


PhD Viva


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My thesis analyzes the regulations pertaining to the economic aspects of international air transport from the perspectives of law and policy. The subject of this analysis is Northeast Asia (defined in this study as China, Japan and Korea), and the focal point is a regional approach to liberalizing the international air transport market.

International air transport is currently undergoing dynamic regulatory changes. Once, the airline industry was one of the most protected fields as well as strongly marked by nationalistic sentiment. Today, however, it is largely in the process of liberalization, which can be measured by the relaxation of market access, ownership and control. While bilateral air services agreements are the principal instruments for liberalizing international air transport, regional approaches have also emerged in most parts of the world.

Thus far, progress on regional liberalization has been slower in Northeast Asia than other regions, particularly Southeast Asia, where substantial progress has been achieved. Although the aero-political calculations that impede liberalization are commonplace all over the world, this impediment is more severely entrenched in Northeast Asia in addition to non-aviation-related barriers. However, there are ample arguments in favor of Northeast Asian open skies and telltale signs of positive changes. Furthermore, the airline industry itself is pushing for Northeast Asian open skies.

Essentially, this thesis investigates the legal and policy aspects of air transport liberalization in the Northeast Asian market and prescribes solutions for Northeast Asian open skies.

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<p>In international investment law in general, there is the renewed awareness that investment treaty arbitration should function as a public law mechanism because it deals with a dispute over a State's sovereign regulatory act. It has been a fundamental issue how to balance competing interests between a host State and a foreign investor in an investment dispute. In particular, with regard to expropriation standard, the most critical issue is how to distinguish an ordinary regulation that does not incur a State responsibility from a compensable expropriation. In addressing this issue, the research seeks to elaborate ways of identifying indirect expropriation on the basis of an approach that deviates from the orthodox sole effect doctrine. It also re-establishes the notion of regulatory expropriation, a type of indirect expropriation, in international investment law so that it can alleviate standard of compensation. The doctrine of the police power is used typically to verify that indirect expropriation cannot be established from the exercise by a State of the police power. The research pursues alternative approaches in using this doctrine as a mean of finding regulatory expropriation.</p>		

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Within the context of an exponential proliferation of investment treaties with virtually uniform language and structure, this research - The Interpretation of Investment Treaties: Problems and Solutions - by Trinh Hai Yen reveals the neglect or misapplication of international rules on treaty interpretation by tribunals in arbitral cases. Such practices have raised the question of the legitimacy of the interpretative process and the engendered inconsistent interpretations of investment treaties.

The book proposes three interpretative approaches aimed at ensuring that adjudicators find legitimate meaning in the challenging generality and vagueness of investment treaty language. It also provides a comprehensive analysis of legislative solutions for States through a case study of the ASEAN Comprehensive Investment Agreement, as well as a comparative analysis of modern and traditional investment treaties.

The thesis has been published as a monograph titled, THE INTERPRETATION OF INVESTMENT TREATIES by Brill | Nijhoff publishers in June 2014 (<http://www.brill.com/products/book/interpretation-investment-treaties>)