Although investment treaty arbitration has become the most common method for settling investor–state disputes, some scholars and practitioners have expressed concern regarding the magnitude of decision-making power allocated to investment treaty tribunals. Many of the recent arbitral awards have determined the boundary between two conflicting values: the legitimate sphere for state regulation in the pursuit of public goods, on the one hand, and the protection of foreign investments from state interference on the other. Can comparative reasoning help adjudicators in interpreting and applying broad and open-ended investment treaty provisions? Can the use of analogies contribute to the current debate over the legitimacy of investor–state arbitration, facilitating the consideration of the commonweal in the same? How should comparisons be made? What are the limits, if any, of comparative approaches to investment treaty law and arbitration? This book scrutinises the impact a comparative approach can have on investment law, and identifies methods for drawing sound analogies.

Valentina Vadi is Professor of International Economic Law at Lancaster University. She is the author of Public Health in International Investment Law and Arbitration (Routledge, 2012) and Cultural Heritage in International Investment Law and Arbitration (Cambridge University Press, 2014).
ANALOGIES IN INTERNATIONAL INVESTMENT LAW AND ARBITRATION

VALENTINA VADI

Lancaster University
To the memory of my beloved grandmother, Lora
CONTENTS

Preface page xi
Acknowledgements xii

Introduction 1

PART I Comparative reasoning and international investment law 11
Introductory note 13

1 Comparative law, methods and reasoning 16
Introduction 16
Comparative law 19
Comparative methods 28
Analogies as a tool of legal interpretation 35
Analogia legis 38
Analogia juris 39
Analogies in international law 41
Conclusions 43

2 International investment law and arbitration 45
Introduction 45
Multilateral failures and bilateral successes 47
Substantive standards of protection 51
The settlement of disputes between foreign investors and states 55
Main characteristics of investor–state arbitration 57
The different conceptualisations of investment treaty arbitration 60
International investment law and its discontents 64
Final remarks 67

3 Comparative reasoning and international investment law 69
Introduction 69
Comparative investment law 78
Comparative arbitration law 81
Legal doctrine 84
Judicial borrowing 88
Reference to previous arbitral awards 92
Reference to the jurisprudence of other international courts and tribunals 97
Reference to the jurisprudence of national courts 104
Treaty interpretation 110
The emergence of general principles of law 119
Conclusions 127

PART II Analogies in investment treaty arbitration 133
Introductory note 135

4 Micro-comparisons in investment treaty arbitration 137
Introduction 137
Analogies in arbitral awards as subsidiary means for the determination of rules of law 138
Reference to previous arbitral awards 141
Reference to the jurisprudence of other international courts 144
The jurisprudence of the ICJ 145
The WTO jurisprudence 148
## CONTENTS

Reference to the jurisprudence of regional courts 159
Reference to the jurisprudence of national courts 162

Analogies in doctrinal writings as subsidiary means for the determination of rules of law 164

Comparative surveys as a legitimating factor of policy measures and as evidence of state practice 166

Critical assessment 172

Conclusions 174

5 Macro-comparisons in investment treaty arbitration 175

Introduction 175

The commercial law paradigm 182

The rise of the public law paradigm 188
  The migration of constitutional ideas: proportionality as a case study 195
  Proportionality in investment treaty arbitration 198
  The promises and pitfalls of proportionality analysis 203

The international public law paradigm 207
  WTO law 209
  Human rights law 217

Critical assessment 219

Conclusions 225

6 Comparative reasoning in international investment law and arbitration: challenges and prospects 227

Introduction 227

The merit of using analogies in international investment law and arbitration 229

Analogies and the coalescence of general principles of law 231

Analogies, legal transplants and their perils 235

Why a public international law paradigm should be preferred 239
CONTENTS

What can comparative lawyers and international investment lawyers learn from each other? 243
A comparative practice in search of a methodology 246
Final remarks 254
Conclusions 256

Bibliography 261
Index 295
PREFACE

The original idea for this book came about in 2009 when I was completing my doctoral thesis at the European University Institute, Florence. Coming across a large number of comparisons and instances of judicial borrowing in investment treaty arbitrations, I began to wonder why, when, how and what kind of analogies are made by investment treaty tribunals. Finding no conclusive answers to these questions in the available literature, I started investigating the matter. Comparisons may play a crucial role in legitimising (and/or increasing the perception of legitimacy of) the investment treaty system. At the same time, critical analysis is needed to provide a sound theoretical framework to comparative analysis. It is my belief that a study of this kind may contribute to making investment treaty arbitration more consistent, fair and predictable.
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V.V.

Florence, August 2015