Model Courts of Justice 2026

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Written by *Mert Halil Bölükbaşı*
Supervised by *Rana Elif Taze*

LETTER FROM THE SECRETARY-GENERAL

Highly Esteemed Participants,

I welcome you all to the 14th Annual Edition of the Model Courts of Justice as the Secretary-General. My name is Rana Elif TAZE, and I am a junior law student at Ankara University.

The case that will be simulated this year is 'RREEF Infrastructure (G.P.) Limited and RREEF Pan-European Infrastructure Two Lux S.à r.l. v. Kingdom of Spain'. In this regard, the participants will have the opportunity to practice their subjects and improve their written and oral skills concerning international investment law and the protection of foreign investments under the Energy Charter Treaty, as well as the legal challenges regarding regulatory changes and the fair and equitable treatment standard within the context of investor-state dispute settlement.

I would like to first express my appreciation and gratitude to the Under-Secretary-General of ICSID, Mr. Mert Halil BÖLÜKBAŞI. He was always there whenever we needed him, both for his own court and the conference in general. I am so grateful for his dedicated and enthusiastic work to make this court the best. As well as his work for Model Courts of Justice 2026, I would also like to thank him as the President of FLAUMUN, our student club. He is a very supportive president and a wonderful friend. Additionally, I would like to thank our Academic Trainees, Mr. Cahide ERTİT and Ms. Dilara İNAN for their hard work and contributions. Lastly, I would like to express my greatest thanks to Ms.İlayda KARA, Director-General of the 14th Edition, to walk with me on this long journey. Without her dedicated work, this edition would never be possible. I am glad we were together in this.

Before attending the sessions, I highly recommend that all the participants read the Study Guide and Rules of Procedure and prepare the printed versions of these documents with them to refer to during the Conference. If you have any questions or hesitations about the Conference, please do not hesitate to contact me at secretarygeneral@modelcj.org.

Warm Regards,

Rana Elif TAZE

Secretary-General of the Model Courts of Justice 2026

LETTER FROM THE UNDER-SECRETARY-GENERAL

Highly Esteemed Participants,

My name is Mert Halil Bölükbaşı, and I am currently a sophomore at Ankara University, Faculty of Law, as the Under-Secretary-General of the International Centre for Settlement of Investment Disputes. It is a great honor to present our work as a guide and meet with you. will be an unforgettable experience for me. I am confident that this conference will always be a success in Turkey for law, but this one will be the greatest one.

This year, the International Centre for Settlement of Investment Disputes will be simulating the case *RREEF Infrastructure (G.P.) Limited and RREEF Pan-European Infrastructure Two Lux S.à.r.l. v. Kingdom of Spain*. This case will test international investment law against evolving environmental policies under the Energy Charter Treaty. Renewable energy transitions will face established investor protections and the 'fair and equitable treatment' principle. The outcome is expected to clarify the state's right to regulate, shaping the legal landscape for global investors and sovereign states. Before concluding my remarks, I wish to express my gratitude to every member of the academic and organization teams who worked on the 14th edition of the Model Courts of Justice for a long time. I extend my sincere appreciation to our esteemed Secretary-General, Ms. Rana Elif TAZE, for always supporting me without hesitation in the whole process. My thanks also go to our committed Director-General, Ms. İlayda KARA, whose efforts were instrumental in bringing the Model Courts of Justice to life. Finally, I would like to acknowledge and thank our trainees, Ms. Cahide ERTİT and Ms. Dilara İNAN, for their remarkable dedication and hard work throughout this journey.

Please do not hesitate to contact us at icsid@modelcj.org for any inquiries you may have regarding the document or proceedings.

Yours faithfully,

Mert Halil Bölükbaşı

Under-Secretary-General for the International Centre for Settlement of Investment Disputes

I. INTRODUCTION TO THE FIELD OF ENERGY LAW

1. History of Energy Law

The rationale for establishing control over energy always existed during human civilisation, from guarding and fueling the communal fire pit in the center of the tribe, which also was a symbol of leadership[1] to world wars over territories rich in mineral deposits and fossil fuels, such as Alsace–Lorraine and Caucasus petrol fields. The seriousness of energy control growth within the industrial revolution assures more need for coal and after that, the petroleum, which kicks off more technological innovation that needs more fuel. The vast expansion of fossil fuel use ultimately gave rise to concerns and dilemmas about economic growth in spite of environmental distress that also encouraged international treaties. These historical developments collectively laid the foundations of modern energy law as states needfulness of control over essential resources and its management became a core conflict in politics.

a) Early Developments in the International Energy Law

In 1500 BC, coal was discovered in China, but the first legal frameworks emerged after the 19th Century, alongside the Industrial Revolution when governments began to formalise how energy was extracted, transported, priced, and supplied. As coal-powered factories, railways, and steamships, states moved from largely customary or property-based rules to sectoral statutes and administrative oversight aimed at mine safety, labour conditions, and the reliability of supply. With the commercialization of oil in the late 19th century, courts in the United States initially relied on private-law doctrines such as the rule of capture[2], which, based on over-drilling and waste until conservation statutes, *prorationing*[3], and pipeline regulation, imposed public limits on private

[1] Marlize Lombard and Peter Gärdenfors, 'Minds on Fire: Cognitive Aspects of Early Firemaking and the Possible Inventors of Firemaking Kits' (2023) 33 Cambridge Archaeological Journal 499.

[2] Resources for the Future, 'Oil and the Law of Capture' (Resources, 2014) https://www.resources.org/archives/oil-and-the-law-of-capture/#:~:text=Most%20oil%20reservoirs%20lie%20under,drilled%20to%20tap%20the%20reservoir accessed 3 November 2025*

[3] Proration means the proportionate allocation of production among wells or producers, commonly used in petroleum regulation to conserve resources and maintain market stability

extraction. Natural gas, first a local by-product, later a strategic fuel, stimulated long-term, cross-border pipeline contracts and transit arrangements, drawing competition law, contract law, and state regulation into an increasingly internationalised framework. Widespread usage of natural gas in the United States of America also affected interstate relations as the states tried to oversee the pipelines by themselves, but the Supreme Court overruled any state interference due to the Supreme Court Commerce Clause.[4]

Being different from others, electricity emerged in the late 19th century not merely as a technological breakthrough but as a public necessity demanding legal oversight and collective management.[5] From a utilitarian standpoint, governments viewed electrification as a means to maximise social welfare-powering factories, lighting cities, and improving public life. The legal frameworks that developed around electricity reflected this perception of energy as a public good rather than a private commodity. Early statutes, such as the United Kingdom's Electric Lighting Act 1882, granted licences to local authorities and private providers under government supervision, ensuring reliability and universal access. In the United States, public-utility commissions applied the just and reasonable rate doctrine to balance consumer protection with fair returns for investors, embedding the notion that electricity served both economic efficiency and social equity. During the 20th century, many European states nationalised electricity networks to guarantee affordability and continuity of supply, while other industrialized Western states maintained tight regulatory control over monopolies, such as the United States. Even after later liberalisation and privatisation waves, the electricity law retained this utilitarian core: the idea that energy infrastructure must serve the broader public interest by ensuring stable, safe, and equitable access for all consumers[6].

Following the consolidation of electricity as a regulated utility, the mid-twentieth century introduced an entirely new dimension to energy law through the emergence of the peaceful uses of nuclear energy. Initially called as a symbol of scientific progress, nuclear power also demanded

[4] History of Regulation' (NaturalGas.org, 2024) https://naturalgas.org/regulation/history/ accessed 5 November 2025

[5] Shelley Welton, 'The Bounds of Energy Law' (2021) 62 Boston College Law Review 2339.

[6] R Richard Geddes, 'A Historical Perspective on Electric Utility Regulation' (1992) 15 Regulation 75 82

certain international legal attention due to its interstate risks and environmental implications. The development of nuclear law rested on the balance between states' sovereign right to access nuclear technology for peaceful purposes and their duty to prevent cross-border harm and ensure safety under international environmental law. The establishment of the International Atomic Energy Agency (IAEA) in 1957 and instruments such as the 1968 Treaty on the Non-Proliferation of Nuclear Weapons[7] institutionalised cooperation, safety oversight, and liability regimes for nuclear activities. Over time, the concept of absolute sovereignty yielded to principles of cooperation, precaution, and sustainable development as environmental protection became central to the governance of nuclear installations.[8] After incidents such as Chornobyl (1986) and Fukushima (2011), states recognised the need for stricter rules on environmental impact assessments and early notification mechanisms under conventions like the Espoo and Aarhus frameworks linking nuclear energy governance to broader international environmental law. In parallel, global attention turned toward renewable and low-carbon energy as part of sustainable development strategies. The late twentieth century saw the rise of legal mechanisms supporting wind, solar, hydro, and geothermal energy through national incentives, EU directives on renewables, and international commitments to reduce greenhouse gas emissions.[9]

b) Treaty-Based Development of International Energy Law

In 1962, the United Nations General Assembly adopted Resolution *1803 (XVII)* on Permanent Sovereignty over Natural Resources[10], affirming the "*inalienable right of all States freely to dispose of their natural wealth and resources in accordance with their national interests*". This principle gave newly independent and developing countries control over their own oil, minerals, and other resources, subject to international law. Two decades later, the 1982 United Nations Convention on the Law of the Sea (UNCLOS)[11] extended this concept seaward. UNCLOS granted

[7] https://www.iaea.org/sites/default/files/publications/documents/infcircs/1970/infcirc140.pdf
[8] Anguel Anastassov, 'Sovereignty of States, Peaceful Nuclear Energy and Principles of International Environmental Law' (2014) 4 International Journal of Nuclear Governance, Economy and Ecology p. 100
[9] Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the Promotion of the Use of Energy from Renewable Sources (recast) [2018] OJ L328/82
[10] UN General Assembly, Resolution 1803 (XVII) on Permanent Sovereignty over Natural Resources (14 December 1962) UN Doc A/RES/1803(XVII).
[11] United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3.

coastal states exclusive sovereign rights to explore and exploit natural resources within a 200-nautical-mile Exclusive Economic Zone (EEZ) and on their continental shelf. This cemented the jurisdiction of coastal nations over offshore oil, gas, and fisheries, while preserving freedom of navigation on the high seas.

Around the same period, the international community established frameworks to address nuclear technology. The Treaty on the Non-Proliferation of Nuclear Weapons (NPT)[12] was opened for signature in 1968 as a landmark pact to prevent the spread of nuclear weapons, advance nuclear disarmament, and promote the peaceful use of nuclear energy under global oversight. In the wake of the 1986 Chernobyl disaster, attention turned to nuclear safety and emergency communication. That year, states agreed to the Convention on Early Notification of a Nuclear Accident, obliging any state experiencing a serious nuclear accident to promptly notify and inform potentially affected states and the International Atomic Energy Agency (IAEA) nature, time, location, and potential cross-border radiological impact of the accident. A further step was taken in 1994 with the Convention on Nuclear Safety (CNS)[13], which commits countries operating nuclear power plants to maintain high safety standards and a robust regulatory framework for nuclear plant safety. Together, these instruments built an international nuclear regime focused on non-proliferation and the safe, peaceful use of atomic energy.

Energy security and cooperation also became critical in the 1970s and 1980s. The 1973 oil crisis exposed the vulnerability of industrialized economies to disruptions in oil supply. As a solution, the Agreement on an International Energy Program (IEP)[14] was concluded in 1974, establishing the International Energy Agency (IEA) within the Organisation for Economic Co-operation and Development. The IEA's founding members agreed to share oil in emergencies, maintain strategic petroleum reserves, and exchange data, which is for measures aimed at ensuring collective energy security.

[12] Treaty on the Non-Proliferation of Nuclear Weapons (adopted 1 July 1968, entered into force 5 March 1970) 729 UNTS 161 (NPT).
[13] Convention on Nuclear Safety (adopted 17 June 1994, entered into force 24 October 1996) 1963 UNTS 293 (CNS).
[14] Agreement on an International Energy Program (adopted 18 November 1974, entered into force 19 January 1976) 1040 UNTS 271 (IEP Agreement).

The post-Cold War era saw new legal frameworks for energy trade and investment. Notably, the *Energy Charter Treaty (ECT)* was signed in 1994 to integrate energy markets across Europe, the former Soviet Bloc, and beyond. The ECT established a multilateral legal framework for cross-border cooperation in the energy industry, which covers all aspects of commercial energy activities, including trade, transit, and investment protection. This treaty aimed to reduce political and legal risks in energy transactions and encourage foreign investment in the energy sector, thereby bolstering energy supply reliability following the collapse of the Soviet Union.

At the same time, global environmental and climate initiatives accelerated. In 1991, countries of the UN Economic Commission for Europe adopted the *Espoo Convention* on Environmental Impact Assessment in a Transboundary Context. This pioneering treaty requires a state that plans a major project to assess its environmental impact on neighboring countries and notify those countries of any significant potential cross-border harm. It also grants the affected countries the right to participate in the environmental assessment process, ensuring that transboundary environmental risks are addressed cooperatively. The following year 1992, world witnessed the birth of the *United Nations Framework Convention on Climate Change (UNFCCC)*[15], the first global treaty on climate change. The UNFCCC created a framework for international action to stabilised greenhouse gas emissions "at a level that would prevent dangerous anthropogenic interference with the climate system,"[16] while recognizing differing responsibilities of developed against. developing states. Though it set no binding targets, the UNFCCC institutionalized annual climate conferences (COPs) and showed the way for further agreements.

Building on the UNFCCC, the *Kyoto Protocol* was adopted in 1997 as the first legally binding climate treaty. Kyoto imposed quantified emissions reduction targets on 37 industrialized countries and economies in transition, typically requiring about a 5% average cut below 1990 emission levels during 2008–2012. Developing countries had no binding obligations under Kyoto, reflecting the principle of "common but differentiated responsibilities."[17] While Kyoto's top-down approach

[15] United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107 (UNFCCC).
[16] United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107.
[17] Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 11 December 1997, entered into force 16 February 2005) 2303 UNTS 162.

covered a limited set of nations, it was a milestone in committing governments to reduce carbon emissions. In the realm of environmental democracy, 1998 saw the adoption of the *Aarhus Convention*[18] on access to information, public participation in decision-making, and access to justice in environmental matters. This UNECE convention empowers the public with the rights to obtain environmental information, participate in environmental decision-making and challenge violations of environmental law. It obliges governments to be transparent and inclusive, thus ensuring that energy projects and policies with environmental impact are subject to public scrutiny and input. The Aarhus Convention significantly broadened opportunities for civil society to influence environmental and energy decisions, complementing the inter-state obligations of the Espoo Convention.

In the 21st century, international energy and climate law converged in the landmark *Paris Agreement (2015)* under the UNFCCC. The Paris Agreement departed from the limited approach of Kyoto and engaged all countries in committing to climate action. Its central goal is to hold the increase in global average temperature to *well below 2°C* above pre-industrial levels and to *pursue efforts to limit the temperature increase to 1.5°C*. Unlike Kyoto's top-down targets, Paris relies on nationally determined contributions (NDCs) each country must devise its own emission reduction plans and update them every five years, under transparency and global stock take mechanisms. This bottom-up architecture, backed by near-universal participation, has anchored global efforts to shift away from fossil fuels and towards clean energy. Recognising that transitioning to renewable energy is key to meeting climate goals, countries' pledges under Paris frequently include expanding wind, solar and other renewables. Indeed, scaling up renewables is seen as crucial to sharply cut energy-related CO_2 emissions in line with Paris goals.

Regionally, the European Union has been at the forefront of implementing the Paris vision through binding law. An example is the *EU Renewable Energy Directive (2018/2001)* a cornerstone of the sustainable energy market design of the European Union. This Directive set a Union-wide target for at least 32% of the EU's final energy consumption to come from renewable sources by 2030. It also introduced cooperative mechanisms and common rules to facilitate the integration of

[18] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447 (Aarhus Convention).

renewable energy. By establishing clear targets and regulatory frameworks, the EU Directive has driven member states to increase investments in renewable power and reduce reliance on carbon-intensive fuels. In combination with the Paris Agreement's global momentum, such measures illustrate the continued evolution of international energy law towards cleaner and more sustainable practices.[19]

2. Basic Principles of Energy Law

Energy Law has a unique aspect as a field of law with a complex relationship of states, citizens, and companies, which are affected by its interstate conditions due to the international rules and regulations on the energy market and production. It has 7 principles listed as[20]:

1. Natural Resources Sovereignty
2. Access to Modern Energy Services
3. Energy Justice
4. Prudent, Rational, and Sustainable Use of Natural Resources
5. Protection of the Environment, Human Health, and Combating Climate Change
6. Energy Security and Reliability
7. Resilience

At the core of energy law is the principle of permanent sovereignty over natural resources. This principle affirms that nation-states have the inalienable right to control and dispose of the energy resources within their territory in accordance with their national interests. It was first articulated in UN General Assembly Resolution 1803 (XVII) of 1962[21], which proclaims citizens and states' right to freely use their natural wealth and resources, subject to the duty to further national development and the well-being of the people. The 1974 UN *Charter of Economic Rights and*

[19] Bill Farren-Price and others, Key Themes for the Global Energy Economy in 2025 (OIES Paper SP35, Oxford Institute for Energy Studies, January 2025)

[20] Decree Blog, 'The Seven Principles of Energy Regulation' (Decree, 20 February 2023) https://blog.decree.om/2023/the-seven-principles-of-energy-regulation/#:~:text=Stemming%20from%20UN%20General%20Assembly,energy%20importing%20and%20consuming%20states accessed 8 November 2025.

[21] UN General Assembly, Resolution 1803 (XVII) on Permanent Sovereignty over Natural Resources (14 December 1962) UN Doc A/RES/1803(XVII).

Duties of States[22] reaffirmed that each state has full permanent sovereignty over all its natural resources, including the right to regulate and nationalise those resources for public purposes, with appropriate compensation to foreign owners where applicable. International law recognizes that sovereignty over resources must be exercised in accordance with global legal norms. For example, the *Energy Charter Treaty of 1994* explicitly acknowledges "state sovereignty and sovereign rights over energy resources," while providing that such sovereignty be exercised in a consistent manner with international law. [23] Article 18 of the ECT reaffirms each state's right to determine how its energy resources are developed.[24] Crucially, coastal states' sovereign rights extend offshore under the *United Nations Convention on the Law of the Sea 1982 (UNCLOS)*[25]. UNCLOS grants coastal nations sovereign rights for the exploration and exploitation of natural resources in their exclusive economic zone and continental shelf, including offshore oil, gas, and renewable energy resources.

Energy law also encompasses the principle of ensuring access to energy and the orderly regulation of energy markets, as we can see in the ECT Article 3(1).[26] Access to modern energy services is widely regarded as a prerequisite for development and a matter of global concern. Both international and domestic frameworks strive to promote wider energy access and to create efficient, competitive energy markets. On the international level, instruments like the *Energy Charter Treaty (ECT)* commit states to facilitating open energy trade and investment. For example, Article 3 ECT calls on parties to "*promote access to international markets on commercial terms*" and to develop open, competitive energy markets. This reflects a consensus that liberalised trade and investment in energy can enhance global energy security and efficiency.

Domestically, the regulation of energy markets involves balancing competition with public oversight. Many countries have restructured electricity and gas industries to introduce competition

---

[22] UN General Assembly, Charter of Economic Rights and Duties of States (12 December 1974) UNGA Res 3281 (XXIX).
[23] UNGA Res 1803 14 December 1962 (n 10).
[24] Dr Urban Rusnák, 'Discussing the Energy Charter Treaty – Q&A with the Secretary-General, Energy Charter Treaty Secretariat' (Norton Rose Fulbright, October 2018) https://www.nortonrosefulbright.com/en-ca/knowledge/publications/e04182e5/discussing-the-energy-charter-treaty--qa-with-dr-urban-rusnk-secretarygeneral-energy-charter-treaty
accessed 7 November 2025.
[25] United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (UNCLOS).
[26] *Energy Charter Treaty* (adopted 17 December 1994, entered into force 16 April 1998) 2080 UNTS 95, art 3(1)

in generation and supply while regulating transmission and distribution as natural monopolies. Independent regulatory authorities often oversee tariffs, market access, and antitrust enforcement in the energy sector to prevent abuse of dominance and to protect consumers. In the European Union, for instance, the Internal Energy Market directives require member states to unbundle vertically integrated utilities and ensure third-party access to networks, under the supervision of national regulators. These laws also permit public service obligations to guarantee universal service and affordability.

Modern energy law is inextricably linked with principles of environmental protection and sustainable development. The production and consumption of energy have a significant environmental impact. Environmental sustainability as a legal principle mandates that energy development be balanced with environmental stewardship and intergenerational equity. International environmental law has progressively infused energy law with sustainability obligations. The *United Nations Framework Convention on Climate Change 1992*[27] and its *Paris Agreement 2015*[28] commit states to mitigate greenhouse gas emissions and transition toward low-carbon energy systems. The Paris Agreement, in particular, sets the goal of "holding the increase in the global average temperature to well below 2°C and pursuing efforts to limit the temperature increase to 1.5°C"[29], which effectively requires profound changes in energy production, detailing their emissions reduction and clean energy plans, creating a framework that guides domestic energy policies towards sustainability. [30]

Beyond climate change treaties, other international instruments also embed environmental considerations into energy activities. An example, the *Energy Charter Treaty* contains provisions on environmental cooperation and energy efficiency, underscoring that investment protection under the ECT should not come at the expense of environmental or health standards. Additionally, treaties like UNCLOS impose environmental duties relevant to energy: states must prevent oil

[27] United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107 (UNFCCC).
[28] Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UNTS No 54113.
[29] Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UNTS XX https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement
[30] Why Is International Law Important for Energy Sustainability?' (Energy Sustainability Directory, 2023) https://energy.sustainability-directory.com/question/why-is-international-law-important-for-energy-sustainability/#:~:text=1,27%20through%20open%20and%20competitive accessed 7 November 2025.

pollution from offshore drilling and maritime transport and cooperate in protecting the marine environment.

Alongside these international environmental mandates, Energy security is a fundamental concern underpinning many energy laws and policies. Energy security refers to the reliable availability of energy at an affordable price to sustain national economic and social needs. In law, this principle has both international and national dimensions. At the international level, cooperation on energy security emerged in response to supply crises. The Agreement on an *International Energy Program of 1974* created the International Energy Agency (IEA), legally obliging member countries to maintain strategic petroleum reserves and to coordinate in oil supply emergencies. Similarly, the Energy Charter Treaty's aim of act to foster open markets and stable investment conditions can be seen as promoting energy security through diversification of supply and the rule of law in energy trade. Article 7 of the ECT, for example, requires parties to facilitate transit of energy materials across borders, which helps prevent supply disruptions and embargos. The *Energy Charter* political declaration of 1991 even enshrined access to energy on a secure and sustainable basis as a guiding aim of cooperation.

In essence, the principle of energy security in law seeks to guarantee that continuous availability of energy at a reasonable cost is upheld. It justifies a range of legal measures: from international stockpiling agreements and pipeline treaties to domestic emergency powers and infrastructure regulations. As the global energy system transitions, the legal concept of energy security is also evolving to encompass aspects like grid reliability, cybersecurity of energy systems, and resilience against extreme weather.

Energy law has always been imbued with public interest obligations. This principle manifests in various doctrines and regulatory requirements that oblige both states and energy companies to consider societal welfare, equity, and long-term interests in energy decision-making. At the international level, the public interest aspect is implicit in the notion of *permanent sovereignty* itself: UN Resolution 1803 (1962) provides that nationalisation or expropriation of natural resources is justified when undertaken for "public utility or interest" of the nation, subject to paying compensation. Likewise, the concept of *energy justice* has emerged as a scholarly and policy framework calling for fair distribution of energy benefits and burdens and inclusive decision-

making. This aligns with SDG 7[31], highlighting a global consensus that access to energy is a public necessity and a foundation for the realization of other social and economic rights.

In administrative law, public interest obligations are often explicitly imposed on energy producers, network operators, and regulators. Many jurisdictions require electricity, gas, and fuel providers to meet certain public service criteria: continuity and quality of supply, universal access, affordability, and environmental protection. EU energy directives, for instance, allow member states to impose PSOs on energy companies "in the general economic interest," which may relate to security of supply, regularity, quality, and price of supplies and environmental protection. These obligations ensure that even in liberalized markets, companies serve goals that the free market alone might undersupply. Another facet of public interest is the public trust doctrine, a principle in some domestic legal systems, which holds that certain critical resources are held by the state in trust for the people. Courts and scholars have explored applying the public trust doctrine to energy resources to require governments to manage these resources for the benefit of the public and future generations, rather than allowing their exploitation to solely benefit private entities.[32] The basic principles of energy law provide a conceptual framework that guides both international and domestic legal regimes. Sovereignty empowers states to control their energy destiny, yet international law tempers this with duties and cooperative mechanisms. Open energy markets and access to energy are promoted as engines of development and security, moderated by regulations to ensure fair and reliable outcomes. Sustainable development and climate imperatives now permeate energy law, requiring a transition to cleaner resources and integration of environmental law principles. Energy security remains paramount, driving laws that safeguard supply stability. Finally, public interest obligations remind us that energy is not an end in itself but a means to social welfare, equity, and the common good. Together, these legal principles form the bedrock of energy law, ensuring that this critical sector is governed not just by economic calculus but by the rule of law and fundamental values of the international community.

[31] The Sustainable Development Goals (SDGs) are 17 interlinked global objectives adopted by the United Nations in 2015 to serve as a universal blueprint for peace and prosperity for people and the planet. Specifically, SDG 7 focuses on ensuring universal access to affordable, reliable, sustainable, and modern energy by promoting renewable sources and enhancing global energy efficiency.

[32] Alexandra B Klass, 'Renewable Energy and the Public Trust Doctrine' (2012) 45 UC Davis Law Review 1021.

III. INTRODUCTION TO THE COURT – ICSID

1. History of the International Centre for Settlement of Investment Disputes (ICSID)

After the Second World War, with the decoloniSation trend, reconstruction of the world order needed a trustworthy investment mechanisms for the recently independent states who claim permanent sovereignty over natural resources within their borders through nationalization policies when the capital centered states stipulated high standards of protection and compensation in expropriation.[33] Domestic courts in the host countries were seen as incompetent and not fully separated from politics by the foreign investors, but the alternative solution, the diplomatic protection in the meaning of intervention, created politicised interstate conversations from private commerce disputes.[34] Clash of interests in the developed and developing state' (or we can say capital-exporting and capital-importing countries) disagreements staggered the early attempts to codify the standards of the investment law, such as the ABS-Scawcross Draft Convention of 1959 which is favoured by capital exporting countries from their perspective.[35] Many capital-importing countries did not accept the terms that came under codifications standards, which were neo-colonial and challenged their national sovereignty and local jurisdiction in their view. In 20th century, an Argentine Jurist named Carlos Calvo argued that allowing foreign countries to intervene on behalf of their nationals violated the sovereignty of weaker states, so the state shall reject any distinctive treatment or international enforcement mechanisms in favour of domestic jurisdiction, with the assertion of the equality of nationals and foreigners.[36] This policy, known as Calvo Doctrine, showed itself in the international agreements as "Calvo Clauses" which pledged not to seek diplomatic or international remedies and to submit to the specific local courts

[33] Selcen Nur Kışla, 'Protection Against Arbitrary or Discriminatory Measures in International Investment Law' (2024) 6(2) Ankara Sosyal Bilimler Üniversitesi Hukuk Fakültesi Dergisi (Prof Dr Mustafa Avcı'ya Armağan) 1846 https://doi.org/10.47136/asbuhfd.1524040

[34] Antonio R Parra, The History of ICSID (Oxford University Press, 2012).

[35] UNCTAD, Fair and Equitable Treatment: UNCTAD Series on Issues in International Investment Agreements (United Nations 1999).

[36] Bernardo M Cremades, 'Resurgence of the Calvo Doctrine in Latin America' (2006) 7 Business Law International 53.

jurisdiction but these clauses are not favoured in the modern investment treaties and mechanisms, which are deliberately trying to focus away from Calvo Doctrine.[37]

Conflicts between Capital-exporting and importing states were also viewed by the General Counsel of the World Bank, Aron Brorches prepared a procedural framework that world bank would sponsor conventions creating equal ease for conciliation and arbitration between investors and local states with leaving a space for applicable law determination, chance to parties in agreements without casuistic standards, named "Broches Plan".[38]

In the explanation of the problem, Broches said that as if no specific agreement derogating from domestic regulation exists, foreign investments are subject to the legal order of the host State. Both the substantive rules governing the investment and the procedural avenues available to the investor are determined by local law. This traditional framework reflects the primacy of State sovereignty and places foreign investors, at least formally, on the same footing as domestic economic actors when seeking redress through national institutions. Where disputes arise from acts attributable to the host State, the investor's recourse under classical international law is indirect. Protection may be sought only through the home state of investor e, either by way of diplomatic intervention or by the espousal of the claim before an international forum. This way is structurally inefficient. Access to international adjudication depends on the discretionary assessment of the home State, which may decline to act for political or strategic reasons, thereby preventing judicial scrutiny of potentially unlawful conduct by the host State. As a result, the investor's legal position is rendered uncertain and contingent upon intergovernmental considerations. Certain investors have attempted to mitigate these limitations by negotiating arbitration clauses directly with host States. Such agreements may establish procedural guarantees, designate applicable law, and provide for neutral dispute settlement. However, this solution remains exceptional rather than systemic. Only a limited category of investors is capable of securing such arrangements, and even where arbitration agreements exist, their enforceability may be contested. In cases of State non-compliance, the

[37] *ibid.*

[38] A Broches, 'Settlement of Disputes between Governments and Private Parties' (EC/M/61-192, 28 August 1961) in International Centre for Settlement of Investment Disputes, History of the ICSID Convention: Documents Concerning the Origin and the Formulation of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, Volume II, Part 1 (ICSID 1968) doc 1.43.

investor is again forced to rely on diplomatic channels, reintroducing the very constraints these agreements were intended to avoid.

More broadly, the historical absence of an institutionalized and universally acceptable mechanism for resolving investment disputes has hindered the development of effective dispute settlement. Private arbitral institutions have often been regarded by States as lacking sufficient public legitimacy, while traditional inter-State mechanisms have excluded private parties altogether. This structural gap has long complicated efforts to depoliticize investment disputes and underscores the rationale for the emergence of specialized international investment arbitration frameworks and for these problems, he raised these solutions:

"*(a) a recognition by States of the possibility of direct access by private individuals and corporations to an international tribunal in the field of financial and economic disputes with Governments;*

(b) a recognition by States that agreements made by them with private individuals and corporations to submit such disputes to arbitration are binding international undertakings;

(c) the provision of international machinery for the conduct of arbitration, including the availability of arbitrators, methods for their selection and rules for the conduct of the arbitral proceeding;

(d) provision for conciliation as an alternative to arbitration."

Consequently The World Bank held a series of consultative meetings for the regions such as Addis Ababa, Santiago, Geneva, and Bangkok, bringing together officials and experts from Africa, Asia, America, and Europe, who raised concerns on the sovereignty and questions on remedies and the applicable law for the drafts. The Convention on the Settlement of Investment Disputes between States and Nationals of Other States was approved by the World Bank's Executive Directors in

March 1965 and opened for signature on 18 March 1965 in Washington, D.C. It entered into force on 14 October 1966. ICSID first arbitration, *Holiday Inns v Morocco*[39], was in 1972 and during the 1980s caselord was modest due to concerns over sovereign control over natural resources and neo-colonialism; even several states hesitated to ratify the convection and others would later denounce it temporarily; however numbers of signatory states increased over time.[40] In 1978, ICSID adopted the Additional Facility Rules, which allowed ICSID to administer arbitrations and conciliations in certain cases that one of the parties was not Contracting State to conversion falling outside the strict scope of the Convention but even this amendment is not guaranteed automatic enforcement regime with awards, reachability of center increased as in non-Convention cases made the Centre more attractive in treaty-making. The significance of ICSID is closely related to the profileration of bilateral investment treaties (BITs) and other investment chapters from the late 1980s onwards, as these instruments typically include standing offers by host states to arbitrate disputes with investors in the ICSID platform as a preferred option. Facultative jurisdiction of the center turned into a consent mechanism based on treaties that is accessible to any investor who wants to be in protection of BITs and multilateral treaties such as the ECT. From the mid-1990s, the Centre's caseload grew exponentially. A growing number of disputes were brought under BITs, NAFTA Chapter 11, and the Energy Charter Treaty, followed by waves of crisis-related cases. ICSID registered its 100th case in 1997, its 200th case in 2004, and by the 2010s had administered several hundred arbitrations, representing a substantial majority of all known investment treaty cases worldwide.[41]

Institutionally, ICSID also evolved in response to experience and criticism. Amendments to the Arbitration Rules in 1984 and in 2006 introduced clearer provisions on transparency, third-party submissions, and summary dismissal of manifestly unmeritorious claims. More recently, a comprehensive rule revision process culminated in the 2022 Rules, which emphasise efficiency, disclosure of third-party funding, broader transparency, and expanded use of the Additional Facility, as well as new mediation and fact-finding mechanisms. These reforms reflect ICSID's

[39] Holiday Inns SA and others v Morocco (Decision on Jurisdiction) (12 May 1974) (1994) 1 ICSID Rep 645.

[40] Pierre Lalive, 'The First "World Bank" Arbitration (Holiday Inns v Morocco)—Some Legal Problems' (1980) 51 British Yearbook of International Law 123 https://doi.org/10.1093/bybil/51.1.123

[41] N (27)

attempt to maintain its founding objectives of neutrality, depoliticization, and legal certainty while addressing legitimacy concerns and adapting to the changing landscape of international investment relations.[42]

2. Structure of the ICSID

The ICSID Convention is a specialised institutional framework rather than a permanent international court. Its structure reflects the foundational objectives of neutrality, depoliticisation, party autonomy, and procedural certainty, while avoiding the creation of standing judges or a hierarchical judicial system. ICSID operates as a self-contained mechanism for investor and State dispute settlement, uniting permanent institutional organs with *ad hoc* adjudicatory bodies constituted for each individual dispute.

At the institutional level, ICSID consists of two permanent organs: the Administrative Council and the Secretariat. These organs are responsible for governance, supervision, and administration, while the adjudicatory function is exercised by arbitral tribunals, conciliation commissions, and *ad hoc* annulment committees, all of which are constituted on a case-by-case basis. The Administrative Council is the governing body of ICSID and is composed of one representative from each Contracting State. Each State has one vote, irrespective of its economic power or level of capital export, a design choice intended to preserve institutional balance and reassure capital-importing States. The President of the World Bank serves *ex officio* as Chairman of the Administrative Council without any voting rights. Despite this limitation, the Chairman exercises significant authority through appointment powers expressly granted by the Convention.[43] The functions of the Administrative Council are primarily normative and supervisory. It adopts and amends the ICSID Arbitration, Conciliation, Mediation, Fact-Finding, and Additional Facility Rules, as well as the Administrative and Financial Regulations governing the Centre's internal functioning. The Council also elects the Secretary-General and Deputy Secretary-General and approves the annual budget of the Centre. Crucially, the Administrative Council does not intervene

[42] International Centre for Settlement of Investment Disputes, 'A Brief History of the Amendment of the ICSID Rules and Regulations' (ICSID, 2022) https://icsid.worldbank.org/news-and-events/speeches-articles/brief-history-amendment-icsid-rules-and-regulations

[43] International Centre for Settlement of Investment Disputes, 'Administrative Council' (ICSID) https://icsid.worldbank.org/about/member-states/administrative-council accessed 4 February 2025.

in the adjudication of individual disputes, thereby safeguarding the independence of tribunals and reinforcing the depoliticised character of the ICSID system.

The Secretariat constitutes the operational core of ICSID and is headed by the Secretary-General, who acts as the legal representative and Registrar of the Centre. The Secretary-General is elected by the Administrative Council and is assisted by one or more Deputy Secretaries-General. The Secretariat is responsible for the registration and administration of cases, organisation of hearings, financial management of proceedings, and procedural assistance to tribunals and annulment committees. While the Secretariat oversees the procedural aspects of a case, it has no authority over jurisdictional rulings or the final award, ensuring it maintains no substantive impact on the conclusion of dispute.[44]

In addition to its permanent organs, ICSID maintains two standing rosters: the Panel of Arbitrators and the Panel of Conciliators. Each Contracting State may designate up to four persons to each Panel, and the Chairman of the Administrative Council may designate additional members. Panel members must be persons of high moral character with recognised competence in law, commerce, industry, or finance, and must be capable of exercising independent judgment. Although parties are not obliged to appoint arbitrators from the Panels by agreement, the Panels play a crucial role in default appointments and in the constitution of ad hoc annulment committees.[45]

3. Proceedings before ICSID

a) Institution of Proceedings

ICSID proceedings are formally instituted by the submission of a written Request for Arbitration or Conciliation to the Secretary-General. The request must identify the parties, the consent instrument relied upon, the investment in dispute, and the nature of the claims. Upon receipt, the

[44] International Centre for Settlement of Investment Disputes, 'Secretariat' (ICSID) https://icsid.worldbank.org/about/secretariat accessed 4 February 2025.

[45] International Centre for Settlement of Investment Disputes, 'Arbitrators and Conciliators' (ICSID) https://icsid.worldbank.org/about/arbitrators-conciliators accessed 4 February 2025.

Secretary-General conducts a limited screening under Article 36 of the ICSID Convention. It must register the request unless the dispute is manifestly outside the jurisdiction of the Centre.[46]

The manifestly outside jurisdiction standard is deliberately narrow and ensures that arguable jurisdictional questions are reserved for determination by the tribunal rather than resolved at the institutional stage. Registration of the request marks the formal commencement of proceedings and triggers the process for constituting the tribunal. From this point onward, the parties' consent becomes irrevocable, and the exclusivity of ICSID jurisdiction applies unless otherwise agreed.[47]

b) Tribunal Composition

Following registration, an arbitral tribunal is constituted in accordance with the parties' agreement or failing such agreement, the default rules set out in the Convention. Tribunals are typically composed of three arbitrators, unless the parties agree on a sole arbitrator or an another uneven number. Party autonomy governs appointments, subject to the Convention's nationality restrictions, which require that the majority of arbitrators be nationals of States other than the host State and the investor's home State.[48]

If the tribunal is not constituted within the prescribed time limits, either party may request the Chairman of the Administrative Council to make the necessary appointments. In such cases, appointments must be made from the Panel of Arbitrators. This default mechanism ensures that proceedings cannot be obstructed by a party's refusal to cooperate in tribunal formation. Once established, the tribunal is empowered to determine the scope of its own legal mandate, rule on the admissibility of the claim, decide the merits of the dispute, and award compensation. Arbitrators are subject to strict requirements of independence and impartiality and parties may seek

[46] *ICSID Additional Facility Conciliation Rules* (entered into force 1 July 2022) ch II.

[47] *ibid.*

[48] *ICSID Rules of Procedure for Arbitration Proceedings (Arbitration Rules)* (entered into force 1 July 2022) ch II.

disqualification of an arbitrator on the basis of a potential lack of the qualities required by the Convention.[49]

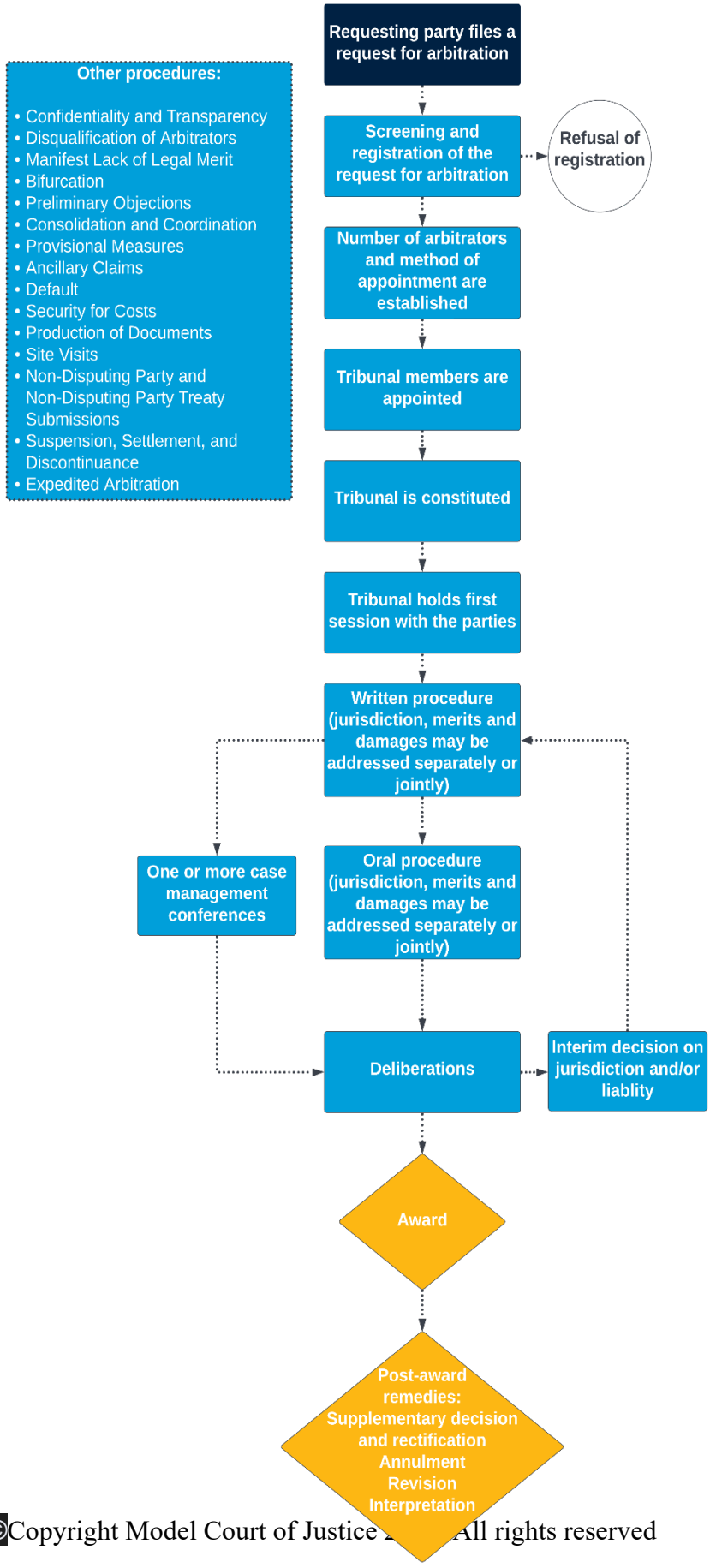
c) Annulment Mechanism and ad hoc Committees

A defining feature of the ICSID system is the absence of appeal to domestic courts and the existence of an internal annulment mechanism under Article 52 of the Convention. Annulment does not constitute an appeal on the merits but is an exceptional remedy designed to safeguard the procedural integrity of the arbitral process.[50]

Applications for annulment are decided by ad hoc committees composed of three members appointed exclusively by the Chairman of the Administrative Council from the Panel of Arbitrators. Committee members must be independent from the original tribunal and are subject to strict nationality restrictions. Annulment may be granted only on one or more of the exhaustive grounds listed in Article 52, including improper constitution of the tribunal, manifest excess of powers, serious departure from a fundamental rule of procedure, corruption, or failure to state reasons.

If an award is annulled in whole or in part, the dispute may be resubmitted to a newly constituted tribunal at the request of either party. Where annulment is refused, the award remains final and binding, and all Contracting States are obliged to recognise and enforce it as if it were a final judgment of their own courts. Through this mechanism, ICSID preserves both the finality of awards and the legitimacy of the arbitral process, reinforcing its character as a self-contained system of international dispute settlement.[51]

[49] ICSID Convention, art 41.
[50] Dmitry Bayandin, 'ICSID Annulment Procedure: Ad hoc Committees and their Powers' (Jus Mundi, 24 September 2025) https://jusmundi.com/en/document/publication/en-icsid-annulment-procedure-ad-hoc-committees-and-their-powers accessed 1 January 2026.
[51] *ibid.*



(table 1: the procedures before ICSID)

4. Sources of Law Applied by ICSID Tribunals

The determination of the sources of law applicable in ICSID arbitration is governed primarily by the ICSID Convention itself, reflecting the Centre's objective of providing a neutral and depoliticised legal framework for the settlement of investment disputes. Unlike domestic courts, ICSID tribunals do not operate within a single legal system but apply a composite body of law derived from the consent of the parties, international law, domestic law, and contractual obligations. The cornerstone provision is Article 42(1) of the ICSID Convention, which establishes a hierarchical yet flexible approach to applicable law. Where the parties have agreed upon the law governing their dispute, the tribunal is bound to apply that law. Such agreements frequently designate international law, the law of the host State or a combination of both, particularly in treaty-based arbitration where the investment treaty itself forms a central part of the applicable law. This shows the consensual nature of ICSID jurisdiction:[52]

> *"The Tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the Tribunal shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws) and such rules of international law as may be applicable.*
>
> *(2) The Tribunal may not bring in a finding of* ***non liquet***[53] *on the ground of silence or obscurity of the law.*
>
> *(3) The provisions of paragraphs (1) and (2) shall not prejudice the power of the Tribunal to decide a dispute* ***ex aequo et bono***[54] *if the parties so agree."*[55]

[52] Convention on the Settlement of Investment Disputes between States and Nationals of Other States (opened for signature 18 March 1965, entered into force 14 October 1966) 575 UNTS 159, art 42.
[53] "the law is not clear." It describes a situation in which a court or tribunal refuses to decide a dispute because the applicable law is considered insufficient, incomplete, or uncertain.
[54] "according to what is equitable and good."
[55] *Ibid.*

In the absence of an express agreement on applicable law, Article 42(1) provides a default rule whereby the tribunal shall apply the law of the host State, including its rules on the conflict of laws, together with such rules of international law as may be applicable. This formulation was the product of careful compromise during the drafting of the Convention, designed to reconcile host States' insistence on the relevance of their domestic legal order with investors' demand for the application of international legal standards.[56] As Broches explained, the aim was not to subordinate international law to domestic law, but to ensure their coordinated application within a single adjudicatory framework.[57] International law plays a particularly prominent role in treaty-based ICSID arbitration. (BITs) and multilateral instruments such as the Energy Charter Treaty constitute binding sources of law where applicable. In addition, tribunals regularly apply principles of customary international law, especially in relation to state responsibility, attribution of conduct, lawful and unlawful expropriation, standards of compensation, and general standards of treatment. In identifying these rules, ICSID tribunals frequently refer to Article 38(1) of the Statute of the International Court of Justice as an authoritative guide to the sources of international law, notwithstanding that it is not formally binding upon them.[58]

Domestic law remains an essential source, particularly for determining the existence, validity, and scope of the investment. Questions concerning property rights, corporate capacity, licences, concessions, and regulatory compliance are typically governed by host State law. However, ICSID tribunals have consistently emphasised that domestic law must be interpreted and applied in conformity with international law obligations. Where a conflict arises, international law may correct or supersede domestic law, especially in cases involving treaty breaches. This interaction was clearly articulated in *Vivendi v Argentina*[59], where the annulment committee distinguished between contract claims governed by domestic law and treaty claims governed by international law. Investment contracts between the investor and the host State may also constitute a significant source of applicable law. Contractual provisions concerning stabilisation, renegotiation, or dispute

[56] Christoph Schreuer and others, The ICSID Convention: A Commentary (2nd edn, CUP 2009)

[57] Aron Broches, 'Settlement of Disputes between Governments and Private Parties' (Note to the Executive Directors, 28 August 1961) in History of the ICSID Convention, Documents Concerning the Origin and the Formulation of the Convention (ICSID 1968) vol II, pt 1,

[58] Statute of the International Court of Justice art 38(1); Rudolf Dolzer and Christoph Schreuer, Principles of International Investment Law (2nd edn, OUP 2012)

[59] Compañía de Aguas del Aconquija SA and Vivendi Universal v Argentine Republic (Decision on Annulment) ICSID Case No ARB/97/3, 3 July 2002.

settlement often shape the analysis of the tribunal, particularly in disputes arising from concessions or long-term infrastructure projects. Nevertheless, even where contractual obligations are central, ICSID tribunals tend to situate them within the broader framework of international law, especially when treaty claims are asserted in parallel.[60]

In addition to binding sources, ICSID tribunals frequently rely on general principles of law and prior arbitral decisions as persuasive authority. Although there is no doctrine of binding precedent in international arbitration, earlier ICSID awards play an important role in promoting coherence and legal certainty. Tribunals regularly cite previous decisions when interpreting standards such as fair and equitable treatment or indirect expropriation, contributing to the gradual consolidation of an ICSID jurisprudence constante. Equity occupies a limited and exceptional place within the ICSID system. Under Article 42(3) of the Convention, a tribunal may decide a dispute ex aequo et bono only if the parties expressly agree. In practice, such authorisation is rare, and ICSID tribunals overwhelmingly prefer to ground their decisions in legal rules rather than considerations of pure equity.[61]

Overall, the sources of law applied by ICSID tribunals reflect the hybrid character of international investment arbitration. By combining domestic law, international law, treaty obligations, and contractual arrangements within a structured legal framework, ICSID tribunals are able to address the complex legal realities of investment and the State disputes while preserving the Convention's founding objectives of neutrality, depoliticization, and legal certainty.[62]

[60] Holiday Inns SA v Morocco (Award) ICSID Case No ARB/72/1, 12 May 1974.
[61] ICSID Convention art 42(3); Schreuer and others (n 42)
[62] Anne Mirjam Schneuwly, International Investment Law and its Instruments: Managing Risks to Investors and Host States (2012)

III. KEY CONCEPTS

1. Most Favoured Nation and Umbrella causes

The Most-Favoured-Nation (MFN) clause is a standard provision in international investment agreements requiring the host State to accord investors treatment no less favourable than that granted to investors of any third State. Its primary function is to prevent nationality-based discrimination and to ensure equal competitive conditions for foreign investors.[63] From a theoretical perspective, the MFN clause reflects the principle of equality of treatment in international economic relations and seeks to prevent competitive distortions arising from treaty fragmentation. While MFN clauses were originally understood as applying to substantive standards of protection, their potential extension to procedural rights, particularly dispute settlement provisions, has generated significant controversy in arbitral practice.[64] Controversy highlights the tension between the principle of State consent to arbitration and the objective of uniform investor protection across treaty networks.

Debate on MFN was first articulated in *Maffezini v Spain*[65], where the tribunal allowed the claimant to rely on the MFN clause to avoid a mandatory domestic litigation requirement by importing a more favourable dispute settlement provision from another BIT. The tribunal reasoned that dispute settlement arrangements are inseparable from the protection of investors and therefore capable of falling within the scope of MFN treatment. This reasoning implied a functional approach, viewing procedural guarantees as integral to the effectiveness of substantive investment protection. However, later tribunals adopted a more restrictive approach. In *Plama v Bulgaria*,[66] the tribunal rejected the extension of MFN clauses to dispute settlement provisions, emphasising that consent to arbitration must be clear and cannot be presumed through an MFN clause unless the treaty expressly so provides. [4] Within this approach, a return to a classical understanding of arbitration as strictly based on consent and reinforces legal certainty in the formation of arbitral jurisdiction.

---

[63] Schreuer and Dolzer

[64] Schreuer and others

[65] Emilio Agustín Maffezini v Kingdom of Spain (Decision on Jurisdiction) ICSID Case No ARB/97/7, 25 January 2000.

[66] Plama Consortium Limited v Republic of Bulgaria (Decision on Jurisdiction) ICSID Case No ARB/03/24, 8 February 2005.

Restrictive interpretation has since become dominant in investment arbitration jurisprudence. As a result, MFN clauses are now generally interpreted as confined to substantive standards unless an explicit intention to extend them to dispute settlement can be established.

Closely related to MFN treatment are umbrella clauses, which aim to elevate contractual and other specific obligations undertaken by a host State toward an investor to the level of international treaty obligations. Typically formulated as an obligation to "observe any obligations" entered into with respect to investments, umbrella clauses seek to prevent States from avoiding international responsibility by relegating disputes to the purely contractual sphere. At a theoretical level, umbrella clauses operate at the intersection of contract law and public international law, raising questions about the internationalisation of State commitments. Their scope, however, has been subject to divergent interpretations. In *SGS v Pakistan*,[67] The tribunal adopted a narrow approach, holding that the umbrella clause did not automatically transform breaches of contract into breaches of the investment treaty. This interpretation was motivated by concerns that an expansive reading would blur the distinction between contractual disputes and treaty claims. By contrast, in *SGS v Philippines*,[68] the tribunal accepted that an umbrella clause may internationalise contractual obligations, although it emphasised the need to respect jurisdictional limits and forum selection clauses. Acknowledges the protective function of umbrella clauses while seeking to preserve procedural order and party autonomy. The relationship between contract claims and treaty claims was further clarified in *Vivendi v Argentina*[69], where the annulment committee held that breaches of an investment treaty are legally distinct from breaches of contract and that the existence of a contractual forum clause does not bar the adjudication of treaty claims before ICSID. Distinction has become a cornerstone of modern investment treaty jurisprudence, allowing treaty standards to operate independently of contractual remedies. The Decision has been highly influential in consolidating the doctrinal autonomy of treaty standards, including umbrella clauses.

[67] SGS Société Générale de Surveillance SA v Islamic Republic of Pakistan (Decision on Jurisdiction) ICSID Case No ARB/01/13, 6 August 2003.
[68] SGS Société Générale de Surveillance SA v Republic of the Philippines (Decision on Jurisdiction) ICSID Case No ARB/02/6, 29 January 2004.
[69] ICSID (n. 58)

2. Legitimate expectations of Investors

The doctrine of legitimate expectations constitutes a core component of the fair and equitable treatment (FET) standard. It protects investors against State conduct that frustrates expectations reasonably relied upon at the time of investing. These expectations must be based on specific assurances, representations, or a stable legal framework attributable to the State, rather than on mere subjective expectations of profitability.[70]

The modern articulation of legitimate expectations in investment law is commonly traced to *Tecmed v Mexico*, where the tribunal held that the host State must act consistently, transparently, and free from ambiguity so as not to frustrate the basic expectations that were taken into account by the investor when investing. Subsequent jurisprudence refined this approach by distinguishing regulatory frameworks and specific commitments. In *Saluka v Czech Republic*[71], the tribunal emphasised that investors cannot legitimately expect complete regulatory immutability and that States retain an inherent right to regulate in the public interest.

This balance between investor protection and regulatory autonomy became particularly salient in crisis-related cases. In *CMS Gas Transmission Company v. Argentine Republic*[72] and *LG&E Energy Corp. v. Argentine Republic*[73], tribunals examined whether Argentina's radical alteration of its legal and economic framework during a financial crisis violated investors' legitimate expectations, while also considering defences based on necessity and public interest. More recent cases in the renewable energy sector under the Energy Charter Treaty further demonstrate a stricter approach, requiring that legitimate expectations be grounded in clear, specific, and unambiguous assurances, rather than inferred solely from general legislation.

Doctrinally, legitimate expectations are closely linked to principles of legal certainty, good faith, and estoppel, but they do not amount to a guarantee against regulatory change. The prevailing view in contemporary arbitral practice is that expectations must be reasonable, objectively justified, and

[70] Andrea K Bjorklund, 'Investment Treaty Arbitral Jurisprudence as a Source of International Law' (2008) 24 ICSID Review 1, 15–17.
[71] *Saluka Investments BV v The Czech Republic* (Partial Award) (17 March 2006) PCA Case No. 2001-04.
[72] *CMS Gas Transmission Company v Argentine Republic* (Award) ICSID Case No ARB/01/8, 12 May 2005.
[73] *LG&E Energy Corp, LG&E Capital Corp and LG&E International Inc v Argentine Republic* (Award) ICSID Case No ARB/02/1, 25 July 2007.

assessed in light of all circumstances, including the host State's right to regulate and its level of economic development. Accordingly, the doctrine operates as a balancing mechanism that protects investor reliance while preserving States' regulatory autonomy.

3. State Aid

State aid within the European Union is fundamentally governed by Article 107(1) of the Treaty on the Functioning of the European Union (TFEU)[74], which prohibits public support that distorts or threatens to distort competition by favoring certain undertakings or productions.[75] To be legally classified as state aid, a measure must strictly satisfy five cumulative criteria: it must be granted by the state or through state resources, be given to an entity engaged in an economic activity, confer a selective economic advantage, distort or threaten to distort competition, and affect trade between Member States. Although state aid is generally deemed incompatible with the internal market, explicit exceptions exist when such interventions are necessary to correct market failures or achieve well-defined public policy objectives, such as environmental protection or a secure energy market.[76]

The historical relationship between state intervention and energy law has evolved significantly from early resource extraction to the management of modern public utilities. Initially, during the commercialization of resources like oil in the 19th century, legal frameworks relied on private-law doctrines such as the rule of capture. Over-extraction and waste quickly necessitated state-imposed conservation statutes and regulatory oversight. As electricity emerged as a transformative technology, it was recognised not merely as a commercial product but as a public necessity, prompting governments to treat energy networks as utilities that required collective management to ensure universal access, continuous supply, and social equity. This utilitarian core established the enduring precedent that state intervention in energy markets is often essential to serve the broader public interest.[77]

---

[74] Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C 326/47 (TFEU).
[75] European Commission, 'Questions and answers: Guidelines on State aid for climate, environmental protection and energy 2022' (27 January 2022)
[76] Communication from the Commission — Guidelines on State aid for environmental protection and energy 2014-2020 OJ C200/1
[77] Grasu S, Popa MG and Popp MR, 'State aid for green energy. Short overview of the EU and Romanian legislation' (Bucharest University of Economic Studies 2023)

Following 20th Century decolonisation, international tensions arose between the sovereignty of newly independent states over their natural resources and the high standards of protection demanded by foreign investors. To depoliticize these cross-border investment disputes and avoid intergovernmental diplomatic conflicts, structured legal frameworks and institutions were established, and multilateral agreements subsequently emerged to provide stable foundations for energy trade, most notably the ECT in 1994, which aimed to encourage foreign capital in the energy sector by guaranteeing legal protections such as the FET standard and safeguarding against unlawful expropriation.[78]

Today, state aid is a primary mechanism the EU utilizes to drive the green energy transition, aligning with the objectives of the European Green Deal and the Paris Agreement. To accelerate decarbonisation, the European Commission introduced the Guidelines on State aid for climate, environmental protection and energy (CEEAG), which broaden the categories of supportable clean technologies, including renewable hydrogen, energy efficiency, and electricity storage.[79] Under the CEEAG, Member States can cover up to 100% of the funding gap for green projects when aid is awarded through transparent competitive bidding processes. Furthermore, the General Block Exemption Regulation (GBER) exempts certain categories of environmental state aid from lengthy prior notification processes, enabling Member States to implement vital renewable energy schemes more rapidly.

While green state aid is crucial for environmental progress, its application is strictly monitored to prevent harmful market fragmentation and subsidy races among Member States. EU guidelines emphasize that state intervention is only justified when it effectively targets a residual market failure that cannot be addressed by the market or other regulatory tools alone. To ensure public funds are utilized efficiently and proportionally, the EU relies on market-based mechanisms like competitive bidding, which lowers the cost of renewable energy subsidies and prevents the overcompensation of energy companies. Additionally, the modern framework aligns with broader

[78] Karova R, 'Application of State aid rules to support for energy from renewable sources in the Energy Community' (Presentation to the Renewable Energy Coordination Group, Vienna, 2 March 2016)
[79] BusinessEurope, *Priorities for the Future of EU State Aid Framework* (Priorities Paper, June 2024)

climate targets by facilitating the progressive phase-out of environmentally harmful subsidies, explicitly limiting the possibility of state aid for heavily polluting fossil fuels.[80]

The aggressive use of state aid and subsidies to attract green energy investments frequently intersects controversially with international investment law, particularly when states attempt to modify their regulatory frameworks. When governments offer lucrative financial incentives to stimulate energy sectors, they attract significant foreign capital. Subsequent macroeconomic pressures or budget deficits can compel states to retroactively alter or withdraw these support schemes. This dynamic creates a direct legal friction between a state's sovereign Right to Regulate in the public welfare and the legitimate expectations of foreign investors under treaties like the ECT.

A prominent European Union doctrinal counterpoint illustrating this precise tension can be found in the jurisprudence of the Court of Justice of the European Union (CJEU), which structurally grants a wider margin of appreciation to public authorities than investment tribunals do. In the Cases C-201/08 and C-203/08 *Plantanol* (2010)[81], the CJEU ruled that the protection of legitimate expectations applies only when the administration has given "precise, unconditional and consistent assurances." In the absence of such specific promises, the right of the state to regulate and adapt to changing circumstances prevails over an investor's reliance on a pre-existing tax benefit.

Similarly, in Case C-17/03 *VEMW and Others* (2005)[82], which dealt with the liberalization of the Dutch electricity market, the Court underscored that a "prudent and circumspect operator" must anticipate legislative flexibility in rapidly evolving economic sectors like energy. This approach is foundational to EU law, tracing back to Case C-331/88 *Fedesa* (1990)[83], where the CJEU confirmed that institutions possess broad discretion in complex economic policies, limiting judicial review only to measures that are manifestly inappropriate. More recently, Case C-594/18 *Austria*

[80] Commission, 'Guidelines on State aid for environmental protection and energy 2014-2020' [2014] OJ C200/1.

[81] Joined Cases C-201/08 and C-203/08 *Plantanol GmbH & Co KG v Hauptzollamt Darmstadt* [2009] ECR I-08343.

[82] Case C-331/88 R v Minister of Agriculture, Fisheries and Food, ex parte Fedesa and Others [1990] ECR I-4023.

[83] Case C-594/18 *Republic of Austria v European Commission (Hinkley Point C)* EU:C:2020:742.

v. Commission (*Hinkley Point C,* 2020) reinforced the wide discretion of Commission to approve State aid that promotes broader public interest objectives, such as energy security. Taken together, these EU cases establish a distinct legal framework from international arbitration: the CJEU consistently prioritizes legislative flexibility and public policy evolution, affirming that under EU law, economic operators possess no inherent right to regulatory immutability.

4. Right the Regulate

The legal doctrine governing a state's regulatory autonomy operates directly at the intersection of domestic legislation and international economic law. Governments maintain a recognised, inherent authority to legislate for the public welfare; international investment treaties do not inherently forbid the expropriation of foreign-owned assets. Under instruments like Article 13(1) of the ECT. However, taking foreign property is lawful only when it strictly satisfies four specific criteria. The action must serve a public purpose, operate without discrimination, follow due process of law, and guarantee prompt, adequate, and effective compensation.[84]

This latitude originates from the customary international law doctrine of police powers. Historically, tribunals did not require states to compensate foreign nationals for financial losses caused by *bona fide*, non-discriminatory regulations protecting public health, safety, or morals. Separating ordinary administrative regulation from an actionable regulatory taking is routinely difficult in practice.[85] A declared public purpose does not offer blanket immunity as asserting a measure serves a legitimate objective does not automatically negate an expropriation claim. If regulatory interference actually amounts to a taking, the state's action might be legally justified, yet the obligation to pay compensation remains intact.

The boundary dividing ordinary regulation from expropriation invites intense debate today, primarily because direct physical seizures of assets are relatively rare. Most contemporary

[84] K Nadakavukaren and R Polanco Lazo, *Legal Opinion on Right to Regulate on Investment Treaties: Canada, European Union, Japan, Netherlands, and United States of America* (E-Avis ISDC 2023, current to 28 July 2023, Swiss Institute of Comparative Law) https://www.isdc.ch

[85] Berfu Beysulen Angin, 'The Right to Regulate vs Investment Protection: Unveiling the Causes of Imbalance and the Limits of Current Reform Efforts in International Investment Law' (2025) 40(1) *ICSID Review – Foreign Investment Law Journal* 11 https://doi.org/10.1093/icsidreview/siaf007

investment disputes deal with indirect takings. In these situations, the foreign entity retains formal legal title to the property, but state interference severely erodes the legal rights, managerial control, or economic utility of the investment. This phenomenon frequently appears as a creeping expropriatio. A single administrative action analyzed in isolation might not breach a treaty. The aggregate, cumulative weight of these step-by-step measures will destroy the investment's utility and result in a de facto taking.[86]

The friction surrounding state regulation is compounded by the broad definition of protected property. Treaties do not limit protection to physical factories or land parcels; they explicitly cover intangible property and contractual rights. International tribunals consistently rule that destroying the commercial utility of rights acquired through a contract carries the precise legal weight as confiscating tangible property. To validate a claim in this area, tribunals require evidence of a materialized state act that would be called an *acta jure imperii.*[87]

Separating a commercial contract breach from an unlawful expropriation requires close doctrinal scrutiny. A state simply breaking a contract in a commercial capacity, for instance, failing to pay a municipal debt, would not create an expropriation. An expropriation exists only when the government abandons its position as an ordinary contracting party. The state must utilize its superior, sovereign governmental authority to evade its obligations or alter the governing legal regime entirely.[88]

Within investor-State dispute settlement mechanisms, arbitrators rely on competing legal doctrines to determine whether a regulation crosses the line into a taking. Historically, many tribunals applied the sole effect doctrine. Under this approach, the state's motive is deemed irrelevant. Arbitrators focus purely on the severity and duration of the economic injury inflicted on the investor; if the state's interference causes a substantial deprivation of reasonably expected economic returns, it constitutes an expropriation. Responding to criticisms that this strict approach stifles domestic policymaking, other tribunals have moved past the sole effect doctrine to evaluate

[86] OECD, *"Indirect Expropriation" and the "Right to Regulate" in International Investment Law* (OECD Working Papers on International Investment 2004/04, OECD Publishing 2004) https://dx.doi.org/10.1787/780155872321
[87] Christoph Schreuer, *The Concept of Expropriation under the ETC and other Investment Protection Treaties* (20 May 2005)
[88] *Ibid.*

the purpose, non-discriminatory character, and proportionality of the governmental action. This creates a shifting standard that attempts to better preserve the state's legislative freedom.

Arbitral case law maps these theoretical boundaries. In the *Methanex v. United States*[89] and *Marvin Feldman v. Mexico* decisions[90], tribunals reinforced the police powers doctrine. They acknowledged that governments require space to regulate and that non-discriminatory regulations enacted for a public purpose do not automatically become compensable takings, even if they cause financial loss. Tribunals also police the limits of administrative abuse. In *Tecmed v. Mexico*[91] , the arbitrators found a specific environmental regulation to be disproportionate to the public interest goal, triggering a compensation requirement. Determining whether these regulatory takings are lawful or unlawful ultimately dictates the financial remedy. A lawful taking requires compensation equal to the actual loss[92], an unlawful taking requires full reparation under the *Chorzów Factory* standard[93], including lost profits or "*lucrum cessans"* to restore the investor to their original position.

5. Regulatory Stability and Predictability

Regulatory stability is best understood as a constituent element of the fair and equitable treatment standard under article 10(1) of the ECT, which expressly requires Contracting Parties to create a stable, equitable, favourable and transparent condition for foreign investments. In arbitral practice under the ECT, this language has generally been read as protecting the essential features of the legal regime on which investors relied when making long-term energy investments, while stopping short of requiring that legislation remain unchanged in all respects.[94] The more persuasive awards therefore treat stability as protection against radical or unforeseeable transformation, rather than

---

[89] *Methanex Corporation v United States of America* (Final Award on Jurisdiction and Merits) (2005) 44 ILM 1345

[90] *Marvin Roy Feldman Karpa v United Mexican States* (Award) (2002) 7 ICSID Rep 341

[91] *Técnicas Medioambientales Tecmed SA v United Mexican States* (Award) (2004) 43 ILM 133

[92] *damnum emergens*

[93] *Factory at Chorzów (Germany v Poland) (Merits)* [1928] PCIJ Rep Series A No 17

[94] Michele Potestà, 'Legitimate Expectations in Investment Treaty Law: Understanding the Roots and the Limits of a Controversial Concept' (2013) 28(1) *ICSID Review – Foreign Investment Law Journal* 88.

as a guarantee that every component of the original remuneration framework will survive for the full life of the investment. This approach is also consistent with the applicable-law structure of the ICSID, which directs tribunals to decide disputes by reference to applicable international law rather than by transforming commercial expectations into a general prohibition on legal change.[95]

Predictability represents the procedural dimension of this principle and is closely connected to the international rule of law. Legal stability and predictability enable private actors to manage their affairs effectively and to plan their conduct on the basis of knowable legal consequences, while transparent and intelligible regulatory change reduces the disruptive effects of uncertainty. In the investment context, this requires the host State to act with sufficient transparency, consistency, and intelligibility to permit a diligent investor to evaluate regulatory risk, model future cash flows, and structure financing over the long term. For this reason, tribunals frequently examine not only the substance of the impugned reform but also whether the legal order gave adequate notice of the regulatory direction, whether official conduct was internally coherent, and whether the investor could reasonably assess the prospect of future modification at the time of entry.[96]

Regulatory stability must be balanced against the sovereign right to regulate in the public interest. More recent jurisprudence and commentary increasingly reject the notion that international investment law grants regulatory immutability, emphasizing instead that States necessarily retain authority to adapt their legal frameworks to changing technological, fiscal, environmental, and social conditions. This is especially true in sectors such as electricity generation, where remuneration systems are highly sensitive to market evolution, infrastructure constraints, and policy recalibration. The resulting position is not that stability is irrelevant, but that the fair and equitable treatment standard protects against arbitrary or disproportionate disruption of the legal framework rather than against all regulatory evolution as such.[97]

This tension is particularly visible where States justify reform by reference to macro-economic necessity. In the EU renewable energy disputes, the structural tariff deficit in the electricity system

[95] Ibid.
[96] Stefanie A Lindquist and Frank B Cross, 'Stability, Predictability and the Rule of Law: Stare Decisis as Reciprocity Norm' (2009) 89(3) *Texas Law Review* 703.
[97] Alberto Peralta and Susan L Young, 'Decoding Regulatory Institutions: The Stability–Flexibility Perceptions Model for Entrepreneurs and Regulators' (2025) 23 *Journal of Business Venturing Insights* e00536.

became the central explanation for the replacement of the earlier remuneration regime with one built around standardized installations and a reasonable return methodology. The legal debate was not whether sustainability of the electricity system was a legitimate public objective; many tribunals accepted that it was. The harder question was whether system sustainability could justify modifying long-term incentive arrangements on which investors had relied when committing capital to renewable generation projects.[98] Some tribunals considered the tariff deficit sufficiently grave to render the reforms suitable and necessary, while others accepted the legitimacy of the objective but still held that the burden imposed on the claimants exceeded what public necessity could justify.

Administrative consistency plays a distinct role in this analysis. Even in the absence of a stabilization clause, a predictable environment may be reinforced by sustained and coherent administrative conduct, including the processing of registrations in the special-regime administrative register and related project-specific communications recognizing eligibility within the operative remuneration framework.Such conduct may not, by itself, amount to a bilateral commitment freezing the law, yet it can contribute to the objective reasonableness of an investor's reliance by demonstrating that the State was not merely legislating in general terms but actively administering a regime in a manner that invited project implementation. Accordingly, tribunals often distinguish between general legislation, which ordinarily remains open to revision, and individualized acts of administration, which may strengthen the case that the investor relied on a concrete and operational legal setting rather than on abstract policy alone.[99]

The modern standard for breach is therefore objective and turns principally on proportionality and reasonableness. As recent scholarship and arbitral practice indicate, tribunals examine whether the challenged measure pursued a legitimate objective, whether it was suitable and necessary to achieve that objective, and whether the burden imposed on the investor remained proportionate in light of the public interest pursued. In the Spanish awards, this inquiry has sometimes crystallized

[98] Mihály Fazekas, Dominik Brenner and Peter Ladegaard, *Measuring Legislative Predictability: The Case of the Kingdom of Jordan and Implications for the MENA Region* (World Bank Policy Research Working Paper No 10864, 2024).
[99] Jacques Pelkmans and others, *Stability and Predictability in EU Regulatory Governance* (CERRE Study, Centre on Regulation in Europe 2013).

into an "individual and excessive burden" test: even where the regulatory objective was accepted as legitimate and urgent, liability could still arise if the reform imposed a disproportionate burden on the particular claimant by driving returns materially below the level that the new regime itself purported to secure. The inquiry is thus not whether the State changed the law, but whether the manner and effect of the change remained within the bounds of acceptable sovereign conduct.[100]

In the end, regulatory stability and predictability function as a balancing mechanism between the protection of acquired legal positions and the necessity of policy evolution. Their objective is not to immobilize the State's legislative and administrative powers, but to prevent a bait-and-switch environment in which a State attracts capital through one set of essential legal features and then radically dismantles those features without adequate justification. Properly understood, the principle requires continuity sufficient to preserve legal certainty and investment planning, while still respecting the State's mandate to respond to fiscal pressures, market failures, technological change, and wider public needs. In this form, regulatory stability does not displace sovereignty; it disciplines the exercise of sovereignty by requiring that change remain reasoned, transparent, and proportionate.

IV. CASE BEFORE THE COURT

The foregoing doctrinal framework on sovereignty, legitimate expectations, State aid, and the right to regulate provides the normative lens through which the dispute in *RREEF Infrastructure (G.P.) Limited and RREEF Pan-European Infrastructure Two Lux S.à r.l. v. Kingdom of Spain* [101]must be examined. The Tribunal is not asked to assess the desirability of Spain's energy reforms, but their compatibility with Article 10(1) of the Energy Charter Treaty within the context of systemic electricity reform and EU law constraints.

[100] Robert Baldwin, *Regulatory Stability and the Challenges of Re-Regulating* (Centre on Regulation in Europe (CERRE) Study, 4 February 2013).
[101] RREEF Infrastructure (G.P.) Limited and RREEF Pan-European Infrastructure Two Lux S.à r.l. v. Kingdom of Spain, ICSID Case No. ARB/13/30

A.Overview

The Claimants, RREEF Infrastructure (G.P.) Limited and RREEF Pan-European Infrastructure Two Lux S.à r.l., have filed a request for arbitration against the Kingdom of Spain at ICSID. They claim that Spain's introduction of a series of broad regulatory measures changed the economic framework of the Spanish Electricity System, violating its international obligations under Article 10(1) of the ECT, specifically the FET standard and the umbrella clause. In 2011, the Claimants invested in Spain's renewable energy sector. They acquired indirect equity interests in wind farms (the Dédalo Project) and Concentrated Solar Power (CSP) plants (the Arenales and Andasol Plants). The Claimants were drawn by the stable economic framework established mainly by Royal Decree 661/2007. This decree provided a profitable Feed-in-Tariff (FIT) system to encourage renewable energy generation. However, due to an unsustainable "Tariff Deficit" in the electricity sector, which exceeded EUR 26 billion by 2013 because of a persistent gap between system revenues and costs, Spain introduced major legislative changes. One of the first contested measures was Law 15/2012, which placed a 7% tax on electric energy production. Following that, Spain enacted Royal Decree-Law 9/2013, which completely eliminated the previous FIT regime. In its place, Spain created a new payment model intended to offer a reasonable return based on the investment and operating costs of a theoretical "standard installation."

B. Facts of the Case.

1. On 27 November 1997, Spain adopted Law 54/1997 (the 1997 Electricity Law), forming the baseline framework for the electricity sector.

2. On 16 April 1998, the Energy Charter Treaty (ECT) entered into force for Spain (as reflected in the record’s treaty framework).

3. In 2005, RREEF Infrastructure (G.P.) Limited (First Claimant) was incorporated under the laws of Jersey.

4. In 2006, RREEF Pan-European Infrastructure Two Lux S.à r.l. (Second Claimant) was incorporated under the laws of Luxembourg.

5. On 25 May 2007, Spain adopted Royal Decree 661/2007 (RD 661/2007) regulating remuneration for Special Regime installations (including renewables).

6. In 2007, RREEF was first approached regarding a potential investment in the wind-sector Dédalo Project.

7. In 2008, the Dédalo Project was put on hold due to financing constraints during the financial crisis.

8. On 30 April 2009, Spain adopted Royal Decree-Law 6/2009 (RDL 6/2009), described as addressing the electricity-system tariff deficit and introducing, inter alia, apre-assignment registration mechanism.

9. In March 2010, negotiations regarding the Dédalo Project resumed, and RREEF reassessed renewable-energy opportunities in Spain.

10. In mid-2010, RREEF undertook due diligence and engaged advisors in relation to prospective wind and CSP investments.

11. In July 2010, Pöyry[102] issued an analysis commissioned by the Claimants focusing on projections under the RD 661/2007 tariff structure and noting the tariff deficit as a major sector issue.

12. On 2 July 2010, Spain issued a press release reflecting the outcome of discussions with sector actors (the “July 2010 Agreement” document as referenced in the record), the nature and significance of which are disputed by the Parties.

13. On 27 July 2010, SJ Berwin produced a preliminary due diligence report in relation to the Arenales project[103].

[102] Pöyry Management Consulting is a consultancy firm specializing in energy markets and regulatory analysis, often acting as an expert in investment arbitration.

[103] Arenales Solar PS, S.L. is a Spanish project company responsible for developing and operating a concentrated solar power (CSP) plant in Spain; the Claimants’ investment in the dispute was made through participation in this project.

14. On 7 December 2010, Spain adopted Royal Decree 1614/2010 (RD 1614/2010), including limitations on remunerated hours for wind and CSP.

15. In February 2011, RREEF made its first investment in Spain by indirectly acquiring equity interests connected to the Dédalo wind project[104].

16. In June 2011, RREEF indirectly invested in two operational CSP plants referred to as the Andasol plants.

17. In July 2011, RREEF indirectly invested in the development of the 49.9 MW Arenales CSP plant in Andalucía.

18. On 27 January 2012, Spain adopted Royal Decree-Law 1/2012 (RDL 1/2012), eliminating economic incentives for new generation installations (including renewables) and suspending certain procedures.

19. On 27 December 2012, Spain adopted Law 15/2012, introducing, inter alia, a 7% levy (TVPEE) on electricity generation revenues and related adjustments.

20. On 1 February 2013, Spain adopted Royal Decree-Law 2/2013 (RDL 2/2013), described as an urgent measure addressing electricity-system financial conditions and remuneration features.

21. On 12 July 2013, Spain adopted Royal Decree-Law 9/2013 (RDL 9/2013), derogating RD 661/2007 and moving to a model based on "standard installations" and a reasonable return concept.

22. On 22 October 2013, ICSID received the Claimants' Request for Arbitration against Spain, in which the Claimants claimed that Spain's modifications to the renewable energy support regime breached the protections afforded under the Energy Charter Treaty.

[104] The Dédalo wind project is a wind power project in Spain in which the Claimants held an investment through their renewable energy infrastructure portfolio.

i. Claims of the Claimants

1. Spain violated the FET standard under Article 10(1) of the ECT by abruptly and disproportionately dismantling the original regulatory framework that the Claimants relied upon when making their investments.

2. The Claimants possessed a legitimate expectation of regulatory "immutability." Based on specific promises, administrative resolutions, and the language of RD 661/2007, they expected the FIT regime to remain frozen for the operational lifetime of their existing installations, with any future regulatory changes applying only to new plants.

3. The disputed measures operate retroactively in violation of international law. The new regime utilizes an unlawful claw-back mechanism that accounts for past earnings to flatten and reduce the investors' future project-level returns, effectively targeting acquired rights.

4. The 7% levy introduced by Law 15/2012 is not a *bona fide* tax of general application. Because renewable energy producers, unlike conventional producers, cannot pass this cost onto consumers, it operates as a "backdoor tariff cut" designed to strip away incentives. Therefore, the ECT's Article 21 tax carve-out does not apply, and the Tribunal maintains jurisdiction over the measure.

5. Spain breached the ECT's umbrella clause by disregarding specific bilateral commitments made to the Claimants' project companies, specifically through their formal RAIPRE registrations and direct administrative communications from the Ministry.

ii. Claims of the Respondent

1. The Tribunal lacks jurisdiction *ratione voluntatis* to hear claims regarding the 7% levy under Law 15/2012. The levy is a *bona fide* macroeconomic tax measure of general application, falling squarely within the tax carve-out established by Article 21 of the ECT.

2. Spain did not breach the FET standard. The ECT does not act as an insurance policy against regulatory evolution, nor did Spain's legal framework ever contain a stabilization clause guaranteeing absolute immutability.

3. In a highly regulated sector, a diligent investor's only objective and legitimate expectation is a dynamic reasonable rate of return. The new regime successfully maintains this standard by tying profitability to the cost of money in capital markets while preventing unjustifiable over-remuneration.

4. The disputed measures are not retroactive. Under international and domestic law, retroactivity requires the nullification of acquired rights. The new regime merely factors in past cash flows to calculate future subsidies; it does not demand the return of past profits already received by the Claimants.

5. The regulatory reforms were necessary, reasonable, and proportionate macroeconomic control measures. They were adopted to address a structural Tariff Deficit that threatened the survival of the entire Spanish Electricity System and to avoid placing an unbearable financial burden on consumers, aligning with Spain's obligations to the EU.

C. Matters to Address in the Award:

The Tribunal shall decide on the below-mentioned questions and address these matters properly in the final Award:

1. Whether or not the Kingdom of Spain breached the Fair and Equitable Treatment (FET) standard under Article 10(1) of the Energy Charter Treaty by derogating the original regulatory framework.

2. Whether or not the Claimants possessed a protected "legitimate expectation" that the lucrative Feed-in-Tariff (FIT) regime established by Royal Decree 661/2007 would remain frozen for the entire operational lifetime of their investments.

3. Whether or not Spain's sweeping regulatory overhaul was a lawful and justifiable exercise of its "Right to Regulate" in the public interest to resolve the national Tariff Deficit crisis.

4. Whether or not the administrative acts issued by the Respondent, specifically the RAIPRE registrations, constituted binding bilateral commitments protected by the "Umbrella Clause" of Article 10(1) of the Energy Charter Treaty.

5. Whether or not the application of EU State Aid rules prevents the Claimants from holding a legally valid expectation that their original subsidies would remain unchanged.

6. Whether or not the new remuneration regime operates unlawfully retroactively by utilizing a mechanism that factors in the Claimants' past earnings to calculate future subsidies.

7. Whether or not the new regulatory regime successfully preserves the investors' right to a "reasonable return" on their investments based on the cost of money in capital markets.

8. Whether or not the regulatory changes impacted the Wind power installations (Dédalo Project) and the Concentrated Solar Power (CSP) plants differently, and how that affects the assessment of damages.

V. APPLICABLE LAW

1. Convention On The Settlement Of Investment Disputes Between States And Nationals Of Other States

Article 42

(1) The Tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the Tribunal shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws) and such rules of international law as may be applicable.

(2) The Tribunal may not bring in a finding of non liquet on the ground of silence or obscurity of the law.

(3) The provisions of paragraphs (1) and (2) shall not prejudice the power of the Tribunal to decide a dispute ex aequo et bono if the parties so agree.

2. Energy Charter Treaty

Article 10

(1) Each Contracting Party shall, in accordance with the provisions of this Treaty, encourage and create stable, equitable, favourable and transparent conditions for Investors of other Contracting Parties to make Investments in its Area. [...] Each Contracting Party shall observe any obligations it has entered into with an Investor or an Investment of an Investor of any other Contracting Party.

(7) Each Contracting Party shall accord to Investments in its Area of Investors of other Contracting Parties, and their related activities including management, maintenance, use, enjoyment or disposal, treatment no less favourable than that which it accords to Investments of its own Investors or of the Investors of any other Contracting Party or any third state and their related activities including management, maintenance, use, enjoyment or disposal, whichever is the most favourable.

(8) "The modalities of application of paragraph (7) in relation to programmes under which a Contracting Party provides grants or other financial assistance or enters into contracts, for energy technology research and development, shall be reserved for the supplementary treaty referred to in paragraph (4).

Article 13

(1) Investments of Investors of a Contracting Party in the Area of any other Contracting Party shall not be nationalised, expropriated or subjected to a measure or measures having equivalent to nationalisation or expropriation (hereinafter referred to as "Expropriation") except where such Expropriation is:

(a) for a purpose which is in the public interest;

(b) not discriminatory;

(c) carried out under due process of law; and

(d) accompanied by the payment of prompt, adequate and effective compensation.

Such compensation shall amount to the fair market value of the Investment expropriated at the time immediately before the Expropriation or impending Expropriation became known in such a way as to affect the value of the Investment (hereinafter referred to as the "Valuation Date").

Such fair market value shall at the request of the Investor be expressed in a Freely Convertible Currency on the basis of the market rate of exchange existing for that currency on the Valuation Date. Compensation shall also include interest at a commercial rate established on a market basis from the date of Expropriation until the date of payment.

(...)

(3) For the avoidance of doubt, Expropriation shall include situations where a Contracting Party expropriates the assets of a company or enterprise in its Area in which an Investor of any other Contracting Party has an Investment, including through the ownership of shares.

Article 21

(2) Article 7(3) shall apply to Taxation Measures other than those on income or on capital, except that such provision shall not apply to:

(a) an advantage accorded by a Contracting Party pursuant to the tax provisions of any convention, agreement or arrangement described in subparagraph (7)(a)(ii); or

(b) any Taxation Measure aimed at ensuring the effective collection of taxes, except where the measure of a Contracting Party arbitrarily discriminates against Energy Materials and Products originating in, or destined for the Area of another Contracting Party or arbitrarily restricts benefits accorded under Article 7(3).

(3) Article 10(2) and (7) shall apply to Taxation Measures of the Contracting Parties other than those on income or on capital, except that such provisions shall not apply to:

(a) impose most favoured nation obligations with respect to advantages accorded by a Contracting Party pursuant to the tax provisions of any convention, agreement or arrangement described in subparagraph (7)(a)(ii) or resulting from membership of any Regional Economic Integration Organisation; or

(b) any Taxation Measure aimed at ensuring the effective collection of taxes, except where the measure arbitrarily discriminates against an Investor of another Contracting Party or arbitrarily restricts benefits accorded under the Investment provisions of this Treaty.

Article 26

(6) "A tribunal established under paragraph (4) shall decide the issues in dispute in accordance with this Treaty and applicable rules and principles of international law."

3. EUROPEAN UNION (EU) LAW

A. Treaty on the Functioning of the European Union

Article 107

(1) Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

(2) The following shall be compatible with the internal market:

(a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;

(3) The following may be considered to be compatible with the internal market:

(a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation;

(b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;

(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;

(...)

(e) such other categories of aid as may be specified by decision of the Council on a proposal from the Commission.

4. DOMESTIC LAW[105]

A. Law 54/1997 On The Electric Power Sector

Article 27. Special regime for electricity production.

The activity of electricity production shall be classified as production under the special regime in the following instances, when conducted from facilities with an installed capacity not exceeding 50 MW:

a) Facilities that utilize cogeneration or other forms of electricity production associated with non-electrical activities, provided they demonstrate high energy performance.

b) When non-consumable renewable energy, biomass, or any type of biofuel is used as the primary energy source, provided that the owner does not engage in production activities under the ordinary regime.

[105] For more details you can check boe.es .

c) When non-renewable waste is used as the primary energy source.

The production of electrical energy from treatment and reduction facilities for waste from the agricultural, livestock, and service sectors, with an installed capacity equal to or less than 25 MW, shall also be classified as special regime production when such facilities demonstrate high energy performance.

Production under the special regime shall be governed by its specific provisions and, for matters not provided for therein, by general regulations on electricity production to the extent applicable.

The status of a production facility subject to this special regime shall be granted by the relevant authorities of the Autonomous Communities with jurisdiction in the matter.

Article 30. Obligations and rights of producers under the special regime

1. The general obligations of electricity producers under the special regime shall be:

a) To adopt the safety standards, technical regulations, and provisions for the approval or certification of facilities and instruments established by the competent Administration.

b) To comply with technical generation standards, as well as with transport and technical management standards of the system.

c) To maintain the facilities in an optimal state of operation, so that they cannot cause damage to persons or the facilities of third parties.

d) To provide the Administration with information regarding production, consumption, energy sales, and other established matters.

e) To contract and pay the corresponding toll (peaje), either directly or through their representative, to the distribution or transport company to which they are connected for injecting energy into their networks.

f) To adequately comply with the established conditions for environmental protection.

2. Producers under the special regime shall enjoy, in particular, the following rights:

a) To incorporate their production of energy at power station busbars into the system, receiving the remuneration determined in accordance with the provisions of this Law. For these purposes, the total production of electrical energy from the facility minus the self-consumption of said generation facility shall be considered production at power station busbars. When electricity supply conditions make it necessary, the Government, following a report from the Autonomous Communities, may limit, for a specific period, the amount of energy that can be incorporated into the system by special regime producers.

b) Priority in access to transport and distribution networks for the generated energy, respecting the maintenance of the reliability and safety of the networks.

c) To connect their facilities in parallel to the network of the corresponding distribution or transport company.

d) To use, jointly or alternatively in their facilities, the energy they acquire through other subjects.

e) To receive from the distribution company the supply of electrical energy they require under the conditions to be determined by regulation.

3. The remuneration regime for electrical energy production facilities under the special regime shall adjust to the provisions of paragraph 1 of Article 16 for electricity producers.

4. Additionally, and in the terms determined by regulation through a Royal Decree of the Council of Ministers, in addition to the remuneration for the sale of generated energy valued at market price, facilities may receive a specific remuneration. This consists of a term per unit of installed power covering, where appropriate, the investment costs of a standard installation (instalación tipo) that cannot be recovered through the sale of energy, and an operating term covering, if applicable, the difference between exploitation costs and revenues from participation in the market of said standard installation.

For the calculation of said specific remuneration, the following shall be considered for a standard installation throughout its regulatory useful life and with reference to the activity performed by an efficient and well-managed company:

a) Standard revenues from the sale of generated energy valued at the production market price.

b) Standard exploitation costs.

c) The standard value of the initial investment.

This remuneration regime shall not exceed the minimum level necessary to cover the costs that allow facilities to compete on an equal footing with the rest of the technologies in the market and that make it possible to obtain a reasonable return (rentabilidad razonable) by reference to the standard installation applicable in each case.

This reasonable return shall hinge, before taxes, on the average yield in the secondary market of ten-year State Obligations applying the appropriate differential. The parameters of the remuneration regime may be reviewed every six years.

B. Royal Decree 661/2007, Of 25 May, Regulating The Activity Of Electricity Production Under The Special Regime

Article 37. Tariffs and premiums for category b) installations, group b.1: solar energy. *Notwithstanding the provisions of Article 36 above for group b.1 installations and the provisions of Article 44, for the purposes of the provisions of Articles 17.c) and 22, the reference installed capacity target is set at 371 MW for subgroup b.1.1 and 500 MW for subgroup b.1.2.*

Article 38. Tariffs for category b) installations, group b.2: wind energy.

Notwithstanding the provisions of Article 36 above, for group b.2 installations:

1. *For subgroup b.2.2 installations, a maximum reference tariff is established for the purposes of the competitive bidding procedure to be regulated for the granting of zone reservations for wind installations in territorial waters, with a value of 14.8557 c€/kWh.*
2. *For the purposes of the provisions of Articles 17.c) and 22, the reference installed capacity target for wind technology is set at 20,155 MW, without prejudice to the provisions of Article 44.*

C. Royal Decree-law 6/2009, Of 30 April, Adopting Certain Measures In The Energy Sector And Approving The Social Bonus.

Article 1 Financing of the Tariff Deficit

From January 1, 2013, access tolls shall be sufficient to satisfy the totality of the costs of regulated activities without any ex ante deficit appearing. The eventual appearance of cyclical deviations... shall result in the access tariffs for the following period being modified by the amount necessary for their adjustment.

Nevertheless, for the years 2009, 2010, 2011 and 2012, the revenue deficit in the settlements of the regulated activities of the electricity sector shall not exceed 3,500 million euros, 3,000 million euros, 2,000 million euros and 1,000 million euros, respectively.

Deficits in the electricity settlement system shall generate collection rights consisting of the right to receive an amount from the monthly billing of access tolls in successive years until satisfied... To finance said deficits, the corresponding collection rights may be assigned to a securitization fund... named the Electricity System Deficit Securitization Fund (FADE)

The General State Administration is authorized... to grant guarantees in support of the economic obligations exigible from the Electricity System Deficit Securitization Fund... derived from the issuance of financial instruments.

Article 4. Remuneration pre-assignment registration mechanism for special regime facilities.

Inclusion in the Remuneration Pre-assignment Registry shall be a necessary condition for the granting of the right to the economic regime established in Royal Decree 661/2007.

(...)

(e) "Possess own economic resources or sufficient financing to undertake at least 50 percent of the investment in the facility."

(f) "Have reached a signed purchase agreement... for the acquisition of equipment for an amount equivalent to at least 50 percent of the total value of the same fixed in the facility project."

(i) "Have deposited a bond... in the amount of €20/kW [or €100/kW for solar thermal].

(...)

Facilities registered in the Remuneration Pre-assignment Registry shall have a maximum period of thirty-six months... to be definitively registered... and begin the sale of energy. Otherwise, the economic right associated with inclusion in the Registry shall be revoked.

(...)

The Government is authorized to modify by royal decree the provisions of paragraphs 3 and following of this article to adapt it to the needs and evolution of the different technologies.

(...)

D. Law 15/2012, Of 27 December, On Fiscal Measures For Energy Sustainability.

Article 4. Taxable event.

(1) The taxable event consists of the production and incorporation into the electricity system of electrical energy measured at power station busbars, including the peninsular electricity system and the insular and extra-peninsular territories, in any of the facilities referred to in Title IV of Law 54/1997, of 27 November, of the Electricity Sector.

(2) For the purposes of this Law, production at power station busbars shall correspond to the energy measured at alternator terminals, reduced by auxiliary consumption in generation and by losses up to the point of connection to the grid.

(3) Regarding concepts and terms with their own substance appearing in the Law, unless defined therein, the provisions of the State-level electricity sector regulations shall apply.

Article 8. Tax rate.

The tax shall be levied at the rate of 7 percent.

E. Royal Decree-Law 9/2013, of 12 July, adopting urgent measures to guarantee the financial stability of the electricity system

Article 1

Additionally... facilities may receive a specific remuneration composed of a term per unit of installed capacity, covering, where appropriate, the investment costs of a ***standard installation*** *(instalación tipo) that cannot be recovered through the sale of energy, and an operating term covering... the difference between operating costs and revenues from market participation for said standard installation*

2. Sole Repeal Provision

1. All rules of equal or lower rank are repealed insofar as they contradict or oppose the provisions of this royal decree-law.

2. The following are expressly repealed:

b) Royal Decree 1578/2008, of September 26 , on remuneration of the activity of electricity production by photovoltaic solar technology for installations after the deadline for maintaining the remuneration of Royal Decree 661/2007, of May 25 , for said technology.

F. Law 24/2013, of 26 December, on the Electricity Sector

Article 13. Principle of Economic and Financial Sustainability

The actions of the Public Administrations and other subjects included within the scope of application of this law shall be subject to the principle of economic and financial sustainability of the electricity system.

Economic and financial sustainability of the electricity system shall be understood as the capacity to satisfy the totality of its costs, in accordance with the provisions of this law and its implementing regulations.

The costs of the system shall be financed through the revenues of the electricity system, which shall include:

a) Access tolls to the transport and distribution networks satisfied by consumers, producers, and agents for energy exports to non-EU countries, intended to cover the remuneration of transport and distribution.

b) The charges established for the payment of other cost items not covered by other revenues, as defined in Article 16.

c) Any financial mechanism established by regulation.

d) Items from the General State Budget intended to cover, among others, the amounts determined corresponding to the costs of the specific remuneration regime for the promotion of generation from renewable energy sources, and the additional cost of production in non-peninsular electricity systems.

e) Any other revenue expressly attributed by a legal or regulatory provision.

Article 14. Remuneration for Activities

The remuneration parameters for transport, distribution, production from renewable energy sources, high-efficiency cogeneration, and waste under a specific remuneration regime... shall be set taking into account the cyclical situation of the economy, electricity demand, and the adequate return for these activities for regulatory periods that shall last six years.

These remuneration parameters may be revised for each regulatory period. If this revision is not carried out before the start of the regulatory period, they shall be considered extended for the entire following regulatory period...

For production activities in non-peninsular electricity systems... the financial remuneration rate established shall be referenced to the yield of ten-year State Obligations in the secondary market... increased by an appropriate differential.

In the case of production facilities from renewable energy sources, high-efficiency cogeneration, and waste under a specific remuneration regime, the modification of remuneration parameters shall be carried out according to the following criteria:

1º. In the revision corresponding to each regulatory period, all remuneration parameters may be modified, including the value upon which the reasonable return shall hinge for the remainder of the regulatory life of the standard installations (instalaciones tipo), which shall be established by law. In no case, once the regulatory useful life or the standard value of the initial investment has been recognized, may these values be revised.

2º. Every three years, the estimates of revenues from the sale of generated energy (valued at the production market price) shall be revised based on the evolution of market prices and operating hour forecasts. Remuneration parameters may be adjusted based on market price deviations from the estimates made for the previous regulatory semi-period.

3º. At least annually, the values of remuneration for operations shall be updated for those technologies whose exploitation costs essentially depend on the price of fuel.

VI. CASELAW

1. Achmea v. Slovak Republic (Case C-284/16)

(31) *By its first and second questions, which should be taken together, the referring court essentially asks whether Articles 267 and 344 TFEU must be interpreted as precluding a provision in an international agreement concluded between Member States, such as Article 8 of the BIT, under which an investor from one of those Member States may, in the event of a dispute concerning investments in the other Member State, bring proceedings against the latter Member State before an arbitral tribunal whose jurisdiction that Member State has undertaken to accept.*

(32) *...an international agreement cannot affect the allocation of powers fixed by the Treaties or, consequently, the autonomy of the EU legal system, observance of which is ensured by the Court. That principle is enshrined in particular in Article 344 TFEU, under which the Member States undertake not to submit a dispute concerning the interpretation or application of the Treaties to any method of settlement other than those provided for in the Treaties.*

(33) *...The autonomy of EU law with respect both to the law of the Member States and to international law is justified by the essential characteristics of the EU and its law, relating in particular to the constitutional structure of the EU and the very nature of that law. EU law is characterised by the fact that it stems from an independent source of law, the Treaties, by its primacy over the laws of the Member States, and by the direct effect of a whole series of provisions which are applicable to their nationals and to the Member States themselves.*

(37) *In particular, the judicial system as thus conceived has as its keystone the preliminary ruling procedure provided for in Article 267 TFEU, which, by setting up a dialogue between one court and another... has the object of securing uniform interpretation of EU law, thereby serving to ensure its consistency, its full effect and its autonomy.*

(42) *It follows that on that twofold basis the arbitral tribunal referred to in Article 8 of the BIT may be called on to interpret or indeed to apply EU law, particularly the provisions concerning the fundamental freedoms, including freedom of establishment and free movement of capital.*

(46) *That characteristic of the arbitral tribunal at issue in the main proceedings means that it cannot in any event be classified as a court or tribunal 'of a Member State' within the meaning of Article 267 TFEU.*

(49) *It follows that a tribunal such as that referred to in Article 8 of the BIT cannot be regarded as a 'court or tribunal of a Member State' within the meaning of Article 267 TFEU, and is not therefore entitled to make a reference to the Court for a preliminary ruling.*

(55) *...arbitration proceedings such as those referred to in Article 8 of the BIT are different from commercial arbitration proceedings. While the latter originate in the freely expressed wishes of the parties, the former derive from a treaty by which Member States agree to remove from the jurisdiction of their own courts... disputes which may concern the application or interpretation of EU law. In those circumstances, the considerations... relating to commercial arbitration cannot be applied to arbitration proceedings such as those referred to in Article 8 of the BIT.*

(58) *...Article 8 of the BIT is such as to call into question not only the principle of mutual trust between the Member States but also the preservation of the particular nature of the law established by the Treaties, ensured by the preliminary ruling procedure provided for in Article 267 TFEU, and is not therefore compatible with the principle of sincere cooperation.*

(59) *In those circumstances, Article 8 of the BIT has an adverse effect on the autonomy of EU law.*

(60) *Consequently, the answer to Questions 1 and 2 is that Articles 267 and 344 TFEU must be interpreted as precluding a provision in an international agreement concluded between Member States, such as Article 8 of the BIT, under which an investor from one of those Member States may... bring proceedings against the latter Member State before an arbitral tribunal whose jurisdiction that Member State has undertaken to accept.*

2. Republic of Moldova v. Komstroy (Case C-741/19)

(42) *The Court has consistently held that an international agreement cannot affect the allocation of powers laid down by the Treaties and, hence, the autonomy of the EU legal system, observance of which is ensured by the Court. That principle is enshrined in particular in Article 344 TFEU, under which the Member States undertake not to submit a dispute concerning the interpretation*

or application of the Treaties to any method of settlement other than those provided for in the Treaties.

(46) *By setting up a dialogue between one court and another, specifically between the Court of Justice and the courts and tribunals of the Member States, that procedure, which is the keystone of the judicial system as thus conceived, has the objective of securing the uniform interpretation of EU law, thereby ensuring its consistency, its full effect and its autonomy.*

(52) *...an ad hoc arbitral tribunal, such as that referred to in Article 26(6) ECT, does not constitute a component of the judicial system of a Member State... That characteristic of such an arbitral tribunal means that it cannot, in any event, be classified as a court or tribunal 'of a Member State' within the meaning of Article 267 TFEU, and is not therefore entitled to make a reference to the Court for a preliminary ruling.*

(60) *Having regard to all the characteristics of the arbitral tribunal... it must be considered that, if the provisions of Article 26 ECT allowing such a tribunal to be entrusted with the resolution of a dispute were to apply as between an investor of one Member State and another Member State, it would mean that... the European Union and the Member States... established a mechanism for settling such a dispute that could exclude the possibility that that dispute... would be resolved in a manner that guarantees the full effectiveness of that law.*

(63) *Such a possibility would... call into question the preservation of the autonomy and of the particular nature of the law established by the Treaties, ensured in particular by the preliminary ruling procedure provided for in Article 267 TFEU.*

(65) *It follows that, although the ECT may require Member States to comply with the arbitral mechanisms for which it provides in their relations with investors from third States... preservation of the autonomy and of the particular nature of EU law precludes the same obligations under the ECT from being imposed on Member States as between themselves.*

(66) *In the light of the foregoing, it must be concluded that Article 26(2)(c) 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.*

(79) *Against that background, it must be held that a mere supply contract is a commercial transaction which cannot, in itself, constitute an 'investment' within the meaning of Article 1(6) ECT, irrespective of whether an economic contribution is necessary in order for a given transaction to constitute an investment.*

(80) *Any other interpretation of that provision would amount to depriving the clear distinction made by the ECT between trade, governed by Part II of that treaty, and investments, governed by Part III thereof, of its effectiveness.*

(85) *In the light of the foregoing considerations, the answer to the first question referred is that Article 1(6) and Article 26(1) ECT must be interpreted as meaning that the acquisition... of a claim arising from a contract for the supply of electricity, which is not connected with an investment, held by an undertaking of a third State against a public undertaking of another Contracting Party to that treaty, does not constitute an 'investment' within the meaning of those provisions.*

VII. CONCLUSION

In conclusion, the dispute in RREEF Infrastructure (G.P.) Limited and RREEF Pan-European Infrastructure Two Lux S.à r.l. v Kingdom of Spain forms part of the broader wave of renewable energy investment arbitrations brought against Spain following significant reforms to its renewable energy support regime. The case reflects the tension between the protection afforded to foreign investors under the Energy Charter Treaty and the regulatory authority of states to modify their legal and economic policies in response to changing circumstances. In particular, the Tribunal was required to examine whether Spain's regulatory reforms frustrated the Claimants' legitimate expectations and thereby breached the fair and equitable treatment standard.

At the same time, the dispute illustrates the continuing debate in investment arbitration regarding the scope of investor protection in sectors that are highly dependent on public regulation. Renewable energy investments are closely linked to government policy, and changes to regulatory frameworks may significantly affect the economic viability of such projects. The Tribunal therefore had to balance the investor's reliance on the regulatory framework in place at the time of the investment against the State's right to regulate in the public interest.

Ultimately, the award contributes to the broader jurisprudence concerning legitimate expectations and the limits of regulatory stability under the Energy Charter Treaty. As part of the growing body of renewable energy arbitration cases, the decision will provide further guidance on how tribunals assess the relationship between regulatory change, investor expectations, and the State's sovereign authority to regulate its energy sector.

VIII. BIBLIOGRAPHY

1. PRIMARY SOURCES

A. Cases

1. *Compañía de Aguas del Aconquija SA and Vivendi Universal v Argentine Republic* (Decision on Annulment) ICSID Case No ARB/97/3, 3 July 2002.
2. *Holiday Inns SA and others v Kingdom of Morocco* (Award) ICSID Case No ARB/72/1, 12 May 1974.
3. *Emilio Agustín Maffezini v Kingdom of Spain* (Decision on Jurisdiction) ICSID Case No ARB/97/7, 25 January 2000.
4. *Plama Consortium Ltd v Republic of Bulgaria* (Decision on Jurisdiction) ICSID Case No ARB/03/24, 8 February 2005.
5. *SGS Société Générale de Surveillance SA v Islamic Republic of Pakistan* (Decision on Jurisdiction) ICSID Case No ARB/01/13, 6 August 2003.
6. *SGS Société Générale de Surveillance SA v Republic of the Philippines* (Decision on Jurisdiction) ICSID Case No ARB/02/6, 29 January 2004. Slovak Republic v Achmea BV (Case C-284/16) [2018] ECLI:EU:C:2018:158.
7. *CMS Gas Transmission Company v Argentine Republic* (Award) ICSID Case No ARB/01/8, 12 May 2005.
8. *LG&E Energy Corp, LG&E Capital Corp and LG&E International Inc v Argentine Republic* (Award) ICSID Case No ARB/02/1, 25 July 2007.
9. Joined Cases C-201/08 and C-203/08 *Plantanol GmbH & Co KG v Hauptzollamt Darmstadt* [2009] ECR I-8343.

10. Case C-331/88 *R v Minister of Agriculture, Fisheries and Food, ex parte Fedesa and Others* [1990] ECR I-4023.
11. Case C-594/18 *Republic of Austria v European Commission* (Hinkley Point C) EU:C:2020:742.
12. *Methanex Corporation v United States of America* (Final Award on Jurisdiction and Merits) (2005) 44 ILM 1345.
13. *Marvin Roy Feldman Karpa v United Mexican States* (Award) (2002) 7 ICSID Reports 341.
14. *Técnicas Medioambientales Tecmed SA v United Mexican States* (Award) (2004) 43 ILM 133.

    Republic of Moldova v Komstroy LLC (Case C-741/19) [2021] ECLI:EU:C:2021:655.
15. *Case Concerning the Factory at Chorzów* (Germany v Poland) (Merits) [1928] PCIJ Rep Series A No 17.

B) Legislation / Treaties / Official Instruments

1. Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the Promotion of the Use of Energy from Renewable Sources (recast) [2018] OJ L 328/82.
2. UN General Assembly Resolution 1803 (XVII) on Permanent Sovereignty over Natural Resources, 14 December 1962, UN Doc A/RES/1803(XVII).
3. United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3.
4. Treaty on the Non-Proliferation of Nuclear Weapons (adopted 1 July 1968, entered into force 5 March 1970) 729 UNTS 161.
5. Convention on Nuclear Safety (adopted 17 June 1994, entered into force 24 October 1996) 1963 UNTS 293.
6. Agreement on an International Energy Program (adopted 18 November 1974, entered into force 19 January 1976) 1040 UNTS 271.
7. United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107.

8. Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 11 December 1997, entered into force 16 February 2005) 2303 UNTS 162.
9. Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447.
10. Charter of Economic Rights and Duties of States, UNGA Res 3281 (XXIX), 12 December 1974.
11. Energy Charter Treaty (adopted 17 December 1994, entered into force 16 April 1998) 2080 UNTS 95.
12. Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UNTS No 54113 https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement.
13. Convention on the Settlement of Investment Disputes between States and Nationals of Other States (opened for signature 18 March 1965, entered into force 14 October 1966) 575 UNTS 159.
14. Communication from the Commission — Guidelines on State aid for environmental protection and energy 2014–2020 [2014] OJ C 200/1.

2. SECONDARY SOURCES

A)Books

1. Antonio R Parra, *The History of ICSID* (Oxford University Press 2012).

2. Aron Broches, 'Settlement of Disputes between Governments and Private Parties' in *History of the ICSID Convention: Documents Concerning the Origin and the Formulation of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States* (ICSID 1968) vol II, pt 1.

3. Christoph Schreuer and others, *The ICSID Convention: A Commentary* (2nd edn, Cambridge University Press 2009).

4. Anne Mirjam Schneuwly, *International Investment Law and its Instruments: Managing Risks to Investors and Host States* (2012).

B)Journal Articles

1. Marlize Lombard and Peter Gärdenfors, 'Minds on Fire: Cognitive Aspects of Early Firemaking and the Possible Inventors of Firemaking Kits' (2023) 33 *Cambridge Archaeological Journal* 499.
2. Shelley Welton, 'The Bounds of Energy Law' (2021) 62 *Boston College Law Review* 2339.
3. R Richard Geddes, 'A Historical Perspective on Electric Utility Regulation' (1992) 15 *Regulation* 75.
4. Anguel Anastassov, 'Sovereignty of States, Peaceful Nuclear Energy and Principles of International Environmental Law' (2014) 4 *International Journal of Nuclear Governance, Economy and Ecology* 100.
5. Alexandra B Klass, 'Renewable Energy and the Public Trust Doctrine' (2012) 45 *UC Davis Law Review* 1021.
6. Selcen Nur Kışla, 'Protection Against Arbitrary or Discriminatory Measures in International Investment Law' (2024) 6(2) *Ankara Sosyal Bilimler Üniversitesi Hukuk Fakültesi Dergisi* 1846 https://doi.org/10.47136/asbuhfd.1524040.
7. Bernardo M Cremades, 'Resurgence of the Calvo Doctrine in Latin America' (2006) 7 *Business Law International* 53.
8. Pierre Lalive, 'The First "World Bank" Arbitration (Holiday Inns v Morocco)—Some Legal Problems' (1980) 51 *British Yearbook of International Law* 123 https://doi.org/10.1093/bybil/51.1.123.
9. Andrea K Bjorklund, 'Investment Treaty Arbitral Jurisprudence as a Source of International Law' (2008) 24 *ICSID Review* 1.
10. Berfu Beysulen Angin, 'The Right to Regulate vs Investment Protection: Unveiling the Causes of Imbalance and the Limits of Current Reform Efforts in International Investment Law' (2025) 40(1) *ICSID Review – Foreign Investment Law Journal* 11 https://doi.org/10.1093/icsidreview/siaf007.
11. Reports / Working Papers

12. Bill Farren-Price and others, *Key Themes for the Global Energy Economy in 2025* (OIES Paper SP35, Oxford Institute for Energy Studies, January 2025).
13. UNCTAD, *Fair and Equitable Treatment: UNCTAD Series on Issues in International Investment Agreements* (United Nations 1999).
14. Grasu S, Popa MG and Popp MR, 'State Aid for Green Energy: Short Overview of the EU and Romanian Legislation' (Bucharest University of Economic Studies 2023).
15. Karova R, 'Application of State Aid Rules to Support for Energy from Renewable Sources in the Energy Community' (Presentation to the Renewable Energy Coordination Group, Vienna, 2 March 2016).
16. BusinessEurope, *Priorities for the Future of EU State Aid Framework* (Priorities Paper, June 2024).
17. K Nadakavukaren and R Polanco Lazo, *Legal Opinion on Right to Regulate on Investment Treaties: Canada, European Union, Japan, Netherlands, and United States of America* (E-Avis ISDC 2023, current to 28 July 2023, Swiss Institute of Comparative Law) https://www.isdc.ch.
18. OECD, *"Indirect Expropriation" and the "Right to Regulate" in International Investment Law* (OECD Working Papers on International Investment 2004/04, OECD Publishing 2004) https://dx.doi.org/10.1787/780155872321.
19. Christoph Schreuer, *The Concept of Expropriation under the ETC and other Investment Protection Treaties* (20 May 2005).