



# TRANSPARENCY IN INTERNATIONAL TRADE AND INVESTMENT DISPUTE SETTLEMENT

EDITED BY HONG KUN-ALLEN

# Transparency In International Trade And Investment Dispute Settlement

**Lisa E. Sachs**



## **Transparency In International Trade And Investment Dispute Settlement:**

*Transparency in International Trade and Investment Dispute Settlement* Junji Nakagawa, 2013 First Published in 2013 Routledge is an imprint of Taylor Francis an informa company      *International Trade and Investment Dispute Settlement* Giorgio Sacerdoti, Niall Moran, 2025-06-17 This book provides a thorough comparative analysis of the trade dispute settlement system of the WTO Regional Trade Agreements and of Investor State Dispute Settlement ISDS Reviewing in parallel their origins features development and current challenges highlighting commonalities and differences the book analyzes criticisms leveled against both regimes explores current reform efforts at the WTO ICSID and UNCITRAL including the controversial proposal to replace ISDS with a Multilateral Investment Court and engages in the on going debate by evaluating possible outcomes As to trade the book highlights the WTO system s successful operation for more than 20 years and its hobbling functioning since the paralysis of the Appellate Body in 2019 As to ISDS the book details the procedural protection granted to foreign investors under Bilateral Investment Treaties BITs other International Investment Agreements and investment chapters of trade agreements such as NAFTA USMCA CETA and the CPTPP alongside the impact of case law on the regulatory space of states This authoritative book intends to serve as a fundamental reference for students and researchers in international investment and trade law as well as for international lawyers adjudicators and diplomats involved in dispute settlement

**Transparency in International Investment Arbitration** Dimitrij Euler, Markus Gehring, Maxi Scherer, 2015-08-10 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

**Sixty Years of European Integration and Global Power Shifts** Julien Chaisse, 2020-02-06 This book focuses on a review of how sixty years of case law and regulatory activity transformed the European continent and the world It provides a critical analysis of the key features of EU integration and how this integration is perceived internally and externally In this context this book also explores the EU s interactions with a number of other countries and organisations with the objective of assessing the EU s role in global governance

**CETA's Investment Chapter** Kriton Dionysiou, 2021-01-31 This book provides a comprehensive account of the CETA Investment Chapter s ability to overcome the legitimacy crisis facing investment

arbitration To do so it first examines the root causes behind the legitimacy crisis ultimately arguing that it reflects a fundamental rule of law crisis within investment arbitration In particular it asserts that the normative standpoints of the legitimacy crisis form part of the rule of law the uniting legal principle from which the legitimacy concerns stem The book contends that the rule of law is not only the principal normative and causal assumption on which the legitimacy concerns are based but that it could also be utilized as a platform to evaluate the investment arbitration mechanism in CETA s Investment Chapter Based on this the book evaluates CETA s Investment Chapter through the rule of law framework in order to provide a convincing account of the latter s ability to overcome the legitimacy crisis facing investment arbitration It concludes that CETA s Investment Chapter is unlikely to completely solve the legitimacy crisis simply because it is just a patchwork of reforms rather than a comprehensive reinvention of the substantive and procedural law of investment arbitration Lastly the book offers meaningful insights into the way the challenges presented by investment arbitration should be addressed The book is intended for academics researching international investment law and arbitration as well as for policy makers focusing on reforming investor state dispute settlement

Rethinking Investor-State Arbitration Flavia Marisi, 2023-10-18 A significant increase in investor State arbitration cases has been observed since the 2000s The trust placed by investors and States in this method of dispute resolution stems from several strengths In addition to its neutrality one of the primary reasons for its widespread use is its adaptability enabling it to address specific challenges that have emerged in recent decades The following elements highlight this adaptability the arbitration procedure can be customised to meet the specific needs of the disputing parties and stakeholders involved It effectively responds to evolving cultural norms and ethical considerations such as diversity gender representation corporate social responsibility environmental issues and human rights Moreover it can adapt to global health crises by facilitating online hearings Finally during times of international armed conflict economic exchanges trade investment and investor State dispute settlement foster economic integration and interdependence contributing to maintaining commercial peace and supporting international peace and security However investor State arbitration has sparked vigorous debates with many advocating for reform in three crucial aspects transparency legitimacy and consistency Multilateral negotiations are currently underway on various fronts including the negotiation of more sustainable investment treaties amendments to institutional arbitral rules the design of a multilateral investment court and the development of enhanced policy frameworks This book delves into the history of investor State dispute resolution to provide readers with an understanding of how its main features have evolved over time It examines the most intensely debated procedural issues analyses their multifaceted characteristics reviews the complex relationship between investor State arbitration and the European Union and explores potential options for addressing stakeholder concerns

*Trade Agreements, Investment Protection and Dispute Settlement in Latin America* Belén Olmos Giupponi, 2019-01-15 In recent years many Latin American countries have liberalized their trade and investment regimes

opening their markets to free international trade At the same time regional economic integration has boomed This book is the first systematic analysis in any language of these globally significant developments and the first comprehensive legal study of dispute settlement relating to foreign direct investment and trade in the region Undertaken by an expert in the field this study describes the current institutional framework of Latin American trade and investment law as well as specialized legal issues in the region s various economic blocs Among the many issues and topics raised the following may be mentioned questions of compliance and procedure in the context of today s international investment regime formalized dispute settlement mechanisms alternative dispute resolution channels including dispute prevention practices legitimacy and transparency of the various dispute settlement mechanisms inclusion of social clauses in trade and investment agreements and avoidance of investment treaty liability In order to offer a most accurate view of the effectiveness of the protection granted to foreign investors special attention is given to relevant case law completely covering the period 1985 2015 as well as arbitral precedents before international bodies and in jurisdictions across the region The book concludes with a critical examination of the future prospects of international economic law dispute settlement in the Americas pinpointing current trends and unveiling future possible avenues for change As an in depth explication of how the rules and principles of international economic law are applied in Latin America this book has no peers For practitioners drafting business agreements with Latin American companies or needing to ensure availability of appropriate remedies this book s detailed insight into international litigation in the region including case law illustrating the main topics will prove to be of immeasurable value Professionals in the arbitral community worldwide as well as governments dedicated research centres and officials in international organizations will welcome this book s model for comparative integration studies systematic guidance on procedure and case law of domestic and international courts and arbitral tribunals and extensive treatment of dispute settlement mechanisms in trade and investment agreements

International Investment and Dispute Settlement  
Chunlei Zhao, 2022-06-16 This book analyzes the dispute settlement mechanisms under the EU China Comprehensive Agreement on Investment CAI including the already established mechanisms for general state to state dispute settlement and the Mechanism to Address Differences for investment and sustainable development issues When China and the EU two of the biggest players in international investment announced the completion of the China European Union CAI negotiations the dispute settlement system remained incomplete While they reached an agreement on state to state dispute settlement the controversial investor state dispute settlement is subject to ongoing negotiations This book explores the possible procedural design of investor state dispute settlement mechanisms under the EU China CAI including potential proposals issues and solutions In addition this work analyzes the separation connection and combination of state to state and investor state dispute settlement all with a mind to ensuring the function and operation of diverse mechanisms and establishing a comprehensive system for successful investment dispute settlement Focusing on the complete dispute settlement system

under the EU China CAI this book will be a valuable resource for students academics and policymakers working in the areas of international dispute resolution international investment law international economic law and comparative law *Appeals Mechanism in International Investment Disputes* Karl P Sauvant,2008-04-08 This volume brings together significant contributions from leading voices in academia the legal profession and government on the increasingly important topic of international investment and the legal system in which it operates With the burgeoning size of international capital flows matched only by an explosion in international agreements intending to regulate the field there is increasing potential for incoherence amongst and between treaties and arbitral decisions *Appeals Mechanism in International Investment Disputes* compiles compares and contrasts the analysis and arguments of the leading scholars practitioners and government officials on the future of the international investment law regime Its special emphasis is on the question of an appellate body for international investment disputes The authors also seek ways to streamline and improve the system channeling the benefits of free trade and investment flows to people in both the developing and emerging markets The Appendices provide readers with extensive background material to place the chapters into context Selected sections include concise commentaries to further illuminate the timely themes covered by the chapters The volume is singular in its success at bringing together so many exceptional individuals on a question of growing import how to improve the international law regime to increase prosperity and further global development If a reader wants to know what the influential voices in international law are saying right now and in a concise and readable format this is the publication to have **Sustainable Development Principles in the Decisions of International Courts and Tribunals** Marie-Claire Cordonier Segger,Judge C.G. Weeramantry,2017-05-08 The 2002 New Delhi Declaration of Principles of International Law relating to Sustainable Development set out seven principles on sustainable development as agreed in treaties and soft law instruments from before the 1992 Rio Earth Summit UNCED to the 2002 Johannesburg World Summit on Sustainable Development to the 2012 Rio UNCS D Recognition of the New Delhi principles is shaping the decisions of dispute settlement bodies with jurisdiction over many subjects the environment human rights trade investment and crime among others This book explores the expanding international jurisprudence incorporating principles of international law on sustainable development Through chapters by respected experts the volume documents the application and interpretation of these principles demonstrating how courts and tribunals are contributing to the world s Sustainable Development Goals by peacefully resolving disputes It charts the evolution of these principles in international law from soft law standards towards recognition as customary law in certain instances assessing key challenges to further judicial consideration of the principles and discussing for instance how their relevance for compliance and disputes related to the 2015 Paris Agreement on climate change The volume provides a unique contribution of great interest to law and policy makers judges academics students civil society and practitioners concerned with sustainable development and the law globally **Yearbook on International Investment Law and Policy 2020** Lisa

E. Sachs, 2022 The Yearbook on International Investment Law Policy is an annual publication which provides a comprehensive overview of current developments in the international investment law and policy field

**Environmental Interests in Investment Arbitration** Flavia Marisi, 2020-01-24 Environmental Interests in Investment Arbitration Challenges and Directions Flavia Marisi Economic growth social inclusion and environmental protection stand at the core of sustainable development which aims to deliver long term growth for current and future generations Foreign Direct Investment FDI can play a key role in sustainable development Host states benefits descending from FDI inflows include tax revenues technology transfer specialised training of local human resources network with satellite activities better availability of quality products and customer centric services These downstream effects jointly stimulate economic growth and social inclusion This thoroughly researched book explores the relationship between environmental protection the third component of sustainable development and FDI In practice the intersection between environmental protection and foreign investment not only has generated remarkable success stories such as cross sectoral green investment but has also in some instances led to severe cases of environmental degradation Certain foreign investments resulted in open pit mines leaking harmful substances into the soil excessive deforestation improper treatment of water pollution of groundwater and contamination of mud pits following oil exploitation leaving the host state with significant environmental damage Some other cases have witnessed the host state withdrawing or infringing its own environmental policies which could in principle lead to a decrease in the value of the foreign investment as a result of natural resources deterioration In recent years an increasing number of investment arbitration cases have seen a clash between the states commitments towards their citizens which include the duty to protect the environment their health and well being and the commitment towards foreign investors to protect their investments In this book the author focuses on investor state cases in which environmental protection measures have been contested and discusses substantive mechanisms in treaty drafting rules of Customary International Law and interpretation doctrines which are aimed at taking environmental concerns into consideration The topics covered include the following statistical analysis of investor state cases where environmental protection measures have been contested the role of environmental principles in investor state arbitration treaty mechanisms addressing environmental concerns legal tools available under Customary International Law to address environmental interests the application of the doctrines of proportionality police powers and margin of appreciation and environmental counterclaims as an instrument to claim compensation for environmental damage The author provides a detailed framework on the normative architecture offers an extensive analysis of the relevant case law and proposes concrete solutions to the identified clashes aimed at refining the balance between environmental and investment protection With its in depth analysis and careful documentation this book aptly captures the inherent fragmentation of international law and undoubtedly represents an invaluable resource for both international law practitioners and scholars The solution oriented approach adopted in the book will be welcomed by legal

counsel law firms investment treaty negotiators and decision makers at the different stages of investment lawmaking and practice as well as by international institutions and academics

**World Trade and Local Public Interest** Csongor István Nagy, 2020-07-15 Trade liberalization has shaped international economic relations since the conclusion of the GATT 1947 The last few decades have seen a significant shift in the focus of this process multilateralism seems to have reached its limits giving way to regionalism and the focus of trade liberalization has shifted to non tariff barriers While these developments have attracted considerable attention exploring them from comparative perspectives has been largely neglected Trading systems the WTO regional economic integrations and federal systems are all based on the same dichotomy of free trade and local public interest they generally prohibit the constituent parties states from restricting trade but exempt them from this limitation if the restriction is warranted by a legitimate local end The purpose of this volume is to contribute to filling the above mentioned research gap by exploring central issues in regional economic integrations from a comparative perspective It provides a general economic analysis of the costs and benefits of trade liberalization and the role and function of normative values in commercial policy This is followed by a comparative analysis of the approaches used in various regional economic integrations in North America Europe and Latin America and federal markets the United States Australia and India regarding the balance between free trade and local public interest Key issues in investment law one of the most contentious elements of next generation free trade agreements are also addressed

**Research Handbook on Foreign Direct Investment** Markus Krajewski ,Rhea Tamara Hoffmann, Increasing international investment the proliferation of international investment agreements domestic legislation and investor State contracts have contributed to the development of a new field of international law that defines obligations between host states and foreign investors with investor State dispute settlement This involves not only vast sums but also a panoply of rights duties and shifting objectives at the juncture of national and international law and policy This engaging Research Handbook provides an authoritative account of these diverse investment law issues

**The Impact of Investment Treaty Law on Host States** Mavluda Sattorova, 2018-02-08 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

The UNCITRAL Code of Conduct for Arbitrators in International Investment Dispute Resolution Chiara Giorgetti, Michele Potestà, 2025-08-18 The 2023 UNCITRAL Code of Conduct for Arbitrators in International Investment Dispute Resolution is the first and significant element of the important process of reform in investor State dispute settlement ISDS This book written by experts active in its drafting and negotiation is the first article by article commentary on the Code and presents an in depth discussion of the Code s preparatory work the negotiations and each provision A comprehensive examination of independence impartiality and ethics in ISDS the commentary includes wide reaching consideration of essential aspects of the Code including rationales for each provision tensions and concerns that each provision addresses critical ethical issues such as double hatting and repeat appointments disclosure requirements regulations on issues related to confidentiality duties of diligence integrity and competence lessons learned from the drafting and negotiations engagement with the viewpoints of States and other stakeholders and accomplishments and potential shortcomings This timely and detailed analysis of one of the key instruments of ISDS reform demonstrates that the Code reflects the most recent trends in the practice of international investment arbitration The Commentary will surely provide an essential guide to practitioners parties and other stakeholders involved in ISDS proceedings through the issues and cases relating to arbitrator ethics

**Corruption and Illegality in Asian Investment Arbitration** Nobumichi Teramura, Luke Nottage, Bruno Jetin, 2024-04-19 This open access book explores Asian approaches towards investment arbitration a transnational procedure to resolve disputes between a foreign investor and a host state setting it in the wider political economy and within domestic law contexts It considers the extent to which significant states in Asia are or could become rule makers rather than rule takers regarding corruption and serious illegality in investor state arbitration Corruption and illegality in international investment are widely condemned in any society but there remains a lack of consensus on the consequences especially in investment arbitration A core issue addressed is whether a foreign investor violating a host state s law should be awarded protection of its investment as per its contract with the host state and or the applicable investment or trade agreement between the home state and the host state Some suggest such protection would be unnecessary as the investor committed a crime in the host state while others attempt to establish an equilibrium between the investor and the host state Others claim to protect investment invoking the sanctity of promises made The book starts with a deep dive into economic and legal issues in corruption and investment arbitration and then explores the situation and issues in major countries in the region in detail It is a useful reference point for lawyers economists investors and government officials who are seeking comprehensive and up to date information on anti bribery rules in Asian investment treaties It is of particular interest to students and

researchers in economics finance and law who are undertaking new research relating to the multifaceted impacts of corruption

**Tax Treaty Dispute Resolution** Rachna Matabudul, 2023-11-07 Stakeholders in the international taxation community agree that existing dispute resolution processes are in serious need of improvement and a global consensus must be achieved This book offers a potential restructuring of the tax treaty dispute resolution system based on a comparative analysis of the dispute resolution mechanisms under tax treaties as prescribed in the OECD and UN models on the one hand and the UN Law of the Sea Convention LOSC on the other This comparative study is the first of its kind and is premised on certain key geopolitical similarities that underpin the international tax regime ITR and the law of the sea regime while taking into consideration the differences in the institutional context of both regimes The author proposes a new tax treaty dispute resolution system based on the LOSC system for resolving multilateral tax disputes focusing on the following mapping of the institutional arrangements that make up the dispute resolution mechanisms to understand how each system works comparative analysis of the patterns of interaction and outcomes generated across the two dispute resolution systems to identify relevant aspects of the LOSC system that may be adapted in the ITR to improve tax treaty dispute resolution and analysis of the inclusivity levels across the decision making structures under each system to identify specific consensus building techniques that may facilitate the implementation of the new proposed tax treaty dispute resolution system and also enhance international cooperation across the ITR The proposed restructuring of the tax treaty dispute resolution system expands the existing mutual agreement procedure and forms a comprehensive legal framework that aims to achieve a more effective predictable and equitable resolution of multilateral tax disputes in the 21st century ITR by striking a balance between countries right to tax sovereignty and the rule of law Just as the design of the dispute resolution system under the LOSC paved the way for universal consensus of the Convention among almost 160 countries the author s new tax treaty dispute resolution system also offers a solid foundation for consensus building towards a universal treaty in the ITR Everyone concerned with international tax dispute resolution whether policymaker in house counsel national tax authority official judge tax lawyer or academic will find the truly valuable analysis here not elsewhere

**The Oxford Handbook of International Arbitration** Thomas Schultz, Federico Ortino, 2020-09-11 This Handbook brings together many of the key scholars and leading practitioners in international arbitration to present and examine cutting edge knowledge in the field Innovative in its breadth of coverage chapter topics range from the practicalities of how arbitration works to big picture discussions of the actors involved and the values that underpin it The book includes critical analysis of some of international arbitrations most controversial aspects whilst providing a nuanced account overall that allows readers to draw their own informed conclusions The book is divided into six parts after an introduction discussing the formation of knowledge in the field Part I provides an overview of the key legal notions needed to understand how international arbitration technically works such as the relation between arbitration and law the power of arbitral tribunals to make decisions the appointment of

arbitrators and the role of public policy Part II focuses on key actors in international arbitration such as arbitrators parties choosing arbitrators and civil society Part III examines the central values at stake in the field including efficiency legal certainty and constitutional ideals Part IV discusses intellectual paradigms structuring the thinking in and about international arbitration such as the idea of autonomous transnational legal orders and conflicts of law Part V presents the empirical evidence we currently have about the operations and effects of both commercial and investment arbitration Finally Part VI provides different disciplinary perspectives on international arbitration including historical sociological literary economic and psychological accounts

*The Principles and Practice of International Commercial Arbitration* Margaret L. Moses, 2024-02-01 This book not only deals with the broad application of international treaties guidelines laws and rules affecting international commercial arbitration but also includes information about the most recent developments in the field Readers learn how arbitration works from the request to arbitrate the selection of arbitrators the procedures leading up to the hearing the witnesses and evidence at the hearing to the granting of the final award Along the way many strategies and tactics come into play as an arbitration moves toward the goal of resolving the dispute The reader learns to appreciate the application of different laws and ethical concepts that may vary by jurisdiction including the ethical obligations of arbitrators and of counsel Throughout the principles of international arbitration are supported by the practice providing a very concrete approach to the resolution of international disputes by arbitration

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