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Informazioni sul volume

This book examines the relationship between the substantive protection afforded to private parties by international law and their capacity to invoke such protection before an international body. Indeed, the two do not necessarily coincide. A rule may protect individuals while reserving its invocation to States, or may permit private participation without conferring control over the proceedings or access to an enforceable remedy. The inquiry therefore concerns not simply whether individuals possess international rights, but who may invoke them, before which forum, under what conditions and with what legal consequences.

To address this question, the book develops the concept of procedural agency: the legally conferred capacity of private parties to influence the institution, conduct and outcome of an international proceeding. That capacity is neither unitary nor absolute: it may be divided among claimants, beneficiaries, representative bodies, States and international institutions. The analysis accordingly considers the jurisdictional basis of each mechanism, standing and admissibility, provisional protection, costs, participation, the legal force of the outcome and the conditions governing its enforcement. These criteria are applied to international human-rights procedures, ICSID and UNCITRAL arbitration, and climate-related practice.

The central argument is that the international legal position of private parties is better described through differentiated forms of procedural agency than through a general right of access to international justice. International practice has sometimes limited States' control over

procedures already established, notably by protecting individual application, restricting the withdrawal of declarations accepting complaints or deriving procedural consequences from good-faith participation in treaty regimes. These developments do not, however, establish a general obligation to grant direct access: they support the more limited proposition that a procedural capacity – once conferred – may acquire a degree of legal security independent of the continuing will of the State.

In this context, the specific comparison between investment protection, human rights and environmental obligations shows that substantive hierarchy and procedural design must be kept distinct. Treaty interpretation may promote coordination among regimes, while jurisdictional clauses, revised consent and enforcement rules may restrict the procedural reach of investment claims. Such techniques determine whether a claim may be brought and with what effect; they do not, by themselves, resolve the normative relationship between the underlying obligations.

The analysis ultimately identifies both a claimant deficit, where no private actor is authorised to invoke an obligation, and a remedial inversion, where strong substantive recognition is accompanied by weak procedural protection. To this end, the right to a clean, healthy and sustainable environment provides a prominent example: its normative recognition has expanded, while the procedural means available to individuals remain fragmented and uneven.

The book therefore replaces the conventional opposition between international subjects and mere beneficiaries with a graduated account of procedural positions. These range from the direct claimant to the petitioner lacking judicial seisin, the represented beneficiary, the collective or associative applicant, the non-party participant and the person protected by an obligation invocable only by States. It also includes holders of internationally derived rights enforceable before domestic courts but not before international bodies. The procedural position of private parties is thus determined less by abstract legal personality than by the rules governing consent, jurisdiction, invocation and remedy. International protection becomes access only where the law identifies an authorised claimant, a competent forum and a legally consequential form of relief.