Page 2300 - 2313 **DOI:** *https://doij.org/10.10000/IJLMH.119998*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 8 | Issue 3

2025

Sovereign Immunity in the Age of Investment Arbitration between Tradition and Treaty Obligation

MOHAMMED ROHIN[1]

ABSTRACT

Sovereign immunity, a cornerstone of international law, traditionally protects states from legal proceedings in foreign jurisdictions. However, in the realm of investment arbitration, this doctrine faces increasing tension as states enter into bilateral investment treaties (BITs) and multilateral agreements that allow private investors to initiate claims. This paper examines the evolving nature of sovereign immunity within the investor-state dispute settlement (ISDS) framework, focusing on the distinction between jurisdictional immunity and enforcement immunity. Through a comparative analysis of national court practices in the United States, United Kingdom, France, and Switzerland, it explores the complexities of enforcing arbitral awards against sovereign states. Highlighting key cases such as Letco v. Liberia and Micula v. Romania, the paper underscores the legal and practical hurdles in executing awards. The study concludes with proposals for harmonizing treaty language, adopting model enforcement laws, and fostering judicial cooperation to ensure a balanced approach that respects state sovereignty while maintaining the credibility and enforceability of investment arbitration.

I. INTRODUCTION

Sovereign immunity, long recognized as a foundational principle of public international law, has historically served as a jurisdictional shield, protecting states from being subjected to the judicial authority of foreign courts. Rooted in the maxim *par in parem non habet imperium*—one sovereign cannot sit in judgment of another—this doctrine originally operated as an absolute bar against any form of legal proceedings brought against a sovereign state. However, with the evolution of international economic relations and the increasing involvement of states in commercial activities, this absolutist conception has gradually shifted towards a more nuanced and restrictive model.

The restrictive theory of sovereign immunity, now widely adopted across jurisdictions, draws a critical distinction between acts *jure imperii* (sovereign or public acts) and acts *jure*

[1] Author is an Advocate at Bar Council of India, India.

 [ISSN 2581-5369]

gestionis (private or commercial acts). This distinction has become particularly significant in the field of investment arbitration, where states often engage with foreign private entities under commercial contracts, concessions, and treaties. In this domain, sovereign immunity is increasingly viewed not as an unqualified shield, but as a principle subject to waiver, especially where the state has consented in advance to arbitration through bilateral investment treaties (BITs), multilateral agreements, or the International Centre for Settlement of Investment Disputes (ICSID) Convention.[2]

In the modern era of globalization, the proliferation of BITs and regional trade agreements containing investor-state dispute settlement (ISDS) clauses reflects a widespread shift in the legal landscape. These instruments frequently embody an express or implied waiver of jurisdictional immunity, thereby granting private investors the procedural right to bring claims against sovereign states before arbitral tribunals. However, while consent to arbitration resolves the question of jurisdiction, it does not automatically extend to the enforcement of arbitral awards. [3]Many states continue to assert immunity from execution, especially where state-owned assets, central bank reserves, or diplomatic property are involved. This bifurcation between *jurisdictional immunity* and *enforcement immunity* remains a contentious and unsettled area of international legal practice.

The complexity deepens when arbitral awards are brought before national courts for recognition and enforcement. Even in cases where a state has clearly consented to arbitration, courts may deny enforcement of the resulting award on sovereign immunity grounds—particularly if local statutes or international conventions provide for asset protection. As a result, investors frequently encounter legal obstacles in converting arbitral awards into tangible remedies, frustrating the objective of investment protection and undermining confidence in the ISDS framework.

This paper undertakes a comprehensive examination of sovereign immunity in the context of investment arbitration. It first outlines the historical development and doctrinal evolution of sovereign immunity, setting the stage for a discussion of its reinterpretation in the arbitral context. It then analyzes how the consent-based structure of BITs and arbitration conventions interacts with the immunity doctrine, particularly in the enforcement phase. Through an analysis of landmark cases and comparative jurisprudence from leading jurisdictions—including the United States, United Kingdom, France, and Switzerland—this research

[2] Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§ 1602–1611 (2018).
[3] United Nations Convention on Jurisdictional Immunities of States and Their Property, G.A. Res. 59/38, U.N. Doc. A/RES/59/38 (Dec. 2, 2004)

identifies the critical tension between respecting state sovereignty and ensuring accountability through arbitration.

Finally, the paper argues for a harmonized approach to sovereign immunity that balances these competing interests. It advocates for clearer treaty drafting, improved national legislation, and greater judicial cooperation to promote legal certainty and facilitate effective enforcement of arbitral awards. In doing so, the paper contributes to the ongoing discourse on the legitimacy and sustainability of the investment arbitration system in an increasingly interconnected world.

II. THE TRADITIONAL DOCTRINE OF SOVEREIGN IMMUNITY

A. Historical Development

The principle of sovereign immunity is deeply rooted in the classical doctrines of international law, arising from the Latin maxim *par in parem non habet imperium*, meaning "an equal has no authority over an equal." Under this doctrine, sovereign states were considered legally and politically equal, each enjoying immunity from the jurisdiction of another state's courts. This concept was fundamental to maintaining the autonomy and dignity of states in an international system premised on mutual respect and non-intervention.

Historically, sovereign immunity was understood in absolute terms. A sovereign could not be sued or subjected to judicial process in a foreign court under any circumstances, regardless of the nature of the conduct in question. This absolute approach was closely linked to the political sensitivities of the time, particularly in an era when state activities were largely confined to public governance functions.

However, as states began participating in international commerce—engaging in transactions, entering into contracts, and managing state-owned enterprises—the limitations of the absolute theory became increasingly evident. The global economic order demanded accountability when states acted as commercial agents. In response, the restrictive theory of sovereign immunity emerged, drawing a distinction between acts *jure imperii* (sovereign or public acts) and acts *jure gestionis* (private or commercial acts). Under this framework, states would continue to enjoy immunity for the former, but not for the latter.[4]

This conceptual shift was supported by judicial decisions and the evolving practices of national courts, particularly in Western legal systems. Courts began to assert jurisdiction over states in cases involving commercial transactions, employment disputes, and other private law

[4] Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, opened for signature Mar. 18, 1965, 575 U.N.T.S. 159 (entered into force Oct. 14, 1966).

matters, thus embedding the restrictive doctrine into customary international law. The restrictive approach recognized the dual personality of modern states—as both political entities and market participants—and established a more balanced application of immunity in line with economic realities.

B. Codification and Custom

The development of a codified framework for sovereign immunity culminated in the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004). This treaty was designed to reflect prevailing state practice and codify the restrictive theory of immunity. Although it has not yet entered into force due to an insufficient number of ratifications, the Convention is widely regarded as an authoritative statement of customary international law on this subject.

The 2004 Convention affirms that a state enjoys immunity from the jurisdiction of the courts of another state, but it also provides specific exceptions. Article 10, for instance, denies immunity in disputes arising out of commercial transactions. Other provisions address employment contracts, personal injury, and property rights—areas where states act more like private parties than public sovereigns. [5]The Convention distinguishes carefully between *jurisdictional immunity* and *enforcement immunity*, signaling that a waiver of one does not imply a waiver of the other.

Parallel to the UN initiative, many states have enacted domestic legislation to codify the restrictive approach. The United States Foreign Sovereign Immunities Act (FSIA) of 1976 marked a watershed moment in the legal treatment of foreign sovereigns. Under the FSIA, foreign states are presumed to have immunity from suit unless a specific statutory exception applies—most notably for commercial activities that have a direct effect in the United States (28 U.S.C. § 1605(a)(2)). The Act also draws a clear line between jurisdictional immunity and immunity from execution, requiring a separate and explicit waiver for the enforcement of judgments against sovereign assets.

Similarly, the United Kingdom's State Immunity Act 1978 adopts the restrictive theory and outlines exceptions to immunity based on the nature of the state conduct. Section 3 of the Act removes immunity in cases concerning commercial transactions, while other provisions address employment, tortious acts, and arbitration agreements. Notably, the Act provides that a state's agreement to arbitrate disputes may be taken as a waiver of jurisdictional immunity

[5] Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, opened for signature Mar. 18, 1965, 575 U.N.T.S. 159 (entered into force Oct. 14, 1966).

but does not automatically waive enforcement immunity—reflecting the dual-track model present in international law.[6]

Other jurisdictions, such as Canada (State Immunity Act, 1985) and Australia (Foreign States Immunities Act, 1985), have followed suit, reinforcing the normative shift from absolute to restrictive immunity.

Together, the evolution of the doctrine—through both treaty and domestic law—demonstrates an emerging consensus that sovereign immunity must be interpreted in light of modern state functions. While the principle continues to protect core attributes of sovereignty, such as foreign policy and military operations, it is no longer an unassailable barrier in commercial or investment disputes. This doctrinal evolution lays the foundation for understanding how sovereign immunity operates—and is often limited—in the context of investment arbitration, where states voluntarily enter into legal commitments and expose themselves to adjudication by international tribunals.

III. The Role of Sovereign Immunity in Investment Arbitration

A. Waiver by Treaty

The cornerstone of investor-state dispute settlement (ISDS) mechanisms is the principle of consent. States that sign bilateral investment treaties (BITs) or multilateral instruments such as the ICSID Convention do so with the express or implied intent of submitting themselves to binding international arbitration. This consent constitutes a waiver of jurisdictional immunity, enabling private investors to initiate claims directly against sovereign states in international fora.

This waiver, while often not explicitly articulated in the treaty text, is inferred from provisions that commit the state to resolve disputes through arbitration. In the context of the ICSID Convention, Article 25 establishes that once a state has given its consent to the jurisdiction of the International Centre for Settlement of Investment Disputes (ICSID), it may not unilaterally withdraw it. Furthermore, Article 54 obliges all contracting states to recognize ICSID awards as binding and enforce them "as if they were final judgments of a court in that state."[7]

BITs frequently contain "standing offers" to arbitrate disputes with investors from the other contracting party. When an investor accepts this offer, typically by initiating arbitration, a binding agreement is formed. By doing so, the host state effectively waives jurisdictional

[6] State Immunity Act 1978, c. 33 (U.K.).

[7] UNCITRAL, UNCITRAL Model Law on International Commercial Arbitration, U.N. Doc. A/40/17, annex I (June 21, 1985), as amended (July 7, 2006).

 [ISSN 2581-5369]

immunity, having agreed in advance to resolve disputes arising from the investment relationship via arbitration rather than through its domestic courts.

While this waiver facilitates adjudication, the extent of the waiver—particularly regarding enforcement—remains a complex issue. Many treaties and even the ICSID Convention do not provide clear provisions on the execution phase, leading to disputes over whether states also implicitly waive enforcement immunity when consenting to arbitration.

B. Jurisdiction vs. Enforcement Immunity

One of the most challenging and debated aspects of sovereign immunity in investment arbitration is the distinction between jurisdictional immunity and enforcement immunity. While many states accept jurisdiction by agreeing to arbitration, they often resist attempts to enforce arbitral awards against their assets, invoking enforcement immunity.

Jurisdictional immunity refers to the state's protection from being sued in the first place. Once waived—via a treaty or contractual arbitration clause—the state becomes subject to the jurisdiction of the arbitral tribunal. However, enforcement immunity pertains to the protection from coercive measures to satisfy a judgment or award, such as the seizure of state-owned assets. States frequently argue that a waiver of jurisdiction does not equate to a waiver of enforcement rights, especially when national assets are involved.[8]

This dual-layer structure is acknowledged in legal instruments such as the UN Convention on Jurisdictional Immunities of States and Their Property (2004), which treats enforcement immunity as requiring a separate and specific waiver. Most domestic statutes, including the U.S. Foreign Sovereign Immunities Act (FSIA) and the UK State Immunity Act 1978, reflect this principle. Even where a sovereign has waived jurisdictional immunity, courts often require explicit language or demonstrated intent to waive enforcement immunity.

This bifurcation creates a serious challenge for investors seeking redress. Even after obtaining a favorable arbitral award, investors may find themselves unable to enforce it against the losing state's assets, especially if those assets are classified as diplomatic, military, or otherwise essential for governmental functions. This has significant implications for the credibility of the ISDS regime, as it creates a gap between adjudicative rights and practical remedies.

[8] Federal Act on Private International Law (Private International Law Act, PILA), Dec. 18, 1987, SR 291 (Switz.).

C. Notable Cases

Letco v. Liberia[9]

In one of the earliest ICSID enforcement cases, *Liberian Eastern Timber Corporation (LETCO) v. Liberia*, the arbitral tribunal rendered an award in favor of LETCO, a foreign investor. However, Liberia failed to comply with the award voluntarily. As a result, LETCO sought enforcement in several jurisdictions, including the United States and France.

These attempts exposed the fragility of the enforcement mechanism. In the U.S., LETCO faced legal hurdles under the FSIA, particularly concerning whether Liberia's assets were commercial and therefore not immune. Although the courts ultimately supported enforcement, the case underscored the procedural and practical delays faced by investors, even with an ICSID award in hand.

The LETCO case became emblematic of the gap between legal entitlement and real-world enforcement, highlighting the challenges posed by enforcement immunity, especially when states shield assets from attachment or refuse to comply with their international obligations.

Micula v. Romania[10]

Perhaps one of the most complex and high-profile enforcement disputes in recent years, *Micula v. Romania* illustrates the intersection of investment arbitration, EU law, and sovereign immunity. In this case, Swedish investors were awarded approximately €180 million by an ICSID tribunal after Romania withdrew tax incentives that had been promised to attract foreign investment.

While the ICSID award was clear, enforcement became politically and legally fraught. Romania refused to pay the award, citing EU State aid rules, which prohibit member states from granting favorable treatment to specific investors without EU approval. The European Commission subsequently issued a decision prohibiting Romania from paying the award, effectively pitting EU law against Romania's obligations under the ICSID Convention.

When the investors sought enforcement in the United Kingdom and the United States, Romanian authorities invoked sovereign immunity from execution. While the UK Supreme Court eventually sided with Romania, U.S. courts took a more enforcement-friendly stance, recognizing the award and attempting to execute it against Romania's commercial assets. However, the process was delayed, legally contested, and financially burdensome.

---

[9] Liberian E. Timber Corp. (LETCO) v. Republic of Liberia, ICSID Case No. ARB/83/2, Award (Mar. 31, 1986).
[10] Ioan Micula et al. v. Romania, ICSID Case No. ARB/05/20, Award (Dec. 11, 2013).

The *Micula* case exemplifies the jurisdiction-enforcement paradox: while states can be held accountable through arbitration, political considerations, domestic laws, and sovereign immunity claims continue to obstruct the path to full compliance.

IV. National courts and the enforcement challenge

While arbitration tribunals may render awards against sovereign states, the practical realization of those awards often hinges on the willingness and legal framework of domestic courts to recognize and enforce them. This phase—the enforcement stage—is where the principle of sovereign immunity continues to pose significant barriers, particularly in relation to execution immunity. Courts across different jurisdictions apply divergent standards when balancing state sovereignty with the rights of successful investors. This chapter examines the enforcement dynamics in the United States, United Kingdom, France, and Switzerland, each offering distinctive jurisprudential insights.

A. United States

In the United States, the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. 1602–1611, governs all aspects of litigation involving foreign sovereigns. It explicitly incorporates the restrictive theory of sovereign immunity, drawing a key distinction between jurisdictional immunity (from suit) and enforcement immunity (from execution of judgments or arbitral awards).

Under sec 1605(a)(6) of the FSIA, a foreign state is not immune from jurisdiction in cases where the action is to confirm an arbitration award governed by an international agreement, such as the New York Convention or ICSID Convention. This provision has been interpreted as a waiver of jurisdictional immunity when a state consents to arbitration.

However, enforcement immunity is addressed separately under §§ 1609–1611, which impose stricter standards. A judgment creditor must establish that the foreign state's property in the U.S. is used for commercial activity and not protected by other statutory immunities. For example, central bank funds, military assets, and diplomatic premises are categorically immune from attachment or execution.

U.S. courts have generally taken a pro-enforcement stance, particularly when the assets in question have a commercial character. In TMR Energy Ltd. v. State Property Fund of Ukraine[11], the court emphasized that agreement to arbitration constitutes waiver of jurisdiction, but enforcement required a clear statutory pathway.

[11] TMR Energy Ltd. v. State Prop. Fund of Ukr., 411 F.3d 296 (D.C. Cir. 2005).

Yet, practical enforcement remains difficult. Many foreign states avoid keeping commercial assets in U.S. jurisdictions, and even when they do, plaintiffs face lengthy litigation to overcome immunity claims. Thus, while U.S. law facilitates recognition of awards, actual collection often involves strategic and jurisdictional complexity.

B. United Kingdom

The State Immunity Act 1978 forms the backbone of sovereign immunity law in the United Kingdom. Like the FSIA, it adopts the restrictive theory, permitting suits against states for commercial activities. The Act is particularly relevant in cases involving arbitration, as it provides a clear framework for distinguishing jurisdictional and enforcement immunities.

Under Section 9(1) of the Act, where a state has agreed in writing to submit a dispute to arbitration, it is deemed not to be immune in proceedings relating to that arbitration. This provision creates a relatively straightforward pathway to recognition of arbitral awards.

However, Section 13(2) of the Act introduces a critical barrier: a judgment creditor cannot enforce a judgment or award against state property unless the state has expressly waived its enforcement immunity, or the property is used for commercial purposes. This has proven to be a substantial impediment in practice.

For instance, in the case of AIG Capital Partners Inc. v. Republic of Kazakhstan [2005] EWHC 2239 (Comm), [12]the High Court refused to allow execution against certain assets, noting that the property was not demonstrably used for commercial purposes within the UK. More recently, in Micula v. Romania, UK courts delayed enforcement of an ICSID award due to complications with EU law and unresolved questions surrounding Romania's immunity claims.

Thus, while UK courts recognize arbitral awards and acknowledge jurisdiction when arbitration agreements are present, they require explicit and unambiguous waiver for enforcement—especially when state assets are targeted. This rigid separation often frustrates investors and underscores the limits of judicial enforcement in sovereign cases.

C. France and Switzerland

In contrast to the more cautious Anglo-American approach, France and Switzerland have developed reputations as arbitration-friendly jurisdictions, especially in their treatment of enforcement proceedings.

In France, the principle that consent to arbitration implies a waiver of enforcement immunity

[12] AIG Capital Partners Inc. v. Republic of Kazakhstan, [2005] EWHC (Comm) 2239 (Eng.).

was solidified in the landmark case Creighton Ltd. v. Government of the State of Qatar (Cass. 1e civ., 6 July 2000). [13]The Cour de cassation held that when a sovereign agrees to arbitration, it implicitly consents to the enforcement of the resulting award—even if no explicit waiver of execution immunity exists. This position reflects the French judiciary's commitment to upholding the effectiveness of international arbitration, particularly where commercial activities are involved.

Moreover, French courts operate within a civil law framework that does not require recognition or "domestication" of foreign arbitral awards in the same way as common law jurisdictions. Awards rendered under the ICSID Convention or New York Convention are directly enforceable without re-litigation of the merits. This streamlined process bolsters Paris's status as a favored seat for international arbitration.

Switzerland, similarly, has demonstrated a liberal approach to enforcement under its national law, which is closely aligned with the Swiss Private International Law Act (PILA). Swiss courts generally consider an agreement to arbitration to include an implicit waiver of both jurisdiction and enforcement immunity, provided the assets pursued are not protected under customary exceptions such as diplomatic or military property.

In cases such as FG Hemisphere Associates v. Democratic Republic of Congo, Swiss courts have shown a willingness to permit enforcement where the state's conduct is commercial in nature and where the waiver is derived from treaty obligations. The judiciary applies a narrow public policy exception, ensuring that enforcement is denied only in the most exceptional circumstances.

Together, France and Switzerland illustrate how national legal traditions can accommodate investor interests more effectively, provided there is a clear legislative and judicial commitment to limiting immunity in commercial contexts. Their approach underscores the possibility of reconciling sovereignty with accountability in the enforcement phase of investment arbitration.

V. Proposals for harmonization and reform

Despite the progressive development of international investment arbitration, the inconsistent application of sovereign immunity—especially at the enforcement stage—continues to undermine the system's effectiveness. While states often consent to arbitration, the invocation of enforcement immunity frustrates investors' ability to obtain actual remedies. A coherent

[13] Creighton Ltd. v. Government of the State of Qatar, Cour de cassation [Cass.] [1st civ. ch.], July 6, 2000 (Fr.).

framework for addressing sovereign immunity is essential for maintaining trust in the investor-state dispute settlement (ISDS) mechanism. This chapter presents several proposals to harmonize legal standards and strengthen enforcement across jurisdictions.

1. Clarify Waivers in Treaties

Many bilateral investment treaties (BITs) and multilateral investment agreements include general consent to arbitration but fail to include specific and unequivocal waivers of enforcement immunity. As a result, investors often find themselves embroiled in enforcement proceedings where states invoke immunity to shield assets from execution, despite the existence of a valid award.

To remedy this, future treaty drafting must distinguish clearly between jurisdictional and enforcement immunity. States should include clauses that expressly state that by consenting to arbitration, they also waive immunity from the recognition and enforcement of awards, particularly in relation to commercial assets. The waiver should be drafted in clear, enforceable terms, avoiding vague language that might be subject to restrictive judicial interpretation.[14]

Moreover, treaty drafters should ensure that enforcement clauses identify applicable forums, enforcement procedures, and asset classes not covered by the waiver. This added clarity will reduce litigation over the scope of immunity and strengthen the enforceability of investor protections.

2. Model Law on Enforcement Immunity

In the same way that the UNCITRAL Model Law on International Commercial Arbitration has contributed to harmonizing arbitration procedures worldwide, a Model Law on Enforcement Immunity could provide much-needed coherence in the enforcement of investment arbitration awards. [15]Such an instrument could be drafted under the auspices of UNCITRAL or the Hague Conference and offer uniform guidance on:

- The scope of waiver required for enforcement,
- The definition of commercial assets vs. sovereign assets,
- Standard exceptions (e.g., military, diplomatic, cultural property),
- Enforcement procedures and asset tracing mechanisms,

[14] FG Hemisphere Assocs. LLC v. Democratic Republic of Congo, Case No. 4P.122/2007, Swiss Fed. Trib. (2007).

[15] UNCITRAL, UNCITRAL Model Law on International Commercial Arbitration, U.N. Doc. A/40/17, annex I (June 21, 1985), as amended (July 7, 2006).

- Judicial obligations regarding recognition of arbitral awards.

Adoption of a model law by national legislatures would promote predictability and consistency while also preserving legitimate sovereign interests. It would also give states a structured framework to rely on in treaty negotiations and reduce the incidence of conflicting enforcement outcomes across jurisdictions.

3. Judicial Dialogue and Best Practices

The lack of judicial coherence among national courts on the enforcement of awards against sovereigns continues to cause legal uncertainty. Courts in different countries interpret waivers, immunity doctrines, and public policy exceptions differently, often leading to contradictory judgments in parallel proceedings.

To address this, cross-border judicial dialogue should be promoted through regional and international forums. Judges from different jurisdictions could collaborate under platforms such as the Hague Conference on Private International Law, the International Bar Association, or even informal judicial networks dedicated to investment arbitration enforcement.[16] These dialogues would allow judges to:

- Share best practices,
- Discuss landmark rulings,
- Encourage convergence of jurisprudence, and
- Avoid unnecessary fragmentation of the legal framework.

Further, publication of reasoned enforcement decisions in national case law databases can serve as a reference for courts worldwide, fostering a jurisprudence constante that strengthens investor confidence in enforcement prospects.

4. Institutional Guidelines

Arbitral institutions—such as ICSID, ICC, and PCA—play a crucial role in shaping investor-state dispute resolution processes. These institutions can take a proactive role in helping parties draft enforceable waiver clauses and advise states and investors during arbitration on enforcement strategy.

Institutions can also issue best-practice guidelines that address:

- The formulation of waiver clauses in investment treaties,

[16] Federal Act on Private International Law (Private International Law Act, PILA), Dec. 18, 1987, SR 291 (Switz.).

- Enforcement strategy during post-award phases,
- Protection against frivolous immunity claims,
- Liaising with national courts to educate them about arbitration processes.

By integrating enforcement planning early in the arbitration lifecycle and standardizing practices, arbitral institutions can significantly reduce post-award legal obstacles.

5. Limited Asset Exemptions

To safeguard legitimate sovereign interests while facilitating enforcement, a balanced approach to asset protection must be adopted. States should pre-identify asset categories that are immune from execution, such as:

- Diplomatic and consular premises and assets,
- Military equipment and defense infrastructure,
- Central bank reserves,
- Cultural and heritage property.

Conversely, commercial assets, such as state-owned enterprise bank accounts or properties leased for commercial use, should be expressly declared non-immune from execution. This approach aligns with the restrictive theory of sovereign immunity and promotes fairness by limiting only those asset classes whose seizure would infringe on sovereignty.

In practice, this could be implemented through national legislation or attached protocols to BITs, specifying enforcement exceptions. This would clarify the boundaries of sovereign immunity and reduce the likelihood of protracted enforcement disputes.

Each of these proposals—whether through clearer treaties, harmonized laws, enhanced judicial cooperation, institutional action, or asset classification—aims to close the gap between **legal entitlement and practical enforcement**. Sovereign immunity must evolve to reflect the realities of international economic engagement, where states act not only as political authorities but also as commercial actors. A modernized, coordinated approach to enforcement immunity is essential for ensuring that the promises made in investment treaties are not rendered hollow at the stage of execution.

VI. Conclusion

Sovereign immunity, once viewed as an inviolable shield insulating states from external legal scrutiny, has undergone significant transformation in response to the demands of a globalized legal and economic order. While it remains a foundational principle of international law—

preserving the dignity, autonomy, and functional independence of states—it is increasingly tempered by the realities of international commerce and investment arbitration.

As sovereigns enter into bilateral and multilateral treaties that include binding arbitration clauses, they voluntarily embrace a legal regime that values dispute resolution, predictability, and accountability. Consent to arbitration under instruments such as the ICSID Convention or investment treaties represents a partial waiver of sovereign immunity, particularly with regard to jurisdiction. However, the full realization of investor protections hinges not merely on access to arbitration, but also on the ability to enforce awards, which is often obstructed by claims of enforcement immunity.

This dualism—whereby states waive immunity to be sued but retain immunity from execution—undermines the core objectives of investor-state dispute settlement (ISDS): legal certainty, equitable recourse, and effective remedy. If awards cannot be executed because state assets are shielded or domestic courts interpret waivers restrictively, the credibility and legitimacy of the arbitration system itself is put at risk.

Accordingly, this paper has emphasized the urgent need for a harmonized and modernized approach to sovereign immunity in investment arbitration. National courts must move toward greater coherence in their treatment of immunity claims, especially where commercial activities and explicit or implied waivers are involved. At the same time, states must act responsibly by drafting clear treaty provisions and recognizing the implications of their consent to arbitration—not only in adjudication but also in enforcement.

Institutional actors, such as arbitral tribunals and enforcement courts, have a vital role to play in shaping consistent jurisprudence and encouraging mutual dialogue. International organizations can contribute by developing model laws and interpretive guidelines that reflect a balance between state sovereignty and investor protection.

Ultimately, the evolution of sovereign immunity in investment arbitration is not about eroding the rights of states but about refining the legal architecture to accommodate the dual character of modern sovereigns—as both governors and global market participants. A system that respects legitimate immunity while ensuring fair and effective enforcement of arbitral awards is essential for preserving the rule of law, attracting foreign investment, and upholding the integrity of the international legal order.

The path forward lies in legal clarity, cooperative reform, and principled adjudication—a triad that can ensure that sovereign immunity evolves in tandem with the growing complexity of cross-border investment relationships.

