

Investor-state dispute settlement and its impact on International Investment Law

OC - (ILA-14150) - PRACTICE AS JURISDICTIONAL REGULATION IN INVESTMENT TREATY ARBITRATION

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Abstract

This paper argues that the practice of arbitral tribunals, ICSID annulment committees, and local courts in the field of investment treaty arbitration evidences the development of the regulatory function of arbitral tribunals regarding their jurisdiction. In particular, practice has developed arbitrator-made jurisdictional rules that direct the interpretation and application of party-provided jurisdictional rules, on the one hand, and occasionally impose independent jurisdictional limits, on the other. The paper dubs this type of regulatory activity *arbitral jurisdictional regulation*, in contrast to the consensual jurisdictional regulation exercised by disputing parties. To that end, Section 2 gives examples of arbitral decisions creating and applying three types of arbitrator-made jurisdictional rules, namely presumptions, default rules, and standards. Section 3 reviews the practice of control mechanisms in this field, namely ICSID annulment committees and local courts, and argues that it does not contest but rather encourages the development of the arbitral jurisdictional regulation. Finally, Section 4 examines prospects of the arbitral regulatory activity, particularly in the context of institutionalised investment court systems. The paper concludes that arbitral jurisdictional regulation is not an idea but a fact that cannot be ignored as a pertinent part of the jurisdictional structure of investment treaty arbitration, and for that reason it requires acceptance and formalisation in a reformed system of investment dispute settlement.

Palavras-chave : jurisdiction, regulation, law-making