

**YEARBOOK ON
INTERNATIONAL
INVESTMENT LAW
& POLICY
2010-2011**

**EDITED BY
KARL P. SAUVANT**

OXFORD

Yearbook On International Investment Law Policy 2010
2011 Yearbook On International Investment Law Policy
2010 2011

Karl P Sauvant



Yearbook On International Investment Law Policy 2010 2011 Yearbook On International Investment Law Policy 2010 2011:

Yearbook on International Investment Law & Policy 2010-2011 Karl P. Sauvant, 2012-02-16 The Yearbook on International Investment Law Policy 2010 2011 monitors current developments in international investment law and policy focusing in Part One on recent trends and issues in foreign direct investment FDI Part Two then addresses the fundamental developments in European Union policy toward bilateral investment treaties and annexes the key official European Union documents **The Foundations of International Investment Law** Zachary Douglas, Joost Pauwelyn, Jorge E. Viñuales, 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 **Prospects in International Investment Law and Policy** Roberto Echandi, Pierre Sauvé, 2013-04-18 The negotiation of a patchy but burgeoning network of international investment agreements and the increasing use to which they are put is generating a growing body of jurisprudence which while still evolving requires closer analytical scrutiny Drawing on many of the most distinguished voices in investment law and policy and offering novel multidisciplinary perspectives on the rapidly evolving landscape shaping international investment activity and treaty making this book explores the most important economic legal and policy challenges in contemporary international investment law and policy It also examines the systemic implications flowing from frenetic recent judicial activism in

investment matters and advances several innovative propositions for how best to promote greater overall coherence in rule design treaty use and policy making and thus offer a better balance between the rights and obligations of international investors and host states **Towards Consistency in International Investment Jurisprudence** Katharina

Diel-Gligor, 2017-05-22 Investor State arbitration is currently a much debated topic both within the legal community and in the public at large In *Towards Consistency in International Investment Jurisprudence* Katharina Diel Gligor addresses the alleged proliferation of inconsistent decision making in this field one of the main points of concern raised in the ongoing discussions After exploring whether such criticism is appropriate at all she goes on to examine the different causes forms and manifestations of the inconsistencies that exist through a detailed analysis of ICSID arbitration The author then canvasses possible approaches to reform and concludes that an ICSID preliminary ruling system the practicalities of which are set out in the study is a suitable means for enhancing consistency in investment arbitration and moving towards a jurisprudence constante

The Effects of Armed Conflict on Investment Treaties Tobias Ackermann, 2022-08-25 This book analyses the multi faceted impact armed conflict has on investment treaties Refuting the common association of the outbreak of hostilities with the termination or suspension of treaties it not only makes a case for the continuity of investment treaties The book argues that the impact of armed conflict on such agreements goes far beyond these questions Changed factual circumstances and public interests as well as international humanitarian law heavily influence the application and interpretation of investment protection standards The book argues that investment treaties can and must channel these effects to remain effective during armed conflict and strike a fair balance between investor and public interests It shows ways in which contextual and systemic interpretation respect for reasonable state action and careful treaty design can ensure that investment treaties continue to fulfil their purpose of strengthening compliance with legal rules also in times of armed conflict

Asia's Changing International Investment Regime Julien Chaisse, Tomoko Ishikawa, Sufian Jusoh, 2017-10-24 This book focuses on the Asia Pacific region delineating the evolving dynamics of foreign investment in the region It examines the relationship between efforts to increase foreign direct investment FDI and efforts to improve governance and inclusive growth and development Against a background of rapidly developing international investment law it emphasises the need to strike a balance between these domestic and international legal frameworks seeking to promote both foreign investment and the laws and policies necessary to regulate investments and investor conduct Foreign investments play a pivotal role in most countries political economies and in order to encourage cross border capital flows countries have taken various steps such as revising their domestic legal frameworks liberalising rules on inward and outward investment and creating special regimes that provide incentives and protections for foreign investment Alongside the developments in domestic laws countries have also taken bilateral and multilateral action including entering into trade and or investment agreements Further the book explores regional investment trends highlights specific features of Asia Pacific investment laws and treaties and analyses

policy implications It addresses four overarching themes the trends how Asia Pacific s agreements compare with recent global trends in the evolving rules on foreign investment what China is doing current investment arbitration practice in Asia and the importance of regionalising investment law in the Asia Pacific region In addition it identifies and discusses the research and policy gaps that should be filled in order to promote more sustainable and responsible investment The book offers a valuable resource not only for academics and students but also for trade and investment officials policy makers diplomats economists lawyers think tanks and business leaders interested in the governance and regulation of foreign investment economic policy reforms and the development of new types of investment agreements **International**

Investment and Dispute Settlement Chunlei Zhao,2022-06-16 This book analyzes the dispute settlement mechanisms under the EU China Comprehensive Agreement on Investment CAI including the already established mechanisms for general state to state dispute settlement and the Mechanism to Address Differences for investment and sustainable development issues When China and the EU two of the biggest players in international investment announced the completion of the China European Union CAI negotiations the dispute settlement system remained incomplete While they reached an agreement on state to state dispute settlement the controversial investor state dispute settlement is subject to ongoing negotiations This book explores the possible procedural design of investor state dispute settlement mechanisms under the EU China CAI including potential proposals issues and solutions In addition this work analyzes the separation connection and combination of state to state and investor state dispute settlement all with a mind to ensuring the function and operation of diverse mechanisms and establishing a comprehensive system for successful investment dispute settlement Focusing on the complete dispute settlement system under the EU China CAI this book will be a valuable resource for students academics and policymakers working in the areas of international dispute resolution international investment law international economic law and comparative law Protection of Foreign Investments in an Intra-EU Context Moskvan, Dominik,2022-02-04 The

Achmea judgment revolutionised intra EU investment protection by declaring intra EU bilateral investment treaties intra EU BITs incompatible with EU law This incisive book investigates whether intra EU foreign investments benefit from this alteration which discontinued the parallel applicability of intra EU BITs and EU law in the EU internal market In addition to comparative legal analysis from an investor perspective Dominik Moskvan puts forward a proposal for a creation of a permanent intra EU foreign investment court to ensure a balanced economic development of the EU internal market

Investment Treaties and the Legal Imagination Nicolás M. Perrone,2021-01-14 Foreign investors have a privileged position under investment treaties They enjoy strong rights have no obligations and can rely on a highly efficient enforcement mechanism investor state dispute settlement ISDS Unsurprisingly this extraordinary status has made international investment law one of the most controversial areas of the global economic order This book sheds new light on the topic by showing that foreign investor rights are not the result of unpredicted arbitral interpretations but rather the

outcome of a world making project realized by a coalition of business leaders bankers and their lawyers in the 1950s and 1960s Some initiatives that these figures planned for did not emerge such as a multilateral investment convention but they were successful in developing a legal imagination that gradually occupied the space of international investment law They sought not only to set up a dispute settlement mechanism but also to create a platform to ground their vision of foreign investment relations Tracing their normative project from the post World War II period this book shows that the legal imagination of these business leaders bankers and lawyers is remarkably similar to present ISDS practice Common to both is what they protect such as foreign investors legitimate expectations as well as what they silence or make invisible Ultimate this book argues that our canon of imagination of adjustment and potential reform remains closely associated with this world making project of the 1950s and 1960s

Dispute Resolution in China, Europe and World Lei Chen, André

Janssen, 2020-04-11 This book brings together articles from leading experts in the field of international dispute resolution The main focus is on the situation in Asia though the European perspective also plays an important part Accordingly the focus on the Asian dispute resolution market with a distinctly American and European touch is one of the book's most unique features The dispute resolution market is rapidly transforming and dispute resolution law is changing with it especially in Asia This book highlights recent advances and outlines future trends in this area Emphasis is especially placed on International Commercial Arbitration Law on the one hand and on International Investment Arbitration Law on the other Two dedicated sections address these two topics while another is dedicated to a quite new phenomenon in the field of international dispute resolution the emergence of International Commercial Courts not only in Asia but also in other regions of the world e.g. in the Netherlands This raises a host of interesting legal questions which the book addresses The book's final section investigates general trends in dispute resolution e.g. the rising cost problem in arbitration in general

The Transformation of International Investment Law and Its Principles Güneş Ünüvar, 2025-10-16 This book explores how international investment law has evolved through the interpretation of key protection standards like Fair and Equitable Treatment and indirect expropriation It examines how arbitral decisions have shaped and been shaped by state treaty making practices particularly in recent new generation agreements The analysis reveals a broader trend toward greater clarity specificity and balance in the design of investment treaties Güneş Ünüvar skillfully combines a voluntarist approach to the making of international investment law and the practical reality that arbitral tribunals are the main interpreters of the volunt of the States thereby shaping the field as much as or perhaps more than the States themselves Ünüvar's analysis of the development and evolution both in cases and treaties of the two most used investment protection norms is a unique and compelling contribution to understanding the law and policy of investment law and arbitration A must read Prof Eric de Brabandere Leiden University This book is an important contribution to the thinking about the international investment regime It looks at the regime dynamically reflecting on how it has developed historically and how the outcome of disputes has shaped the responses of

governments in their treaty making This book will be important reading for everybody thinking critically about the regime whether in academia or in government It is all the more relevant for the work of UNCITRAL Working Group III which has to think both about which reforms to develop but also how to ensure that adjustments can be made in the future Colin Brown European Commission G ne n var offers an insightful perspective on the evolving landscape of international investment law By examining the dynamic relationship between arbitration and treaty making this book sheds light on how protection standards like fair and equitable treatment and indirect expropriation are shaped through practice and interpretation n var s analysis is both thoughtful and accessible shedding light into complex ideas about legal certainty legitimacy and normative development Prof Ursula Kriebaum University of Vienna An important contribution to international investment law In The Transformation of International Investment Law and its Principles G ne n var does a remarkable job of integrating treaty practice and arbitral case law into a comprehensive and accessible study of investment law s most important standards Prof Catharine Titi The French National Centre for Scientific Research CNRS *Proportionality in Investor-State Arbitration* Gebhard Bücheler, 2015-06-11 While international investment law is one of the most dynamic and thriving fields of international law it is increasingly criticized for failing to strike a fair balance between private property rights and the public interest Proportionality is a tool to resolve conflicts between competing rights and interests This book assesses its current role its potential and its limits in investor State arbitration Proportionality is often lauded for reconciling colliding interests This book identifies three factors arbitrators should consider before engaging in a proportionality analysis the rule of law the risk of judicial law making and the availability of a value system that guides the proportionality analysis Apart from making suggestions when arbitrators should apply proportionality and when not to the book outlines what States can do to recalibrate the balance between private property rights and the public interest if they wish to do so without dismantling the current system of investor State arbitration Proportionality in Investor State Arbitration considers whether and to what extent the notion of general principles of law within the meaning of Article 38 1 c of the ICJ Statute and the concept of systemic integration enshrined in Article 31 3 c of the Vienna Convention on the Law of Treaties provides a valid legal foundation for applying proportionality in investor State arbitration **State-to-state Arbitration based on International Investment Agreements** Angshuman Hazarika, 2020-09-14 This book discusses the use of the compromissory clause in international investment agreements IIAs for interstate dispute resolution It puts forward the possibility of using state to state arbitration based on the compromissory clause in IIAs as an alternative means of resolving investment disputes in light of the global debate on the shortcomings of investor state arbitration The book s main conclusion is that state to state arbitration may be used as an alternative to currently popular investor state arbitration by resolving procedural hurdles which impede its acceptance It becomes more important with the removal of investor state arbitration as an option in certain recent IIAs which then elevates state to state arbitration as the sole option for binding third party dispute resolution in the

treaty Even then it is unlikely to replace investor state arbitration completely due to its inherent shortcomings such as the risk of re politicising disputes and a lack of direct control over the process for the affected investors Nevertheless the availability of an alternative forum will benefit all parties involved as they will no longer be wholly dependent on investor state arbitration which can be affected by events such as denunciation from the ICSID Convention or the refusal of a host state to enforce an arbitration award Regionalism in International Investment Law Leon Trakman,Nick W.

Ranieri,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 **EU External**

Action in International Economic Law Mads Andenas,Luca Pantaleo,Matthew Happold,Cristina Contartese,2020-09-25

The topic of this book is the external action of the EU within international economic law with a special focus on investment law The aim of the volume is to provide the reader with an appraisal of the most recent trends and developments that have characterised a field that has been rapidly evolving and in which the EU has imposed itself as a leading actor The book is aimed at academics practitioners and graduate students as well as at EU officials and judges all of whom should find the subject matter discussed useful for keeping updated on a scholarly discussion of relevance to case law Mads Andenas is Professor of Law at the Faculty of Law of the University of Oslo in Norway Luca Pantaleo is Doctor of Law and Senior Lecturer in International and European Law at The Hague University of Applied Sciences in The Netherlands Matthew Happold is Professor of Law at the Universit du Luxembourg in Luxembourg Cristina Contartese is Lecturer in Law at the European Law and Governance School in Athens Greece The European Crisis and the Transformation of Transnational Governance Christian Joerges,Carola Glinski,2014-11-13 The debate on law governance and constitutionalism beyond the state is confronted with new challenges In the EU confidence in democratic transnational governance has been shaken by the authoritarian and unsocial practices of crisis management The ambition of this book which builds upon many years of close

co operation between its contributors is to promote a viable interdisciplinary alternative to these developments Conflicts law constitutionalism is a concept of transnational governance which derives democratic legitimacy from the supranational control of the external impact of national decision making on the one hand and the co operative responses to problem interdependencies on the other The first section of the book contrasts Europe s new modes of economic governance and crisis management with the conditionality of international investments and reflects upon the communalities and differences between emergency Europe and global exceptionalism Subsequent sections substantiate the probl matique of executive and technocratic rule explore conflict constellations of prime importance in the fields of environmental and labour law and discuss the impact and limits of liberalisation strategies Throughout the book European and transnational developments are compared and evaluated

National Security Exceptions in International Trade and Investment Agreements

Sebastián Mantilla Blanco,Alexander Pehl,2020-01-16 This book provides a comprehensive analysis of national security exceptions in international trade and investment agreements The subject has gained particular relevance in the past few years as both the United States and the Russian Federation have invoked national security as justification for trade restrictive measures in the context of WTO dispute settlement proceedings The book describes the evolution of security exceptions in international economic law from the GATT 1947 to the most recent economic treaties such as the 2017 Buenos Aires Protocol for Intra Mercosur Investment and the 2018 USMCA Further it presents an overview of the rich array of adjudicatory practices addressing national security clauses covering the decisions of WTO dispute settlement bodies the ICJ and numerous investment arbitral tribunals To this end the book addresses the debates surrounding the alleged self judging character of security exceptions and the standards of review applicable where the exception is considered to be justiciable

Constitutional Review and International Investment Law David Schneiderman,2024-04-10 The revival of interest in comparative constitutional studies alongside the rise of legal limitations to state action due to investment treaty commitments calls for a unique analysis of both investment law and comparative constitutional law The unresolved tensions that arise between the two are only beginning to be addressed by judges Are courts resisting these new international limitations on their constitutional space Constitutional Review and International Investment Law Deference or Defiance pioneers this discussion by examining how a selection of the highest courts around the world have addressed this potential discord A comparison of decisions in the US Europe Colombia Indonesia Israel and elsewhere reveals that rather than issuing declarations of constitutional incompatibility courts are more likely to respond to constitutional tensions indirectly Their rulings adopt stances that range from hard deference such as the Peruvian Constitutional Court viewing constitutional law and investment law as entirely compatible to soft defiance for example the Colombian Constitutional Court requiring only modest renegotiation of some treaty terms so that they are constitutionally compliant Readers learn that judges are not aiming to undermine the investment law regime but are seeking to mitigate constitutional collision

Performance

Requirement Prohibitions in International Investment Law Alexandre Genest, 2019-09-16 In *Performance Requirement Prohibitions in International Investment Law* Alexandre Genest explores the prohibition of performance requirements in investment treaties The author focuses on answering two questions first how do States prohibit performance requirements in investment treaties And second how should such prohibitions of performance requirements be interpreted and applied In providing answers to these questions Alexandre Genest breaks new ground by proposing the first empirical typology of performance requirement prohibitions in investment treaties and the first in depth analysis of arbitral awards on the subject Alexandre Genest formulates insightful remarks for a more deliberate and informed interpretation and application of existing performance requirement prohibitions These remarks will help improve the drafting of performance requirement prohibitions in future investment treaties

Investment Law's Alibis David Schneiderman, 2022-08-04 Connects narratives associated with colonialism imperialism civilized justice debt and development to international investment treaty law and arbitration

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Table of Contents Yearbook On International Investment Law Policy 2010 2011 Yearbook On International Investment Law Policy 2010 2011

1. Understanding the eBook Yearbook On International Investment Law Policy 2010 2011 Yearbook On International Investment Law Policy 2010 2011
 - The Rise of Digital Reading Yearbook On International Investment Law Policy 2010 2011 Yearbook On International Investment Law Policy 2010 2011
 - Advantages of eBooks Over Traditional Books
2. Identifying Yearbook On International Investment Law Policy 2010 2011 Yearbook On International Investment Law Policy 2010 2011
 - Exploring Different Genres

- Considering Fiction vs. Non-Fiction
- Determining Your Reading Goals
- 3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Yearbook On International Investment Law Policy 2010 2011 Yearbook On International Investment Law Policy 2010 2011
 - User-Friendly Interface
- 4. Exploring eBook Recommendations from Yearbook On International Investment Law Policy 2010 2011 Yearbook On International Investment Law Policy 2010 2011
 - Personalized Recommendations
 - Yearbook On International Investment Law Policy 2010 2011 Yearbook On International Investment Law Policy 2010 2011 User Reviews and Ratings
 - Yearbook On International Investment Law Policy 2010 2011 Yearbook On International Investment Law Policy 2010 2011 and Bestseller Lists
- 5. Accessing Yearbook On International Investment Law Policy 2010 2011 Yearbook On International Investment Law Policy 2010 2011 Free and Paid eBooks
 - Yearbook On International Investment Law Policy 2010 2011 Yearbook On International Investment Law Policy 2010 2011 Public Domain eBooks
 - Yearbook On International Investment Law Policy 2010 2011 Yearbook On International Investment Law Policy 2010 2011 eBook Subscription Services
 - Yearbook On International Investment Law Policy 2010 2011 Yearbook On International Investment Law Policy 2010 2011 Budget-Friendly Options
- 6. Navigating Yearbook On International Investment Law Policy 2010 2011 Yearbook On International Investment Law Policy 2010 2011 eBook Formats
 - ePub, PDF, MOBI, and More
 - Yearbook On International Investment Law Policy 2010 2011 Yearbook On International Investment Law Policy 2010 2011 Compatibility with Devices
 - Yearbook On International Investment Law Policy 2010 2011 Yearbook On International Investment Law Policy 2010 2011 Enhanced eBook Features
- 7. Enhancing Your Reading Experience

- Adjustable Fonts and Text Sizes of Yearbook On International Investment Law Policy 2010 2011 Yearbook On International Investment Law Policy 2010 2011
 - Highlighting and Note-Taking Yearbook On International Investment Law Policy 2010 2011 Yearbook On International Investment Law Policy 2010 2011
 - Interactive Elements Yearbook On International Investment Law Policy 2010 2011 Yearbook On International Investment Law Policy 2010 2011
8. Staying Engaged with Yearbook On International Investment Law Policy 2010 2011 Yearbook On International Investment Law Policy 2010 2011
- Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Yearbook On International Investment Law Policy 2010 2011 Yearbook On International Investment Law Policy 2010 2011
9. Balancing eBooks and Physical Books Yearbook On International Investment Law Policy 2010 2011 Yearbook On International Investment Law Policy 2010 2011
- Benefits of a Digital Library
 - Creating a Diverse Reading Collection Yearbook On International Investment Law Policy 2010 2011 Yearbook On International Investment Law Policy 2010 2011
10. Overcoming Reading Challenges
- Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
11. Cultivating a Reading Routine Yearbook On International Investment Law Policy 2010 2011 Yearbook On International Investment Law Policy 2010 2011
- Setting Reading Goals Yearbook On International Investment Law Policy 2010 2011 Yearbook On International Investment Law Policy 2010 2011
 - Carving Out Dedicated Reading Time
12. Sourcing Reliable Information of Yearbook On International Investment Law Policy 2010 2011 Yearbook On International Investment Law Policy 2010 2011
- Fact-Checking eBook Content of Yearbook On International Investment Law Policy 2010 2011 Yearbook On International Investment Law Policy 2010 2011

◦ Distinguishing Credible Sources

13. Promoting Lifelong Learning

- Utilizing eBooks for Skill Development
- Exploring Educational eBooks

14. Embracing eBook Trends

- Integration of Multimedia Elements
- Interactive and Gamified eBooks

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understand your organization and its particular context 4 2

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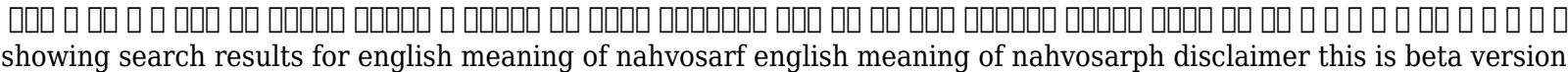
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