PERSPECTIVES

ARBITRATION AWARDS AND SOVEREIGN IMMUNITY IN ENGLISH COURTS

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Recent English case law has created two distinct tracks for the enforcement of investor-state awards, confirming that a state's ratification of the International Centre for Settlement of Investment Disputes (ICSID) Convention amounts to a waiver of sovereign immunity, while ratification of the New York Convention does not.

This article examines why treatment of the two treaties has diverged by reference to the Supreme Court's ruling in *Infrastructure Services v. Spain* and the Court of Appeal's ruling in *Devas (Mauritius) Limited v. India*, and what it means for parties enforcing awards against states in the UK.

State immunity – the statutory framework

Section 1(1) of the State Immunity Act 1978 (SIA) provides that a foreign state is immune from the jurisdiction of the UK courts, subject only to certain exceptions. The burden of establishing an exception falls on the party bringing proceedings against the state.

Section 2(1) provides that a state is not immune in proceedings to which it has submitted to the jurisdiction of the UK courts and section 2(2) specifies that a state may submit after a dispute arises, or by a prior written agreement. A provision

merely specifying that an agreement is governed by UK law does not, on its own, satisfy section 2(2).

Section 17(2) provides that for the purposes of section 2(2) references to an agreement include references to a treaty, meaning that, in principle, ratifying a multilateral treaty could constitute the "prior written agreement" to submit to jurisdiction. Whether a particular treaty does constitute prior written agreement to submit to the jurisdiction of the UK courts is a question of interpretation.

The ICSID track: Spain v Infrastructure Services Luxembourg Sarl

Procedural history. Although referred to as *Spain v Infrastructure Services Luxembourg Sarl*, the case concerned two distinct appeals by Spain and Zimbabwe as to the enforcement of ICSID arbitration awards in the UK. Spain's appeal arose from a claim under the Energy Charter Treaty after regulatory changes damaged a solar energy investment, resulting in a 2018 award of roughly €101m. Zimbabwe's arose from a bilateral investment treaty claim after the expropriation of agricultural land, resulting in a 2015 award of over $124m. Both awards were registered as High Court judgments and both states sought to set the awards aside on immunity grounds.

In 2024, the Court of Appeal upheld both registrations on the basis that article 54(1) of the ICSID Convention constitutes an express submission to the jurisdiction. Both states appealed to the Supreme Court, where both appeals were unanimously dismissed in March 2026.

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The Supreme Court's reasoning. First, the Supreme Court determined the test to be applied under section 2 of the SIA for a waiver of immunity, finding that it requires "a clear and unequivocal expression of the state's consent to the exercise of jurisdiction". The Supreme Court dismissed the argument that explicit language, such as "waiver" or "submission", is necessary. The real test is whether the words used "lead to the conclusion" that the state had submitted to the jurisdiction; it is not determined solely by reference to express terminology.

Having set out the test, the Supreme Court turned to whether the states had waived state immunity by way of article 54(1) of the ICSID Convention, which provides that "[e]ach Contracting State shall recognize an award rendered pursuant to [the ICSID] Convention as binding and enforce […] that award within its territories".

The Supreme Court read article 54(1) as containing a reciprocal obligation: each contracting state not only promises to recognise and enforce ICSID awards but consents to every other contracting state doing the same as against it. The Supreme Court did note that article 55 expressly preserves immunity from execution of an award only, but concluded that does not override the obligation in article 54 to recognise the award.

In short, article 54(1) is a clear and unequivocal submission to English jurisdiction, and a waiver of sovereign immunity from adjudication in proceedings for the recognition and enforcement of ICSID arbitral awards.

The New York Convention track: CC/Devas (Mauritius) Limited v. India

Conversely, on 24 June 2026, the Court of Appeal unanimously held that a state's ratification of the New York Convention does not, of itself, amount to a submission to the English jurisdiction under section 2(2) of the SIA.

Procedural history. The claimants held two United Nations Commission on International Trade Law awards against India under the Mauritius-India bilateral investment treaty, following India's 2011 termination of a satellite spectrum-lease agreement with Devas Multimedia. They sought to enforce the awards in England in 2021, however India disputed whether it had agreed to arbitrate the dispute at all.

This issue of whether there was an arbitration agreement was already pending before the Dutch courts, so India applied for a stay of the English proceedings until the issue was resolved in the Netherlands. In response, to avoid this delay, the claimant investors raised a novel argument based on section 2 of the SIA and the New York Convention, arguing that India's ratification of the New York Convention, specifically article III, amounted to a submission to English jurisdiction for purposes of section 2 of the SIA.

Article III of the New York Convention is similar in language to article 54(1) of the ICSID Convention, providing that "[e]ach Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon".

However, the High Court rejected the investors' argument, finding that article III preserved rather than displaced state immunity, on account of its reference to "rules of procedure". On appeal, the Court of Appeal unanimously upheld the High Court's decision.

The Court of Appeal's reasoning. The Court of Appeal applied the same test as the Supreme Court had in the *Spain v Infrastructure Services* case: a clear and unequivocal expression of a state's consent is required to waive immunity. However, the Court of Appeal declined to carry the Supreme Court's reasoning in relation to article 54(1) of the ICSID Convention across to article III of the New York Convention, distinguishing the two treaties and confirming that the question of immunity depends on the proper interpretation of the relevant articles to a treaty.

In reaching its conclusion, the Court of Appeal noted several distinctions between the treaties.

Firstly, article 54(1) of the ICSID Convention contains no qualifying language: each contracting state "shall recognize" and "enforce" an award as final. That is unlike article III of the New York Convention which includes the phrase "in accordance with the rules of procedure of the territory where the award is relied upon". The Court of Appeal treated this distinction as a deliberate signal that, under the New York Convention, domestic procedural law, including rules on state immunity such as codified in the SIA, continue to apply.

Secondly, the ICSID Convention is closed and self-contained: it applies only between contracting states and investors of other contracting states and expressly preserves execution immunity only. By comparison, the New York Convention is silent as to immunity and applies to awards generally, not just awards involving states.

Lastly, the ICSID Convention exists to secure investment and protect investors by way of a mutually reinforced enforcement guarantee between states. Whereas, the New York Convention has a broader purpose to promote the enforceability of awards generally, regardless of the parties.

These distinctions meant the appellants in *Devas* could not simply read across the Supreme Court's judgment, despite the seeming similarity between article 54(1) of the ICSID Convention and article III of the New York Convention.

Having separated the two treaties, the Court of Appeal then turned to the interpretation of the term "rules of procedure" in article III. It refused the appellant's proposed narrow reading of the term, that would exclude state immunity while admitting rules as to limitation and insolvency defences, and instead held that Lord Sumption's definition in *Benkharbouche v Embassy of the Republic of Sudan* was the only workable interpretation: a rule of procedure is "a rule which, whether technically procedural or substantive in character, has the effect of barring a claim for reasons which do not go to its legal merits; that is to say, rules which do not define the existence or extent of any legal obligation". Having set the test, the Court of Appeal found that state immunity fell within that definition.

Implications for investor-state award holders

ICSID awards now have a clearer path to enforcement in the UK than do New York Convention awards against states.

Spain v Infrastructure Services removes state immunity as a viable defence at the recognition and enforcement stage for ICSID awards, while it is less straightforward for non-ICSID investor-state award holders. Investors with New York Convention awards cannot rely on ratification of the New York Convention alone to defeat immunity and must demonstrate that the state agreed in writing to arbitrate.

The upshot is that parties' choice of arbitration forum now carries enforcement consequences. Investment treaties often offer both ICSID and non-ICSID arbitration. Careful consideration must be given to this election by an investor when commencing arbitration, which requires an assessment of what assets may be available for enforcement and whether enforcement is likely to be pursued in the UK. CD

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