

Peter Muchlinski, Federico Ortino and Christoph Schreuer (eds). ***The Oxford Handbook of International Investment Law***. Oxford: Oxford University Press, 2008. Pp. 1282. \$240. ISBN: 9780199231386.

The idea for the *Oxford Handbook of International Investment Law* was developed in the International Law Association (ILA) Committee on Foreign Investment, which was established in 2003 to examine the procedure and theory of international investment law. The Committee presented its Final Report at the ILA Conference in August 2008. The Chair of the Committee, Christoph Schreuer, was assisted by two Rapporteurs, Peter Muchlinski and Federico Ortino, who together edited this book. The Committee's Final Report, however, cannot be regarded as a summary of the Handbook since all Committee members adopted the Report by consensus while maintaining complete academic freedom to expand upon their personal views in their individual contributions to the book. The ILA Report sought to show where the problems and inconsistencies lie in this field of law, indicating the different choices for future development, while refraining from drawing any final conclusions as that was seen as premature. In the Handbook, on the other hand, several authors do advocate certain solutions for specific issues, but this does not result in numerous irreconcilable clashes of opinion. On the contrary, the book forms a coherent overview of the contemporary rules on international investment.

The Handbook is structured in three main parts: fundamental, substantive and procedural issues. The part on fundamental issues starts by setting out the sources and institutional factors governing international investment law: policy issues that arise out of its structural nature as well as the procedural and substantive sources of law applicable in investor-state arbitration. Also, certain key terms which identify the subject matter are analysed, for example investment–investor definitions, combined with a study of certain corporate notions, such as the concept of a shareholder, recent developments in treaty practice and case

law interpretation. Next, this part looks at multilateral rules for investment, the failure of the Multilateral Agreement on Investment (MAI) and the rejection of investment issues during the WTO Doha negotiations – all of which leads to the query whether an exercise in multilateralism would be useful. Lastly, attention is paid to how obligations under international investment agreements interact with other types of obligations, such as environmental or trade obligations. One such ‘non-investment’ area is international trade regulation, which receives special consideration in a separate chapter that includes questions such as whether the national treatment obligation has the same implications for trade and investment. The underlying issue is whether a common international law of trade and investment is developing or whether trade and investment law remain distinctive issue areas, each requiring their very own source and type of interpretation?

In its second main part, the Handbook addresses substantive standards in investment law, covering details from common provisions in international investment treaties and newly emerging trends. The ‘usual suspects’ are addressed, such as admission and establishment, standards of treatment, most-favoured-nation treatment and expropriation. However, more ‘uncommon’ aspects are also examined, such as taxation, emergency exceptions, investment insurance, and state responsibility. Notably, substantive transparency is discussed separately from procedural requirements and an interesting analysis is made of anti-corruption rules and investors’ duties, in particular the obligation of compliance with national law. This part also includes a study of corporate social responsibility, for example disclosure rules under company law.

In its third and final part, the Handbook includes a discussion on dispute settlement and enforcement, in order to identify and analyse the dynamics behind investment arbitration. This is done by dividing the procedural issues into 14 topics including, *inter alia*, consent to arbitration; jurisdiction and admissibility, the need for an appellate system, and issues relating to the review of awards and the development of a doctrine of precedent.

It is impossible within the limited scope of this review to do justice to each and every chapter of this Handbook; hence it would seem more interesting to the reader (and more fair to the authors) to assess some of the common substantive and procedural threads which run through several chapters of the volume.

The Handbook successfully identifies the major topics which arise out of present-day developments in international investment law, indicating how complex and multifaceted this area of international law has become, so much so that a complete and straightforward consensus seems forever precluded. The specific political, social and economic interests involved will continue to present many challenges, hence one point many of these authors emphasize is the need to at least achieve greater clarity and uniformity in the interpretation of specific treaty standards. While recognizing that the legal foundation of international investment law is formed by separate (mostly bilateral) treaties, they advocate a harmonized approach to substantive rights and duties in treaties. Such approach would be based on the dual aim of investment law: on the one hand, to provide a stable investment climate where investors are protected from adverse state interference, and on the other hand, to allow states to enjoy the development benefits that foreign investment projects entail. As a result, this work paints a clearly analysed picture of a legal system that is defined by its balancing act between private and public concerns to ensure that its complementary objectives can be attained.

In the preface, the editors indicate their intention to address the two main levels of criticism facing the investment system. First, the host state is bound by treaty obligations to protect investors and their projects, but there is no reciprocal duty of responsibility for investors. Second, arbitral dispute resolution is said to be ‘non-transparent, inconsistent, unreliable and unpredictable’, often resulting in unaffordable damages awards. The solutions offered throughout the book vary from the need for examination of the social and economic consequences of investment projects on host states, over increased awareness concerning the corporate social respon-

sibility duties of investors, to the suggestions for a new generation of investment treaties. An important theme in this respect is the issue of the influence of customary international law on the development of investment law, and vice versa. This mutual influence will remain very relevant for future decisions – for example, in the *Diallo* case currently pending before the International Court of Justice, one of the main questions is to what extent customary international law can fill lacunae vis-à-vis investment protection standards and emergency situations. Inevitably, customary international law will continue to evolve so the advantage of complementarity works both ways: treaty law can also fill a number of gaps or elaborate where the customary norm is too vague to be applied.

The current proliferation of arbitration proceedings is not seen as a positive trend as arbitration currently risks adopting the flaws of court litigation – although it was originally precisely created as an alternative to long-winded, expensive procedures determined by distant judges instead of the parties themselves with arbitrators of their own choice. Many debates are still ongoing concerning the scope of jurisdiction of investment tribunals, the question of policy transparency, the review of awards, matters of compliance, precedents, etc. The central issue is the need to reach a consensus by addressing the question of the nature of investment arbitration as a dispute settlement mechanism. There are two main approaches in this debate, one is based on commercial arbitration, and the other founded on public policy. Hence, several authors emphasize the need for a more development-oriented investment policy, which takes into account public law concerns, but they also formulate ideas for the promotion of alternative settlement of disputes in addition to investor-state arbitration. The objective as expressed by the editors is to form a contribution to the process of guiding investment law away from its current focus on dispute settlement and towards its roots of economic development through the transfer of human and capital resources. Several proposals to this extent are formulated in various chapters, for example through changing the current style of treaty-drafting so as to include

the consideration of a larger range of regulatory objectives and possibly even to prescribe concrete duties for foreign investors.

No single volume could ever offer an exhaustive overview of all possible issues relating to investment law, but whereas the ILA Committee Report contains a discussion on the relationship between the EU and bilateral investment treaties, this topic is missing as a separate section in the Handbook. That seems an omission which is rather regrettable due to the topical nature of the issue since the EU enlargement (both in terms of an increase in the number of Member States, as well as in terms of additional competences exercised at the EU/EC level) raises additional important questions regarding the interaction between regional rules and investment treaties. However, as a whole, the Handbook certainly succeeds in identifying the major issues which currently form problematic questions before international investment tribunals and the subject of ongoing doctrinal debate. The book does not intend to decisively solve all possible questions but focuses on igniting the discussion by offering some interesting analyses.

On the one hand, this book performs the role of a twin to the *Oxford Handbook of International Trade Law* (2009), meaning that it is a standard reference work, the ideal starting point for research concerning particular investment law issues, for example the rules on expropriation, standards of treatment or compensation. The reader will not only find a comprehensive analysis of the main ideas formulated elsewhere on these topics but also a number of proposals for improvement in these well-known areas. On the other hand, the book also furthers scholarship on investment law through several interesting contributions on novel themes which have been less extensively elaborated upon elsewhere. Notable illustrations (but by no means the only examples) include the examination of the links between investment law and other fields of international law; or topical issues such as the role of necessity and the problem of corruption. Due to the expansive development of investment arbitration, it was indeed

high time that authors addressed (in the particular context of investment) the relationship between international tribunals and domestic courts, solutions to deal with the increased risk on parallel – and hence possibly conflicting – proceedings, and the interaction between the powers of an arbitral investment tribunal and the autonomy of the parties. In sum, the *Oxford Handbook of International Investment Law* forms an excellent resource for academics and practitioners (who may have a background in public international law but not necessarily in investment law in particular) as well as for advanced students of international law.

Individual Contributions

Peter Muchlinski, Policy Issues;
Engela C. Schlemmer, Investment, Investor, Nationality, and Shareholders;
Ole Spiermann, Applicable Law;
Stefan D. Amarasingha and Juliane Kokott, Multilateral Investment Rules Revisited;
Moshe Hirsch, Interactions between Investment and Non-Investment Obligations;
Friedl Weiss, Trade and Investment;
Ignacio Gómez-Palacio and Peter Muchlinski, Admission and Establishment;
Todd J. Grierson-Weiler and Ian A. Laird, Standards of Treatment;
Thomas W. Wälde and Abba Kolo, Coverage of Taxation under Modern Investment Treaties;
Pia Acconci, Most-Favoured-Nation Treatment;
August Reinisch, Expropriation;
Andrea K. Bjorklund, Emergency Exceptions: State of Necessity and *Force Majeure*;
Andreas R. Ziegler and Louis-Philippe Gratton, Investment Insurance;
Kaj Hobér, State Responsibility and Attribution;
Hilmar Raeschke-Kessler and Dorothee Gottwald, Corruption;
Akira Kotera, Regulatory Transparency;
Peter Muchlinski, Corporate Social Responsibility;
August Reinisch and Loretta Malintoppi, Methods of Dispute Resolution;

Joachim Delaney and Daniel Barstow
Magraw, Procedural Transparency;
Loretta Malintoppi, Independence, Impartiality, and Duty of Disclosure of Arbitrators;
Christoph Schreuer, Consent to Arbitration;
David A. R. Williams QC, Jurisdiction and Admissibility;
Audley Sheppard, The Jurisdictional Threshold of a Prima-Facie Case;
Jacomijn J. van Haersolte-van Hof and Anne K. Hoffmann, The Relationship between International Tribunals and Domestic Courts;
Katia Yannaca-Small, Parallel Proceedings;
Thomas W. Wälde and Borzu Sabahi, Compensation, Damages, and Valuation;
Vladimír Balaš, Review of Awards;
Asif H. Qureshi, An Appellate System in International Investment Arbitration?;
Alan S. Alexandroff and Ian A. Laird, Compliance and Enforcement;
Christoph Schreuer and Matthew Weiniger, A Doctrine of Precedent?;
Giuditta Cordero Moss, Tribunal's Powers versus Party Autonomy;

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