

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

### OC - (ILA-14163) - THE FUTURE OF INTERNATIONAL INVESTMENT ADJUDICATION: WILL THE INVESTMENT COURT SYSTEM ENSURE A CONSISTENT INTERNATIONAL INVESTMENT JURISPRUDENCE?

Somesh Dutta (Luxembourg)<sup>1</sup>

1 - Max Planck Institute Luxembourg For Procedural Law

#### **Somesh Dutta**

Professional Experience

(05/2019 – Present) Research Fellow, Max Planck Institute Luxembourg for Procedural Law, Department of International Law & Dispute Resolution

(03/2018 – 09/2018) Foreign Lawyer, Shearman & Sterling LLP (Paris)

(01/2015 – 03/2015) Trainee Lawyer, International Court of Justice (The Hague)

Education

LL.M. in International Dispute Settlement, MIDS Program jointly offered by the Geneva University Law School & Graduate Institute of International and Development Studies (2017)

Integrated Bachelor of Arts & Law (B.A. LL.B. Hons.), University of Petroleum & Energy Studies (2015)

Publications

Blogposts & Newspaper Articles

“If India wants to address issue of unemployment, revision of model BIT is a must”, Financial Express, 19 Dec 2017. Article available at the address <https://www.financialexpress.com/opinion/if-indiawants-to-address-issue-of-unemployment-revision-of-model-bit-is-a-must/980585/>

“How Realistic is India’s Dream of Becoming a Global Arbitration Hub?”, The Wire, 30 Apr 2018. Article available at the address <https://thewire.in/law/india-global-arbitration-hub-modi-government>

“Restrictions on Extrajudicial Activities by the Members of the International Court of Justice: A New Beginning in International Adjudication?”, Blog of Jus Mundi (medium.com), 2 Nov 2018. Blogpost available at the address <https://medium.com/jusmundi/restrictions-on-extrajudicial-activities-bythe-members-of-the-international-court-of-justice-a-55cc534c643f>

How to Make Legal Education in India ‘Meaningful’?, Livelaw.in, 1 Sep 2018. Article available at the address <https://www.livelaw.in/how-to-make-legal-education-in-india-meaningful/>

“A case to relax advertising restrictions for legal practitioners in India”, The Hindu, 9 July 2018. Article available at the address <https://www.thehindu.com/opinion/op-ed/a-case-to-relax-advertisingrestrictions-for-legal-practitioners/article24372921.ece>

Additional Certifications

International Arbitration, International Academy for Arbitration Law (Paris, 2017)

Questioning of Expert Witnesses in International Arbitration, Foundation for International Arbitration Advocacy (Geneva, 2017)

Mediation, Association of Indian Mediators (Dehradun, 2014)

International Trade Law, Indian Society of International Law (New Delhi, 2012)

Intellectual Property Law, World Intellectual Property Organization (Online, 2011)

Prizes & Scholarships

Certificate of Honors in International Law, Xiamen Academy of International Law (China, 2014)

University Scholarship for Best Academic Performance, University of Petroleum & Energy Studies (India, 2014)

Special Mention Award, 1st WBNUJS Model United Nations (India, 2013)

Professional Affiliations

Admitted to the Bar Council of Chhattisgarh, India (2015)

## **Abstract**

The international investment regime, as it stands today, is supported by a unique dispute resolution mechanism called the ISDS mechanism. However, in the recent past, such a 'hybrid' mechanism faced severe criticism from the stakeholders, inter alia, for lack of consistency in international investment jurisprudence. In response to the backlash against the ISDS, the United Nations Commission on International Trade Law (UNCITRAL), at its fiftieth annual session in July 2017, decided to entrust the Working Group III with a broad mandate to begin deliberations on possible reforms.

While it remains challenging to predict the exact outcome of the ongoing deliberations under the UNCITRAL framework, the approach adopted by the European Union (EU) deserves special attention as it intends to propose radical reforms by introducing the investment court system (ICS). On 20 March 2018, the Council of the European Union made public the 'negotiating directives for a Convention establishing a multilateral court for the settlement of investment disputes' (the Negotiating Directives).

Considering the position of the European Union and other scholarly works on possible ISDS reforms, the article aims to explore the impact of a permanent body, with or without an appellate mechanism, on international investment law. Put differently, will a permanent mechanism ensure a consistent international investment jurisprudence? In light of the proposals for a permanent investment court, the research will further touch upon the future role of various international dispute resolution institutions, in specific, the International Centre for Settlement of Investment Disputes (ICSID) and the Permanent Court of Arbitration (PCA), as far as the resolution of international investment disputes arising through international investment agreements (IIAs) is concerned.

**Palavras-chave : investment court system, international investment jurisprudence, ISDS reform**