2026 Int'l Arbitration Trends: Awards Against Sovereign States

By **Katie Gonzalez, Laurie Achtouk-Spivak and Boaz Morag** (January 23, 2026)

Katie Gonzalez

Laurie Achtouk-Spivak

Boaz Morag

This is the fourth article in a five-part series discussing international arbitration trends and topics for 2026. This article focuses on the enforcement of arbitral awards against sovereign states, which remains one of the most contentious and rapidly evolving areas in international arbitration.

While both the New York Convention and the International Centre for Settlement of Investment Disputes Convention establish frameworks favorable to the recognition and enforcement of awards, neither treaty directly addresses sovereign immunity at the enforcement or execution stage.[1] This has produced divergent results across jurisdictions, creating both strategic opportunities and challenges for award creditors.

Three issues are likely to define the enforcement landscape in 2026: (1) the scope of sovereign immunity; (2) the assignability of rights under arbitral awards; and (3) the availability and scope of public policy defenses based on fraud and corruption.

Sovereign Immunity

A central question over the last decade has been whether sovereign states implicitly waive immunity from enforcement by ratifying multilateral treaties such as the ICSID Convention or the Energy Charter Treaty, or ECT. This debate has been particularly acute in the context of intra-European Union investment disputes against Spain, where changes to renewable energy policies have triggered claims by foreign investors.

The European Court of Justice has held that arbitration clauses in intra-EU bilateral investment treaties and the ECT are incompatible with EU law because they undermine the autonomy of the EU legal order and remove disputes involving EU law from the jurisdiction of EU courts.[2]

As a result, in the EU, arbitral awards under such clauses are unenforceable in certain intra-EU disputes. In a 2025 decision, Antin v. Spain, the European Commission went further and concluded that Spain's payment of an ICSID award to certain Dutch and Luxembourgish investors would constitute illegal state aid.[3]

By contrast, courts in the U.K. and Australia have recently concluded that ratification of the ICSID Convention requires signatory states to recognize and enforce ICSID awards.

In Infrastructure Services Luxembourg SARL v. Spain, the English High Court considered whether Article 54 of the ICSID Convention amounts to a submission by a signatory state to the adjudicative jurisdiction of any other signatory state for purposes of recognizing and enforcing an ICSID award. Both the English High Court in 2023 and the Court of Appeal in 2024 held that it did and, therefore, that sovereign immunity is not an available defense

against recognition or enforcement.[4]

The courts also confirmed that EU law cannot alter the obligation on ICSID Convention signatories to recognize and enforce awards made pursuant to that convention, and thus Spain's EU law objections did not provide a basis for immunity or for refusing registration.

In Blasket Renewable Investments LLC v. Spain, the Federal Court of Australia reached a similar conclusion in August, reaffirming that Australia's enforcement obligations under the ICSID Convention are autonomous and leave no room for reconsidering jurisdiction or merits.[5]

In the U.S., years of inconsistent district court decisions were provisionally clarified in August by the U.S. Court of Appeals for the District of Columbia Circuit in Blasket Renewable Investments LLC v. Spain, in which the court held that the arbitration exception to the Foreign Sovereign Immunities Act applies to intra-EU ICSID awards and, therefore, Spain's immunity was waived.[6]

According to the D.C. Circuit, a sovereign's consent to arbitration derives from its ratification of the ECT, which designates ICSID as an available forum — not from the validity of the underlying arbitration clause under EU law.[7]

The D.C. Circuit's decision may not be the last word on the matter, as Spain has sought certiorari review from the U.S. Supreme Court. In October, the Supreme Court invited the U.S. Solicitor General to submit a brief addressing the questions on appeal, including whether the FSIA requires U.S. courts to confirm that a foreign sovereign specifically consented to arbitrate the underlying dispute before asserting personal jurisdiction, or whether general consent through a multilateral treaty is sufficient.[8]

In the event that the Supreme Court reviews this case, the decision will likely weigh in on these and other issues affecting the enforcement of arbitration awards against foreign sovereigns.

Assignability

While the rapid growth of third-party funding and specialized enforcement vehicles has increased the importance of assignment of rights under arbitral awards,[9] the legal landscape remains fragmented across different jurisdictions. In 2025, there were a number of critical decisions regarding the ability to enforce assigned ICSID claims, which will have implications on enforcement proceedings in 2026 and beyond.

In Operafund Eco-Invest Sicav PLC v. Spain, the English High Court held in November that courts may not enforce an award made pursuant to the ICSID Convention that has been assigned.[10] This decision was based on an interpretation of Article 54(2) of the ICSID Convention, which the English court held authorizes only "parties" to the arbitration to seek recognition and enforcement of an award.

The court further held that the Arbitration (International Investments Disputes) Act 1966, which implements the ICSID Convention into English law, treats the process of registering an award for the purposes of enforcement as a procedural mechanism, one that does not give rise to new substantive rights that are capable of assignment.[11]

Blasket Renewable Investments LLC, the assignee of the ICSID award, was granted permission to appeal the Operafund judgment, leaving open the possibility of a shift in the

U.K.'s stance on award assignability.

This decision represents a significant departure from courts' practice in jurisdictions like the U.S. and Australia, which have generally permitted third-party assignees to enforce ICSID awards, provided the assignment is valid under applicable law.[12]

Corruption and Fraud

Even where immunity obstacles are overcome and any assignments are found to be valid (or uncontested), enforcement of arbitral awards may still be vulnerable to public policy defenses such as corruption and fraud. Challenges on the basis of corruption or fraud are increasingly invoked, particularly following the decision by the High Court of England in Process & Industrial Developments Ltd. v. Nigeria.

In that case, the High Court set aside two awards valued at $11 billion after finding, among other things, that the underlying contract had been procured through bribery, that bribery persisted during the arbitration, and that the claimant had committed perjury during the arbitration.[13] The Court of Appeal upheld the costs order in July 2024, and in 2025, the U.K. Supreme Court dismissed P&ID's appeal on that issue.[14]

Although parties may invoke fraud or corruption as a ground for vacating, or otherwise resisting enforcement of, arbitral awards, the evidentiary burden for demonstrating such fraud or corruption remains high, and courts are often unwilling to review allegations that were considered by, or could have been raised before, the tribunal.

For example, in Metropolitan Municipality of Lima v. Rutas de Lima SAC, the D.C. Circuit affirmed the U.S. District Court for the District of Columbia's denial of Lima's petition to vacate two arbitration awards totaling over $200 million, despite allegations that the concession contract had been procured through bribes by Rutas de Lima's parent company, Odebrecht.[15]

Although Lima also alleged fraud and procedural misconduct during the arbitration itself (including false discovery responses and the exclusion of allegedly probative evidence), the district court held that vacatur was unwarranted, including because both arbitral tribunals rejected Lima's corruption claims, finding insufficient evidence linking Odebrecht's corrupt payments to the concession contract.[16]

The D.C. Circuit upheld the tribunals' factual findings and declined to vacate, rejecting Lima's arguments that there was fraud and misconduct in the arbitration itself, and declined to revisit allegations of corruption already considered by the tribunals.[17] The decision confirms that courts will give significant weight to arbitrators' factual findings and may view with skepticism arguments that there was fraud or misconduct in the arbitration process itself, absent compelling evidence of corruption directly linked to the arbitration proceeding that could not have been raised in the arbitration itself.[18]

The threshold for corruption and fraud, whether as a public policy defense to recognition under the New York Convention or as a stand-alone ground for vacatur under Sections 10(a)(1) or 10(a)(2) of the Federal Arbitration Act, remains high. But as was the case in Process & Industrial Developments Ltd. v. Nigeria, courts may be more willing to intervene where the court is persuaded that the arbitration process amounted to little more than "a shell that got nowhere near the truth."[19]

Strategic Considerations in 2026

Recent developments suggest that the following trends in the enforcement of awards against sovereign states will continue into 2026:

- The U.S., U.K. and Australia are emerging as principal fora for enforcement of intra-EU investment awards, which are facing increasing enforcement hurdles within the EU itself. However, the forthcoming U.S. Supreme Court decision on whether to hear Kingdom of Spain v. Blasket Renewable Investments could significantly reshape the U.S. framework for treaty-based sovereign immunity and, by extension, global enforcement strategies.

- Investors must carefully evaluate whether to assign rights under an arbitral award, as assignability may facilitate obtaining a recovery and/or enforcement in some jurisdictions but bar it entirely in others. Recent decisions in the U.K. may chill the market for buying and selling certain arbitration awards and claims, although it is expected that mitigation strategies through corporate structuring of entities holding claims may be contemplated.

- Public policy defenses grounded in corruption and fraud may impose a high evidentiary burden, but remain a potential mechanism to resist enforcement.

Katie L. Gonzalez, Laurie Achtouk-Spivak are partners, and Boaz S. Morag is counsel, at Cleary Gottlieb Steen & Hamilton LLP.

Cleary incoming associate Christopher Hudson Verde and attorney Annalisa Martini contributed to this article.

[1] See Kingdom of Spain v. Infrastructure Servs. Luxembourg S.à.r.l., [2023] HCA 11, ¶ 44–58 (Austl.).

[2] See Case C-284/16 Slovak Republic v. Achmea BV [2018] 4 WLR 87; Case C-741/19 Republic of Moldova v. Komstroy LLC [2021] 4 WLR 132.

[3] See Antin (Case SA.54155 (2021/NN)) Commission Decision C(2025) 1781 final [2025] OJ L 1235/1.

[4] See Infrastructure Servs. Luxembourg SARL & Anor v Kingdom of Spain [2023] EWHC 1225 (Comm). This decision was upheld on appeal to the English Court of Appeal in [2024] EWCA 1257 (Civ) and is currently pending appeal to the U.K. Supreme Court.

[5] Blasket Renewable Invs. LLC v. Kingdom of Spain [2025] FCA 1028 (29 August 2025) (Austl.).

[6] See generally Blasket Renewable Invs., LLC v. Kingdom of Spain, No. 20-817 (JDB),

2025 WL 2336428 (D.C. Cir. Aug. 13, 2025). The arbitration exception allows jurisdiction over actions to confirm arbitral awards if the award is governed by a treaty or other international agreement in force in the United States. 28 U.S.C. § 1605(a)(6).

[7] Blasket, 2025 WL 2336428, at *1.

[8] Kingdom of Spain v. Blasket Renewable Invs., LLC, No. 24-1130 (U.S. petition for cert. filed May 1, 2025). The U.S. Solicitor General may also address whether dismissal on forum non conveniens grounds is categorically unavailable in suits to confirm foreign arbitral awards.

[9] See Cleary Gottlieb Steen & Hamilton, International Arbitration Trends and Topics for 2025, 8–10 (Jan. 6, 2025).

[10] Operafund Eco-Invest SICAV PLC, Schwab Holding AG v. Kingdom of Spain [2025] EWHC 2874 (Comm).

[11] Id., ¶ 78. The Court also refused to apply issue estoppel against Spain based on an earlier Australian decision upholding assignments to Blasket Renewable Investments LLC, on the basis that (i) no final order had been issued by the Australian court, and (ii) Spain had only appeared in the Australian proceedings in order to assert state immunity. See Operafund [2025] EWHC 2874 (Comm), [33].

[12] See, e.g., Blasket, [2025] FCA 1028; Blasket, 2025 WL 2336428, at *9.

[13] Process & Industrial Developments Ltd. v. Nigeria [2023] EWHC 2638 (Comm).

[14] Process & Industrial Developments Ltd. v. Nigeria, [2024] EWCA Civ. 790, aff'd, [2025] UKSC 36.

[15] Metro. Mun. of Lima v. Rutas De Lima S.A.C., 141 F.4th 209, 212, 219 (D.C. Cir. 2025).

[16] Id. at 215, 216.

[17] Id. at 221.

[18] Id. at 220 (citing Enron Nigeria Power Holding, Ltd, v. Federal Republic of Nigeria, 844 F.3d 281, 289 (D.C. Cir. 2016)).

[19] Process & Industrial Developments Ltd. v. Nigeria [2023] EWHC 2638 (Comm) [580].