Accountability of investor-state dispute settlement as benchmark for reform

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Current investment court projects

CETA
EU-Vietnam FTA
EU TTIP proposal
References to court in recent treaties
EU internal proposal for multilateral convention
UNCITRAL discussions
1. Related concepts: Legitimacy and transparency

2. Accountability
   - Notion
   - For what are investment tribunals accountable?
   - Clash with judicial independence
   - Compare international tribunals and national courts

3. Looking forward
Someone reports / is responsible to someone else for something
Accountability v. judicial independence: 3 pressure points

- Appointment / selection
- Compensation
- Discipline
International judicial body
(1) Permanent
(2) Established by law
(3) Applying international law
(4) Preexisting procedures
(5) Binding decisions
Decision-makers on international courts

<table>
<thead>
<tr>
<th>Court</th>
<th>Members</th>
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<tbody>
<tr>
<td>ICJ</td>
<td>15-17</td>
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<td>ECtHR</td>
<td>7, 17</td>
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<td>ITLOS</td>
<td>5, 9, 11</td>
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<td>CJEU</td>
<td>5, 15</td>
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<td>WTO Appellate Body</td>
<td>3 (exchanging views with 4 others)</td>
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<tr>
<td>IUSCT</td>
<td>3 or 9 (for important issues or overruling prior case)</td>
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Decision-makers on highest national courts

US Supreme Court 9
German Bundesgerichtshof 5
French Cour de cassation 5
Swiss Supreme Court 5
Democratic States worldwide

(Freedom House)
Objective: A dispute settlement mechanism that

(1) Fixes democratic accountability deficiency

(2) Takes account of asymmetric nature of investment arbitration

(3) Preserves (as much as possible) gains of current system (distance/neutrality; finality; manageability)