APPLICABLE LAW IN INTERNATIONAL INVESTMENT DISPUTES

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Abstract

This paper addresses the legal uncertainty surrounding how arbitral tribunals determine applicable law in investor–state disputes. The research aims to clarify how tribunals balance investor protections with host state regulatory interests by analyzing the interaction between domestic and international legal frameworks. Methodologically, the study uses qualitative content analysis of key International Centre for Settlement of Investment Disputes (ICSID) and non-ICSID cases, including *Gami Investments Inc. v. Mexico* (2004) and *Glamis Gold, Ltd. v. The United States of America* (2009), supported by doctrinal sources such as Schreuer (2007) and Coop and Ribeiro (2008). The findings reveal significant inconsistency in the application of domestic and international law, with some tribunals favoring a dual approach, while others prioritize international standards, particularly under bilateral investment treaties (BITs). The study concludes that the absence of a clear legal hierarchy contributes to fragmented decision-making. The paper's relevance lies in its call for harmonized interpretative guidelines to increase predictability in investment arbitration and strengthen coherence in the application of legal norms.

Keywords: Arbitration Tribunals, Applicable Law, International Law, National Law, Investment Disputes, BITs, Customary International Law, Legal Uncertainty, Legal Principles

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1. INTRODUCTION

Foreign direct investment (FDI) has become a cornerstone of global economic development, especially since the 1980s, when globalization significantly intensified cross-border capital flows. FDI is widely recognized for promoting economic growth, job creation, and the diffusion of technology and innovation (Musabegović et al., 2015). Recent data from the United Nations Conference on Trade and Development (UNCTAD, 2024) indicates that global FDI inflows grew by 11%, reaching approximately $1.4 trillion.

The increase in FDI has also led to a rise in disputes between investors and host states. These issues are predominantly resolved through international arbitration, which provides investors with a forum to protect their interests against potential misconduct by the host state. Bilateral investment treaties (BITs) typically provide the legal foundation for initiating such arbitration proceedings. The International Centre for Settlement of Investment Disputes (ICSID), as the principal institution in this domain, registered 58 new cases during the fiscal year ending June 30, 2024, its second-highest annual caseload to date (ICSID, 2024).

Investment disputes frequently center on legal uncertainty, especially regarding which law governs the substantive aspects of the case. The complexity of determining the applicable law arises from the involvement of multiple legal systems, the absence of a fixed forum law (*lex fori*), and the inherent transnational character of arbitration (Kjos, 2013). A particularly contentious area involves determining whether international or national law, or a combination thereof, should govern the resolution of the dispute. Article 42(1) of the ICSID Convention (ICSID, 1965) acknowledges this complexity by allowing for the simultaneous application of national and international law in the absence of an explicit party agreement.

ICSID tribunals operate with a distinct advantage: their internationalized nature allows them to bypass domestic conflict-of-law rules. This

makes ICSID unique in its ability to adjudicate disputes independently of any single national legal system, offering both neutrality and consistency (Kinnear, 2023). In contrast, ad hoc or non-ICSID tribunals may apply domestic law depending on their seat or arbitration rules, leading to potentially divergent outcomes (Kjos, 2013).

Over the past two decades, ICSID has not only expanded its caseload but has also set standards for transparency and accessibility. All ICSID cases are registered online, and most awards and procedural orders are publicly available. Biannual statistical reports provide detailed insights into case types, industries involved, legal instruments invoked, and arbitrator demographics (Kinnear, 2023). This transparency fosters the consistent development of investor-state jurisprudence and promotes greater legal certainty for parties involved.

Despite these advancements, a clear and uniform approach to determining the applicable law remains elusive. The lack of consensus continues to create unpredictability in arbitral outcomes, undermining confidence in the system. This research aims to address this gap by analyzing how investment arbitration tribunals, particularly ICSID, interpret and apply legal norms in resolving disputes. The central focus is on the methodologies used to identify the applicable substantive law and the interaction between international and domestic legal sources.

The main research questions are:

RQ1: How do investment arbitration tribunals determine the applicable law governing the substance of disputes between investors and host states?

RQ2: What implications does this have for legal certainty and the balance between private and public interests?

This paper adopts a qualitative, doctrinal approach grounded in both treaty interpretation and case law analysis. It considers relevant arbitral decisions to trace patterns and shifts in how tribunals conceptualize and resolve the conflict between competing legal systems.

A particular emphasis is placed on the interplay between national and international law in arbitral reasoning. Although Article 42(1) ICSID Convention formally allows tribunals to apply both legal systems, there remains an ongoing debate about their respective weight and compatibility. This research does not address questions of applicable law related to procedural or jurisdictional matters, except where necessary to support the main analysis. To guide the reader through this inquiry, the rest of the paper is structured as follows:

Section 2 reviews the relevant literature, highlighting the evolution of investment arbitration and the methods used to determine applicable law. Section 3 analyses the methodology that has been used to conduct empirical research on investment arbitration cases, focusing on the relationship between national and international law. Section 4 presents the findings of the research. Section 5 discusses the trends and patterns observed in arbitral decisions. Section 6 concludes the paper with recommendations for enhancing legal certainty in determining applicable law in investment disputes.

2. LITERATURE REVIEW

The theoretical foundation of this research lies in the principle of party autonomy, a cornerstone of both private international law and international arbitration. At its core, this principle enables parties to structure their legal relationships freely, including the right to choose the law applicable to their dispute. This right is rooted in the broader framework of contractual freedom, a concept endorsed by both domestic legal systems and international instruments. It is also supported by theories of legal pluralism, which recognize the coexistence of national, international, and transnational legal norms in resolving cross-border disputes.

From a theoretical standpoint, party autonomy derives from liberal legal traditions emphasizing individual freedom and consensual relations. Böckstiegel (1997) notes that arbitration is moving toward the broadest possible application of this principle, reflecting a shift from state-centered legal systems to a more contract-based, party-driven model of dispute resolution.

This dual aspect of party autonomy, substantive and conflict-of-law, has been codified in major legal instruments. For example, Article 42 of the ICSID Convention allows arbitrators to apply the law agreed upon by the parties, defaulting to the host state's law and international law in the absence of such agreement. Similarly, the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules (Art. 35), the International Chamber of Commerce (ICC) Rules of Arbitration 2021 (Art. 21), and the SCC Arbitration Rules 2023 (Art. 22) all reaffirm that tribunals must respect the parties' choice of law and only apply ex aequo et bono when expressly authorized.

National legislation also embeds this principle. The UK Arbitration Act 1996 and Brazilian Arbitration Law of 1996 (Law No. 9.307/96, 1996) allow parties to select the substantive law of any jurisdiction, provided public policy is not violated. These frameworks support the understanding that arbitration offers a high degree of legal flexibility, provided the choice is clearly expressed.

Despite its theoretical centrality, party autonomy is not absolute. Recent jurisprudence shows that tribunals may override the parties' choice of law, especially where the application of international legal norms is deemed necessary to protect investor rights or ensure consistency with public international law. This reflects a deeper theoretical tension between contractual autonomy and public interest regulation, particularly when tribunals are asked to resolve disputes arising under BITs.

Coop and Ribeiro (2008) and Schreuer (2007) argue that international investment law requires tribunals to consider a broader set of legal obligations, which may not align with the parties' contractual choices. Moreover, Hamid Bahrami-Ahmadi, in his dissenting opinion No. 292, Case No. 253, of March 2, 1987, asserts that arbitrators should not substitute the agreed law unless necessary, reaffirming the legal force of party autonomy even under complex institutional arrangements like the Iran-U.S. Claims Tribunal.

Recent scholarship has reinforced these concerns. Vadi (2020) explores the interplay between cultural sovereignty and investment law, noting that tribunals increasingly invoke international standards to limit state discretion. Salacuse (2021) emphasizes that party autonomy often gives way to international public policy, especially in areas like human rights or environmental protection. Cappiello (2020)

discusses how inconsistent interpretation of applicable law clauses leads to unpredictability.

To promote consistency in arbitral reasoning, González-Bueno Catalán de Ocón (2022) proposes harmonized frameworks that integrate national and international legal sources, particularly in disputes involving hybrid contracts or mixed public-private law elements. Bernatt and Cseres (2024) also highlights the relevance of European Union (EU) law and competition norms in determining the applicable law in intra-EU investment disputes, a topic that has grown in importance post-Achmea and Komstroy. Further, Titi (2014) argues for the increasing role of jus cogens and mandatory rules in limiting party autonomy, especially in the context of sustainable development goals and corporate responsibility standards.

The increasing complexity of investment disputes reflects the influence of legal pluralism, a theoretical framework that recognizes the simultaneous operation of multiple legal systems, national, international, and transnational. Investment arbitration lies at the intersection of these systems. As such, tribunals often apply *lex mercatoria*, UNIDROIT Principles, or customary international law to fill interpretive gaps, especially when treaties are silent or ambiguous.

This pluralistic approach, while flexible, also introduces fragmentation. Different tribunals may interpret the same BIT provisions differently, apply national law inconsistently, or prioritize conflicting principles. As Kjos (2013) notes, unless the parties' choice is explicit and unequivocal, arbitrators retain wide discretion in determining the applicable law, which can lead to conflicting rulings and reduced legal certainty.

The literature confirms that while party autonomy is a foundational principle of investment arbitration, its application is often limited by tribunal discretion, public international law considerations, and the fragmented nature of the applicable legal sources. This research is positioned within this theoretical landscape to investigate how these tensions play out in practice and to propose ways to enhance coherence and predictability in arbitral decision-making.

3. RESEARCH METHODOLOGY

This research employs a qualitative, doctrinal legal methodology focused on analyzing arbitral practice and legal instruments relevant to the determination of applicable law in international investment disputes. The core aim is to identify how tribunals interpret and apply national and international legal systems when resolving disputes under BITs, arbitration rules, and contractual frameworks.

The study primarily uses doctrinal legal analysis, also known as the "black letter" method. This involves a detailed examination of legal texts, including arbitral awards, investment treaties, arbitration rules, and conventions, to interpret how the principle of party autonomy and the choice of applicable law are treated across jurisdictions and institutional settings.

Key sources include:

- Arbitral awards from ICSID, UNCITRAL, and *ad hoc* tribunals (e.g., *Gami Investments Inc. v. Mexico*, *Glamis Gold, Ltd. v. The United States of America*, *PSEG Global, Inc., The North American Coal Corporation, and Konya Ingin Electrik Üretim ve Ticaret Limited Sirketi v. Republic of Turkey*);
- Treaties and conventions such as the ICSID Convention, European Convention on International Commercial Arbitration, and various BITs;
- Arbitration rules (UNCITRAL, ICC, SCC, etc.);
- National arbitration legislation (e.g., UK Arbitration Act 1996, French Arbitration Law);
- Academic literature and legal commentaries (e.g., Schreuer, 2007; Coop & Ribeiro, 2008; Vadi, 2020; Cappiello, 2020).

To ensure comparative validity, the study includes both ICSID and non-ICSID awards and cases decided under different legal traditions, enhancing the diversity of arbitral reasoning examined.

The research uses thematic content analysis to identify recurring patterns and divergences in arbitral reasoning. Awards are coded according to:

- Whether and how tribunals apply the parties' choice of law;
- The extent of reliance on national law, international law, or general principles;
- The treatment of conflicts between legal sources.

Findings are then synthesized to highlight trends, inconsistencies, and areas of legal uncertainty.

While doctrinal analysis is appropriate for understanding legal reasoning and interpreting norms, several alternative or complementary methods could further enrich the research:

- Empirical legal research: This could involve statistical analysis of a large dataset of arbitral awards to quantify how often certain legal sources are applied. Recent studies using databases like UNCTAD's Investment Dispute Navigator or ICSID's case archive demonstrate the potential for this approach.
- Comparative case study analysis: By closely comparing a small number of factually similar disputes decided under different legal frameworks or by different tribunals, researchers could draw insights into how context affects the determination of applicable law.
- Interviews with practitioners and arbitrators: Qualitative interviews could uncover how arbitrators make decisions on applicable law in practice, revealing informal factors that may not be evident from published awards.
- Legal-normative analysis: A more theoretical approach could examine the legitimacy and coherence of current practices, proposing normative models for balancing party autonomy with public international law constraints.

In conclusion, the chosen methodology, doctrinal and thematic content analysis, offers a comprehensive understanding of the current state of arbitral practice. However, future research could benefit from integrating empirical or socio-legal methods to capture the broader dynamics influencing arbitral decision-making.

4. RESULTS

Although international investment arbitration primarily rests on international law, national law plays a crucial complementary role, particularly in cases involving BITs. While often applied directly in contract-based disputes, national law also becomes relevant in treaty-based arbitration when it helps define rights and obligations. In *LG&E Energy Corp., LG&E Capital Corp., and LG&E International, Inc. v. Argentine Republic* (2007), the tribunal, invoking

Article 42(1) of the ICSID Convention, held that although there was no express agreement on the applicable law, international law would prevail due to the BIT-based nature of the dispute. Nevertheless, national law was not excluded; it was treated as complementary, especially in issues insufficiently addressed by the BIT (*LG&E Energy Corp., LG&E Capital Corp., and LG&E International, Inc. v. Argentine Republic*, 2007, paras. 91–98). In other cases, national law is essential for determining the legal status of entities (e.g., *Bosh International, Inc., B&P Ltd Foreign Investments Enterprise v. Ukraine*, 2012) or the nationality of claimants (Knahr, 2017).

General international law lacks detailed provisions on property rights. Thus, national law is applied to establish the scope, content, and validity of such rights. In *EnCana Corporation v. Republic of Ecuador* (2006, para. 184), despite the absence of an express reference to host state law in the BIT, the tribunal ruled that property rights had to be evaluated under Ecuadorian law. Similarly, in Accession Mezzanine v. Hungary, the tribunal used Hungarian law to determine whether the investor held a valid broadcasting right. Only after establishing the domestic legal basis did the tribunal assess whether these rights qualified as protected investments under the BIT (*Accession Mezzanine Capital L.P. and Danubius Kereskedőház Vagyonkezelő Zrt. v. Hungary*, 2013, para. 75). The tribunal in *Alpha Projektholding GmbH v. Ukraine* (2010, para. 347) echoed this approach, applying Ukrainian law to resolve factual issues regarding contractual rights. Likewise, *Bosh International, Inc., B&P Ltd Foreign Investments Enterprise v. Ukraine* (2012, para. 113) confirmed the necessity of applying national law where contractual claims intersect with BIT claims. However, contrasting jurisprudence exists. In *Caratube International Oil Company LLP v. Republic of Kazakhstan* (2012), the tribunal asserted that international law applied even to disputes founded in contracts, suggesting a trend toward reducing national law's relevance (*Caratube International Oil Company LLP and Devincci Salah Hourani v. Republic of Kazakhstan (II)*, 2017, para. 291). In *SGS Société Générale de Surveillance S.A. v. Republic of the Philippines* (2004), the tribunal emphasized that contractual obligations fall under national law, even when the breach invokes a BIT umbrella clause. Thus, the underlying investment agreement was subject to Philippine law (*SGS Société Générale de Surveillance S.A. v. Republic of the Philippines*, 2004, para. 128). These cases illustrate that national law continues to play a vital role, especially in defining property and contractual rights. Nevertheless, arbitral practice increasingly treats national law as evidence rather than substantive law, particularly in BIT-based disputes.

A recurring question is whether a state's failure to comply with its own laws can constitute a breach of the fair and equitable treatment (FET) standard. This issue goes beyond jurisdictional questions regarding investment legality at the time of acquisition (Coop & Ribeiro, 2008; Schreuer, 2007).

In GAMI v. Mexico, the claimant argued that the government's arbitrary and inconsistent application of its laws violated FET. The tribunal clarified that its role was not to assess the content of Mexican law, but whether the state respected its own legal framework in practice (*Gami Investments Inc. v. Mexico*, 2004, para. 90). The tribunal held that systemic failures to enforce the law could contribute to a violation, particularly if actions were discriminatory or arbitrary. The *PSEG Global, Inc., The North American Coal Corporation, and Konya Ingin Electrik Üretim ve Ticaret Limited Sirketi v. Republic of Turkey* (2007, paras. 253–254) affirmed this approach, noting that inconsistent government conduct, including failure to respect judicial decisions, breached FET, even if done in good faith. Conversely, in *Glamis Gold, Ltd. v. The United States of America* (2009), the tribunal emphasized that a breach of domestic law is not necessarily a breach of international law. The tribunal found that even if there were procedural irregularities, they were remedied and did not amount to a denial of justice under international law (*Glamis Gold, Ltd. v. The United States of America*, 2009, paras. 768-774).

In *Bosh International, Inc., B&P Ltd Foreign Investments Enterprise v. Ukraine* (2012), the claimant alleged a breach of FET based on the state's non-application of the res judicata principle. The tribunal applied Ukrainian law and found no such violation, concluding that domestic procedures had been properly followed (*Bosh International, Inc., B&P Ltd Foreign Investments Enterprise v. Ukraine*, 2012, paras. 278–282). Scholars like Kjos (2013) observe that in many of these cases, national law is used to assess the factual context, not as the governing law. Yet its role remains significant, where it frames expectations or shapes the regulatory environment.

In expropriation claims, national law is often used to assess whether state action was lawful. In *Saluka Investments B.V. v. The Czech Republic* (2006, paras. 245–275), the tribunal ruled that the Czech National Bank's actions did not constitute unlawful expropriation because they were grounded in legitimate regulatory authority under national law. However, other cases suggest that the application of national law is not always necessary. In *OI European Group B.V. (OIEG) v. Bolivarian Republic of Venezuela* (2015, para. 388), the tribunal found that since the BIT only required due process and not adherence to national law, the issue should be assessed solely under international standards. This view has been criticized (Hepburn, 2017), as it detaches the due process requirement from its domestic legal foundation. Arbitral decisions vary significantly on whether expropriation must comply with domestic law to be lawful. This inconsistency underscores the uncertain status of national law in defining the legality of state actions.

5. DISCUSSION

The analysis reveals that national law plays a complex but significant role in international investment arbitration, often complementing international law, especially in disputes involving BITs. While international law generally governs treaty-based claims, national law frequently serves as the foundation for defining property rights, contractual obligations, and the legal status of investors and their investments. This is evidenced in cases like *LG&E Energy Corp., LG&E Capital Corp., and LG&E International, Inc. v. Argentine Republic* (2007), where international law prevailed but national law remained relevant to fill gaps, and *EnCana Corporation v. Republic of Ecuador* (2006), where domestic law determined property rights despite no explicit treaty reference. Conversely, some tribunals, such as in *Caratube International Oil Company LLP v. Republic of Kazakhstan* (2012),

have limited the role of national law, favoring international law even in contract-based disputes. The approach often depends on the tribunal's interpretive methodology and the clarity of the treaty's applicable law clause.

National law's role extends to assessing breaches of domestic legal frameworks in relation to investor protection standards such as FET. Arbitral tribunals have varied in their approaches: some, like in *Gami Investments Inc. v. Mexico* (2004) and *PSEG Global, Inc., The North American Coal Corporation, and Konya Ingin Electrik Üretim ve Ticaret Limited Sirketi v. Republic of Turkey* (2007), consider the state's failure to consistently apply its laws as potentially breaching FET, while others, such as in *Glamis Gold, Ltd. v. The United States of America* (2009) and *Bosh International, Inc., B&P Ltd Foreign Investments Enterprise v. Ukraine* (2012), distinguish breaches of domestic law from breaches of international obligations, emphasizing the latter's primacy. The inconsistency among tribunals has generated debate over whether a breach of national law alone suffices to trigger international responsibility under BITs. This dual approach underlines national law's function as a factual context rather than a direct source of international responsibility. However, in practice, the tribunal's willingness to examine national law thoroughly often reflects its attitude toward due process and transparency.

In the context of expropriation claims, national law again serves as a reference point to evaluate the legitimacy of state actions. For example, in *Saluka Investments B.V. v. The Czech Republic* (2006), the tribunal upheld regulatory measures as lawful based on national law authority. Yet, tribunals have not always uniformly applied this standard. In *RosInvestCo UK Ltd. v. The Russian Federation* (2010), the tribunal gave substantial weight to Russian constitutional guarantees when assessing the legality of state interference. However, some tribunals prioritize international standards over domestic legal compliance, as seen in *OI European Group B.V. (OIEG) v. Bolivarian Republic of Venezuela* (2015), a stance that has drawn academic criticism for potentially disconnecting due process protections from their domestic legal roots. This trend risks marginalizing domestic legal systems in investment arbitration, which may conflict with the expectations of host states. Moreover, divergent approaches to the relevance of national law may undermine the legitimacy of investor-state dispute settlement (ISDS) by creating unpredictable outcomes.

Overall, the findings indicate a trend where tribunals treat national law as a complementary or evidentiary tool rather than as the governing law, particularly in BIT disputes. This approach may undermine the clear application of Article 42(1) of the ICSID Convention, which mandates the application of national law absent agreement on the applicable law. The discretion exercised by tribunals in balancing national and international law raises concerns about legal certainty and respect for party autonomy. In practice, this flexibility may lead to greater coherence in some awards but also opens the door to critiques of arbitrator bias or inconsistency. Additionally, the increasing prevalence of public interest considerations in investment arbitration, such as human rights and environmental concerns, has further diluted the role of national law in favor of transnational norms.

These observations suggest that while national law remains relevant in defining legal rights and contextualizing state conduct, its role is increasingly subordinate to international law within arbitral practice. Some scholars have called for clearer procedural rules or interpretive guidelines that establish when and how national law should be applied in investment disputes. Others argue that tribunals should exercise greater deference to domestic legal systems to reinforce the principle of subsidiarity in international adjudication. This evolving dynamic merits further scholarly inquiry to determine whether it supports or detracts from the legitimacy and predictability of international investment arbitration outcomes. Given the growing tension between investor protection and state sovereignty, the status of national law in arbitral reasoning will likely remain a contested and evolving aspect of international investment law.

6. CONCLUSION

This study has demonstrated that the determination of the applicable law in investment arbitration remains one of the most complex and contentious issues within international dispute resolution. Arbitral tribunals face the difficult task of balancing private investor protections with the sovereign rights and public interests of host states, often navigating between national legal frameworks and international law. While arbitration provides an effective dispute resolution mechanism, the inconsistent application of laws, particularly the interplay between national law and BITs, continues to generate legal uncertainty and challenge the legitimacy of arbitral outcomes.

A key finding is the significant role played by the principle of autonomy of will, whereby parties commonly attempt to select the governing law through contract or treaty clauses. Yet, tribunals do not uniformly uphold these choices, especially when international law standards, such as those embodied in BITs, are invoked to safeguard investor rights or to align with evolving international norms. For example, some tribunals have prioritized international law exclusively in cases involving alleged treaty breaches, even when parties explicitly chose national law, illustrating a divergence in tribunal approaches that undermines legal predictability.

The absence of a clear hierarchy of legal sources within BITs further exacerbates inconsistencies, granting tribunals broad discretion in deciding whether to apply national or international law. This discretionary power has led to divergent rulings on core issues such as expropriation standards and state responsibility. For instance, tribunals have alternately applied customary international law as a complementary source or treated BIT provisions as *lex specialis*, revealing a lack of doctrinal consensus that complicates the legal landscape.

Moreover, this research highlights the dynamic use of general legal principles, such as good faith, non-discrimination, and FET, which arbitral tribunals often invoke to fill gaps where treaty or customary law remains silent. This adaptive approach demonstrates the evolving nature of international investment law but simultaneously contributes to unpredictability, as the scope and application of these principles can vary widely across cases.

Despite the primacy often attributed to international law in BIT disputes, national law

remains influential, particularly in defining the legal nature of entities, property rights, and in assessing whether breaches of domestic regulations may constitute violations of international investment obligations. This dual application underscores the complexity and the interdependent relationship between national and international legal regimes.

Implications of these findings suggest that to enhance the legitimacy and fairness of investment arbitration, greater harmonization and clearer guidance are necessary. This could be achieved through the development of a more explicit hierarchy of legal sources within BITs or through the adoption of model clauses that delineate the interaction between national and international law. Further, enhanced transparency and consistency in tribunal reasoning, particularly concerning the respect for party autonomy and the application of general principles, would contribute to reducing legal uncertainty.

Limitations of the current study include its reliance on selected arbitration cases and literature predominantly from European and American contexts, which may limit the generalizability of findings to other regions with differing legal traditions. Additionally, the rapid evolution of arbitration practice means that some recent developments may not yet be fully captured.

Future research should focus on comparative analyses incorporating arbitration practices from a broader range of jurisdictions, including emerging economies and non-English legal sources. Empirical studies assessing the impact of tribunal discretion on arbitration outcomes could shed light on the practical effects of legal uncertainty. Furthermore, investigations into how international organizations and treaty drafters could contribute to standardizing applicable law provisions would be valuable in advancing the field.

In summary, while international investment arbitration remains a flexible and adaptable mechanism, the lack of uniformity in determining applicable law and the broad discretion exercised by tribunals contribute to ongoing legal uncertainty. Addressing these challenges through clearer legal frameworks and enhanced harmonization efforts is essential to strengthening the predictability, fairness, and legitimacy of investment dispute resolution going forward.

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