Book Review of International Investment Law: National, Regional and Global Perspectives by Dr Collins C Ajibo (Wolf Legal Publishers, Nijmegen, the Netherlands: 2020)

By:

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The book (International Investment Law: National, Regional and Global Perspectives) examines the principles and practices of international investment law in the light of international law. The book is situated within the prevailing dynamics of international investment law and policy that are underpinned by competing interests of the host States and foreign investors.

The book contains 22 chapters. In the first three chapters, the book examines the evolution of international investment law, the various theories (such as

eclectic theory and internalization theory) that provide justifications for international investment, the frameworks of international investment law, as well as extracts of applicable laws.

The author further analyses substantive terms and principles from treaty practice and the regulation of foreign investment entry and establishment respectively. Since there are diverse legislation and regulations (such as NIPC Act, ISA Act and CAMA 2020) that underpin investment in various sectors of the Nigerian economy, the author examines the sectorial regulation of investment in Nigeria and concludes that the investor has a responsibility to determine the sector of interest to invest.

Chapters 7 and 8 explore the various standards of protection to foreign investment including non-discriminatory and arbitrary treatment and the no-precluded-measures (NPMs). The NPM is the equivalent of the customary international law doctrine of necessity. Both terms basically replicate the same normative content and practical significance.

Chapter 9 examines State contract or investment contract under the national law and international law, while the doctrine of stabilization clauses or *pacta sunt servanda* applicable to investment agreement was examined in chapter 10. The doctrine of *pacta sunt servanda* envisages good faith adherence and observance of freely concluded agreement. *Pacta sunt servanda* is equated with stabilization clauses. Stabilization clauses and *pacta sunt servanda* are regarded as two sides of the same coin.

Chapter 11 explores the concept of expropriation and Chapter 12 concerns the applicable law, governing law, or choice of law in investor state dispute settlement (ISDS). ISDS remains the prevailing mechanism for dispute settlement in international investment disputes.

Chapters 13 and 14 show that the risk insurance and guarantee are required for international investment to cater to the vicissitude of political risks in most developing countries, and the fiscal and fund transfer regimes that apply in cross border investment.

Since performance requirement is essential to foster socioeconomic and industrial development of the host country, Chapter 15 explores the regime of

performance requirement including technology transfer. The processes for international technology transfer generally can be categorised into three main frameworks, namely: (1) regulatory framework, (2) market-based framework and (3) intraregional and inter-regional framework. Developing countries can optimize these frameworks as part of performance requirements expected of foreign enterprises to foster development.

The author also explores the responsible foreign investment and gas flaring conundrum in the natural resources sector, within the context of promoting sustainable development. While decrying the lax regulation of gas flaring, he proffers the guideline for future course of actions such as gas reinjection, liquefying the gas and storing it in vessels and compressing the gas to limit environmental degradation.

The author further presents the regulation of multinational corporations (MNCs), transnational corporations (TNCs) or multinational enterprises (MNEs). The idea of regulation of the MNCs or TNCs has evoked substantial responses nationally and globally from scholars and policy makers, especially in view of diverse regulatory perspectives such as soft law regulation, hard law regulation, hardened soft law regulation, self-regulation or voluntary regulation versus mandatory regulation, host State regulation versus home State regulation, as well as unilateral regulation versus multilateral regulation. The chapter contends that a combination of regulatory approaches should be preferred.

Also, the author examines the legitimacy challenges that underpin international investment law which are invariably attributable to continued absence of an overarching multilateral investment agreement (MIA) which ought to regulate cross-border investment globally, in addition to WTO’s Trade-Related Investment Measures (TRIMs). The term ‘Trade-Related Investment Measures’ was not defined by the TRIMs Agreement. Nevertheless, the annex to the Agreement contains an illustrative list of measures that are considered to be inconsistent with Article III:4 and Article XI:1 of GATT 1994. By and large, TRIMs cover a wide range of performance requirements and incentives that governments may place on foreign investors.

The regulation of international portfolio investment and the establishment of the International Centre for the Settlement of Investment Disputes (ICSID)

between the Contracting States and Nationals of other Contracting States were extensively discussed in the last two chapters.

The reader gets to analyse the principles and practice of international investment law in the light of international law by adopting a comparative approach which makes this book very important and very interesting. Legal libraries need such a book. However, it is a bit risky for the author to include so many foreign jurisdictions without co-authors from the relevant countries, but the benefit is that there is a high degree of coherence among the case studies, which unfortunately is quite rare in edited volumes with authors from multiple jurisdictions.

The national aspects of the chapters are intertwined with the regional and global perspectives. Most importantly, a common thread runs through all the chapters irrespective of the national, regional and global nature of the book, namely: the need to balance the interest of the parties with international investment rule-making and norms-setting to achieve an equitable distribution of rights, privileges and obligations.

The organization of the book was logical and well-structured, and the author was able to present a detailed and clear material. The topics follow each other smoothly, and the position of the author was clearly put across. Also, the study questions of each chapter are carefully designed to enhance the reader’s involvement in the penetrating reflection that the book is intended to introduce her/him to.

Nowadays, economic issues such as the lack of public finance and budget deficits have meant that some governments are unable to fund projects which provide and deliver services to people. The need for private sector involvement has become increasingly important to some financially developing and poor countries, and is also considered to be a critical driver of economic growth as private sector involvement will encourage foreign private sector involvement and, as a result, encourage foreign direct investment in the country.

When private enterprises decide to invest in any country, their first concern is to ensure that their investment is safe and protected in the case of a dispute with the host government. One of the best methods of protecting investors is to provide them with the option to resolve any potential disputes in a neutral

environment. Therefore, the strongest point for this book is the last chapter which concerns the settlement of investment disputes, as it makes the book well-suited for investors, state/administration, academicians, researchers, undergraduate and postgraduate students with legal backgrounds.

Another most original contribution of the book is its second chapter where there is a clear analysis of the various theories that provide justifications for international investment. The author rightly maintained in this chapter that none of these theories standing alone can justify international business, as one or more of these theories are needed to provide a comprehensive explanation for the cross-border business activities.

On the basis of my overall assessment of the book, it is my view that the book contains original contributions and the author has a good grasp of contemporary issues and literature in the area of international investment law.

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