Standards Of Investment Protection

With the successful introduction in 2010 of the Czech Yearbook of International Law, Professor Alexander J. Bělohlávek and Professor Naděžda Rozehnalová, the editors, present the 2011 volume of this ambitious project. The second volume focuses on the admittedly controversial topics relating to a shift from the investors' viewpoints on investment protection to the contrasting viewpoints of the host states, which are facing growing numbers of alleged claims by investors. Volume II has set as its objective to plot

the shift in the paradigm towards a new balance between investors and host states in the investment protection system. Such a shift can be observed in the rising number of counterclaims brought by host states against investors, by the introduction of new standards for evaluation of investments in light of the good faith of the investor at the time of an investment, and by the choice of an absolute means of protection of a host state's interest against investor claims by termination of an existing investment treaty. These topics represent pieces of the whole mosaic of this problem, to which the second volume of the Czech

Yearbook of International Law is dedicated to a wide professional audience. The Czech Yearbook of International Law (CYIL) is a collective effort by the following persons and institutions

This book provides a conceptual and legal analysis of the core of investment protection guarantees that emerge from international treaties signed since 1959 for the promotion and protection of foreign investment. It focuses on both the origin and evolution of investment treaty standards. Beginning with origins, the work considers the broader context at the time when the first modern investment treaty

was concluded. It goes on to examine the many decisions of ad hoc arbitral tribunals that have since been called upon to apply these treaties in order to resolve the several hundred investor-State disputes. It also looks at some of the recent investment treaties that have attempted to clarify and/or reform the content and scope of investment protection guarantees. Federico Ortino posits that the key investment protection provisions in investment treaties, and thus much of the controversy associated with such treaties, revolve around three concepts: legal stability, investment's value, and

reasonableness. He argues that, from the very beginning, the protections afforded to foreign investments by modern investment treaties have been exceptionally broad, and as such restrictive of host States' ability to regulate. And whilst a growing number of investment treaty tribunals, as well as new investment treaties, have to some extent reined in such broad protections, the evolution of key investment protection standards has been marred by inconsistency and uncertainty.

The book considers the ways in which the international investment law regime intersects with

the human rights regime, and the potential for clashes between the two legal orders. Within the human rights regime states may be obligated to regulate, including a duty to adopt regulation aiming at improving social standards and conditions of living for their population. Yet, states are increasingly confronted with the consequences of such regulation in investment disputes, where investors seek to challenge regulatory interferences for example in expropriation claims. Regulatory measures may for instance interfere with the investment by imposing conditions on investors or negatively affecting the

value of the investment. As a consequence, investors increasingly seek to challenge regulatory measures in international investment arbitration on the basis of a bilateral investment treaty. This book sets out the nature and the scope of the right to regulate in current international investment law. The book examines bilateral investment treaties and ICSID arbitrations looking at the indicative parameters that are granted weight in practice in expropriation claims delimiting compensable from non-compensable regulation. The book places the potential clash between the right to regulate and international

investment law within a theoretical framework which describes the stability-flexibility dilemma currently inherent within international law. Lone Wandahl Mouyal goes on to set out methods which could be employed by both BIT-negotiators and adjudicators of investment disputes, allowing states to exercise their right to regulate while at the same time providing investors with legal certainty. The book serves as a valuable tool, an added perspective, for academics as well as for practitioners dealing with aspects of international investment law.

India is one of the fastest growing economies and

intends to achieve the desired growth with the help of foreign investment. Recently, India terminated all the existing Bilateral Investment Treaties (BITs) and announced to renegotiate them based on the newly issued Model BIT. This book is the first comprehensive commentary and analyses of international investment law with focus on India. It offers detailed examination of India's legal position in relation to protection of foreign investment and the impact of investment treaty arbitration and related jurisprudence on the country's governance structures and regulatory framework. Additionally, it reflects

upon the political and economic rationales for the policy on foreign investment. Among the matters discussed are the following: • jurisprudence of investment tribunals, with focus on cases where India was a party (White Industries v. India); • impact of the Make in India campaign and other reforms on foreign investment; • requirement of valid entry and operation of foreign investment; • prominent treatment standards such as expropriation, fair and equitable treatment, full protection and security, most favoured nation, and national treatment; • dispute resolution clauses and enforcement of investment arbitration

awards; • interaction of protection of foreign investment and the Indian judiciary; and • reasons for India not joining the ICSID Convention. Given India's position as a hugely influential player in the cross-border movement of capital, with the willingness to 'change the rules' on foreign investment and investment treaty arbitration worldwide, this book will prove of immeasurable value to practitioners, legal academics, interested policy makers, multinational corporations and their counsel and others interested in international investment law and India.

Balancing Investment Protection and Regulatory

Autonomy
Building International Investment Law
Foreign Investment, International Law and Common Concerns
The Fair and Equitable Treatment (FET) Standard in International Investment Arbitration
The Impact of Investment Treaty Law on Host States
The International Law on Foreign Investment

Model Bilateral Investment Treaties (BITs) are a state's blueprint for the investment treaties it negotiates with other states. This book compiles commentaries on the Model BITs of 19 key jurisdictions. It analyses state practice on international

investment law, detailing each state's legislative regime on foreign investment and their BIT programme

The steadily rising number of investor-State arbitration proceedings within the EU has triggered an extensive backlash and an increased questioning of the international investment law regime by different Member States as well as the EU Commission. This has resulted in the EU's assertion of control over the intra-EU investment regime by promoting the termination of bilateral intra-EU investment treaties (intra-EU BITs) and by opposing the jurisdiction of arbitral tribunals in intra-EU investor-State arbitration proceedings. Against the backdrop of the landmark Achmea decision of the European Court of Justice, the book offers an in depth analysis of the interplay of international investment law and the law of the

European Union with regard to intra-EU investments, i.e. investments undertaken by an investor from one EU Member State within the territory of another EU Member State. It specifically analyses the conflict between the two investment protection regimes applicable within the EU with a particular emphasis on the compatibility of the international legal instruments with the law of the European Union. The book thereby addresses the more general question of the relationship between EU law and international law and offers a conceptual framework of intra-European investment protection based on the analysis of all intra-EU BITs, the Energy Charter Treaty and EU law, as well as the arbitral practice in over 180 intra-EU investor-State arbitration proceedings. Finally, the book develops possible solutions to reconcile the international legal

standards of protection with the regionalized transnational law of the European Union.

The level of protection given to an investment in a foreign territory is a significant element to consider when thinking about investing abroad. The most common international practices for the protection of foreign investments are the execution of a Bilateral Investment Treaty (BIT) or the inclusion of an investment chapter in Free Trade Agreements (FTAs). The former type of international agreement is implemented between two states for the reciprocal protection of the investments made by investors of the other contracting Party in their territory. Consequently, each BIT is different. Nonetheless, international law and the practice of international investment arbitration have identified a number of basic

elements that a BIT must contain in order to be considered valid, e.g., the scope of application of the agreement, namely, what is considered as an investment under the agreement and also who is considered as an investor. In addition, BITs generally contain several basic substantive standards. Among these we can find absolute standards, such as the obligation to grant fair and equitable treatment (FET) and full protection and security (FPS) to all foreign investments made in the host state, and relative standards, such as Most Favored Nation (MFN) and National Treatment (NT).

Increasingly, transnational corporations, developed countries and private actors are broadening the boundaries of their investments into new territories, in search of a higher return on capital. This growth in direct foreign investment involves

serious concerns for both the investor and host state. Various exponents of international civil society and non-governmental organisations persuasively claim that such growth in foreign investments constitutes potential and serious hazards both to the environment and the fundamental rights and freedoms of local populations. This book explores from an international law perspective the complex relationship between foreign investments and common concerns, i.e. values that do not coincide, or do not necessarily coincide, with the interests of the investor and of the host state. It pays particular attention to the role of the main international development banks in reconciling the needs of foreign investors with the protection of common concerns, such as the environment, human rights and labour rights. Among its collection of essays, the volume asks how

much "regulatory space" investment law leaves; whether international investment law is an effective means of balancing contrasting interests, and whether investment arbitration currently constitutes a mechanism of global governance. In collecting the outlooks of various experts in human rights, environmental and international economic law, this book breaks new ground in exploring how attention to its legal aspects may help in navigating the relationship between foreign investment and common concerns. In doing so, the book provides valuable insights into the substantive issues and institutional aspects of international investment law.

A human rights perspective

Reconciling Policy and Principle

Protection of Foreign Investment in India and Investment

Treaty Arbitration
International Investment Law and the Right to Regulate
The Cambridge Companion to Business and Human Rights Law
Harnessing Foreign Investment to Promote Environmental Protection

The rapidly growing number of investors' disputes with states and the approach of arbitral tribunals, perceived by some, whether rightly or not, as being too investor-friendly, underlie a contentious debate about the need to strike a more effective balance between investors' rights under international investment agreements (IIAs) and the right of

states to pursue legitimate regulation in the public interest. In this regard the European Union, with the exclusive external competence in foreign direct investment vested in it under the Lisbon Treaty, is emerging as the leader and driving force in the future development of international investment law. This book examines the competence of the EU to conclude investment treaties in the light of the investment protection rules of IIAs, explores how far the EU regime for cross-border investment and investors' rights under IIAs can be considered comparable, and brings about an extensive analysis of existing

agreements of Member States and their compatibility with EU law, with detailed investigation of how the potentially conflicting obligations of Member States under the two regimes can be reconciled. The book covers such elements of the debate as the following: • 'standards of treatment' under IIAs; • investment-related provisions of EU law; • dispute settlement mechanisms and the conduct of investment disputes; • how recent controversies over bilateral investment treaties (BITs) shape emerging EU international investment policy; • effect of political and institutional interests; •

transitional arrangements for BITs between Member States and third countries established by Regulation 1219/2012; • CJEU decisions concerning BITs concluded between EU Member States and third countries; • significant arbitral awards involving intra-EU BITs; • allocation of international responsibility for breaches of investors' rights; • intra-EU dimension of the Energy Charter Treaty (ECT); • possibilities for review of arbitral awards by courts of Member States; • desirability of international protection of foreign investment in developed countries; and • role of the Convention on the Settlement of

Investment Disputes between States and Nationals of Other States (ICSID Convention)
The author provides a number of well-grounded recommendations, taking into account throughout the legitimate interests and expectations of individual investors. As an invaluable commentary on developments related to the interplay between international investment law and EU law, and a guide to ameliorating the tensions and controversies surrounding this relationship, this book will appeal to a wide variety of readers. The questions dealt with are faced not only by negotiators and others involved in

policymaking in the area of foreign investment, but also by specialists in international investment law, investment arbitration, EU international relations law, and anyone involved in cross-border law, as well as others who encounter these questions in the course of their professional or academic activities.

This book analyses the adequacy of Mongolia's legal system for foreign investment protection by conducting a multi-level assessment of international investment treaties, domestic legislation of the host State, and investor-State contracts from an

international comparative perspective. The investigation distinguishes between three legal dimensions, each of which offers both substantive legal guarantees for the protection of investments in the host State and provisions for the settlement of investment disputes by arbitration. In the first dimension of Public International Law (PIL), Mongolia is bound by international investment treaties, which offer investors an international law setting. In the second dimension, a special domestic investment law defines the domestic framework for the establishment, promotion and protection of

investments, but also for the conclusion of investor-State contracts. These contracts in turn open a third legal dimension, which represents a cross-section through the PIL and domestic-law dimensions of investment protection. Following the development of a multi-level system with legal dimensions that are not isolated but rather interrelated and mutually reinforcing, the book examines whether Mongolia's international investment treaties and domestic investment law reflect globally shared international and domestic standards of treatment and protection of foreign investments. Lastly, the author

inquires whether the domestic laws applicable to investor-State contracts in Mongolia allow investors and the Mongolian Government to agree on protective terms according to the (not uncontroversial) standards of international contract practice.

International investment law is one of the fastest growing areas of international law. It has led to the signing of thousands of agreements, mostly in the form of investment contracts and bilateral investment treaties. Also, in the last two decades, there has been an exponential growth in the number of disputes being resolved by investment

arbitration tribunals. Yet the legal principles at the basis of international investment law and arbitration remain in a state of flux. Perhaps the best illustration of this phenomenon is the wide disagreement among investment tribunals on some of the core concepts underpinning the regime, such as investment, property, regulatory powers, scope of jurisdiction, applicable law, or the interactions with other areas of international law. The purpose of this book is to revisit these conceptual foundations in order to shed light on the practice of international investment law. It is an

attempt to bridge the growing gap between the theory and the practice of this thriving area of international law. The first part of the book focuses on the 'infrastructure' of the investment regime or, more specifically, on the structural arrangements that have been developed to manage foreign investment transactions and the potential disputes arising from them. The second part of the book identifies the common conceptual bases of an array of seemingly unconnected practical problems in order to clarify the main stakes and offer balanced solutions. The third part addresses the main sources of

'regime stress' as well as the main legal mechanisms available to manage such challenges to the operation of the regime. Overall, the book offers a thorough investigation of the conflicting theoretical positions underlying international investment law, testing their worth by reference to concrete issues that have arisen in the jurisprudence. It demonstrates that many of the most important practical questions arising in practice can be addressed by a carefully dosed resort to theory.

This volume examines the standards of treatment, demanded from host states, that

form the basis of contemporary international investment protection. It analyses the core standards commonly contained in bilateral and multilateral investment treaties, including 'fair and equitable treatment', 'full protection and security', and the non-discrimination standards. The burgeoning case-law before arbitral tribunals has exercised a huge influence on how these standards are interpreted in practice. The essays in this volume, by leading practitioners and scholars in the field of investment arbitration, analyse the case-law and provide a framework for a common consensus to emerge on how the

standards should be applied in future.

International Protection of Investments

The First 50 Years of ICSID

Commentaries on Selected Model Investment Treaties

The Foundations of International Investment Law

Origins, Operations, Policies and Basic Documents of the Multilateral Investment Guarantee Agency

Full Protection and Security in International Investment Law

This volume examines the standards of treatment, demanded from host states, that form the basis of

contemporary international investment protection. Leading practitioners and academics analyse the interpretation of core standards in arbitration proceedings, and present the emerging judicial consensus shaping their practical application. Traditionally, international investment law was conceptualised as a set of norms aiming to ensure good governance for foreign investors, in exchange for their capital and know-how. However, the more recent narratives postulate that investment treaties and investor–state arbitration can lead to better governance not just for foreign investors but also for host state communities. Investment treaty law can arguably foster good governance by holding host governments liable for

a failure to ensure transparency, stability, predictability and consistency in their dealings with foreign investors. The recent proliferation of such narratives in investment treaty practice, arbitral awards and academic literature raises questions as to their juridical, conceptual and empirical underpinnings. What has propelled good governance from a set of normative ideals to enforceable treaty standards? Does international investment law possess the necessary characteristics to inspire changes at the national level? How do host states respond to investment treaty law? The overarching objective of this monograph is to unpack existing assumptions concerning the effects of international investment law on host states. By combining doctrinal, empirical,

comparative analysis and unveiling the emerging 'nationally felt' responses to international investment norms, the book aims to facilitate a more informed understanding of the present contours and the nature of the interplay between international investment norms and national realities.

'...This book [...] goes beyond stating what the law is and focuses on controversies occurring within this area of the law... an excellent introduction to this complex area of international law for newcomers to the subject' Kate Miles, Australian International Law Journal The updated edition of this acclaimed book offers a critical overview of the law of foreign investment, incorporating a thorough analysis of the principles and standards of

treatment available to foreign investors in international law. It is authoritative and multi-layered, offering an analysis of the key issues and an insightful assessment of recent trends in the case law, from both developed and developing country perspectives. A major feature of the book is that it deals with the tension between the law of foreign investment and other competing principles of international law. In doing so, it proposes ways of achieving a balance between these principles and the need to protect the legitimate rights and expectations of foreign investors on the one hand, and the need not to restrict unduly the right of host governments to implement their public policy on the other, including the protection of the environment and human rights, and the

promotion of social and economic justice within the host country. Many of the pioneering ideas that were advanced in the first edition of this book in 2008 have been taken up by governments and international organisations in their attempts to reform the investor-State dispute settlement mechanism and strike a balance between different competing principles in developing international investment law. Accordingly, this fourth edition captures the essence of the ongoing multiple reform processes -either planned or envisaged – currently underway.

Harnessing Foreign Investment to Promote Environmental Protection investigates the main challenges facing the implementation of environmental

protection and the synergies between foreign investment and environmental protection. Adopting legal, economic and political perspectives, the contributing authors analyse the various incentives which encourage foreign investment into pro-environment projects (such as funds, project-finance, market mechanisms, payments-for-ecosystem services and insurance) and the safeguards against its potentially harmful effects (investment regulation, CSR and accountability mechanisms, contracts and codes of conduct).

The Interpretation of International Investment Law

More Balanced, Less Isolated, Increasingly Diversified

The Political Economy of the Investment Treaty Regime

Treaties, Domestic Law, and Contracts on Investments in

International Comparison and Arbitral Practice
Czech Yearbook of International Law - Rights of Host States within the System of International Investment Protection - 2011
The Core Standard of International Investment Protection

Following the Trans-Pacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (TTIP), the demonstrations against investor-state arbitration and the wide discussion during the 2016 US presidential election, the climate surrounding foreign investment law is one of controversy and change, and with implications for human rights and

environmental protection, foreign investment law has gained widespread public attention and visibility. Addressing the pressing need to examine foreign investment law in the context of public international law, the role of the multinational corporation in foreign investment and issues of liability for environmental and other damage, this new edition analyses contractual and treaty-based methods of investment protection and examines the effectiveness of bilateral and regional investment treaties. By offering thought-provoking analysis of the law in historical, political and

economic contexts, this fully updated edition of Sornarajah's classic text captures leading trends and charts the possible course of future developments. Suitable for postgraduate and undergraduate students, The International Law on Foreign Investment is essential reading for anyone specialising in the law of foreign investments. This volume celebrates the first fifty years of the International Centre for Settlement of Investment Disputes (ICSID) by presenting the landmark cases that have been decided under its auspices. These cases have addressed every aspect of investment

disputes: jurisdictional thresholds; the substantive obligations found in investment treaties, contracts, and legislation; questions of general international law; and a number of novel procedural issues. Each chapter, written by an expert on the chapter's particular focus, looks at an international investment law topic through the lens of one or more of these leading cases, analyzing what the case held, how it has been applied, and its overall significance to the development of international investment law. These topics include: - applicable law; - res judicata in investor-State arbitration; -

notion of investment; - investor nationality; - consent to arbitration; - substantive standards of treatment; - consequences of corruption in investor-State arbitration; - State defenses - counter-claims; - assessment of damages and cost considerations; - ICSID Arbitration Rule 41(5) objections; - mass claims, consolidation and parallel proceedings; - provisional measures; - arbitrator challenges; - transparency and amicus curiae; and - annulment. Because the law of international investment continues to grow in importance in an ever globalizing world, this book is more than a fitting

way to mark the past fifty years and to welcome the next fifty years of development. It will prove both educational for practitioners new to the field and informative for seasoned investment lawyers. Moreover, the book itself is a landmark that will be of great value to professionals, scholars and students interested in international investment law. International investment law is in transition. Whereas the prevailing mindset has always been the protection of the economic interests of individual investors, new developments in international investment law have brought about a

paradigm shift. There is now more than ever before an interest in a more inclusive, transparent, and public regime. Shifting Paradigms in International Investment Law addresses these changes against the background of the UNCTAD framework to reform investment treaties. The book analyses how the investment treaty regime has changed and how it ought to be changing to reconcile private property interests and the state's duty to regulate in the public interest. In doing so, the volume tracks attempts in international investment law to recalibrate itself towards a more balanced, less

isolated, and increasingly diversified regime. The individual chapters of this edited volume address the contents of investment agreements, the system of dispute settlement, the interrelation of investment agreements with other areas of public international law, constitutional questions, and new regional perspectives from Europe, South Africa, the Pacific Rim Region, and Latin America. Together they provide an invaluable resource for scholars, practitioners, and policymakers. The individual chapters of this edited volume address the contents of investment agreements, the system

of dispute settlement, the interrelation of investment agreements with other areas of public international law, constitutional questions, and new regional perspectives from Europe, South Africa, the Pacific Rim Region, and Latin America. Together they provide an invaluable resource for scholars, practitioners, and policymakers.

This book presents comprehensive information on a range of issues in connection with the Fair and Equitable Treatment (FET) standard, with a particular focus on arbitral awards against host developing countries, thereby contributing to the

available literature in this area of international investment law. It examines in detail the interpretation of the FET standard of key arbitral awards affecting host developing countries, demonstrating the full range of interpretation approaches adopted by the current investment tribunals. At the same time, the book offers valuable practical guidance for counsels/scholars representing host developing countries in investment arbitration, where balancing the competing interests of the foreign investors and the host developing countries in investment

disputes poses a complex challenge. The book puts forward the pressing need for a re-conceptualized interpretation of the FET standard in tune with the developmental issues and challenges faced by host developing countries, recognizing these countries ' particular perspectives as an important and relevant aspect of investment disputes (often ignored by the current investment tribunals), while continuing to ensure reasonable protections for foreign investors and therefore serving the needs of the system as whole. The findings presented here will greatly benefit host developing countries

engaged in investment arbitration. In addition, the book offers an insightful guide for all researchers whose work involves investment law and investment arbitration issues.

The Protection of Foreign Investments in Mongolia

International Investment Law and Development

Enabling Good Governance?

Proportionality and Standards of Review in Investor-state Arbitration

Developing Countries in Context

Investor-State Arbitration versus WTO Dispute Settlement

Investment treaties grant special international protection to foreign investors, and give them a means to enforce those rights against States in which they have invested. This book systematically examines the law of international investment treaties, particularly with respect to its origins, structure, content, and effects. Although the precise provisions of investment treaties are not uniform, virtually all investment treaties address the same issues. This book examines those issues in detail, including the scope of application, conditions for the entry of foreign investment, and general standards of treatment of foreign investments. Investment treaty law has continued to evolve rapidly and dramatically since publication of the

second edition of this work in 2015. The field has seen considerable growth in the number and scope of investment treaties, now estimated at 3300, and investor-state arbitrations cases, which reached over 1000 in 2020. The field has also experienced significant changes and reforms. In 2018, eleven Pacific Basin Countries, despite the withdrawal of the United States, forged ahead to conclude the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTTP), a potentially far reaching regional trade and investment agreement. The next year, the three north American nations replaced the North American Free Trade Agreement (NAFTA) with the United States-Mexico-

Canada Agreement (USMCA). And in 2020, European Union member states terminated over 100 intra-EU BITs, leaving intra-EU investors to rely on EU law and legal processes alone for protection from unfavourable government acts. This edition of The Law of Investment Treaties incorporates a consideration of all of these and other reforms into its analysis of the body of law created by investment treaties since World War II.

This is the first book to tackle investment law and trade law jointly, and to compare the principles, rules, and dispute-settlement mechanisms of investment agreements with the multilateral framework of the WTO/GATS. Among the many invaluable questions the

book addresses are the following: What are the substantive rules that apply to investment in services under investment agreements and the GATS? How do these disciplines differ? Which offers the best protection for investors in services and do they affect the governments' policymaking capacity? Who can gain access to investor-State arbitration and WTO dispute settlement? The in-depth analysis, supported by an extensive review of existent jurisprudence, provides a thorough explanation of treaty standards like most favoured nation, national treatment, fair and equitable treatment, domestic regulation, and transparency, as well as procedural rules on access to the dispute-

settlement mechanisms and enforcement procedures. This book surveys and analyses the nature of FET as a new rule of customary law that is non-contingent and absolute in that it protects a given entity irrespective of the treatment which may be accorded to others. The author explores whether the often-heard criticism of the international investment protection regime is justified. The overarching questions are: Does the systems mixture of private arbitration and public law indeed undermine accountability and independence in judicial decision-making? Does it trump principles of legislative supremacy and, in the end, alter a central tenet of representative democracy? Among the far-reaching

aspects of the subject covered are the following: the relationship of FET to human rights and other standards of protection; assumptions about reciprocity and mutuality; the treatification of foreign investment law; the special significance of the Energy Charter Treaty; ICSID as a self-contained system; identifying limitations on the parties freedom of choice; the protection of legitimate expectations; the relevance of investors conduct in FET proceedings; due process in administrative decision-making, and denial of judicial justice. Relevant case law is examined, and there are detailed descriptions of the main dispute resolution forums ICSID arbitration especially, but with due attention to the new UNCITRAL,

the ICC Rules, the SCC and the LCIA Rules. This is a significant contribution to the debate over a controversial concept and its normative underpinnings. By analysing how states are bound by investment treaty obligations and how arbitrators deal with them, this book explains how the standards are continually shaped and scrutinized to respond to the needs of the actors engaged in an investment relationship."

In the wake of the notable failure of the OECD draft Multilateral Agreement on Investment (MAI), it has become clear that any attempt to regulate investment at the global level must pay serious attention to the position of developing countries. This remarkable collection of

essays sheds penetrating light on this and other legal, political, and economic issues affecting the intense international debate on this important subject. The result of a symposium sponsored in April 1999 by the E.M. Meijers Institute of Legal Studies at Leiden University, Multilateral Regulation of Investment presents the incisive views of nine outstanding authorities, both academics and practitioners, in disciplines related to investment and development. Among the essential criteria proposed for a successful global regulatory framework for investment are the following: involvement at the national level of all sectors of the economy in drafting a national position; involvement from the start of

multilateral negotiations of both developing and developed countries; transparency of negotiations; balance between investment protection and the right to regulate; and respect for core labour standards and human rights. The authors agree in seeing the objectives of the multilateral regulation of investment, both direct and portfolio, as not only reducing risk but also enhancing trust between investors and states, as host states must be sure that foreign investors will genuinely contribute to sustainable development and the well-being of their populations.

International Investment Protection within Europe

Shifting Paradigms in International Investment Law

Incentives and Safeguards
The Fair and Equitable Treatment and Full Protection and Security as Investment Protection Standards Established in the Mexico-EU BITs
Perspectives in Constitutionalism and General International Law

International investment law has often been seen as an obstacle to sustainable development. While the connections between investment and development are plain, for a long time there has been relatively little scholarship exploring them. Combining critical reflection and detailed analysis, this book addresses the relationship between contemporary investment law and development. The book is organized around two competing visions

of investment and development - as working either harmoniously or in conflict with one another. The expert contributors reflect on both of these views and analyse the social dimensions of development and its impact on investment law. Coverage includes in-depth discussion on such issues as human rights, poverty reduction, labor standards, and indigenous peoples. Students and scholars of international investment law will benefit from the informed analysis of the links between investment and development. This book will also be of use to practitioners and experts of development law who are looking for an up-to-date perspective of the field.

Chapters.

This comprehensive book provides a complete overview of the international legal system of foreign investment protection,

synthesising material from treaties, general international law, contracts and case law to demonstrate a coherent system of investment protection. Through this systematic approach, the book considers all aspects of the discipline, providing a thorough and accessible analysis.

This book outlines the protection standards typically contained in international investment agreements as they are actually applied and interpreted by investment tribunals. It thus provides a basis for analysis, criticism, and stocktaking of the existing system of investment arbitration. It covers all main protection standards, such as expropriation, fair and equitable treatment, full protection and security, the non-discrimination standards of national treatment and MFN, the prohibition of unreasonable and discriminatory measures, umbrella clauses and transfer

guarantees. These standards are covered in separate chapters providing an overview of textual variations, explaining the origin of the standards and analysing the main conceptual issues as developed by investment tribunals. Relevant cases with quotations that illustrate how tribunals have relied upon the standards are presented in depth. An extensive bibliography guides the reader to more specific aspects of each investment standard permitting the book's use as a commentary of the main investment protection standards.

Stability, Value, and Reasonableness

The Origin and Evolution of Investment Treaty Standards

The Legal Protection of Foreign Investments Against Political Risk

Inconsistencies in the Systemic Interpretation of Substantive

Investment Protection Standards
The Law of Investment Treaties
International Investment Law

This EYIEL special issue examines the interaction between international investment law and competition law. Although issues related to both international investment law and competition law arise regularly in international legal practice and are examined together, scholarly analysis largely treats them as parallel universes. As a result their actual and potential overlap has yet to be sufficiently explored. In this light, International Investment Law and Competition

Law discusses a variety of topics at the intersection of investment and competition, including the interaction between competition-related provisions and investment protection standards in free trade agreements; investors' anti-competitive behaviour and illegal investments; state aid schemes and foreign investors' legitimate expectations; EU member States' compliance with investment awards as (illegal) state aid under EU law; State-owned enterprises and competitive neutrality; and interactions between public procurement, investment and competition law. The book focuses on the substantive

protections accorded to investors and investments and on the variations among jurisdictions. Among the many specific issues and topics that arise in the course of the discussion are the following: - problems of transparency and conflict of interest; - the recent growth in IIAs between and among developing nations; - the effect of new model bilateral investment treaties (BITs); - the ability of non-disputing parties to participate in investor-state arbitration; - theories of the interaction of foreign direct investment (FDI) and BITs; - investor-state arbitration as an evasion of public

regulatory authority; - the role of investment funds in international investment; - 'fork in the road' provisions; and - institutional versus ad hoc arbitration. International business and other investors will greatly appreciate the in-depth information and insightful guidance in this solidly useful book. It will also be welcomed by jurists and students as a significant milestone in the development of principles in a quickly growing field of practice that is still plagued with inconsistencies.

In The Interpretation of International Investment Law: Equality, Discrimination and

Minimum Standards of Treatment in Historical Context, author Todd Weiler demonstrates how historiographical analysis should be adopted in the interpretation of international investment law obligations. Weiler subjects some of the most commonly held beliefs about the nature and development of international investment law to a critical re-appraisal, based upon meticulously assembled historical record. In the process, the book provides readers with a fresh perspective on some of the oldest obligations in international law. The Legal Protection of Foreign Investments Against Political Risk examines how political

risks associated with foreign direct investment in the energy sector are managed or mitigated, and suggests new ways to deal with the possibility of such risk. It applies its analysis—using case studies and international law, and examining actual contracts—to the specific context of foreign investment in five Asian countries' power infrastructure projects. "Legal protection of foreign investments against political risk has been a problem for a long time. Professor Papanastasiou's book brilliantly balances the legitimate regulatory power of host states with legitimate business interests of foreign

investors by presenting a neatly designed multi-layered legal framework for political risk management. This is an important contribution to both the study of international investment law and the practice of foreign investment business transactions." — Junji Nakagawa, Professor of International Economic Law, Institute of Social Science, University of Tokyo Author, International Harmonization of Economic Regulation (Oxford University Press, 2011) "This book is an impressive and important entry into the field of international investment law scholarship. While maintaining a focus on the important

Japanese and Asian regions, it also provides a general and up-to-date coverage of relevant international investment law and political risk considerations faced by multinational corporations. It is impressively concise, yet thorough; it is practical, yet takes into account relevant and recent legal scholarship; it is well-written and organized. The ultimate goal is to help foreign investors and their advisors understand the current international investment law framework and climate to enable them to devise strategies to help their clients reduce political risk, and to

protect their clients' property rights and investments. This work should be of interest to in-house counsel and international law practitioners, as well as to law students and scholars for its coverage of current international investment law standards, scholarship, and practices." — N. Stephan Kinsella, Attorney, Houston, Texas Co-author, International Investment, Political Risk, and Dispute Resolution (OUP, 2005) "This study contributes insightfully to the literature on international economics and, in particular, on the laws protecting foreign investment. The book is unique in two ways. First, it

analyzes and measures the impact of such multi-tier legal frameworks as FTAs, investment contracts, FDI regulations and insurance by combining legal interpretative tools and scoring techniques. Second, it adds a new narrative on how Japanese business can use law to secure investments from political risks in the energy sector of foreign countries." — Shujiro Urata, Professor of International Economics, Graduate School of Asian Pacific Studies, Waseda University Co-editor, Economic Consequences of Globalization: Evidence from East Asia (Routledge, 2012)

Equality, Discrimination and Minimum Standards of Treatment in Historical Context
Law and Practice of Investment Treaties
Standards of Investment Protection
The Substantive Standards
International Investment Law and Competition Law
Protecting Investment in Services

There is extensive literature on conflict of legal norms and interests in international investment law. The dominant discourse is on the implications of treaty-based investment protection for sovereign regulatory autonomy. Mainstream scholarship critical of the scope and effect of investment

treaties has taken the legal status of these treaties for granted. Little systematic attention has been paid to the capacity of states to make investment treaties and the obligations states can or cannot agree to under those treaties in light of their public interest obligations. Yet, this issue is of fundamental importance for three reasons. First, the case for states' regulatory autonomy arises out of their primary duty to regulate in the public interest. This duty has its legal justification in national constitutions and international law. Second, treaty obligations are founded on the existence of legal norms necessary for the treaty to come into existence and which define the juridical consequences attached to the

conclusion of the treaty. These matters are also determined by national constitutions and international law. Third, the limitations inherent in state-specific defences in international investment disputes settlement compel a proactive rethink of the conclusion of investment treaties and how they are interpreted. The question this thesis assesses with reference to Ghana then is: does a state that is legally required to act both under the terms of its constitution and international law in the public interest have the capacity to conclude investment treaties that expressly prevent or abridge the exercise of its public interest regulatory powers, and how should treaties adopted in breach of these obligations be

interpreted? To address this question, three areas of public interest regulation that have featured prominently in investment arbitration serve as case studies: the jurisdiction of municipal courts, environmental protection and development policy. Based on the impact and potential limitations of standards of investment protection on these areas, the thesis argues that some treaties are incompatible with the public interest regulation obligations of Ghana under the Constitution and international law. The core proposition of the thesis is that the legal source and public purpose of the State's powers prevent it from concluding agreements that directly prohibit public interest regulation or

indirectly achieve that effect. Accordingly, the thesis proposes that the express and implied limitations on the duty to regulate in the public interest placed on investment treaty making powers of the State must inform the making of investment treaties and their interpretation. By its approach, this thesis establishes a principled basis for reflection on the limits to the State's capacity to conclude investment treaties and on how they should be interpreted.

An innovative textbook setting out a systematic approach to business and human rights.

This book provides a comprehensive study of the standard of 'full protection and security' (FPS) in international

investment law. Ever since the Germany-Pakistan BIT of 1959, almost every investment agreement has included an FPS clause. FPS claims refer to the most diverse factual settings, from terrorist attacks to measures concerning concession contracts. Still, the FPS standard has received far less scholarly attention than other obligations under international investment law. Filling that gap, this study examines the evolution of FPS from its medieval roots to the modern age, delimits the scope of FPS in customary international law, and analyzes the relationship between FPS and the concept of due diligence in the law of state responsibility. It additionally explores the interpretation and

application of FPS clauses, drawing particular attention to the diverse wording used in investment treaties, the role ascribed to custom, and the interplay between FPS and other treaty-based standards. Besides delivering a detailed analysis of the FPS standard, this book also serves as a guide to the relevant sources, providing an overview of numerous legal instruments, examples of state practice, arbitral decisions, and related academic publications about the standard.

The concept of fair and equitable treatment, which has assumed prominence in investment relations between States, provides a yardstick by which relations between foreign

direct investors and Governments of capital-importing countries may be assessed. In addition to discussing this issue, the publication also takes stock and analysis of: trends in the use of the standards; and models based on State practice. The publication also gives insight into the interaction of fair and equitable treatment standard with other issues and concepts that arise in investment practice.

Investment Protection Standards

Bridging the Gap

Miga and Foreign Investment

Standards of Treatment

The EU's Assertion of Control

International Investment Agreements and EU Law

Investment treaties are some of the most controversial but least understood instruments of global economic governance. Public interest in international investment arbitration is growing and some developed and developing countries are beginning to revisit their investment treaty policies. The Political Economy of the Investment Treaty Regime synthesises and advances the growing literature on this subject by integrating legal, economic, and political perspectives. Based on an analysis of the substantive and procedural rights conferred by investment treaties, it asks four basic questions. What are the costs and benefits of investment treaties for investors, states, and other

stakeholders? Why did developed and developing countries sign the treaties? Why should private arbitrators be allowed to review public regulations passed by states? And what is the relationship between the investment treaty regime and the broader regime complex that governs international investment? Through a concise, but comprehensive, analysis, this book fills in some of the many "blind spots" of academics from different disciplines, and is the first port of call for lawyers, investors, policy-makers, and stakeholders trying to make sense of these critical instruments governing investor-state relations.

Japanese Business in the Asian Energy Sector

Multilateral Regulation of Investment

The Investment Treaty Regime and Public Interest Regulation in Ghana
Fair and Equitable Treatment
Bringing Theory into Practice