Preface

The façade of the church of Santa Maria Novella in Florence has been considered as the perfect expression of the golden proportion, and as ‘the most important of the Renaissance’, setting the example that architects would follow for centuries to come.\(^1\) Its architect, the humanist Leon Battista Alberti (1404–1472), was credited with having elaborated the ‘first great example of eurhythmia’ and a remarkable system of proportions.\(^2\)

Yet, on a closer look, the façade of Santa Maria Novella presents irregular patterns, uneven structural elements and visible asymmetries that were typical in the Middle Ages.\(^3\) In fact, for quintessentially economic and legal reasons, the architect had to include ‘extensive portions of the existing medieval façade into his new design’.\(^4\) Alberti could not simply develop an entirely new façade relying on abstract theories of proportion; rather, he had to build upon the existing gothic elements, still visible in the lower section of the façade, devise new elements, and combine old and new features in an orderly fashion. Abstract theories had to be combined with concrete realities. Yet, Alberti combined the various ‘imperfections’ with sufficient elasticity to form an elegant façade that transcended the medieval origins of the church and led to the Renaissance.

In international investment law and arbitration something similar is happening.\(^5\) Like the façade of Santa Maria Novella in the fifteenth

\(^2\) Ibid.
\(^5\) Admittedly, this is not the first piece of international law scholarship that analogizes the debate on the functioning of international courts and tribunals to some architectural debate. See for instance D. Shelton, ‘Form, Function, and the Powers of International Courts’ (2009) *Chicago JIL* 537–71, 537 (on the debate raised by the construction of the first skyscrapers in Chicago). International law scholars have also analogized the international community to some architectural
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century, the arbitral jurisprudence remains a work in progress, and there are ongoing attempts to create order out of the existing chaos, systematize the field and enhance its perceived legitimacy. The proportionality concept has been seen as one of the available tools to calibrate investment law and its jurisprudence to emerging circumstances and make the system a more equilibrate one. Yet, the past cannot but influence some of the available choices. The proportionality analysis is an abstract theory ‘with a propensity for the best possible [option]’.6 Despite its best intentions, it can remain ineffective as the search for ‘the right proportion’ or perfection can prove to be elusive and remain ‘ideal’.

This is not to say, however, that the ongoing efforts of scholars, arbitrators and policy makers cannot, or will not achieve a sound, valuable and enduring outcome. International investment law is rising up over its old horizon, and gradually assuming a new shape. This book aims to contribute to this renaissance, examining the role that the concepts of proportionality and reasonableness, on the one hand, and standards of review, on the other, can play in devising the new architecture of international investment law and arbitration, thus contributing to its effectiveness, perceived legitimacy and justice.

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7 Ibid.