

Buchbesprechung

1. Noah Rubins/Stephen Kinsella, *International Investment, Political Risk and Dispute Resolution: A Practitioner's Guide*, 761 + xl pages, Oceana Publications, Inc., 2005, £ 90.00.
2. R. Doak Bishop/James Crawford/W. Michael Reisman, *Foreign Investment Disputes: Cases, Materials and Commentary*, lv + 1653 pages, Kluwer Law International, 2005, € 250.00.

This review examines two recent books dealing with the protection of foreign investments and the settlement of disputes arising between states and foreign investors. They merit attention because they fill a gap which – so far – existed in the flood of literature dealing with individual issues pertaining to foreign investments and investment disputes.

The first book is a classical treatise. *Rubins* and *Kinsella* examine the subject-matter by focusing on the central concept of political risk. The book is structured into three main parts. In the first part, it covers topics such as regulatory interference with property rights, different forms of investment (concessions, production sharing agreements, service contracts) and explain clauses to be included in contracts with the state (ranging from core clauses on arbitration and choice of law to possibilities to bind the state as a party to the contract). Part II explains the international law framework for investment protection and political risk. That includes a chapter on basic concepts of international law such as state responsibility, on the history and development of the customary international law and the substantive law of contemporary international investment protection. The authors then explain the major substantive provisions of investment protecting foreign investors (e.g. expropriation, fair and equitable treatment etc.). It is noteworthy and commendable that – unlike so many other contemporary writers – the authors try to give a neutral and unbiased overview over diverging awards and disputed issues. Where possible, they group awards and decisions into "The Dominant View" and "The Minority View", without taking sides with one of the views. Part III deals with the following issues: how to establish arbitral jurisdiction (Chapter 7), the basic outline of arbitration procedure (Chapter 8), the conciliation of investment disputes (Chapter 9) and the intervention of states in investment disputes (Chapter 10). These chapters cover all practically relevant procedural aspects of foreign investment

disputes. The book concludes with 17 appendixes of nearly 300 pages, containing useful information such as the US model BIT, the ICSID Convention, the New York Convention and the UNCITRAL Notes on Organizing Arbitral Proceedings.

It is a timely book. In their introduction, the authors state: "we hope to provide the non-specialist lawyer, business person, or government official with the tools necessary to understand the international law of investment and its relationship to political risk". They have managed to do so, and done even more. First, they successfully combined what would be three separate books (on structuring of investment, international law on investment protection and dispute settlement) in their own right. Second, they provide a coherent and – despite the necessary brevity – in-depth discussion of all relevant issues. Even minor points such as pre-dispute settlement negotiations, or the problem of pre-investment expenditures as investments, are dealt with comprehensively, with further references in the footnotes. In doing so, the authors never become lost in academic debate, but always keep the perspective of the practitioner. These features make the book not only an excellent introduction and comprehensive overview about the state of the law of investment protection, but also a valuable reference tool for anyone experienced in the field. It is to be recommended to anyone who wishes to gain an insight into the topics under discussion or only needs a reference guide to current law and practice. The quality of the analysis ensures that the book will not lose its value even if the law continues to develop. For both academics and practitioners active in investment arbitration, it must be considered indispensable.

The second book is a US-style casebook. The authors are three of the most renowned practitioners in the field of international law and especially in investment arbitration. They have collected excerpts of the most relevant materials (awards, papers and treatises), structured them in an order similar to the *Rubins/Kinsella* book and published them together with comments and questions enabling the reader to come to its own conclusions. Thirteen chapters, including a short introduction, cover topics such as "Investment Contracts and Key Clauses" (Chapter 3), "Political Risk Insurance" (Chapter 4), "International Responsibility" (Chapter 7), "Reparations recoverable by Foreign Investors in International Law" (Chapter 11) and "Procedure and Proof: Developing the Case" (Chapter 12).

It is a massive work and extremely useful for anyone needing to undertake serious research in the field of investment arbitration. While most of the current investment treaty awards are accessible via the Internet (via websites such as www.investmentclaims.com or the ICSID-Website), older awards are published in print journals such as ILR, the ILM or the Iran-US Claims Tribunal Reports which are not accessible to everyone. That also applies with respect to papers published in various law journals (e.g. Christie's seminal paper on expropriation in the 1962 BYIL). The mass of information, combining the analysis of various authorities for each pertinent issue, but especially the 1600+ pages make it difficult, if not impossible to review the book in detail and to give appropriate credit to it. In short, the book saves a considerable amount of research time and – in most cases – will even make accessible to the reader material which he would not have searched for without the book. It is a treasure chest of references and information. However, the book is too detailed for anyone new to the field of investment arbitration (except if it is used as a course-book). That would be like giving a first-year student the *Encyclopedia Britannica*. One needs to have at least a basic understanding of this field of law in order not to be overwhelmed by the mass of information.

These books are like sea chart maps which allow the reader to navigate on the vast sea of information constituted by

papers, awards and courts cases during the last 100 years. Even the experienced sailor will and should not leave harbour without such sea charts.

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