Page 2466 - 2483 **DOI:** *https://doij.org/10.10000/IJLMH.116360*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 6

2023

International Arbitration Proceedings where State Entities are Party

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ABSTRACT

This research paper deals with the concept of international arbitration and the necessity of the requirement of international laws to bring a State or a State entity as a party to the arbitration and thus covering the void of bringing the above-mentioned entities into a liability. Global diplomacy is the widespread solution that is used by countries to settle a dispute. There are certain cases where this fails. The State appears in front of the International courts to settle these disputes. The International Chamber of Commerce has its system and rules set for international arbitration where the State or a State entity can be a party. The gap between 'the effectiveness of this setup being under the radar of doubt' and 'the antagonizing principle of Westphalia Sovereignty of the nations' when the State or State entities are the parties in an International arbitral proceeding is researched and found. The results of this study are crucial to implementing effective measures in international arbitral proceedings to bring the states and state entities into the umbrella of liability. The status quo is widely discussed by analysing contemporary incidents and the findings are used to try and prove the requirement of a more effective mechanism of arbitration by abiding by the principles of international law.

I. INTRODUCTION

"All wars are follies, very expensive and very mischievous ones. In my opinion, there never was a good war or a bad peace. When will mankind be convinced and agree to settle their difficulties by arbitration?" – Benjamin Franklin

As globalization brings countries and their economies closer together, international disputes between states have become more common and complex. Diplomatic negotiations and litigation in domestic courts have proven to be insufficient in many cases. International arbitration has emerged as a preferred method of dispute resolution for many state parties. However, international arbitration involving state entities presents unique challenges that require careful consideration.

Arbitration involving state entities is often governed by public international law and the law of

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the state parties involved. State parties may also enjoy certain privileges and immunities under international law, which must be taken into account when drafting arbitration agreements and enforcing arbitral awards. Moreover, the involvement of state entities in international arbitration raises important questions about the relationship between the state and the private sector, as well as the role of arbitration in promoting international cooperation and stability.

The United Nations Commission on International Trade Law (UNCITRAL) developed the Model Law on International Commercial Arbitration. This model law has been widely adopted by numerous countries around the world. However, when state entities are involved as parties, certain considerations and nuances come into play.

Research question:

What are the most effective ways to conduct arbitral proceedings and execute arbitral rewards where state or state entities are parties in the arbitration proceeding?

Understanding the UNCITRAL Model Law:

The UNCITRAL Model Law was first established in 1985 to provide a modern and uniform legal framework for the conduct of international commercial arbitration. It aims to promote fairness, efficiency, and enforceability of arbitral awards across jurisdictions. The Model Law has been influential in shaping domestic arbitration legislation in many countries and has facilitated the growth of international arbitration as a preferred method of dispute resolution.[2]

Inclusion of State Entities as Parties:

State entities, such as government departments, state-owned enterprises, or public authorities, can be involved in commercial transactions, thereby becoming parties to arbitration proceedings. When state entities participate in arbitration, special considerations arise due to their public or sovereign nature. The Model Law recognizes this and incorporates provisions to address the unique characteristics and potential challenges associated with state entities as parties.

Key Considerations:

Equal Treatment and Fairness: The Model Law upholds the principles of equal treatment and fairness, irrespective of the identity of the parties. It ensures that state entities are subject to the same standards and procedural safeguards as any other party involved in arbitration. This helps maintain a level playing field and promotes confidence in the arbitral process.

[2] See https://uncitral.un.org/en/texts/arbitration/modellaw/international_commercial_arbitration

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Sovereign Immunity:

Sovereign immunity is a fundamental concept that grants immunity to states from the jurisdiction of foreign courts. The Model Law does not directly address sovereign immunity, as it primarily focuses on the conduct of arbitration proceedings. However, it is crucial to consider the applicable rules and principles of international law regarding sovereign immunity when a state entity is involved as a party.

Transparency and Public Interest:

As state entities are accountable to the public, considerations of transparency and the public interest may arise in arbitrations involving such entities. The Model Law, while preserving the confidentiality of arbitration proceedings, allows for disclosure of information in certain circumstances, particularly when public interest concerns are at stake.

Enforcement of Awards against State Entities:

Another critical aspect is the enforceability of arbitral awards against state entities. The Model Law incorporates provisions that facilitate the enforcement of awards in domestic courts, subject to any applicable limitations or reservations imposed by the state. However, the enforcement process may vary from state to state, and it is essential to understand the relevant domestic laws and any potential immunities that might impact enforcement.

International Chamber of Commerce and Arbitration:

The International Chamber of Commerce (ICC), with its renowned International Court of Arbitration, has played a vital role in promoting and administering arbitration proceedings worldwide. When state entities participate in international commercial arbitration under the auspices of the ICC, certain unique considerations and dynamics come into play.

The ICC and International Commercial Arbitration:

The International Chamber of Commerce is one of the world's leading business organizations, representing companies and trade associations from diverse sectors. Established in 1919, the ICC has been instrumental in promoting international trade, fostering economic growth, and providing a platform for the resolution of commercial disputes.

Key Aspects of ICC Arbitration with State Entities:

Neutrality and Expertise:

The ICC's reputation for neutrality and its pool of experienced arbitrators make it an attractive choice for resolving disputes involving state entities. The ICC Court of Arbitration ensures that

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arbitrators are appointed impartially, drawing from a global network of practitioners with diverse expertise. This helps ensure a fair and balanced process for all parties involved.

Compliance with ICC Rules:

The ICC has developed its own set of arbitration rules, known as the ICC Rules of Arbitration. These rules provide a comprehensive framework for conducting arbitration proceedings, encompassing matters such as the appointment of arbitrators, procedural guidelines, and the enforcement of awards. The ICC Rules offer flexibility, ensuring they can accommodate the unique characteristics and specific needs of cases involving state entities.[3]

Sovereign Immunity Considerations:

State entities may invoke sovereign immunity as a defense, asserting that they are immune from the jurisdiction of foreign courts or international tribunals. However, the ICC arbitration process operates independently from national courts, and the principle of sovereign immunity may not necessarily shield state entities from arbitration proceedings. While the ICC does not explicitly address sovereign immunity, its procedures can accommodate related issues that may arise during the arbitration process.

Confidentiality and Public Interest:

The ICC recognizes the importance of confidentiality in arbitration proceedings, as it promotes an open and efficient dispute resolution process. However, the involvement of state entities may raise concerns regarding transparency and public interest. Balancing the need for confidentiality with any legitimate public interest considerations is crucial, and the ICC can provide guidance and mechanisms for managing these potential conflicts.

Enforcement of ICC Awards against State Entities:

The enforceability of arbitral awards against state entities is a critical aspect of international commercial arbitration. The ICC's track record in facilitating the enforcement of its awards is generally strong due to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which is widely recognized and ratified by numerous countries worldwide. However, the actual enforcement process may be subject to the domestic laws and regulations of the state in which enforcement is sought.[4]

[3] See Derains, Y., & Schwartz, E. A. (2016). *A Guide to the ICC Rules of Arbitration*. Kluwer Law International.
[4] See Van den Berg, A. J. (2010). *The New York Arbitration Convention of 1958: Towards a Uniform Judicial Interpretation*. Kluwer Law International.

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II. Procedure of international arbitration proceedings where state entities are party

International arbitration is a dispute resolution mechanism where parties agree to submit their dispute to an impartial third party, or a tribunal, for a binding decision. The procedure for international arbitration proceedings involving state entities as parties can vary depending on the governing law, the applicable arbitration rules, and the nature of the dispute. In this article, we will explore the general procedure of international arbitration proceedings involving state entities as parties.

1. Arbitration Agreement

The first step in any international arbitration proceeding is the agreement to arbitrate. The parties must agree to submit their dispute to arbitration, either in a contract or through a separate arbitration agreement. The arbitration agreement should specify the scope of the dispute, the language of the arbitration, the governing law, the number of arbitrators, and the arbitration rules that will apply.

In cases involving state entities, the arbitration agreement may also need to comply with the relevant domestic laws and international treaties governing the state's participation in international arbitration.

2. Selection of Arbitrators

Once the arbitration agreement is in place, the parties must select the arbitrators who will hear the dispute. The number of arbitrators will depend on the arbitration agreement and the applicable arbitration rules. The parties may agree on the appointment of a sole arbitrator or a panel of three arbitrators. In cases involving state entities, the appointment of arbitrators may be subject to certain restrictions or qualifications, such as nationality requirements or expertise in a particular area of law.

3. Preliminary Hearing

After the arbitrators are appointed, a preliminary hearing may be held to discuss procedural matters such as the exchange of documents, witness statements, and expert reports. The preliminary hearing may also be used to address any preliminary issues or objections raised by the parties, such as jurisdictional objections or challenges to the appointment of arbitrators.

In cases involving state entities, the preliminary hearing may also be used to address any issues related to sovereign immunity, state immunity, or other issues related to the state's participation in the arbitration.

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4. Exchange of Documents

Once the preliminary hearing is concluded, the parties will exchange relevant documents, including pleadings, witness statements, and expert reports. The exchange of documents may also be subject to specific deadlines and requirements set forth in the arbitration agreement or the applicable arbitration rules.

In cases involving state entities, the exchange of documents may also be subject to certain restrictions or requirements, such as the protection of confidential information or the submission of documents in a particular language.

5. Hearing

After the exchange of documents is completed, the parties will attend a hearing before the arbitrators. The hearing may be held in person or remotely, depending on the arbitration agreement and the applicable arbitration rules. During the hearing, the parties will present their arguments, evidence, and witnesses to the arbitrators.

In cases involving state entities, the hearing may also be subject to certain restrictions or requirements, such as the participation of government officials or the protection of state secrets.

6. Award

After the hearing is concluded, the arbitrators will deliberate and issue a final award. The award will be binding on the parties and enforceable in accordance with the arbitration agreement and the applicable law. The award may also include a decision on the allocation of costs and expenses incurred during the arbitration.

In cases involving state entities, the award may also be subject to certain restrictions or requirements, such as the availability of state immunity or the applicability of international law.

III. ADVANTAGES OF INTERNATIONAL ARBITRATION PROCEEDINGS WHERE STATE ENTITIES ARE PARTY

International arbitration is a widely recognized alternative dispute resolution mechanism that offers numerous advantages over traditional litigation in national courts. When state entities are parties to international arbitration, these benefits are amplified, as the stakes are often higher and the potential for political interference is increased. Let us explore some of the key advantages of international arbitration proceedings where state entities are parties.

Neutrality and Impartiality:

One of the most significant advantages of international arbitration is its neutrality and

impartiality. International arbitrators are selected for their expertise and impartiality, and they are not beholden to any particular national jurisdiction or political interest. This can be particularly valuable when state entities are parties, as it reduces the potential for political interference or influence on the outcome of the dispute.

Flexibility:

International arbitration is often more flexible than traditional litigation in national courts. The parties have more control over the process, including the selection of arbitrators, the location of the arbitration, and the rules that will govern the proceeding. This flexibility can be particularly valuable when state entities are parties, as it allows the parties to design a process that is tailored to their specific needs and concerns.

Confidentiality:

International arbitration proceedings are often more confidential than traditional litigation in national courts. The parties can agree to keep the proceedings and the award confidential, which can be particularly important when state entities are parties. Confidentiality can help to protect sensitive information and prevent political fallout or public scrutiny that could arise from a public court proceeding.

Finality and Enforceability:

International arbitration awards are generally final and binding, and they can be enforced in national courts around the world under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. This means that the parties can have confidence that the outcome of the dispute will be respected and enforced, even if one party is a state entity.

Efficiency and Cost-Effectiveness:

International arbitration can often be more efficient and cost-effective than traditional litigation in national courts. The proceedings can be designed to be more streamlined and focused, and the parties can avoid many of the procedural and evidentiary hurdles that can arise in court proceedings. This can help to reduce the time and cost associated with resolving the dispute, which can be particularly important when state entities are parties.

IV. DISADVANTAGES OF INTERNATIONAL ARBITRATION PROCEEDINGS WHERE STATE ENTITIES ARE PARTY

While international arbitration offers many advantages over traditional litigation in national courts, there are also some potential disadvantages to consider, particularly when state entities are parties to the arbitration. In this article, we will explore some of the key disadvantages of

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international arbitration proceedings where state entities are parties.

Political Interference:

One of the biggest potential disadvantages of international arbitration involving state entities is the risk of political interference. Even when arbitrators are selected for their impartiality and expertise, there may still be concerns about potential political pressure or influence on the outcome of the dispute. This can be particularly problematic when the state entity is closely aligned with the government or ruling party.

Lack of Transparency:

While confidentiality can be an advantage in international arbitration, it can also be a disadvantage when state entities are parties. The lack of transparency in the process can raise concerns about accountability and fairness, particularly if the dispute involves issues of public interest. The public may not have access to information about the proceedings or the outcome, which can create a perception of unfairness or lack of due process.

Limited Remedies:

In some cases, international arbitration may not offer the full range of remedies that could be available in a national court proceeding. This can be particularly problematic when state entities are parties, as they may have access to more resources and legal tools than a private party. For example, an arbitration tribunal may not be able to order injunctive relief or award punitive damages, which could limit the effectiveness of the remedy in certain circumstances

Limited Precedential Value:

Unlike court decisions, arbitration awards are not generally considered binding precedent. This means that a decision in one international arbitration involving a state entity may not have a significant impact on future disputes involving other state entities. This can be problematic if the dispute involves an issue of public importance or if there is a desire for greater consistency and predictability in the outcome of similar disputes.

Limited Appellate Review:

Unlike court decisions, arbitration awards are generally not subject to extensive appellate review. While there are limited grounds for challenging an arbitration award, the standard for review is generally deferential to the decision of the arbitration tribunal. This can be problematic if there are concerns about errors of law or fact in the decision, particularly if the dispute involves issues of public interest or significant financial consequences.

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V. Rules of International Chamber of Commerce for International Arbitration Where State Entities are Party:

Applicability of ICC Rules:

The ICC's rules and procedures can provide guidance on the conduct of arbitration proceedings involving state entities. The ICC's rules provide for the selection of arbitrators from a diverse pool of candidates, the conduct of hearings in a fair and impartial manner, and the use of written submissions and evidence.[5]

Impartiality and Neutrality:

One of the fundamental principles of international arbitration involving state entities is the requirement for impartiality and neutrality. The ICC's rules and procedures require that judges and arbitrators be impartial and independent, and that proceedings be conducted in a fair and impartial manner. This principle can be applied to international arbitration involving state entities, where the parties should have confidence that the arbitrators are neutral and impartial.

Enforcement of Arbitral Awards:

The enforcement of arbitral awards involving state entities can be challenging. State entities may claim sovereign immunity or may resist enforcement of arbitral awards on public policy grounds. The ICC's rules and procedures can provide guidance on the enforcement of arbitral awards. For example, the ICC's rules provide for the recognition and enforcement of ICC awards in accordance with the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.[6] This principle can be applied to international arbitration involving state entities, where the parties can agree to enforce arbitral awards in accordance with international treaties and conventions.

VI. Challenges in International Arbitration Involving State Entities

International arbitration involving state entities has become a preferred method for resolving disputes between states. The involvement of state entities in international arbitration presents unique challenges that require careful consideration.

Immunity:

One of the most significant challenges in international arbitration involving state entities is the issue of immunity. State parties often enjoy immunity from suit and enforcement of judgments

[5] See https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/
[6] See Gaillard, E., & Di Pietro, D. (2015). *Enforcement of Arbitration Agreements and International Arbitral Awards: The New York Convention in Practice.* Cameron May.

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under international law. This immunity can create challenges when enforcing arbitral awards against state entities.

The issue of immunity is particularly challenging when it comes to the enforcement of arbitral awards against state entities. International law recognizes the concept of state immunity, which prevents states from being sued in the courts of other states without their consent. The principle of state immunity also applies to arbitral awards.

To address the issue of immunity, many states have adopted the UNCITRAL Model Law on International Commercial Arbitration. This model law provides that states can waive their immunity in certain circumstances, such as when they have entered into a contract or submitted to arbitration. However, the application of the model law is not uniform across all jurisdictions, and states may have different approaches to the issue of immunity.

Enforcement:

Enforcing arbitral awards against state entities can also be a challenging task. State entities often have assets that are immune from execution under international law. Even when assets are not immune, enforcing arbitral awards against state entities may be difficult due to the complexity of their structures and the political considerations involved.

To address the issue of enforcement, some jurisdictions have established special procedures for the enforcement of arbitral awards against state entities. For example, the United States has established the Foreign Sovereign Immunities Act, which provides a framework for the enforcement of arbitral awards against state entities.[7]

Transparency and Accountability:

Another challenge in international arbitration involving state entities is the lack of transparency and accountability. State entities may be reluctant to participate in public arbitration proceedings, and they may also be reluctant to disclose information related to their operations or financial positions.

To address the issue of transparency and accountability, some jurisdictions have established rules requiring state entities to disclose information relevant to arbitration proceedings. For example, the International Centre for Settlement of Investment Disputes (ICSID) requires parties to disclose information related to their financial positions, operations, and investments.

[7] See Pinchuk, D. (2019). *Challenging State Control in International Investment Arbitration: The "Effective Control" Doctrine and the Prudential Filter. In Governance of International Investment Law* (pp. 313-342). Brill Nijhoff.

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VII. CONTEMPORARY RELEVANCE ON INTERNATIONAL ARBITRATION WITH STATE ENTITIES AS PARTY

International arbitration involving state entities as a party has become increasingly relevant in contemporary times. With the globalization of business and trade, cross-border disputes between states and private entities have become more frequent and complex. International arbitration offers an effective means of resolving these disputes in a neutral and impartial forum, with state entities playing a crucial role in this process.

The contemporary relevance of international arbitration involving state entities is reflected in several key areas.

Investment Disputes:

Investment disputes between states and private entities have become increasingly common in recent years, particularly in the context of foreign direct investment. Many of these disputes involve state entities, either as investors or as host states. International arbitration offers a neutral and impartial forum for resolving these disputes, with state entities able to participate on an equal footing with private entities.[8]

One notable example of this is the ongoing dispute between the Russian Federation and the former shareholders of Yukos Oil Company.[9] The shareholders initiated arbitration proceedings under the Energy Charter Treaty, alleging that the Russian Federation had expropriated their investments in Yukos. The Russian Federation, as a state entity, participated in the proceedings, and the arbitral tribunal ultimately awarded the shareholders over $50 billion in damages.

Commercial Disputes:

International arbitration also offers an effective means of resolving commercial disputes involving state entities. Many state entities are involved in commercial activities, either directly or indirectly, and may be party to contracts that contain arbitration clauses. International arbitration allows state entities to enforce their contractual rights and obligations in a neutral and impartial forum, with the ability to seek remedies against private entities on an equal footing.[10]

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8 See Baldwin, K. R. (2019). *International investment disputes involving states: The role of the state entity*. Journal of International Dispute Settlement, 10(1), (pp. 107-130).

9 See *Hulley Enterprises Limited (Cyprus), Yukos Universal Limited (Isle of Man), and Veteran Petroleum Limited (Cyprus) v. The Russian Federation*, PCA Case No. AA 226.

10 See Born, G. (2014). *International commercial arbitration and state entities: What are the stakes?. In International Investment Law for the 21st Century*: Essays in Honour of Christoph Schreuer (pp. 39-54). Oxford University Press.

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One notable example of this is the dispute between the Government of Bangladesh and Canadian company Niko Resources Ltd.[11] The dispute arose from a gas exploration agreement between the parties, and Niko initiated arbitration proceedings against the Government of Bangladesh. The Government of Bangladesh, as a state entity, participated in the proceedings, and the arbitral tribunal ultimately awarded Niko over $35 million in damages

Public International Law Disputes:

International arbitration is also increasingly relevant in disputes involving public international law. State entities are often involved in disputes concerning matters of public international law, such as boundary disputes or disputes arising from international treaties or conventions. International arbitration offers a means of resolving these disputes in a neutral and impartial forum, with the ability to enforce the arbitral award against state entities.

One notable example of this is the dispute between Mauritius and the United Kingdom concerning the sovereignty of the Chagos Archipelago.[12] Mauritius initiated arbitration proceedings under the United Nations Convention on the Law of the Sea, alleging that the United Kingdom had unlawfully separated the Chagos Archipelago from Mauritius in 1965. The United Kingdom, as a state entity, participated in the proceedings, and the arbitral tribunal ultimately awarded Mauritius sovereignty over the Chagos Archipelago.

Contemporary international arbitration issues where state entities are party is ongoing:

International arbitration is a common method for resolving disputes between state entities. It involves the use of an impartial third party to adjudicate disputes, and the outcome of the arbitration is binding on the parties involved. While international arbitration is generally considered to be an effective means of resolving disputes, there have been cases where it has failed to produce a satisfactory outcome.

Chevron v. Ecuador:[13]

Arbitration Forum: Permanent Court of Arbitration (PCA)

One of the most well-known cases where international arbitration involving state entities as parties failed is the Chevron v. Ecuador case. The dispute arose when Chevron acquired Texaco, which had previously operated oil fields in Ecuador. After the acquisition, Chevron was sued

[11] See *Niko Resources Ltd. v. Bangladesh Oil, Gas & Mineral Corp.*, ICC Case No. 12954/MS.

[12] See United Nations Convention on the Law of the Sea (UNCLOS), 10 December 1982, 1833 UNTS 3, Art 287(1)(b); *Case concerning maritime delimitation in the Indian Ocean (Mauritius v United Kingdom), Provisional Measures*, Order of 22 June 2017, ITLOS Reports 2017, (p. 23).

[13] See *Chevron Corporation and Texaco Petroleum Company v. The Republic of Ecuador*, UNCITRAL Arbitration Tribunal, PCA Case No. 2009-23, final award rendered on August 30, 2018.

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by a group of Ecuadorian plaintiffs who alleged that Texaco had caused environmental damage in the country.

Chevron argued that Texaco had already remediated the damage, and that any further claims were baseless. However, the Ecuadorian court ruled against Chevron and ordered the company to pay over $9 billion in damages. Chevron then initiated international arbitration, arguing that the Ecuadorian court had violated international law and that the damages award was excessive.

However, the arbitration tribunal sided with Ecuador, ruling that the damages award was not excessive and that the Ecuadorian court had not violated international law. The case is still ongoing, and Chevron has continued to challenge the arbitration award in various courts around the world. The dispute relates to environmental damage and subsequent litigation in Ecuador over oil drilling activities. The case raises complex legal issues regarding the jurisdiction of the arbitral tribunal, environmental liability, and the interpretation of investment treaty provisions.

Russia v. Yukos:[14]

Another high-profile case where international arbitration involving state entities as parties failed is the Russia v. Yukos case. The dispute arose when the Russian government expropriated the assets of the oil company Yukos, which was owned by the businessman Mikhail Khodorkovsky.

Yukos argued that the expropriation was politically motivated and violated international law. The company initiated international arbitration, and an arbitration tribunal ruled in favor of Yukos, awarding the company over $50 billion in damages.

However, the Russian government refused to pay the damages, and instead initiated legal proceedings in various courts around the world to challenge the arbitration award. The case is still ongoing, and the Russian government has shown no signs of complying with the arbitration award. The former shareholders of Yukos initiated arbitration proceedings against Russia, alleging expropriation and violations of the Energy Charter Treaty. The case involves complex jurisdictional issues, questions of corporate governance, and the assessment of damages in the context of a politically charged dispute.

South China Sea Dispute:[15]

The South China Sea dispute involves multiple state entities, including China, the Philippines, Vietnam, Malaysia, and Brunei. The dispute revolves around conflicting territorial claims in the

[14] See *Yukos Universal Limited (Isle of Man) v. The Russian Federation*, PCA Case No. AA 226, final award rendered on July 18, 2014.
[15] See Permanent Court of Arbitration, *The South China Sea Arbitration (The Republic of the Philippines v. The People's Republic of China)*, PCA Case No. 2013-19, award rendered on July 12, 2016.

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South China Sea, which is rich in natural resources and strategic importance.

In 2016, the Permanent Court of Arbitration (PCA) in The Hague ruled in favour of the Philippines, finding that China's claims to the South China Sea were not based on historical evidence and were therefore invalid. However, China refused to recognize the ruling, and instead continued to assert its territorial claims in the region. The case addresses issues related to maritime boundaries, sovereignty disputes, and the interpretation of the United Nations Convention on the Law of the Sea (UNCLOS).

The South China Sea dispute is ongoing, and it is unclear whether international arbitration will ultimately be able to resolve the conflict.

Vodafone v. India:

Parties: Vodafone Group Plc (UK) vs. Republic of India

Arbitration Forum: International Centre for Settlement of Investment Disputes (ICSID)

Vodafone initiated arbitration proceedings against India under the India-UK Bilateral Investment Treaty. The dispute concerns a tax liability imposed on Vodafone's acquisition of an Indian telecom company. The case raises questions regarding tax treatment, the scope of investment protection, and the balancing of state sovereignty and investor rights.

Philip Morris v. Australia:

Parties: Philip Morris International Inc. (Switzerland/Hong Kong) vs. Commonwealth of Australia

Arbitration Forum: United Nations Commission on International Trade Law (UNCITRAL)

Philip Morris filed an arbitration claim challenging Australia's tobacco plain packaging legislation under the Australia-Hong Kong Bilateral Investment Treaty. The case centres on issues of public health, intellectual property rights, and the extent of regulatory measures allowed under investment treaties.

Effective mechanisms to address the challenges on international arbitration with state entities as party:

International arbitration with state entities as a party can be complex and challenging. These challenges can arise from issues such as sovereign immunity, political interference, and enforcement of arbitral awards against state assets. However, effective mechanisms can be implemented to address these challenges and ensure that international arbitration remains an effective means of resolving disputes involving state entities.

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Sovereign Immunity:

One of the main challenges in international arbitration involving state entities is the issue of sovereign immunity. State entities may claim immunity from jurisdiction or enforcement of arbitral awards based on their sovereign status. However, the United Nations Convention on Jurisdictional Immunities of States and Their Property provides a framework for addressing issues of sovereign immunity in international arbitration.

Under this convention, state entities may waive their immunity from jurisdiction or enforcement of arbitral awards. Additionally, the convention provides exceptions to sovereign immunity, such as when a state entity engages in commercial activities or when it waives immunity explicitly.

Political Interference:

Another challenge in international arbitration involving state entities is the potential for political interference. State entities may seek to influence the outcome of arbitration proceedings through political pressure or interference. This can undermine the neutrality and impartiality of the arbitral process.

To address this challenge, it is essential to ensure that arbitration proceedings are conducted in accordance with established rules and procedures. This can be achieved through the adoption of rules and guidelines for international arbitration, such as those provided by the International Chamber of Commerce (ICC) or the United Nations Commission on International Trade Law (UNCITRAL).[16]

Additionally, it is important to ensure that arbitrators are independent and impartial. This can be achieved through the selection of arbitrators from a diverse pool of candidates, with appropriate qualifications and experience in international arbitration.

Enforcement of Arbitral Awards:

A further challenge in international arbitration involving state entities is the enforcement of arbitral awards against state assets. State entities may claim immunity from enforcement or seek to resist enforcement of arbitral awards on the basis of public policy or other grounds.

To address this challenge, it is essential to ensure that international arbitration agreements provide for the enforcement of arbitral awards against state assets. This can be achieved through the use of specific language in arbitration clauses that explicitly waives sovereign immunity for

16 See Cheng, T. (2017). *Contemporary challenges in international arbitration involving state parties: the role of arbitral institutions*. The Journal of World Investment & Trade, 18(1), (pp. 98-119).

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the purposes of enforcement.

Additionally, it is important to ensure that national laws provide for the enforcement of arbitral awards against state assets. This can be achieved through the adoption of laws that provide for the enforcement of arbitral awards in accordance with international treaties and conventions.

The Challenge of Sovereign Immunity:

One of the primary challenges in enforcing ICC arbitral awards against state entities is the doctrine of sovereign immunity. State entities typically enjoy immunity from execution of judgments and enforcement proceedings. This immunity is derived from principles of public international law, safeguarding states from legal action without their consent.

However, it is important to note that many jurisdictions have adopted legislative measures to restrict or waive sovereign immunity in certain circumstances. For example, some states have incorporated the restrictive theory of sovereign immunity, which limits immunity to acts of a strictly sovereign nature. This provides an avenue for enforcing arbitral awards against state entities.

Waiver of Sovereign Immunity:

State entities can waive their immunity by voluntarily submitting to arbitration or by explicitly consenting to the enforcement of arbitral awards. The inclusion of an arbitration clause in contracts with state entities can be a crucial step in securing their consent to arbitration and eventual enforcement. By expressly waiving their immunity, state entities signal their willingness to be bound by the arbitral process and the resulting awards.

Bilateral and Multilateral Treaties:

Another important aspect is the role of bilateral and multilateral treaties. Several treaties, such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, facilitate the enforcement of arbitral awards between states. These treaties provide a legal framework for enforcing ICC arbitral awards against state entities, offering mechanisms for recognition and enforcement.

Political Considerations and Diplomatic Channels:

Enforcing ICC arbitral awards involving state entities can also be impacted by political considerations and diplomatic channels. Given the sensitivity of such cases, diplomatic negotiations may be necessary to encourage compliance and overcome potential resistance. Building relationships and fostering dialogue between relevant government officials and arbitration practitioners can facilitate the enforcement process.

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Transparency and Public Scrutiny:

In cases involving state entities, there is often a desire for transparency and public scrutiny to ensure accountability. Transparency can be promoted by advocating for the publication of arbitral awards involving state entities, subject to appropriate redactions to protect sensitive information. Enhanced transparency enhances trust and promotes the consistent enforcement of ICC arbitral awards involving state entities.

Relationship between global diplomacy and international arbitration where state entities are party:

Global diplomacy refers to the use of diplomatic channels to resolve disputes between states. It involves direct negotiations between state representatives, and can include high-level meetings, discussions, and the exchange of diplomatic notes. Diplomacy is often seen as the first approach to resolving disputes, as it is generally less formal and more flexible than legal proceedings.

International arbitration, on the other hand, involves the use of an impartial third party to adjudicate disputes between states. It is a formal legal process, and often involves the use of specialized arbitration panels or tribunals. The outcome of international arbitration is binding on the parties involved, and can have significant legal consequences.

While global diplomacy and international arbitration may seem like two separate approaches to conflict resolution, they are actually closely related, and can be seen as complementary to one another. In fact, global diplomacy can be seen as a precursor to international arbitration. In many cases, states may attempt to resolve disputes through diplomacy before resorting to international arbitration.

Additionally, global diplomacy can play a role in the arbitration process itself. Before the arbitration begins, the parties involved may engage in diplomatic negotiations to try to reach a settlement outside of the arbitration process. Even during the arbitration, the parties may continue to engage in diplomatic discussions in an attempt to resolve the dispute.

VIII. ADVANTAGES OF COMBINING GLOBAL DIPLOMACY AND INTERNATIONAL ARBITRATION

There are several advantages to combining global diplomacy and international arbitration in cases where state entities are involved. Firstly, the use of diplomacy can help to create a more conducive environment for the arbitration itself. Diplomatic negotiations can help to create a more cooperative atmosphere between the parties involved, which can help to make the

arbitration process smoother and more efficient.[17]

Additionally, combining global diplomacy and international arbitration can help to ensure that the dispute is resolved in a way that is acceptable to all parties involved. Diplomatic negotiations can help to identify the key issues and concerns of each party, which can then be taken into account during the arbitration process. This can help to ensure that the outcome of the arbitration is fair and reasonable, and is acceptable to all parties involved.

IX. CONCLUSION

The findings of this research imply that the current methods of dispute resolvents do not suffice when countering transnational issues. The existing setup even though is rock solid needs certain modifications to deal with practical difficulties. Arbitration has proven to be a wonderful method to settle legal disputes outside court in a peaceful manner. The same approach with slight changes will prove effective in an international forum where state or state entities in themselves are parties to the proceedings. If global diplomacy and international arbitration are clubbed together with a strong leash of International law, the methods to adjudicate disputes through arbitration will bare many sweet fruits without affecting the Westphalia sovereignty of nations.

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[17] See Fry, J. R. (2016). *Arbitration and Diplomacy: The Role of International Arbitration in the Resolution of International Disputes*. Int'l L. & Int'l Relations, 12, (p. 113).

 [ISSN 2581-5369]