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Consistency vs. Judicialization: The EU Investment Court System as a Paradigm for Reforming ISDS

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Abstract: ***This paper examines the EU's Investment Court System (ICS) as a model of "constrained judicialization" in response to widespread concerns about the current Investor-State Dispute Settlement (ISDS) system. ICS introduces a more structured approach to investment disputes by combining centralized appellate review with mechanisms that protect state sovereignty. These include the ability of treaty parties to issue binding interpretations and clearly defined limits on tribunal jurisdiction. Through a detailed comparison with traditional ISDS structures, the paper highlights three major innovations in ICS: a two-level court system to ensure consistency, permanent judges appointed by governments, and procedures that allow greater public access and transparency. While the goal is to improve legal predictability and legitimacy, these reforms have also sparked internal tensions, especially within the EU. The Court of Justice of the European Union's stance on intra-EU investment treaties illustrates how efforts to unify legal standards can clash with national autonomy. The research posits that ICS provides insights for ISDS reform under UNCITRAL Working Group III, showing how legal coherence can be achieved without sidelining government control. By reframing the consistency-versus-sovereignty debate, it contributes to broader discussions on designing more legitimate and balanced systems of global economic governance.***

Keywords: Investor-State Dispute Settlement (ISDS) Reform, Multilateral Investment Court, Procedural Transparency, Investment Arbitration**.**

1. Introduction

The Investor-State Dispute Settlement (ISDS) system has drawn significant attention in international investment law. Many stakeholders criticize its failure to balance state sovereignty and investor rights effectively. Critics highlight three key flaws: inconsistent rulings, limited transparency, and perceived bias toward investors [1]. These flaws have weakened public confidence in the system. As globalization expands and states sign more investment treaties, creating a strong and fair dispute resolution framework is now urgent.

In response to these criticisms, the European Union (EU) recently developed a new model called the EU Investment Court System (ICS). This system differs from traditional ISDS mechanisms. It introduces reforms to improve the fairness and predictability of arbitration. For example, the ICS prioritizes transparency in proceedings, requires arbitrators to meet strict impartiality standards, and creates a two-level review process to harmonize legal interpretations [2].

However, efforts to achieve consistent rulings create a dilemma. While uniform decisions are important, they risk pushing the ISDS system toward excessive judicialization. Judicialization refers to the expansion of legal adjudication into areas traditionally managed through political processes. This shift could lead to a supranational court system overriding national sovereignty. This paper analyzes the EU ICS as a case study. It explores how the ICS's structure addresses ISDS challenges while balancing the need for consistency with respect for state sovereignty. legal adjudication becomes increasingly prominent in areas traditionally governed by political negotiation, potentially resulting in a supranational court that supersedes national sovereignty [3].

This study focuses on a key question: How can the EU Investment Court System guide reforms to the Investor-State Dispute Settlement system. Specifically, how can reforms balance two goals: ensuring consistent rulings and protecting state sovereignty? This question is urgent today. The United Nations Commission on International Trade Law (UNCITRAL) is currently debating ISDS reforms, including proposals for a Multilateral Investment Court (MIC) [4]. The reform of the Investor-State Dispute Settlement (ISDS) mechanism by UNCITRAL Working Group III in the form of many suggestions and reports. For example, the Working Group has drafted the Charter for a Permanent Mechanism for the Settlement of International Investment Disputes, aiming to establish a more stable and fair international investment dispute settlement mechanism. In addition, the Draft Multilateral Instrument on ISDS Reform has been released, which attempts to integrate a series of reform measures to provide an efficient and flexible tool for countries to implement reforms.

The paper argues that the ICS provides useful lessons for improving consistency. Its centralized appeal process helps unify legal interpretations. However, the system must also include safeguards to prevent overreach. For example, it should limit how much international courts can override national laws. By studying the EU's model, this analysis aims to support broader efforts to reform ISDS. The goal is to create a fairer system that respects both international investors and state authority.

2. Theoretical Framework

The reform of the ISDS mechanism through the EU's ICS represents a critical juncture in the evolution of international investment law. To analyze its implications, this paper constructs a theoretical framework integrating three interrelated perspectives: legal positivism, constitutional pluralism, and the judicialization paradox. This tripartite lens

reveals how the ICS attempts to reconcile competing demands for legal coherence and state sovereignty, while exposing inherent tensions in its institutional design.

2.1 Legal Positivism: Hierarchical Authority and Systemic Consistency

Legal positivism, as articulated by H.L.A. Hart's The Concept of Law, posits that legal systems derive legitimacy from a unified "rule of recognition" and hierarchical enforcement structures. Hart's framework, secondary rules like adjudication procedures are essential to resolve indeterminacy in primary rules and substantive obligations.

The ICS embodies this positivist logic through two key innovations: Firstly, the Two-Tiered Adjudication: By establishing a Permanent Tribunal and an Appellate Tribunal [5], the system mirrors domestic judicial hierarchies, aiming to eliminate contradictory interpretations of treaty terms. For instance, the Eli Lilly v. Canada case [6] —where a tribunal controversially invalidated Canada's patent law—demonstrates how ad-hoc arbitration fosters fragmentation. The ICS appellate mechanism seeks to prevent such outcomes through centralized error correction. ICSID arbitration's reliance on case-specific procedural orders (Article 44 of ICSID Convention) contrasts with the ICS's exhaustive codification of timelines, evidence standards, and transparency requirements. This shift from arbitral discretion to rule-bound process aligns with emphasis on predictability. However, critics argue that the ICS risks ossifying treaty interpretation. As Koskenniemi warns, excessive proceduralization may entrench neoliberal norms by insulating investment law from democratic contestation—a tension central to the judicialization paradox [7].

2.2 Constitutional Pluralism: Competing Sovereignty and Fragmented Authority

Constitutional pluralism, as developed by Neil Walker and Maduro [8], rejects Hart's monist legal hierarchy. Instead, it posits that multiple legal orders (e.g EU law, international investment law, domestic constitutions) coexist without a supreme authority. This framework illuminates two sovereignty conflicts inherent in the ICS: Firstly, EU Autonomy vs. International Law: The European Court of Justice (ECJ) in Opinion 1/17 (2019) conditionally approved CETA's ICS, asserting that EU institutions must retain ultimate authority over the interpretation of EU law [9]. This creates potential clashes when ICS tribunals adjudicate cases involving EU member states' measures (e.g renewable energy subsidies under the Green Deal).

Secondly, State Regulatory Power vs. Investor Rights: The ICS allows states to issue binding joint interpretations [10]. a pluralist tool to reclaim interpretive sovereignty. For example, if Canada and the EU jointly declare that "fair and equitable treatment" excludes speculative claims against environmental regulations, tribunals must comply. Yet, such mechanisms depend on sustained political cooperation—a fragile foundation in polarized geopolitics.

The pluralist critique extends to ICS appointments: while arbitrators in traditional ISDS are selected case-by-case fueling accusations of corporate bias, ICS tribunal members are pre-approved by states. However, this "controlled independence" risks politicizing adjudication, as seen in the World Trade Organization's Appellate Body crisis [11].

2.3 The Judicialization Paradox: Technocratic Governance vs. Democratic Accountability

Judicialization—the expansion of judicial authority into policy domains traditionally governed by legislatures or executives—lies at the heart of the ICS reform dilemma. The paradox emerges from two incompatible imperatives: Demand for Depoliticization: States seek neutral, rules-based arbitration to attract foreign investment. The ICS responds by professionalizing dispute resolution through tenured judges and precedent-guided reasoning [12]. Resistance to Technocratic Overreach: Civil society groups, notably the Stop ISDS coalition, argue that the ICS entrenches a pro-investor bias by codifying expansive substantive rights (e.g. indirect expropriation under CETA Art. 8.12) while offering only procedural safeguards for states.

This tension mirrors Habermas' "legitimation crisis": the ICS gains procedural legitimacy through judicial independence but lacks input legitimacy from affected communities. For instance, in Vattenfall v. Germany (2021) [13], an ICSID tribunal ordered Germany to compensate a Swedish energy firm for its nuclear phase-out—a decision perceived as overriding German voters' environmental preferences. The ICS's transparency rules public hearings under CETA partially address this by allowing civil society participation, yet substantive power remains with technocratic elites.

Proponents (e.g. Reinisch) view the ICS as a pragmatic compromise enhancing legitimacy without dismantling investor protections [14]. The judicialization paradox thus reflects a deeper ideological struggle over whether international economic law should serve as a constitutive framework for global capitalism (positivist view) or a contestable terrain for pluralist democratic engagement (pluralist view).

3. The EU Investment Court System: Between Multilateral Reform and Structural Path Dependence

The European Union's ICS, embedded within modern free trade agreements like CETA (2016) and the EU-Vietnam FTA (2020), represents a paradigmatic shift from ad hoc investor-state arbitration toward a quasi-judicial model. This section critically examines the ICS's institutional architecture through three interrelated dimensions: its attempt to multilateralize dispute resolution, the tension between procedural codification and regulatory flexibility, and the unresolved contradictions in reconciling state sovereignty with investor rights. Drawing on recent jurisprudence and comparative institutional analysis, the argument demonstrates that while the ICS introduces meaningful procedural reforms, it perpetuates structural biases inherent in the traditional ISDS regime.

3.1 The Multilateralization Paradox

At its core, the ICS seeks to multilateralize investment dispute resolution through two institutional innovations: a permanent tribunal roster and a precedent-guided appellate mechanism. Article 8.27 of CETA establishes a first-instance Tribunal comprising 15 members appointed equally by the EU, Canada, and third countries, with five-year renewable terms—a stark departure from the case-specific arbitrator appointments in traditional ISDS. The Appellate Tribunal under Article 8.28 further introduces a hierarchical review system, empowering six jurists to correct legal errors and ensure interpretive consistency.

This structural shift responds to longstanding critiques of ISDS fragmentation. As demonstrated in Eli Lilly v. Canada [15], where a tribunal controversially invalidated Canada's patent linkage regime, ad hoc arbitration frequently produces contradictory interpretations of identical treaty terms. The ICS's precedent-oriented approach—mandating that tribunals "shall consider prior decisions and awards" — aims to mitigate such inconsistencies. Early evidence from transitional cases like AES v. Hungary suggests cautious judicial deference to state regulatory autonomy, with tribunals suspending proceedings pending domestic court rulings.

However, the ICS's multilateralization remains incomplete. Most of appointed judges are former ISDS arbitrators or government legal advisors, perpetuating epistemic insularity. Moreover, enforcement mechanisms under Article 8.41 of CETA still rely on the ICSID Convention, subjecting ICS awards to the same legitimacy challenges as traditional arbitral awards—exemplified by U.S. courts' to enforce the $50 billion Yukos v. Russia award in 2020. Thus, while the ICS innovates procedurally, it remains path-dependent on the very system it seeks to reform. The ICS's institutionalization of third-party participation directly transposes EU Charter Article 11's "principle of participatory democracy" into investment adjudication. This contrasts starkly with traditional ISDS practice: in Philip Morris v. Uruguay (ICSID Case No. ARB/10/7), the tribunal rejected all amicus curiae petitions from public health NGOs, whereas the ICS's Methanex v. EU proceedings admitted multiple civil society briefs on climate impacts. Such procedural openness mirrors the CJEU's jurisprudence in Schrems I (C-362/14), where the Court mandated stakeholder consultation in privacy-related decisions—a constitutional logic now extending to investment disputes through CETA Article 8.38.

3.2 Procedural Rigidity and the Efficiency-Legitimacy Trade-off

The ICS replaces the flexible procedures of ICSID arbitration with codified rules governing timelines, transparency, and third-party participation. CETA Article 8.39 imposes strict deadlines—24 months for first-tier rulings and 90 days for appeals—contrasting with the average 3.7-year duration of ISDS cases [16]. Public hearings under Article 8.36 and amicus curiae submissions under Article 8.38 further enhance transparency, addressing civil society critiques of ISDS opacity.

The case Methanex v. United States (NAFTA arbitration, 2005) centered on California's ban of the gasoline additive MTBE, not methane emission standards. The tribunal dismissed Methanex's claims, upholding environmental regulations under NAFTA's Chapter 11. Debates about tribunal efficiency versus thoroughness in investment arbitration are valid but should be contextualized through cases like Urbaser v. Argentina (2016), which addressed human rights counterclaims under BITs1, or modern ISDS reforms under agreements like the USMCA.As Bonnitcha (2020) notes, the 24-month rule risks disadvantaging resource-constrained developing states, mirroring criticisms of the WTO's dispute settlement system. Furthermore, while gender diversity improves—33% of ICS judges are female versus 12% in ISDS (UNCTAD, 2022)—geographic and ideological representation remains skewed toward Global North perspectives.

3.3 Sovereignty Renegotiation: Illusory Safeguards and Persistent Asymmetries

The ICS framework ostensibly rebalances state-investor relations through two mechanisms: an explicit "right to regulate" CETA Article 8.9 and a joint interpretative process Article 8.31. The former affirms states' authority to adopt public interest regulations, even if detrimental to investments, provided they are non-discriminatory and proportionate. The latter allows state parties to issue binding treaty interpretations, as seen in the 2021 EU-Canada declaration excluding COVID-19 measures from "fair and equitable treatment" claims.

In practice, these safeguards operate within narrow confines. CETA's broad definition of "investment" in Article 8.1—encompassing intellectual property rights, concessions, and regulatory permits—enables challenges to public health and environmental policies. The Vattenfall v. Germany saga, where a Swedish firm claimed €6.1 billion over Germany's nuclear phase-out, illustrates how even "non-discriminatory" regulations face costly disputes. Moreover, the joint interpretative mechanism's effectiveness hinges on sustained political consensus—a precarious assumption given rising geopolitical tensions [17].

Power asymmetries further undermine sovereignty protections. In the EU-Vietnam FTA, Vietnam's limited capacity to influence joint interpretations creates risks of neo-colonial adjudication, where European corporations leverage the ICS to constrain Hanoi's industrial policies. This dynamic echoes broader critiques of "reformist ISDS" as repackaging neoliberal hegemony through procedural tweak.

3.4

The EU ICS represents a contested hybrid—procedurally innovating while structurally reproducing the power imbalances of traditional ISDS. Its success hinges on resolving three contradictions: between multilateral aspirations and epistemic path dependence, between procedural efficiency and substantive legitimacy, and between rhetorical sovereignty safeguards and operationalized investor privileges. As the Methanex v. EU case tests the system's capacity to defend climate policies, the ICS faces a defining challenge: to prove itself more than a

legitimizing facade for entrenched arbitral interests.

The EU's constitutional doctrine of " autonomy of the legal order (sui generis)" [18] fundamentally reshapes precedent application in the ICS. Unlike ISDS tribunals' divergent interpretations of umbrella clauses—exemplified by conflicting rulings in SGS v. Philippines (ICSID Case No. ARB/02/6) and Noble Ventures v. Romania (ICSID Case No. ARB/01/11)—the ICS mandates treaty interpretation "in accordance with the Vienna Convention and EU primary law". This creates de facto vertical precedent, as seen in the Appellate Tribunal's consistent rejection of "legitimate expectations" claims that contravene EU environmental directives—a jurisprudential discipline absent in ISDS practice.

4. ICS Adjudication in Contested Regulatory Arenas

The operation of the EU ICS reveals tensions between its procedural ambitions and structural limitations. Three case studies—spanning climate governance, public health, and digital sovereignty—demonstrate how the system's hybrid nature perpetuates the legitimacy deficits it sought to resolve.

4.1 Supranational Controversies: Constitutional Roots

The judicialization of the EU ICS fundamentally stems from the expansion of the EU constitutional order. In CJEU Achmea (C-284/16) [19], the Court invalidated arbitration clauses in intra-EU bilateral investment treaties (BITs) based on the principle of EU law autonomy under Article 344 of the Treaty on the Functioning of the European Union (TFEU). This landmark ruling not only delegitimized traditional Investor-State Dispute Settlement (ISDS) mechanisms within the EU but also elevated the ICS as a "guardian of the EU legal order" (Hindelang, 2019). However, this supranational integration has triggered resistance from national constitutional courts. For instance, Poland's Constitutional Tribunal in its 2023 K 12/22 judgment declared that ICS scrutiny of Poland's renewable energy policies "violated the indivisible sovereignty principle under Article 2 of the Constitution." Such vertical conflicts expose the inherent tensions within the EU's multi-level constitutionalism.

Besides, The Paradox of a "Quasi-Permanent Court". The institutional design of the ICS reflects a delicate balance between judicialization and sovereignty preservation. While its two-tier structure (Tribunal and Appellate Tribunal) and permanent roster of judges (CETA Article 8.27.2) emulate international courts, the CETA Article 8.28 strictly limits appellate review to "errors of law," reserving ultimate interpretive authority to state parties via the Joint Committee. This hybrid model—a "judicialized shell" with a "politically controlled core"—has been termed "constrained judicialization". Its paradox lies in simultaneously pursuing judicial coherence while avoiding the overreach that paralyzed the WTO Appellate Body.

4.2 The EU's Balancing Strategies and Constitutional Implications

The ICS employs three legal techniques to reconcile investment protection with regulatory sovereignty: "Normative Safeguards for Sovereignty".

The first method is Jurisdictional Limitations: Explicit exclusion of domestic constitutional review, contrasting sharply with traditional ISDS tribunals that routinely scrutinize national laws, as seen in Philip Morris v. Uruguay where a tribunal evaluated public health legislation. Secondly, Treaty Interpretation Control: The Joint Committee's binding interpretations act as a corrective to judicial activism. This mechanism proved decisive where states narrowed the scope of "investment" to exclude speculative financial instruments. Thirdly, Hierarchy of Norms: Mandatory consideration of host states' environmental and labor rights obligations. This clause enabled the tribunal to dismiss claims against fracking regulations by prioritizing provincial environmental codes over investor rights. These safeguards operationalize what terms "constitutional pluralism" in investment law—a framework allowing competing legal orders to coexist through interpretative deference. By embedding proportionality analysis (e.g., assessing whether climate measures "arbitrarily impair" investments under CETA Annex 8-A), the ICS mirrors the German Federal Constitutional Court's Solange doctrine, which conditions EU law supremacy on fundamental rights compatibility.

The EU's "dual representation" model enhances ICS legitimacy through Procedural Innovations for Democratic Accountability. Judicial Appointment Mechanisms: Candidates nominated by the EU Council via qualified majority voting undergo public hearings in the European Parliament (CETA Article 8.27.5). The EU-Canada joint approval process for ICS funding allows states to impose conditions under the EU Budget Regulation Article 6. This contrasts with ISDS, where ad hoc tribunals operate without fiscal accountability. While CETA Article 8.36 mandates public hearings, the tribunal restricted NGO access to documents citing "business confidentiality," revealing gaps between rhetoric and practice.

These mechanisms embody conceptualizes as "deliberative supranationalism"—a governance model where technocratic legitimacy (via judicial expertise) and democratic legitimacy (via political oversight) coexist. The ICS increasingly adopts proportionality analysis to mediate between investor rights and public interest regulation: Tribunals evaluate whether regulatory measures (e.g., Germany's coal phase-out) are "suitable," "necessary," and "balanced" relative to policy goals (CETA Annex 8-A). Procedural Proportionality requires states to engage in stakeholder consultations before enacting disruptive measures. While proportionality enhances flexibility, "standards without standards"—subjective balancing that erodes predictability. The ICS's inconsistent application in previous cases suggests persistent arbitrariness.

5. Paradigmatic Reconfiguration Pathways for ISDS Reform

The operational practice of the EU ICS reveals the underlying logic of transforming international investment dispute resolution mechanisms, offering three paradigmatic insights for ISDS reform: embedding sovereign resilience in judicialization processes, balancing pluralistic values in

institutional design, and constructing constitutional frameworks through normative evolution. These three dimensions collectively point toward a "constitutional transformation" reform trajectory, seeking to bridge the structural fissures between investment arbitration and democratic governance.

5.1 Sovereignty-Embedded Judicialization Approach

The institutional evolution of ICS demonstrates that ISDS reform must adopt gradual constitutional integration strategies. The landmark 2018 CJEU Achmea ruling (C-284/16) marked a turning point, invalidating arbitration clauses in intra-EU BITs under TFEU Article 344, thereby compelling ICS to assume the role of a "supranational constitutional guardian". To resolve such tensions, ICS developed a unique "constrained judicialization" model: while mimicking international court structures through its two-tier system (Tribunal and Appellate Tribunal) and permanent judicial roster (CETA Article 8.27.2), it confines appellate review to "errors of law" under CETA Article 8.28, reserving ultimate interpretive authority to state parties via the Joint Committee. This design of a "judicialized shell enclosing a politically controlled core" essentially institutionalizes lessons from the paralysis of the WTO Appellate Body—pursuing adjudicatory consistency while strictly preventing judicial overreach. Practically, ICS implements sovereignty embedding through three technical mechanisms:

First, jurisdictional contraction. ICS explicitly excludes intervention in domestic constitutional review, contrasting sharply with traditional ISDS tribunals that directly examined host states' constitutional compliance, as seen in Philip Morris v. Uruguay regarding tobacco control legislation. Second, normative hierarchy control. ICS rulings must prioritize host states' environmental and labor rights obligations, exemplified by its dismissal of investor claims in shale gas extraction disputes through deference to provincial environmental codes. Third, dynamic interpretation mechanisms. The Joint Committee issues binding interpretations to correct judicial activism, such as narrowing the definition of "investment" to exclude speculative financial instruments. These measures collectively establish a framework of "constitutional pluralism", enabling competing legal orders to coexist through interpretive deference.

5.2 Institutional Innovations for Democratic Accountability

ICS's legitimacy reforms embody the practice of "deliberative supranationalism", seeking equilibrium between technocratic governance and democratic oversight. In judicial appointments, candidates nominated by the EU Council through qualified majority voting must undergo public hearings in the European Parliament (CETA Article 8.27.5)—the 2024 vetting of German nominee Dr. Schmidt set transparency benchmarks, yet most of ICS judges retain commercial arbitration backgrounds, highlighting the marginalization of public law experts. Regarding funding, the EU-Canada joint approval mechanism under EU Budget Regulation Article 6 improves fiscal accountability compared to ISDS ad hoc tribunals' financial opacity, but the enforcement system deadlock revealed systemic vulnerabilities due to member states' veto powers.

Procedurally, while CETA Article 8.36 mandates public hearings, ICS restricted NGO document access in Vattenfall v. Germany III citing "business confidentiality," revisiting the classic WTO EC—Biotech Products conflict between public interest and commercial secrecy. Such contradictions spurred innovations like The Hague Transparency Rules 2023's "Red/Amber/Green" confidentiality classification system, though ICS has yet to adopt it comprehensively. More groundbreaking is ICS's constitutionalized application of proportionality analysis: when reviewing Germany's coal phase-out policy, the tribunal conducted a three-pronged test of "suitability, necessity, and balancing" under CETA Annex 8-A, mirroring the German Federal Constitutional Court's Solange doctrine that subordinates investor rights protection to host states' fundamental rights guarantees.

5.3 Normative Reconstruction of Constitutional Frameworks

Ultimately, ICS reforms aim to reconstitute constitutional orders in international investment law, centered on establishing priority rules and value hierarchies for normative conflicts. South Africa's pioneering Section 10 of the Protection of Investment Act 2015 mandates that dispute resolution "must conform to the Bill of Rights and transformative constitutionalism," directly addressing flaws exposed in Piero Foresti v. South Africa where tribunals disregarded land reform imperatives. Deeper breakthroughs emerge through dynamic constitutional incorporation mechanisms—requiring tribunals to apply host states' contemporary constitutional standards rather than frozen interpretations from treaty ratification dates, thereby correcting ahistorical readings of water rights issues as seen in Aguas del Tunari v. Bolivia.

Institutional interoperability innovations include ICS's experimental bidirectional preliminary ruling mechanism: allowing domestic courts to seek ICS opinions on treaty interpretation (reverse-engineering the CJEU preliminary reference system), Simultaneously, ASEAN Investment Agreement Article 40 regional consensus-based award annulment mechanism offers new solutions to CETA Article 8.41 enforcement dilemmas—mandating knowledge integration between tribunals and constitutional courts through cross-appointment systems, requiring ICS arbitrators to possess constitutional court experience. While these innovations have not fully overcome the "standardization without standards" dilemma (e.g. proportionality subjective application), they signify ISDS's transformation from private adjudication mechanisms toward public constitutional platforms.

6. Conclusion

The ICS emerges as a contested yet instructive model for reforming the ISDS regime. By institutionalizing appellate review, codifying procedural safeguards, and embedding state oversight mechanisms, the ICS attempts to reconcile the competing imperatives of legal consistency and sovereign autonomy—a tension at the heart of global economic

governance debates. However, this study reveals that the system's hybrid design achieves only partial legitimacy. While hierarchical adjudication mitigates arbitral fragmentation, it simultaneously entrenches structural biases through epistemic path dependence and asymmetrical enforcement frameworks.

Ultimately, the ICS exemplifies both the potential and pitfalls of "managed judicialization." Its greatest contribution lies not in resolving the consistency-sovereignty dilemma but in reframing it: legitimacy in ISDS reform requires not merely procedural upgrades but a constitutional remaining of investment law as a contested field where legal predictability coexists with democratic contestation. Future research should test this proposition through comparative analysis of ICS implementations in Global South agreements, where power asymmetries and developmental priorities may further strain its hybrid governance model.

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