THE NEW GENERATION OF INTERNATIONAL ADJUDICATION

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ABSTRACT

Until World War II, foreign states enjoyed complete immunity from the jurisdiction of national courts. Disputes arising from commercial interactions between states and private parties were not subject to the jurisdiction of national courts and hence, a policy of "absolute immunity" of foreign states prevailed. This scenario hindered in smooth functioning of business and commercial interactions between nations because when a private party had to pursue a claim against a foreign state, first it had to persuade its home state to diplomatically negotiate and support its claims against the foreign state.

Keywords: International Adjudication, Theories.

INTRODUCTION

A new generation of tribunals were not the result of high aspirations of securing world peace, but instead their evolution is the result of a multitude of practical ad hoc arrangements involving "bilateral relationships between states or private entities, and in most cases concerning trade or investments. "These tribunals were constituted pursuant to investment treaties, such as the North American Free Trade Agreement (NAFTA), the International Centre for Settlement of Investment Disputes (ICSID), international commercial arbitration tribunals, such as the UN Claims Commission, and the World Trade Organization.[1]

RESTRICTIVE THEORY OF SOVEREIGN IMMUNITY

This led to the development of the "restrictive theory" of sovereign immunity during the first half of the 20th century. This theory broadly meant that a "foreign state shall enjoy immunity from the jurisdiction of national courts for its sovereign actions but not for its private acts." International Relations developed around the globe through legalization of the restrictive theory of immunity of

foreign states. Nations around the world gradually started enacting their own legislation of foreign sovereign immunity which aimed in resolving discourses between foreign states and to effectively enforce national court judgements against states. National courts could now, through arbitration agreements, exercise jurisdictions over disputes of business and commercial nature, and also over a few actions and disputes over which states have waived their immunity. Judgements provided by national courts against the commercial assets of a foreign state could also be enforced now through these statutes. The 2004 UN Convention on Jurisdictional Immunities of States and Their Property gave effect to the theory of restrictive theory of sovereign immunity. This resulted in a significant caseload in which private parties could now directly participate in the bulk of adjudication in national courts.[2]

INTERNATIONAL COMMERCIAL ARBITRATION INVOLVING STATE PARTIES

Along with the restrictive theory of sovereign immunity, in parallel the states agreed in number of cases to resolution of commercial, financial, and other disputes with private parties through commercial arbitration. Most of the disputes from the 1960s and 1970s involving states and private parties, which were of commercial nature were resolved through arbitration. The signing of the New York Convention in 1958 initiated an effective enforcement mechanism for international arbitration agreements and awards. As strong legal regimes started developing around the world, international arbitral process started gaining affect and states around the world enacted progressively more effective legislation to ratify the Convention. With 146 contracting parties to the Convention by 2012, it can be fairly said that for commercial and investment related agreements, international arbitration became the popular means of dispute resolution between state related entities and private parties.[3]

So a new category of international adjudication procedures came into effect which produced enforceable decisions that can be executed against a state's assets. Once a foreign state obligate to international arbitration, it is bound to its obligation and the jurisdiction of the arbitral tribunal becomes compulsory under the New York Convention. This award of the arbitral tribunal is to be recognized and enforced in all of the contracting parties of the Convention.

CONCLUSION

It is clear now that the presence of neutral international arbitration mechanism has proved as an

Effective means of resolving business disputes and it is much essential for the success of international trade and investment. States committing to international commercial arbitration agreements almost always take part in arbitration proceedings and also satisfy awards which are made against them. In rare cases of noncompliance of arbitration awards, enforcement proceedings are instituted and successfully.

REFERENCES

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