

RELATIONS AND POSSIBLE INTERACTIONS BETWEEN STATE-STATE DISPUTE SETTLEMENT AND INVESTOR-STATE ARBITRATION UNDER BITS

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ABSTRACT

The State-State arbitration and the investor-State arbitration are widely included in bilateral investment treaties. There are no clear rules under the customary international law directly addressing the relations between these two remedial channels. The paper argues that it is desirable to avoid parallel proceedings between State-State arbitration and investor-State arbitration, if their purposes are basically to address the same violation of obligation by the host State. However, there are some problems in applying the lis pendens and res judicata principles. The paper further argues that in order to avoid undesirable concurrent proceedings, the application of the good faith principle to suspend the conflicting second proceeding or to prevent a proceeding to re-decide the merit could be a possible solution. In addition to such interactive relations between these two proceedings, there are positive dual proceedings, i.e., to use State-State proceeding to pursue the compliance of an arbitral award resulting from the investor-State arbitration procedure.

KEYWORDS: *State-State arbitration, investor-State arbitration, parallel*

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