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PRESENTAZIONE DEL VOLUME

Informazioni generali

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Informazioni sul volume

This book provides an in-depth analysis of equality of parties in international adjudication beyond the conventional interstate framework. It challenges the idea that party equality in international proceedings follows only from sovereign equality and shows that this assumption is ill-suited to disputes involving private actors. The book argues that equality can be protected in asymmetric proceedings between states or international organizations and private entities, even when the parties are not formally equal in the international legal order. Drawing on investor-state arbitration, regional human rights courts and international administrative tribunals, the book identifies a common legal foundation for equality of parties in a general principle of law derived from national approaches to administrative adjudication.

Equality of parties is one of the typical elements of the “ideal” adjudicative body. Traditionally understood as a procedural expression of formal equality before the law, it has often been treated in international adjudication as a corollary of sovereign equality: since states are equal on the international plane, they must also be equal before international courts and tribunals. This assumption works well as long as international adjudication performs its classic function

of settling disputes between states. It becomes less persuasive, however, when the parties to international proceedings do not share the same legal status.

Equality of Parties in International Adjudication explores this difficulty by moving beyond the conventional interstate framework. Indeed, the proliferation of international courts and tribunals has opened international dispute settlement to individuals and legal persons whose position in the international legal order remains different from that of states and international organizations. While private entities may hold some rights and obligations under international law, their capacity to influence its formation remains distinctly limited. International adjudication thus increasingly brings together actors who are not formally equal, raising the question of whether, and on what legal basis, their procedural equality can nevertheless be protected.

The book defines proceedings between states or international organizations and private entities as “asymmetric proceedings”. This terminology conveys the absence of equality of legal status without assuming that the proceedings themselves are necessarily unequal. Indeed, whether an underlying asymmetry translates into procedural inequality is precisely what requires investigation. The traditional connection between equality of legal status and equality of parties cannot simply be reproduced in this context. Nor does sovereign equality provide sufficient guidance on the procedural treatment of actors whose international legal personality is limited or contested.

The central argument is that a general principle of law provides a common legal foundation for protecting equality of parties in asymmetric adjudication. Building on the International Court of Justice’s advisory opinions concerning decisions of international administrative tribunals and the International Law Commission’s work on general principles of law, the book examines whether such a principle exists, how its content should be defined and what functions it can perform. Its application does not depend on the parties enjoying equal status in the international legal order. Rather, it responds to the procedural challenges arising from that very absence of equality.

The analysis draws on three categories of proceedings: investor-state arbitration, regional human rights adjudication and international administrative adjudication. These mechanisms differ in their institutional structures, purposes and procedural arrangements, but all involve disputes between actors whose legal positions are structurally asymmetric. A comparative approach is adopted, as examining each system in isolation would risk reproducing the fragmentation of international adjudication in the protection of party equality.

The book develops its argument over four chapters. The first clarifies the different meanings of equality of parties and explains why asymmetric proceedings require a perspective distinct from that adopted in interstate disputes. The second and third examine the fragmented protection afforded by existing procedural frameworks, distinguishing between two branches of equality: equal access to justice and equality of arms. The analysis shows that procedural rules frequently offer only partial protection and leave questions unresolved. These gaps make it necessary to investigate whether a general rule can supplement the arrangements of individual courts and tribunals. The fourth chapter addresses this question by identifying a general principle of law derived from national legal systems, focusing on national approaches to administrative adjudication.

Ultimately, the book treats equality of parties as both a central aspiration of asymmetric adjudication and a procedural response to the structural inequalities of a state-centered international legal order. By identifying a common foundation across otherwise fragmented mechanisms, it seeks to clarify how international courts and tribunals can protect equality without presupposing an equality of legal status that does not exist.