

Book Review: *International Investment Law and the Environment*

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The relationship between investment protection and environmental concerns is one of the long-standing issues in international investment law. Saverio Di Benedetto's book, International Investment Law and the Environment, provides a welcome contribution to the debate on the issue by addressing the problem from an informed theoretical standpoint. The author shows how attention to environmental protection has begun penetrating into international investment agreements and investment arbitral case law, leading to the likely development of treaties and case law towards integration rather than isolation. The main argument of

the book is based on the author's identification of "internal", "external", and "exceptional" methods of interpreting investment rules, when questions of environmental and human health are at stake. The "internal" and "external" methods are sturdily knotted, as they both rest on the principles embraced by arbitral tribunals in construing such rules. The "exceptional" method, instead, operates a priori, when the legal instruments regulating investment and environmental protection are negotiated and drafted, bringing more certainty, but less flexibility, in dealing with the ever-developing international law on foreign investment.

La relation entre la protection de l'investissement et les préoccupations environnementales est une problématique de longue date en droit international de l'investissement. Le livre de Saverio Di Benedetto, International Investment Law and the Environment, fournit une contribution bienvenue au débat sur la problématique en question en abordant le problème d'un point de vue théorique éclairé. L'auteur montre comment l'attention accordée à la protection de l'environnement a commencé à s'intégrer dans les accords internationaux d'investissement et dans la jurisprudence arbitrale sur l'investissement conduisant ainsi à l'évolution probable des traités et de la jurisprudence vers l'intégration plutôt que l'isolement. L'argument principal du livre est

basé sur l'identification de l'auteur de méthodes «internes», «externes» et «exceptionnelles» d'interprétation des règles d'investissement lorsque des questions de santé environnementale et humaine sont en jeu. Les méthodes «internes» et «externes» sont solidement nouées, car les deux reposent sur les principes embrassés par les tribunaux arbitraux dans l'interprétation de règles similaires. La méthode «exceptionnelle», quant à elle, fonctionne a priori lorsque les instruments juridiques régissant l'investissement et la protection de l'environnement sont négociés et rédigés, apportant ainsi plus de certitude, mais moins de souplesse, dans le traitement du droit international sur les investissements en continuels développement.

Titre francophone : Recension : *International Investment Law and the Environment*.

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The problems surrounding the relationship between foreign investment and environmental protection have been raised by academics and practitioners of international investment law.¹ The core of the problem lies in the fact that protecting the rights of investors and environmental protection are often clashing objectives. Trying to harmonise these two fields of international law may present significant challenges to many scholars, especially considering the enormously conflicting interests at stake any time an investor carries out economic activities abroad. Saverio Di Benedetto recognises such difficulties and addresses the problem from quite a realistic perspective. His book is aimed at integrating environmental concerns “into the strict logic of international investment rules.”² To do so, Di Benedetto analyses how the relationship between investment protection and environmental concerns has evolved so far, by looking at arguments and solutions in international investment agreements and case law. He tries to categorise such arguments and solutions on the basis of the legal approach behind them, and eventually suggests three possible outcomes for the route towards the integration of environmental concerns into international investment law.

¹ The literature on the international law of foreign investment is quite extensive, but a few works stand out for their scope and effectiveness in providing a broad coverage of the whole field. See generally Rudolph Dolzer & Christoph Schreuer, *Principles of International Investment Law*, 2nd ed (Oxford: Oxford University Press, 2012); Muthucumaraswamy Sornarajah, *The International Law on Foreign Investment*, 3rd ed (Cambridge: Cambridge University Press, 2010); Surya P Subedi, *International Investment Law: Reconciling Policy and Principle*, 2nd ed (Portland: Hart, 2012); Andrew Newcombe & Lluís Paradell, *Law and Practice of Investment Treaties: Standards of Treatment* (Alpen on the Rhine: Kluwer Law International, 2009).

² Saverio Di Benedetto, *International Investment Law and the Environment* (Cheltenham: Edward Elgar, 2013) at ix.

Saverio Di Benedetto's *International Investment Law and the Environment* is divided into two main parts, part I being devoted to the analysis of the problem of the intersection of investment protection and environmental concerns in treaties and case law, and part II addressing the issue of integration between the two fields at stake. More in detail, part I can be considered as the foundational section of the book, which establishes the main aspects of international investment law and its relationship with non-commercial values. At the same time, it underlies the pathway towards the critical analysis that follows later in the book. Chapters 1 and 2 are largely descriptive, giving readers the necessary background information regarding international law on foreign investment and environmental protection; they also highlight the core issues in each field and explain the relationship between them. Chapter 3 analyses the theoretical aspects of international investment law, addressing the question of whether international investment law is to be considered 'as a unit or a set of fragmented elements.'³ However, this issue, as correctly pointed out by the author, is not merely a theoretical one, but rather one with significant consequences in terms of the integration of other concerns and values in investment treaties and arbitral cases, such as environmental protection. Chapter 4 builds on the previous chapter to analyse the role of applicable law in the integration of non-commercial values in investment arbitral disputes.

In part II, chapter 5, intriguingly named "Internal Arguments: From Ordinary Meanings to Derogatory Logic", is the first one in the book to address the behaviour of arbitral tribunals when facing potential conflicts between investors' rights and environmental protection. The chapter in question focuses on "internal arguments" developed by arbitral tribunals that refer to the ordinary interpretative canons of international investment law. Chapter 6, on the other hand, analyses systemic approaches taken by investment tribunals and treaty makers in order to integrate, to a certain extent, concerns other than investors' rights into the settlement of investment disputes. Chapter 7 addresses "exceptional models"—namely, the "specific ways of taking non-commercial issues into account when applying investment rules."⁴ Finally, chapter 8 builds upon the previous parts of the book to outline three possible scenarios where international investment law and environmental protection might interact in the future.

Notwithstanding its possibly misleading title, Saverio Di Benedetto's *International Investment Law and the Environment* is first and foremost a book on international investment law, as the author correctly points out in his preface.⁵ This is in line with the approach adopted in most of the literature in the field; for instance, Shyami Puvimanasinghe in *Foreign Investment, Human Rights and the Environment*⁶ and, to a slightly lesser extent, Jorge E. Viñuales in his *Foreign Investment and the Environment in International Law*⁷ tackle the issue in recent contributions from a very similar perspective.⁸ However, Puvimanasinghe's book deals mainly

³ *Ibid* at 22.

⁴ *Ibid* at 158.

⁵ *Ibid* at x.

⁶ Shayami Fernando Puvimanasinghe, *Foreign Investment, Human Rights, and the Environment: A Perspective from South Asia on the Role of Public International Law for Development* (Leiden: Martinus Nijhoff, 2007).

⁷ Jorge E Viñuales, *Foreign Investment and the Environment in International Law* (Cambridge: Cambridge University Press, 2012).

⁸ The same approach is taken by two more authors: see Giorgio Sacerdoti et al, eds, *General Interests of Host States in International Investment Law* (Cambridge: Cambridge University Press, 2014); Freya

with the problem of the lack of integration between public international law and regional and domestic legal systems, using South Asia as a case study on the North-South power dynamics.⁹ Viñuales, for his part, focuses mainly on the relationship between investment and environmental protection from a policy and a practical perspective, considering the problems of such a relationship through an analysis of a wide range of case law. While Di Benedetto's book is similar to these two titles, as it attempts to address the issue of integration of non-commercial values into international investment law, *International Investment Law and the Environment* stands out based on the strong theoretical foundation that permeates the whole analysis and the recommendations of the author at the end. As this review will demonstrate, Di Benedetto's analysis moves from a theoretical to a practical perspective, in a strongly academic fashion—he tries to identify specific theoretical points in investment arbitral awards and treaties to predict possible developments of the practice. Viñuales' book is based on the opposite approach, analysing State practice and the case law of fora such as the International Centre for Settlement of Investment Disputes, ad hoc arbitral tribunals under the United Nations Commission on International Trade Law Arbitration Rules, the International Court of Justice, the World Trade Organization (WTO) Appellate Body, the International Tribunal for the Law of the Sea, and even human rights bodies to extract more general and theoretical lessons.

In light of this comparison, it is worth underscoring that Di Benedetto's approach is more appropriate with regard to how problems concerning investment and the environment have emerged at the international law level, be it arbitral jurisprudence or bilateral and multilateral investment agreements. Di Benedetto offers evidence and examples that demonstrate how considerations of environmental protection have started to penetrate into international investment agreements and investment arbitral case law.¹⁰ At the same time, the author correctly recognizes that there is no evidence that the attention to environmental concerns is now steadily established in investment law. The author is successful, however, in showing how the two fields of international law in question are now intertwined, and demonstrating that the development of treaties and case law is progressively moving towards integration rather than isolation. By addressing this point, Di Benedetto's work also fills a long-standing gap in the literature, as his book tackles the issues of investment and environment from the perspective of integration. While one may possibly disagree with the author's views on such integration—especially if one adheres to the view that the jurisdiction of investment tribunals should be strictly limited to questions arising from the relationship between the investor and the host

Baetens, ed, *Investment Law within International Law: Integrationist Perspectives* (Cambridge: Cambridge University Press, 2013). A different approach is instead taken by other authors, whose choice has been to insert investment law in a broader discourse about international law and its branches (often as a sort of case study) while using the term "investment" in the title: see e.g. Vai Io Lo & Xiaowen Tian, *Law and Investment in China: The Legal and Business Environment after China's WTO Accession* (Oxon: RoutledgeCurzon, 2005); Anselm Kamperman Sanders, ed, *The Principle of National Treatment in International Economic Law: Trade, Investment and Intellectual Property* (Cheltenham: Edward Elgar, 2014); Trinh Hai Yen, *The Interpretation of Investment Treaties* (Leiden: Brill Nijhoff, 2014).

⁹ See especially Puvimanasinghe, *supra* note 6, ch 2 at 33-57, ch 4 at 97-162, ch 8 at 243-260.

¹⁰ Di Benedetto, *supra* note 2, ch 5-7.

state¹¹—the analysis contained in *International Investment Law and the Environment* must not be dismissed in any study of the problem of environmental concerns in investment law. One may argue that Di Benedetto's analysis is largely unbalanced in favour of case law rather than treaties and domestic investment laws. However, this is due to the fact that arbitral tribunals have actually played a key role in introducing environmental protection values in investment disputes. Tribunals have somehow anticipated the treaty tradition that has now incorporated environmental concerns among the norms on investment protection and promotion.¹² In other words, the aforementioned unbalanced analysis is rather the fault of the system of investment law, and not a flaw in Di Benedetto's study.

Notwithstanding the similarity of approaches taken by most of the contributions in the field, *International Investment Law and the Environment* is a compelling book that addresses the problem of investment and environment from an original perspective. The main shortcoming of the existing literature is, in my opinion, the failure to keep up with the practice and shift the focus from the relevance of non-investment concerns to questions of integration. More specifically, the literature in the field seems to be mostly concerned with the importance of considering non-commercial values in investment arbitral proceedings—deemed to be the doorway for such values to enter into the house of investment law—rather than with issue of method and incorporation.¹³ It is true that the incorporation of non-commercial values in the sphere of investment law is still at an embryonic stage, hence the focus of scholarship on the need to address this deficiency.¹⁴ However, merely raising issues related to such non-commercial values is no longer sufficient, especially in light of the US Model BITs—and other Model BITs

¹¹ See Veijo Heiskanen, "Ménage à trois?: Jurisdiction, Admissibility and Competence in Investment Treaty Arbitration" (2014) 29:1 ICSID Review 231 for an overview of different positions on the jurisdiction of investment arbitral tribunals; Paula F Henin, "The Jurisdiction of Investment Treaty Tribunals over Investors' Human Rights Claims: The Case Against *Roussalis v. Romania*" (2012) 51 Colum J Transnat'l L 224 on the effects of integration of non-commercial values into investment arbitration.

¹² Reference is made in particular to the *North American Free Trade Agreement Between the Government of Canada, the Government of Mexico and the Government of the United States*, 17 December 1992, Can TS 1994 No 2 art 1114 (entered into force 1 January 1994) [NAFTA]; the *North American Agreement on Environmental Cooperation Between the Government of Canada, the Government of Mexico and the Government of the United States*, 14 September 1993, 32 ILM 1480 arts. 2–7, 37–45 (entered into force 1 January 1994) [NAAEC]; *2012 US Model Bilateral Investment Treaty*, art 12, online: <www.state.gov/documents/organization/188371.pdf> [*US Model BIT 2012*]. See generally Edit Antal, "Lessons from NAFTA: The Role of the North American Commission for Environmental Cooperation in Conciliating Trade and Environment" (2006) 14 Mich St J Intl L 167.

¹³ See e.g. Lorenzo Cotula, *Human Rights, Natural Resource and Investment Law in a Globalised World: Shades of Grey in the Shadow of the Law* (Oxon: Routledge, 2012); Cordula A Meckenstock, *Investment Protection and Human Rights Regulation: Two Aims in a Relationship of Solvable Tension* (Baden-Baden: Nomos, 2010); Pierre-Marie Dupuy, Ernst-Ulrich Petersmann & Francesco Francioni, eds, *Human Rights in International Investment Law and Arbitration* (Oxford: Oxford University Press, 2009); Seline Trevisanut, "Foreign Investment in the Offshore Energy Industry: Investment Protection v. Energy Security v. Protection of the Marine Environment" in Tullio Treves, Francesco Seatzu & Seline Trevisanut, eds, *Foreign Investment, International Law and Common Concerns* (Oxon: Routledge, 2014) 247; Kate Miles, "International Investment Law: Origins, Imperialism and Conceptualizing the Environment" (2010) 21:1 Colo J Intl Envtl L & Pol'y 1; Rahim Moloo & Alex Khachaturian, "Foreign Investment in a Post-Conflict Environment" (2009) 10:3 J World Investment & Trade 341; Puvimanasinghe, *supra* note 6; Viñuales, *supra* note 7.

¹⁴ See especially Cotula, *supra* note 13; Meckenstock, *supra* note 13.

that followed, such as the Colombian and Canadian ones—and the tradition of integration between commercial and non-commercial values started with the WTO Agreements.

Di Benedetto, however, recognises this issue and devotes half of his book to addressing integration, rather than the mere consideration of environmental concerns in international investment law. Di Benedetto's work critically addresses both arguments used by arbitral tribunals as well as treaty provisions to integrate environmental and human health issues into the sphere of investment law, dividing such arguments and provisions into the three categories that give titles to chapters 5 to 7 ("Internal Arguments", "Systemic Approaches", and "Exceptional Models"). Di Benedetto tries to rationalize, in his own words, "what is otherwise a chaotic quantity of legal materials" into schematic categories that represent one of the core contributions of his book to the debate on foreign investment and the environment.¹⁵ To do so, the book revolves around the author's identification of "internal", "external", and "exceptional" methods of interpreting investment rules in disputes in which questions of environmental and human health are at stake. The "internal" and "external" methods are strongly intertwined, as they both depend on the canon embraced by arbitral tribunals in interpreting such rules. The "exceptional" method, instead, is one that operates *a priori*, when the legal instruments regulating investment and environmental protection are negotiated and drafted. While it brings more certainty to the table, it is also less flexible and perhaps less appropriate to deal with the ever-developing international law on foreign investment. On one hand, "internal" arguments, analysed in chapter 5, are based on a self-centred approach of arbitral tribunals. Such tribunals, considering investment law as a self-sufficient system, only deal with the ordinary meaning of the various applicable norms; thus external rules and principles are unable to enter the scene and affect the consideration of the facts of the case, and, in the end, the outcome of the dispute at hand. On the other hand, "external" arguments also consider rules and obligations outside of investment law, contextualising, where possible, the need for—and rules on—investment protection within the bigger picture of host states' interests.

Di Benedetto rightly points out at various stages how the two categories of "internal" and "external" arguments are not mutually exclusive.¹⁶ Even the case law shows that arbitral tribunals move easily from "internal" to "external" arguments. Generally speaking, it is possible to observe a tendency for arbitral tribunals to try and solve disputes by only applying investment law rules (mostly from BITs and domestic investment laws) in their ordinary meaning. However, when this is not possible, arbitral tribunals have shown no fear in going beyond the boundaries of investment law whenever rules from outside this field are needed, particularly in the application and interpretation of rules on environmental protection.¹⁷ This *modus operandi* of arbitral tribunals comes from the gaps of investment law as a system. Such gaps are commonly filled by reference to general public international law and other specialised branches of international law. This argument is strictly related to the long-standing

¹⁵ Di Benedetto, *supra* note 2 at 79.

¹⁶ Di Benedetto, *supra* note 2 at 86, 95, 134, 151.

¹⁷ *Ibid* at 80, 93, 103. See especially *Compañía del Desarrollo de Santa Elena, S.A. v The Republic of Costa Rica* (2000), ARB/96/1 at paras 54–74 (International Centre for Settlement of Investment Disputes); *Metalclad Corporation v the United Mexican States* (2000), ARB(AF)/97/1 paras 48ff (International Centre for Settlement of Investment Disputes).

dichotomy between unity and fragmentation of international law.¹⁸ Nonetheless, it is hard to disagree with Di Benedetto's argument that both "internal" and "external" arguments work towards integration of non-commercial values into investment law.¹⁹ As previously pointed out, the inclusion of provisions on environmental protection—alongside other concerns such as human rights, public health, and labour standards—is a relatively recent development in international investment law: whilst it is possible to trace it back to the 1992 NAFTA (which is actually a trade agreement that includes a chapter on investment protection), it was only with the 2004 US Model BIT that such values entered the sphere of international investment agreements in a stable way.²⁰

The third category of arguments identified by Di Benedetto in his book, as stated beforehand, includes "exceptional" models, namely interpretative approaches that require a legal exception—for instance, specific norms included in investment agreements or norms of *jus cogens*—for the integration of environmental concerns into international investment law. The genesis of such exceptions is identified by the author in Article XX of *The General Agreement on Tariffs and Trade*, which allows WTO member states to adopt or enforce measures necessary to protect public morals, human, animal or plant life or health, or relating to the conservation of exhaustible natural resources.²¹ Exceptional models are now quite frequent in the investment law practice. For instance, article 14 of the 2012 US Model BIT excludes the application of the most favoured nation and national treatment standards to certain measures taken by the host state, while Annex B, point 4 of the same BIT outlines, to the exclusion of any other situations, which measures shall be considered indirect expropriations.²² Moreover, article 9 of the Canada Model BIT restricts the application of the most favoured nation and national treatment standards, as well as the minimum standard of treatment, excluding the application of such standards to the pre-existing situations listed in article 9 itself.²³ Lastly, article 19 of the Canada-Benin BIT provides specific exceptions for the protection of intellectual property rights and the application of standards of treatment to the investment, while article 20 of the

¹⁸ The literature on the issue of fragmentation and unity of international law is quite generous: see especially Barbara Stark, "International Law from the Bottom Up: Fragmentation and Transformation" (2012-2013) 34:4 U Pa J Intl L 687; Ralph Alexander Lorz, "Fragmentation, Consolidation and the Future Relationship Between International Investment Law and General International Law" in Baetens, *supra* note 8, 482; Hugo Caminos, "The Growth of Specialized International Tribunals and the Fears of Fragmentation of International Law" in Nerina Boschiero et al, eds, *International Courts and the Development of International Law: Essays in Honour of Tullio Treves* (The Hague: Asser, 2013) 55.

¹⁹ See Di Benedetto, *supra* note 2 at 103–127, 134–152.

²⁰ *US Model Bilateral Investment Treaty*, 2004, online: <www.state.gov/documents/organization/117601.pdf>, arts 12, 13. See also Edward Guntrip, "Labour Standards, the Environment and US Model BIT Practice: Where to Next?" (2011) 12:1 J World Investment & Trade 101; Laura Henry, "Investment Agreement Claims Under the 2004 Model U.S. BIT: A Challenge for State Police Powers?" (2010) 31:3 I Pa J Intl L 935; Jack J Cole Jr, "An Examination of the Draft Award Circulation Provision of the US Model BIT of 2004" in Catherine A Rogers & Roger P Alford, eds, *The Future of Investment Arbitration* (New York: Oxford University Press, 2009) 107.

²¹ *The General Agreement on Tariffs and Trade*, 30 October 1947, 58 UNTS 187 art XX (entered into force 1 January 1948) online: <www.wto.org/english/docs_e/legal_e/gatt47_02_e.htm>.

²² *US Model BIT 2012*, *supra* note 12.

²³ *Canada Model Bilateral Investment Treaty*, online: <www.italaw.com/documents/Canadian2004-FIPA-model-en.pdf> [*Canada Model BIT*].

BIT contains general exceptions to protect “human, animal or plant life or health” and to conserve living or nonliving exhaustible natural resources.²⁴

Notwithstanding the efforts of chapters 5 to 7, Saverio Di Benedetto himself points out that it is not genuinely possible, at this stage, to predict the methods through which environmental concerns will be integrated into international investment law. However, he foresees three possible scenarios: fragmentation, sovereignty, and general exception. These scenarios are very much linked to the three interpretative methods identified by Di Benedetto, fragmentation being the outcome of the “internal” method, sovereignty being at the core of the “external” method, and the general exception scenario being the logical result of the “exceptional” method of interpretation. Each will be discussed in turn. Whilst the fragmentation of state and arbitral practice has so far dominated the scene in investment law, it appears—from an analysis of the academic literature as well the reading of the most recent case law—that a number of core principles (such as the fair and equitable treatment, the full protection and security, the most favoured nation treatment, and the national treatment standards)²⁵ are now undisputedly part of the commonly accepted approach to international investment law, and more should be on the way. In spite of the relatively conservative character of international investment law, the tendency since the 1960s seems to illustrate a shift towards a system, however imperfect, that might overcome internal fragmentation. The imperfection lies mostly in the fact that a number of investment agreements provide slightly different formulas of such core norms; however, their nature as central, essential, and fundamental is universally accepted.²⁶ The second scenario, which gives precedence to state sovereignty by justifying any state regulatory measure, as long as it is non-discriminatory and in pursuance of a public policy objective, also seems to be past its prime and confined to cases of indirect expropriation, mostly because of the undesirably vast amount of discretion left to arbitral tribunals. As one of the problems of international investment law concerns certainty and predictability,²⁷ this scenario seems to be even more obsolete than the first.

The “general exceptions” scenario, in the words of the author, “would involve a normative model of general exceptions that would become the basic tool to take fundamental non-commercial interests, such as human health and the environment, into account in investment regimes.”²⁸ As previously stated, the most recent international investment agreements seem

²⁴ *Agreement Between the Government of Canada and the Government of the Republic of Benin for the Promotion and Reciprocal Protection of Investments*, online: <investmentpolicyhub.unctad.org/Download/TreatyFile/438>.

²⁵ See generally Martins Paparinskis, *The International Minimum Standard and Fair and Equitable Treatment* (Oxford: Oxford University Press, 2013), chs 1–6.

²⁶ See e.g. the different wording of the most favoured nation treatment, national treatment, fair and equitable treatment, and full protection and security standards in the *US Model BIT 2012*, *supra* note 12, arts 3–5; *Canada Model BIT*, *supra* note 23, arts 3–5; *Colombian Model Bilateral Investment Treaty*, 2007, arts III– IV, online: <italaw.com/documents/Canadian2004-FIPA-model-en.pdf>; *Italian Model Bilateral Investment Treaty*, 2003, arts 2–3, online: <italaw.com/sites/default/files/archive/ITALY%202003%20Model%20BIT%20.pdf>.

²⁷ See generally Joost Pauwelyn, “At the Edge of Chaos? Foreign Investment Law as a Complex Adaptive System, How it Emerged and How It Can Be Reformed” (2014) 29:2 *ICSID Review - Foreign Investment LJ* 372.

²⁸ See Di Benedetto, *supra* note 2 at 213.

to converge on listing, more or less exhaustively, the possibilities to derogate from the rules on investment protection. This entails a drastic reduction of the possibility for the tribunal to consider the majority of regulatory state measures as exceptional. A model based on legal exceptions could indeed provide more certainty and predictability to bilateral and multilateral investment regimes. Moreover, such a model would allow for the stable inclusion of environmental, labour, and human health values in the system of investment law. At the same time, this model would not significantly affect state sovereignty, except for a “soft” limitation for the preservation of specific, widely accepted values (as opposed to “hard” limitations in certain matters listed in treaties). Di Benedetto’s point on the feasibility of the “general exceptions” scenario is solidly grounded in existing scholarship. Academics have engaged with the topic, both from a theoretical²⁹ and a practical perspective,³⁰ addressing the applicability of exceptions as a legal method in different fields of international law. As Di Benedetto himself points out in chapter 7, WTO Agreements use this very method to take non-commercial issues into account; the scholarship has identified many other instances, mostly in the law of state responsibility, in which the method is successfully implemented. Thus, there are solid reasons to believe that such a method would also effectively allow consideration of environmental issues within the investment law discourse.

From a stylistic point of view, this book is definitely a compelling read. Even though one can anticipate that a number of scholars might disagree with Di Benedetto’s conclusions, the author’s writing style makes the reading an enjoyable experience, as it constantly reminds the reader of the core argument of the book. Moreover, every argument raised by Di Benedetto is substantively grounded in literature and case law. The scholarly research is of the highest quality, as is the consideration of writings in adjoining fields.

All things considered, the overall judgment on *International Investment Law and the Environment* cannot but be a definitely positive one, particularly from an academic point of view. Di Benedetto’s study of the topic at stake is to be commended, as it is exceptionally rigorous and extremely sophisticated from a theoretical standpoint.

In a way, though, the main strength of Saverio Di Benedetto’s book is also one of its primary weaknesses: the thorough, complex, and sophisticated level of the analysis expertly provided by Di Benedetto is not aimed at addressing the hands-on issues of environmental concerns in investment law and arbitration. The analysis is rather aimed at identifying and categorising the existing trends for the purpose of trying to predict the future developments of

²⁹ See e.g. Frederick Schauer, *Playing by the Rules: A Philosophical Examination of Rule-Based Decision-Making in Law and in Life* (Oxford: Oxford University Press, 1993); Carlo Focarelli, *International Law as Social Construct: The Struggle for Global Justice* (Oxford: Oxford University Press, 2012); Jürgen Kurtz, “Adjudging the Exceptional at International Investment Law: Security, Public Order and Financial Crisis” (2010) 59:2 ICLQ 325.

³⁰ See e.g. Andrea K Bjorklund, “Emergency Exceptions: State of Necessity and *Force Majeure*” in Peter Muchlinski, Frederico Ortino & Christoph Schreuer, eds, *The Oxford Handbook of International Investment Law* (Oxford: Oxford University Press, 2008) 459; Newcombe & Paradell, *supra* note 1 at 481; Don Wallace Jr & David B Bailey, “The Inevitability of National Treatment of Foreign Direct Investment with Increasingly Few and Narrow Exceptions” (1998) 31:3 Cornell Intl LJ 615; Christina Binder, “Necessity Exceptions, the Argentine Crisis and Legitimacy Concerns: Or the Benefits of a Public International Law Approach to Investment Arbitration” in Tullio Treves, Francesco Seatzu & Seline Trevisanut, eds, *Foreign Investment, International Law and Common Concerns* (Oxon: Routledge, 2014) 71.

the integration process between foreign investment and the environment. If the approach taken by the author in this book somehow limits its potential audience, it is nevertheless essential reading for all scholars in the field, and quite possibly recommendable for postgraduate study of investment law, environmental law and legal theory—especially part II of the book, which would not only be of interest to international economic law theorists but rather appeal to a more general audience. As stated beforehand, the theoretical underpinning of this book makes it less appropriate for a practice-oriented perspective on the issue of environmental protection in international investment law—while Viñuales' *Foreign Investment and the Environment in International Law* would be a valuable tool for practitioners especially by virtue of the approach it takes. In sum, *International Investment Law and the Environment* is a seminal, sophisticated, theoretical, scholarly oriented contribution to the study of international investment law, and a must-have for investment law scholars.