

from Western (and Northern) Europe with a tradition of human rights protection. There is not a single case study of any post-communist Central and Eastern European state or a state reporting systemic (e. g. Italy) and severe (e. g. Turkey or Russia) human rights problems. Due to the case selection, the authors of the book neglect judicial treatment of the ECHR in countries with rather limited human rights awareness and severe human rights problems. It is clear that the book cannot cover all the 47 Council of Europe member states. Still, if a more representative sample of countries was selected, the conclusions of the book would be further generalizable and more useful.

All in all, despite this critical comment, the book edited by Gerards and Fleuren is a welcome contribution to the literature on implementation of the ECHR. It is particularly valuable because the authors provide a lot of information about the domestic “life” of the ECHR rights – not only about the domestic judgments but, timely, also about the overall public and political debate on the Strasbourg court’s role and legitimacy.

Jan Petrov\*

**Sornarajah, Muthucumaraswamy. *The International Law on Foreign Investment*. Cambridge: Cambridge University Press, 2010. 524 p.**

The Cambridge University Press has agreed to print this book in its third edition again maybe for Lawyers to have a good knowledge and understanding in the recent trend of the development of International investment law. As a whole, each concept applies not only for the development of the trend of law to developed countries but also to certain developing countries too.

A short review at The Cambridge University Press’ cover of this book tells us an idea that “ Gives recent seismic upheavals in the world’s money market, an updated edition of an authoritative, reliable textbook on the international law of foreign investment has rarely been so timely”. Sornarajah’s classic text surveys how international law has developed to protect foreign investments by multinational actors and to control any misconducts on their part. Its analyses treaty-base methods and examines the effectiveness of bilateral and regional investment treaties. It also considers the reverse flow of investments from emerging industrializing powers such as China and Brazil and explores the retreat from market-oriented economics to regulatory controls by offering thought- provoking analysis of, not only the law, but also to related developments in economic and political sciences. Sornarajah also gives immediacy and relevance to discipline. This book is a required reading for all postgraduate and undergraduate international law student specialising in the law of foreign investments.”<sup>1</sup>

M. Sornarajah is C. J. Koh Professor at the faculty of Law of the National University of Singapore, and Tunku Abdul Raman Professor of International Law at the University of Malaya at Kuala Lumpur<sup>2</sup>. In his professional background, he explained the world economic and political situations right now in his critique of Neo-Liberalism theory as a required market and an assurance of freedom of movement to multinational corporations of developed countries and has a standard

<sup>5</sup> See e. g. ANAGNOSTOU, D., MUNGIU-PIPIDI, A. Domestic Implementation of Human Rights Judgments in Europe: Legal Infrastructure and Government Effectiveness Matter. *European Journal of International Law*. 2014, Vol. 25, No. 1; HILLEBRECHT, C. Implementing International Human Rights Law at Home: Domestic Politics and the European Court of Human Rights. *Human Rights Review*. 2012, Vol. 13, No. 3.

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<sup>1</sup> SORNARAJAH, M. *The International Law on Foreign Investment*. Cambridge: Cambridge University Press, 2010 in cover of this book.

<sup>2</sup> Ibid, in cover of this book.

treatment for the investment. One of the examples is a standard treatment of the investment against expropriation of foreign investment. However, the result of Neo- Liberalism theory created obstruction for developing countries in the international trade and international investment because of the fact that international investments are concluded relations between developed countries, like capital exporting and importing states in imbalance or un-equality in international investment practice. An example of which is the unequal position power for negotiation to make investment treatments. Right now, Bilateral Investment Treaty (BIT) looks like a standard contract of both developed and developing countries, which cannot be negotiated or bargained, and this must be recognizable.

In the first introduction of chapter 1, he wrote statements about evolution and periods of international investment during the colonial, the post- colonial, and the neo liberalism period, which started in the 1990s. He also explained theory of international law based on positivism, morality, and conscience. This book is a contribution to the process of normative conflict. The identification of the conflicts in norm will facilitate itself to the process of future settlement of conflicts and bring out a clear set of rules to the international investment law. He also gave the definition of foreign investment as “the transfer of tangible or intangible assets from one country to another for the purpose of their use in that country to generate wealth under the total or partial control of the owner of the assets”. Also Investment treaties define the nature of foreign investment that is protected through their provisions in the purpose, which they are created for use.

In Chapter 2, he identified factors which have effects on international investment law and all its possible involvements. For example, historical setting on how to treat an investor and his properties for investment by principle of Hall formula as it should be prompt, adequate and effective. He explained that Calvo’s doctrine is opposite to his view that no state should required protection of investment more than its own nation as a host state. He also wrote a conflict of economic theories and identified some sectors that have effects on international investment particularly the natural resource sector, financial sector, plantation sector, finance sector and intellectual property sector. The multinational and state corporations are described and identified the source of problems for international investment law and its roles to international institutions. Also, this chapter has identified many arbitral awards and opinions to support the understanding of rule or principle of investment law.

This chapter looks like the international investment in our world wherein it is comparable to a theatre that has a lot of actors and each of them has a role to make a principle in international investment law to enforce in its relation.

Chapter 3 discussed the control of the host state to the process of foreign investment. The host state has some policies and strategies to control laws such as domestic law level or bilateral or multilateral treaty level. This chapter shows us the balance between sovereignty of host state and the clause of standard treatment in investment treaty.

Chapter 4 stated the control of home state to multinational corporation and its measures. Multinational corporation must have an thorough obligation with host state and should not interfere to domestic politics, human rights, promotion of economic development, and liability for violations to environmental norms. Extraterritorial control by home state must be responsible for any failure to control Multinational Corporation and must provide remedies to victims. After we read this chapter, we will understand that home state of multinational corporation must have a responsibility in international investment too, not only to its investment treatments.

Chapter 5 is an analysis of bilateral investment treaties (BIT). BITs are important trends, and most countries like to sign BITs to develop and increase investments. It is now considered as a phenomenon of the modern law. Author explained that many claims are made not to constitute customary international law maybe because BIT requires only two states<sup>3</sup>. This chapter also explains how to balance standard investment treatment and the sovereign rights of contracting state.

Chapter 6 explained Multilateral instruments on foreign investment made by international institutions to set up international investment uniform norm. One of the examples is the Multilateral Agreement on Investment (MAI) by OECD. This is not successful because of its failure to embroil the politics of globalization. WTO tries again to make an international investment unified to norm, both for the present and future. The effect of multilateral instrument on foreign investment made by international institutions set up a softer law to international investment.

Chapter 7 discussed the Settlement of investment disputes contract-Based arbitration according to the conducts of ICSID or non ICSID or other international institute of arbitration. After reading this chapter, we will understand the reason of author's criticism in the award of arbitration made on commercial base and did not follow theory of international law.

Chapter 8 stated the Treaty-based investment arbitration on jurisdictional issues. This chapter aims to understand treaties, procedural requirement of dispute and arbitration particularly in jurisdictional issues like problems in consent of parties in treaty or other ways, and criticisms on extension of interpretation to a jurisdiction with no limitation.

Chapter 9 enumerated the causes of action like breaches of treatment, standards of treatments as result of NAFTA litigation opportunity to extend and create standards of treatment for developed countries, legitimacy of the techniques used by tribunals, and the interpretation of principle of faire and equitable.

Chapter 10 talked about foreign property and how to protect forms of expropriation in a period of neo-liberalism. It also discussed the reaction to enforce the admission of an exception of expropriation that exercised a regulation. An example of which is the expropriation by public purpose.

Chapter 11 discussed the compensation for nationalisation of foreign investments based on the principle of Hall formula prompt to its adequacy and effectivity.

Chapter 12 defended a certain responsibility. This chapter explained that evolution of international investment law tried to create responsibilities of state in activity of investment based on treaty or customary of international law such as *Ius cogens* or human rights.

## Conclusion

The period of neo liberalism which started in the 1990s where the international investment law as branch of public international law was established, evolved in the concept of liberal and free trade movement and tried to reduce obstruction of international investment and setup regulations for relations in international investment law in the form of resource public international treaties, custom, general principles and judicial decisions for the protections and treatments of international investment such as principles of National treatment and Most – Favoured – Nation (MFN) Treatment, Fair and Equitable Treatment, Umbrella clauses of protection and form expropriation.

The world of international investment tried to set up positive law of international investment law as Multilateral Agreement on Investment (MAI) by OECD, or Settlement of investment disputes based on conduct of ICSID for the purpose of good conduct in relations to international investment. However, after the occurrence of economic crisis in Argentina and negative experiences with investment arbitration in developing countries, we can rethink the concept of neo liberalism in international investment law is hiding something. The real situation shows the relation between developed countries (like capital exporting states) and developing countries (like capital importing state in imbalance or un-equality in international investment practice and unequal position power for negotiation) in making investment treatment and principles of international investment law. However Professor M. Sornarajah – the author of this book explained and criti-

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<sup>3</sup> Ibid p. 232.

cized the international investment law base on concept of neo-liberalism. He presented the international investment in concept of balance and sustainable views. He also explained tactics of developed countries in practice of international investment and how to negotiate investment treaty for developing countries. After reading this book, we will understand the author's concept of international investment for developing countries and how to react with developed countries in relation to international investment.

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