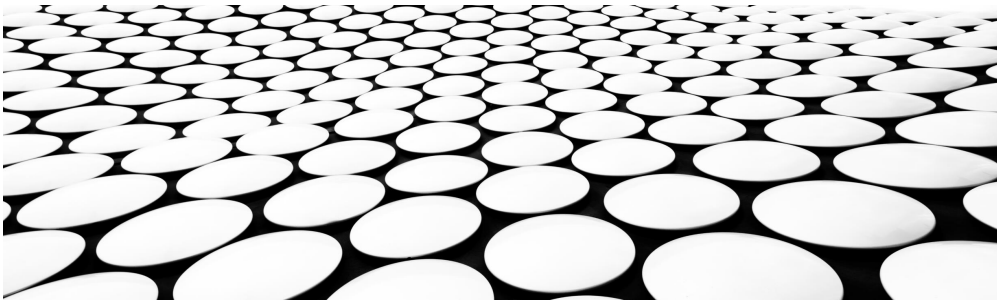


NEGOTIATIONS AND INTERNATIONAL ORGANIZATIONS

SETTING THE STAGE IV: NEGOTIATING ABOUT AND IN INTERNATIONAL ORGANIZATIONS

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TODAY'S LECTURE

- The World Bank (Global Development, Alleviating Poverty)
 - The five institutions of WB
- Negotiating in the WB
 - The Dispute Settlement Mechanisms

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READING: THE WORLD BANK

- World Bank website:
 - <https://www.worldbank.org/en/who-we-are>
 - <https://www.worldbank.org/en/about>
 - <https://www.worldbank.org/en/what-we-do>
- ICSD (2021) Background Paper on Investment Mediation. Available at: https://icsid.worldbank.org/sites/default/files/publications/Background_Paper_on_Investment_Mediation.pdf
- ICSD (2021) **Overview of Investment Treaty Clauses**. Available at: https://icsid.worldbank.org/sites/default/files/publications/Overview_Mediation_in_Treaties.pdf
- MIGA (2015) **Dispute Resolution and Claims**. Available at: https://www.miga.org/sites/default/files/archive/Documents/Dispute_Resolution_and_Claims.pdf

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THE WORLD BANK GROUP - MISSION

- The World Bank Group has set two **goals** for the world to achieve by 2030:
 - End extreme poverty by decreasing the percentage of people living on less than \$1.90 a day to no more than 3%
 - Promote shared prosperity by fostering the income growth of the bottom 40% for every country
- The World Bank provides financial and technical assistance to developing countries around the world.
- It is not a bank in the ordinary sense but a unique partnership to reduce poverty and support development. The World Bank Group comprises **five institutions** managed by their member countries.

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THE WORLD BANK GROUP - MISSION

- The World Bank Group comprises [five institutions](#) managed by their member countries.
 - [The International Bank for Reconstruction and Development](#)
 - [The International Development Association](#)
 - [The International Finance Corporation](#)
 - [The Multilateral Investment Guarantee Agency \(MIGA\)](#)
 - [The International Centre for Settlement of Investment Disputes \(ICSID\)](#)

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WORLD BANK – HISTORICAL BACKGROUND

- Founded in 1944, the [International Bank for Reconstruction and Development](#) (soon called the **World Bank**) has expanded to a closely associated group of five development institutions. Originally, its loans helped rebuild countries devastated by World War II. In time, the focus shifted from **reconstruction** to **development**, with a heavy emphasis on infrastructure such as dams, electrical grids, irrigation systems, and roads.
- With the founding of the [International Finance Corporation](#) in 1956, the institution became able to lend to private companies and financial institutions in developing countries.
- And the founding of the [International Development Association](#) in 1960 put greater emphasis on the poorest countries, part of a steady shift toward the eradication of poverty becoming the Bank Group's primary goal. The subsequent launch of the [International Centre for Settlement of Investment Disputes](#) and the [Multilateral Investment Guarantee Agency](#) further rounded out the Bank Group's ability to connect global financial resources to the needs of developing countries.

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WORLD BANK (1)

- [The International Bank for Reconstruction and Development](#)
 - The **IBRD** lends to governments of middle-income and creditworthy low-income countries.
- [The International Development Association](#)
 - The **IDA** provides interest-free loans – called **credits** – and **grants** to governments of the poorest countries.
 - Together, **IBRD** and **IDA** make up the World Bank.
- [The International Finance Corporation](#)
 - The **IFC** is the largest global development institution **focused** exclusively on the **private sector**.
 - It helps **developing** countries achieve sustainable growth by **financing investment**, mobilizing capital in international financial markets, and providing **advisory services** to businesses and governments.

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WORLD BANK (2)

- [The Multilateral Investment Guarantee Agency](#)
 - The **MIGA** was created in 1988 to promote **foreign direct investment** into developing countries to support economic growth, reduce poverty, and improve standards of living.
 - MIGA fulfills this mandate by offering **political risk insurance (guarantees)** to investors and lenders.
- [The International Centre for Settlement of Investment Disputes](#)
 - The **ICSID** provides international facilities for conciliation and arbitration of investment disputes.

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WORLD BANK – THE IBRD

- [The International Bank for Reconstruction and Development](#)
 - IBRD is a global development **cooperative** owned by 189 member countries.
 - As the largest development bank in the world, it supports the World Bank Group's mission by providing **loans, guarantees, risk management products, and advisory services** to middle-income and creditworthy low-income countries.
 - Engages with middle-income countries (MICs) both as clients and shareholders.
 - MICs have more than 70% of the world's poor people, often in remote areas, and limited access to private finance makes these countries vulnerable to economic shocks and the crises that cross borders, including climate change, forced migration, and pandemics.

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WORLD BANK – THE IBRD: WHAT IT DOES (1)

- [The International Bank for Reconstruction and Development](#)
 - Through partnerships with Middle Income Countries (MICs) and **creditworthy** poorer countries, IBRD offers financial products (loans, guarantees, and risk management products) and knowledge and advisory services (including on a reimbursable basis) to governments at the national and subnational levels.
 - IBRD finances investments across all sectors and provides technical support and expertise at each stage of a project. IBRD's resources not only supply borrowing countries with needed financing, but also serve as a vehicle for global knowledge transfer and technical assistance.

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WORLD BANK – THE IBRD: WHAT IT DOES (2)

- [The International Bank for Reconstruction and Development](#)
 - Advisory services in **public debt and asset management** help governments, official sector institutions, and development organizations build institutional capacity to protect and expand financial resources.
 - IBRD supports government efforts to strengthen public financial management as well as improve the investment climate, address service delivery bottlenecks, and strengthen policies and institutions.

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WORLD BANK – THE IBRD: FUNDING

- [The International Bank for Reconstruction and Development](#)
 - IBRD raises most of its funds in the world's financial markets: it has provided more than \$500 billion in loans to alleviate poverty around the world since 1946, with its shareholder governments paying in about \$14 billion in capital.
 - IBRD has maintained a **AAA** rating since 1959. This high credit rating allows it to borrow at low cost and offer middle-income developing countries access to capital on favorable terms – helping ensure that development projects go forward in a more sustainable manner, while often complementing or catalyzing private financing.
 - IBRD earns income every year from the **return on its equity** and from the **small margin** it makes on lending. This pays for World Bank operating expenses, goes into reserves to strengthen the balance sheet, and provides an annual transfer of funds to **IDA**, the fund for the poorest countries.

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WORLD BANK – INTERNATIONAL DEVELOPMENT ASSOCIATION (IDA) (1)

■ [The International Development Association](#)

- The **International Development Association** (overseen by its 174 shareholder countries, which make up the [Board of Governors](#)) is the part of the World Bank that helps the world's poorest countries: it aims to reduce poverty by providing loans (called "credits") and grants for programs that boost economic growth, reduce inequalities, and improve people's living conditions.
- IDA is one of the largest sources of assistance for the world's 74 poorest countries and is the single largest source of donor funds for basic social services in these countries.
- IDA lends money on **concessional** terms. This means that IDA credits have a zero or very low interest charge and repayments are stretched over 30 to 38 years, including a 5- to 10-year grace period. IDA also provides grants to countries at risk of debt distress.

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WORLD BANK – INTERNATIONAL DEVELOPMENT ASSOCIATION (IDA) (2)

- IDA funds are allocated to the recipient countries in relation to their income levels and record of success in managing their economies and their ongoing IDA projects.
 - Relative poverty defined as GNI per capita must be below an established threshold (updated annually). In fiscal year 2022, this was \$1,205.
 - Lack creditworthiness to borrow on market terms and therefore have a need for concessional resources to finance the country's development program.
- The lending terms are determined with reference to recipient countries' risk of debt distress, the level of **GNI per capita**, and creditworthiness for the [IBRD](#) borrowing.
- Recipients with a **high risk** of debt distress receive **100 percent** of their financial assistance in the form of **grants** and those with a **medium risk** of debt distress receive **50 percent** in the form of **grants**.

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WORLD BANK – INTERNATIONAL DEVELOPMENT ASSOCIATION (IDA) (3)

- In addition to concessional loans and grants, IDA provides significant levels of debt relief through the [Heavily Indebted Poor Countries \(HIPC\) Initiative](#) and the [Multilateral Debt Relief Initiative \(MDRI\)](#).
 - The joint IMF–World Bank comprehensive approach to debt reduction is designed to ensure that no poor country faces a debt burden it cannot manage. To date, debt reduction packages under the HIPC Initiative have been approved for 37 countries, 31 of them in Africa, providing \$76 billion in debt-service relief over time.
 - Low-income countries (LICs) have often struggled with large external debts. The IMF and the World Bank have developed a framework to help guide countries and donors in mobilizing the financing of LICs' development needs, while reducing the chances of an excessive build-up of debt in the future. The [Debt Sustainability Framework \(DSF\)](#) was introduced in April 2005 and is periodically reviewed.
- See also:
 - <https://www.worldbank.org/en/topic/debt/brief/hipc>

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INTERNATIONAL DEVELOPMENT ASSOCIATION (IDA) – (4)

IDA Snapshot



Promote Sustainable Development

Since IDA's inception **35 countries have graduated** and no longer rely on IDA support. Many now help to finance IDA.



Value for Money

Every \$1 in total donor contributions **translates to about \$3** of financing support for IDA18.



Transparent and Accountable

Top rankings in:
2018 Quality of Official Development Assistance (Center for Global Development)
2018 Aid Transparency Index (Publish What You Fund)

By the Numbers

Key IDA achievements from FY2011-2019



14
MILLION

Teachers were recruited and/or trained



330
MILLION

Children were immunized



769
MILLION

People received essential health services

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WORLD BANK –INTERNATIONAL FINANCE CORPORATION

- IFC products and services aim at [creating markets](#) that give new opportunities to people in developing countries.
- IFC applies financial resources, technical expertise, global experience, and innovative thinking to help its clients and partners overcome financial, operational, and other challenges.
- IFC is a leading mobilizer of third-party resources for projects: esp. because of its willingness to engage in difficult environments it manages to crowding-in private finance.

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WORLD BANK – IFC FUNDING

- IFC issues bonds in a variety of markets, formats, and currencies – including global benchmarks bonds. In addition, it issues local-currency bonds to develop domestic capital markets and facilitate local-currency lending.
- Besides raising capital through bond issuance, IFC invests its liquid assets globally and manage them versus recognized industry benchmarks: aim at ensuring funds are available as needed for private sector investments in developing countries.
- IFC also manages currency and interest rate risks of assets and liabilities on its funded balance sheet within prudent risk limits. This allows to tailor risk management and loan products to the needs of IFC's clients while hedging the resulting market risks.

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WORLD BANK – MULTILATERAL INVESTMENT GUARANTEE AGENCY (MIGA) – (1)

- MIGA provides [political risk insurance](#) and credit enhancement to private sector investors and lenders. MIGA's guarantees protect investments against non-commercial risks, and can help investors obtain access financing on improved terms and conditions.
- [Political risk insurance](#) coverage products may be purchased individually, or in combination. Selection of desired coverage must be made before a guarantee is issued.
- MIGA's Investment Guarantees:
 - [Currency Inconvertibility and Transfer Restriction](#)
 - Protection against losses arising from an inability to legally convert local currency into hard currency.
 - [Expropriation](#)
 - Protection against losses arising from certain government actions that may reduce ownership of the insured investment.

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WORLD BANK – MULTILATERAL INVESTMENT GUARANTEE AGENCY (MIGA) – (2)

- MIGA provides [political risk insurance](#) and credit enhancement to private sector investors and lenders. MIGA's guarantees protect investments against non-commercial risks, and can help investors obtain access financing on improved terms and conditions.
- MIGA's Investment Guarantees:
 - [War, Terrorism, and Civil Disturbance](#)
 - Protection against loss from, damage to, or disappearance of tangible assets caused by political acts of war or civil disturbance.
 - [Breach of Contract](#)
 - Breach of Contract coverage provides protection against losses arising from a government's breach or repudiation of a contract with an investor.
 - [Non-Honoring of Financial Obligations](#)
 - Protection against losses from a failure by a sovereign, sub-sovereign, or state-owned enterprise to make a payment when due.

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INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES (ICSID)

- [International Centre for Settlement of Investment Disputes](#)
- ICSID is the world's leading institution devoted to international investment dispute settlement.
 - It has extensive experience in this field, having administered the majority of all international investment cases.
 - States have agreed on ICSID as a forum for investor-State dispute settlement in most international investment treaties and in numerous investment laws and contracts.
 - ICSID is an independent, effective dispute-settlement institution. Its availability to investors and States helps to promote international investment by providing confidence in the dispute resolution process. It is also available for state-state disputes under **investment treaties** and **free trade agreements**.

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ICSID: THE BACKGROUND

- [International Centre for Settlement of Investment Disputes](#)
- **Main purpose:** The resolution of disputes between host countries of foreign investments and investment institutions.
- **Function:** Conducting **institutional arbitration** that is associated with an investment and involves a state, a state entity or a Regional Economic Union-Organization (REIO).
- **Conditions for an investment dispute:**
 1. Consent of both parties to submit the dispute to the Centre.
 2. A finding of a clear legal dispute arising out of an investment and **not** a political issue.
 3. One party to the dispute being a sovereign state and the other party being a private party, a national of a different state.

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ARBITRATION IN THE ICSID

- The stages of the process
 1. The two parties submit their positions in writing to the arbitrator, and jointly decide on the **Protocol of Arbitration**.
 2. Initiation, exploration and negotiation of the two parties.
 3. Formulation of the exact terms of the agreement and final approval of the settlement by the competent bodies.
- Specialized mechanisms under ICSID
 - Annulment mechanism: allows the annulment of the arbitral award in cases of violation of a fundamental rule of procedure or miscarriage of justice or excess of power on the part of the arbitrators.
 - Additional or Complementary Facility: offering arbitration services mainly for disputes in which one of the parties is not a party to the Convention but wishes to arbitrate under ICSID.

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DISPUTE RESOLUTION: MIGA (1)

- Categories of investment disputes:
 1. **Between MIGA and investors, and**
 2. Between MIGA and host countries.
- **For the first category of investment disputes:**
 - The amicable settlement procedure is preferred, and MIGA can either finance the dispute by paying the investor and accepting a loan from the government as repayment or accept the local currency of the host country and transfer it to the investor through its own foreign exchange.

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DISPUTE RESOLUTION: MIGA (2)

- Categories of investment disputes:
 1. Between MIGA and investors, and
 2. **Between MIGA and host countries.**
- For the second category of investment disputes:
 - Amicable settlement under the ICSID procedure is again preferred, while the possibility of recourse to international arbitration is given.

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ARGUMENTS IN FAVOR OF ICSID & MIGA MECHANISMS

- Introducing innovations in relation to investment dispute resolution and improving the rules of international institutional arbitration.
- Promote amicable settlement as an alternative method of dispute resolution.
- Emphasized the mandatory nature of compliance with arbitral awards and strengthened the very role of institutional arbitration.
- Introduction of a flexible and consensual procedure that may combine both arbitration and amicable settlement.

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ARGUMENTS AGAINST OF ICSID & MIGA MECHANISMS

- Low attractiveness as a dispute resolution option.
- Inherent difficulty in finding the true nationality of the company, especially in cases of multi-share schemes with shareholders of different nationalities.
- Existence of political interference in favor of certain multinational companies.
- With regard to MIGA, it has been criticized by non-governmental bodies for non-disclosure of its data and developmental inefficiencies.

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MIGA (1): CHINA: DEQING DARCO PRODUCING WATER CO., LTD

- The county of Deqing in China's Zhejiang province was facing a serious shortage of potable water due to its rapid growth. Investment in the water sector was sorely needed.
- In 2004, MIGA issued a guarantee covering an equity investment by Darco Environmental Pte Ltd of Singapore in a water treatment plant that would supply 60,000 cubic meters of potable water per day.
- The plant was nearly complete when a dispute broke out between the investor and the local authorities. As the dispute escalated, and each party claimed breaches of the joint-venture contract by the other party, the construction of a water plant that would provide potable water to nearly half a million people was delayed.
- MIGA conflict-resolution team traveled to China. MIGA successfully helped the parties reach a settlement, through the cooperation and goodwill of all parties concerned including the foreign investor, the Chinese government, and the provincial authorities. As a result, the project was back on track and the water treatment plant is now completed and operational.

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MIGA (2): SOUTH AMERICA: MULTIPLE BANKS–GUARANTEES OF LOANS

- The country abandoned its 1:1 dollar exchange rate system, issued emergency decrees that instituted a flexible exchange rate system, and then converted foreign currency obligations and US dollar bank deposits into the local currency at a depreciated rate.
- Loan payments to lenders outside the country were required to be authorized by the Central Bank, with payments likely to be subject to transfer restrictions and delays.
- MIGA had guaranteed numerous nondomestic bank loans to local borrowers. MIGA negotiated with the Ministry of Finance and Central Bank and secured an exception to the requirement for Central Bank authorization for the holders of MIGA's guarantees. MIGA received no claims relating to transfer risk.

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ICSID: DAIMLER FINANCIAL SERVICES AG VS. ARGENTINE REPUBLIC

a) Original Proceeding

- Instrument(s) Invoked: BIT Germany - Argentina 1991
- Claimant(s)/Nationality(ies): Daimler Financial Services AG (German), DaimlerChrysler Services AG (German)
- Respondent(s): Argentine Republic (Argentine)
- Date Registered: January 14, 2005
- Outcome of Proceeding: August 22, 2012

b) Annulment Proceeding

- Applicant(s)/Requesting Party(ies): Claimant(s)
- Date Registered: December 27, 2012 (Claimant(s))
- Outcome of Proceeding:
 - January 7, 2015 - The ad hoc Committee issues its decision on annulment.

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