

**NEW BOOKS, ARTICLES, AND REPORTS ON INVESTMENT TREATY LAW:  
JANUARY TO MAY 2010**

**By Prof. Andrew Newcombe, Faculty of Law, University of Victoria**

**Books**

Alvik, Ivar. *Contracting with Sovereignty* (Hart, forthcoming 2010).

Bjorklund, Andrea K.; Laird, Ian A.; and Ripinsky, Sergey, eds. *Investment Treaty Law: Current Issues III* (British Institute for International and Comparative Law, 2009).

Brekoulakis, Stavros. *Third Parties in International Commercial Arbitration* (Oxford, forthcoming December 2010).

Cameron, Peter. *International Energy Investment Law: The Pursuit of Stability* (Oxford, 2010).

Lapiashvili, Natia. *Freedom of Transit in International Investment Law: At the example of BTC pipeline legal framework* (LAP Lambert Academic Publishing, 2010).

Laird, Ian A. and Weiler, Todd J., eds. *Investment Treaty Arbitration and International Law – Volume 2* (JurisNet, LLC, 2009).

Leal-Arcas, Rafael. *International Trade and Investment Law—Multilateral, Regional and Bilateral Governance* (Elgar, 2010).

Petersmann, Ernsy-Ulrich. *Human Rights, Constitutionalism and International Economic Law* (Hart, forthcoming 2010).

Rodríguez, Sonia and Wöss, Herfried, eds. *Arbitraje en Materia de Inversiones. Memorias de las I Jornadas del Foro de Arbitraje en Materia de Inversiones (III-UNAM, 2009).*

Salacuse, Jeswald W. *The Law of Investment Treaties* (Oxford, 2010).

Schill, Stephan W. *International Investment Law and Comparative Public Law* (Oxford, forthcoming October 2010).

Sornarajah, M. *The International Law on Foreign Investment* (Cambridge, 2010).

Vandevelde, Kenneth J. *Bilateral Investment Treaties: History, Policy, and Interpretation* (Oxford, 2010).

Waibel, Michael; Kaushal, Asha; Chung, Kyo-Hwa; and Balchin, Claire. *The Backlash Against Investment Arbitration* (Kluwer, 2010).

Yannaca-Small, Katia, ed. *Arbitration Under International Investment Agreements: A Guide to the Key Issues* (Oxford, 2010).

### Articles

Alvarez-Jiménez, Alberto. “Foreign Investment Protection and Regulatory Failures as States' Contribution to the State of Necessity under Customary International Law” (2010) 27:2 J. Int'l Arb. 141.

Ayad, Mary B. “International Commercial Arbitration Award Enforcement at the Crossroads of Sharia Law and Ordre Public in the Mena. Paving the Golden Path towards Harmonisation” (2009) 10:5 J. World Investment & Trade.

Bernardini, Piero. “Specific Aspects of State-Party Arbitration” (2008) 23:2 ICSID Rev. - Foreign Investment L.J. 251.

Bismuth, Régis. “Anatomy of the Law and Practice of Interim Protective Measures in International Investment Arbitration” (2009) 26:6 J. Int'l Arb. 773.

Branson, David J. “An ICSID Tribunal Applies Supranational Legal Norms to Banish Counsel from the Proceeding - A Note on *Hrvatska Elektroprivreda v. Republic of Slovenia*” (2009) 25:4 Arb. Int'l 615.

Burgstaller, Markus. “European Law and Investment Treaties” (2009) 26:2 J. Int'l Arb. 181.

Carska-Sheppard, Andrea. “Issues Relevant to the Termination of Bilateral Investment Treaties” (2009) 26:6 J. Int'l Arb. 755.

Chaisse, Julien and Gugler, Philippe. “Expansion of Trade and Foreign Direct Investment in Asia - Strategic and Policy Challenges” in *Routledge Contemporary Asia Series* (Routledge, 2009) 304. Available on <http://papers.ssrn.com>.

Chen, An. “Queries to the Recent ICSID Decision on Jurisdiction Upon the Case of *Tza Yap Shum v. Republic of Peru* : Should China-Peru BIT 1994 Be Applied to Hong Kong SAR under the “One Country Two Systems” Policy” (2009) 10:6 J. World Investment & Trade.

Clapham, Jason. “Finality of Investor-State Arbitral Awards: Has the Tide Turned and is there a Need for Reform?” (2009) 26:3 J. Int'l Arb. 437.

Collins, David. “A new role for the WTO in international investment law: public interest in the post-neoliberal period” (2009) 25 Conn. J. Int'l L. 1-35. Available on <http://papers.ssrn.com>.

Cotula, Lorenzo. "Pushing the Boundaries vs Striking a Balance: The Scope and Interpretation of Stabilization Clauses in Light of the *Duke v. Peru* Award" (2010) 11:1 J. World Investment & Trade.

Crawford, James. "Continuity and Discontinuity in International Dispute Settlement: An Inaugural Lecture" (2010) 1:1 J. Int'l Dispute Settlement 3.

Dai, Tamada. "Assessing Damages in Non-expropriation Cases before International Investment Arbitration" (2009) 52 Japanese Yearbook of International Law.

Davis, Kevin E. "Does the Globalization of Anti-Corruption Law Help Developing Countries?" in Faundez, Julio and Tan, Celine, eds., *International Law, Economic Globalization and Development* (Edward Elgar, 2010). Available on <http://papers.ssrn.com>.

Dimopoulos, Angelos. "Shifting the Emphasis from Investment Protection to Liberalization and Development: The EU as a New Global Actor in the Field of Foreign Investment" (2010) 11:1 J. World Investment & Trade.

Dumberry, Patrick. "Compensation for Moral Damages in Investor-State Arbitration Disputes" (2010) 27:3 J. Int'l Arb. 247.

Dupont, Pierre-Emmanuel. "Foreign Investment and the Status of Kosovo in International Law" (2009) 10:6 J. World Investment & Trade.

Elsheshtawy, Hassan. "Issues of Sovereign and State Entities in International Arbitration: A Look into Investor-State Arbitration" Available on <http://papers.ssrn.com>.

Ghouri, Ahmad Ali. "Investment Treaty Arbitration and the Development of International Investment Law as a 'Collective Value System': A Synopsis of a New Synthesis" (2009) 10:6 J. World Investment & Trade.

Hindelang, Steffen; Wilske, Stephan; and Esin, Ismail G. "Turkey: Soon to Face a Wave of International Investment Arbitrations?" (2009) 26:5 J. Int'l Arb. 701.

Heckscher, Yvon and Schokkaert, Jan. "Protected Investors Nationality" (2009) 10:5 J. World Investment & Trade.

Hobér, Kaj. "Investment Arbitration and the Energy Charter Treaty" (2010) 1:1 J. Int'l Dispute Settlement 153.

Hsu, Locknie. "Multi-Sourced Norms Affecting Sovereign Wealth Funds: A Comparative View of National Laws, Cross-Border Treaties and Non-binding 'Codes'" (2009) 10:6 J. World Investment & Trade.

- Huang, Hui. "The regulation of foreign investment in post-WTO China: a political economy analysis" (2009) 23 Colum. J. Asian L. 185-215. Available on <http://papers.ssrn.com>.
- Ishikawa, Tomoko. "Third Party Participation in Investment Treaty Arbitration" (2010) 59:2 Int'l and Comp. L.Q. 373.
- Kalotay, Kálmán. "The Political Aspect of Foreign Direct Investment: The Case of the Hungarian Oil Firm MOL" (2010) 11:1 J. World Investment & Trade.
- Kjos, Hege Elisabeth. "Agora – Asymmetry and Equality of Arms: Foreword" (2010) 26:1 Arb. Int'l 1.
- Kläger, Roland. "Fair and Equitable Treatment: A Look at the Theoretical Underpinnings of Legitimacy and Fairness" (2010) 11:3 J. World Investment & Trade.
- Kolo, Abba. "Witness Intimidation, Tampering and Other Related Abuses of Process in Investment Arbitration: Possible Remedies Available to the Arbitral Tribunal" (2010) 26:1 Arb. Int'l 43.
- Kriebaum, Ursula. "Human Rights of the Population of the Host State in International Investment Arbitration" (2009) 10:5 J. World Investment & Trade.
- Kurtz, Jürgen. "Adjudging the Exceptional at International Investment Law: Security, Public Order and Financial Crisis" (2010) 59:2 Int'l and Comp. L.Q. 325.
- Laborde, Gustavo. "The Case for Host State Claims in Investment Arbitration" (2010) 1:1 J. Int'l Dispute Settlement 97.
- Lalive, Pierre, "On the Reasoning of International Arbitral Awards" (2010) 1:1 J. Int'l Dispute Settlement 55.
- Leal-Arcas, Rafael. "The Multilateralization of International Investment Law" (2009) 35:1 N.C.J.Int'l L.& Com.Reg. 133-235. Available on <http://papers.ssrn.com>.
- Leal-Arcas, Rafael. "Towards the Multilateralization of International Investment Law" (2009) 10:6 J. World Investment & Trade.
- Maruyama, Warren H. and Rosenberg, Charles B. "The Investment Chapter of the U.S.-Colombia FTA: New Protections for U.S. Investors" (2010) 11:3 J. World Investment & Trade.
- Matthews, Joe and Stewart, Karen. "Time to Evaluate the Standards for Issuance of Interim Measures of Protection in International Investment Arbitration" (2009) 25:4 Arb. Int'l 529.

Maxwell, Iain and Wegner, Kay-Jannes. "The New ASEAN Comprehensive Investment Agreement" (2009) 5:2 Asian Int'l Arb. J. 167.

Nawafleh, Abdullah Suleiman. "The Legal Framework for Foreign Direct Investment in the Hashemite Kingdom of Jordan" (2010) 11:1 J. World Investment & Trade.

Orakhelashvili, Alexander. "Principles of Treaty Interpretation in the NAFTA Arbitral Award on Canadian Cattlemen" (2009) 26:1 J. Int'l Arb. 159.

Parish, Matthew. "On Necessity" (2010) 11:2 J. World Investment & Trade.

Paulsson, Jan. "Unlawful Laws and the Authority of International Tribunals" (2008) 23:2 ICSID Rev. - Foreign Investment L.J. 215.

Scherer, Matthias; Heiskanen, Veijo; and Moss, Sam. "Domestic Review of Investment Treaty Arbitrations: The Swiss Experience" (2009) 27:2 ASA Bulletin 256.

Shan, Wenhua. "Umbrella Clauses and Investment Contracts under Chinese Bits: Are the Latter Covered by the Former?" (2010) 11:2 J. World Investment & Trade.

Supnik, Kate M. "Note. Making amends: amending the ICSID Convention to reconcile competing interests in international investment law" (2009) 59 Duke L.J. 343-376.

Sweet, Alec Stone. "Investor-State Arbitration: Proportionality's New Frontier" (2010) 4:1 Law and Ethics of Human Rights 47-76. Available on <http://papers.ssrn.com>.

Tortorola, Ignacio and & Domenico Di Pietro, "Notes on the Requirement of Guarantees as a Condition for a Stay of Enforcement of ICSID Arbitral Awards", Vol. 7, Issue 1 Transnational Dispute Management (April 2010).

Tschanz, Pierre-Yves and Viñuales, Jorge E. "Compensation for Non-expropriatory Breaches of International Investment Law" (2009) 26:5 J. Int'l Arb. 729.

Vargiu, Paolo. "Beyond Hallmarks and Formal Requirements: A "Jurisprudence Constante" on the Notion of Investment in the ICSID Convention" (2009) 10:5 J. World Investment & Trade.

Waibel, Michael. "BIT by BIT – The Silent Liberalisation of the Capital Account" in Binder, Christina; Kriembaum, Ursula; Reinisch, August; and Wittich, Stephan; eds., *International Investment Law for the 21st Century: Essays in Honour of Christoph Schreuer* (Oxford, 2009) 497-518. Available on <http://papers.ssrn.com>.

Wälde, Thomas W. "Procedural Challenges in Investment Arbitration under the Shadow of the Dual Role of the State: Asymmetries and Tribunals' Duty to Ensure, Pro-actively, the Equality of Arms" (2010) 26:1 Arb. Int'l 3.

Webster, Thomas H. "Efficiency in Investment Arbitration: Recent Decisions on Preliminary and Costs Issues" (2009) 25:4 Arb. Int'l 469.

Weidemaier, Mark C. "Toward a Theory of Precedent in Arbitration" (2010) 51 Wm. & Mary L.Rev. 1895. Available on <http://papers.ssrn.com>.

Yackee, Jason W. "Do Bilateral Investment Treaties Promote Foreign Direct Investment? Some Hints from Alternative Evidence" (2010) Available on <http://papers.ssrn.com>.

Ziadé, Nassib G. "ICSID's Contribution to the Development of Investment Arbitration in the Arab World" (2008) 23:2 ICSID Rev. - Foreign Investment L.J. 233.

### **Symposia**

The 14th Geneva Global Arbitration Forum. Articles by Charles C. Adams, Stuart Harbinson, Gary Horlick, Jazashree Watal, and Jacques Werner (2009) 10:5 J. World Investment & Trade.

The Global Interdependent Economy: New Explorations of the Boundaries of International Investment. (2009) 18 Mich. St. J. Int'l L. 1-141.

- Anderson, Rachel J. "Toward global corporate citizenship: reframing foreign direct investment law" (2009) 18 Mich. St. J. Int'l L. 1-31.
- Footer, Mary E. "Bits and pieces: social and environmental protection in the regulation of foreign investment" (2009) 18 Mich. St. J. Int'l L. 33-64.
- Bean, Bruce Winfield. "Attack of the sovereign wealth funds: defending the public from the threat of sovereign wealth funds?" (2009) 18 Mich. St. J. Int'l L. 65-115.
- Sabater, Anibal. "Foreign investment arbitration in the global interdependent economy" (2009) 18 Mich. St. J. Int'l L. 131-141.

### **Reports**

Cotula, Lorenzo. *Investment contracts and sustainable development: How to make contracts for fairer and more sustainable natural resource investments* (International Institute for Environment and Development, 2010).

Ruggie, John. *Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises*, UN HRC, 14th Sess. (2010). Available at <http://www.reports-and-materials.org/Ruggie-report-2010.pdf>.

UNCTAD. *Latest Developments in Investor-State Dispute Settlement*, IIA Issues Note No. 1 (2010). Available at [http://www.unctad.org/en/docs/webdiaeia20103\\_en.pdf](http://www.unctad.org/en/docs/webdiaeia20103_en.pdf).