I. Introduction

The initial objective for the authors of this chapter was to provide a summary of Professor Thomas Wälde’s views about international investment law and rule of law, and in particular his view that international investment law promoted good governance. This was a challenging task both in terms of the volume of the material that needed to be reviewed, because Professor Wälde was a prolific writer, and in terms of the complexity of the topics that were covered. Accordingly, after a preliminary review of Professor Wälde’s writings, we decided to limit ourselves to a selective review of his works related to rule of law as found in the field of international investment law in order to provide a short summary of his main doctrinal approaches and identify whether and to what extent they have remained valid.
With this objective in mind, we chose six areas to review: first, Professor Wälde’s main doctrinal view whereby he deemed investment arbitration as a vehicle that promoted good governance; second, the interaction between international investment law and domestic law; third, the system of investment arbitration, including a review of Professor Wälde’s views about certain substantive protections under investment treaties and remedies; fourth, soft law and the rule of law; fifth, non-governmental organizations; and sixth, sustainable development.

II. Investment Arbitration, an External Discipline that Promotes Good Governance

Professor Wälde wrote a number of papers commenting on the relationship between the international investment law regime, rule of law, and development. Professor Wälde’s chief doctrinal approach towards this relationship is encapsulated in the title of his article called: “Investment Arbitration as a Discipline for Good Governance.”3 Investment arbitration, in his words, was an “external discipline,” because it had its roots in international law rather than in the domestic laws of the host State of an investment. It was a “discipline,” because it forced governments to change their conduct, particularly towards foreign investors, in a way which was more in line with the modern, and perhaps Western capitalist, notions of good governance. And good governance, in turn, could “help [...] to attract and mobilise investment—both foreign, but in the end also domestic.”4 These steps lead to the premier achievement of international investment law: “creating a ‘rule of law’, anchored in international, enforceable disciplines within which initiative and competition can flourish and thus create prosperity.”5

Not only does the type of good governance, buttressed by international arbitration, sustain development; such governance was, in his view, essential to development. Professor Wälde wrote that the “essence of capitalist investment” is the ability of investors to reliably plan ahead.6 To do so, investors must be able to rely on both property and contractual rights, what Professor

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