

## BOOK NOTE

*Regionalism in International Investment Law*, by Leon Trakman & Nicola Ranieri. Oxford Univ. Press, 2013. Pp. 560. \$150.00 (hardcover).

At a time of declining legal markets, the meteoric growth of international investment treaties, and attendant demand for international investment lawyers, comes something of a bright spot. Twenty-five years ago, there were about four hundred bilateral investment treaties (BITs) worldwide.<sup>1</sup> Today, there are about twenty-eight hundred.<sup>2</sup> A 2010 paper suggested that the decrease in the number of BITs signed from 2000 to 2010 compared to the number signed from 1990 to 2000 is the result of saturation of the network—increasingly, everyone who wants a BIT with a trading partner has one.<sup>3</sup> This sudden leap into omnipresence has provided jobs not just for the lawyers who handle arbitrations under BITs, but also for the academics who explore the many complicated issues implicated by these treaties. *Regionalism in International Investment Law* is a valuable addition to this field, and its special emphasis on the role that regional groupings play in structuring international investment lends a unique perspective to its discussions of global commerce, sovereignty, regulation, expropriation, dispute resolution, and investor protections. The authors of the book use both conceptual and practical approaches to grapple with the subject, making it of interest to practitioners as well as academics. Readers unfamiliar with international investment will still find the essays approachable and can profit from the two opening chapters, which offer a brief but thorough overview of foreign direct investment (FDI) in the current global economy and historical context for the current proliferation of BITs.

The two editors of the book, Leon E. Trakman and Nicola W. Ranieri, have both academic and practical expertise. Professor

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1. United Nations Conference on Trade and Development, *Bilateral Investment Treaties 1959–1999*, at 1, U.N. Doc. UNCTAD/ITE/IIA/2 (2000), available at <http://unctad.org/en/docs/poiteiid2.en.pdf>.

2. *International Investment Agreements Navigator*, UNCTAD.ORG, <http://investmentpolicyhub.unctad.org/IIA> (last visited Nov. 25, 2014).

3. Daniela Saban et al., *Analysis and Models of Bilateral Investment Treaties Using a Social Networks Approach* (Jan. 8, 2010) (unpublished manuscript), available at [http://www.columbia.edu/~ns2224/papers/bits\\_physicA.pdf](http://www.columbia.edu/~ns2224/papers/bits_physicA.pdf).

Trakman is Professor of Law and a former Dean of the University of New South Wales, and has served as an international commercial arbitrator and as an intergovernmental trade adjudicator under the North American Free Trade Agreement (NAFTA). Dr. Ranieri currently works in private practice, counseling clients on NAFTA-related issues, and was previously the Director of the Centro Juridico Para el Comercio Inter-Americana in Mexico and a Panelist on a NAFTA Chapter 19 panel dealing with antidumping measures. Reflecting their breadth of experience, as well as that of the authors, the book examines international investment law across four different continents and touches on a number of different themes.

The central theme of *Regionalism in International Investment Law* is that investment law is “not an entirely value-neutral means of resolving investor-state disputes.”<sup>4</sup> This is not a novel insight, of course, and the major criticism of the BITs and investor-state arbitration is that the treaty structure is designed to privilege the interests of investors over that of the states in which they invest. The focus of this book on regionalism provides a useful comparison between the ways in which different nations and groups of nations have organized their investment dispute systems to strike a balance between the benefits of unhampered capital and the necessities of protecting sovereign interests. More specifically, taking a regional perspective implicitly examines the methods in which international investment law, though still quite new in its modern application, has begun to coalesce into a coherent body of transnational law.

The book begins with an investigation into the content of this emerging consensus in Chapter Three, “International Investment Law: Some Legal Cultural Insights,” written by Associate Professor Colin Picker of the University of New South Wales. This essay offers a careful analysis of the emergent legal culture among practitioners of international investment law and highlights in particular the importance of Anglo-American common law thinking even in disputes between parties from civil law traditions. Despite the diversity of parties in such disputes, both arbitrators and the representatives of parties to arbitrations tend to be repeat players, and BITs themselves, although by no means uniform, do tend to use similar terms. Accordingly, a sizeable body of *jurisprudence constante* has been created in a comparatively short period of time. The chapter is descriptive rather than prescriptive, yet even identifying

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4. REGIONALISM IN INTERNATIONAL INVESTMENT LAW xix (Leon E. Trakman & Nicola W. Ranieri eds., 2013).

the outlines of a coherent legal culture, separate from those of the contracting parties, raises very serious questions about the role of sovereigns in this economic world order and the extent to which a common legal approach to international investment disputes can be reconciled with ideals of popular democracy. This important foundational work by Professor Picker sets the table for the rest of the book.

This is not to suggest that the later chapters advance theoretical arguments on the nature of sovereignty; instead, the authors focus on the practical details of how international investments are governed in various regions, while tying the varying results and problems back into the overarching questions of the field. The topics covered include indirect expropriation, the comparative benefits of investor protection mechanisms and their enforceability, compensation for changed circumstances, and when investor protections no longer apply. Chapters cover NAFTA (Chapters 5 and 14), the European Union (Chapters 6 and 13), Australia (Chapters 12 and 15), China (Chapter 9), Latin America (Chapter 7), and the Association of Southeast Asian Nations (Chapter 8). Other topics include the ongoing significance of the Iran-United States Claims Tribunal to the development of law governing expropriation (Chapter 11), and whether the International Centre for the Settlement of Investment Disputes appropriately balances the interests of investors with those of host states (Chapter 10).

The book closes with another vital contribution, "The Case Against a Regime on International Investment Law," by Professor Muthucumaraswamy Sornarajah of the National University of Singapore and the University of Malaya. Professor Sornarajah pointedly argues that the existing FDI regime is essentially a relic of the recent colonial past and was meant to codify the rights of investors in developed states to exploit the resources of developing states. Furthermore, Professor Sornarajah contends that the BIT system is inextricably tied to the neoliberal Washington Consensus of the 1990s and will not be able to survive the 2008 financial crisis or the ongoing emergence of formerly developing countries as major economic powers. Although written before the revitalization of the Doha Round in Bali, the essay offers trenchant and still relevant criticism of the view that a multilateral FDI system is inevitable or even likely. This criticism continues into the Appendix, written as a dialogue between Professors Trakman and Sornarajah on the cases for and against investment liberalization, respectively. The debate is lively, intelligent, and nuanced. Both sides offer compel-

ling arguments and tie together many of the themes running throughout the book to explain their perspectives.

In short, *Regionalism in International Investment Law* provides a wonderful survey of the current state of play in international trade and investment, accessible and worthwhile for both knowledgeable readers and those new to the subject.