Investment Arbitration's New Architecture

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Sergio Patino Reyes

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How UNCITRAL and ICSID reforms are reshaping investor–State dispute settlement

The reform of investor–State dispute settlement (ISDS) is in a structural phase. Since 2017, the United Nations Commission on International Trade Law (UNCITRAL) Working Group III has been mandated to identify systemic concerns and develop reform options, including the possible establishment of a standing multilateral tribunal and an appellate mechanism.

In parallel, the International Centre for Settlement of Investment Disputes (ICSID) amended its Arbitration Rules in 2022 after a multi-year reform process aimed, principally, at improving efficiency, transparency, and cost control. (International Institute for Sustainable Development [IISD], n.d.).

This dual reform track raises a central question: are we witnessing incremental procedural reform, or a genuine paradigm shift in the model of investment arbitration? For the purposes of this article, a *paradigm shift* is proposed as a transformation of the foundational logic of ISDS—specifically, a move away from decentralized, *ad hoc* arbitration toward permanent adjudicatory structures with standing adjudicators, binding appellate review, and formal precedent. By contrast, *incremental reform* refers to procedural modernization that preserves these core features while improving their operation. The distinction matters because it determines whether ICSID's institutional role is being optimized or fundamentally reconfigured (Marcoux et al., 2024).

This article argues that the UNCITRAL reform agenda does not replace ICSID but may gradually reconfigure the ecosystem of investment dispute resolution. The emerging system points toward institutionalized adjudication layered over, rather than substituting, *ad hoc* arbitration.

It should be noted at the outset that UNCITRAL's reform proposals are not self-executing: they can only reshape the ISDS system to the extent

that States incorporate them into bilateral investment treaties or opt-in instruments. This condition of State consent and treaty uptake is critical to evaluating the transformative potential of the reform agenda and will be addressed explicitly throughout the analysis.

The analysis proceeds in five parts: (1) UNCITRAL's reform mandate and core institutional proposals; (2) the scope and direction of the ICSID 2022 amendments; (3) whether these trajectories signal coexistence or structural transformation; (4) two illustrative ecosystem scenarios; and (5) conclusions on the trajectory of institutionalized investment adjudication.

2. Mandate and core reform proposals of Working Group III

UNCITRAL Working Group III was entrusted with a systemic mandate: to identify structural concerns in ISDS and to develop reform options capable of addressing perceived deficits in legitimacy, consistency, and efficiency (UNCITRAL, n.d.). Since the outset of its work, States and stakeholders have converged around a set of recurring criticisms, including the inconsistency of arbitral awards, concerns regarding arbitrator independence and impartiality, the high cost and duration of proceedings, and perceived asymmetries between investors and host States (IISD, n.d.; UNCITRAL, 2017).

In response, the Working Group has moved beyond incremental procedural adjustments and developed a comprehensive menu of reform options ranging from modest procedural innovations to more ambitious institutional redesign(UNCITRAL, 2019a). At the structural end of the spectrum, the most significant proposals include the establishment of a standing multilateral investment tribunal, the creation of an appellate mechanism, and the development of a multilateral advisory centre. Alongside these, the Working Group has advanced complementary measures such as a Code of Conduct for adjudicators, mechanisms for early dismissal of unmeritorious claims, and rules aimed at preventing parallel or duplicative proceedings.

Taken together, these proposals signal a potential shift in the underlying logic of ISDS from decentralized, party-driven arbitration toward more institutionalized forms of adjudication. A standing tribunal, for example, would replace the traditional system of party-appointed arbitrators with a roster of permanent adjudicators serving fixed terms, thereby aligning ISDS more closely with established models of international courts such as the World Trade Organization (WTO) dispute settlement system or the International Court of Justice. Similarly, the introduction of an appellate mechanism would qualify the long-standing principle of finality in arbitration (i.e., the principle that arbitration produces a binding and definitive resolution of a dispute, subject only to exceptional review) by enabling the review of legal interpretations and promoting jurisprudential consistency, echoing features found in the European Court of Human Rights and, historically, the WTO Appellate Body. (Wolters Kluwer Arbitration Blog, 2022).

These institutional designs pursue several interrelated objectives: enhancing legal coherence, reducing incentives for forum shopping, and strengthening the perceived legitimacy of ISDS as a system of public law adjudication. However, at the same time, they could introduce trade-offs familiar from other international adjudicatory regimes, including potential increases in duration, questions regarding institutional independence, and the risk of politicization in appointment processes.

Importantly, the Working Group's agenda does not operate exclusively at the level of structural reform. Parallel efforts aimed at procedural refinement—such as the Code of Conduct and early-dismissal mechanisms—indicate a broader attempt to address legitimacy concerns across different institutional configurations(British Institute of International and Comparative Law [BIICL], 2021). The increasing emphasis on mediation and dispute prevention reflects a normative shift away from purely reactive dispute settlement toward alternative and earlier forms of dispute resolution.

What emerges from this body of work is a reform process primarily concerned with institutional architecture rather than substantive investment protection standards. The focus lies on how disputes are adjudicated, by whom, and under what structural conditions. In this respect, UNCITRAL Working Group III does not intend to merely reform ISDS; it intends to rethink the institutional foundations of international investment adjudication.

3. Scope and direction of the ICSID 2022 reforms

While UNCITRAL experiments with structural alternatives, the ICSID has pursued a parallel but distinct reform trajectory through the 2022 amendments to its Arbitration Rules. These amendments were adopted following a comprehensive five-year consultation process involving Member States and stakeholders, aimed at modernizing, simplifying, and streamlining ICSID procedures while enhancing transparency and efficiency(International Centre for Settlement of Investment Disputes [ICSID], 2022a). The revised framework introduces changes across several procedural dimensions, including early dismissal mechanisms, expedited arbitration, enhanced publication standards, and rules governing Third-Party funding and costs(ICSID, 2022b).

One of the most significant innovations is the clarification and expansion of the procedure for dismissing claims that are "manifestly without legal merit." Under the revised Rule 41(5), objections may now extend beyond the substantive merits of a claim to include jurisdictional deficiencies and issues relating to the competence of the tribunal. This expansion allows tribunals to dispose of clearly unmeritorious or jurisdictionally defective claims at an early stage, thereby improving procedural economy. (ICSID, 2022c). The mechanism reflects a broader trend in international adjudication toward

early case filtering, a feature also under consideration in UNCITRAL Working Group III discussions on procedural reform(UNCITRAL, 2019b).

A second major development is the introduction of expedited arbitration procedures under Chapter XII of the 2022 Rules. These procedures are designed for less complex disputes and impose significantly tighter timelines for each stage of the proceedings, with the aim of reducing both duration and cost. This responds directly to longstanding empirical concerns regarding ISDS, where proceedings have historically averaged over three years (ICSID, 2022d; ICSID, 2021). By offering a streamlined procedural track, ICSID seeks to enhance accessibility and efficiency without altering the underlying arbitral framework.

The 2022 amendments also introduce important transparency measures. Under Rule 62, the default position is now publication of awards and decisions; however, any party may object to publication within 60 days of dispatch, in which case the document may be published only in redacted form or, if the objecting party so requests, withheld entirely. Enhanced disclosure obligations regarding third-party funding are governed by Rule 14, which requires disclosure at the earliest opportunity once funding is secured. These reforms align ICSID with broader developments in transparency in investor–State arbitration, including the UNCITRAL Rules on Transparency (2014), while preserving a meaningful role for party consent in controlling the public record.

Beyond the Arbitration Rules, ICSID has also revised its Additional Facility Rules and introduced new mediation procedures, signaling a willingness to diversify its dispute-resolution toolbox. Nevertheless, the core model remains *ad hoc* arbitration: each case is governed by a treaty-based jurisdiction, and tribunals are created on a party-by-party basis, buffered by a permanent Registry but not by a standing court. From an institutional-design perspective, ICSID's 2022 amendments are best understood as incremental modernization rather than revolutionary change(Wolters Kluwer Arbitration Blog, 2022).

From an institutional-design perspective, the 2022 amendments are therefore best understood as incremental but strategic modernization. They respond to legitimacy concerns while preserving the core features of *ad hoc* arbitration. In contrast to the structural objectives of UNCITRAL Working Group III, ICSID's reform path reinforces, rather than reconfigures, the existing model of investment dispute settlement.

4. Coexistence or structural transformation?

The central question is whether the reform trajectories driven by UNCITRAL Working Group III and ICSID point toward mere coexistence or a deeper structural transformation of ISDS.

On one reading, the two processes can be understood as functionally complementary. Under this interpretation, ICSID's 2022 amendments

refine and optimize the existing arbitration model, while UNCITRAL develops alternative institutional frameworks that States may selectively incorporate into future treaty practice. A standing multilateral tribunal or an appellate mechanism would thus operate alongside ICSID, creating a pluralist procedural landscape in which States retain the ability to choose between different adjudicatory designs. In such a hybrid ecosystem, ICSID-style *ad hoc* arbitration would persist as a viable and flexible option, but no longer the uncontested default. The realization of this scenario, however, is conditional: UNCITRAL-driven mechanisms will only reshape the system to the extent that States embed them in treaty practice, a condition that, to this day, remains uncertain.

A more compelling interpretation is that UNCITRAL-led reform is gradually reconfiguring the systemic logic of ISDS. The introduction of permanent adjudicatory bodies and appellate review mechanisms challenges core features of arbitration, most notably finality, party autonomy in tribunal constitution, and the absence of formal precedent. To the extent that States progressively embed such mechanisms in treaty practice, the centrality of the *ad hoc* arbitral model itself might be called into question.

Indeed, the ability of institutions such as ICSID to administer proceedings conducted under alternative procedural frameworks, including the UNCITRAL Rules, underscores that the emerging shift concerns not institutional viability but systemic design. In this evolving landscape, ICSID is unlikely to disappear; however, its role may shift from that of a dominant institutional framework to one node within a more plural and differentiated system of international adjudication.

There are developments that may support this transformative reading. For example, the ongoing work on a Code of Conduct for adjudicators (jointly developed under UNCITRAL and ICSI) signals a move toward harmonized standards across arbitral and court-like mechanisms (UNCITRAL & ICSID, 2023). This convergence reduces the distance between arbitration and standing adjudication, while illustrating increasing coordination between institutional frameworks.

Second, the parallel emphasis on early-dismissal procedures and appellate review across both UNCITRAL discussions and ICSID reforms reflects a broader effort to enhance the efficiency, consistency, and institutional legitimacy of ISDS. While originating in distinct institutional contexts, these tools point toward increasing procedural discipline and a gradual alignment in the logics governing investment dispute settlement.

Despite these points of convergence, important structural differences remain. ICSID's authority is grounded in the Washington Convention, which establishes a closed, State-centric framework with binding procedural rules for its Contracting States. By contrast, UNCITRAL-led reforms are negotiated in a more open, multilateral setting, requiring subsequent incorporation through treaties or opt-in instruments. This divergence in governance structures is likely to influence both the pace and the degree of

reform implementation, helping explain why transformative reforms may emerge incrementally rather than through a single institutional redesign.

From a practical standpoint, the gradual emergence of a multilateral tribunal and an appellate mechanism may generate systemic benefits for both States and investors by enhancing legitimacy, predictability, and jurisprudential consistency. These gains, however, may come at the cost of some of the flexibility traditionally associated with *ad hoc* arbitration, particularly regarding forum design and adjudicator selection.

The debate over institutional design thus reflects competing visions of the function of ISDS: whether it should remain a flexible, party-driven mechanism, or evolve toward a more centralized system of public law adjudication. The trajectory of current reforms suggests not the replacement of arbitration by standing adjudication, but a gradual reconfiguration of ISDS in which arbitral and adjudicatory logics increasingly coexist within a more integrated institutional framework.

5. Two ISDS-ecosystem scenarios

Rather than mutually exclusive outcomes, the two scenarios presented below should be understood as poles of a spectrum. Both are grounded in the institutional developments analyzed in this article and are intended to illustrate the systemic implications of different reform trajectories.

Scenario A: Pluralist coexistence. Under this scenario, ICSID-based ad hoc arbitration and a standing multilateral tribunal coexist as alternative first-instance pathways within the ISDS ecosystem. States select the mechanism that best fits their treaty preferences, and no single framework displaces the others. An appellate mechanism may operate within treaty frameworks that opt for hierarchical review, creating an additional layer of oversight without fundamentally displacing arbitral adjudication. ICSID remains an important institutional actor, while UNCITRAL-derived institutions serve States that opt into deeper reform. The ecosystem remains decentralized but gains institutional diversity.

Scenario B: Gradual institutionalization. Gradual institutionalization. Under this scenario, State uptake of UNCITRAL-driven mechanisms becomes sufficiently widespread that these reforms are incorporated into an increasing number of investment treaties. As a result, the standing tribunal and appellate body gradually emerge as the default pathways for investment disputes. ICSID adapts its administrative infrastructure to support these new bodies, while ad hoc arbitration persists primarily in residual treaty frameworks. The system progressively converges toward court-like logic characterized by permanent adjudicators, greater jurisprudential consistency, and hierarchical review. Current trends, including selective treaty uptake and the ongoing negotiation of a multilateral investment court, suggest that the system could move along this spectrum. The pace and

direction of that evolution will depend on the political economy of State preferences and the institutional capacity of the bodies involved.

6. Towards institutionalized jurisdiction, not the disappearance of the ICSID model

The central claim advanced in this article is that UNCITRAL-led reform does not entail the displacement of ICSID but rather contributes to a gradual reconfiguration of the ISDS ecosystem. The 2022 amendments to the ICSID Arbitration Rules represent a process of procedural modernization within the existing arbitral paradigm, whereas the proposals developed under UNCITRAL Working Group III point toward the progressive institutionalization of investment dispute settlement through court-like structures.

Framed in these terms, the current reform moment should not be understood as a binary transition between an "old" and a "new" system. Instead, what is emerging is a layered institutional architecture in which multiple mechanisms coexist and interact: ICSID-based arbitration, a potential multilateral investment tribunal, an appellate mechanism, and an expanding set of mediation and dispute-prevention tools. The relative centrality of each of these components will ultimately depend on treaty design, State preferences, and use in practice.

From an institutional perspective, this emerging architecture presents both opportunities and challenges. Permanent adjudicatory bodies and appellate review mechanisms may enhance consistency, predictability, and perceived legitimacy. At the same time, the coexistence of multiple procedural pathways may require greater coordination across institutions and treaty frameworks. The effectiveness of future reforms will therefore depend not only on their substantive design, but also on the ability of States and institutions to integrate new mechanisms within an increasingly pluralist ISDS landscape.

Ultimately, the significance of current reforms lies less in the formal replacement of one model by another than in the gradual transformation of the system's underlying logic. The traditional features of arbitration—decentralization, finality, and party autonomy—are being complemented, and in some respects qualified, by emerging elements of institutionalized adjudication, including permanence, hierarchy, and systemic coherence.

Whether this evolution amounts to incremental modernization or genuine structural transformation will depend on the extent to which States operationalize UNCITRAL-driven designs in treaty practice. Should a standing multilateral tribunal and an appellate mechanism gain widespread acceptance, they may come to function as new norm-setting poles within the system, reshaping expectations regarding consistency and legal authority. If, by contrast, adoption remains partial, the result will likely be a more pluralist but still *ad hoc*-centered landscape.

In either case, the trajectory is clear: ISDS is moving toward a more complex and institutionalized configuration in which arbitration, rather than disappearing, is repositioned within a broader framework of international adjudication.

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