

Contents

Abbreviations	13
Part one	
Introduction	17
1. The Clash of Two Transnational Juridical Phenomena	17
Chapter one	20
1. The Meaning and Sources of Human Rights	20
1.1. Meaning	20
1.2. Sources of Positive Human Rights Law	23
1.2.1. The Universal Protection of Human Rights	23
1.2.1.1. Universal Declaration of Human Rights of November 10, 1948	23
1.2.1.2. International Covenant on Civil and Political Rights of December 19, 1966	24
1.2.2. The European Convention on Human Rights and Fundamental Freedoms of November 4, 1950 (EHRC)	26
2. Status of Human Rights Law in International Law and the Features of Human Rights	28
2.1. Legal Status of Human Rights Law in International Law	28
2.1.1. The UN Universal Declaration on Human Rights	28
2.1.2. Human Rights Covenants and Conventions	30
2.1.2.1. The Legal Character of the Catalogue of the International Bill of Human Rights	33
2.1.2.1.1. Introductory Remarks on the Hierarchy of Norms in International Law	33
2.1.2.1.1.1. The Universal Declaration as a Part of Jus Cogens	36
2.1.2.1.1.2. The Hierarchical Status of the Political Covenant in International Law	43
2.1.2.2. The Particular Legal Character of the EHRC	50
2.2. The General Features of Human Rights	61
3. The Place of the International Human Rights Law in Municipal Law	63
3.1. The Self-Executing Character of the Human Rights Norms	65
3.2. Belgium	70
3.3. France	72
3.4. Switzerland	74

Chapter two	76
1. The Hierarchical Relationship and Conflict between Treaties	76
1.1. Introductory Remarks	76
1.2. The Relationship between the EHRC and the Political Covenant	78
1.3. The Relationship between Human Rights Treaties and Treaties in the Matters of International Commercial Arbitration	81
2. Conclusions to Part One	85
Part two	
The applicability of human rights instruments	89
1. General Remarks	89
2. The Interpretation of Human Rights Instruments	89
3. Applicability Ratione Loci	95
4. Applicability Ratione Materiae	97
5. Applicability Ratione Personae	99
5.1. Introductory Remarks	99
5.2. Individual	100
5.2.1. The Victim Requirement	101
5.2.1.1. Potential Victim	102
5.2.1.2. Indirect Victim	103
5.3. States	105
5.3.1. Introductory Remarks	105
5.3.2. The Character of State's Obligations	106
5.3.2.1. The Horizontal Applicability (Drittwirkung) of Human Rights Instruments	108
5.3.2.1.1. The Horizontal Effects at Domestic Level	114
5.3.2.1.1.1. Belgium	114
5.3.2.1.1.2. France	114
5.3.2.1.1.3. Switzerland	117
5.3.2.1.2. The Horizontal Effects at International Level	118
5.3.2.1.3. The Responsibility of States under the Human Rights Instruments	122
6. The Applicability of Human Rights Instruments to Voluntary Arbitration	128
6.1. Basic Features of Voluntary Arbitration	128
6.1.1. Notion and Status of Arbitration in the Municipal Legal System	128
6.1.2. Arbitration Agreement	133
6.1.2.1. Independence of Arbitration Agreement and Applicable Law	134
6.1.2.2. Interpretation and Scope of Arbitration Agreement	136
6.1.2.2.1. Towards the Establishing of Arbitral Jurisdiction: Pathological Arbitral Clauses	137
6.1.2.2.2. Scope of Arbitration Agreement Ratione Personae	145
6.1.3. Arbitral Proceedings	149
6.1.3.1. Multi-Party Arbitration	153

6.1.3.1.1.	Introductory Remarks	153
6.1.3.1.2.	The Joinder	155
6.1.3.1.2.1.	Compulsory Joinder	155
6.1.3.1.2.2.	Permissive Joinder	156
6.1.3.1.2.3.	The Joining of a Third Party	158
6.1.3.1.2.4.	Consolidation	161
6.1.4.	Judicial Control of Arbitral Award	166
6.1.4.1.	General Remarks	166
6.1.4.2.	Setting Aside of Arbitral Award	168
6.1.4.2.1.	Toward Degrading the Setting Aside Procedure	170
6.1.4.3.	Recognition and Enforcement of Arbitral Awards	175
6.1.4.3.1.	Particularities	178
6.2.	Different Approaches toward the Applicability of Human Rights Instruments to Voluntary Arbitration	183
6.2.1.	The Consistency and Plausibility of the Waiver Theory	201
6.2.1.1.	The Party Autonomy and Restrictions Thereon	204
6.2.1.1.1.	The Waiver of the Right to a Fair Administration of Justice (Justizgewährungsanspruch)	205
6.3.	Responsibility of States	210
7.	Conclusions to Part Two	215
Part three		
The protection of human rights in arbitration proceedings		221
Chapter one		221
1.	General Considerations	221
1.2.	Some Preliminary Observations on Procedural Guarantees Applicable to Voluntary Arbitration	225
1.2.1.	The Right to a Fair Hearing and Arbitral Proceedings	227
1.2.3.	The Right to an Independent and Impartial Arbitration Tribunal	244
Chapter two		277
1.	Violations of Human Rights in the Arbitral Process	277
1.1.	Introductory Remarks	277
1.2.	The Right of Access to a Court	277
1.2.1.	The Right of Access to a Tribunal and the Extension of Arbitration Agreement	279
1.2.2.	The Right of Access to a Tribunal and the Setting Aside of Arbitral Awards	280
1.2.2.1.	Dispute over Civil Rights and Obligations	283
1.2.2.2.	Article 1717 (4) of the Belgian Code judiciaire (former version)	285
1.2.2.2.1.	Article 1717 (4) of the Belgian Code judiciaire (former version) and the Right of Access to a Court	285
1.2.2.2.2.	Article 1717 (4) of the Belgian Code judiciaire (former version) and the Right to an Effective Remedy	293

1.2.2.2.3.	Article 1704 (4) of the Belgian Code judiciaire (former version) and Prohibition of Discrimination _____	301
1.2.2.3.	Article 192 (1) of the IPRG and Article 1717 (4) of the Belgian Code Judiciaire _____	309
1.2.2.3.1.	Waiver of the Setting Aside Procedures and the Right of Access to a Court _____	310
1.2.2.3.2.	Waiver of the Setting Aside Procedures and Prohibition of Discrimination _____	315
1.3.	The Right to a Competent Arbitral Tribunal _____	318
2.	The Obligation of States to Recognise Foreign Arbitral Awards _____	320
2.1.	Introductory Remarks _____	320
2.2.	Ban on Unrestricted Enforcement _____	321
2.2.1.	The Annulment of the Award in Forum Arbitri and Its Exequatur in the Enforcement Forum _____	322
2.2.2.	Article IX. of the European Convention and the Recognition of Annulled Foreign Arbitral Awards _____	325
3.	Conclusions to Part Three _____	327
Table of cases _____		337
Index _____		343
Literature _____		351