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The Manchester Journal of International Economic Law is first and foremost an International Economic law Journal. Its geographical origins breathe a nomenclature to it to distinguish it from other Journals in the field. Manchester also as a city is a good symbol of globalisation; international in its racial and cultural diversity; and occupies an important place in the history of international economic relations – being the city from where came one of the original calls for free trade. Appropriately therefore the matches in international economic scholarship should result in goals from Manchester too!

– – Asif H Qureshi, Editorial, MJIEL, 2004, Volume 1, Issue 1

Aims of the Journal:

The journal covers all aspects of international economic law including in particular world trade law, international investment law, international monetary and financial law, international taxation, international labour law, international corporate responsibility and international development law. The journal's focus is mainly from a Public International Law perspective and includes comparative analysis within the context of a discourse in Public International Law. The aims of MJIEL are to promote:

- Independent, original and alternative perspectives to international economic relations;
- Fuller coverage of international economic relations in all its spheres;
- A holistic focus on international economic issues; and
- Awareness of a development dimension in international economic relations.

Cover image:

Free Trade Hall, Manchester: Built on land offered by Richard Cobden in St Peter's Fields, by the Anti-Corn Law League, the fine permanent stone building replaced a simple brick building of 1843 which itself replaced a timber pavilion of 1840. Its name derives from the pivotal role played by Manchester in the repeal of the Corn Laws in 1846 and the promotion of Free Trade and Liberalism in the history of England.

Image courtesy of 19th era/Alamy

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Book Reviews

Contributory Fault and Investor Misconduct in Investment Arbitration, by Martin Jarrett, Cambridge University Press, 2020.

The unbalanced nature of investment arbitration and its reputation for being a vehicle to safeguard corporate interests at the expense of host governments, their populations and the environment has been the subject of extensive academic attention.[1] The international investment system, and its dispute settlement mechanism, is accused of limiting state sovereignty and undermining the democratic process by binding states to standards that become obsolete and eventually damaging for the economic environmental and social development of the host country.[2]

The legal cornerstone of the success and expansion of the international investment system is, arguably, the clause in investment treaties that enables the waiver of state immunity and thus the renunciation of part of the state's sovereignty in favour of the investor.[3] The existence of that dispute resolution clause enables the investor to take the host state to an international arbitral tribunal, usually the World Bank's ICSID for the resolution of any dispute that arises during the investment process.[4] Moreover, any decision by an authorised investment arbitral tribunal will be enforceable under the most successful arbitration treaty - the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (New York, 10 June 1958).[5] The extraordinary transfer of power from a sovereign state to private investors has received great academic and practitioner attention, and, as it was to be expected, much criticism. I will not rehearse in this note the most written about irregularities and shortcomings

[1] August Reinisch, *Classics of International Investment Law* (Edward Elgar Publishing, 2014); James Crawford, 'Investment Arbitration and the ILC Articles on State Responsibility', *ICSID Review*, 2010, 25(1): 127-99; Valentina Vadi, *Proportionality, Reasonableness and Standards of Review in International Investment Law and Arbitration* (Edward Elgar Publishing, 2018); Michael Waibel, 'Two Worlds of Necessity in ICSID Arbitration: *CMS* and *LG&E*', *Leiden Journal of International Law*, 20(3): 637-48; Christoph Schreuer (2011), 'From ICSID Annulment to Appeal Half Way Down the Slippery Slope', *The Law and Practice of International Courts and Tribunals*, 2011, 10: 211-25.

[2] Luke Nottage and Kate Miles, '"Back to the Future" for Investor-State Arbitrations: Revising Rules in Australia and Japan to Meet Public Interests', *Journal of International Arbitration*, 2009, 26(1): 25-58. Ursula Kriebaum, 'Are Investment Treaty Standards Flexible Enough to Meet the Needs of Developing Countries?', in Freya Baetens (ed.), *International Investment Law within Interntional Law* (Cambridge Universty Press, 2013), pp. 330-40.

[3] Muthucumaraswamy Sornarajah, *The International Law on Foreign Investment* (Cambridge University Press, 2017) p. 9; Eric De Brabandere, *Investment Treaty Arbitration as Public International Law Procedural Aspects and Implications* (Cambridge Universty Press, 2014), pp. 175-201.

[4] ICSID, 'About ICSID' *International Centre for the Settlement of Investment Disputes*, https://icsid.worldbank.org /about (accessed 28 August 2020),

[5] *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (signed 10 June 1958, entered into force 7 June 1959).

of the system: from accusations of lack of transparency to allegations of illegitimacy almost every aspect of the process has been challenged; the appointment of arbitrators, procedural aspects of the arbitral process, lack of understanding of public law and public policy needs, violation of human rights and rigid prioritising of the financial interest of anonymous investors over the human rights of the local population or the environment. Each of these criticisms is justified by a plethora of decisions, cases, and campaigns.

The title under review is an addition to the continuously growing library on investment arbitration. It focusses not so much on the failings and shortcomings of the process, or the public law aspects of investment arbitration but instead considers the position of the host state and its rights and prerogatives within the investment arbitration procedure in cases of investor misconduct or contributory fault. Both situations are considered from a procedural and substantive point of view by Jarrett, and in doing so, are extracted from the more 'emotional' accounts or critiques to the investment arbitration system at its perceived bias.

The book begins by drawing an overview of international investment law proceedings and, to Jarrett's credit, it does so without unnecessarily rehearsing the themes of arbitrators' bias, lack of legitimacy, restriction on sovereign powers and the alleged prioritising of economic interests of investors that are ubiquitous on international investment arbitration academic contributions. These themes are, of course, acknowledged and mapped out (in Chapter 1) but Jarrett moves swiftly into what preoccupies him: the procedural and conceptual basis for challenging investors' claims by host states on the basis of contributory fault and investor misconduct. Jarrett is concerned, mostly, with the legal function of the rules relating to both these defences and begins by building the theoretical underpinning of both rules as defences to the potential international responsibility by host states.[6] The question of whether the host state's conduct could and should be constructed as a defence to the investor's claim within the arbitral proceedings is considered with a great degree of detail and dissected by an abstract doctrinal analysis of its conceptual function and procedural operation. Jarrett focusses, mostly, on the abstract discursive formulation of principles and rejoices in the construction of general deductions from painstakingly detailed doctrinal research. In this respect this is a serious piece of scholarship which will be consulted, challenged and referred to in the future by academics and practitioners in the area. However, many will find the development of the themes and theories excessively abstract and somehow disconnected from a more practical approach which considers and discusses relevant facts, principles applied, points of inflection in tribunals' decisions and any departure from established jurisprudence. Cases are, of course, mentioned throughout the book but this is done predominantly in footnotes and frequently without the required context. For example in chapter 5 (Post-Establishment Illegality) makes references in footnotes to *Occidental v Ecuador*[7] and *Yukos v Russia*[8] yet there is no explanation of the actual conduct in respect of the point being discussed in that particular

[6] Chapters 3 to 5.
[7] *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. The Republic of Ecuador*, ICSID Case No. ARB/06/11, Award, 5 Octover 2012.
[8] *Yukos Universal Limited (Isle of Man) v. The Russian Federation*, UNCITRAL, PCA Case No. AA 227, Final Award, 18 July 2014.

section of the chapter, nor of the tribunal's decision and reasoning and of how other similar cases have (or have not) been decided in the same way. In this respect the discussion may be less accessible and relevant to students and scholars in a common law jurisdiction. Having said that Jarrett's book should be taken as a serious doctrinal contribution to the literature in the field.

In an area that straddles between the public and the private[9] and has, of late, veered dangerously towards the private to the detriment of other public host state's interest and priorities. In other areas of transnational disputes between private multinational corporations and host state populations we know only too well how highly skilled legal teams operate derailing the operations of transnational litigation through procedural rules for the advantage of powerful companies and the detriment of claimants (strategic litigation). The Chevron/Texaco saga comes to mind with its twists and turns between litigation in host and home states,[10] forum non conveniens pleas and, ultimately investment arbitration.[11] In investment arbitration we encounter similar interests and power struggles: those of private investors with powerful and highly solvent legal teams against governments in financial trouble unable to face up to prolonged technical and procedural battles, often caught up between social pressure against the foreign investment and the liabilities acquired. Introducing clear procedural rules could, unquestionably, improve transparency and enable struggling host states to challenge investors claims. But this, by itself, will not re-balance the highly unequal and asymmetric system crafted around the interest of foreign investors. What stared its life as an allegedly levelling mechanism within public international law between states and private investors, has, on time, exponentially transformed into a system that favours the profit of private investors over the public concerns of host states and their populations. It will not be sufficient to develop legal tools to change this regrettable 'direction of travel', instead a profound and highly unlikely geopolitical undertaking will be required to enable any legal tools to be applied in a such a way that ensure the 'development' of home states.

Elena Blanco*

[9] Eric De Brabandere, *Investment Treaty Arbitration as Public International Law Procedural Aspects and Implications* (CUP, 2014), pp. 175-201.

[10] Business & Human Rights Resource Centre, 'Texaco/Chevron lawsuits (re Ecuador)' *Business & Human Rights Resource Centre*, www.business-humanrights.org/en/texacochevron-lawsuits-re-ecuador (accessed 28 August 2020). Two class actions were brought against Texaco in the US courts by Ecuadorian (*Aguinda v Texaco*) and Peruvian (*Jota v. Texaco*) in 1993 and 1994 respectively. Both were dismissed on grounds of *forum non conveniens* in 2002.

[11] D.P Fernandez Arroyo, 'Adjudicating Public Interests by Private Means: the Inescapable Involvement of States in the *Chevron/Texaco* Saga', in H Muir Watt, et al. (eds.) *Global Private Interntional Law* (Edward Elgar Publishing, 2019), pp. 56-66.

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