Book Review


International Investment Law is essentially the body of bilateral and multilateral treaties that seek to regulate foreign direct investment (FDI) and related aspects between states. These treaties and agreements are created, revised, and renegotiated periodically to respond to and keep pace with the changing economic, political, technological, and other attendant conditions having a direct and indirect bearing on FDI. Despite some FDI declines between 2008 and 2010 in the wake of the Western financial crisis and recession, the importance of FDI can hardly be overstated, given its phenomenal growth over the past two decades. From a modest US$ 2.08 trillion in 1990, FDI inward stocks rose to a staggering US$ 17.74 trillion by year 2009 (p. 5, Table 1). Likewise, the significance of international investment law is evident by the development and offering of courses at LLM level by many prestigious universities world over.

Given that international investment law and policy are constantly evolving, it becomes necessary for parties dealing with it to keep abreast with the latest trends, practices, and perspectives governing and affecting such evolution of international investment law and policy. This annual publication by the Oxford University Press in collaboration with the Yale Columbian Center on Sustainable International Investment is timely and invaluable to its users by providing guidance, pointers, and clarifications on current international investment law and practice.

Stephen M. Schwebel—an active international arbitrator and counselor, a former judge and president of the International Court of Justice, and a permanent member of the panel of arbitrators for the International Centre for the Settlement of Investment Disputes (ICSID)—wrote the Foreword, which is befittingly brief, yet reveals the pulse of the field of international investment law and practice. The Foreword bears ample evidence to his years of experience and to his command of the subject. The Preface by the editorial team provides an informative and interesting outline of the contents of the book and keeps readers hooked, curious to learn more.

The yearbook is divided into two parts. Part one (Chapters 1–3) defines the current context of investment law with excellent contributions dealing
with recent trends and issues in FDI and associated investment law and practices, including arbitration aspects in year 2010. Part two follows with timely detailed discussions of current developments in the European Union in regards to external investment policy, bilateral investment treaties, and the development of bilateral trade and investment policies. Updated (2010) and authoritative official European Union (EU) documents that have been the center of debate surrounding investment law and the EU are appended to this section (Chapters 4–7). The rest of Part two (Chapters 8–22) is comprised of contributions concerning international investment law and practice and FDI that are presented in broad strokes under the title General Articles. Finally, a special section comprising winning memoranda from the 2010 International Investment Moot Competition (FDI Moot) is appended.

Chapter 1 (Part one), “Recent Trends and Issues in Foreign Direct Investment, 2010,” by the editor of the book, Karl P. Sauvant, defines the context of the yearbook by beginning with presenting multiple perspectives on FDI trends, viz., global, regional, emerging markets and multinational enterprises (MNEs). This chapter serves as a “primer” for novices and as “refresher” for experts in the field of FDI. Sauvant then explains the causes and reasons for the seemingly waning trend of investment liberalization and presents irrefutable facts/examples. He then details the role of subnational authorities in attracting FDI and benefitting from it. Sauvant concludes the chapter with a note on the role played by the emerging markets in the FDI flows. They are becoming significant contributors in the new Triad (along with the United States, EU [p. 27]) at the expense of Japan, an erstwhile member of the old Triad (United States, EU [p. 15], and Japan) of the 1990s, thanks to a simultaneous decline in Japan’s share of global outflows over these years (pp. 34–35).

Chapter 2, “Trends in International Investment Agreements, 2009/2010,” defines the current context by presenting statistics of the number of International Investment Agreements (IIAs), Bilateral Investment Treatises (BITs), Double Taxation Treatises (DTTs), and so on, for the years 2009 and 2010. It also touches upon the revisions in Arbitration Rules. It then proceeds with a detailed analysis of 8 of the 19 “renegotiated BITs” of 2009 to track the broad recent trends in evolution of BITs (pp. 43–61). The chapter concludes with the observation that BITs are becoming more “precise” in their definitions for sure and “while certain renegotiated provisions clearly favor investors most of revisions are heavily influenced by the host-country policy objectives . . .” (p. 62), raising a speculation of “leveling the playing field.”

Chapter 3, “International Investment Law and Arbitration: 2010 in Review,” forms the core of this book with an analysis and discussion of 57 decisions of International Investment Tribunals in 2010 categorized into

a. jurisdiction,
b. merits,
c. compensation and damages, and  
d. procedure categories.

This section is quite easily the most interesting section for legal practitioners and students alike, with the highest number of intriguing cases decided in a single year, and the immensely enlightening decisions that ensue. These decisions are comprised of the ones that form the basis for determination of general principles for use in other cases as well as the ones that have no or limited applicability for other cases. This chapter chronicles the continuing refinement of international investment law and practice.

In a brief note, Federico Ortino identifies two major challenges facing the EU and its member states as a consequence of the coming into force of the Treaty of Lisbon on December 1, 2009, which resulted in inclusion of FDI in EU Common Commercial Policy. They include:

i. the resolution/reconciliation of the existing BITs of member states and EUs to transition into common commercial policy and  
ii. the shaping of the long-term common EU investment policy. In order to reflect on these challenges and associated issues, the editorial team thought it appropriate to include a symposium on International Investment Law and the European Union in this yearbook.

Chapters 4–7 are devoted to this express purpose of discussing the impact of the Lisbon treaty on EU member treaties and shaping up of EU common commercial policy.

A number of emerging issues in international investment law and practice make up the general articles section, Chapters 8–22. They include Customary International Law Defense of Necessity (Chapter 8), Potentially Problematic Self-Judging Emergency Clause (Chapter 9), Necessity Clause (Chapter 10), Japanese Multinationals in Foreign Disputes (Chapter 19), Comparing U.S. Law and Recent U.S. Investment Agreements (Chapter 20), as well as discussion of the extent to which a country can yield its sovereignty in international agreements, finding a balance between protecting the rights of investing countries and the flexibility the borrowing countries' governments need to pursue their public policy objectives. All these articles are quite informative and highly thought-provoking in some cases.

Arguably, as more nations in the world are becoming involved in FDI activities for a multitude of development objectives, issues concerning international investment are multiplied given the fact that parties to these international investment agreements (IIAs) have the privilege and option to define their own "agreed-upon" terms and conditions. These IIAs deal with complex subjects and complex agencies, necessitating excellent understanding of their rights, privileges, and obligations on the part of the parties to IIAs.
as well as the administrators and arbitrators of governing agencies so as to ensure a fair, smooth, and mutually beneficial operation of the FDI activities and sharing of benefits.

Chapters and general articles are contributed by the leading experts in the field of FDI and are of outstanding quality having been subjected to a double-blind peer review process by external reviewers besides receiving oversight by an expert team of editorial board members headed by Karl P. Sauvant. Contributors include practicing attorneys, professors from prestigious law schools, and current and/or former international arbitrators and administrators.

User-friendliness of the book would have been enhanced with the inclusion of a subject index (or at least a list of abbreviations used) as an appendix. Overall, this book is a treasure of knowledge, useful to professors and students, all stakeholders, practitioners, policy makers, researchers, and others involved in FDI and international investment law and practice.

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