North American Investment Law and Policy: Developments in 2019

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This working paper summarizes the main developments in 2019 in an often over-looked policy area: international investment law. When Congress ratifies trade agreements and other treaties, one of the mechanisms they sometimes set in place is the ability for foreign investors to challenge states over their domestic regulations outside of national courts, before panels of international arbitrators. These arbitration cases tend to be quite controversial, touching on country's sovereignty over environmental, tax, and other areas of policy. These agreements can be bilateral - offering rights to investors from one country doing business in a second country. They can also be regional.

INTRODUCTION

The final days of 2019 saw legislative ratifications of significant changes to the North American investment treaty template, with approvals of the U.S.-Mexico-Canada Agreement (USMCA) that will replace the 1993 North American Free Trade Agreement (NAFTA). On December 10, the three governments signed the final version of the pact. Two days later, Mexico's Senate passed it on a 107-1 vote.[2] A week later, the U.S. House of Representative followed suit on a 385-41 vote.[3]

Despite this flurry of activity, North American investor-state dispute settlement (ISDS, the acronym for investment law arbitrations) developments were sparse in 2019, with no known merits decisions. Accordingly, this working paper will be brief, focusing on the political reception of the treaty changes and a handful of arbitral developments.

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[2] This came after passing the 2018 version of the pact in the summer of 2019. Eric Martin, 'Mexico's Senate Passes Changes to U.S., Canada Trade Deal' *Bloomberg Law* (12 December 2019) <https://news.bloomberglaw.com/international-trade/house-democrats-plan-usmca-vote-as-pelosi-lauds-revised-deal> accessed 28 January 2020.

[3] Emily Cochrane and Ana Swanson, 'Revised North American Trade Pact Passes House' *The New York Times* (19 December 2019) <https://www.nytimes.com/2019/12/19/us/politics/usmca-deal.html> accessed 28 January 2020. In early 2020, the U.S. Senate followed suit, leaving only the Canadian Parliament to sign off, which it is expected to do in early 2020.

RECEPTION TO INVESTMENT TREATY CHANGES

The politics around USMCA generally and ISDS specifically were unusually scrambled in 2019. For years, growing concerns had been expressed across the political spectrum that ISDS promoted regulatory chill and offshoring of jobs. However, the biggest push for legal changes had traditionally come from the left-wing flank of center-left parties, which would push the pro-ISDS center and right.[4] This time around, center-left parties in Canada and Mexico were negotiating with the right-wing (yet ISDS-critical economic nationalist) Trump administration thoroughly in charge of a traditionally pro-trade Republican Party. Moreover, Trump's U.S. Trade Representative Robert E. Lighthizer partnered with the Democratic Party, AFL-CIO, and progressive advocates to make last-minute changes to the USMCA's labor rules in 2019.[5] Thus, many of the typical voices in all three countries that might have raised concerns about the pact template were – to paraphrase the hit musical *Hamilton* – "in the room where it happens." The few that were not were lonely indeed. To take one example: only one Mexican senator voted "no" on the USMCA. That was Senator Emilio Álvarez Icaza Longoria – a left-wing independent representing Mexico City – who criticized the breakneck speed and accused President Andres Manuel Lopez Obrador (AMLO) for backing a trade deal that will worsen "savage capitalism" and poverty.[6]

Nonetheless, it was in the U.S. where investment treaty issues entered the mainstream policy conversation in a major way. (Canada and Mexico have long been on the losing end of major cases, so the issues are more widely understood there.) After generations of modeling the impact of trade agreements based largely on the impact of tariff removal, the U.S. International Trade Commission (a governmental body) turned its analysis towards ISDS, projecting that limitations on the system would redirect capital from Mexico to the U.S. This

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[4] Todd N Tucker, *Judge Knot: Politics and Development in International Investment Law* (Anthem Press 2018).
[5] Emily Cochrane, Ana Swanson and Jim Tankersley, 'How a Trump Trade Pact Won Over Democrats' *The New York Times* (19 December 2019) <https://www.nytimes.com/2019/12/19/us/politics/trump-trade-deal.html> accessed 31 January 2020.
[6] Neldy San Martín, 'En fast track, los senadores aprueban cambios al T-MEC' *Proceso* (13 December 2019) <https://www.proceso.com.mx/610668/senadores-aprueban-cambios-al-t-mec> accessed 30 January 2020.

analysis underpinned the administration talking point that the deal would boost incomes by $68 billion.[7] However, by taking a closer look at the ITC's report, the scenarios they offer that do not make these questionable assumptions about ISDS and regulatory certainty show that the overall USMCA would have shrunk U.S. incomes.[8]

The political debate followed suit. Massachusetts Senator Elizabeth Warren (D-Mass.) – one of the front-runners in the Democratic Party primary contest for the presidential nomination – made opposition to ISDS a centerpiece of her extensive trade plan.[9] One of the lower polling candidates – Rep. Tulsi Gabbard (D-Hawaii) – actually brought the system up in the second round of televised debates. She criticized the Obama administration's Trans-Pacific Partnership (TPP) for giving "away our sovereignty to a panel of international corporations whose rulings would supersede any domestic law that we would pass, either a federal law or a state or a local law. This is extremely dangerous and goes against the very values that we have as a country."[10] While slightly misleading (ISDS panels are composed of arbitrators, not corporations, and domestic policymakers have choices as a practical matter about whether and how to alter domestic laws in response to arbitral rulings, or to just pay any damages and keep the challenged policy in place), the comment shows that there is newfound awareness of and concern about the investor-state dispute settlement system.

Nonetheless, these two ISDS critics and the vast majority of Democrats supported passage of the USMCA, which maintains the system. One factor for this confusing pattern (on top of the scrambled political alignments noted above) may have been the extremely truncated timeline of the debate on the implementing legislation. Instead of the 45 days of debate in each

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[7] Mike Pence, 'Congress Must Pass the U.S.-Mexico-Canada Agreement' *Washington Post* (14 July 2019) <https://www.washingtonpost.com/opinions/mike-pence-congress-must-pass-the-us-mexico-canada-agreement/2019/07/14/ac9e09a0-a584-11e9-b732-41a79c2551bf_story.html> accessed 30 January 2020.
[8] USITC, 'United States-Mexico-Canada Agreement: Likely Impact on the U.S. Economy and Specific Industry Sectors' (US International Trade Commission 2019) 4889 <https://www.usitc.gov/press_room/news_release/2019/er0418ll1087.htm>. 56, 203
[9] Todd N Tucker, 'Elizabeth Warren's Trade Plan Empowers Workers, Not Corporations' [2019] *The Nation* <https://www.thenation.com/article/elizabeth-warren-trade-plan/> accessed 6 September 2019.
[10] 'Transcript: Night 2 of the Second Democratic Debate' *Washington Post* (1 August 2019) <https://www.washingtonpost.com/politics/2019/08/01/transcript-night-second-democratic-debate/> accessed 30 January 2020.

legislative chamber allowed under fast-track trade promotion authority, the U.S. House passed the bill only nine days after the agreement was finalized.[11] This led to even more confusion than normal among lawmakers, who often struggle to understand the complexities of trade agreements. For example, Rep. Peter De Fazio (D-Ore.) – one of the few nay votes – claimed (inaccurately) as one of the few positive aspects of the deal that it “removes NAFTA’s Investor-State Dispute Settlement (ISDS) regime.”[12]

Part of the difficulty in getting an accurate analysis was that USMCA *did* remove certain investment protections.[13] Canadian investors in the U.S. (and U.S. investors in Canada) will no longer be able to bring claims against the U.S. (or Canada) after a three-year post-NAFTA transition period. Yet U.S. investors in Mexico will continue to have significant rights *vis a vis* the Mexican government, and those with federal contracts with the Mexican government in five privileged sectors will have virtually all the same protections as under NAFTA. The sectors are: 1) oil and natural gas activities controlled by the national government; provision to the public of 2) power generation, 3) telecommunications, or 4) transportation services; and 5) ownership or management of roads, railways, bridges, or canals generally for the use and benefit of the public. The Trump administration justified “The more limited availability of ISDS” as reflecting “the Administration’s broader efforts to ensure that our trade and investment rules respect our sovereignty and the right to regulate, reduce defensive litigation exposure, and reduce or eliminate incentives to outsource production and jobs.” Nonetheless, “because U.S. investors contracting with the Mexican government in sectors such as oil and gas, power generation, and telecommunications, may face unique political risks to long-term, capital-intensive projects, USMCA provides those investors access to ISDS

[11] While the initial USMCA was signed on November 30, 2018, supplemental negotiations were concluded on December 10, 2019. Up until the latter date, lawmakers could not be certain what was in or out of the agreement.
[12] Congressional Record, Dec. 19, 2019, at H12268. https://www.congress.gov/116/crec/2019/12/19/CREC-2019-12-19-pt1-PgH12221.pdf
[13] For a more comprehensive discussion, see Manuel Perez-Rocha, ‘North American Investment Law and Policy: 2018’ in Lisa Sachs, Lise Johnson and Jesse Coleman (eds), *Yearbook on International Investment Law & Policy 2018* (Oxford University Press 2020).

for a broader scope of obligations."[14] Left unmentioned, perhaps because the overall stock of Mexican direct investment in the U.S. remains relatively low,[15] is that Mexican investors will have the same rights north of the border that their American counterparts will have south.

As a result of these changes, it remains unclear just how much exposure the U.S. and Mexico will have to arbitral claims *vis-à-vis* the other's investors in the future. By one account, only nine U.S. firms accounting for 13 contracts with Mexico qualified as fully protected investors under the USMCA, and U.S. firms with contracts with Petróleos Mexicanos (Pemex, Mexico's national oil company) would not qualify.[16] If true, this would be a substantial exclusion, as Pemex has extensive private contracts since the partial deregulation of the oil sector in 2013.[17] Yet by the account of most major U.S. environmental groups, the potential for ISDS claims in the five sectors remains substantial, opening up both governments to challenges of climate change policy.[18]

Which view is correct? The text of USMCA indicates that covered investors include those with contracts with "any person, including a state enterprise or another body, when it exercises governmental authority delegated to it by an authority at the central level of government." This would at first blush appear to include the oil giant. However, since 2013, Pemex is considered under Mexican law to have operational autonomy.[19] Would an international tribunal defer to this domestic designation? There is no language (such as that found in other

[14] Hearing on The President's 2019 Trade Policy Agenda and the United States-Mexico-Canada Agreement: Questions for the Record for Ambassador Robert Lighthizer 2019.
[15] Moreover, the U.S. federal government is less engaged in the type of contracts and licenses that would be the gateway to jurisdiction for Mexican investors.
[16] See '1994 NAFTA vs. Trump 2018 NAFTA 2.0 vs. 2019 New NAFTA' (Public Citizen 2019) <https://www.citizen.org/article/comparing-nafta-side-by-side/> accessed 31 January 2020. This analysis – by ISDS critics that support USMCA – appears to be shared by some business leaders who feared loss of ISDS. See Isabelle Hoagland, 'Lawmakers Air ISDS Concerns during USMCA Enforcement Hearing' *Inside US Trade* (24 May 2019). Emily Meredith and Bridget DiCosmo, 'Democrats Skeptical on NAFTA Replacement' *Oil Daily* (4 April 2019). Kelsey Tamborrino, 'Oil, Gas Companies Wary of NAFTA Replacement' *POLITICO* (21 November 2018) <https://politi.co/2qZGAiM> accessed 29 January 2020.
[17] Guillermo J Garcia Sanchez, 'The Mexican Petroleum License of 2013: A Step to the Past to Bring Mexico into the Present and the Grounds for an Uncertain Future' (Texas A&M University School of Law 2019) 19–21 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3396727&download=yes> accessed 29 January 2020.
[18] Kate Aronoff, 'The New U.S. Trade Deal Is Climate Sabotage' [2020] *The New Republic* <https://newrepublic.com/article/156240/new-us-trade-deal-climate-sabotage> accessed 29 January 2020.
[19] https://crsreports.congress.gov/product/pdf/R/R44981

contexts)[20] requiring a panel to adopt a certain interpretation. Moreover, in interviews with Professor David Gantz, the U.S. Trade Representative's (USTR) office confirmed that the deal would effectively lock-in the partial deregulation of the oil sector by former President Enrique Pena-Nieto. Gantz himself maintains that Pemex contracts would be covered.[21] In any event, USTR promised senators close to the oil and gas industry that any investor not covered by ISDS will be able to rely on the U.S. to raise their concerns through state-state dispute settlement.[22] In the end, the post-2020 ISDS landscape in North America may look a lot like that of pre-1993, when (in the words of one prominent NAFTA supporter) "not a single word was uttered in discussing Chapter 11. Why? Because we didn't know how this provision would play out. No one really knew just how high the stakes would get."[23]

ARBITRAL DEVELOPMENTS

As noted above, there were no merits awards issued against a North American respondent government in 2019. The U.S. did not see any new cases launched against it, although there were developments in various cases against Canada and Mexico. It is notable that some of the latter cases involve sectors that may continue to enjoy access to ISDS even under the new USMCA.

Canada

On January 10, a tribunal issued a damages award in the decade-long arbitration between U.S.' Bilcon Company and Canada.[24] Launching its case in 2008, Bilcon had maintained that

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[20] For instance, the U.S.-Peru trade agreement includes a footnote to its essential security exception that instructs a tribunal to defer to a respondent government invoking it.
[21] David A Gantz, 'The United States-Mexico-Canada Agreement: Energy Production and Policies' (Rice University's Baker Institute of Public Policy 2019). At 4.
[22] See pledge to Sen. Bill Cassidy (R-La.), reported in Isabelle Icso, 'Senate Committees Approve USMCA, Setting up Final Vote This Week' *Inside US Trade* (15 January 2020).
[23] Quote of former Sen. John Kerry (D-Mass.), in Adam Liptak, 'Review of U.S. Rulings by Nafta Tribunals Stirs Worries' *The New York Times* (18 April 2004) <http://www.nytimes.com/2004/04/18/us/review-of-us-rulings-by-nafta-tribunals-stirs-worries.html> accessed 14 October 2015. For evidence of the temporal mismatch between ratifications of ISDS treaties and adequate understanding of their implications, see Lauge N Skovgaard Poulsen, *Bounded Rationality and Economic Diplomacy: The Politics of Investment Treaties in Developing Countries* (Cambridge University Press 2015).
[24] *Clayton/Bilcon v. Canada*, PCA Case No. 2009-04, Award on Damages, January 10, 2019.

the province of Nova Scotia and the federal government had acted erratically in their dealings with the company, surprising the latter by taking into account "community values" in their 2007 denial of an environmental permit for an offshore mining project.

To any reasonable observer (and certainly anyone with substantial investment dollars on the line), this outcome should not have been unexpected. In the late 1990s and early 2000s, the ruling Conservative Party in Nova Scotia had encouraged such investment. However, no sooner had quarrying projects advanced in the coastal town of Digby Neck in 2002 than the community leaders expressed serious misgivings that the estimated 31 jobs the project would create would be outweighed by costs in water availability and on the local tourism and fishery industries, particularly as many retire in Digby Neck because of the excellent whale and bird watching opportunities. That year, the municipal council voted 3-0 against the project, the Bear River Mi'kmaq tribe (which relied on the area for traditional fishing and medicinal practices) voiced its opposition, and advocates called for a referendum to block the project (which they estimated would pass with 80 percent of the vote).[25] Indeed, a newspaper search for the time period indicates uniformly negative press coverage. In the 2003 elections, the issue became a rallying cry for the left-leaning New Democratic Party and Liberal Party, who assailed the provincial ruling Conservative Party for supporting the mining project.[26] In elections on August 3rd of that year, the left successfully denied the Conservatives their majority – with a key flipped seat being Digby Neck.[27] One week later, the provincial government announced a Joint Review Panel (JRP) that would go on to be comprised with specialists in ecology and community consultation. After a lengthy process, the JRP in 2007 concluded that the community had an "exceptionally strong and well defined

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[25] David Swick, '"We Will Become a Ghost Town": Digby Neck Residents Fighting a Massive Quarry Project' *Halifax Daily News* (17 November 2002). Richard Dooley, 'Digby Neck Quarry Opponents Seek Plebiscite' *Halifax Daily News* (9 December 2002).
[26] 'Environment Minister David Morse Says His Hands Are Pretty Much Tied When It Comes to a Proposed Rock Quarry' *Broadcast News* (12 July 2002). Brian Flinn, 'Tories' Lack of Green Plan "Another Broken Promise"' *Halifax Daily News* (22 May 2003). Brian Flinn, 'Tories Score Worst, NDP Tops after Survey on Enviro Issues' *Halifax Daily News* (22 July 2003).
[27] David Swick, 'Hamm Eyeing Saskatchewan? That Western Province Also Has a Minority Government, One That Embraced Third Party' *Halifax Daily News* (8 August 2003).

vision of its future" and that "The imposition of a major long-term industrial site would introduce a significant and irreversible change to Digby Neck and Islands, resulting in sufficiently important changes to that community's core values to warrant the Panel assessing them as a Significant Adverse Environmental Effect that cannot be mitigated."[28]

Enter NAFTA. In February 2008, Bilcon filed an ISDS complaint. In a 2015 merits decision, the majority of the tribunal sided with the company, arguing that the JRP's consultation efforts and criteria fell below the minimum standard of treatment required under international law. A dissenting opinion strongly objected to this finding, noting that the JRP was within its mandate in determining that the investors had failed "to engage effectively in consultations with Aboriginal peoples, with fishers and with others in the community".[29] He accused the majority decision of making…

> "a significant intrusion into domestic jurisdiction and will create a chill on the operation of environmental review panels… In this day and age, the idea of an environmental review panel putting more weight on the human environment and on community values than on scientific and technical feasibility, and concluding that these community values were not outweighed by what the panel regarded as modest economic benefits over 50 years, does not appear at all unusual… In this respect, the decision of the majority will be seen as a remarkable step backwards in environmental protection."[30]

Despite this setback, Canada was somewhat more successful at the damages phase in 2019. While the investors requested $443.4 million, the tribunal awarded a mere $7 million. The claimants maintained that they should be compensated for hypothetical losses as if they had

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[28] *William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware Inc v Government of Canada (Award on Jurisdiction and Liability)* [2015] PCA (UNCITRAL) No. 2009-04. Para 20.
[29] *William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware Inc v Government of Canada (McRae Dissent)* [2015] PCA (UNCITRAL) No. 2009-04. Para 17-26.
[30] Ibid, paras 48-51.

not only secured the environmental permit but gone on to have a profitable enterprise. The tribunal disagreed, noting this was speculative on the company's part. They identified four conceivable NAFTA-compliant outcomes, including 1) a finding of "serious adverse effects on right whale and lobster habitats, which are not capable of mitigation"; 2) a finding of persistent "serious socio-economic adverse effects, which are not capable of mitigation"; 3) an approval of the project "with conditions that would render it economically unviable. Such conditions might notably have included provisions for the protection of human health or animal health (*e.g.*, to reduce noise pollution)"; and 4) approval by the JRP but disapproval by other provincial and national authorities.[31] Indeed, the tribunal noted, "even in the event of an approval, the long-term future profitability of the [project] must be regarded as uncertain. This is notably due to (i) possible changes in the Bay of Fundy ecology; (ii) possible new environmental regulations affecting quarry operation and/or shipping; (iii) possible market changes affecting the need for basalt over time; and (iv) possible macro-economic changes that may occur over the five decades of the projected life of the quarry."[32] Because of this uncertainty, the tribunal assessed damages only for the opportunity cost of having to engage with a flawed JRP process. Nonetheless, this was over seven times what Canada assessed as the true lost opportunity, noting Bilcon refused to seek domestic judicial review of the JRP.[33]

The more lasting consequence of the Bilcon ruling may be the fodder it gave for Canada's successful efforts in 2018-19 to remove ISDS rights for U.S. investors in Canada.[34]

Mexico

The year kicked off with a January filing of a Notice of Intent by Odyssey Marine Exploration, a U.S. deep sea treasure recovery company invested in exploring and developing a

[31] *William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware Inc v Government of Canada (Award on Damages)* [2019] PCA (UNCITRAL) No. 2009-04. Paras 169-172.
[32] ibid. Para 227.
[33] ibid. Paras 87, 224,
[34] Paul Withers, '$500M in Damages Riding on Rejected N.S. Quarry in NAFTA Fight' *CBC* (30 January 2018) <https://www.cbc.ca/news/canada/nova-scotia/500m-dollars-in-damages-riding-on-rejected-quarry-1.4509192> accessed 30 January 2020.

phosphate deposit off the coast of Baja California Sur. The project had attracted the ire of local environmentalists, who claimed Odyssey's dredging method was unproven and could damage local turtle populations. While the company's environmental impact assessments (EIA) were under regulatory review in 2016, it began business relationships with companies tied to Alonso Ancira Elizondo, a steel industry executive arrested in Spain in 2019 on money laundering charges.[35] According to the Odyssey, Mexican Undersecretary for Environmental Enforcement (and Green Party member) Rafael Pacchiano had raised objections only about the project's impact on whale migration in earlier meetings in 2015. However, while the EIA was under review in 2016, Pacchiano (since promoted to Secretary) advised Odyssey's representatives "that in light of other recent environmental controversies (none of which had anything to do with the Oceánica project) his political position was precarious" and the project could not be approved.[36] Accusing Pacchiano and his agency of "fundamental breaches of due process in administrative decision-making" and of inventing "grounds for opposition that have no scientific basis" (in violation of NAFTA's minimum standard of treatment, among other breaches) Odyssey is claiming $3.5 billion in damages.[37]

An oil-related case made headwinds in 2019, as U.S. investors in five offshore drilling rigs that are leased to Pemex moved forward with complaints of violations of NAFTA. The complaint, initiated in 2018, claims that their contracts were modified and then terminated after rig owners failed to pay bribes to Mexican officials. In their Notice of Arbitration, the investors allege collusion between Pemex and a rump group of the rigs' bondholders and draw connections between these localized events and the *Lava Vato* corruption scandal

[35] Daniela Pastrana, 'Minera estadunidense exige a México 3,500 mdd por frenar proyecto' *La Verdad Juárez* (18 June 2019) <https://laverdadjuarez.com/index.php/2019/06/18/minera-estadunidense-exige-a-mexico-3500-mdd-por-frenar-proyecto/> accessed 27 January 2020. Juan Luis Ramos, 'Firma ligada a AHMSA demanda a México' *El Sol de México* (10 June 2019) <https://www.elsoldemexico.com.mx/finanzas/firma-ligada-a-ahmsa-demanda-a-mexico-3742472.html> accessed 27 January 2020. Roberto Ortiz, 'Deja AHMSA atrás un negro 2019' *El Tiempo* (1 January 2020) <http://periodicoeltiempo.mx/deja-ahmsa-atras-un-negro-2019/> accessed 27 January 2020.
[36] *Odyssey Marine Exploration, Inc on Their Own Behalf and on Behalf of Exploraciones Oceanicas S de RL de CV v Mexico (Notice of Arbitration)*. Para 93.
[37] ibid. Paras 128-134.

encompassing Brazil and other countries in Latin America.[38] The tribunal convened to hear the case made six procedural orders in 2019, the most recent in December declining to order interim measures for Mexico to drop its criminal investigation against the complainants.[39] Separately, similar cases at the nexus of Pemex subcontracting and corruption made their way forward under Mexico's bilateral investment treaties with Panama and Singapore.[40]

In May 2019, Canadian and U.S. technology companies invested in a Mexico City concessionaire launched parallel NAFTA claims over the 2018 cancellation of a deal to install and maintain Uber-like taximeters in the city's cab fleet. The cancellation was driven by mayoral candidate, Nobel Peace Prize winner, and ally of Mexican president, Claudia Sheinbaum, who campaigned against the concession. After winning and assuming office, she called the arrangement a "no contest monopoly" by an "unexperienced company." She called for the city government to develop an open-source app to help cab drivers hard hit by competition from ride-sharing apps.[41]

In terms of arbitral decisions themselves, there was limited forward motion in 2019. On July 19, 2019, an arbitral tribunal issued a partial award in *B-Mex v. Mexico*, a case initiated by 39 individual and corporate U.S. gaming investors under NAFTA in 2014.[42] The majority opinion

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[38] *Alicia Grace and others v United Mexican States (Notice of Arbitration)* [2018] ICSID UNCT/18/4. See also Lisa Bohmer, 'NAFTA Tribunal Majority Rejects Amicus Curiae Bid by Bondholders; Newly-Released Documents Lay out Allegations of Bribery and Illegal Collusion in Oil Rig Case' [2019] *Investment Arbitration Reporter* <https://www.iareporter.com/articles/majority-reject-bondholders-request-to-submit-amicus-curiae-brief-in-nafta-arbitration-over-oil-rig-newly-release-documents-lay-out-allegations-of-bribery-and-illegal-collusion/> accessed 27 January 2020.
[39] *Alicia Grace and others v United Mexican States (Procedural Order No 6)* [2019] ICSID UNCT/18/4.
[40] Lisa Bohmer, 'Parties in Mexican Offshore Marine Services Dispute Debate Whether or Not Measures Taken against the Claimant's (Unrelated) Local Partner Can Give Rise to a Claim under the Mexico-Singapore BIT' [2019] *Investment Arbitration Reporter* <https://www.iareporter.com/articles/parties-in-mexican-offshore-marine-services-dispute-debate-whether-or-not-measures-taken-against-the-claimants-unrelated-local-partner-can-give-rise-to-a-claim-under-the-mexico-singapore-bi/> accessed 27 January 2020.
[41] Sara Pantoja, 'Usarán aportaciones de Uber y Didi para la sustitución de taxis antiguos' [2019] *Proceso* <https://www.proceso.com.mx/588232/usaran-aportaciones-de-uber-y-didi-para-la-sustitucion-de-taxis-antiguos> accessed 27 January 2020. See also Lisa Bohmer, 'Mexico Round-up: Details Surface about Taximeter NAFTA Threat, New Objection Is Raised on Ownership/Control in Telecoms Case, New Tribunal Is Formed in Quarry Case, Settlement Struck in Pipeline Case, and Reasons Surface for Non-Release of KBR NAFTA Award' [2019] *Investment Arbitration Reporter* <https://www.iareporter.com/articles/mexico-round-up-details-surface-about-taximeter-nafta-threat-a-new-objection-is-raised-over-ownership-control-in-telecoms-case-a-new-tribunal-is-formed-in-limestone-quarry-case-a-settlement-is-str/> accessed 27 January 2020.
[42] *B-Mex, LLC and Others v United Mexican States (Partial Award)* [2019] ICSID ARB(AF)/16/3.

accepted jurisdiction for 38 of the investors, dismissing most of Mexico's objections on questions such as whether the U.S. claimant had fully established ownership over its Mexican investment. (Some of the shares had apparently been destroyed in a casino fire.[43]) A dissenting opinion by Raul Vinuesa (Mexico's appointee) would have accepted a number of Mexico's jurisdictional objections. Notably, the tribunal awarded legal costs to the investor – a move which is unusual at the jurisdiction stage. The claimants claimed $8.5 million in legal costs in the proceedings thus far, contrasted with $1.7 million by Mexico for its attorneys. The tribunal faulted the former for submitting a claim that was 5.8 times the latter, despite similar levels of competence and effectiveness between the two parties. Noting moreover that the investors were only partially successful in their jurisdictional claims, the arbitrators lowered the cost award to $1.4 million, or 16 percent of the total claim.[44] The case will now proceed to the merits and (if Mexico is found to have violated substantive standards) damages phase.

[43] ibid. para 168.
[44] ibid. Para 272.