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THE PAPER STUDIES THE INTERACTIONS BETWEEN INTERNATIONAL INVESTMENT LAW AND PUBLIC INTERESTS IN TWO AREAS: WHILE NEGOTIATING INVESTMENT AGREEMENTS AND IN INVESTMENT ARBITRATION

Although it is true that the incorporation of public interest into bilateral and multilateral agreements on protection of investments is partial, basically affecting labour and environmental rights, it is no less so that this interplay makes the creation of legal coordination techniques necessary to ensure the systematic interpretation of these treaties, the contents of which are increasingly complex. From a material point of view, some BITs provide for the possibility of invoking the principle of systemic integration, whereas certain multilateral free trade agreements (CAFTA-DR) codify the principle of *lex superior* and, in the event of a conflict, the chapters dedicated to protecting public interest prevail over the chapter that contains the obligations to protect investments.

Interactions between international investment Law, international human rights Law and international environmental Law can also be seen in investment arbitration. These interactions can be analysed from a substantive and procedural perspective.

The interactions of a substantive nature between the different legal subsystems relate to a presumption of compatibility between all of them, endorsed by both the IACtHR (*Sawhoyamaxa*) and by investment tribunals (*Suez*), as in general, investment treaties do not set out homogeneous legal mechanisms to settle any conflict between the international regime of foreign investment protection and public interests. The limited acceptance of the principle of systemic integration in international investment Law requires the use of other legal coordination techniques. Accordingly, this opens up the possibility of establishing «gateways» through concepts and categories generally used in public Law, such as legitimate expectations (*Tecmed*) or the principle of proportionality (*Yukos*). More caution should be used when the intention is to apply autonomous notions from international human rights Law, such as the margin of appreciation, automatically and by analogy, because they have their own specific characteristics that make their adaptation to another legal subsystem extremely complex (*Continental Casualty*).

The interactions of a procedural nature reflect, first of all, the need to overcome the risks arising from the proliferation of adjudication bodies in international Law through dialogue between international jurisdictions. The possibility of an investor initiating parallel proceedings before different dispute settlement bodies, in both international investment Law and international human rights Law, allows the phenomenon of sectorialisation of public international Law to be channelled and there should be no problems of horizontal compatibility, as long as arbitral tribunals restrict their activity to the settlement of disputes originating in the normative regime where they operate and with the instruments it

provides (*Yukos*). In the presence of a vertical conflict between international and national judicial bodies (*Chevron*), it may be necessary to resort to mechanisms of an inter-State character, such as diplomatic protection, to elucidate the fulfilment of international obligations. Secondly, interactions of a procedural nature contribute to an adjustment between the rights of foreign investors and the obligations of host States, a balance traditionally tipped towards the side of the investor. Finally, the intervention of third parties as *amicus curiae* in investment arbitration favours the incorporation of public interests into arbitration, and enables a cohesive interpretation of the categories, institutions and general rules of international Law.