Is there a role for human rights in investment arbitration? Foreign investment is today regulated by a patchwork of bilateral and regional treaties. They have proliferated since the late 1950s at an ever accelerating speed. Over 2600 bilateral investment treaties and several regional treaties which contain norms to protect foreign investment have been concluded.\(^1\) Dispute settlement is provided for on a State to State and an investor to State level. Beside treaties providing for investor state dispute settlement, direct contracts between investors and States often provide for investment protection and this form of dispute settlement.

The popularity of investment arbitration has led to a tremendous increase in case-law. It has also led to evermore complex legal and policy questions involving the interaction of investment law with non-investment obligations like human rights law.\(^2\)

1. **Effects of Foreign Investment upon the Human Rights of the Population of the Host State**

Investment can be made in a wide range of sectors and can take many different forms. Hence investment dispute cases also cover a wide range of investment activities. They have arisen with regard to activities such as construction, water and sewage services, brewing, telecommunication concessions, banking and financial services, hotel management, television and radio broadcasting, hazardous waste management, textile production, gas and oil production, and various forms of mining.

It is difficult to generalize the effects of investment on the enjoyment of human rights of the population of the host State.\(^3\) It is today acknowledged that investment is

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capable of generating economic growth, reducing poverty, increasing demand for the rule of law and contributing to the realization of human rights.\(^4\) For many countries foreign investment flows are much larger than development aid by States and International Organizations.

As a UN report indicates, well-managed investment has the potential to promote and protect human rights. Today, most developing countries seek investment as a means of promoting development.\(^5\) Accordingly, there is a potential for a positive correlation between foreign investment and human rights. Particularly in the field of economic, social and cultural rights foreign investment can have a positive impact and both fields may be mutually-reinforcing.\(^6\)

However, beside this potential to enhance the respect for human rights, a number of human rights violations related to foreign investment have arisen\(^7\) and are likely to arise in the future.

Here are some examples:

Human rights related problems have occurred in connection with infrastructure privatization. Access of the population to the necessary minimum supply of some basic services such as water is protected by economic, social and cultural rights.\(^8\)

Human rights violations can also occur as a result of health endangering pollution of the environment in case of sewage systems, waste management facilities, oil production or mining activities.

In some areas of foreign investment cases of torture or ill-treatment by privately hired security services or military at the disposal of the investor as well as cases of forced labour or working conditions which violate human rights have been reported.


\(^6\) Ibid., at 8.
