

Book Reviews

Human Rights

Human Rights in International Investment Law and Arbitration

edited by Pierre-Marie DUPUY, Francesco FRANCIONI, and Ernst-Ulrich PETERSMANN.

Oxford: Oxford University Press, 2009. xlviii + 597 pp. Paperback: £125.

doi:10.1017/S2044251310000160

Pierre-Marie Dupuy, Professor of International Law at the Graduate Institute of International and Development Studies in Geneva, Francesco Francioni, Professor of International Law and Human Rights at the European University Institute in Florence, and Ernst-Ulrich Petersmann, Professor of International and European Law and Head of the Law Department, also at the European University Institute, have compiled contributions by leading scholars regarding the interactions between international investment law and arbitration and international human rights. This collective work is divided into four parts. Due to the paucity of space, only succinct reference can be made to each chapter.

Part I, by Petersmann, provides readers with an outstanding introduction, where the main questions dealt with by the editors and authors are addressed. Part II features contributions that place the relationship between international investment law and arbitration and international human rights within the context of broader debates in international law. For instance, Dupuy addresses the debate over the fragmentation of international law and concludes that the concurrent development of the two sets of international legal regimes under examination does not lend support to this thesis. Also, in the light of recent developments, Francioni considers that the consolidation of access to justice, which pertains to both regimes under consideration, has been furthered mainly by contemporary investment arbitration.

Within this framework, Reiner and Schreuer conduct a comparative analysis between international human rights and international investment law and highlight that there are significant differences stemming from, *inter alia*, the relevance of nationality in relation to the jurisdictional phase of the arbitral proceedings, and substantive aspects, such as the determination of expropriation. These differences are also underscored by Hirsch, who concludes that international investment law, unlike international human rights, focuses on the private law aspect of the legal relationships regulated by both regimes. Also, the need for appellate review is discussed by Werner. Sweet and Grisel put forward that a transition from delegation to judicialization is taking place within the context of international investment arbitration. As a conclusion to Part I, Petersmann deals exhaustively with constitutional theories of international economic adjudication and concludes, *inter alia*, that the judicial protection of rule of law is based on respect for constitutional justice, which is required in the context of “mutually beneficial cooperation among citizens” (p. 189).

Part III addresses specific problems related to judicial balancing of economic law and human rights in regional courts. Within this framework, De Witte addresses the role of fundamental rights in connection with the control exerted by the courts on the European Union’s economic regulation. Furthermore, De Sena studies the distinction between economic and non-economic values with regard to the evolution of the concepts of “possession” and “interference” and the assessment of proportionality in the European Court of Human Rights’ case-law. Additionally, Kriebaum concludes that the European Court of Human Rights provides a forum for the settlement of investment disputes, even though it entails disadvantages, compared to investor state arbitration. Nikken focuses on the jurisprudence of the Inter-American System of Human Rights, and concludes, *inter alia*, that “the system is not the forum to protect business activity against arbitrary acts of the state” (p. 270).

Part IV gathers case-studies regarding protection standards and specific human rights in the context of investor-state arbitration. Waincymer undertakes a study on the relationship between

property and human rights within the framework of claims of expropriation. Tudor concludes, *inter alia*, that human rights arguments can only be considered in order to calculate compensation for breach of the fair and equitable treatment standard. Ortino examines non-discrimination provisions and concludes that “human rights law and policy should play an important role in shaping the interpretation and development of investment rules” (p. 366). Also, Cantegreil focuses on the implementation of human rights in North American Free Trade Agreement (NAFTA) case-law, and puts forward that “a legal internalization” could be achieved. In addition, Harrison analyses the benefits and problems of *amici curiae* submissions raising human rights issues.

Furthermore, Morijn and Krommendijk address the legal relevance of human rights within international investment law and explore the application of the proportionality principle in this context as a means of balancing investor interests and human rights. Vadi focuses on the issue of tobacco control and concludes that international investment law, far from being a self-contained regime, is a component of public international law, which requires arbitrators to make decisions on the basis of customary rules of treaty interpretation and taking into account human rights. Thielbörger analyses the treatment of the human right to water and asserts that this right lacks a legally binding status which, therefore, renders the supposedly “dual dilemma” of the right to water a single question, namely, whether human rights should be deemed by arbitrators as part of the applicable law.

Morgera focuses on the relevance of corporate environmental accountability for international investment law and highlights its human rights dimensions. Pavoni considers that investor-state cases involving environmental issues should be adjudicated upon by arbitral tribunals on the basis of the principle of public participation, in line with the “protection of environmental procedural human rights” (p. 556). Liberti explores the role of non-investment treaty obligations in the ascertainment of state responsibility, the determination of the quantum of compensation, and the choice of valuation methods, and puts forward that, under specific circumstances, such conventional obligations are relevant, in the light of relevant case-law. Finally, Dimopoulos analyses the question of whether European Community Free Trade Agreements constitute an alternative model for addressing human rights in the context of foreign investment regulation and dispute settlement mechanisms.

To conclude, these contributions explore exhaustively the relationship between these two branches of international law and offer an accurate and complete overview of the state of the art in this matter.

reviewed by Diego G. MEJÍA-LEMOS

International Economic Law

International Investment Law: Reconciling Policy and Principle

by Surya P. SUBEDI.

Oxford: Hart Publishing, 2008. xxii + 244 pp. Paperback: £35.

doi:10.1017/S2044251310000184

The book *International Investment Law: Reconciling Policy and Principle* represents the four-year work of Surya P. Subedi in a field of international law that has always held opposing visions from practitioners and academics. This book brings an analysis of international investment law as a subject of constant evolution, which is frequently challenged by a globalized world where non-traditional subjects of international law have to interact with domestic institutions such as authorities, regulations, and policies, *inter alia*.

The book briefly explains the historical evolution of some basic disciplines of international investment law, introducing the reader to the current context of the institutions of international investment law. In this section of the book, the author introduces the reader to the history of international investments and the relation of international investment law with some general principles of international public law.