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TOPIC OF RESEARCH: PROTECTION OF PUBLIC INTEREST IN INVESTOR-STATE  
ARBITRATION WITH SPECIAL REFERENCE TO DEVELOPING NATIONS

### FINDINGS

The research explores the evolution and complexities of investment arbitration, particularly under the framework of Bilateral Investment Treaties (BITs). It highlights how the Investor-State Dispute Settlement (ISDS) mechanism operates at the intersection of private and public international law, resulting in inherent tensions between the interests of foreign investors and host states. While BITs provide enforceable protections to investors without reciprocal liabilities, states often find themselves as respondents in arbitration proceedings, tasked with defending their regulatory actions aimed at safeguarding public interest.

A fundamental conflict arises from the divergent priorities of investors, who seek stability and predictability, and states, whose mandate is to protect public welfare through regulation. The principle of *pacta sunt servanda* clashes with the doctrine of state sovereignty, especially when states enact measures for legitimate public purposes. Arbitrators are frequently required to determine whether such measures constitute lawful regulation or expropriation, with compensation implications hinging on this distinction.

The research asserts that public interest must be a central consideration in investment arbitration, even though the public is not a direct party to the dispute. States have a responsibility to their citizens, and regulatory actions such as those related to environmental protection, public health, or labour rights may be necessary despite potential challenges from foreign investors. The public, as taxpayers and affected parties, ultimately bears the consequences of treaty violations and the costs of compensation.

The legitimacy crisis of investment arbitration is accentuated in developing countries, which are more vulnerable due to lower gross national income and limited institutional capacity. Awards against developing nations can impede their progress and strain resources, leading to

cautious regulatory behaviour. Historically, the attitude of developing nations towards international arbitration has evolved from scepticism post-decolonisation to greater acceptance in pursuit of foreign investment and infrastructure development. However, this has often involved trade-offs with state sovereignty and economic autonomy.

In conclusion, the study emphasises that investment arbitration must balance investor protections with the legitimate regulatory interests of states, particularly those in the developing world. A robust framework is required to guide arbitrators in distinguishing between lawful regulatory measures and expropriation, ensuring that public interest is not compromised in the settlement of investment disputes.