MANIFESTATIONS OF COHERENCE AND INVESTOR–STATE ARBITRATION

Coherence is highly valued in law. It is especially sought after in investor–state dispute settlement, where charges of incoherence in arbitral awards have long been raised by states and scholars. Yet coherence is a largely underexplored notion in international law. Often, coherence is treated as a mere ideal to strive towards or simply as a different way to describe the legal consistency of judicial outcomes. This book takes a different approach. It views coherence as an independent concept having two dimensions: a substantive and a methodological one. Both are critical for legal reasoning by international courts and tribunals, including by investor–state tribunals, and the book illustrates through several case studies some of the ways this conclusion is borne out in practice. A fuller understanding of coherence in international law has implications for the way we should understand the concept of law, the practice of legal reasoning, and judicial professional ethics.

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PREFACE AND ACKNOWLEDGEMENTS

This book is a product of my doctoral studies, which I undertook at the Graduate Institute of International and Development Studies. Interestingly, coherence was not the topic I had initially chosen to pursue. This was, rather, general principles of law and their use in investor–state arbitration. I came to coherence almost by accident. Coherence kept turning up in my readings, often in vague and under-analysed ways but undoubtedly as an important concept.

Indeed, coherence is a largely underexamined concept in international law. It is frequently seen as a good thing and as an ideal towards which to strive, but there appears to be little study on any other aspects of it or on any implications that it may have in the legal field. International lawyers agree that coherence is a desirable goal to pursue but tend to stop there and do not scrutinise the matter further. Legal reasoning is therefore an especially fruitful area for one to examine coherence. In international investment law in particular, the relevance and potential practical implications of coherence for legal reasoning are demonstrated in the debate on investor–state dispute settlement reform taking place at Working Group III of the United Nations Commission on International Trade Law (UNCITRAL). The Working Group's mandate is to improve, among other concerns, the coherence of investor–state awards.

The present study thus seeks to take the first steps towards unpacking coherence and identifying its implications – both theoretical and practical – for legal reasoning in international law. While my primary focus in this book is on investor–state arbitration, my intention has been to also contribute to the international legal field more generally. Indeed, the remarks made in the book can be extrapolated and made to cover general international law with only minor modifications. At the same time, I also wanted my examination of coherence to be attuned to the latter's theoretical dimensions. This has often resulted in the book's chapters having to perform a balancing act between theory and practice, as well as between international investment and general international law. Every

effort has been made for all of these aspects to complement each other as much as possible. My overall hope is for this study to create greater awareness about coherence and its manifold manifestations in international law and legal reasoning.

In seeing this project to completion, I have collected a few debts of gratitude that I wish to acknowledge here. First and foremost, I am grateful to Zachary Douglas for giving me the opportunity to embark on the doctoral adventure in the first place. I am grateful to Thomas Schultz and George Letsas for kindly agreeing to serve as examiners. Andrea Bianchi, Joost Pauwelyn, and Fuad Zarbiyev have all influenced significant parts of this book with their teaching. While at the Graduate Institute, I was fortunate to benefit from the institute's financial assistance throughout my studies. On several occasions, I had the opportunity to work at the Investment Agreements Section at the United Nations Conference on Trade and Development (UNCTAD), which greatly improved my understanding of investment treaties. I am grateful to Elisabeth Tuerk, Diana Rosert, and Hamed El-Kady for their continued trust.

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