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Human Rights and International Investment Protection

In the past, legal research has mainly focused on possible collisions between International Investment Law (IIL) and International Human Rights Law (IHRL). In a fragmented international legal order obligations to protect foreign investment can potentially hinder states from fulfilling their obligations under human rights treaties. Although practical examples of norm collisions between the two fields of law have been the exception, at least the regulatory chill that IIL may trigger for national legislation, particularly with respect to human rights, seems widely accepted. However, lately a new approach is gaining increasing support in the academic community: Investment protection could be understood as being part of human rights law. This understanding may seem farfetched at first, most prominently because investment protection is generally only awarded to foreign investors and as such at least *de lege lata* does not constitute a human right. From a conceptual perspective, however, IIL and IHRL share more common ground than differences. Thus, it is not surprising that both fields of the law share common roots in the customary rules of international law protecting the rights of aliens and that prior to the establishment of the relevant treaties, - ICCPR, ICESCR on the one hand, ICSID and numerous BITS on the other hand - the protection of property was widely considered to be part of human rights protection. As such it rather seems surprising that IIL and IHRL at some point in their respective developments took divergent paths.

In this contribution, I will introduce two key points: First, that certain material standards of IIL can be understood as emerging human rights and, second, that this assumption will in no way lead to a neoliberal proliferation of economic rights but to the contrary may serve as important methodological tool to balance economic rights with other fundamental human rights in case of norm conflict. After all, IIL could prove to be not more, but also not less, than “One Out of a Crowd” of all other fundamental human rights.