BOOK REVIEWS

Bilateral Investment Treaties

Rudolf Dolzer and Margarete Stevens

(The Netherlands, Martinus Nijhoff, 1995), 330 pages

Bilateral investment treaties are assuming great significance in modern times as a mechanism for the protection of foreign direct investment (FDI). The authors of this recent work on the subject stress the importance of these treaties by pointing out the extent of the frenetic activity towards the making of these treaties. They begin by stating that there are over 700 treaties; by mid-1995, there were over 900 such treaties. Such is the rapidity with which these treaties are being concluded. Their number is set to grow as States that had kept out of such treaty practice are now losing their hesitancy and beginning to make such treaties.

This activity itself shows the need for a book on the subject. Though there are other book-length treatments of the subject, these were confined to the study of the practice of particular States. The work by Dolzer and Stevens attempts a more systematic study of the subject and is therefore a welcome addition to the scarce literature on the subject. The book itself was prepared under the auspices of the International Centre for Settlement of Investment Disputes (ICSID), a World Bank body. The authors obviously had access to a comprehensive set of materials. ICSID does an enormous service to the scholarly community by publishing the bilateral investment treaties in an accessible form.

The authors are very cautious in expressing views on contentious subjects. Thus, they are reluctant to answer the issue as to whether the treaties confirm or create any customary international law relating to foreign investment protection. They, however, seem to be inclined towards such a view. In several areas, they are also inclined to the view that there is substantial uniformity among the treaties as to certain principles stated in them, even though the evidence for such uniformity appears flimsy based on the evidence they present. The traditional view is that the principles in the treaties constitute customary international law. Another view is that there is no purpose in such extensive treaty practice if there were, in fact, clear principles of customary international law on foreign investment protection and that it is precisely because of this absence that States seek to define the rules of protection so as to ensure that, as between themselves, the rules of investment protection are clarified by the treaty. It may also better explain why there is as yet no multilateral treaty on investment protection: for if States are willing to generate customary international law, they should show no reluctance in having it stated in a multilateral investment treaty. This is a tenable view, and there is insufficient discussion as to which view is correct.

Such questions are not the mere preoccupation of an academic international lawyer. They are crucial to the issue of determining the extent to which a globally effective system of FDI protection can be built up. The book was not written with such long-term objectives in mind, but with the immediate objective of helping in the task of drafting future treaties. It was obviously written with the government official negotiating such treaties and others who have to make decisions on the basis of these treaties in mind. From that point of view, the amount of information packed in the book is admirable, though weighted in favour of inducing the audience to regard the treaties as the panacea for the difficult problem of foreign investment protection. It is largely a descriptive work which contains a very competent survey of the areas covered by the treaties. The book deals with the different types of clauses which have been used in the various treaties, explaining what the objects of the different formulations are. There is, however, a bias in favour of the effectiveness of these treaties, and the possible defects in them appear to have been played down. These criticisms are admittedly ungenerous because the authors obviously did not set out to do what academics, like the present reviewer, would want to see in a book on the subject.

Chapter one begins with an excellent overview of the practice on investment treaties. It contains a survey of the beginnings of not only bilateral but also multilateral instruments on investment protection. Having brought the issue of multilateral instruments into the picture, there is no reference anywhere in the book to the question as to why, despite such bilateral activity, there is reluctance to conclude a single multilateral treaty to supplant all the bilateral treaties. The view of the authors as to the possibility of such a treaty would have been welcome to the reader.

Chapter two deals with the scope of the application of the treaties. It is in determining the scope of the application of the bilateral investment treaties that many of the tussles begin. A crucial factor in bilateral investment treaties is that there is no common definition of the type of investments that are given protection. If one searches for uniformity, one can find plenty—but the uniformity should be legally meaningful. The absence of a common definition of foreign investment is by itself an impediment to the evolution of any general customary law on the basis of these treaties, for if there is customary law, it must uniformly protect all foreign investments. That does not appear to be the case in the regimes constructed by the bilateral treaties. The survey by Dolzer and Stevens points out that the practice in South-East Asian treaties is to confine protection to "approved investments". The more recent Indonesian and Australian treaties provide protection only to foreign investments made in accordance with their screening laws. The United States-Russia treaty provides for exception of foreign investments deemed to be threats to national security by either party. These subjective formulations of the type of foreign investments which are given protection emasculate the content of these treaties. They permit the national legal systems to determine what foreign investment should be given protection, and, as a result, have the potential to eviscerate the treaties of any international content. Given the nature of the distinction made between foreign investments in these treaties, it is far-fetched to argue that they contain the genesis of globally applicable rules relating to FDI in general. In their quest to identify uniform principles, Dolzer and Stevens do not seek to overcome this initial problem that the treaties contain several manipulatable devices which may remove a foreign investment, even possibly after it has made entry, from the scope of the treaty's protection. Rather they seek to highlight the uniformity of the provisions in supporting a case that customary international law could be generated by these treaties. There is, however, considerable caution displayed in advancing such a view.

The chapter on admission and treatment indicates the diversity of approaches adopted in dealing with entry of foreign investments and its subsequent treatment. Most States ensure that their power to screen investments prior to entry are not affected and that they may impose conditions upon the entry of these investments. Even the United States, which has approached these treaties as having uniformity, is shown as having excluded industries from the application of some of its treaties.

The chapter on expropriation surveys the provision on taking of property of foreign investors. Here again, uniformity is elusive. There is uniformity as regards the requirement of a public purpose for the taking and that the taking should not be discriminatory, but it is well accepted that these rules do not impede expropriations to any significant degree in modern times. Uniformity on these rules cannot amount to much, as nothing turns on them in the modern international law on nationalizations. The crucial dispute as to expropriation is the standard of compensation to be paid by the host State in the event of expropriation. The capital-exporting States have favoured the Hull standard of prompt, adequate and effective compensation. The developing States have favoured an alternative, uncertain standard of appropriate compensation. Dolzer and Stevens find that the majority of the treaties accept the Hull standard. But the significance of this fact is somewhat dented when it is known that the same State that had accepted the Hull standard in some treaties has used the alternative standard in other treaties. The treaties do not provide much guidance as to what the general international law on the point is, particularly because they cover only foreign investments that are given such treaty protection by falling within the definition in each treaty.

The final chapter is on the dispute-settlement provisions in the treaties. One great innovation made by these treaties is that they provide status for the foreign investor to initiate proceedings against the host State without the mediation of the home State. Under the classic rules of international law, the mediation of the State was necessary. To this extent, the treaties bring about a change. But, as the authors point out carefully, this right is automatically available to the foreign investor only in the few treaties that have used mandatory language regarding the right of the foreign investor to arbitration of disputes. The technical competence of the study is clearest in this chapter where the drafting nuances of the different provisions in the treaties are carefully explained.

On the whole, this is a careful study of an instrument that is becoming a popular mean of devising foreign investment protection. It will be of invaluable assistance to those who have to draft such treaties as well as those who have to interpret them. The cautious nature of the conclusions drawn by the authors may not be to the liking of academic students in the area of foreign investment but to them too, the work brings many fresh insights. There is a valuable collection of important model agreements in the appendixes. ■

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The Evolution of International Business

Geoffrey G. Jones

(London and New York, Routledge, 1996), 360 pages

This book covers the history of international business since the time of the first corporate foreign direct investments (FDI). It aims to be an introduction for students of international business and for historians seeking a point of entry into international business. Geoffrey G. Jones, writing at the University of Reading, draws on a well-founded command of the leading theoretical and empirical work which has been done on this topic.

Chapter one presents the basic building blocks of the modern theory of international business and the transnational corporation (TNCs). The second chapter presents the evolution of TNCs, divided into several historical periods and relates this to the leading countries involved and the prevailing economic conditions. It tracks the increasing diversity in TNCs' home and host countries and discusses the growth of collaborative forms of international business that blur the boundaries between the academic classification of methods of market servicing. It then focuses on the historical shifts in the industrial characteristics of foreign investment. Beginning with a pattern where TNCs are channels for the natural resource commodities required for production in the developed countries, the discussion traces the growth of investment in manufacturing in the developing countries and the rise of services sector TNCs. Particularly interesting is the discussion of the service sector (chapter 5) which has flourished in international business in the "borderless world of the nineteenth century" (p. 193). The growth of State monopolies and tight regulatory barriers to entry in the twentieth century have acted as barriers to much potential FDI in services. Jones analyses the influence of the economic environment on certain services, such as banks and trading companies, and provides an excellent illustration of the impact of government intervention and control on the course of international business activity.

Chapter 6 extends the previous discussion by applying an historical perspective to the competitiveness of firms and nations. This reveals the periodic, or episodic, nature of source country performance. A similar pattern is evident in the distribution of inward investment into host countries. Jones traces these patterns to a number of factors. One is industry composition. As the received theory of international business predicts, FDI flourishes in certain industries more than in others. For instance, natural resource-extractive industries tend to attract substantial FDI because it enable firms to secure supplies via direct investment abroad and to exploit the opportunities to employ international transfer pricing, thus raising profits.

Additional factors suggested by Jones as determinants of the FDI profile of a country include geographical proximity among countries which favours economic integration and, in the absence of political and economic trade barriers, raises the level of cross-border investment and a country's complement of entrepreneurial human capital. Jones discusses the explanatory power of these factors for the growth, maturity and decline of countries as sources of TNCs. There is some resonance in this respect with the recent attempt to construct a theory of these cyclical patterns, as presented in the evolutionary model of FDI of John H. Dunning and Rajneesh Narula (1996).

Policy concerns, such as the impact of outward FDI on employment, are also treated in chapter 6. No hard and fast lessons are on offer here, although it has long been recognized that judicious investment abroad maintains or improves the competitiveness of TNCs and can also enable improved performance in the domestic economy. In the case of countries with high levels of outward investment, the FDI stock may assist the home base to weather the storms of international competition better and to alleviate adjustment problems and decline. All of this suggests that countries should have a policy towards outward investment but, as Jones remarks, surprisingly few do.

The author addresses also the issue of the national origin of TNCs. While national origins remain important, as Jones emphasizes, the cross-penetration of economies by TNCs has substantially eroded the traditional notion of the home country. The author notes that even today "boards of directors of almost all MNEs continue to be of home country origin" (p. 223). However, international acquisitions and mergers can change the nationality of firms overnight. This implies that the current distribution of a home country's foreign assets in part reflect the history of another country as an outward investor. Conventional statistics of FDI cannot capture this subtlety, and this clearly demonstrates the complementary nature of business history as a research tool.

Chapter 7 discusses the impact of FDI on host economies and explores the idea of TNCs as engines of economic growth. The difficulty in assessing what would have occurred in the absence of FDI (the "counterfactual" position) is a methodological hurdle that has not been overcome yet. Even so, the sectoral and country studies reviewed in this chapter demonstrate persuasively the potential for growth conferred by FDI, although the author acknowledges the possibility of negative impacts of TNCs.

The following chapter (chapter 8) contains a fascinating presentation of the intertwined nature of the history of TNCs and the history of host countries. Jones demonstrates why some policies have been enlightened, while others have failed. A comparative section on the policies of India, Brazil and Singapore highlights the scale of economic benefits that can be achieved and, equally, that of opportunities that can be lost.

A concluding chapter summarizes some of the central themes of the book. It emphasizes the observation, exemplified by the evidence of post-war United Kingdom, that the performance of a country's firms abroad is often distinct from the home country's competitiveness. The impact of TNCs on their home countries remains an area of contention and Jones reminds the reader that TNCs can engage in an excessive transfer of innovatory capability and entrepreneurial capacity abroad, to the detriment of domestic economies.

This book conveys the importance and the significance of international business in a way that will inform, and hopefully inspire, students of the field. Scholars of international business will find this an excellent complement to their specialist work. ■

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Reference

Dunning, John H. and Rajneesh Narula (1996). *Foreign Direct Investment and Governments: Catalysts for Economic Restructuring* (London and New York: Routledge).

Foreign Direct Investment and APEC Economic Integration

APEC Economic Committee

(Singapore, APEC Secretariat, June 1995), 109 pages

The ambitious title of this study is followed by an even more ambitious set of objectives outlined in the study's introduction. These are to "develop a time series database of direct investment flows and stocks for the APEC region during the period 1980-1992; to analyse the growth dynamism of APEC member economies; to examine the role of trade and direct investment in APEC member economies; to investigate trends in intraregional investment linkages between Asian APEC and non-Asian APEC member economies as well as within these two sub-groups of APEC and to discuss investment linkages with non-APEC countries; to analyse the linkages between APEC trade and investment; and to examine the implications of direct investment-led economic integration for market framework policies and laws" (p. 2).

The study begins with an overview of the Asia-Pacific Economic Cooperation (APEC) economies, followed by a closer examination of the international relationships between these as well as between APEC and non-APEC countries and concludes with a consideration of the policy implications that arise from the previous analysis. A large number of charts and tables, along with two appendixes, provide detailed methodological information and sources of the data.

The matrix tables that present bilateral FDI and trade data for the APEC countries are the main highlight of the study. They illustrate a number of important trends. For example, they show that the share of intra-APEC trade in total APEC trade increased from 58 per cent to over 70 per cent between 1980 and 1992. This was a result of strengthened trade among non-Asian APEC countries as well as among Asian APEC countries. With respect to FDI, the study highlights, *inter alia*, the rise of China as a host country for FDI, the growth in the share of Japanese FDI flowing to the United States and the growing importance of outward FDI from Japan to other Asian APEC countries. The matrix tables are complemented by twelve charts that distil some of the main patterns in the data. Chart 2, for example, shows that the contribution of FDI to gross domestic capital formation of the APEC countries doubled between the periods 1981-1986 and 1987-1991.

The report raises many questions and points towards areas where further research is required. For example, one of the important factors identified as a possible explanation for the recent surge in Asian-APEC FDI is "the rising wave of protectionism in the U.S." (p. 29). However, the export data presented in the report (tables 15 to 17) show a rising share of total Asian-APEC exports directed to the United States between 1980 and 1990, followed by a slight decline in the share in 1992. A similar pattern is shown for the Newly Industrialized Economies (NIEs). The absolute values of exports of Asian-APEC and the NIEs to the United States increased by 230 and 320 per cent for these two groups, respectively, between 1980 and 1992. Unless it can be shown that exports to the United States would have been much higher in the absence of United States protectionism (or the threat thereof), the export data might suggest that United States protectionism has not been an important motivation for the increases in FDI from Asian-APEC to non-Asian APEC, in particular to the United States. Indeed, these data may support a rejection of the popular view that United States protectionism has motivated United States inward FDI flows. Another possible explanation offered for this pattern is that Asian-APEC-based TNCs are investing in non-Asian APEC economies in order to get access to more advanced technologies.

The data in the study are used to estimate the relationships between economic growth and FDI and trade liberalization, as well as the relationship between FDI and trade. Both relationships were found to be positively correlated (suggesting in the latter case that FDI and trade have been complements rather than substitutes). The elasticity of trade with respect to FDI is found to be 0.6 (e.g., a $1 increase in FDI results in a $0.60 increase in trade), with large variations across the APEC countries (between 0.3 and 0.8). The elasticity of trade with respect to FDI should be interpreted cautiously due to the apparent shift towards FDI in the tertiary sector in many APEC countries (interestingly, the study identifies the reverse trend in several APEC countries). The elasticity of FDI to trade is lower in services than in manufacturing due to the lower tradeability of services. Therefore, in the case of countries for which a growing proportion of FDI is in the tertiary sector, the expected decline in the elasticity of trade with respect to FDI over time would reflect a change in the composition of FDI away from tradeable sectors rather than an actual change in the responsiveness of trade to FDI.

The concluding section of the volume offers policy recommendations based upon the findings of the analysis. They suggest that greater liberalization leads to better economic performance and that more FDI leads both to more trade and deeper economic integration. Looking ahead, the volume suggests that APEC policy makers will have to increasingly adjust to higher levels of integration as well as competition among their economies. The report suggests that the harmonization of policies in areas such as competition and intellectual property protection should be pursued by APEC governments in this context, and that such cooperation and coordination represents a process of "market-led policy convergence" (p. 34). The report also points out, however, that higher levels of economic integration could also "significantly constrain the policy autonomy of national governments" (p. 34).

This study provides large amounts of valuable information on the trade and FDI patterns of APEC and highlights areas where further research is needed. It will be of great interest both to readers interested in a concise and detailed account of the economic integration processes that have radically changed the APEC economies since the early 1980s as well as to researchers interested in pursuing further analysis of what is and promises to remain one of the most dynamic economic regions in the world. ■

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The Global Competitiveness of the Asian Firm

Helmut Schütte, ed.

(New York, St. Martin's Press, 1994), 379 pages

Interest in Asian economies and their success has been increasing during the past decades, and various attempts have been made to explain the success of Japan and East Asia from macro-economic and political perspectives. These efforts have gained momentum as what is happening in Asia is considered to be the most important development in the world today. The evaluation of this region has substantial consequences for the rest of the world as we move towards the next millennium. In the past four decades, Asia has progressed enormously, reducing poverty by more than 50 per cent. The World Bank recently announced that the progress of Asia is a unique process in human history and concluded that the East Asian story is an economic miracle (Naisbitt, 1996).

Helmut Schütte, in his introduction to the book, reminds us that it is companies, not countries that compete: "The competitiveness of the latter determines the fate of the former", (p. viii). The volume he has edited has emerged out of the eighth Euro-Asia Management Studies conference which focused on the competitiveness of Asian firms. At first sight, the title and the content seem to mismatch. The title refers to Asia, while the papers included deal mainly with firms from Japan and the Pacific Rim. The reason for this disparity is one of the least understood phenomenon behind Asian progress, namely, the overseas Chinese community which dominates business in most of East Asia.

The volume is divided into six parts: the cultural dimension; the management of the firm; the internationalization process; adaptation to the local environment; the expansion into Europe; and comparing Asian and European firms. The first part of Schütte's volume focuses on the cultural dimension of the Asian success and raises the need for a re-evaluation of the existing modernization theory. The chapter by Yasusada Yawata claims that the essential features of Western modernization is the individualistic nature of both ideological and social principles. While Western modernism was provided with "tremendous power of destruction and production" (p. 5), the Asian development has been more harmonious and human. According to him, modernization is quite peculiar to Western society, but it is inadequate term for socio-economic advancements in non-Western societies. The term "development" is more appropriate for these societies. Another chapter in part one views the influence of Confucianism on the behaviour of Korean firms.

In part two, Ilari Tyrni and Ivan Tselichtchev praise the ability of Japanese firms to network across borders, which they consider to be one of their main competitive strengths. The networking of Japanese firms and the role played by Keiretsus in Japan is not new. These types of arrangements have also been detected by Masao Hanaoka and Tomasz Mroczkowski among firms in Hong Kong, Taiwan Province of China and overseas Chinese firms in another chapter.

The internationalization of the firm—the focus of the third part of the book—has been a key issue in international business research. Growth of firms is considered to be the main reason behind internationalization. The relationship between internationalization, growth and forms of foreign market servicing is well documented in Peter J. Buckley and Pervez N. Ghauri (1994). One of the main models presented in their volume is the sequential and gradually incremental process of internationalization. In Schütte's volume, Choo-sin Tseng presents a Chinese model of internationalization and demonstrates that Chinese firms started their internationalization process through joint ventures. Nigel Campbell discusses the internationalization of Japanese firms and also supports the theory of gradual involvement.

Parts four and five of Schütte's volume deal with Japanese firms and their influence on the production systems and technologies abroad. While it is established that they have been able to gain considerable ground in automobiles and electronic industries, they still lack the competitive edge in pharmaceuticals. In this respect, this study is quite revealing. The final section compares Asian and European firms as regards their technological competencies and competitive strategies. This analysis is quite useful.

Out of the 18 papers included in this volume, all deal with competitiveness of firms in Japan and East Asia from different angles, 10 focus on Japan, 3 on China, 2 on Taiwan Province of China, 2 on the Republic of Korea and 1 on the Pacific Rim. In other words, most of the volume deals with Japanese firms. In spite of this imbalance, the volume is quite coherent. It focuses on firms that have been, in one way or another, influenced by Confucianism as a major cultural base. It is thus not surprising that Schütte concludes that the emphasis in Asia on soft skills such as networking, organization learning and sharing, stands in sharp contrast to the establishment of strategic business units in Western firms. In the West, individual managers have responsibility for profit and identify less with the overall success of their firm than with their own career objectives. In my opinion, an understanding of the advantages of the competitive strategies of Asian firms and their underpinning factors will help Western managers to compete and to reform their own management strategies. This has also been maintained by scholars such as John Naisbitt (1996) and Keninchi Ohmae (1995).

Overall, Schütte has succeeded in compiling a highly informative and useful volume. The comparative approach used is quite beneficial, as that is a useful way to compare non-Western with Western management systems and strategies, as long as we have not found a more optimal system to handle these issues. ■

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References

Buckley, Peter and Pervez N. Ghauri (1994). *The Internationalization of the Firm* (London: Dryden Press).

Naisbitt, John (1996). *Megatrends Asia* (New York: Simon and Schuster).

Ohmae, Keninchi (1995). *The End of the Nation State: The Rise of Regional Economies* (New York: Free Press).