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**Book Review**

## Book Review: Principles of International Investment Law

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**Rudolf Dolzer and Christoph Schreuer (2008):  
Principles of International Investment Law**

Oxford University Press, 480 pages

ISBN-13: 9780199211760, ISBN-10: 0199211760; USD 45,00

The field of international investment law has gained considerably in practical importance in recent years, as is witnessed by greatly increased volumes of capital transfers in relation to foreign direct investment. This development is partly due to a change in the international investment climate that resulted *inter alia* from the collapse of the former Soviet Union and from a less sceptical attitude toward foreign investment by Latin American and developing countries. This phenomenon is also closely connected to the emergence of a great number of new investment treaties. These trends have also attracted a growing number of legal scientific and related publications. One contribution which stands out from the crowd is the book entitled "Principles of International Investment Law", written by two leading scholars in the field, RUDOLF DOLZER and CHRISTOPH SCHREUER. As these authors explain in their foreword, they have neither intended to write a European-style treatise, nor a common law casebook. Rather, their book tries to illustrate the meaning of central principles in international investment law by examining relevant jurisprudence in customary international law, regional agreements and bilateral investment treaties.

Chapter 1 explains the nature, evolution and the context of international investment law. It emphasises the fact that foreign investment law consists of general international law, general standards of international economic law and specific principles, which are particular to its domain. It reminds the reader of the importance of the interplay between international law and the domestic law of the host state. The authors also stress the difference between foreign investment and trade transactions, which mainly lies in the long-term relationship between the investor and the host country. One corollary which follows from this specificity of international investment law is the authors' admonition that one should not generally assume, without a more detailed analysis of concrete concepts, that analogies can be drawn between international investment law and international trade law. This leading thought recurs several times in the book. The remainder of Chapter 1 is devoted to a concise account of the evolution of customary international law, treaty law and current trends in treaty practice in the field of international investment.

Chapters 2–4 introduce the reader to the interpretation and application of investment treaties, the concepts of investor and investment and the various types of investment contracts. Though generally written in a textbook style, these chapters contain brief and highly interesting references to practical legal developments such as "nationality planning" and "host states" reactions, that is the fact that states increasingly react to companies seeking establishment in countries that have favorable treaty relations with a given host state for example by requiring a 'genuine link' in the form of a bond of economic substance between a corporation and the state. Chapter on 'Admission and Establishment' explains the differences in the approach of investment treaties as regards market access, an issue which is crucial in the context of increasing economic liberalism: whereas the United States, Canada and Japan have been including a right of admission in their bilateral investment treaties, European countries have generally contented themselves with negotiating guarantees for investments which the host state has unilaterally decided to admit.

A central section of this book is Chapter 6 which deals with expropriation and is to a large extent devoted to indirect expropriations and the problem of distinguishing between per-

missible governmental activity and compensable indirect expropriation. The analysis of this important area of the law is supplemented by an illustrative overview of leading cases (pp. 96–101). After discussing other issues such as the protection of legitimate expectations, Chapter 6 returns to the problem of indirect expropriations and discusses the question whether general regulatory measures of a host country can amount to an indirect expropriation (pp. 109ff). The authors contrast decisions according to which a host country is not responsible for economic disadvantages resulting from general regulatory or tax measures that pursue a public purpose and are not discriminatory with decisions pursuant to which the obligation to pay compensation persists. Final section addresses a further delicate issue of delimitation, namely that of drawing the line between failures by a government to perform a contract which do not amount to an 'expropriation of contractual rights', and breaches of commercial contracts which have to be regarded as violating international investment disciplines; the authors point out that tribunals seem to assume that the determining factor is whether the state violating the contract has acted in an official governmental capacity.

The book also addresses a second central theme in international investment law, namely standards of protection (Chapter 7). It first examines the concept of fair and equitable treatment, whose essential purpose, according to the authors, is to fill gaps in bilateral investment treaties. After discussing the relationship between this concept and customary international law, and its evolution, DOLZER and SCHREUER correctly state that the central methodological issue in this context concerns the process of legal reasoning when this abstract concept is applied to concrete cases. In trying to analyse the meaning of this concept, the authors describe typical factual situations to which this principle has been applied (pp. 133–149). This approach is in line with recent writings in legal methodology and legal theory, which emphasise that the meaning of legal principles – whose application requires balancing operations taking into account the facts of the concrete case – tends to crystallise over time as typical classes of case emerge. The book then goes on to discuss further standards, such as full protection and security; the 'umbrella clause'; access to justice, fair procedure, and denial of justice; emergency, necessity, armed conflicts, and *force majeure*; preservation of rights; arbitrary or discriminatory measures; national treatment and most-favored-nation treatment. Just as the other chapters, this chapter contains numerous valuable references to leading cases and recent decisions.

While Chapter 7 gives a brief overview of state responsibility and attribution in the field of international investment law, Chapter 9 provides an introduction to insurance against political risks. Unfortunately, this chapter is rather short despite its practical importance. Chapter 10, the final section of the book, contains a thoroughly well written introduction into the settling of investment disputes, which gives considerable weight to the practice of ICSID. This Chapter, too, covers decisions up to 2007. It is often thought-provoking, such as in its brief section on the applicability of most-favored-nation clauses to dispute settlement, which discusses the question of whether it is possible to avoid the conditions under a given investment treaty by relying on an MFN clause in order to invoke a more favorable treaty concluded by the respondent state with a third state.

In conclusion, this is a highly recommendable book which, if at all, attracts only very few critical remarks. One such is that it surprisingly does not address the WTO GATS agreement: it is clear that the GATS is not just a trade agreement, but is also widely regarded as an investment agreement, given that its scope of application extends to foreign direct investment ("commercial presence") according to Article I:2 of the GATS. Hence, despite the

authors' aforementioned recurrent viewpoint that international trade law and international investment law are different disciplines, the GATS ought not to be omitted in a book on international investment. Also, it might have been helpful to include a section in the introductory chapter dealing more extensively with the economic rationales and realities of foreign direct investment. However, these are quite minor remarks that cannot detract from the very positive overall impression of this book, which contains a detailed account of the state of the law in the field of international investment. It is a comprehensive and highly up to date study, covering also decisions from 2007. Therefore, this book will greatly *benefit* both students and practitioners.

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