The Role of the Domestic Law of the Host State in Determining the ratione materiae Jurisdiction of Investment Treaty Tribunals: The Partial Revival of the Localisation Theory

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Propositions relating to the dissertation

The Role of the Domestic Law of the Host State in Determining the *ratione materiae* Jurisdiction of Investment Treaty Tribunals: The Partial Revival of the 'Localisation' Theory

by Reza Eftekhar

1. International investment treaties were invented as a direct reaction to the 'localisation' efforts of the developing countries who tried to dominate the laws and the courts of the host state over the fate of foreign investment disputes.
2. By catering for a direct right for investors to access arbitration and by including international law standards of treatment, international investment agreements achieved significant success in wiping out the 'localisation' theory.
3. Recently, investment treaty law has shown a noticeable tendency towards 'localisation' by devoting a greater functionality room to the laws and the courts of the host state in a number of outcome-determinative issues.
4. Nowadays, the main function of domestic laws of the host state in issues concerning jurisdiction is acting in the form of and as 'law', thus, constituting part of the governing law of the case.
5. It is arguably settled case law that certain critical *ratione materiae* issues, e.g., the legality of investment and the existence of rights underlying investments, have to be determined exclusively in accordance with the laws of the host state.
6. Acting as part of the applicable law to jurisdiction *ratione materiae*, laws of the host state are controlling as to various aspects of the legality of investment as well as pertinent private law questions arising in an investment treaty arbitration.
7. The practical prominence of domestic law in resolving these issues is highly outstanding. In certain cases, pursuant to a domestic law analysis, the tribunal will dismiss the case for want of jurisdiction no matter its strength on the merits.
8. When required, there are veritable methods to ascertain the contents of host state law chief among them being through studying the jurisprudence of the courts of the host state, in particular, the jurisprudence of the highest state courts.
9. In the same vein, nowadays, many investment treaties and myriads of investment treaty tribunals consider a more prominent role for the courts of the host state and their findings in the resolution of investment treaty disputes.
10. These developments are reminiscent of the 'localisation' efforts of the 1960s-1970s since the pillars of the 'localisation' theory as they existed then have gained some real strength today in the investment treaty arbitration field.