

Dispute Settlement in International Economic Law – Selected Aspects

Abstract

At the time of the emergence of investor state arbitration, such regulation of states was seen as necessary to protect Western investors from expropriation of their investments by developing states, in which there was an absence of rule of law and the protections that flow from that. The ICSID Center was established primarily to ensure the availability of an assured impartial and independent dispute resolution service. The increase in the number of cases over the years, together with sometimes expansive, unexpected and inconsistent interpretations of International Investment Agreement provisions by tribunals, had triggered a worldwide debate and a number of countries had adopted reform measures. The EU has proposed a Permanent Investment Court to address criticism, aimed at investment arbitration and to be included as a measure under the TTIP. This concept has been also adopted in the CETA, and if successful, is likely to be adopted in other treaty agreements as the European Parliament has expressed a preference for the proposed investment court under the TTIP to be included in other free trade agreements. The concept of a permanent legal body providing public proceedings and decisions, establishing binding case law to address international investment disputes, is not a novel one, although it has not been put into action yet. This option implies the replacement of the current system of ad hoc arbitration tribunals with a standing international investment court, which could also have an appeals chamber. The court would consist of judges appointed or elected by States on a permanent basis, e.g. for a fixed term. The advantages of a new appeal mechanism could prove to silence some of the criticism generally levelled against investment arbitration. It would address most of the problems as it would go a long way toward ensuring the legitimacy and transparency of the system, facilitating the consistency and accuracy of decisions and promoting the independence and impartiality of adjudicators.

Key words

ICSID arbitration, post-award remedies, international investment court