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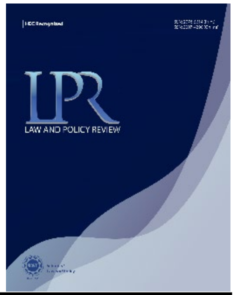

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State Immunity and its Impact on Investment Protection: Challenges and Prospects in International Investment Law

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Abstract

A fundamental principle in international law is state immunity or state sovereignty. When interacting with investment law, this principle presents significant challenges, especially regarding investment protection. This study focuses on balancing sovereign rights and investor protection by exploring the issues and complications related to state immunity in investment disputes concerning arbitration, for execution of arbitral awards. It is found that legal safeguards for state immunity often obstruct investors from finding remedies for breaches of investment contracts. To reconcile these issues, this study discusses modern-day techniques regarding international investment treaties, following the emerging trends in customary law. By analyzing multiple case laws, the study sheds light on the challenges investors face during the arbitration process and enforcement of arbitral awards against the host state. In search of reforms to find a balanced legal framework, the role of prominent international organizations in the arbitration system is also discussed. The findings of this study suggest that, although state sovereignty is a substantial barrier, specific provisions in agreements including a transparent arbitration process, clarity in attaching assets, continuous review of contracts and right of appeal against arbitral awards should be incorporated.

***Keywords*:** arbitration, arbitral award, investment, legal reforms, sovereign immunity

Introduction

In international law, state immunity and investor protection are fundamental concepts that may conflict in disputes involving investments. While sovereign activities are shielded from foreign jurisdiction by state immunity, investor protection measures ensure that investors can seek redress if host states treat them unfairly. It takes intricate legal systems and

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careful treaty drafting to strike a balance between these ideals and ensure transparency and equity for nations and investors (Titi, 2024).

Bilateral Investment Treaties (BITs) are contracts between two states that specify the terms and conditions for foreign investment in the other state. They treaties usually contain clauses about national treatment, Most Favored Nations (MFN) treatment, expropriation protection, and dispute resolution procedures (Imanuddin, 2023).

A contrast is drawn between acts supported in a sovereign capacity and acts carried out in a commercial capacity under the restrictive immunity approach. When it comes to acts of sovereignty, states are immune, but not when engaging in business activities (Thomas, 2024).

The conventional shield that sovereign governments have against lawsuits from outside tribunals is reduced by exceptions to state immunity. With their gradual evolution, these exclusions, especially in cases of wrongful behaviour and commerce, strike a balance between upholding state sovereignty and guaranteeing accountability (Holden, 2024).

When conducting business in a manner akin to that of private enterprises, states are not granted immunity. This exception holds states responsible for their contractual and commercial commitments (Yoon, 2024).

When a state expropriates property without fully compensating the owner, or when property is located within the forum state, immunity is often withdrawn. In property-related conflicts, this prevents states from unfairly profiting from their sovereignty. Conflicts arising from employment agreements with foreign nationals might not be protected by immunity, especially if the employment is for non-sovereign purposes, for example, embassy employees carrying out non-diplomatic duties (Viterbo, 2024).

The exceptions to state immunity signify a move towards limited immunity, ensuring that states aren't unfairly exempted from accountability, particularly when they act like private companies or commit serious crimes. In international relations, this equilibrium promotes responsibility and justice (Kohl, 2024).

The legislative structures and procedures intended to safeguard the rights and interests of foreign investors in host nations are referred to as investor protection. These protections are typically established through international agreements, national legislation, and bilateral investment treaties (BITs) (Kryvoi, 2024a).

Fair and Equitable Treatment (FET) ensures that investors receive equitable treatment from the host country, free from capricious or prejudiced policies. Investors are shielded from asset seizure that does not result in timely, sufficient, or satisfactory recompense. Expropriation must be carried out by due process, serve a public interest, and not be discriminatory (Price & Hallam, 2024).

The Most-Favored-Nation (MFN) Treatment Clause guarantees that investors are treated equally to those who invest in other nations. Foreign investors should receive the same treatment under national treatment as local investors in comparable situations. Investment treaties often include arbitration clauses, such as those about the International Centre for Settlement of Investment Disputes (ICSID) (Gutiérrez, 2024).

According to Full Protection and Security (FPS), the host nation must provide a safe environment for investors, shield them from harm, and make sure the judicial system respects their rights. Investors are usually entitled to repatriate earnings, dividends, and other returns on their investments without undue hindrance or delay under repatriation of profits laws (Onyeani, 2023).

Investor protection strategies attract international investors who would otherwise be discouraged by political and economic concerns by offering a secure and predictable legal environment (Gugler & de Raemy, 2024). Increased foreign investment has the potential to boost the host nation's economy, create jobs, and transfer technologies. Legal safeguards lower the risks involved in international investment, increasing the appeal of cross-border capital allocation for investors (Hu, 2023).

Due to state immunity from enforcement, it may be difficult to enforce an arbitral ruling against a state, even if an investor wins the case. Recovery efforts may be hampered by assets in some states that are immune-protected (Brewster, 2024). State sovereignty and the need to safeguard investors are intended to be balanced by the legal frameworks. While states can be held accountable for violations of investment treaties that impact investors' rights, they remain protected from prosecution for sovereign conduct (Subedi, 2024).

In a historic case, expropriation by Russia was demanded through arbitration by the former shareholders of Yukos Oil Company. The claimants received significant damages from the tribunal, but because of Russia's sovereign immunity, enforcement was difficult. The difficulties in striking a balance between investor protection and sovereign immunity are demonstrated by this case (Mokaled, 2023).

State immunity and investor protection are co-related to each other. Sovereign equality and non-interference are core assets for states but still, there are occasions where this concept is broken. Arbitration is one example when investors have the protection of being heard in case of any dispute. Investors' protection is very essential for a better investment climate and at the same time, a state's sovereignty is one of the big weapons for states to exercise in its favour (Kohl, 2024).

Research Questions

The leading research question for the study is:

To what extent does investment law meet the criteria to safeguard the interest of investors against the idea of a state's sovereign immunity?

To find the answer following are some sub-questions:

- What are the primary obstacles that state immunity presents to the implementation of arbitral rulings about international investments?
- In what ways have national and international legal frameworks have evolved over time to resolve the disputes between investor protection and sovereign immunity?
- Which court decisions and precedents best highlight the conflict between investor rights and sovereign immunity?
- What are some possible policy suggestions to improve the predictability of international investment law?

Legal Frameworks

To address the first part of the main research question, it is essential to explore the legal frameworks available to provide safeguard measures for potential investors against state immunity.

Key International Conventions

Arbitration agreements and arbitral decisions come under the New York Convention (n.d.) of 1958, an international agreement which guarantees member states to uphold arbitration agreements and enforceme arbitral awards. A proper, standardized, and effective legal framework, especially for arbitrating disputes, is crucial for better investment opportunities (van Zelst & Masumy, 2024). This convention provides an efficient and effective international platform to settle investment disputes among parties. It protects investors against state immunity and plays an important role in the enhancement of international trade. The convention also offers a separate structure for the execution and enforcement of arbitral decisions.

International treaty. European Convention on State Immunity of 1972 (Council of Europe, 1972) provides rules for state immunity, preventing states from being sued in any other country. Its stance on state immunity is limited, as it distinguishes between different acts of states, which are usually immune, and those acts by private or commercial sectors that are not immune. It also provides regulations for the enforcement of arbitral awards against states, specifying instances when state immunity may be waived (Bankas, 2005).

Employment agreements, business interactions, property damage or personal injury due to state possession are safeguarded under the European Convention on State Immunity of 1972 (Council of Europe, 1972). It also sets out rules for ownership of property and its involvement with different enterprises or legal corporations (Fox & Webb, 2013). To provide legal certainty and uniformity in the treatment of state immunity issues, it seeks to harmonize the laws governing immunity among its member nations. To promote justice within global legal procedures, the Convention seeks to protect state sovereignty while ensuring that nations are held accountable for their economic and non-sovereign activities.

United Nations Convention on Jurisdictional Immunities of States and Their Property, 2004 (United Nations, 2005) is an international convention that specifies when nations and their possessions are exempt from being sued by courts abroad. It takes a limited stance on state immunity, making a distinction between acts that are sovereign, usually immune, and acts that are not, like commercial activities, which are not immune (Cottrell, 2021).

To harmonize and clarify the laws governing state immunity, the convention establishes exceptions for commercial interactions, employment agreements, damage to property or personal injuries and possession or ownership of property.

Bilateral and Multilateral Investment Treaties

Bilateral Investment Treaties (BITs) are agreements between two nations that specify the terms and conditions for private investment on the sovereign territory of one state by its citizens and businesses (Dimitropoulos, 2024).

Key protections under BITs:

This clause in BITs guarantees the equitable treatment of foreign investors by host nations. Its goal is to shield investors from the host state's capricious, prejudiced, or unfair behaviour. Several rights are covered by the FET rule, such as transparency, reasonable investor expectations, and consistency in the business and legal environments. It is a cornerstone BIT standard intended to give foreign investments an environment that is stable and predictable (Alvik, 2020).

Expropriation and Compensation

Foreign investors are shielded from the host state's attempt to seize their assets through the processes of expropriation and reparation. Expropriation for the interest of the public conducted timely and by law is required under BITs. Under these treaties, compensation is dependent on fair market value. a Method for redressal in expropriation cases which serves to protect the interests of investors is also catered under BITs (Mohanty & Doshi, 2024).

Most-Favored-Nation (MFN) Treatment

This clause ensures that the same favourable treatment will be given to all foreign investors from any state they belong to. It encourages impartial and fair treatment for international investors in the host state by avoiding discrimination against them, based on their nationality. MFN provisions require that the host country should treat investors equally to those who are receiving preferential treatment (Halim, 2024).

Full Protection and Security

Host countries are required to provide necessary protection to international investors regarding their investments. This clause guarantees that the receiving state will act to protect investments from any physical damage. It also provides a safeguard against unauthorized intervention by outside parties. International investor's satisfaction and confidence regarding investment security in the host state are managed under this clause (Wells & Ahmed, 2007).

Dispute Resolution Mechanisms

When state sovereignty is at stake, dispute resolution mechanisms play a valuable role in settling the conflicts between states and foreign investors. The natural mechanism and place for accountability are dependent on this system (Brus, 2024). Complicated and tricky connections of investor's rights and state immunity are maintained in dispute resolution. Under dispute resolution, unbiased clauses and organized platforms can help to secure an investment climate. Uphold accountability will foster international economic cooperation (Dhivya, 2024).

International Centre for Settlement of Investment Disputes (ICSID)

ICSID, an independent international organization, was established in 1966 under the supervision of the World Bank. The primary purpose of ICSID was to provide easy way-outs for foreign investors and host states for resolving disputes over investments. ICSID provides an impartial and result-oriented procedure by suggesting a venue for conciliation and arbitration (Donoso, 2024).

Article 21 of ICSID provide immunity to arbitrators and conciliators, while performing their official duties, to ensure independence and protection from interference (International Centre for Settlement of Investment Disputes [ICSID], 2006). Article 27 of ICSID discusses the immunity from jurisdiction. It states that signing this agreement, by related contracting states to arbitration, does not mean that states are giving up their jurisdictional immunity concerning the enforcement of arbitral decisions. By entering into arbitration under ICSID the state immunity remains intact and in place (Dautaj, 2024).

Recognition and enforcement of awards is binding, however state immunity will only be available if state has explicit waiver from execution. Article 55 directly talks about state immunity for enforcement of awards (Dimitriou, 2024). Nothing should be interpreted as violating any Participating State's existing legislation regarding that State's immunity from execution. The ICSID further recognizes that state rules pertaining to immunity from execution govern the implementation of arbitral verdicts.

However, the rules of sovereign immunity might make it difficult to enforce an award made by an ICSID tribunal, particularly when it comes to state-owned assets. By requiring nations to agree to arbitration under investment accords, the ICSID system gets around exemption from jurisdiction (Trevisan et al., 2025).

Although states often expressly consent to ICSID, unless otherwise specified, this waiver might not be relevant to execution exemption. However, investors might have trouble in executing awards against states that assert immunity, especially in case of non-commercial or sovereign assets (Brenninkmeijer & Gélinas, 2021).

United Nations Commission on International Trade Law (UNCITRAL)

Advancement, unification and coordination in international trade are the primary objectives of UNITRAL, founded in 1966. It has developed rules and regulations to promote trade and investment by reducing obstacles in the way of legal clarity. Subjects like arbitration, electronic commerce insolvency and transportation are covered under UNICITRAL. Professional and multinational organizations can share their knowledge in the field of international trade by working together (Brodlija, 2024). Article 23 of the UNICITRAL talks about state protection from enforcement procedures. Under this article, all those assets and properties that are used for non-commercial purposes are exempted from enforcement actions which include attachment of properties except in all those cases when the state agrees otherwise. Moreover, assets and properties that are used for commercial purposes are not covered under this shadow of this article. In the context of international commercial arbitration, article 23 offers guidance on the boundaries of state immunity (Baid, 2024).

Ad hoc Arbitration

When parties agree to arbitrate their disagreements without using a recognized arbitral organization or set of rules, this is known as ad hoc arbitration. Rather, the terms of the arbitration procedure, such as the administrative arrangements, procedural rules, and arbitrator selection, are directly negotiated by the parties. Ad hoc arbitration gives the parties freedom and flexibility to customize the process to suit their unique requirements and interests. However, since the parties are in charge of running the arbitration without the backing of an institutional structure, they could need more labour and knowledge from them to manage the arbitration successfully (Kryvoi, 2024b).

State immunity concerns may surface in an ad hoc arbitration in which a state is a party, particularly at the enforcement stage of the arbitral procedure. State immunity may prevent an arbitral tribunal's award from being enforced against the state's assets, even if the claimant wins. Under this theory, states and their assets are normally immune from enforcement actions like execution or attachment unless the state has renounced this immunity or the assets are being used for commercial reasons (Asudemade, 2020). In the context of ad hoc arbitration, parties must handle state immunity by navigating intricate legal frameworks and processes to enforce arbitral rulings against state organizations. They might have to think about whether the arbitration agreement waives the state's immunity or if there are any exceptions to immunity, particularly those about economic activity (Walton, 2024).

The Coexistence of Investor Protection and State Immunity

State immunity and investor protection must coexist in a way that strikes a balance between foreign investors' rights to pursue legal recourse and states' general immunity from international court jurisdiction. Treaties regarding international investments, such as BITs, frequently incorporate clauses safeguarding investors from expropriation and providing fair and equitable treatment. Usually, these accords offer dispute resolution procedures like arbitration (Howse, 2019). States are shielded from lawsuits for their sovereign conduct in foreign courts by the doctrine of state immunity. State immunity does, however, have some limits, especially for commercial activity. Allowing arbitration and other comparable procedures to offer a neutral forum for settling conflicts while upholding state immunity in enforcement proceedings strikes the right balance. This approach ensures that states can conduct international trade without undue risk, while investors are given the means to safeguard their capital and pursue damages if their rights are violated (Levashova & Zugliani, 2024). But finding a balance between investors and state immunity is not without its difficulties. The following is a list of some of the difficulties.

Jurisdictional Challenges

Parties express permission to confers jurisdiction onto arbitration tribunals. This permission needs to be explicit and unambiguous to avoid investor-state disputes. It can be difficult to determine whether a state has consented to arbitration in a given situation, though, because permission is frequently buried in intricate treaties or contracts (Ghodoosi & Sharif, 2023). The terminology on consent to arbitration in treaties and investment agreements can occasionally be imprecise or confusing. Jurisdictional difficulties may result from disagreements about whether the state has consented to arbitrate particular kinds of disputes or not (Nweze & Ukwueze, 2023). The extent of consent can be challenged even in cases where arbitration is agreed upon. States may contend that some matters, such as those about public policy, national security, or particular industries not covered by the treaty, are outside the agreed-upon parameters of arbitration (Taylor, 2023). The agreement to arbitrate may only apply to conflicts that occur in particular periods or geographical areas. Determining whether a certain disagreement is within these bounds can be a difficult and complicated legal process (Waincymer, 2023).

For sovereign acts, states are normally exempt from jurisdiction, however, this is not the case for business acts. Arbitral tribunal jurisdiction can be affected by the interpretation and complexity of determining whether a state's actions are commercial or sovereign (Ferrari & Rosenfeld, 2023). Since states are immune from lawsuits, it may be difficult to enforce an arbitral tribunal's decision against their assets, even if the tribunal is given jurisdiction and renders a decision. States can claim immunity from execution, especially if the assets in question are utilized for national security (Hobér, 2023). The diplomatic ramifications of state-to-state arbitration are frequently profound. The efficacy of investor protection systems may be impacted by the state's reluctance to fully cooperate in arbitration or abide by verdicts because of worries about their autonomy and international relations (Marisa, 2023). Understanding complicated treaties, managing intricate legal frameworks, and striking a balance between the rights and obligations of states and investors are all necessary to resolve jurisdictional issues about sovereign immunity and investor protection.

Case Analysis

An important arbitration case from 1958 that addresses state immunity and investor protection is Saudi Arabia v. Arabian American Oil Co., 1963 (Trans-Lex Law Research, n.d.). The American oil corporation Arabian American Oil Corporation (Aramco) and the Saudi Arabian government were at odds. An oil exploration, production, and marketing concession had been given to Aramco in Saudi Arabia. Conflicts emerged over time about how the concession agreement should be interpreted and carried out, especially when it came to pipeline building and oil transportation. The question which arose was whether Saudi Arabia, as a sovereign state and all alone, could alter or ignore its conditions regarding concession for Aramzo or not. The decision of the arbitral panel was in favour of Aramco in such a way that once the agreement on concessions was done by Saudi Arabia it needed to be obliged. The arbitral court decided that the state cannot alter the agreement alone, without going through the clauses and its duties under international trade law. Aramco's rights were upheld against the unpredictable actions of Saudi Arabia and hence the sacredness of the contract was emphasized.

This arbitral award is important as it has established that no state can use its sovereign power just to avoid contractual obligations under international trade law. This case sheds light on the conflict between state immunity and investor protection. Arbitral award emphasized that the state could be held responsible, in any international arbitration, to perform its contractual duties.

Germany v. Italy (Oxford International Public Law, 2012) is another prominent case which involves the jurisdictional sovereignty of states. In the International Court of Justice (ICJ) Germany filed a complaint against Italy. According to Germany, Italy had betrayed its sovereign immunity by allowing civil lawsuits in Italian courts for war crimes, carried out by Nazi forces, against them. The primary objective was to find whether the act of Italy violated international law or not. Italy demanded that war crimes against humanity should be exempted from sovereign immunity. ICJ gave a verdict, favouring Germany, that even in situations involving grave transgressions of international law which may include war crimes, states are normally protected from the jurisdiction of foreign courts. Moreover, ICJ decided that there is no exception to sovereign immunity, recognized by international investment law. It is observed by ICJ that state immunity is a procedural provision that has nothing to do with whether the state's actions are substantively lawful or not.

ICJ's decision supported the concept of state immunity by emphasizing that even in cases of grave international crimes, sovereign states cannot be indicted in other state's local courts without their consent. The findings of the case applied to Investor-state conflicts precisely even its main topic was state immunity about human rights and war crimes. Limitations of national court's jurisdictions were decided in this case, especially for all those investment cases when foreign governments, claiming immunity, are involved. This case explains the difficulties in striking a balance between investor protection and the rights of people who are seeking justice for the preservation of national sovereignty. Moreover, the significance of arbitration and other dispute resolution mechanisms is also highlighted under this court decision which allowed investors to pursue remedies, even in cases of state immunity and sovereignty.

An important arbitration case from 2003 that addresses state immunity and investor protection is Tecmed v. Mexico case (Italaw, 2003). Tecmed, which is a Spanish investor, argued in an ICSID arbitration that Mexico had broken the Mexico-Spain Bilateral Investment Treaty (BIT) by refusing the renewal of its toxic waste dump authorization. The hearing committee concluded that Mexico had violated the fair and equitable treatment (FET) criterion by engaging in indirect expropriation. A compensation of $5.5 million was awarded to Tecmed. The way that moderation and FET are interpreted in investment arbitration makes this case noteworthy. Multiple factors were highlighted in this case which include 1- fair and equitable treatment, 2- Proportionality in Expropriation, 3- narrowing the scope of police power doctrine and 4- impact of environmental rules and regulations.

Methanex v. United States (Italaw, 2005) is another prominent case which involves the jurisdictional sovereignty of states. Methanex, a Canadian methanol producer, argued in a NAFTA the arbitration process that the United States had broken the agreement by prohibiting a methanol-based fuel additive in California due to issues related to health and environment. Methanex claimed that the prohibition violated its duties to provide fair and equitable treatment leading to indirect expropriation. The panel rejected Methanex's arguments, concluding that the United States had sole authority to impose regulations on environment and health. This judgment made clear that expropriation does not apply to lawful, impartial measures for the public good. The case was a historic one due to the application of police powers doctrine in investment arbitration. U.S. legal fees was imposed as fine on Methanex.

These rulings helped in shaping international investment law more precisely and accurately in investor state dispute regulations.

Enforcement Challenges

In most cases, arbitral awards and court rulings are difficult to enforce. Some kind of difficulties are:

State Immunity in Prosecution

Some specific assets are exempted from enforcement of awards even if states have agreed to arbitration or litigation. Assets that are meant to be used for public purposes cannot be attached or taken to execute the enforcement of the award (Ndayisabye, 2023). Normally, assets related to business purposes are permitted for the implementation of arbitral awards. Differentiating between these kinds of assets can be difficult and complicated legally since states frequently claim that their assets are used for sovereign reasons to evade punishment.

Domestic Legal Structures

If domestic courts decide to enforce foreign arbitral awards or judgements, they do so by their legal norms. State immunity laws can be applied quite differently in different jurisdictions, which can produce different results (Bjuhr, 2023). The implementation of state immunity rules is not consistent worldwide, resulting in a patchwork of enforcement mechanisms. Investors may encounter distinct legal obstacles contingent upon the nation in which they pursue enforcement (Maalouf, 2024).

Exceptions in Public Policy

States have the option to challenge the execution of foreign judgements or arbitral awards by citing exceptions based on public policy. A state may use this defence to claim that enforcement would go against its core legal values or the interests of the public (Arp, 2023). Public policy exceptions are frequently construed liberally, allowing governments a great deal of discretion to contest their enforcement for a variety of reasons, including concerns about sovereignty and national security, or financial stability.

Problems Associated with Special Asset Types

Since the assets owned by a state's central bank are deemed essential to the nation's monetary policy and economic stability, they are frequently exempt from enforcement actions. To protect national security and cultural integrity, sensitive assets such as military hardware and artefacts are usually exempt from enforcement (Brunk, 2023). The concepts of state immunity make it difficult to enforce arbitral awards and court rulings against states in investor-state conflicts. The distinction between commercial and sovereign assets, differences in national legal systems, public policy defences, diplomatic concerns, and particular safeguards for particular categories of state assets, are some of these difficulties.

Notable Case

The Republic of Argentina v. NML Capital, Ltd. Case, (Supreme Court of the United States, 2014) Brings to light important obstacles to the enforcement of arbitral verdicts and judgements against governments because of investor protection concerns and state immunity. A holdout creditor that abstained from Argentina's debt restructuring after its 2001 default is NML Capital, Ltd., a subsidiary of hedge fund Elliott Management Corporation. In this case, the Sovereign state is Argentina. Argentina restructured its debt between 2005 and 2010, with the majority of its creditors agreeing to accept new bonds for a fraction of the previous value, following the 2001 sovereign debt default. Nonetheless, NML Capital decided to sue for full reimbursement. Argentina was ordered by US courts to pay the whole amount owed on the defaulted bonds, as per the judgments obtained by NML Capital. Among the rulings in these cases were directives to divulge Argentina's global asset portfolio. Discovery orders were obtained by US courts requiring Argentina to provide comprehensive details about its worldwide holdings, which NML Capital may use to pursue the execution of the judgments.

Regarding State Immunity Defense, Argentina contended that under international law and the US Foreign Sovereign Immunities Act (FSIA), many of its assets, especially those connected to sovereign responsibilities, were exempt from executions. Identifying which Argentine assets may be deemed sovereign vs commercial, subject to enforcement, was at the centre of the legal dispute. This distinction is important, yet it can be difficult and controversial legally. The global asset discovery orders issued by US courts were unparalleled in their reach. Because these orders forced the disclosure of highly classified data concerning assets utilized for sovereign purposes, Argentina argued that they breached the concepts of diplomatic immunity and state sovereignty.

It was extremely difficult to enforce judgments against foreign sovereign assets, even with discovery orders. The enforcement procedure is made more difficult by the disparate ways that different governments define and use sovereign immunity. As a result of this case, some political stress took place between the two countries. According to Argentine, its sovereignty is violated due to strong enforcement measures which made it difficult to perform its normal government actions.

Balancing of Investor Protection and State Immunity

Waivers of Immunity:

Waivers of immunity are powerful tools to balance investor protection and state immunity. Framework for foreign investors is offered by governments, while safeguarding their sovereignty, for the implementation of arbitral awards to pursue justice (Delimatsis & Hrynkiv, 2023). The waivers which give assurance to investors regarding legal remedies are very important for striking a balance between investor protection and sovereign immunity. These waivers need to be drafted carefully with the support of a legal framework to effectively permit investment and safeguard the interests of states and investors (Baltag et al., 2023). Moreover,

Piercing the Corporate Veil:

Piercing the corporate veil means a legal technique in which tribunals reject the sovereign legal identity of state-owned enterprises (SOEs) to make the state answerable for the debts or other activities of the SOEs. Especially, when the SOEs are used to shield the state from accountability, this is done as an assurance that investors can apply for rewards straight from the state (Durkee, 2024). Tokios Tokelės v. Ukraine case (Italaw, 2004), is a notable case in which the tribunal assessed the jurisdiction and liability by considering the level of control the state applied over the business associations. One more prominent case is Foresti v. South Africa case (Italaw, 2010) in which the issue of breaching the corporate veil was raised to determine whether the states could be held answerable for the deeds of their agencies or not.

Reforms in the EU's investment court system

With the goal of replacing conventional ISDS procedures with a more open and unbiased framework, the EU has implemented numerous improvements to its Investment Court System (ICS) including: a- establishment of permanent investment tribunals, b- transparency, by enhancing openness and public hearings, c- judicial independence, d- uniformity in decision making, and d- public interest protection. These reforms, which have been incorporated into recent EU trade agreements (including CETA), demonstrate the EU's resolve to modernize ISDS (Gantz, 2017).

Some recent developments include Multilevel Investment Court (MIC) initiative, supplemental provisions under CETA, inclusion of investment court provisions in trading agreements. By striking a balance between investor protection and state sovereignty in regulating in the public good, these efforts demonstrate the EU's dedication in improving investment dispute resolution (Segger & Garcia, 2025).

Recommendations

- While signing contracts and BITs, authorized individuals should incorporate express waivers of immunity. If there is any standardized legal frame, then the investor's clarity regarding the protection of his investment will increase. In this way, inconsistent state immunity applications will be wiped out.
- Some specified procedures should be adopted to efficiently enforce arbitral awards. These standards should be more precise regarding the asset attachment while executing any award.
- Transparent contract clauses will add more value to the investor's mind and his satisfaction will attract more investment.
- To reduce uncertainty and jurisdictional problems, investment contracts and BITs should include mandatory arbitration clauses that specify the forum and procedures for resolving disputes.
- Mediation and reconciliation should be exercised at initial stages of dispute rather than going for litigation or arbitration.
- To protect investment, arbitration frameworks should have some temporary remedies and interim relief for the sack of initial compensation.

- The addition of an appeal process should be there in the arbitration procedure.
- To review arbitral awards time and again, the procedure for appeal should be included in the contract.
- To make a more effective and efficient procedure for investment, arbitration rules and regulations should be reviewed after a specified time frame.

Conclusion

State immunity and investor protection are the most important pillars of international investment law. Striking a balance between protecting foreign investments and upholding the State's right of sovereignty is a complex challenge. The finding of this study shows that investors want specific mechanisms for the resolution of conflicts on time and states also want to uphold their sovereign control over assets. The study found that there are many advancements which took place in the field of investment law. On one hand, state immunity can prevent arbitral awards from being enforced, which deprives investors of useful recourse and on the other hand week state immunity can expose sovereign rights which might harm the nation as a whole. Creation of legal structure, rules and regulations are most important for the better results of dispute settlement.

It is found that standardized arbitration clauses, special investment courts, transparency in proceedings and unambiguous arbitration clauses can foster a more favorable environment for investments. Moreover, enhancing international cooperation, consistent legal standards, and strengthening competence in underdeveloped countries can improve the dispute resolution mechanism. Based upon the findings, it is recommended that foreign investment be carefully safeguarded. To enhance the investment by executing hybrid approaches, regular modifications in regulatory frameworks, for both state immunity and investor protection, should be made. The right to appeal should be added in BIT clauses while signing the contract. Arbitration frameworks should have some temporary remedies and interim relief the investment safeguard.

Conflict of Interest

The authors of the manuscript have no financial or non-financial conflict of interest in the subject matter or materials discussed in this manuscript.

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