

BOOK NOTE

The International Law of Investment Claims. By Zachary Douglas. Cambridge: Cambridge University Press, 2009. Pp. 684, \$130.00 (hardcover).

In *The International Law of Investment Claims*, Zachary Douglas enumerates fifty-four model rules governing the prosecution of a claim in investment treaty arbitration. The rules are a codification of the current principles used for investment claims. The rules are generally applicable and address the legal foundations of investment treaty arbitration, the laws applicable to a claim, jurisdictional issues of the arbitration tribunal, and what situations claims are admissible in.

International investment treaties are formed to provide stability and predictability for foreign direct investment by setting international minimum standards for governmental action that affects foreign investments. These standards generally include a prohibition on uncompensated expropriation by the host government, a guarantee of fair and equitable treatment, and full protection and security for investments. Investment treaties are often made between two countries through a Bilateral Investment Treaty (BIT), but can also be multinational. This book focuses on claims that arise when an investor sues the country hosting the investment, alleging a violation of a treaty. Most often, the investor is a citizen of a developed nation and the government is a developing state. The claim is decided through arbitration in an international tribunal, with the specific tribunal usually designated in the treaty.

Douglas analyzes each of the fifty-four model rules. In doing so, he examines the historical development of the principle, language from various treaties, and decisions of both domestic and international courts. He also includes his own commentary on the meaning of each principle and how the principle fits into the larger framework of investment-treaty arbitration. His explanations often lead him to a comparison of domestic laws, BITs, and other international treaties.

Section One is titled “The juridical foundations of investment treaty arbitration.” This section outlines the foundations of investment treaty arbitration and why the system is set up to resolve conflicts between a citizen and a host state. Section Two is called

“Applicable laws.” Depending on the issue, the applicable law shifts between the domestic law of the host state, private international law, general legal principles, and the investment treaty itself.

Douglas then turns to jurisdictional issues for the majority of the book, beginning with Section Three, “Taxonomy of preliminary issues relating to jurisdiction and admissibility in investment treaty arbitration.” Section Four, entitled, “Consent to the arbitration of investment disputes” reviews the need for consent of the host nation to arbitrate an investment dispute, and the necessity for the claimant to satisfy any conditions set out in the treaty before bringing a claim. Section Five is simply titled “Investment” and discusses what defines and is required of an investment.

The discussion of jurisdictional issues continues with Section Six, called “Jurisdiction *ratione materiae*.” This section reviews the scope of the matters that can be arbitrated. This scope is broad, extending from traditional legal claims, such as contracts and torts, to a country’s public acts relating to the claimant’s investment. According to the principles, the tribunal must make any ruling on its jurisdiction over the matter in a preliminary decision.

Next, Douglas analyzes when a tribunal has jurisdiction based on the parties involved in Section Seven, “Jurisdiction *ratione personae*.” The section discusses how the tribunal should assess the nationality of the claimant, whether the way in which the investment is held affects the nationality of the claimant, and other rules for determining the nationality of claims. Douglas concludes his discussion of jurisdictional issues with Section Eight, “Jurisdiction *ratione temporis*,” which deals with a tribunal’s jurisdiction over the investment itself. The analysis focuses on the timing of the investment in relation to the signing of the investment treaty.

Section Nine covers just one rule and is entitled “The obligation to accord most-favored-nation treatment and the jurisdiction of an investment treaty tribunal.” The remainder of the book is devoted to the admissibility of claims, including Section Ten, “Admissibility: Contractual choice of forum.” Where the basis for a claim is a breach of a contractual obligation, the rules outline certain situations in which the tribunal should defer to the method of dispute resolution stipulated in the contract. An exception exists, however, where the tribunal determines that the claimant will be denied justice in the forum outlined in the treaty.

Section Eleven, called “Admissibility: Shareholder claims,” analyzes rules allowing a shareholder to bring claims against a host country that has engaged in certain actions affecting the operation

or value of a company the shareholder has shares in. These claims can only be brought if they will not have certain unfair consequences for the host country.

Section Twelve is titled "Admissibility: Dispositions relating to the legal and beneficial ownership of the investment." It contains three rules relating to the legality of structuring an investment to gain the protection of an investment treaty, both before and after the alleged injury has occurred. The book's final section, "Admissibility: Denial of Benefits," covers a country's invocation of a "denial of benefits" provision and its consequences.

Douglas includes eleven appendices. The first two are documents arising out of multilateral conventions dealing specifically with international arbitration and investment disputes. The next two are excerpts of multilateral agreements that affect international investment claims. The last seven are examples of model BITs that countries use to enter into agreements, all from large developed countries including China, France, Germany, the Netherlands, Turkey, the United Kingdom and the United States.

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