

**From:** Paul Mason  
**To:** [ICSID Ideas](#)  
**Cc:** [Paul Eric Mason](#)  
**Subject:** Comment on Proposed Amendments to ICSID Rules  
**Date:** Monday, August 06, 2018 1:02:48 PM  
**Attachments:** [Outlook-1476889491.png](#)  
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To the Committee responsible for ICSID Rules Amendments:

My own experience in the investor - state area has been primarily in rendering advice to parties regarding mediation of these disputes prior to, or during and parallel to the arbitration phase.

My principal comment, however, is directed principally to the arbitration phase. I would suggest the Committee give strong consideration to eliminating, or at least limiting and/or otherwise controlling, the practice of "double hatting" in investment arbitration cases whereby the same persons continue acting as arbitrators in some cases and counsel in others.

Unlike commercial arbitration, investment arbitration draws on a relatively small and closed group of arbitrators to decide cases of enormous financial value. Many of these decisions will also carry important ramifications for public health, financial and consequent social welfare in host countries. Adding to this is the lack of transparency in cases with these wider implications.

One by-product of this double-hatting practice is an increased number of costly and lengthy challenges to ICSID arbitrators. These challenges often spill over into the public news forum, sully the reputation of the arbitration process as well as of individuals concerned. This is undoubtedly one reason ICSID is facing a challenge from a prospective Investment Court sponsored by the EU.

The new Dutch Model BIT does exactly this, and with that endorsement I would hope the Committee will pay serious attention and deal responsibly with this issue.

Respectfully submitted,



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