



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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## Impact of International Arbitration on Economic Development

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*Received* 03 December 2023; *Accepted* 27 December 2023; *Published* 30 December 2023

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*Arbitration plays a vital role in the new international merchant law, which was developed and created by the parties involved. Over the last few decades, arbitration has grown to be seen as the ideal method for resolving international economic disputes, including those with governmental bodies and the State itself. Today, a growing number of international arbitration institutions, such as the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), and the International Centre for the Settlement of Investment Disputes (ICSID), administer a growing number of international arbitration cases. Arbitration plays a crucial role in the evolution of contemporary international commercial law. The opening recital of the ICSID Convention from 1965 states that the Contracting States have agreed to establish the International Centre for the Settlement of Investment Disputes considering the need for international cooperation for economic development and the role of private international investment in this regard. This introduction sets the stage for an examination, fifty years later, of whether international arbitration actually promotes economic development and how it may have a greater positive impact. Arbitration reduces the risks connected with foreign investments by providing a neutral forum for the final and enforceable resolution of such disputes. Over the last several decades, international arbitration has achieved widespread support as the conflict resolution technique of choice for international transactions and foreign investment, and this article explains how crucial arbitration has become for economic progress.*

**Keywords:** *arbitration, fdi, economic growth, uncitral.*

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## INTRODUCTION

All nations have processes in place for the resolution of conflicts. When two private parties disagree, they can take their case to a domestic court in any of their respective countries. Special tribunals or agencies, such as the administrative courts in several nations, may have jurisdiction if a governmental power is at issue. Foreign investors, their investment partners, and the governments of both countries have traditionally been wary of having legal disputes resolved in the courts of the other countries. The absence of a unified international commercial judicial system has necessitated the growth and widespread usage of diverse private procedures to resolve disputes arising out of foreign investments and transactions.

Arbitration is the most prominent of these processes because it allows conflicts to be resolved in a neutral setting by arbitrators mutually agreed upon by the parties or by an independent third party. International commercial conflicts, including disagreements with governmental bodies and the State itself, have been resolved through arbitration more frequently in recent decades. More than 140 countries have already signed on to the Washington Convention for the settlement of investment disputes between states and nationals of other states. This was made possible in large part by the work of the United Nations and the World Bank. An ever-increasing number of international arbitrations are also being handled by a growing number of international arbitration institutions like the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), and the International Centre for the Settlement of Investment Disputes (ICSID).<sup>1</sup>

## OBJECTIVE OF THE STUDY

- To study and discuss the impact of international arbitration on economic development
- To study how international arbitration improves economic development.

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<sup>1</sup> Amanda Rawls, 'Improving the Impact of International Arbitration on Economic Development, International Arbitration and the Rule of Law' (2017) 19 *Kluwer Law International* 85-99  
<<https://www.ilsa.org/ILW/2018/CLE/Panel%20%2320%20-%20Rawls-%20Improving%20the%20impact%20of%20international%20arbitration%20on%20economic%20dev...pdf>>  
accessed 20 November 2023

- To study and analyse the effective use and enforcement of international arbitration.

## SCOPE OF THE STUDY

The research is limited to the introduction of international arbitration and its effective use and enforcement. Further, it limits the role of international arbitration on economic development and its impact. Also provides insight into international commercial arbitration promoting foreign direct investment and expanding economic growth.

## RESEARCH QUESTIONS

1. Whether international commercial arbitration is improving economic development.
2. Whether there has been any impact on the economic development through ICA.

## RESEARCH METHODOLOGY

The researcher preferred doctrinal methodology to be followed for the said project as it would involve extensive reading and critical analysis of the primary data sources, especially the reports and journals. Books by eminent authors, articles in research journals, and newspaper articles have been scanned and examined as a secondary study tool.

## SIGNIFICANCE OF THE STUDY

This research discusses international arbitration and its impact on economic development. International arbitration has gained wide acceptance as the dispute resolution method of choice about international transactions and foreign investment and this article discusses how arbitration has become vital to economic development.

## LITERATURE REVIEW

**In the paper, The Role of International Arbitration in Economic Development by Eric A. Schwartz:**<sup>2</sup> This paper discusses how arbitration has become vital to economic development. It

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<sup>2</sup> Eric A. Schwartz, 'The Role of International Arbitration in Economic Development' (2009) 12 International Trade and Business Law Review <<https://www.taylorfrancis.com/chapters/edit/10.4324/9780203876732-6/role-international-arbitration-economic-development-eric-schwartz>> accessed 20 November 2023

deals with the effectiveness of international arbitration in reducing the risks associated with foreign investment through the consent of the parties, effective use of arbitration, and enforcement of the award. However, this paper discusses improving the effectiveness of the arbitration process and its enforcement and its impact on economic development.

**The paper by Philip J. McConnaughay, *The Role of Arbitration in Economic Development and the Creation of Transnational Legal Principles*:**<sup>3</sup> This paper deals with the lecture of the

author which concerns two aspects of private commercial arbitration that have been the focus of his work and scholarship both as a practicing lawyer and as a law professor. The first deals with the private arbitration's unique potential to contribute to economic growth and development in nations without advanced legal systems and the second discusses the arbitration for resolving disputes between parties from very different legal systems thereby contributing to the development of new norms and practices for bridging transnational differences. However, this deals with International commercial arbitration, investment arbitration, etc, and its role in developing the economy.

**In the paper, *Improving the Impact of International Arbitration on Economic Development*,**

**by Amanda Rawls:**<sup>4</sup> Paper discusses improving the impact of international arbitration on economic development through access, institutions, and transparency. This article takes as a starting point this global desire to foster economic development and examines contributions both positive and negative that international arbitration might make to this effort. It identifies potential links between international arbitration and these building blocks and considers how it could be implemented differently to improve development outcomes. However, this paper deals with the role of arbitration in economic development but not in very detail through access and transparency.

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<sup>3</sup> Philip J. McConnaughay, 'The Role of Arbitration in Economic Development and the Creation of Transnational Legal Principles' (2013) 1(1) PKU Transnational Law Review  
<<https://www.pkusz.edu.cn/uploadfile/2013/1008/20131008051334815.pdf>> accessed 20 November 2023

<sup>4</sup> Rawls (n 1)

**In the paper by Andrew Myburgh and Jordi Paniagua, Does International Commercial Arbitration Promote Foreign Direct Investment?:<sup>5</sup>** In this research, the author investigated how international commercial arbitration promotes FDI. In this study, the author provided a theoretical framework to examine the function and impact of international arbitration. The model's predictions are put through an empirical test within a gravity framework. According to the findings of this study, having easy access to arbitration attracts more foreign direct investment. However, this paper does not delve into the empirical study but is only concerned with the theoretical work.

**The paper by Jason Fry, Arbitration and Promotion of Economic Growth and Investment:<sup>6</sup>** This paper deals with international commercial Arbitration and Promotion of Economic Growth and Investment. This research shows how the adoption of the New York Convention and other regional conventions dealing with arbitration promotes economic growth throughout the world. And discusses that investor-state arbitration has a direct impact on encouraging foreign direct investment. However, this paper talks about the UNCITRAL Model Law on International Commercial Arbitration and how it facilitates trade inflow, economic growth, and foreign investment.

### **SIMPLY PUT, WHAT IS ECONOMIC DEVELOPMENT?**

If growth is used as a proxy for development by those who claim that international arbitration is beneficial to economic development, then this is because those who make this claim are arguing that the presence of international arbitration as a dispute resolution mechanism in a developing country's economy (whether through individual commercial contracts or a bilateral investment treaty) encourages foreign investment and that in turn leads to economic growth (GDP growth). Investors are reassured that their disputes will be resolved through international

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<sup>5</sup> Andrew Myburgh and Jordi Paniagua, 'Does International Commercial Arbitration Promote Foreign Direct Investment?' (2016) 59(3) The Journal of Law & Economics <<https://www.jstor.org/stable/10.2307/26456960>> accessed 20 November 2023

<sup>6</sup> Jason Fry, 'Arbitration and Promotion of Economic Growth and Investment' (2011) 13 European Journal of Law Reform <[https://heinonline.org/hol-cgi-bin/get\\_pdf.cgi?handle=hein.journals/ejlr13&section=30](https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/ejlr13&section=30)> accessed 20 November 2023

arbitration rather than in the country's domestic courts.<sup>7</sup> According to economics professor Michael Todaro, growth means increasing living standards, improving self-esteem needs, freedom from oppression, and greater choice.

## **ADOPTION OF NY CONVENTION AND OTHER REGIONAL CONVENTIONS**

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which was ratified by many nations in 1958, stipulates that arbitral awards rendered in other nations are to be enforced without any judicial review whatsoever. Acceptance of the New York Convention by a particular country can signal a country's readiness to enforce foreign arbitral awards impartially, prompting collective changes in the trading behavior of foreign enterprises. Berkowitz, Johannes Moenius, and Katharina Pistor concluded in their analysis that a country's trading patterns changed after the ratification of the New York Convention.<sup>8</sup> To begin, ratifying countries are now able to export more complicated commodities despite low ratings for domestic institutional quality. Second, the institutionalization process begins with the ratification of the New York Convention. Finally, the ratification of an international convention sends a more believable signal than the ratification of a unilateral proclamation, as violations of the international legal order will be noticed alongside domestic anomalies.<sup>9</sup>

The NY Convention provides a foundation for international commercial arbitration by making it easier to enforce arbitral rulings. By ratifying the New York Convention, countries pledge to significantly strengthen their arbitration system. A country's international arbitration regime can be said to have been positively affected by joining the NY Convention.

The enhancement of the business and investment climate is also influenced by other regional accords favoring international arbitration. These include the European Convention on International Commercial Arbitration (Geneva, 1961), the Inter-American Convention on International Commercial Arbitration (Panama, 1975), the European Convention Providing a Uniform Law on Arbitration (1966), the Arab Countries - Convention Arabe D'Amman Sur

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<sup>7</sup> *Ibid*

<sup>8</sup> Fry (n 6)

<sup>9</sup> McConnaughay (n 3)

L'Arbitrage Commercial (1987), and the OHADA Treaty on the Harmonization of Business Law in Africa (1999). (Port-Louis, Senegal, Title IV deals with arbitration).<sup>10</sup>

## INVESTOR-STATE ARBITRATION

There are currently around 157 signatories to the Washington Convention, which established ICSID as a neutral forum for investor-state disputes. Furthermore, the (ICSID) and other institutions like the International Chamber of Commerce (ICC) and the Arbitration Institute of the Stockholm Chamber of Commerce (Arbitration Institute) are recognized as options for resolution in more than 2,000 bilateral investment treaties.

Bilateral investment treaties may not have a significant effect on attracting FDI, and there is little evidence to back this claim. Potential financial risks and benefits to the investor, the stability of an investment environment, the availability of appropriate human capital, access to effective enforcement procedures, embedded personal and professional relationships, and other factors may all influence investors' decisions, but a country's conclusion of investment treaties may be one of them.<sup>11</sup>

Yet, the precise breadth and impact of the role played by the availability of investment treaty arbitration in influencing investment determinations has not been articulated. Nonetheless, there is evidence to suggest that a country's chances of attracting investment improve significantly when it signs the Washington Convention.

There has been some recent criticism of investment arbitration, a relatively new process that has only been tried and true within the last decade. Investors' confidence in the security of their property rights is bolstered by the fact that investment arbitration provides an extra layer of protection and, more crucially, indicates a government's adherence to the rule of law.

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<sup>10</sup> *Ibid*

<sup>11</sup> Susan Franck, 'Foreign Direct Investment, Investment Treaty Arbitration, and the Rule of Law' (2007) 19 *McGeorge Global Business and Development Law Journal*  
<[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=882443](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=882443)> accessed 20 November 2023

Governments can better foster economic growth if they back domestic and international commercial arbitration.

## UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION

Modern arbitration laws also encourage economic growth, foreign investment, and the free flow of goods and services. An arbitration law or the norms of an arbitral institution should provide the parties a lot of leeway and have few hard and fast restrictions if it is to attract foreign investors.<sup>12</sup>

Instead of coming up with their own arbitration system from scratch, developing countries can look to the UNCITRAL Model Law on International Commercial Arbitration as a guide. Having a single, all-encompassing rule that is in line with global norms makes the investment process easier to understand and navigate for potential foreign investors.<sup>13</sup>

This promotes an environment of trust and confidence in international trade, which in turn encourages companies to participate in global commerce, which in turn boosts economic activity and generates economic growth. Business is further encouraged to engage in cross-border trade thanks to the Model Law's ability to lower the price tag of dispute resolution in international business deals. In addition, the Model Law provides a consistent and predictable set of regulations and processes, making it simpler for enterprises to enter into international trade.<sup>14</sup>

In addition, the UNCITRAL Model Law offers the chance to take advantage of comprehensive commentary and databases in many languages that can aid in the implementation and interpretation of the law in jurisdictions where neither of these things is available.<sup>15</sup>

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<sup>12</sup> Daniel Berkowitz et al., 'Legal Institutions and International Trade Flows' (2004) 26(1) Michigan Journal of International Law <<https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1219&context=mjil>> accessed 20 November 2023

<sup>13</sup> Rawls (n 1)

<sup>14</sup> 'International Commercial Arbitration' (United Nations Commission on International Trade Law) <<https://uncitral.un.org/en/texts/arbitration%20#%20the%20UNCITRAL%20Model%20process>> accessed 20 November 2023

<sup>15</sup> *Ibid*



## THE EFFECTIVENESS OF INTERNATIONAL ARBITRATION PROMOTES ECONOMIC GROWTH

International arbitration will only contribute to economic growth if it is effective at resolving disputes involving foreign investment. Such instruments must be employed sincerely and appropriately by the judiciary to ensure the efficiency of the arbitral process. Although it is generally agreed that the New York Convention in particular has room for improvement in several ways, it is also generally agreed that if generally accepted international norms faithfully applied to the Convention, it would be sufficient to overcome a number of the current obstacles to the effective use of the international arbitration process.<sup>16</sup>

More attention should be paid to ensuring that developing countries have access to the legal resources they need to, first, prevent a disagreement from escalating into a full-blown one that needs to be resolved and, second, prosecute or defend a claim in court if one arises. The author's experience as a lawyer for poor nations has left him frustrated by the fact that international financing institutions like the World Bank rarely cover the cost of legal support for a project, unlike the cost of engineering and other technical consulting services. Due to a lack of access to experienced international legal counsel, developing countries generally rely on non-legal technical consultants to draft the initial contract documents and seldom involve such counsel in the early assessment and analysis of claims as they arise during a project.<sup>17</sup> Further, the cost of engaging the finest available legal representation in a poor nation may discourage the referral of a dispute to arbitration. Many problems might be avoided or mitigated with competent legal representation from the start of a project, and the best possible outcome could be reached in the event of arbitration. The research argues that sufficient examples of its successful application are all that should be required to overcome any remaining hesitation in developing countries as elsewhere to the use of international arbitration.<sup>18</sup> Thus, developing countries should get

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<sup>16</sup> Schwartz (n 2)

<sup>17</sup> McConaughay (n 3)

<sup>18</sup> *Ibid*

additional encouragement and help from funding bodies to ensure they have access to high-quality legal advice and representation.

## **DOES INTERNATIONAL COMMERCIAL ARBITRATION PROMOTE FDI?**

International commercial arbitration is a system of private commercial law that enables businesses to enforce contracts more efficiently by circumventing the inefficiencies of domestic courts. Hence, the ability to use international arbitration should encourage FDI.

Disputes between foreign investors and host governments can be resolved quickly, affordably, and effectively through international commercial arbitration, which encourages FDI. Arbitration can reduce the likelihood of drawn-out, expensive, and arbitrary judicial battles. Foreign investments can be shielded from expropriation, political meddling, and corruption with its aid. Furthermore, arbitration provides a framework for the parties to develop win-win solutions, which can boost the investment climate and attract FDI. Because of this, investors may feel more comfortable putting their money into other markets, even if problems emerge. Further encouraging foreign investment is the availability of international commercial arbitration as a more neutral forum for resolving conflicts.<sup>19</sup>

**1. Cost Savings:** Foreign direct investment firms can save money and time by using international commercial arbitration instead of going to court. The time and money required for arbitration are normally substantially less than those of a court case.

**2. Flexibility:** The rules and procedures of international commercial arbitration are determined by the parties to the dispute. This adds a degree of flexibility to the arbitration process. This flexibility gives the parties a chance to make the arbitration procedure fit their requirements and preferences.

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<sup>19</sup> Myburgh (n 5)

**3. Predictability:** Compared to a court trial, international business arbitration offers more certainty and predictability in the law. Foreign investors will appreciate this because it improves their ability to plan for the future of their investments.

**4. Reputation:** International commercial arbitration has a better reputation than litigation because it is considered more trustworthy and unbiased. Because of this, potential foreign investors may feel more secure with their investments.<sup>20</sup>

**5. Neutrality:** Disputes can be settled more amicably through international business arbitration since it is done in an independent third-party venue. This can aid in lowering the potential for favoritism or bias in the resolution of conflicts.

## RECOMMENDATIONS

Over the last several decades, international arbitration has achieved widespread support as the preferred dispute resolution technique for international transactions and foreign investments that are critical to economic development. However, to reach its maximum potential and be as effective as possible. The procedure must be carried out in a way that fosters confidence and allows for finality. Another important challenge to using international business arbitration is a lack of knowledge and comprehension. The judiciary, business community, users, and the legal profession have been highlighted as the three important stakeholder groups that require a more in-depth understanding of international commercial arbitration. A judiciary that is unaware of its international commercial arbitration commitments will hinder foreign direct investment and business's use of international commercial arbitration. Therefore, increasing awareness about the benefits of commercial arbitration and enhancing understanding of commercial arbitration among businesses, legal professionals, and policymakers is recommended.

Also recommends other countries to implement modern international commercial arbitration legislation based on the 2006 UNCITRAL Model Law on International Commercial Arbitration and developing, in collaboration with stakeholders, a strategy for increasing national capacity

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<sup>20</sup> *Ibid*

to host, conduct, and access international commercial arbitration. Harmonizing legal frameworks could promote the harmonization of arbitration laws and regulations across jurisdictions to ensure consistency and enforceability to arbitral awards making it more attractive for businesses to engage in cross-border transactions.

## CONCLUSION

The growth of the economy has been aided in numerous ways by international commercial arbitration. International arbitration is both a result of and a contributor to economic prosperity, as seen by its rapid expansion and increasing effectiveness as a way of settling business disputes on a worldwide scale.

Developing countries benefit from a better business climate and an influx of international investment and trade when the rule of law is strengthened. Effective national arbitration laws, adoption of the New York Convention and other regional arbitration conventions, adoption of investment arbitration mechanisms, education, and the development of arbitration-friendly domestic courts are all important components of international arbitration that can contribute to that effect. These variables create an environment conducive to investment.

One of its primary benefits is that it facilitates an expedited and inexpensive method of resolving commercial conflicts, saving time and money over traditional litigation. As a result, businesses can channel their efforts towards their core competencies and look for expansion prospects. Second, foreign investment might be encouraged through international commercial arbitration because it promotes the predictability and certainty of international commercial agreements. This, in turn, has the potential to promote expansion and growth in the economy. Finally, international commercial arbitration can assist in advancing the rule of law and boost worldwide confidence in the international business environment by providing enterprises with an unbiased and effective dispute settlement procedure. Finally, the implementation of arbitral judgments in foreign jurisdictions can aid in boosting contract enforceability and encouraging the free movement of goods and services across international borders.