

PIGEONHOLING HUMAN RIGHTS IN INTERNATIONAL INVESTMENT ARBITRATION: A CLAIM OR DEFENCE?

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Human rights and investment laws do not seem to stand at odds with each other, as it was previously thought. The recent developments show that human rights considerations in international investment arbitration could be invoked either as a state defence or an investor's rights. Arbitral tribunals might invoke human rights *sua sponte* in their decisions. Accordingly, in *Urbaser v. Argentina* (2016), Argentina, subjected to arbitration due to its emergency measures in the financial crisis, alleged that the concessionaire that supplied water failed to provide the necessary level of investment and thus violated the right to water. In *Grandriver Enterprise v. the U.S.* (2011), the investors belonging to indigenous people claimed that the term investment, as well as the fair and equitable treatment clause, had to be interpreted by taking into account indigenous peoples' rights. In *Micula v. Romania* (2008), the tribunal noted that it would be 'mindful' of Article 15 of the Universal Declaration of Human Rights when deciding on the legality of the deprivation of nationality.

While the readiness of tribunals to use human rights as authority for their decisions has not aroused major controversies (and has remained largely untheorised), there is an ongoing heated debate regarding the issues of whether investors' rights included in investment treaties are human rights and whether a host state can use human rights as its defence to justify regulatory measures affecting the investment. The paper offers an assessment of the pigeonholing of human rights considerations in international investment arbitration from the perspective of human rights law with the aim of demonstrating that while human rights can justify the host state's legitimate right to adopt regulatory measures to protect human rights, the investor's rights are not human rights, although some rights granted to the investors in the investment treaties tend to echo human rights.