Beiträge zum Transnationalen Wirtschaftsrecht

Christian Tietje/Darius Ruff/Mathea Schmitt

Final Countdown in EU Investment Protection Law: Does the ECJ's Komstroy Ruling also Apply in intra-EU ICSID Proceedings?

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A. Introduction[1]

Following the *Achmea* decision of the ECJ on March 6, 2018[2] and the subsequent Termination Agreement of 23 member states of the European Union (EU),[3] in which they drew the consequences from the *Achmea* ruling by terminating all intra-EU BITs existing between them, another milestone in intra-European investment protection occurred in September 2021: the ECJ held in its September 2, 2021 judgment in the case of *Republic of Moldova v. Komstroy LLC* (Case C-741/19), that (para. 66)

> "Article 26(2)(c) ECT [Energy Charter Treaty] must be interpreted as not being applicable to disputes between a Member State and an investor of another Member State concerning an investment made by the latter in the first Member State."

Thus, the non-applicability of intra-European arbitration clauses is no longer limited to bilateral investment treaties. The *Komstroy* ruling answers the question of whether *Achmea* jurisprudence also applies to the Energy Charter Treaty (ECT), to the effect that the multilateral ECT is also inapplicable in intra-EU disputes of EU member states.[4] However, the *Komstroy* ruling only refers to arbitration proceedings under the UNCITRAL Arbitration Rules. Whether *Komstroy* also applies to ICSID proceedings, which are possible under the Energy Charter Treaty and play a major role in practice, remains unclear. This will be the central subject of this paper.

In the following, the ECJ's *Komstroy* ruling is presented first. Subsequently, it will be discussed whether and, if so, to what extent, the ECJ's *Komstroy* ruling affects proceedings under Section 1032 (2) of the German Code of Civil Procedure (ZPO) before German courts, which are currently being brought into intra-EU disputes,[5] insofar as ICSID arbitration proceedings are involved.

B. The ECJ's Komstroy ruling

The starting point of the ECJ's *Komstroy* ruling was a dispute between an investor from a non-EU state and another non-EU state – an UNCITRAL arbitration between

1 This article has its basis in a legal opinion delivered by the authors in the context of one of the proceedings pending before a German Higher Regional Court (Oberlandesgericht) pursuant to Section 1032 (2) of the German Code of Civil Procedure.

2 ECJ, Judgment of 6 March 2018, Case C-284/16 - Achmea.

3 Agreement for the Termination of Bilateral Investment Treaties between the Member States of the European Union, available online: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22020A0529(01).

4 Cf. on this issue prior to the *Komstroy* judgment *Nacimiento/Bauer*, BB 2018, 1347 (1348); *Miller*, EuZW 2018, 357 (362); *Stöbener de Mora*, EuZW 2018, 363 (366f.).

5 *Markert/Doernenburg*, RWE and Uniper: Can (German) Courts Assess the Jurisdiction of ICSID Arbitral Tribunals?, Kluwer Arbitration Blog from July 11, 2021, available at: http://arbitrationblog.kluwerarbitration.com/2021/07/11/rwe-and-uniper-can-german-courts-assess-the-jurisdiction-of-icsid-arbitral-tribunals/ (accessed 12/20/2021).

the Ukrainian company *Komstroy* (previously: *Energoalians*) and the Republic of Moldova on the basis of the ECT.[6] The subject matter of the dispute was unpaid debts of a Moldovan public electricity supplier, which *Komstroy* asserted against the Republic of Moldova on the basis of assigned rights of an intermediate supplier. The arbitral tribunal ruled in favor of the investor *Komstroy* in 2013.[7]

Following the award, the Republic of Moldova sought to have the award annulled before French courts, invoking the public policy objection in the French Code of Civil Procedure. Finally, in 2018, the French Court of Cassation referred questions to the ECJ for a preliminary ruling under Art. 267 TFEU to have the interpretation of the investment concept in Art. 1 and Art. 26 of the ECT clarified. Notwithstanding these specific questions for a preliminary ruling, and the fact that the proceedings were based on an extra-EU dispute, the ECJ took a comprehensive position on the question of whether the arbitration clause in the ECT is compatible with EU law in an *obiter dictum* without providing further reasons. The ECJ justified the jurisdiction for its decision within the meaning of Art. 267 TFEU by stating that the ECT, as an agreement concluded by the EU, constitutes an element of the EU legal order and can therefore be interpreted by the ECJ as an act of Union law.[8] In doing so, the ECJ admitted that it did not have jurisdiction to interpret international agreements *"where such a dispute is between an investor of a non-member State and another non-member State"*.[9] However, since the provisions of the ECT are also applicable to Union law situations, there is an EU interest in the uniform interpretation of this Treaty, especially with a view to future disputes.[10] Moreover, by choosing Paris as the place of arbitration, the arbitration parties recognized French law as *lex fori*, and by extension, also the asso-ciated Union law. Thus, the European Court of Justice was called upon in this case pursuant to Art. 19 TEU to ensure compliance with Union law.[11]

In terms of content, the ECJ ruled that the dispute resolution clause in Art. 26 ECT was not compatible with Union law.[12] The argumentation is largely analogous to the *Achmea* decision and refers to it several times. For the ECJ, it was once more decisive that the autonomy of the Union legal order is ensured in particular by the preliminary ruling procedure pursuant to Art. 267 TFEU, which guarantees the consistency and uniformity of the interpretation of Union law.[13] Since the ECT, as an act of Union law, may be interpreted by arbitral tribunals, which are not *"court[s] or tribunal[s] of a Member State"* within the meaning of Art. 267 TFEU that are entitled to request a preliminary ruling, the ECT's arbitration clause withdraws such disputes from the court system of the EU.[14] This jeopardizes the full effectiveness of Union law; accordingly, the ECT violates the autonomy of Union law and is consequently incompatible with the Union

6 On the facts of the case, see ECJ, Judgment of 2 September 2021, Case C-741/19, para. 8ff. - Komstroy.

7 *Ibid.*, para. 13; *Energoalians TOB v. Republic of Moldova*, UNCITRAL, Award of 23 October 2013.

8 *Ibid.*, para. 23.

9 *Ibid.*, para. 28.

10 *Ibid.*, para. 29ff.

11 *Ibid.*, para. 34.

12 *Ibid.*, para. 65f.

13 *Ibid.*, para. 45.

14 *Ibid.*, paras 47ff., 51ff., 62.

Treaties.[15] The (limited) possibility of reviewing arbitral awards by Member State courts, e.g. in the context of annulment proceedings, was not sufficient to ensure compliance with EU law.[16] Consequently, the dispute resolution clause in Art. 26 ECT was not applicable in intra-EU disputes.

The ECJ thus also applies the principles set out in the *Achmea* decision to the multilateral Energy Charter Treaty. The *Komstroy* ruling has implications for around 40 ongoing intra-EU arbitration proceedings conducted on the basis of the ECT – 35 of them under the ICSID dispute settlement mechanism.[17] The central question that therefore arises is whether the *Komstroy* ruling means that national courts can declare ongoing intra-EU ICSID proceedings that are based on the ECT to be incompatible with Union law and therefore inadmissible before EU member state's national courts. For example, in two proceedings before German courts, the Netherlands is currently seeking a declaration under Section 1032 (2) of the German Code of Civil Procedure that the ICSID arbitration proceedings brought by RWE and Uniper against the Netherlands are inadmissible because the underlying arbitration agreement is not compatible with EU law.[18] In such cases, proceedings pursuant to Section 1032 (2) ZPO would violate Art. 25, 26, 41, 53, and 54 (1) ICSID, as well as the exclusive character of the Convention as a whole which derives from these provisions. As will be explained below, this violation of the ICSID Convention would be a violation of international law *erga omnes* vis-à-vis all ICSID Contracting Parties and would therefore no longer be covered by the primacy of application of EU law. Indeed, EU law does not establish a duty to breach international law vis-à-vis third states.

C. The primacy of application of Union law does not create an obligation for an EU member state to act in violation of international law

I. Exclusivity of the ICSID Convention

The proceedings underlying the ECJ ruling in the *Komstroy* case were conducted as arbitration proceedings under the UNCITRAL Arbitration Rules. Such arbitration proceedings are subject to a state's *lex arbitri*, i.e. there is a (limited) jurisdiction of domestic courts related to some essential procedural aspects. Section 1032 (2) of the German Code of Civil Procedure is a typical case in point.

Other proceedings before German courts relating to investor-state arbitration to date have also involved situations which, with the seat of the arbitral tribunal in Germany, were subject to the German *lex arbitri*. The March 6, 2018 ECJ judgment in *Slovak Republic v. Achmea BV* (Case C-284/16), which is repeatedly referred to in the

15 *Ibid.*, para. 62ff.

16 *Ibid.*, para. 54ff.

17 See: https://www.energychartertreaty.org/cases/list-of-cases/ (accessed on 01/10/2022).

18 The background to these arbitration proceedings is the coal phase-out by 2030 decided by the Netherlands; *Putter*, The Netherlands Coal Phase-Out and the Resulting (RWE and Uniper) ICSID Arbitrations, Kluwer Arbitration Blog from August 24, 2021, available at: http://arbitrationblog.kluwerarbitration.com/2021/08/24/the-netherlands-coal-phase-out-and-the-resulting-rwe-and-uniper-icsid-arbitrations/ (accessed 12/20/2021).

context of the *Komstroy* judgment as well as in the academic discourse on investment protection in the European Union, was also based on arbitration proceedings under the UNCITRAL Arbitration Rules.[19] The same situations existed in the proceedings under Section 1032 of the German Code of Civil Procedure (ZPO) between the *Republic of Croatia and Raiffeisen Bank,* which were decided by the Higher Regional Court of Frankfurt am Main in February 2021 and confirmed by the Federal Court of Justice in November 2021.[20]

However, cases such as RWE and Uniper against the Netherlands differ from the previous litigation situations in two respects: they are being conducted under the ICSID dispute settlement system on the basis of the multilateral Energy Charter Treaty (ECT). This should be kept in mind in the following, and in the evaluation of the academic literature available to date.

Unlike UNCITRAL proceedings, or any other *ad hoc* or institutionalized international arbitration, ICSID proceedings do not have a *lex arbitri*. ICSID proceedings are exclusively international law proceedings; any jurisdiction of domestic courts to review ICSID proceedings and ICSID decisions is explicitly excluded under the ICSID Convention (Art. 53, 54 ICSID).[21] According to Art. 54 (1) ICSID, state courts can only be concerned with the enforcement of arbitral awards, without having any influence on their content.

With regard to Section 1032 (2) ZPO proceedings, it is sometimes argued that Art. 2 and 3 of the German Implementation Act to the ICSID Convention[22] (InvStreitÜbkG) only deviate from Section 1032 (2) ZPO with regard to the recognition and enforcement of ICSID arbitral awards, and that therefore Section 1032 (2) ZPO also applies to ICSID proceedings.[23] This is not convincing; Art. 1 InvStreitÜbkG approves the provisions of the ICSID Convention as a whole, and thus approves exclusive dispute resolution procedure by the ICSID Convention beyond the ZPO. Due to the *lex spe-cialis* rules, Art. 1 InvStreitÜbkG takes precedence over any provisions in the ZPO. The following Art. 2 and 3 InvStreitÜbkG only regulate the national procedure for the de-termination of the enforceability of ICSID arbitral awards, as provided for in Art. 54 of the ICSID Convention. In accordance with the ICSID Convention, the application to determine the admissibility of enforcement may only be rejected by German courts *"if the award has been set aside in proceedings under Article 51 or Article 52 of the Convention"* (Art. 2 (4) InvStreitÜbkG) or if it has been determined after proceedings under Art. 50 ICSID Convention that *"enforcement [...] is admissible"* (Art. 2 (1) InvStreitÜbkG). This reflects the exclusive character of ICSID dispute settlement. Also, this has not been

19 ECJ, Judgment of 6 March 2018, Case C-284/16 - Achmea; *Achmea B.V. v. The Slovak Republic*, UNCITRAL, PCA Case No. 2008-13 (previously Eureko B.V. v. The Slovak Republic).

20 OLG Frankfurt, Decision of 11 February 2021 - Az. 26 SchH 2/20; BGH, Decision of 17 November 2021 - Az. I ZB 16/21; *Raiffeisen Bank International AG and Raiffeisen Bank Austria d.d. v. Republic of Croatia*, UNCITRAL, PCA Case No. 2020-15.

21 *Schreuer/et al.*, The ICSID Convention, Art. 53 ICSID Convention, para. 22; *Eskosol S.p.A. in liquidazione v. Italian Republic*, ICSID Case No. ARB/15/50, Decision on Italy's Request Termination of May 7, 2019, para. 231.

22 Gesetz zu dem Übereinkommen vom 18. März 1965 zur Beilegung von Investitionsstreitigkeiten zwischen Staaten und Angehörigen anderer Staaten of 25 February 1969, BGBl. 1969 II S. 369.

23 See *Rusche,* IPRax 2021, 494 (500).

changed by the Arbitration Reform Act of 22.12.1997,[24] since Art. 2 § 11 explicitly refers to the InvStreitÜbkG and only editorial adjustments to the new ZPO regulations were made. Moreover, the InvStreitÜbkG speaks of a "corresponding" application when referring to ZPO norms and does not refer to ZPO rules, either generally or individually, for the other procedural stages before the declaration of enforceability. Accordingly, the rules from the ICSID Convention are precisely not embedded in the comprehensive rules on arbitration in the 10th Book of the ZPO. Thus, the InvStreitÜbkG shows that ICSID proceedings take place independently of the rules of the ZPO; if this were not the case, reference would have been made to the ZPO beyond the rules on the determination of enforceability before national courts.

The "dualist nature of the German legal system" recently emphasized by one author[25] has no bearing on the fact that non-observance of the ICSID Convention by a German court would in any case constitute a violation of international law by the Federal Republic of Germany, irrespective of the relevance of the ICSID Convention in domestic German law. This follows directly from the first sentence of Art. 27 of the Vienna Convention on the Law of Treaties (VCLT), which states that *"[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."*[26]

If one interprets the *Komstroy* decision of the ECJ against the background of the special feature of the ICSID Convention to which the Federal Republic of Germany is bound under international law, to the effect that a German court can or must decide in proceedings pursuant to Section 1032 (2) ZPO on the existence of an effective arbitration agreement with a view to ICSID proceedings, this could lead to a violation of the exclusivity of ICSID proceedings pursuant to Art. 26, 41, 53, 54 (1) ICSID. The decision of a German court, which is attributed to the Federal Republic of Germany as a whole under international law,[27] could therefore lead to a violation of international law. It is therefore questionable whether, and if so to what extent, Union law - here as interpreted by the ECJ in *Komstroy* - obliges an EU Member State to commit a violation of international law in order to enforce Union law.

II. Obligations of an EU Member State under International Law and EU Law

Union law regulates the relationship between EU law on the one hand and international law obligations of EU Member States on the other hand with regard to international treaties in Art. 351 TFEU. The provision reads as follows:

24 Gesetz zur Neuregelung des Schiedsverfahrensrechts (Schiedsverfahrens-Neuregelungsgesetz - SchiedsVfG) of 22 December, 1997, BGBl. I p. 3224.

25 *Rusche*, IPRax 2021, 494 (500).

26 On this conformity to international law recognized by customary international law as an obligation to achieve results independent of monism or dualism instead of many *von Arnauld*, Völkerrecht, paras. 498ff.

27 On comprehensive responsibility under international law for acts of organs, instead of many *von Arnauld*, Völkerrecht, para. 400.

Art. 351 TFEU (ex Art. 307 TEC):

"The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of the Treaties.

To the extent that such agreements are not compatible with the Treaties, the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude.

In applying the agreements referred to in the first paragraph, Member States shall take into account the fact that the advantages accorded under the Treaties by each Member State form an integral part of the establishment of the Union and are thereby inseparably linked with the creation of common institutions, the conferring of powers upon them and the granting of the same advantages by all the other Member States."

The regulatory content of Art. 351 TFEU is not new; the provision has been part of Community/Union law since the foundation of the EEC in 1957:

Art. 234 EEC-V

"The rights and obligations arising from agreements concluded before the entry into force of this Treaty between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of this Treaty.

To the extent that such agreements are not compatible with this Treaty, the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude.

In applying the agreements referred to in the first paragraph, Member States shall take into account the fact that the advantages accorded under this Treaty by each Member State form an integral part of the establishment of the Community and are thereby inseparably linked with the creation of common institutions, the conferring of powers upon them and the granting of the same advantages by all the other Member States."

III. ICSID Convention is not part of the Union law

First, the question briefly arises whether the ICSID Convention may have become part of Union law and thus binds the Union under international law. This is not the case; a formal binding of the Union is ruled out for two reasons 1) because the EU itself is not a member of the ICSID Convention, and 2) because not all EU Member States are parties to the ICSID Convention on an individual basis. [28] A functional or legal succession of the Union is also ruled out, since again there is no binding of all member states to the ICSID Convention and the ICSID Convention is also not a pre-Community treaty.[29] Consequently, the ICSID Convention does not bind the Union. Nor can the EU become a member of the ICSID Convention, since according to Art. 67 of the ICSID Convention this can only be "states".[30]

IV. Primacy of application of Union law

The fundamental primacy of application of the EU legal order[31] also applies to the membership of the Federal Republic of Germany in the ICSID Convention and the rights and obligations arising from this Convention. Due to the dualistic integration of international treaties into the German legal order, which are implemented by federal laws (cf. Art. 59 (2) German Basic Law - Grundgesetz), international treaties are undoubtedly subject to the primacy of application of Union law in terms of norm hierarchy. However, in the present case, Union law does not affect the rights and obligations of the Federal Republic of Germany under the ICSID Convention. Any obligations under Union law that conflict with the ICSID Convention remain inapplicable if the requirements of Art. 351 TFEU are met. This is to be explained in the following.

1. Art. 351 TFEU

Art. 351 TFEU expresses, in accordance with the principles of international law, that the application of the Treaties of the European Union shall not affect the obligation of a Member State to respect rights of third countries under prior international treaties, or to fulfil obligations arising therefrom.[32] The purpose of Art. 351 TFEU is to protect Member States from being required by Union law to breach their international law obligations vis-à-vis third countries.[33] In this respect, Art. 351 TFEU is the Union law expression of the general principle of *pacta sunt servanda* under international law, as it

28 The Republic of Poland is not a member of the ICSID Convention, see https://icsid.worldbank.org/about/member-states/database-of-member-states (accessed 11/20/2021).

29 In more detail, e.g.: ECJ, Judgment of 22 October 2019 - Case C-301/08, Bogiatzi, EU:C:2009:649 (Warsaw Convention).

30 In detail: *Bungenberg*, EuR Beiheft 1 2009, 210; *Weiß* in Grabitz/Hilf, Art. 207 TFEU para. 41.

31 Instead of all *Streinz*, Europarecht, para. 207.

32 ECJ, Judgment of 5 November 2002, Case C-466/98, para. 24 - Commission v. United Kingdom; ECJ, Judgment of 22 October 2019, Case C-301/08, para. 18 - Bogiatzi; ECJ, Judgment of 14 October 1980, Case C-812/79, para. 8 - Burgoa.

33 *Grabitz/Hilf*, Art. 351 TFEU, para. 2; specifically with regard to investment protection agreements: *ibid.*, Art. 207 TFEU, para. 48; *Pache/Bielitz,* EuR 2006, 316 (326).

is laid out in Art. 26 VCLT.[34] In addition, Art. 351 TFEU formulates the principle of integration at Community/Union level in conformity with international law.[35] It follows that the Union cannot and may not force a Member State to breach its obligations under international law if the scope of application of Art. 351 TFEU is opened.

According to its wording, Art. 351 TFEU applies directly to international treaties *"concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other"*. Therefore, it has to be discussed in the following whether the (temporal) scope of application of Art. 351 TFEU is opened in direct (**2.**) or analogous application (**3.**). The special feature that an international law bound to the ICSID Convention also applies in intra-EU arbitration proceedings is then - as already emphasized - to be dealt with separately in the further course of this article.

2. Direct application of Art. 351 TFEU

Art. 351 TFEU applies directly to international treaties *"concluded before 1 January 1958 or, for acceding States, before the date of their accession [...]"*. The Federal Republic of Germany ratified[36] the ICSID Convention in 1969 and there-fore acceded to the Convention after its accession or after January 1, 1958. A direct application of Art. 351 TFEU is therefore not possible.

3. Application of Art. 351 TFEU by analogy

However, in the event that an EU Member State acceded to an international treaty after January 1, 1958, or after its accession to the EU Treaties, and at that time the

[34] *Grabitz/Hilf*, Art. 351 TFEU, para. 2; specifically with regard to investment protection agreements: *ibid.*, Art. 207 TFEU, para. 48.

[35] *Pache/Bielitz*, EuR 2006, 316 (326); *Voss*, SRIEL 1996, 161 (166f.).

[36] Gesetz zu dem Übereinkommen vom 18. März 1965 zur Beilegung von Investitionsstreitigkeiten zwischen Staaten und Angehörigen anderer Staaten, BGBl. II 1969 S. 369; see also https://ic-sid.worldbank.org/about/member-states/database-of-member-states (accessed 11/20/2021).

Union did not yet have competences in the respected area, Art. 351 TFEU is applicable by analogy.[37] This has also been held by the Federal Constitutional Court:

> "The continued legal existence of the agreements already concluded is not in question. International agreements of the Member States concluded before 1 January 1958 shall in principle not be affected by the Treaty establishing the European Community (Article 307.1 ECT; Article 351.1 TFEU). In many cases, this provision is not directly applicable because bilateral investment protection agreements have, as a general rule, been concluded more recently, but the legal concept that a legally existing factual situation in the Member States will in principle not be adversely affected by a later step of integration may nevertheless be inferred from this provision" (BVerfG, Judgment of June 30, 2009, 2 BvE 2, 5/08 et al., para. 380).

The analogous application results from the following circumstances. According to its wording, Art. 351 TFEU does not regulate cases where a subsequent transfer of competence leads to a conflict with Member State obligations under international treaties that were concluded before the transfer of competence. Consequently, there is a regulatory gap.[38] However, the situation of interest in relation to the other regulatory cases of Art. 351 TFEU is comparable. Accession to the Treaties within the meaning of Art. 351 (1) TFEU is equivalent to a later and (initially) unforeseen transfer of competence to the Union in terms of value. In both cases, the Union does not have the competence for the national regulatory areas since the competence is only transferred to the Union

[37] *Bernhardt,* EuR 1983, 199 (205); *Herrmann*, EuZW 2010, 207 (211); *Johannsen,* Die Kompetenz der Europäischen Union für ausländische Direktinvestitionen nach dem Vertrag von Lissabon, Beiträge zum Transnationalen Wirtschaftsrecht, vol. 90, pp. 23ff; *Kokott* in Streinz, Art. 351 TFEU, para. 6; *Krück*, Völkerrechtliche Verträge im Recht der Europäischen Gemeinschaften, p. 136; *Lavranos* in von der Groeben/Schwarze, Art. 351 TFEU, para. 6 with further references; *Lavranos*, Transnational Dispute Management (TDM), Volume 10, Issue 2, March 2013, p. 5; *Lorenzmeier* in Grabitz/Hilf, Art. 351 TFEU, para. 24 et seq., 66; *Schmalenbach* in Calliess/Ruffert, Art. 351 TFEU, para. 9, is of the opinion that *"agreements concluded in time after accession but before an unforeseeable shift in competence do not in every case require the assistance of Art. 351"*, since they *"came about without violations of competence"* and therefore do not violate the order of competence of Union law; *Terhechte*, EuR 2010, 517 (522f.); *Tietje*, Die Außenwirtschaftsverfassung der EU nach dem Vertrag von Lissabon, Beiträge zum Transnationalen Wirtschaftsrecht, vol. 83, p. 17; *Voss*, SRIEL 1996, 161 (165); in contrast, *Manzini*, EJIL 2001, 781 (785): obligation of the Member States not to hinder a later exercise of competence by the Union; criticism of Manzini rightly by *Lavranos* in von der Groeben/Schwarze, Art. 351 TFEU, footnote 24: *"Manzini übersieht jedoch die neben der direkten, am Wortlaut orientierten Anwendung stehende Möglichkeit der Analogie; Konflikte mit dem Unionsrecht werden durch Art. 351 Abs. 2 vermieden. Die unionsinterne Rücksichtnahmepflicht der Mitgliedstaaten rechtfertigt keine Enttäuschung des Vertrauens von Drittstaaten in das Bestehen von Abkommen, deren Unvereinbarkeit mit später entstandenem EU-Sekundärrecht nicht vorhersehbar war, siehe oben. Vielmehr sollten die Mitgliedstaaten eine spätere Kompetenzausübung der Union durch Kündigungsklauseln sicherstellen."*

[38] On the unintended nature of the regulatory gap, see *Johannsen,* Beiträge zum Transnationalen Wirtschaftsrecht, Vol. 90, pp. 24f.

by a later act of transfer by the Member States. The Member States would otherwise be generally prevented from concluding treaties under international law if they had to anticipate a possible later transfer of competence at any time.[39] The interests of a third state in the performance of an international treaty concluded before the transfer of competence are just as worthy of protection as treaties concluded before accession within the meaning of Art. 351 (1) TFEU. The *ratio* of respect for the legal situation under international law prior to accession to the treaties, which is inherent in Art. 351 TFEU, also applies to international treaties concluded prior to a transfer of competence.

In the 2008 opinion of the ECJ in the *Commune de Mesquer* case, AG Kokott expressed that Art. 351 TFEU is also applicable by analogy to cases in which a conflict arises between a Member State treaty and Union law due to a subsequent integration step.[40] For a long time, the European Court of Justice did not comment on an analogous application of Art. 351 TFEU. In the *Kramer* decision, however, the ECJ did point out that because "*the Community not yet having fully exercised its functions in the matter, […] the Member States had the power"* to assume "commitments" within the framework of a fisheries agreement.[41] In the *Luksan* decision, the ECJ finally hinted at the possibility of an analogous application of Art. 351 TFEU. [42] The decision is rightly read as an approval in principle of an analogous application.[43] The ECJ held in *Luksan* that a Member State may not rely on an international treaty if the treaty merely *authorizes* a Member State to take a measure contrary to Union law. If the Member State then takes a legislative measure on the basis of this authorization, and the legislative measure turns out to be contrary to Union law as a result of a development in Union law, the Member State cannot rely on this international treaty as grounds to breach Union law obligations. Conversely, it follows that a Member State may rely on a treaty (here: ICSID Convention) if the international treaty *obliges* the Member State to take a measure that is contrary to Union law. If the Member State then takes a legislative measure on the basis of this obligation, and the legislative measure turns out to be contrary to Union law as a result of a development in Union law, the Member State can rely on the international treaty as grounds to breach Union law obligations.

39 Cf. *Pache/Bielitz,* EuR 2006, 316 (327), who assume at most an obligation to include termination and adjustment clauses in newly concluded treaties.

40 Opinion of AG *Kokott* of 13 March 2008, Case C-188/07, [2008] ECR I-4501, para. 95 - Commune de Mesquer: "*A mutatis mutandis application of the first paragraph of Article 307 EC does not lead to any other conclusion. It is conceivable where an international obligation on the part of a Member State conflicts with a subsequently agreed measure of secondary law.";* on this: *Lorenzmeier* in Grabitz/Hilf, Art. 351 TFEU para. 26.

41 ECJ, Judgment of 14.07.1976, Joined Cases 3, 4 and 6/76, [1976] ECR 1279, para. 39 - Kramer; see also *Schmalenbach* in Calliess/Ruffert, Art. 351 TFEU, footnote 27.

42 ECJ, Judgment of 09 December 2012, Case C-277/10, para. 63f. - Luksan: "*That case-law must also be applicable mutatis mutandis when, because of a development in European Union law, a legislative measure adopted by a Member State in accordance with the power offered by an earlier international agreement appears contrary to European Union law."*

43 For example, *Lorenzmeier* in Grabitz/Hilf, Art. 351 TFEU para. 26; *Reuter*, ZaöRV 2020, 379 (403).

Analogous application presupposes, as explained above, that the Union is now responsible for the area of competence and that the transfer of competence was not foreseeable for the Member States.[44]

First of all, it should be noted that the Union has only had comprehensive and exclusive competence for foreign direct investment (cf. Art. 207 (1) TFEU) since the Treaty of Lisbon, which entered into force on December 1, 2009.[45] The wording and the associated scope of this competence has been, and continues to be, the subject of detailed discussions, in particular with regard to investor-state dispute settlement. Irrespective of whether, and to what extent, one assumes an exclusive competence of the Union for investor-state dispute settlement in the area of foreign direct investment,[46] it should be noted that the transfer of competence for foreign direct investment from the Member States to the Union took place with the Treaty of Lisbon in 2009, decades *after* the accession of the Federal Republic of Germany to the ICSID Convention in 1969. The accession coincides with the founding years of the European Communities, when a comprehensive competence of these Communities for foreign direct investment was not foreseeable.

4. Interim result

Accordingly, Art. 351 TFEU is applicable by analogy in the sense explained above. This means that the ICSID Convention constitutes an earlier agreement within the meaning of Art. 351 (1) TFEU. It follows that in the event of a conflict between this international treaty as national international law of the Federal Republic of Germany and Union law, the former takes precedence.[47] The primacy of application of Union law therefore does not apply in such a case, insofar as one assumes a multilateral obligation with regard to individual norms of the ICSID Convention. This is explained in the following for Art. 26, 41, 53, 54 (1) ICSID Convention.

D. Violation of the ICSID Convention by a proceeding under § 1032 (2) ZPO also in intra-EU arbitration proceedings

It does not follow from either the *Achmea* or the *Komstroy* decision of the ECJ that ICSID/ECT proceedings are incompatible with Union law. That this depends on further legal aspects, and that the *Achmea* and *Komstroy* judgments are to be interpreted rather narrowly, is also made clear by the ECJ in its judgment of October 26, 2021, Case C-109/20 - *Republic of Poland v. PL Holdings.* There it states in para. 67:

44 *Krück,* p. 136; *Bernhardt* EuR 1983, 199 (205); *Lavranos* in von der Groeben, Art. 351 TFEU para. 6; *Terhechte* in Schwarze, Art. 351 TFEU para. 16; *Schmalenbach* in Calliess/Ruffert, Art. 351 TFEU para. 8.

45 For background see *Tietje*, Die Außenwirtschaftsverfassung der EU nach dem Vertrag von Lissabon, Beiträge zum Transnationalen Wirtschaftsrecht, Vol. 83, p. 13.

46 The ECJ rejected exclusive jurisdiction in its Singapore opinion, see ECJ, Opinion 2/15 - Singapore, para. 293; critically, *Weiß* in Grabitz/Hilf, Art. 207 TFEU para. 41.

47 *Lorenzmeier* in Grabitz/Hilf, Art. 351 TFEU para. 20 et seq.

> "[I]t should be noted that, as regards, first, the alleged impact that the present judgment might have on the arbitration agreements concluded by the Member States for various types of contract, the **interpretation of EU law provided in the present judgment refers only to ad hoc arbitration agreements concluded in circumstances such as those at issue in the main proceedings** and summarised, in particular, in paragraph 65 above."(emphasis added by author)

As already emphasized, proceedings under Section 1032 (2) of the ZPO could violate the exclusive character of the ICSID Convention under international law, which would then exclude the primacy of application of Union law in this case (Art. 351 TFEU by analogy). This is to be explained in the following.

I. Differentiation of the fulfillment structure of multilateral treaties into bilateral and multilateral fulfillment structures

International law distinguishes between bilateral and multilateral obligations of international treaties. This distinction is decisive for the applicability of Art. 351 (1) TFEU with regard to the ISCID Convention, in particular Art. 25, 26, 41, 53, 54 ICSID Convention. If the norms have bilateral obligations, non-application by EU Member State A only violates the rights of EU Member State B in the bilateral relationship, but not the rights of third states, so that Art. 351 (1) TFEU would not apply. In the case of multilateral obligations in the sense of an obligation *erga omnes partes,* performance is owed to each state that has ratified the ICSID Convention, even if the breach of obligation by Member State A is not directly against the third state, but primarily against EU Member State B. The non-observance of the exclusivity of the ICSID Convention by a Member State would then not only violate the rights of another Member State, but also the rights of all third States that have ratified the ICSID Convention, thus Art. 351 (1) TFEU applies.

The ECJ has also already recognized the substance of these regulatory contexts under international law. In the *Levy* judgment, the ECJ stated that *"whether a Community rule may be deprived of effect by an earlier international agreement"* depends on *"whether that agreement imposes on the Member State concerned obligations whose performance may still be required by non-member countries which are parties to it"*.[48]

As early as 1958, in the context of the preparation of the Vienna Convention on the Law of Treaties, *Fitzmaurice* distinguished between treaties with a bilateral perfor-mance structure and international treaties of an integral nature, whose obligations are *"self-existent, absolute and inherent for each party, and not dependent on a corresponding performance by the others"*.[49] This differentiation became part of the Vienna Convention on the Law of Treaties. For example, Art. 40 (2) of the Vienna Convention on the Law

[48] ECJ, Judgment of 2 August 1993, Case C-158/91, ECLI:EU:C:1993:332, [1993] ECR I-4300, para. 13 - Levy.

[49] Third Report on the Law of Treaties by Gerald Fitzmaurice, UN doc. A/CN.4/115, YILC, vol. II, 20, 27 Art. 18, para. 2, Art. 19.

of Treaties speaks of the amendment of "a multilateral treaty as between all the parties".

The differentiation is clearer in the *Articles on the Responsibility of States for Interna-tionally Wrongful Acts* of the International Law Commission (ILC), which were adopted by the UN General Assembly in Resolution 56/83 of December 12, 2001. The ILC Articles on the Responsibility of States for Internationally Wrongful Acts distinguish between "injured state" (Art. 42 lit. a) and "states other than the injured state" (Art. 48 (1)). With respect to Art. 48(1), the related commentary states that two conditions must be met: 1) the duty that has been violated must be owed to a group of states, and 2) the duty must serve to protect a collective interest.[50]

"Group of states" does not mean that a new legal personality arises from the collec-tive of states, it instead describes the functional character in the sense of a group "con-sisting of all or a considerable number of States in the world or in a given region, which have combined to achieve some collective purpose".[51] "Collective interests/ obligations" are those whose "principal purpose will be to foster a common interest, over and above any interests of the States concerned individually".[52]

Overall, it follows from Art. 48 para. 1 lit. a that a breach of obligations can be alleged by "the entire group of states involved".[53] "[E]nvironmental protection (espe-cially biodiversity and global warming), collective security (such as test ban treaties) and the protection of human rights", [54] though not an exhaustive list, are all examples of collective obligations.[55]

It remains to be said, therefore, that international treaties with multilateral obligations are obligations to protect collective interests and cannot be reduced to bilateral relations. The criteria for multilateral obligations are disputed in detail. The mere fact that the treaty is multilateral does not indicate that the obligations are also multilateral. On the contrary, in general bilateral obligations are assumed to be the standard.[56] In order to derive multilateral obligations, the individual norms must be considered in the overall systematic context of the international treaty. Criteria that can be used for this purpose include the protection of collective interests, the significance of the norm for the overall context, and the limitation of derogation from the norm.[57] Applying these criteria to Art. 25, 26, 41, 53, and 54 (1) of ICSID, multilateral obligations are clearly evident.

Some argue that the ICSID Convention only contains procedural rules and merely performs administrative activities, so that no multilateral obligations can be assumed.[58]

50 Commentary to the ILC Draft Articles, Art. 48, para. 6.

51 Commentary to the ILC Draft Articles, Art. 42, para. 11.

52 *Ibid.*, Art. 48, para. 7.

53 *Pauwelyn*, EJIL 14 (2003), 907 (918).

54 *Ibid.*, 929.

55 *Ibid.*, 925; so also *Lang*, Beiträge zum Transnationalen Wirtschaftsrecht, Vol. 156, p. 29 and *Besson*, in: Benvenisti/Nolte (eds.), Community Interests Across International Law, 36 (42).

56 *Ibid.*, 926 with further references; so also *Hutchinson*, Solidarity and Breaches of Multilateral Treaties, 151 (153, 155).

57 *Besson*, in: Benvenisti/Nolte (eds.), Community Interests Across International Law, 36 (41ff.).

58 *Lang*, Beiträge zum Transnationalen Wirtschaftsrecht, vol. 156, p. 29.

This view cannot be accepted, at least with regard to Art. 25, 26, 41, 53 and 54 (1) ICSID.

II. Multilateral Obligations of Rules of the ICSID Convention

1. Protection of collective interests

A collective interest goes beyond the parallelism of identical interests. Rather, the community of states must have a common interest in fulfilling the obligations of the international treaty.[59] One of the fundamental goals of investment law in general is the creation of a depoliticized dispute settlement procedure that is independent of the states involved. *Broches*, who was instrumental in the conception of the ICSID Convention, therefore sought with the ICSID Convention to create an effective and independent dispute settlement mechanism whose goal would be to balance the rights of investors and host states.[60] Autonomy and independence are therefore fundamental principles in the implementation of the ICSID Convention. Moreover, the protection of collective interests of the ICSID Convention already results from its preamble:

> "CONSIDERING the need for international cooperation for economic development, and the role of private international investment therein; [...] ATTACHING PARTICULAR IMPORTANCE to the availability of facilities for international conciliation or arbitration to which Contracting States and nationals of other Contracting States may submit such disputes if they so desire".

The protection of collective interests is particularly evident in the exclusivity of an ICSID proceeding in the context of jurisdiction (Art. 25, 26, 41 ICSID) and enforcement of an award (Art. 53, 54 ICSID). This special feature of ICSID proceedings is also repeatedly emphasized by arbitral tribunals. As an example, the arbitral tribunal in *Tokyo Tokeles v. Ukraine* stated:

> "In becoming a party to the Convention, Ukraine has committed itself to the principle of exclusivity of ICSID proceedings, and, hence, to the exclusion of domestic judicial or administrative remedies. Pursuant to this principle, which lies at the very heart of the ICSID institution and mechanism, once the parties have consented to ICSID arbitration, they must refrain from initiating or

[59] *Neugärtner*, Die actio popularis in der WTO, 17f.; *Günther*, Die Klagebefugnis der Staaten, 122f.

[60] vgl. *Dolzer/Schreuer,* Principles of International Investment Law, 9; *Alexandrov*, in: Binder/Kriebaum/Reinisch/Wittich (Hrsg.), International Investment Law for the 21st Century: Essays in Honour of Christoph Schreuer, 322 (323).

> pursuing proceedings in any other forum in respect of the subject matter of the dispute before ICSID. ... According to this basic principle, ICSID tribunals have repeatedly ruled: (a) that the parties to a dispute over which ICSID has jurisdiction must refrain from any measure capable of having a prejudicial effect on the rendering or implementation of an eventual ICSID award or decision, and in general refrain from any action of any kind which might aggravate or extend the dispute or render its resolution more difficult."[61]

Effective compliance with ICSID Convention rules, the *ratio* of which is derived from the preamble, is only possible if one sees collective interests in the ICSID Convention. This has also been stated by the British Supreme Court:

> "It is clear that the specific duties in articles 54 and 69 of the ICSID Convention are owed to all other Contracting States. The Convention scheme is one of mutual trust and confidence which depends on the participation and compliance of every Contracting State. The importance within this scheme of the effective recognition and enforcement of awards is apparent from the preamble which emphasises the requirement that 'any arbitral award be complied with'."[62]

2. Derogation options

Art. 26 ICSID states that *"[c]onsent of the parties to arbitration under this Convention shall, unless otherwise stated, be deemed consent to such arbitration to* ***the exclusion of any other remedy****"* (emphasis added by author). It follows that as soon as "consent" is given, **any** other forum of a contracting state must decline its own jurisdiction.[63] This applies in particular to national courts of the contracting states, as the drafting history of Art. 26 shows.[64] In this sense, *Georges R. Delaume* stated:

> "If a court in a Contracting State becomes aware of the fact that a claim may call for adjudication under ICSID, the court should refer the parties to ICSID to seek a ruling on the subject. Until such a ruling is made, if the possibility exists that the claim may

61 *Tokios Tokelés v. Ukraine*, ICSID Case No. ARB/02/18, Order No. 1 of July 1, 2003, para.1f.

62 The Supreme Court, [2020] UKSC 5, Micula and others v Romania, Judgment of 19 February 2020, para 104.

63 *Schreuer/et al.,* The ICSID Convention, Art. 26 ICSID Convention, para. 110 (emphasis by author).

64 *Ibid.*, para. 111, 114.

fall within the jurisdiction of ICSID, the court must stay the proceedings pending proper determination of the issue by ICSID."[65]

"Exclusive remedy" according to Art. 26 ICSID comes into effect as soon as an arbitration agreement exists. In the case of proceedings based on the ECT, the arbitration agreement within the meaning of Art. 26 ICSID Convention is effectively concluded by the acceptance of the offer under the ECT.[66]

In this regard, it is sometimes misunderstood that the review of the validity of an ICSID arbitration agreement is not carried out by national judges.[67] Reference is made to the clear wording of Art. 25, 26, and 41 of the ICSID Convention, according to which from the time of consent to arbitration under the ICSID Convention, this consent is at the same time deemed to be a *"exclusion of any other remedy"*. According to Art. 41 of the ICSID Convention, only the ICSID Arbitral Tribunal, within its exclusive competence, shall decide on its jurisdiction and review *"[a]ny objection by a party to the dispute that that dispute is not within the jurisdiction of the Centre, or [...] the Tribunal"*. Accordingly, the question of whether a valid arbitration agreement exists falls within the exclusive jurisdiction of the arbitral tribunal.[68] It follows from this unambiguous wording that there is no room for review of jurisdiction by national courts and that the ICSID proceedings are therefore beyond the control of national courts from the outset.[69] In contrast to other states, Germany has also not declared a reservation of jurisdiction within the meaning of Art. 25 (4) of the ICSID Convention.[70]

Furthermore, Art. 53 of the ICSID Convention prohibits any intervention by national courts by stating that ICSID arbitral decisions *"shall not be subject to any appeal or to **any other remedy**"* (emphasis added by author). This wording is similar to Art. 26

65 *Delaume*, ICSID Arbitration in Practice, International Tax and Business Lawyer 2/58 (1984), 58 (61).

66 C.f. *Lang*, Beiträge zum transnationalen Wirtschaftsrecht, Vol. 156, p.19.

67 *Rusche*, IPRax 2021, 494 (495).

68 *Schreuer/et al.*, The ICSID Convention, Art. 41 ICSID Konvention, paras. 3, 6.

69 Cf. also *Lörcher*, SchiedVZ 2005, 11 (11 and 12f.); *Semler*, SchiedsVZ 2005, 97 (99): „[Die ICSID-Schiedsgerichtsbarkeit] hat ihren Rechtsgrund nicht in nationalen Gesetzgebungen, sondern in den völkerrechtlichen Bindungen, die die ICSID-Vertragsstaaten eingegangen sind. ICSID-Schiedssprüche sind weder inländische noch ausländische Schiedssprüche im Sinne der ZPO, sondern Schiedssprüche sui generis. Das wirkt sich praktisch dahin aus, dass sie keiner Anerkennung oder Vollstreckbarkeitserklärung gemäß § 1061 ZPO bedürfen. §§ 1025 ff. ZPO wären nicht anwendbar, wenn der Schiedsort in Deutschland läge. Im Rahmen von ICSID-Schiedsverfahren können nationale Gerichte auch keine Maßnahmen des einstweiligen Rechtsschutzes anordnen, vgl. Art. 26 Satz 1 ICSID-Convention. ICSID-Schiedssprüche sind in allen Vertragsstaaten wie rechtskräftige Urteile der dortigen nationalen Gerichte zu behandeln (Art. 53 f. ICSID-Convention).".

70 See https://icsid.worldbank.org/sites/default/files/2020_July_ICSID_8_ENG.pdf (accessed 11/20/2021).

ICSID. The purpose of Art. 53 is also to guarantee neutral and depoliticized proceedings.[71] Instead, Art. 53 (1) ICSID refers to the control mechanisms within the Convention.[72] Accordingly, ICSID proceedings are self-contained and exempt from any state interference, especially by national courts.[73] The commentary on Art. 54 states:

> "[a] domestic court or authority before which recognition and enforcement is sought is restricted to ascertaining the award's authenticity. It may not re-examine the ICSID tribunal's jurisdiction. It may not re-examine the award on the merits. Nor may it examine the fairness and propriety of the proceedings before the ICSID tribunal."[74]

This means that once the competent arbitral tribunal has issued an award in the case and the ICSID internal annulment options have been exhausted, the case is *res judicata*.[75] This is the case even if the arbitration clause leaves the investor the choice between proceedings before national courts, proceedings under UNCITRAL rules, or the like.[76]

With regard to the practical implementation of Art. 53 ICSID, no concerns were expressed during the creation of the treaty, because *"any other course of conduct was likely to lead to adverse reactions by other States and would affect the standing of the State concerned with the international business community (History, Vol. II, pp. 273, 425, 428, 430)."*[77] This again shows that bilateral obligations are not to be assumed. Rather, the behavior of individual states affects their reputation vis-à-vis the community of states as a collective.

It follows from Art. 53 (1) ICSID that national appeals in particular are inadmissible after debates to admit on public grounds could not prevail.[78] In particular, the ground for setting aside under Section 1059 (2)(2)(b) of the ZPO, according to which such arbitral awards may be set aside whose recognition and enforcement *"lead to a result contrary to public order"* does not apply to ICSID arbitral awards. Instead, Art. 53 (1) of ICSID applies under the ICSID regime. Thereafter, the award is deemed binding *"and shall not be subject to any appeal or to any other remedy except those provided for in this Convention."* This also applies to Section 1032 of the ZPO. Accordingly, the task of state courts is limited to determining the authenticity of the arbitral award,[79] and the possibilities of derogation from the provisions of the Convention are very limited.

71 *Griebel*, Internationales Investitionsrecht – Lehrbuch für Studium und Praxis, p. 119.

72 Art. 49 para. 2, 50, 51, 52 ICSID, cf. *Schreuer/et al.*, The ICSID Convention, Art. 54 ICSID Convention, para. 81.

73 *Alexandrov*, in: Binder/Kriebaum/Reinisch/Wittich (Ed.), International Investment Law for the 21st Century: Essays in Honour of Christoph Schreuer, 322 (323).

74 *Schreuer/et al,* The ICSID Convention, Art. 54 ICSID Convention, para. 81.

75 *Ibid.*, Art. 53 ICSID Convention, para. 31.

76 *Ibid.*

77 *Ibid*, para. 39.

78 *Ibid.*, Art. 54 ICSID Convention, para. 83ff.

79 UNCTAD, Dispute Settlement, ICSID, 2.9 Binding Force and Enforcement (2003), p. 12.

3. Meaning in the overall context

Art. 54 (1) of ICSID provides that *"[e]ach Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State."* Even if disputes are necessarily settled bilaterally, under Art. 54(1) of ICSID, all other states that have ratified the international treaty undertake to recognize the award without being a party to the proceedings.[80] Accordingly, arbitral awards bind not only the parties to the arbitration proceedings, but all contracting parties equally. Conversely, this has the consequence that *"the party seeking recognition and enforcement of an award has the possibility to select the forum most favorable for this purpose."*[81] This is not contradicted by the fact that Art. 53 ICSID speaks of the award being bind-ing on the parties to the proceedings. The commentary explicitly states that this does not limit the legal consequences of an award to the parties.[82] This result is supported by a recent ruling of the English Supreme Court, which explicitly confirms multilateral obligations of the ICSID Convention:

> "While it is correct that in order for article 351 TFEU to apply relevant obligations under the prior treaty must be owed to a non-member state, that does not impose an additional requirement that the particular dispute before the court must relate to extra-EU activities or transactions. [...] It is clear that the specific duties in articles 54 and 69 of the ICSID Convention are owed to all other Contracting States. The Convention scheme is one of mutual trust and confidence which depends on the participation and compliance of every Contracting State. The importance within this scheme of the effective recognition and enforcement of awards is apparent from the preamble which emphasises the requirement that 'any arbitral award be complied with'."[83]

III. Interim result

Overall, the exclusive character of the ICSID Convention indicates that the rules mentioned above are multilateral obligations. Thus, disregarding Art. 53 ICSID in a domestic court proceeding, e.g. according to Section 1032 (2) ZPO, would violate the rights of all ICSID Contracting Parties under international law. Such a violation of the ICSID Convention would have *erga omnes partes* effect.

80 *Schreuer/et al.,* The ICSID Convention, Art. 54 ICSID Convention, para. 23.

81 UNCTAD, Dispute Settlement, ICSID, 2.9 Binding Force and Enforcement (2003), p. 11.

82 *Schreuer/et al.*, The ICSID Convention, Art. 53 ICSID Convention, para. 12.

83 The Supreme Court, [2020] UKSC 5, *Micula and others v Romania*, Judgment of 19 February 2020, paras. 100, 104.

E. Conclusion

Proceedings before a German court under Section 1032 of the Code of Civil Procedure would be contrary to international law and would violate the rights of all ICSID Contracting States under international law. In analogous application of Art. 351 TFEU, Union law does not require EU Member States to commit such a violation of international law. In intra-EU arbitration proceedings conducted on the basis of the ICSID Convention, the primacy of application of Union law does not apply; thus, the statements of the ECJ in the *Komstroy* ruling do not apply in ICSID arbitration proceedings.

REFERENCES

Alexandrov, Stanimir A., Enforcement of the ICSID Awards: Articles 53 and 54 of the ICSID Convention, in: Binder, Christina/Kriebaum, Ursula/Reinisch, August/Wittich, Stephan (Eds.), International Investment Law for the 21st Century: Essays in Honour of Christoph Schreuer, Oxford 2009.

Becker, Ulrich/*Hatje*, Armin/*Schoo*, Johann/*Schwarze*, Jürgen (Ed.), EU-Kommentar, 4th edition, Baden-Baden 2019, 322-337.

Bernhardt, Rudolf, Die Europäische Gemeinschaft als neuer Rechtsträger im Geflecht der traditionellen zwischenstaatlichen Rechtsbeziehungen, EuR 1983, 199-215.

Besson, Samantha, Community Interests in International Law, in: Benvenisti, Eyal/Nolte, Georg (Eds.), Community Interests Across International Law, Oxford 2018, 36-49.

Bungenberg, Marc, Außenbeziehungen und Außenhandelspolitik, in: Der Reformvertrag von Lissabon, Europarecht (EuR) 2009, Beiheft 1, 195-216.

Calliess, Christian/*Ruffert,* Matthias (Eds.), Das Verfassungsrecht der Europäischen Union mit Europäischer Grundrechtecharta, Kommentar, 6th edition, Munich 2022.

Delaume, Georges R., ICSID Arbitration in Practice, International Tax and Business Lawyer 2/58 (1984), 58-78.

Dolzer, Rudolf/*Schreuer*, Christoph, Principles of International Investment Law, 2nd edition, Oxford 2012.

Fitzmaurice, Gerald, Third Report on the Law of Treaties, UN doc. A/CN.4/115, Yearbook of the International Law Commission 1958, Vol. II, 20-46.

Grabitz, Eberhard/*Hilf,* Meinhard/*Nettesheim,* Martin (Eds.), Das Recht der Europäischen Union, 74. Ergänzungslieferung (September 2021), Munich 2021.

Günther, Carsten Alexander, Die Klagebefugnis der Staaten im internationalen Streitbeilegungsverfahren, Cologne 1999.

Herrmann, Christoph, Die Zukunft der mitgliedstaatlichen Investitionspolitik nach dem Vertrag von Lissabon, EuZW 2010, 207-212.

Hutchinson, D.N., Solidarity and Breaches of Multilateral Treaties, British Yearbook of International Law, Volume 59, Issue 1 (1988), 151-215.

Johannsen, Sven Leif Erik, Die Kompetenz der Europäischen Union für ausländische Direktinvestionen nach dem Vertrag von Lissabon, Beiträge zum Transnationalen Wirtschaftsrecht, Heft 90, (8/2009), available at: https://telc.jura.uni-halle.de/sites/default/files/altbestand/Heft_90.pdf.

Krück, Hans, Völkerrechtliche Verträge im Recht der Europäischen Gemeinschaften: Abschlußkompetenzen, Bindungswirkung, Kollisionen, Berlin 1977.

Lang, Andrej, Die Autonomie des Unionsrechts und die Zukunft der Investor-Staat-Streitbeilegung in Europa nach Achmea – Zugleich ein Beitrag zur Dogmatik des Art. 351 AEUV, Beiträge zum Transnationalen Wirtschaftsrecht, Heft 156 (7/2018), available at: https://telc.jura.uni-halle.de/sites/default/files/Beitraege-TWR/Heft%20156.pdf.

Lavranos, Nikos, In Defence of Member States' BITs Gold Standard: The Regulation 1219/2012 Establishing a Transitional Regime for Existing Extra-EU BITs - A Member State's Perspective, Transnational Dispute Management (TDM), Volume 10, Issue 2, March 2013.

Lörcher, Torsten/*Lörcher,* Gino, Organisation eines Ad-hoc-Schiedsverfahrens, SchiedVZ (4/2005), 179-189.

Miller, Robin Dominik, Autonomie des Unionsrechts versus Schiedsgerichtsbarkeit, Zur Bedeutung des EuGH-Urteils in der Rs. Achmea für die Entwicklung der Europäischen Union als Rechtsgemeinschaft, EuZW 2018, 357-363.

Nacimiento, Patricia/*Bauer,* Sascha, Das Achmea-Urteil des EuGH - und nun?, BB 2018, 1347-1349.

Neugärtner, Ilka, Die actio popularis in der WTO: Überlegungen zur Zulässigkeit einer actio popularis, der Kollektivierung des Durchsetzungsmechanismus und der Einführung einer Aufsichtsklage, 2002.

Pache, Eckhard/*Bielitz,* Joachim, Das Verhältnis der EG zu den völkerrechtlichen Verträgen ihrer Mitgliedstaaten, EuR 2006, 316-339.

Pauwelyn, Joost, A Typology of Multilateral Treaty Obligations: Are WTO Obligations Bilateral or Collective in Nature? European Journal of International Law, Issue Vol. 14 No. 5 (2003), 907-951.

Reuter, Alexander, Taking Investors' Rights Seriously: The Achmea and CETA Rulings of the European Court of Justice Do Not Bar Intra-EU Investment Arbitration, ZaöRV 2020, 379-427.

Rusche, Tim Maximilian, Abwehr rechtsmissbräuchlicher innereuropäischer Investoren-Staaten-Schiedsverfahren durch Verfahren vor deutschen Gerichten, Praxis des Internationalen Privat- und Verfahrensrechts 2021, 494-502.

Schreuer, Christoph H./*Malintoppi,* Loretta/*Reinisch,* August/*Sinclair,* Anthony, The ICSID Convention, A Commentary, 2nd edition 2009.

Semler, Franz-Jörg, Schiedsverfahren im Rahmen von Investitionsschutzabkommen der Bundesrepublik Deutschland, SchiedsVZ 2003, 97-102.

Stöbener de Mora, Patricia Sarah, Das Achmea-Urteil zum Intra-EU-Investitionsschutz, Die Auswirkungen und die Notwendigkeit eines EU-weiten Schutzmechanismus, EuZW 2018, 363-370.

Streinz, Rudolf, Vertrag über die Europäische Union, Vertrag über die Arbeitsweise der Europäischen Union, Charta der Grundrechte der Europäischen Union, Kurzkommentar, 18th edition, Munich 2018.

– Europarecht, 11th edition, Heidelberg 2019.

Terhechte, Jörg Philipp, Art. 351 AEUV, das Loyalitätsgebot und die Zukunft mitgliedstaatlicher Investitionsschutzverträge nach Lissabon, EuR 2010, 517-532.

Tietje, Christian, Die Außenwirtschaftsverfassung der EU nach dem Vertrag von Lissabon, Beiträge zum Transnationalen Wirtschaftsrecht, Heft 83, (1/2009), available at: https://telc.jura.uni-halle.de/sites/default/files/altbestand/Heft83.pdf.

UNCTAD, Dispute Settlement, ICSID, 2.9 Binding Force and Enforcement, 2003.

von Arnauld, Andreas, Völkerrecht, 4th edition, Heidelberg 2019.

von der Groeben, Hans/*Schwarze,* Jürgen/*Hatje,* Armin (Eds.), Europäisches Unionsrecht, 7th edition, Baden-Baden 2015.

Voss, Rüdiger, Die Bindung der Europäischen Gemeinschaft an vorgemeinschaftliche Verträge ihrer Mitgliedstaaten, Swiss Review of International and European Law (SRIEL) 1996, 161-189.

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