

ABSTRACT.

The failure of the customary international law to provide clear and reliable rules for the protection of the foreign investors, led the developed countries to conclude a clearer and elaborate legal instruments such as the investment treaties. The first investment treaty was that concluded between Germany and Pakistan in 1959. The conclusion of investment treaties was followed by other countries like Suisse in 1961 and France 1972. Nowadays there are more than 2500 investment treaties. Those investment treaties provide for substantives and procedurals rules such as the National Treatment Provision, Most Favorite Nation Treatment, Fair and Equitable Treatment, Guaranties against expropriation. The implementation of those provisions is ensured by the right given by the treaties to the investor to have direct access to the international arbitral tribunals. Those institutions are they ad hoc or institutional, are in charge of interpreting the substantive provisions of investment treaties.

Recently the analysis of the outcomes of the interpretation of the investment treaty's provisions made by the investment arbitral tribunals had shown a great inconsistency. The investment treaties' provisions are interpreted in divergent way by the arbitral tribunals. The reasons of that is that, the investment provisions are broadly formulated, the ways of interpreting the provision are different, the possibility for the investors to engage multiple proceeding before different tribunals are frequent, the lack of rule of precedent and an appellate mechanism are obvious. This inconsistency may have an important consequence on the legitimacy of the investment dispute settlement mechanism and also upon the state ability to regulate on behalf of public interest.

As available remedies, there are mechanisms to reduce this inconsistency. But, there are very limited in their scope, in the sense that they cannot serve as mechanism to review the merit of the case. In the list of those remedies, there has been a suggestion to establish an appellate mechanism in order to review and correct the inconsistent decisions. However, this suggestion has met important challenges be it at *ad hoc* level or at institutional level such as ICSID.

Therefore, there is a need to assess others possibilities that may help to reduce an inconsistency. Those possibilities are the reform of the investment treaties in the sense to bring into them clear provisions, to ensure the transparency in the process and also to bring into the dispute settlement, the system of scrutiny of award. The latter one may be to some extend useful tool to reconcile the inconsistent decisions but it is focused mainly on procedural issues.

Key words: Inconsistency, Investor-State Dispute Settlement, Investment Protection, Predictability, Certainty and Reliability, State right to regulate, Appellate mechanism, Treaties reforms.