Book Review. Gesetzgebung zur Förderung ausländischer Kapitalanlagen by H. W. Baade

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rio et de la pratique, mais encore à tout juriste étranger s’adonnant à la recherche et à l’étude de cette partie si difficile à comprendre de la procédure civile internationale et qui présente une telle importance dans le domaine de la juste solution des litiges internationaux.

Émile Bendermacher - Génoussis


One of the major problems of the post-war international economy has been the shortage of private international investment, especially investment directed toward the underdeveloped areas. This phenomenon is due to a number of factors, some of which are strictly economic in character, while others are political or legal. The latter category of factors includes the various restrictions on foreign investments, the fear of expropriation of alien property, etc. To counteract such factors, the states concerned, both capital-importing and capital-exporting ones, have employed several means. They have concluded bilateral treaties providing for the protection of foreign investment and they have passed municipal legislation on similar lines. Multilateral treaties, embodying «codes» of fair treatment, have also been proposed more than once, but with little practical success. The book under review deals with one category of such special measures, namely, municipal legislation in capital-importing countries for the encouragement and protection of foreign investment.

The book in question is chiefly a collection of documents. The editor, Dr. Baade of the International Law Institute of the University of Kiel, has collected the texts of the laws, decrees, or official statements of policy in effect in 23 countries in German or English translations. It is quite an extensive collection, though one could point out that a few interesting examples of «investment laws» are missing, such as the Colombian and Italian laws, the Burmese statements of policy of 1949 and 1955, and Mexican and Puerto-Rican legislation on industrial development (the two last dealing, it is true, with encouragement of industrial investments in general, domestic as well as foreign). Of course, the value of a collection of texts is always somewhat limited, since a legal text acquires its real importance through the political, institutional and procedural factors surrounding it. Still, a text provides the tools which are indispensable for further study.

Dr. Baade, however, has done more than just collect a number of texts; he has also provided an introduction constituting one third of the whole book (30 out of 90 pages) and in which he discusses some theoretical aspects of his topic. He gives first a brief history of capital movements and their role in the world economy, dealing in turn with the mercantilist beginnings of the modern international economy and the successive domination of the Dutch, English and American capital markets. He then describes the recent practices with regard to foreign investment in the United States and W. Germany. The discussion on the encouragement of international investments through international organizations which follows is focused mainly on the activities of the International Bank and its affiliates, and the discussions and resolutions of the U. N. General Assembly on the matter.

The last section of the introduction is the most interesting and constitutes at the time the author’s most original contribution. In it he gives an analysis of the form and content of the various municipal law measures for the encouragement of foreign investment. Such measures may assume a variety of legal forms; they may be formal laws, administrative decrees or simple statements of government policy. Foreign investors may be guaranteed against unfair treatment or granted a privileged position in several manners. The author holds that the relations between a guaranteeing state and foreign investor are not simply contractual but
are similar to those arising under European administrative law out of «contrats administratifs». The main objective of investment laws is the advancement of a country's economic development in general and of certain aspects of it (industrialization, exploitation of natural resources) in particular. Generally such laws have rather elastic provisions. In most cases, investors are granted, by express provision or by implication, national treatment, i.e., treatment similar to that of the capital-importing state's nationals. Moreover, they may be granted privileges, particularly with regard to taxation and to exchange restrictions. At this point, Dr. Baade provides some very enlightening tables (Pp. 29, 30-31). With regard to the foreign investors' obligations certain problems of jurisdiction arise, with definite repercussions in public international law (e.g., application of the Calvo clause). Foreign investors must generally comply with the capital-importing country's laws and in particular with the terms of the special instrument which approves and guarantees their investment. The author concludes this very interesting discussion with an enumeration of «typical» investment law provisions and some thoughtful speculations on the possibility of uniform international legislation on the matter.

Dr. Baade has presented us with a highly interesting and useful book. Its first contribution lies in its making available a number of legal texts which are normally very hard to find. It also provides, however, a brief but adequate review of the economic background of the question and an equally brief and thorough analysis of the provisions of the various investment laws. The author shows an extensive knowledge of the existing relevant legislation in many states. It is regrettable that he did not choose to treat the subject at more length. The absence of a sufficient bibliography is also to be deplored. In spite of these qualifications, however, Dr. Baade's study remains a valuable addition to the still quite inadequate legal literature on international investment problems.

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Par la réunion et la publication, en un volume indépendant, de quatre communications faites par des juristes éminents à la session de la Société de Droit Comparé tenue à Munich en 1951, M. Konrad Zweigert, Professeur de droit international privé à Tübingen, fournit aux juristes européens l'occasion précieuse de se mettre pleinement au courant des tendances modernes, sur le Continent Européen, en matière d'unification du droit privé et des règles du droit international privé. Comme l'éditeur l'observe dans sa préface, si à la fin de la première guerre mondiale la tendance ci-dessus constituait un zèle enthousiaste, qui malheureusement ne se réalisa pas, maintenant, après la deuxième guerre mondiale, en raison de la coopération économique plus étroite devenue indispensable entre les peuples de l'Europe, elle constitue un besoin impérieux.

Comment l'unité du droit se réalisera-t-elle dans le champ européen? Voici le problème. Par l'unification du droit privé, ou par l'harmonie des droits respectifs des divers pays? De plus, l'unification des règles du droit international privé suffirait-elle à conduire à une solution heureuse du problème?

Deux Professeurs éminents, le français René David et l'allemand Bernhard Aubin, s'occupent de ces importants problèmes en deux communications contenant même des propositions déterminées de solution du problème. Le premier considère que nous pouvons parvenir à l'harmonie des droits respectifs en cultivant consciencieusement l'unité européenne du droit, comme à peu près dans le monde du Common Law, le second moyennant l'unification des règles de fond du droit privé en fonction de l'unification des règles du droit international privé. Je pense que le point de