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LEGAL MECHANISMS FOR INVESTOR PROTECTION IN INTERNATIONAL TRANSACTIONS

Summary. *Introduction. In an era of globalization and deepening economic interdependence, foreign investments are indispensable to the dynamic growth of nations. Yet, the specter of unfair measures by host states—whether through arbitrary regulation or outright expropriation—demands robust legal safeguards. Effective protection mechanisms are not mere niceties; they are the bedrock of investor confidence, the guarantors of capital inflows, and the bulwarks of economic stability. Without them, the principle of fair treatment for investors becomes an empty promise, and the global investment regime risks collapse.*

Purpose. The purpose of this study is to identify modern legal instruments that safeguard investors in international transactions and to examine the evolving trends in arbitration and judicial practice that shape the standards of fair and equitable treatment.

Materials and methods. A broad range of sources examining various aspects of legal investment protection was used in the preparation of this article. The research employed comparative analysis methods to compare international and national regulations, as well as a systematic review of scholarly works on foreign investor protection. A doctrinal analysis of legal positions articulated in arbitration rulings and judicial practice was conducted to identify the most effective mechanisms and illustrate key trends in the development of investment law.

Results. The study outlined key contractual instruments that regulate protection against unlawful expropriation and unfair administrative actions. It also explored the mechanisms of the 1958 New York Convention on the Recognition and Enforcement of Arbitral Awards, as well as the practical application of the fair and equitable treatment principle, which ensured a just and impartial regulatory environment for foreign capital. Special attention was given to sovereign immunity and the limitations of its application in investment disputes.

The study revealed that the 1958 New York Convention plays a pivotal role in ensuring the recognition and enforcement of arbitral awards globally, significantly reducing barriers for foreign investors seeking legal recourse. Furthermore, the research highlighted how sovereign immunity is increasingly being interpreted restrictively in investment disputes, allowing investors to challenge state actions that infringe on private law activities. Bilateral Investment Treaties (BITs) and the principle of fair and equitable treatment (FET) also emerged as critical mechanisms for protecting foreign investors against unfair treatment and ensuring a stable regulatory environment.

The objective of this study was to identify effective legal strategies for protecting foreign investors. The research employed comparative legal analysis and doctrinal source evaluation. The conclusion reviewed trends in law enforcement practices, which might be of interest to international lawyers, investors, and the academic community.

Further research in this area. Investor protections face evolving pressures, inviting deeper scholarly exploration into whether frameworks designed for stable borders and compliant states can adapt to decentralized capital and geopolitical volatility. Cryptocurrency’s decentralized, stateless nature raises significant questions regarding jurisdictional anchoring in arbitration, as exemplified by Tokios Tokelès v. Ukraine, where consent, rather than geography, governed jurisdiction—prompting inquiry into whether digital assets meet

established investment criteria under cases like Salini v. Morocco and Biwater v. Tanzania. Additionally, research is warranted into how geopolitical disruptions—such as U.S. tariff policies or Hungary’s pivot toward non-EU capital—impact fair and equitable treatment standards under frameworks like the Energy Charter Treaty, potentially influencing future arbitration claims. Finally, sanctions regimes and their implications, exemplified by Yukos v. Russia, necessitate examination of arbitration’s resilience and the viability of decentralized, blockchain-based arbitration systems as alternative investor protection mechanisms.

Key words: *investments, international transactions, arbitration, immunity, expropriation, fair and equitable treatment, BIT, ICSID, New York Convention, legal protection.*

Statement of the problem. This article analyzes the legal mechanisms for protecting investors involved in international transactions. In an era defined by unprecedented cross-border capital flows, the imperative for robust legal mechanisms safeguarding international investments has never been more critical. Yet, as sanctions reshape global markets and digital assets blur jurisdictional lines, traditional frameworks like bilateral investment treaties falter, exposing a critical gap: the absence of a dynamic, adaptive system that reconciles state power with investor security. This tension—exacerbated by events like the 2022 Russian invasion of Ukraine and the rise of decentralized finance—demands not mere reevaluation, but a radical rethinking of how sovereignty and rights coexist in a borderless economy. The relevance of this research is driven by the increasing volume of cross-border investments and the need to establish effective legal safeguards for foreign companies. The novelty of this study lies in its examination of both international and domestic principles of investment protection, drawing on various legal sources and contemporary arbitral tribunal practices. The study outlines key contractual instruments that regulate protection against unlawful

expropriation and unfair administrative actions. It also explores the mechanisms of the 1958 New York Convention on the Recognition and Enforcement of Arbitral Awards, as well as the practical application of the fair and equitable treatment principle, which ensures a just and impartial regulatory environment for foreign capital. Special attention is given to sovereign immunity and the limitations of its application in investment disputes.

The objective of this study is to identify effective legal strategies for protecting foreign investors. The research employs comparative legal analysis and doctrinal source evaluation. The conclusion reviews trends in law enforcement practices, which may be of interest to international lawyers, investors, and the academic community. This article will be useful for specialists in international investment law, legal practitioners, arbitrators, and experts engaged in investor rights protection.

Regulatory guarantees and international agreements. Numerous investment treaties, both bilateral and multilateral, establish legal protections for foreign companies investing in the economies of other states (see Table 1).

Table 1

Summary of International Documents

| Name | Year of Adoption | Key Provisions | Distinctive Features |
|--------------------------------------|------------------|--|--|
| Bilateral Investment Treaties (BITs) | Various periods | Ensures equal treatment of foreign capital, protection against unfair nationalization | Broad scope of agreements, principle of fair and equitable treatment |
| ICSID Convention | 1965 | Regulation of investment disputes under the International Centre for Settlement of Investment Disputes (ICSID) | Interstate mechanism, legal significance of arbitration awards for contracting parties |
| Energy Charter Treaty | 1994 | Rules focused on investments in the fuel and energy sector | Targeted at the energy sector, dispute resolution under international regulations |

| Name | Year of Adoption | Key Provisions | Distinctive Features |
|---------------------|------------------|--|--|
| New York Convention | 1958 | Establishes a simplified framework for recognizing and enforcing foreign arbitral awards | Unified legal basis for global recognition and enforcement of arbitral rulings, high level of state ratification |

Source: compiled by the author based on original research

Bilateral Investment Treaties (BITs), the Energy Charter Treaty, and the 1965 Washington Convention (ICSID Convention) are among the agreements that regulate the resolution of disputes between investors and states [13; 17; 19; 20]. The ICSID framework provides a supranational platform for addressing claims related to interference with property rights, discriminatory measures, or denial of fair legal procedures [17; 21; 22; 31]. The core provisions of these agreements are aimed at ensuring a fair and equitable regime, protecting against unlawful nationalization, and preventing abusive administrative actions [23; 25; 43; 70]. Additionally, the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards serves as a key instrument, facilitating the legalization and enforcement of arbitration decisions in most signatory states [2; 18; 34; 35; 36].

A significant role is played by the principle of equal treatment of foreign investors, which is reflected in most international treaties and reaffirmed by arbitral tribunal decisions [45; 58; 62; 67]. It has been recognized that capital inflows are encouraged by stable legal conditions that prevent arbitrary restrictions on business activities [13; 15; 24; 46]. Consequently, national courts and international arbitrators increasingly reference the fair and equitable treatment (FET) standard, emphasizing its independent legal nature and broad scope [3]. OECD documents and arbitral precedents, such as *Metalclad v. Mexico*, specify the FET principle as a prohibition on opaque regulatory procedures and a requirement to duly notify investors of regulatory changes affecting their business operations [7].

Domestic investment regulation. Many national legal systems have established specialized judicial and administrative procedures that allow foreign investors to challenge decisions made by regulatory authorities [8; 26; 27; 28]. Domestic arbitration courts frequently handle claims related to violations of the non-discrimination principle or unjustified restrictions on business freedoms [29; 30; 32]. Under bilateral investment treaties, investors may also have the option to pursue parallel proceedings in international arbitration if the treaty explicitly grants the right to initiate dispute resolution under the ICSID framework or UNCITRAL rules [1; 20; 33].

Arbitration mechanisms. Internationally recognized arbitration institutions, including ICSID, LCIA, ICC, and SCC, adjudicate investor claims concerning state interference in their activities [31; 32; 33; 41]. These bodies have developed a diverse body of case law that reflects the evolution of investor protection doctrines (Figure 1).

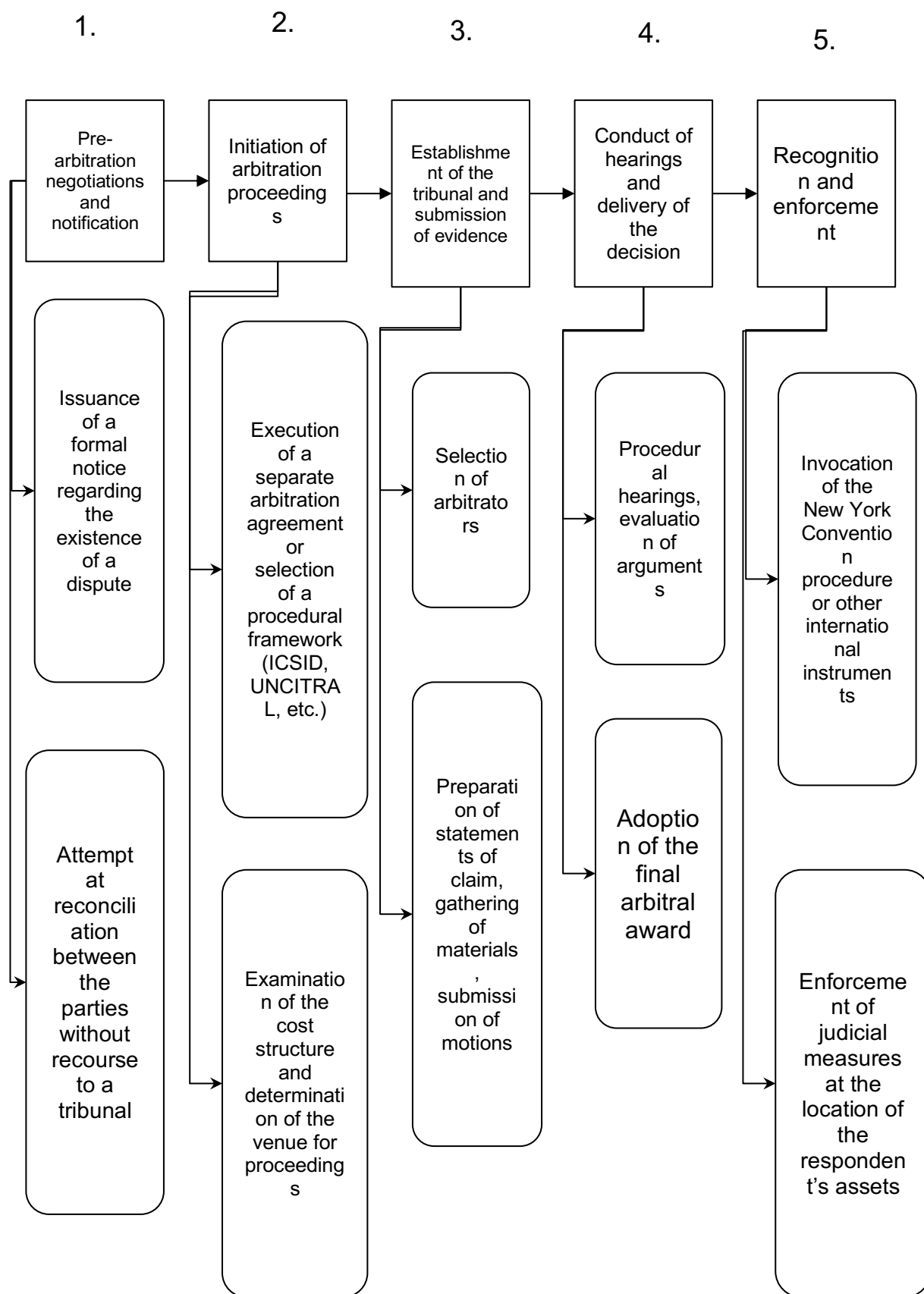


Fig. 1. Flowchart delineating stages of proceedings in international investment arbitration

Source: compiled by the author based on original research

In some cases, tribunals acknowledge de facto expropriation, where there is no formal seizure of property, but administrative measures effectively deprive the investor of key economic benefits [2; 21; 38]. A similar approach applies to cases involving breaches of contractual obligations if state-imposed measures render the execution of an investment project impractical or economically unviable [6].

The enforcement mechanisms under the New York Convention ensure a simplified process for recognizing and executing arbitration awards [18; 34; 35]. If the respondent state refuses to comply voluntarily, the prevailing party may seek to seize the state's assets located in other jurisdictions, subject to local legal requirements [37; 39; 40]. Such cases often attract significant attention, as they involve issues of sovereign immunity and its limitations. Rulings in disputes such as *NML Capital v. Argentina* illustrate that national courts in various jurisdictions tend to allow the enforcement of arbitral awards when the state has voluntarily participated in arbitration and has not taken legal action to annul the decision in a competent judicial forum [7].

Legal positions and justification of immunities. States and international organizations, when facing claims from investors, invoke various forms of immunity [37; 38; 39]. In public international law, the principle of functional immunity establishes that a state retains its independence in sovereign actions but loses immunity in commercial operations. A similar approach applies to organizations engaged in global projects: they are granted inviolability when fulfilling statutory duties, yet their exemption from liability for actions beyond official functions is often regarded as a violation of widely recognized principles of justice.

In investment arbitration, which is guided by principles of good faith and balance of interests, immunity is not considered an absolute barrier [3; 40; 52]. The boundaries of state immunity have been systematically examined in legal disputes, including cases where the respondent argued against liability by citing

sovereign prerogatives [4]. Arbitral and national courts typically assess such arguments based on the theory of restricted immunity: if a dispute involves private law activities, the state is required to participate on equal terms with other parties [4; 42; 46].

The role of judicial and law enforcement practice. Judicial bodies in various jurisdictions have established a substantial body of rulings detailing investor protection mechanisms and the procedures for compensation claims [47; 48; 54]. High courts in the United States, Germany, and France have repeatedly addressed issues of jurisdictional immunity, the permissible scope of regulatory measures, and conditions under which government actions exceed legitimate intervention [5; 37; 38]. In cases of unlawful expropriation or discrimination resulting from targeted policies, states are generally required to compensate for damages [21; 22; 23]. Rulings based on multilateral treaties include interpretations that facilitate investors' ability to prove violations of fair and equitable treatment standards, as these standards are being interpreted increasingly broadly [9].

In certain precedents, international tribunals have concluded that systemic violations of investor rights warrant significant compensation imposed on the respondent state. Such verdicts encourage governments to enter into additional agreements clarifying contentious aspects of investment regulation. National and international courts, referring to doctrines of human rights protection and property rights inviolability, emphasize that formal immunities should not result in the complete exclusion of legal protection from the business sphere [10].

Observed trends. An increasing role of investment tribunals [31; 32; 33]. There is a rising number of cases being referred to arbitration to resolve disputes concerning violations of expropriation bans and the denial of impartial treatment of foreign capital [45; 66; 67].

Clarification of immunity boundaries. Cases in Europe and the United States indicate a growing tendency among arbitrators and courts to view

immunity not as an absolute barrier but as a condition subject to restrictive interpretation, particularly when property rights and contractual obligations are at stake [5; 37; 39; 68].

Growth of multilateral regulations. New free trade agreements and specific acts of international organizations are shaping modernized legal norms aimed at regulatory transparency. Traditional bilateral treaties are being supplemented with provisions on labor and environmental standards, with non-compliance leading to disputes that affect not only economic interests but also the broader legal order.

Expansion of the fair and equitable treatment doctrine. The application of this principle is extending beyond simple discrimination claims. Recent rulings indicate that violations may be assessed based on the investor's reasonable expectations of a predictable legal environment.

Use of pre-litigation negotiation mechanisms. States and investors increasingly seek to resolve disputes through out-of-court settlements, entering into conciliation agreements or utilizing mediation under the guidance of neutral intermediaries.

Correlation between national and international remedies. The specialized provisions of domestic legislation and multilateral agreements form a unified set of tools that enable investors to restore their rights [26; 29; 30; 50]. According to the "waiver theory," investors, under certain conditions, may choose between filing a claim in local courts or seeking recourse through an international tribunal, guided by the specific provisions of an investment treaty [1; 9; 10; 52]. National courts retain jurisdiction over cases that do not directly involve treaty-based provisions, but in instances of legal conflict, the terms of an international agreement may take precedence [14; 49; 50] (Figure 2).

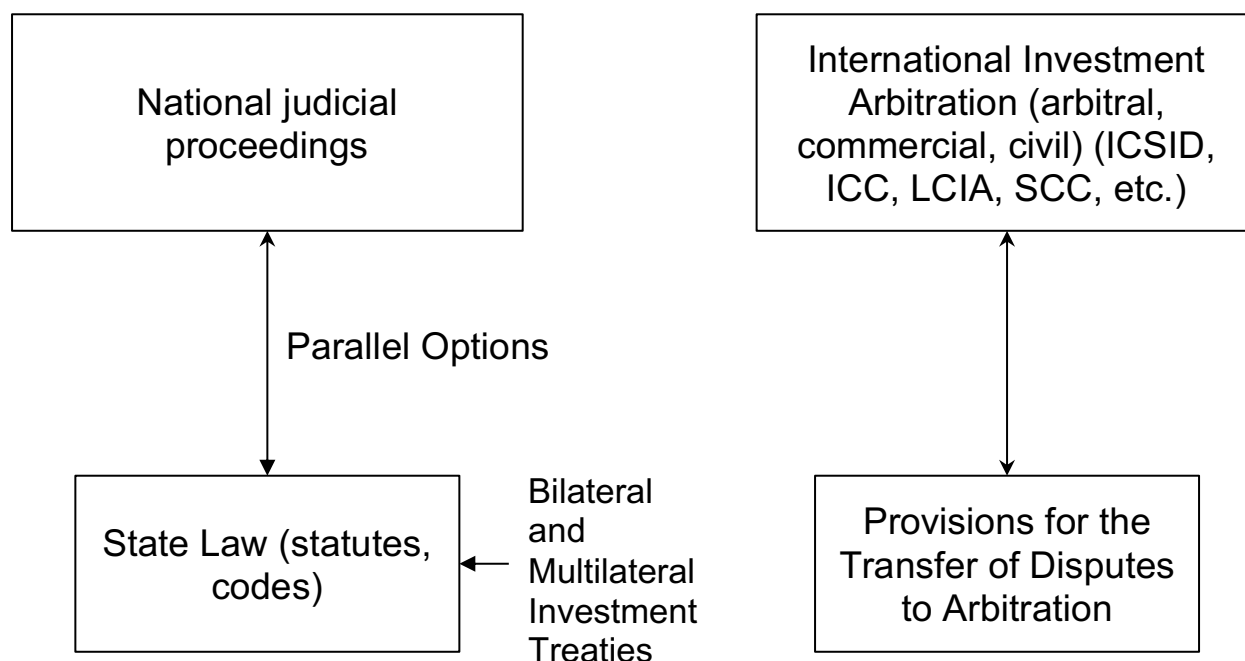


Fig. 2. Diagram of the Relationship Between National and International Means of Protection

Source: compiled by the author based on original research

Courts must assess the balance between public order norms and contractual obligations. If an arbitral award mandates compensation and the state evades enforcement, procedures may be initiated to seize state assets located abroad, provided they are not used for sovereign functions. Through case law, courts have established limits beyond which a state can no longer invoke public authority to avoid paying compensation.

Procedural compliance and access to justice. Investors filing claims rely on a set of procedural safeguards, including the right to public hearings and fair trial standards [51; 53; 54]. In jurisdictions where the principle of due process is established, courts and arbitrators generally follow a consistent approach: if state actions have deprived businesses of effective means to protect their interests, grounds for compensation are established [55; 57; 63]. At the same time, governments increasingly include mandatory "cooling-off periods" in bilateral agreements, allowing for dialogue before legal action is taken. This approach

partially reduces the burden on tribunals and strengthens the commitment of contracting parties to seek mutually beneficial resolutions.

Legal systems are also implementing electronic submission mechanisms for procedural documents [10; 44; 59]. This development simplifies investor access to justice, eliminating barriers associated with geographical distance. When filing claims in international arbitration, principles outlined in UNCITRAL and ICSID regulations apply, with compliance with domestic law being assessed during the recognition and enforcement stages.

Conclusion. The observed trends indicate a deliberate effort to strengthen confidence in judicial and arbitral institutions [45; 62]. The primary areas of conflict revolve around defining the limits of state immunity, interpreting the true scope of fair and equitable treatment, and determining the enforcement mechanisms when a state refuses to comply with arbitral awards voluntarily. Combined with the increasing number of bilateral and multilateral agreements, a comprehensive legal framework is emerging, ensuring investor protection against arbitrary state actions and fostering conditions for capital inflow.

Various interpretations published by the International Centre for Settlement of Investment Disputes, the European Court of Human Rights, and national supreme courts contribute to a structured legal framework where equal access to justice and compensation for damages are recognized as imperative principles [17; 55]. Notably, tribunals take into account not only the formal provisions of investment treaties but also the practical implementation of regulatory measures, assessing the adequacy of procedural safeguards and the economic rationale behind imposed restrictions. This trend suggests that investor protection mechanisms in international transactions are being built around the principles of transparent and predictable regulation, where any excessive state intervention is evaluated through the lens of global fairness and good faith standards.

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