Substantive Law in Investment Treaty Arbitration
The Unsettled Relationship Between International Law and Municipal Law
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This new edition of what has rapidly become the pre-eminent work on the role of municipal law in investment treaty arbitration is justified not only by the accelerating appearance of investment treaty awards but also by the continuing, serious flaws in the application of international law by investment treaty arbitral tribunals. As a matter of international law, arbitrators need to be attentive to the circumstances where municipal law supplies the necessary substantive legal rule. They will find this book to be the best guide to this complex challenge. The author has maintained the overall structure of the first edition and added a new chapter on Article 42 of the ICSID Convention. Certain descriptions and arguments have been rethought and revised to clarify their significance and their applicability. The treatment focuses on the role of municipal law in providing the substance for concepts such as contracts, property rights, and shareholders’ rights, which are relevant in the international investment treaty context but are not regulated under international law. Among the complex questions considered are the following: - If the application of international law requires a renvoi to municipal law, how should that renvoi be conducted? - In investment disputes, what role, if any, should municipal law have in assessing State attribution under international law? - Should shareholders receive compensation for damages suffered by their company due to a violation of an international obligation vis-à-vis the company? - Does a contractual right exist to foreign investment ‘property’? - Under what conditions may a violation of municipal law become internationally wrongful? - May foreign investors rely on ‘expectations’ as an autonomous source of rights in investment treaty disputes? - Does an alleged breach of an umbrella clause transform a breach of contract claim covered by municipal law into an international law claim? The chapters answer these and many other questions in extraordinary depth, drawing on detailed analyses of the
issues and implications posed by major relevant cases and arbitral decisions. The author’s analysis of the unavoidable interaction of municipal law and international law in investment treaty arbitration – and the consequences stemming from rejecting the application of municipal law when relevant – will continue to prove of immeasurable value to arbitrators, arbitration counsel, corporate counsel, and scholars of international law.

Substantive Law in Investment Treaty Arbitration-Monique Sasson 2017 Substantive Law in Investment Treaty Arbitration' is a clear analysis of previously unexplored aspects of investment arbitration. This second edition of what has rapidly become the pre-eminent work on the role of municipal law in investment treaty arbitration is justified not only by the accelerating appearance of investment treaty awards, but also by the continuing, serious problems in the application of international law by investment treaty arbitral tribunals. The book considers key matters of substantive law in which a renvoi to municipal law must be conducted if an investment treaty tribunal is to reach sound results under international law.

Substantive Protection under Investment Treaties-Jonathan Bonnitcha 2014-08-14 This book seeks to determine the level of substantive protection that investment treaties should provide to foreign investment.

Investor-State Arbitration-Christopher Dugan 2011-11-25 Investor-State Arbitration describes the increasing importance of international investment and the necessary development of a new field of international law that defines the obligations of host states and creates procedures for resolving disputes. The authors examine the international treaties that allow investors to proceed with the arbitration of their
claims, describe the most-commonly employed arbitration rules, and set forth the most important elements of investor-State arbitration procedure - including tribunal composition, jurisdiction, evidence, award, and challenge of annulment. The authors trace the evolution and rapid development of the field of international investment, including the formation of the International Center for the Settlement of Investment Disputes (ICSID), and the more than 2,000 bilateral investment treaties, most of which were entered into in the last twenty years. The authors explain how this development has led to far greater certainty for foreign investors in dealing with their host countries, as well as how it has incentivized growth in international trade and commerce.

**International Investment Arbitration**

Campbell McLachlan 2017-09-07  “[This book reviews] the substantive principles of international law applied by investment arbitration tribunals, and a clear and comprehensive description of the present state of the law...The second edition is fully updated to take account of the arbitration awards rendered in the period since 2007...Key areas of coverage include: the instruments under which investment disputes arise; the legal basis of treaty arbitration; dispute resolution and parallel proceedings; who is a foreign investor, including nationality issues and foreign control; what is an investment; investors' substantive rights, including fair and equitable treatment; expropriation; compensation and remedies. Arbitration of overseas investment disputes is one of the fastest growing areas of international dispute resolution. The exponential growth of international investment in recent years has led to the signature of over two thousand Bilateral Investment Treaties (BITs) between foreign states, in addition to a wealth of multilateral treaties and other forms of concession agreements. The legal principles that have developed in this area are subject to intense debate, and are still in a state of flux.”
While tribunals routinely state that they are applying principles of public international law to determine disputes, many of the principles applied have only been developed recently in the context of investment treaty arbitrations, and tribunals are often guided more by the approaches taken by other tribunals, than by pre-existing doctrines of public international law."

**International Investment Arbitration**-Campbell McLachlan 2014-03 This is an authoritative and full-scale review of the substantive law and principles of investment treaty arbitration. The first edition has been widely referenced and relied upon, and presents the first and deepest analysis of this rapidly-growing field; the second edition accounts for the significant growth in BITs and case law since 2006.

**Law and Practice of Investment Treaties**-Andrew Paul Newcombe 2009-01-01 The book focuses on the
is still plagued with inconsistencies.

**Applicable Law in International Investment Disputes** - Taida Begic 2005
This book gives a comprehensive overview of all relevant aspects of the issue of applicable substantive law in the context of investor/State arbitration. It is a comparative survey of both the International Center for Settlement of Investment Disputes (ICSID) and non-ICSID arbitral practice. The applicable substantive law represents an important issue in investment disputes as it determines the rules of law that should be applied to the merits of the dispute. This study demonstrates the need for a discussion on the applicable law before examining the merits of the case, as it appears to be non-existent in most arbitral awards. The author gives an extensive survey of choice of law clauses as found in direct agreements between parties and in multilateral or bilateral investment treaties. Furthermore, the author analyzes the following issues: stabilization clauses in investment agreements, the application of the residual rule (if parties failed to agree on the applicable law), the special position of the Iran-US Claims Tribunal and various annulment decisions.

**International Protection of Investments** - August Reinisch 2020-06-30
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.

Evolution in Investment Treaty Law and Arbitration—Chester Brown 2011-11-17
International investment law is in a state of evolution. With the advent of investor-State arbitration in the latter part of the twentieth century - and its exponential growth over the last decade - new levels of complexity, uncertainty and substantive expansion are emerging. States continue to enter into investment treaties and the number of investor-State arbitration claims continues to rise. At the same time, the various participants in investment treaty arbitration are faced with increasingly difficult issues concerning the fundamental character of the investment treaty regime, the role of the actors in international investment law, the new significance of procedure in the settlement of disputes and the emergence of cross-cutting issues. Bringing together established scholars and practitioners, as well as members of a new generation of international investment lawyers, this volume examines these developments and provides a balanced assessment of the challenges being faced in the field.

Investment Treaty Arbitration as Public International Law—Eric De Brabandere 2014-09-15
This book demonstrates how the public international law character of investment treaty arbitration has impacted on the dispute settlement procedure.

The Political Economy of the Investment Treaty Regime—Jonathan Bonnitcha
2018-01-26 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.

Building International Investment Law-Meg Kinnear 2015-12-22 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.

The Foundations of International Investment Law - Zachary Douglas

2014-05-01 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.

**Reassertion of Control over the Investment Treaty Regime**

Andreas Kulick 2016-12-15 Driven by public opinion in host states, contracting parties to investment agreements are pursuing many avenues in order to curb a system that is being perceived - correctly or not - as having run out of control. Reassertion of Control over the Investment Treaty Regime is the first book of its kind to examine the many issues of procedure, substantive law, and policy which arise from this trend. From procedural aspects such as frivolous claims mechanisms, the establishment of appeals mechanism or state-state arbitration, to substantive
issues such as joint interpretations, treaty termination or detailed definitions of standards of protection, the book identifies and discusses the main means by which states do or may reassert their control over the interpretation and application of investment treaties. Each chapter tackles one of these avenues and evaluates its potential to serve as an instrument in states' reassertion of control.

The Law of Investment Treaties—Jeswald W. Salacuse 2015 New to this edition: Additional chapter on the consequences of treaty violations and the determination of damages in investor state disputes - Covers all treaties and free trade agreements that have been negotiated since the first edition - Includes analysis of trends from treaty negotiation

Beyond Consent—Relja Radović 2021-06-29 In Beyond Consent: Revisiting Jurisdiction in Investment Treaty Arbitration, Relja Radović investigates the development of jurisdictional rules by arbitral tribunals, against the conventional wisdom that the jurisdiction of arbitral tribunals is governed by party consent.

Arbitrating Foreign Investment Disputes—Norbert Horn 2004-01-01 Cross-border direct investment constitutes a substantial sector of the international financial market and is also an important vehicle for the transfer of technology and the modernisation of national economies. In recent years, international arbitration has gained a prominent role as a means of settlement of foreign investment disputes. The number and size of investment disputes under arbitration have risen significantly due to the growing number of bilateral investment treaties and increased use of arbitration under multilateral investment treaties. Arbitrating such disputes requires specialised skills and arbitrators with international experience. This new title, featuring...
contributions from leading experts in the field, deals with the procedural and substantive legal aspects of arbitrating foreign investment disputes. The chapters cover the basic framework of investment protection, the key notions of investment protection and examples and crucial aspects of arbitrating foreign investment disputes. For those involved with international investment arbitration, including practising lawyers, anyone doing business abroad and academics Arbitrating Foreign Investment Disputes: Procedural and Substantive Legal Aspects will provide high level analysis and accurate legal updates and assessments from around the world.

The Protection of Foreign Investments in Mongolia - Bajar Scharaw 2017-11-07
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.

Arbitration Under International Investment Agreements - Katia Yannaca-Small 2010 Investor-state arbitration is a relatively new dispute settlement mechanism that allows foreign investors the opportunity to seek redress for damages arising out of breaches of investment-related treaty obligations by the governments of host countries. Claims are submitted to independent, international arbitration tribunals, which are called upon to interpret the treaty at hand. Because of the public interest involved in these cases, the awards of these tribunals are subject to much scrutiny and debate. Thus, it has already generated hundreds of cases and created new legal disciplines, inspiring a continuous string of legal writings. This book provides a comprehensive analysis of the main issues that arise in investor-state arbitration. It accompanies the reader through the phases of such a procedure, starting with an examination of the instruments, which provide, in the overwhelming majority of the cases, the legal basis for the requests for such arbitration. It then continues with the launching of the arbitration procedure, followed by the analysis of the main jurisdictional and substantive issues that the tribunals are confronted with, and the review procedures, when there is a request for setting aside of the award. It finally looks at the post-award phase and concludes with a reflection on the role of precedent in investment arbitration. Arbitration under International Investment Agreements: a Guide to the Key Issues contains in one
volume what everybody needs to know on this evolving topic. Calling on the most renowned experts in this field, private practitioners, academics, government and international organization officials, it describes the process in all its phases from A to Z, providing a comprehensive insight in the way investor-state arbitration works from the perspective of the main actors involved. Its analyses of all key aspects of the topic are pragmatic and reliable.

**Investment Treaty Law**
Federico Ortino 2007

In 2005, as part of its research activities in the field of investment treaty law and arbitration, the Investment Treaty Forum at the British Institute of International and Comparative Law organized two very successful public conferences in London addressing the issues of 'Nationality and Investment Treaty Claims' and 'Fair and Equitable Treatment in Investment Treaty Law.' This publication records the presentations given by very distinguished experts in the field. The first conference addressed a central issue in international law. Nationality sits at the heart of the debate over the rights and participation of private parties in international relations. In international investment law, nationality constitutes one of the central criteria defining the scope of application of international investment agreements such as the International Centre for Settlement of Investment Disputes (ICSID) Convention or the several thousands bilateral investment treaties (BITs) and free trade agreements (FTAs). Topics addressed at the conference include the issue of nationality of physical and legal persons, the requirements for substantive and continuous nationality, as well as the issue of nationality in derivative actions and indirect claims. The second conference dealt with potentially the most important and elusive obligation imposed on States by international investment treaties: the fair and equitable treatment standard. The elements that are usually cited by the case law and by legal scholars in the attempt...
to describe the meaning of the fair and equitable treatment standard include very broad concepts that are open to differing interpretations depending fundamentally on the perceived objectives of the international investment system. Among the topics addressed at the conference were the application of the fair and equitable treatment standard in customary international law and in investment treaty practice; equivalent standards under domestic administrative law; the relationship between the fair and equitable standard and expropriation; and the relevance of the conduct of the investor in determining a breach of the fair and equitable treatment standard.

**Latin American Investment Treaty Arbitration**-Mary Helen Mourra 2008-01-01

Nowhere in the world has the process of investment treaty arbitration been more volatile or unpredictable than in Latin America. Although the rush of bilateral investment treaties (BITs) entered into by Latin American countries during the 1990s seemed to promise stable guarantees and security for investors, recent years have produced an ever increasing number of arbitrations before international tribunals involving claims by foreign investors amounting to millions and even billions of dollars. In many cases, the disputes have arisen from regulatory measures involving matters of public interest, including the general welfare, health, environment, security, or economy. In five deeply informative and challenging essays by well-known authorities in various aspects of Latin American and/or international investment legal practice, this book investigates the issues affecting arbitration of disputes invoking Latin American BITs. In-depth coverage includes the following: emerging controversies and conflicts, as well as the serious academic debates regarding varying interpretations of treaty terms by different arbitral tribunals; ICSID cases concluded to date against Latin American States and cases that have been dismissed on jurisdictional grounds; detailed analysis of
non-precluded measures provisions, the state of necessity defence, and State liability for investor harms in exceptional circumstances (particularly in connection with water rights); a guide for government officials managing investment treaty obligations and investor-State disputes; procedural and substantive issues that States should consider in connection with their investment obligations and the handling of claims; and options available to address investment treaty provisions that States find troubling and the utility and effectiveness of the recommendations presented. The book demonstrates that there is a compelling need for States to develop greater awareness of their investment treaty obligations with a view to both diminishing the likelihood of claims and properly managing those that are submitted to arbitration. It describes the stocktaking process that should form part of any Stateand’s efforts to manage its investment treaty obligations and claims by investors that the State has breached those obligations.

With specific recommendations for the effective administration of State obligations and investor-State disputes, the book offers eminently practical utility in addition to its penetrating theoretical analysis, and as such constitutes an enormously valuable resource for all parties concerned in Latin American investment.

**Beyond Consent**-Relja Radović 2021 "The process of jurisdictional regulation in investment treaty arbitration is governed by the principle of consensualism, which in theory confers the power to define the jurisdiction of arbitral tribunals on disputing parties exclusively. The practice of arbitral tribunals, however, has given the impression that tribunals are willing to establish jurisdiction on alternative and weaker bases than party consent. This book addresses the question to what extent party consent indeed defines the jurisdiction of arbitral tribunals"--

**MFN Standard as**
Substantive Treatment - Mira Suleimenova 2019-03-28

The Impact of Investment Treaties on Contracts between Host States and Foreign Investors - Jan Ole Voss 2010-12-10
In the field of investment treaty arbitration, the co-existence of contracts and treaties has generated an increasingly divided jurisprudence on central aspects of treaty interpretation. This book comprehensively examines the legal problems surrounding the relationship of these two instruments.

CETA's Investment Chapter - Kriton Dionysiou 2021-01-31
This book provides a comprehensive account of the CETA Investment Chapter's ability to overcome the legitimacy crisis facing investment arbitration. To do so, it first examines the root causes behind the legitimacy crisis, ultimately arguing that it reflects a fundamental rule of law crisis within investment arbitration. In particular, it
asserts that the normative standpoints of the legitimacy crisis form part of the rule of law, the uniting legal principle from which the legitimacy concerns stem. The book contends that the rule of law is not only the principal normative and causal assumption on which the legitimacy concerns are based, but that it could also be utilized as a platform to evaluate the investment arbitration mechanism in CETA's Investment Chapter. Based on this, the book evaluates CETA's Investment Chapter through the rule of law framework in order to provide a convincing account of the latter's ability to overcome the legitimacy crisis facing investment arbitration. It concludes that CETA's Investment Chapter is unlikely to completely solve the legitimacy crisis simply because it is just a patchwork of reforms rather than a comprehensive reinvention of the substantive and procedural law of investment arbitration. Lastly, the book offers meaningful insights into the way the challenges presented by investment arbitration should be addressed. The book is intended for academics researching international investment law and arbitration as well as for policy-makers focusing on reforming investor-state dispute settlement.

**Judicial Acts and Investment Treaty Arbitration**-Berk Demirkol
2018-01-31 A study of state responsibility for acts committed in the course of different stages of adjudicatory process.

**The Role of the State in Investor-State Arbitration**-
Shaheeza Lalani 2014-11-21
Edited by Shaheeza Lalani and Rodrigo Polanco Lazo,
The Role of the State in Investor-State Arbitration is a collection of edited contributions by lawyers, arbitrators and political scientists on the development of the concept of the “State” in a field that currently presents an increasing number of controversial disputes: Investor-State Arbitration.
Harnessing Foreign Investment to Promote Environmental Protection
Pierre-Marie Dupuy
2013-03-14 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).

International Investment Law. The Sources of Rights and Obligations
Tarcisio Gazzini
2012-08-22 Drawing on State practice, arbitral awards and national decisions, this book provides a systematic study of the sources of rights and obligations in the field of transnational investment, and their coordination and interaction.

Regionalism in International Investment Law
Leon Trakman
2013-04-25 Regionalism in International Investment Law provides a multinational perspective on international investment law. In it, distinguished academics and practitioners provide a critical and comprehensive understanding of issues in a field which has grown exponentially in its importance particularly over the last decade, focusing on the European Union, Australia, North America, Asia, and China. The book approaches the field of foreign direct investment from both academic and practical viewpoints and analyzes different bilateral, regional, and multinational
agreements, often yielding competing perspectives. The academic perspective yields a strong conceptual foundation to often misunderstood elements of international investment law, while the practical perspective aids those actively pursuing foreign direct investment in better understanding the landscape, identifying potential conflicts which may arise, in more accurately assessing the risk underlying the issues in conflict and in resolving those issues. Thorny issues relating to global commerce, sovereignty, regulation, expropriation, dispute resolution, and investor protections are covered, depicting how they have developed and are applied in different regions of the world. These different treatments ensure that readers are able grasp the subject matter at multiple levels and provide a comprehensive overview of developments in the field of foreign direct investment.

**Civil Society in Investment Treaty Arbitration** - Farouk El-Hosseny 2018-02-05

**The role of international law in Article 42(1) of the Washington Convention on the Settlement of Investment Disputes** - Lydia Beil 2016-07-28

Master's Thesis from the year 2011 in the subject Law - European and International Law, Intellectual Properties, grade: 19, course: ICSID Convention, language: English, abstract: The role of international law in Article 42(1) of the ICSID Convention is not very clear and has caused many debates. Scholarly opinions have therefore developed different theories. Some want to reduce the application to a minimum, the international ius cogens, whereas others argue that international law should prevail in all cases over the host state’s law. Some authors as well as the case-law also establish different limits. This paper analyses the role of international law with many different interpretative methods from civil law and common law. It concludes that no artificial limits can be maintained, but the current
version of Article 42(1) leaves the determination of the scope of international law to the discretion of the tribunal. In order to clarify the notion entirely, more harmonisation of the substantive rules on foreign investment would be needed, either on the national or on the international level. Some future approaches are presented in this paper.

**State Responsibility for National Judicial Decisions in Investment Arbitration**  
Jo Chen 2017  
As a party to over 100 bilateral investment treaties, it is important for China to evaluate its exposure to state liability from domestic court decisions related to investment treaty arbitration in order to mitigate its risk of state liability in such cases and ultimately to improve China's investment environment. Investment treaty arbitration jurisprudence shows that many investment tribunals subject domestic court decisions to substantive review and attach liability to those court decisions. This substantive review approach is, in fact, separate from the deferential approach generally adopted by other international tribunals and is rooted in the concept of "substantive denial of justice." However, the basis of state responsibility triggered by national court decisions should not be the substance of the decisions, but rather the way the national courts handle the substantive materials of the cases, e.g., bias, discrimination, arbitrariness or bad faith on the part of the court. Intervention in domestic judicial decisions by investment tribunals should be launched only on the condition that the foreign investor has satisfied the burden of proof to produce convincing evidence of one of these elements. The concept of "substantive denial of justice" is misleading and should be abandoned in international investment arbitration. Meanwhile, it is equally important that China realizes and responds to issues presented in investment arbitration case law and its domestic legal practice, which may increase its exposure to state

responsibility under investment treaties. Insufficient reasoning in Chinese court decisions is worth particular attention, especially when the decision declines recognition and enforcement of a foreign-related or foreign arbitral award. Lack of sufficient reasoning may serve as a strong indication of abusive misconduct, arbitrariness, or even bad faith on the part of the court, which may contribute to a finding of state liability. Furthermore, in addition to a denial of justice—a traditional standard for state responsibility involving judicial acts—case law shows that investment tribunals also access responsibility issues under other standards, such as the fair and equitable treatment (FET) standard and the full protection and security (FPS) standard, even under the principle of prohibition of expropriation. China should be alert to the possibility that its court decisions also trigger state responsibility under these less demanding standards and should make efforts to ensure its national law and the legal practice of Chinese courts are in conformity with its treaty obligations.

**International Challenges in Investment Arbitration**
Mesut Akbaba 2018-10-03 As the proverbial workhorse of international economic law, investment arbitration is heavily relied upon around the globe. It has to cope with the demands of increasingly complex proceedings. At the same time, investment arbitration has come under close public scrutiny in the midst of heated political debate. Both of these factors have led to the field of investment protection being subject to continuous changes. Therefore, it presents an abundance of challenges in its interpretation and application. While these challenges are often deeply rooted in the doctrinal foundations of international law, they similarly surface during live arbitral proceedings. International Challenges in Investment Arbitration serves not only as a collection of recently debated issues in investment law; it also deals with the
underlying fundamental questions at the intersection of investment arbitration and international law. The book is the product of the 1st Bucerius Law Journal Conference on International Investment Law & Arbitration. It combines the current state of knowledge, new perspectives on the topic as well as practical issues and will be of interest to researchers, academics and practitioners in the fields of international investment law, international economic law, regulation and comparative law.

**Protection of Foreign Investment in India and Investment Treaty Arbitration** - Aniruddha Rajput 2016-04-24

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.

**Improving International Investment Agreements**
Armand De Mestral
2013-02-11

This book presents the reflections of a group of researchers interested in assessing whether the law governing the promotion and protection of foreign investment reflects sound public policy. Whether it is the lack of "checks and balances" on investor rights or more broadly the lack of balance between public rights and private interests, the time is ripe for an in-depth discussions of current challenges facing the international investment law regime. Through a survey of the evolution in IIA treaty-making and an evaluation from different perspectives, the authors take stock of developments in international investment law and analyze potential solutions to some of the criticisms that plague IIAs. The book takes a multidisciplinary approach to the subject, with expert analysis from legal, political and economic scholars. The first part of the book traces the evolution of IIA treaty-making whilst the other three parts are organised around the concepts of efficiency, legitimacy and sustainability. Each contributor analyzes one or more issues related to substance, treaty negotiation, or dispute resolution, with the ultimate aim of improving IIA treaty-making in these respects. Improving International Investment Agreements will be of particular interest to students and academics in the fields of International Investment Law, International Trade Law, Business and Economics.
Arbitrating Brands - Metka Potočnik 2019 In light of the controversy of the Philip Morris cases against Australia and Uruguay, this book systematically explores trade marks and brands as foreign direct investment, and in particular their substantive protection under international investment treaties. With the use of various hypothetical examples of devaluation of investments made in brands, the book explores the specifics of arbitrating investment claims arising out of state trade mark regulation. This work aims to establish useful tools in bridging the terminological and analytical gaps between experts in intellectual property law and international investment law.

The International Law of Investment Claims - Zachary Douglas 2009-06-11 This book is a codification of the principles and rules relating to the prosecution of investment claims.

The Impact of Investment Treaty Law on Host States - Mavluda Sattorova 2018-02-08 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.