Bungenberg/Griebel/Hobe/Reinisch

International Investment Law

A Handbook

C.H.BECK · Hart · Nomos

Bungenberg / Griebel / Hobe / Reinisch International Investment Law



International Investment Law

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Editors' Foreword

Four years have passed since our first discussion about a *Handbook on International Investment Law* in January 2010. This has been a time of conceptual work, numerous e-mail exchanges with some 90 authors, and correspondence with our publisher.

The main purpose of this handbook – aside from providing basic information – is to strive for more clarity and an attempt to achieve some coherence in this relatively young discipline of international law, a system consisting of arbitral awards and doctrinal interpretations, constituting the most dynamic field of international economic law. After a relatively slow beginning as an integral part of customary international law, international investment law has in the past decade evolved like almost no other field of public international law, especially on the basis of an increasing number of bilateral investment treaties. In this regard, the book approaches the most crucial aspects of international investment law and thereby hopefully provides answers to many questions arising in this field.

We are particularly grateful to the contributors who have anxiously awaited the publication of this work. We owe them not only thanks for their contributions, but also for their patience. We are equally grateful to our assistant editor, Ms Yun-I Kim, for her skilful, meticulous and dedicated management of the entire editorial process. Whoever has edited a book of approximately 2000 pages will appreciate such outstanding commitment. Thanks also go to Mr Christoph Hölken and Ms Katharina Diel-Gligor who supported Ms Kim during parts of the editing process, and to the publisher for their excellent cooperation. Finally, it should also be mentioned that the resources at both the International Investment Law Centre Cologne (IILCC) and at the Department of European, International and Comparative Law of the University of Vienna, provided the necessary basis for such a comprehensive work.

It goes without saying that this first attempt at providing an encompassing overview on existing international investment law is far from perfect. There is an academic responsibility of each author for every article, but also an overall responsibility of the editors who have read each contribution and where necessary, have discussed them with the authors. Therefore, any proposal for improvement of contributions is most welcome and can be directed to the authors as well as to the editors. In any event, we hope that you enjoy reading this hand-book!

Cologne, Siegen, and Vienna, December 2014

Marc Bungenberg Jörn Griebel Stephan Hobe August Reinisch



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AAA American Arbitration Association

AANZFTA ASEAN-Australia-New Zealand Free Trade Agreement

AAPPI ASEAN Agreement for the Promotion and Protection of

Investments

AC Law Reports, Appeal Cases

ACFTA ASEAN-China Free Trade Agreement

ACHPR African Commission on Human and Peoples' Rights

ACHR American Convention on Human Rights

ACIA ASEAN Comprehensive Investment Agreement

AcP Archiv für die civilistische Praxis
ADR alternative dispute resolution

AF Additional Facility

AfCHPR African Charter on Human and Peoples' Rights

AFD Agence Française de Developpement
AFDI Annuaire Français de Droit International
AFR Administrative and Financial Regulations
AGP Agreement on Government Procurement

AJCEPA ASEAN–Japan Comprehensive Economic Partnership

Agreement

AJIL American Journal of International Law

ALI American Law Institute
Am. Econ. Rev. American Economic Review

Am. J. Comp. L. American Journal of Comparative Law

Am. Soc'y Int'l L. Proc. Proceedings of the Annual Meeting of the American So-

ciety of International Law

Am. U. Int'l L. Rev. American University International Law Review
Annuaire Annuaire de l'Institut de Droit International

a.o. and others; amongst others

APEC Asia Pacific Economic Cooperation

APV adjusted present value AR Arbitration Rules

Arb. Arbitration

Arb. Int'l Arbitration International ARE Arab Republic of Egypt

ARIEL Austrian Review of International and European Law
ARSIWA ILC Draft Articles on Responsibility of States for Inter-

nationally Wrongful Acts

Art(s). Article(s)

ASCM Agreement on Subsidies and Countervailing Measures

ASEAN Association of South East Asian Nations
Asian Int'l Arb. J. Asian International Arbitration Journal
Asian J. Comp. L. Asian Journal of Comparative Law

Asper Rev. Int'l Bus. & Asper Review of International Business and Trade Law

Tr. L.

Australian Treaties Not Yet in Force **ATNIF** Australian Yearbook of International Law Austl. YB Int'l L.

Austrian Arb. YB Austrian Arbitration Yearbook

Austrian Rev. Eur. & Int'l Austrian Review of European and International Law

L.

AVR Archiv des Völkerrechts

(Archive of Public International Law)

BBBetriebs-Berater

B.C. Int'l & Comp. L. Boston College International and Comparative Law Re-

view Rev.

Berkeley J. Int'l L. Berkeley Journal of International Law BEE Black Economic Empowerment

BGB1 Bundesgesetzblatt

BGE Entscheidungen des Bundesgerichts (Switzerland)

BHR **Business History Review**

BIICL British Institute of International and Comparative Law BIRD Bank for International Reconstruction and Development

Bilateral Investment Treaty(ies) BIT(s)

BOO build-own-operate BOT build-operate-transfer

Brook. J. Int'l L. Brooklyn Journal of International Law

Bus. Law. **Business Lawyer**

Bus. L. Int'l **Business Law International**

BVerfGE Entscheidungen des Bundesverfassungsgerichts (Deci-

sions of the German Constitutional Court)

BYIL British Yearbook of International Law

contre (against) C

CAFTA United States – Dominican Republic – Central America

Free Trade Agreement

CALS Centre for Applied Legal Studies

CAMCA Commercial Arbitration and Mediation Center for the

Americas

Can. TS Canada Treaty Series

Can YBIL Canadian Yearbook of International Law

CARIFORUM Caribbean Forum: Forum of the Caribbean Group of

African, Caribbean and Pacific (ACP) States

CAT Convention against Torture **CCF** capitalised cash flow

CCP Common Commercial Policy Clean Development Mechanism CDE

Centre see ICSID

CESCR Committee on Economic, Social and Cultural Rights **CEPA** Comprehensive Economic Partnership Agreement **CEPMLP**

Centre for Energy, Petroleum and Mineral Law and Pol-

CETA Comprehensive Economic Trade Agreement

confer (compare) cf.

CFI Court of First Instance

ch chapter

Chi. J. Int'l L. Chicago Journal of International Law Chinese J. Int'l L. Chinese Journal of International Law CIAA Common Investment Area Agreement CIEL Centre for International Environmental Law

CIME Committee on International Investment and Multination-

al Enterprises

Centre International pour le Règlement des Différends relatifs aux Investissements **CIRDI**

CIS Commonwealth of Independent States

CJCourt of Justice

CJEU Court of Justice of the European Union

CLP Current Legal Problems

CMIT Committee on Capital Movements and Invisible Trans-

actions

CMLR Common Market Law Review

Colo. J. Int'l Envtl. L. & Colorado Journal of International Environmental Law

Pol'y and Policy

Colum. Hum. Rts. L. Rev. Columbia Human Rights Law Review Colum. J. Transnat'l L. Columbia Journal of Transnational Law

Colum. L. Rev. Columbia Law Review

COMESA Common Market for Eastern and Southern Africa

Conf. Rep. Conference Report Conn. L. Rev. Connecticut Law Review Constr L J Construction Law Journal

Contemporary Asia Arbitration Journal Contemp. Asia Arb. J.

Convention ICSID Convention

Cornell Int'l L. J. Cornell International Law Journal

Cornell L. O. Cornell Law Quarterly

Cowper's King's Bench Reports Cowp.

Conciliation Rules CR

CRCICA Cairo Regional Centre for International Commercial Ar-

bitration

CYIL Czech Yearbook of International Law DAC **Development Assistance Committee**

Der Betrieb DB

District of Columbia DC DCF discounted cash flow

DEG Deutsche Investitions- und Entwicklungsgesellschaft

mbH

Denver Journal of International Law and Policy Denv. J. Int'l L. & Pol'v Foreign Affairs and International Trade Canada **DFAIT**

DFI **Development Finance Institution** Disp. Res. Int'l Dispute Resolution International Disp. Res. J. Dispute Resolution Journal

Doc Document

DPCI Droit et pratique du commerce international

Duke L. J. Duke Law Journal

European Bank for Reconstruction and Development **EBRD**

ECHR European Convention on Human Rights

ECJ European Court of Justice

ECommHR European Commission of Human Rights

Economics and Politics Econ. & Pol.

ECOWAS Economic Community of West African States

ECT Energy Charter Treaty

European Court of Human Rights **ECtHR** edition

ed(s)editor(s) **EFTA** European Free Trade Association exempli gratia (for example) e.g.

European Human Rights Reports **EHRR** FIA **Environmental Impact Assessment**

EIB Estonian Innovation Bank

EJIL European Journal of International Law Emory Int'l L. Rev. Emory International Law Review

Energy L. J. Energy Law Journal

ERPL European Review of Private Law

ESG Environmental, Social, and Corporate Governance

especially esp.

et alii (and others) et al

et sequens (and the following) et sea.

EU European Union European Law Journal Eur. L. J. Eur Pub L European Public Law Exch. **Exchequer Cases**

Exhibit exh

EYIEL. European Yearbook of International Economic Law

F. Federal Reporter F. Supp. Federal Supplement

FAO Food and Agriculture Organization of the United Na-

FATF Financial Action Taskforce FDI Foreign Direct Investment

Federal Register Fed. Reg.

Foreign Investment Law Journal FILJ

FIPA Foreign Investment and Protection Agreement (Canada)

footnote fn

Fordham Int'l L. J. Fordham International Law Journal

Fordham L. Rev. Fordham Law Review

FPS Full Protection and Security

ed

FSIA Foreign Sovereign Immunities Act of the United States

of 1976

FTA Free Trade Agreement

FYIL. Finnish Yearbook of International Law

GA General Assembly

GAFTA Grain and Feed Trade Association

Global Arbitration Review GAR

GATS General Agreement on Trade in Services GATT General Agreement on Tariffs and Trade

Geo. Int'l Envt'l L. Rev. Georgetown International Environmental Law Review

Geo. J. Int'l L. Georgetown Journal of International Law Geo Mason U. L. Rev George Mason University Law Review Geo. Wash. Int'l L. Rev. George Washington International Law Review

Geo. Wash. L. Rev. George Washington Law Review

German L. J. German Law Journal GHG Greenhouse Gas

Glob. Envt'l Pol. Global Environmental Politics Global Trade and Customs Journal Glob. Trade & Customs J.

YILJ Global Community Yearbook of International Law Global Community

and Justice

German Yearbook of International Law GYIL Harv. Int'l L. J. Harvard International Law Journal

Harv. L. Rev. Harvard Law Review

Hastings Int'l & Comp. Hastings International & Comparative Law Review

L. Rev.

IACHR Inter-American Convention on Human Rights IACtHR. Inter-American Court of Human Rights

IACommHR Inter-American Commission of Human Rights

IAR **Investment Arbitration Reporter** International Bar Association **IBA**

ihid ibidem (the same)

International Business Law Journal IBL/J **ICC** International Chamber of Commerce

ICCPR International Covenant on Civil and Political Rights International Convention on the Elimination of All **ICERD**

Forms of Racial Discrimination

ICESCR International Covenant on Economic, Social and Cultur-

al Rights

ICJ International Court of Justice

ICJ Rep. ICJ Reports

International Construction Law Review **ICLR ICLQ** International and Comparative Law Quarterly

ICRMW

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

International Centre for Settlement of Investment Dis-**ICSID**

putes

ICSID Convention Convention on the Settlement of Investment Disputes

between States and Nationals of other States

ICSID Rep. ICSID Reports

ICSID Rev.-FILJ ICSID Review - Foreign Investment Law Journal

ICtHR International Court of Human Rights

id. idem (the same)

IDATB Integrated Database of Trade Disputes for Latin Ameri-

ca and the Carribean

IDI Institut de Droit International

i.e. id est (that is)

IEL International Environmental Law

IFAD International Fund for Agricultural Development

IIA International Investment Agreement IFC International Finance Corporation

IIC International Review of Intellectual Property and Com-

petition Law; Inter-American Investment Corporation

IIL International Investment Law

IISD International Institute for Sustainable Development

ILAInternational Law AssociationILCInternational Law CommissionILMInternational Legal MaterialsILOInternational Labor OrganisationILRInternational Law Reports

ILSA J. Int'l & Comp. L. ILSA Journal of International and Comparative Law

Ind. J. Global Legal Stud. Indiana Journal of Global Legal Studies

infra below

INTERIGHTS International Centre for the Legal Protection of Human

Rights

Int'l International

Int'l Arb. L. Rev. International Arbitration Law Review Int'l Fin. L. Rev. International Financial Law Review

Int'l J. International Journal

Int'l Judicial Monitor
Int'l L. Forum
Int'l Law.
International Law Forum
Int'l Law.
International Lawyer
Int'l Neg.
Int'l Stud. Q.
International Studies Quarterly

Int'l Tax & Bus. L. International Tax and Business Lawyer

Int'l Trade Brief
IP
International Trade Brief
Intellectual Property
IPR
Intellectual Property Rights

IPRax Praxis des Internationalen Privat- und Verfahrensrechts

IR Institution Rules

Iran-US CTR Iran-United States Claims Tribunal, Iran-United States

Claims Tribunal Reports

IStR Internationales Steuerrecht (International Tax Law)

Ital. YIL Italian Yearbook of International Law

ITLOS International Tribunal for the Law of the Sea

ITN Investment Treaty News

IWG-SWF International Working Group of Sovereign Wealth

Funds

J. Journal

J. Air L. & Com. Journal of Air Law and Commerce

J. Bus. L. Journal of Business Law

J. Chartered Inst. Arb. Journal of the Chartered Institute of Arbitrators

J. Comp. Econ. Journal of Comparative Economics

J. Constr. Engin. & Mgmt Journal of Construction Engineering and Management

J. Econ. Growth
J. Econ. Hist.
Journal of Economic Growth
Journal of Economic History
J. Int'l Arb.
Journal of International Arbitration

J. Int'l Disp. Settlement
J. Int'l Econ. L.

Journal of International Dispute Settlement
Journal of International Economic Law

J. L. & Econ. Journal of Law and Economics

J. L. Econ. & Org. Journal of Law, Economics and Organization

J. Monetary Econ.

J. Pol. Econ.

Journal of Monetary Economics

Journal of Political Economy

J. Pub. L.

Journal of Public Law

J. Transnat'l L. & Pol'y Journal of Transnational Law and Policy

JDI Journal du Droit International

JDIA Journal of Damages in International Arbitration
JERL Journal of Energy and Natural Resources Law
JIDS Journal of International Dispute Settlement

J.O. Journal Officiel

JWELB Journal of World Energy Law and Business

JWI Journal of World Investment

JWIT Journal of World Investment & Trade

JWT Journal of World Trade

JWTL Journal of World Trade Law

KfW Kreditanstalt für Wiederaufbau

KSzW Kölner Schrift zum Wirtschaftsrecht

L. Law

Law & Bus. Rev. Am. Law & Business Review of the Americas

Law & Contemp. Probs. Law and Contemporary Problems

Law & Phil. Law and Philosophy
Law. Am. Lawyer of the Americas

LCIA London Court of International Arbitration

LDCs Least Developed Countries
LDR Law and Development Review
Leiden J. Int'l L. Leiden Journal of International Law

LGDJ Librairie Générale de Droit et de Jurisprudence

LIEI Legal Issues of Economic Integration

lit.litera (character)LNGliquefied natural gas

LNTS League of Nations Treaty Series *loc. cit. loco citato* (in the place cited)

Loy. L.A. Int'l & Comp. Loyola of Los Angeles International and Comparative

L. Rev. Law Review

LPICT Law and Practice of International Courts and Tribunals

LQR Law Quarterly Review LRC Legal Resources Centre

Ltd. Limited m million

MAI Multilateral Agreement on Investments

Max Planck UN YB Max Planck Yearbook of United Nations Law

McGill L. J. McGill Law Journal

MDB multilateral development banks

MEA Multilateral Environmental Agreement
MEP Member of the European Parliament

Mercosur Mercado Común del Sur MFN Most Favoured Nation

Mich. J. Int'l L. Michigan Journal of International Law

Mich. L. Rev. Michigan Law Review

MIGA Multilateral Investment Guarantee Agency

Minn. J. Global Trade Minnesota Journal of Global Trade Minn. J. Int'l L. Minnesota Journal of International Law

Minn. L. Rev. Minnesota Law Review mn. marginal number

Modern L. Rev. The Modern Law Review

n. note

NAAEC North-American Agreement on Environmental Coopera-

tion

N.C. J. Int'l L. & Com. North Carolina Journal of International Law and Com-

Reg. mercial Regulation
NCP National Contract Point
NDP non-disputing party

NAFTA North American Free Trade Agreement NAFTA FTC NAFTA Free Trade Commission

New York Convention Convention on the Recognition and Enforcement of For-

eign Arbitral Awards of 1958

NGO non-governmental organisation
NIEO New International Economic Order
NILR Netherlands International Law Review

No. Number n.s. new series

Nw. J. Int'l L. & Bus. Northwestern Journal of International Law & Business

NY CPLR New York Code – Civil Practice Law and Rules NYIL Netherlands Yearbook of International Law

NY L. Sch. J. Int'l & New York Law School Journal of International and

Comp. L. Comparative Law
NYLJ New York Law Journal

NYU Env. L. J. New York University Environmental Law Journal NYU JILP New York University Journal of International Law and

Politics

NYU L. Rev. New York University Law Review

NYU LQR New York University Law Quarterly Review

OECD Organisation for Economic Co-operation and Develop-

ment

Off. Gaz. Official Gazette

OGEL Oil, Gas & Energy Law

OJ Official Journal of the European Union

OP Optional Protocol

op. cit. opere citato (in the work cited)

ÖZÖR Österreichische Zeitschrift für österreichisches Recht

p., pp. page(s)

Pace Int'l L. Rev. Pace International Law Review

para(s). paragraph(s)

PCA Permanent Court of Arbitration

PCIJ Permanent Court of International Justice

PDR People's Democratic Republic

PECL Principles of European Contract Law

PEEREA Protocol on Energy Efficiency and related Environmen-

tal Aspects

Penn St. L. Rev. Penn State Law Review Pepp. L. Rev. Pepperdine Law Review

P.L. Public Law

PRC People's Republic of China

PRI Principles for Responsible Investment

Prof Professor

PROPARCO Société de Promotion et de Participation pour la

Coopération Économique

Quart. J. Econ. The Quarterly Journal of Economics

QMLJ Queen Mary Law Journal R&D Research and Development

Rabels Zeitschrift für ausländisches und internationales

Privatrecht (The Rabel Journal of Comparative and In-

ternational Private Law)

R.B.D.I. Revue belge de droit international

RC Recueil des Cours

RCADI Recueil des Cours de l'Académie de Droit International

RCAKL Regional Centre for Arbitration Kuala Lumpur RCDIP Revue critique de droit international privé

RdE Recht der Energiewirtschaft
RDI Rivista di Diritto Internazionale

REIO Regional Economic Integration Organisation

Res Resolution

Rev. Arb. Revue de l'Arbitrage

RGDIP Revue Générale du Droit International Public
RIAA Reports of International Arbitral Awards
RIW Recht der Internationalen Wirtschaft

RTA Regional Trade Agreement

Rule Arbitration Rule

S. Treaty Doc. Senate Treaty Documents

SADC Southern African Development Community

San Diego L. Rev. San Diego Law Review

SCC Arbitration Institute of the Stockholm Chamber of Com-

merce

SchiedsVZ Zeitschrift für Schiedsverfahren

(German Arbitration Journal)

S.D.N.Y. Southern District of New York

Sec. Section
Ser. Series

SFDI Société française pour le droit international SMEs small and medium-sized enterprises

Soc. & Legal Stud. Social & Legal Studies

SPS Sanitary and Phytosanitary Measures
Stan. J. Int'l L. Stanford Journal of International Law

Stan. L. Rev. Stanford Law Review

Stat. Statute

Stockholm Arb. Rep. Stockholm Arbitration Report
Stockholm CC Stockholm Chamber of Commerce

Stockholm Int'l Arb. Rev. Stockholm International Arbitration Review

Suffolk Transnat'l L. Rev. Suffolk Transnational Law Review

Suppl. Supplement supra above

Sw. J. Int'l L. Southwestern Journal of International Law

SWF Sovereign Wealth Fund

Syracuse J. Int'l L. & Syr

Com.

Syracuse Journal of International Law and Commerce

Tampa Bay Bus. J. Tampa Bay Business Journal TBT Technical Barriers to Trade

TDM Transnational Dispute Management

Temp. L. Rev. Temple Law Review
TEU Treaty on European Union
Tex. Int'l L. J. Texas International Law Journal

TFEU Treaty on the Functioning of the European Union

Tilburg L. Rev. Tilburg Law Review
TNC Transnational Corporation
TPA Trade Promotion Agreement
TPP Trans-Pacific Partnership

TPPA Trans-Pacific Partnership Agreement

TRIMs Agreement on Trade-Related Investment Measures
TRIPS Agreement on Trade-Related Aspects of Intellectual

Property Rights

U. Miami Int.-Am. L. University of Miami Inter-American Law Review

₹ev.

U. Pa. J. Const. L. University of Pennsylvania Journal of Constitutional

Law

U. Pa. J. Int'l Econ. L. University of Pennsylvania Journal of International Eco-

nomic Law

U. Pa. J. Int'l L. University of Pennsylvania Journal of International Law

U. Pa. L. Rev.U. Toronto L. J.University of Pennsylvania Law ReviewUniversity of Toronto Law Journal

U. Toronto Fac. L. Rev. University of Toronto Faculty of Law Review UC Davis J. Int'l L. & UC Davis Journal of International Law and Policy

Pol'y

UDHR Universal Declaration of Human Rights

UK United Kingdom

UKTS United Kingdom Treaty Series
UMIC upper middle income countries

UN United Nations

UNASUR Unión de Naciones Suramericanas

UNCC United Nations Compensation Commission

UNCITRAL United Nations Commission on International Trade Law UNCLOS United Nations Convention on the Law of the Sea UNESCO United Nations Educational, Scientific and Cultural Or-

ganization

UNIDROIT International Institute for the Unification of Private Law UNRIAA United Nations Reports of International Arbitral Awards

UNTS United Nations Treaty Series

US United States

USA United States of America
USC United States Code
USR United States Reports

UST United States Treaties and Other International Agree-

ments

v. *versus* (against)

Va. J. Int'l L. Virginia Journal of International Law Vand. J. Transnat'l L. Vanderbilt Journal of Transnational Law

VAT Value Added Tax

VCLT Vienna Convention on the Law of Treaties

viz. videlicet (namely)

Vol. Volume

WACC weighted average cost of capital

WAMR World Arbitration and Mediation Review

Wis. L. Rev. Wisconsin Law Review
WLR Weekly Law Reports
WM Wertpapier-Mitteilungen

World Trade Review
WTO World Trade Review
World Trade Organization

WTO DSU WTO Dispute Settlement Understanding

WTOA WTO Agreement

Yale J. Int'l L. Yale Journal of International Law

Yale L. J. Yale Law Journal

YB Yearbook

YB Int'l Inv. L. & Pol'y Yearbook on International Investment Law and Policy

YBILC Yearbook of the International Law Commission

YCA Yearbook Commercial Arbitration

ZaöRV Zeitschrift für ausländisches öffentliches Recht und

Völkerrecht

ZVglRWiss Zeitschrift für Vergleichende Rechtswissenschaft

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