
Book Review

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Regionalism in International Investment Law
by: Leon E. Trakman and Nicola W. Ranieri
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The book, entitled *Regionalism in International investment Law*, was edited by Leon E. Trakman, who is a Professor at the Faculty of Law at the University in South Wales, author and editor of a lot of articles and several books, arbitrator, mediator, adjudicator, barrister, solicitor and advocate in one person, and Nicola W. Ranieri, former Director of the Centro Juridico Para el Comercio Inter-Americana in Mexico, a Panelist under the Nafta Chapter 19, a founding member of the NAFTA Consortium on Legal Education and a lot more.

This book consists of 16 chapters also including preface, introduction and appendix. It describes the historical background and development of the foreign direct investments, the protection of the foreign investors in particular regions, which are getting more and more important. It deals also with shaping of this field of law because of regional and bilateral influence.

Next, it explains forming the protocols of bilateral and multilateral agreements or treaties in last years. Several most important agreements and treaties are listed and their impact on background is analysed, which is of extreme importance. The book highlights different recent trends in the dispute resolution in investment law. It does not only follow the theoretical aspirations, it tries to be also practical literature and helps investors to understand the proceedings and tries to assist to plan their investments. This is getting more and more important in nowadays, where financial flows are unlimited and money knows no borders.

This topic is more and more discussed lately. Foreign direct investments are in the boom in recent years, despite the past financial and economic crisis which hit globally in 2008. Leon E. Trakman and Nicola W. Ranieri are not the first who concerns with this issue. We can mention, for example, the books edited by Kenneth A. Froot, Theodore H. Moran or Imad A. Moosa.

However, the reviewed book represents a good basis for academic as well as practitioners that deal with the topics. The first chapter by Leon E. Trakman and Nicola W. Ranieri, entitled *Foreign Direct Investment: An Overview*, tries to explain the

very subject-matter of the foreign direct investments¹ and mentions its different categories. Describes also the development of the FDI throughout the history till recent years. The chapter lists some possible ways how to regulate this field and demonstrates the very likely way how the instantaneous economical trend of international law will develop in the future.

The second chapter, authored by the editors of this book and entitled *Foreign Direct Investment: Historical Perspective*, highlights the influence of the politics on the FDI, provides us through the four periods of shaping of the FDI protocols, describes the forming of the General Agreement on Tariffs and Trade², NAFTA³ after the second world war and along hand in hand with GATT the forming of WTO.⁴ Other part of the chapter explains that the approach to the liberalisation of the market varies in different parts of the world, especially emphasises the soviet block and its rejecting of the free market. The chapter also commences as an alternative to the multilateral agreement the BITs⁵ and FTAs⁶ that were rising unstopably after the end of the war.

The third chapter, written by Colin B. Picker, called *International Investment Law: Some Legal Cultural Insights*, explains the definition of a legal culture and gives us the problematic idea how to differ legal culture from legal tradition and legal system and how hard is to do an analysis of some fields of a legal system. The chapter also underscores many obstacles that occur the analysis of the foreign direct investment division, especially highlights its non-complexity because of the fact that this field was formed only recently. In the last part of the chapter deals with different circumstances that have an influence on the results of the legal analysis.

Leon E. Trakman in the fourth chapter, called *Bilateral Trade and Investment Agreements*, analyses and evaluate the liberalisation of trade and investment and also its reasons, highlights the advantages of BITs and FTAs but on the contrary explains some problems that developing states can have and their effort not to be in the weak position by protecting parts of their economy. In the chapter commences the principles for future application of the bilateral and trade agreements.

The fifth chapter, *NAFTA: An Overview*, from Nicola W. Ranieri presents an overview of the North American Free Trade Agreement.⁷ He analyses the parts of this milestone in the evolution of the international economic agreements and emphasises the alternative dispute resolution in connection with its structure, participation of the public and its effectiveness. The mechanism mentioned in NAFTA was considered as a new way of solving disputes.

The author of the sixth chapter *The Legal Framework for Foreign Investments in the EU: The EU Internal Market freedoms, the Destiny of Member States' BITs, and Future European Agreements on Protection of Foreign Investments*, Anna de Luca, describes the functioning of European Union market connected to the foreign investment such as internal market freedoms, right to establishment, right to provide services, free circulation of capital etc. Than it focuses on the conditions and the limits of applicability of the law of foreign investors among EU and the sectoral harmonising of rules in relation with the access of foreign investors to the EU market. Also describes the signing of bilateral investment treaties between EU and third countries and examines the protection of national investors abroad.

The seventh chapter authored by Gisela Bolívar and called *The Effect of Survival and Withdrawal Clauses in Investment Treaties: Protection of Investments in Latin America* takes into an account the obvious difference between developed and developing countries

in regard to signing bilateral trade agreements. The chapter evaluates and shows all the economical and legal circumstances on a case study that includes analysing the FDI issues involving the company Cementos Mexicanos in Venezuela and also analysing the effects of survival and withdrawal clauses in the international treaties.

Author of the eight chapter with the name *ASEAN: The Liberalization of Investment through Regional Agreements*, Vivienne Bath, describes the Association of Southeast Asian Nations⁸ and some of the developments and practice of the association. She takes a closer look on the ASEAN Comprehensive Investment Agreement and other agreements that ASEAN signed with many other countries like Korea, New Zealand, etc. She commences the liberalisation objectives and its implementation in connection with the access for the foreign investors and then compares the possibility of achieving the investment liberalisation through the agreements within the jurisdiction of a regional organisation or through the bilateral or multilateral agreements.

In the ninth chapter, called *China and International Investment Law* and written by Wenhua Shan, the fact that China is on the second place in the world in attracting FDI and on the fifth place in exporting FDI and that it has the second biggest BIT network in the world is crucial for us to take a closer look on its economical and legal system. This chapter gives us an overview about history of developing FDI, legal framework of FDI in China's system and lists the most important legal issues. Then it analyses the interaction between the domestic provisions and those that are international. At the end, it compares BIT prototype common in Europe with the one China uses.

The tenth chapter, *The ICSID and Investor-State Arbitration*, written by Leon E. Trakman, concerns with the International Center for the Settlement of Investment Disputes and with its ideology. In the first part deals with the influence toward the wealthier countries and questions how this influence can reflect in the institutional mechanism. In the second part, Trakman polemises if this system of ICSID is a good alternative for the resolution at a domestic level in front of the courts. At the end he analyses the way how could be possible to make ICSID more transparent.

The 11th chapter by Romesh Weeramantry, *The Law of Indirect Expropriation and the Iran-United States Claims Tribunal's Role and Development*, describes the boom of the jurisprudence of the law of indirect expropriation in recent years. The chapter commences the participation on issuing of the jurisprudence that is done by Iran-US Claims Tribunal. It continues with giving an idea about historical background that was followed by the Tribunal establishment. After aforesaid there is described the formation, jurisdiction and functions of Tribunal and its role in the system of dispute solving. Then it focuses on the utilisation of the case law of Tribunal in practice and on the question if other measures that have influence on property rights can be considered as *lex specialis* relating to the investment arbitration law or not.

At the beginning of the 12th chapter, authored by Leon E. Trakman and entitled *Australia's Rejection of Investor-State Arbitration: A Sign of Global Change*, is challenging the Australian Productivity Commission's opinion that investor-state arbitration should be rejected on the basis of interfering to other dispute resolution mechanism. The chapter highlights the best alternative, the domestic litigation, then evaluates the consequences of resorting to domestic courts. Also gives several ideas how to improve the investor-state arbitration that could accommodate some of the deficiencies in it. The chapter concludes with the argumentation against Australian Government's summary rejection of investor-state arbitration because it lacks reasonability.

Stephan W. Schill, author of the 13th chapter entitled *The Relation of the European Union and Its Member States in Investor-State Arbitration*, summarises the reasons why the fact of procedural status has an indispensable importance when different actors are involved. Analyses the future of EU investments treaties and also emphasises the important issues that should be considered. And finally evaluates the effect of newly granted competence by Article 207 TFEU⁹ on ISA.¹⁰

In the Chapter 14, authored by Niki Ranieri and called *Investors' Rights, Legal Concepts, and Public Policy in the NAFTA Context*, scrutinises the balance between investor's rights and public interests under Chapter 11 of the NAFTA. The chapter also gives us a quick overview about historical development of the provisions in Chapter 11 of the Agreement and describes the recent situation connected with the legitimacy of Chapter 11. Also clarifies a test that should help the tribunals to identify and balance all relevant interest easily. At last, he points out that with the development of this field there will be a need to improve provisions of the chapter to be capable to solve more intricate issues soon.

The 15th chapter, authored by Luke Nottage, will provide us through the dispute between Philip Morris and Australia. The chapter includes the concerns about Australia's consumer product safety. The first part of the chapter explains the legal background and pure facts of this case. In the second part it emphasises the impact on Australia's policy and highlights that a political debate was set afoot. This debate arises a lot of questions connected to the procedural issues and even to the dispute resolution system.

The 16th chapter, entitled *The Case against a Regime on International Investment Law* and written by Muthucumaraswamy Sornarajah, summarises the book, mentions the foundations of international investment law. At the beginning, the author describes a history of the international law on foreign investment, than analyses the current literature that is looking for a global regime of investment law. After the global economic crises the development slowed down.

In conclusion, the book provides a quality source to international investment law, to understand the main principles of foreign direct investment and disputes resolution mechanisms etc. This book tries to give us a picture about investment law in general, for more detailed overview is needed proper and bigger insight and analysis. According Colin B. Picker this field has too short history to be developed like some others field of law so there is a need for permanent improving of its system. We would recommend this book to every scholar, specialists and other practitioners in different fields of law, commerce, investments, international matters, economy and many others.

Notes

- 1 FDI
- 2 GATT
- 3 North American Free Trade Agreement
- 4 World Trade Organization
- 5 Bilateral Investment Treaty
- 6 Free Trade Agreement
- 7 NAFTA
- 8 ASEAN
- 9 Treaty on the Functionin of European Union
- 10 Investor-state arbitration