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## Francisco González de Cossío, *Arbitraje de Inversión* (Editorial Porrúa 2009)

IN THE AUTHOR'S OWN WORDS, THIS book is addressed to the Latin American market and takes the Mexican experience as its point of departure. However, because of its comprehensive presentation and analysis of legal texts, cases and doctrinal opinions regarding the different aspects of international investment arbitration, it exceeds the limited boundaries of any regional or national jurisdiction.

The book commences with a useful (and too often forgotten in the current legal literature) presentation of foreign investment as an economic phenomenon. Like many other tools of human endeavor, the beneficial or damaging effects of foreign investment depend on how it is used. Mr. González de Cossío's judgment on the different possible scenarios is lucid, balanced and based on an objective evaluation of pros and cons.

In chapter 2, he deals with the international law of foreign investment. After a useful historical consideration of its developments before the relatively recent mushrooming of BITs, which includes references to the political and ideological background of some of these developments, Mr. González de Cossío specifically examines substantive and procedural aspects of the international law of foreign investment in the BIT arena, including the development of international standards of protection of foreign investments and investors, the structure and role of the World Bank's International Centre for Settlement of Investment Disputes (ICSID) and the UN International Law Commission's Articles on State Responsibility.

In this chapter, the author already follows a methodology that is maintained throughout the rest of the book, namely, to privilege the concrete analysis of relevant legal provisions and cases over any abstract considerations or

generalizations not specifically supported by experience or objective data. Such methodology is particularly fit for properly assessing both the role played by international arbitration in the development of foreign investment law and the reciprocal influence of other legal sources in the fashioning of the procedural and substantive law of international investment arbitration.

In consecutive chapters, the author deals with the different substantive matters considered in the resolution of disputes arising out of BITs and submitted to international arbitration: the meaning of “investment,” the investor’s nationality, national treatment, fair and equitable treatment, most-favored-nation treatment, full protection and security, expropriation, measures tantamount to expropriation, treaty claims and contract claims. The analysis is invariably premised on the study of the arbitral decisions dealing with these topics, the identification of the different or conflicting trends or positions shown through the various decisions or, when appropriate, the singling out of prevailing trends. Needless to say, this careful consideration of the existing law is extremely useful not only to the scholar, but also to the practitioner or arbitrator, always anxiously seeking reliable guidance to find the right solution in a frequently uncertain legal field.

Further, the author does not limit himself to presenting the existing law or simply carrying out a textual analysis of legal provisions and arbitral decisions. Far from that, Mr. González de Cossío often provides insightful views permitting the reader to better understand issues, legal solutions and the reasons why a certain approach has been followed.

An illustrative example is the very short, but full of substance, chapter XI, in which he explains why the substantive provisions of BITs take the form of open-textured standards (more in accordance with the common law tradition) rather than specific legal rules (closer to the continental or civil law tradition). Such an approach provides arbitrators with uncommonly ample leeway to resolve the specific disputed issues they are confronted with and is justified—as underscored by Mr. González de Cossío—by the historically difficult political and ideological issues underlying investment arbitration and the need to allow the gradual development of international investment law step-by-step, *i.e.*, through decisions that may have a *de lege ferenda* impact, despite dealing with the specific facts and circumstances of the case. The fact that BITs rely on legal standards does not then mean that a legal tradition is disfavored: the drafters were simply prompted by pragmatic considerations in their search of the legal technique best adapted to the issues and disputes covered by BITs.

In the three final chapters, the author considers criticisms of investment arbitration, Mexico’s decision not to ratify of the 1965 Washington Convention, and the future of investment arbitration. Many constructive

ideas are presented in these chapters which, like the preceding ones, reveal the author's mature, balanced and penetrating understanding and evaluation of international investment arbitration and its problems. The author also differentiates the political resolution of international investment disputes from their settlement through legal or jurisdictional means. Without denying the political or ideological history or implications of foreign investment law and dispute resolution, it seems absolutely necessary to clearly distinguish political and legal mechanisms in order not to transpose the tactics and instruments used to advance political agendas in the domestic or international arena onto the resolution of BIT disputes through international arbitration. The fact that investment arbitration may have a *de lege ferenda* impact should not "force this essentially political function into a legal mould and entrust its exercise to a tribunal ..." or "dissolve politics into law."<sup>1</sup> The pages of Mr. González de Cossío's outstanding book constitute a perpetual reminder that deviating from the legal path may seriously compromise the future resolution of BIT disputes through international arbitration.

Finally, this book is written in an accessible prose free from unnecessary flourishes. Invariably, the author goes to the point without superfluous verbiage. It is certainly not a minor accomplishment to have condensed in little more than 300 pages of text so much information, erudition and profound analysis. Mr. González de Cossío has produced a *précis* in the best tradition of great legal texts. I would not be surprised to see it go through many future editions.

Horacio A. Grigera Naón\*

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<sup>1</sup>E.H. Carr, *The Twenty Years' Crisis 186* (Michael Cox ed., 2001).

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