



# HOW TO REFORM ISDS

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# The TDM Special Issue on Reform of ISDS: In Search of a Road Map

- <http://www.transnational-dispute-management.com/article.asp?key=2023>
- Background:
- UNCTAD Policy Paper
- UNCITRAL Transparency Initiative
- ICSID 2006 Revisions
- OECD Scoping Paper
- EU Consultation
- US BIT revision
- Academic + NGO papers
- Perceptions + available data
- 15 years + 500 cases: pertinent number to take stock

# Legitimacy – Predictability - Consistency

- Three critical issues stemming from the same problem: pattern of commercial arbitration
- Systemic question: is there an IIA system? Is there an ISDS system?
- Legitimacy: sovereign States, measures taken for public purpose, panel of three private arbitrators, no recourse other than annulment, no unified ISDS system
- Predictability: duration, cost, enforceability, major issue for end-users
- Consistency: contradictory decisions, no jurisprudence, content of international investment law.
- Are these really the issues?

# Reform from without – Reform from within

- **Key role of States: the Masters of Investment Law**
- Revision the treaties: substantive and procedural provisions
- Compare generations of investment treaties. US/Canada led reform
- Role of States in interpretation
- Role of States in dispute management
- Role of States in re-designing the system: unilateral, bilateral, regional, multilateral approaches.
- Reform from within: rules of interpretation. Role of institutions such as ICSID

# Promoting alternatives – an appellate system – standing investment court

- Investor-State Mediation: current initiatives. A credible option for investors and States.
- An appellate system: bilateral approaches: the US treaties, the EU proposals. A role for ICSID?
- Standing investment court: UNASUR, Arab Investment Court. What is needed to propose a credible alternative?
- Concrete proposals for reform:
  - Cost shifting
  - Streamlining the process
  - Arbitrator appointment – conflict issues
  - Other proposals



THANK - YOU

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