

**POLAT KALAFATOGLU, Mehmet:** *L'arbitrabilité en matière de propriété industrielle. Etude en droit de l'arbitrage international*, Paris L'Harmattan, Collection Logiques Juridiques, 2018, 588 pp. (Prólogo de M.–E. Ancel). ISBN: 978–2–343–14154–1.

En matière de propriété industrielle, alors que le contentieux relatif à l'exploitation contractuelle et à la contrefaçon est arbitrable de longue date, l'annulation des titres échappait à la compétence arbitrale. En 2008, un arrêt de la Cour d'appel de Paris a étendu la compétence arbitrale : désormais, le tribunal arbitral peut statuer inter partes sur une exception de nullité. Cette solution, bien qu'utile pour garantir l'efficacité de l'arbitrage, n'est pas exempte de critiques.

La présente thèse explore la possibilité de reconnaître aux arbitres la compétence pour décider erga omnes sur la validité. Plusieurs raisons ont été avancées pour fonder l'inarbitrabilité de la demande d'annulation. En particulier, on considère qu'une sentence arbitrale ne peut pas produire l'effet absolu attaché à une décision d'annulation. Cependant, les sentences arbitrales sont opposables aux tiers et un prétendu effet inter partes de la sentence ne peut pas justifier l'inarbitrabilité. La raison profonde de l'inarbitrabilité réside dans la nature inter partes de la justice arbitrale internationale, qui ne prévoit pas de protection procédurale au profit des tiers intéressés. Le domaine arbitrable pourrait donc être élargi à condition de garantir l'effet erga omnes de la sentence par la publicité de celle-ci et de le contrebalancer par une tierce opposition limitée, moderne et adaptée à l'arbitrage international.

**SASSON, Monique:** *Substantive Law in Investment Treaty Arbitration. The Unsettled Relationship between International Law and Municipal Law*, 2<sup>a</sup> ed., International Arbitration Law Library, vol 21, Kluwer Law International, 2017. 304 pp. ISBN : 978–90–411–6103–1.

This new edition of what has rapidly become the pre-eminent work on the role of municipal law in investment treaty arbitration is justified not only by the accelerating appearance of investment treaty awards but also by the continuing, serious flaws in the application of international law by investment treaty arbitral tribunals. As a matter of international law, arbitrators need to be attentive to the circumstances where municipal law supplies the necessary substantive legal rule. They will find this book to be the best guide to this complex challenge.

The author has maintained the overall structure of the first edition and added a new chapter on Article 42 of the ICSID Convention. Certain descriptions and arguments have been rethought and revised to clarify their significance and their applicability. The treatment focuses on the role of municipal

law in providing the substance for concepts such as contracts, property rights, and shareholders' rights, which are relevant in the international investment treaty context but are not regulated under international law. Among the complex questions considered are the following: i) If the application of international law requires a renvoi to municipal law, how should that renvoi be conducted?; ii) In investment disputes, what role, if any, should municipal law have in assessing State attribution under international law?; iii) Should shareholders receive compensation for damages suffered by their company due to a violation of an international obligation vis-à-vis the company?; iv) Does a contractual right exist to foreign investment 'property'?; v) Under what conditions may a violation of municipal law become internationally wrongful?; vi) May foreign investors rely on 'expectations' as an autonomous source of rights in investment treaty disputes?, and vii) Does an alleged breach of an umbrella clause transform a breach of contract claim covered by municipal law into an international law claim?.

The chapters answer these and many other questions in extraordinary depth, drawing on detailed analyses of the issues and implications posed by major relevant cases and arbitral decisions.

The author's analysis of the unavoidable interaction of municipal law and international law in investment treaty arbitration – and the consequences stemming from rejecting the application of municipal law when relevant will continue to prove of immeasurable value to arbitrator arbitration counsel, corporate counsel, and scholars of international law.

**UN DUGGAL, Kabir, LAIRD, Ian y SOURGENS, Frederic G.:** *Evidence in International Investment Arbitration*, Oxford University Press / Oxford International Arbitration, 2018, 326 pp. ISBN: 978-0-19-875350-6.

*Evidence in International Investment Arbitration* is a guide for practitioners representing a party in investment arbitration disputes, whilst also offering academics a perspective on the practical elements affecting the treatment of evidence in the area. The book is the first of its kind to systematically review the jurisprudence of investor-state tribunals on evidentiary matters and inductively establish the rules recognized in those decisions. It uses a comparative approach to demonstrate the points of commonality and uniformity in the transnational foundations of the law of evidence as it affects international investment arbitration, providing theoretical and practical guidance on the treatment of evidence at all stages of such disputes.

The work establishes the rules of evidence as currently recognized by investor-state arbitral jurisprudence and examines these rules of evidence against those recognized in the traditional rules of international law, as well as against those codified by the IBA Rules on the Taking of Evidence in International Arbitration. It examines the theory and function of international