law (Chapter 12), and third-party enforcement (Chapter 12). For each subject, the author argues that the relevant rules of general international law, while being useful, are not and cannot be fully applied to peace agreements because of their inherent ambiguities. Whereas many international lawyers might experience this as problematic, Bell finds this should be valued in terms of the *lex pacificatoria*'s particular needs and of the contribution it makes to the development of international law.

On the Law of Peace is essentially an external study of the law of peacemaking. The author has chosen not to go into the substance of the law of peacemaking, but remains at the level of their external characteristics: their form, their nature and their relation to international (and domestic law). As such, the book does not offer a detailed and profound study of the substance of the laws of conflict resolution and constitutional formation. In this, the book is rightly entitled *On the Law of Peace. The Law of Peace* remains a book yet to be written. But whoever wants to take up this task will find an excellent analytical framework in Bell's work.

With *On the Law of Peace*, Christine Bell helps to fill in an important hiatus in the literature of international law. Whereas peace agreements are, as they have been for centuries, important diplomatic and legal instruments, they are, as they have been, severely neglected in international legal writing. The ambition to write a comprehensive book on the law of peacemaking as it emerges from the hundreds of peace agreements made since the end of the Cold War is a huge one. In order to do so successfully, the author needs to combine the careful perusal of a huge amount of legal and political sources with an exercise of analytical and out-of-the-box thinking – that is, the box of traditional international legal understandings. Bell, whose academic experience with the subject is second to none, has lived up to these challenges. She has succeeded in setting out the main characteristics and confines of the newly emerging law of peacemaking as a partially self-standing category, while at the same time allowing space for its relation to international law at large. In doing so, she had transcended the ambiguities between international and domestic and between process and substance and made them into keys to understanding the laws of peacemaking, rather than impediments.

*Randall Lesaffer**

Pierre-Marie Dupuy, Francesco Francioni, and Ernst-Ulrich Petersmann (eds.), *Human Rights in International Investment Law and Arbitration*, Oxford, Oxford University Press, 2009, 640pp., ISBN-9780199578191, £130.00 (hb), £47.00 (pb).
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Many consider human rights and international investment to be mutually exclusive areas of law. It is thus not surprising that relatively little attention has been paid to analysing how these areas intersect, overlap, and conflict with each other. Though a small handful of books have attempted this feat, none has succeeded so

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comprehensively as *Human Rights in International Investment Law and Arbitration*. For this reason alone, this compiled volume edited by Pierre-Marie Dupuy, Francesco Francioni, and Ernst-Ulrich Petersmann constitutes mandatory reading.

Human Rights in International Investment Law and Arbitration begins, in Part I, by advancing its overarching theme, specifically that international economic law should incorporate principles of justice into its system because of the role of third-party arbitrators in international investment law as administrators of justice (p. 9). Petersmann, writing the introduction to this book, observes that international investment law is 'controversial' (p. 3) in its attempts to administer justice with respect to input legitimacy, due to its failure to respect human rights; output legitimacy, through its favouring of investor interests over other stakeholders' interests; and effectiveness, in terms of providing just and legally coherent judgments. Responding to this dilemma, he posits the universal recognition of human rights as 'constitutionally significant'[1] both for the administration of justice and for clarifying the systemic dimensions of international economic law (p. 10).[2] As he notes, international economic law derives its legitimacy from respecting, promoting, and protecting human rights. Thus, Petersmann concludes that investment arbitration calls for principle-oriented judicial interpretations and balancing in individual disputes.

Following this premise, the book is divided into three parts. Part II examines whether there is a role for human rights in investment arbitration, Part III assesses the degree to which regional courts have already engaged in balancing economic-law issues against human-rights ideals, and Part IV explores the extant treatment of human rights under investment law by examining both the standards of treatment under investment law and their interactions with human rights and the treatment of specific human-rights issues under investment law.

The strengths of this book are particularly apparent in Parts II and IV. In Part II, seven contributors advance potential roles for human rights in investment disputes, the principle argument being that human rights should be used to situate investment disputes within the broader contexts of both national and international law.[3] Accordingly, the contributors argue that human rights may be used to interpret investment treaties as a 'relevant rule of international law',[4] as a general principle of law,[5] or with reference to national law to the extent that the latter incorporates human-rights ideals.

Astutely, the contributors advocate a restrained role for human rights because of their peripheral status in investment disputes. As Dupuy notes in his contribution,

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1 Petersmann uses the term 'constitution' to refer to the legal framework that defines the common rules for ensuring equal freedoms under the rule of law and the set-up of the institutions and decision-making processes that make, administer, and enforce the rules. See E.-U. Petersmann, 'How to Constitutionalize International Law and Foreign Policy for the Benefit of Civil Society?', (1998) 20 Mich. JIL 1, at 12.

2 As Petersmann notes, the precise content of the concept of 'judicial administration of justice' in international economic law is controversial when different dimensions of justice (i.e., procedural justice, distributive justice, and corrective justice) collide. Human rights, he suggests, can help resolve this dilemma.

3 E.g., the clause in the investment treaty governing the scope of the arbitral tribunal's jurisdiction or the national constitutional legal framework of the state may necessitate the consideration of national or international law in an international investment dispute.

4 See VCLT, Art. 31(3)(c). See also ICSID Convention, Art. 42: 'the Tribunal shall apply ... such rules of international law as may be applicable.'

5 See Statute of the International Court of Justice, Art. 38(1)(c).

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an 'unfettered' consideration of human-rights issues in investment disputes is not warranted because of the limited jurisdiction of investment arbitral tribunals. Rather, he argues, tribunals should only consider those human-rights issues that interfere with the implementation of the investment treaty provision under consideration (p. 58). Schreuer and Reiner, in Chapter 4, also seem to suggest a circumscribed role for human rights in investment disputes through their observation that investment tribunals have typically only considered human-rights issues by way of amicus curiae submissions. Nevertheless, by establishing a limited yet meaningful role for human rights in investment disputes, the contributors demonstrate their sensitivity to investment tribunals' general reluctance to consider human-rights issues. This results in pragmatic recommendations that are more likely to gain currency with investment tribunals.

Part II also examines the reasons for the limited role for human rights in investment disputes and reviews the justifications for expanding this role. The contributors contend that a public–private divide is responsible for investment tribunals' 'unenthusiastic attitude' towards considering human-rights issues in investment disputes (Chapter 5). However, as agents of the greater community, they argue, investment arbitral tribunals must consider the community's interests when making their decisions (Chapter 7). Moreover, in a return to the premise of Part I, they maintain that, in view of its participation in the administration of justice, investment arbitration should adhere to principles of constitutional justice, which include respect for the rule of law and the protection of human rights (Chapter 8).

Nevertheless, curiously absent from Part II is a thorough treatment of investment arbitration as a system of governance.[6] Given the ability of investment law and arbitration to shape constitutional values,[7] including those related to human rights, the investment regime's governance function may constitute one of the most serious threats to human-rights ideals.[8] While two chapters introduce the idea of investment arbitration's governance functions, including its ability to constitutionalize investment rules, no further study of these issues is undertaken. Moreover, although this part contains a short chapter on the absence of an appellate mechanism that would mitigate investment arbitration's adverse governance functions, an additional chapter exploring the possible constitution and functions of such an appellate vehicle would have enriched this part.[9]

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6 Investment arbitration functions as a review mechanism that assesses the regulatory actions of states, particularly in relation to public-interest regulations. Decisions of investment tribunals may also influence *ex ante* the behaviour of states when it comes to enacting future public-interest regulations. For these reasons, investment arbitration has been analogized to a system of global governance. See generally B. Kingsbury and S. Schill, 'Investor–State Arbitration as Governance: Fair and Equitable Treatment, Proportionality and the Emerging Global Administrative Law', New York University School of Law Public Law & Legal Theory Research Paper Series Working Paper No. 09-46 (2009).

7 For a thorough discussion of this topic, see generally D. Schneiderman, *Constitutionalizing Economic Globalization: Investment Rules and Democracy's Promise* (2008).

8 The ability of investment tribunals to review and assess a state's human-rights regulations that interfere with investments can compromise a state's ability to protect human rights and can create a regulatory chill. Threats to human-rights issues have already arisen in investment disputes relating to water services and affirmative-action policies. For a thorough discussion of these issues, see L. E. Peterson, *Human Rights and Investment Treaties: Mapping the Role of Human Rights Law within Investor–State Arbitration* (2009).

9 E.g., ideas for constructing an appellate mechanism for investment disputes are discussed in G. Van Harten, *Investment Treaty Arbitration and Public Law* (2007), 152.

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The discussion of the need to consider human-rights issues in investment disputes begun in Part II is then continued and supplemented in Part IV. In particular, Krommendijk and Morijn contend that human-rights issues are relevant to investment disputes because their acknowledgement ensures that states continue to respect both their human-rights and their investment-treaty obligations, which operate in parallel, and because human rights represent 'a legally relevant articulation, or clarification', of investment law's role in the economic development of the host state (p. 430). Similarly, Harrison argues that investment arbitration's rights-based paradigm necessitates viewing investment disputes through a human-rights lens. In short, a valuation of investor rights that is devoid of human-rights considerations – at times even in contravention of domestic human-rights regulations – mocks the obvious social-justice implications of investment law (Chapter 17). Unfortunately, the thoughtful contributions these chapters make to the discussion in Part II are obfuscated by their later placement in Part IV.

Instead of expanding on the theoretical justifications for including human-rights issues in investment disputes, Part III proceeds with an examination of how regional courts – specifically the European Court of Justice, the European Court of Human Rights, and the Inter-American System of Human Rights – balance economic law and human rights in practice. The utility of this undertaking is limited, however, as the conditions shaping the interaction of economic law and human rights in regional courts differ markedly from those grounding international investment law. In stark contrast to international investment agreements, for instance, human rights are specifically provided for in the substance of some of the regional courts' governing treaties. Accordingly, the analysis in Part III offers only a starting point for determining how human-rights considerations might enter international investment law's traditional economic calculus.

Yet, any shortcomings in Part III are amply rectified by the book's strengths in Part IV. In particular, the case studies in this section are especially helpful in exploring the intersection of human rights with the specific standards of treatment found in international investment agreements. Examining expropriation (Chapter 13), fair and equitable treatment (Chapter 14), and non-discriminatory treatment (Chapter 15), the contributors demonstrate the myriad of ways that standards of treatment can interfere with human-rights issues. As Knoll-Tudor observes, the ability of these standards of treatment to compromise states' policy space is the real concern for human-rights issues in investment arbitration.

Part IV also examines specific instances of human-rights conflicts with investment obligations. Using examples from the tobacco industry (Chapter 19), water privatization (Chapter 20), and protection of the environment (Chapters 21 and 22), these chapters describe the risks to human rights, such as the right to health or the right to water, that investment obligations can pose. As many commentators remain sceptical of the linkages between human-rights law and investment law, the careful detail in these chapters may begin to counter any existing doubt of the connectedness of these two areas.

Finally, Part IV suggests practical ways of including human-rights issues in international investment law. For example, two authors suggest that human-rights obligations should be treated at the compensation level: that is, the compensation

a state owes to an investor should be reduced where the state's interference with the investment is necessary to protect its nationals' human rights (Chapters 14 and 23). Similarly, Ortino argues that the 'chaotic' state of international investment law, resulting from investment tribunals' inconsistent interpretations of the standards of treatment in investment treaties, affords governments the flexibility to redraft these treaties and to strike a more equitable balance between investor rights and human rights (Chapter 15). Other contributors recommend that tribunals use a modified version of the European Court of Human Rights' proportionality principle to balance investor rights against human rights (Chapter 18) or that they allow amicus curiae submissions in the hope of translating social-justice 'noise' into audible and discernible human-rights 'signals' (Chapter 17).

Ultimately, the real strength of *Human Rights in International Investment Law and Arbitration* lies in the immense practicability of its recommendations. In skilfully navigating investment tribunals' economic bias, limited jurisdiction, and expertise in human-rights issues, the book posits circumscribed and defined roles for human rights in investment arbitration without sacrificing impact. The result is a series of recommendations that are efficient and ready for implementation. Though a more ambitious book might have attempted to expand the role of human rights in international investment law by equating them with investor rights, doing so would only have alienated those best situated to effect reform, namely investment arbitral tribunals. A pragmatic approach is more likely to be adopted by investor-friendly tribunals.[10] Accordingly, this book acknowledges what few human-rights commentators are prepared to concede: in international economic law, moral compromise is critical to human-rights protection. *Human Rights in International Investment Law and Arbitration* is to be commended for charting that essential middle course.

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Yoram Dinstein, *The International Law of Belligerent Occupation*, Cambridge, Cambridge University Press, 2009, 287pp., ISBN-9780521896375, £66.00.
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With the present book, Yoram Dinstein has completed his series on the use of armed force in inter-state relations and its consequences. After *War, Aggression and Self-Defence* (2005) and *The Conduct of Hostilities under the Law of International Armed Conflict* (2004), the present work covers a transitory period during which the armed hostilities have ceased but peace is not yet reached, namely the belligerent occupation.

10 The investor-friendly approach of many tribunals is aptly described by the *Noble Ventures* tribunal, which noted that it is not permissible to interpret investment-treaty clauses exclusively in favour of investors, 'as is too often done regarding BITs'; see *Noble Ventures Inc. v. Romania*, ICSID Case No ARB/01/11, Award, 12 October 2005, at para. 52.

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