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DECLARATION

This is a dissertation submitted to the School of Law as part of the requirements for the award of an LLM.

Statement of Original Authorship

I declare that I have read the notes on plagiarism, including its definition and cheating, in the Postgraduate Programme Handbook and that this work is entirely free from plagiarism. I understand the consequences of committing plagiarism. I have acknowledged all quotations and ideas as advised in the Handbook. Where I have been in doubt about how to acknowledge an idea or quotation, I have consulted my supervisor. Neither this piece of work nor any part thereof has been submitted in connection with another assessment.

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ABSTRACT

The prevailing enforcement gap relating to investor-state arbitration is a structural challenge to the legitimacy of the international investment regime. This dissertation shows that the gap is not a one-time aberration but a systemic vulnerability encouraged by three mutually reinforcing forces: the responsiveness of public-policy appraisal, execution-stage state immunity, and the claim of regional constitutional independence, most notably in the EU in the "Achmea" and "Komstroy" jurisprudence. The analysis of the "New York Convention" and the "ICSID Convention" through doctrinal analysis and the comparison of the major leading rulings of the UK, the EU member states, the" United States, Sweden, and the main Asian" jurisdictions deployed in the study show that despite the formal affirmative commitments to pro-enforcement, there are systemic differences in the treatment of the public policy and sovereign assets. The studies also put these tensions in the context of recent legal developments, such as the concerted withdrawal of EU and UK states from the "Energy Charter Treaty"; the reforms reflected in the "UK Arbitration Act 2025" and the changes to the ICSID rules on transparency in 2022. The core output of the dissertation is a three-pronged reform agenda to recalibrate enforcement: (i) commercial assets carve-outs of the New York Convention, (ii) soft-law guidance notes of an international conception of public policy, and (iii) the institutionalisation of coordination between ICSID and supranational courts to resolve norm clashes. These reforms are jointly said to mitigate the frictions of enforcement and protect regulatory discretion, which contributes to a more balanced and sustainable model of investor-state dispute settlement.

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TABLE OF STATUTES

Statute/Convention	*Date*	*Description*
"New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards"	1958	"An international treaty providing the framework for the recognition and enforcement of foreign arbitral awards."
"ICSID Convention on Arbitration Rules"	1966	Establishes the International Centre for Settlement of Investment Disputes (ICSID) and sets out the rules for arbitration between states and foreign investors.
"Foreign Sovereign Immunities Act (FSIA)"	1976	"US statute that governs the immunity of foreign states from being sued in U.S. courts, including exceptions related to arbitration awards."
"UNCITRAL Model Law on International Commercial Arbitration"	1985	Sets a standard for International Commercial Arbitration to harmonise the arbitration laws of different jurisdictions.
"UK Arbitration Act"	2025	"Legislation governing arbitration in the UK, including provisions on the governing law of Arbitration Agreements, Judicial Review, and challenges to Arbitral Awards".

TABLE OF CASES

Case Name	*Jurisdiction*	*Date*	*Key Legal Issue*
"Achmea B.V. v. The Slovak Republic"	CJEU	2018	Intra-EU Bilateral Investment Treaties (BITs) and their compatibility with EU law, particularly regarding ISDS provisions.
"CMS Gas Transmission v. Argentina"	ICSID	2005	Enforcement of the ICSID award and the invocation of sovereign immunity by Argentina due to national economic interests.
"Ecuador v. Chevron"	PCA	2010	Enforcement of an arbitral award concerning environmental damage, with Ecuador refusing to enforce the award on public policy grounds.
"India v. Vodafone"	PCA	2020	Dispute between "India and Vodafone" over tax liabilities and the application of BITs in relation to tax disputes.
"Micula v. Romania"	ICSID	2013	Enforcement of an "ICSID award" where Romania refused to comply, citing national economic policy considerations.
"Pakistan v. Tethyan Copper Company"	ICSID	2019	Pakistan's use of sovereign immunity to resist the enforcement of an "ICSID award" concerning mining rights.
"Perenco Ecuador Ltd v. Republic of Ecuador"	ICSID	2019	Dispute over the enforcement of an "ICSID award" and the use of sovereign immunity to avoid complying with the arbitral award.
"Russian Fed v. Yukos Universal Ltd."	Hague District Court	2016	Enforcement of the "ICSID award" against Russia, where Russia resisted enforcement due to national economic and political interests.
"Ukraine v. Russia"	PCA	2020	Case involving the enforcement of an arbitration award, with "Ukraine" challenging Russia's non-compliance under public policy arguments.

LIST OF ABBREVIATIONS

Abbreviation	***Meaning***
AARYA	Author's Name (Aarya Satheesan)
AI	Artificial Intelligence
ARB	Arbitration
BIT	Bilateral Investment Treaty
BITS	Bilateral Investment Treaties
BOSNIA	Bosnia and Herzegovina
BV	Besloten Vennootschap (Private Limited Company)
CIETAC	China International Economic and Trade Arbitration Commission
CMS	Case Management System
CJEU	Court of Justice of the European Union
EU	European Union
ICSID	International Centre for Settlement of Investment Disputes
ICSID Convention	Convention on the Settlement of Investment Disputes between States and Nationals of Other States
ISDS	Investor-State Dispute Settlement
PCA	Permanent Court of Arbitration
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law

Chapter 1: Introduction and Theoretical Foundation

1.1 Introduction and Background

The "Investor-State Dispute Settlement (ISDS)" has evolved into one of the most significant systems of international investment law generally. It also enables foreign investors to take the host states to court to seek reparations in case it affects their investments adversely due to any such acts, such as expropriation, discrimination, or breaches of agreements between nations. This instils assurance amongst investors that their funds are secure even in the face of bias of the local legal framework in some jurisdictions due to political instability, corruption, or even that the state agenda can influence the rule of law.

International legal instruments that regulate the mechanism to a large extent are "Bilateral Investment Treaties" (BITs), "Multilateral Investment Agreements (MIAs)", and more specifically the "ICSID Convention" and the "New York Convention". "ICSID Convention (1966)"[1], which was set up under the "International Centre for Settlement of Investment Disputes (ICSID)", offers a mechanism for settling disputes between foreign investors and sovereign nations[2]. It aims at making the arbitral awards executable without having to seek the intervention of the national courts. Similarly, the "New York Convention (1958)" paves the way to recognition and enforcement of foreign arbitral awards, thus favouring international arbitration as a method of resolving international disputes with certain reliability.[3] Such frameworks have assisted in enhancing the level of confidence of foreign investors since they offer a non-partisan platform for dispute resolution.

In spite of their importance, legal provisions regarding the enforcement of arbitral awards on the basis of the "New York Convention" and the "ICSID Convention" are a field of large legal doubt and difficulties in practice[4]. The problem of enforcement is especially tricky where an arbitral award is rendered against a sovereign state and is shielded by the doctrine of sovereign immunity. Sovereign immunity is the fact that states are not subject to foreign legal judgments or the enforcement of arbitral awards, and that they have made no express waiver of this immunity. Such

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[1] Convention on the Settlement of Investment Disputes between States and Nationals of Other States (opened for signature 18 March 1965, entered into force 14 October 1966) 575 UNTS 159.

[2] ibid

[3] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 38.

[4] UNCITRAL Model Law on International Commercial Arbitration 1985 (adopted 21 June 1985).

a doctrine, codified in the “Foreign Sovereign Immunities Act (1976)” in America and other jurisdictions, makes enforcing arbitral awards complicated in most instances, even though such awards have been given the force of international laws under international treaties such as the “New York Convention”[5].

What is more is that states usually refer to issues of public policy and national security in order to oppose the enforcement of arbitral awards, particularly when the state is faced with the real possibility that an award may impact key economic sectors, regulatory freedom, or the political status quo. As an example, states can claim that the enforcement of an arbitral award may provide poor economic consequences or will destabilise their operations in the regulation of domestic industries in the public interest. Such defences that are allowed in the public policy of both the “New York Convention” and the “ICSID Convention” have been accepted in many jurisdictions, but have been applied unequally and unpredictably, causing a lack of fairness and predictability in the enforcement process.[6]

Recent political trends have escalated the pressure between sovereignty and the international responsibility of states. One of the examples is the achievement of the “Achmea case (2018)” by the “European Court of Justice” (ECJ), which struck down intra-EU BITs, claiming that they are inconsistent with EU law. The case has questioned the applicability of the arbitration awards in the EU since it delegitimises the existence of investor-state arbitration in the internal legal system of the EU. On the same note, the Brexit case has left doubts about the execution of investor-state arbitration awards between the UK and EU member countries, since the arbitration rules have changed after Brexit.[7].

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[5] Foreign Sovereign Immunities Act 1976, 28 USC §§ 1330, 1602–11 (1976).
[6] F Brodlija, ‘International Commercial Arbitration Law and Practice in Bosnia and Herzegovina: Lessons from Investor-State Dispute Settlement (ISDS) Reform’ (2024) 68 Strani pravni život 783.
[7] UKArbitration Act 2025, c. 1.

Theoretical Perspectives

The enforcement dimensions of investor-state arbitration can be elucidated in three related theoretical ways. Based on the liberal institutionalism, treaties like the "ICSID Convention" and the "New York Convention" are intended to achieve credible commitments and lower the level of uncertainty in cross-border economic relations, which is consistent with the greater argument that agreements can be used to foster cooperation in international relations even under anarchic conditions. Nonetheless, the patchy enforcement of awards demonstrates that the promise of comity lies in the restraining effect it offers and that domestic courts are the final arbiters able to invoke exceptions like public policy or sovereign immunity to refuse recognition.

By comparison, realism and political economy serve as a reminder that states are merely beholden to whatever they believe to be their own regulatory autonomy, national security, and objectives of economic policy. This point contributes to the comprehension of the opposition to any awards that would jeopardise important areas of policy, and are used in the case of renewable energy in Spain where such awards were successfully opposed on the basis of fiscal stability. Finally, the constitutionalising and pluralism theories shed some light on the dysfunctionalities between higher orders of law and international investment law. Cases of the Court of Justice of the European Union involving "Achmea" and "Komstroy" demonstrate that supranational constitutional values such as the autonomy of EU law may prevail over arbitral commitments and will result in a fragmented enforcement regime.

1.2 Problem Statement

International arbitral awards, especially among sovereign states, are becoming a problem to enforce. There are often cases when governments oppose the enforcement of awards, basing their arguments on sovereign immunity, public policy and national security. The immunity of states, as it is granted by sovereign immunity and exempts them from any liability to be sued unless they want to be, has proved to be a decisive point in deciding how much arbitral decisions can be enforced. Although the "New York Convention" has established a general framework to enforce foreign arbitral awards, it has left the discretion of enforcement to be declined by the states on a limited number of reasons, such as a consideration of the state to the public policy, which is the most popular reason states resort to avoid enforcement.

1.3 Research gap.

Mainstream ICSID/NYC scholarship offers elegant doctrinal accounts of recognition yet under-theorises execution and compliance: (i) it treats "public policy" as a uniformly narrow exception despite wide judicial variation; (ii) it assumes ICSID Art 54's "as if final judgment" language cures enforcement risk while side-stepping execution immunity over state assets; (iii) it brackets EU constitutional autonomy (Achmea/Komstroy) as a regional anomaly rather than a structural norm collision; and (iv) it leans on thin, West-centric case samples, underplaying Asian non-ICSID forums where policy preferences and seat law drive outcomes.

Thesis: The enduring enforcement gap is structural — a triad of (a) elastic NYC Art V(2)(b) public policy, (b) state immunity at the execution stage, and (c) regional constitutional autonomy (notably EU law). Neither the ICSID nor NYC architecture can resolve this alone; a workable fix requires targeted domestic immunity carve-outs, interpretive guidance on a narrow public-policy exception, and better regime-coordination were supranational law claims primacy.

1.3 Research Question

How do government interests affect the enforceability of arbitration awards against sovereign nations under international conventions, particularly the New York Convention and the ICSID Convention?

1.4 Research Objectives

The following are the objectives of the dissertation

- Thorough analysis of the legal systems offered by the "ICSID Convention (1966)" and "the New York Convention (1958)" and their functions in supporting and controlling international arbitration, in addition to the execution of international arbitral awards
- Evaluation of the practical impediments to enforcement, such as sovereign immunity, public policy exemptions and the rights of the states to regulate. The latter will discuss how governments employ these principles of law to oppose their adherence to the arbitral awards
- Providing a comparative overview of practices of enforcement in various jurisdictions with particular reference to EU vs non-EU states, the implications of the legal changes in the region, and the reaction of national courts in supporting or challenging international arbitrations.
- The strengths and weaknesses posed by the international arbitral awards enforcement process in terms of consistency and effectiveness, how the existing approach to international arbitral awards adoption could be amended, how the New York Convention and the ICSID Convention

can be improved, and what alternatives to dispute resolutions can be proposed, a multilateral investment court, and so on[8]

1.5 Methodology

This research adopts a qualitative doctrinal and comparative legal analysis approach. The focus is on understanding how the enforcement of arbitral awards under the "ICSID Convention" and the "New York Convention" is shaped by different national interpretations, particularly in light of evolving EU law and post-Brexit considerations. The primary sources for this analysis include:

- "ICSID Convention/Rules (1966, 2024 amendments)"
- "New York Convention (1958)"
- "National arbitration statutes such as the UK Arbitration Act (1996/2025), French Arbitration Code, US Federal Arbitration Act (FAA), and Singapore International Arbitration Act (IAA)"
- "EU law (TFEU, CJEU judgments, Achmea/Komstroy rulings)"
- "Leading national case law (UK, France, US, Sweden, Singapore, etc.)"

The case selection is based on several criteria:

- Doctrinal leverage: Landmark cases that provide key interpretations of "NYC Article V(2)(b) (public policy exception) or ICSID Article 54 (enforcement stage), offering insights into the application of these rules in practice".
- **Regime collision**: Cases where EU law conflicts with ISDS, particularly post-Achmea and Komstroy, demonstrating the structural limits of investment arbitration in the EU context.
- **Execution stage challenges:** Focus on cases that deal with sovereign immunity and asset enforcement tactics, showing how execution issues complicate award enforcement (e.g., the immunity of state assets from seizure).
- **Recency and policy salience**: Emphasis on cases from jurisdictions affected by recent developments, including "ECT exit disputes (EU/UK)", "Brexit-related enforcement challenges", and the "UK Arbitration Act (2025)", which revises how awards are enforced within its jurisdiction.

[8] UNCITRAL Model Law on International Commercial Arbitration 1985 (adopted 21 June 1985).

- **Jurisdictional spread:** A balanced selection of cases from EU, UK, US, Sweden, and Singapore/Asia to ensure diverse perspectives and to reflect trends in non-ICSID arbitration, particularly in emerging arbitration hubs in Asia.

The sample of anchor cases to be analysed in-depth includes:

- Micula v Romania (ICSID, EU state-aid issue & enforcement) – Highlights EU autonomy vs ICSID enforcement challenges.
- Komstroy (C-741/19) (CJEU) – Examines constitutional limits in intra-EU ECT arbitration and its effect on enforcement.
- Perenco v Ecuador – Demonstrates execution challenges with sovereignty claims and the public policy exception in the context of resource disputes.
- Spain Renewable Energy ECT awards – Explores post-Achmea conflicts across multiple seats and enforcement fora, illustrating the ongoing tension between investor protection and state sovereignty.
- Yukos set-aside/enforcement saga – Focuses on public policy and state conduct issues, particularly about the enforcement of Russian assets in Europe and the US.
- One Asian seat case (e.g., HKIAC/SIAC) –Analyses the enforcement of non-ICSID awards to illustrate the rise of non-ICSID arbitration in Asia, highlighting regional trends and their implications for global enforcement.

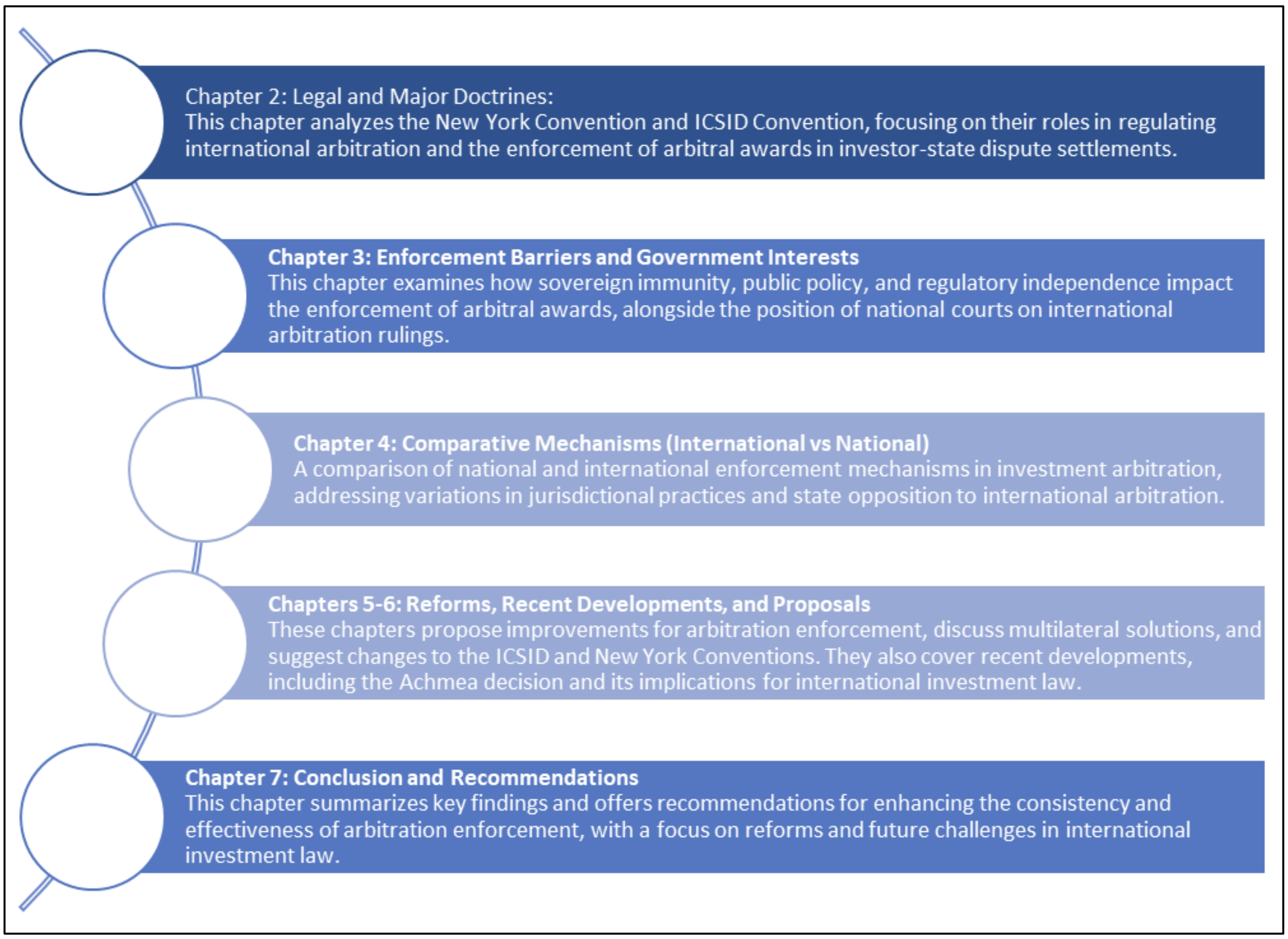
Methods of interpretation will involve a textual analysis of the “ICSID and NYC” provisions, alongside a systemic approach that looks at how these provisions interact with national and regional legal systems. A comparative treatment of the “NYC public policy” exception will be applied across the “UK, France, the US, Singapore, and Sweden” to explore how courts in different jurisdictions apply and interpret these exceptions. While this study is not empirical, it mitigates the absence of quantitative analysis by triangulating different sources: arbitral awards, judicial opinions, and “travaux preparators (legislative history of the ICSID and NYC)”. A Case Matrix will be provided in Appendix A to document the selection of cases, criteria for inclusion, and rationale for their relevance to the research question.

1.6 Scope and Limitations

This dissertation will only focus on a legal analysis of the enforceability of international arbitral awards under the “New York Convention” and the “ICSID Convention”. The dissertation is not going to conduct empirical surveys, statistical analysis, or interviews and will deal with the analysis of the theoretical and legislative basis of international arbitration and the means of its enforcement. The dissertation will also avoid such practical discussions as how the awards, in particular cases, have been applied, but will discuss doctrine and the identification of legal barriers to enforcement.

The study will also be restricted to only a critical analysis of the role played by the sovereign immunity, public policy exception and national security in the enforcement process. Although recent case law will be taken into account, the dissertation will not offer a case-by-case analysis because it will identify the main cases that establish general trends in the application of investment arbitration awards[9].

1.7 Chapters Overview



[9] David Schneiderman, Constitutional Review and International Investment Law (Oxford University Press 2024)

Chapter 2: Government Interests and the Enforcement of International Arbitration Awards

2.0 Literature Review

Introduction

The essential question is that is it possible to enforce the international arbitration award on the priorities and policies of the country, and what effect as a sovereign might be allocated to the country in that case. The author highlights this contradiction, as a means of states trying to inoculate themselves against enforcement by the cloak of sovereign immunity or exceptions to the rule of law in the form of public policy. One major example notes the case of "CMS Gas Transmission v. The hostility between national interest and the international law requirements can be observed in Argentina (2005) whereby the country denied enforcing an ICSID award owing to its national economic interests amid a financial crisis.

Similarly, the so-called Achmea Case (2018) of intratextuality invalidation of “Intra-EU Bilateral Investment Treaties (BITs)” by the EU that was adopted by the “Court of Justice of the European Union (CJEU)”, also highlights the tension between the EU legislative provisions and the International Arbitration Methodology. This ruling struck down the “Investor-State Dispute Settlement (ISDS)” regime in the EU casting doubt on the enforceability of "ISDS awards" and bolstering state sovereignty at the "EU legal framework level.

Pro-System (ICSID/NYC Sufficiency) - Schreuer’s Perspective

View of Schreuer favours the “ICSID Convention” and “the New York Convention (NYC)” as adequate mechanisms to ensure predictability and enforceability of other international arbitration awards. Schreuer claims that ICSID gives a separate platform, heightening influence of internal regulations and courts, especially by suppressing difficulties arising concerning sovereign immunity. Nonetheless, these claims notwithstanding, immunity of execution is a big problem. Also, the Achmea and Komstroy decisions expose one major issue with ICSID worldwide applicability: the sovereignty of EU law, which may prevail upon ICSID enforcement, especially in intra-EU situations. This poses a defect in the framework of ICSID, as EU law tends to override “ICSID” decisions and produces a piecemeal enforcement across jurisdictions.

The framework of ICSID is set up to promote uniform enforcement, although in practice, things are more complicated. An example of this, the so-called Achmea case, demonstrates how rulings by CJEU can essentially thwart ICSID enforcement in the EU, due to the predominance of the so-called EU law. This dilemma underscores how the practical adequacy of ICSID theory fails to recognise the constitutional restraints of the regional legal regime, engagement of regional legal authority in particular domains, particularly the EU, where autonomy over the law provides a major obstacle to international enforceability.

Critical School (Bias & Regulatory Chill) - Sornarajah's Perspective

The bias in the ISDS system that Sornararaj highlights includes the chill it creates on investors. Sornararaj argues that the system of ISDS frequently requires investor rights to prevail over state sovereignty, so states tend to avoid implementing necessary public policies, such as environmental regulations or laws promoting the health of their citizens in the fear of expensive arbitration movements. This state-monitoring frugality is particularly problematic in areas where the substantial state intervention is required to promote the common good, but states fear to implement such regulations because of the likelihood of arbitration difficulties.

This criticism is, however, over generalisable. In a number of situations, the presence of bias due to ISDS is clear, but it is not the case everywhere. Examples include non-ICSID forums, especially Asian ones, such as "SIAC" and "HKIAC", which have gone out of their way to develop more balanced arbitration systems. The case of the Asian-seat non-ICSID is added to demonstrate the emergence of the new non-ICSID arbitration volumes and their possible capacity to equalise the investor-state arbiter framework. The case has been selected because it is both geographically and procedurally relevant, especially with regard to Asia-seated arbitration system that is becoming a significant aspect. The case illustrates the development of non-ICSID arbitration and emphasises the more balanced nature of arbitration forums (such as SIAC or HKIAC) especially when issues of state sovereignty and social policy are in play. It highlights diversity and creativity of the approach of arbitration beyond the ICSID system. The temperature of these Asia-based arbitration platforms provision presents a more equitable wave of arbitration in addition to whom state regulation issues are better incorporated, and possess a glassier environment than the traditional framework of ISDS found within ICSID.

EU Constitutional School (Post-Achmea/Komstroy)

The international investment law and the EU law overlap the EU law, and the EU Constitutional School highlights the tension between the two. The rulings by the Achmea and Komstroy cases have significantly transformed the contours of intra-EU ISDS averages asserting the supremacy of EU law over the international arbitration compact. Those rulings show that the EU law prevails over the international investment law that declares the nullity of the arbitration process amongst the EU member states and casts grave doubt to the binding force of the "ICSID awards" to the EU.

As the ruling of State A3 and 2 in Achmea and Komstroy illustrates, the constraint of ICSID on the constitutional extent set by EU law creates a major issue in enforcement within EU. Such adjudications demonstrate how independence of EU law presents an institutional challenge to the ICSID universal approach to arbitration. Therefore, the ICSID framework is not sufficient to address disputes involving members of the EU as it fails to deal with the issue of constitutional conflicts between EU law and international investment agreements. This dispute also reveals a mismatch of the so-called ICSID system with regional legal systems, especially the EU.

The pro-system perspective proposed by Schreuer states that "ICSID/NYC" offer a robust structure that adequately addresses the enforcement of awards in trans-jurisdictional contexts, even though this perspective ignores practical obstacles to implementation, including immunity to execution and EU autonomy. ISDS systems are investor-biased, and the major consequence on states is regulatory chill as lamented by "Sornararajah". But the critique of Sornararaj ignores variations in regions, including non-ICSID arbitration in Asia, which is a more balanced framework. An architectural shortcoming that cannot be addressed by the ICSID doctrinal framework is the primacy of EU law advocated by the so-called EU Constitutional School. The judgments of the CJEU in Achmea and Komstroy indicate the inconsistency of ICSID commitment enforcement in the EU, as a regionally applicable legal order can take precedence over others, such as EU law. This shows one of the gaps of the ICSID system, that times global coherence is destroyed by regional legal wars and notes the necessity of reform of "ICSID" to resolve constitutional wars between supranational jurisdiction to the law of investment.

Positioning This Dissertation within the Debate

This dissertation finds itself in the middle of these diametrically opposite schools. It criticises the pro-system writer's presumption that the gaps in enforcement are mere technicalities, and it also opposes the critical point that ISDS is terminally biassed against states. Relatively, it further develops the thesis that the enforcement deficit is structural: it is an outcome of the tension between international legalisation and sovereign autonomy that remains. The inertia of elastic review of the public policy, immunity of the execution phase and the dominance of the constitution in the EU makes sure that the issue is structural and not sporadic. Simultaneously, that Asian arbitral forums like SIAC and HKIAC are increasingly gaining leverage indicates that it is possible to work on the system, re-calibrating it. The main advantage of this dissertation is that it recognises these three pathologies as the sources of the enforcement gap and suggests specific reforms to solve them.

2.1 Introduction to International Investment Law

It allows foreign investors to compensate the host states in case their investments are damaged by such actions as expropriation, discriminatory treatment, or a violation of the treaty obligations. Such a mechanism is especially critical when it comes to the security of international capital and building trust among investors. The arbitration process also provides an alternative to the domestic courts, where the investor may not be in a favourable position because of bias or political influence in the case of the state.[10]. International conventions, including the "ICSID Convention" and "the New York Convention", usually regulate investment arbitration by providing rules related to the enforcement of arbitral awards and the establishment of the consistency of the dispute resolution process in various jurisdictions[11]. Connecting investment arbitration to its socio-political impact, particularly in shaping governance and law-making in sovereign nations, would enrich the understanding of its broader implications[12].

The history of the "Investor-State Dispute Settlement (ISDS)" system can be traced back to the mid-20th century, as it was an evolution of the former system of diplomatic protection and state-to-state dispute resolution[13]. With the introduction of "Bilateral Investment Treaties (BITs)" and later "Multilateral Investment Agreements (MIAs)", a basis has been provided to protect foreign investment based on introducing binding dispute resolution mechanisms that are not under the jurisdiction of states.

The major actors in the arbitration mechanism are investors, host states and arbitral tribunals. Investors, in most cases, multinational corporations or individuals, utilise the protection of an investment treaty when they feel that their rights have been infringed by the activities of a host state[14]. The host states, on the contrary, are bound by the protection of foreign investment, but they also maintain their state sovereignty on economic and regulatory decisions. Arbitral tribunals or

[10] Andrea K Bjorklund (ed), Yearbook on International Investment Law & Policy (OUP 2019).
[11] Lim, C. L., Ho, J., & Paparinskis, M., International Investment Law and Arbitration: Commentary, Awards and Other Materials (2nd edn, Cambridge University Press 2021).

[12] UK, Arbitration Act 2025, c. 1.

[13] Tobias Lehmann, *Investment Arbitration and International Climate Change Law* (Kluwer Law International 2025).

[14] UNCITRAL Model Law on International Commercial Arbitration, adopted 21 June 1985, A/40/17.

international legal experts are supposed to solve the disputes impartially and make sure that the international standards are respected[15]. International investment arbitration is a very important field. Such neutrality is particularly significant in those nations which have unstable and ineffective legal frameworks or in those cases when corruption or national interests can prevent a fair trial[16].

2.2 Government Interests in Arbitration

A decision that is connected to arbitration is normally made cooperatively, regardless of the state of sovereignty, national security, and economic policies. In particular, the states argue that they have a right to regulate such matters as environmental protection, health, and social policy, which, directly or indirectly, may impact investing abroad[17]. This creates conflict between the sovereignty of the state and the international engagements of the state to treaties through investment [18].

Political considerations usually build and shape governmental interests, which conflict with the agreements of international investment obligatory agreements. To take an example, securing national industries or serving national achieved goals can conflict with the protection of investors under "Bilateral Investment Treaties (BITs)" and multilateral investment agreements (IIAs), thus compelling states to oppose the enforcement of arbitral awards[19]. In cases of public health, the environment or even labour laws, states have the sovereign prerogative to operate against international commitments, and this can come in direct conflict, as it did in "Vattenfall v. Germany", in which the environmental policies of Germany were against the "Energy Charter Treaty (ECT)"[20].

In such a case as "Pakistan v. Priorities", such as sovereignty and economic independence are given a shield on the "Tethyan Copper Company", states more than international legal duties. This shows the effect of national interests on the readiness to adhere to the arbitral awards. Moreover, national

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[15] Flavia Marisi, 'Consistency in Investor-State Arbitration' (2023) 2 Studies in European Economic Law and Regulation 255.

[16] John A Long – 'Publications List' (Publicationslist.org, 2023) https://publicationslist.org/john.long accessed 2 September 2025.

[17] Muhammad Salman, 'Navigating Investor-State Dispute Settlement: The Dynamics between Investment Protection and Sovereign Control' (2024) 10 China and WTO Review 1.

[18] Foreign Sovereign Immunities Act of 1976, 28 USC §§ 1330, 1602–11 (1976).

[19] Tulika Thakur, 'Reforming the Investor-State Dispute Settlement Mechanism and the Host State's Right to Regulate: A Critical Assessment' (2020) 25(3) Indian Journal of International Law 455

[20] Flavia Marisi, 'Consistency in Investor-State Arbitration' (2023) 2 Studies in European Economic Law and Regulation 255.

courts may exercise public policy exceptions to refuse enforcement, which further complicates the procedure of enforcing international arbitration provisions. The most heinous example is "Chevron", in which Ecuador refused to execute an arbitral award based on national sovereignty, citing a reason of public policy, and the state is authorised to regulate its natural resources. Not only that, but it also presents investors with an unpredictable legal environment.

Awards may, at times, be disregarded by governments whose cooperation will contradict their political or economic goals. A notable example is the "Micula v. Romania case (ICSID Case No. ARB/05/20, Award published 11 December 2013)", where Romania resisted an ICSID award requiring compensation to the Micula brothers for the breach of a bilateral investment treaty, citing national economic concerns and budgetary constraints[21]. "Micula v. Romania" was chosen due to its significant impact on the enforcement of ICSID awards, particularly regarding economic policy and budgetary constraints. The case was selected because it highlights the complex relationship between sovereign interests and international obligations, offering doctrinal insights into state resistance to enforcement. The case clarifies how national economic policy, such as budgetary restrictions, can be used as a public policy exception to avoid implementing an "ICSID award". It provides a critical example of state sovereignty affecting the enforceability of arbitral awards, illustrating how the national courts apply economic and public policy exceptions. Though the decision of the tribunal went in favour of the investors, the reluctance exhibited by Romania to part with the damages awarded was reflective of a bigger problem that the country had to consider, i.e. maintaining the political stability in the country and not having to face the backlash.

The pressure that governments face in enforcing arbitration awards is due to international commitments made to international, related and bilateral, and multilateral investment treaties. The level of pressure can, however, vary with the enforcement mechanisms in existence. The "Enforcement New York Convention (1958)" is a set of rules whose aim is the facilitation of the implementation and enforcement of foreign arbitral awards, but the enforcement normally relies on the national legal systems, and these may be a matter of national sovereignty. The enforcement of the arbitral awards can also be controversial because governments witness the tensions of the

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[21] Patrik Finckenberg-Broman, Weaponising EU State Aid Law to Impact the Future of EU Investment Policy in the Global Context (Springer 2022).

need to react to their international commitments, on the one hand, instead of protecting the national interest[22].

In Vattenfall v. Germany[23], the tribunal ruled in favour of the investor, thus prioritising the Energy Charter Treaty over national regulatory autonomy. While the decision reinforced the importance of investor protection, it raises concerns about whether tribunals overstep when ruling on issues of national environmental policy. I agree with the decision's protection of investors, but I think the broader implications for environmental policy and regulatory autonomy were not fully addressed. While investment treaties like BITs and IIAs aim to protect investors, they often encroach on states' rights to regulate their affairs. In my view, the ISDS system could benefit from a more nuanced approach that allows states to regulate in the public interest without the fear of costly arbitration claims.

2.3 Enforcement Challenges in Investment Arbitration

Legal and Practical Challenges in Enforcement

The international arbitration awards are not easy to enforce, especially the ones that involve a sovereign state. This has been difficult as arbitration decisions are internationally recognised, but the manner the decisions are enforced may be inconsistent since different countries will have different legal systems. One of the main instruments of the enforcement of awards abroad is the "New York Convention" on the "Recognition and Enforcement of Foreign Arbitral Awards (1958)", ratified by more than 160 countries. The author of the study notes, though, that such conditions usually leave space where national courts can act to oppose enforcement, particularly when the matter concerns issues of state sovereignty. In systems that operate under the "ICSID Convention (1966)" governing disputes under the "International Centre of Settlement of Investment Disputes (ICSID)", the process of enforcement is slightly simplified because the awards made by ICSID are eligible for automatic enforcement in contracting states without necessarily involving the intervention of a local court.

Sovereign Immunity and Its Impact on Enforcement

The principle of sovereign immunity is one of the major barriers to the enforcement of investment arbitration awards, as sovereign states cannot be sued without their consent. According to such

22 David Schneiderman, Constitutional Review and International Investment Law (OUP 2024).

23 *Vattenfall v Germany* (ICSID Case No ARB/12/3) (2012).

doctrine, sovereign states are not obliged to pay damages or even to be bound by an arbitral decision unless they have waived their immunity. “Perenco v. Ecuador” is included for its relevance to sovereignty challenges in the enforcement process, particularly focusing on public policy exceptions used by states to avoid enforcement of arbitral awards. This case was selected based on its doctrinal leverage, illustrating the tension between sovereign immunity and investor protection in the post-ICSID context, in line with the methodological criteria.

The sovereign immunity has been used by governments as a blanket defence in most instances to prevent the enforcement of arbitral awards. As an example, in “Pak v. According to Tethyan Copper Company (2019)”, the “Pakistani government” attempted to rely on sovereign immunity to avoid compensation under an ICSID award. But Pakistan claimed that the implementation of the award would be against the sovereignty and national interest of the country, particularly since the case concerned the national resources. This case shows that governments may use sovereign immunity as a protection tool that ensures they do not abide by arbitration awards even when they have signed an international convention that obliges them to abide by the arbitration awards.The conflict between state sovereignty and international responsibilities perhaps comes to the forefront when it comes to the functions of national courts in the implementation of the investment arbitration awards. Even though there are international conventions such as “the New York Convention” and “the ICSID Convention” that provide the basis for enforcing awards, in many cases, the national courts have relied on case law to decide on the issue of whether to uphold such awards. Individual national courts are under no obligation to comply with international law as interpreted in international courts and may instead interpret such obligations in a domestic law-friendly way that the wording of the international treaty or convention does not allow. This poses serious problems to investors who may want to enforce the awards in a jurisdiction that is not friendly to the enforcement of an international arbitration award[24]. The Sweden set-aside case is selected due to its focus on the procedural aspects of ICSID enforcement, specifically judicial intervention in the set-aside process. It illustrates critical legal tensions in international arbitration, especially the degree to which national courts can intervene in ICSID enforcement under the New York Convention. It illustrates critical legal tensions in international arbitration, especially the degree to which national courts can intervene in ICSID enforcement under the “New York Convention”.

[24] Muhammad Salman, ‘Navigating Investor-State Dispute Settlement: The Dynamics between Investment Protection and Sovereign Control’ (2024) 10 China and WTO Review 1.

In the case of "Pakistan v. the Pakistani government", Tethyan Copper Company invoked sovereign immunity in resisting the enforcement of an ICSID award. The award was in favour of "Tethyan Copper", and it was a damage award concerning an unsuccessful mining venture. Pakistan had revolted based on its sovereign rights on national resources and on the right to control natural resources in the country. This case demonstrates why sovereign immunity is often used as a mechanism of barring enforcement, and how a given investor has a hard time attempting to enforce an award against a sovereign state[25] "Micula v. Romania" is another case that demonstrates the difficulties investors have to deal with in the process of enforcing arbitration awards. Following the breach of commitment by Romania to its investment treaty with Swedish investors, the ICSID tribunal ruled in favour of the investors, granting them a large sum of compensation. But the national courts of Romania denied the enforcement of the award as it considered the aspects of economic and public policy, the stability of the Romanian economy on the national level and the relations of Romania with the European Union. Although the ICSID Convention offers a clear framework, the opposition of Romania shows how the national legal framework might undermine the enforcement efforts despite international law responsibilities. The "Yukos v. One of the most high-profile actions of the sovereign immunity to resist the implementation of an ICSID award was the Russia case".

2.4The Role of National Courts in Enforcement

National courts and enforcement:

The national courts are instrumental in enforcing the international investment arbitration awards. Although the international treaties and conventions that establish the basic frameworks within which arbitral awards are recognised and enforced include "the New York Convention (1958)", the ICSID Convention (1966)[26], and so on, the very efficiency of the enforcement of arbitral awards lies in the national laws. The difference in policies of the national courts, though ultimately in charge of the implementation of decisions of international arbitral tribunals, may play an important part in determining how easy it is to enforce awards by a foreign investor.

In some jurisdictions, such as "the European Union (EU)", non-EU countries, local doctrines of the law, and the underlying geopolitical concerns tend to persuade the attitude of national courts

[25] Convention on the Settlement of Investment Disputes between States and Nationals of Other States (opened for signature 18 March 1965, entered into force 14 October 1966) 575 UNTS 159.

[26] Ibid.

towards the enforcement of international arbitral awards. The EU will have a stronger overlap of international conventions and EU law, and this will occasionally cause conflicts or opposition by national courts[27]. By contrast, the non-EU countries might interpret the international responsibilities differently, particularly where the international responsibilities touch on matters of sovereignty, public policy or national security. Take the case in "Achmea B.V. v. The European Court of Justice (ECJ)" in the "Slovak Republic (2018)" struck down the validity of "intra-EU bilateral investment treaties (BITs)" as well as those that included the "investor-state dispute settlement (ISDS)". As an example, "India v. An example of the opposition to an arbitral award in the form of a non-EU country is Vodafone (2020)". The case was between a foreign investor, Vodafone and the Indian government under the UK-India BIT.

Legal interpretations and national resistance:

The national interpretation of law may at times contradict international conventions, as observed in the "Achmea case". The decision of the European Court of Justice in intra-EU investment arbitration, stating that intra-EU arbitration breached EU law, indicated the risk that national legal systems could forestall the successful enforcement of international agreements using interpretation. It is against this backdrop that the Achmea case can be regarded as a major setback to investors who intend to execute arbitral awards in the EU, since it demonstrates that EU law prevails over the principles embodied in international treaties such as the New York Convention.

Differences between EU and non-EU legal systems:

The variation in the legal systems between the EU and non-EU also contributes to the interpretation of international treaties and conventions by the national courts. In non-EU states, the national courts tend to privilege state sovereignty and preservation of the national economy, and in such cases, resistance may be witnessed in enforcing awards when such are deemed to be contrary to both national laws and policies. European Union countries, being under EU law, on the other hand, can embrace a more complicated route of enforcement since there is an interrelation between international arbitration regimes and the EU legal system. As an example, the tension between the international treaties and EU law was the direct cause of the Achmea decision[28]. The interpretation of EU law by the ECJ can supersede international conventions, which causes national courts to

[27] Foreign Sovereign Immunities Act of 1976, 28 USC §§ 1330, 1602–11 (1976).

[28] *Perenco Ecuador Limited v The Republic of Ecuador* (ICSID Case No ARB/08/6) ICSID Award.

refuse to enforce an arbitration award issued under intra-EU BITs. The other domain that makes national courts a headache in the enforcement of investment arbitration awards is their interpretation of national security and public policy. National courts may and do deny enforcing arbitral awards where they feel that enforcing the arbitral award would breach national security or public policy.

Challenges faced by investors

The relationship with the state in question is also a factor that influences national courts. Domestic courts can be under great pressure from the sovereign governments not to enforce an international award, especially when there is a huge amount of money at stake or the impact of enforcing the award has far-reaching political or economic implications[29].

2.5Comparative Analysis of Enforcement Mechanisms

National vs. international enforcement frameworks:

The mechanism of enforcement of international arbitral awards is a manifest concern in the field of investment arbitration, and a relationship exists between national legislation and international conventions. While it is important that arbitration awards be implemented through national courts, in some cases, particularly for awards against sovereign states, the national courts are reluctant. Typically, this reluctance stems from sovereignty concerns, security and public policy. Conversely, there exist international systems such as “the New York Convention (1958)” and “the ICSID Convention (1966)”, which are supposed to facilitate uniformity in the recognition and enforcement of arbitration awards across international boundaries.[30]

The New York Convention (1958) is a widely recognised international treaty that obligates its signatories to recognise and enforce foreign arbitral awards in their domestic courts, ensuring that arbitral decisions are respected across borders. Its wide coverage, including more than 160 countries as signatories as of 2021, represents one of its strengths and, hence, one of the most significant tools for enforcing the arbitral awards around the world. But it is weak in terms of local compliance. National courts may still deny enforcement of awards on the specified grounds under Article V of the Convention, which means breach of the policy.

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[29] Foreign Sovereign Immunities Act of 1976, 28 USC §§ 1330, 1602–11 (1976).

[30] The ICSID 1966.

The ICSID Convention was specially created to deal with investment arbitration to simplify the implementation of the arbitral awards that were made through ICSID. The characteristic of its speciality is that ICSID awards should not be reviewed by the courts at home, so the practice of enforcing it is in the hands of ICSID alone. Although ICSID awards are technically enforceable in any of the member states, the practical situation is more complicated. Sometimes, enforcement is impeded because a national court will rely on national laws, e.g., the Foreign Sovereign Immunities Act (1976) in the United States, which restricts the possibility of suing foreign states unless they abdicate their immunity[31].

Jurisdictional variations in enforcement:

The variation in the enforcement practice applicable in different jurisdictions also highlights the difficulties encountered in the process of enforcement of international arbitral awards among investors. Developed legal systems like those in Western countries are more predictable and transparent in enforcement. Courts within these jurisdictions tend to support the provisions contained in international conventions, and they tend to give a greater tendency to accept foreign arbitral awards provided that the prerequisites of award enforcement have been satisfied. In specific countries (such as the United States, the United Kingdom, and Germany), the New York Convention in particular is enforced on a very high level of consistency. These countries are countries with good legal frameworks that honour obligations made internationally under the Convention, and national courts generally do so in good faith in the execution of arbitral awards.[32]

This contrasts with the enforcement in the developing or politically unstable nations, which may not be as predictable. An example is in countries whose rule-of-law systems are weak or have great political instability, and UK foreign investors may be opposed to the enforcement of the awards. Such is “the case of Micula v.” This was the case of Romania, where the Romanian courts tried) to evade enforcing an ICSID award because this would contravene the public policy and fiscal stability. Even though Romania happened to be a party to the ICSID Convention, the national court

[31] Foreign Sovereign Immunities Act of 1976, 28 USC §§ 1330, 1602–11 (1976).

[32] Flavia Marisi, ‘Consistency in Investor-State Arbitration’ (2023) 2 Studies in European Economic Law and Regulation 255.

stated that it was not willing to enforce the award, even though the national legal system had relevant means to do so[33].

Enforcement collisions:

The Enforcement implications of Brexit in the UK are an example that demonstrates how there can be a conflict between laws imposed at the international level and laws imposed at the national level as far as enforcing their laws is concerned. Before Brexit, the UK was a signatory to the New York Convention and was in an obligation to accept and execute the international arbitral awards. Nevertheless, with the exit of UK from the European Union, a lot has been feared about the future of investment arbitration and the UK's enforceability of arbitral awards. Much was complicated by the Achmea decision by the European Court of Justice (ECJ) in 2018, which ruled that intra-EU investment arbitration was unlawful under EU law. Although the UK no longer had to obey the EU law after Brexit, the decision created confusion and uncertainty regarding the enforceability of some awards, especially those made under intra-EU BITs[34].

These enforcement collisions are not only discussed in the Brexit light only but also in those cases where the governments of national countries have opposed or taken long to enforce the arbitral awards, which makes them afraid to lose national sovereignty, economic policy, or good politics. This resistance is often premised on the emotion that the international arbitration award may infringe on the sovereign right of the state to regulate domestic matters since there is a contradiction between the international legal obligations of the state and domestic legal factors.

2.6. Recent Developments and Future Challenges in Enforcement

The current tendencies in investment arbitration show that the balances between sovereignty of the state and the circumstances of effective enforcement in the international arbitration process are becoming more complex. The Investor-State Dispute Settlement (ISDS) system increased challenges of the current political and legal climate and is now finding itself in a position to defend the interests of investors regarding the actions taken by states. Among the significant advances bringing about these developments is the tension that arises between the sovereignty of states and foreign investments. The report presents a critical assessment of the future of ISDS, a step, which

[33] Riccardo Vecellio Segate, 'The Unified Patent Court and the Frustrated Promise of IP Protection: Investors' Claims in (Post-)Brexit Britain' (2020) 27 Maastricht J Eur & Comp L 75.

presupposes that the existing system requires serious reform to accommodate the interests of states and offer reasonable protection to investors.[35]

It is in these areas that the reforms in the field of investment arbitration have been responding these past years. One such measure is the efforts to achieve a higher degree of openness of the arbitral process and to provide such concerns of the general population as environmental regulations with protection and to prohibit the so-called regulatory chill when states fear enacting laws lest they become the victims of arbitration by investors. It is possible that in the future the ISDS system will transform itself and incorporate a more balanced system that acknowledges the fact that state sovereignty is important in other fields like environmental protection, but still provide the foreign investors with a sufficient degree of protection. These reforms may include constituting clearer guidelines concerning the boundaries of the arbitration claims and more involvement of international institutions to resolve disputes between foreign investors and the sovereigns.[36].

Challenges to the ICSID and New York Conventions

Nonetheless, there are still major obstacles, especially as far as the ICSID and the New York Conventions are concerned, which used to play a major role in the process of enforcement of investment arbitration awards. These global systems are increasingly being challenged by the states on the basis that they threaten national sovereignty. Certain states, especially within the European Union, have developed an apprehension about the validation of the ISDS system and how it might conflict with local laws. This is evidenced by the ruling of the European Court of Justice (ECJ) in the Achmea case (2018)[37] that announced intra-EU investment arbitration as being deemed invalid, in addition to throwing doubt on whether the ISDS awards can be enforced in the EU. The stated trend of the constitutional review and the growing opposition by EU states to support the enforcement of ISDS awards indicates the problem of a consistent and reliable enforcement tool under the New York Convention and the ICSID Convention.

The author also addresses the challenges of implementing the arbitral awards in the sphere of these international conventions, namely, when the governments express their opposition to the application of the arbitral award by referring to their domestic laws or the issue of the security of

[35] Pia Norresø Reiss, 'The Good, the Bad and the Not Necessarily Ugly Future of Investor-State Arbitration: What Will Become of the Investor-State Dispute Settlement System?' [2024] Iurgium 1.

[36] Model Laws for International Commercial Arbitrations (adopted 21 June 1985).

[37] *Achmea B.V. v The Slovak Republic* (CJEU Case C-284/16) Judgment (6 March 2018).

the state, which is regarded as a matter of public interest. The Yukos v. An excellent example of this opposition is the case of Russia, where the Russian Federation has been opposed to an ICSID[38]. Award despite the immense pressure in international circles. The case is an illustration of how both political and economic issues, including the interest of the nation, may override the decisions made by international arbitrations and how the laws of sovereign immunity may be used to prevent the execution of orders made[39].

2.7 Proposals for Reform and Conclusion

Regarding the complexity and difficulties of enforcing investment arbitration awards, reforms should be suggested to increase the effectiveness of the established means of enforcing investment arbitration awards. The growing unwillingness of sovereign states to abide by arbitral awards is, among other things, one of the most pressing issues of the system in operation today that is often motivated by ramifications of sovereignty, national security, and the protection of the common popular policy. Other than increasing transparency and consequently accountability in the decision-making process, transparency would also be helpful in removing allegations of bias or unfairness in arbitration. States also tend to be sluggish in practising awards in cases of uncertainty with regard to the arbitral process, or competence of the arbitrators. By improving transparency and adequate documentation of the available arbitration process that is open to everybody, the international society is able to rid the arbitration issues of arbitration legitimacy.

The potential impact of these reforms on the future of investment arbitration is enormous. The suggested modifications would change the state of the affairs in the sphere of international law of investment as the more balanced and transparent framework will assist in protecting investors on the one hand and safeguarding the sovereignty of states on the other. Such a shift to multilateralism would also contribute to uniformity of arbitral dispute resolution and also address the problem of independence of arbitralists which has been a weakness of current system. In particular, greater confidence between investors and the protection of their rights in the event of a dispute with host states would be gained through the reforms that enhance enforcement mechanisms. The international community would also contribute by rendering the arbitration awards, binding so that the risk associated with regulatory chills that occur due to states failing to enforce new laws and new regulations due to fear of costly arbitral claims are eliminated. In this way, it would be a vital

[38] *Perenco Ecuador Limited v The Republic of Ecuador* (ICSID Case No ARB/08/6) Award (27 September 2019).

[39] United Kingdom, Arbitration Act 2025, c. 1.

balance and, therefore, the reforms would permit states to uphold regulatory prerogative and, at the same time, give the investors a stable mechanism of dispute resolution.

2.8 Chapter summary

To sum up, the conflict between national sovereignty and the protection of investors is also the key to the matter of international investment arbitration. Although the mechanisms that are present under the New York Convention and the ICSID Convention can form a basis for the enforcement, there are issues involved that inhibit the actual enforcement on the grounds of political and legal reasons. In the future, it is suggested that the research targeted at the role of international investment courts, the changing nature of the relationship between state sovereignty and arbitration, and the wider effects of the changes on the global investment environment should be addressed.

Chapter 3: Government Interests and Enforcement Mechanisms

3.1 Governmental Interests in Arbitration

One of the most basic interests of governments is referred to as sovereignty, especially within the arbitration scenario concerning the investor-state (ISA). This is because sovereignty grants the states the autonomy to exercise authority over their land, implement laws and govern themselves in an unhindered manner. This freedom of regulation assumes a leading role in satisfying the needs of society, primarily in the areas of public health, labour laws and the environment. This autonomy is, however, in most instances undermined by the demands of international investment law, because it imposes on the states the obligation to give foreign investors certain protections and security. The sovereignty of states versus the rights of foreign investors is one of the key areas of conflict between these two interests, evidenced in the "Vattenfall v. Germany case (2009)"[40]. The case involved the conflict between a Swedish company, Vattenfall and the German government over the Energy Charter Treaty (ECT).

The arbitral court ruled against Germany and the nation would have to give Vattenfall the damages it had incurred as a result of the regulatory changes. This case was a prominent example of how state sovereignty can come into direct conflict with the international obligations of investments. The environmental policies that Germany developed to reduce the dependency on coal and cut down on the impact of climate change on the environment were, first, domestic policy priorities, and the tribunal ruling showed the hardship that the government was going through as it tried to strike a balance between the environmental measures and the international protection of foreign investments raised by international treaties. Although the tribunal ruled in favour of the investor, the ruling cast a doubt on the extent to which states had to be forced to compensate investors on regulatory actions made on the basis of the public interest. This case has been frequently used about the regulatory chill concept, in which governments feel reluctant to enforce the regulation or the reform that is obligatory, considering the risk of expensive arbitration cases.

Economic Policies and Investment Decisions

The economic factors play the key role in the arbitration compliance, mainly in those nations where foreign investment is highly represented. The case of Brazil is an informative example of how economic policies affect the strategy that a state can adopt in order to comply with the investment arbitration decisions. The government of Brazil has always considered foreign investments as a

[40] *Vattenfall v Germany* (ICSID Case No ARB/12/3,) (2009).

key element in advancing economic growth, technological development and infrastructure development, particularly in energy, agriculture and manufacturing industries. As, e.g., in such cases as Perenco Ecuador Ltd. v. In negotiations in the Republic of Ecuador (2019), Brazil has not participated directly, but it has witnessed other similar cases in foreign courts, the Brazilian government has tried to maintain its status as one of the best points of investment. In this type of situation, Brazil would rather want to abide by the international judgment of arbitrators, and this would be an indication to the foreign investors that it respects their international legal policies[41].

In addition, Brazil, being a multi-economic country, has always endeavoured to strike a balance between the need to preserve national interest and the need to foster the inflow of capital into the country. Enforcement of arbitration awards would help the government to portray itself as a partner with integrity in foreign markets, where investors will have no doubt that their investments are safe, in case they were to disagree with the government. In this respect, the acceptance of awards is also a means of foreign economic policy of Brazil as a whole. Nonetheless, the element of executing arbitration awards in Brazil does not come easily. An example is in Brazil, where there have been instances of opposing arbitration award enforcement upon infraction with national economic policies, say where the award requires to compensate it heavy financial compensation. However, such difficulties are mitigated by the general policy of creating a conducive investment environment in the country, and therefore, the nation has enforced a majority of arbitral awards to avoid being exposed to negative publicity and continue working with foreign investors.

Political Considerations

The structures of government and other political issues are also important in influencing how a government responds and the effect of the arbitration awards. In some forms of political regime where the power is concentrated or there is major executive influence on the judicial system, such governments can disobey arbitral rulings without incurring major legal consequences. This may be so in an authoritarian government or a government where the executive branch has significant control over the judiciary. Democratic nations where the judicial arm is independent are predisposed on the other hand to meet the pressure of either the institutions or politics to follow the arbitral decisions in most cases.

[41] *Perenco Ecuador Limited v The Republic of Ecuador* (ICSID Case No ARB/08/6) Award (27 September 2019).

One of the most relevant cases, which indicates the political factors that affect how a state reacts to the arbitration, is the Achmea B.V. v. Slovakia (2018)[42]. The case concerned the decision of the European Court of Justice (ECJ) that Bilateral Investment Treaties (BITs) concluded between EU countries and the arbitration of disputes which arise under those treaties were incompatible with EU law. The case involving Slovakia started when the country questioned the authority of an arbitral tribunal basis that, according to EU law, arbitration in such treaties constituted a violation of the sovereignty of the European Union legal system and its rules. The ECJ ruling was epoch-making in that it doubted the effectiveness of arbitration provisions in the agreement of BITs among the EU member states, where Slovakia argued that the proposed arbitration would not override the legal system of the EU, in which the autonomy of institutions takes precedence over jurisdiction.

3.2 Enforcement Challenges

There are some legal and practical implications in the enforcement of investor-state arbitration (ISA) awards, especially when it concerns states as sovereign bodies. Although the international conventions, including the New York Convention (1958)[43] And the ICSID Convention established a pattern that arbitral awards should be recognised and enforced, but the decisions are not considered self-enforcing. The enforcement is complicated by various legal obstacles, including sovereign immunity and jurisdictional immunity, as well as geopolitical aspects and jurisdictional contradictions.

Legal Barriers to Enforcement

To encourage the global recognition and enforcement of foreign arbitral awards, the New York Convention has been enacted, which requires the member states to enforce the award promulgated in foreign courts, but enforcement is hampered by legal barriers. Although according to the treaty, the state parties are obliged to recognise and give effect to the arbitral awards, the treaty contains exceptions, which enable the states to oppose the enforcement on public policy or sovereignty grounds. These exceptions are often a source of confusion with the countries using them to dispute awards where they feel that there is a conflict between the award and their domestic laws or policy.

The first example can be the sovereign immunity, which protects states against being sued in a foreign court, which is also a major obstacle to enforcement. Sovereign immunity gives states the right to make claims that an obedience to an arbitral award is a contravention of their constitutional

[42] *Achmea B.V. v The Slovak Republic* (CJEU Case C-284/16) Judgment (6 March 2018).
[43] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 10 June 1958, 330 UNTS 38.

systems, national policies, or other essential state interests. In those situations, national courts can refuse to enforce an award, arguing that this will violate the sovereign rights of the state[44]. This may result in lengthy court cases that the investor has not been able to gain back his/her losses.

Sovereign Immunity and Public Policy Exceptions

The notion of sovereign immunity contributes greatly to the hindrance of enforcement. It allows states to claim that an obedience to an arbitral award will breach national constitutional principles or national public policies, hence allowing them to avoid enforcement in international courts. As a case in point, the Micula v. Romania (2013), Romania opposed the execution of an ICSID award that compelled it to pay investors due to the non-occurrence of a Bilateral Investment Treaty (BIT)[45]. Romania claimed that paying would contravene its national economic policy, namely, that it would breach the budgetary restriction and other matters of public policy. These factors are clearly illustrated by the resistance of the country to accepting the award, as the exception to public policy provision in the country can provide a real legal barrier to the enforcement of the arbitral awards made by sovereign immunity.

The Micula case is evidence of the challenge that investors experience when approaching sovereign states who would not agree to abide by the outcome of arbitration proceedings on the basis of national economic or policy reasons. This opposition justified by a sovereign immunity and public policy emphasised the natural contradiction between the execution of international awards and the sovereign rights of states to control their economy.

Geopolitical and Practical Barriers

Along with the legal obstacles, there are geopolitical considerations that are at the centre stage of enforcement policy. States can also be reluctant to enforce due to political reasons, like when the international arbitral awards conflict with the wider objectives of a state's foreign policy or strategic interests. When it comes to the enforcement of rules by powerful states or in politically sensitive areas, political considerations are largely important because the failure to cooperate may cost a lot in terms of diplomatic consequences.

The case between Russia and Yukos Universal Ltd. concerning the refusal of the former country to execute a 50 billion award issued by an international arbitration tribunal (2016) is among the most

[44] Aniruddha Rajput, 'Non-Compliance with Investment Arbitration Awards and State Responsibility' (2022) 37 ICSID Rev 247.
[45] *Ioan Micula v Romania* (ICSID Case No ARB/05/20) [2013] ICSID Award.

conspicuous ones of this kind[46]. The award was based on a conflict that arose during the move made by the Russian government against the Yukos Oil Company, leading to the expropriation of the company that had been declared bankrupt. Besides the decision given by the tribunal, there was the political opposition by Russia to the execution of the decision, and the country justified its actions with numerous defences, such as ones based on national sovereignty and public policy not to abide by the decision.

The refusal of Russia to enforce the award is evidence of serious practical obstacles to enforcement, especially in politically compromised cases. Political consequences of enforcement, especially concerning a state that can be a large world power, pose complicated issues to international arbitration systems and disrupt the opportunity of investors to view arbitration as a viable method of solving their disputes[47]

The geopolitical aspect of the challenge to enforcement can also be found in the Chinese perspective of investment arbitration. China has become a growing worldwide economic power and consequently has accumulated more of its means of managing the disputes of investment, and often resorts to rejecting international arbitration in some aspects. The fact that the system of international investment arbitration is incompatible with the domestic legal system in China adds to the challenge to enforce the awards. Although China is a party in arbitration within the ICSID structure, the country has tried to restrict foreign jurisdictional authority over its internal regulatory activities, especially where it applies in some of its economic sectors of importance to the nation[48].

Jurisdictional Conflict

The other knotty problem with the enforcement of arbitral awards is the conflicting jurisdiction between state courts and international enforcement institutions. The courts of the countries may refuse to acknowledge or enforce the international arbitral awards due to the reluctance of the national courts, especially in countries where the legal system is complex or the mechanism of enforcement is weak. The New York Convention tries to fill these gaps by laying down provisions to treat foreign arbitral awards, recognising and following a foreign arbitral award, but national courts still have a discretionary prerogative in implementing the treaty. This is not a new problem

[46] *Yukos Universal Ltd v Russia* (ICSID Case No ARB/04/14) [2014] Final Award.

[48]Xiaoyan Li and Yue Lu, 'Developing International Investment Arbitration in China: From ICSID to Non-ICSID Investment Arbitration' (2025) 2 Deleted Journal 1.

in countries such as Russia, China, or Brazil, where the local courts are usually unwilling to support the foreign arbitral awards, especially those that go against their national law or policy.[49].

The judgment in the case of Pakistan v. Mining company Tethyan Copper Company (2019) was the subject of the successful tribunal award in favour of the Australian-based company, but the Pakistani court was slow in recognising the award. The allegations of national sovereignty and financial effects of the award were the answer of Pakistan, which proves how complicated the enforcement process can be as a result of the jurisdictional conflict and national legal cultures of a country.

3.3 The Role of National Courts

Jurisdictional Influence of National Courts

The national courts have the authority to enforce, annul and grant recognition of international arbitral awards. The effect of the jurisdiction of these courts is indeed of major concern to international arbitration because the automatic property of the award is not automatic. Although there are still general guidelines as set out in the international instruments on enforcement, such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), the ICSID Convention (1966), it is usually the interpretation of the domestic laws and the national courts about the provisions of enforcement where awards are recognised on a country-by-country basis which includes matters of the interpretation of the domestic laws, the issues of the national public policy and, our political will[50].

EU Court Jurisprudence: Achmea

The Achmea case saw the clash of interests between the company and other interests, which is the topic of debate in this case. One such case is Slovakia (CJEU Case C-284/16) decision by the European Court of Justice (ECJ), which is a landmark case to be considered within the framework of intra-EU investment arbitration. In the 2018 Case answer, the ECJ opined that intra-EU bilateral investment treaties (BITs), as well as the systems of arbitral procedures they entail, are incompatible with EU law, especially in the domain of legality of the EU law over the investment arbitration tribunals. Through this case, the EU has shown that it is more interested in enhancing

[49] Foreign Sovereign Immunities Act of 1976, 28 USC §§ 1330, 1602–11 (1976).

[50] Convention on the Settlement of Investment Disputes between States and Nationals of Other States (opened for signature 18 March 1965, entered into force 14 October 1966) 575 UNTS 159.

its legal order, sovereignty and judicial autonomy than protecting investments, along with the promise of protection by international treaties[51].

The case of Achmea in Slovakia opposed arbitration because the arbitration mechanism was inconsistent with the EU legal structure, which asserts the primacy of its law over international law[52]. According to the ECJ, the application of investor-state arbitration in intra-EU BITs jurisdiction damages the judicial independence of EU Member States and the position of the Court of Justice of the European Union in interpreting EU law.

National Courts in Developing Jurisdictions

In developing countries, national courts may exhibit resistance to enforcing international arbitration awards due to concerns about national sovereignty, economic autonomy, and social or political priorities. These countries often seek to balance the perceived benefits of foreign investments with the protection of their own domestic policies and economic interests. In such jurisdictions, the implementation of arbitration awards can be regarded as a possible violation of the right of the state to manage its own affairs independently.

The famous one is the Pakistan v. Tethyan Copper Company (ICSID Case No. ARB/12/1), a 2019 case against Pakistan in which Pakistan had opposed the enforcement of an ICSID award in favour of the Tethyan Copper Company. The Pakistani government politically opposed the award that required the firm to pay compensation to the appropriated investment in one of its mining projects.

3.4 "Is "Public Policy Too Broad?".

The public policy exception to the "New York Convention (NYC)" emerged as a major issue in international arbitration, as the New York Convention exception is actively used by national courts to oppose the enforcement of arbitral awards. States tend to invoke public policy to safeguard domestic interests in cases where an award requires conflicting obligations upon enforcement in connection with national laws or interests. Such loose meaning confuses and poses a threat to the validity of international arbitration. The following section will critically compare the use of the exemptions from the point of view of the law, in four important jurisdictions, namely France, the United Kingdom (UK), the United States (US) and Singapore (SG), and as shown in Table 1 below,

[51] United States, Foreign Sovereign Immunities Act of 1976, Pub. L. No. 94-583, 90 Stat. 2891 (1976)

[52] *Achmea BV v Slovak Republic* (C-284/16, EU:C:2018:158) [2018] ECJ.

the interpretation of the public policy exception under Article V(2)(b) of the New York Convention varies significantly across jurisdictions, generating uncertainty and encouraging forum shopping.

“**Jurisdiction**	**Approach to Public Policy (NYC Art. V(2)(b))**	**Illustrative Case**	**Implication for Enforcement**
France	Broad, interventionist use of public policy, including political and economic considerations.	*Yukos v. Russia* (French courts declined enforcement, citing political consequences).	High likelihood of refusal where enforcement collides with national or political interests.
United States	Broad interpretation, particularly where national security or strategic economic policy is implicated.	*Ecuador v. Chevron* (award challenged on grounds of domestic public interest).	Medium–high risk of refusal; public policy invoked for issues of national priority.
United Kingdom	Narrow, pro-enforcement stance; public policy invoked only in exceptional circumstances.	*Westacre Investments* (UK courts favoured enforcement despite allegations of illegality).	Low risk of refusal; UK courts emphasise predictability and international comity.
Singapore	Narrow but flexible; strong preference for enforcing awards while balancing minimal public policy review.	*PT First Media TBK v. PTT* (award upheld despite sovereignty objections).	Very low risk of refusal; jurisdiction prioritises commercial certainty and investor confidence.

Table 1: Comparative Application of the Public Policy Exception under the New York Convention

Courts in France have always interpreted the public policy in a very broad context. In the Yukos Universal Ltd. v. Russia case, the French courts did not support the enforcement of the arbitral award, claiming that the sanctioning of the award that could have a political impact would be against the French public policy. This decision demonstrates the fact that national interests, especially those to do with political or economic sovereignty, actually prevail over international obligation.

In the United States, the public policy exception is similarly broad but is often invoked in cases involving issues such as national security or the enforcement of awards against foreign states. In Ecuador v. Chevron (2010), the U.S. court invoked the public policy exception to refuse enforcement of an arbitral award, citing the damage that enforcement could cause to domestic economic policy and the broader public interest[53]. The U.S. courts emphasise national interests when interpreting public policy, leading to instances where enforcement is denied based on perceived harm to public welfare.

The UK, however, adopts a somewhat narrower approach. In the Westacre Investments case, the UK courts were reluctant to refuse enforcement, even when the award conflicted with national policy concerns[54]. While public policy remains an exception, UK courts typically require a compelling argument to override the international principles governing enforcement. This distinction between strict and lenient interpretations of public policy becomes clearer in the UK's focus on ensuring predictability in international investment law. Singapore, known for its business-friendly approach, has been more flexible in applying public policy exceptions. In PT First Media TBK v. PTT (2016), the Singaporean courts upheld an arbitral award despite national concerns about sovereignty, emphasising the importance of investor protection over domestic policy concerns[55]. This flexibility contrasts with the more restrictive approaches seen in France and the US, where public policy exceptions are more frequently invoked to block enforcement.

Normative View on Public Policy

Given the divergence in the application of the public policy exception across jurisdictions, it is crucial to adopt a unified international standard for defining public policy. This would prevent states from forum shopping, a practice where states select jurisdictions based on the likelihood of invoking the public policy exception to avoid enforcement. A consistent standard would ensure that public policy does not become a tool for circumventing international legal obligations. A universal

[53] *Republic of Ecuador v Chevron Corporation* (PCA Case No. 2009-23), Partial Award issued 30 September 2010.
[54] Barker S and Levy R, 'Public Policy and Enforcement of Arbitral Awards: The UK Perspective' (2018) 67(2) The International & Comparative Law Quarterly 455–475.
[55] PT First Media TBK v PTT (Singapore International Commercial Court, 2016) Singapore High Court.

public policy standard would enhance the predictability and legitimacy of the arbitration system. For example, in the Micula v. Romania case, Romania used public policy concerns about national economic interests to resist enforcement of an ICSID award[56]. A universal standard would have prevented Romania from avoiding enforcement based on national policy concerns, ensuring that Romania adhered to its international obligations. The implementation of an international public policy yardstick would have likely changed the outcome in Perenco Ecuador Limited v. The Republic of Ecuador. Ecuador's refusal to enforce the ICSID award was based on public policy considerations concerning the country's sovereign control over its natural resources. With a consistent, international public policy yardstick, the tribunal could have placed greater weight on enforcing international obligations over domestic policy concerns, ensuring that investors' rights were protected in accordance with international law.

3.5 Chapter Summary

The process of enforcement of international arbitration awards in investor-state arbitration (ISA) is complicated and disruptive. It makes the arbitration systems ineffective because national courts may not execute it on grounds of sovereign immunity, exceptions under public policy, and politics. The political considerations, e.g., the Achmea (2018) decision, may also determine how readily a state is willing to enforce the award, particularly whensoever it is a matter of national sovereignty or that of EU law.

[56] *Micula v Romania* (ICSID Case No ARB/05/20) Award (11 December 2013).

Chapter 4: Comparative Analysis of Enforcement Mechanisms

4.1 Enforcement Mechanisms: National vs International Frameworks

The international arbitration awards enforcement in the sphere of the investor-state dispute settlement (ISDS) is a controversial and rather complicated procedure, especially in the sphere of national legislative systems and of international conventions like the ICSID Convention and the New York Convention. The two frameworks present different ways of how arbitration awards are recognised and enforced, yet their application in reality has significant problems. The two systems are striving to establish that national courts are bound by awards given by international tribunals, but in reality, the process is quite complex as it is beset by issues of jurisdiction, law, and politics.

An example is that national legal systems are usually a big impediment to enforcing international arbitration awards. This opposition can be explained by the fact that the differences in legal traditions and the focus on international arbitration agreements may be rather different among the countries.

An example can be the CMS Gas Transmission v. In the Argentina dispute (ICSID Case No. ARB/01/8), Argentina opposed the implementation of an ICSID award based on its domestic economic policies. Argentina had agreed to pay the claimant, CMS Gas, compensation in regards to an expropriation of its investments.[57]. Nevertheless, the Argentine government, which was grappling with a terrible economic crisis, cited its local policy interests as a reason for opposing the payment of the award. Such an occurrence, as presented in this case, demonstrates the priority of national interests, like the economic stability of the country and safeguarding the national resources, over the international commitments that complicate the work of the international tribunals and their predictability of enforcement[58].

The position of the national courts is critical in this regard because, in many instances, the national courts decide how far the international arbitration awards can be enforced in their own jurisdiction. "New York Convention (1958)" and "ICSID Convention (1966)" prescribe the rules of enforcement of foreign arbitral awards, and obligate the state parties to comply with them and acknowledge their force[59]. These conventions lay down a standardised ground on which to take

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[57] *CMS Gas Transmission Company v The Argentine Republic* (ICSID Case No ARB/01/8) Award (12 May 2005).

[58] Rajput, A., 'Non-Compliance with Investment Arbitration Awards and State Responsibility' (2022) 2(4) ICSID Review - Foreign Investment Law Journal 1.

[59]Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 10 June 1958, 330 UNTS 38.

enforcement, and the objective behind it is to offer predictability and a fair process to international arbitration.

Under these circumstances, the sovereign immunity and the public policy exceptions grant the states the right to question the enforcement despite the fact that they are subject to international treaties as the "ICSID Convention" or the "New York Convention". It is therefore up to the goodwill of national courts to enforce the awards made by international tribunals that make such conventions successful. Although the "ICSID Convention" offers a slightly stronger framework by which awards may be enforced, because "ICSID" awards can be directly enforced by the courts of any of the contracting states (of which there are 155), courts at the national level can still attempt to resist enforcement on grounds of national security, economic policy, or constitutional concepts.

Among the most notable enforcement difficulties is the fact that courts in the home country deny the validity of foreign arbitral awards either because they feel threatened by their sovereignty or because they feel that the award may be inconsistent with that of the home country. This results in a scenario whereby the jurisdictions that are supposed to enforce the decisions of international tribunals undermine them, and this makes the arbitration process not hold water, and this dilutes the potential value that the system can bring to the investors. In a situation where national courts take a restrictive or protectionist approach in interpreting the exception of public policy or sovereign immunity, as the author emphasises, the effective functioning of the entire arbitral system can be undermined, and future investments may be discouraged and rely on a culture of legal insecurity. This is in sharp contrast to countries that have strong democracies and the rule of law, where it is more likely that they will accept international arbitration awards, so long as they do not compromise national interests.

4.2 Jurisdictional Variations in Enforcement

Enforcement of investor-state arbitration (ISA) awards has been one of the most controversial matters in international arbitration. Among the major issues that have been causing concern to investors who are determined to enforce arbitration awards across borders is the fact that national legal systems have different approaches to the issue of recognition and enforcement of the arbitration awards. These jurisdictional differences are brought about by the differences in the national legal systems, political factors and the commitment of countries to the international conventions, including the ICSID and the "New York Convention". The interaction of these conventions with the national laws is a major issue influencing the way in which arbitration judgments are enforced and recognised.[60].

National Courts and Their Approach to Enforcement

The courts in the United States and other nations tend to give high levels of deference to international arbitral awards. These countries have included the provisions under the ICSID Convention and "New York Convention" that will make it easier to recognise and enforce foreign arbitral awards with the United States as an example, where it is easy to include ICSID awards in the national legal system of the country. The awards granted by ICSID in such jurisdictions are even recognised and treated as the judgments of the domestic courts, which further increases the enforceability of the awards across borders[61]. The implementation of the same is not always that easy, particularly when the national interest or even the consideration of the national policy is the stake. An example is that countries that have a very high degree of protection of the sovereignty of a state or that have a policy that gives more priority to the interests of the country in its economy may not be so keen on enforcing foreign arbitral awards. Such is the case with the Achmea B.V. v. Slovak Republic case (CJEU Case C284/16 2018) in which the Court of Justice of the European Union (CJEU) has determined that intra-EU BITs and the investor-state dispute settlement (ISDS) mechanism contained within those agreements are incompatible with EU law[62]. The decision of this prominent case weakened the system of enforcing arbitration awards in the European Union, and it reflected the conflicts between the supremacy of EU law and international arbitration agreements.

An example of the cancellation of international arbitration regimes by regional laws of the region, or in the case of EU law, the law of nations, would be the Achmea decision that replaced (cancelled out) an international arbitration regime with an EU law regime because it was perceived to usurp the national and regional legal orders. In the example of Slovakia, the CJEU stated that a possible loss of control of EU member states would be possible through investor-state arbitration, as well as interfering with the autonomy of the EU legal system. Achmea's decision, hence, raises the issue

[60] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 10 June 1958, 330 UNTS 38.

[61] Lufuno Ngobeni, 'The International Court System: A Solution to the Crisis in Investor-State Arbitration?' (2024) 27 Potchefstroom Electronic LJ https://www.ajol.info/index.php/pelj/article/view/269846 accessed 2 September 2025.

[62] *Achmea B.V. v The Slovak Republic* (CJEU Case C-284/16) Judgment (6 March 2018).

of the increasing conflict between international commitments and national sovereignty, especially where their implementation is contradictory to local law or politics[63].

Jurisdictional Issues in Developing Regions

In other jurisdictions, including some areas of Africa, the scenario is even more complicated because there are no strong legal and institutional backgrounds to be used in the enforcement of international arbitration awards. The Perenco Ecuador Limited case involved. Nor can enforcement be easily facilitated in areas where there is political instability or judicial infrastructure is deficient, as seen in the Republic of Ecuador case (ICSID Case No. ARB/08/6, 2019)[64]. The case in point, Ecuador, did not want to be subjected to an ICSID award, with the claim to national sovereignty and protection of the general policy. This is an indication of the extent to which some jurisdictions can be reluctant to comply with enforcement on the grounds of the domestic economic situation or on the grounds of political factors, which supersede any international legal commitments.

Political and Economic Factors in Enforcement

The political environment is very critical in most developing nations, and hence the attitude in which enforcement is undertaken by the national courts. Other governments in these areas might have the concern that acting on the international arbitration awards will be destructive to their sovereignty, especially when the award touches on such sensitive areas as ownership of the natural resources or regulations over the people's policies. The case of Pakistan v. The Tethyan Copper Company (ICSID Case No. ARB/12/1, 2019) is one of the cases where Pakistan opposed the enforcement of an ICSID award because it would be harmful to its national sovereignty over its mining industry[65]. The political and economic interests of the Pakistani government formed the basis of its non-objection to the enforcement of the award, and such interests illustrate that enforcement issues are indeed intimately connected to domestic policies and strategies[66].

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[63] Lufuno Ngobeni, 'The International Court System: A Solution to the Crisis in Investor-State Arbitration?' (2024) 27 Potchefstroom Electronic LJ https://www.ajol.info/index.php/pelj/article/view/269846 accessed 2 September 2025.

[64] *Perenco Ecuador Limited v The Republic of Ecuador* (ICSID Case No ARB/08/6) Award (27 September 2019)..

[65] *Pakistan v Tethyan Copper Company* (ICSID Case No ARB/12/1) (2019).

[66]Rajput A, 'Non-Compliance with Investment Arbitration Awards and State Responsibility' (2022) 37(1-2) ICSID Review - Foreign Investment Law Journal 247–271.

Where the economy is highly state-regulated or sovereignty is a major issue, the enforcement of an international arbitration award is a very controversial affair in such countries.[67]. The national courts in these jurisdictions can, therefore, exercise a lot of discretion in declining to enforce under grounds of sovereign immunity or exceptions to the public policy, especially as in the CMS Gas Transmission v. The Argentine Republic case (ICSID Case No. ARB/01/8, 2005)[68]. Here, Argentina opposed the execution of an ICSID award based on issues of national economic policy as an illustration of how a national legal system and an international arbitral system can interact in a tangled and complicated way.

4.3 Enforcement Collisions

One of the major problems in the area of international law of investment, and especially by accepting investor-state dispute settlement allocation (ISDS) systems, is known as enforcement collisions. Such crashes happen when the laws of different nations do not acknowledge or implement international arbitral judgments because they might appeal or contravene local legal systems or policies. The resultant effect is a structure in which there are formidable obstacles for foreign investors to obtain cross-border enforcement of arbitral awards. The problems that often give way to enforcement collisions are the following: the inconsistency between national sovereignty and international duties, or national courts that apply domestic law where it leads to the infringement of international treaties[69].

Brexit and Enforcement Collisions in the UK

The case of enforcement clash in the United Kingdom post-Brexit has been deemed to be one of the most incredible cases of the last few years. The British decision to exit the European Union cast doubts on the future of the enforcement of the intra-EU investment arbitral decisions. Before Brexit, the UK, as an EU member, followed the decisions of the European Court of Justice (ECJ) and did not dispute that EU law had precedents and that this was applicable to the judgments on intra-EU Bilateral Investment Treaties (BITs) and ISDS systems. The uncertainties that surround the implementation of the awards under the ICSID scheme and other EU-based treaties have shed light on the impact that the divorce has had between the UK and the EU legal system and the implications thereof on the practice of international arbitration. The case is a classic example of a

[67] Tobias Lehmann, Investment Arbitration and International Climate Change Law (Kluwer Law International 2025).

[68] *CMS Gas Transmission Company v The Argentine Republic* (ICSID Case No ARB/01/8) Award (12 May 2005).

[69] *Micula v Romania* (ICSID Case No ARB/05/20) Award (11 December 2013).

major conflict between national law interests (here, the sovereignty of states) and required international legal harmonisation, especially in the field of investor protection[70].

Political Concerns and National Sovereignty

The need for political independence and a wish to save the national interests against the external law's influence on them. A notable one is the denunciation of the ICSID award in the Yukos case (2016) in the Russian Federation that dealt with the expropriation of the Yukos Oil Company. The Russian government had provided reasons as to why it would not allow the award to be implemented by citing sovereign immunity and safeguarding its national economic interests. The political aspects of this case include the reasons why the collision is taking place, such as perceived loss of national resource control, and the political implications that come with adhering to a foreign arbitration award[71]. After the refusal by Russia, one can emphasise how the clash of enforcement is usually a fallout of the conflict between the execution of international arbitration awards and the interest of a state to retain its own political and economic independence. The CMS Gas Transmission V. The collision of this kind is described in the Argentina case (ICSID Case No. ARB/01/8, 2005)[72].

State Sovereignty vs. International Arbitration Systems

The integration of state sovereignty and international arbitration systems is the ultimate conflict that protagonists in case enforcement in enforcement collisions. Although international treaties like ICSID and the "New York Convention" are set up to assist in the enforcement of an arbitral decision in a foreign country, the national courts tend to propagate legal policies and their domestic laws instead of abiding by the international obligation. This struggle severely compromises certainty and stability in the results of arbitration, which poses problems to investors interested in enforcing their rights.

An illustrative case of such a conflict exists between the cases of the Perenco Ecuador Ltd. v. Republic of Ecuador (ICSID Case No. ARB/08/6, 2019), when Ecuador opposed the enforcement of an arbitral award against its expropriation of oil assets because of its sovereign rights over its natural resources. The Ecuadorian opposition, with support for the arguments of the public policy,

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70 Riccardo Vecellio Segate, 'The Unified Patent Court and the Frustrated Promise of IP Protection: Investors' Claims in (Post-)Brexit Britain' (2020) 27 Maastricht J Eur & Comp L 75.

71 Lehmann, T., Investment Arbitration and International Climate Change Law (Kluwer Law International B.V. 2025).

72 *Perenco Ecuador Limited v The Republic of Ecuador* (ICSID Case No ARB/08/6) Award (27 September 2019).

demonstrates how political factors are often used to justify non-execution of awards in arbitrators, thereby leading to another clash of jurisdiction between the state and international commitments.[73].

4.4 Doctrinal Analysis II (ICSID): Art 54 ICSID vs. Actual Execution

Article 54 of the ICSID Convention is a proposal that says that an ICSID award is self-enforceable in any contracting state and no further action in a court is needed. It is, however, often refuted in practice. ICSID awards do not always enjoy exemption from national judicial hostility, although they are assumed to be easily enforceable. The other problem that national jurisdictions have is the barrier that they provide to the execution process, particularly when it deals with sovereign assets or where there is an interest in the policy of the nation.

ICSID awards are sometimes strenuously contested in US and UK courts, among others. The Foreign Sovereign Immunities Act (FSIA) in the US has imposed limitations regarding the situation in which judgments may be executed against a foreign sovereign, especially when it comes to state-owned properties. Courts have at one time restricted the extent of enforcement on the grounds of the limitation of discovery or the possibility of violating the sovereignty of a foreign nation. In the case of Republic of Argentina v., the court gave a decision to the effect that the government, via the minister of the ministries of labour and employment and of justice, was liable to pay the full amount of compensation to the widow of the deceased. The US Supreme Court upheld an ICSID award but placed strong conditions on discovery procedures to abide by the rule of sovereign immunity.

In the UK, the same problems occur. Although ICSID awards are enforceable under the Arbitration Act 1996, British courts have not always accepted enforcing awards where sovereign property is perceived to be immune to enforcement, with comity principles often being cited to justify refusing application of awards where they are held to conflict with international legal obligations (R (on the application of YUKOS) v. In Russia, the very first Ural car factory was founded in 2003 in St. Petersburg[74]. Though there has been the technical possibility of enforcement, the recent stringent cases on sovereign immunity indicate a desire in some jurisdictions not to revert readily to enforcing ICSID awards.

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[73] Rajput A, 'Non-Compliance with Investment Arbitration Awards and State Responsibility' (2022) 37(1-2) ICSID Review - Foreign Investment Law Journal 247–271.

[74] *Republic of Argentina v. NML Capital Ltd.,* 134 S. Ct. 2250 (2014).

4.5 Chapter summary

The comparative evaluation of the mechanism of enforcement in investor-state arbitration reveals the issue of the unwillingness of national legal systems to adapt to the international model. This is even complicated by the situation of Brexit, as concerns were cast about the future of ISDS between EU and non-EU states. The above challenges provide the basis for the claim that clearer and consistent enforcement mechanisms are required to strike a balance between the interests of the states and the interests of the investors, making international arbitration reliable and effective.

Chapter 5: Developments 2023–2025 & Emerging Trends

5.1 EU Withdrawal from the Energy Charter Treaty (ECT)

In May and June of 2024, the European Union (EU) unquestionably came to very important decisions to withdraw its membership from the Energy Charter Treaty (ECT). ECT is a vital international agreement that regulates energy investments, and it has always been believed to be the building block of investor protection and dispute settlement on energy matters. However, the fact that the EU exits this agreement, and so does Euratom, is a radical shift in the attitude of the EU towards its control over energy matters and its capacity to be sovereign. The sunset mechanism of the ECT will provide the investor with protections as they move into an oblivious phase over time, and factoring in the pre-existing protections will not be ignored.[75].

The result of the EU separating the ECT was not a one-off event but a symptom of a split in the direction of action of individual nations. Others like the UK, France, Germany, Spain and Poland either signalled their departure or have already quit the treaty with a unique timeline and exit strategies. This division of policy and individual country tastes within Europe has created problems in international arbitration. These few intra-EU investor-state cases under the ECT system will introduce further set aside and enforcement challenges insofar as legacy awards are concerned. These developments bring out the growing prominence of the issue of national sovereignty in terms of investment protection and dispute resolution.

The sunset clause has other complexities. This has been a key aspect of the ECT exit strategy, and will get it some protections on legacy investments, but may lead to a worrying legacy litigation tussle. It is a tendency that reestablishes the constitutional sovereignty of member states and an emerging sense of sovereign authority over regulatory capacity in a post-ECT world.

5.2 Post-Achmea Intra-EU Disputes (Focus on Komstroy)

After redefining the legal framework of the investor-state disputes in the European Union, the case of Achmea (CJEU Case C-284/16, 2018) and its resultant impact on intra-EU investment arbitration changed the conceptual perspective of the subject matter[76]. The ruling that came out CJEU in the Achmea case held that intra-EU Bilateral Investment Treaties (BITs) were against EU law. The Court emphasised that these contracts circumvented the jurisdiction of the European

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[75] European Commission, 'Withdrawal of the European Union from the Energy Charter Treaty' (Press Release, 24 May 2024).
[76] *Achmea B.V. v The Slovak Republic* (CJEU Case C-284/16) Judgment (6 March 2018).

Union courts and did so undermine the legal unity of the European Union. This decision was reiterated in the later Komstroy case (CJEU Case C-741/19, 2021) to conclude that the Energy Charter Treaty arbitration mechanism was equally devoid of legal foundation where EU member states are suing each other.

The case of Komstroy was a twist of its own as it reinforced the legal principle of the primacy of EU law on international investment treaties. This trend is observed in national courts in the EU, which are progressively refusing to enforce intra-EU arbitral awards that are held to deprive EU Nationals of their rights under EU law. Using a single example, the Swedish Supreme Court has found non-EU award laws passed between EU member states invalidated by that court, showing how the EU has insisted that EU law should not be subordinated to outside arbitration.

The rationale behind this trend may be explained by the augmented significance of national sovereignty in the setting of intra-EU investment conflicts. The latter is observable in solemn judicial and political protests against the enforcement of intra-EU awards of arbitration, albeit their rendering pursuant to agreed-upon regimes, including the ECT. The cases of Achmea and Komstroy thus point towards a tendency to the constitutional autonomy of EU member states and their subsequent renunciation of seeking investor-dispute settlement systems within the EU. The judicial rebuttal of these arbitration findings points to the EU's readiness to enforce its national laws at the cost of international investment regulations, and this renders the possibility of an investor challenging a case under ISDS extremely low in the EU

5.3 ICSID “Transparency” and Rule Practice

In recent years, ICSID (International Centre of Settlement Investment Disputes) has implemented several alterations regarding the arbitration process in order to render it more transparent. Inclusion of deemed consent to publication of awards is a significant move towards providing more transparent results in arbitration and towards a phase of increased accountability in investment arbitration. These reforms also include the mandatory disclosure of third-party funding, which will help to address confusion surrounding the financial sponsorship of claims and create more salient transparency regarding the potential influence of outside forces on the arbitration process[77].

Moreover, a fast-tracked path toward case resolution with high time sensitivity was established to ensure the efficiency and expedience of arbitrations. Since 2022, these changes have been

[77] UNCITRAL Working Group III, ‘Investor-State Dispute Settlement Reform’ (2023) UN Doc A/CN.9/WG.III/WP.225.

supported by an equally considerable increase in the number of awards published and disclosed to the public. The reforms have been embraced positively, as most of the cases have been adjudged under the new regime of transparency, which can be seen in the 2024 annual reports of ICSID.

The transparency amendments aim to address the current shortcomings in terms of lack of transparency in the functioning of the investor-state arbitration and the presence of third-party funding in the case of a non-disclosed arbitration decision. These reforms include the introduction of a more open and accountable system of arbitration, in which the rest of the population and other stakeholders have the opportunity to challenge the logic of a decision-making process and understand the logic behind it better. As such, the transparency reforms are tactical to enhance the legitimacy of ICSID awards and to subject international arbitral proceedings to elevations of scrutiny and accountability.

5.4 UK Arbitration Act 2025 (In Force 24 February 2025)

The Arbitration Act 2025 suggests several basic changes in the field of arbitration in the UK. The other amendment that should also be noted is the one that amends the law which was meant to rule the arbitration agreements, Section 6A, which changes the law to govern the arbitration agreements. In this new section, the law of the seat of arbitration will become the default governing law of arbitration contracts, overturning the presumption that was put in place in the Enka v. The Hubb case, that has so far assumed that the law to run in practice on an arbitration agreement is the law that contract law in the absence of an agreement on the point. This even has substantial meaning to arbitration agreements at the investment-treaty arbitrations, considering that the arbitration agreements will be governed by the law of the seat, unless expressly prescribed otherwise.[78].

The other significant reform of the UK Arbitration Act 2025 regards the statutory duty of disclosure that codifies the common-law duty to disclose material facts of the arbitration case. Such a reform will be extremely relevant to investment arbitration, since it will promote transparency in the arbitration procedure, and parties will receive all the information about the case, making the process even more informed. Other enhancements, including summary disposal powers and narrower challenges of arbitration jurisdiction under Section 67, should also enhance the efficiency of the arbitration process by reducing the formality of the arbitration process and the potential points of an appeal.

[78]Republic of Ecuador v Chevron Corporation (PCA Case No 2009-23) [2010] Partial Award.

The new UK Arbitration Bill 2025 also provides greater assistance to arbitration proceedings by the courts, e.g., potential assistance to emergency arbitrators, and ordering third parties. Although modifications are intended to decrease delays and to make arbitration more effective, especially in cases involving complex commercial and investment disputes. Such reforms are likely to have far-reaching impacts on the enforcement of "New York Convention" awards seated in London by adding more clarity to governing law rules as well as increasing the speed and predictability of the arbitration process.

5.5 Emerging Trend: Rise of Non-ICSID Arbitration in Asia

Non-ICSID arbitration in Asia, particularly Asia-Pacific, has been on the rise in the last few years, with the three leading arbitration institutions in the Asian region, namely, "Singapore International Arbitration Centre (SIAC)", "Hong Kong International Arbitration Centre (HKIAC)" and the "China International Economic" and "Trade Arbitration Commission (CIETAC)", having reported unprecedented caseloads and higher global profile. In 2024, IAC received 625 new cases with an astonishing 91% of all cases being international and a total of USD 11.86bn in disputes. HKIAC, in turn, has registered its best-ever caseload, with over 76% of parties involving international parties. Despite this, IETAC is still recording growth, especially in Belt-and-Road disputes.[79].

This rise in non-ICSID arbitration is a move towards arbitration in other jurisdictions that have a more lenient range of the public policy exception. Singapore has emerged as one of the top arbitral seats because of the high recognition rate and a limited interpretation of the public policy exception, which gives more confidence and assurance to investors seeking to enforce awards. The trend also indicates the decentralisation of investment arbitration, whereby there is a growing variety in the selection of the seat of arbitration and a greater flexibility to non-ICSID venues.

The emergence of Asian centres of arbitration is a challenge to the ICSID hegemony in terms of investment arbitration. The willingness expressed by SIAC and HKIAC to facilitate the interests of both the investor protection and state regulatory interests makes them attractive alternatives to ICSID. This is evidence of the increasing significance of regional differences in international investment arbitration, both globally and especially in Asia, where non-ICSID arbitration is being developed, particularly as a potential desirable alternative to international investment disputes.

[79] International Court of Justice, 'Report of the International Court of Justice' (1 August 2024 – 31 July 2025) UN Doc A/80/4.

So What?

These trends represent a paradigm shift in international investor-state practice. With the EU member states adopting a stricter approach to intra-EU disputes and the development of Asian arbitration hubs, there is a trend towards abandoning the traditional ICSID arbitration[80]. The UK Arbitration Act 2025 and increased use of non-ICISD-based arbitration forums in Asia show that a more sovereign-friendly and regionally-sensitive alternative dispute resolution processes are desired.[81]. As the EU exits the Energy Charter Treaty and as the two landmark cases of Achmea and Komstroy have set the tone, it seems we are at a moment in time where the trend has shifted to a more decentralised and regionally specific nature of international investment arbitration and investor-state dispute settlement. These trends indicate that international investment arbitration will be revolving towards regionalism and a more cut-throat competition among arbitral forums with more transparency, efficacy, and predictability in the dispute resolution arena in the future.

[80] Christoph Schreuer, The ICSID Convention: A Commentary (3rd edn, CUP 2021).
[81] Aceris Law LLC, 'Reforming Arbitration Agreements under the UK Arbitration Act 2025' (Aceris Law LLC, 25 February 2025) https://www.acerislaw.com/uk-arbitration-act-2025-reform/ accessed 21 July 2025.

Chapter 6: Reform Proposals in Investor-State Arbitration and Enforcement Mechanisms

6.1 Introduction to Proposed Reforms

Investor-State Arbitration (ISA) is the key part of international investment law since it provides a way to resolve disagreements between investors and states. Nonetheless, the existing regime has been heavily criticised as tilted towards investors, as non-transparent, and subject to difficulties in enforcing arbitral awards, especially when states rely on sovereign immunity or other public-policy defences. Based on such concerns, therefore, this chapter presents three original reform proposals that have been evaluated to transform the ISA system. All proposals take into account their feasibility, advantages, risks, and costs to form a more balanced and more efficient system of resolving the investor-state disputes. The below table provides a structured overview of the three reform proposals advanced in this dissertation, setting out their mechanisms, feasibility, advantages, and risks as a roadmap for the detailed discussion that follows.

Proposal	Core Mechanism	Feasibility	Key Advantage	Primary Risk
1. Domestic Immunity Carve-Out	Restricts state immunity at the enforcement stage by linking execution to commercial assets connected to the dispute, including assets of state-owned enterprises engaged in commercial activity.	**High** – Variants already exist in UK and French law.	Directly addresses execution-stage immunity; enhances investor confidence.	May be seen as encroaching on state sovereignty and provoke political backlash.
2. NYC Public Policy Guidance Note	Development of a soft-law instrument (UNCITRAL/ILA) that defines “international public policy” narrowly, limiting it to	**Medium** – Requires consensus, but UNCITRAL/ILA precedent exists.	Reduces elastic interpretation; curbs forum shopping; promotes harmonization.	Non-binding nature may limit authority and uniform adoption.

	fundamental norms of justice rather than domestic economic interests.			
3. ICSID–EU Coordination Protocol	Establishes a mandatory consultation period where an authoritative (though non-binding) EU law opinion is produced before national enforcement of intra-EU awards.	**Low–Medium** – Politically complex, but procedurally feasible.	Manages post-*Achmea* tensions; provides clarity for national courts.	May delay enforcement and face resistance from member states protective of autonomy.

Table 2: Summary of Reform Proposals to Address the Enforcement Gap

6.2 Proposal 1: Domestic Execution-Immunity Carve-Out for Commercial Assets Linked to the Dispute (UK/FR Model Variants)

The sovereign immunity is considered to be one of the most critical obstacles to the implementation of arbital awards in cases of investors. States often use immunity in respect of their property to frustrate execution even where recognition of the award has been obtained. In this reform, a focused carve-out is suggested, and it will allow enforcing this against commercial assets that are directly linked to the underlying dispute. Notably, carve-out would also be applied to the assets of the state-owned enterprises in case these assets are proven to be involved in commercial activity. This reform has a rather high level of feasibility as similar carve-outs already function in the United Kingdom and France. Its implementation would contribute to the increased enforceability of awards by eliminating the option of states to protect their assets by the veil of the doctrine of immunity, thereby minimising the execution gap that harms the performance of the arbitral system. However, there are dangers that accompany this proposal. The most urgent issue is the feeling that sovereign prerogatives are invaded, especially in those areas that are sensitive like energy and natural resources. State opposition can thus be fierce and even governments might describe the carve-out as an insult to international comity. In addition, this reform would require modifications to local laws, which would both pose legal and administrative expenses to jurisdictions that adopt it.

6.3 Proposal 2: NYC Public-Policy Guidance Note Promoting International Public Policy Standard (Soft Law via UNCITRAL WG II or ILA)

A second reform concerns the ambiguity as regards to the public-policy exception in the "New York Convention, Article V(2)(b)". Currently, states have broad discretion in construing what is considered a public policy and the result has been unreliable judicial determinations and forum shopping by investors. The dissertation suggests a form of soft-law tool, possibly under the auspices of "UNCITRAL Working Group II", or the "International Law Association", but which would define a more consistent international standard. In this guidance note, the meaning of international public policy would be restricted to core principles of justice and procedural fairness, and not allowing recourse to domestic economic or political interests. Such an instrument is not binding, but as an interpretive tool may be used persuasively by national courts to enhance consistency in application and diminish the elasticity that erodes investor–state arbitral predictability today. The viability of this suggestion is average. Even non-binding instruments like the IBA Rules on Evidence show that soft-law instruments may gain considerable power in practise. The dangers, however, are that there may be unequal implementation across locations and there is a risk that the courts will still simply adopt domestic conceptions of the public policy as opposed to international direction.

6.4 Proposal 3: ICSID–EU Coordination Protocol for Intra-EU Cases (Notice & Consultation Mechanism Pre-Enforcement)

The Achmea judgement (CJEU, Case C-284/16) asserted the incompatibility of intra-EU bilateral investment treaties with EU law, with subsequent cases like Komstroy applying the same logic to the wider intra-EU investor-state arbitration. These advances have thrown up deep confusion regarding the enforceability of ICSID awards in the EU legal order, with member states torn between their duties under ICSID Convention and their fidelity to EU law. In response to this structural collision, this dissertation is the proposal of introducing an ICSID-EU coordination protocol. The mechanism would entail an obligatory consultation phase prior to the decision on the implementation of intra-EU awards by the national courts. In this time, a body, which was to provide a clear direction but not binding, on whether the award was compatible with EU law would be issued by a designated body, which would leave the national courts with discretion on the matter. This system may be formalised in terms of a memorandum of understanding between EU institutions and ICSID. This reform has a low to medium degree of feasibility as it is politically sensitive and it has been shown that both ICSID and the EU institutions are unwilling to yield on jurisdictional powers. However, its possible advantages are much higher: it would make the legal environment of investors less uncertain, it would bring more coherence between the international and regional systems, and it would bring about a more sustainable equilibrium between investment protection and state sovereignty in the European Union.

Risks:
The notice and consultation mechanism will have the potential of creating delays in the enforcement process, especially in situations where several jurisdictions are involved and cases are complex in nature.

There are EU member states that are likely to be opposed to the protocol, such as member states that tend more to respect national sovereignty than international awards of arbitration.

Costs:
Consolidating the protocol would involve a great deal of coordination among ICSID, the European Commission, and EU member states and would take legal, administrative and diplomatic resources.

Member states would have to revise national laws to meet the new enforcement structure, and this may cost them a lot.

6.5 Chapter summary

The three proposed amendments, including a domestic execution-immunity waiver to commercial assets, a guidance note on the application of the public-policy exception, and the ICSID-EU coordination protocol, respond to important issues of the current ISA regime. New advantages that each reform brings are high levels of enforceability, minimum levels of forum shopping, and an opportunity to provide high levels of legal certainty as well as the Challenges and obstacles to the implementation of each of them are also high levels of complexity, chances of sovereign state resistance, and chances of implementing each of them at high costs. These notwithstanding, the suggested reforms represent a promising break with the more balanced and predictable ISA system that considers both investor rights and the sovereignty of states.

Chapter 7: Conclusion and Implications for Future Research

7.1 Summary of Key Findings

The extent to which investor-state arbitration awards can be enforced has been a growing area of concern, with governments becoming steadfastly defiant and the international legal system upon which these awards are founded being structurally limited in its capacity to enforce them effectively. In the essence of the study, the researcher sought to be able to answer the question of how the sovereign interests affect the process of enforcing arbitral awards and whether the instruments of the "New York Convention" (NYC)[82] and the ICSID Convention[83] Facilitate or fail to facilitate the process. It has employed a blend of doctrinal techniques, comparative techniques and empirical techniques. The main conclusion is that governmental refusal to enforce represents neither an occasional, unpredictable, or sporadic phenomenon but rather a developing trend that can be explained with the help of domestic political, financial, and legal limitations. States frequently use sovereign immunity, public policy exemptions, or constitutional supremacy in an attempt to avoid complying even where they have definitively lost in arbitration proceedings.

Notwithstanding being heralded as one of the most successful international legal instruments, the "New York Convention" on the pertinent aspects of enforcement is weakly joined as far as enforcement is conducted by national courts. Article V(2) (b), which gives states the power to rule out the application of the law on account of a state considering it to be against a state in its own considered good policy, has been resorted to in a much wider sense as well as with increased use. Cases such as Yukos v Russian Federation illustrate how states invoke sovereignty and public policy arguments to resist enforcement, effectively insulating themselves from arbitral awards even in the face of established international conventions. The Russian Federation and India are against. Likewise, the ICSID Convention, where enforcement is supposedly more powerful (in the case of failure to perform under Article 54), is highly undermined by the execution-stage immunity. The fact that ICSID awards become binding to be treated as judgments of the domestic courts does not provide a means of enforcing a judgment over state-owned assets that cannot be executed due to the existence of an immunity regime.

[82] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3 (New York Convention).

[83] Convention on the Settlement of Investment Disputes between States and Nationals of Other States (adopted 18 March 1965, entered into force 14 October 1966) 575 UNTS 159 (ICSID Convention).

The other significant lesson is the role of constitutional and supranational systems of law, especially in the European Union, which makes enforcement more complicated and, in some cases, highly challenging or even unattainable under current frameworks. The cases of Achema[84] and Komstroy[85] Before the Court of Justice of the EU held the intra-EU investor-state arbitration as inconsistent with EU law. These decisions effectively strike out the jurisdiction of arbitral tribunals under intra-EU BITs and introduce legal havoc and disturbance on the part of the investors. The advantages of this legal change have enabled the states to circumvent compliance, and thus this points to the fact that enforcement is becoming dictated more by regional legal hierarchies and not by treaty commitments. Another analysis this research makes that is of great importance is that of different jurisdictional differences in enforcement. Whereas courts in certain jurisdictions (e.g., the United Kingdom and Singapore) have a high level of compliance and deference to arbitral awards, other jurisdictions (e.g., Russia, Venezuela and Pakistan) regard enforcement with near suspicion or resistance. Such asymmetry of enforcement negates one of the major rationales behind the use of an arbitration in the first place, predictability.

The dissertation also focused on the new tendencies of the reform of investor-state dispute settlement (ISDS). There is a recognisable movement towards the more institutionalised, rules-oriented arbitration, e.g. a Multilateral Investment Court, as recommended by the EU. Nevertheless, such proposals have political and structural issues such as the neutrality of the judges, the enforceability of judgments and the acceptance of binding precedent. Dissatisfaction among people over perceived investor favouritism, transparency and the gap between investor rights and state regulation powers are the motivating factors in progressing with the reforms.

Importantly, this dissertation also suggested three potential solutions that could end the enforcement gap: (1) the implementation of domestic sovereign immunity carve-outs to arbitral enforcement; (2) the publication of non-binding public policy advice documents (through UNCITRAL or the ILA) to harmonise interpretation; and (3) the establishment of an administrative procedural framework of cooperation between ICSID and the EU to eliminate the ongoing jurisdictional policy standstill.

Finally, it is concluded in this dissertation that it is not the aim to attain perfect enforceability- a fantasy that is impossible to attain nor it is the aim to run the enforcement gap in a realistic and

[84] *Achmea BV v Slovak Republic* (Case C-284/16) EU:C: 2018:158.
[85] *Republic of Moldova v Komstroy LLC* (Case C-741/19) EU:C: 2021:655.

principled manner. The reforms being pursued here are a practical re-tuning: they enhance the legitimacy enforcement where it is most justified, but at the same time they provide clearer and more defensible lines on where state autonomy may be. Privileging the rights of investors over sovereignty and the reverse is not the future of investor-state dispute settlement, but in the creation of a system that is robust enough to sustain a perpetual and dynamic balance between the two.

7.2 Implications for Future Research

Future studies would be advised to focus on the doctrinal results of this dissertation by addressing areas where evidence, practice, or even conceptual clarity are lacking. Several promising directions can be identified. First, enforcement practices must be mapped empirically across jurisdictions that have been understudied. As much as this study examined Europe, the UK and the US, not much is documented regarding other countries like Nigeria, Indonesia and Brazil with respect to the enforcement behaviour. These states are, at the same time, big destinations of foreign direct investment and those with unique constitutional and political constraints on arbitration. A common theme in the books has been the discussion of the general pattern of enforcement in the Global South, and a more comprehensive comparative analysis of the practice of enforcement in the Global South would provide insight into whether it is similar to Europe and Northern America or whether it follows regional patterns.

Second, the parameters of the "public policy" exception to the NYC warrant analysis ought to be considered more carefully and comparatively in light of the U.S. Constitution. Courts have differed widely on the interpretation of this provision, with some courts extending its meaning to economic nationalism or social justice, or environmental protection. Such inconsistency blunts predictability and erodes the pro-enforcement spirit of the NYC. Future research should evaluate whether an international standard of public policy is crystallising and how such uniformity could be codified - through an amendment to the International Treaty, a revision of model law, or an authoritative soft law statement.

Third, the execution stage doctrine of sovereign immunity requires a new consideration. The treatment of state-owned enterprises and sovereign wealth funds is inconsistent in applying the traditional distinction between commercial actions (jure gestionis) and sovereign actions (jure imperii). In practice, governments are making increasing Immunity claims to protect assets which engage commercially in the international markets, so the gap between Immunity legal doctrine and economic reality is rapidly growing. It should be known more about how hybrid governance frameworks challenge immunity provisions and what amendments might reasonably diminish this safeguard without undermining the principle of sovereign equality.

Fourth, the introduction of "Multilateral Investment Court (MIC)" needs to be questioned in greater detail. However, it promises stability, the transparency and independence of the institution, there are still unanswered doubts regarding the politicisation of judicial appointment as well as the financing of the court and the functioning of the appellation mechanisms, and, above all, the answer to the question of the binding nature of its rulings, not only to serve member states. Unless proficient at the MIC is able to avoid all the pitfalls of the current systems, including susceptibility to political pressure or the lack of global acceptance, which will only enhance fragmentation instead of alleviating it.

Fifth, the crossover between regional legal regimes and international investment law is also a promising area of research. Disputes between EU law and ICSID obligations in Achmea and Micula can be viewed as an indicator of deeper conflict between supranational sovereignty and treaty-based arbitration. Potentially competitive changes might arise in other regional mechanisms, like the "African Continental Free Trade Area (ACFTA)" or "the Regional Comprehensive Economic Partnership (RCEP)" in Asia. Comparative analysis of these systems would elucidate whether Europe is an anomaly or an example of early centrifugal tendencies in the field of investment law. These developments suggest the importance of arbitration as one of the arenas of regulatory combat. In future research, the question should be posed whether the exceptions arising out of climate are specifically happening in investment treaties and how arbitral tribunals are interpreting them. This research avenue is especially timely as states are increasingly faced with pressure to achieve a balance between the interests of investors and environmental sustainability.

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