Bilateral Investment Treaties

The Impact of Bilateral Investment Treaties on Taxation

The First Bilateral Investment Treaties is the first and only history of the U.S. postwar Friendship, Commerce, and Navigation (FCN) treaty program, and focuses on the investment-related provisions of those treaties. The 22 U.S. postwar FCN treaties were the first bilateral investment treaties ever concluded, and nearly all of the core provisions in the modern network of more than 3000 international investment agreements worldwide trace their origin to these FCN treaties. This book explains the original understanding of the language of this vast network of agreements which have been and continue to be the subject of hundreds of international arbitrations and billions of dollars in claims. It is based on a review of some 32,000 pages of negotiating history housed in the National Archives. This book demonstrates that the investment provisions were founded on the New Deal liberalism of the Roosevelt-Truman administrations and were intended to acquire for U.S. companies investing abroad the same protections that foreign investors already received in the United States under the U.S. Constitution. It chronicles the failed U.S. attempt to obtain protection for investment through the proposed International Trade Organization (ITO), providing the first and only history of the investment-related provisions in the ITO Charter. It then shows how the FCN treaties, which dated back to 1776 and originally concerned with establishing trade and maritime relations, were re-conceptualized as investment treaties to provide investment protection bilaterally. This book is also a work of diplomatic history, offering an account of the negotiating history of each of the 22 treaties and describing U.S. negotiating policy and strategy.

An updated list of bilateral investment treaties concluded to mid- 1991.

In March 2018, the Court of Justice of the European Union (EU) ruled in Achmea that investor-state dispute resolution provisions in intra-EU bilateral investment treaties (BITs) are incompatible with EU law and ipso facto invalid. In January 2019, EU Member States issued Declarations on the Legal Consequences of the Judgment in Achmea undertaking to take steps formally to terminate intra-EU BITs. However, at present, there is no consensus among them on the implications of Achmea on the Energy Charter Treaty, the multilateral energy treaty to which the EU and its Member States are all parties. Many EU law scholars consider the Achmea judgment as the death knell to intra-EU investment treaty arbitrations. Some have even predicted the end of Investor-State Dispute Settlement itself. Investment treaty and public international law scholars and legal practitioners, however, have a different view of the schism now growing between EU and international law. The Future of Investment Treaty Arbitration in the EU examines the current and the proposed new framework for investment protection in the EU and internationally, with a particular focus on investment treaty arbitration and energy-related investments. With contributions from leading academics and practitioners, the book addresses the following themes: Intra-EU investment protection and the rule of law, including the proposed Multilateral Investment Court. The original purpose and features of investment protection, with particular focus on the EU. The Achmea judgment and its impact on the Energy Charter Treaty and energy investments. The ongoing discussion to modernize the Energy Charter Treaty post-Achmea. EU state aid and investment arbitral awards. Recognition and enforcement of investment arbitral awards post-Achmea in EU Member States, including in the light of Brexit. Recognition and enforcement of investment arbitral awards post-Achmea in China, Singapore, Switzerland and the United States. This eminently informative book is very timely given the ongoing debate taking place in the EU and internationally regarding the interrelationship between investment treaty arbitration, public international law and EU law. The

contributions from leading academics, scholars and European Commission officials provide a balanced, contextualized, detailed and critical analysis that will aid interested stakeholders to navigate their way with confidence through this difficult and changing area of the law.
Discusses the bilateral investment treaty, or BIT.
The tax aspects of bilateral investment treaties, which, in most cases, provide the investor with the unique opportunity to directly initiate an international dispute settlement process? also known as investor-state dispute settlement? are often overlooked. The increasing number of tax-related investment disputes is a clear indicator of an urgent need to identify and examine the issues emerging in this area in an academic context.0 The aim of this book is to provide a comprehensive analysis of the relationship between taxation and bilateral investment treaties. Twenty-one national reports from countries across the globe have been compiled in this volume. The reports, prepared for the conference?The Impact of Bilateral Investment Treaties on Taxation?, which took place in Rust (Austria) from 2-4 July 2015, help bring to light tax aspects of bilateral investment treaties that have significant unexplored aspects.
Many countries have started contesting international investment treaties that allow foreign corporations to sue sovereign States for alleged treaty breaches at international arbitration fora. This contestation has taken the form of either countries terminating their investment treaties orwalking out of the investor-State dispute settlement (ISDS) system. India has also jumped on the contestation bandwagon. As a consequence of being sued by more than 20 foreign investors, India terminated close to 60 investment treaties and adopted a new model bilateral investment treaty (BIT)purportedly to balance investment protection with the host State's right to regulate. This book studies critically India's approach towards BITs by tracing its origin, evolution, and the current state of play. The book does so by locating it in India's economic policy in general and policy towardsforeign investment in particular. India's approach towards BITs and its policy towards foreign investment were consistent with each other in the periods of economic nationalism (1947-1990) and economic liberalism (1991-2010). However, post 2010, India's approach to BITs has become protectionistwhile India's foreign investment policy continues to be liberal. In order to balance investment protection with the State's right to regulate, India needs to evolve its BIT practice based on the twin framework of international rule of law and embedded liberalism.
Examines how developing countries often sign up to highly potent rules underwriting economic globalisation without even realising it.
In 2005, as part of its research activities in the field of investment treaty law and arbitration, the Investment Treaty Forum at the British Institute of International and Comparative Law organized two very successful public conferences in London addressing the issues of 'Nationality and Investment Treaty Claims' and 'Fair and Equitable Treatment in Investment Treaty Law.' This publication records the presentations given by very distinguished experts in the field. The first conference addressed a central issue in international law. Nationality sits at the heart of the debate over the rights and participation of private parties in international relations. In international investment law, nationality constitutes one of the central criteria defining the scope of application of international investment agreements such as the International Centre for Settlement of Investment Disputes (ICSID) Convention or the several thousands bilateral investment treaties (BITs) and free trade agreements (FTAs). Topics addressed at the conference include the issue of nationality of physical and

legal persons, the requirements for substantive and continuous nationality, as well as the issue of nationality in derivative actions and indirect claims. The second conference dealt with potentially the most important and elusive obligation imposed on States by international investment treaties: the fair and equitable treatment standard. The elements that are usually cited by the case law and by legal scholars in the attempt to describe the meaning of the fair and equitable treatment standard include very broad concepts that are open to differing interpretations depending fundamentally on the perceived objectives of the international investment system. Among the topics addressed at the conference were the application of the fair and equitable treatment standard in customary international law and in investment treaty practice; equivalent standards under domestic administrative law; the relationship between the fair and equitable standard and expropriation; and the relevance of the conduct of the investor in determining a breach of the fair and equitable treatment standard.

This book seeks to determine the level of substantive protection that investment treaties should provide to foreign investment.

Seminar paper from the year 2016 in the subject Business economics - Miscellaneous, grade: 1,6, http://www.uni-jena.de/, language: English, abstract: In the era of Globalisation international investment flows are large. Even small and medium sized companies are active in foreign countries and economies are increasingly interdependent. Despite this globalisation process there is no unified legal framework concerning international investments and the disputes which may arise from them. In this perspective global governance is lacking behind globalisation. International investment is one of the key drivers of economic development. Investors demand legal security, also in countries where domestic governance is weak in order to minimise the non-commercial risks. International Investment Agreements (IIA) between two or more countries serve as primary legal basis to govern and protect international investments and to settle disputes between investors and states. The framework of thousands of IIAs and within it the system of Investor State Dispute Settlement (ISDS) is fragmented and increasingly subject to harsh critique of providing inconsistent arbitration awards and lacking legitimacy in general. This paper addresses the development of ISDS provisions in investment agreements and how the current system could be reformed. Chapter two provides a historical overview of investment treaty practice, the roots of the current system and the development of private courts of arbitration. Main ISDS institutions and their rules will be introduced. The following section will point out the arguments in favour and opposing ISDS. Critique will be made visible on examples of prominent cases as well as on overall findings from treaty analysis. The final chapter deals with possibilities to reform, amend or even replace today’s ISDS regime. It will address recent megaregional agreements such like the Trans-Pacific Partnership (TPP) and the Trans-Atlantic Trade and Investment Partnership (TTIP) and their

possible roles in shaping future rules which will govern international investment flows.

Touted as an important commitment device that attracts foreign investors, the number of bilateral investment treaties (BITs) ratified by developing countries has grown dramatically. Hallward-Driemeier tests empirically whether BITs have actually had an important role in increasing the foreign direct investment (FDI) flows to signatory countries. While half of OECD FDI into developing countries by 2000 was covered by a BIT, this increase is accounted for by additional country pairs entering into agreements rather than signatory hosts gaining significant additional FDI. The results also indicate that such treaties act more as complements than as substitutes for good institutional quality and local property rights, the rationale often cited by developing countries for ratifying BITs. The relevance of these findings is heightened not only by the proliferation of such treaties, but by recent high profile legal cases. These cases show that the rights given to foreign investors may not only exceed those enjoyed by domestic investors, but expose policymakers to potentially large-scale liabilities and curtail the feasibility of different reform options. Formalizing relationships and protecting against dynamic inconsistency problems are still important, but the results should caution policymakers to look closely at the terms of agreements. This paper--a product of Investment Climate, Development Research Group--is part of a larger effort in the group to understand the determinants of productive investment.

This is a comprehensive commentary on Chinese bilateral investment treaties (BITs), which are being increasingly used in Chinese foreign investment policy. It will define BITs' role, analyse and interpret their key provisions, and discuss the future of China's investment programme.

This book offers a systematic study of the interpretation of investment-related treaties – primarily bilateral investment treaties, the Energy Charter Treaty, Chapter XI NAFTA as well as relevant parts of Free Trade Agreements. The importance of interpretation in international law cannot be overstated and, indeed, most treaty claims adjudicated before investment arbitral tribunals have raised and continue to raise crucial and often complex issues of interpretation. The interpretation of investment treaties is governed by the Vienna Convention on the Law of Treaties (VCLT). The disputes relating to these treaties, however, are rather peculiar as they place multinational companies (or natural person) in opposition to sovereign governments. Fundamental questions dealt with in the study include: Are investment treaties a special category of treaty for the purpose of interpretation? How have the rules on interpretation contained in the VCLT been applied in investment disputes? What are the main problems encountered in investment-related disputes? To what extent are the VCLT rules suited to the interpretation of investment treaties? Have tribunals developed new techniques concerning treaty interpretation? Are these techniques consistent with the VCLT? How can problems relating to interpretation be solved or minimised? How creative have arbitral tribunals been in interpreting investment treaties? Are

States capable of keeping effective control over interpretation?

This work organizes, summarizes and comments upon the arbitral awards interpreting and applying BIT provisions. Policymakers and practitioners will find a thorough introduction to the operation of the BITs, including the principal arguments and case authorities on both sides of the major issues in international investment law.

In July 2010 the Commission published a communication titled "Towards a Comprehensive European International Investment Policy" expressing its vision of a common investment policy with the ultimate goal of replacing the network of bilateral investment treaties (the "BITs") concluded between Member States and third countries by a regulation based on measures (legislation as well as international treaties) taken primarily by the European Union (the "EU"). It shall be noted that regulation of foreign investments is traditionally seen as a prerogative of sovereign states. The present work reflects current discussions over whether EU law provides for a regulation of foreign investments comparable to the regulation covered by the current BITs concluded by Member States.

As a consequence of being sued by more than 20 foreign investors, India terminated close to 60 investment treaties and adopted a new Model Bilateral Investment Treaty (BIT) purportedly to balance investment protection with the host State’s right to regulate. This book is a critical study of India’s approach towards BITs and traces their origin, evolution, and the current state of play. It does so by locating them in India’s economic policy in general and policy towards foreign investment in particular. India’s approach towards BITs and policy towards foreign investment were consistent with each other in the periods of economic nationalism (1947–1990) and economic liberalism (1991–2010). However, post 2010, India’s approach to BITs has become protectionist while India’s foreign investment policy continues to be liberal. To balance investment protection with the State’s right to regulate, India needs to evolve its BIT practice based on the twin framework of international rule of law and embedded liberalism.

This dissertation analyses developments of international arbitration on investment disputes. Recent years, there has been an extraordinary increase in the number of investment arbitration for breach of Bilateral Investment Treaties (BITs). These treaties include substantive and procedural rules to provide investment security and investment neutrality to foreign investor. In particular, most BITs have investor-state dispute settlement provision which allows investors to sue host states directly. Through analyzing the Turkish BIT experience, this study concludes that there are different approaches that utilized in various investor-state dispute settlement provisions. Thus, the wording of these provisions is important. Furthermore, the ICSID arbitration is mostly incorporated into BITs dispute settlement provisions since the ICSID arbitration has an effective system and different characteristics from other types of international commercial arbitration. This dissertation examines not only the main features of the ICSID, but also the recent amendments made to the ICSID arbitration rules. Finally, after analyzing the concluded and pending ICSID cases against Turkey regarding energy sector, this study concludes that the ICSID has an important role for the development of the international arbitration on investment disputes.

In The Interpretation of Investment Treaties, Trinh Hai Yen analyzes arbitral neglect or misapplication of international rules on treaty interpretation in investor-state arbitrations and proposes both adjudicative and legislative solutions.

Over the past twenty years, foreign direct investments have spurred widespread liberalization of the foreign direct investment (FDI) regulatory framework. By opening up to foreign investors and encouraging FDI, which could result in increased capital and market access, many countries have improved the operational conditions for foreign affiliates and strengthened standards of treatment and protection. By assuring investors that their investment will be legally protected with closed bilateral investment treaties (BITs) and double taxation treaties (DTTs), this in turn creates greater interest in FDI.

The book is divided into four chapters. Chapters I reviews the purposes of bilateral investment treaties (BITs) and their origins. Chapter II discusses the negotiating process of such treaties. Chapter III analyses individual clauses in BITs, focusing in particular on the definition of the terms and principles involved, how these are used, the differences and similarities between present and former treaty practice, and the implications of individual treaty provisions for development. Chapter IV examines the impact BITs have on investment flows. Annex I contains a list of BITs signed as at 1 January 1997.

Bilateral Investment Treaties (BITs) are an important instrument for the protection of foreign direct investment (FDI). However, compared to international trade law, international investment law has so far received only little research attention from an economic point of view. By applying a law and economics approach, Jan Peter Sasse provides a systematic analysis of the way BITs function. He explains why BITs are more than just a signal, how they relate to institutional competition as well as to institutional quality and why transparency in international investment arbitration is hard to achieve and may even be detrimental.

Foreign direct investment (FDI) is an increasingly important driver of the global economy. In the absence of an overarching multilateral framework on investment, bilateral investment treaties (BITs) and investment chapters in free trade agreements (FTAs), collectively referred to as "international investment agreements", have emerged as the primary mechanism for promoting a rules-based system for international investment. This book provides an overview of U.S. international investment agreements, focusing specifically on BITs and investment chapters in FTAs. It discusses key trends in U.S. and international investment flows, governance structures for investment at the bilateral and multilateral levels, the goals and basic components of investment provisions in U.S. international investment agreements, the outcomes of the Administration's model BIT review, and key policy issues for Congress.

Bilateral investment treaties (BITs) signed prior to the 21st century are problematic. Some countries with BITs signed during this period have since reviewed those BITs and taken action to address the disadvantages the BITs held for the host nation or have either resorted to eradicating some of their BITs. In particular, developing countries that signed BITs with developed nations seem to be disproportionately disadvantaged in these agreements. This research highlights Kenya’s current BIT situation and compares it in light of another developing country, South Africa, with regards to its BIT experience. Given that South Africa has undergone an extensive BIT review process and moves to change some of these BITs, this study compares and contrasts the Kenyan and South African experience. The study highlights the possible lessons that could be learnt from the South African BIT review experience and provides recommendations for the Kenyan government regarding its outdated BITs. The lessons and recommendations benefit not only Kenya but also other countries that are still to review their BITs as it adds to the literature on why it is important for countries with such BITs to revisit them and how they can go about the

review mechanism best. In addition, the study is also significant as far as it raises awareness of the use and effects of BITs, thereby enabling countries that enter into such agreements to make informed decisions.

Bilateral Investment Treaties: History, Policy, and Interpretation organizes, summarizes and comments upon the arbitral awards interpreting and applying BIT provisions. Policymakers and practitioners will find a thorough introduction to the operation of the BITs, including the principal arguments and case authorities on both sides of the major issues in international investment law. The book is intended to be a single-volume reference covering every important development in the 50 years of BIT programs worldwide, from 1959 until 2009. Author Kenneth Vandevelde argues that the primary purpose of the BITs is to promote the application of the rule of law to foreign investment, while a secondary purpose is to create a liberal investment regime. He further argues that BITs are based on six core principles: reasonableness, security, nondiscrimination, access, transparency and due process. The book explains each of these principles and analyzes the major BIT provisions based on them. Vandevelde addresses the host of complex questions that BITs engender: Do bilateral investment treaties attract foreign investment or otherwise contribute to economic development? Do BITs limit host state regulatory discretion too much? Why should countries continue to conclude BITs? What is meant by BIT guarantees of "fair and equitable treatment" and "full protection and security"? What is the scope of the BIT provision for most-favored-nation treatment? The book's expert analysis of these questions makes it useful to policy makers in the area of international economic relations, attorneys representing multinational companies, and anyone interested in the process of economic globalization.

International Investment Treaties and Arbitration Across Asia examines whether and how the Asian region has or may become a significant ‘rule maker’ in contemporary international investment law and dispute resolution, focusing on the ‘ASEAN+6’ economies.

Comprehensively investigate key characteristics, evolutionary path, driving forces, interpreting methodologies, and some missing puzzles of Chinese BITs.

The rapid growth in investment treaties has led to a burgeoning number of international arbitration decisions that have applied and interpreted treaty provisions in disputes between investors and states concerning their respective rights. This flurry of treaties and arbitral decisions has seen the creation of a new branch of international law- the law of investment claims. In this revised edition, Jeswald Salacuse examines the law of international investment treaties, specifically in relation to its origins, structure, content, and effect, as well as their impact on international investors and investments, and the governments that are parties to them. Investment treaty law is a rapidly evolving field and since publication of the first edition, the law of international investment treaties has both experienced considerable growth and generated extensive controversy. 2011 saw the highest number of new treaty-based arbitration filed under international investment agreements to date, and in July 2014, the Yukos Universal Limited (Isle of Man) v The Russian Federation culminated with awards of over US$50 billion; a historic record for any arbitration. Controversy in this field has primarily revolved around the investor-state dispute settlement process, which as thus far involved at least 98 states as respondents. Salacuse captures these developments in this updated edition, examining not only the significant growth in treaties, but the trends that have followed, and their effect on the content and evolution of the law of investment treaties. Specific topics include conditions for the entry of foreign investment and general standards of treatment of foreign investments; monetary transfers; operational conditions; protection against expropriation; dispossession and compensation for losses; dispute settlement, including negotiation, arbitration, and conciliation; and judicial proceedings.

Foreign investment is mainly protected through national laws. However the wide-spreading network of bilateral investment treaties aims to

ensure a certain standard of protection. These treaties demonstrate far-reaching implications at both treaty level and international level. The implications raise an important question as to whether bilateral investment treaties are coherent or not. Coherence can be viewed as an attempt to prettify the law and minimise the effect of politics which may leave the law incoherent. It is obvious that bilateral investment treaties need to be coherent for a number of reasons. Firstly, incoherent treaties may create problems in relation to the development policy of member countries. Secondly, coherence reassures that negotiators of such treaties would not encounter possible contradictions and inconsistencies amongst the countries' agreement network as well as between the treaties and domestic laws. Thirdly, coherence is critical to treaty interpretation as it is necessary to avoid further complications which may arise from contradictory awards. The aim of this thesis is mainly to elucidate the meaning of coherence and use it to provide an understanding as to how coherent these treaties are. The coherence of bilateral investment treaties will be evaluated in a number of aspects: coherence between bilateral investment treaties and the fundamental principles of international investment law; coherence between bilateral investment treaties and their objectives of investment promotion and investment liberalisation; coherence within the bilateral investment treaties network; coherence between bilateral investment treaties and customary international law on foreign investment; coherence between bilateral investment treaties and free trade agreements; coherence between bilateral investment treaties' obligations and non-investment obligations of states.

Model Bilateral Investment Treaties (BITs) are a state's blueprint for the investment treaties it negotiates with other states. This book compiles commentaries on the Model BITs of 19 key jurisdictions. It analyses state practice on international investment law, detailing each state's legislative regime on foreign investment and their BIT programme

"The secretariat of the United Nations Conference on Trade and Development (UNCTAD) is implementing a programme on international investment arrangements. It monitors the trends in IIAs and analyzes the emerging issues and development implications. It seeks to help developing countries participate as effectively as possible in international investment rulemaking. ... This paper is part of the programme's research and policy analysis on international investment policies for development. ... The main objective of this paper is to update UNCTAD's 1998 study entitled Bilateral Investment Treaties in the Mid-1990s and to identify trends in the normative developments of each of the elements typically addressed in BITs since this last stocktaking in 1998. The study traces and explains the new issues that have emerged in recent BITs and also sets out the implications of those developments for developing countries."--Pref.

This book presents the reflections of a group of researchers interested in assessing whether the law governing the promotion and protection of foreign investment reflects sound public policy. Whether it is the lack of "checks and balances" on investor rights or more broadly the lack of balance between public rights and private interests, the time is ripe for an in-depth discussions of current challenges facing the international investment law regime. Through a survey of the evolution in IIA treaty-making and an evaluation from different perspectives, the authors take stock of developments in international investment law and analyze potential solutions to some of the criticisms that plague IIAs. The book takes a multidisciplinary approach to the subject, with expert analysis from legal, political and economic scholars. The first part of the book traces the evolution of IIA treaty-making whilst the other three parts are organised around the concepts of efficiency, legitimacy and sustainability. Each contributor analyzes one or more issues related to substance, treaty negotiation, or dispute resolution, with the ultimate aim of improving IIA treaty-making in these respects. Improving International Investment Agreements will be of particular interest to students and academics in the fields of International Investment Law, International Trade Law, Business and Economics.

"Bilateral Investment Treaties," which has been prepared under the auspices of the International Centre for Settlement of Investment

Disputes, examines BIT provisions, particular emphasis being placed on treatment, expropriation and the settlement of disputes. Dolzer and Stevens show that a great degree of uniformity exists in modern investment treaties and thus clearly establish that the significance of these treaties lies not only in the extensive network of rights and obligations of their respective parties; equally important is the contribution of these treaties to an emerging international acceptance of common standards for the treatment of foreign investment. This book presents all the elements of modern BITs and explains what the main problems are. Based on research that has never been published elsewhere, it offers a valuable contribution to the understanding of an area of international law that is currently undergoing tremendous change.' From the "Preface" by Ibrahim F.I. Shihata.