Frey Baetens (ed.)


The book under review is the latest in a series of works addressing linkages between international investment law and other areas of international law.¹ Unlike many other works, the focus is not on one particular linkage (investment and public health, investment and IP, etc.), but on a number of them. Some of the chosen comparators count among the ‘usual suspects’, such as the chapters on investment and human rights (Part II), on investment and sustainable development, and on investment and trade (Parts III and IV). The inclusion of others (notably investment and armed conflict, and investment law and EU law, respectively in Parts I and V) is perhaps more surprising. But both in its predictable and less predictable parts, the book follows a common line of inquiry: as Freya Baetens explains in her preface, the aim is to bring “a more systematic approach” (p. xlii) to investment treaties that assesses “how concepts, principles and rules developed in the context of other subfields of international law could, or should, inform the content of investment law” (p. xxvii). That they could, and should, is taken for granted – and the book’s subtitle makes this express by describing the contributions as “Integrationist Perspectives.”

The ‘perspectives’ provided do a lot to enhance our understanding of the linkages between investment law and other areas of international law. Two observations may serve to illustrate the point: *First*, the chapters by Schreuer and Hernández elucidate the interaction of investment law and armed conflict. The overall impression gained from these chapters is that “the legal potential [for increased litigation in this field] is considerable” (as Schreuer puts it on p. 20), because investment treaties in principle remain applicable during armed conflict (as both writers agree, drawing on the 2010 ILC Draft Articles on the Effect of Armed Conflict on Treaties, UN Doc A/65/10). However, there is no agreement on just how ‘integrated’ investment law is with IHL rules on armed conflict. Schreuer adopts a ‘macro’ perspective, and his emphasis is on the special protection granted by investment treaties: as the different types of ‘war’ and ‘security clauses’ differ widely, treaty language is key. In this field, treaty

language needs to be looked at even more carefully than elsewhere in investment law. While there is room for arguments derived from general rules on State responsibility (war as ‘force majeure,’ etc.), “investment protection in times of armed conflict will in large measure depend on the availability of favourable treaties” (p. 20). Conversely, Hernández focuses on a treaty standard that would seem to address the matter most clearly, viz. full protection and security. In his more focused ‘micro’ analysis, a specific investment standard can only be understood in the light of general international law. He suggests that tribunals have read it to reflect minimum standards of protection; and, in filling this vague guideline with life, have drawn inspiration from general international law arguments about the scope of duties to prevent foreigners from riots and violence. The result, in Hernández’ view, is that full protection and security clauses – when applied to situations of armed conflict – are interpreted in light of basic principles that govern public international law (p. 46). This presents an interesting contrast to Schreuer’s focus on the specificity of investment standards. And precisely because they emphasise different aspects, the two chapters do a lot to facilitate our understanding of a yet-unexplored area of investment protection.

Insofar as they address linkages between investment and human rights or trade, other chapters of the book cannot really claim to break new ground: too much has been written on this before. However, the analysis often highlights nuances and/or important structural aspects. Mary Footer’s chapter on trade and investment (“the relationship that never went away”) is an example of the second category. Historically informed, it maps out bilateral versus multilateral modes of regulating the two types of activities. While most of the other chapters discuss whether ‘other concepts’ could be integrated into investment law, Footer also looks at investment law within WTO debates. As she concludes, the two treaty regimes are “different but interconnected” (p. 296). There is evidence of cross-fertilisation, perhaps increasingly so, but boundaries remain – and their contours accurately reflect the different ordering paradigms upon which the two regimes were built in the post-wwii era. All this is set out in a clear and balanced manner. Perhaps one might add that, precisely because boundaries remain, the recent rise of preferential trade and investment agreements (PTAs) is so exciting: it promises to move from cross-fertilisation to re-integration.

These brief comments illustrate the strength of the book: taken together, its 21 chapters highlight important aspects of the relationship between investment law and other areas of international law. As is clear from even the few examples picked up in the preceding paragraphs, some chapters are more detailed and focused than others; ‘macro’ and ‘micro’ perspectives co-exist;