

Julien Chaisse (ed.): China's International Investment Strategy: Bilateral, Regional, and Global Law and Policy.

Oxford: Oxford University Press, 2019, 517 pages, ISBN 978-0-19-882745-0.

Author: Ondřej Svoboda, Charles University, Prague, Czech Republic.

E-mail: ondrej.svobod@gmail.com.

DOI: <https://doi.org/10.32422/mv.1697>.

Alongside its accession to the World Trade Organization in 2005 China has also solidified its position in the international investment system since its embrace of the “open door” policy in 1978. It expanded its international investment treaty programme that reflects today’s China’s exponential growth as both the leading source and recipient of foreign investment. Currently, China is well-positioned to be the world’s greatest single source of foreign outbound investment. On the other hand, the backlash against Chinese investments is noticeable as more countries and regional economic international organisations are starting to employ mechanisms to review or limit investments coming from China.¹ In connection with the consequences of emerging economic and tech rivalries and the US-China trade war, Chinese investments abroad have dropped significantly recently. Under the conditions of these complex developments, Julien Chaisse, a Professor at the City University of Hong Kong, brought together a group of 35 experts with different professional backgrounds in order to analyse China’s developing investment strategy and its particular policy ramifications. In this respect, the added value of the resulting edited book is a diverse group of distinguished contributors from academia, government, international organisations and the private sector who attended the 2016 Asia FDI Forum held in Hong Kong on November 29–30, an event jointly organised by the Faculty of Law of the Chinese University of Hong Kong and the Columbia University Centre for Sustainable Investment.

The collection under review consists of an introduction that sets the scene and 27 contributions. The chapters cover a wide range of topics, from broader issues and challenges such as globalisation of Chinese enterprises and the influence of tax policy on Chinese investments to the addressing of sustainable development concerns in Chinese investment agreements. Together, they create a harmonious narrative of the growing and multifaceted role of China as a major economic power in the international economic arena. Correspondingly, the structure of the book subtly reflects its main thesis – that China is deploying an ambitious triple-track international investment strategy at bilateral, regional and global levels.

At bilateral and regional level, China has recently concluded 150 bilateral investment treaties (BITs) or other treaties containing investment provisions. This makes China the most active participant in the investment treaty system outside Europe. In addition, its investment treaty negotiations with the United States and the European Union have the potential to considerably change the future direction of the system. It is therefore more than welcome that the contributions in this volume, mainly those by Kyle Dylan Dickson-Smith, Flavia Marisi, Amokura Kawharu, Luke Nottage, Qian Wang and Heng Wang, address both of these types of negotiations in detail. A similar Chinese activity is observed in its regional and plurilateral negotiations. This is particularly the case with the China-led initiative of the Regional Comprehensive Economic Partnership (RCEP), a trade and investment agreement envisaged among the ten member countries of the

Association of Southeast Asian Nations (ASEAN) and five other Asian and Pacific countries (Australia, Japan, New Zealand, South Korea, and India), which is currently coming to its conclusion. The negotiations are analysed in a number of chapters. The contents of the respective treaties and their proposals are compared in order to closely examine the question whether China is a rule-follower, rule-shaker or rule-maker.

To provide a comprehensive view on the implications of such international arrangements, it is essential to analyse investment disputes, too. In this regard, China's presence in investor-state dispute settlement (ISDS) has been slowly rising as well, with claims initiated by Chinese investors² in host countries around the globe as well as by foreign investors against China.³ A number of contributors, particularly Matthew Hodgson, Adam Bryan, Jane Willems and Claire Wilson, scrutinise the arbitration cases involving Chinese parties, evaluating the practical implications of investment protection.

At the global level, the main global initiatives spearheaded by China are the 2016 presidency of the G20 (with related G20 initiatives in this field such as the G20 Guiding Principles for Global Investment Policymaking) and also the already enormously influential Silk Road Economic Belt and the 21st Century Maritime Silk Road (the Belt and Road Initiative, BRI). The commencement of infrastructure projects under the BRI throughout 70 countries around the world will make for a direct investment of between US\$ 1 trillion to US\$ 8 trillion (Desierto 2018). Accordingly, in 2018 the Chinese government announced plans to set up its own dispute settlement mechanisms to deal with investor-state claims based on existing arbitral institutions to provide a broader range of ISDS services; in connection with this, the Supreme People's Court will establish "international commercial courts" in Xi'an, Shenzhen, and Beijing. The contributors Ka Zeng and Manzoor Ahmad, who are focused on the BRI, highlight different aspects of the initiative, provide an empirically rich analysis of investments made within this framework while looking at China's interests in several regions under the BRI. This reviewer finds that there perhaps still might be one important aspect overlooked by the authors of China's International Investment Strategy with respect to that global dimension. It is the current multilateral reform of investor-state dispute settlement efforts at the United Nations Commission on International Trade Law (UNCITRAL), where China also participates and may soon become a crucial actor between the competing views of the European Union and the United States. Against this background, the book's conclusion about the emerging China's role as a global architect of international investment law policy is undeniable.

Additionally, the attention of several contributors, particularly Sophie Meunier and Susan Finder, among others, is fittingly devoted to the issue of state-owned enterprises which play a significant part in China's economic reform programme and investing abroad. Their enhanced role as foreign investors could be anticipated as state-owned enterprises have enjoyed an international expansion during the last decade. Currently, 18 per cent of all state-owned enterprises are from China, and the list of the top 100 global multinational enterprises includes five Chinese state-owned enterprises (UNCTAD 2019: 6). Given the China's economic model, many Chinese homegrown industry champions have become global players rivalling long-time corporate business entities from the US or Europe. Indeed, the rise of state-owned enterprises goes beyond mere economic considerations. With the number of countries that operate investment review mechanisms growing (OECD 2019) and the current heated debate over the participation of the Chinese companies Huawei and ZTE in 5G networks, national security concerns over investment flows in specific sectors and heightened sensitivity over the control of assets that constitute critical infrastructure are emerging serious obstacles for state-owned enterprises operating abroad.

In sum, it is easy to conclude that China's presence as a power in the international investment regime is expected to grow and deepen. The reviewed compilation convincingly presents China as an active investment policy-maker pursuing various interests while balancing between underpinning and challenging the system. In addition, thanks to presenting a multitude of perspectives, the book sheds light on various institutional, political and economic aspects of China's investment policy, many of them unexplored until now. For instance, the chapters discussing China's increasing presence on the global stage are particularly novel as they explore recent achievements of the Chinese G20 presidency. Despite their soft law nature, they slowly draw more attention because they provided a political stimulus for the structured discussions on a multilateral framework for investment facilitation for development. This topic, in regard to which China plays a leading role in the World Trade Organisation (WTO), has evolved into one of the scarce evidences that the WTO is still able to negotiate new rules for international trade and investment. Similarly, the book provides insightful commentaries on recent arbitration cases, which were frequently complicated by the nature of China's constitutional system, which leads to a specific phenomenon of jurisdictional disputes involving Hong Kong and Macao.

As a whole, in order to provide a comprehensive analysis of the subject, the volume combines legal and international relations perspectives. As such it serves as an excellent source for legal and IR scholars, policymakers and practitioners alike, as well as others who are interested in international economic governance and contemporary China's commercial policy in times of the growing use of economic tools for geopolitical purposes⁴ and the U.S.-China competition over vital economic interests.

¹ See the Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union; or the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) in the United States.

² E.g. *Tza Yap Shum v. Peru* (ICSID Case No. ARB/07/6); *China Heilongjiang v. Mongolia* (PCA Case No. 2010-20); *Ping An Life Insurance v. Belgium* (ICSID Case No. ARB/12/29); *Beijing Urban Construction v. Yemen* (ICSID Case No. ARB/14/30).

³ E.g. *Ansung Housing v. People's Republic of China* (ICSID Case No. ARB/14/25); *Hela Schwarz GmbH v. People's Republic of China* (ICSID Case No. ARB/17/19).

⁴ On the rise of geoeconomics see, e.g., Blackwill and Harris' *War by Other Means: Geoeconomics and Statecraft*.

Literature

- Blackwill, Robert D. – Harris, Jennifer M. (2016): *War by Other Means: Geoeconomics and Statecraft*. Cambridge: Harvard University Press.
- Desierto, Diane A. (2018): China as a Global ISDS Power. *Investment Claims*, <<https://oxcon.oupplaw.com/page/715>>.
- OECD (2019): Acquisition- and Ownership-Related Policies to Safeguard Essential Security Interests: New Policies to Manage New Threats. Research Note on Current and Emerging Trends. Paris: OECD, <<http://www.oecd.org/investment/Current-and-emerging-trends-2019.pdf>>.
- UNCTAD (2019): *World Investment Report 2019*. Geneva: United Nations.

AUTHOR BIOGRAPHY

Ondřej Svoboda is a PhD Candidate at the Department of International Law, the Faculty of Law of Charles University in Prague, Czech Republic. Currently, he teaches public international law and international economic law. His main fields of interest include international investment law, international economic organisations and the European Union's trade policy.