

THE ROLE OF PUBLIC INTERNATIONAL LAW IN INTEGRATING HUMAN RIGHTS CONSIDERATIONS IN INVESTMENT TREATY ARBITRATION

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ABSTRACT

In investment treaty arbitration, the respondent states have been increasingly raising the defences that the impugned measures were adopted to fulfill and protect that state's human rights obligations or that the conduct of the investors had infringed on the human rights of their local population. Controversies arise as to how to reconcile the tensions between investment protection and public interests, particularly where the language of underlying investment treaties keeps silent on this matter.

This article explores the role of "public international law" in providing "affirmative defences" for the host state in investment treaty arbitration, bridging the normative divide between investment protection and human rights. Specifically, it delves into the application of the doctrines of police powers and contributory fault as judicial tools for tribunals to accommodate public interests or give effect to investor misconduct with respect to human rights. These notable instances reveal the potentials of public international law in integrating human rights considerations in investor-state

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treaty arbitration, thereby reconciling the normative conflicts between competing public and private interests.

KEYWORDS: *investor-state treaty arbitration, human rights, public international law, police powers, contributory fault*