

Joanna Gomula, Stephan Wittich (eds.)

## Research Handbook on International Procedural Law

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[Výzkumná příručka o mezinárodním procesním právu]

One of the recent books published by Edward Elgar in its edition Research Handbooks deals with a very important but sometimes neglected issue of international procedural law. Therefore, it is the merit of both editors, Dr. Joanna Gomula, fellow at the Lauterpacht Centre for International Law, University of Cambridge, and Prof. Stephan Wittich, University of Vienna, together with the assistant editor Markus Stemeseder, that they collected, edited, and published this Research Handbook. The volume comprises 31 chapters divided into four parts, written by 40 authors from various countries not only in the West and East of Europe but of all continents. The Research Handbook was dedicated to the memory of Professor Hugh Thirlway, one of the co-authors of that book who passed away before its publication.

As the editors put in the preface, ‘it was the conviction that procedural rules not only are fundamental to the legitimacy and efficiency of proceedings, but also impacting or at least influencing the substantive outcome thereof (ultimately the decision on the merits), that lay at the origins of this *Research Handbook*.’ (p. xix)

In the general introduction, Stephan Wittich addressed the nature and meaning of procedure in international courts and tribunals. Starting from the outline of different meanings of the word *procedure* and *legal procedure*, he also presents the nature of procedural rules and objective, structure, and chapter overview of the Research Handbook. As it appears from the Content, the book focuses on the study of international procedure in the meaning of procedural rules on dispute settlement. It is not limited to the inter-state courts and tribunals but also takes into consideration other dispute settlement mechanisms.

Part I, titled “Introductory issues”, is opened by the chapter of the late Professor Thirlway which provides thoughts on the significance of procedure in the judicial settlement of international disputes. He looks at the difference in the nature of substantive and procedural law. He argues that substantive law as a rule determines the allocation of rights and obligations. This aspect of *right v. obligation* is however absent when the invoked law is procedural. It also means that a disregard of a procedural decision by one party will normally not be an infringement of the rights of the other party. The breach of procedural rules will usually not entail state responsibility either.

In Chapter 2, the authors (M. Scherer, A.D. Mitchell, and D. Prasad) search for the sources of procedural law in international dispute settlement. They range from specific treaty rules (statutes of courts and tribunals), general principles of law, customary law to judicial decisions, works of jurists, and even the inherent powers of courts. In Chapter 3, Philipp Janig focuses on one of the sources, general principles of law. Under the title of general principles of procedural law, he presents both principles with broad implications for the judicial process (such as good faith and the proper administration of justice), and specific procedural principles (e.g., competence-competence and *non ultra petita*). Finally, in

Chapter 4, Niccolò Ridi offers an empirical assessment of the use of precedents and explains how precedents can contribute to the development of international procedural law.

Part II deals with procedural aspects of selected courts and tribunals. It presents a really wide range of tribunals and other mechanisms of dispute settlement in various areas of international law. They include not only chapters on some usual and expected procedural issues of the International Tribunal for the Law of the Sea (K. J. Marciniak), WTO dispute settlement (C. Carmody), international investment treaty disputes (A. K. Bjorklund and D. Chawla), the Court of Justice of the European Union (A. Lazowski), or procedural questions in advisory proceedings (K. Schmalenbach). Some other chapters address procedural issues of international environmental disputes (L. Chiussi Curzi), international commercial arbitration (S. Kröll and M. M. Fargas), international administrative tribunals (T. A. Lim and O. Elias), settlement of disputes in Asian free trade agreements (M. Kawano), and inter-state disputes and Africa's supranational courts (M. Happold and O. Owiso).

While the second part of the Research Handbook discusses procedural issues of dispute settlement in various areas of international law (including some specialized tribunals and regional courts), Part III ("Institutions and concepts of the dispute settlement process") offers a different perspective. This part deals with important cross-cutting issues of international dispute settlement. The chapters cover a wide range of issues and concepts that are relevant to all or at least some means of dispute settlement. Some of them address theoretical concepts while the others present a more practical perspective. The topics include the issues such as public interest litigation before the ICJ (D. Tamada), jurisdiction and admissibility (J. Magnaye), conduct of proceedings (S. Georgilas), due process (S. Forlati), evidence, fact-finding, and experts (J. G. Devaney), proceedings incidental to main proceedings (K. U. Galka), intervention of a third party in international proceedings (J. A. Hofbauer), and the concept of *amicus curiae* and other forms of participation in judicial proceedings (P. Wojcikiewicz Almeida). In particular, the two last issues, i.e., intervention and *amicus curiae* participation, discern a new trend in proceedings before the ICJ. They perfectly complement the analysis of the case of public interest in disputes before the Court.

However, the individual chapters of this part cover not only the institutions and concepts pertaining to the conduct of proceedings but also judgments and post-judgment procedures. The authors cover judgements and the termination of proceedings (D. Costelloe), annulment (M. Jeżewski), appellate review (J. Gomula), judgment and compliance (L. F. Viveros-Montoya), post-judgment procedures before international courts and tribunals (M. Almeida Ribeiro), and alternative dispute settlement resolution methods (E. Sthoeger and F. Fontanelli).

Here, the individual contributions do justice to the cross-cutting nature of Part III, as they examine various institutions from the multiple perspectives (the ICJ, the WTO dispute settlement mechanism, investment treaty arbitration, and others). For example, as Joanna Gomula rightly put regarding appellate review, 'traditionally, it has been regarded as a procedural tool not well fitted for the predominantly one-tiered dispute settlement in international law.' With international law evolving, however, 'the institution of appeal has gradually become a more natural component of the international legal landscape' (pp. 504–505). Therefore, after presenting the concept and functions of appeal in international law, the author highlights some early (pre-1945) examples of the use of appeal (e.g., appeal to the PCIJ from the awards of mixed arbitral tribunals) and presents the role of the ICJ as a court

of appeal (e.g., from decisions of administrative tribunals or from the ICAO Council). Then, she provides an overview of selected modern appellate mechanisms, such as the WTO Appellate Body, bilateral and regional trade and investment agreements, and the proposal of a multilateral investment court.

Part IV, titled “International procedural law in making?”, attempts at providing more general, synthetizing conclusions and perspectives. The present Research Handbook does not include a single conclusion. Instead, three different chapters serve this purpose. The first one addresses the interplay between substantive and procedural law in the settlement of international disputes (Ch. Brown and R. Carvosso). The second discusses the interplay between private and public international law regarding procedure (M. Requejo Isidro and B. Hess). The last chapter deals with the proliferation of international courts and tribunals and their effects on procedure in the settlement of international disputes (B. Krzan).

To conclude, this Research Handbook presents the state-of-the-art knowledge in the field of international procedural law. It includes both general and specific institutions and concepts of international dispute settlement, both sectoral and cross-cutting perspectives. The depth of analysis and the clear presentation of many difficult issues must be commended. In my view, this Research Handbook will become an indispensable tool for academics and practitioners in international law. It may also be recommended to students, in particular on master or doctorate levels, who need to learn more on international dispute settlement.

*Pavel Šturma\**

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\* **Prof. JUDr. Pavel Šturma, DrSc.**, is professor at the Department of International Law, Faculty of Law, Charles University in Prague, senior research fellow at the Institute of Law of the Czech Academy of Sciences, President of the Czech Society of International Law and a former member of the UN International Law Commission. He is a co-author of the textbook *Public International Law* and author of many publications on codification of international law, international criminal law, human rights and international investment law.