

国际投资协定中的 公平与公正待遇研究

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邓婷婷博士的大作《国际投资协定中的公平与公正待遇研究》即将面世之际,希望我说几句话,不亦乐乎。投资的国际经贸合作久已有之,当代此类合作的特点是双边投资协定及区域和多边自由贸易协定,投资章节均包括实体内容相同、具体文字表述微异的涉及外国投资者与投资的相对和绝对待遇。公平与公正待遇为绝对待遇标准之一。鉴于国际投资协定仅规定东道国有义务向外国投资者和投资提供“公平与公正”待遇,而无具体规定何为“公平”,何为“公正”,使得负责争议解决的仲裁庭可较大限度地行使裁量权。这也使得投资仲裁庭更似国际投资领域的准司法审查机构。

国际投资的另一特点是判例法的成型。理论上,任何仲裁庭的裁决均无具拘束力的先例之作用,然而实践中无论是争议当事方还是仲裁庭均无例外地援引先前的裁决。有的仲裁庭声称如此做法是为了维护国际法的一致性,有的则认为先前的裁决应具说服力的效力。

基于前述,对国际投资的公平与公正待遇之研究如不侧重实践中仲裁庭对之进行的解释则无法得窥全豹。

本书以东道国监管权与外国投资者应享有的利益为视角,通过对投资仲裁庭的裁决梳理总结,对公平与公正待遇的溯源、性质、内涵等进行了全面系统的研究。总体而言,此书视角新颖,反映了当前公平公正待遇的理论与实践,体现了作者扎实的理论功底与把握学术前沿问题的能力,促进了国际投资法的研究,是一部难得的学术专著。

作为邓婷婷的硕士及博士生导师,我为此书的出版感到高兴与欣慰。付梓在即,特致数语,是为序。

王贵国

2017年4月16日

缩写列表

ACP	非洲、加勒比和太平洋国家集团
ASEAN	东南亚国家联盟
BCBS	巴塞尔银行监管委员会
BIT, BITs	双边投资条约
CEPA	更紧密经济伙伴协定
CETA	欧盟—加拿大全面经济贸易协定
COMESA	东非和南部非洲共同市场
CUP	剑桥大学出版社
DSB	争端解决机构
EC	欧共体
ECT	能源宪章条约
EEC	欧洲经济共同体
EPA	经济伙伴协定
EU	欧盟
FCN, FCNs	友好通商航海条约
FDI	外国直接投资

FET	公平与公正待遇标准
FIPA	外国投资保护和促进协定
FTA, FTAs	自由贸易协定
FTC	自由贸易委员会
GATT	关税与贸易总协定
IBRD	国际复兴开发银行
ICC	国际商会
ICJ	国际法院
ICSID	国际投资争端解决中心
ITO	国际贸易组织
IMF	国际货币基金组织
ISDS	投资者—国家争端解决机制
ISO	国际标准化组织
IIA, IIAs	国际投资协定
LCIA	伦敦国际仲裁院
MAI	多边投资协定
MERCOSUR	南方共同市场
MFN	最惠国待遇
MIGA	多边投资担保机构
MST	最低待遇标准
NAFTA	北美自由贸易协定
OECD	经济合作与发展组织
OUP	牛津大学出版社

PCIJ	常设国际法院
SCC	斯德哥尔摩商会仲裁院
TIP, TIPs	载有投资条款的条约
UK	英国
UN	联合国
UNCITRAL	联合国国际贸易法委员会
UNCTAD	联合国贸易与发展会议
UNCTC	联合国跨国公司中心
US	美国
WTO	世界贸易组织

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