BOOK REVIEW

Reports of Overseas Private Investment Corporation Determinations

Edited by Mark Kantor, Michael D. Nolan and Karl P. Sauvant
(New York, Oxford University Press, 2011)

Globalization, and its concomitant foreign direct investment (FDI), could not have succeeded to the extent that they did without the existence or framework for (a) analysing political risk in both the home and host countries engaged in FDI transactions, and (b) a system of insuring political risks at an affordable price, and mutually agreed and enforceable arbitration mechanisms for dispute resolution.

The cumulative positive effect of these phenomena is easily envisaged from the growth in FDI which increased from roughly US$50 billion per year during 1980-85 and currently stands at US$1.4 trillion per year. Another positive influence of their FDI flows has been increasing liberalization and harmonization in investment and lax regimes in various parts of the world and most notably among the developing countries and emerging economies of the world.

From the United States perspective, Overseas Private Insurance (OPIC) – a United States government agency – has played a critical role in expanding its outward FDI through insurance coverage for foreign expropriation-related risks. Their process has generated a large volume of cases and investment treaties.

These cases have been thoughtfully organized and analysed in *Reports of Overseas Private Investment Corporation Determinations*, edited by Mark Kantor, Michael D. Nolan and Karl P. Sauvant, which is the object of this review.

The two-volume report is an extremely important reference source, which contains a comprehensive cataloguing of 281 cases and 289 treaties. The strength of the compendium lies in the fact that for the first time, these cases provide access to the complete set of OPIC determinations. OPIC has the broadest set of political risk insurance (PRI) determinations by a public institution in the world. It also has one of the oldest PRI programmes in the world.

These volumes provide important analysis through classification of contextual materials in the beginning of volume 1 where readers can understand how political risk issues are resolved from the insurance perspective and how the appreciation of political risk factors developed and was refined through different international crisis. In many instances, the insurance determinations addressed risks that were not otherwise captured by growing investment arbitration jurisprudence in anywhere near the same detail such as, for example, in the context of political violence and inconvertibility claims. Where similar risks are at issue, as is the case with expropriation claims, the decisions develop arguably different approaches in the PRI and investment treaty world (both with their own cohesive policy underpinnings) that are worthy of further examination. The data are easily accessed and expand on the basis of countries, corporations and types of disputes.

By making this primary material readily accessible for the first time, the editors have provided scholars and practitioners alike with tools to refine their own approaches to present day political risk issues such as the losses caused by the political violence in the Middle East and potential foreign exchange issues that could be created by the euro and the United States debt crisis.

From the perspective of this reviewer, I feel that the editors have missed a valuable opportunity to add three more steps to their analysis.

1. The current analysis is essentially classificatory in nature. Although, quite useful in its own right, it deprives the readers of the insights that the editors must have gained through their yeoman work in reviewing these materials.

2. The review focuses on the past, i.e., what has happened, but it does not look at what should have happened, but did not happen. For example, the editors could point out to some of the emerging areas of political (social) risks that could and should have been covered, or should not have been covered. For example, many syndicated loans from IFC and other multilateral organizations require that lenders comply with the Equator Principles and thereby certify whether

such loans – especially in infrastructure projects – would exclude environmentally unsustainable and potentially harmful projects.

3. The review could also use the editors' perspective as some of critical emerging issues of political risk where pre-emptive thought and action could save potential harm to the projects and to the funding and insuring organizations. For example, a significant number of projects in war-torn countries in Africa and other emerging economies that deal with extractive industries are facing extreme opposition from the indigenous people in the impacted region while the national governments have been highly supportive of these projects. These conflicts have resulted in frequent instances of violence, sabotage to the companies' facilities, and an overall increase of costs and thus lowering the potential for economic gain.

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