

Intellectual Property Objectives in International Investment Agreements

by Pratyush Nath UPRETI. Cheltenham, UK: Edward Elgar Publishing, 2022. 292 pp. Hardcover: £95.00; eBook: £20.00/\$26.00. doi: 10.4337/9781802204216

Chen YU

Faculty of Law, National University of Singapore, Singapore

One of the major criticisms against investor-State dispute settlement (ISDS) is its threat to host states' legitimate regulatory rights: international investment agreements (IIAs) are primarily designed to protect foreign investments, and ISDS tribunals frequently interpret the vague IIA obligations broadly in favour of investors. This problem can be particularly salient in disputes involving Intellectual Property Rights (IPRs). As Dr Pratyush Nath Upreti points out in his timely and well-researched book, *Intellectual Property Objectives in International Investment Agreements*, social objectives are embedded in domestic and international intellectual property (IP) legal orders, and they risk being undermined in an investment-protection-oriented legal regime.

The book tackles the tension between IIAs and IP regulation and provides normative suggestions for reconciling their competing objectives (i.e. investment protection v. social objectives). To be more specific, Chapter 2 showcases the central role of social objectives in international IP norms (particularly Articles 7 and 8 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)). Chapter 3, which examines the key features of international investment law, suggests that ISDS tribunals tend to emphasize the property rights of investments but overlook their social functions. Chapter 4 tackles the important question of whether IPRs can be considered investments in IIAs. Critically assessing the features of IPRs against the criteria established in ISDS jurisprudence (i.e. the *Salini* test) as well as the functions of investment through the lens of IPRs, it concludes that IPRs *per se* should not be equated with investments. Chapter 5 reaffirms the importance of national laws in ISDS given the territoriality nature of IPRs; it also proposes viable approaches to ensure that national exceptions and limitations to IPRs are considered in ISDS. Chapter 6 analyzes the review of domestic courts' decisions by ISDS tribunals and discusses potential approaches to secure the autonomy of domestic regulatory and judicial organs.

Based on the discussion in the preceding Chapters, the author proposes in Chapter 7 a novel avenue to safeguard the social objectives of IP in ISDS; that is, to include *sui generis* IP exceptions in IIAs that consist of TRIPS Articles 7 and 8. According to the author, this method can effectively supplement other methods such as proportionality, the margin of appreciation, and general exceptions. The proposal is convincing. The assessment of other methods, nevertheless, could benefit from further critical analysis of the inherent tension between domestic IP regulation for public purposes on the one hand and investment tribunals' (possibly enlarging) lawmaking power on the other. As the author also emphasizes in Chapter 5, granting more deference to domestic regulations is critical for safeguarding IP's social objectives, while allowing tribunals to engage with, for example, proportionality analysis, creates more chances for them to conduct substantive reviews of host States' IP policies, thus systemically increasing the risk of impeding domestic regulation.

Overall, the book makes a novel and timely contribution to studying the intersection between international investment law and IP. Its discussion also has important

implications for other issues in IIAs that are intertwined with social objectives, which is particularly valuable for the ongoing discourse on investment law reform.

Competing interests. The author declares none.

doi:10.1017/S2044251323000061

National Security of India and International Law

**edited by Bimal N. PATEL. Leiden: Brill Nijhoff, 2020. xvi + 237 pp.
Hardcover: €199.00/USD\$239.00; eBook: €199.00/USD\$239.00.
doi: 10.1163/9789004427563.**

Shannu NARAYAN

Indian Institute of Management Kozhikode (IIMK), Kerala, India

National Security Law has been debated since the early 1990s; however, within the Indian context, this book is the first of its kind and approaches the subject with an interdisciplinary approach transcending various fields of study including law, politics, economics, society, and security. The authors argue for India to have a national security policy by enumerating the challenges India faces and analyzing whether the current international law framework contributes to the protection of India's interests. In devising a strategy, India should adopt a Janus-faced to assert its position in key areas of global concern, while simultaneously focusing on tailor-made theories to address matters of internal concern. The narrative of India emerging as a superpower is a distant dream considering its limitations in addressing various transnational organized crimes due to the region's geopolitical situation. This work clarifies India's foreign policy paradigm shift since independence, from being a third-world non-aligned champion during its nascent stage to using international law language to emphasize its relative power position in the region.

India, as explained in the Introduction, is "fighting 'mini-state syndrome' and asserting to be a major power", if not a superpower. Having a comprehensive intelligence framework backed by law and high-end technology will be useful wherein autonomy and accountability of the intelligence agencies go hand-in-hand. A structured space program fitting both security and commercial requirements would be beneficial. From the natural resources preservation and water security angle, it is imperative for India to re-assess its sustainable use, sustainable development, and conservation, taking into account its long-term goal towards maximization of its available resources. Being a responsible peaceful nuclear-advanced country, one of the chapters analyzes how India could revisit the nuclear exceptionalism approach to attain a common nuclear knowledge management network with limited transparency. To enable India to shift from the world's largest arms importer to a self-sufficient defence developer, it is suggested that India engages with private players in defence manufacturing through various projects that may be ancillary to sovereign functions.

To address the refugee issue, it is again argued that the current refugee management strategies should be reassessed in order to curtail terrorist attacks on its civilian and military populations. Hence, one of the chapters puts forth a justification for the use of force for self-defence based on necessity and proportionality. There is a need for India to spearhead the anti-terrorism movement, at least at the regional level (for example, through the