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Investment law is undoubtedly one of the legal fields which has the most evolved in recent years. This evolution provoked, and still provokes, some fierce controversies. Very important questions underlie the discussion, such as the power of States to settle capital flows, the scope of protection that shall be granted by States to investors, and the unavoidable contradictions between the rights of investors and general interests that are often affected by investments. Hundreds of disputes settled by arbitral tribunals since about thirty years highlight these questions, and particularly since 2000, when the numbers of cases exploded. It is indeed since this decade that investment arbitration has occupied the centre stage, owing to the junction of two factors: firstly, the irruption of numerous bilateral treaties on the protection of investments and other many multilateral instruments (such as free trade agreements) containing mechanisms for the settlement of disputes; secondly, the consequences (expected and unexpected) of the situation created by the deregulation and the massive privatization of energy sector industries and public utilities. If almost fifty years ago, after quite complex negotiations under the auspices of the World Bank, it has been possible to create a system for the settlement of investment disputes without the intervention of State courts (the ICSID mechanism – International Centre for the Settlement of Investment Disputes – established by the Washington Convention of 1965), it has been necessary to wait until the production of this conjecture for the system to show its importance, while other mechanisms for the settlement of disputes, as well institutional as *ad hoc*, also started to develop.

In this context, States (and nowadays also the European Union) try to find a balance between their need to attract investments, on the one hand, and their regulatory role as well as their responsibility within the promotion and the protection of general interests, on the other hand. There are diverse, and even opposite, ways to achieve this balance. Naturally, besides the official positions assumed by States, their opinions are not unanimous. Even the "arbitral community" lacks unanimity on these tricky questions, as it may be revealed by some dissenting opinions became famous. Likewise, on the investors' side, one can observe the fair and comprehensible reactions against some simply illegitimate arbitrary measures taken by States, but also some clearly abusive conducts in which they pretend to be the victims of discriminations or expropriations, where there is nothing else than the normal exercise of the government by the State. However, beyond these differences, there is an objective situation showing that most of the States have assumed legal engagements, taking part in the weaving of the thick spider net composed by bilateral treaties on the protection of investments and other international agreements. That is how investment law became an evident reality, in which the scope and the characteristics of the engagements assumed by the States remain subject to discussion.

This is the reason why an essential part of the debates on investment law is about the settlement of disputes between foreign investors and States, in the same way as the adoption of political positions and the definition of international economic relations. The fact that the discussion focuses on the functioning and the justification of arbitral proceedings let us glimpse a fundamental element of this discipline: the exclusion of the principle of jurisdiction of States courts. One should remember that the possibility for a State to renounce to recourse to its own legal apparel – when it intervenes as a party – seemed unacceptable until a quite recent time and that it is still controversial in some States, at least regarding some strategic fields. However, nowadays, even states that have openly denied the ICSID system try to establish other international arbitral mechanisms.

Some crucial issues, such as the nature of assets subject to expropriation and the definition and limits of the notion of investment, continue to occupy an important part of the legal debate in the discipline. Nevertheless, two important subjects evidently linked – the one related to the substance of the problem, the other related to the implementation of arbitral mechanisms – populate the brains of researchers as well as the tables of negotiations. The discussion turns actually to the research of a more stable and fair balance between general and particular interests, with the protection of fundamental rights as the impassable limit of the equation. Regarding arbitration, a boiling discussion about transparency, essential vector of governance, takes place particularly within the frame of UNCITRAL – United Nations Commission on International Trade Law. Many important questions depend on the result of these discussions and their application.

Outline

Introduction – Why this subject at this moment?
I. The notion of investment: is economy fired out of the legal field?
II. Public v. private: how to adjudicate sovereign debt?
III. Transparency and jurisprudence: does global governance need them?

Readings

I. **On the collapse of public/private divide within investment arbitration**:
· Horatia MUIR WATT, "Private International Law: beyond the Schism, from Closet to Planet", pp. 19-25, available at: http://blogs.sciences-po.fr/pilagg/files/2011/11/HMWPILAGG-Launching-Paper-Revisited.pdf
· Asha KAUSHAL, "Revisiting History: How the Past Matters for the Present Blacklash Against the Foreign Investment Regime", 50 *Harv. Int'l L.J.* 491 (2009), 514-522

II. **On the assessment of jurisdiction and enforcement of awards under ICSID mechanisms**:
· Ivar ALVIK, *Contracting with Sovereignty – State Contracts and International Arbitration*, Oxford and Portland: Hart Publishing, 2011, pp. 121- 125

III. **On the influence of arbitrators' political behavior on investment arbitration outcomes**:
· Michael WAIBEL, Yanhui WU, "Are arbitrators political?" (forthcoming), pp. 20-23, 38-41

IV. **Case studies:**
· **On the Argentinean crisis and the political behavior of arbitrators**:
- David SCHNEIDERMAN, "Judicial Politics and International Investment Arbitration: Seeking an Explanation for Conflicting Outcomes", pp. 4-11, 29, available at: http://ssrn.com/abstract=1965629

· **On sovereign debt adjudication**:
- Michael WAIBEL, "Opening Pandora's Box: Sovereign Bonds in International Arbitration", 101 *Am. J. Int'l L.* 711 (2007), pp. 757-759
- Georges ABI-SAAB, Dissenting opinion on *Abaclat and Others v. The Argentine Republic* (2011), pt. 263-274, available at: http://italaw.com/documents/Abaclat_Dissenting_Opinion.pdf

· **On the fair and equitable treatment obligation**:
- Asha KAUSHAL, "Revisiting History: How the Past Matters for the Present Blacklash Against the Foreign Investment Regime", 50 *Harv. Int'l L.J.* 491 (2009), 525-533