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The Law & Practice of International Courts and Tribunals

SPECIAL ISSUE

THE DUTIES, RIGHTS AND POWERS OF INTERNATIONAL ARBITRATORS

Journal's Editor-in-Chief: Eduardo Valencia Ospina

Journal's Managing Editor: Pierre Bodeau-Livinec

Guest editors of the Special Issue:

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INTERNATIONAL CONFERENCE

THE DUTIES, RIGHTS AND POWERS OF INTERNATIONAL ARBITRATORS

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American University College of Law

Washington, DC, September 19, 2017

This special issue of the journal *The Law & Practice of International Courts and Tribunals* focuses on the duties, rights and powers of international arbitrators in investment arbitration disputes. According to a well-known saying, the three key elements of international arbitration are “arbitrator, arbitrator and arbitrator.” The exercise of the professional activity of international arbitrators, who are the real soul of the contemporary ISDS system, poses many challenges. For example, the legal relationship of arbitrators to the parties, especially to the one which appoints them, is controversial and questioned. The following are just some areas on which the Special Issue will focus:

International arbitrator competence: The award is the outcome of the arbitration and is reviewed by the arbitrators’ peers, by an annulment body and in the near future could be judged by an appellant body depending on the legal quality of the award. By applying the legal limits of *Kompetenz-Kompetenz* the arbitrators are confronted with questions such as *who* must arbitrate, *what* must be arbitrated, and *which* powers they may exercise.

Duties of international arbitrators: This issue has many controversial approaches, for example: whether the arbitrators’ duties are based in contract or on the law. Under his/her obligation to conduct the proceedings, an arbitrator may be confronted with agreements between the parties about the proceedings that could be unreasonable, costly or delay the arbitration unnecessarily. What are the arbitrators’ duties in this respect? Should the arbitrator maintain order and override the unreasonable agreements of the parties? Do the arbitrators have the power to do so? Likewise, it is worth thinking about whether arbitral institutions should be drafting new guidelines for arbitrators regarding different and controversial issues, e.g. corruption or counsel sanctioning.

Challenge, removal and replacement of international arbitrators: Increasingly often, investment arbitrations are affected by challenges that the parties raise against the arbitrators composing the arbitral tribunal. Are ICSID standards for disqualifying arbitrators too high compared with other systems, e.g. IBA rules? Should standards coming from commercial arbitration be transplanted into investment arbitration? What reasons explain the challenges that have arisen in ICSID in recent years?

Liability of international arbitrators: Current practice and doctrine are still divided on this issue, for example on whether arbitrators should be held liable for their misconduct or whether they should have judicial immunity to protect them from liability for their misconduct. What remedies do parties have when the arbitrators have breached their duties? These issues arise, for instance, when a party-appointed arbitrator resigns before the end of the proceedings; when an arbitrator fails to disclose pertinent information about his prior relations with a party creating doubt as to his independence and impartiality; when an arbitrator suggests favourable arguments that his/her appointing party has overlooked; or when two arbitrators deliberate without the presence of the third arbitrator.

Rights of international arbitrators: Current critiques of international investment arbitration focus on an arbitral framework which fails to hold arbitrators accountable for their lack of discretion and ethical standards. Is the inner circle of arbitrators justified in reacting to this critique? Do arbitrators have rights other than remuneration? Should arbitrators be pressing for the system to recognize new rights?

Effects of the European Union policy on foreign direct investment on the duties, rights and powers of international arbitrators: The proposal on the TTIP, issued on November 12th 2015, devotes its attention to the arbitrators, who are referred to as “judges”. For instance, the text proposes creating a stable first instance tribunal and an appeal tribunal, and eliminates the power of the parties to appoint arbitrators. Additionally, the text requires members of the first instance tribunal and appeal tribunal to refrain from acting as counsel in any pending or new investment protection disputes under TTIP or any other agreement or domestic law. The Special Issue invites submissions especially focused on the impact that these types of proposals –also contained in the revised version of CETA and in the EU-Vietnam Free Trade Agreement– may cause in the current ISDS system.

Other regional initiatives, Draft Constitutive Agreement of the Center for the Settlement of Investment Disputes of the UNASUR: The UNASUR Constitutive Agreement, which is currently being negotiated, contains a novel proposal allowing each member-state of the Center to provide justifiable objections to candidates by other States

when they understand that a candidate does not meet the necessary requirements to be a UNASUR arbitrator (high moral values, reputation, recognized professional experience in the field of law, and confidence in their impartiality and independence of judgment).

If the State proposing the candidate and the objecting State do not reach an agreement on the nominated candidates, the objection raised will prevail over the nomination of the candidate. The Special Issue is interested in this type of legislative novelty that may affect the arbitrator's status.

Submission of proposals

The Law and Practice of International Courts and Tribunals (**Editor-in-Chief: Eduardo Valencia-Ospina and Managing Editor: Pierre Bodeau-Livinec**) is firmly established as the leading journal in its field, which is indexed in Scopus. Each issue of this double-blind peer-reviewed journal presents the latest developments with respect to the preparation, adoption, suspension, amendment and revision of Rules of Procedure as well as statutory and internal rules and other related matters. The *Journal* also presents the latest practice with respect to the interpretation and application of rules of procedure and constitutional documents, which can be found in judgments, advisory opinions, written and oral pleadings as well as legal literature. Procedural matters covered in the *Journal* include the bench, representation of the parties, institution of contentious proceedings, written proceedings and related matters, oral proceedings, proceedings in chambers, absence of appearance, provisional measures of protection, preliminary objections, counterclaims, intervention by third States, discontinuance of proceedings, the decision, interpretation and revision of judgments, advisory proceedings, evidence, witnesses, experts and the extra-judicial function.

The guest editors of this *The Law and Practice of International Courts and Tribunals* Special Issue are **Jose Manuel Álvarez Zárate**¹ (*Externado University of Colombia, Colombia*) and **Katia Fach Gómez**² (*University of Zaragoza, Spain*).

¹ http://scienti.colciencias.gov.co:8081/cvlac/visualizador/generarCurriculoCv.do?cod_rh=0000147478

² Katia Fach Gómez's participation in this initiative has been supported by the Alexander von Humboldt Foundation (*Forschungsstipendium für erfahrene Wissenschaftler*). <http://orcid.org/0000-0001-8060-7133>, https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=1127096.

For this call for papers for the *Law and Practice of International Courts and Tribunals*, experienced practitioners, IIA negotiators and scholars are invited to submit innovative proposals that go beyond the state of the art.

Extended abstracts – minimum of 1,000 words – or unpublished full papers should be submitted to the editors (josealvarez.zarate@hotmail.com and katiafachgoz@gmail.com) along with the author's name, affiliation and a CV that includes the author's contact details.

All submissions and finalised papers must be written in English. Submission for the Special Issue is incompatible with a parallel submission to a different publication.

Finalised papers will be around 6,000-8,000 words and must comply with the *Law and Practice of International Courts and Tribunals* style guide, ethical and legal conditions which can be accessed here http://www.brill.com/sites/default/files/ftp/authors_instructions/LAPE.pdf.

International Conference

Under the direction of **Dr. Horacio Grigera Naón**, American University Washington College of Law, and the guest editors are organizing an international conference that will take place on **September 19th, 2017** at the Washington College of Law. Accepted papers will be presented in this forum. Paper presenters will receive comments on their papers from key speakers, scholars attending the conference, prominent international lawyers, and guest editors. Selected speakers are expected to bear the costs of their own travel and accommodation.

Timeline:

- The deadline for the submission of proposals is **December 31st, 2016**.
- Successful applicants will be informed by **January 31st, 2017**.
- The deadline for the submission of the draft paper for accepted proposals is **August 15th, 2017**.
- The international conference will be held at American University Washington College of Law in **September 19th, 2017**.

- Finalised paper will be submitted to the editors by **October 30th, 2017**.
- The special issue in *The Law & Practice of International Courts and Tribunals* will be published in Spring **2018** (LPCT, Vol. 17, No. 1).
