

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

OC - (ILA-14165) - THE PHENOMENON OF REPEATEDLY APPOINTED ARBITRATORS IN INTERNATIONAL INVESTMENT LAW

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I am currently a PhD Candidate at the University of Leicester conducting an empirical study on the effect of repeatedly appointed arbitrators on the evolution of international investment law, using the concept of fair and equitable treatment as my case study. I was a founding member and Treasurer of the ILA Cypriot Branch (2016/2019) and frequently represented the Branch in Executive Council Meeting in the ILA HQ in London. Prior to my doctoral studies worked as a trainee lawyer at the Attorney General's Office of the Republic of Cyprus, acted as a Legal Advisor to Permanent Mission of Cyprus to the UN Headquarters in New York and worked as a Blue Book Stagiaire for the European Commission in DG HOME. As part of my PhD I have coached Vis Moot teams and taught on various modules including international investment law. Last year I was awarded White and Case Scholarship to attend the International Arbitration Academy in Paris.

Abstract

The paper seeks to examine the phenomenon of repeatedly appointed arbitrators and highlight the literature gap on the effect of the phenomenon on the substantive development of international investment law. The phenomenon of repeatedly appointed arbitrators was observed almost 20 years ago and is still prevalent today. In 1999, Ibrahim Shihata, the Secretary-General of the International Centre for Settlement of Investment Disputes, and Antonio Parra, the ICSID's Deputy Secretary-General wrote that, of the 52 arbitral tribunals constituted in proceedings pursuant to the ICSID Convention since 1973, '[o]ver 100 individuals have been appointed as arbitrators in such proceedings, several of them more than once'.^[1] Now, almost twenty years later, of the 1,039 ICSID and non-ICSID international investment arbitration cases and 2,676 arbitral appointments, 25 arbitrators account for 4% of all investment arbitrators and represent over a third of all arbitral appointments.^[2] The paper offers a doctrinal analysis of all existing empirical studies on international investment arbitrators and the literature related to the notion of repeatedly appointed arbitrators, as currently envisioned in the IBA Guidelines on the Conflicts of Interest.

The paper argues that existing empirical research has yet to examine the effect of international arbitrators as decision-making actors in the international investment arbitration regime, due to various systemic limitations. The paper also puts forward the argument that the notion of repeatedly appointed arbitrators has a chameleon-like character and currently its limited understanding inhibits the emergence of debates on its impact on the substantive evolution of the law. The notion's content and nature changes within the legal community based on the situations it arises in. On the one hand, the notion has been traditionally connected to concerns of conflict of interest and the requirement of independence and impartiality of international arbitrators. The relationship of an arbitrator with actors in the dispute built, partly, through frequent appointments is at the core of the notion. The frequency of appointments is at the centre of an arbitrator's relationships with (1) a disputing party, a counsel, a co-arbitrator or a third party funder and (2) the dispute's subject matter. On the other hand, the notion is also connected to the nature of international arbitration itself, which would be the relationship between the individual arbitrator and his or her experience in investment arbitration or international arbitration in general. It is a relationship expected and in fact revered within the international arbitration community. Experience in arbitral procedure and substantive international investment law or public international law is not only desirable but it is a must in order to secure appointments. In other words, the more appointments one holds the more likely he or she is to be appointed in the future. The paper brings to focus the need to reframe the notion of repeatedly

appointed arbitrators and provides the theoretical framework for further empirical research centered on the decision-making effect of repeated arbitrators on substantive principles of international investment law.

[1] Ibrahim FI Shihata and Antonio R Parra, 'The Experience of the International Centre for Settlement of Investment Disputes' (1999) 14(2) ICSID Review – Foreign Investment Law Journal 299.

[2] Malcolm Langford, Daniel Behn and Runar Hilleren Lie, 'The Revolving Door in International Investment Arbitration' (2017) Journal of International Economic Law 1.

Palavras-chave : repeated arbitrators, impartiality, empirical