an award could well order the performance or non-performance of certain acts but all that could be enforced would be the obligation to pay damages if the party did not comply with that order. In the kind of disputes that would come before the Centre payment of damages was all that ultimately the parties would expect in the absence of voluntary compliance."

<sup>118</sup> Broches, Awards Rendered Pursuant to the Convention, p. 287.

<sup>119</sup> *History II*, p. 989; Report of the Executive Directors, para. 42; Tawil G. S., 'Binding Force and Enforcement of ICSID Awards: Untying Articles 53 and 54 of the ICSID Convention' in van den Berg A. J. (ed), 50 Years of the New York Convention: ICCA International Arbitration Conference, Kluwer (2009) 327, 328-332. *See also*, *Enron Corporation and Ponderosa Assets, L.P. v. Argentine Republic*, ICSID Case No. ARB/01/3, Decision on the Argentine Republic's Request for a Continued Stay of Enforcement of the Award (October 7, 2008) para. 68; *Sempra Energy International v. Argentine Republic*, ICSID Case No. ARB/02/16, Decision on the Argentine Republic's Request for a Continued Stay of Enforcement of the Award (March 5, 2009), para 37.

<sup>120</sup> *See e.g.*, Australia High Court NSW Decision [2023] HCA 11 dated April 12, 2023 in relation to *Antin v. Spain*, para 71.

<sup>121</sup> Schreuer's Commentary, p. 1454; *see also*, *e.g.*, *History II*, p. 900 ("Mr. Broches (Chairman) said that the main idea was that there should be a complete parallelism between the obligation to comply with the award and the possibility of seeking enforcement [...]").

90. Similarly, a State that is an award debtor cannot rely on a defense of immunity from execution to excuse its non-compliance with the Award.<sup>122</sup> In *MINE v. Guinea*, the *ad hoc* Committee stated that: “State immunity may well afford a legal defense to forcible execution, but it provides neither argument nor excuse for failing to comply with an award.”<sup>123</sup>
91. Compliance is governed by the terms set out in the Award. If the Award specifies the timing of compliance, such terms apply. Otherwise, the obligation to comply takes effect immediately upon dispatch of the Award to the parties and remains in effect unless enforcement is stayed pursuant to the ICSID Convention. Under Articles 50(2), 51(4), and 52(5) of the ICSID Convention, a tribunal or an *ad hoc* committee may suspend the obligation to comply with the Award by staying enforcement pending its decision.<sup>124</sup>
92. Although not needed in the context of an ICSID arbitration, some investment treaties include express language concerning the obligation to comply with an Award<sup>125</sup> and have established a procedure in the event of a failure to comply with an Award.<sup>126</sup> These types of provisions mirror the obligations in the ICSID Convention and serve as additional international law obligations to comply with the Award.<sup>127</sup>

#### B. *Voluntary Compliance and Post-Award Settlements in Practice*

93. The drafters of the ICSID Convention expected that States would voluntarily comply with an Award.<sup>128</sup>
94. Aside from their legal obligations under the Convention, States and investors have many reasons to comply with an Award. An outstanding Award may accrue interest that the award debtor may wish to avoid. The parties may also want to avoid incurring additional costs in enforcement proceedings, and the potential seizure of assets.

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<sup>122</sup> *Patrick Mitchell v. Democratic Republic of Congo*, ICSID Case No. ARB/99/7, Decision on the Stay of Enforcement of the Award (November 30, 2004), para 41; Schreuer’s Commentary, p. 1460, fn. 78.

<sup>123</sup> *Maritime International Nominees Establishment v. Republic of Guinea*, ICSID Case No. ARB/84/4, Interim Order No. 1, August 12, 1988, para 25, 4 ICSID Reports 111, 115 (1997).

<sup>124</sup> See e.g., *Victor Pey Casado and President Allende Foundation v. Republic of Chile*, ICSID Case No. ARB/98/2 (Second Annulment Proceeding), Decision on the Request for the Stay of Enforcement of the Award (March 15, 2018), para. 52.

<sup>125</sup> See e.g., Agreement between the Government of the Kingdom of Sweden and the Government of the Republic of Venezuela on the Promotion and Reciprocal Protection of Investments (‘Sweden-Venezuela BIT (1996)’ (signed November 25, 1996, entered into force January 5, 1998) art 7(7).

<sup>126</sup> See e.g., Agreement between the United States of America, the United Mexican States and Canada (USMCA) (signed November 30, 2018), art 14.D.13(11); Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (signed March 8, 2008, entered into force November 20, 2018) art 9.29(11).

<sup>127</sup> See e.g., Article 35(10) of the Australia-Hong Kong Investment Agreement (2019): “If the respondent fails to abide by or comply with a final award, on delivery of a written request by the non-disputing Party, Section B (Settlement of Disputes between the Parties) shall apply to this matter. If a panel is established pursuant to such application, the requesting Party may seek in those proceedings: (a) a finding that the failure to abide by or comply with the final award is inconsistent with the obligations under this Agreement; and (b) in addition to Section B (Settlement of Disputes between the Parties), a recommendation that the respondent abide by or comply with the final award.”

<sup>128</sup> Schreuer’s Commentary, p. 1460.

95. An outstanding Award may negatively affect the award debtor's creditworthiness and thus its credit rating. For a State, an important incentive to comply voluntarily with an Award is to maintain its reputation in the international community as a State that respects the rule of law, and to ensure continued retention, expansion and attraction of foreign investment.<sup>129</sup>
96. Furthermore, tribunals have viewed a party's proven history of default (such as non-payment of advances or non-compliance with an award in a separate proceeding) as evidence of that party's potential inability or unwillingness to comply, and have considered that in the context of requests for security for costs.<sup>130</sup> They have examined whether the inability or unwillingness to comply with a future adverse costs award would constitute "exceptional circumstances" that warrant an order for security for costs.<sup>131</sup> This practice has been reflected in the 2022 ICSID Arbitration Rules, Rule 53, which provides the procedure and circumstances for an order of security for costs. When ordering security for costs, the tribunal must specify the relevant terms and fix a time limit for compliance with the order. Failure to comply with an order for security for costs may lead to suspension, and ultimately discontinuance of the proceeding.<sup>132</sup>
97. Some States have enacted domestic laws creating a separate budgetary reserve to comply with unforeseen pecuniary obligations arising from an adverse award (that would otherwise not be included in the annual State budget) or an expedited internal process for payment of an award.<sup>133</sup> These laws purport to remove administrative obstacles to compliance such as annual budgetary schedules or parliamentary approvals and facilitate voluntary compliance with an Award.

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<sup>129</sup> *Patrick Mitchell v. Democratic Republic of Congo*, ICSID Case No. ARB/99/7, Decision on the Stay of Enforcement of the Award (November 30, 2004), para 41 ("[A] State's refusal to enforce an ICSID award may have a negative effect on this State's position in the international community with respect to the continuation of international financing or the inflow of other investments."); Gaillard E. and Mitrev Penusliski I., 'State Compliance with Investment Awards', 35(3) ICSID Rev—FILJ (2020), p. 540.

<sup>130</sup> *RSM Production Corporation v. Saint Lucia*, ICSID Case No. ARB/12/10, Decision on Saint Lucia's Request for Security for Costs (August 13, 2014), paras 86, 90; *Burimi SRL and Eagle Games SH.A v. Republic of Albania*, ICSID Case No. ARB/11/18, Procedural Order No. 2, paras. 39, 41; *EuroGas Inc. and Belmont Resources Inc. v. Slovak Republic*, ICSID Case No. ARB/14/14, Procedural Order No. 3 Decision on Provisional Measures, June 23, 2015, para 123.

<sup>131</sup> *Vercara, LLC (formerly Security Services, LLC, formerly Neustar, Inc.) v. Republic of Colombia*, ICSID Case No. ARB/20/7, Decision on Security for Costs (September 27, 2023), para. 85; *Eugene Kazmin v. Republic of Latvia*, ICSID Case No. ARB/17/5, Procedural Order No. 6 (Decision on the Respondent's Application for Security for Costs) (April 13, 2020), para. 31-60; *Rachel S. Grynberg, Stephen M. Grynberg, Miriam Z. Grynberg and RSM Production Corporation v. Grenada*, ICSID Case No. ARB/10/6, Tribunal's Decision on Respondent's Application for Security for Costs (October 14, 2010), paras. 5.17-5.25; *RSM Production Corporation v. Saint Lucia*, ICSID Case No. ARB/12/10, Decision on Saint Lucia's Request for Security for Costs (August 13, 2014), paras 86, 90.

<sup>132</sup> Rule 53(6) of the 2022 ICSID Arbitration Rules.

<sup>133</sup> See e.g., Affef Ben Mansour, 'Domestic Procedures for the Payment of Damages by States in Investment Arbitration', *Investment Treaty News* (2020), available at: <https://www.iisd.org/itn/en/2020/06/20/domestic-procedures-for-the-payment-of-damages-by-states-in-investment-arbitration-affef-ben-mansour>. These mechanisms are created for a specific and limited purpose and without admission of liability in the case.

98. Some award creditors have monetized their award by selling or assigning their rights to third parties.<sup>134</sup> The underlying rationale as observed by commentators is to reduce risks and burden involved in seeking enforcement.<sup>135</sup> Some of these transactions have been made public in press reports,<sup>136</sup> in corporate filings,<sup>137</sup> in a procedural order,<sup>138</sup> or during proceedings before domestic courts.<sup>139</sup> The issue of whether an assignee can seek enforcement has been examined by domestic courts in enforcement proceedings. For example, with respect to the Award in *CMS Gas Transmission Company v. The Argentine Republic*, Blue Ridge Investments, LLC sought enforcement against Argentina as an assignee of the Award.<sup>140</sup> The US District Court which was handling the enforcement proceeding held that “nothing in the ICSID Convention, in Congress’s legislation implementing ICSID, or in New York law prevents an assignee from seeking recognition and enforcement of an ICSID Convention award”.<sup>141</sup> Argentina appealed to the US Court of Appeals to reverse this judgment, but the US Court of Appeals declined to exercise jurisdiction on this issue.<sup>142</sup>
99. After an Award is rendered, the disputing parties may engage in discussions concerning the award debtor’s compliance with the Award.<sup>143</sup> Sometimes these lead to post-award settlements, e.g., a payment schedule or terms other than those contained in the Award. These settlements can occur at different post-award stages, e.g., immediately after the

<sup>134</sup> Gaillard E. and Mitrev Penusliski I., ‘State Compliance with Investment Awards’, 35(3) ICSID Rev—FILJ (2020), p. 590; Commission J., ‘*The Financing of Investor-State Arbitration*’, in Commercial Legal Finance, Practising Law Institute (2023), pp. 5-13.

<sup>135</sup> Gaillard E. and Mitrev Penusliski I., ‘State Compliance with Investment Awards’, 35(3) ICSID Rev—FILJ (2020), p. 590; Commission J., ‘*The Financing of Investor-State Arbitration*’, in Commercial Legal Finance, Practising Law Institute (2023), pp. 5-13.

<sup>136</sup> See, e.g., Karadelis K., ‘Argentina ‘Close’ to Settling Treaty Awards’, *Global Arbitration Review* (2013).

<sup>137</sup> See, e.g., O-I, 8-K, July 31, 2017, regarding *OI European Group B.V. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/11/25); Tenaris S.A., 20-F, December 31, 2023 regarding both *Tenaris S.A. and Talta – Trading e Marketing Sociedade Unipessoal Lda. V. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/26, and *Tenaris S.A. and Talta – Trading e Marketing Sociedade Unipessoal Lda. V. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/12/23.

<sup>138</sup> *9REN Holding S.a.r.l. v. Kingdom of Spain*, ICSID Case No. ARB/15/15 (Annulment), Procedural Order No. 2, Decision on the Stay of Enforcement of the Award, November 19, 2021), paras. 131-132.

<sup>139</sup> US District Court Southern District of New York, Petition for an Order Confirming Foreign Arbitral Award and Entering Judgment Thereon (January 8, 2010), Memorandum Opinion & Order (September 30, 2012), *Blue Ridge Investments, L.L.C., v. The Argentine Republic* regarding *CMS Gas Transmission Company v. The Argentine Republic*, ICSID Case No. ARB/01/8.

<sup>140</sup> US District Court Southern District of New York, Petition for an Order Confirming Foreign Arbitral Award and Entering Judgment Thereon (January 8, 2010), *Blue Ridge Investments, L.L.C., v. The Argentine Republic* regarding *CMS Gas Transmission Company v. The Argentine Republic*, ICSID Case No. ARB/01/8.

<sup>141</sup> US District Court Southern District of New York, Memorandum Opinion & Order (September 30, 2012), *Blue Ridge Investments, L.L.C., v. The Argentine Republic* regarding *CMS Gas Transmission Company v. The Argentine Republic*, ICSID Case No. ARB/01/8, p. 20.

<sup>142</sup> US Court of Appeals for the 2<sup>nd</sup> Circuit, Enforcement Decision (August 19, 2013), *Blue Ridge Investments, L.L.C., v. The Argentine Republic* regarding *CMS Gas Transmission Company v. The Argentine Republic*, ICSID Case No. ARB/01/8, pp. 2, 12-15. After the US Court of Appeals decision, Argentina reached an agreement with the award creditors (i.e., Blue Ridge Investments LLC) concerning the satisfaction of the Award. Ministerio de Economía y Finanzas Públicas, Resolución No 598/2013, October 8, 2013, available at [https://www.argentina.gob.ar/normativa/nacional/decisi%C3%B3n\\_administrativa-830-2013-221137/texto](https://www.argentina.gob.ar/normativa/nacional/decisi%C3%B3n_administrativa-830-2013-221137/texto).

<sup>143</sup> If both parties are open to post-award discussions, mediation is available and can be explored concerning the form of compliance. For more information on mediation, see, e.g., ICSID Background Paper on Investment Mediation (July 2021), p. 4, available at: [https://icsid.worldbank.org/sites/default/files/publications/Background\\_Paper\\_on\\_Investment\\_Mediation\\_Oct.2021.pdf](https://icsid.worldbank.org/sites/default/files/publications/Background_Paper_on_Investment_Mediation_Oct.2021.pdf).

Award, during or after post-award remedy proceedings, or during or after enforcement proceedings.

100. ICSID does not monitor compliance with or post-award settlement of Awards. However, if an award creditor informs ICSID of the debtor's non-compliance, ICSID's practice is to remind the non-complying party of the obligation to comply with the Award under Article 53(1) of the ICSID Convention and to request information on the steps that party has taken, or will take, to do so.

## VI. Recognition and Enforcement of Awards before Domestic Courts

101. Article 54(1) and (2) of the ICSID Convention addresses recognition and enforcement of Awards in the territories of ICSID Member States. Each Member State must recognize an Award as binding and enforce the pecuniary obligations within its territories “as if it were a final judgment of a court in that State”, or in a constituent State for States with federal constitutions (Art. 54(1) ICSID Convention). The ICSID Convention provisions on recognition and enforcement do not distinguish between Awards against investors and against host States. The absence of such distinction was deemed essential by the drafters of the Convention to maintain a balance between the parties to a dispute.<sup>144</sup>
102. Article 54(2) establishes the procedure that a party seeking recognition and enforcement of an Award in the territory of a Member State must follow. The procedure is simply to furnish a copy of the Award certified by the Secretary-General of ICSID to the competent court or other authority which that State has designated for such purpose.<sup>145</sup> Article 54 does not provide for any grounds according to which recognition and enforcement may be refused. As explained above (see paragraphs 60-65 above), the drafters of the ICSID Convention considered and rejected the idea to permit refusal of enforcement on the same grounds as those in the New York Convention. They also considered retaining at least the public policy defense against enforcement but, after much discussion, voted against its inclusion.
103. Article 53 of the Convention establishes that an Award “shall be binding on the parties and shall not be subject to any appeal or to any other remedy except those provided for in this Convention.” Thus, any recourse against an Award must be brought pursuant to the post-award remedies in the Convention (Arts. 49-52 ICSID Convention). For example, ICSID *ad hoc* committees have addressed arguments that an Award be annulled based on the grounds in Article 52(1) of the Convention because the tribunal lacked jurisdiction or failed to exercise a jurisdiction that it had.<sup>146</sup>
104. This Chapter describes the interpretation and application of the measures taken by Member States to implement the ICSID Convention provisions on recognition and enforcement of Awards by domestic courts or authorities. The ICSID Secretariat has identified 124 publicly available domestic court decisions and orders in respect of 63 Awards in 21 jurisdictions. It has categorized them (*i.e.*, whether they concerned recognition and enforcement or execution of assets) and indicated their outcomes at Annex A, Table of Domestic Court Decisions.

### A. *Competent Courts and Authorities Designated by ICSID Member States*

105. For purposes of recognition, enforcement and execution of Awards, Article 54(2) of the ICSID Convention provides that Member States shall designate “*the competent court*” or “*other authority*” in its State, and advise of any change to such designation.

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<sup>144</sup> Schreuer’s Commentary, p. 1119.

<sup>145</sup> Article 54(2), ICSID Convention.

<sup>146</sup> [ICSID’s Background Paper on Annulment](#) provides an overview of how the grounds for annulment have been interpreted by ICSID *ad hoc* committees. See ICSID, Updated Background Paper on Annulment (March 2024).

106. The list of competent courts or authorities designated by ICSID Member States is published on ICSID's website as document ICSID/8-E.<sup>147</sup> Some Member States have also enacted laws on the recognition and enforcement of ICSID Awards in which they designate a competent court or authority.<sup>148</sup>
107. As of December 2023, 59% of the 158 ICSID Member States had made designations pursuant to Article 54(2).<sup>149</sup> Of the 93 bodies designated, 87% are courts, and 13% are other authorities. ICSID regularly asks States to update these designations.
108. Some Member States have designated a single court or authority,<sup>150</sup> while others have opted for a broader formula and designated a category of competent bodies, such as the locally competent district courts.<sup>151</sup> Designated courts include courts of first instance or district courts,<sup>152</sup> and sometimes the supreme court or a court of appeal of the State.<sup>153</sup> Some Member States with federal constitutions, like the United States, the Commonwealth of Australia, and the Federation of Malaysia have designated their lowest federal courts or the supreme courts of their respective states or provinces.
109. A minority of designations refer to other authorities, such as the Ministry of Foreign Affairs or the Ministry of Justice.<sup>154</sup>
110. In one Member State that designated other authorities as competent authorities (Belgium), Awards have been recognized and enforced (granted exequatur) by those authorities, followed by execution proceedings before courts.<sup>155</sup> Another Member State (Sweden) designated the Ministry of Foreign Affairs, while the execution of the Award is pursued through *Kronofogden* – a national enforcement authority.<sup>156</sup>

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<sup>147</sup> See [ICSID/8-E](#).

<sup>148</sup> See [ICSID/8-F](#).

<sup>149</sup> See [ICSID/8-E](#).

<sup>150</sup> e.g., Cyprus designated the District Court of Nicosia, Indonesia designated its Supreme Court, Lesotho designated its Permanent Secretary for Foreign Affairs as their competent authorities (See [ICSID/8-E](#)).

<sup>151</sup> e.g., Israel designated the “Appropriate District Court”, Tunisia designated the “Tribunal de Première Instance” having jurisdiction in the place where the enforcement is to take place”, Italy designated the “Courts of Appeal having jurisdiction in the province where the enforcement is to take place”, the United States of America designated “Federal District Courts (including each Court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States).” (See [ICSID/8-E](#)).

<sup>152</sup> e.g., the Republic of Korea designated nine competent district courts, the Netherlands designated the president of the District Court in The Hague. (See [ICSID/8-E](#)).

<sup>153</sup> e.g., Azerbaijan, Nigeria, Mauritius, Mauritania and Jamaica designated their respective supreme courts. Lithuania, Senegal and Italy designated their respective court of appeals. (See [ICSID/8-E](#)).

<sup>154</sup> e.g., Belgium, Sweden, Norway, Czechia Egypt, Latvia, and Sierra Leone. (See [ICSID/8-E](#)).

<sup>155</sup> In Belgium, Article 3 of the *Loi du 17 juillet 1970 portant approbation de la Convention pour le règlement des différends relatifs aux investissements entre Etats et ressortissants d'autres Etats* provides that the Ministry of Foreign Affairs, having verified the authenticity of the documents presented to enforce an Award in Belgium, remits the Award to the chief registrar of the Brussels Court of Appeal (“*greffier en chef de la Cour d'appel de Bruxelles*”), who appends the declaration of enforceability (“*appose la formule exécutoire*”). *Hydro S.r.l. and others v. Republic of Albania*, ICSID Case No. ARB/15/28, Brussels Court of First Instance Judgment, March 23, 2022, para. 10; Judgment of the Brussels Court of First Instance, January 27, 2016, in *Micula v. Romania* p. 12, referring to the exequatur granted by the “*greffier en chef de la Cour d'appel de Bruxelles*” upon request of the Ministry of Foreign Affairs.

<sup>156</sup> e.g., Decision of Kronofogden dated March 16, 2017, in case U 25445-16/0103 regarding the Award in *Micula v. Romania*.

111. The non-designation of courts or authorities or implementing legislation does not affect a State's obligation under the Convention to recognize and enforce Awards in its territories. There is no provision in the Convention preventing the State from enforcing the Award absent such a designation. For example, Ukrainian courts have reportedly enforced five Awards, although Ukraine has not designated any court or authority pursuant to Article 54(2) of the ICSID Convention.<sup>157</sup>
112. This is also confirmed by a Kuala Lumpur High Court decision that concluded that the absence of a predetermined procedural domestic framework for enforcement of ICSID Awards did not preclude the court from exercising its jurisdiction to enforce such Award.<sup>158</sup>

*B. Jurisdictions where Recognition, Enforcement and Execution of Awards Have Been Sought*

113. As of March 2024, ICSID had identified 84 enforcement proceedings (which resulted in the 124 decisions and orders) in 21 jurisdictions (see Annex A, Table of Domestic Court Proceedings). These proceedings also relate to Awards rendered after the cut-off date for the ICSID Study in Chapter II. Many of them relate to the enforcement of the same Award in different jurisdictions, *e.g.*, enforcement of the Award in *Micula v. Romania* in multiple jurisdictions.<sup>159</sup>
114. Award creditors have most frequently sought recognition and enforcement before US courts (41 Awards). Other jurisdictions where parties have sought to enforce ICSID Awards include England and Wales, Australia, France, Ukraine, the Netherlands, Belgium, Spain, and Singapore (see Table of Domestic Court Proceedings, Annex A).

*C. Domestic Courts' Recognition and Enforcement of Awards*

115. This section describes the requirements for recognition and enforcement of an Award under Article 54(1) and (2) of the ICSID Convention, as interpreted by domestic courts before which recognition and enforcement of Awards was sought.

(1) Verifying the Authenticity of the Award

116. In accordance with Article 49(1) of the ICSID Convention, the Secretary-General dispatches certified copies of the Award to the parties and deposits it in the archives of the

<sup>157</sup> See Annex A for the list of decisions of Ukrainian courts enforcing Awards.

<sup>158</sup> Kuala Lumpur High Court Decision dated February 17, 2023, Originating Summons No. WA-24NCC-322-07/2021, concerning the Award dated July 28, 2015 in *Bernhard von Pezold and others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, paras 31-34, *cf.* Türkiye Court of Cassation Decision No. 20201\4586 dated April 28, 2021 in case No. 2021/875 concerning the Award dated March 8, 2016 in *İçkale İnşaat Limited Şirketi v. Turkmenistan*, ICSID Case No. ARB/10/24, para 9. Turkmenistan first obtained from a lower Turkish court the enforcement of the Award in a judgment-based proceeding. The Court of Cassation noted that Türkiye had not designated a "competent court or other authority" under Article 54(2) of the ICSID Convention and held that an ICSID Award could therefore not be enforced in Türkiye under the ICSID Convention. Türkiye has since designated courts for the purpose of Article 54(2).

<sup>159</sup> See Annex A: United States, Belgium, Sweden, United Kingdom, Luxembourg.

Centre for permanent retention.<sup>160</sup> A party seeking recognition and enforcement must furnish a certified copy to the competent court or authority designated for recognition and enforcement purposes (Art. 54(2) ICSID Convention). No other verification (such as an apostille) is necessary under the Convention.

117. Most courts have held that these provisions reflect a simplified recognition and enforcement procedure, and that the court's review is limited to verifying the authenticity of the Award,<sup>161</sup> without subjecting it to substantive review or any condition additional to those included in the Convention.<sup>162</sup>

## (2) Existence of Pecuniary Obligations

118. All obligations under the Award, whether pecuniary or other, are binding on the parties, which must comply with them in accordance with Article 53 of the Convention. Under

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<sup>160</sup> See also, Regulation 29 (1)(d) and 29 (2) of the ICSID Administrative and Financial Regulations (2022), and Rule 60(1)(b) of the Arbitration Rules.

<sup>161</sup> Paris Court of Appeal Decision dated June 26, 1981, concerning the Award dated August 8, 1980 in *S.A.R.L. Benvenuti & Bonfant v. People's Republic of the Congo*, ICSID Case No. ARB/77/2, para 2 (“*Que ces dispositions [Article 54] prévoient un exequatur simplifié et limitent le pouvoir du Juge désigné à cet effet dans chaque Etat contractant au contrôle de l'authenticité de la sentence certifiée conforme par le Secrétaire Général du Centre International pour le règlement des différends relatifs aux investissements*”; US District Court of the SD of Florida Order dated June 8, 2022 concerning the Award dated March 22, 2019 in *Italba Corporation v. Oriental Republic of Uruguay*, ICSID Case No. ARB/16/9, p. 14 (“Article 54 of the ICSID Convention requires the award creditor, here Uruguay, to furnish to the Court a copy of the Award certified by the Secretary General of the Convention. Uruguay has complied with this requirement by attaching a certified copy of the Award to the Petition. The Award attached to the Petition includes an attached cover page that expressly certifies that the attached document is a true copy of the Award and is signed by the Acting Secretary-General of the ICSID. This satisfies the requirements of the Convention.”); US District Court for DC Memo and Order dated February 9, 2015, concerning the Award dated November 19, 2007 in *Miminco LLC and others v. Democratic Republic of the Congo*, ICSID Case No. ARB/03/14, p. 3 (“[B]y filing a certified copy of the award, Petitioners have complied with the requirements of Article 54(2) of the ICSID Convention.”)

<sup>162</sup> Schreuer's Commentary, p. 1128; Second Order and Judgment of the US District Court for Southern District of New York dated December 12, 1986, concerning the Award dated March 31, 1986, in *Liberian Eastern Timber Corporation v. Republic of Liberia*, ICSID Case No. ARB/83/2; US DC for SD of New York Decision dated February 20, 2013 concerning the Award in *Sempra Energy International v. Argentine Republic*, ICSID Case No. ARB/02/16; US DC for SD of New York Order dated April 29, 2011 concerning the Award in *RSM Production Corporation v. Grenada*, ICSID Case No. ARB/05/14; US DC for DC Memo Opinion dated 11 Sep 2019 in *Micula v. Romania*; US DC of DC Memo Opinion dated 10 Jul 2020 concerning the Award in *Getma International and others v. Republic of Guinea*, ICSID Case No. ARB/11/29; US DC for SD of New York Memo dated June 27, 2017 concerning the Award dated May 4, 2017 in *Eiser Infrastructure Limited and Energía Solar Luxembourg S.à r.l. v. Kingdom of Spain*, ICSID Case No. ARB/13/36; US District Court of the SD of Florida Order dated June 8, 2022 concerning the Award dated March 22, 2019 in *Italba Corporation v. Oriental Republic of Uruguay*, ICSID Case No. ARB/16/9; Paris Court of Appeal Decision dated June 26, 1981 concerning the Award dated August 8, 1980 in *S.A.R.L. Benvenuti & Bonfant v. People's Republic of the Congo*, ICSID Case No. ARB/77/2; US District Court DC Report and Recommendation dated August 3, 2022 concerning the Award dated July 25, 2017 in *Valores Mundiales, S.L., and Consorcio Andino, S.L., v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/13/11; US District Court for DC Memo and Order dated February 9, 2015 concerning the Award dated November 19, 2007 in *Miminco LLC and others v. Democratic Republic of the Congo*, ICSID Case No. ARB/03/14; Kuala Lumpur High Court Decision dated February 17, 2023, Originating Summons No. WA-24NCC-322-07/2021, concerning the Award dated July 28, 2015 in *Bernhard von Pezold and others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, para. 7 (“As long as the requirement of Article 54(2) of the ICSID Convention is satisfied, which the Plaintiffs have done by exhibiting a copy of the Award and the Decision on Annulment certified by the Secretary-General of the ICSID Centre, the Court is mandated to recognize the Award and Decision on Annulment pursuant to the provisions of the ICSID Act.”)

Article 54(1), the obligation on each Member State to recognize extends to the full Award, but the obligation to enforce and execute applies solely to pecuniary obligations imposed by the Award.<sup>163</sup> Recognition confirms the Award's binding force or *res judicata* effect.<sup>164</sup> The drafters of the Convention intended to restrict the enforcement obligation of Member States under Article 54(1) to the payment of monetary Awards. This would avoid issues that could arise if the Award ordered forms of relief that were unavailable in the domestic legal system where enforcement was sought (*e.g.*, in some jurisdictions courts cannot order specific performance).<sup>165</sup>

### (3) Recognition and Enforcement of an Award “as if it were a final judgment”

119. Many courts have referred to the language of Article 54(1) of the ICSID Convention that a State must recognize and enforce the pecuniary obligations imposed by an Award “as if it were a final judgment of a court in that State.”<sup>166</sup> Most have relied on this language to

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<sup>163</sup> Order and Judgment of the US District Court for Southern District of New York dated September 5, 1986, concerning the Award dated March 31, 1986, in *Liberian Eastern Timber Corporation v. Republic of Liberia*, ICSID Case No. ARB/83/2; US DC for SD of New York Decision dated February 20, 2013 concerning the Award in *Sempra Energy International v. Argentine Republic*, ICSID Case No. ARB/02/16; US DC for SD of New York Order dated April 29, 2011 concerning the Award in *RSM Production Corporation v. Grenada*, ICSID Case No. ARB/05/14; US DC of DC Memo Opinion dated 10 Jul 2020 concerning the Award in *Getma International and others v. Republic of Guinea*, ICSID Case No. ARB/11/29; US DC DC Memo Opinion dated 14 Sep 2021 concerning the Award in *Duke Energy International Peru Investments No. 1 Ltd. v. Republic of Peru*, ICSID Case No. ARB/03/28; US DC for MD of Florida Order II dated 11 Apr 2014 and US DC for SD of New York Judgment dated 14 Jul 2012 both concerning the Award in *EDF International S.A., SAUR International S.A. and León Participaciones Argentinas S.A. v. Argentine Republic*, ICSID Case No. ARB/03/23; French Court of Cassation Decision dated 21 Jul 1987 concerning the Award in *S.A.R.L. Benvenuti & Bonfant v. People's Republic of the Congo*, ICSID Case No. ARB/77/2; English High Court of Justice Judgment dated June 4, 2001 concerning the Award dated October 7, 2003 in *AIG Capital Partners, Inc. and CJSC Tema Real Estate Company v. Republic of Kazakhstan*, ICSID Case No. ARB/01/6; US District Court DC Report and Recommendation dated August 3, 2022 concerning the Award dated July 25, 2017 in *Valores Mundiales, S.L., and Consorcio Andino, S.L., v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/13/11; US District Court for SD of New York Order dated April 29, 2011 concerning the Award in *RSM Production Corporation and others v. Grenada*, ICSID Case No. ARB/10/6; US District Court DC Memo Opinion dated July 10, 2020 concerning the Award in *Getma International and others v. Republic of Guinea*, ICSID Case No. ARB/11/29, para 20.

<sup>164</sup> Schreuer's Commentary, p. 1485, para 52.

<sup>165</sup> *Id.*, pp. 1136-1137.

<sup>166</sup> US District Court of the SD of Florida Order dated June 8, 2022 concerning the Award dated March 22, 2019 in *Italba Corporation v. Oriental Republic of Uruguay*, ICSID Case No. ARB/16/9; US District Court for MD of Florida Order II dated April 11, 2014 concerning the Award in *EDF International S.A., SAUR International S.A. and León Participaciones Argentinas S.A. v. Argentine Republic*, ICSID Case No. ARB/03/23; English High Court of Justice Judgment dated June 4, 2001 concerning the Award dated October 7, 2003 in *AIG Capital Partners, Inc. and CJSC Tema Real Estate Company v. Republic of Kazakhstan*, ICSID Case No. ARB/01/6; US District Court DC Report and Recommendation dated August 3, 2022 concerning the Award dated July 25, 2017 in *Valores Mundiales, S.L., and Consorcio Andino, S.L., v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/13/11; Federal Court of Australia NSW Judgment dated June 25, 2021 concerning the Award in *Antin v. Spain*; Brussels Court of Appeal Judgment dated March 13, 2019 concerning the Award dated December 11, 2013 in *Ioan Micula, Viorel Micula and others v. Romania*, ICSID Case No. ARB/05/20; Buenos Aires Commercial Court of Appeal Decision 8030/2015 dated August 8, 2015 concerning the Award dated May 21, 2013 in *Convial Callao S.A. and CCI - Compañía de Concesiones de Infraestructura S.A. v. Republic of Peru*, ICSID Case No. ARB/10/2; Kuala Lumpur High Court Decision dated February 17, 2023, Originating Summons No. WA-24NCC-322-07/2021, concerning the Award dated July 28, 2015 in *Bernhard von Pezold and others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15; Nacka District Court Stockholm Decision dated January 23, 2019 concerning the Award in *Micula v. Romania*; Swiss Federal Supreme Court Decision 5A 406/2022 dated March 17, 2023 concerning the Award dated September 6, 2019 in *OperaFund Eco-Invest SICAV PLC and Schwab Holding AG v. Kingdom of Spain*, ICSID Case No. ARB/15/36.

support a finding that courts may not refuse enforcement based on a substantive review of the Award. Courts have noted that review of ICSID Awards is reserved for ICSID *ad hoc* committees in annulment proceedings under the Convention and that there are “no grounds for repetition or rehearing of”<sup>167</sup> such arguments in enforcement proceedings. Courts have held that this extends to jurisdictional review.

120. For example:

- The Swiss Federal Supreme Court has held that Swiss authorities may not review an ICSID Award with respect to enforceability, finding that apart from the verification of authenticity, no control at all should be allowed, even with regard to arguments based on public policy grounds.<sup>168</sup>
- US courts have taken the position that Congress directed the federal courts to enforce ICSID Awards in the same manner as the federal courts enforce state court final judgments,<sup>169</sup> and that “[a] federal court is “not permitted to examine an ICSID award’s merits, its compliance with international law, or the ICSID tribunal’s jurisdiction to render the award.”<sup>170</sup>
- The Federal Court of Australia has held that treating the Award *as if* it were a final judgment requires that “[...] a litigant or disputant [be] put in a position to obtain satisfaction: to be paid the debt now owing in domestic law by the recognition of the award as having the status of an enforceable judgment of the Court.”<sup>171</sup>
- The UK High Court has held that “provided the enforcing court is satisfied of the authenticity of the award, it is not entitled to review either the substance of the award or the jurisdiction of the tribunal or to refuse recognition or enforcement (save possibly in the exceptional and extraordinary circumstances contemplated in *Micula*).”<sup>172</sup>
- The High Court of Malaysia has held that “[t]he Defendant cannot resist recognition or enforcement of the Award and the Decision on Annulment on grounds pertaining

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<sup>167</sup> English High Court of Justice Judgment (May 24, 2023), concerning the Award in *Antin v. Spain*, paras. 161-163.

<sup>168</sup> Swiss Federal Supreme Court, March 17, 2023, para 3.2.2. (“Pursuant to Article 54(1) of the ICSID Convention, each Contracting State must recognize as binding any award rendered under the Convention and enforce in its territory the pecuniary obligations imposed therein as if it were a final judgment of one of its domestic courts. Accordingly, apart from the verification of the authenticity of the award, no control at all should be allowed. The Swiss authorities may not review the ICSID award with respect to general recognition requirements; in particular, they are also barred from public policy review.” [unofficial translation])

<sup>169</sup> US District Court DC Report and Recommendation dated August 3, 2022, concerning the Award dated July 25, 2017 in *Valores Mundiales, S.L., and Consorcio Andino, S.L., v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/13/11, p. 13; Compare also Federal Court of Australia NSW Judgment dated June 25, 2021 concerning the Award in *Antin v. Spain*, para 9.

<sup>170</sup> US Court of Appeals for the Second Circuit Decision dated July 11, 2017, and US District Court Southern District of New York Decision dated January 22, 2017 concerning the Award in *Mobil Cerro Negro Holding, Ltd., Mobil Cerro Negro, Ltd., Mobil Corporation and others v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/27, paras 102, 118.

<sup>171</sup> Federal Court of Australia NSW Judgment dated June 25, 2021 concerning the Award in *Antin v. Spain*.

<sup>172</sup> UK High Court, in *Border Timbers Limited, Hangani Development Co. (Private) Limited and Republic of Zimbabwe*, EWHC 58 (Comm) (January 19, 2024), para 111(c).

to jurisdiction, nor sustain any reference to the impugned Land Reforms and their implementation as acts of a sovereign and governmental nature at this stage.”<sup>173</sup>

- The High Court of Zimbabwe has ordered the registration of an ICSID Award without any analysis of the Award.<sup>174</sup>

121. Most courts thus limit their review to confirming the authenticity of the Award that was submitted to the court.<sup>175</sup> Courts have rejected defenses based on immunity from jurisdiction for recognition and enforcement procedures, which they conclude States have waived by their accession to the ICSID Convention.<sup>176</sup>

122. In few instances, courts have denied enforcement based on the applicant’s failure to comply with procedural requirements under the applicable domestic law (*i.e.*, not relating to the Award itself). For example, where:

- Enforcement was requested before the incorrect venue (*e.g.*, US District Court for the Eastern District of Virginia instead of the US District Court of the District of Columbia).<sup>177</sup>

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<sup>173</sup> Kuala Lumpur High Court (NCC1) (Commercial Division), Judge Atan Mustaffa Yussof Ahmad, dated November 27, 2023, concerning the Award dated July 28, 2015 and Decision on Annulment dated November 21, 2015 in *Bernhard von Pezold and others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, para 50.

<sup>174</sup> The High Court of Zimbabwe, consent order of March 1, 2023 concerning the Award of July 28, 2015 in *Bernard von Pezold and others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15 and the annulment decision of November 21, 2018.

<sup>175</sup> US District Court for the Southern District of New York Decision dated February 13, 2015 concerning the Award dated October 19, 2015 in *Venezuela Holdings B.V. and others v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/27, p. 19 (“Beyond confirming that the ostensible award did in fact issue from ICSID, a court presented with an application for recognition is not empowered to re-assess the merits of the award—it does not sit as a court of appeals and is not empowered to undertake substantive review”); US District Court for DC Memo Opinion dated September 11, 2019 concerning the Award in *Micula v. Romania*, p. 3 (“The domestic courts of member countries lack the authority to review the merits of a decision by an ICSID tribunal.”); US District Court of DC Memo Opinion dated February 15, 2023 concerning the Award in *9REN Holding S.a.r.l v. Kingdom of Spain*, ICSID Case No. ARB/15/15, p. 23; Schreuer’s Commentary, p. 1145; US District Court of DC Memo and Order dated February 9, 2015 concerning the Award in *Miminco LLC and others v. Democratic Republic of the Congo*, ICSID Case No. ARB/03/14; US District Court for MD Florida dated June 13, 2013 concerning the Award in *Nations Energy, Inc. and others v. Republic of Panama*, ICSID Case No. ARB/06/19; US District Court for SD of New York Order dated April 29, 2011 concerning the Award in *RSM Production Corporation and others v. Grenada*, ICSID Case No. ARB/10/6; US District Court of Massachusetts Default Judgment dated 18 Sept 2018 concerning the Award in *Adel A Hamadi Al Tamimi v. Sultanate of Oman*, ICSID Case No. ARB/11/33; US District Court of DC Order dated 19 Jan 2021 concerning the Award in *Vestey Group Ltd v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/06/4.

<sup>176</sup> Federal Court of Australia NSW Decision dated February 24, 2020 concerning the Award dated May 4, 2017 in *Eiser Infrastructure Ltd. v. Kingdom of Spain*, ICSID Case No. ARB/13/6, paras 190, 192, Australia High Court NSW Judgment dated April 12, 2023 concerning the Award dated June 15, 2018, in *Antin Infrastructure Services Luxembourg S.à.r.l. and Antin Energia Termosolar B.V. v. Kingdom of Spain*, ICSID Case No. ARB/13/31, paras 75, 77, 79, US District Court DC Memo Opinion dated August 19, 2022 concerning the Award dated March 8, 2019 in *ConocoPhillips Petrozuata and others v. Venezuela*, ICSID Case No. ARB/07/30, p. 8, Kuala Lumpur High Court Decision dated February 17, 2023, Originating Summons No. WA-24NCC-322-07/2021, concerning the Award dated July 28, 2015 in *Bernhard von Pezold and others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, para 24.

<sup>177</sup> US District Court Eastern District of Virginia Memo dated September 11, 2012, concerning the Award dated September 5, 2008 in *Continental Casualty Company v. Argentine Republic*, ICSID Case No. ARB/03/9; US District Court Southern District of New York Decision dated January 22, 2017 concerning the Award dated March 13, 2015

- There was improper service.<sup>178</sup> Some US courts have denied enforcement when applicants failed to serve a State pursuant to the requirements of the Foreign Sovereign Immunities Act (FSIA), the domestic statute applicable to civil suits brought against foreign States. In *Mobil Cerro Negro v. Venezuela*, the US Court of Appeals for the Second Circuit held that the ICSID implementing statute (U.S.C. 22 § 1650a) was overridden by the FSIA where the Award was against a sovereign. The court found that the Award could not be enforced *ex parte* (an issue that would not arise if the procedure was sought against a non-sovereign award debtor).<sup>179</sup> It vacated the District Court judgment that had granted the *ex parte* petition for enforcement and remanded the case to the District Court without prejudice to renewal in an action commenced in compliance with the FSIA.<sup>180</sup>
- Enforcement was attempted against a person different from the award debtor and that person's connection to the award debtor was insufficient.<sup>181</sup>

123. In recent years, some award debtors have sought to resist enforcement of ICSID Awards on substantive grounds. These challenges mostly relate to Awards rendered in arbitrations between a party that is a national of an EU Member State and an EU Member State (“intra-EU arbitrations”). In a preliminary ruling issued in the context of the set aside proceeding of a non-ICSID award, the Court of Justice of the European Union (CJEU) took the position that the arbitration provision contained in a bilateral investment treaty between two EU Member States was incompatible with EU law. Following this ruling and declarations made by certain EU Member States that they would terminate their intra-EU bilateral investment treaties, 23 EU Member States signed the Agreement for the Termination of Intra-EU Bilateral Investment Treaties on May 5, 2020.<sup>182</sup> Among other things, this Treaty directed

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in *Tidewater Investment SRL and Tidewater Caribe, C.A. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/10/5.

<sup>178</sup> US District Court of DC Memo and Opinion dated September 22, 2022 concerning the Awards in *Bernard von Pezold and others v. Zimbabwe* (ARB/10/15) and *Border Timbers Limited, Timber Products International (Private) Limited, and Hangani Development Co. (Private) Limited v. Zimbabwe* (ARB/10/25); US Court of Appeals DC Circuit Court Decision dated January 25, 2022 concerning the Award dated November 3, 2017 in *Saint-Gobain Performance Plastics Europe v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/12/13; British Virgin Island High Court of Justice (commercial division) May 20, 2021, concerning the Award dated July 12, 2019 in *Tethyan Copper Company Pty Limited v. Islamic Republic of Pakistan*, ICSID Case No. ARB/12/1.

<sup>179</sup> US Court of Appeals for the Second Circuit Decision dated July 11, 2017: “[...] Section 1650a of Title 22 requires federal courts to enforce ICSID awards as if they were final judgments of state courts—that is, pursuant to civil actions brought under the Federal Rules of Civil Procedure on such awards. The FSIA provides the sole basis for United States courts’ subject matter jurisdiction over foreign sovereigns, and Section 1650a embodies no exception to that rule. As a result, when the ICSID award-debtor is a foreign sovereign, the FSIA’s procedural mandates control, including the requirements that process be served to obtain personal jurisdiction under 28 U.S.C. § 1330(b), and venue be proper under 28 U.S.C. § 1391(f). [...]” See also, US District Court Southern District of New York Decision dated January 22, 2017, concerning the Award in *Mobil Cerro Negro Holding, Ltd., Mobil Cerro Negro, Ltd., Mobil Corporation and others v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/27.

<sup>180</sup> US Court of Appeals for the Second Circuit Decision dated July 11, 2017.

<sup>181</sup> British Virgin Island High Court of Justice (commercial division) May 20, 2021, in *Tethyan Copper Company Pty Limited v. Islamic Republic of Pakistan*, ICSID Case No. ARB/12/1; Singapore High Court, 23 May 2022, in *OI European Group v. Venezuela*; US District Court Idaho Memo and Order, 29 Aug 2022, in *Lao Holdings NV v. Lao People’s Democratic Republic*.

<sup>182</sup> See Agreement for the termination of Bilateral Investment Treaties between the Member States of the European Union, L169 (May 29, 2020) available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L:2020:169:FULL> (last accessed May 15, 2024). The Treaty entered into force on August 29, 2020.

EU Member States to “ask the competent national court, including in any third country, as the case may be, to set the arbitral award aside, annul it or to refrain from recognizing and enforcing it.”<sup>183</sup>

124. In a second preliminary ruling issued in the context of the set aside proceedings of another non-ICSID award, the CJEU took the view that the arbitration provision in the Energy Charter Treaty (ECT) was not applicable to intra-EU arbitrations.<sup>184</sup>

125. In the context of one ICSID Award issued in an intra-EU arbitration, the CJEU held that State consent under the relevant intra-EU bilateral investment treaty lacked force after the State’s accession to the EU.<sup>185</sup> It also held that the European Commission (EC) was competent to determine if payment of the Award, whether voluntary or enforced, made by an EU State constituted state aid, if the payment (*i.e.*, the measure considered capable of constituting aid) is made after the State’s accession to the EU.<sup>186</sup> Subsequently, the CJEU further held that EU law must be interpreted as meaning that a court of an EU State seized with the enforcement of that Award (which was the subject of EC Decision 2015/1470 on state aid) may not give it effect and, therefore, may not enforce it.<sup>187</sup>

126. As a result of the CJEU judgments, some EU Member State courts have set aside non-ICSID intra-EU awards issued by tribunals seated in their jurisdiction.<sup>188</sup>

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<sup>183</sup> Agreement for the termination of Bilateral Investment Treaties between the Member States of the European Union, L169 (May 29, 2020), *see* Article 7(b).

<sup>184</sup> *See Slowakische Republik (Slovak Republic) v. Achmea BV*, CJEU, Judgment of the Court (March 6, 2018) in which the CJEU held that arbitration provisions contained in intra-EU bilateral investment treaties such as Article 8 of the BIT between the Kingdom of the Netherlands and the Czech and Slovak Federative Republic are precluded by Articles 344 and 267 Treaty of the Functioning of the European Union (“TFEU”); and *Republic of Moldova v. Komstroy LLC*, CJEU, Judgment of the Court (September 2, 2021), in which the CJEU took the position that the arbitration provision in the ECT “must be interpreted as not being applicable to disputes between a Member State and an investor of another Member State concerning an investment made by the latter in the first Member State”. These CJEU judgments did not concern ICSID cases; they were preliminary rulings issued by the CJEU at the request of the courts of the seat in the respective set aside proceedings.

<sup>185</sup> *Commission v. European Food and Others*, CJEU, Judgment of the Court, (January 25, 2022), paras. 141-145, concerning the Award in *Micula v. Romania*. The EU is not a party to the ICSID Convention and therefore, neither it nor the CJEU have any obligations under Articles 53 to 55 of the Convention. However, the CJEU decisions are relevant as EU Member States that are parties to the Convention and their competent courts or authorities do have obligations under Articles 53 to 55 of the Convention. As indicated in paras. 61 to 63, these obligations are *inter partes* (*i.e.*, to all the ICSID Contracting States, and not *inter se* (*i.e.*, in relation to two or more Contracting States) and are essential to the functioning of the ICSID system.

<sup>186</sup> The CJEU found that the “[European Commission’s] decision [...] was correct in regarding Romania’s payment [of the *Micula* Award], whether voluntarily made or enforced, of that compensation as constituting a State aid. Since that State aid was granted after Romania’s accession to the European Union, the Commission was competent to adopt that decision.” *Commission v. European Food and Others*, CJEU, Judgment of the Court (January 25, 2022), para 86.

<sup>187</sup> *DA and Others v Romanian Air Traffic Services Administration (Romatsa) and Others*, CJEU, Order of the Court (September 21, 2022), paras. 40-44. *See* para. 44: “[...] le droit de l’Union, en particulier ses articles 267 et 344 TFUE, doit être interprété en ce sens qu’une juridiction d’un État membre saisie de l’exécution forcée de la sentence arbitrale ayant fait l’objet de la décision 2015/1470 est tenue d’écarter cette sentence et, partant, ne peut en aucun cas procéder à l’exécution de celle-ci afin de permettre à ses bénéficiaires d’obtenir le versement des dommages et intérêts qu’elle leur accorde.”

<sup>188</sup> Svea Court of Appeal (Sweden), Judgment dated December 13, 2022, in *Novenergia II - Energy & Environment (SCA) (Grand Duchy of Luxembourg), SICAR v. The Kingdom of Spain* (SCC Case No. 2015/063); Svea Court of

127. At the same time, a non-EU Member State court has dismissed an application to set aside a non-ICSID award in an intra-EU arbitration commenced on the basis of the ECT. The Swiss Federal Supreme Court analyzed the CJEU's judgments (*Achmea* and *Komstroy*, see above, fn 184). The Court noted that *Achmea* had been strongly criticized for not taking into account international law or rules on treaty interpretation,<sup>189</sup> while considering *Komstroy* of limited value. The question before the Swiss Court was not on the scope of a foreign law, but whether the rules adopted by a community of states, like the EU, prevail over those resulting from a multilateral treaty, like the ECT.<sup>190</sup> The Court found that Article 26 of the ECT, interpreted in accordance with the Vienna Convention on the Law of Treaties, “excludes the assumption that the unconditional consent given by [the State] would not include [intra-EU disputes].”<sup>191</sup>
128. To date, no Award has been annulled under the ICSID Convention based on the intra-EU objection to jurisdiction. However, in enforcement proceedings concerning one Award in *Micula v. Romania*, courts have reached different conclusions. Courts in Luxembourg and Sweden have denied enforcement, a court in Belgium stayed its judgment, whilst courts in Romania, the UK and the US have granted enforcement:

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Appeal (Sweden) Judgment dated December 20, 2023, in *Festorino Invest Limited and others v. Republic of Poland* (Case No T 12646-21); Svea Court of Appeal (Sweden), Judgment dated March 27, 2024, in *Triodos SICAV II v. The Kingdom of Spain* (SCC Case No. 2017/194); Svea Court of Appeal (Sweden), Judgment dated May 27, 2024 (Case T 4236-19), regarding the award issued in *CEF Energia BV v. Italian Republic* (SCC Case No. 2015/158); Supreme Court of Sweden, Judgment dated December 14, 2022 (Case T-1569-19) regarding the partial and final awards issued in *PL Holdings v. Poland* (SCC Case No. 2014/163). The Swedish courts have found that awards issued in intra-EU arbitrations seated in Sweden and commenced on the basis of arbitration clauses contained in an intra-EU bilateral investment treaty and on the basis of Article 26 of the ECT are incompatible with the principles of the EU legal order and Swedish public policy and have, thereby, declared them invalid.

<sup>189</sup> Swiss Federal Supreme Court, Judgment 4A\_244/2023 (April 3, 2024) regarding the award issued in *EDF Energies Nouvelles S.A. v. Kingdom of Spain*, PCA Case No. AA613. See para. 7.6.5., referring to the CJEU’s Judgment in *Slowakische Republik (Slovak Republic) v. Achmea BV*.

<sup>190</sup> Swiss Federal Supreme Court, Judgment 4A\_244/2023 (April 3, 2024), para. 7.6.5., referring to CJEU’s Judgment in *Republic of Moldova v. Komstroy LLC*: “[...] le Tribunal fédéral, lorsqu’il est appelé - dans le cadre de son libre pouvoir d’examen en droit de la compétence du tribunal arbitral - à examiner des questions relevant du droit étranger, se rallie en principe [...] à l’opinion émise par la juridiction suprême du pays ayant édicté ladite règle. Cette règle prétorienne, qui peut toutefois souffrir des exceptions, est sans doute pertinente lorsque le Tribunal fédéral doit résoudre une question préjudicielle ponctuelle ressortissant au droit étranger, car la cour suprême de l’État en question est sans conteste mieux à même d’en préciser la nature et la portée. Elle l’est moins lorsqu’il s’agit de déterminer si les règles adoptées par une communauté d’États, telle l’UE, doivent l’emporter sur celles qui découlent d’un traité international multilatéral, à l’instar du TCE, liant ladite communauté, des États membres de celle-ci et des États tiers. Il faut en effet bien voir que, dans un tel cas, la problématique juridique ne se résume pas à apprécier la portée d’une norme de droit étranger mais à examiner la relation juridique existant entre les règles ancrées dans divers instruments présentant un caractère international. Or, en présence d’un conflit entre de telles règles, il se peut que l’autorité judiciaire mise en place par ladite communauté d’États soit tentée, comme dans l’affaire *Komstroy*, d’affirmer la primauté de son droit sur celui issu de cet autre accord international, donnant ainsi à sa décision le caractère d’un plaidoyer pro domo. Par conséquent, la Cour de céans n’accordera pas de valeur particulière à l’arrêt rendu par la CJUE dans l’affaire *Komstroy* mais s’attachera, au contraire, à rechercher elle-même le sens et la portée de l’art. 26 TCE [...]”

<sup>191</sup> Swiss Federal Supreme Court, Judgment 4A\_244/2023 (April 3, 2024), para. 7.7.6. [Unofficial translation] Original French: “[...] l’art. 26 par. 3 point a) TCE, interprété de bonne foi suivant le sens ordinaire à attribuer aux termes du traité dans leur contexte et à la lumière de son objet et de son but, exclut de retenir que le consentement inconditionnel donné par l’État recourant à la soumission de tout différend à une procédure d’arbitrage n’engloberait pas les litiges présentant un caractère intra-européen.”

- In January 2019, the Nacka District Court in Sweden found that enforcement of the Award in *Micula v. Romania* would have led to a Swedish authority helping to set aside the European Commission’s decision which directed Romania not to pay the compensation due under the Award.<sup>192</sup> The Nacka District Court noted that Article 54 of the ICSID Convention mandates Sweden to enforce an Award as if it were a final Swedish judgment. For the Court, a judgment which would contravene EU law if enforced could not be enforced and there was no difference in that respect with the Award.<sup>193</sup> Therefore, as long as the European Commission’s decision remained valid,<sup>194</sup> the EU law principle of sincere cooperation prevented enforcement of the Award. The District Court ordered costs against the award creditors. The award creditors later withdrew their request for enforcement but appealed the District Court’s costs allocation. In this context, the Supreme Court considered that “[...] it is neither obvious that enforcement would be granted nor that there were obstacles to enforcement. Therefore, the costs of the proceedings shall not be allocated based on what can be assumed about the outcome on the merits, but instead based on the circumstances under which Romania paid.”<sup>195</sup>
- In March 2019, the Brussels Court of Appeals noted that Belgium had an obligation to enforce the Award under the ICSID Convention, but that the European Commission’s decision on state aid in *Micula v. Romania* created a conflict for

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<sup>192</sup> The European Commission viewed the payment of the compensation due under the Award as unlawful state aid. See Commission Decision (EU) 2015/1470 of March 30, 2015, on State aid SA.38517 (2014/C) (ex 2014/NN) implemented by Romania.

<sup>193</sup> Nacka District Court Stockholm Decision dated January 23, 2019, concerning the Award in *Micula v. Romania*, p. 13: “[...] It should be noted that the Commission’s ban is directed at Romania; in other words, Romania is the party which may not make payments pursuant to the arbitral award. There is no doubt, however, that enforcement in Sweden would mean that Romania, by means of the actions of the Enforcement Authority, would be forced to pay, and would therefore be in breach of the Commission’s prohibition on payment; this, in turn, would require Romania to immediately recover what the Enforcement Authority had seized. [...] Enforcement of the award, therefore, would have led to a Swedish authority helping to set aside the Commission’s decision. As long as the Commission’s decision is valid, therefore, it is not possible, under the principle of sincere cooperation, to allow the enforcement sought. [...]” “The District Court notes that Sweden is obliged pursuant to Article 54 of the Washington Convention to enforce the arbitral award as though it were a final Swedish judgment. A Swedish judgment of this type, whose enforcement was in violation of EU law, could not have been enforced either. There is no difference in this respect, therefore, between a Swedish final judgment and the arbitral award. Sweden’s commitments pursuant to Article 4(3) TEU, therefore, entail that there are impediments to the enforcement sought.” [unofficial translation].

<sup>194</sup> The Nacka District Court noted that the European Commission’s 2015 decision was subject to review by the General Court of the European Union. In June 2019, the General Court annulled the European Commission’s decision finding that the Commission lacked competence to assess the alleged unlawfulness of the payments under EU law regarding the period predating Romania’s accession to the European Union. See para. 86 of the Judgment of the General Court (Second Chamber, Extended Composition), June 18, 2019, in Cases T-624/15, T-694/15 and T-704/15. In a judgment of January 25, 2022, the Grand Chamber of the Court of Justice of the European Union set aside the 2019 judgment of the General Court regarding the finding that the Commission lacked competence to assess the alleged unlawfulness of the payments ordered under the Award. See para. 151 of the Judgment of the Court (Grand Chamber), January 25, 2022, in case C-638/19 P.

<sup>195</sup> [unofficial translation]. See judgment of the Supreme Court of Sweden of March 17, 2023, concerning the Award in *Micula v. Romania*, para 21. Original Swedish: “21. En översiktlig genomgång av processmaterialet [...] ger vid handen att det varken är uppenbart att verkställighet skulle ske eller att det fanns hinder mot verkställighet. Rättegångskostnaderna ska därför inte fördelas utifrån vad som kan antas om utgången i sak utan i stället utgå från de omständigheter under vilka Rumänien betalade.”

Romania<sup>196</sup> and that its own decision might conflict with future decisions of EU Courts.<sup>197</sup> It therefore stayed its judgment concerning the enforcement, and the appeal was later withdrawn.

- In October 2019, the Bucharest Court of Appeal in Romania addressed the merits of the *Micula* Award. It found that arguments alleging a contradiction between the Award and Romania's obligations as an EU member State, and concerning incompatibility between the Treaty on the Functioning of the European Union ("TFEU") and the Romania-Sweden BIT, were inadmissible at the execution stage.<sup>198</sup> It also found that Romania had undertaken to comply with and enforce ICSID Awards under Article 54(1) of the Convention as decisions made by its own courts and not to subject them to any control or appeal. The Court held that Article 54(2) of the Convention mandates a simplified form of recognition and that national courts may only verify the authenticity of the Award.<sup>199</sup> On State aid, the Court found that the CJEU's role is limited to interpreting EU law or to ruling on the validity of acts adopted by EU institutions, bodies, offices or agencies. The Court concluded that applying the law to the facts of particular cases falls exclusively on national courts.<sup>200</sup> It thus enforced the Award.
- In February 2020, the UK Supreme Court took the position that:

"The first step in the analysis should be to ask whether the United Kingdom has relevant obligations arising from the ICSID Convention which, by operation of article 351 TFEU, preclude the application of the Treaties. As explained below ..., on a proper interpretation of the ICSID Convention, the United Kingdom clearly does have such obligations. Therefore, the [EU] Treaties do not have any relevant effect and this court is not bound by EU law to interpret the Convention in the manner for which Romania contends. In any event, the proper interpretation of the Convention is given by principles of international law applicable to all Contracting States and it cannot be affected by EU law."<sup>201</sup>

The Supreme Court reserved its position on whether Article 54(1) required an ICSID Award to be treated as "equivalent" to a final decision of a domestic court or as "simply provid[ing] a legal basis for execution".<sup>202</sup> Nevertheless it held that:

"It is a notable feature of the scheme of the ICSID Convention that once the authenticity of an award is established, a domestic court before which recognition is sought may not re-examine the award on its merits. Similarly, a domestic court may not refuse to enforce an authenticated ICSID award on grounds of national or

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<sup>196</sup> See Commission Decision (EU) 2015/1470 dated March 30, 2015 on State aid SA.38517 (2014/C) (ex 2014/NN) implemented by Romania (notified under document C(2015) 2112).

<sup>197</sup> Brussels Court of Appeal Judgment 2019/2134 dated March 12, 2019 concerning the Award in *Micula v. Romania*, p. 19.

<sup>198</sup> 4th Civil Court of Bucharest Appellate Court Order No. 1483A dated October 21, 2019 in Case File N. 15755/3/2014, concerning the Award in *Micula v. Romania*.

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> UK Supreme Court Judgment dated February 19, 2020 in *Micula v. Romania*, para 87.

<sup>202</sup> *Id.*, para 83.

international public policy. In this respect, the ICSID Convention differs significantly from the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.”<sup>203</sup>

The Supreme Court further indicated that, “[...] it is arguable that there is scope for some additional defences against enforcement, in certain exceptional or extraordinary circumstances which are not defined, if national law recognizes them in respect of final judgments of national courts and they do not directly overlap with those grounds of challenge to an award which are specifically allocated to Convention organs under articles 50 to 52 of the Convention.”<sup>204</sup> However, the Court also stated that a Member State would breach its obligations under the ICSID Convention were it to provide that ICSID awards are not to be recognized or enforced if illegal under domestic law or contrary to its public policy.<sup>205</sup>

- In May 2020, the US Court of Appeals for the District of Columbia Circuit confirmed the District Court’s decision to enforce the Award.<sup>206</sup> The US District Court held that the rulings of the CJEU do not alter the court’s prior findings or jurisdiction as the CJEU did not invalidate or nullify Romania’s consent to arbitrate.<sup>207</sup> The District Court affirmed the legal standard established by previous US federal courts that (i) “[a] federal court is ‘not permitted to examine an ICSID award’s merits, its compliance with international law, or the ICSID tribunal’s jurisdiction to render the award;’ (ii) ‘an ICSID-award debtor... would not be permitted to make substantive challenges to the award;’ and (iii) ‘the court ‘can do no more than examine the judgment’s authenticity and enforce the obligations imposed by the award’”.”<sup>208</sup>
- In July 2022, the Luxembourg Supreme Court held that the consent to arbitration in the Sweden-Romania BIT was “devoid of purpose” because it disregarded the primacy of EU law, and the principle of immunity from jurisdiction for the State therefore applied.<sup>209</sup> At the same time, when dismissing other grounds for rejecting exequatur, the Court stated that the only condition for obtaining exequatur under Articles 53 and 54 of the ICSID Convention is to file a certified copy of the Award with the exequatur judge. It said that “[h]ormis cette condition, la Convention de

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<sup>203</sup> UK Supreme Court Judgment dated February 19, 2020 in *Micula v. Romania*, para 68.

<sup>204</sup> *Id.*, para 78.

<sup>205</sup> *Id.*, para 106.

<sup>206</sup> US District Court of the District of Columbia (September 11, 2019), *Micula v. Government of Romania*, 404 F Supp 3d 265 (DDC 2019); US Court of Appeals No 19-7127, slip op at 1 (DC Cir May 19, 2020).

<sup>207</sup> See *Micula v. Government of Romania*, 2022 WL 18356669 (D.D.C. December 22, 2022) (Mehta, J.) pp. 14-15.

<sup>208</sup> *Micula v. Government of Romania*, 404 F Supp 3d 265 (DDC 2019), 275, quoting *Mobil Cerro Negro*, 863 F.3d at 102, 118 and 121, and *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, Civ. No. 17-102 (RDM) 2018 WL 4705794, at p. 2.

<sup>209</sup> *Romania v. Ioan Micula and others*, Luxembourg Court of Cassation, Case No. 116/2022, Judgment (July 14, 2022), [35]: “Dès lors cependant qu’à partir du 1er janvier 2007, date de l’adhésion de la Roumanie à l’Union européenne, le système des voies de recours juridictionnel propre à l’Union européenne s’est substitué à la procédure d’arbitrage du TBI liant le Royaume de Suède à l’Etat de Roumanie et que le consentement du demandeur en cassation à voir trancher le différend en application de la clause d’arbitrage y contenue est dépourvu de tout objet, les juges d’appel, en statuant comme ils l’ont fait, ont violé tant les articles 267 et 344 TFUE que le principe de droit international public de l’immunité de juridiction de l’ETAT DE ROUMANIE.”

*Washington ne prévoit aucune cause de refus d'exequatur d'une sentence CIRDI.*"<sup>210</sup> The Court nevertheless denied enforcement.

- In May 2024, the US Court of Appeals for the District of Columbia Circuit, in confirming its previous decision, held that "[u]nder the ICSID Convention, the 'only route for setting aside an ICSID Arbitral Tribunal's award is through the ... annulment process.' ... Signatory nation courts must 'recognize an award rendered pursuant to the Convention as binding' and are 'not permitted to examine an ICSID award's merits.'"<sup>211</sup>

129. Other ICSID and non-ICSID tribunals are currently addressing intra-EU arbitrations. Where called upon by a disputing party, ICSID *ad hoc* committees are reviewing the resulting ICSID Awards on the applicable annulment grounds under the Convention.<sup>212</sup> Some Awards that were upheld in post-award remedy proceedings are now in enforcement proceedings.<sup>213</sup>

130. To date, proceedings before courts in non-EU States have granted enforcement of intra-EU arbitration Awards. For example, in Australia and the UK, enforcement was granted in *Antin v. Spain*.<sup>214</sup> In the US, appeals are pending with respect to enforcement proceedings in *9REN Holding S.a.r.l v. Kingdom of Spain* (ICSID Case No. ARB/15/15) and *NextEra Energy Global Holdings B.V. and NextEra Energy Spain Holdings B.V. v. Kingdom of*

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<sup>210</sup> *Romania v. Ioan Micula and others*, [15] and [21] : "Il résulte des articles 53 et 54 de la Convention de Washington que l'unique condition posée à l'obtention de l'exequatur d'une sentence arbitrale réside dans l'existence d'une sentence CIRDI, dont une copie certifiée conforme par le secrétaire général est à soumettre au juge de l'exequatur. Hormis cette condition, la Convention de Washington ne prévoit aucune cause de refus d'exequatur d'une sentence CIRDI."

<sup>211</sup> US Court of Appeals for the District of Columbia Circuit Opinion of May 14, 2024, p. 10. The Court further found that "Congress enacted Section 1650a, supra note 1, to give effect to the United States' treaty obligations under the ICSID Convention, requiring US courts to give 'full faith and credit' to ICSID awards. ... The district court exercised jurisdiction under the FSIA arbitration exception, and it was obligated by Section 1650a to enforce the Miculas' valid ICSID award"; p. 12-13.

<sup>212</sup> In non-ICSID Convention cases, the grounds for setting aside the award are set out in the laws of the country in which, or under the law of which, that award was made; in ICSID Convention cases, the grounds for annulment are contained in Article 52 of the ICSID Convention.

<sup>213</sup> As of the date of this Paper, enforcement proceedings were known to be pending with respect to 33 Awards, 15 of which correspond to Awards rendered in intra-EU arbitrations.

<sup>214</sup> See Annex A. The *Antin* Award was enforced in Australia and the UK, see the Order of the High Court of Australia in *Kingdom of Spain v. Infrastructure Services Luxembourg S.à.r.l* [2023] HCA 11, April 12, 2023, and the decision in *Infrastructure Services Luxembourg S.à.r.l. and Energia Termosolar B.V. v. Kingdom of Spain*, [2023] EWHC 1226 (Comm), May 24, 2023. An appeal proceeding is pending in the UK before the EWCA. In a fourth case, *Eiser Infrastructure Limited and Energía Solar Luxembourg S.à.r.l. v. Kingdom of Spain*, ICSID Case No. ARB/13/36, on February 24, 2020, the Federal Court of Australia ordered the enforcement of the Award and payment of the amounts due; see Judgment of the Federal Court of Australia, *Eiser Infrastructure Ltd v. Kingdom of Spain* [2020] FCA 157, February 24, 2020. On June 11, 2020, an *ad hoc* committee annulled the Award in *Eiser v. Spain*. On June 5, 2021, the US District Court for the District of Columbia dismissed with prejudice the enforcement of the *Eiser* Award, but without prejudice to Eiser's rights to seek enforcement of any future Award resulting from a resubmitted case under Article 52(6) of the ICSID Convention. At the time of this Paper, the *Eiser* resubmission proceedings were pending at ICSID.

*Spain* (ICSID Case No. ARB/14/11).<sup>215</sup> As mentioned above, the same Court of Appeals recently confirmed the judgment granting enforcement in *Micula v Romania*.<sup>216</sup>

131. The English High Court of Justice rejected Spain's request to set aside the order that recognized the Award in *Antin v. Spain*. The Court concluded that:

The law of England and Wales, as set out in the 1966 Act, clearly requires the High Court to recognize the Award, which was the result of the valid ICSID arbitration process [...]. It was this valid procedure which led to the Award, which is a valid and authentic one. Recognition was achieved by the making of the Order [to register the award], which was done *ex parte* as required by the Civil Procedure Rules. [...]

However, there are no proper grounds for setting aside the Order or refusing to recognize the Award, and on all the different arguments raised [...] – those based on lack of jurisdiction or immunity, no arbitration agreement, an invalid award and so on – and also non-disclosure to the judge who made the Award [have] failed [...].

[...] if the ICSID Committee have considered and dismissed objections under the Convention procedure and the award is a valid and authentic one, I wish to make it clear that there are no grounds for repetition or rehearing of those in the Commercial Court. Unless a case is truly exceptional, it is difficult to foresee how a hearing of the length required in this case, and a judgment of this length, would occur again. To do so would be contrary to the ICSID Convention and the 1966 Act, and is exactly what international arbitration is designed to avoid.<sup>217</sup>

132. Some courts have also referred to the scope of their review in the reasoning concerning the enforcement of Awards in non-intra-EU arbitration cases.

133. In *City-State N.V., Praktyka Asset Management Company LLC, Crystal-Invest LLC and Prodiz LLC v. Ukraine*, the Kyiv Court of Appeals considered that the Award at issue did not change any mandatory norms established by the legislation of Ukraine, therefore, there were no circumstances that indicated a violation of public order.<sup>218</sup>

134. The Federal Administrative Court in Argentina confirmed the enforcement of the Award issued in *Urbaser v. Argentina* after being satisfied that the request referred only to pecuniary obligations (legal fees and arbitration costs incurred in the arbitration) and did not involve Argentina's sovereign decisions.<sup>219</sup> The Court noted that the Government, the

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<sup>215</sup> See Annex A. Enforcement proceedings regarding these Awards are also pending before courts of EU Member States. On September 13, 2023, the US District Court for the District of Columbia ordered a stay of the enforcement proceeding in *Antin* pending resolution of the Appeals in the D.C. Circuit regarding *NextEra* and *9REN*.

<sup>216</sup> US Court of Appeals for the District of Colombia Circuit Opinion of May 14, 2024.

<sup>217</sup> English High Court of Justice Judgment (May 24, 2023), concerning the Award in *Antin v. Spain*, paras. 161-163.

<sup>218</sup> Kyiv Court of Appeals Decision dated September 16, 2019, concerning the Award dated July 26, 2018 in *City-State N.V., Praktyka Asset Management Company LLC, Crystal-Invest LLC and Prodiz LLC v. Ukraine*, ICSID Case No. ARB/14/9.

<sup>219</sup> Federal Administrative Court Judgment dated June 13, 2023, concerning the Award dated December 8, 2016 in *Urbaser S.A. and Consorcio de Aguas Bilbao Biskaia, Bilbao Biskaia Ur Partzuergoa v. Argentine Republic*, ICSID Case No. ARB/07/26.

award debtor in that case, did not argue that recognition and enforcement of the Award would breach public policy or raise constitutional issues related to human rights.<sup>220</sup>

135. It is clear from the drafting history of the ICSID Convention that the drafters voted against substantive defenses to the enforcement of an Award (see above, Chapter IV), and specifically against public policy grounds to refuse enforcement. One commentator noted that “[i]f Contracting States foreswore the right to reject ICSID awards not only on such fundamental grounds as those embodied in the New York Convention, but also on grounds of public policy standing alone, it is difficult to see on what substantive grounds they are nevertheless privileged to reject them.”<sup>221</sup> While some ICSID Awards (notably in intra-EU arbitrations) may be denied enforcement in some courts (those of EU Member States in intra-EU arbitrations, see above paragraph 124), other ICSID Member States have enforced the Awards in accordance with their obligations under the ICSID Convention, and there is no indication that they will not continue to do so.

#### *D. Domestic Court Interpretations of the ICSID Convention Provisions on Enforcement*

136. Many of the 124 ICSID Member State court decisions and orders that ICSID has identified have interpreted Articles 53-55 of the ICSID Convention and have confirmed certain principles relating to the provisions on enforcement:

- Parties must comply with their obligations under the Award;
- ICSID Member States have an obligation to recognize and enforce an Award;
- Courts may not refuse enforcement based on the absence of a domestic procedural framework implementing the ICSID Convention provisions on enforcement;
- An Award can be enforced in any ICSID Member State;
- The procedure for recognition and enforcement of Awards is outside the regime for recognition and enforcement of arbitral awards governed by the New York Convention or domestic legislation;
- Domestic courts have no authority to review the jurisdiction and merits of Awards and are limited to ascertaining their authenticity;
- ICSID Member States have waived immunity from jurisdiction for purposes of recognition and enforcement; and

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<sup>220</sup> Federal Administrative Court Judgment dated June 13, 2023, “*Considerando las pautas referidas precedentemente, cabe resaltar que en este proceso de ejecución el Estado Nacional, al momento de contestar la citación, no opuso defensas referidas a la afectación del orden público ni tampoco esgrimió planteos constitucionales vinculados a los derechos humanos. Por tal razón y atendiendo a que la ejecución que se pretende se refiere a aspectos meramente adjetivos en concepto de costas (honorarios legales y gastos incurridos en el arbitraje) y que por tanto no involucra decisiones soberanas de la República Argentina, no se advierten óbices sustanciales a su procedencia*”.

<sup>221</sup> Bermann G. A., ‘Understanding ICSID Article 54’, 35(1-2) ICSID Rev—FILJ (2020), pp. 311, 341.

- Immunity from execution applies as it would to a final judgment of the State.

137. Quotes from the domestic court decisions confirming these principles are included in Annex B.

## VII. Execution of ICSID Convention Awards by Domestic Courts

138. As explained in Chapter III, there is a distinction between recognition, enforcement, and execution of Awards in the ICSID Convention.
139. Under Article 54(3) of the ICSID Convention, the execution of the Award is governed by domestic law pertaining to execution of judgments in the State where execution is sought, for example by attaching, freezing or seizing assets to satisfy the amounts owed under the Award.<sup>222</sup>
140. Article 55 of the ICSID Convention specifies that the domestic laws of the State in which execution is sought apply to a State's sovereign immunity from execution. By preserving the State's right to immunity from execution, Article 55 maintains the limitation on the assets of States which may be executed to satisfy pecuniary obligations in Awards.<sup>223</sup> This limitation does not apply to an investor's pecuniary obligations.
141. This Chapter addresses the execution of ICSID Awards by domestic courts, including: (i) the effect of State immunity from execution and whether States can waive such immunity; (ii) execution against assets of State entities; and (iii) other aspects of execution proceedings.

### A. *State Immunity from Execution*

142. Execution against specific assets of a State to satisfy an Award against that State will depend on whether: (i) those assets are protected from execution by domestic laws on sovereign immunity; and (ii) there was a waiver of immunity from execution by that State.
143. The principle of State immunity (or sovereign immunity) has two important components: immunity from jurisdiction and immunity from execution.<sup>224</sup> Immunity from jurisdiction addresses whether a domestic court can exercise jurisdiction over a foreign sovereign, whereas immunity from execution addresses whether the court can attach and execute against specific sovereign property.<sup>225</sup> In ICSID Convention arbitration, courts have generally confirmed that States have waived their right to immunity from jurisdiction of

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<sup>222</sup> See above, Chapter IV, paras. 74-75, 82, Report of the Executive Directors on the Convention, para 43.

<sup>223</sup> Broches, Awards Rendered Pursuant to the Convention, pp. 299, 329-330; Stier A., 'Enforcement of ICSID Awards – A Walk in the Park?', in Happ R. and Wilske S. (eds), *ICSID Rules and Regulations 2022: Article-by-Article Commentary*, CH Beck (2022), pp. 776, 778.

<sup>224</sup> Brownlie I., 'Principles of Public International Law', 9th ed. OUP (2019), p. 473; Bjorklund A. K., 'State Immunity and the Enforcement of Investor-State Arbitral Awards' in Binder Ch. and others, *International Investment Law for the 21<sup>st</sup> Century – Essays in Honour of Christoph Schreuer*, OUP (2012), p. 310.

<sup>225</sup> See Miles C. S., 'Sovereign Immunity', in *Enforcement of Arbitral Awards Against Sovereigns*, R., Doak Bishop ed., JurisNet, LLC (2009), p. 42.

national courts which are petitioned to recognize an Award.<sup>226</sup> Waiving immunity from jurisdiction is not equivalent to a waiver of immunity from execution.<sup>227</sup>

144. In international law, there are two theories regarding State immunity: (i) absolute immunity and (ii) restrictive immunity. Under the theory of absolute immunity, the immunity of a State's property from execution was absolute, extending to all assets of the State.<sup>228</sup> This notion began to subside during the 1970s.<sup>229</sup> Considering the increasing participation of States in commercial activities, and the increase in the number of disputes arising from such activities, courts in various States began to restrict the immunity of State property. Thus, the restrictive concept of immunity began to take hold, allowing execution against some State assets.<sup>230</sup>

145. The restrictive theory of State immunity distinguishes between assets that are considered governmental in nature and State-owned commercial assets.<sup>231</sup> In most jurisdictions, assets related to acts of a governmental nature (acts *de jure imperii* or public acts of the State) are immune from execution, whereas acts of a commercial nature (*acta jure gestionis* or private acts of the State) are not.<sup>232</sup> In practice, this means that in many countries a State's commercial property or property used for commercial activity is not protected by sovereign immunity.

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<sup>226</sup> See above, Chapter VI, para 122, fn. 175. cf. British Virgin Island High Court of Justice (commercial division) May 20, 2021, *Tethyan Copper Company Pty Limited v. Islamic Republic of Pakistan*, the High Court held that Tethyan "had failed to establish that adjudicative immunity did not apply" [Eastern Caribbean Supreme Court Territory of the Virgin Islands, High Court of Justice (Commercial Division) Claim No. BVIHC (COM) 2020/0196]. Tethyan Copper Company Pty Limited, brought nearly simultaneous proceedings before the US District Court of the District of Colombia, which held that "According to the [arbitral] Tribunal, Pakistan agreed to arbitrate. ... Thus, the FSIA waives Pakistan's sovereign immunity." (*Tethyan Copper Company Pty Limited v. Islamic Republic of Pakistan*, US District Court for the District of Colombia, Memorandum Opinion, Case No. 1:19-cv-02424 (TNM), March 10, 2022, p. 18.

<sup>227</sup> See Article 20 of the United Nations Convention on Jurisdictional Immunities of States and Their Property. *Liberian E. Timber Corp. v. Gov't of Republic of Liberia*, 650 F. Supp. 73, 76-77 (S.D.N.Y. 1986), where the court found that although Liberia waived its immunity from recognition, the execution of the Award was a separate legal issue under Article 55 of the ICSID Convention; See also, *Société Ouest Africaine des Bétons Industriels v. Senegal*, Cour de Cassation, France, Decision (June 11, 1991), 30 I.L.M. 1169; See also, Bjorklund A., 'State Immunity and the Enforcement of Investor-State Arbitral Awards' in Binder Ch. and others, *International Investment Law for the 21st Century – Essays in Honour of Christoph Schreuer*, OUP, Oxford (2012), pp. 302, 303, 304.

<sup>228</sup> Brownlie I., *Principles of Public International Law*, 9th ed. (2003), pp. 488-489; Sweeny J., *The International Law of Sovereign Immunity*, US State Department (1963), pp. 20-22; Miles C., 'Sovereign Immunity', in *Enforcement of Arbitral Awards Against Sovereigns*, R. Doak Bishop ed. (2009), p. 36; Mortara A., 'The Case against Retroactive Application of the Foreign Sovereign Immunities Act of 1976', 253 U. CHI. L. Rev. (2001), p. 256.

<sup>229</sup> Letter from Jack B. Tate, Acting Legal Adviser, Department of State, to Acting Attorney General Phillip B. Perlman (May 19, 1952), in 26 Dep't St. Bull. 984 (1952); *Alfred Dunhill of London v. Republic of Cuba*, May 24, 1976 *Supreme Court of the United States*, 10 Int'l L. 589 (1976); Sweeny J., *The International Law of Sovereign Immunity*, US State Department (1963), pp. 20-22; Miles C., 'Sovereign Immunity', in *Enforcement of Arbitral Awards Against Sovereigns*, R. Doak Bishop ed. (2009), p. 36; Mortara A., 'The Case against Retroactive Application of the Foreign Sovereign Immunities Act of 1976', 253 U. CHI. L. Rev. (2001), p. 256.

<sup>230</sup> *Trendtex Trading Corporation v. Central Bank of Nigeria*, [1977] 1 QB 529, 588; Sweeny J. M., 'The International Law Of Sovereign Immunity', pp. 22-23 (US State Department 1963).

<sup>231</sup> Brownlie I., *Principles of Public International Law*, 9th ed. (2003), p. 471; Most States have abandoned the absolute theory of sovereign immunity in favor of the restrictive theory. See Miles C., 'Sovereign Immunity', in *Enforcement of Arbitral Awards Against Sovereigns*, R. Doak Bishop ed. (2009), pp. 38-39.

<sup>232</sup> Miles C., 'Sovereign Immunity', in *Enforcement of Arbitral Awards Against Sovereigns*, R. Doak Bishop ed. (2009), pp. 38-39.

146. Two multilateral treaties address sovereign immunity: (i) the European Convention on State Immunity of 1972 (the “European Convention”);<sup>233</sup> and (ii) the United Nations Convention on Jurisdictional Immunities of States and Their Property of 2004 (the “UN Convention”, not yet in force).<sup>234</sup> Both treaties adopt the restrictive theory of sovereign immunity and consider the nature of the assets targeted for execution or attachment.

147. Article 19(c) of the UN Convention provides that execution or attachment may be sought against property that “has a connection with the entity against which the proceeding was directed” and is “specifically in use or intended for use by the State for other than government non-commercial purposes.”<sup>235</sup> Article 21 of the UN Convention also lists the specific categories of property that do not meet this criterion,<sup>236</sup> e.g., “(a) property, including any bank account, which is used or intended for use in the performance of the functions of the diplomatic mission of the State”; “(b) property of a military character or used or intended for use in the performance of military functions”; “(c) property of the central bank or other monetary authority of the State”; and (d) “property forming part of the cultural heritage of the State”. Although not yet in force, the UN Convention has been described as “the most authoritative statement available on the current international understanding of the limits of state immunity in civil cases” and has been held to reflect customary international law.<sup>237</sup>

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<sup>233</sup> The European Convention has been ratified by seven countries. See European Convention on State Immunity (1972), in force since June 11, 1976, ETS No. 74 <https://rm.coe.int/16800730b1;https://treaties.un.org/pages/showDetails.aspx?objid=08000002800c8eb2> (Accessed May 27, 2024).

<sup>234</sup> The UN Convention on Jurisdictional Immunities of States and their Property was adopted by the UN General Assembly on December 2, 2004. It requires 30 ratifications to enter into force, with 23 ratifications deposited as of [May 3, 2024]; See United Nations Convention on Jurisdictional Immunities of States and their Property, General Assembly Resolution 59/38 (December 2, 2004). G.A. Res. 59/38, U.N. DOC A/RES/59/38 (December 16, 2004), available at [https://treaties.un.org/doc/Treaties/2004/12/20041202%2003-50%20PM/CH\\_III\\_13p.pdf](https://treaties.un.org/doc/Treaties/2004/12/20041202%2003-50%20PM/CH_III_13p.pdf). See also, Miles C., ‘Sovereign Immunity’, in *Enforcement of Arbitral Awards Against Sovereigns*, R. Doak Bishop ed. (2009), p. 42.

<sup>235</sup> See G.A. Res. 59/38, U.N. DOC A/RES/59/38 (December 16, 2004), available at: [https://treaties.un.org/doc/Treaties/2004/12/20041202%2003-50%20PM/CH\\_III\\_13p.pdf](https://treaties.un.org/doc/Treaties/2004/12/20041202%2003-50%20PM/CH_III_13p.pdf). See also, Article 26 of the European Convention, which reads as follows in relevant parts: “a judgment rendered against a Contracting State in proceedings relating to an industrial or commercial activity, in which the State is engaged in the same manner as a private person, may be enforced in the State of the forum against property of the State against which judgment has been given, used exclusively in connection with such an activity (...)”.

<sup>236</sup> Article 21(1) of the UN Convention provides: “The following categories, in particular, of property of a State shall not be considered as property specifically in use or intended for use by the State for other than government non-commercial purposes under article 19, subparagraph I: (a) property, including any bank account, which is used or intended for use in the performance of the functions of the diplomatic mission of the State or its consular posts, special missions, missions to international organizations or delegations to organs of international organizations or to international conferences; (b) property of a military character or used or intended for use in the performance of military functions; (c) property of the central bank or other monetary authority of the State; (d) property forming part of the cultural heritage of the State or part of its archives and not placed or intended to be placed on sale (e) property forming part of an exhibition of objects of scientific, cultural or historical interest and not placed or intended to be placed on sale.”

<sup>237</sup> Stier A., ‘*Enforcement of ICSID Awards – A Walk in the Park*’, Richard Happ & Stephan. Wilske eds. (2022), p. 778, referring to *Jones v. Ministry of Interior of Saudi Arabia*, UK House of Lords, Opinions of the Lords of Appeal for judgment, June 14, 2006, UKHL 26, para. 26. Although the Netherlands have not signed the UN Convention, in a series of three 2016 judgments, the Dutch Supreme Court regarded Article 19 of the UN Convention as a rule of customary international law, see Supreme Court September 30, 2006, ECLI:NL:HR:2016:2236, *NJ* 2017/190

148. Examples of domestic sovereign immunity laws in common law jurisdictions that adopt the restrictive concept of sovereign immunity and have been relied upon in the execution of ICSID Awards include the US FSIA, the UK State Immunity Act of 1978 and the Australian Foreign State Immunities Act of 1985.<sup>238</sup> For civil law jurisdictions, the French “*Loi Sapin 2*” of 2016 also confirms the restrictive theory and endorses the principles of the UN Convention.<sup>239</sup>
149. Most jurisdictions have determined that specific assets, *e.g.*, diplomatic or military property and financial instruments held by a State’s central bank, are governmental in nature.<sup>240</sup> This is consistent with Article 21 of the UN Convention
150. For example, applying French laws on sovereign immunity, the French Cour de Cassation held that real estate acquired by the Democratic Republic of the Congo on French territory for the use of a Congolese diplomatic agent was immune from execution and could not be seized to satisfy the Award, even if the diplomatic agent was not occupying the premises at the time of the seizure.<sup>241</sup> However, when executing an investor-State award rendered in the Stockholm Chamber of Commerce (“SCC”) arbitration *Sedelmayer v. Russian Federation* against an office building in Stockholm owned by the Russian Federation, the Swedish Supreme Court ruled in favor of the investor.<sup>242</sup> The Court held that the building performed a partially commercial function, since only a minority of the building’s tenants were Russian diplomats. The investor could therefore execute his award against the rent payments collected from the non-diplomatic tenants.<sup>243</sup>
151. In some jurisdictions, immunity from execution is presumed unless proven otherwise by the opposing party. For example, in *Kazakhstan v. Samruk*, the Dutch Supreme Court held that property of a foreign State is subject to a presumption of immunity under the rules of international law. This presumption gives way only if it is established that the property in question is used or intended to be used by the foreign State for other than public purposes.

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(*Morning Star International v. Gabon and the Kingdom of the Netherlands*), Supreme Court October 14, 2016, ECLI:NL:HR:2016:2354, NJ 2017/191 (*Kingdom of the Netherlands v. Servaas*) and Supreme Court October 14, 2016, ECLI:NL:HR:2016:2371, NJ 2017/192 (*N.N. v. Kingdom of the Netherlands*).

<sup>238</sup> Bjorklund A. K., ‘*State Immunity and the Enforcement of Investor-State Arbitral Awards*’ in Christina Binder and others, *International Investment Law for the 21<sup>st</sup> Century – Essays in Honour of Christoph Schreuer*, OUP (2012), p. 309.

<sup>239</sup> France ratified the UN Convention on August 12, 2011. ([https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=III-13&chapter=3&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=III-13&chapter=3&clang=en)); *Loi relative à la transparence, à la lutte contre la corruption et à la modernisation de la vue économique* n°2016-1691 dated November 9, 2016 (“*Loi Sapin 2*”). Article L111-1 of the *Code de procédure civile d’exécution* codifies the *Loi Sapin 2*.

<sup>240</sup> Kuipers J. A., ‘*Too big to Nail: How Investor-State Arbitration Lacks an Appropriate Execution Mechanism for the Largest Awards*’, Boston College International and Comparative Law Review (2022), p. 428.

<sup>241</sup> The French court also referred to Article 30(1) of the Vienna Convention on Diplomatic Relations of 1961, according to which the private residence of a diplomatic agent should enjoy the same inviolability and protection as the premises of the mission. Cour de Cassation, July 7, 2021, Pourvoi n°20-15.994, regarding *Antoine Abou Lahoud and Leila Bounaféh-Abou Lahoud v. Democratic Republic of the Congo*, ICSID Case No. ARB/10/4.

<sup>242</sup> *Franz Sedelmayer v. Russian Federation*, Award dated July 7, 1998, available at: <https://www.italaw.com/sites/default/files/case-documents/ita0757.pdf>.

<sup>243</sup> *Russian Federation v. Sedelmayer, Hogsta Domstolen* (Supreme Court), Sweden, No. O 170-10, paras 20-25 (July 1, 2011).

It is incumbent on the party relying on an exception to sovereign immunity from execution to prove that the exception applies.<sup>244</sup>

152. Additionally, in some jurisdictions, foreign States can designate certain property as protected by sovereign immunity, even in the course of a judicial execution proceeding.<sup>245</sup> For example, in the United Kingdom, Section 13(5) of the State Immunity Act of 1978 provides that a certificate issued by the head of a State's diplomatic mission attesting that "any property [that] is not in use or intended for use by or on behalf of the State for commercial purposes shall be accepted as sufficient evidence of that fact unless the contrary is proved."<sup>246</sup>

153. Assets that courts have found to be immune from execution include:

- tonnage fees, registration fees, and other taxes due to the State government;<sup>247</sup>
- local bank accounts of an embassy "used or intended to be used for purposes of the diplomatic mission";<sup>248</sup>
- cash and securities held by third parties in the name of the national bank of a State "as custodian and banker" pursuant to a global custody agreement;<sup>249</sup>

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<sup>244</sup> Supreme Court December 18, 2020, ECLI:NL:HR:2020:2103, *NJ 2021/106 (Republic of Kazakhstan v. Samruk-Kazyna JSC)*.

<sup>245</sup> Kuipers J., 'Too big to Nail: How Investor-State Arbitration Lacks an Appropriate Execution Mechanism for the Largest Awards', *Boston College International and Comparative Law Review* (2022), p. 428; referring to Bjorklund A. K., 'Re-Politicization of Investment Disputes' at pp. 228-29, and *Alcom Ltd. v. Republic of Colombia*, 23 I.L.M. pp. 719, 725 (April 12, 1984). In *Alcom*, the UK court found that that ambassador's declaration that the bank account of a foreign embassy in the UK was not held for commercial purposes was sufficient. *See also*, Blackaby N., Partasides C., et al., *Redfern and Hunter on International Arbitration* (Sixth Edition, 2015), pp. 658-659, referring to *SerVaas Incorporated v. Rafidain Bank & Republic of Iraq and others* [2012] UKSC 40, where the head of mission's certificate was found by the court to be sufficient to prove that funds were protected by sovereign immunity.

<sup>246</sup> UK State Immunity Act of 1978, available at: <https://www.legislation.gov.uk/ukpga/1978/33>.

<sup>247</sup> US District Court for SD of New York Order (II), December 12, 1986, regarding *Liberian Easter Timber v. Republic of Liberia*, ICSID Case No. ARB/83/2. The court held that: "The nature of the amounts due from ships flying the Liberian flag, the registration fees or taxes, is constant. They are tax revenues for the benefit of the Government of Liberia, and the method employed to effect their collection does not destroy the basic nature of that collection. The levy and collection of taxes intended to serve as revenues for the support and maintenance of governmental functions are an exercise of powers particular to a sovereign."

<sup>248</sup> US District Court for District of Columbia (DC) Order, April 16, 1987, regarding *Liberian Easter Timber v. Republic of Liberia*, ICSID Case No. ARB/83/2. The court held that: "The Liberian Embassy bank accounts are 'utilized for the maintenance of the full facilities of Liberia to perform its diplomatic and consular functions as the official representative of Liberia in the United States of America, including payment of salaries and wages of diplomatic personnel and various ongoing expenses incurred in connection with diplomatic and consular activities necessary to the proper functioning of the Embassy.' The essential character of the activity for which the funds in the accounts are used, therefore, undoubtedly is of a public or governmental nature because only a government entity may use funds to perform the functions unique to an embassy ... In conclusion, the bank accounts of the Liberian Embassy are immune from attachment both because they enjoy diplomatic immunity under the Vienna Convention and because no exception of the FSIA applies to deprive the bank accounts of their grant of sovereign immunity. Also, as noted above, the bank account used for the central bank of Liberia is immune under 28 USC § 1611(b)(1)", *see* <https://app.investorstatelawguide.com/DocumentView?rt=Wk21nmb-fNY=&docid=bdGa3SdXR-0>.

<sup>249</sup> English High Court of Justice Judgment, October 20, 2005, regarding *AIG Capital Partners, Inc. and CJSC Tema Real Estate Company v. Republic of Kazakhstan*, ICSID Case No. ARB/01/6. The court held: "On the facts of this case, the London Assets, held by AAMGS on behalf of the [National Bank of Kazakhstan ('NBK')] are 'property of a central bank', *i.e.*, the property of NBK, within the meaning of section 14(4). This is because NBK has an interest in that property within the definition of 'property' [set above in the decision]. Therefore all the London Assets are

- the share of revenues from the production and sale of oil assigned to a State agency by two private companies, based on an oil exploration and exploitation agreement concluded between them.<sup>250</sup>

154. At the same time, a Belgian court has held that taxes and route charges collected by Eurocontrol, the European organization in charge of air traffic security, and remitted to Albcontrol, an Albanian company in charge of collecting the route charges on behalf of the Republic of Albania, had a commercial purpose and were not immune from execution.<sup>251</sup> The Belgian court considered *inter alia* the company's commercial structure and the fact that Albcontrol was reinvesting parts of its revenues for commercial purposes.<sup>252</sup>

#### B. *Waiver of Immunity from Execution*

155. Under the prevailing view, a renunciation of immunity from execution by a foreign State must be clear.<sup>253</sup> The UN Convention provides that this type of waiver exists if the State has “expressly consented” to such result “in an arbitration agreement or in a written contract” or if one of the other criteria in Articles 18 or 19 is fulfilled.<sup>254</sup> The requirement for an express waiver can also be found in Article 23 of the European Convention.<sup>255</sup>

156. Some domestic sovereign immunity laws allow the State to waive its immunity from execution. The State and the investor may agree to include a waiver of execution immunity

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immune from the enforcement jurisdiction of the UK courts”, see: <https://www.italaw.com/sites/default/files/case-documents/ita0022.pdf>.

<sup>250</sup> Hague District Court Judgment, January 27, 2021, regarding *Hydro S.r.l. and others v. Republic of Albania*, ICSID Case No. ARB/15/28. The court stated: “Hydro et al have argued that AKBN is a commercial vehicle and that AKBN’s claims are commercial claims based on commercial agreements; however, this does not provide a basis from which the purpose of the funds can be inferred. A commercial origin and nature of the claim does not yet mean that the claim also has a non-public purpose. Nor does that conclusion follow from the fact that the agreement with Shell [Shell Upstream Albania B.V. and Shell Albania Block 4 B.V.] provides for payments in US dollars. Such funds can still be used for public purposes after exchange. Hydro et al also argued that it can be inferred from the fact that Albania has waived immunity and acknowledged that its contractual claims are purely commercial that Albania’s claims against Shell are non-public. That argument must likewise be rejected since these contractual agreements between the parties cannot lead to any conclusion as to the intended use of the assets. Such agreements are not an obstacle to the assets being intended for public use.”

<sup>251</sup> Tribunal de première instance francophone de Bruxelles, Section Civile, 20/7265/A et 21/2665/A, dated March 23, 2022 regarding *Hydro S.r.l. and others v. Republic of Albania*, ICSID Case No. ARB/15/28. The Francophone Tribunal de Première Instance of Brussels first assessed whether Albania was the sole owner of the assets (para. 60). After concluding that it was, the Tribunal determined that the activities of Albcontrol were not exclusively governmental and that the taxes and route charges obtained by Albania were not exclusively used for governmental or non-commercial public service purposes, but that they were also invested in the context of its commercial activities (para 82).

<sup>252</sup> *Id.*, Tribunal de première instance francophone de Bruxelles, “c.3 L’utilisation des redevances saisies” at paras. 80-85.

<sup>253</sup> Dopagne F., ‘*Waivers of Immunity from Execution*’ in Ruys T., Angelet N., & Ferro L., *The Cambridge Handbook of Immunities and International Law* (2019), p. 392.

<sup>254</sup> Juratowitch B., ‘*Waiver of State Immunity and Enforcement of Arbitral Awards*’, *Asian JIL*, vol. 6, no. 2 (2016), p. 214.

<sup>255</sup> Article 23 further requires that the express consent be given “in writing” and “in any particular case”. See also, Dopagne F., ‘*Waivers of Immunity from Execution*’ in Ruys T., Angelet N., & Ferro L., *The Cambridge Handbook of Immunities and International Law* (2019), p. 393.

in their investment contract containing the parties' consent to arbitrate<sup>256</sup> or a waiver can be included in an investment treaty. For example, the UK State Immunity Act explicitly allows waiver "by a prior written agreement."<sup>257</sup> Another example is Australia's Foreign Sovereign Immunities Act of 1985 which provides that a State may waive immunity from execution in relation to property by agreement at any time.<sup>258</sup>

157. A few States permit an implied waiver of sovereign immunity from execution, by providing in their domestic sovereign immunity legislation that a waiver of immunity can be explicit or implied.<sup>259</sup> For example, Section 12(1)(a) of Canada's State Immunity Act of 1985<sup>260</sup> provides that "property of a foreign state that is located in Canada is immune from attachment and execution [...] except where the state has, either explicitly or by implication, waived its immunity from attachment, execution [...]." Article 1610(a)(1) of the US FSIA similarly allows an implied waiver.<sup>261</sup>

### C. *Execution against Assets of State Entities*

158. State property situated in the territory of another State may be held by juridically distinct legal entities, such as State-owned companies or entities. Most jurisdictions recognize that State-owned companies and entities established as separate legal entities are distinct and independent from the State.<sup>262</sup> Therefore, an award against a State may only be executed against the assets of companies or entities owned by that State in limited circumstances.<sup>263</sup> The party seeking attachment will often need to show that the property is owned by or attributable to the State because the State owns or controls the asset or because it has a special relationship with the entity.<sup>264</sup> Even where execution against a State-owned entity is permissible, courts typically address whether the relevant assets are of such a character as to warrant immunity from execution.

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<sup>256</sup> An example of such clause can be found in ICSID's model clauses, ICSID, 'Model Clauses,' Doc ICSID/5/Rev.1 (February 1, 1993); Waiver of immunity from execution of the Award, Model Clause 15, available at: <https://icsidfiles.worldbank.org/icsid/icsid/staticfiles/model-clauses-en/15.htm>.

<sup>257</sup> Juratowitch B., 'Waiver of State Immunity and Enforcement of Arbitral Awards', Asian JIL, vol. 6, no. 2 (2016), p. 207; See paragraphs 2(2) and 13(3) of the UK State Immunity Act available at <https://www.legislation.gov.uk/ukpga/1978/33>.

<sup>258</sup> Australia Foreign States Immunities Act of 1985, Section 31. Available at: <https://www.legislation.gov.au/Details/C2016C00947>.

<sup>259</sup> Crawford J., 'Brownlie's Principles of Public International Law', 9<sup>th</sup> Edition (2009), p. 488, fn. 162.

<sup>260</sup> Canada's State Immunity Act of 1985, available at: [https://laws.justice.gc.ca/eng/acts/S-18/page-1.html#:~:text=3%20\(1\)%20Except%20as%20provided,of%20any%20court%20in%20Canada.&text=\(2\)%20In%20any%20proceedings%20before,any%20step%20in%20the%20proceedings](https://laws.justice.gc.ca/eng/acts/S-18/page-1.html#:~:text=3%20(1)%20Except%20as%20provided,of%20any%20court%20in%20Canada.&text=(2)%20In%20any%20proceedings%20before,any%20step%20in%20the%20proceedings).

<sup>261</sup> Article 1610(a)(1) reads as follows:

"(1) the foreign state has waived its immunity from attachment in aid of execution or from execution either explicitly or by implication, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, [...]" Available at: <https://www.law.cornell.edu/uscode/text/28/1610>.

<sup>262</sup> Tonova S. T., Vasani B. S., 'Enforcement of investment treaty awards against assets of states, state entities and state-owned companies', in Fourer J. (ed), Enforcement of Investment Treaty Arbitration Awards, A Global Guide, Globe Law and Business (2015), p. 95.

<sup>263</sup> *Id.*, p. 83.

<sup>264</sup> This is the case in the United States. See Foster G. K., 'Collecting from Sovereigns: The Current Legal Framework for Enforcing Arbitral Awards and Court Judgments against States and Their Instrumentalities, and Some Proposals for Its Reform' 25(3) Arizona Journal of International and Comparative Law 665 (2008), at p. 680.

159. For example, in the United States there is a presumption that State-owned legal entities are separate from the State, with the result that it is not possible to attach the assets of the State-owned entity. This presumption may be overcome if recognizing the separate status of the entity would “work fraud or injustice.”<sup>265</sup> In this situation, the courts might disregard the separate legal personality of the entity and attribute the acts or debts of its parent State to it, making assets of that entity reachable.<sup>266</sup>
160. Some domestic courts consider whether the State-owned company or entity is an “emanation” of the State to attach its assets. For example, French courts allow a creditor to reach the assets of a separate State agency if the entity can be shown to be an “emanation” of the State. This generally requires a finding that the entity is controlled by the State. French courts look at the entity’s independence, analyzed through its shareholding and organizational structures, and whether the entity can implement its own decisions.<sup>267</sup>
161. This question arose before the French Cour de Cassation in a proceeding to execute the amounts owed under the Award in *S.A.R.L. Benvenuti & Bonfant v. People’s Republic of the Congo* against a bank account of the Congolese Commercial Bank (“CCB”) and the Republic of the Congo<sup>268</sup> held in a French Bank, Le Credit Lyonnais.<sup>269</sup> The French Cour de Cassation looked at CCB’s independence in decision-making and noted that the CCB operated for its own business purposes, even though the Republic of Congo exercised some control over it. It also considered that the mere fact of financial control exercised by the State was insufficient to make CCB an instrumentality of the Republic of the Congo.<sup>270</sup> Therefore, the Cour de Cassation denied the attachment of CCB’s bank account.
162. In *OI European Group B.V. v. Venezuela*, the claimant sought execution against the assets of Propernyn, PDVSA Services and PDV, three companies owned by Venezuela with their registered seats in the Netherlands.<sup>271</sup> A Dutch court granted enforcement but denied

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<sup>265</sup> See *First Nat’l City Bank v. Banco Para el Comercio Exterior de Cuba*, 462 US 611, 626, 629 (1983), cited in Foster G. K., ‘Collecting from Sovereigns: The Current Legal Framework for Enforcing Arbitral Awards and Court Judgments against States and Their Instrumentalities, and Some Proposals for Its Reform’, 25(3) *Arizona Journal of International and Comparative Law* 665 (2008), at p. 682.

<sup>266</sup> *Id.* p. 683.

<sup>267</sup> See Foster G. K., ‘Collecting from Sovereigns: The Current Legal Framework for Enforcing Arbitral Awards and Court Judgments against States and Their Instrumentalities, and Some Proposals for Its Reform’, 25(3) *Arizona Journal of International and Comparative Law* 665 (2008), at 686, citing to Cass. 1e civ., November 14, 2007, Bull. civ. I (Fr.) (holding that a company owned by Cameroon was an *emanation* of Cameroon, and that its assets could be reached by creditors of the Republic); Caroit E., Daureu P., Fouret J., ‘France’, in Fouret J. (ed), *Enforcement of Investment Treaty Arbitration Awards, A Global Guide*, Globe Law and Business (2015), pp. 236-237.

<sup>268</sup> Formerly the People’s Republic of the Congo.

<sup>269</sup> *S.A.R.L. Benvenuti & Bonfant v. People’s Republic of the Congo*, ICSID Case No. ARB/77/2, Award dated August 8, 1980.

<sup>270</sup> Djuma Bilali Lokema G.P., Mingashang I., Mwanza Kambongo J.P., ‘Democratic Republic of Congo’ in *Enforcement of Investment Treaty Arbitration Awards, A Global Guide* (Julien Fouret), pp. 236-237. Decision de la Cour de Cassation, Chambre Civil 1, dated July 21, 1987, regarding *S.A.R.L. Benvenuti & Bonfant v. People’s Republic of the Congo*, ICSID Case No. ARB/77/2. See also, in a non-ICSID context, Cour d’appel de Paris, Chambre 4-8, September 5, 2019, 18/17592, *Al-Kharafi v. Libyan Investment Authority (LIA) and Libyan Arab Foreign Investment Company (LAFICO)*.

<sup>271</sup> *OI European Group B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/25, Award dated March 10, 2015.

execution, finding there was insufficient evidence to show that the three companies were emanations of the State under Dutch law.<sup>272</sup>

163. Courts in other States, e.g., the United States, assess whether the State-owned entity is the *alter ego* of a State. If the property belongs to an agency or instrumentality of a State which is engaged in commercial activity in the United States, all local assets of that company are reachable unless the court determines that the property is immune from execution under other provisions of the US FSIA.<sup>273</sup> In *OI European Group B.V. v. Venezuela* (concerning enforcement of the same Award as that before Dutch courts), a US court partially granted execution against the shares of PDV Holding, Inc held by Petr6leos de Venezuela, S.A. (PDVSA) - the Venezuelan State-owned petroleum company.<sup>274</sup> The court held that the creditors had rebutted the presumption that PDVSA and Venezuela were separate and found that PDVSA was the *alter ego* of the judgment debtor, Venezuela.<sup>275</sup>
164. In *Sistem v. Republic of Kyrgyzstan*, which concerned an ICSID Additional Facility award, the Ontario Superior Court of Justice in Canada analyzed the targeted property by reference to ownership interest.<sup>276</sup> The claimant sought to execute against shares in Centerra, a Canadian mining company, that were registered in the name of Kyrgyzaltyn JSC, a company owned by Kyrgyzstan.<sup>277</sup> The Superior Court of Ontario denied execution, finding that Kyrgyzstan and Kyrgyzaltyn JSC were separate legal entities, that Kyrgyzstan did not have an ownership interest in the Centerra shares, and that these shares could therefore not be seized to satisfy the Award.<sup>278</sup>

#### D. *Other Aspects of Execution*

165. There may be other factors affecting execution based on the applicable domestic laws concerning execution of judgments.

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<sup>272</sup> Hague District Court Judgment, February 16, 2022, ECLI:NL:RBDHA:2022:1602 - Court of The Hague, 16-02-2022 / C/09/580846 / HA ZA 19-1030). The case was decided under Dutch law, however, the Dutch court also referred to Venezuelan law and judgments of US courts.

<sup>273</sup> See Foster G. K., 'Collecting from Sovereigns: The Current Legal Framework for Enforcing Arbitral Awards and Court Judgments against States and Their Instrumentalities, and Some Proposals for Its Reform', 25(3) Arizona Journal of International and Comparative Law 665 (2008), at pp. 677-680. Section 1611 of the FSIA provides immunity from execution for certain designated types of properties.

<sup>274</sup> The investors are seeking to collect on their judgment through property located in the United States of America. PDVSA owns 100% of PDV Holding, Inc. ("PDVH"), which itself owns 100% of CITGO Holding, Inc., which in turn owns CITGO Petroleum Corp. ("CITGO"). PDVH, CITGO Holding, Inc. and CITGO Petroleum are companies registered in the United States.

<sup>275</sup> US District Court Delaware Opinion, March 23, 2023, p. 58, regarding *OI European Group B.V. v. Bolivarian Republic of Venezuela*. See also, *OI European Group B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/25, Order of the United States District Court for the District of Delaware, March 23, 2023.

<sup>276</sup> Decision of the Superior Court of Justice, Reasons for Decision, dated July 11, 2016, on the execution of *Sistem Muhendislik Insaat Sanayi ve Ticaret A.S. v. Kyrgyz Republic*, ICSID Case No. ARB(AF)/06/1, Award dated September 9, 2009.

<sup>277</sup> *Id.*

<sup>278</sup> Relying on section 18 of the Execution Act, the Court concluded in para. 67 of the Decision that Kyrgyzstan did not have any "equitable or other right, property, interest or equity of redemption" in the Centerra shares that could be subject to seizure and sale pursuant to Section 18 of the 1990 Execution Act.

166. For example, the Swiss Federal Supreme Court examined the conditions for attachment of a foreign State's assets located in Switzerland (including patents, real estate, bank accounts and assets in safe deposit) under Swiss law and determined that there was insufficient connection with Switzerland.<sup>279</sup> It found that it was not enough that the State's assets were located in Switzerland; there must also be a sufficiently close connection to the underlying claim, which the Court described as a procedural requirement.<sup>280</sup> Because that connection test was not met in this case, Swiss laws on sovereign immunity precluded execution.
167. In addition, sanctions against a particular State or company may affect execution. In the US, execution proceedings for ICSID Awards were halted in certain cases against Venezuela due to the domestic sanctions' regime implemented by the US Treasury Department's Office of Foreign Assets Control ("OFAC").<sup>281</sup> While it was not disputed that any writ of attachment could not be served until either an OFAC license was obtained or the sanctions were lifted, the US courts concluded that OFAC sanctions themselves do not prevent the authorization of the eventual issuance of a writ of attachment, conditioned on approval by the executive branch.<sup>282</sup>

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<sup>279</sup> Swiss Federal Supreme Court, Decision 5A\_406/2022 (March 17, 2022). The Court determined that the "sufficient connection" requirement also applies in the ICSID context based on Article 55 of the ICSID Convention, since the assessment is made under Swiss laws on sovereign immunity. *See* para. 3.3.2. of the Decision.

<sup>280</sup> *Id.*

<sup>281</sup> *See e.g.*, US District Court for the District of Delaware, Memorandum Order (December 12, 2019), in *OI European Group B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/25; US District Court Order dated March 27, 2019, concerning the Award dated March 10, 2015, in *OI European Group B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/25; US District Court for the District of Columbia Order dated November 20, 2015, concerning the Award dated September 22, 2014, in *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1.

<sup>282</sup> US District Court for the District of Delaware, Opinion (March 2, 2022), in *OI European Group B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/25; US District Court for the District of Delaware, Memorandum Order (May 4, 2022), in *OI European Group B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/25; US District Court for the District of Delaware, Memorandum Order (April 23, 2023), in *OI European Group B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/25, *Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/12/5, *Koch Minerals Sàrl and Koch Nitrogen International Sàrl v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/19, and *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1.

## VIII. Differences in Post-Award Remedies and Recognition and Enforcement under the ICSID Convention and non-ICSID Regimes

168. Non-ICSID awards may be subject to set aside or annulment procedures in accordance with the laws of the seat of the arbitration, *i.e.*, the domestic laws governing the arbitration proceeding. The seat of arbitration can be established in the instrument of consent (the arbitration agreement), by party agreement once proceedings are instituted, by the procedural rules or by decision of the arbitral tribunal. As investment treaties most often do not prescribe the seat of arbitration, there is often no certainty at the time treaty-based investor-State proceedings commence.

169. By contrast, ICSID Convention Awards can only be subject to the remedies in Articles 49 – 52 of the ICSID Convention. These post-award remedies are heard by *ad hoc* committees (regarding annulment) or by the original tribunals (regarding supplementary decisions, rectification, interpretation and revision). An Award can be annulled on one or more of the exhaustive grounds provided for in Article 52(1) of the Convention, *e.g.*, that the tribunal manifestly exceeded its powers (Article 52(1)(b)).<sup>283</sup> Domestic courts have no role in the annulment process, nor in other post-award proceedings under the Convention.

170. The recognition and enforcement of non-ICSID Convention awards is governed by the New York Convention or, if the State is not a contracting party to the New York Convention or if available in the State, by domestic recognition and enforcement procedures. The New York Convention requires the party applying for recognition and enforcement to provide the enforcing court with the duly authenticated original award and the original arbitration agreement or duly certified copies thereof (Article IV). It states that recognition and enforcement may be refused based on one of the grounds set out in Article V(1) (which can be raised and proven by the party resisting enforcement) or Article V(2) (which can be done by the court on its own motion). For example, under Article V(1), a court may deny recognition and enforcement if:

- A party to the arbitration agreement was under some incapacity;
- The arbitration agreement was invalid;
- The award deals with issues outside the scope of the submission to arbitration;
- The composition of arbitral authority or the procedure was not in accordance with the agreement of the parties, or absent such agreement, with the law of the seat;
- The award is not yet binding on the parties; or
- The award was set aside in the country where it was made.<sup>284</sup>

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<sup>283</sup> See [ICSID's Background Paper on Annulment](#).

<sup>284</sup> Article V, New York Convention provides as follows:

“1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

- (a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

171. The ICSID Convention does not provide grounds to refuse recognition and enforcement of the Award. The Convention only requires that the party seeking recognition and enforcement provide the competent court or other authority with a copy of the Award certified by the ICSID Secretary-General (Article 54(2)). Subject to any stay of enforcement in connection with post-award remedies, and unless the Award has been annulled,<sup>285</sup> Article 54 requires every ICSID Member State to recognize the Award as binding and enforce its pecuniary obligations as if it were a final judgment of a domestic court. The ICSID Convention does not prescribe the method to be followed for recognition and enforcement but requires each Member State to meet the requirements in Article 54 in accordance with its own legal system.

172. Some courts have discussed the difference between enforcement of arbitral awards under the New York Convention and ICSID Awards under the ICSID Convention, highlighting that the enforcement of ICSID Awards should be less cumbersome than enforcement under the New York Convention.

173. For example, in *Union Fenosa Gas SA v. Arab Republic of Egypt*, the UK High Court referred to its reasoning in *Micula v. Romania*<sup>286</sup> and stated that “*Micula* confirms that the ICSID Convention differs significantly from the New York Convention.”<sup>287</sup> For the UK High Court:

“[...]it would be surprising if a more cumbersome procedure had to be followed for the registration of ICSID Awards under the 1996 [UK implementing] Act, when compared to the procedure for the New York Convention awards, in circumstances

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- (c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
  - (d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
  - (e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

- (a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
- (b) The recognition or enforcement of the award would be contrary to the public policy of that country.”

<sup>285</sup> For example, on June 5, 2021, following the *ad hoc* committee’s annulment of the *Eiser* Award on June 11, 2020, the District Court of the District of Columbia dismissed with prejudice *Eiser*’s enforcement action with respect to the *Eiser* Award; but without prejudice of *Eiser*’s right to seek enforcement of any future award resulting from a resubmission proceeding. At the date of the publication of this paper, the *Eiser* resubmission proceeding was pending at ICSID. This regime is in contrast with Article V(1)(e) of the New York Convention according to which recognition and enforcement “*may be refused*” (emphasis added) if the award invoked “[...] has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.”

<sup>286</sup> UK Supreme Court Judgment dated February 19, 2020 in *Micula v. Romania*, para 78.

<sup>287</sup> UK High Court of Justice Approved Judgment dated June 30, 2020 concerning the Award dated August 31, 2018 in *Union Fenosa Gas, S.A. v. Arab Republic of Egypt*, ICSID Case No. ARB/14/4, para 67.

where the arguments available to the state (if they exist at all) are significantly more limited. [...]”<sup>288</sup>

174. The UK High Court issued a subsequent judgment concerning enforcement of the Award in *Antin v. Spain*,<sup>289</sup> where it cited and distinguished the United States District Court’s decision in *Blasket v. Spain*<sup>290</sup>: “[*Blasket*] found that there was no valid agreement to arbitrate as a result of the law of the EU and Spain’s petition to be dismissed was granted. [*Blasket*] did not however concern an ICSID award, but rather was one convened under UNCITRAL. That is a very important difference.”<sup>291</sup> The Court also found that: “The availability of defences to a foreign state faced with an application to register an arbitral award under the ICSID Convention is far narrower than those that would be available if an award were being enforced under the New York Convention. ICSID is a separate and stand-alone international convention, with signatories far more numerous than the Member States of the EU.”<sup>292</sup>

175. Relying on the UK Supreme Court Judgment in *Micula v. Romania*, the *Antin* judgment further noted:

The effect of these provisions [Articles 53 and 54 of the ICSID Convention] [...] is to take ICSID awards outside the normal regime for the enforcement of arbitral awards, including the New York Convention regime, which enables recognition to be refused by national courts on specified grounds. Instead, the ICSID Convention has its own internal procedure for interpretation, revision and annulment of awards. Requests for annulment are dealt with by an *ad hoc* committee, and the grounds for annulment are limited...Unless an ICSID award is annulled pursuant to this procedure, the courts of Contracting States are bound to recognise and enforce it in accordance with Article 54(1).<sup>293</sup>

176. Another UK High Court judgment stated in this respect that there is:

...a principled distinction to be drawn between applications to enforce ICSID awards, which are not served and where the award cannot be reviewed, and applications to enforce awards under the New York Convention, which not only do potentially require service but, more importantly, expressly require the court to exercise its adjudicative jurisdiction in determining that none of the defences to recognition and enforcement applies. The potentially far-reaching consequences which would otherwise ensue for enforcement of awards under the New York Convention are thus avoided altogether and the well-established case law in this

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<sup>288</sup> UK High Court of Justice Approved Judgment dated June 30, 2020 concerning the Award dated August 31, 2018 in *Union Fenosa Gas, S.A. v. Arab Republic of Egypt*, ICSID Case No. ARB/14/4, para 67.

<sup>289</sup> English High Court of Justice Judgment dated May 24, 2023, concerning the Award in *Antin v. Spain*.

<sup>290</sup> A decision denying enforcement of a non-ICSID award.

<sup>291</sup> English High Court of Justice Judgment dated May 24, 2023, concerning the Award in *Antin v. Spain*, para 118.

<sup>292</sup> *Id.*, para 78 (citing UK Supreme Court Judgment dated February 19, 2020, in *Micula v. Romania*).

<sup>293</sup> *Id.*, para 78.

field, such as *Svenska Petroleum Exploration AB v. Lithuania, Tatneft and General Dynamics*, [footnote omitted] is left intact.<sup>294</sup>

177. In Portugal, the Supreme Court of Justice granted the applicant's request to recognize and enforce an ICSID Award despite the State party to the dispute (Venezuela) having denounced the ICSID Convention. The Court noted that "[t]he recognition of the enforceability of ICSID arbitral awards follows a somewhat different regime from that prescribed for arbitral awards under the New York Convention [...], both as to the jurisdiction for recognition and the scope of the court's intervention."<sup>295</sup> It considered that it was clear from national and international legal literature that "[f]or the purposes of recognizing the enforceability of ICSID awards, the Supreme Court of Justice exercises a mere formal control, aimed at verifying the authenticity of the award submitted."<sup>296</sup> The Court found that the State's denunciation of the ICSID Convention in 2012 did not affect the effectiveness of the Award.<sup>297</sup> The Court concluded that, "[...] taking into account the provisions of Art. 54(1) of the Convention [...], the examination by this Supreme Court of Justice of the arbitral award certified by the [ICSID Secretary-General] [...] allows us to state, pursuant to Art. 54(2) of the Washington Convention, that there are no obstacles to recognizing its enforceability in the terms requested."<sup>298</sup>
178. With regard to *execution* of non-ICSID awards and ICSID Awards, the regimes are not different. Domestic laws typically govern the question whether awards can be executed against specific sovereign assets and whether immunity from execution applies with regard to those assets.

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<sup>294</sup> UK High Court, in *Border Timbers Limited, Hangani Development Co. (Private) Limited and Republic of Zimbabwe* [2024] EWHC 58 (Comm) (January 19, 2024), para 111(e).

<sup>295</sup> Portugal No. 2023-W1, *OI European Group B.V. v. Bolivarian Republic of Venezuela*, Supremo Tribunal de Justiça, Case No. 59.19.7YF (January 13, 2020), in Stephan W. Schill (ed), *ICCA Yearbook Commercial Arbitration 2023 - Volume XLVIII, Yearbook Commercial Arbitration, Volume 48* (© Kluwer Law International; ICCA & Kluwer Law International 2023) pp. 1 – 2, para. 20. [Unofficial translation] Original Portuguese: “[...] *O reconhecimento da exequibilidade das decisões arbitrais proferidas no âmbito do ICSID/CIRDI segue um regime algo diverso do prescrito para as decisões arbitrais a que se reporta a Conv. de Nova Iorque sobre o Reconhecimento e Execução de Sentenças Arbitrais Estrangeiras, quer quanto à competência para o reconhecimento, quer quanto à amplitude da intervenção do órgão jurisdicional.*”

<sup>296</sup> *Id.*, para. 20. Original Portuguese: “4.1. *Para efeitos de reconhecimento da exequibilidade de acórdãos arbitrais condenatórios proferidas no suto do ICSID/CIRDI, o Supremo Tribunal de Justiça exerce um mero controlo formal, destinado a verificar a autenticidade da decisão apresentada. Esta afirmação não merece qualquer discussão, como o revela toda a literatura jurídica nacional e internacional sobre o suto, nos termos que exemplificativamente se assinalam [...]*”

<sup>297</sup> *Id.*, para. 29.

<sup>298</sup> *Id.*, para 30, “*Neste contexto, tendo em conta o disposto no Article 54º, nº 1, da Convenção (cada Estado Contratante reconhecerá a obrigatoriedade da sentença dada em conformidade com a presente Convenção e assegurará a execução no seu território das obrigações pecuniárias impostas por essa sentença como se fosse uma decisão final de um tribunal desse Estado), o confronto deste Supremo Tribunal de Justiça com a certidão do acórdão arbitral certificada pelo Secretário-Geral do “Centro Internacional para a Resolução de Diferendos Relativos a Investimentos” (ICSID/CIRDI) que foi apresentada pela Requerente (fls. 159 a 273) permite afirmar, nos termos do art. 54º, nº 2, da Conv. de Washington, que não existem obstáculos a que se reconheça a exequibilidade nos termos que foram requeridos.*”

## **IX. Conclusion**

179. The ICSID Convention's regime for compliance and enforcement of ICSID Awards is a key feature of the ICSID Convention and one of the reasons why users prefer ICSID arbitration over other dispute resolution options. It provides a self-contained system in which Awards are final and binding and are only subject to the post-award remedies provided for in the ICSID Convention. Domestic courts must enforce an ICSID Award as a final judgment of their own courts, and the Convention does not provide any ground to refuse recognition and enforcement. The regime thus instills confidence that parties will comply with their obligations in an Award or that the Award will be satisfied in enforcement proceedings, subject only to sovereign immunity from execution. The ICSID Convention's regime therefore differs from the regime under the New York Convention, which contains grounds for domestic courts to refuse to recognize and enforce non-ICSID awards.
180. The ICSID Secretariat's research shows that the ICSID Convention regime remains highly effective. When domestic courts are called on to recognize and enforce an ICSID Award, an overwhelming majority do so. They do not review the merits or jurisdiction of the Award and they limit sovereign immunity defenses to the execution stage.
181. The majority of ICSID Convention Awards do not require enforcement proceedings, as award debtors voluntarily comply with their obligations, or the parties reach post-award settlements. This was the case in 66% of the 151 Damages Awards included in the Study. Overall, award creditors obtained satisfaction through voluntary compliance, post-award settlement or enforcement in 97% of Damages Awards with known outcomes in enforcement proceedings, with 90% obtained through voluntary compliance and post-award settlement.
182. It is important for the proper functioning of the ICSID Convention that States and investors voluntarily comply with ICSID Awards and, if they do not, that domestic courts or other competent authorities of Member States enforce them in accordance with their obligations under the Convention. Compliance and successful enforcement are vital to maintaining user confidence and ensuring that the ICSID Convention can continue to encourage reliable legal frameworks, which is essential for foreign direct investment.

**Enforcement of ICSID Convention Awards – Domestic Court Decisions by Jurisdiction**  
**ANNEX A**

<b>JURISDICTION</b>	<b>CASE NO.</b>	<b>DECISIONS</b>	<b>DATE</b>	<b>OUTCOME</b> <small>KEY: ENFORCEMENT (ENF); EXECUTION (EXE); GRANTED; DENIED; STAYED; OTHER</small>
U.S. 1.	ARB/83/2 <i>Liberian Eastern Timber Corporation</i> v. <i>Republic of Liberia</i> Award of March 31, 1986	US District Court for Southern District (SD) of New York (NY) Order <a href="https://jusmundi.com/en/document/decision/en-liberian-eastern-timber-corporation-v-republic-of-liberia-us-district-court-for-southern-district-of-new-york-i-friday-5th-september-1986#decision_1054">https://jusmundi.com/en/document/decision/en-liberian-eastern-timber-corporation-v-republic-of-liberia-us-district-court-for-southern-district-of-new-york-i-friday-5th-september-1986#decision_1054</a>	5-Sep-86	ENF Granted
		US District Court for SD of NY Order (II) <a href="https://jusmundi.com/en/document/decision/en-liberian-eastern-timber-corporation-v-republic-of-liberia-us-district-court-for-southern-district-of-new-york-ii-friday-12th-december-1986#decision_1055">https://jusmundi.com/en/document/decision/en-liberian-eastern-timber-corporation-v-republic-of-liberia-us-district-court-for-southern-district-of-new-york-ii-friday-12th-december-1986#decision_1055</a>	12-Dec-86	ENF Granted EXE Denied (sovereign immunity)
2.	ARB/01/3 <i>Enron Corporation and Ponderosa Assets, L.P. v. Argentine Republic</i> Award of May 22, 2007	US District Court for SD of NY Order No. M-82 <a href="https://jusmundi.com/en/document/decision/en-enron-creditors-recovery-corporation-formerly-enron-corporation-and-ponderosa-assets-l-p-v-argentine-republic-order-and-judgment-of-the-united-states-district-court-for-the-southern-district-of-new-york-tuesday-20th-november-2007#decision_6513">https://jusmundi.com/en/document/decision/en-enron-creditors-recovery-corporation-formerly-enron-corporation-and-ponderosa-assets-l-p-v-argentine-republic-order-and-judgment-of-the-united-states-district-court-for-the-southern-district-of-new-york-tuesday-20th-november-2007#decision_6513</a>	20-Nov-07	ENF Granted
3.	ARB/02/16 <i>Sempra Energy International</i> v. <i>Argentine Republic</i> Award of September 28, 2007	US District Court for SD of NY Decision <a href="https://jusmundi.com/en/document/pdf/decision/en-sempra-energy-international-v-argentine-republic-order-and-judgment-of-the-united-states-district-court-for-the-southern-district-of-new-york-wednesday-14th-november-2007">https://jusmundi.com/en/document/pdf/decision/en-sempra-energy-international-v-argentine-republic-order-and-judgment-of-the-united-states-district-court-for-the-southern-district-of-new-york-wednesday-14th-november-2007</a>	20-Feb-13	ENF Granted

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4.	ARB/03/14 <i>Miminco LLC and others</i> v. <i>Democratic Republic of the Congo</i> Award of November 19, 2007	US District Court for DC Memo and Order <a href="https://jusmundi.com/en/document/decision/en-miminco-llc-and-others-v-democratic-republic-of-the-congo-memorandum-order-of-the-united-states-district-court-for-the-district-of-colombia-monday-9th-february-2015#decision_5200">https://jusmundi.com/en/document/decision/en-miminco-llc-and-others-v-democratic-republic-of-the-congo-memorandum-order-of-the-united-states-district-court-for-the-district-of-colombia-monday-9th-february-2015#decision_5200</a>	9-Feb-15	ENF Granted
5.	ARB/03/28 <i>Duke Energy International Peru Investments No. 1 Ltd</i> v. <i>Republic of Peru</i> Award of August 18, 2008	US District Court DC Memo Opinion <a href="https://www.italaw.com/sites/default/files/case-documents/italaw9973.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw9973.pdf</a>	14-Sep-12	ENF (denying motion to dismiss)
		US District Court for DC Memo Opinion II <a href="https://www.italaw.com/sites/default/files/case-documents/italaw9972.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw9972.pdf</a>	19-Nov-12	ENF Granted
6.	ARB/03/9 <i>Continental Casualty Company</i> v. <i>Argentine Republic</i> Award of September 5, 2008	US District Court Eastern District of Virginia Memo <a href="https://jusmundi.com/en/document/decision/en-continental-casualty-company-v-argentine-republic-memorandum-opinion-tuesday-11th-september-2012#decision_1214">https://jusmundi.com/en/document/decision/en-continental-casualty-company-v-argentine-republic-memorandum-opinion-tuesday-11th-september-2012#decision_1214</a>	11-Sep-12	ENF Granted in part and denied in part (denied with regard to venue)
7.	ARB/05/14 <i>RSM Production Corporation</i> v. <i>Grenada</i> Award of March 13, 2009	US District Court for SD of NY Order <a href="https://jusmundi.com/fr/document/decision/en-rachel-s-grynberg-stephen-m-grynberg-miriam-z-grynberg-and-rsm-production-corporation-v-grenada-order-and-judgment-of-the-united-states-district-court-for-the-southern-district-of-new-york-friday-29th-april-2011#decision_6515">https://jusmundi.com/fr/document/decision/en-rachel-s-grynberg-stephen-m-grynberg-miriam-z-grynberg-and-rsm-production-corporation-v-grenada-order-and-judgment-of-the-united-states-district-court-for-the-southern-district-of-new-york-friday-29th-april-2011#decision_6515</a>	29-Apr-11	ENF Granted
8.	ARB/05/15 <i>Waguih Elie George Siag and Clorinda Vecchi</i> v. <i>Arab Republic of Egypt</i> Award of June 1, 2009	US District Court for SD of NY Order <a href="https://jusmundi.com/fr/document/decision/en-waguih-elie-george-siag-and-clorinda-vecchi-v-arab-republic-of-egypt-decision-of-the-southern-district-of-new-york-court-friday-19th-june-2009">https://jusmundi.com/fr/document/decision/en-waguih-elie-george-siag-and-clorinda-vecchi-v-arab-republic-of-egypt-decision-of-the-southern-district-of-new-york-court-friday-19th-june-2009</a>	19-Jun-09	ENF (requests certified copy of award)

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9.	ARB/06/19 <i>Nations Energy, Inc. and others</i> v. <i>Republic of Panama</i> Award of November 24, 2010	US District Court for Middle District Florida Order <a href="https://www.italaw.com/sites/default/files/case-documents/italaw10222.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw10222.pdf</a>	13-Jun-13	ENF Granted
		US District Court for Middle District Florida Order II <a href="https://www.italaw.com/sites/default/files/case-documents/italaw10224.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw10224.pdf</a>	11-Apr-14	EXE (preliminary injunction granted)
10.	ARB/10/6 <i>RSM Production Corporation and others</i> v. <i>Grenada</i> Award of December 10, 2010	US District Court for SD of NY Order <a href="https://jusmundi.com/fr/document/decision/en-rachel-s-grynberg-stephen-m-grynberg-miriam-z-grynberg-and-rsm-production-corporation-v-grenada-order-and-judgment-of-the-united-states-district-court-for-the-southern-district-of-new-york-friday-29th-april-2011#decision_6515">https://jusmundi.com/fr/document/decision/en-rachel-s-grynberg-stephen-m-grynberg-miriam-z-grynberg-and-rsm-production-corporation-v-grenada-order-and-judgment-of-the-united-states-district-court-for-the-southern-district-of-new-york-friday-29th-april-2011#decision_6515</a>	29-Apr-11	ENF Granted
11.	ARB/03/23 <i>EDF International S.A., SAUR International S.A. and Léon Participaciones Argentinas S.A.</i> v. <i>Argentine Republic</i> Award of June 11, 2012	US District Court for SD of NY Judgment <a href="https://jusmundi.com/fr/document/decision/en-edf-international-s-a-saur-international-s-a-and-leon-participaciones-argentinas-s-a-v-argentine-republic-judgment-of-the-united-states-district-court-for-the-southern-district-of-new-york-saturday-14th-july-2012#decision_17192">https://jusmundi.com/fr/document/decision/en-edf-international-s-a-saur-international-s-a-and-leon-participaciones-argentinas-s-a-v-argentine-republic-judgment-of-the-united-states-district-court-for-the-southern-district-of-new-york-saturday-14th-july-2012#decision_17192</a>	14-Jul-12	ENF Granted
12.	ARB/05/20 <i>Ioan Micula, Viorel Micula and others</i> v. <i>Romania</i> Award of December 11, 2013	District Court for DC Memorandum Opinion <a href="https://italaw.com/sites/default/files/case-documents/italaw8946.pdf">https://italaw.com/sites/default/files/case-documents/italaw8946.pdf</a>	18-May-15	ENF Denied (no <i>ex parte</i> motion to confirm)
		District Court for the Southern District of New York Opinion <a href="https://italaw.com/sites/default/files/case-documents/italaw10228.pdf">https://italaw.com/sites/default/files/case-documents/italaw10228.pdf</a>	9-Sep-15	ENF Granted
		Court of Appeals for Second Circuit Summary Order <a href="https://italaw.com/sites/default/files/case-documents/italaw94011.pdf">https://italaw.com/sites/default/files/case-documents/italaw94011.pdf</a>	23-Oct-17	ENF Denied (no <i>ex parte</i> motion to confirm)

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		District Court for DC Memo Opinion <a href="https://www.italaw.com/sites/default/files/case-documents/italaw10816.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw10816.pdf</a>	11-Sep-19	ENF Granted
		Court of Appeals for DC Judgment <a href="https://italaw.com/sites/default/files/case-documents/italaw11504.pdf">https://italaw.com/sites/default/files/case-documents/italaw11504.pdf</a>	19-May-20	ENF Granted
		Court of Appeals for the District of Columbia Opinion <a href="https://jusmundi.com/en/document/pdf/decision/en-ioan-micula-viorel-micula-and-others-v-romania-i-opinion-of-the-united-states-court-of-appeals-for-the-district-of-columbia-circuit-tuesday-14th-may-2024">https://jusmundi.com/en/document/pdf/decision/en-ioan-micula-viorel-micula-and-others-v-romania-i-opinion-of-the-united-states-court-of-appeals-for-the-district-of-columbia-circuit-tuesday-14th-may-2024</a>	14-May-24	ENF Granted
13.	ARB/07/27 <i>Venezuela Holdings B.V. and others</i> v. <i>Bolivarian Republic of Venezuela</i> Award of October 9, 2014	US District Court for SD of NY Order and Judgment <a href="https://jusmundi.com/en/document/decision/en-mobil-cerro-negro-holding-ltd-mobil-cerro-negro-ltd-mobil-corporation-and-others-v-bolivarian-republic-of-venezuela-order-and-judgment-of-the-united-states-district-court-for-the-southern-district-of-new-york-friday-10th-october-2014#decision_61802">https://jusmundi.com/en/document/decision/en-mobil-cerro-negro-holding-ltd-mobil-cerro-negro-ltd-mobil-corporation-and-others-v-bolivarian-republic-of-venezuela-order-and-judgment-of-the-united-states-district-court-for-the-southern-district-of-new-york-friday-10th-october-2014#decision_61802</a>	10-Oct-14	ENF Granted
		US District Court for SD of NY Opinion and Order <a href="https://www.italaw.com/sites/default/files/case-documents/italaw4160.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw4160.pdf</a>	13-Feb-15	ENF Stayed (revision and annulment proceedings were pending)
		US District Court for SD of NY Judgment <a href="https://www.italaw.com/sites/default/files/case-documents/italaw10567.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw10567.pdf</a>	4-Mar-15	ENF Granted (Motion to amend judgment enforcing Award denied)
		US Court of Appeals for Second Circuit Decision <a href="https://www.italaw.com/sites/default/files/case-documents/italaw9225.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw9225.pdf</a>	11-Jul-17	ENF Denied (no <i>ex parte</i> motion to confirm; enforcement denied without prejudice to renewal in an action commenced in

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				compliance with the FSIA)
14.	ARB/11/25 <i>OI European Group B.V.</i> v. <i>Bolivarian Republic of Venezuela</i> Award of March 10, 2015	US District Court for DC Order <a href="https://www.italaw.com/sites/default/files/case-documents/italaw10543.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw10543.pdf</a>	27-Mar-19	ENF Granted
		US District Court Memo Opinion <a href="https://www.italaw.com/sites/default/files/case-documents/italaw10546.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw10546.pdf</a>	21-May-19	ENF Granted
		US District Court Memo Opinion <a href="https://www.italaw.com/sites/default/files/case-documents/italaw10905.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw10905.pdf</a>	1-Nov-19	EXE Granted
		US District Court Delaware Memo Order <a href="https://www.italaw.com/sites/default/files/case-documents/italaw170759.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw170759.pdf</a>	29-Sep-22	EXE Granted (abeyance on attachment motions lifted)
		US District Court Delaware Opinion <a href="https://www.italaw.com/sites/default/files/case-documents/italaw171170.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw171170.pdf</a>	23-Mar-23	EXE (alter ego)
15.	ARB/10/5 <i>Tidewater Investment SRL and Tidewater Caribe, C.A.</i> v. <i>Bolivarian Republic of Venezuela</i> Award of March 13, 2015	US District Court for SD of NY Order and Judgment <a href="https://www.italaw.com/sites/default/files/case-documents/italaw10175.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw10175.pdf</a>	18-Mar-15	ENF Granted
		US District Court for SD of NY Order <a href="https://www.italaw.com/sites/default/files/case-documents/italaw171093.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw171093.pdf</a>	22-Jun-17	ENF Denied (application of FSIA and venue)
		US District Court for DC Memo Opinion <a href="https://jusmundi.com/en/document/pdf/decision/en-tidewater-investment-srl-and-tidewater-caribe-c-a-v-bolivarian-republic-of-venezuela-memorandum-opinion-of-the-united-states-district-court-for-the-district-of-colombia-monday-17th-december-2018">https://jusmundi.com/en/document/pdf/decision/en-tidewater-investment-srl-and-tidewater-caribe-c-a-v-bolivarian-republic-of-venezuela-memorandum-opinion-of-the-united-states-district-court-for-the-district-of-colombia-monday-17th-december-2018</a>	17-Dec-18	ENF Granted (default judgment)

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16.	ARB/03/19 <i>Suez, Sociedad General de Aguas de Barcelona, S.A. and Vivendi Universal, S.A.</i> v. <i>Argentine Republic</i> Award of April 9, 2015	US Court of Appeals for DC Circuit Order <a href="https://www.italaw.com/sites/default/files/case-documents/italaw9845.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw9845.pdf</a>	3-Jul-18	ENF Granted
17.	ARB/10/15 <i>Bernhard von Pezold and others v. Republic of Zimbabwe</i> Award of July 28, 2015	US District Court DC Memo and Opinion <a href="https://www.italaw.com/sites/default/files/case-documents/italaw170567_0.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw170567_0.pdf</a>	6-Sep-22 (Proceeding consolidated with ARB/10/25)	ENF Denied (lack of proper service under the FSIA)
		US District Court DC Order <a href="https://jusmundi.com/en/document/pdf/decision/en-bernhard-von-pezdold-and-others-v-republic-of-zimbabwe-order-of-the-united-states-district-court-for-the-district-of-columbia-tuesday-24th-january-2023">https://jusmundi.com/en/document/pdf/decision/en-bernhard-von-pezdold-and-others-v-republic-of-zimbabwe-order-of-the-united-states-district-court-for-the-district-of-columbia-tuesday-24th-january-2023</a>	24-Jan-23	ENF Service effected within deadline
		Memorandum Opinion of the United States District Court for the District of Columbia <a href="https://jusmundi.com/en/document/decision/en-bernhard-von-pezdold-and-others-v-republic-of-zimbabwe-memorandum-opinion-of-the-united-states-district-court-for-the-district-of-columbia-wednesday-9th-august-2023#decision_53602">https://jusmundi.com/en/document/decision/en-bernhard-von-pezdold-and-others-v-republic-of-zimbabwe-memorandum-opinion-of-the-united-states-district-court-for-the-district-of-columbia-wednesday-9th-august-2023#decision_53602</a>	09-Aug-23	ENF Granted (motion to dismiss denied; appeal pending)
18.	ARB/10/25 <i>Border Timbers Limited, Timber Products International (Private) Limited, and Hangani Development Co. (Private) Limited v. Republic of Zimbabwe</i> Award of July 28, 2015	US District Court DC Memo Opinion and Order <a href="https://www.italaw.com/sites/default/files/case-documents/italaw170567.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw170567.pdf</a>	6-Sep-22 (Proceeding consolidated with ARB/10/15)	ENF Denied (lack of proper service under the FSIA)

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		Memorandum Opinion of the United States District Court for the District of Columbia <a href="https://jusmundi.com/en/document/decision/en-bernhard-von-pezold-and-others-v-republic-of-zimbabwe-memorandum-opinion-of-the-united-states-district-court-for-the-district-of-columbia-wednesday-9th-august-2023#decision_53602">https://jusmundi.com/en/document/decision/en-bernhard-von-pezold-and-others-v-republic-of-zimbabwe-memorandum-opinion-of-the-united-states-district-court-for-the-district-of-columbia-wednesday-9th-august-2023#decision_53602</a>	09-Aug-23	ENF Granted (motion to dismiss denied; appeal pending)
19.	ARB/11/33 <i>Adel A Hamadi Al Tamimi</i> v. <i>Sultanate of Oman</i> Award of November 3, 2015	US District Court Massachusetts Default Judgment <a href="https://jusmundi.com/en/document/pdf/decision/en-adel-a-hamadi-al-tamimi-v-sultanate-of-oman-default-judgment-of-the-united-states-district-court-for-the-district-of-massachusetts-tuesday-18th-september-2018">https://jusmundi.com/en/document/pdf/decision/en-adel-a-hamadi-al-tamimi-v-sultanate-of-oman-default-judgment-of-the-united-states-district-court-for-the-district-of-massachusetts-tuesday-18th-september-2018</a>	18-Sep-18	ENF Granted
20.	ARB/11/26 <i>Tenaris S.A. and Talta - Trading e Marketing Sociedade Unipessoal Lda.</i> v. <i>Bolivarian Republic of Venezuela</i> Award of January 29, 2016	US District Court DC Memo Opinion <a href="https://www.italaw.com/sites/default/files/case-documents/italaw11576.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw11576.pdf</a>	17-Jun-20	ENF Granted (in part and denied in part, subject to approval by OFAC)
21.	ARB/06/4 <i>Vestey Group Ltd</i> v. <i>Bolivarian Republic of Venezuela</i> Award of April 15, 2016	US District Court DC Order <a href="https://jusmundi.com/en/document/pdf/decision/en-vestey-group-ltd-v-bolivarian-republic-of-venezuela-stipulated-order-for-judgment-in-the-united-states-district-court-for-the-district-of-columbia-tuesday-19th-january-2021">https://jusmundi.com/en/document/pdf/decision/en-vestey-group-ltd-v-bolivarian-republic-of-venezuela-stipulated-order-for-judgment-in-the-united-states-district-court-for-the-district-of-columbia-tuesday-19th-january-2021</a>	19-Jan-21	ENF Granted
22.	ARB/11/29 <i>Getma International and others</i> v. <i>Republic of Guinea</i> Award of August 16, 2016	US District Court DC Memo Opinion <a href="https://www.italaw.com/sites/default/files/case-documents/italaw11765.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw11765.pdf</a>	10-Jul-20	ENF Granted

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23.	ARB/12/23 <i>Tenaris S.A. and Talta – Trading e Marketing Sociedade Unipessoal Lda. v. Bolivarian Republic of Venezuela</i> Award of November 12, 2016	US District Court DC Memo Opinion <a href="https://jusmundi.com/en/document/pdf/decision/en-tenaris-s-a-and-talta-trading-e-marketing-sociedade-unipessoal-lda-v-bolivarian-republic-of-venezuela-ii-memorandum-opinion-of-the-united-states-district-court-for-the-district-of-columbia-wednesday-24th-february-2021">https://jusmundi.com/en/document/pdf/decision/en-tenaris-s-a-and-talta-trading-e-marketing-sociedade-unipessoal-lda-v-bolivarian-republic-of-venezuela-ii-memorandum-opinion-of-the-united-states-district-court-for-the-district-of-columbia-wednesday-24th-february-2021</a>	24-Feb-21	ENF Granted
24.	ARB/13/36 <i>Eiser Infrastructure Limited and Energía Solar Luxembourg S.à r.l. v. Kingdom of Spain</i> Award of May 4, 2017	U.S. District Court for SD of NY Memo Opinion <a href="https://www.italaw.com/sites/default/files/case-documents/italaw9051.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw9051.pdf</a>	27-Jun-17	ENF Granted
		US District Court Order DC <a href="https://www.italaw.com/sites/default/files/case-documents/italaw11780.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw11780.pdf</a>	5-Aug-20	ENF (Stay lifted)
25.	ARB/13/11 <i>Valores Mundiales, S.L. and Consorcio Andino S.L. v. Bolivarian Republic of Venezuela</i> Award of July 25, 2017	US District Court DC Report and Recommendation <a href="https://jusmundi.com/en/document/pdf/decision/en-valores-mundiales-s-l-and-consorcio-andino-s-l-v-bolivarian-republic-of-venezuela-report-and-recommendation-of-the-united-states-district-court-for-the-district-of-columbia-wednesday-3rd-august-2022">https://jusmundi.com/en/document/pdf/decision/en-valores-mundiales-s-l-and-consorcio-andino-s-l-v-bolivarian-republic-of-venezuela-report-and-recommendation-of-the-united-states-district-court-for-the-district-of-columbia-wednesday-3rd-august-2022</a>	3-Aug-22	ENF Granted
		US District Court DC Memorandum Opinion <a href="https://jusmundi.com/en/document/pdf/decision/en-valores-mundiales-s-l-and-consorcio-andino-s-l-v-bolivarian-republic-of-venezuela-memorandum-opinion-monday-15th-may-2023">https://jusmundi.com/en/document/pdf/decision/en-valores-mundiales-s-l-and-consorcio-andino-s-l-v-bolivarian-republic-of-venezuela-memorandum-opinion-monday-15th-may-2023</a>	15-May-23	ENF Granted
26.	ARB/11/19 <i>Koch Minerals Sàrl and Koch Nitrogen International Sàrl v. Bolivarian Republic of Venezuela</i> Award of October 30, 2017	US District Court Memo Opinion and Order <a href="https://www.italaw.com/sites/default/files/case-documents/italaw16491.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw16491.pdf</a>	22-Feb-22	EXE Granted

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27.	<p style="text-align: center;">ARB/12/13</p> <p style="text-align: center;"><i>Saint-Gobain Performance Plastics Europe</i></p> <p style="text-align: center;">v.</p> <p style="text-align: center;"><i>Bolivarian Republic of Venezuela</i></p> <p style="text-align: center;">Award of November 30, 2017</p>	<p style="text-align: center;">US Court of Appeals DC Circuit</p> <p style="text-align: center;"><a href="https://www.italaw.com/sites/default/files/case-documents/italaw16444.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw16444.pdf</a></p>	25-Jan-22	<p style="text-align: center;">ENF Denied</p> <p style="text-align: center;">(lack of proper service; case remanded to district court for opportunity to effect service)</p>
		<p style="text-align: center;">US District Court for the District of Columbia Consent Judgment</p> <p style="text-align: center;"><a href="https://jsumundi.com/en/document/decision/en-saint-gobain-performance-plastics-europe-v-bolivarian-republic-of-venezuela-consent-judgment-of-the-united-states-district-court-for-the-district-of-columbia-wednesday-2nd-august-2023#decision_53312">https://jsumundi.com/en/document/decision/en-saint-gobain-performance-plastics-europe-v-bolivarian-republic-of-venezuela-consent-judgment-of-the-united-states-district-court-for-the-district-of-columbia-wednesday-2nd-august-2023#decision_53312</a></p>	02-Aug-23	<p style="text-align: center;">ENF Granted</p>
		<p style="text-align: center;">Order of the United States District Court for the District of Columbia</p> <p style="text-align: center;"><a href="https://jsumundi.com/en/document/decision/en-saint-gobain-performance-plastics-europe-v-bolivarian-republic-of-venezuela-order-of-the-united-states-district-court-for-the-district-of-columbia-thursday-31st-august-2023#decision_54263">https://jsumundi.com/en/document/decision/en-saint-gobain-performance-plastics-europe-v-bolivarian-republic-of-venezuela-order-of-the-united-states-district-court-for-the-district-of-columbia-thursday-31st-august-2023#decision_54263</a></p>	31-Aug-23	<p style="text-align: center;">ENF Granted in part</p> <p style="text-align: center;">(motion to register the judgment in another state (Delaware) granted; motion seeking order for attachment of assets denied due to timing)</p>
		<p style="text-align: center;">Memorandum Opinion of the United States District Court for the District of Delaware</p> <p style="text-align: center;"><a href="https://jsumundi.com/en/document/decision/en-saint-gobain-performance-plastics-europe-v-bolivarian-republic-of-venezuela-memorandum-opinion-of-the-united-states-district-court-for-the-district-of-delaware-wednesday-1st-november-2023#decision_55824">https://jsumundi.com/en/document/decision/en-saint-gobain-performance-plastics-europe-v-bolivarian-republic-of-venezuela-memorandum-opinion-of-the-united-states-district-court-for-the-district-of-delaware-wednesday-1st-november-2023#decision_55824</a></p>	01-Nov-23	<p style="text-align: center;">EXE Granted</p>

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28.	ARB/14/1 <i>Masdar Solar &amp; Wind Cooperatief U.A.</i> v. <i>Kingdom of Spain</i> Award of May 16, 2018	US District Court DC Memo Opinion <a href="https://www.italaw.com/sites/default/files/case-documents/italaw10826.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw10826.pdf</a>	18-Sep-19	ENF Stayed (annulment was pending)
29.	ARB/14/4 <i>Unión Fenosa Gas, S.A.</i> v. <i>Arab Republic of Egypt</i> Award of August 31, 2018	US District Court DC Memo Opinion <a href="https://www.italaw.com/sites/default/files/case-documents/italaw11693.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw11693.pdf</a>	4-Jun-20	ENF Stayed (annulment was pending)
30.	ARB/07/30 <i>ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V. and ConocoPhillips Gulf of Paria B.V.</i> v. <i>Bolivarian Republic of Venezuela</i> Award of March 8, 2019	US District Court DC Memo Opinion <a href="https://www.italaw.com/sites/default/files/case-documents/italaw170491.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw170491.pdf</a>	19-Aug-22	ENF Granted
31.	ARB/16/9 <i>Italba Corporation</i> v. <i>Oriental Republic of Uruguay</i> Award of March 22, 2019	US District Court SD of Florida Order <a href="https://www.italaw.com/sites/default/files/case-documents/italaw170390.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw170390.pdf</a>	8-Jun-22	ENF Granted

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32.	<p style="text-align: center;">ARB/14/11</p> <p style="text-align: center;"><i>NextEra Energy Global Holdings B.V. and NextEra Energy Spain Holdings B.V.</i></p> <p style="text-align: center;">v.</p> <p style="text-align: center;"><i>Kingdom of Spain</i></p> <p style="text-align: center;">Award of May 31, 2019</p>	<p style="text-align: center;">US District Court DC Memo Opinion</p> <p style="text-align: center;"><a href="https://www.italaw.com/sites/default/files/case-documents/italaw11841.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw11841.pdf</a></p>	30-Sep-20	ENF Stayed (annulment was pending)
		<p style="text-align: center;">US District Court DC Memo Opinion</p> <p style="text-align: center;"><a href="https://jusmundi.com/en/document/decision/pdf/en-nextera-energy-global-holdings-b-v-and-nextera-energy-spain-holdings-b-v-v-kingdom-of-spain-memorandum-opinion-of-the-united-states-district-court-for-the-district-of-columbia-wednesday-15th-february-2023#lvl_340225">https://jusmundi.com/en/document/decision/pdf/en-nextera-energy-global-holdings-b-v-and-nextera-energy-spain-holdings-b-v-v-kingdom-of-spain-memorandum-opinion-of-the-united-states-district-court-for-the-district-of-columbia-wednesday-15th-february-2023#lvl_340225</a></p>	15-Feb-23	Preliminary injunction granted
33.	<p style="text-align: center;">ARB/15/15</p> <p style="text-align: center;"><i>9REN Holding S.a.r.l</i></p> <p style="text-align: center;">v.</p> <p style="text-align: center;"><i>Kingdom of Spain</i></p> <p style="text-align: center;">Award of May 31, 2019</p>	<p style="text-align: center;">US District Court DC Memo Opinion</p> <p style="text-align: center;"><a href="https://www.italaw.com/sites/default/files/case-documents/italaw11837.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw11837.pdf</a></p>	30-Sep-20	ENF Stayed (annulment was pending)
		<p style="text-align: center;">US District Court DC Memo Opinion</p> <p style="text-align: center;"><a href="https://jusmundi.com/en/document/pdf/decision/en-9ren-holding-s-a-r-l-v-kingdom-of-spain-memorandum-opinion-of-the-united-states-district-court-for-the-district-of-columbia-wednesday-15th-february-2023">https://jusmundi.com/en/document/pdf/decision/en-9ren-holding-s-a-r-l-v-kingdom-of-spain-memorandum-opinion-of-the-united-states-district-court-for-the-district-of-columbia-wednesday-15th-february-2023</a></p>	15-Feb-23	Preliminary injunction granted
34.	<p style="text-align: center;">ARB/12/1</p> <p style="text-align: center;"><i>Tethyan Copper Company Pty Limited</i></p> <p style="text-align: center;">v.</p> <p style="text-align: center;"><i>Islamic Republic of Pakistan</i></p> <p style="text-align: center;">Award of July 12, 2019</p>	<p style="text-align: center;">US District Court DC Memo Opinion</p> <p style="text-align: center;"><a href="https://www.italaw.com/sites/default/files/case-documents/italaw170057.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw170057.pdf</a></p>	10-Mar-22	ENF Granted

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35.	ARB/15/20 <i>Cube Infrastructure Fund SICAV and others</i> v. <i>Kingdom of Spain</i> Award of June 26, 2019	US District Court DC Memo Opinion and Order <a href="https://jusmundi.com/en/document/pdf/decision/en-cube-infrastructure-fund-sicav-and-others-v-kingdom-of-spain-memorandum-opinion-and-order-of-the-united-states-district-court-for-the-district-of-columbia-monday-17th-may-2021">https://jusmundi.com/en/document/pdf/decision/en-cube-infrastructure-fund-sicav-and-others-v-kingdom-of-spain-memorandum-opinion-and-order-of-the-united-states-district-court-for-the-district-of-columbia-monday-17th-may-2021</a>	17-May-21	ENF Stayed (annulment was pending)
36.	ARB/14/12 <i>InfraRed Environmental Infrastructure GP Limited and others</i> v. <i>Kingdom of Spain</i> Award of August 2, 2019	US District Court DC Memo Opinion <a href="https://www.italaw.com/sites/default/files/case-documents/italaw170555.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw170555.pdf</a>	29-Jun-21	ENF Stayed (annulment was pending)
37.	ARB/08/6 <i>Perenco Ecuador Limited</i> v. <i>Republic of Ecuador</i> Award of September 27, 2019	US District Court for DC Memo Opinion <a href="https://files.lbr.cloud/public/2023-03/04519811259.pdf?VersionId=ZEYjh2Wfk9IbxGCH2W1w2jeDp0I2GQxP">https://files.lbr.cloud/public/2023-03/04519811259.pdf?VersionId=ZEYjh2Wfk9IbxGCH2W1w2jeDp0I2GQxP</a>	16-Mar-23	ENF Granted
38.	ARB/13/30 <i>RREEF Infrastructure (G.P.) Limited and RREEF Pan-European Infrastructure Two Lux S. à r.l. v. Kingdom of Spain</i> Award of December 11, 2019	US District Court DC Memo Opinion <a href="https://jusmundi.com/en/document/pdf/decision/en-rreef-infrastructure-g-p-limited-and-rreef-pan-european-infrastructure-two-lux-s-a-r-l-v-kingdom-of-spain-memorandum-opinion-of-the-united-states-district-court-for-the-district-of-columbia-wednesday-31st-march-2021">https://jusmundi.com/en/document/pdf/decision/en-rreef-infrastructure-g-p-limited-and-rreef-pan-european-infrastructure-two-lux-s-a-r-l-v-kingdom-of-spain-memorandum-opinion-of-the-united-states-district-court-for-the-district-of-columbia-wednesday-31st-march-2021</a>	31-Mar-21	ENF Stayed (annulment was pending)

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39.	ARB/10/23 - Resubmission <i>TECO Guatemala Holdings, LLC</i> v. <i>Republic of Guatemala</i> Award of May 13, 2020	US District Court DC Order and Final Judgment <a href="https://www.italaw.com/sites/default/files/case-documents/italaw12006.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw12006.pdf</a>	4-Nov-19	ENF Granted
40.	ARB/15/42 <i>Hydro Energy 1 S.à r.l. and Hydroxana Sweden AB</i> v. <i>Kingdom of Spain</i> Award of August 5, 2020	US District Court D.C. Memo Opinion <a href="https://www.italaw.com/sites/default/files/case-documents/italaw170401.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw170401.pdf</a>	28-Jun-22	ENF Stayed (annulment was pending)
41	ARB/14/34 <i>RWE Innogy GmbH and RWE Innogy Aersa S.A.U.</i> v. <i>Kingdom of Spain</i> Award of December 18, 2020	US District Court DC Order <a href="https://jusmundi.com/en/document/decision/en-rwe-innogy-gmbh-and-rwe-innogy-aersa-s-a-u-v-kingdom-of-spain-order-of-the-united-states-district-court-for-the-district-of-columbia-thursday-13th-april-2023#decision_48522">https://jusmundi.com/en/document/decision/en-rwe-innogy-gmbh-and-rwe-innogy-aersa-s-a-u-v-kingdom-of-spain-order-of-the-united-states-district-court-for-the-district-of-columbia-thursday-13th-april-2023#decision_48522</a>	13-Apr-2023	ENF Stayed (annulment was pending)
42.	ARB/17/22 <i>Big Sky Energy Corporation</i> v. <i>Republic of Kazakhstan</i> Award of November 24, 2021	US District Court Nevada Default Judgment <a href="https://jusmundi.com/en/document/pdf/decision/en-big-sky-energy-corporation-v-republic-of-kazakhstan-default-judgment-of-the-united-states-district-court-for-the-district-of-nevada-thursday-28th-july-2022">https://jusmundi.com/en/document/pdf/decision/en-big-sky-energy-corporation-v-republic-of-kazakhstan-default-judgment-of-the-united-states-district-court-for-the-district-of-nevada-thursday-28th-july-2022</a>	28-Jul-22	ENF Granted
<b>France</b> 43.	ARB/77/2	Tribunal de Grande Instance Decision (subscription needed) <a href="https://app.investorstatelawguide.com/DocumentView?rt=Wk21nmb-fNY=&amp;docid=egdyi8duBR4=">https://app.investorstatelawguide.com/DocumentView?rt=Wk21nmb-fNY=&amp;docid=egdyi8duBR4=</a>	23-Dec-80	ENF Granted

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	<i>S.A.R.L. Benvenuti &amp; Bonfant</i> v. <i>People's Republic of the Congo</i> Award of August 8, 1980	Paris Court of Appeal Decision <a href="https://jusmundi.com/en/document/decision/pdf/fr-s-a-r-l-benvenuti-bonfant-v-peoples-republic-of-the-congo-decision-de-la-cour-dappel-de-paris-friday-26th-june-1981#lvl_68651">https://jusmundi.com/en/document/decision/pdf/fr-s-a-r-l-benvenuti-bonfant-v-peoples-republic-of-the-congo-decision-de-la-cour-dappel-de-paris-friday-26th-june-1981#lvl_68651</a>	26-Jun-81	ENF Granted (Modified decision of 23-Dec-80)
		Court of Cassation (Supreme Court) Decision <a href="https://jusmundi.com/en/document/decision/pdf/fr-s-a-r-l-benvenuti-bonfant-v-peoples-republic-of-the-congo-france-decision-de-la-cour-de-cassation-chambre-civile-1-tuesday-21st-july-1987#lvl_48104">https://jusmundi.com/en/document/decision/pdf/fr-s-a-r-l-benvenuti-bonfant-v-peoples-republic-of-the-congo-france-decision-de-la-cour-de-cassation-chambre-civile-1-tuesday-21st-july-1987#lvl_48104</a>	21-Jul-87	EXE Denied
44.	ARB/82/1 <i>Société Ouest Africaine des Bétons Industriels v. Senegal</i> Award of February 25, 1988	Paris Court of Appeal Decision <a href="https://jusmundi.com/en/document/decision/pdf/fr-societe-ouest-africaine-des-betons-industriels-c-republique-du-senegal-decision-de-la-cour-dappel-de-paris-tuesday-5th-december-mala1989#lvl_68568">https://jusmundi.com/en/document/decision/pdf/fr-societe-ouest-africaine-des-betons-industriels-c-republique-du-senegal-decision-de-la-cour-dappel-de-paris-tuesday-5th-december-mala1989#lvl_68568</a>	5-Dec-89	ENF and EXE Denied
		Court of Cassation Decision <a href="https://jusmundi.com/en/document/decision/pdf/fr-societe-ouest-africaine-des-betons-industriels-v-senegal-france-decision-de-la-cour-de-cassation-chambre-civile-1-tuesday-11th-june-1991#lvl_48108">https://jusmundi.com/en/document/decision/pdf/fr-societe-ouest-africaine-des-betons-industriels-v-senegal-france-decision-de-la-cour-de-cassation-chambre-civile-1-tuesday-11th-june-1991#lvl_48108</a>	11-Jun-91	Annulled decision of 5-Dec-89, case remanded due to violation of ICSID Convention Articles 53 and 54
45.	ARB/10/4 <i>Antoine Abou Lahoud and Leila Bounafeh-Abou Lahoud</i> v. <i>Democratic Republic of the Congo</i> Award of February 7, 2014	Court of Cassation Decision <a href="https://www.italaw.com/sites/default/files/case-documents/italaw16445.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw16445.pdf</a>	7-Jul-21	EXE Denied
U.K. 46.	ARB/01/6 <i>AIG Capital Partners, Inc. and CJSC Tema Real Estate Company v. Republic of Kazakhstan</i> Award of October 7, 2003	English High Court of Justice Judgment (subscription required) <a href="https://app.investorstatelawguide.com/DocumentView?rt=Wk21nmb-fNY=&amp;docid=NDxw6Qz-AJE=">https://app.investorstatelawguide.com/DocumentView?rt=Wk21nmb-fNY=&amp;docid=NDxw6Qz-AJE=</a>	4-Jun-01	EXE Denied
47.	ARB/05/20	UK Supreme Court Judgment	19-Feb-20	ENF Granted

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	<i>Ioan Micula, Viorel Micula and others</i> v. <i>Romania</i>  Award of December 11, 2013	<a href="https://www.italaw.com/sites/default/files/case-documents/italaw11213.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw11213.pdf</a>		
48.	ARB/13/31  <i>Antin Infrastructure Services Luxembourg S.à.r.l. and Antin Energia Termosolar B.V.</i> v. <i>Kingdom of Spain</i>  Award of June 15, 2018	English High Court of Justice Judgment  <a href="https://jusmundi.com/fr/document/pdf/decision/en-infrastructure-services-luxembourg-s-a-r-l-and-energia-termosolar-b-v-formerly-antin-infrastructure-services-luxembourg-s-a-r-l-and-antin-energia-termosolar-b-v-v-kingdom-of-spain-approved-judgment-1-of-the-high-court-of-justice-of-england-and-wales-2023-ewhc-234-friday-27th-january-2023">https://jusmundi.com/fr/document/pdf/decision/en-infrastructure-services-luxembourg-s-a-r-l-and-energia-termosolar-b-v-formerly-antin-infrastructure-services-luxembourg-s-a-r-l-and-antin-energia-termosolar-b-v-v-kingdom-of-spain-approved-judgment-1-of-the-high-court-of-justice-of-england-and-wales-2023-ewhc-234-friday-27th-january-2023</a>	27-Jan-23	Rejected an application by the European Commission to intervene in proceedings for enforcement – the desirability test for the EC to intervene was not met
		English High Court of Justice Judgment  <a href="https://www.judiciary.uk/judgments/infrastructure-services-luxembourg-v-kingdom-of-spain/">https://www.judiciary.uk/judgments/infrastructure-services-luxembourg-v-kingdom-of-spain/</a>	24-May-23	ENF Granted
49.	ARB/14/4  <i>Unión Fenosa Gas, S.A.</i> v. <i>Arab Republic of Egypt</i>  Award of August 31, 2018	English High Court Judgment  <a href="https://www.italaw.com/sites/default/files/case-documents/italaw11691.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw11691.pdf</a>	30-Jun-20	Stay Denied
50.	ARB/08/6  <i>Perenco Ecuador Limited</i> v. <i>Republic of Ecuador</i>  Award of September 27, 2019	Enforcement sought and achieved in UK  <a href="https://jusmundi.com/en/document/pdf/other/en-perenco-ecuador-limited-v-republic-of-ecuador-perencos-press-release-on-the-registration-of-the-icsid-award-owed-to-it-by-the-republic-of-ecuador-in-the-singapore-high-court-and-the-high-court-of-england-and-wales-friday-26th-august-2022">https://jusmundi.com/en/document/pdf/other/en-perenco-ecuador-limited-v-republic-of-ecuador-perencos-press-release-on-the-registration-of-the-icsid-award-owed-to-it-by-the-republic-of-ecuador-in-the-singapore-high-court-and-the-high-court-of-england-and-wales-friday-26th-august-2022</a>	-	ENF Granted
51.	ARB/12/1  <i>Tethyan Copper Company Pty Limited</i>	British Virgin Islands High Court of Justice (Commercial Division)	25-May-21	ENF Denied (immunity from jurisdiction, lack of proper service, lack

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	v. <i>Islamic Republic of Pakistan</i> Award of July 12, 2019	<a href="https://www.eccourts.org/judgment/tethyan-copper-company-pty-limited-v-islamic-republic-of-pakistan-et-al-2">https://www.eccourts.org/judgment/tethyan-copper-company-pty-limited-v-islamic-republic-of-pakistan-et-al-2</a>		of evidence of <i>alter ego</i> )
52.	ARB/10/25 <i>Border Timbers Limited, Timber Products International (Private) Limited, and Hangani Development Co. (Private) Limited v. Republic of Zimbabwe</i> Award of July 28, 2015	England and Wales High Court (Commercial Court)  <a href="https://www.bailii.org/ew/cases/EWHC/Comm/2024/58.html">https://www.bailii.org/ew/cases/EWHC/Comm/2024/58.html</a>	19-January-24	ENF Granted
<b>Australia</b> 53.	ARB/10/4 <i>Antoine Abou Lahoud and Leila Bounafteh-Abou Lahoud v. Democratic Republic of the Congo</i> Award of February 7, 2014	Federal Court of Australia, New South Wales (NSW) Decision <a href="https://www.italaw.com/sites/default/files/case-documents/italaw9294.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw9294.pdf</a>	25-Jul-17	ENF Granted
54.	ARB/13/36 <i>Eiser Infrastructure Limited and Energía Solar Luxembourg S.à r.l. v. Kingdom of Spain</i> Award of May 4, 2017	Federal Court of Australia, NSW Decision <a href="https://www.italaw.com/sites/default/files/case-documents/italaw11276.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw11276.pdf</a>	24-Feb-20	ENF Granted
55.	ARB/13/31 <i>Antin Infrastructure Services Luxembourg S.à.r.l. and Antin Energia Termosolar B.V. v. Kingdom of Spain</i> Award of June 15, 2018	Federal Court of Australia NSW Judgment <a href="https://www.italaw.com/sites/default/files/case-documents/italaw10735.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw10735.pdf</a>	1-Aug-19	ENF Stayed (pending annulment procedure)
		Federal Court of Australia NSW Judgment <a href="https://www.italaw.com/sites/default/files/case-documents/italaw16542.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw16542.pdf</a>	24-Feb-20	ENF Granted

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		Federal Court of Australia NSW Judgment <a href="https://www.italaw.com/sites/default/files/case-documents/italaw16543.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw16543.pdf</a>	1-Feb-21	ENF Granted (form of recognition pending)
		Federal Court of Australia NSW Judgment <a href="https://www.italaw.com/sites/default/files/case-documents/italaw16545.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw16545.pdf</a>	25-Jun-21	ENF Granted
		Australia High Court NSW <a href="https://www.italaw.com/sites/default/files/case-documents/italaw16547.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw16547.pdf</a>	18-Mar-22	Special leave session to appeal ENF Granted
		Australia High Court NSW <a href="https://jusmundi.com/fr/document/pdf/decision/en-infrastructure-services-luxembourg-s-a-r-l-and-energia-termosolar-b-v-formerly-antin-infrastructure-services-luxembourg-s-a-r-l-and-antin-energia-termosolar-b-v-v-kingdom-of-spain-order-of-the-high-court-of-justice-of-australia-2023-hca-11-wednesday-12th-april-2023">https://jusmundi.com/fr/document/pdf/decision/en-infrastructure-services-luxembourg-s-a-r-l-and-energia-termosolar-b-v-formerly-antin-infrastructure-services-luxembourg-s-a-r-l-and-antin-energia-termosolar-b-v-v-kingdom-of-spain-order-of-the-high-court-of-justice-of-australia-2023-hca-11-wednesday-12th-april-2023</a>	12-Apr-23	ENF Granted (appeal dismissed)
<b>Netherlands</b> 56.	ARB/15/28 <i>Hydro S.r.l. and others</i> v. <i>Republic of Albania</i> Award of April 24, 2019	Hague District Court Judgment <a href="https://www.italaw.com/sites/default/files/case-documents/italaw12023.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw12023.pdf</a>	27-Jan-21	EXE Denied (sovereign immunity)
57.	ARB/17/33 <i>EcoDevelopment in Europe AB and EcoEnergy Africa AB</i> v. <i>United Republic of Tanzania</i> Award of April 24, 2019	District Court of Limburg Summary Judgment, Case No. C/03/310349 / KG ZA 22-395 <a href="https://jusmundi.com/en/document/decision/nl-ecodevelopment-in-europe-ab-and-ecoenergy-africa-ab-v-united-republic-of-tanzania-uitspraak-van-het-rechtbank-limburg-tuesday-8th-november-2022#decision_37538">https://jusmundi.com/en/document/decision/nl-ecodevelopment-in-europe-ab-and-ecoenergy-africa-ab-v-united-republic-of-tanzania-uitspraak-van-het-rechtbank-limburg-tuesday-8th-november-2022#decision_37538</a>	8-Nov-22	EXE Granted

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58.	ARB/11/25 <i>OI European Group B.V.</i> v. <i>Bolivarian Republic of Venezuela</i> Award of March 10, 2015	Hague District Court Judgment <a href="https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:RBDHA:2022:1602&amp;showbutton=true&amp;keyword=pdvsa">https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:RBDHA:2022:1602&amp;showbutton=true&amp;keyword=pdvsa</a>	16-Feb-22	EXE (alter ego)
		Hague Court of Appeals <a href="https://linkeddata.overheid.nl/front/portal/document-viewer?ext-id=ECLI:NL:GHDHA:2023:988">https://linkeddata.overheid.nl/front/portal/document-viewer?ext-id=ECLI:NL:GHDHA:2023:988</a>	30-May-2023	EXE (alter ego)
<b>Belgium</b> 59.	ARB/05/20 <i>Ioan Micula, Viorel Micula and others</i> v. <i>Romania</i> Award of December 11, 2013	Brussels Court of Appeal Judgment <a href="https://www.italaw.com/sites/default/files/case-documents/italaw10446.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw10446.pdf</a>	13-Mar-19	ENF Stayed
60.	ARB/15/28 <i>Hydro S.r.l. and others</i> v. <i>Republic of Albania</i> Award of April 24, 2019	Brussels Court of First Instance Judgment <a href="https://www.italaw.com/sites/default/files/case-documents/italaw170253.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw170253.pdf</a>	23-Mar-22	EXE Granted
<b>Argentina</b> 61.	ARB/10/2 <i>Convial Callao S.A. and CCI - Compañía de Concesiones de Infraestructura S.A.</i> v. <i>Republic of Peru</i> Award of May 21, 2013	Buenos Aires Commercial Court of Appeals Decision, Juzgado Nacional en lo Comercial No. 3, Secretaria No. 6, Exp. No. 8030/2015 (unpublished)	8-Aug-15	ENF Granted
62.	ARB/07/26 <i>Urbaser S.A. and Consorcio de Aguas Bilbao Biskaia, Bilbao</i>	Federal Administrative Court <a href="https://jsumundi.com/en/document/decision/es-urbaser-s-a-and-consorcio-de-aguas-bilbao-biskaia-bilbao-biskaia-ur-">https://jsumundi.com/en/document/decision/es-urbaser-s-a-and-consorcio-de-aguas-bilbao-biskaia-bilbao-biskaia-ur-</a>	13-June-2023	ENF Granted

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	<i>Biskaia Ur Partzuergoa</i> v. <i>Argentine Republic</i> Award of December 8, 2016	<a href="#">partzuergoa-v-argentine-republic-sentencia-del-juzgado-contencioso-administrativo-federal-de-argentina-20642-2021-tuesday-13th-june-2023#decision_52290</a>		
<b>Luxembourg</b> 63.	ARB/05/20 <i>Ioan Micula, Viorel Micula and others</i> v. <i>Romania</i> Award of December 11, 2013	Luxembourg Court of Cassation Judgment <a href="https://www.italaw.com/sites/default/files/case-documents/italaw170526.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw170526.pdf</a>	14-Jul-22	ENF Denied (consent devoid of object)
<b>Singapore</b> 64.	ARB/08/6 <i>Perenco Ecuador Limited</i> v. <i>Republic of Ecuador</i> Award of September 27, 2019	Enforcement sought and achieved in Singapore (not public) See: <a href="https://jsumundi.com/en/document/pdf/other/en-perenco-ecuador-limited-v-republic-of-ecuador-perencos-press-release-on-the-registration-of-the-icsid-award-owed-to-it-by-the-republic-of-ecuador-in-the-singapore-high-court-and-the-high-court-of-england-and-wales-friday-26th-august-2022">https://jsumundi.com/en/document/pdf/other/en-perenco-ecuador-limited-v-republic-of-ecuador-perencos-press-release-on-the-registration-of-the-icsid-award-owed-to-it-by-the-republic-of-ecuador-in-the-singapore-high-court-and-the-high-court-of-england-and-wales-friday-26th-august-2022</a>	-	ENF Granted
65.	ARB/11/25 <i>OI European Group B.V.</i> v. <i>Bolivarian Republic of Venezuela</i> Award of March 10, 2015	Singapore High Court (not public) <a href="https://globalarbitrationreview.com/article/venezuelan-state-entity-dodges-icsid-enforcement-in-singapore">https://globalarbitrationreview.com/article/venezuelan-state-entity-dodges-icsid-enforcement-in-singapore</a>	23-May-22	ENF and EXE Denied (lack of link to Respondent)
<b>Ukraine</b> 66.	ARB/08/8 <i>Inmaris Perestroika v. Ukraine</i> Award of March 1, 2012	Pecherskyi District Court of Kyiv City <a href="https://jsumundi.com/fr/document/decision/uk-inmaris-perestroika-sailing-maritime-services-gmbh-and-others-v-ukraine-ukhvala-pecherskogo-raionnogo-sudu-m-kiieva-2-k-14-12-wednesday-26th-september-2012#decision_51088">https://jsumundi.com/fr/document/decision/uk-inmaris-perestroika-sailing-maritime-services-gmbh-and-others-v-ukraine-ukhvala-pecherskogo-raionnogo-sudu-m-kiieva-2-k-14-12-wednesday-26th-september-2012#decision_51088</a>	26-Sep-12	ENF Granted
67.	ARB/08/11 <i>Bosh International, Inc. and B&amp;P, LTD Foreign Investments Enterprise</i>	Ukraine Supreme Court Decision, Case No. 760/11060/15 <a href="https://verdictum.ligazakon.net/document/67891023">https://verdictum.ligazakon.net/document/67891023</a>	18-Jul-17	ENF Granted

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	<p style="text-align: center;">v.  <i>Ukraine</i>  Award of October 25, 2012</p>	<p style="text-align: center;">Kyiv Administrative Court No. 826/13973/17  <a href="https://zakononline.com.ua/court-decisions/show/80383469">https://zakononline.com.ua/court-decisions/show/80383469</a></p>	<p style="text-align: center;">18-Feb-19</p>	<p style="text-align: center;">EXE Granted</p>
68.	<p style="text-align: center;">ARB/14/9  <i>City-State N.V., Praktyka Asset Management Company LLC, Crystal-Invest LLC and Prodiz LLC</i>  v.  <i>Ukraine</i>  Award of July 26, 2018</p>	<p style="text-align: center;">Kyiv Court of Appeals Decision, Case No. 824 /138/19, Proceedings No. 2-k/824/75/2019  <a href="https://jusmundi.com/en/document/decision/uk-city-state-n-v-praktyka-asset-management-company-llc-crystal-invest-llc-and-prodiz-llc-v-ukraine-rishennia-apeliatsiinogo-sudu-kiieva-monday-16th-september-2019#decision_46423">https://jusmundi.com/en/document/decision/uk-city-state-n-v-praktyka-asset-management-company-llc-crystal-invest-llc-and-prodiz-llc-v-ukraine-rishennia-apeliatsiinogo-sudu-kiieva-monday-16th-september-2019#decision_46423</a></p>	<p style="text-align: center;">16-Sep-19</p>	<p style="text-align: center;">ENF Granted</p>
69.	<p style="text-align: center;">ARB/14/17  <i>Krederi Ltd. V. Ukraine</i>  Award of July 2, 2018</p>	<p style="text-align: center;">Kyiv Court of Appeals Decision, Case No. 824-136-19  <a href="https://jusmundi.com/en/document/decision/uk-krederi-ltd-v-ukraine-ukhvala-kiyvskogo-apeliatsiinogo-sudu-824-136-19-wednesday-23rd-october-2019#decision_48370">https://jusmundi.com/en/document/decision/uk-krederi-ltd-v-ukraine-ukhvala-kiyvskogo-apeliatsiinogo-sudu-824-136-19-wednesday-23rd-october-2019#decision_48370</a></p>	<p style="text-align: center;">23-Oct-19</p>	<p style="text-align: center;">ENF Granted</p>
70.	<p style="text-align: center;">ARB/17/5  <i>Eugene Kazmin</i>  v.  <i>Republic of Latvia</i>  Award of March 24, 2021</p>	<p style="text-align: center;">Ukraine Supreme Court Decision, Case No. 824/182/21, No. 61-18657AB21  <a href="https://reyestr.court.gov.ua/Review/106141305">https://reyestr.court.gov.ua/Review/106141305</a></p>	<p style="text-align: center;">2-Sep-22</p>	<p style="text-align: center;">ENF Granted</p>
<p style="text-align: center;"><b>Italy</b>  71.</p>	<p style="text-align: center;">ARB/12/25  <i>Marco Gavazzi and Stefano Gavazzi</i>  v.  <i>Romania</i>  Award of April 18, 2017</p>	<p style="text-align: center;">Court of Appeals of Milan Decree, (First Civil Law Section) (R.g. No. 2513/18 of 25/09/2018)   (not public)</p>	<p style="text-align: center;">21-Sep-18</p>	<p style="text-align: center;">ENF and EXE  Granted</p>

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<b>Malaysia</b> 72.	ARB/10/15 <i>Bernhard von Pezold and others v. Republic of Zimbabwe</i> Award of July 28, 2015	Kuala Lumpur High Court Decision, Originating Summons No: WA-24NCC-322-07/2021 <a href="https://www.italaw.com/sites/default/files/case-documents/italaw171156_0.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw171156_0.pdf</a> <a href="https://globalarbitrationreview.com/article/malaysian-court-recognises-icsid-award-against-zimbabwe">https://globalarbitrationreview.com/article/malaysian-court-recognises-icsid-award-against-zimbabwe</a>	17-Feb-23	ENF Granted
		Kuala Lumpur High Court Decision, Originating Summons No: WA-24NCC-322-07/2021 <a href="https://files.lbr.cloud/public/2024-02/wa-24ncc-322-07-2021%20%28goj%29%20zimbabwe%20%2B%40001.pdf?VersionId=ybEtGQC5DbVeW2sv.Ygtw0jKehy5WWoq">https://files.lbr.cloud/public/2024-02/wa-24ncc-322-07-2021%20%28goj%29%20zimbabwe%20%2B%40001.pdf?VersionId=ybEtGQC5DbVeW2sv.Ygtw0jKehy5WWoq</a>	27-Nov-2023	ENF Granted
<b>New Zealand</b> 73.	ARB/14/20 <i>Sodexo Pass International SAS v. Hungary</i> Award of January 28, 2019	New Zealand High Court Wellington Judgment <a href="https://www.italaw.com/sites/default/files/case-documents/italaw16454.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw16454.pdf</a>	10-Dec-21	Protest to jurisdiction denied; jurisdiction to recognize Award upheld
<b>Portugal</b> 74.	ARB/11/25 <i>OI European Group B.V. v. Bolivarian Republic of Venezuela</i> Award of March 10, 2015	Portuguese Supreme Court of Justice <a href="https://www.kluwerarbitration.com/document/KLI-KA-ICCA-YB-XLVIII-120-n">https://www.kluwerarbitration.com/document/KLI-KA-ICCA-YB-XLVIII-120-n</a>	13-Jul-20	ENF Granted
<b>Romania</b> 75.	ARB/12/25 <i>Marco Gavazzi and Stefano Gavazzi v. Romania</i> Award of April 18, 2017	Bucharest Municipal Court Order, Case No. 26727/3/2018 (not public)	24-Sep-18	ENF and EXE Granted
76.	ARB/05/20 <i>Ioan Micula, Viorel Micula, S.C. European Food S.A, S.C. Starmill S.R.L. and S.C. Multipack S.R.L. v. Romania [I]</i>	Bucharest Court of Appeal, Case No. 1483/2019 <a href="https://www.rejust.ro/juris/e92853d6">https://www.rejust.ro/juris/e92853d6</a>	21-Oct-2019	ENF and EXE Granted

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	Award of December 11, 2013			
<b>Spain</b> 77.	ARB/98/2 <i>Victor Pey Casado and President Allende Foundation</i> v. <i>Republic of Chile</i> Award of May 8, 2008	Madrid Court of First Instance Resolution <a href="https://www.italaw.com/sites/default/files/case-documents/italaw1338.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw1338.pdf</a>	6-Mar-13	ENF Granted
		Madrid Court of First Instance Decree <a href="https://www.italaw.com/sites/default/files/case-documents/italaw1337.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw1337.pdf</a>	6-Mar-13	EXE Granted
78.	ARB/98/2 - Resubmission <i>Victor Pey Casado and President Allende Foundation</i> v. <i>Republic of Chile</i> Award of September 13, 2016	Madrid Court of First Instance Order <a href="https://www.italaw.com/sites/default/files/case-documents/italaw170335.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw170335.pdf</a>	7-Dec-21	ENF Granted
		Madrid Court of First Instance Order (II) <a href="https://www.italaw.com/sites/default/files/case-documents/italaw170524.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw170524.pdf</a>	9-Mar-22	EXE Granted
<b>Sweden</b> 79.	ARB/05/20 <i>Ioan Micula, Viorel Micula and others</i> v. <i>Romania</i> Award of December 11, 2013	Nacka District Court Stockholm Decision <a href="https://www.italaw.com/sites/default/files/case-documents/italaw10319.pdf">https://www.italaw.com/sites/default/files/case-documents/italaw10319.pdf</a>	23-Jan-19	ENF Denied (incompatibility with EU law)
<b>Türkiye</b> 80.	ARB/10/24 <i>İçkale İnşaat Limited Şirketi</i> v. <i>Turkmenistan</i> Award of March 8, 2016	Türkiye Court of Cassation Decision, Yargıtay, 12 <sup>th</sup> Civil Division, Case No. 2021/875, Decision No. 2021/4586 (not public)	28-Apr-21	ENF Denied (lack of implementing procedure)
<b>Switzerland</b>	ARB/15/36	Swiss Federal Supreme Court	17-Mar-23	

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81.	<i>OperaFund Eco-Invest SICAV PLC and Schwab Holding AG v. Kingdom of Spain</i> Award of September 6, 2019	<a href="https://www.bger.ch/ext/eurospider/live/de/php/aza/http/index.php?highlight_docid=aza://17-03-2023-5A_406-2022&amp;lang=de&amp;zoom=&amp;type=show_document">https://www.bger.ch/ext/eurospider/live/de/php/aza/http/index.php?highlight_docid=aza://17-03-2023-5A_406-2022&amp;lang=de&amp;zoom=&amp;type=show_document</a>		EXE Denied (lack of connection to Switzerland)
<b>Zimbabwe</b> 82.	ARB/10/15 <i>Bernhard von Pezold and others v. Republic of Zimbabwe</i> Award of July 28, 2015	High Court of Zimbabwe <a href="https://jusmundi.com/en/document/decision/en-bernhard-von-pezold-and-others-v-republic-of-zimbabwe-consent-order-of-the-high-court-of-zimbabwe-wednesday-1st-march-2023">https://jusmundi.com/en/document/decision/en-bernhard-von-pezold-and-others-v-republic-of-zimbabwe-consent-order-of-the-high-court-of-zimbabwe-wednesday-1st-march-2023</a>	1-Mar-23	ENF Granted
<b>Germany</b> 83.	ARB/14/34 <i>RWE Innogy GmbH and RWE Innogy Aersa S.A.U. v. Kingdom of Spain</i> Award of December 18, 2020	Essen Court Judgment <a href="https://files.lbr.cloud/public/2024-04/Spain%20v%20RWE%20-%20Essen%20judgment_0.pdf?VersionId=wS29M_hJ7fbQsEVsZH1a9qY8mlgbgyzc">https://files.lbr.cloud/public/2024-04/Spain%20v%20RWE%20-%20Essen%20judgment_0.pdf?VersionId=wS29M_hJ7fbQsEVsZH1a9qY8mlgbgyzc</a>	12-Apr-24	Anti-injunction suit declared inadmissible

Parties must comply with their obligations under the Award	
1.1.	<p>“Although Spain correctly submitted that the main reason for the inclusion of Art 54 was to ensure that Contracting States were able to obtain effective remedies against private investors, this was to ensure parity with the obligations of the Contracting States because it was otherwise assumed that participating nation states would abide by arbitral outcomes. This assumption is most explicit in the provision in Art 53(1), restating customary international law that each party, that is each Contracting State, ‘shall abide by and comply with the terms of the award’, except to the extent to which the terms are stayed. In that sense, Art 53 is the ‘primary provision’.”</p> <p>Australia High Court NSW Judgement dated 12 April 2023 concerning the Award dated June 15, 2018, in <i>Antin Infrastructure Services Luxembourg S.à.r.l. and Antin Energia Termosolar B.V. v. Kingdom of Spain</i> (ICSID Case No. ARB/13/31), para 71.</p>
ICSID Member States have an obligation to recognize and enforce an Award	
2.1.	<p>“[R]eading the treaty as a whole, leaves little doubt that the signatories to the Convention intended that awards made pursuant to its provisions be given full faith and credit in their respective jurisdictions subject to such rights as are reserved by signatories thereunder.”</p> <p>Second Order and Judgment of the US District Court for Southern District of New York dated 12 December 1986, concerning the Award dated 31 March 1986, in <i>Liberian Eastern Timber Corporation v. Republic of Liberia</i> (ICSID Case No. ARB/83/2), para. 9.</p>
2.2.	<p>“[I]t is New Zealand’s international obligation to recognize the award [...] Under art 54(1), which has legal force in New Zealand in accordance with s 4(2) of the ICSID Act, the High Court ‘shall recognize an award rendered pursuant to [the ICSID] Convention’. New Zealand has promised that it will do so [...]”</p> <p>New Zealand High Court Wellington Judgment CIV-2020-485-734 dated 10 December 2021 concerning the Award dated 28 January 2019 in <i>Sodexo Pass International SAS v. Hungary</i> (ICSID Case No. ARB/14/20), para. 55.</p>
2.3.	<p>“The New Zealand Court will still generally be slow to assert jurisdiction for conduct occurring wholly outside New Zealand. But it is different when New Zealand has an international obligation to do so. The Rules need to be interpreted and applied with that important gloss. ... Under the terms of art 54(3) of the ICSID Convention New Zealand’s domestic laws must be applied to such matters of execution, including in relation to state immunity under art 55. So jurisdiction must be assumed for that purpose.”</p> <p>New Zealand High Court Wellington Judgment CIV-2020-485-734 dated 10 December 2021 concerning the Award dated 28 January 2019 in <i>Sodexo Pass International SAS v. Hungary</i> (ICSID Case No. ARB/14/20), para. 57.</p>

2.4.	<p>“It is clear that the Court is mandated under the Convention on the Settlement of Investment Disputes Act 1966 (Revised 1989) (‘ICSID Act’) to recognize the award .... Section 3 of the ICSID Act provides that an award made by an arbitrator under the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (‘the ICSID Convention’) is binding and may be enforced as a decree judgment or order of the High Court. The ICSID Convention itself, which is the Schedule to the ICSID Act, also specifies that the award shall be binding on the parties, and each contracting state shall recognize and enforce the pecuniary obligations imposed by the award within its territories as if it were a final judgment of a Court in that state.”</p> <p>Kuala Lumpur High Court Decision dated 17 February 2023, Originating Summons No. WA-24NCC-322-07/2021, concerning the Award dated 28 July 2015 in <i>Bernhard von Pezold and others v. Republic of Zimbabwe</i> (ICSID Case No. ARB/10/15), para 5.</p>
2.5.	<p>“However, with the greatest of respect to the CJEU, it is not the ultimate arbiter under the ICSID Convention, nor under the ECT, and the difficulties in which Spain finds itself does not assist it here, given the United Kingdom’s own treaty obligations under the ICSID Convention, which are owed to all signatories of the ICSID Convention. The domestic mechanism established under the 1966 Act was enacted specifically in order to comply with these.”</p> <p>English High Court of Justice Judgment dated 24 May 2023, concerning the Award dated 15 June 2018 in <i>Antin Infrastructure Services Luxembourg S.à.r.l. and Antin Energia Termosolar B.V. v. Kingdom of Spain</i> (ICSID Case No. ARB/13/31), para. 80.</p>
2.6.	<p>“Spain acceded to [the ICSID Convention] freely and so did the United Kingdom. Spain – or any other Member State in my judgment – cannot rely upon the <i>Achmea</i> and/or the <i>Komstroy</i> cases to dilute the United Kingdom’s own multilateral international treaty obligations. It certainly cannot rely upon those cases to interpret the 1966 Act differently to what its clear terms require.”</p> <p>English High Court of Justice Judgment dated 24 May 2023, concerning the Award dated 15 June 2018 in <i>Antin Infrastructure Services Luxembourg S.à.r.l. and Antin Energia Termosolar B.V. v. Kingdom of Spain</i> (ICSID Case No. ARB/13/31), para. 86.</p>
2.7.	<p>“Astfel, particularitatea hotărârii arbitrale pronunțate de ICSID este dată de calitatea Statului ##### de parte a Convenției pentru reglementarea diferendelor relative la investiții între state și persoane ale altor state, încheiată la Washington la 18.03.1965, convenție care, în art. 54 alin. 1 prevede că : „Fiecare stat contractant recunoaște orice sentință dată în cadrul Convenției ca fiind obligatorie și asigură executarea pe teritoriul său a obligațiilor pecuniare pe care sentința le impune ca și când ar fi vorba de o judecată definitivă a unui tribunal funcționând pe teritoriul așa zisului stat”. În temeiul acestui text, ##### s-a obligat să respecte și să pună în executare deciziile pronunțate de CIRDI la fel ca deciziile pronunțate de propriile instanțe de judecată și să nu le supună niciunui control sau apel de către nicio altă instituție a sa”.</p> <p><b>Unofficial translation:</b> “Thus, the particularity of the arbitral award pronounced by ICSID is given by the quality of State ##### as a party to the Convention for the settlement of investment disputes between states and persons of other states, concluded in Washington on 18.03.1965, convention which, in art. 54 para. 1 provides that: ‘Each contracting state recognizes any sentence</p>

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	<p>given under the Convention as binding and ensures the execution on its territory of the pecuniary obligations that the sentence imposes as if it were a final judgment of a court operating on the territory of the so-called state'. Based on this text, ##### undertook to respect and enforce the decisions issued by ICSID as well as the decisions issued by its own courts and not subject them to any control or appeal by any other institution”</p> <p>4th Civil Court of Bucharest Appellate Court Order No. 1483A dated 21 October 2019 in Case File N. 15755/3/2014, concerning the Award dated 11 December 2013 in <i>Ioan Micula, Viorel Micula, S.C. European Food S.A, S.C. Starmill S.R.L. and S.C. Multipack S.R.L. v. Romania [I]</i> (ICSID Case No. ARB/05/20).</p>
2.8	<p>“The first sentence of Article 54(1) is a composite provision comprising two distinct obligations. The first is an obligation on each Contracting State to recognise as binding an award rendered pursuant to the Convention. As a matter of language, this applies to the entirety of the award and involves acceptance of both the binding character of the award and its preclusive effects as regards, for example, res judicata and issue estoppel. The second is an obligation on Contracting States - limited to pecuniary obligations only - to enforce such pecuniary obligations in the award as if they were contained in a final judgment of a national court.”</p> <p>High Court of Justice King's Bench Division, Business and Property Courts of England and Wales, Commercial Court, Mrs Justice Dias Dbe, Case No. CL-2021-000541, dated 19 January 2024, para 35, concerning the Award dated 28 July 2015 in <i>Borders Timbers Limited and Hangani Development Co. (Private) Limited v. Zimbabwe</i> (ICSID Case No. ARB/10/25)</p>
2.9	<p>“The Plaintiffs have exhibited certified copies of the Award and the Decision on Annulment in accordance with Article 54(2). It is clear that this Court, as the designated “competent court”, is mandated to recognise the Award and the Decision on Annulment by virtue of the ICSID Act implementing the ICSID Convention in Malaysia.”</p> <p>High Court of Malaya at Kuala Lumpur in the Federal Territory of Kuala Lumpur, Kuala Lumpur High Court (NCC1) (Commercial Division), Judge Atan Mustaffa Yussof Ahmad, Originating Summons No: WA-24NCC-322-07/2021, dated 27 November 2023 concerning the Award dated 28 July 2015 and Decision on Annulment dated 21 November 2015 in <i>Bernhard von Pezold and others v. Republic of Zimbabwe</i> (ICSID Case No. ARB/10/15), para 29.</p>
<p><b>Enforcement may not be denied based on the absence of a domestic procedural framework that implements the ICSID Convention enforcement provisions</b></p>	
3.1.	<p>“The absence of a ‘procedural framework’ does not preclude the Court from exercising substantive powers conferred by statute. The Court is permitted to adapt its existing procedures to whatever extent is necessary to exercise the substantive jurisdiction conferred upon it by statute. Regard must be given to the Court’s power to administer justice which is a power of substance, not form.”</p>

	Kuala Lumpur High Court Decision dated 17 February 2023, Originating Summons No. WA-24NCC-322-07/2021, concerning the Award dated 28 July 2015 in <i>Bernhard von Pezold and others v. Republic of Zimbabwe</i> (ICSID Case No. ARB/10/15), para 31.
3.2.	<p>“The Court allows the Plaintiffs’ application for recognition of the Award and the Decision on Annulment as not doing so based on the lack of a specified procedural framework would undermine the substantive authority of the Court under the ICSID Act and Malaysia’s treaty obligations as a contracting state to the ICSID Convention”</p> <p>Kuala Lumpur High Court Decision dated 17 February 2023, Originating Summons No. WA-24NCC-322-07/2021, concerning the Award dated 28 July 2015 in <i>Bernhard von Pezold and others v. Republic of Zimbabwe</i> (ICSID Case No. ARB/10/15), para 36.</p>
3.3	<p>“The lack of a procedural framework in the ICSID Act does not preclude this Court’s substantive jurisdiction to allow the Originating Summonses seeking recognition of the Award and the Decision on Annulment.”</p> <p>High Court of Malaya at Kuala Lumpur in the Federal Territory of Kuala Lumpur, Kuala Lumpur High Court (NCC1) (Commercial Division), Judge Atan Mustaffa Yussof Ahmad, Originating Summons No: WA-24NCC-322-07/2021, dated 27 November 2023 concerning the Award dated 28 July 2015 and Decision on Annulment dated 21 November 2015 in <i>Bernhard von Pezold and others v. Republic of Zimbabwe</i> (ICSID Case No. ARB/10/15), para 58.</p>
<b>An Award can be recognized and enforced in any ICSID Member State</b>	
4.1.	<p>“[T]he purpose of investment treaties is to promote foreign investment, and the recognition and enforcement mechanism under the ICSID Convention is a core feature. If the award could only be enforced in the respondent state, this would nullify the purpose of investment treaties. There is no language in [article 11(3) of the Germany-Zimbabwe BIT] that prohibits the enforcement of the award outside of the respondent state.”</p> <p>Kuala Lumpur High Court Decision dated 17 February 2023, Originating Summons No. WA-24NCC-322-07/2021, concerning the Award dated 28 July 2015 in <i>Bernhard von Pezold and others v. Republic of Zimbabwe</i> (ICSID Case No. ARB/10/15), para. 43.</p>
4.2.	<p>“The absence of any reservation made by the Defendant to restrict the terms of the ICSID Convention is significant, as it means that the Convention can be enforced in any ICSID Contracting State. This is reinforced by Article 70 of the Convention, which specifies that the Convention applies to all territories for which a Contracting State is responsible, unless they have excluded them.”</p> <p>Kuala Lumpur High Court Decision dated 17 February 2023, Originating Summons No. WA-24NCC-322-07/2021, concerning the Award dated 28 July 2015 in <i>Bernhard von Pezold and others v. Republic of Zimbabwe</i> (ICSID Case No. ARB/10/15), para 45.</p>

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4.3.	<p>“En otros términos, cuando el Estado requerido frente al CIADI no cumple voluntariamente y de buena fe la obligación emergente de un laudo, la parte vencedora tiene habilitada la ejecución judicial de ese laudo en cualquier Estado parte.”</p> <p>Argentinian Federal Administrative Court Judgment dated 13 June 2023 concerning the Award dated 8 December 2016 in <i>Urbaser S.A. and Consorcio de Aguas Bilbao Biskaia, Bilbao Biskaia Ur Partzuergoa v. Argentine Republic</i> (ICSID Case No. ARB/07/26), p. 27.</p>
4.4.	<p>“[...]ante el incumplimiento del Estado, los inversores tienen la facultad de que le permita determinar “elección de foro” la mejor posibilidad de lograr una ejecución forzosa sobre los bienes de la demandada, aun fuera del territorio del Estado contratante contra quien se pretende ejecutar el laudo”</p> <p>Argentinian Federal Administrative Court Judgment dated 13 June 2023 concerning the Award dated 8 December 2016 in <i>Urbaser S.A. and Consorcio de Aguas Bilbao Biskaia, Bilbao Biskaia Ur Partzuergoa v. Argentine Republic</i> (ICSID Case No. ARB/07/26), p. 287.</p>
4.5	<p>“Therefore, when acceding to the ICSID framework under this Convention, the Defendant agreed to recognition of ICSID Awards and annulment decisions by domestic courts in all Contracting States, including Malaysia.”</p> <p>High Court of Malaya at Kuala Lumpur in the Federal Territory of Kuala Lumpur, Kuala Lumpur High Court (NCC1) (Commercial Division), Judge Atan Mustaffa Yussof Ahmad, Originating Summons No: WA-24NCC-322-07/2021, dated 27 November 2023 concerning the Award dated 28 July 2015 and Decision on Annulment dated 21 November 2015 in <i>Bernhard von Pezold and others v. Republic of Zimbabwe</i> (ICSID Case No. ARB/10/15), para 42.</p>
<p><b>The procedure for recognition and enforcement of ICSID Awards is outside the regime for enforcement of arbitral awards governed by the New York Convention or domestic legislation – it is a simplified procedure</b></p>	
5.1.	<p>“The effect of [articles 53 and 54 of the ICSID Convention] is to take ICSID awards outside the normal regime for the enforcement of arbitral awards, including the New York Convention regime .... ‘the courts of Contract States are bound to recognise and enforce it in accordance with Art. 54(1)’”</p> <p>English High Court Judgment dated 30 June 2020 concerning the Award dated 31 August 2018 in <i>Unión Fenosa Gas, S.A. v. Arab Republic of Egypt</i> (ICSID Case No. ARB/14/4), para 66.</p>
5.2.	<p>“[L]a convention de Washington du 18 mars 1965 a institué, en ses articles 53 et 54, un régime autonome et simplifié de reconnaissance et d’exécution qui exclut celui des articles 1498 et suivants du nouveau Code de procédure civile et, en particulier, les voies de recours qui y sont prévues”</p>

	French Court of Cassation Judgement dated 11 June 1991 concerning the Award dated 25 February 1988 in <i>Société Ouest Africaine des Bétons Industriels v. Senegal</i> (ICSID Case No. ARB/82/1), para 5.
5.3.	<p>“[Requiring] an award creditor to bring a plenary lawsuit to recognize an ICSID award is ... deeply problematic. Venezuela’s construction would bring the FSIA into grave tension with the objectives of the ICSID Convention ... because the history and terms of the ICSID Convention unavoidably reveal that the contracting states to the ICSID Convention intended to put in place an expedited and automatic recognition procedure. They sought to depart from, not to double down on, the model of a contested recognition process used under the New York Convention.”</p> <p>US District Court of SD of NY Opinion and Order dated 13 February 2015 concerning the Award dated 9 October 2014 in <i>Venezuela Holdings B.V. and others v. Bolivarian Republic of Venezuela</i> (ICSID Case No. ARB/07/27), p. 43.</p>
5.4.	<p>“The recognition of the enforceability of ICSID arbitral awards follows a somewhat different regime from that prescribed for arbitral awards under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, both as to the jurisdiction for recognition and the scope of the court’s intervention.”</p> <p>Portuguese Supreme Court Decision concerning the Award dated 10 March 2015 in <i>OI European Group B.V. v. Bolivarian Republic of Venezuela</i> (ICSID Case No. ARB/11/25), translation in ICCA Yearbook 2023, para 20.</p>
5.5.	<p>“Entre los caracteres más salientes del sistema, destaca que sus laudos arbitrales quedan excluidos del procedimiento del exequatur. En el sub lite, ambas partes concuerdan en esta parcela.”</p> <p>Argentinian Federal Administrative Court Judgement dated 13 June 2023 concerning the Award dated 8 December 2016 in <i>Urbaser S.A. and Consorcio de Aguas Bilbao Biskaia, Bilbao Biskaia Ur Partzuergoa v. Argentine Republic</i> (ICSID Case No. ARB/07/26), p. 26.</p>
5.6.	<p>“Așadar, art. 54 alin. 2 din Convenție stipulează o formă simplificată a recunoașterii hotărârii arbitrale, concluzia ce se desprinde din interpretarea acestor prevederi ale convenției fiind că părțile au exclus parcurgerea procedurii recunoașterii arbitrale prevăzută de legislația națională, nefiind necesare alte formalități prealabile executării, precum cele prevăzute de Cartea a VII a, Titlul IV, capitolul II din Noul Cod de procedură civilă invocate de apelant. Cum tratatele internaționale leagă statele semnatare, pentru care convenția are putere de lege, susținerea apelantului privind aplicarea dreptului național nu are suport legal. Pentru recunoaștere, instanța de judecată națională este limitată la verificarea autenticității hotărârii CIRDI. Pentru punerea în executare, instanța de judecată națională va aplica mijloacele și metodele de executare disponibile potrivit dreptului procedural național, respectiv procedura încuviințării executării silite reglementate de codul de procedură civilă.”</p> <p><b>Unofficial translation:</b> “Therefore, art. 54 para. 2 of the Convention stipulates a simplified form of recognition of the arbitral award, the conclusion that emerges from the interpretation of these provisions of the convention is that the parties have excluded the procedure of arbitral recognition provided for by national legislation, no other formalities prior to execution being necessary, such</p>

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	<p>as those provided for by Book VII a, Title IV, Chapter II of the New Code of Civil Procedure invoked by the appellant. As international treaties bind the signatory states, for which the convention has the force of law, the appellant's claim regarding the application of national law has no legal support. For recognition, the national court is limited to verifying the authenticity of the CIRDI decision. For enforcement, the national court will apply the means and methods of enforcement available according to national procedural law, respectively the procedure for approving forced enforcement regulated by the code of civil procedure.”</p> <p>4th Civil Court of Bucharest Appellate Court Order No. 1483A dated 21 October 2019 in Case File N. 15755/3/2014, concerning the Award dated 11 December 2013 in <i>Ioan Micula, Viorel Micula, S.C. European Food S.A, S.C. Starmill S.R.L. and S.C. Multipack S.R.L. v. Romania</i> [I] (ICSID Case No. ARB/05/20).</p>
<p><b>Domestic Courts have no authority to review the jurisdiction or merits of an Award and are limited to ascertaining its authenticity</b></p>	
6.1.	<p>“[T]he domestic courts of member countries lack the authority to review the merits of a decision by an ICSID tribunal”</p> <p><i>US District Court for DC Memo Opinion dated 11 September 2019 concerning the Award dated 11 December 2013 in Ioan Micula, Viorel Micula, S.C. European Food S.A, S.C. Starmill S.R.L. and S.C. Multipack S.R.L. v. Romania</i> [I] (ICSID Case No. ARB/05/20), p. 3.</p>
6.2.	<p>“Section 1650a mandates that the pecuniary obligations of a final ICSID award ‘shall be given the same full faith and credit as if the award were a final judgment of a court of general jurisdiction of one of the several States.’ 22 U.S.C. § 1650a. And ‘[r]egarding judgments [of another state] ... , the full faith and credit obligation is exacting.’ <i>Baker ex rel. Thomas v. Gen. Motors Corp.</i>, 522 U.S. 222, 233 (1998). A final judgment of one state—or, for that matter, from ICSID—‘if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land.’ <i>Id.</i>4 And the Award, including the annulment, constitutes a final decision of the tribunal on the question of Venezuela’s pecuniary obligations to Tidewater for the expropriating conduct. See ICSID Convention art. 53. Thus, the language of § 1650a appears to envision no role for this Court beyond ensuring its own jurisdiction over this action and the validity of Tidewater’s entitlement to any unpaid claims under the Award.”</p> <p>US District Court for DC Memo Opinion dated 17 December 2018 concerning the Award dated 13 March 2015 in <i>Tidewater Investment SRL and Tidewater Caribe, C.A. v. Bolivarian Republic of Venezuela</i> (ARB/10/5), pp. 11-12.</p>
6.3.	<p>“The contention that <i>some portion</i> of the Award violates EU law goes to the merits of the ICSID panel’s determination. That argument must be taken to the ICSID arbitral panel, and is not a valid ground on which to reject converting the Award in full to a judgment.”</p>

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	<p>US District Court for DC Memo Opinion dated 11 September 2019 concerning the Award dated 11 December 2013 in <i>Ioan Micula, Viorel Micula, S.C. European Food S.A, S.C. Starmill S.R.L. and S.C. Multipack S.R.L. v. Romania [I]</i> (ICSID Case No. ARB/05/20), p. 30.</p>
6.4.	<p>“Guatemala’s attempt to revisit issues decided by the ICSID tribunal and <i>ad hoc</i> committee is at odds with the purpose of the treaty and the clear terms of the implementing legislation.”</p> <p>US District Court DC Order and Final Judgment dated 4 November 2019 concerning the Award dated 13 May 2020 in <i>TECO Guatemala Holdings, LLC v. Republic of Guatemala</i> (ICSID Case No. ARB/10/23), Resubmission, para. 103.</p>
6.5.	<p>“As long as the requirement of Article 54(2) of the ICSID Convention is satisfied, which the Plaintiffs have done by exhibiting a copy of the Award and the Decision on Annulment certified by the Secretary-General of the ICSID Centre, the Court is mandated to recognise the Award and Decision on Annulment pursuant to the provisions of the ICSID Act.”</p> <p>Kuala Lumpur High Court Decision dated 17 February 2023, Originating Summons No. WA-24NCC-322-07/2021, concerning the Award dated 28 July 2015 in <i>Bernhard von Pezold and others v. Republic of Zimbabwe</i> (ICSID Case No. ARB/10/15), para. 7.</p>
6.6.	<p>“[A]n authentic ICSID arbitral award will be enforced by the federal courts of this country except in the most extraordinary of circumstances.”</p> <p>U.S. District Court DC Report and Recommendation dated 3 August 2022 concerning the Award dated 25 July 2017 in <i>Valores Mundiales, S.L., and Consorcio Andino, S.L., v. Bolivarian Republic of Venezuela</i> (ICSID Case No. ARB/13/11), para 34.</p>
6.7.	<p>“Member states’ courts are thus not permitted to examine an ICSID award’s merits, its compliance with international law, or the ICSID tribunal’s jurisdiction to render the award; under the Convention’s terms, they may do no more than examine the judgment’s authenticity and enforce the obligations imposed by the award. Thus, the Convention reflects an expectation that the courts of a member nation will treat the award as final.”</p> <p>US District Court of SD of NY Opinion and Order dated 13 February 2015 concerning the Award dated 9 October 2014 in <i>Mobil Cerro Negro Ltd., et al., v Bolivarian Republic of Venezuela</i> (ICSID Case No. ARB/07/27), para 102.</p>
6.8.	<p>“Que ces dispositions prévoient un exequatur simplifié et limitent le pouvoir du Juge désigné à cet effet dans chaque Etat contractant au contrôle de l’authenticité de la sentence certifiée conforme par le Secrétaire Général du Centre International pour le règlement des différends relatifs aux investissements.”</p> <p>Paris Court of Appeal Decision dated 26 June 1981 concerning the Award dated 8 August 1980 in <i>S.A.R.L. Benvenuti &amp; Bonfant v. People’s Republic of the Congo</i> (ICSID Case No. ARB/77/2), para 2.</p>

6.9.	<p>“Petitioners have submitted to the Court what appear to be accurate copies of the Award, the ad hoc Committee’s decision to lift the provisional stay on enforcement of the Award, the ad hoc Committee’s confirmation that the provisional stay of enforcement has been discontinued, and all other relevant documents. [...] These are each thorough, careful, and well-reasoned. There is no apparent basis to disregard them. These materials are enough to establish a prima facie entitlement to relief, and Petitioners have therefore established their entitlement to relief under 22 U.S.C. § 1650a.”</p> <p>US District Court DC Memo Opinion dated 19 August 2022 concerning the Award dated 8 March 2019 in <i>ConocoPhillips Petrozuata and others v. Venezuela</i> (ICSID Case No. ARB/07/30), p. 12.</p>
6.10.	<p>“[If] the ICSID Committee have considered and dismissed objections under the Convention procedure and the award is a valid and authentic one, I wish to make it clear that there are no grounds for repetition or rehearing of those in the Commercial Court. Unless a case is truly exceptional, it is difficult to foresee how a hearing of the length required in this case, and a judgment of this length, would occur again. To do so would be contrary to the ICSID Convention and the 1966 Act, and is exactly what international arbitration is designed to avoid.”</p> <p>English High Court of Justice Judgment dated 24 May 2023, concerning the Award dated 15 June 2018 in <i>Antin Infrastructure Services Luxembourg S.à.r.l. and Antin Energia Termosolar B.V. v. Kingdom of Spain</i> (ICSID Case No. ARB/13/31), para. 163.</p>
6.11.	<p>“Pursuant to Article 54(1) of the ICSID Convention, each Contracting State must recognize as binding any award rendered under the Convention and enforce in its territory the financial obligations imposed therein as if it were a final judgement of one of its domestic courts. Accordingly, apart from the verification of the authenticity of the award, no control at all should be allowed. The Swiss authorities may not review the ICSID award with respect to general recognition requirements; in particular, they are also barred from public policy review.”</p> <p>Swiss Federal Supreme Court Judgement dated 17 March 2023 concerning the Award dated 6 September 2019 in <i>OperaFund Eco-Invest SICAV PLC and Schwab Holding AG v. Kingdom of Spain</i> (ICSID Case No. ARB/15/36), para 3.2.2.</p>
6.12.	<p>“Fiind prezentate copiile certificate ale hotărârilor arbitrale și încheierii de îndreptare este îndeplinită condiția prevăzută de art.54 alin 2 din Convenție.</p> <p>Art. 663 alin 1-4 Cod procedură civilă prevede că executarea silită nu se poate face decât dacă creanța este certă, lichidă și exigibilă. Creanța este certă când existența ei neîndoiește rezultă din însuși titlul executoriu. Creanța este lichidă atunci când obiectul ei este determinat sau când titlul executoriu conține elementele care permit stabilirea lui. Creanța este exigibilă dacă obligația debitorului este ajunsă la scadență sau acesta decăzut din beneficiul termenului de plată.</p> <p>În cauză creanța este certă, lichidă și exigibilă, astfel că, în baza art.666 Cod procedură civilă, tribunalul va admite cerere și va încuviința executarea silită a Hotărârii arbitrale pronunțată de ICSID în cauza nr ARB/12/25 din data de 18.04.2017 și a Hotărârii de rectificare din data de 13.07.2017 la cererea creditorilor Marco Gavazzi și Stefano Gazzi, debitor din Statul Român”</p>

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	<p>“By presenting the certified copies of the arbitral decisions and the rectification agreement, the condition stipulated by art. 54 paragraph 2 of the Convention is fulfilled.</p> <p>Art. 663 paragraph 1-4 of the Code of Civil Procedure provides that forced execution can only be done if the claim is certain, liquid and enforceable. The claim is certain when its undoubted existence results from the enforceable title itself. The claim is liquid when its object is determined or when the enforceable title contains the elements that allow its establishment. The claim is enforceable if the debtor's obligation has reached maturity or he has lost the benefit of the payment term.</p> <p>In the case, the claim is certain, liquid and enforceable, so that, based on art. 666 of the Civil Procedure Code, the tribunal will admit the request and approve the forced execution of the Arbitral Award pronounced by the ICSID in case No. ARB/12/25 of 18.04. 2007 and of the Rectification Decision dated 13.07.2017, the request of creditors Marco Gavazzi and Stefano Gazzi, debtor of the Romanian State”</p> <p>Bucharest Municipal Court Order dated 24 September 2018 concerning the Award dated 18 April 2017 in <i>Marco Gavazzi and Stefano Gavazzi v. Romania</i> (ICSID Case No. ARB/12/25), unofficial translation.</p>
6.13.	<p>“For the purposes of recognizing the enforceability of ICSID awards, the Supreme Court of Justice exercises a mere formal control, aimed at verifying the authenticity of the award submitted.”</p> <p>Portuguese Supreme Court Decision concerning the Award dated 10 March 2015 in <i>OI European Group B.V. v. Bolivarian Republic of Venezuela</i> (ICSID Case No. ARB/11/25), translation in ICCA Yearbook 2023.</p>
6.14.	<p>“[...] el Convenio establece, en principio, un sistema exclusivo de revisión referido únicamente a sede internacional. Con este marco, los únicos recursos admitidos son los recursos de aclaración, revisión y anulación previstos en los arts. 49, inc. 2, 50, 51 y 52 del Convenio.”</p> <p>“En el marco del CIADI, en cambio, se estableció un sistema de reconocimiento automático con la simple presentación de copia del laudo certificada por el Secretario General, conforme los términos del art. 54, inc. 2 del Convenio. En consecuencia, los laudos arbitrales tendrán el carácter de una sentencia firme dictada por un tribunal del Estado contratante (art. 54, inc. 1) debiendo los tribunales locales simplemente verificar su autenticidad.”</p> <p>Argentinian Federal Administrative Court Judgement dated 13 June 2023 concerning the Award dated 8 December 2016 in <i>Urbaser S.A. and Consorcio de Aguas Bilbao Biskaia, Bilbao Biskaia Ur Partzuergoa v. Argentine Republic</i> (ICSID Case No. ARB/07/26), p. 26-27.</p>
6.15.	<p>“A federal court’s role in enforcing an ICSID award is limited . . . [reflecting] an expectation under the Convention that the courts of a member nation will treat the award as final.”</p> <p>US District Court for DC Memo Opinion dated 11 September 2019 concerning the Award dated 11 December 2013 in <i>Ioan Micula, Viorel Micula, S.C. European Food S.A, S.C. Starmill S.R.L. and S.C. Multipack S.R.L. v. Romania</i> [I] (ICSID Case No. ARB/05/20), paras. 275-276.</p>

ANNEX B

Quotes From Domestic Court Decisions

6.16	<p>“I am quite clear that the award is final and binding for this purpose and that it is not open to the English court to review the merits of the decision or the jurisdiction of the tribunal. In this specific context,<sup>5</sup> I regard it as highly relevant that ICSID is a self-contained regime and that the only permitted avenue of challenge to an award is via the process for annulment within the confines of the Convention.”</p> <p>High Court of Justice King's Bench Division, Business and Property Courts of England and Wales, Commercial Court, Mrs Justice Dias Dbe, Case No. CL-2021-000541, dated 19 January 2024, para 35, concerning the Award dated 28 July 2015 in <i>Borders Timbers Limited and Hangani Development Co. (Private) Limited v. Zimbabwe</i> (ICSID Case No. ARB/10/25) Para 77.</p>
6.17	<p>“The Defendant cannot resist recognition or enforcement of the Award and the Decision on Annulment on grounds pertaining to jurisdiction, nor sustain any reference to the impugned Land Reforms and their implementation as acts of a sovereign and governmental nature at this stage.”</p> <p>High Court of Malaya at Kuala Lumpur in the Federal Territory of Kuala Lumpur, Kuala Lumpur High Court (NCC1) (Commercial Division), Judge Atan Mustaffa Yussof Ahmad, Originating Summons No: WA-24NCC-322-07/2021, dated 27 November 2023 concerning the Award dated 28 July 2015 and Decision on Annulment dated 21 November 2015 in <i>Bernhard von Pezold and others v. Republic of Zimbabwe</i> (ICSID Case No. ARB/10/15), para 50.</p>
<p><b>State parties have waived immunity from jurisdiction for recognition and enforcement procedures</b></p>	
7.1.	<p>“This is exactly the point: on the proper construction of the Investment Convention ..., Spain by becoming a Contracting State expressly submitted to the jurisdiction of the courts of other Contracting States in respect of the recognition and enforcement, but not execution, of any resulting award. If that is correct, then it satisfies the requirements of submission/waiver under s 10 of the <i>Immunities Act</i> and there is no basis to conclude that, notwithstanding such a submission, Spain nevertheless enjoys immunity because the particular arbitration in question does not meet the requirements of the exception in s 17.”</p> <p>Federal Court of Australia NSW Decision dated 24 February 2020 concerning the Award dated 4 May 2017 in <i>Eiser Infrastructure Ltd. V. Kingdom of Spain</i> (ICSID Case No. ARB/13/6), para 190.</p>
7.2.	<p>"It is not the case that ‘simply by agreeing to arbitrate the dispute’ Spain has submitted to the jurisdiction of the Court under s 10 of the Immunities Act; that submission to jurisdiction arises from Spain’s agreement to the Investment Convention the terms of which include mutual obligations to recognise and enforce Centre awards. That carries with it the inevitable consent to Centre awards being recognised and enforced in fulfilment of that obligation.”</p> <p>Federal Court of Australia NSW Decision dated 24 February 2020 concerning the Award dated 4 May 2017 in <i>Eiser Infrastructure Ltd. V. Kingdom of Spain</i> (ICSID Case No. ARB/13/6), para 192.</p>

7.3.	<p>“The conclusion that the express terms of Art 54(1) involve a waiver of immunity from jurisdiction in relation to recognition and enforcement is also supported by the 1991 Report of the International Law Commission which, as explained above, was relied upon by Lord Goff in Pinochet [No 3] for his Lordship’s cautious approach to inferences supporting a waiver of immunity. That report referred to a rule of customary international law that a waiver of immunity be ‘expressed ... in no uncertain terms’. The International Law Commission gave examples of State practice where a State ‘has previously expressed its consent to such jurisdiction in the provision of a treaty or an international agreement’. One of those examples was the ICSID Convention.”</p> <p>Australia High Court NSW Judgement dated 12 April 2023 concerning the Award dated 15 June 2018, in <i>Antin Infrastructure Services Luxembourg S.à.r.l. and Antin Energia Termosolar B.V. v. Kingdom of Spain</i> (ICSID Case No. ARB/13/31), para 75.</p>
7.4.	<p>“Spain’s contention was that this Court would ‘take cognisance’ of <i>Komstroy</i> in identifying whether Spain had agreed to submit to the jurisdiction of the Australian courts for the purposes of the Foreign States Immunities Act. That contention must fail because the relevant agreement arose from Spain’s entry into the ICSID Convention, which included its agreement as to the consequences of an award rendered pursuant to the ICSID Convention.”</p> <p>Australia High Court NSW Judgement dated 12 April 2023 concerning the Award dated 15 June 2018 in <i>Antin Infrastructure Services Luxembourg S.à.r.l. and Antin Energia Termosolar B.V. v. Kingdom of Spain</i> (ICSID Case No. ARB/13/31), para 79.</p>
7.5.	<p>“Relevant here, Venezuela implicitly waived its sovereign immunity with respect to suits to recognize and enforce ICSID awards by becoming a Contracting State to the ICSID Convention. See Art. 54(1) "... To hold otherwise would be disrespect Venezuela's choice (at the time) to be a Contracting State, and it would diminish other Nations’ ability to attract investment in the future by committing themselves to resolving investment disputes through arbitration”</p> <p>US District Court DC Memo Opinion dated 19 August 2022 concerning the Award dated 8 March 2019 in <i>ConocoPhillips Petrozuata and others v. Venezuela</i> (ICSID Case No. ARB/07/30, p. 8.</p>
7.6.	<p>“Regarding the question of the Defendant’s submission to the jurisdiction of the Malaysian Court or waiver of its immunity, it is the finding of this Court that the Defendant has, through its conduct, submitted to the jurisdiction of the courts of every contracting state to the ICSID Convention where the Award and Decision on Annulment are being recognised. Moreover, the Defendant is considered to have waived its immunity before the courts of every contracting state where the Award and Decision on Annulment are being recognised.”</p> <p>Kuala Lumpur High Court Decision dated 17 February 2023, Originating Summons No. WA-24NCC-322-07/2021, concerning the Award dated 28 July 2015 in <i>Bernhard von Pezold and others v. Republic of Zimbabwe</i> (ICSID Case No. ARB/10/15), para 24.</p>
7.7	<p>“The only matter supporting Spain’s alternative submission, that any waiver of immunity from jurisdiction should be confined to recognition, is the different linguistic phrasing used in the French and Spanish texts of Arts 53-55. But, for the reasons explained above, the materials before</p>

	<p>this Court strongly militate against any conclusion that the French and Spanish texts of Arts 53-55 were intended to mean, or have been interpreted to mean, anything different from the English text. No basis has been shown to conclude that those texts bear a different meaning from the English text, preserving, subject to the laws of a Contracting State, the immunity from court processes relating to enforcement and not merely immunity from court processes relating to execution.”</p> <p>Australia High Court NSW Judgement dated 12 April 2023 concerning the Award dated June 15, 2018, in <i>Antin Infrastructure Services Luxembourg S.à.r.l. and Antin Energia Termosolar B.V. v. Kingdom of Spain</i> (ICSID Case No. ARB/13/31, para 77.</p>
7.8	<p>“Therefore, according to the ICSID Convention, the consideration of sovereign immunity is limited to the execution stage after the recognition of Tribunal awards as final judgments of the relevant Contracting State.”</p> <p>“By ratifying the ICSID Convention and making such representations, the Defendant has acquiesced to Contracting States including Malaysia recognising the Award and the Decision on Annulment as a binding domestic court judgment pursuant to Article 54 without claiming immunity.”</p> <p>High Court of Malaya at Kuala Lumpur in the Federal Territory of Kuala Lumpur, Kuala Lumpur High Court (NCC1) (Commercial Division), Judge Atan Mustaffa Yusof Ahmad, Originating Summons No: WA-24NCC-322-07/2021, dated 27 November 2023 concerning the Award dated 28 July 2015 and Decision on Annulment dated 21 November 2015 in <i>Bernhard von Pezold and others v. Republic of Zimbabwe</i> (ICSID Case No. ARB/10/15), paras 39, 48.</p>
<p><b>Immunity from execution applies as it would to a final judgment of the State</b></p>	
8.1.	<p>“[domestic provision on immunity of assets] does not deprive the Claimants of their possession, ie. the ICSID Award or the judgment that has been registered. The Award is always subject to the restrictions on enforcement that existed at the time it was made. Those restrictions are clear from Article 55 of the Washington Convention which set up the ICSID arbitration procedure.”</p> <p>English High Court of Justice Judgment dated 4 June 2001 concerning the Award dated 7 October 2003 in <i>AIG Capital Partners, Inc. and CJSC Tema Real Estate Company v. Republic of Kazakhstan</i> (ICSID Case No. ARB/01/6), para 95(5).</p>
8.2.	<p>“As can be seen from Arts 54 and 55 above, the Investment Convention expressly distinguishes between an initial stage of recognition of an award and a final stage of execution. In that last stage, as Arts 54(3) and 55 foreshadow, there may be issues under domestic law relating to sovereign immunity.”</p> <p>Federal Court of Australia NSW Decision dated 25 July 2017 concerning the Award dated 7 February 2014 in <i>Antoine Abou Lahoud and Leila Bounafteh-Abou Lahoud v. Democratic Republic of the Congo</i> (ICSID Case No. ARB/10/4), para 20.</p>

ANNEX B

Quotes From Domestic Court Decisions

8.3.	<p>“The obligation to recognise an award under article 54 was unequivocal and unaffected by questions of immunity from execution. As the reasons of Perram J and as the discussion of Professor Schreuer (<i>op cit</i> pp 1128–1134) both show, sovereign immunity from execution (Arts 54(3) and 55) does not arise at the point of recognition.”</p> <p>Federal Court of Australia NSW Decision dated 1 February 2021 concerning the Award dated 4 May 2017 in <i>Eiser Infrastructure Ltd. V. Kingdom of Spain</i> (ICSID Case No. ARB/13/6), para 6.</p>
8.4.	<p>“Mais considérant que l’ordonnance d’exequatur d’une sentence arbitrale ne constitue pas un acte d’exécution mais seulement un acte préalable aux mesures d’exécution ; Que le premier Juge, saisi en application de l’article 54 de la Convention de Washington, ne pouvait donc, sans excéder sa compétence, s’immiscer dans la seconde phase, celle de l’exécution, à laquelle se rapporte la question de l’immunité d’exécution des Etats étrangers.”</p> <p>Paris Court of Appeal Decision dated 26 June 1981 concerning the Award dated 8 August 1980 in <i>S.A.R.L. Benvenuti &amp; Bonfant v. People’s Republic of the Congo</i> (ICSID Case No. ARB/77/2), para 4-5.</p>
8.5.	<p>“Attendu que, pour infirmer cette décision, l’arrêt attaqué, en se fondant sur l’article 1502, 5°, du nouveau Code de procédure civile, a considéré que l’exécution en France de la sentence heurtait l’ordre public international, car la Soabi n’établissait pas que l’exécution serait effectuée de telle manière que l’immunité d’exécution de l’Etat sénégalais ne puisse pas être opposée ; Attendu, cependant, que l’Etat étranger qui s’est soumis à la juridiction arbitrale a, par là même, accepté que la sentence puisse être revêtue de l’exequatur, lequel ne constitue pas, en lui-même, un acte d’exécution de nature à provoquer l’immunité d’exécution de l’Etat considéré ;”</p> <p>French Court of Cassation Judgement dated 11 June 1991 concerning the Award dated 25 February 1988 in <i>Société Ouest Africaine des Bétons Industriels v. Senegal</i> (ICSID Case No. ARB/82/1).</p>
8.6.	<p>“Hungary has agreed that the award may be so recognised, and has waived any adjudicative immunity it had in relation to recognition. It is only after recognition of the award in the New Zealand judicial system that New Zealand law can be applied to assess the claims to immunity in relation to execution steps. It is agreed that the New Zealand Court has jurisdiction to make such decisions. ... The immunity applicable to execution is not an immunity from ... having the award recognised in domestic law. Indeed it is only possible to apply the domestic laws on immunity from execution if the domestic courts first have jurisdiction. So for this reason art 55 does not make Hungary immune from the jurisdiction.”</p> <p>New Zealand High Court Wellington Judgment dated 10 December 2021 concerning the Award dated 28 January 2019 in <i>Sodexo Pass International SAS v. Hungary</i> (ICSID Case No. ARB/14/20), paras 25-26.</p>
8.7.	<p>“There is perhaps nothing decisive in [the <i>travaux préparatoires</i> of the ICSID Convention], but the ability of a state to claim immunity was identified as an issue in the discussions, and the better view of the <i>travaux</i> is that it was agreed that the machinery of the Convention allowed the awards to be recognized and therefore enforceable, with the normal immunities then applying to</p>

	<p>execution. Article 55 was added after debates on that question had occurred, and it is significant that this article preserved immunity in relation to execution processes only. Something more decisive would have been added as a consequence of these discussions if it had been intended that states could be immune from these processes altogether.”</p> <p>New Zealand High Court Wellington Judgment dated 10 December 2021 concerning the Award dated 28 January 2019 in <i>Sodexo Pass International SAS v. Hungary</i> (ICSID Case No. ARB/14/20), para 30.</p>
8.8.	<p>“The Plaintiffs in the Originating Summonses are seeking recognition, not execution, of the Award and the Decision on Annulment. Therefore, the consideration of immunity from enforcement and execution is premature and should only be addressed when execution is sought, if raised by the Defendant.”</p> <p>Kuala Lumpur High Court Decision dated 17 February 2023, Originating Summons No. WA-24NCC-322-07/2021, concerning the Award dated 28 July 2015 in <i>Bernhard von Pezold and others v. Republic of Zimbabwe</i> (ICSID Case No. ARB/10/15), para 17.</p>
8.9.	<p>“Therefore, according to the ICSID Convention, the consideration of sovereign immunity is limited to the execution stage after the recognition of the Award and Decision on Annulment as a final judgment of the relevant Contracting State.”</p> <p>Kuala Lumpur High Court Decision dated 17 February 2023, Originating Summons No. WA-24NCC-322-07/2021, concerning the Award dated 28 July 2015 in <i>Bernhard von Pezold and others v. Republic of Zimbabwe</i> (ICSID Case No. ARB/10/15), para 22.</p>
8.10	<p>“More significantly both the French and Spanish versions have separate words for recognition (<i>reconnaît</i> and <i>reconocerá</i>). So all the versions contemplate recognition is different from execution. Only execution is subject to the preservation of state immunity in art 55.”</p> <p>New Zealand High Court Wellington Judgment dated 10 December 2021 concerning the Award dated 28 January 2019 in <i>Sodexo Pass International SAS v. Hungary</i> (ICSID Case No. ARB/14/20), para 27.</p>
8.11	<p>“Therefore, when acceding to the ICSID framework under this Convention, the Defendant agreed to recognition of ICSID Awards and annulment decisions by domestic courts in all Contracting States, including Malaysia. However, at the execution phase, the Defendant can still invoke state immunity under local laws.”</p> <p>High Court of Malaya at Kuala Lumpur in the Federal Territory of Kuala Lumpur, Kuala Lumpur High Court (NCC1) (Commercial Division), Judge Atan Mustaffa Yussof Ahmad, Originating Summons No: WA-24NCC-322-07/2021, dated 27 November 2023 concerning the Award dated 28 July 2015 and Decision on Annulment dated 21 November 2015 in <i>Bernhard von Pezold and others v. Republic of Zimbabwe</i> (ICSID Case No. ARB/10/15), para 42.</p>

## About ICSID

ICSID is the world's leading institution devoted to international investment dispute settlement. It has extensive experience in this field, having administered the majority of all international investment cases. States have agreed on ICSID as a forum for investor-State dispute settlement in most international investment treaties and in numerous investment laws and contracts.

ICSID was established in 1966 by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention). The ICSID Convention is a multilateral treaty formulated by the Executive Directors of the World Bank to further the Bank's objective of promoting international investment. ICSID is an independent, depoliticized and effective dispute-settlement institution. Its availability to investors and States helps to promote international investment by providing confidence in the dispute resolution process. It is also available for State-State disputes under investment treaties and free trade agreements, and as an administrative registry.