Part II
The Context: Entering an Unjust Regime?

This part looks in more detail into one specific field of international economic regulation: international investment law. It demonstrates that this field of law is particularly exclusionary; it perpetuates human rights violations and discrimination existing at national level. That is first because it only grants access to the shaping and the implementation including the adjudication to certain actors and second because it is built on putting any regulation and state action under an assumption of breach including those that are aiming for human rights advancement and combatting exclusion such as affirmative action, redistributive justice or the protection of the most vulnerable parts of society as soon as it sets constraints to economic activity of foreign investors.

Chapter 4 demonstrates how the substantive international investment law captures and sanctions such state measures directly and how the diversity of threats and techniques of exclusion also lead to many human rights violations remaining concealed. This chapter also discusses the recent increased openness towards human rights in international investment law but concludes that it is still volatile because of its inconsistency, the lack of any authoritative methodology and a selective and therefore allegedly biased integration of certain human rights and methodology. This selective approach is manifesting the investor privilege and is not compatible with the indivisibility paradigm of human rights law. Further, such proposals for increased human rights integration in the literature and isolated attempts in arbitration are also volatile, because this regime so far developed into a largely autonomous field of law with uniform standards of good governance, which is partly backed by scholarship. Attempts to regain legislative control will therefore require increased efforts and textual clarity by the treaty makers.

Chapter 4 also explains how human rights interests, especially those of politically marginalized at local level, remain excluded at the procedural stage. Entry barriers are the lack of legal standing and the inconsistent and non-transparent approach towards *amicus curiae* submission and the lack of interest on the part of the host states in spelling out their own human rights obligations (and even less so their failures) and the resulting focus on regulatory discretion. For all these reasons,

this part concludes that the current structure of the regime substantively and procedurally shows little transformative potential.

Chapter 5 looks into the EU's position towards each of the problems identified in Chap. 4, which is in the midst of undergoing reforms. Although some individual aspects may therefore still undergo changes, Chap. 5 can already demonstrate that the strategies adopted so far as well as the identification of problems will only marginally remedy the systemic imbalance of rights protection. The EU reforms mainly target the procedural level, where substantial innovations were achieved. Nevertheless, the procedural reforms did not include legal standing for third parties and the substantive reforms did not add enough textual authority for articulating their interests nor sufficient methodological instructions for the arbitrators on how to respond to those. The EU's approach refrained from taking a clear stance on many of the debates identified as counter movements in Chap. 4.

However, as demonstrated in Chap. 4, making the current investment regime compliant with non-discriminatory human rights protection may require recalibrating certain provisions as well as their systemic interrelations and to reassess the impact of the regime as a whole. Reviewing the approaches adopted by the EU so far, it is not discernible how the obligation to integrate human rights protection and promotion was actually operationalized in the investment policy making cycle. Part III therefore proposes to reform the participation in the investment regime from a different angle. Those reforms are legally possible and to some extent even required and could help overcome the deeply rooted bias. Instead of the current EU approach, Part III focuses non-litigation methods that enable access to the law making and therefore to the contestation of such. Therefore, the proposals in Part III are not to be seen as a substitute to the current reforms nor for the still existing need for legal remedy; but rather as complementary methods that might reinforce the former. This approach is based on the conclusion that in light of the multiplicity of human rights threats, it seems essential to establish institutions that can reach out to the interests and experiences of deprivation of the previously disregarded which currently face difficulties in being recognized by all relevant actors in investment arbitration.