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Principles of International

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International investment law is one of the fastest-growing areas of international law today. Only a decade ago, the current surge in investor–state arbitrations, having cumulated in approximately 300 investment treaty disputes,¹ was beyond imagination. At the same time, investment treaties enshrine principles of international investment law, rather than hard and fast rules. Almost unavoidably, international investment law therefore became coined more by the dispute settlement activities of arbitral tribunals which entertain claims between foreign investors and host states brought under investment treaties rather than by diplomatic exchange, inter-governmental negotiation, and inter-state treaty-making. Similarly, international invest-

ment law transpires and develops more in view of arbitral precedent and case law than on the basis of traditional textual approaches to treaty interpretation. Nonetheless, applying investment treaties in practice as well as studying and understanding the field not only requires knowledge about the jurisprudential developments but also demands awareness of the historic, economic, and customary international law context of foreign investment activities.

The present book, written by two of the most eminent scholars in international investment law with decades of experience in practice and academia, does exactly this in 10 clearly structured and concisely written chapters. While focusing in its core on the substantive principles of investment protection, the rights and obligations contained in investment treaties, and the reading that arbitral tribunals have given to them, it starts out by embedding the discussion into a thorough, yet concise, review of the larger economic, historic, and political framework which is necessary to gain a deeper understanding of international investment law as a field (at Ch. 1). It continues by analysing the specificities of interpretation of investment treaties, mentioning in particular the strong influence of precedent and the temporal aspects of application of investment treaties (at Ch. 2). Subsequently, the threshold elements which open the scope of application of investment treaties are discussed, namely the notions of investor and investment as they are applied by investment tribunals (at Ch. 3).

After an informative, but brief, diversion on investment contracts (at Ch. 4), the book delves into its main subject: the scope and interpretation of the substantive principles of international investment law. It first touches briefly on the rules on admission and establishment which have, because of the usually limited obligations states have assumed in this context, not given rise to much case law (at Ch. 5). Yet, the chapter's section on the requirement that investments have to comply with the host state's law in order to enjoy protection is well developed. Chapter 6 then focuses in depth on the provisions concerning expropriation. The authors mention not

¹ UNCTAD, *Latest Developments in Investor–State Dispute Settlement* (2008), available at: www.unctad.org/en/docs/iteiia20083_en.pdf, at 1–2.

only the right to expropriate and its restrictions; they equally discuss at length the more difficult issue of determining the domain of indirect expropriations, i.e. interferences with a vested property right which do not directly affect the title, but the value and use of property. Chapter 7, in turn, addresses the other substantive standards of treatment which form part of the usual canon of investment treaty protection and regularly appear in investor–state arbitration. It includes, *inter alia*, in-depth discussions of the standards to provide fair and equitable treatment and full protection and security, analyses the scope and function of umbrella clauses and clauses prohibiting arbitrary and discriminatory treatment, and dissects the provisions on non-discrimination contained in investment treaties, i.e. national treatment and most-favoured-nation (MFN) treatment. The same chapter also discusses the impact that emergencies and a state of necessity have on investment treaty obligations. This chapter is complete, concise, and comprehensive and conveys a clear and practical picture of how investment treaties and the rights they grant to investors are implemented in practice.

Subsequently, the book discusses the relatively complex and not yet fully resolved issues surrounding state responsibility and attribution, in particular as regards state entities other than state organs (at Ch. 8), and gives a brief introduction to political risk insurance (at Ch. 10). Finally, the book contains a very elaborate section on the dispute settlement mechanisms under investment treaties with a detailed discussion of investor–state arbitration and the various issues which are of interest in this context, such as the application of MFN clauses to questions of procedure and jurisdiction, the review and annulment of arbitral awards, or the relationship between domestic courts and tribunals (at Ch. 10). This section is written so that it gives both an introduction to those not familiar with investment arbitration and valuable overview of current and contentious issues regarding investment treaty arbitration to the more experienced reader. At the very end, the book presents an extensive annex which contains the most

important legal texts in the field of international investment law, including the ICSID Convention, the Energy Charter Treaty, the NAFTA, and the model bilateral investment treaties (BITs) of China, France, Germany, the UK, and the US. These annexes not only make the practical work in investment treaty arbitration easier, they also allow a comparison of those model BITs which are most influential and illustrate the different emphases states put in their investment treaty practice.

The principal approach the book takes is to view most of the questions it addresses through the practice of arbitral tribunals and the way they have concretized the often vague standards of international investment law without losing sight of the historic development. Thus, it often introduces the fate certain treaty provisions had on their way to becoming part of the standard arsenal of investment treaties and accounts for differences in the treaty practice of states as regards, for instance, rules on admission and establishment or fair and equitable treatment. Furthermore, the book also gives an accurate and objective account of differences, divergences, and conflict in investment jurisprudence, for example with regard to the almost notorious topic of umbrella clauses. Commentary on which side of two coins in investment jurisprudence is preferable and why is, however, rather rare. Instead, the authors remain in the tradition of an objective treatise which attempts to describe, order, structure, and classify rather than develop an independent theory of international investment law.

While the authors manage to describe the rather voluminous investment jurisprudence in an accurate and concise fashion, the inevitable pitfall of such an approach is the constant need for both readers and authors to keep up to date with newly appearing arbitral awards. While the fast-moving pace of investment law leaves little alternative, summarizing analyses at the end of each section in an attempt to provide a *Rechtsdogmatik* of international investment law would have been helpful, in particular to non-expert readers and students. Similarly, further references to the growing

and more specific literature would have been welcome. These aspects should, however, not detract from the great value this book brings, not only as an introduction to students, but also as a valuable tool for researchers and practitioners. In any event, the way investment jurisprudence has developed so far, going back and relying on the foundational cases, which are without fail discussed in Dolzer/Schreuer, suggests that even without constant updates this book will provide a lasting account for anybody interested in international investment law. At the price of £25 for the paperback edition, this book is bound to become the primary teaching material for international investment law in law schools around the world.

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