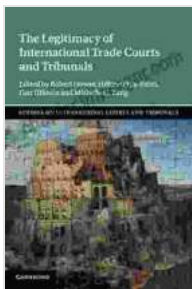


Exploring the Legitimacy of Investment Arbitration: A Comprehensive Analysis

Investment arbitration has emerged as a prominent mechanism for resolving disputes between foreign investors and host states. It empowers investors to seek compensation for alleged violations of international investment agreements (IIAs) and provides them with an avenue for recourse against perceived unfair treatment. However, the legitimacy of investment arbitration has come under scrutiny, sparking a lively debate among scholars, practitioners, and policymakers. This article delves into the intricacies of this debate, examining the legal basis, procedural fairness, and broader implications of investment arbitration.



The Legitimacy of Investment Arbitration: Empirical Perspectives (Studies on International Courts and Tribunals) by Ole Kristian Fauchald

★★★★★ 5 out of 5

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File size : 12982 KB
Text-to-Speech : Enabled
Screen Reader : Supported
Enhanced typesetting : Enabled
Word Wise : Enabled
Print length : 400 pages



Judicial Decisions on Legitimacy

Courts and tribunals worldwide have played a crucial role in shaping the legitimacy of investment arbitration. In recent years, there have been

notable developments in judicial decisions:

- **Affirmation of Arbitral Authority:** In *ICSID v. ConocoPhillips*, the US Supreme Court upheld the authority of the International Centre for Settlement of Investment Disputes (ICSID) to determine its own jurisdiction.
- **Judicial Review of Arbitral Awards:** Courts have asserted their power to review arbitral awards on limited grounds, such as due process violations or evident partiality. However, they have generally deferred to the expertise of arbitration tribunals.
- **Recognition and Enforcement of Awards:** Courts in most jurisdictions recognize and enforce arbitral awards under the *New York Convention*, subject to limited exceptions.

Scholarly Perspectives on Legitimacy

Academics have extensively debated the legitimacy of investment arbitration. Key perspectives include:

- **Procedural Fairness:** Scholars have raised concerns about the lack of transparency and accountability in investment arbitration proceedings, arguing for procedural reforms to enhance fairness and impartiality.
- **Legal Basis:** Some scholars question the legitimacy of investment arbitration, arguing that it undermines the sovereignty of states and bypasses domestic legal systems.

li>"**Investor-State Bias**": Critics contend that investment arbitration is inherently biased in favor of investors, as tribunals are reluctant to find

against host states for fear of deterring foreign investment.

Practical Implications of Legitimacy Concerns

The legitimacy of investment arbitration has practical implications for both investors and host states:

- **Investor Confidence:** The perceived legitimacy of investment arbitration affects investor confidence in the stability and fairness of the international investment regime.
- **State Sovereignty:** Host states may perceive investment arbitration as an encroachment on their sovereignty and a potential tool for foreign investors to challenge legitimate government policies.
- **Public Perception:** The public's perception of investment arbitration as fair and impartial is essential for its continued legitimacy.

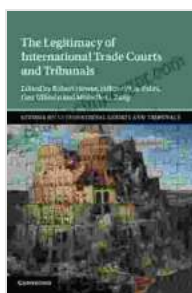
Reform Proposals to Enhance Legitimacy

In response to legitimacy concerns, various reform proposals have been put forward:

- **Transparency and Accountability:** Increased transparency in arbitration proceedings and greater accountability of tribunals would enhance public trust.
- **Independent Appointments:** Ensuring the independence and impartiality of arbitrators would strengthen the legitimacy of arbitral decisions.
- **Judicial Oversight:** Enhanced judicial oversight of investment arbitration, while preserving arbitral autonomy, could provide a

safeguard against potential abuses.

The legitimacy of investment arbitration remains a complex and contested issue. Judicial decisions, scholarly perspectives, and practical implications all contribute to the ongoing debate. While the system has proven effective in resolving investor-state disputes, concerns about procedural fairness, legal basis, and potential biases have raised legitimate questions about its legitimacy. Reform proposals aimed at enhancing transparency, accountability, and impartiality offer promising avenues for addressing these concerns and ensuring the continued viability of investment arbitration as a credible mechanism for resolving international investment disputes.



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