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Investment Treaty Arbitration Judging Under Uncertainty

Investment claims have exposed the vague nature of the standards by which arbitral tribunals are expected to adjudicate them and the policy reasons which explicitly or implicitly have an influence. The ad hoc nature of the tribunals and the decisions reached on various controversial issues have brought to the fore the issue of consistency.

Andrés Rigo Sureda's Hersch Lauterpacht Memorial Lectures examine how arbitral discretion is exercised in the face of uncertainty of the law. It explores the choices made by arbitral tribunals as they approach treaty interpretation, as they search for limits in determining jurisdiction and the content of the standards of protection, and as they search for consistency in the exercise of arbitral discretion.

ANDRÉS RIGO SUREDA is a judge on the Administrative Tribunal of the IMF and a member of the Sanctions Committee (the Anticorruption Tribunal) of the Inter-American Development Bank. He has extensive experience as an arbitrator and mediator in commercial and investor-states disputes, and served with the World Bank in various capacities from 1973 to 2000, including Assistant General Counsel and Deputy General Counsel.

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Foreword

by Sir Elihu Lauterpacht C.B.E. Q.C. LL.D.

In the remarkable substantive and procedural expansion of international law during the last half-century the development and protection of international investment has occupied a prominent position. And within this area a significant contribution has come from the impressive growth in the international litigation that is one of the principal reflections of the enhanced status of individuals and corporations in the international legal system. In the forefront has been the adoption in 1965 of the International Convention on the Settlement of Investment Disputes, together with the emergence of hundreds of bilateral treaties containing watertight provisions for the settlement of such disputes. The present thoughtful and incisive book identifies and probes many of the problems now embedded in the extensive arbitral jurisprudence reflecting this development. They have deep significance for international law.

Nobody could be better qualified to explore these matters than the present author, Dr Andrés Rigo Sureda. For more than twenty-five years he occupied a central position in this field as one of the leading lawyers of the World Bank, eventually becoming its Deputy General Counsel. Since leaving the Bank he has himself been an active practitioner and arbitrator in the field. His connection with Cambridge goes back to 1968 when he was a Ph.D. student on an Overseas Research Fellowship of the BIICL and later a Senior Rouse Bell Student of Trinity College. We remain grateful to him for contributing this stimulating study, originally given as a series of Hersch Lauterpacht Memorial Lectures, containing much enlightening discussion of perennial problems of international adjudication, not the least of which is his penetrating treatment of the role and limits of judicial discretion.

E. Lauterpacht
June 2011

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