

Abstract and Key Words: The Binding Effect of Decisions and Awards in International Disputes

Abstract

International investment law accords foreign investors two main types of protection: first, it articulates standards of protection a host State must adhere to with respect to foreign investments, and, second, it provides an investor with a choice to have investment disputes settled by an independent international tribunal. While standards of protection and the mandate of arbitrators stem from an international investment treaty, arbitrators apply both national law and international law. Nevertheless, being regarded as principally deciding on the international responsibility of States, questions of national law are usually sidelined in the academic debate. This thesis rectifies this neglect and asks: How should an arbitrator in investment treaty arbitration treat national judicial decisions? The thesis addresses this question from doctrinal angle by analysing academic writings, judicial decisions, and arbitral awards in the field of international investment arbitration, international commercial arbitration, and the practice of the International Court of Justice. This is because investment treaty arbitration is a hybrid formation oscillating between public international law adjudication and national adjudication.

On the basis of this analysis, the thesis forms three distinct models of arbitrator's treatment of national law and national judicial decisions: (i) treating it as a matter of fact, (ii) treating it as a national judge, and (iii) treating it as a transnational adjudicator. The thesis finds that all three are applicable in investment treaty arbitration.

The main argument of the thesis is that an arbitrator shall decide with respect to each claim she was mandated to decide which of the models of national (case) law treatment should be employed. The thesis demonstrates that the nature of the investment claim influences the role national law plays in its settlement and, accordingly, its treatment should change as well. This is illustrated on four investment claims: a claim for unlawful expropriation, breach of fair and equitable treatment standard, an umbrella-clause claim, and a pure contractual claim. The thesis concludes with demonstration of possible consequences of improper treatment of national case law by arbitrators.

Key words: investment treaty arbitration, treatment of national case law, national law