International Law Review, Volume 43, Issue 82, Summer 2026, pp. 273-278

Jurisdiction *ratione temporis* of International Investment Tribunals in Light of Investment Treaties
(Original Research)

Seyed Nasrollah Ebrahimi *
Mohamadali Nori **

Persian Text pp. 149-176

(DOI) : 10.22066/cilamag.2025.2051553.2676
Date Recived: 25 Jan.2025 Date Accepted: 26 Jun.2025

Extended Abstract

1. Introduction
Jurisdiction *ratione temporis* refers to the effect of time on the scope of an investment tribunal's adjudicative power. Investor-state tribunals convened under a bilateral investment treaty (BIT) typically have jurisdiction over disputes that arise after the treaty's entry into force.

2. Research Issue
While most BITs provide that they shall be applicable to pre-existing investments, they do not establish any jurisdictional requirements *ratione temporis*. This has raised questions for tribunals. For instance, whether they have jurisdiction over post-BIT disputes that originate from pre-BIT facts and events. Considering the foregoing, the present article aims to analyze the practice of investor-state tribunals regarding their jurisdiction's temporal scope under BITs. This article sheds light on whether the practice of tribunals is consistent enough in determining the date of disputes' occurrence. In this regard, the article primarily deals with the 'temporal rule' and the principle of 'non-retroactivity of treaties.' Subsequently, it delves into the interpretive approaches of tribunals in addressing jurisdictional clauses, including 'unrestricted clause,' 'single exclusion' and 'double exclusion' clauses, and those that implicitly limit jurisdiction.

3. Methodology
This paper employs a descriptive-analytical methodology. It relies on well-known scholars and arbitral awards.

4. Key Findings
An overview of the awards issued thus far and the research conducted in this

* Corresponding Author; Associate Prof., Department of Private and Islamic Law, Faculty of Law and Political Science, University of Tehran, Tehran, Iran; snebrahimi@ut.ac.ir

** Master'ss Student in Oil and Gas Law, University of Tehran, Tehran, Iran; mohamadali.nori@ut.ac.ir

field reveals two main approaches. Some tribunals base their temporal jurisdiction on the date when the dispute, in its legal sense, first arose—specifically when the parties expressed their opposing views, actively pursued their interests, and sought to resolve their disagreement. In other words, some tribunals distinguish between 'the facts and events that give rise to the dispute' and 'the dispute in its legal sense,' using the latter to determine jurisdiction *ratione temporis*.

This approach can be criticized for several reasons. Since it is possible that a party raises a new claim after the treaty enters into force and by arguing that the negative response to this claim is a wrongful act that leads to a new dispute, it bypasses the pre-set temporal limitations in the BIT. This practice undermines legal certainty and predictability. Furthermore, it could significantly expand the scope of disputes and alleged violations that may be brought before tribunals.

The research concludes that the latter approach is more appropriate. It considers when the facts and situations that gave rise to the dispute occurred. It distinguishes between the facts that are the "source" or "real cause" of the dispute and those that are "background" to the dispute, focusing on the former in determining jurisdiction. This is more compatible with legal principles, including the temporal rule, the non-retroactivity of treaties, and legal certainty and predictability. Nonetheless, it cannot be said that tribunals adhere to a certain kind of practice. Such a lack of consistency may affect the confidence of both states and investors.

5. Contribution to the field

The analysis also demonstrates that, in most cases, single exclusion clauses have failed to prevent interpretive challenges of tribunals. This is because the facts and events giving rise to the dispute often straddle the date that the BIT comes into force. Therefore, jurisdictional clauses should be drafted more clearly to avoid potential ambiguities and disagreements. The authors of this article suggest that the parties to a BIT draft the dispute resolution provisions in one of the following three ways, depending on their intent:

a) For the BIT to cover pre-existing disputes and for the parties to override the rule against retroactivity, the jurisdictional clause may be worded as follows: 'This treaty shall apply to all disputes between a contracting party and investors of the other party, even if the dispute arose before the treaty entered into force.'
b) With an intention for the BIT to cover only disputes that arise after it enters into force, as well as disputes originating from prior events, the jurisdictional clause could be drafted as follows: 'This treaty shall be applicable only to disputes that arise after its entry into force, even if the disputes originate from or relate to facts or events that took place prior to its entry into force.'
c) If the parties intend for the BIT to apply only to disputes arising after its entry into force and not originating from prior facts or events, they may draft the jurisdictional clause as a 'double exclusion' clause: 'This treaty shall not apply to disputes arising out of or relating to facts, acts, or situations that occurred before it entered into force, even if the effects of these continue after the treaty's entry into force.'

6. Conclusion

Prima facie, the practice of investor-state tribunals in this area appears inconsistent. However, a closer analysis reveals a relatively coherent pattern. For example, tribunals do not extend their jurisdiction to pre-existing disputes. Moreover, regarding disputes based on pre-BIT facts and acts, the prevailing trend among tribunals is that such disputes do not fall within their temporal jurisdiction. Finally, it should be noted that the uncertainties in this area are mostly due to the complexity of each case's factual background. Nevertheless, the arbitral awards examined in this article indicate that investment tribunals have tried to delineate a coherent legal framework, which this study sought to identify and present.

Keywords
Jurisdiction *ratione temporis*, Temporal Rule, Settlement of Disputes Clause, Legal Dispute, Non-Retroactivity.

References

- Books

1. Amerasinghe, Chittharanjan Felix. *Jurisdiction of International Tribunals.* The Hague: Kluwer Law International, 2003.
2. Barati Darani, Ali Akbar. *ICSID Jurisdiction System and Settlement of Investment Disputes.* Tehran: The SD Institute of Law Research & Study, 2015. [In Persian]
3. Baumgartner, Jorun. *Treaty Shopping in International Investment Law.* UK: Oxford University Press, 2016.
4. Binder, Christina, and Jane A. Hofbauer. "The Temporal Scope of Application of Investment Treaties and the Effects on General International Law." In *International Investment Law and General International Law*, edited by Christian Tams, Stephan Schill, and Rainer Hofmann. Edward Elgar Publishing, 2023. DOI: 10.4337/9781800884069.00012
5. Dolzer, Rudolf, Ursula Kriebaum, and Christoph Schreuer. *Principles of International Investment Law.* 3rd ed. Oxford & New York: Oxford University Press, 2022.
6. Douglas, Zachary. *The International Law of Investment Claims.* Cambridge: Cambridge University Press, 2009.
7. Piran, Hossein. *The Law of International Investment.* Tehran: Ganje Danesh, 2024. [In Persian]
8. Schreuer, Christoph, and Stanimir A. Alexandrov. *Schreuer's Commentary on the ICSID convention.* Edited by Stephan Schill and Loretta Malintoppi. 3rd ed. Cambridge: Cambridge University Press, 2022.
9. Vandevelde, Kenneth J. *United States Investment Treaties: Policy and Practice.* Deventer (Netherlands) & Boston: Kluwer Law and Taxation, 1992.
10. Villiger, Mark Eugen. *Commentary on the 1969 Vienna Convention on the Law of Treaties.* Leiden & Boston: Martinus Nijhoff Publishers, 2009.

- Articles

1. Alexandrov, Stanimir. "The 'Baby Boom' of Treaty-Based Arbitrations and the Jurisdiction of ICSID Tribunals: Shareholders as 'Investors' and

Jurisdiction Ratione Temporis." *The Law & Practice of International Courts and Tribunals* 4, no. 1 (2005). DOI: 10.1163/1571803053498853
2. Askari, Pouria, and Niloufar Saeidi. "Role of Abuse of Rights Doctrine and Investment Arbitration Ratione Temporis in Limiting Nationality Planning." *The Quarterly Journal of Public Law Research* 23, no. 74 (2022). [In Persian]. doi: 10.22054/QJPL.2022.58734.2569
3. Gallus, Nick. "Article 28 of the Vienna Convention on the Law of Treaties and Investment Treaty Decisions." *ICSID Review* 31, no. 2 (2016). DOI: 10.1093/icsidreview/siw001
4. Gattini, Andrea. "Jurisdiction Ratione Temporis in International Investment Arbitration." *The Law & Practice of International Courts and Tribunals* 16, no. 1 (2017). DOI: 10.1163/15718034-12341345
5. Higgins, Rosalyn. "Time and the Law: International Perspectives on an Old Problem." *International and Comparative Law Quarterly* 46, no. 3 (1997). DOI: https://doi.org/10.1017/S0020589300060784
6. Li, Zhenni. "International Intertemporal Law." *California Western International Law Journal* 48, no. 2 (2018). https://scholarlycommons.law.cwsl.edu/cwilj/vol48/iss2/6
7. Murphy, Sean D. "Temporal Issues Relating to BIT Dispute Resolution." *ICSID Review - Foreign Investment Law Journal* 37, no. 1–2 (2022). DOI: 10.1093/icsidreview/siab030
8. Savarese, Eduardo. "BIT Clauses Bearing on the Ratione Temporis Jurisdiction of ICSID Tribunals: A Survey on the Constituent Elements of Investor-State Legal Disputes under BITS." *The Journal of World Investment & Trade* 10, no. 3 (2009). DOI: 10.1163/221190009x00321
9. Schreuer, Christoph. "Jurisdiction and Applicable Law in Investment Treaty Arbitration." *McGill Journal of Dispute Resolution* 1, no. 1 (2014). https://ssrn.com/abstract=2520501

- Cases

1. ICSID, *Agility Public Warehousing Company K.S.C. v. Republic of Iraq*, Decision on Jurisdiction, 9 July 2019, ICSID Case No. ARB/17/7.
2. ICSID, *Emilio Agustín Maffezini v. Kingdom of Spain*, Decision on Jurisdiction, 25 January 2000, ICSID Case No. ARB/97/7.
3. ICSID, *Empresas Lucchetti, S.A. and Lucchetti Peru, S.A. v. Republic of Peru*, Award, 7 February 2005, ICSID Case No. ARB/03/4.
4. ICSID, *Empresas Lucchetti, S.A. and Lucchetti Peru, S.A. v. Republic of Peru*, Decision on Annulment, 5 September 2007, ICSID Case No. ARB/03/4.
5. ICSID, *Feldman v. United Mexican States*, Interim Decision on Preliminary Jurisdictional Issues, 6 December 2000, ICSID Case No. ARB(AF)/99/1.
6. ICSID, *Generation Ukraine, Inc. v. Ukraine*, Award, 16 September 2003, ICSID Case No. ARB/00/9.
7. ICSID, *Helnan International Hotels A/S v. Arab Republic of Egypt*, Decision on Jurisdiction, 17 October 2006, ICSID Case No. ARB/05/19.
8. ICSID, *Impregilo S.p.A. v. Islamic Republic of Pakistan*, Decision on Jurisdiction, 22 April 2005, ICSID Case No. ARB/03/3.

9. ICSID, *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, Decision on Jurisdiction, 16 June 2006, ICSID Case No. ARB/04/13.
10. ICSID, *Lao Holdings N.V. v. Lao People's Democratic Republic*, Decision on Jurisdiction, 21 February 2014, ICSID Case No. ARB(AF)/12/6.
11. ICSID, *M.C.I. Power Group, L.C. and New Turbine, Inc. v. Republic of Ecuador*, Award, 31 July 2007, ICSID Case No. ARB/03/6.
12. ICSID, *Mondev International Ltd v. United States of America*, Award, 11 October 2002, ICSID Case No. ARB(AF)/99/2.
13. ICSID, *Salini Construttori S.p.A. and Italstrade S.p.A. v. Hashemite Kingdom of Jordan*, Decision on Jurisdiction, 29 November 2004, ICSID Case No. ARB/02/13.
14. ICSID, *Sociedad Anónima Eduardo Vieira v. Republic of Chile*, Award, 21 August 2007, ICSID Case No. ARB/04/7.
15. ICSID, *Victor Pey Casado and President Allende Foundation v. Republic of Chile*, Award, 8 May 2008, ICSID Case No. ARB/98/2.
16. IUSCT, *Amoco International Finance Corporation v. Islamic Republic of Iran*, Partial Award, 14 July 1987, IUSCT Case No. 56, Award No. 310-56-3.
17. PCA, *Chevron Corporation and Texaco Petroleum Company v. The Republic of Ecuador (I)*, Interim Award, 1 December 2008, PCA Case No. 2007-02/ AA277.
18. PCA, *Indian Metals & Ferro Alloys Ltd v. Republic of Indonesia*, Final Award, 29 March 2019, PCA Case No. 2015-40.
19. PCA, *Island of Palmas (The Netherlands v. The United States of America)*, Award, 4 May 1928, PCA Case No. 1925-01.
20. PCA, *Philip Morris Asia Limited v. The Commonwealth of Australia*, Award on Jurisdiction and Admissibility, 17 December 2015, PCA Case No. 2012-12.
21. PCA, *The Renco Group, Inc. v. Republic of Peru*, Decision on Expedited Preliminary Objections, 30 June 2020, PCA Case No. 2019-46.
22. PCIJ, *Electricity Company of Sofia and Bulgaria (Belgium v. Bulgaria)*, Preliminary Objection, Separate Opinion of M. Erich, 4 April 1939, *P.C.I.J. Series A/B*, No. 77.
23. PCIJ, *Mavrommatis Palestine Concessions (Greece v. Britain)*, Judgment, 30 August 1924, *P.C.I.J. Rep. Series A*, No. 2.
24. UNCITRAL, *Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. Mongolia*, Award on Jurisdiction and Liability, 28 April 2011, UNCITRAL.
25. UNCITRAL, *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. Government of Mongolia*, Award on Jurisdiction and Liability, 28 April 2011, UNCITRAL.
26. UNCITRAL, *Walter Bau AG (In Liquidation) v. Kingdom of Thailand*, Award, 1 July 2009, UNCITRAL.

- Documents

1. Argentina-Spain Bilateral Investment Treaty (adopted 3 October 1991, entered into force 28 September 1992). https://edit.wti.org/document/

show/906eff11-67f0-4fed-afb9-3f6a725b5c76

2. BLEU (Belgium-Luxembourg Economic Union)-Egypt Bilateral Investment Treaty (adopted 28 February 1999, entered into force 24 May 2002). https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bit/483/bleu-belgium-luxembourg-economic-union---egypt-bit-1977-
3. Chile-Peru Bilateral Investment Treaty (adopted 2 February 2000, entered into force 11 August 2001). https://edit.wti.org/document/show/ 8efe123e-50ba-46d7-ad93-a25e78c36c42
4. Chile-Spain Bilateral Investment Treaty (adopted 2 October 1991, entered into force 29 March 1994). https://edit.wti.org/document/show/ b378ecd8-e633-43e9-b0fa-9fe12824030e
5. Denmark-Egypt Bilateral Investment Treaty (adopted 27 April 1999, entered into force 30 January 2000). https://edit.wti.org/document/ show/a8452830-f7a4-49c7-98b2-6c481d0984b7
6. "Draft Articles on Responsibility of States for Internationally Wrongful Acts" (2001) Yearbook of the ILC, Vol. II (Part Two). https://legal.un.org/ilc/ texts/instruments/english/draft_articles/9_6_2001.pdf
7. Ecuador-Peru Bilateral Investment Treaty (adopted 19 May 1999, entered into force 19 May 1999). https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateralinvestment-treaties/1330/ecuador---peru-bit-1999-
8. Ecuador-United States of America Bilateral Investment Treaty (adopted 27 August 1993, entered into force 11 May 1997). https://investmentpolicy. unctad.org/international-investment-agreements/treaties/bit/1337/ecuador---united-states-bit-1993-
9. Iran-Singapore Bilateral Investment Treaty (adopted 29 February 2016, entered into force 10 January 2018). https://investmentpolicy.unctad.org/ international-investment-agreements/treaties/bit/3631/iran-islamic-republic-of---singapore-bit-2016-
10. Italy-Jordan Bilateral Investment Treaty (adopted 21 July 1996, entered into force 17 January 2000). https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bit/2082/italy---jordan-bit-1996-
11. Italy-Pakistan Bilateral Investment Treaty (adopted 19 July 1997, entered into force 22 June 2001). https://edit.wti.org/document/show/ ab7e3ca9-f6da-4c07-849a-e3e522eaf497
12. U.S. Model Bilateral Investment Treaty (2004). https://edit.wti.org/ document/show/436f41b6-7f59-47c2-a03f-cd45914597ef
13. Ukraine-United States of America Bilateral Investment Treaty (adopted 4 March 1994, entered into force 16 November 1996). https://2009-2017. state.gov/e/eb/ifd/43366.htm
14. Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331. https://legal.un.org/ ilc/texts/instruments/english/conventions/1_1_1969.pdf
15. Yearbook of the ILC (1966), Vol. II, A/CN.4/SER.A/1966/Add.1. https://legal.un.org/ilc/publications/yearbooks/1960_1969.shtml