International Economic Law

Building International Investment Law: The First 50 years of ICSID
edited by Meg KINNEAR, Geraldine FISCHER, Jara Minguez ALMEIDA, Luisa Fernanda TORRES, and Mariée URAN BILDEGAIN.
Alphen aan den Rijn: Wolters Kluwer, 2015. iii + 723 pp. Hardcover: €195.
doi:10.1017/S2044251316000369

The Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("the Convention") entered into force on 14 October 1966 after ratification by the first twenty states. The number of Contracting States currently stands at 153. In the fifty years since the Convention entered into force, the International Centre for Settlement of Investment Disputes [ICSID] has grown from a nascent organization to what it is today: the pre-eminent institution for the resolution of investor-state disputes.

The establishment of the ICSID has played a pivotal role in reshaping the relationship between host countries and foreign investors. Before that, foreign investors whose legal rights had been violated by internationally wrongful acts of states had limited meaningful options for seeking redress. Against this backdrop, the ICSID has emerged as an autonomous international institution with the aim of "promoting an atmosphere of mutual confidence and thus stimulating a larger flow of private international capital into those countries which wish to attract it".[2] Since its inception, it has provided aggrieved individuals with direct access to an effective international forum to seek redress. The number of ICSID cases registered has surged from just one case in 1972 to fifty-two cases in 2015. As at 30 June 2016, the cumulative case-load of the ICSID stood at 570 cases.

It is against the backdrop of fifty burgeoning years of ICSID jurisprudence that the treatise *Building International Investment Law: The First 50 years of ICSID* has been published. Fittingly, it is an impressive collection of fifty papers, contributed by eminent scholars and practitioners from all over the world. The papers are organized in six parts, covering a wide array of topics addressed in leading ICSID decisions. Part 1 elucidates the general principles pertaining to such issues as the applicable rules of interpretation, and the requisite burden and standard of proof in ICSID arbitration. Part 2 pertains to the jurisdiction of ICSID, and engages such matters as the criteria for determining investor nationality, the preconditions for ICSID arbitration, and the waiver of local remedies. Part 3 examines the substantive aspects of ICSID disputes, detailing the standards of protection to which investors are entitled. Concepts such as fair and equitable treatment and protection from expropriation are all dealt with systematically. Parts 4 and 5 then focus respectively on the exceptions, defences, and counterclaims that states may invoke, on the valuation of claims and on the issues of costs. The concluding Part 6 contains papers on various procedural and related matters.

The treatise provides its readers with a comprehensive insight into both the procedural and substantive aspects of ICSID arbitration, from the onset of a dispute to its final stages. In addition, it serves as a springboard for the further development of ICSID jurisprudence by identifying and elaborating upon controversial and unresolved issues of law which have arisen over the last fifty years. For instance, Chapter 18 expounds on the schism that has arisen with respect to the importation of dispute resolution procedures into investment treaties through the application of the most-favoured-nation clause. The chapter explains the two divergent approaches to have emanated from the landmark decisions of *Emilio Agustin Maffezini v. The Kingdom of Spain*, ICSID Case No. ARB/97/7 and *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, and goes on to identify

2. International Bank for Reconstruction and Development, "Report of the Executive Directors on the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States" (March 1965), online: ICSID <https://icsid.worldbank.org/ICSID/StaticFiles/basicdoc/partB-section03.htm> at para. 9.

some of the challenges which states and arbitral tribunals will face in the resolution of this dichotomy in the years to come.

This work comes to us at a time when we not only mark a half-century of the Convention but are poised on the cusp of an era of growing transnational trade links, when the demand for the dispute resolution mechanism created by the Convention can be expected to grow. In that context, the availability of this treatise is a boon. Its comprehensive coverage, coupled with the immense experience and eminence of its contributors, assures us that we now have, perhaps as never before, a work that sets out to describe, explain, and synthesize the critical aspects of this area of the law in a way that is systematic and accessible to every category of users. I am confident it will be warmly received.

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China and International Investment Law: Twenty Years of ICSID Membership
edited by Wenhua SHAN and Jinyuan SU.
Leiden: Brill/Nijhoff, 2015, 435 pp. Hardcover: €153.
doi:10.1017/S2044251316000370

China and International Investment Law: Twenty Years of ICSID Membership is an edited collection of papers developed from the "China and ICSID" International Workshop and Roundtable on International Investment Law and Arbitration organized in 2012 by Xi'an Jiaotong University School of Law, China. The book is edited by Professors Wenhua Shan and Jinyuan Su of Jiaotong.

The book's key themes include the evolution of China's approach to bilateral investment treaties [BITs] as it transitions into a capital-exporting country, and the tension between Chinese state control over the economy and the protection of foreign investments. The book also covers China's negotiations of investment treaties with the European Union [EU] and the United States [US], and the impact that such negotiations might have on future Chinese BITs.

The book is divided into three parts. In Part 1, leading experts in international investment law, including Meg Kinnear and M. Sornarajah, provide a general overview of international investment law. Part 2 discusses key features of Chinese investment treaties and describes the development of Chinese BITs, from so-called first-generation BITs, which provide for only limited arbitral jurisdiction over investors' claims for compensation for expropriation, to second- and third-generation BITs which provide for jurisdiction over a broader range of disputes. Contributors such as Yongjie Li and Martin Endicott discuss reasons for changes in China's BIT policy, which include, among other factors, the dramatic increase of China's outbound foreign investment over the years (pp. 174–9, 232–3).

Part 2 also provides a historical account of China's foreign investment arbitration experience. The book notes (pp. 183, 208) that, notwithstanding that China has entered into roughly 130 BITs, there has been one single case filed against China (*Ekran Berhad v. People's Republic of China*, ICSID Case No. ARB/11/15). (Note that, since the book's publication, there has been a second arbitration filed against China, *Ansung Housing Co., Ltd. v. People's Republic of China*, ICSID Case No. ARB/14/25.) The book's contributors attribute the paucity of cases against China to China's willingness to reach a compromise when a dispute arises and to the more limited jurisdiction provided by first-generation Chinese BITs.

Part 3 provides an overview of the key investment treaty negotiations in which China is currently involved, including the negotiations of the US-China BIT and the EU-China investment agreement. Several authors, such as Eric Pekar, Marc Bungenber, and Catharine Titi, discuss the challenges of concluding those investment agreements, including the treatment of pre-establishment rights and the right of the state to regulate the economy. Other authors discuss the implications of these negotiations on future Chinese BITs and possible future multilateral treaties.