THE IEL COLLECTIVE
INAUGURAL CONFERENCE
6 – 7 NOVEMBER 2019
UNIVERSITY OF WARWICK, COVENTRY, UK

STAKEHOLDERS OF INVESTMENT ARBITRATION: ESTABLISHING A DIALOGUE AMONG ARBITRATORS, ACADEMICS AND OTHER ACTORS IN INTERNATIONAL INVESTMENT LAW

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Abstract

It is generally accepted, and formalised in the ICSID Convention, that any arbitral award extends its effects solely on the parties to the dispute in which is rendered. In light of this, and the lack of either a system of precedent or a *jurisprudence constante*, investment arbitral awards should be considered as operating in a vacuum, outside of which the award and its substantive content are non-existent. However, the investment arbitral regime has over the years developed a *de facto* precedent system; moreover, the scholarship on investment arbitration - which arguably guides the development of investment law through the participation of academics in investment tribunals as well as the reference to scholarship by such tribunals - addresses virtually all questions of investment law considering how such questions have been answered to by arbitral tribunals. Therefore, it is arguable that the duties of investment arbitral tribunals are not limited to merely addressing the questions posed to them by the parties, and the reasoning behind their answers is not simply due to the requirements of the various applicable instruments governing the enforcement of arbitral awards. Indeed, investment tribunals address matters for a much broader audience than the parties - an audience that includes other states involved in investment relationships with foreign investors, investors that may at any point file a claim before an investment arbitral tribunal, scholars who analyse the case-law and teach the next generation of investment lawyers, NGOs and associations interested in the subject matter of the cases, and the taxpayers of each state acting as respondent before an arbitral tribunal. All these subjects fall within

the definition of "stakeholders of investment arbitration", as they all have a tangible interest in how investment treaties are interpreted and applied, and how international investment law is developed. There is, however, no international law instrument vesting investment tribunals with the responsibility to take all these concerns into account when deciding on a claim brought by an investor. It is indeed exceptionally rare that international tribunals are to consider, when deciding on a case, the interest of stakeholders with no direct interest in such case; and it is doubtful whether any instruments of soft-law may ever establish such duty upon arbitral tribunals. This paper is therefore aimed at framing the role and functions of investment arbitral tribunals with regard to stakeholders of investment arbitration beyond claimants and respondent, and question whether the theories of multilateralization of investment law can address the need for a shared language of investment arbitration and to construe investment arbitral tribunals as actors in a proper multilateral system, in spite of the lack of a multilateral convention on international investment law or a world investment court of sorts.