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# Standards Of Investment Protection

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Host State Circumstances and Absolute Standards of Protection in International Investment Law

International Investment Law

Czech Yearbook of International Law - Rights of Host States within the System of International Investment Protection - 2011

A Comprehensive Approach to Investment Protection

Standards of Investment Protection

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**HARRY LAUREL**

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Host State Circumstances and Absolute Standards of Protection in International Investment Law Kluwer Law International B.V.

This thoughtfully edited volume brings together leading scholars in the field to explore the relationship between the

substantive standards of treatment contained in international investment agreements and the rule of law, which is developing into one of the key principles which both supporters and critics use to evaluate the investment treaty regime. *Investment Protection Standards and the Rule of Law* explores two perspectives. Firstly, it examines to what extent the substantive standards of treatment can be understood as expressions of the rule of

law. Secondly, it addresses the rule-of-law problems, or rule-of-law lacunae, that exist in, or are created by, the application of these standards. The subject matter is advanced by combining doctrinal analysis of the core substantive treatment standards, as well as normative assessment of those standards from the perspective of the rule of law. This book also offers a critical discussion of the potential the rule of law has as a

guidepost for structuring international investment relations, as well as its blind spots.

International Investment Law Kluwer Law International B.V.

The international legal framework governing foreign investment consists of a vast network of international investment agreements (IIAs) supplemented by the general rules of international law. Although other international treaties interact with this network in important ways, IIAs are the primary public international law instruments governing the promotion and protection of foreign investment. IIA texts differ in many important respects, but they are also remarkably similar in structure and content: most IIAs combine similar (sometimes identical) treaty-based standards of promotion and protection for foreign investment with an investor-state arbitration mechanism that allows foreign investors to enforce with a powerful and dynamic method of international treaty enforcement. The purpose of this book is to provide a comprehensive explanation of the substantive standards of treatment that states must accord to foreign

investors and investment under IIAs. The uniqueness of the current IIA network is a product of an historical evolution going as far back as the Middle Ages. Prior to the twentieth century, international standards of foreign investment and investor protection developed primarily through the related processes of diplomatic protection and claims commissions. In the late nineteenth and early twentieth centuries, as the world economy became increasingly internationalized, the limits of the diplomatic protection model became apparent, particularly as controversies arose between capital exporting and importing states regarding the customary international law minimum standard of treatment to be accorded to foreign investors and investments. In the aftermath of the Second World War (WWII), the process of international economic integration was rekindled, leading to the emergence of the contemporary investment treaty framework. It is crucial to consider this historical development in order to better understand current debates and contentious issues in investment treaty law. This chapter is divided into five parts.

Part I delves into the historical origins of international investment law. Part II then explores developments in the post- WWII period, setting the background for Part III, which discusses the origins and development of IIAs. Part IV provides an overview of the current status of the IIA network. Part V discusses the basic structure of IIAs.

Czech Yearbook of International Law - Rights of Host States within the System of International Investment Protection - 2011 Kluwer Law International B.V.

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.

*A Comprehensive Approach to Investment Protection* Bloomsbury Publishing

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.

*Standards of Investment Protection* Oxford University Press

With the entry into force of the Treaty of Lisbon in 2009, the EU became a global actor in the field of foreign direct investment. Since then, the field of EU investment policy has been gradually shaped by numerous political changes, judgments and opinions delivered by the Court of Justice of the EU, as well as lively scholarly debate. Today, a clear division between the "internal" and "external" dimensions of EU investment policy has emerged, which constitutes the general topic of this book. Within these dimensions, additional – and sometimes contradictory – facets of the EU's multi-layered approach to investment protection can be identified. On the one hand, EU investment policy is shifting toward a decentral approach when it comes to substantive standards of investment protection. On the other hand, the EU is following a multilateral approach with regard to procedural innovations in

investor-State dispute settlement. In this EYIEL Special Issue, leading experts in the field discuss the latest developments with regard to the above-mentioned dimensions and facets, which reflect new trends and challenges for EU investment policy. Among others, the book discusses the EU's participation in the reform process for the international investment regime, the emergence of central planning and decentral implementation of EU investment policy, the feasibility of an intra-EU investment court, the protection and enforcement of investment standards under EU law, and the suitability of mediation as an alternative to intra-EU investment arbitration.

#### Standards of Review and Reviewing

#### Standards Nomos Verlag

There are various constructions of the 'Fair and Equitable Treatment' (FET) clauses in investment treaties. Many of them have combined the FET standard with other investment protection standards in the same clause. A simplistic interpretation of these clauses might lead to an understanding that the FET standard are synonymous with other standards prescribed by the particular investment

treaties largely due to the flexibility and generality of the standard. This article will closely scrutinize this interrelation between the FET standard with some other investment protection standards. The demarcation line between and among these interaction is so thin that it becomes difficult to distinguish one standard from another. This article will discuss that the FET is indeed an overarching principle and despite some conceptual similarities with other investment protection standards the FET standard is unique and distinct in its own free standing in the international investment law regime and combining the standard with other investment protection standards is simply a stylistic matter and not a matter of substance to its content. *The Protection of Foreign Investments in Mongolia* Cambridge University Press 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.

Standards of Protection in International Investment Law BIICL

In *The Interpretation of International Investment Law: Equality, Discrimination and Minimum Standards of Treatment in Historical Context*, author Todd Weiler demonstrates how historical 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.

**Investment Protection Standards**

Martinus Nijhoff Publishers

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.

*The Origin and Evolution of Investment Treaty Standards* OUP Oxford

The law of foreign investment is at a crossroads. In the wake of an unprecedented global financial crisis and a sharp surge of investment arbitration cases, states around the world are reflecting on the pros and cons of the current liberal investment regime and exploring new ways ahead. This book

brings together leading investment lawyers from more than 20 main jurisdictions of the world to tackle the challenge of producing a first comparative study of foreign investment law. Based on the General and National Reports presented at the 'Protection of Foreign Investment' Session at the 18th International Congress of the International Academy of Comparative Law (Washington DC, July 2010), the book is a unique resource for investment lawyers. Part I of the book presents a comparative overview of key aspects of foreign investment protection in the world today, including admission, investment contracts, treatment standards, tax regime and incentives, performance requirement, property and expropriation, monetary transfer and dispute settlement. Part II presents in-depth and detailed accounts of the investment laws of more than 20 jurisdictions, including Argentina, Australia, Canada, China, Croatia, Czech Republic, Ethiopia, France, Germany, Greece, Italy, Japan, South Korea, Macau, Peru, Portugal, Russia, Singapore, Slovenia, Turkey, the UK and the USA. The book will be an invaluable guide to legal

and business communities with an interest in the law and practice of foreign investment in the world in general and in these jurisdictions in particular.

**New Frontiers for EU Investment Policy** Juris Publishing, Inc.

Global banking and finance is a complex and specialized field with sector-specific investment forms, subject to distinctive legal and regulatory frameworks and unique types of political risk. This comprehensive guide to international investment protection in the finance and banking sector, written by acknowledged experts in the field of investor-State arbitration, provides the first in-depth discussion of how international investment law applies to investors and investments in the sector. Featuring expert guidance on the key legal protections for cross-border banking and finance investments, with complete and up-to-date coverage of investor-State cases, the analysis crystallizes a set of field-specific legal principles for the sector. In particular, the authors address the following practical aspects of investment protection in the banking and finance sector: how sector-specific forms of investment, such as loans

and derivatives, impact the dispute resolution process; types of political risk that cross-border investments in the sector are likely to encounter; distinctive adverse sovereign measures that underlie disputes in the sector, including those from sovereign debt defaults and banking sector bailouts; specific treaty provisions, such as jurisdictional carve-outs and targeted exclusions; remedies available for violations of international investment protections; how monetary damages may be assessed for injury to banking and finance sector investments; the scope of financial services chapters included in certain free trade agreements; the protections available under domestic foreign investment laws; and alternative sources of protection such as political risk insurance and investment contracts. International disputes practitioners and academics, in-house counsel in the finance and banking industries, and arbitrators addressing banking and finance disputes will welcome this book for its practical guidance. With strategies for investors as well as for sovereign States to navigate the intricacies of the investment protection system, the authors'

comprehensive analysis will help ensure appropriate international protection for banking and finance sector investments, both when establishing investments and when resolving disputes. The book lays the groundwork for the future consolidation of international investment protection as a critical tool to manage the political risk confronting global banking and finance.

*The Legal Protection of Foreign Investment*  
Oxford University Press

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.

**Investment Protection Standards as Global Constitutional Law** Oxford University Press

This book outlines the principles behind the international law of foreign investment. The main focus is on the law governed by bilateral and multilateral investment treaties. It traces the purpose, context, and evolution of the clauses and provisions characteristic of contemporary investment treaties, and analyses the case law, interpreting the issues raised by standard clauses. Particular consideration is given to broad treaty-rules whose understanding in practice has mainly been shaped by their interpretation and application by international tribunals. In addition, the book introduces the dispute settlement mechanisms for enforcing investment law, outlining the operation of Investor-State arbitration. Combining a systematic analytical study of the texts and principles underlying investment law with a jurisprudential analysis of the case law arising in international tribunals, this book offers an ideal introduction to the principles of international investment law

and arbitration, for students, scholars, and practitioners alike.

The Fair and Equitable Treatment and Full Protection and Security as Investment Protection Standards Established in the Mexico-EU BITs Edward Elgar Publishing

This volume examines the standards of treatment, demanded from host states, that form the basis of contemporary international investment protection. Practitioners and academics analyse the interpretation of core standards in arbitration proceedings, and present the emerging judicial consensus shaping their practical application.

Principles of International Investment Law Edward Elgar Publishing

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.

EU Investment Protection Law Kluwer Law

International B.V.

With the successful introduction in 2010 of the Czech Yearbook of International Law, Professor Alexander J. Bělohávek 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

**Investment Protection Standards and the Rule of Law** Oxford University Press

The object of this article is to examine different options in investment treaty making for addressing and preventing potential conflicts of norms that involve investment and cultural heritage rights. For this purpose, it will be taken into account the rationale of intergenerational justice and the extent to which it may underpin the protection of cultural heritage within the realm of international investment law. Part II is devoted to examine the interface between investment treaty obligations and international cultural heritage law. It explores potential conflicts of norms and delves into the culture-related cases in investor-State arbitration. Part III turns then into the analysis of investment treaty making alternatives deemed consistent with the safeguard of cultural heritage. This part addresses first the option of a refinement

of treaty standards of investment protection, an ends up with an analysis concerning the suitability of including culture-related IIA exceptions. Part IV provides the overall conclusions of the study.

**The Interpretation of International Investment Law** Springer Nature

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.

Law and Practice of Investment Treaties  
Springer Nature

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.

**International Investment Law** Kluwer Law International B.V.

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.