Transparency In International Investment Arbitration A Guide To The Uncitral Rules On Transparency In Treaty Based Investor State Arbitration

In General Principles of Law in Investment Arbitration, the authors address selected general principles of law, assessing their functions in investment arbitration. The resulting picture is that of a lively source that escapes doctrinal straitjackets and maintains its relevance.

Presents four studies on international investment law: one on transparency, one on the fair and equitable treatment standard, one on indirect expropriation and the right to regulate, and one on most favoured nation treatment.

International arbitration has developed into a global system of adjudication, dealing with disputes arising from a variety of legal relationships: between states, between private commercial actors, and between private and public entities. It operates to a large extent according to its own rules and dynamics - a transnational justice system rather independent of domestic and international law. In response to its growing importance and use by disputing parties, international arbitration has become increasingly institutionalized, professionalized, and judicialized. At the same time, it has gained significance beyond specific disputes and indeed contributes to the shaping of law. Arbitrators have therefore become not only adjudicators, but transnational lawmakers. This has raised concerns over the legitimacy of international arbitration. Practising Virtue looks at international arbitration from the 'inside', with an emphasis on its transnational character. Instead of concentrating on the national and international law governing international arbitration, it focuses on those who practice international arbitration, in order to understand how it actually works, what its sources of authority are, and what demands of legitimacy it must meet. Putting those who practice arbitration into the centre of the system of international arbitration allows us to appreciate the way in which they contribute to the development of the law they apply. This book invites eminent arbitrators to reflect on the actual practice of international arbitration, and its contribution to the transnational justice system.

This book presents the first critical review of the less frequently addressed stakeholders in international investment law. Focusing on private actors, including but not limited to lawyers, experts, funders, civil society, the media and scholars, the book highlights the variety of actors that help shape international investment law and demonstrates how best to manage their interactions in order to achieve synergies and enhance the legitimacy of this pluralistic field.

Private Actors in International Investment Law

Transparency

The Rise of Transparency in International Arbitration

Human Rights in International Investment Law and Arbitration

International Investment Law: A Changing Landscape A Companion Volume to International Investment Perspectives

The influence of international courts is ubiquitous, covering areas from the law of the sea to international criminal law. This judicialization of international law is often lauded for bringing effective global governance, upholding the rule of law, and protecting the right of individuals. Yet at what point does the omnipresence of the international judiciary shackle national sovereign freedom? And can the lack of political accountability be justified? Follesdal and Ulfstein bring together the crème de la crème of the legal academic world to ask the big questions for the international judiciary: whether they are there for mere dispute settlement or to set precedent, and how far they can enforce international obligations without impacting on democratic self-determination.

Litigating International Investment Disputes: A Practitioner's Guide serves as a comprehensive and straightforward resource for those who are new to international investment arbitration, as well as for seasoned practitioners.

Transparency can have a large impact on whether the work of international legal institutions such as tribunals is seen as legitimate as well as the ability of governments to manage the domestic audience costs of adjusting to international norms. International investment arbitration offers a special opportunity to study transparency because nearly always the parties to international investment disputes have the choice of whether to reveal the final results of arbitration to the public. Working with a new statistical database of disputes at the world's largest investor-state arbitral institution -- the World Bank's International Centre for the Settlement of Investment Disputes (ICSID) -- this paper examines the incentives of individual firms as well as governments to keep the details of their disputes secret. Secrecy prevails in cases where the incentives for privacy are strongest: over investments that have long time horizons where costly compromises by investors and the host state are essential to keeping the project financially viable and when any party has reason to expect ex ante that it will lose. This research has sobering implications for scholarship that has identified transparency as an essential condition for institutional legitimacy and effectiveness because the public is least informed about arbitral outcomes in precisely those cases where broad public interests are likely to be most affected.

Master's Thesis from the year 2018 in the subject Law - Civil / Private / Trade / Anti Trust Law / Business Law, grade: 1,3, Stellenbosch Universitiy, language: English, abstract: This research paper will examine the current development of amicus curiae participation in investment arbitration and the functioning of the European Commission in this role. The need for transparency and reforms in international investment arbitration will be examined and it will be critically evaluated whether amicus participation is a suitable tool for addressing

legitimacy concerns. The role of an amicus curiae in current arbitration practice will be examined as well. Various arbitration regimes and their approach to amicus participation will be evaluated. The last part of the paper will concentrate on the role of the European Commission and will examine the Commission's role as an amicus in investment disputes in practice. Within our global economy, international investments are a cornerstone. In the modern era, the favoured dispute resolution mechanism has been investment arbitration, a distinct form of international commercial arbitration, which has increased dramatically. Today, investors usually submit claims after consultations and negotiations with the host state for resolution under the auspices of an arbitral institution. Similarly, a new trend in structuring and supporting investments is the proliferation of regional arrangements in the form of Free Trade Agreements, like the North American Free Trade Agreement (NAFTA), the Comprehensive Economic and Trade Agreement between Canada and the EU (CETA) or the multi-party Energy Charter Treaty (ECT). As investment arbitration has gained more presence within the international judicial landscape, it has also been put under the scrutiny of public society. Especially during the CETA and the TTIP negotiations, a growing public concern within Europe evolved, manifesting the belief that international investment arbitration is a threat to the principles of a democratic society and could, by allowing a "secretive panel of corporate lawyers" to overrule the will of parliament and thus, destroy legal protection. These concerns led to public and academic discussions on whether the traditional principle of confidentiality should be reformed towards more transparency in international investment arbitration. The most discussed component for these reforms is the figure of an amicus curiae.

Investment Arbitration and National Interest

Secrecy in International Investment Arbitration

The Participation of an Amicus Curiae in Investment Treaty Arbitration. How does the European Commission Function in this Role?

A Mixed Blessing?

Conflict of Interest in Global, Public and Corporate Governance

Practising Virtue

This Chapter traces the development of procedural transparency in international investment arbitration to tease apart different types of transparency, whilst also considering their objectives and consequences. The analysis indicates that the meaning, promise and limits of transparency will differ for different stakeholders and different

reform objectives. The Chapter draws out the differences between the concepts of transparency as 'availability', 'access', and 'participation' to identify three distinct types of 'transparency'. It connects these concepts to the reforms to procedural transparency that have occurred for investment arbitration to date. This supports an analysis of whether the types of transparency reforms that have been pursued thus far are adapted to achieving their stated purposes. What emerges is an understanding of transparency that is closely connected to the development of, and hopes for, international investment arbitration. Transparency has emerged as a key means of improving international investment arbitration, including to make it more accountable and more legitimate. An agenda that seeks to identify and enact effective reforms to reach this promise must take into account the types of transparency best adapted to achieve these goals. In considering transparency in international investment arbitration, then, it is vital that States, arbitral institutions, and other stakeholders confront the assumptions and motivations underpinning suggested reforms in order to best adapt those reforms to achieve their stated objectives. The contours of the discussion in this Chapter hold importance for reform agendas in other fields of international arbitration. It highlights the importance of clarifying what is being proposed, what is being excluded from that discussion, and how these understandings influence the concrete outcomes of reform efforts as well as the appraisal of their success by disparate stakeholders.

This book explores the extent to which contemporary international law expects states to take into account the interests of others - namely third states or their citizens - when they form and implement their policies, negotiate agreements, and generally conduct their relations with other states. It systematically considers the various manifestations of what has been described as 'community interests' in many areas regulated by international law and observes how the law has evolved from a legal system based on more or less specific consent and aimed at promoting particular interests of states, to one that is more generally oriented towards collectively protecting common interests and values.

Through essays by experts in the field, this book explores topics such as the sources of international law and the institutional aspects of developing the law and covers a range

of areas within the law.

Arbitration has traditionally been considered the best way of resolving disputes on international investment. Yet, some parties involved in investment disputes, notably developing countries, have raised concerns about the effectiveness of arbitration. Alternatives to arbitration have been developed with a view to providing the international investment dispute system with more credibility. These alternatives are characterized by informality and tend to be less time-consuming than arbitration. Nonetheless, they also face challenges, especially a lack of transparency and legitimacy. This paper analyzes why arbitration has been criticized and investigates the main challenges to transparency and ethics in alternatives to arbitration in the field of international investment disputes.

The Multiple Forms of Transparency in International Investment ArbitrationTheir Implications, and Their Limits

The Oxford Handbook of International Investment Law

General Principles of Law and International Investment Arbitration

Procedural Issues in International Investment Arbitration

Community Interests Across International Law

Litigating International Investment Disputes

The Multiple Forms of Transparency in International Investment Arbitration

The aim of this thesis is to address the extent and particulars of the regulation of procedural transparency in treaty-based investor-state dispute settlement. I will investigate the development that has taken place in states' approach to treaty design and in the relevant arbitral regimes with regard to the transparency of investor-state dispute settlement. To what extent are “transparency and accountability ... beginning to outweigh privacy and confidentiality in importance” in investment arbitration? In order to answer this and related questions, it is essential to analyse decisions of arbitral tribunals pertaining to procedural transparency, as these provide interpretations of the procedural rules relevant to transparency, as well as illustrating the degree of interplay between treaties, applicable procedural rules and the powers of arbitral tribunals to determine issues of procedure, including issues pertaining to transparency and confidentiality. I will attempt to present a hopefully representative over-view of the extent and characteristics of transparency regulation in investment treaties, the approach of arbitral tribunals when exercising procedural discretion on the most central issues, as well as point to possible future developments with regard to treaty design and tribunal attitudes to transparency in arbitration proceedings.

With the emerging wave of new-generation free trade agreements, investment arbitration has become a central issue of the contemporary discourse on international economic relations. Critics argue that investment disputes are settled via intransparent arbitral proceedings devoid of democratic legitimacy, giving ad-hoc private bodies competence to adjudicate public law questions of great significance - and great cost - to host countries. This volume addresses five central issues of this scholarly and social debate: i) issues of legitimacy such as abuse, lack of access, transparency and public participation; ii) strengths and weaknesses of participating institutions; iii) growing problems in enforcement of awards; iv) some regional perspectives; and v) reforms, efforts, successes and failures to date. Chapters and Contributors: 1. Csongor István Nagy: Investment Protection and National Interest; 2. Frank Emmert & Begaiym Esenkulova: Balancing Investor Protection and Sustainable Development in Investment Arbitration - Trying to Square the Circle?; 3. Dalma Demeter & Zebo Nasirova: Trends and Challenges in the Legal Harmonisation of ISDS; 4. Wasiq Dar: "Abuse of Process" and Anti-Arbitration Injunctions in Investor-State Arbitration - an Analysis of Recent Trends and the Way Forward; 5. Rebecca Khan: Third Party Participation by Non-Government Organizations in International Investment Arbitration: Transparency as a Tool for Protecting Marginalized Interests; 6. Bálint Kovács: Access of SMEs to Investment Arbitration - Small Enough to Fail?; 7. Dildar F. Zebari: The Promotion, Protection, Treatment and Expropriation of Investments under the Energy Charter Treaty - a Critical Analysis of the Case-Law; 8. Balázs Horváthy: Opinion 2/15 of the European Court of Justice and the New Principles of Competence Allocation in External Relations - a Solid Footing for the Future?; 9. Csongor István Nagy: Extra-EU BITs and EU law: Immunity, "Defense of Superior Orders", Treaty Shopping and Unilateralism; 10. Pavle Flere: Arbitrability of Competition Law Disputes in the European Union - Balancing of Competing Interests; 11. Yue Ma: Execution of ICSID Awards and Sovereign Immunity; 12. Orsolya Toth: The New York Convention - Challenges on Its 60th Birthday; 13. Zoltán Víg & Gábor Hajdu: Investment Protection under CETA: a New Paradigm?

In debates over the democratic deficit of international institutions, transparency is usually the legitimacy criteria most easily satisfied. It is therefore a sign of the ongoing legitimacy crisis within international investment arbitration that this element has remained so elusive. While some of this could be attributed fairly to the historical development of investment arbitration - an outgrowth from classical commercial arbitration - investment issues are often of public significance and investors themselves have politicised the use of investment treaties. This paper analyses the emerging response of the investment arbitration regime to demands for greater transparency and shadows two contrasting approaches in recent cases.

Conflict of interest occurs at all levels of governance, ranging from local to global, both in the public and the corporate and financial spheres. There is increasing awareness that conflicts of interest may distort decision-making processes and generate inappropriate outcomes, thereby undermining the functioning of public institutions and markets. However, the current worldwide trend towards regulation, which seeks to forestall, prevent and manage conflicts of interest, has its price. Drawbacks may include the stifling of decision-making processes, the loss of expertise among decision-makers and a vicious circle of distrust. This interdisciplinary and international book addresses specific situations of conflict of interest in different spheres of governance, particularly in global, public and corporate governance.

The Principles and Practice of International Commercial Arbitration

An Economic Analysis of Bilateral Investment Treaties

A Practitioner's Guide

Opportunity Or Threat?
The Impact of Investment Treaty Law on Host States
Transparency in International Investment Arbitration

Procedural issues are an area of increasing complexity and concern in modern investment arbitration, and one in which very little guidance currently exists. Indeed, there are a number of important points of departure from the procedural rules commonly adopted in the context of international commercial arbitration. Procedural Issues in International Investment Arbitration is the first text of its kind to address this gap, examining the most prevalent and controversial procedural issues that arise in investment arbitrations conducted under the ICSID, UNCITRAL, and other arbitral rules. Written by international arbitration experts, the book takes the reader through an investment arbitration in chronological order, identifying each key procedural issue in turn and providing details of the relevant precedents. It charts the process of an arbitration from applicable law and first sessions right through to post-hearing applications and costs. Fully cross-referenced and tabled, Procedural Issues in International Investment Arbitration is an invaluable and practical guide to issues of increasing importance and relevance in ICSID and other arbitrations today.

International investment law is in transition. Whereas the prevailing mindset has always been the protection of the economic interests of individual investors, new developments in international investment law have brought about a paradigm shift. There is now more than ever before an interest in a more inclusive, transparent, and public regime. Shifting Paradigms in International Investment Law addresses these changes against the background of the UNCTAD framework to reform investment treaties. The book analyses how the investment treaty regime has changed and how it ought to be changing to reconcile private property interests and the state's duty to regulate in the public interest. In doing so, the volume tracks attempts in international investment law to recalibrate itself towards a more balanced, less isolated, and increasingly diversified regime. The individual chapters of this edited volume address the contents of investment agreements, the system of dispute settlement, the interrelation of investment agreements with other areas of public international law, constitutional questions, and new regional perspectives from Europe, South Africa, the Pacific Rim Region, and Latin America. Together they provide an invaluable resource for scholars, practitioners, and policymakers. The individual chapters of this edited volume address the contents of investment agreements, the system of dispute settlement, the interrelation of investment agreements with other areas of public international law, constitutional questions, and new regional perspectives from Europe, South Africa, the Pacific Rim Region, and Latin America. Together they provide an invaluable resource for scholars, practitioners, and policymakers.

International investment law and arbitration is a rapidly evolving field, and can be difficult for

students to acquire a firm understanding of, given the considerable number of published awards and legal writings. The first edition of this text, cited by courts in Singapore and Colombia, overcame this challenge by interweaving extracts from these arbitral decisions, treaties and scholarly works with concise, up-to-date and reliable commentary. Now fully updated and with a new chapter on arbitrators, the second edition retains this practical structure along with the carefully curated end-of-chapter questions and readings. The authors consider the new chapter an essential revision to the text, and a discussion which is indispensable to understanding the present calls for reform of investment arbitration. The coverage of the book has also been expanded, with the inclusion of over sixty new awards and judicial decisions, comprising both recent and well-established jurisprudence. This textbook will appeal to graduates studying international investment law and international arbitration, as well as being of interest to practitioners in this area.

Based on the author's dissertation (doctoral)--University of Geneva.

The Protection of General Interests in Contemporary International Law

The Influence of the 2014 UNCITRAL Transparency Rules on Treaty-based Investor-State-Arbitration

Transparency in International Law

Their Implications, and Their Limits

A Theoretical and Empirical Inquiry

Another Rip in the Arbitration Veil? Transparency in the Wake of Forresti and Giovanna

Bilateral Investment Treaties (BITs) are an important instrument for the protection of foreign direct investment (FDI). However, compared to international trade law, international investment law has so far received only little research attention from an economic point of view. By applying a law and economics approach, Jan Peter Sasse provides a systematic analysis of the way BITs function. He explains why BITs are more than just a signal, how they relate to institutional competition as well as to institutional quality and why transparency in international investment arbitration is hard to achieve and may even be detrimental.

Investment arbitration is at the cutting edge of international law and dispute resolution, and is predicted to be a major factor in the development of the global economic system in years to come. This one-volume monograph contains contributions from leading experts on a wide range of topics of both theoretical importance and practical implication that will affect the future of investment arbitration. The highly innovative chapters combine to form a constructive and valuable discussion for all in the arbitration field. The contributors, chosen to represent the full spectrum of perspectives, are leading arbitration experts from all over the world, including ICSID insiders, US government officials, UNCTAD research personnel, seasoned investment arbitrators and counsel, and renowned legal scholars. The book is divided into three themes, with the first centering on the adequacy of UNCITRAL and ICSID arbitration rules, with particular attention to recent and proposed changes. The second theme focuses on the future of bilateral investment treaties, discussing trends in the

interpretation of treaty provisions and the debate concerning the efficacy of the treaties in benefiting developing countries. The third theme revolves around the public function of investment arbitration decisions, including the use of arbitration to resolve disputes between sovereigns and the arbitrators' role as a guardian of international public policy. The Future of Investment Arbitration is unique in its outstanding range of topics and the expertise of the contributors. It previews and guides future directions in the field, as well as discussing the larger policy implications of specific rules. It includes cutting-edge analysis of empirical research regarding BITS that is essential to evaluating many assumptions about investment law and arbitration. Finally, the book takes a broad perspective, examining the rules discussed within the larger structural context of investment arbitration, and drawing investment arbitration into the wider setting of international law and corporate governance.

Mounting pubic interest concerns associated with investor-state arbitration have influenced the drafting of contemporary investment treaties including the requirement for transparency. Investor-state mediation is nevertheless a pre-arbitration dispute resolution method that if successful, obviates the need for further investor-state arbitration, but in most cases is confidential. This article argues that reconciling the freedom of expression facilitated through confidential mediation communications and the public interest in transparency is a delicate balance to strike. Cases do exist of effective transparent public sector mediated outcomes at the domestic level with high rates of compliance. Yet, successfully mediated cases have also relied on a high degree of discretion given trade secrets, sensitive government protocols, and policy concerns. In light of the above factors, it is suggested that as the process becomes more fully established, familiarity gained, expertise developed and selected mediated cases become public through party consent, investor-state mediation move toward gradual openness in the long term.

This title provides the reader with immediate access to understanding the world of international arbitration. Arbitration has become the dispute resolution method of choice in international transactions. This book explains how and why arbitration works. It provides the legal and regulatory framework for international arbitration, as well as practical strategies to follow and pitfalls to avoid. It is short and readable, but comprehensive in its coverage of the basic requirements, including changes in arbitration laws, rules, and guidelines. In the book, the author includes insights from numerous international arbitrators and counsel, who tell firsthand about their own experiences of arbitration and their views of the best arbitration practices. Throughout the book, the principles of arbitration are supported and explained by the practice, providing a concrete approach to an important means of resolving disputes.

More Balanced, Less Isolated, Increasingly Diversified

The Judicialization of International Law

Enabling Good Governance?

Challenges to Transparency and Ethics in Alternatives to Arbitration in the Realm of International Investments

Inside International Arbitration

A Companion Volume to International Investment Perspectives

This in-depth commentary analyses the new UNCITRAL Rules on Transparency in Treaty-Based Investor-State Arbitration.

The Oxford Handbooks series is a major new initiative in academic publishing. Each volume offers an authoritative and state-of-the-art survey of current thinking and research in a particular subject area. Specially commissioned essays from leading international figures in the discipline give critical examinations of the progress and direction of debates. Oxford Handbooks provide scholars and graduate students with compelling new perspectives upon a wide range of subjects in the humanities and social sciences. The Oxford Handbook of International Investment Law aims to provide the first truly exhaustive account of the current state and future development of this important and topical field of international law. The Handbook is divided into three main parts. Part One deals with fundamental conceptual issues, Part Two deals with the main substantive areas of law, and Part Three deals with the major procedural issues arising out of the settlement of international investment disputes. The book has a policy-oriented introduction, setting the more technical chapters that follow in their policy environment within which contemporary norms for international foreign investment law are evolving. The Handbook concludes with a chapter written by the editors to highlight the major conclusions of the collection, to identify trends in the existing law, and to look forward to the future development of this field.

This volume celebrates the first fifty years of the International Centre for Settlement of Investment Disputes (ICSID) by presenting the landmark cases that have been decided under its auspices. These cases have addressed every aspect of investment disputes: jurisdictional thresholds; the substantive obligations found in investment treaties, contracts, and legislation; questions of general international law; and a number of novel procedural issues. Each chapter, written by an expert on the chapter's particular focus, looks at an international investment law topic through the lens of one or more of these leading cases, analyzing what the case held, how it has been applied, and its overall significance to the development of international investment law. These topics include: - applicable law; - res judicata in investor-State arbitration; - notion of investment; - investor nationality; - consent to arbitration; - substantive standards of treatment; - consequences of corruption in investor-State arbitration; - State defenses - counter-claims; - assessment of damages and cost considerations; - ICSID

Arbitration Rule 41(5) objections; - mass claims, consolidation and parallel proceedings; - provisional measures; - arbitrator challenges; - transparency and amicus curiae; and - annulment. Because the law of international investment continues to grow in importance in an ever globalizing world, this book is more than a fitting way to mark the past fifty years and to welcome the next fifty years of development. It will prove both educational for practitioners new to the field and informative for seasoned investment lawyers. Moreover, the book itself is a landmark that will be of great value to professionals, scholars and students interested in international investment law.

This book explores the notions of global public goods, global commons, and fundamental values as conceptual tools for the protection of the general interests of the international community. It explores how states and other actors have used international law to protect general interests, and outlines significant challenges still to be addressed.

The History of ICSID

Commentary, Awards and other Materials

Transparency in International Trade and Investment Dispute Settlement

International Investment Treaties and Arbitration Across Asia

International Investment Law and Arbitration

A Guide to the UNCITRAL Rules on Transparency in Treaty-Based Investor-State Arbitration

An increasing number of international trade disputes are settled through the WTO dispute settlement (DS) procedure. In parallel, an increasing number of international investment disputes are settled through investor-host state arbitration procedure. What does "transparency" mean in the context of international trade and investment dispute settlement? Why is enhanced transparency demanded? To what extent and in what manner should these dispute settlement procedures be transparent? The book addresses these issues of securing transparency in international trade and investment dispute settlement. Transparency in international trade and investment dispute settlement drew attention of international economic law scholars in the late 1990s, but most literature discusses the transparency in trade DS and investment DS separately. The book deals with the issue in a comprehensive and coherent manner, combining the analyses of the issue in both DS procedures and comparing the pros and cons to enhanced transparency in them. The main argument of the book is, firstly, that transparency in these procedures should be enhanced so that they may be accountable to a wider range of stakeholders, but, secondly, that the extent and the manner of transparency might differ in these two procedures, reflecting their structural and functional differences. The book appeals to both scholars and students interested in international economic law and international relations, as well as lawyers and government officials who deal with international trade and investment regulation.

Investment treaty arbitration has a hybrid nature combining public international law (as regards its substance) with elements of

international commercial arbitration (mainly as regards procedure). However, in essence and function it deals with a special, internationalised form of judicial review of governmental conduct that is more akin to the judicial control of governmental action provided for by national administrative and constitutional law than to either classic inter-state dispute resolution or international commercial arbitration. This has been recognised in some academic writing and several awards, where reference to national administrative law concepts and principles of international law-based judicial review of governmental action, such as international trade or human rights law, is used to help specify and apply the open-ended concepts of investment treaties. In-depth conceptualization is however often lacking. The current study is the first, pioneering effort to bring these under-developed ad hoc references to comparative and international administrative law concepts into a deeper theoretic and systematic framework. The book thus intends to develop a 'bridge' between treaty-based international investment arbitration and comparative administrative law on both a theoretical and practical level. The major obligations in investment treaties (indirect expropriation, fair and equitable treatment, national treatment, umbrella/sanctity of contract clause) and major procedural principles will be compared with their counterpart in comparative public law, both on the domestic as well as international level. That 'bridge' will allow international investment law to benefit from the comparative public law experience, which could enhance its legitimacy, its political acceptance, and its ability to develop more finely-tuned interpretations of central treaty obligations.

While its importance in domestic law has long been acknowledged, transparency has until now remained largely unexplored in international law. This study of transparency issues in key areas such as international economic law, environmental law, human rights law and humanitarian law brings together new and important insights on this pressing issue. Contributors explore the framing and content of transparency in their respective fields with regard to proceedings, institutions, law-making processes and legal culture, and a selection of cross-cutting essays completes the study by examining transparency in international law-making and adjudication.

International Investment Treaties and Arbitration Across Asia examines whether and how the Asian region has or may become a significant 'rule maker' in contemporary international investment law and dispute resolution, focusing on the 'ASEAN+6' economies.

International Investment Law and Comparative Public Law

Between Transparency and Confidentiality in International Investment Arbitration

The Future of Investment Arbitration

China, the EU and International Investment Law

The First 50 Years of ICSID

Shifting Paradigms in International Investment Law

The topic of transparency in international investment arbitration is gaining increasing attention. This in-depth commentary analyses the UNCITRAL Rules on Transparency in Treaty-Based Investor-State Arbitration, one of the most recent and innovative developments in international law. Focusing on the application of these rules, contributors analyse the issue of transparency in investment law more broadly and provide in-depth guidance on how to apply the UNCITRAL transparency rules. Chapters

encompass all treaty-based disputes between investors and state, examining the perspectives of disputing parties, third parties, non-disputing state parties and arbitral tribunals. The contributors each have a strong background in investment arbitration, in both professional practice and academia. This commentary will be of interest to all actors involved in investment arbitrations, especially practitioners, counsels, NGOs and scholars in the fields of international law, commercial arbitration and investor-state arbitration.

Investor-Staat Streitbeilegungsverfahren haben lange Zeit hinter verschlossenen Türen stattgefunden. Aufgrund der Beteiligung von Nationalstaaten und der Tatsache, dass solche Verfahren hoch politische Kontroversen tangieren können, ist ein Mindestmaß an Transparenz zur Legitimation notwendig. Die UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration sind ein Vorstoß zu mehr Transparenz in solchen Verfahren. In der vorliegenden Dissertation wird untersucht ob und inwieweit sich die Schiedspraxis und Nationalstaaten, bei der Verhandlung von internationalen Investitionsschutzverträgen, seit Einführung der UNCITRAL Transparenzregeln zu mehr Transparenz bekannt haben.

The Rise of Transparency in International Arbitration is inspired by a joint research conducted in the last years by the Milan Chamber of Arbitration and the Law School of the University Carlo Cattaneo–LIUC, Castellanza, in Italy. The two bodies have shared a common concern in order to increase the use of international commercial arbitration and to develop a proper culture in the field: the need for enhancing transparency and especially for a wider dissemination of arbitral awards. The advantages of arbitration as the main alternative means of dispute resolution are well known and undisputed. Privacy and confidentiality are among them and at the same time among the prevailing features of any arbitral proceedings. However, sometimes users have the feeling to deal with a close and too slow-growing world. The need, if not the request, for a greater accountability of the arbitral world in the whole is more and more widespread. In this context the aim of this book is on the one hand to spur discussion and to shed new light on the traditional idea of confidentiality in international commercial arbitration (and in some other figures alike). Although this idea is sometimes founded upon sound reasons that cannot be ignored or totally set aside, it must be reconsidered by taking into account the rise of transparency. On the other hand, a specific proposal is made in order to step ahead from the current situation, with particular reference to the issue of the publication of the awards. In this respect, the main outcome is the Guidelines for the Anonymous Publication of Arbitral Awards, already adopted and experienced by the Milan Chamber. They are addressed to institutions, practitioners, scholars with the goal to favor the circulation of the awards and of the related decisions.

Applying his unmatched chessboard experience, Grandmaster Garry Kasparov taught that without long-term goals decisions become purely reactive and one is no longer playing her game . In International

Investment Law (IIL), we may not be playing someone else's game, however, while the IIL community focuses on spectacular arbitration and academic battles, the lack of an overarching goal for this atomised set of rules means everyone flounders and some occasionally run aground. Transparency provides a good example in this respect. Whereas transparency gives the mirage of a quick-fix for major IIL problems, most importantly for legitimacy concerns, it often seems that rule-making is reactive to practice; practice responds to investor and civil society concerns, while public dismay thrives in a legal grey zone. The article will show that transparency can bring benefits, but used carelessly may also entail unexpected results. A vicious circle indeed.

Predictability Versus Flexibility

The Publication of Arbitral Documents

Investor-State Mediation and the Rise of Transparency in International Investment Law

La Bocca Della Verità

Reforming Investor-State Dispute Settlement

Building International Investment Law

There is a growing interplay between international investment law, arbitration and human rights. This book offers a systematic analysis of this interaction, exploring the role of principles of justice in investment law, comparing investment arbitration with other courts, and examining case studies on human rights and protection standards.

This book provides an original and critical analysis of the most contentious subjects being negotiated in the China–EU Comprehensive Agreement on Investment (CAI). It focuses on the pathway of reforming investor-state dispute settlement (ISDS) from both Chinese and European perspectives in the context of the China–EU CAI and beyond. The book is divided into three parts. Part I examines key and controversial issues of the China–EU CAI negotiations, including market access, sustainable development and human rights, as well as comparing distinct features between the China–EU CAI and the China–US BIT. Part II concentrates on the institutional reform of investor-state arbitration with an extensive analysis of the EU's approach to replacing the private nature of investment arbitration with the public nature of an investment court. Part III addresses the core substantive and procedural issues concerning ISDS, such as the role of domestic courts in investment dispute settlement, the status of state-owned enterprises (SOEs) as investors, transparency and the protection of victims in investment dispute resolution. This book will be of interest to scholars and practitioners in the field of international investment and trade law, particularly investment dispute settlement.

Section I of the book contains an explanation of the concept of transparency as it is understood in the context of

international investment agreements. Section II provides a review of current treaty and arbitral practice with respect to transparency issues. Section III analyses the interaction of transparency obligations with other related issues. The final section of this paper contains a series of policy options available to IIA negotiators and those involved in revising arbitral rules. In this final section, the paper also briefly discusses the implications of those options for host State development considerations so as to assist with negotiator decision-making on whether or not to include transparency provisions in IIAs, and, if so, which formulation to insert into new agreements.

Traditionally, international investment law was conceptualised as a set of norms aiming to ensure good governance for foreign investors, in exchange for their capital and know-how. However, the more recent narratives postulate that investment treaties and investor–state arbitration can lead to better governance not just for foreign investors but also for host state communities. Investment treaty law can arguably foster good governance by holding host governments liable for a failure to ensure transparency, stability, predictability and consistency in their dealings with foreign investors. The recent proliferation of such narratives in investment treaty practice, arbitral awards and academic literature raises questions as to their juridical, conceptual and empirical underpinnings. What has propelled good governance from a set of normative ideals to enforceable treaty standards? Does international investment law possess the necessary characteristics to inspire changes at the national level? How do host states respond to investment treaty law? The overarching objective of this monograph is to unpack existing assumptions concerning the effects of international investment law on host states. By combining doctrinal, empirical, comparative analysis and unveiling the emerging 'nationally felt' responses to international investment norms, the book aims to facilitate a more informed understanding of the present contours and the nature of the interplay between international investment norms and national realities.

See No Evil? Procedural Transparency in International Investment Law and Dispute Settlement