



Public and Private International Law Bulletin

BOOK REVIEW / KİTAP DEĞERLENDİRMESİ

China's International Investment Strategy: Bilateral, Regional, and Global Law and Policy

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Abstract

The examination of China's investment strategy is becoming more important because of the change in China's strategy. China is moving forward and taking serious steps to shape international trade and investment law. Belt & Road, in this respect, is a key strategy for China to play a more active role with other countries. Not alone this initiative, China has already a great number of investment treaties with other countries. This book provides important insights into China's investment-treaty network and informs those who want to understand China's changing investment strategy.

Keywords

Investment law, China's investment strategy, Investment treaties

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To cite this article: Eken C, Book Review: China's International Investment Strategy: Bilateral, Regional, and Global Law and Policy, by Julien Chaisse, eds, Oxford: Oxford University Press, 2019, 560 Pages (2019) 39(2) PPIL 713. <https://doi.org/10.26650/ppil.2019.39.2.0024>

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The book, edited by Professor Julien Chaisse, covers a very important topic for the future of global economic governance, which also is of strategic importance in Turkey. At present, the trade war between China and the United States (US) emerged and affected many countries in the world. Turkey-US relations, subsequently, have seen tensions that have driven Turkey to turn its face to the east and search for new collaboration as alternatives. While China changed its investment policy and has taken on a more active role on the world stage, potential China-Turkey collaboration offers many opportunities to both countries.

China's International investment Strategy changed drastically after its open-door policy, and now with the Belt & Road Initiative, China is deemed more ambitious in the international trade and investment regime. China is not only a rule-taker but also a rule shaker, if not a rule-maker, as demonstrated in the reviewed book. Turkey, as a country located at the doorstep of Europe for Asian countries, and a gateway to Asia for Europe, demonstrates its strategic importance. China is trying new ways to increase its relations with other countries and revive the historic spice and silk roads. Turkey is conveniently located on both routes, and set to forge a closer relationship with China in the coming years. As China aims to stretch the historic routes even further to Europe and beyond, Turkey would play an even more crucial role for those plans due to, not only its location, but also its history and deep-rooted relations. This offers great opportunities for business to develop, lawyers to help investors, and policymakers to make more informed decisions. Therefore, understanding China's investment law and policy is essential for investors, lawyers and policymakers from Turkey for further collaboration. This book offers perceptive insights into the topic, and is suitable for those who would like to understand China's investment strategy comprehensively to take a better position in the coming years. This is the goal of this review, to introduce this useful source that is available to fill this need.

The edited book, as suggested by its name, covers investment treaties signed between China and other countries. It also offers important economic and political analyses in addition to legal analysis. The book has twenty-seven chapters written by many distinguished authors and an introduction by its editor. The foreword is written by Professor Zhao Hong, an appellate body member in the World Trade Organization. In her foreword, she highlights the major changes in China's economic integration after 1978. She praises the book and Professor Julien Chaisse, stressing the importance of China's accession to the World Trade Organization, as it signifies the involvement of China in the global economy. In general, the book gives extensive information and a concrete framework regarding China's international investment law in five aspects, namely China's international investment law and policy (1) in the domestic law context, (2) in the Bilateral Investment Treaties (BIT) context, (3) in the regional context, (4) in a global context, and last but not least, (5) the dispute

settlement mechanism and its challenges. In the following, the chapters in each part are analyzed and reviewed in detail. The editor divides the book into those five parts, and this book review does so as well.

The first part is the foundations of China's international investment law and policy, and there are six chapters in this part. The first chapter, by Michael J Enright, provides a general overview of China's investment policy and a brief history of China's policy changes. After providing the legal structure of investment in China, the chapter analyses policies in China as sector-based and geography-based policies. Enright provides important charts showing foreign-invested enterprises and their performances over the years in China. A concise economic and catalytic impact analysis is given by the author. After examining the implications of those analyses, the author concludes that the impacts and benefits of foreign direct investment (FDI) for China have not received the attention they deserve.

The second chapter, co-authored by Hui Yao Wang and Lu Miao, provides significant highlights for China's overseas investments. It is noted that in 2015, China's overseas investment exceeded the investment China received for the first time. After revealing the significance of this landmark in China's investment history, the authors offer explanations on how China managed to achieve such success. They also provide a crisp comparison of outward investment from China in Asia, and that from other countries, the difference of which could be attributed to the launch of the Belt & Road initiative. It is particularly interesting to see which sectors the Chinese investors preferred and the challenges they faced as they trod the paths. The authors end the chapter on an optimistic note though, putting forward recommendations on how to overcome the challenges and suggesting that investment by Chinese enterprises will grow thanks to the 'Going Global' strategy adopted by China.

The third chapter, by Na Li, examines Chinese foreign direct investments from a tax perspective and the impact of tax on such investments. It provides important information and insights to tax incentives for foreign investors in China, as well as tax instruments for facilitating Chinese investors for outbound investment. After discussing important tax issues such as tax avoidance, tax competition and planning, the author concludes the chapter by highlighting the major changes in Chinese tax laws.

The following chapter, by Lu Wang, is about investments by Chinese state-owned enterprises (SOE) and how concerns about those investments were addressed by international investment agreements. The author has included detailed explanations of those concerns and important implications of them.

The fifth chapter, by Jie (Jeanne) Huang, is about regulatory change in China from a positive list to a negative list for market access. The author talks about existing

deficiencies in the Chinese negative list, and gives suggestions for improvement in terms of format, substance and the formulation of a negative list. In the conclusion, the author stresses the importance of creating a comprehensive negative list in China.

The sixth chapter addresses sustainable development issues in international investment agreements (IIA). The author, Manjiao Chi, explains how sustainable development principles are developed, what types of sustainable developments are taking place in Chinese IIAs and how the principle can be enhanced in Chinese IIAs. In the conclusion, the author highlights that with this chapter he aims to give a broad understanding of the principles of sustainable development and examine the three major types of such development, namely environmental provisions, transparency provisions, and labour rights provisions. He concludes that Chinese IIAs are insufficiently sustainable-development-compatible even though some progress has been made. The author argues there might be cases related to sustainable development relying on Chinese IIAs in the near future. This chapter marks the end of the first part of the book.

The second part of the book is about bilateral investment treaties (BIT) China has with other countries. In this part, China's investment relations with Canada, Israel, the European Union and the United States are surveyed. It starts with Chapter 7, written by Kyle Dylan Dickson-Smith, on potential US-China BIT and what lessons from the experience of China BITs can be used to improve the potential BIT between the two largest economies in the world. The author uses specifically the Canada-China Foreign Investment Protection Agreement (FIPA) as a case study. It analyses relations between China and Canada, and applies what has been learned from it to the US-China context. A close analysis of the Canada-China BIT and a supported conclusion can be found in this chapter.

The eighth chapter, co-authored by Hadas Peled and Marcia Don Harpaz, is specific to China-Israel BIT. The authors identify that innovation plays an essential role in the development strategies of the two countries, which serves primarily as a catalyst in their economic, political and investment relations. After examining the aspects in the China-Israel BIT context, the extent to which innovation might wield its power is explained.

China-EU negotiations for Comprehensive Investment Agreements (CIA) are the topic of Chapter 9, co-authored by Flavia Marisi and Qian Wang. A thorough examination of the drivers behind such negotiations and specific clauses in the negotiations are given. As they are important indications of future developments of China-EU relations, not only legal drivers but also political and economic drivers for CIA, and EU-China relations are analysed.

Three authors, Xinquan Tu, Na Sun and Zhen Dai, work on issues on State-Owned Enterprises (SOE) in BITs in Chapter 10. Chinese SOEs in the US and US SOEs in China are analyzed in a case study. A review of international standards for SOEs, and SOEs specific to the ongoing US-China BIT negotiations, is presented in the chapter.

At the end of the second part of the book, Chapter 11, Matthew Levine examines a new generation of Chinese treaty practice. It is referred to by the author as the fourth-generation practice, which emphasizes the importance of regionalism. The author also examines changes and substantial provisions in recent Chinese BITs.

Regional treaties constitute the third part of the book. First, in Chapter 12, Won Mog Choi talks about substantive provisions of the East Asian Trilateral Investment Agreement, and probes the consequences from those provisions. Important provisions, such as the definition and scope of investment, non-discrimination, expropriation and exceptions where the agreement does not apply, are analysed. The articles of the East Asian Trilateral Investment Agreement are compared with the articles in the largest regional treaty, the Trans-Pacific Partnership (TPP), and the proposed Transatlantic Trade and Investment Partnership (TTIP) between the European Union and the United States.

In Chapter 13, Heng Wang examines the Regional Comprehensive Economic Partnership (RCEP) rules. The author identifies the RCEP as the only mega treaty China has signed, describing the Chinese Free Trade Agreements as 'malleable', and addressing the lessons to be learnt by other Chinese FTAs from such agreements. The chapter further explores China's position in investment treaties as a rule-follower, rule-shaker and rule-maker.

Chapter 14 is co-authored by Amokura Kawharu and Luke Nottage, and examines the role of Australia and New Zealand in the Asia-Pacific region. Current treaties to which Australia or New Zealand is a party, the track record of the two countries in the WTO dispute settlement mechanism, and their role and impact in RCEP negotiations are detailed in the chapter.

The last chapter of the third part of the book is Chapter 15, written by Horia Ciurtin, explores investment law with a Taiwanese investment treaty. With a historical perspective, the chapter illustrates how a new era started in Taiwan's investment treaty system.

The fourth part of the book examines investment law from a global perspective. In Chapter 16, Karl P Sauvani inspects China's move in the G20 towards a more facilitative investment regime. As an important outward FDI country, China has grasped the opportunity to reform the international regime by taking advantage of its presidency in the G20. The author remarks that China used to have limited influence

on international trade and financial regimes, but over the years, China has acquired the power to shape and even reform the regimes.

Chapter 17 is also about the importance of the G20 for global investment policy-making. Co-authored by Anna Joubin-Bret and Christian Rodriguez Chiffelle, the chapter examines the G20 Guiding Principles.

Chapter 18, by Sophie Meunier, highlights the importance of foreign direct investment by China in Europe and the US.

Chapter 19, by Ka Zeng, also highlights the impact of Chinese Outward FDI in light of the Belt & Road initiative. It examines the value of investment made under the initiative, and the different hypotheses regarding the management of those investments, providing an empirical analysis in the chapter.

In Chapter 20, Manzoor Ahmad inspects China's interests in Central Asia. He focuses on notable projects in the region and analyses the China-Pakistan economic corridor.

In Chapter 21, Susan Finder explores how Chinese SOEs interact with the international fraud and corruption sanctioning system, which is a lesser-known aspect of the practice of Chinese SOEs.

In Chapter 22, Joel Slawotsky examines the leading role of the US in global economic and legal governance after World War II, which has remained unshaken despite the rise of other powers. China's challenge to the US interests is highlighted in this chapter. The fourth part of the book is completed with this chapter.

The last part of the book is on the Investor-State Dispute Settlement System (ISDS). The first chapter of this part, Chapter 23, is co-authored by Matthew Hodgson and Adam Bryan on how China affects investment treaty arbitration in Asia. The authors analyze China's BITs, and offer their predictions regarding China's future investment strategy.

In Chapter 24, Jane Willems examines how arbitral tribunals enforce jurisdiction over investment disputes under China's BITs. The author examines arbitration cases involving Chinese parties.

Chapter 25 analyses the *Ping An v Belgium* case, the first case brought by a mainland Chinese company under ICSID. Claire Wilson, the author, examines how investment protection works for Chinese companies under ISDS.

Chapter 26, by Sungjin Kang, examines the extent to which China's Anti-Monopoly Laws apply to investors. The author takes the Korea-China BIT as a model to argue

that there might be challenges to the laws as a result of disputes over the application of the BIT.

The last chapter of the book, Chapter 27, written by Shu Shang, is on the possibility of investor-state mediation in China's next-generation investment treaties.

As reviewed, the book covers a wide range of issues in China's investment law and policy, and contains contributions by many leading experts in the field. Each chapter addresses a major issue related to China's investment law and strategy. It is more than a law book in that it not only gives China's investment law a much-needed framework, the diverse group of authors also examine the political and economic aspects of the law. Such aspects are intricately linked to investment law, but are often overlooked.

However, the reviewed book is also left with some shortcomings. First of all, while Belt & Road is part of great importance in China's investment law and strategy after 2013, as initiated by the president of China, the book does not seem to have given the initiative the attention. It could improve the coverage of the initiative by dedicating a sub-section of the book to it. Secondly, China's international law on GATT is not covered in the book. It could have been a bonus to this book, especially given the continuing US-China trade war. Thirdly, even though the book investigates China's relations with a wide range of countries and details both their bilateral and multilateral agreements, an important jurisdiction is missing. The book could use a chapter or two to examine the laws of the Australia-China bilateral treaty and compare the investment instruments of both countries. Nevertheless, despite the above, the book is a significant contribution to the literature on China's investment strategy, providing insights useful to both investors from China and investors to China.

The importance of this book for Turkish lawyers and investors is emphasized by Heng Wang in Chapter 13. He states that China needs strong support from major economies, developing and developed ones alike. Turkey makes an ideal fit for China, being a developing country itself, and would benefit from the collaboration that sees increased trade and investment in both countries. As officials continue their negotiations and talks, it is predicted that the collaboration will go further with time. Thus, this book offers great insights and serves as a handbook for those seeking to learn and understand Chinese Investment law and strategies, for example, lawyers, policymakers, investors and academics.

In conclusion, Professor Julien Chaisse has brought together an impressive group of leading experts, and produced the reference work on China's international investment law and policy. In an unmatched critical manner, the book provides a comprehensive investigation of China's investment policy and its effects in other jurisdictions,

effectively filling a considerable gap in the existing literature. It is relevant to all who work in investment law, including policymakers. The book “China’s International Investment Strategy: Bilateral, Regional, and Global Law and Policy” will sit at the vanguard of excellence for the next generation of scholarship on China international investment law and policy.

References

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