OXFORD INTERNATIONAL ARBITRATION SERIES

Series Editor: Loukas Mistelis

Professor of Transnational Commercial Law and Arbitration
Queen Mary, University of London

ANNULMENT UNDER THE ICSID CONVENTION

OXFORD INTERNATIONAL ARBITRATION SERIES

Series Editor: Loukas Mistelis

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ANNULMENT UNDER THE ICSID CONVENTION

R Doak Bishop and
Silvia M Marchili

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SERIES EDITOR'S PREFACE

This series of monographs is dedicated to specific issues in international arbitration law and practice, and gives authors the opportunity and the challenge of undertaking a more in-depth treatment than is possible in leading generalist works. It also provides an international forum for the profound exploration of important practical and theoretical matters and will further the development of arbitration as a self-luminous academic discipline and major international legal practice area.

This book addresses the fundamental topic of annulment process, law, and practice under the ICSID Convention, or dare I say, system. The main characteristic of ICSID has been that it is a closed (ie self-contained, autonomous) arbitral system, not interacting with national courts, so that the review or control of awards is only possible by ad hoc committees. Some early annulment decisions, such as *Amco I* and *Klöckner I*, appeared to have expanded the scope of annulment provided for in the ICSID Convention and were expectedly criticized. After these early cases (also called the 'first generation'), subsequent annulment decisions in the second and third generations, such as *Amco II*, *Vivendi I*, and *Wena*, were all welcomed as positive developments, establishing confidence in the system and providing a cause for optimism. However, since 2002, a hyperactivity has been observed, and a fourth generation of annulment cases, such as *Mitchell*, *CMS*, *Sempra*, *Enron*, have caused quite a bit of discussion and criticism, and contain representation or comments that, to put it mildly, raise eyebrows and possibly introduce an unwanted element of uncertainty associated with ICSID annulment. Even if one were not to be ideological about annulment, uncertainty as to the scope of annulment has as an inevitable consequence an increase in the cost and length of proceedings. Some even criticize certain annulment committees as functioning *de facto* as appellate judges, and consider that in its application Article 52 of ICSID has had an uncharacteristic elasticity.

This monograph examines systematically the law and practice of ICSID annulment by examining the text of the Convention, the *travaux préparatoires*, and the general rules of treaty interpretation in accordance with the Vienna Convention of the Law of Treaties, and by dissecting the relevant jurisprudence. It also discusses from a historical and dogmatic perspective the issue of control mechanisms in international arbitration and attempts to establish confidence in international arbitration.

In this highly debated area Silvia Marchili and Doak Bishop offer profound knowledge and insight in writing and analysing complex issues. The topic is an ambitious and a challenging one but the authors have succeeded in their task and offer us a significant piece of work, rich in research and accurate in analysis. Most importantly the book is of practical relevance and value while at the same time maintaining the highest of academic standards.

I am very pleased to introduce this book, the seventh one in the Oxford International Arbitration Series to have emerged from the bridge which ought to exist between academic theory and practice.

Loukas Mistelis
London
20 June 2012

FOREWORD

The ICSID Convention provides for annulment of awards under narrowly circumscribed circumstances. To the uninitiated reader this would suggest that this instrument is available only under rare and highly unusual circumstances. In actual practice, annulment has become an important part of litigation strategy under the Convention. Today it is often seen as offering a second chance to the losing party if only the stakes are high enough and the war chest is deep enough.

Annulment is designed to ensure that the outcome of the arbitration has remained within the framework of the parties' agreement to arbitrate and was reached by a process that guaranteed fairness to them. In addition to the parties' right to justice, there is also a public interest in the integrity of a process of dispute settlement established by a multilateral treaty.

Over time the emphasis between finality and review has shifted back and forth in ICSID annulment proceedings. Successive *ad hoc* committees have adopted varying approaches to their powers. Nearly all of them have emphasised the difference between annulment and appeal. But at times their willingness to delve deeply into questions of law and fact has surpassed that of a typical court sitting in appeal. Decisions on annulment are often elaborate sometimes surpassing the awards they scrutinize in length. But annulment is, or should be, concerned only with the legitimacy of the process of decision and not with its substantive correctness.

The activism of some *ad hoc* committees has been widely criticized by a number of observers. But the desire to contain the existing review process has not been uniform. There have also been calls for a new expanded review mechanism through the creation of an appellate facility.

Part of the difficulties in circumscribing the proper function of an *ad hoc* committee stems from the broad definition of the grounds for annulment. Excess of powers covers all issues that impact jurisdiction, including the existence of an investment, nationality, and the scope of consent to arbitration. Another form of excess of powers is failure to apply the proper law. Its application by *ad hoc* committees is vulnerable to blending into an examination of the correct application of the law. Departure from a rule of procedure is a ground for annulment only if the rule is fundamental and the departure is serious. This ground for annulment, though often invoked, has been accepted infrequently. Failure to state reasons is a particularly subjective standard. An examination of the adequacy of reasons easily leads to an examination of the award's quality.

These and numerous other questions have made a monograph on the topic of annulment under the ICSID Convention highly desirable. The community of ICSID users and observers are much indebted to the authors of this book for undertaking an erudite and systematic presentation of this difficult subject.

Christoph Schreuer
November 2012

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LIST OF ABBREVIATIONS

BIT	bilateral investment treaty
FILJ	Foreign Investment Law Journal
ICJ	International Court of Justice
ICSID	International Centre for Settlement of Investment Disputes
ILC	International Law Commission
PCIJ	Permanent Court of International Justice
UNCITRAL	United Nations Commission on International Trade Law

2

ARTICLE 52 OF THE ICSID CONVENTION

A. Control Mechanisms in International Arbitration 2.01
B. Article 52 of the Convention 2.21

A. Control Mechanisms in International Arbitration

2.01 Control mechanisms exist to ensure that a system works in the way that it is designed to work.[1] They are concerned with the very existence of a community, its decision-making processes, and its continuing efficient operation.[2] In the case of international arbitration, control mechanisms can be a key factor in selecting a dispute-resolution venue. Moreover, because they affect the allocation of costs and benefits of the processes in which they operate, those mechanisms can be highly political and controversial, and are frequently the subject of explicit policy considerations.[3]

2.02 International arbitration has long involved a tension between the finality of awards (ie the fact that they amount to *res judicata* regarding the merits of the case) and control mechanisms. As early as 1617, Hugo Grotius wrote in *De Iure Belli et Pacis*:

> [W]ith regard to arbiters who are referred to by compromise, the Civil Law may direct, and does in some places direct, that it shall be lawful to appeal from them, and to complain of their wrong; this cannot have place between kings and peoples. For in their case, there is no superior power, which can either bar or break the tie of the promise. And therefore they must stand by the decision, whether it be just or unjust; so that, as Pliny says, *When you choose a person your umpire, you make him your supreme judge*.[4]

2.03 Notably, in translating this passage to French, Jean Barbeyrac qualified this clear expression regarding the finality of arbitral decisions by clarifying that Grotius undoubtedly assumed that the arbitrator did not engage in fraud or collusion.[5] In 1672, Samuel von Pufendorf

[1] See W M Reisman, *Systems of Control in International Adjudication & Arbitration* (Durham, NC: Duke University Press, 1992), 1.
[2] See Reisman, *Systems of Control*, 8.
[3] See Reisman, *Systems of Control*, 3.
[4] H Grotius, *De Iure Belli et Pacis* (W Whewell translation) (London: John W Parker, 1853), Vol III, 351 (emphasis in the original). Note the reference to both the principle of *res judicata* and *pacta sunt servanda*. See Chapter 3 explaining that finality of awards is a natural consequence of those principles.
[5] See H Grotius, *Le Droit de la Guerre et de la Paix, Nouvelle Traduction par Jean Barbeyrac* (Amsterdam: Pierre de Coup, 1729), Vol II, 491. Barbeyrac stated: '*Notre Auteur suppose sans doute, qu'il n'y ait point de fraude ou de collusion de la part d'un Arbitre*' (citing Pufendorf).

stated, like Grotius, that it was manifest that there could not be any appeal against the findings of arbitrators, 'because there is no superior Judge who can revise their award'.[6] At the same time, however, Pufendorf maintained that in cases of manifest collusion between an arbitrator and one of the parties, the award should not be binding on the other party.[7] Michael Reisman pointed out the inconsistency in Pufendorf's position on the finality of the award: if claims of nullity cannot be controlled, then no grounds for nullity can be admitted.[7a] On the other hand, Pufendorf sought to avoid the imposition of a corrupted award on the innocent party. Faced with that challenge, Pufendorf qualified the ground for annulment so that only 'manifest' corruption may result in annulment. Reisman noted: 'The inclusion of the word manifestly is only an illusory restriction on the unilateral power of nullification that Pufendorf proposed to sanction'.[8]

2.04 Emer de Vattel, for his part, maintained that once the parties to a dispute consent to arbitration, 'they are bound to abide by the sentence of the arbitrators: they have engaged to do this; and the faith of treaties should be religiously observed'.[9] Vattel identified, however, exemptions to the finality of awards: if the arbitrators pronounce 'a sentence evidently unjust and unreasonable' or if the party pretending to evade the sentence proves 'by incontestable facts, that it was the offspring of corruption or flagrant partiality'.[10] Moreover, Vattel identified 'excess of power' as a reason not to observe the decision of the arbitrators, because it is upon 'the subject in dispute, the respective and opposite pretentions of the parties, the demands of the one, and the objections of the other . . . that the parties promise to abide by their judgment'.[11] Notably, in the absence of a reviewing authority, these grounds give the losing party 'an extremely wide discretion'.[12]

2.05 Two centuries later, Johan Kaspar Bluntschli published *Das Moderne Völkerrecht der Civilisirten Staten*, in which Article 495 provided that arbitral awards could be annulled for several reasons: if the arbitrators exceeded their powers, engaged in a denial of justice, failed to hear the parties, breached any other fundamental principle of procedure, or if the award was contrary to international law.[13] According to Bluntschli, error or inequity, on the other hand, could not result in annulment.

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[6] S Pufendorf, 'De Modo Litigandi in Libertate Naturali' Book V, Chapter XIII, § 4 in *De Iure Naturae et Gentium*, Libri Octo (Frankfurt: Friderici Knochii & Filii, 1716), 785 ('*Caeterum id manifestum est, ab arbitris non posse provocari; cum nullus sit superior judex, qui sententiam eorum corrigere queat*'). See S Pufendorf, 'De Modo Litigandi in Libertate Naturali' in W Evans Darby, *International Tribunals, A collection of the various schemes which have been propounded* (London: J M Dent, 1900) at 60 and M A Pierantoni, 'La Nullité d'un Arbitrage International' (1898) 30 Revue de Droit Internationale et de Législation Comparée 445, 455.

[7] See S Pufendorf, 'De Modo Litigandi', 785 ('*Nam uti ideo quidem a compromisso resilire non licet, quod contra nos fuerit pronunciatum … ita tunc sane arbitri sententia nos non stringet, si manifeste adpareat, ipsum cum altera parte colludere, aut ab eadem donis corruptum, aut pactum in fraudem nostrum inivisse. Nam qui aperte ad alterutram sese partem adplicat, arbitri personam gerere amplius nequit*'). See W M Reisman, *Nullity and Revision—The Review and Enforcement of International Judgments and Awards* (New Haven and London: Yale University Press, 1971), 22 et seq.

[7a] See Reisman, *Nullity and Revision*, 24.

[8] Reisman, *Nullity and Revision*, 24.

[9] E de Vattel, *The Law of Nations* (edited by J Chitty) (Cambridge: Cambridge University Press, 1834), §329, 277–8.

[10] Vattel, *The Law of Nations*, 277–8.

[11] Vattel, *The Law of Nations*, 277–8.

[12] Reisman, *Nullity and Revision*, 25.

[13] See J C Bluntschli, *Das Moderne Völkerrecht der Civilisirten Staten, Als Rechtbuch Dargestellt* (1868), § 495, at 277. ('*Der Spruch des Schiedsgerichts kann von einer Partei als ungültig angefochten werden: a) wenn*

2.06 Several initiatives that purported to codify international arbitration rules also contained provisions on annulment of awards. In 1875 in The Hague, the *Institut de Droit International* approved the Draft Rules for International Arbitral Procedure (*Projet de règlement pour la procédure arbitrale internationale*), which provided that an arbitration award was void if no arbitral agreement existed, a fundamental error had occurred, or in a case of excess of power by the tribunal or proven corruption by one of the arbitrators.[14]

2.07 The 1899 Hague Peace Conference also addressed the issue of finality of awards *vis-à-vis* fairness concerns. While some delegates argued that arbitral decisions should be accepted as final, others—including Frederick Holls, on behalf of the US delegation—contended that the fundamental purpose of the court was to ascertain and administer justice, and thus, a miscarriage of justice would prejudice the court. Holls, therefore, maintained that the surest means to finally settle a controversy was by a judgment, the fairness of which could not be successfully attacked.[15] The final text provided that awards were final, unless the parties expressly agreed to a process for revision.[16]

2.08 By contrast, some authors in the late 1800s went as far as to maintain that, in cases in which the arbitrators exceeded their powers—or when another proper ground for annulment was found to exist—and no higher court had jurisdiction to review the arbitral award, a State party to the arbitration could unilaterally declare the invalidity of the award, and thus, justify a failure to comply with it.[17]

2.09 Against this backdrop, as early as the creation of the Permanent Court of International Justice (PCIJ) in 1920, the international community has sought to implement an appeal or control mechanism for international awards, other than through domestic courts. In 1928, Szymon Rundstein—the Polish delegate at a series of conferences called by the League of Nations—proposed that States should be able to submit requests for appeals regarding excess of jurisdiction and violations of international law by arbitral tribunals, as well as requests for revisions.[18] With respect to the court that would decide a request for revision,

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und soweit das Schiedsgericht dabaie seine Vollmachten überschritten hat, b) wegen unredlichen Verfahrens der Schiedsrichter, c) wenn das Schiedsgericht den Parteien das Gehor verweigert oder sonst die Fundamentalgrundsätze alles Rechtsverfahrens offenbar verletzt hat, d) wenn der Inhalt des Spruchs mit den Geboten des Volker und Menschenrechts unferträglich ist. Aber der Schiedsspruch darf night aus dem Grunde angefochten warden, das ser unrichtig or oder fur eine Partei unbillig sei. Vorbehalten bleibt die Berichtigung blosser Rechnungsfehler.') For a throrough survey on grounds for annulments identified by different authors, see A Balasko, *Causes de Nullité de la Sentence Arbitrale en Droit International Public* (Paris: Pedone, 1938). See F Dreyfus, *L'Arbitrage International* (Paris: Calmann Lévy Editeur, 1892), 287–96.

[14] See Institut de Droit International, The Hague Session, 1875, *Projet de règlement pour la procédure arbitrale internationale*, Art 27. ('*La sentence arbitrale est nulle en cas de compromis nul, ou d'excès de pouvoir ou de corruption prouvée d'un des arbitres ou d'erreur essentielle.*')

[15] See J B Scott, *The Hague Peace Conferences—1899 and 1907* (Baltimore: Johns Hopkins University Press, 1909), Vol 1, 81.

[16] See Scott, *The Hague Peace Conferences*, 81.

[17] See Pierantoni, 'La Nullité d'un Arbitrage International', 455; W E Hall, *A Treatise on International Law* (Oxford: Clarendon Press, 1890), 362. Pasquale Fiore, for example, distinguished between grounds that made the award null, such as cases in which the decision ('*dispositif*') is contradictory, and those that could be used to request its annulment, such as cases of corruption of one of the arbitrators (see P Fiore, *Le Droit International Codifié* (Paris: Pedone, 1911), 619–20). Cfr J Limburg, 'L'Autorité de chose jugée des décisions des juridictions internationales' (1929) 30 Recueil des Cours 566–7.

[18] See Committee of Jurists on the Statute of the Permanent Court of International Justice, *Minutes of the Session held at Geneva*, Mar 11–19, 1929, Annex 6, at 105. The proposal stated: '§ 3. The appeal will lie as

Rundstein's project seemed to assume that the arbitral tribunal still existed—ie, that no *functus officio* had occurred—although it also included the possibility of appointing the PCIJ as the court in charge of deciding the request for revision.[19]

2.10 This initiative was not isolated. The *Institut de Droit International* recommended in 1929 that in consenting to arbitration, States should agree to submit to the PCIJ all disputes between them concerning the jurisdiction of the arbitral tribunal or an excess of powers.[20]

2.11 Seizing the momentum, in the context of a proposal by the Government of Finland, the League of Nations appointed a Committee of Jurists to analyse what would be the most appropriate procedure for States to enable the PCIJ to act as a 'tribunal of appeal' in situations of an alleged lack or excess of jurisdiction.[21] The Committee made alternative proposals, in all of which a party alleging the nullity of an award had to submit its request for annulment to the PCIJ, which could, in turn, annul the award in whole or in part.[22] The Committee included as grounds for annulment a lack or excess of jurisdiction or a 'fundamental fault in the procedure'.[23] The proposals languished, however, and the idea of implementing this mechanism proved to be premature.[24]

2.12 After the Second World War, these ideas found their way into the United Nations. In its 1949 session, the International Law Commission (ILC) included 'arbitral procedure' as one of the three topics for codification, and it instructed Special Rapporteur Professor Georges Scelle to prepare a code for international arbitral procedure.[25] From the outset, the *res judicata* of arbitral awards and a potential review mechanism were considered as key issues to develop or codify. By then, regardless of the principle according to which arbitral awards were *res judicata*, 'efforts have often been made, and have often succeeded, to re-open cases in which the award was not satisfying to one of the parties'.[26] In fact, the ILC's Secretariat considered that there was much dissatisfaction with the *res judicata* principle, and that lack of any means of recourse against arbitral awards had led to numerous complaints regarding

regards: (a) Violation of a rule of international law; (b) Exceeding of its competence by the tribunal. § 4. The appeal must be made to the Permanent Court of International Justice within the two months following the notification of the award by way of an application addressed to the Registrar'.

[19] See Committee of Jurists on the Statute of the PCIJ, *Minutes of the Session held at Geneva*, Annex 6, at 105. The proposal stated: '§ 5. Eventual revision of an award belongs to the competence of the international arbitral or judicial tribunal which has been established by the signatory parties, except where they confer on the Permanent Court of International Justice jurisdiction as a tribunal for revision. An application for revision may only be made in accordance with the provisions of Article 61 of the Statute of the Court'. See Balasko, *Causes de Nullité*, 58 et seq.

[20] See *Extension de l'Arbitrage Obligatoire*, Institut de Droit International, New York, 1929. ('*[L]es Etats, dans leurs conventions d'arbitrage, ainsi que dans les clauses compromissoires, signées par eux, conviennent de soumettre à la décision de la Cour permanente de Justice internationale toutes contestations entre eux au sujet, soit de la compétence du tribunal arbitral, soit d'un excès de pouvoir de ce dernier allégué par l'une des Parties*.')

[21] See *Proposal of the Government of Finland to Confer on the Permanent Court of International Justice Jurisdiction as a Tribunal of Appeal in Respect of Arbitral Tribunals Established by States*, *Report of the Committee Appointed by the Council*, 11 League of Nations OJ (1930) 1359.

[22] See *Proposal of the Government of Finland*, *Report of the Committee Appointed by the Council*, 11 League of Nations OJ (1930) 1363. See Balasko, *Causes de Nullité*, 58 et seq, and Reisman, *Systems of Control*, 49.

[23] *Proposal of the Government of Finland*, *Report of the Committee Appointed by the Council*, 11 League of Nations OJ (1930) 1364.

[24] See W M Reisman, 'The Supervisory Jurisdiction of the International Court of Justice' (1996) 258 Recueil de Cours 46. See Balasko, *Causes de Nullité*, 85 and 11 League of Nations OJ (1930) 1363–4.

[25] See Memorandum Prepared by the Secretariat, Doc A/CN.4/35, Nov 21, 1950, at 158.

[26] Memorandum, Doc A/CN.4/35, at 177.

certain arbitral decisions.[27] It concluded, 'the trend is now in the direction of providing some means of appeal'.[28]

2.13 In his first report, Scelle acknowledged the *res judicata* principle, although he maintained that it was not absolute.[29] The subsequent *Avant-Projet* confirmed the principle, but stated that any vices affecting the validity of the award should be heard before a new tribunal—the Permanent Court of Arbitration or the International Court of Justice (ICJ)—which would then decide whether the request should be addressed in the context of an appeal or a *cassation*.[30]

2.14 In June 1952, the ILC specifically addressed the issue of whether to include in the project a potential appeal, *cassation*, or annulment mechanism. During the debates, the chairman stated that the concern resulting from arbitral decisions rendered *ultra vires* or involving gross errors of law or fact had inspired some jurists to propose that the PCIJ be empowered to review arbitral awards as a court of second instance. The chairman considered, however, that although the concern was justified, that proposal was an inadequate solution.[31] He pointed out that both appeal and *cassation* were extraneous to international arbitration, and that submitting arbitral awards to appeal before an international court 'would be to disregard the nature of arbitration itself'.[32] Moreover, the chairman highlighted that the essence of arbitration was that the parties submitted their dispute to judges of their own choice, and that it would be manifestly inconsistent for the parties to place their confidence not in the judges they chose themselves, but in an appellate court.[33] As a result, the commission instead included the control mechanism proposed by the representative of Colombia, which contained three of the five grounds for annulment in Article 52 of the ICSID Convention.[34]

2.15 Notably, during the debates, even those representatives who supported the possibility of challenging a decision due to excess of jurisdiction, such as the UK representative, Hersch Lauterpacht, rejected the possibility of appeal due to error of law or an incorrect application of international law.[35]

2.16 In light of these discussions and amendments, in its fourth session in 1952, the ILC adopted a 'Draft on Arbitral Procedure' and circulated it to the members of the United Nations for comment. During subsequent debates, the ILC included failure to state reasons as a type of 'serious departure from a fundamental rule of procedure', and clarified that it had decided 'having regard to the paramount requirement of finality, not to amplify . . . the grounds on

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[27] See Memorandum, Doc A/CN.4/35, at 177.

[28] Memorandum, Doc A/CN.4/35, at 177.

[29] See Report on Arbitral Procedure by Georges Scelle, Special Rapporteur, Doc A/CN.4/18, 21 March 1950, at 142. ('*La sentence arbitrale possède l'autorité de la chose jugée*.')

[30] See Doc A/CN.4/18, at 147 and *Avant-Projet de Texte Proposé* § XVI. The second *Avant-Projet* of 1951 did not introduce any substantial changes (see Deuxième Report par M. Georges Scelle, Special Rapporteur, Doc A/CN.4/46, May 28, 1951, at 119–20).

[31] See Doc A/CN.4/SER.A/1952, Yearbook of the International Law Commission, 1952, Vol I, at 83.

[32] Doc A/CN.4/SER.A/1952, at 83.

[33] See Doc A/CN.4/SER.A/1952, at 84. See J Paulsson, 'ICSID's Achievements and Prospects' (1991) 6 ICSID Rev–FILJ 387 (making a similar remark in the context of ICSID arbitration).

[34] See Doc A/CN.4/SER.A/1952, at 88. The new provision stated: 'The validity of an award may be challenged by either party on one or more of the following grounds: (a) if the tribunal has exceeded its powers; (b) the corruption of a member of the tribunal; (c) if there has been a serious departure from a fundamental rule of procedure'.

[35] See Doc A/CN.4/SER.A/1952, at 84.

which the annulment of the award may be sought'.[36] As a result of this amendment, the 1953 version of the ILC Model Rules, on which the drafters of the ICSID Convention relied in drafting Article 52,[37] provided:

> Annulment of the award
>
> Article 30
>
> The validity of an award may be challenged by either party on one or more of the following grounds:
>
> (a) That the tribunal has exceeded its powers;
> (b) That there was corruption on the part of a member of the tribunal;
> (c) That there has been a serious departure from a fundamental rule of procedure, including failure to state the reasons for the award.[38]

2.17 The ILC was of the view that requests for annulment of international awards should be heard by the International Court of Justice.[39] In adopting that position, the ILC took into account the 1929 resolution of the *Institute de Droit International*, and the work of the Committee of Jurists of the League of Nations.[40] Nonetheless, this approach was criticized for allegedly restricting international tribunals' independence from the ICJ.[41]

2.18 The drafters included further amendments and the 1958 version of the rules added a fourth ground for annulment: '(d) That the undertaking to arbitrate or the *compromis* is a nullity'.[42] In the commentary to that article—which in the 1958 version is Article 35—the ILC clarified that this principle also applied to the validity of international treaties, but that in any event these cases should prove exceedingly rare.[43] Scelle explained that the rationale behind this article was that arbitration practice has always conflicted with the principle of absolute finality of arbitral awards, although different opinions existed with respect to the specific grounds that should lead to annulment.[44]

2.19 The General Assembly rejected the proposal and adopted the text merely as a set of 'Model Rules'. The final text of the Model Rules includes the fourth ground for annulment—nullity of the undertaking to arbitrate or *compromis*—as well as a new article providing for the finality of the award, which states: 'The arbitral award shall constitute a definitive settlement of the dispute'.[45]

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[36] Report of the International Law Commission to General Assembly (A/2456), in Doc A/CN.4/76, at 205, 211.

[37] See A Broches, 'Observations on the Finality of ICSID Awards' (1991) 6 ICSID Rev–FILJ 325. See ICSID, 'Background Paper on Annulment for the Administrative Council of ICSID', Aug 10, 2012, at 5.

[38] Report of the International Law Commission to General Assembly (A/2456), in Doc A/CN.4/76, at 211. See Broches, 'Observations on the Finality of ICSID Awards', 325.

[39] See Draft on Arbitral Procedure Adopted by the Commission at its Fifth Session Report by Georges Scelle, Special Rapporteur, Doc A/CN.4/SER.A/1958/Add.l, at 11. See Report of the International Law Commission to General Assembly (A/2456), in Doc A/CN.4/76, Art 31, at 211.

[40] See Draft on Arbitral Procedure, Doc A/CN.4/SER.A/1958/Add.l, at 11.

[41] See Draft on Arbitral Procedure, Doc A/CN.4/SER.A/1958/Add.l, at 11.

[42] Report of the International Law Commission Covering the Work of its Tenth Session (A/3859), Apr 28–Jul 4, 1958, at 86.

[43] See Report of the International Law Commission (A/3859), at 88.

[44] See Draft on Arbitral Procedure, Doc A/CN.4/SER.A/1958/Add.l, at 11.

[45] Report of the International Law Commission (A/3859), at 86. The final version of Art 35 reads: 'Validity and Annulment of the Award. Article 35: The validity of an award may be challenged by either party on one or more of the following grounds: (a) That the tribunal has exceeded its powers; (b) That there

2.20 States have adopted the ILC Model Rules only in a few instances.[46] Nevertheless, this model provides important background for the development of international arbitral procedure, and in the 1953 version is to be found the predecessor to Article 52 of the ICSID Convention. The drafters of the ICSID Convention, however, took a further step towards designing a self-contained control mechanism within ICSID, a key feature of ICSID as the following section explains.

B. Article 52 of the Convention

2.21 The drafters of the ICSID Convention sought, like the ILC, to reconcile finality of the award with the need to prevent flagrant cases of excess of jurisdiction and injustice.[47]

2.22 The 1962 Working Paper by Aron Broches, General Counsel of the World Bank, which constitutes the first draft of the Convention, only provided for the interpretation and revision of awards and not for their annulment.[48] Thus, in the Working Paper, ICSID awards were 'absolutely' final.[49] The drafters only incorporated the annulment mechanism in the 1963 Preliminary Draft.[50]

2.23 The text of the provision on annulment in the 1963 Preliminary Draft was identical to that of the 1953 ILC Draft Rules on Arbitral Procedure.[51] After further debate, the drafters modified

was corruption on the part of a member of the tribunal; (c) That there has been a failure to state the reasons for the award or a serious departure from a fundamental rule of procedure; (d) That the undertaking to arbitrate or the compromis is a nullity' (Report at 86). See K S Carlston's Codification of International Arbitral Procedure, Art IX of which appoints the ICJ as an appellate and annulment court ('Codification of International Arbitral Procedure' (1953) 47(2) American Journal of International Law 223).

[46] See US-Grenada BIT. (Art VII: '1. Any dispute between the Parties concerning the interpretation or application of this Treaty … shall be submitted, upon the request of either Party, to an arbitral tribunal for binding decision in accordance with the applicable rules of international law. In the absence of an agreement by the Parties to the contrary, the Model Rules on Arbitral Procedure adopted by the United Nations International Law Commission in 1958 as referred to in U.N. General Assembly Resolution 1262 (XIII) shall govern.') See US-Senegal BIT, Art VIII; US-Morocco BIT, Art VII; US-Panama BIT, Art VIII; US-Haiti BIT, Art VIII; US-Egypt BIT, Art VIII; US-Congo BIT, Art VIII; and US-Cameroon BIT, Art VIII.

[47] See A Broches, 'Awards Rendered Pursuant to the ICSID Convention: Binding Force, Finality, Recognition, Enforcement, Execution' (1987) 2 ICSID Rev–FILJ 290.

[48] For a description of the genesis of the Convention, see A Broches, 'Development of International Law by the International Bank for Reconstruction and Development' (1965) 59 American Society of International Law Proceedings 30. Aron Broches was in charge of the World Bank staff work on the Convention and was also Chairman of the Regional Consultative Meeting and of the Legal Committee division of the Executive Directors of the World Bank.

[49] See P Lalive, 'Concluding Remarks' in E Gaillard and Y Banifatemi (eds), *Annulment of ICSID Awards* (New York: Juris Publishing Inc, 2004), 300, and Mitchell, Decision on the Respondent's Request for a Continued Stay of Execution, Jun 1, 2005, para 40, arguing that in the absence of the annulment procedure, the States would not have ratified the ICSID Convention. With respect to the finality of ICSID awards, although the language in the Working Paper was slightly different than the final version of Art 53, it still provided that the award shall be final and binding and that each party 'shall abide by and comply with the award immediately'. (See *History of the ICSID Convention*, Vol I, 242.)

[50] See *History of the ICSID Convention*, Vol II, 42–3, 217. See D A Redfern, 'ICSID—Losing its Appeal?' (1987) 3(2) Arbitration International 98–118, 99; ICSID, 'Background Paper', 6.

[51] The 1963 Preliminary Draft provided: 'The validity of an award may be challenged by either party on one or more of the following grounds: (a) That the tribunal has exceeded its powers; (b) That there was corruption on the part of a member of the tribunal; or (c) That there has been a serious departure from a fundamental rule of procedure, including failure to state the reasons for the award'. (See *History of the ICSID Convention*, Vol I, 230.)

the text of that article, substituting the passive voice for the active voice in the first sentence, separating the last two grounds for annulment, and adding the possibility for the parties to agree that the tribunal did not need to state reasons for the award.[52] By December 1964, the drafters agreed on what would become the final text of Article 52 of the ICSID Convention.[53]

2.24 Article 52 is included in Section 5 of the Convention, which covers the review mechanisms of awards under the Convention: interpretation, revision, and annulment. Article 52 governs 'the extraordinary and narrowly circumscribed remedy of annulment' and its concise text lists the five grounds on the basis of which an ICSID award may be annulled.[54] It provides:

(1) Either party may request annulment of the award by an application in writing addressed to the Secretary-General on one or more of the following grounds:
  (a) that the Tribunal was not properly constituted;
  (b) that the Tribunal has manifestly exceeded its powers;
  (c) that there was corruption on the part of a member of the Tribunal;
  (d) that there has been a serious departure from a fundamental rule of procedure; or
  (e) that the award has failed to state the reasons on which it is based.

2.25 At least two of the grounds for annulment under Article 52 of the Convention include express qualifications that convey a sense of gravity. An excess of power must be *manifest*, a departure from a fundamental rule of procedure must be *serious*, and it must involve a *fundamental* rule of procedure in order to be deemed a ground for annulment.[55] The use of qualifiers such as 'manifest', 'serious', and 'fundamental' suggests that the powers of an ad hoc committee to annul an ICSID award were intended to be limited.[56]

2.26 The other provisions in Article 52 of the Convention relate to the time limit for annulment applications, the appointment of the committee members, the applicable rules to the annulment procedure, the possibility of staying the enforcement of the underlying award, and the resubmission of wholly or partially annulled decisions to a new tribunal.[57]

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[52] See *History of the ICSID Convention*, Vol I, 232. That version of the article stipulated: 'Either party may request annulment of the award by an application in writing addressed to the Secretary-General on one or more of the following grounds: (a) that the Tribunal was not properly constituted; (b) that the Tribunal has manifestly exceeded its power; (c) that there was corruption on the part of a member of the Tribunal; (d) that there has been a serious departure from a fundamental rule of procedure; or (e) failure to state the reasons for the award, unless the parties have agreed that reasons need not be stated'.

[53] See *History of the ICSID Convention*, Vol II, 926–7.

[54] See Broches, 'Observations on the Finality of ICSID Awards', 327.

[55] In the case of a failure to state reasons, the Convention does not qualify the reasons that should be given. One interpretation of the absence of qualifiers is that the drafters intended that only a total *absence of* reasons (ie the failure to provide *any* reasons) would qualify as a ground for annulment. See *Klöckner* para 3: 'The very language of the provision demands a cautious approach: sub-paragraph (b) requires that the Tribunal's excess of powers be "*manifest*." Likewise, under sub-paragraph (d), only a "*serious* departure" from a *fundamental* rule of procedure can justify challenging an award. Finally, the Convention envisages in sub-paragraph (e) a "failure to state reasons and not, for example, a mistake in stating reasons. With respect to each complaint, the *ad hoc* Committee will determine the meaning which must be given to the legal concepts involved"'.

[56] See Redfern, 'ICSID—Losing its Appeal?', 102–03; and Paulsson, 'ICSID's Achievements and Prospects', 387.

[57] The remaining provisions of Art 52 stipulate: '(2) The application shall be made within 120 days after the date on which the award was rendered except that when annulment is requested on the ground of corruption such application shall be made within 120 days after discovery of the corruption and in any event within three years after the date on which the award was rendered. (3) On receipt of the request the Chairman shall forthwith appoint from the Panel of Arbitrators an ad hoc Committee of three persons. None of the

2.27 With respect to the body in charge of deciding an annulment request, the ICSID Convention offers a unique solution: an ad hoc committee acting within the ICSID system and wholly appointed by ICSID. Interestingly, the drafters discarded the possibility of providing for the International Court of Justice as the competent court to hear applications for annulment because under Article 34(1) of the ICJ Statute, only States can be parties to cases before the Court.[58]

2.28 In this context, commentators and practitioners frequently describe ICSID as an autonomous, delocalized, and 'self-contained' system.[59] No court or tribunal of the host State is empowered to review an ICSID award on the merits. In fact, no domestic or international court can invalidate or qualify an ICSID award in any respect. This is perhaps the most remarkable feature of the ICSID system. Unlike other international arbitration centres, which operate against a background of different national legal systems and domestic courts, ICSID is independent of any other legal framework and of the decisions of any other courts.[60] No other venue broadly available to foreign investors is of such truly 'international' nature.

members of the Committee shall have been a member of Convention on the Settlement of Investment Disputes between States and Nationals of Other States the Tribunal which rendered the award, shall be of the same nationality as any such member, shall be a national of the State party to the dispute or of the State whose national is a party to the dispute, shall have been designated to the Panel of Arbitrators by either of those States, or shall have acted as a conciliator in the same dispute. The Committee shall have the authority to annul the award or any part thereof on any of the grounds set forth in paragraph (1). (4) The provisions of Articles 41–45, 48, 49, 53 and 54, and of Chapters VI and VII shall apply mutatis mutandis to proceedings before the Committee. (5) The Committee may, if it considers that the circumstances so require, stay enforcement of the award pending its decision. If the applicant requests a stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the Committee rules on such request. (6) If the award is annulled the dispute shall, at the request of either party, be submitted to a new Tribunal constituted in accordance with Section 2 of this Chapter'.

[58] See Broches, 'Awards Rendered Pursuant to the ICSID Convention', 290. Art 64 of the ICSID Convention provides that a dispute between the Contracting Parties concerning the interpretation or application of the Convention may be referred to the ICJ, but this provision does not confer jurisdiction on that court to review the decision of an ICSID arbitral tribunal (see *History of the ICSID Convention*, Vol II, 964).

[59] See Broches, 'Observations on the Finality of ICSID Awards', 322; *History of the ICSID Convention*, Vol II, 422, 424, 427; A Cohen Smutny, 'Arbitration before the International Centre for Settlement of Investment Disputes' (2004) 1(1) Transnational Dispute Management; G Delaume, 'Sovereign Immunity and Transnational Arbitration' in J Lew (ed), *Contemporary Problems in International Arbitration* (Dordrecht: Martinus Nijhoff, 1987), 34; L Reed, J Paulsson, and N Blackaby, *Guide to ICSID Arbitration* (The Hague: Kluwer Law International, 2004), ix and chap 5; G R Delaume, 'International Centre for Settlement of Investment Disputes Arbitration and the Courts' (1983) 77 American Journal of International Law 784, 784–5; A Redfern and M Hunter, *Law and Practice of International Commercial Arbitration* (London: Sweet & Maxwell, 1986), 33; P T Muchlinski, 'Dispute Settlement Under the Washington Convention on the Settlement of Investment Disputes' in W E Butler (ed), *Control over Compliance with International Law* (Dordrecht: Martinus Nijhoff, 1991), 189; E Baldwin et al, 'Limits to Enforcement of ICSID Awards' (2006) 23(1) Journal of International Arbitration 1, 3; C Schreuer et al, *The ICSID Convention: A Commentary* (Cambridge: Cambridge University Press, 2009), 1103; OECD, *International Investment Perspectives—2006 Edition* (Paris: OECD Publishing, 2006), 185; ICSID, 'Background Paper', 3. On an alternative concept of finality, see C Tams, 'An Appealing Option? The Debate about an ICSID Appellate Structure' (2006) 57 Essays in Transnational Economic Law 13–14. Awards rendered under the Additional Facility are, however, subject to any review or appeal provided by the law of the seat of the arbitration (see Arts 1, 19, and 20 of the ICSID Arbitration Rules (Additional Facility)).

[60] See Redfern, 'ICSID—Losing its Appeal?', 98; Schreuer, *Commentary*, 1103.

2.29 Articles 52 and 53 of the Convention ensure the finality and legal certainty of ICSID awards.[61] Together with the limited grounds for annulment, the fact that only ICSID annulment committees are empowered to analyse ICSID awards for purposes of annulment is considered an important advantage of this venue, and constituted an advance forward for the protection of investments.[62]

2.30 The finality of ICSID awards is thus an intrinsic advantage over other systems. The following Chapter addresses the background and consequences of the finality of ICSID awards as well as ICSID practice on this issue.

[61] Article 53(1) provides: 'The award shall be binding on the parties and shall not be subject to any appeal or to any other remedy except those provided for in this Convention. Each party shall abide by and comply with the terms of the award except to the extent that enforcement shall have been stayed pursuant to the relevant provisions of this Convention'.

[62] See M B Feldman, 'The Annulment Proceedings and the Finality of ICSID Arbitral Awards' (1987) 2 ICSID Rev–FILJ 86–7; Paulsson, 'ICSID's Achievements and Prospects', 387.

APPENDIX

Summary of ICSID Annulment Decisions

Case	Committee Members	Duration of Annulment Proceedings (approx)	Annulled?	Article 52(1)(b): manifest excess of powers	Article 52(1)(d); serious departure from a fundamental rule of procedure	Article 52(1)(e): failure to state reasons
Togo Electricité and GDF-Suez Energie Services v Togo ('Togo Electricité') ICSID Case No ARB/06/7	Albert Jan Van den Berg (President), Franklin Berman, and Rolf Knieper	10 months Registered: Nov 4, 2010 Decided: Sept 6, 2011	Application denied.			
Helnan International Hotels A/S v Egypt ('Helnan') ICSID Case No ARB/05/19	Stephen M Schwebel (President), Bola Ajibola, and Campbell McLachlan	1 year, 7 months Registered: Nov 10, 2008 Decided: Jun 14, 2010	Partially annulled.	Paras 40–57, 73(1)—failure to apply proper law (as agreed by parties).		

(*Continued*)

(*Continued*)

Case	Committee Members	Duration of Annulment Proceedings (approx)	Annulled?	Article 52(1)(b): manifest excess of powers	Article 52(1)(d); serious departure from a fundamental rule of procedure	Article 52(1)(e): failure to state reasons
				Tribunal decided to 'annul the holding of the Arbitral Tribunal in paragraphs 148 and 162 of its Award which, while disclaiming a requirement of exhaustion of local remedies before ICSID arbitral tribunal denied other grounds invoked.		
Rumeli Telekom AS and Telsim Mobil Telekomunikasyon Hizmetleri AS v Kazakhstan ('Rumeli') ICSID Case No ARB/05/16	Stephen M Schwebel (President), Campbell McLachlan, and Eduardo Silva Romero	1 year, 4 months Registered: Nov 7, 2008 Decided: Mar 25, 2010	Application denied.			

Malaysian Historical Salvors, SDN, BHD v Malaysia ICSID Case No ARB/05/10	Stephen M Schwebel (President), Mohamed Shahabuddeen, and Peter Tomka	1 year, 7 months Registered: Sept 17, 2007 Decided: Apr 16, 2009	Annulled award on jurisdicion. Dissenting opinion issued by Mohamed Shahabuddeen.	Paras 80–1—failure to exercise jurisdiction.	
Sociedad Anónima Eduardo Vieira v Chile ('Vieira') ICSID Case No ARB/04/7	Christer Söderlund (President), Piero Bernardini, and Eduardo Silva Romero	2 year, 11 months Registered: Jan 24, 2008 Decided: Dec 10, 2010	Application denied.		
Compagnie d'Exploitation du Chemin de Fer Transgabonais v Gabonese Republic ICSID Case No ARB/04/5	Franklin Berman (President), Ahmed Sadek El-Kosheri, Rolf Knieper	1 year, 10 months Registered: Jul 10, 2008 Decided: May 11, 2010			
Duke Energy International Peru Investments No 1 Ltd v Peru ('Duke') ICSID Case No ARB/03/28	Campbell McLachlan (President), Dominique Hascher, and Peter Tomka	2 years, 3 months Registered: Dec 24, 2008 Decided: Mar 1, 2011	Application denied.		
Fraport AG Frankfurt Airport Services Worldwide v Republic of the Philippines ('Fraport') ICSID Case No ARB/03/25	Peter Tomka (President), Dominique Hascher, and Campbell McLachlan	2 years, 11 months Registered: Jan 8, 2008 Decided: Dec 23, 2010	Annulled award of Aug 16, 2007.		Paras 218–47—right to be heard.

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Case	Committee Members	Duration of Annulment Proceedings (approx)	Annulled?	Article 52(1)(b): manifest excess of powers	Article 52(1)(d); serious departure from a fundamental rule of procedure	Article 52(1)(e): failure to state reasons
Continental Casualty Company v Argentine Republic ('Continental Casualty') ICSID Case No ARB/03/9	Gavan Griffith (President), Bola Ajibola, and Christer Söderlund	2 years, 8 months Registered: Jan 14, 2009 Decided: Sept 16, 2011	Application for annulment by Continental Casualty Company denied. Application for partial annulment of the Argentine Republic denied.			
MCI Power Group, LC, and New Turbine, Inc v Ecuador ('MCI Power') ICSID Case No ARB/03/6	Dominique Hascher (President), Hans Danelius, and Peter Tomka	1 year, 10 months Registered: Dec 06, 2007 Decided: Oct 19, 2009	Application denied.			
Industria Nacional de Alimentos SA and Indalsa Perú SA (formerly Empresas Lucchetti SA and Lucchetti Perú SA) v Peru ('Lucchetti') ICSID Case No ARB/03/4	Hans Danelius (President), Andrea Giardina, and Franklin Berman	2 years, 2 months Registered: Jul 1, 2005 Decided: Sept 5, 2007	Application denied.			

Sempra Energy International v Argentine Republic ('Sempra') ICSID Case No ARB/02/16	Christer Söderlund (President), David A O Edward, and Andreas J Jacovides	2 years, 5 months Registered: Jan 30, 2008 Decided: Jun 29, 2010	Annulled award of Sept 28, 2007.	Paras 159–222—failure to apply proper law (failure to apply Art XI of the US/Arg BIT).
CDC Group plc v Seychelles ('CDC') ICSID Case No ARB/02/14	Charles N Brower (President), Michael Hwang, and David A R Williams	1 year, 2 months Registered: Apr 30, 2004 Decided: Jun 29, 2005	Application denied.	
Hussein Nuaman Soufraki v United Arab Emirates ('Soufraki') ICSID Case No ARB/02/7	Florentino P Feliciano (President), Omar Nabulsi, and Brigitte Stern	2 years, 7 months Registered: Nov 12, 2004 Decided: Jun 5, 2007	Application denied.	
Azurix Corp v Argentine Republic ('Azurix') ICSID Case No ARB/01/12	Gavan Griffith (President), Bola Ajibola, and Michael Hwang	2 years, 9 months Registered: Dec 11, 2006 Decided: Sept 1, 2009	Application denied.	
Repsol YPF Ecuador SA v Empresa Estatal Petróleos del Ecuador ('Repsol') ICSID Case No ARB/01/10	Judd L Kessler (President), Piero Bernardini, and Gonzalo Biggs	2 years, 6 months Registered: Jul 15, 2004 Decided: Jan 8, 2007	Application denied.	

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Case	Committee Members	Duration of Annulment Proceedings (approx)	Annulled?	Article 52(1)(b): manifest excess of powers	Article 52(1)(d); serious departure from a fundamental rule of procedure	Article 52(1)(e): failure to state reasons
CMS Gas Transmission Company v Argentine Republic ('CMS') ICSID Case No ARB/01/8	Gilbert Guillaume (President), Nabil Elaraby, and James R Crawford	2 years Registered: Sept 27, 2005 Decided: Sept 25, 2007	Partially annulled.			Paras 89–97—absence of reasons.
MTD Equity Sdn Bhd and MTD Chile SA v Chile ICSID Case No ARB/01/7	Gilbert Guillaume (President), James R Crawford, and Sara Ordoñez Noriega	2 years, 6 months Registered: Sept 30, 2004 Decided: Mar 21, 2007	Application denied.			
Enron Creditors Recovery Corporation (formerly Enron Corporation) and Ponderosa Assets, LP v Argentine Republic ('Enron') ICSID Case No ARB/01/3	Gavan Griffith (President), Patrick L Robinson, and Per Tresselt	2 years, 4 months Registered: Mar 7, 2008 Decided: Jul 30, 2010	Partially annulled.	Paras 355–95; 400–8—failure to apply proper law (failure to apply Art XI of the US/Arg BIT).		

Consortium RFCC v Kingdom of Morocco ICSID Case No ARB/00/6	Bernard Hanotiau (President), Arghyrios A Fatouros, and Franklin Berman	1 year, 9 months Registered: Apr 30, 2004 Decided: Jan 18, 2006	Unpublished.			
Patrick Mitchell v Democratic Republic of the Congo ('Mitchell') ICSID Case No ARB/99/7	Antonias C Dimolitsa (President), Robert S M Dossou, and Andrea Giardina	2 years, 4 months Registered: Jul 15, 2004 Decided: Nov 1, 2006	Annulled award of Feb 9, 2004.	Paras 42–48—excess of jurisdiction.		Paras 34–41—absence of reasons.
Wena Hotels Limited v Egypt ('Wena')ICSID Case No ARB/98/4	Konstantinos D Kerameus (President), Andreas Bucher, and Francisco Orrego Vicuña	1 year, 1 month Registered: Jan 24, 2001 Decided: Feb 5, 2002	Application denied.			
Compañía de Aguas del Aconquija SA and Vivendi Universal SA v Argentine Republic ('Vivendi I') ICSID Case No ARB/97/3	L Yves Fortier (President), James R Crawford, and José Carlos Fernández Rozas	1 year, 4 months Registered: Mar 23, 2001 Decided: Jul 3, 2002	Partially annulled.	Paras 86–8, 93–115—tribunal manifestly exceeded its powers by not examining claims against Tucumán authorities under the BIT.		
Compañía de Aguas del Aconquija SA and Vivendi Universal SA v Argentine Republic ('Vivendi II') ICSID Case No ARB/97/3	Ahmed Sadek El-Kosheri (President), Andreas J. Jacovides, and Jan Hendrik Dalhuisen	2 years, 8 months Registered: Dec 19, 2007 Decided: Aug 10, 2010	Application denied.			

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Case	Committee Members	Duration of Annulment Proceedings (approx)	Annulled?	Article 52(1)(b): manifest excess of powers	Article 52(1)(d); serious departure from a fundamental rule of procedure	Article 52(1)(e): failure to state reasons
Maritime International Nominees Establishment (MINE) v Guinea ('MINE') ICSID Case No ARB/84/4	Sompong Sucharitkul (President), Aron Broches, and Kéba Mbaye	1 year, 9 months Registered: Mar 30, 1988 Decided: Dec 22, 1989	Partially annulled (did not apply to counter-claims).			Paras 6.98–6.108—contradictory reasons and failure to deal with questions.
Klöckner Industrie-Anlagen GmbH and others v United Republic of Cameroon and Société Camerounaise des Engrais ('Klöckner I') ICSID Case No ARB/81/2	Pierre Lalive (President), Ahmed Sadek El-Kosheri, and Ignaz Seidl-Hohenveldern	1 year, 3 months Registered: Feb 16, 1984 Decided: May 3, 1985	Annulled award of Oct 21, 1983.			Paras 127 et seq—absence of reasons, insufficient and inadequate reasons, failure to deal with questions.
Klöckner Industrie-Anlagen GmbH and others v United Republic of Cameroon and Société Camerounaise des Engrais ('Klöckner II') ICSID Case No ARB/81/2	Sompong Sucharitkul (President), Andrea Giardina, and Kéba Mbaye	1 year, 10 months Registered: Jul 1, 1988 Decided: May 17, 1990	Denied Cameroon's application for annulment. Denied Klöckner's request for partial annulment.			

Amco Asia Corporation and others v Indonesia ('Amco I') ICSID Case No ARB/81/1	Ignaz Seidl-Hohenveldern (President), Florentino P Feliciano, and Andrea Giardina	1 year, 2 months Registered: Mar 18, 1985 Decided: May 16, 1986	Partially annulled (did not apply to tribunal's finding that the action of government officials was illegal).	Paras 89–98—failure to apply fundamental provisions of Indian law.		Paras 89–98—failure to state reasons for its Calculation of PT Amco's investment.
Amco Asia Corporation and others v Indonesia ('Amco II') ICSID Case No ARB/81/1	Sompong Sucharitkul (President), Arghyrios A Fatouros, and Dietrich Schindler	1 year, 10 months Registered: Feb 20, 1991 Decided: Dec 17, 1992	Denied Indonesia's application for annulment of award of Jun 5, 1990. Denied Amco's application for partial annulment of award of Jun 5, 1990. Annulled supplemental award of Oct 17, 1990.		Paras 1.11–1.12, 9.10—right to be heard.	

Note: This table does no include Articles 52(1)(a) and (c) because no Committee has annulled an award on these grounds yet.

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