



**Substantive Law in Investment Treaty
Arbitration: The Unsettled Relationship Between
International Law and Municipal Law
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Monique Sasson

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The difficult coexistence of municipal law and international law is nowhere more evident than in the context of investment treaty disputes. Investment treaty arbitral tribunals commonly address, as a matter of international law, an alleged breach of a contract (or other legal obligation concerning an investment) that is often regulated by municipal law. However, there is no self-contained legal system that provides substantive rules of direct applicability for these tribunals. In practice, approaches range from complete exclusion of municipal law to complete reliance on municipal law. While the former has no defensible foundation in international law, an absolute renvoi to municipal law runs afoul of the principle that international law governs the characterization of an internationally wrongful act.

Arguing that international investment law requires a more nuanced consideration of the role of municipal law than many arbitral tribunals have implemented to date, this book provides a detailed, systematic approach to the interplay of municipal law and international law in investment disputes. 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 questions addressed are the following:

- If the application of international law requires a renvoi to municipal law, how should that renvoi be conducted?
- In investment disputes, what role, if any, should municipal law have in assessing State attribution under international law?
- Should shareholders receive compensation for damages suffered by their company due to a violation of an international obligation vis-a-vis the company?
- May foreign investors rely on 'expectations' as an autonomous source of rights in investment treaty disputes?
- Does an alleged breach of an umbrella clause transform a breach of contract claim covered by municipal law into an international law claim?

The book's chapters answer these and other investment law questions in depth, drawing on analyses of the issues and implications in arbitral decisions. This work will be welcomed by arbitrators, arbitration counsel, corporate counsel, and scholars of international arbitration.

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