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**NAVIGATING LEGAL FRONTIERS: PUBLIC INTERNATIONAL LAW'S
IMPACT ON INVESTMENT TREATY ARBITRATION**- Arnab Goswami¹**Abstract**

This research explores the discrepancy observed in the application of public international law principles within investor-state dispute settlement (ISDS) mechanisms, aiming to uncover its underlying reasons and suggest potential remedies. Through a thorough examination of existing literature, legal precedents, and case studies, the research aims to shed light on the intricate interplay between public international law and investment treaty arbitration. By elucidating the factors contributing to the underutilization of public international law in ISDS, the study seeks to provide valuable insights into the challenges of navigating the convergence of these legal domains. Moreover, it underscores the implications of this gap on the effectiveness and legitimacy of ISDS mechanisms. Addressing this research gap holds the potential to deepen our understanding of international investment law and dispute resolution, contributing to ongoing discussions on enhancing mechanisms for resolving conflicts in this field and promoting transparency, fairness, and coherence in the ISDS framework.

Keywords: *Public International Law, Investment Treaty Arbitration, Investor-State Dispute Settlement*

RESEARCH GAP

A gap in research lies in comprehending the reasons behind the limited application of public international law principles in settling disputes between investors and states. Addressing this discrepancy could bolster the efficacy of mechanisms for resolving conflicts in international investment law.

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RESEARCH OBJECTIVE

I base my research to contribute exists in analyzing how emerging jurisprudential trends in investment treaty arbitration, particularly regarding fair and equitable treatment, state responsibility intersect with evolving customary international law principles. Understanding the impact of recent tribunal decisions on customary norms can provide insights into the dynamic evolution of international investment law.

REVIEW OF LITERATURE

While researching on this topic, I read books such as ‘Investment Treaty Arbitration as Public International Law’ written by Eric De Brabandere and published by Cambridge University Press which provided insights into how public international law principles manifest in disputes. Additionally, scholarly articles delve into specific facets, such as tribunal decision-making on applicable laws, the ICSID (International Centre for Settlement of Investment Disputes) website served as a rich repository, giving me access to cases and awards that draw upon public international law concepts. Moreover, I referred reliable articles by Organizations like the UN Conference on Trade and Development (UNCAD), along with legal databases and other online articles.

HISTORICAL EVOLUTION OF INVESTMENT TREATY ARBITRATION

Since its beginning, investment treaty arbitration has undergone substantial change, mostly as a result of the growth of bilateral investment treaties (BITs) and the creation of institutional structures for the settlement of disputes. BITs, which first came into existence after World War II, were designed to encourage foreign investment by guaranteeing investors against expropriatory or discriminating measures by host governments.² However, early cases were handled through ad hoc arbitration due to the lack of a regulated process for resolving disagreements, which led to inconsistent and unpredictable results.³

The International Centre for Settlement of Investment Disputes (ICSID) was established in 1965 under the auspices of the ICSID Convention, marking a significant turning point in the historical evolution of investment treaty arbitration. Investment dispute resolution was made easier with the

² <https://icsid.worldbank.org/resources/publications/practice-notes> (last visited Apr 13, 2024).

³ ERIC DE BRABANDERE, INVESTMENT TREATY ARBITRATION AS PUBLIC INTERNATIONAL LAW: PROCEDURAL ASPECTS AND IMPLICATIONS (First paperback edition ed. 2015).

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help of ICSID, which offered an organized and neutral arbitration forum. This was a substantial shift from ad hoc procedures and allowed for more consistency and predictability when resolving investor-state conflicts.⁴

The growth of investment treaty arbitration was aided by the BIT and trade agreement investment chapters that proliferated in the 1990s and early 2000s. The number of treaties increased, which expanded the range of conflicts that might be arbitrated and resulted in a sharp rise in investor-state lawsuits. The options for resolving disputes were further expanded with the establishment of additional arbitration mechanisms, such as ad hoc arbitration under UNCITRAL regulations and arbitration conducted by organizations like the Stockholm Chamber of Commerce (SCC) and the International Chamber of Commerce (ICC).⁵

The development of investment treaty arbitration was significantly influenced by the body of case law pertaining to arbitration. The rulings made by arbitral tribunals in significant instances, like CMS v. Argentina⁶ and Metalclad v. Mexico⁷, set significant precedents that impacted how treaty clauses and protection requirements were interpreted. The creation of a cohesive body of investment law was aided by these rulings, which provide clarity on matters ranging from expropriation and fair and equitable treatment to the interpretation of umbrella clauses.

Investment treaty arbitration has faced criticism even with its improvements. Transparency, consistency in decision-making, and alleged investor bias have all drawn criticism. Initiatives to improve the arbitration process's accountability and openness have been implemented in an effort to allay these worries. For instance, by mandating public access to important papers and proceedings in investor-state disputes, the 2014 UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration encourage more transparency.

Mega-regional agreements like the Trans-Pacific Partnership (TPP) and the Comprehensive Economic and Trade Agreement (CETA) have investor protection and dispute resolution clauses in response to increasing advancements in the industry. Strong investment protection clauses are

⁴ <https://icsid.worldbank.org/resources/publications/Investment-Laws-of-the-World> (last visited Apr 13, 2024).

⁵ OECD, Impact of Investment treaties, OECD Business and Finance Outlook 2016, <https://www.oecd.org/daf/inv/investment-policy/BFO-2016-Ch8-Investment-Treaties.pdf>.

⁶ CMS v. Argentina | Investment Dispute Settlement Navigator | UNCTAD Investment Policy Hub, <https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/68/cms-v-argentina> (last visited Apr 18, 2024).

⁷ Metalclad v. Mexico | Investment Dispute Settlement Navigator | UNCTAD Investment Policy Hub, <https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/17/metalclad-v-mexico> (last visited Apr 18, 2024).

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included in these agreements, which frequently incorporate components of investment treaty arbitration, such as investor-state dispute resolution procedures. The existence of such clauses emphasizes how crucial investment treaty arbitration is to the functioning of the contemporary international economy.⁸

Negotiations and arbitration procedures have changed as a result of attempts to resolve issues like regulatory autonomy and sovereignty. For instance, some recent BITs have clauses that aim to reconcile the rights of nations to regulate in the public interest with investor protection. In a similar vein, the possible effects on domestic regulatory autonomy are frequently carefully considered during the development of investment chapters in trade agreements.

UNVEILING THE VIENNA CONVENTION'S INFLUENCE ON TREATY INTERPRETATION

Adopted in 1969, the Vienna Convention on the Law of Treaties⁹ is a fundamental piece of international law that has a significant impact on how treaties are interpreted and applied globally. It has an impact on many other areas, influencing how treaties are perceived, put into practice, and upheld. When the impact of the Vienna Convention on treaty interpretation is examined, a sophisticated framework based on the ideas of customary international law and codified regulations pertaining to treaty interpretation becomes apparent.

Fundamentally, the Vienna Convention¹⁰ offers an extensive set of guidelines controlling the interpretation and implementation of treaties. The main method of interpretation is set forth in Article 31, which emphasizes the significance of the treaty language and its surrounding context, which includes the preamble and annexes. With special attention to the common meaning of terms in their context and in light of the treaty's intent and purpose, this textual method highlights the relevance of the language employed in the treaty itself.

Article 32 of the Vienna Convention, which supplements Article 31 of the convention, permits additional methods of interpretation, such as consulting preliminary work and later agreements, as well as the circumstances surrounding the treaty's conclusion. These additional methods should be

⁸ Christoph Schreuer, Jurisdiction and Applicable Law in Investment Treaty Arbitration, McGill Journal of Dispute Resolution, https://icsid.worldbank.org/sites/default/files/parties_publications/C8394/Claimants%27%20documents/CL%20-%20Exhibits/CL-0082.pdf.

⁹United Nations Treaty Collection, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXIII-3&chapter=23&clang=_en (last visited Apr 19, 2024).

¹⁰*Idib.*

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utilized in addition to the main textual technique, but they also provide important context for understanding the parties' intents and the negotiating environment.

Pacta sunt servanda, which requires treaties to be carried out in good faith, is one of the other principles codified in the Vienna Convention. This concept strengthens the stability and predictability of the international legal order by highlighting nations' fundamental need to uphold their treaty obligations. The Vienna Convention also provides reasons for nullifying treaties, such as error, fraud, or coercion, preventing parties from being bound by commitments made under pressure or deceit.

The Convention's provisions have been acknowledged as reflecting customary international law, therefore their influence on treaty interpretation goes beyond its written regulations. As a result, the Vienna Convention's norms for interpreting treaties apply even to states that are not parties to it. The Convention's importance as a founding document in the evolution of international law is shown by its broad acceptance.¹¹

The Vienna Convention has a practical impact on treaty interpretation, as demonstrated by the arbitral awards and court rulings made by international courts. In order to ensure uniformity and coherence in the interpretation of international agreements, courts and tribunals frequently utilize the Convention's rules and principles to interpret treaties. In addition, nations and international organizations use the Vienna Convention as a guide while negotiating, drafting, and interpreting treaties, which helps them make choices and take actions related to treaty law.

The Vienna Convention is noteworthy for its flexibility in responding to the changing demands and issues facing the global community. Although its tenets were developed within the framework of state-centric diplomacy, they have been applied to a variety of international accords, including those involving non-state players and institutions of global governance. This adaptability and continued relevance of the Convention's rules and principles in the current international legal environment are reflected in this flexibility.

The Vienna Convention has been applied to new and developing fields of international law in recent years, reinforcing and broadening its effect on treaty interpretation. The principles of the Vienna Convention are being applied in new situations by courts and tribunals as a result of the growing

¹¹ Jason Haynes, Reforming the Bilateral Investment Treaty Landscape in the Caribbean Region: A Clarion Call, 38 ICSID REVIEW - FOREIGN INVESTMENT LAW JOURNAL 72 (2023), <https://academic.oup.com/icsidreview/article/38/1/72/6628618> (last visited Apr 13, 2024).

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scope of treaty law pertaining to issues like human rights, environmental protection, and sustainable development. The Convention's continuous development highlights its continued significance and flexibility in response to shifting international conditions.¹²

NAVIGATING SOVEREIGNTY AND INVESTOR RIGHTS

Navigating the delicate balance between sovereignty and investor rights is a central challenge in the field of international investment law. At its core, this dynamic reflects the tension between the sovereign authority of states to regulate in the public interest and the legitimate expectations and rights of foreign investors. Achieving harmony between these competing interests requires a nuanced understanding of the legal principles, mechanisms, and challenges inherent in the interaction between sovereignty and investor rights.

The idea of regulatory autonomy, which gives governments the power to make and enforce laws and regulations inside their borders, is one of the core ideas supporting state sovereignty. This idea, which is rooted in customary international law, serves as the cornerstone for governments' domestic policy goals, including the advancement of social welfare, environmental preservation, and public health.¹³

The reasonable expectations and rights of foreign investors, which are frequently safeguarded by international investment agreements (IIAs) including bilateral investment treaties (BITs) and investment chapters in free trade agreements, must be weighed against the exercise of sovereignty. These agreements usually contain clauses that provide guarantees and rights to foreign investors, like the right to effective dispute resolution procedures, protection against expropriation without compensation, and fair and equitable treatment.

When government activities, such as new laws or policies, have an effect on foreign investments, there is frequently a conflict between investor rights and sovereignty. For instance, if a state enacts tax laws or environmental rules that hinder profitability or interfere with expected return on investment, it may be argued that these actions violate investor rights. States, on the other hand, can contend that taking such action is required to protect the public interest and accomplish legal policy goals.

¹² Browse, OXFORD PUBLIC INTERNATIONAL LAW, <https://opil.oup.com/search?sb=ae5e845c-6d71-1014-90bf-c1927c3ed365> (last visited Apr 19, 2024).

¹³ Jason Odering, *Library Guides: International Investment Law: Treaties*, <https://unimelb.libguides.com/c.php?g=929887&p=6719573> (last visited Apr 19, 2024).

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A rigorous balancing act that considers the interests of both nations and investors is necessary to navigate this tension. International investment law offers procedures for settling conflicts between investors and nations. One such mechanism is investor-state arbitration, which enables investors to sue host states for allegedly violating their treaty duties. But there has also been opposition to the spread of investor-state dispute settlement (ISDS) systems, with some expressing worries that arbitration could erode governments' regulatory authority and autonomy.¹⁴

In an attempt to properly balance investor rights and sovereignty, discussions and changes have been continuing as a result of these issues. Certain recent IIAs, for instance, have clauses that both emphasize the significance of giving foreign investors appropriate protection and equitable treatment and expressly acknowledge governments' authority to regulate in the public good. Additionally, in response to complaints regarding the lack of openness and consistency in decision-making, initiatives have been made to improve accountability and transparency in investor-state arbitration processes.

Using carve-out clauses and exceptions in IIAs is one way to balance investor rights with sovereignty. These clauses exempt specific policy areas from the application of investor protection laws, allowing states to maintain their regulatory autonomy. An IIA might, for instance, contain carve-out clauses for policies pertaining to environmental preservation, public health, or cultural preservation, acknowledging the significance of enabling governments to pursue their legal policy goals without worrying about investor lawsuits.

Using investor-state communication and consultation structures is another tactic for resolving the conflict between investor rights and sovereignty. These channels facilitate positive communication, information sharing, and resolution of possible conflicts between states and investors prior to the initiation of formal arbitration processes. These strategies can assist in preventing conflicts and promoting mutual understanding of each other's interests and concerns by encouraging communication and cooperation between parties.¹⁵

A harmonious balance between sovereignty and investor rights requires a multifaceted approach that takes into account the complexities of international investment law and the diverse interests of states and investors. By promoting transparency, accountability, and dialogue, while also respecting the

¹⁴ Chapter 3: Trade Agreements and Economic Theory | Wilson Center, <https://www.wilsoncenter.org/chapter-3-trade-agreements-and-economic-theory> (last visited Apr 19, 2024).

¹⁵GUS VAN HARTEN, INVESTMENT TREATY ARBITRATION AND PUBLIC LAW (Reprinted ed. 2011).

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legitimate policy objectives of states, the international community can work towards a more equitable and sustainable framework for governing foreign investment in the 21st century.¹⁶

PRINCIPLE OF FAIR AND EQUITABLE TREATMENT IN INVESTOR-STATE DISPUTES

The principle of fair and equitable treatment (FET) is a cornerstone of international investment law, governing the treatment of foreign investors by host states. This principle, while not explicitly defined in treaty texts, is widely recognized as a core element of investment protection. Navigating the complexities of the FET principle in investor-state disputes requires a nuanced understanding of its interpretation, application, and evolving jurisprudence.¹⁷

Fundamentally, host states are required by the Fair and Equitable Treatment (FET) concept to ensure that foreign investors receive fair, equitable, and non-discriminatory treatment. This includes a broad variety of state acts, such as legislative, executive, and judicial actions, in addition to more general factors like due process, transparency, and predictability. The FET principle seeks to guarantee that host countries do not apply arbitrary or discriminatory treatment to foreign investors and that they are given equal opportunities on the market.

Determining the extent of the duties the FET principle places on host states is one of the main issues in its interpretation. Despite the principle's wide formulation, there has been much discussion and interpretation over its exact meaning and application in both academic literature and arbitral adjudication. Arbitral tribunals have acknowledged that the Fair and Equitable Treatment (FET) principle is a standard of care that is adaptable and situation-specific, considering the particulars of each case as well as the reasonable expectations of investors.

The 1994 decision of *Tecmed v. Mexico*¹⁸ is considered a key case in the development of the FET principle, as the tribunal clarified the notion of legitimate expectations as a fundamental component of FET. The expectations that investors may justifiably have in light of the host state's statements, guarantees, or actions are known as legitimate expectations. Tribunals have determined that even while these reasonable expectations aren't expressly stated in treaty texts, host governments nonetheless have a duty to observe and uphold them.

¹⁶*Idib.*

¹⁷ Practice Notes for Respondents in ICSID Arbitration | ICSID, <https://icsid.worldbank.org/resources/publications/practice-notes> (last visited Apr 20, 2024).

¹⁸ Jus Mundi, *Tecmed v. Mexico, Award, 29 May 2003*, <https://jusmundi.com/en/document/decision/en-tecnicas-medioambientales-tecmed-v-united-mexican-states-award-thursday-29th-may-2003> (last visited Apr 19, 2024).

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Through later arbitral rulings and scholarly discussion, the FET principle's meaning and applicability have changed over time. For instance, the tribunal determined that a host state's activities that amounted to arbitrary or unreasonable interference with the investor's investment could constitute a violation of the FET principle in the 2001 case of *Metalclad v. Mexico*.¹⁹ This ruling broadened the application of the Fair and Equitable Treatment (FET) concept to include less obvious types of interference with investors' rights in addition to overt discrimination.

The acknowledgement of the notion of proportionality is a noteworthy advancement in the understanding of the FET principle. Tribunals have ruled that in order to balance the legitimate regulatory interests of the state with the interests of investors, host governments' regulatory measures must be commensurate to the public policy goals they want to achieve. This idea has been used in situations involving taxation, public health initiatives, and environmental regulation, among other things. It emphasizes the necessity of striking a balance between state sovereignty and investor protection.²⁰

The FET concept has also generated discussion and criticism, especially in light of its potential to unnecessarily limit state regulatory autonomy. Some contend that states' authority to regulate in the public interest is restricted by the liberal interpretation of the FET principle in arbitral jurisprudence, which discourages the implementation of essential regulatory measures. In order to prevent compromising nations' sovereign rights to regulate, critics have advocated for more clarity and moderation in the application of the FET principle.

Efforts to address these concerns have led to ongoing debates and reforms aimed at refining the interpretation and application of the FET principle. For example, recent IIAs have included provisions that seek to clarify and specify the scope of the FET obligation, including explicit references to concepts such as regulatory stability and legitimate expectations. Additionally, efforts have been made to enhance transparency and accountability in investor-state dispute settlement proceedings, promoting greater consistency and coherence in decision-making.

¹⁹ Jus Mundi, *Metalclad v. Mexico, Award, 30 août 2000*, <https://jusmundi.com/fr/document/decision/en-metalclad-corporation-v-the-united-mexican-states-award-wednesday-30th-august-2000> (last visited Apr 19, 2024).

²⁰GUS VAN HARTEN, *INVESTMENT TREATY ARBITRATION AND PUBLIC LAW* (Reprinted ed. 2011).

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EXAMINING STATE RESPONSIBILITY FOR BREACHES OF INVESTMENT TREATIES

Examining state responsibility for breaches of investment treaties sheds light on the intricate framework governing the obligations and liabilities of states in the context of international investment law. This examination delves into the principles, mechanisms, and challenges inherent in holding states accountable for breaches of their treaty commitments, providing insights into the evolving landscape of investor-state dispute resolution.

Fundamentally, customary international law provides the foundation for state responsibility in the context of investment treaties. This includes the need to uphold and honor treaty obligations in good faith. A state undertakes specific duties to foreign investors when it signs an investment treaty, including treating them fairly and equally, guarding against unjustified expropriation, and guaranteeing that they have access to efficient dispute resolution procedures. Violations of these duties may result in state accountability, with legal ramifications for the offending state.²¹

Investor-state dispute settlement (ISDS) is a crucial mechanism that holds nations responsible for violating investment treaty obligations. It enables foreign investors to file claims directly against host states for purported treaty violations. Foreign investors have access to independent arbitral courts to settle disputes with host nations through the use of Investor-State Dispute Settlement (ISDS) processes, which are frequently featured in bilateral investment treaties (BITs) and investment chapters of free trade agreements.²²

Usually, the parties agree to create the jurisdiction of these arbitral tribunals. This can be done by submitting agreement to arbitration at the time of conflict or by including arbitration terms in investment treaties. Arbitral tribunals can decide on claims made by foreign investors and decide if a treaty commitment has been broken after jurisdiction has been established.

In order to assess whether a breach has occurred and what remedies are appropriate, arbitral tribunals tasked with resolving investor-state disputes refer to customary international law, treaty interpretation rules, and the particular terms of the investment treaty at hand. The *pacta sunt*

²¹ Charles Bjork, *Guides: International Investment Law Research Guide: Customary Law on State Responsibility*, <https://guides.ll.georgetown.edu/c.php?g=371540&p=2511830> (last visited Apr 21, 2024).

²² HILJ-HIALSA International Arbitration Collaboration, HARVARD INTERNATIONAL LAW JOURNAL, <https://journals.law.harvard.edu/ilj/category/content/article-series/online-features/hilj-hialsa-international-arbitration-collaboration/> (last visited Apr 21, 2024).

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servanda concept, which states that treaties must be upheld, and the jurisprudence built from earlier rulings in investment arbitration cases serve as the courts' guiding principles.

In investor-state conflicts, the investor usually has the burden of proof to show that the host state violated its treaty duties through actions or omissions. In order to do this, the investor must offer proof of the purported violation and show a connection between the actions of the state and the harm the investor experienced. In response, host governments have the chance to offer refutations and supporting documentation for their positions.

Arbitral courts that adjudicate state accountability in investor-state conflicts frequently have to go through intricate legal and factual concerns. These could involve interpreting the terms of the treaty, evaluating the host state's actions in comparison to the treatment standards stipulated in the treaty, and figuring out the amount of damages owed to the investor. Tribunals also have to think about how their rulings may affect the balance between state sovereignty and investor protection as well as the larger picture of the international investment regime.²³

Conflicting or inconsistent rulings from several courts considering comparable claims is one of the difficulties in investor-state dispute settlement. This tendency, referred to as "regulatory chill," has the potential to erode the consistency and predictability of the international investment regime, creating uncertainty for states and investors alike. In order to tackle this difficulty, efforts have been made to establish processes for appeal or formulate rules for tribunal decision-making, with the goal of fostering coherence and consistency in the law of investment arbitration.²⁴

A further obstacle in the resolution of disputes between investor and state is the belief that the arbitration procedure lacks accountability and transparency. The contention of critics is that the resolution of investor-state conflicts lacks transparency and legitimacy due to the confidential nature of arbitration processes and the restricted chances for public participation. Calls for increased transparency in arbitration procedures, such as the publication of arbitral decisions and the involvement of *amicus curiae* (friends of the court) in proceedings, have been made in an attempt to allay these worries.

²³ Anthea Roberts, *Power and Persuasion in Investment Treaty Interpretation: The Dual Role of States*, 104 THE AMERICAN JOURNAL OF INTERNATIONAL LAW 179 (2010), <https://www.jstor.org/stable/10.5305/amerjintlaw.104.2.0179> (last visited Apr 21, 2024).

²⁴HILJ-HIALSA International Arbitration Collaboration, HARVARD INTERNATIONAL LAW JOURNAL, <https://journals.law.harvard.edu/ilj/category/content/article-series/online-features/hilj-hialsa-international-arbitration-collaboration/> (last visited Apr 21, 2024).

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Hence examining state responsibility for breaches of investment treaties provides insights into the complex framework governing the obligations and liabilities of states in the context of international investment law. While investor-state dispute settlement mechanisms offer foreign investors recourse to hold host states accountable for breaches of treaty commitments, challenges remain in achieving consistency, transparency, and legitimacy in the resolution of investor-state disputes. Efforts to address these challenges will be critical in maintaining confidence in the international investment regime and promoting a conducive environment for foreign investment and economic development.

CONCLUSION AND SUGGESTIONS

Situated at the intersection of state regulatory autonomy and investor protection, investment treaty arbitration is a dynamic field that is always changing. This growth is influenced by continuous discussions, adjustments, and advancements in the field of public international law, especially with regard to governments' rights and obligations when it comes to foreign investment. Within this framework, it is critical to strike a careful balance between protecting investor interests and maintaining state sovereignty. The preservation of trust and confidence in the arbitration process depends critically on initiatives targeted at improving openness, guaranteeing consistency in outcomes, and resolving bias concerns. In the end, investment treaty arbitration is an important tool in the larger subject of public international law, helping to navigate the intricate relationship between state sovereignty and investor protection while promoting economic growth and international investment.

One of the foundational texts of public international law, the Vienna Convention on the Law of Treaties has a significant impact on how treaties are interpreted and implemented globally. Coherence, predictability, and consistency in treaty law are thereby fostered by its codified rules and principles, which offer a strong framework for understanding and putting into practice international agreements. The Vienna Convention's lasting relevance and adaptability continue to influence the development of treaty interpretation within the larger framework of public international law, even as the world community struggles with new opportunities and difficulties.

Understanding the tenets of public international law in detail is necessary to strike a balance between investor rights and sovereignty. Through promoting openness, responsibility, and communication, as well as recognizing the rightful policy goals of nations, the global community can endeavor to

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develop a just, equitable, and long-lasting structure for managing foreign investment. In the field of public international law, navigating the difficulties of investor rights and sovereignty is essential to advancing international law's tenets while also advancing global economic development.²⁵

In the context of international investment, the principle of fair and equitable treatment (FET) continues to be a pillar of public international law, prescribing how host nations should treat foreign investors. Even with changing meanings and uses, the FET principle is still essential for giving investors guarantees of fairness, predictability, and nondiscrimination. Within the larger context of public international law, the FET principle supports legitimate expectations and encourages respect for international law, which helps to create a stable and favorable climate for foreign investment and economic development.

Analyzing a state's liability for investment treaty breaches provides important insights into the complex system that governs a state's obligations and liabilities under public international law. Even though investor-state dispute settlement systems give foreign investors a way to hold host states responsible for treaty violations, there are still issues with maintaining legitimacy, consistency, and openness in the process of resolving disputes. In the larger framework of public international law, resolving these issues is crucial to preserving trust in the international investment regime and promoting an atmosphere that welcomes foreign capital and economic expansion.

In the field of public international law, the necessity of multilateral conventions and accords to regulate foreign investment is becoming increasingly apparent. States can create comprehensive frameworks that encourage coherence and uniformity in the application of legal concepts across many jurisdictions by embracing multilateralism. Additionally, multilateral accords can promote state cooperation and a more egalitarian and inclusive approach to investment governance.

It is important to fortify the institutional structures. Public international law frameworks governing investment treaty arbitration are significantly shaped by international institutions like ICSID and UNCITRAL. A more resilient and efficient system of dispute resolution may be developed by

²⁵Anthea Roberts, *Power and Persuasion in Investment Treaty Interpretation: The Dual Role of States*, 104 THE AMERICAN JOURNAL OF INTERNATIONAL LAW 179 (2010), <https://www.jstor.org/stable/10.5305/amerjintlaw.104.2.0179> (last visited Apr 21, 2024).

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strengthening these institutional frameworks' ability to advance best practices and standards in investment arbitration.²⁶

Resource availability is another area that requires modification. Developing nations may need support for capacity-building and technical assistance in order to navigate the complexity of investment treaty arbitration. The international community can assist in strengthening the institutional and legal capacity of governments to participate in investment treaty negotiations and dispute resolution procedures by offering training programs, workshops, and other types of support.

Furthermore, within the parameters of public international law, technology may improve the effectiveness and accessibility of investment treaty arbitration procedures. States and investors can increase access to justice for all parties concerned, cut expenses, and streamline dispute resolution procedures by utilizing digital tools and platforms.

Investment treaty arbitration, deeply rooted in public international law, undergoes constant evolution to balance investor protection and state sovereignty. Professor Rudolf Dolzer, a renowned scholar in the field of international investment law, aptly stated, "Understanding the intricacies of why public international law principles are underutilized in investment arbitration is essential for advancing the effectiveness and legitimacy of the international investment regime." Important actions within this framework include embracing international agreements, fortifying institutional frameworks, resolving resource inequities, and utilizing technology. The international investment regime can advance toward more coherence and inclusion by adhering to the values of transparency, accountability, and justice. This will support global economic development while maintaining the integrity of public international law.

²⁶HILJ-HIALSA International Arbitration Collaboration, HARVARD INTERNATIONAL LAW JOURNAL, <https://journals.law.harvard.edu/ilj/category/content/article-series/online-features/hilj-hialsa-international-arbitration-collaboration/> (last visited Apr 23, 2024).

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