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Article Abstracts

The New Face of Investment Arbitration: NAFTA Chapter 11 — *Guillermo Aguilar Alvarez & William W. Park* 365

To protect American investment abroad, the United States traditionally endorsed arbitration as the preferred means to resolve disputes between investors and host countries. Arbitration was justified as a way to level the procedural playing field in controversies over expropriation, reducing the prospect of "home town justice" in host country courts.

Recently this policy has been tested by provisions of the North American Free Trade Agreement (NAFTA) intended to enhance cross-border investment. If one NAFTA country victimizes an investor from another, the investor has a right to seek redress through arbitration. The United States now finds itself a Respondent in several cases brought by Canadian investors asserting discrimination, unfair treatment, or expropriation without compensation, often allegedly committed by American states. Certain segments of American society have objected to these arbitrations as constituting unacceptable interference with governmental economic regulation. Fueled by media attacks, legislation has been proposed (and in some cases enacted) to limit the effectiveness of arbitration pursuant to bilateral investment treaties. Moreover, the NAFTA Free Trade Commission has issued "Notes of Interpretation" intended to soften the rigor of certain NAFTA provisions.

This Article suggests that assaults on investment arbitration are misguided, and may end up doing more harm than good. On balance, arbitration serves as a positive force in the protection of legitimate economic expectations abroad. Impairing neutral arbitral dispute resolution will enfeeble international cooperation by chilling confidence in the security of cross-border transactions. Moreover, the United States' own national interest in safeguarding American-owned assets from foreign political risks requires maintaining an arbitration regime to resolve investment disputes.

Comparative Reasoning and Judicial Review — *Sarah K. Harding* 409

Many states have enacted constitutions that are influenced by the U.S. Constitution, and foreign courts often look to the jurisprudence of the U.S. Supreme Court or other foreign courts for guidance. The U.S. Supreme Court, however, remains insulated from constitutional developments in other countries, despite calls by some Justices for greater openness to foreign law as a comparative tool. This Article examines the ramifications of a comparative approach to judicial reasoning and examines how attitudes toward the use of foreign and comparative analysis can be understood as parts of more general theories of judicial review and authority. The Article compares recent case law of the U.S. Supreme Court and the Supreme Court of Canada to construct enforcement and dialogic models of judicial reasoning. The analysis juxtaposes judicial attitudes about foreign law to concerns about local authority and the interrelationship of legal institutions in a domestic system. The purpose is not to detail how the use of foreign law impacts the development of a particular legal doctrine, but rather to discuss how the acceptance or rejection of foreign law fits within or transforms other aspects of judicial reasoning. The Article ultimately suggests that comparative analysis neither necessarily undermines local authority nor disconnects legal analysis from its local origins when encompassed in the dialogic model.

Sustainable Development is Security: The Role of Transboundary River Agreements as a Confidence Building Measure (CBM) in South Asia *James Kraska* 465

The disciplines of international law and international relations have proceeded independently, as well as in collaboration, to examine the role of international rules in the modern world. The relatively recent concept of environmental security—that military security is linked to, or even dependent upon, environmental quality—has become an especially prominent theme amenable to interdisciplinary inquiry.

Freshwater is perhaps the key to environmental sustainability throughout much of the world, and resource competition throughout international river basins can be acute. International law and international relations scholars have developed a striking correlation between insufficient quantity and quality of freshwater, and increased international tension and war, especially along international rivers. Israeli and Arab competition for access to Jordan River water exemplifies this model

This Article offers a different lens through which to view transboundary river agreements by introducing their role as CBMs; the "spillover" effects of these agreements can reduce tension and help to prevent war throughout the river basin. The agreements do so by serving as a mechanism for substantive and procedural compliance, creating healthy monitoring and verification regimes, and by weaving stakeholders among competing epistemological communities such as law, engineering, economics, security, and non-governmental organizations, into a single, focused network. The direct and collateral benefits of the experience of the Ganges and Indus agreements serve as compelling examples by which the parties turned the traditional environmental security model on its head. These findings suggest that the pursuit of sustainable development generates security, and that security is not a precursor to sustainable development.

Lawyering for Justice and the Inevitability of International Human Rights Clinics *Deena R. Hurwitz* 505

As globalization forces a deeper understanding of social and legal pluralism, law schools must respond by redesigning their curricula to meet the challenges of a transnational public order and legal practice. International human rights law, in particular, now must constitute a part of any legal training that is truly relevant to the contemporary world—especially in view of the new and multifarious human rights problems associated with globalization, many of which affect and concern each member of the global community no matter where the actual human rights violation occurs. Legal education institutions thus face a challenge of determining how such an ethic of global responsibility can most effectively be taught. This Article posits that, given the highly practical and fundamentally values-driven nature of human rights law, human rights education is greatly enhanced through an applied—that is, clinical—component. In this respect, human rights lawyering draws important parallels to the work of the traditional poverty law clinics of the 1970s and 1980s—and indeed can be considered a modern manifestation of the original social justice mission of those clinics. After a brief overview of the contours of human rights practice, this Article explores how human rights clinics are both part of this tradition of clinical legal education and, at the same time, different from conventional clinics. In making the case for increased reliance on the clinical model, it also examines how lecture and seminar courses are limited in their capacity to properly teach international human rights. It then proceeds to consider the structure and pedagogical goals of international human rights clinics and to discuss aspects of projects that are most meaningful for teaching human rights advocacy. Finally, the Article discusses some of the tensions and challenges inherent to human rights clinics that ultimately give them their pedagogical dynamism.