Markus Krajewski and Rhea Tamara Hoffmann (eds.): Research Handbook on Foreign Direct Investment. XII, 724 pp., Hardcover. Edward Elgar Publishing. Cheltenham; Northampton, MA 2019. ISBN 978-1-78536-984-1. € 289.95

This handbook is about geography, investment and the foreign investor(s). Currently, there are more than 3.300 International Investment Agreements (IIA) including Free Trade Agreements and bilateral investment treaties (BITs) in place. For some time now, the forms of foreign investment and their economic significance have been the focus of attention, not least in terms of geographical relations. According to the prevailing view, international investment is divided into foreign direct investment (FDI) flows and portfolio investment. The reasons for this distinction are primarily legal aspects: In a foreign direct investment, an investor intends to become economically involved in the target country of the investment on a permanent basis or at least for a certain period of time. The investor can build a production plant (so-called greenfield development), he can realize a hotel complex or an infrastructure improvement; but he can also take over an existing production facility, for example merge with the local company or take over company shares in it. Then the construction is commonly called 'merger and acquisition'. Both forms of investment raise legal, economic, and geo-systematic/geographic issues that need to be addressed here in the review (and I n geographic science elsewhere). Portfolio investments, however, are largely excluded from this excellent, compiling, up-to-date book publication. I admit that there are already numerous handbooks devoted to the legal and (political) economic aspects of FDI and BITs such as capital formation, technology transfer or employment generation. This book nevertheless attempts to incorporate the geographical expertise of the authors – who are almost all lawyers and economists – in individual rich chapters. The main editor Markus Krajewski holds the Chair of Public Law and International Law at the University of Erlangen. Rhea T. Hoffmann is a research assistant and legal postdoc at this chair.

Cross border investment governance is needed, but increasingly politically infeasible on a multilateral level; see the in-depth opening chapter compiled by Bauerle Danzman (pp. 11-38). Direct investments are often concluded on the basis of bilateral investment treaties. If such a treaty contains an investment protection chapter with provisions for arbitration proceedings, for example, there is much to be said for the theory that this creates special regulations for investors, or even separate ownership regimes for these companies. One need only think of the controversy surrounding CETA and TTIP. Whether the various forms of investment actually lead to measurable economic effects in the respective host state is a matter of dispute. However, the dogmatically interesting aspect that this Research Handbook aims to shed light on is rooted in the triangular relationship between the host state, the home state (of the investor) and the investor itself. Customary law and international law form a fascinating mélange. In addition, there are regional agreements. The task of geographers is now to identify the geo-spheric investment substrates behind foreign direct investment. This is the 'blind spot' in the (geo)scientific, but also economic and legal discourse on investment protection and trade agreement: the geospheric and nomospheric investment assets (see Thiel 2018; Thiel 2020). The book therefore contributes significantly to understanding in which (geo-)sphere the monetarization of resource (exploitation) entails particular effects. Hence, lithosphere, hydrosphere, biosphere and anthroposphere, where the legal issues seem to be resolved, are to be examined here.

Many international dispute settlement cases, such as those under NAFTA, UNCITRAL dispute settlement agreements or bilateral investment treaties, involve land and real estate assets utilities. The core issue is always whether there is a lawful, unlawful, direct or indirect expropriation, nationalization or a measure tantamount to an expropriation (see chapters elaborated by Titi, pp. 179-182; De Luca and Sacerdoti, pp. 199-240). This applies to private and public lands, lithospheric deposits, and water resources. After direct expropriations have become rare in recent times – if one disregards, for example, events in Bolivia, Venezuela or Zimbabwe – indirect expropriations and such measures that violate fair and equitable treatment of the investor have become the focus of investment protection interest. Arbitral decisions make it clear that the expansion of the concept of expropriation, which originally only encompassed direct cases (cf Art. 1110 NAFTA), necessarily places international investment protection law in a relationship of tension with the autonomous regulatory power of the host state (see chapters by Fach Gómez, pp. 494-522 and Magraw, pp. 523-561, particularly on NAFTA). Instructive leading cases are, for example, a completely non-transparent and unpredictable procedure for a building permit that was withdrawn due to the (subsequent) designation of a nature reserve. The refusal of a permit for the management of a hotel in Egypt, the prevention of a land development project in Chile at the municipal level due to a violation of a land use plan that had been prepared and originally approved at the national level, or simply any non-transparent and

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arbitrary refusal to extend a plant and building permit or to limit the term of a building permit. The *Metalclad* and *MTD Equity* investment case, in particular, are telling of the construction and planning law implications of TTIP. *Metalclad* had begun construction on a waste-to-energy plant after receiving a federal building permit; however, the municipality in which the plant was to be built ordered a halt to construction because, in its view, the required documentation had not been applied for. A court case filed at the request of the municipality prevented the plant from operating.

In the *MTD v. Chile* case, the government of Chile had encouraged the claimant to invest in a project to construct a planned community and granted approval for the establishment of the investment. The project was contrary to the local zoning laws. The developer was unable to convince the local committee and could not succeed with the project. The refusal to modify the law allowing an investment was not an expropriation. The investor had no reasonable expectation of receiving an economic benefit from a project that was unlawful. No investor has a right to a modification of the laws of the host country BIT. The tribunal did find Chile's conduct, however, to violate the fair and equitable treatment standard. In the case of *Biloune versus Ghana Investment Centre* (see chapter by De Brabandere, see pp. 628 ff.), the focus of the arbitration was not on the purpose or proportionality of the measure affecting the investment, but solely on the impact of the measures at issue, which concerned the renovation of a hotel complex along with a restaurant. The municipality and a sub-organ of the government of Ghana assured the investor that a building permit would be issued. The company began construction work, after being expressly requested to do so. However, the building permit was not issued. A construction stop was ordered and demolition was ordered. The arbitration court classified the measure as indirect expropriation. Investment law is, as it were, in a permanent phase of readjustment. By 2019, 350 bilateral investment protection agreements had to be renegotiated with regard to protection standards such as indirect expropriation and the principle of fair and equitable treatment.

In five main chapters, the 29 authors attempt to trace the nature of foreign direct investment. Under "*Foundations*" are extensive overviews of the architecture and spatial relations of the regimes governing FDI and is underlying transnational legal order (chapters written by Bauerle Danzman; Schill and Gülay; Alvik; Protopsaltis). Very relevant for geography scholars is the chapter "*Foreign investment law and developing countries*" provided by Rickson Hippolyte (see pp. 72-125). The contribution highlights the negative approach – in contemporary terms: 'narrative' – of FDI in developing countries; the author opts for a move beyond criticism towards beneficial BITS with the strengthened corporate social responsibility of investors. International Investment Agreements are important legal framework documents. Tuerk, Baumgartner and Atanasova (see pp. 150-172) shade intense light on the current trends of policy-making and reforms on local, regional and global level. A groundbreaking chapter written by Catharine Titi (see pp. 173-192) focuses on the nature of investment treaties and the 'substantive' protection standards that mutually drive both investments and investor. The 1960s are often describes as the emergence of investment arbitration and its standards. The concept of an indirect expropriation in these early instruments gained recognition in BIT practice. The first Swiss BIT, signed with Tunisia in 1961, applied to expropriations or measures having 'similar affects'. The investor's reasonable expectation must be taken into account of the State's regulatory power. Most cases are clear: Many kinds of regulation enacted by a host State are to be expected and an investor whose investment is affected by a regulation has no reasonable expectation that the regulation will not be imposed. The International Centre for Settlement of Investment Disputes (ICSID) was created in this period (see chapter by De Luca and Sacerdoti, see pp. 193-240).

For geographers, chapter 4 presenting the "*Regional Perspectives*" is highly relevant: the relationship between state practice, legal and economic framework, reforms in domestic investment law and international investment law, with the specific global region. For "*Africa*", Dagbanja highlights the complexity of the legal regime for FDI protection and the potential for conflict surrounding the presence of national, customary and informal laws, formal legal instruments, and international law (Dagbanja, pp. 336-362). The author argues that investment dispute settlements tribunals must be driven by the obligation to take account of the development objectives in African States. For Asia, Hsu shows that due to the increasing number of investment treaties (see recent agreements with Vietnam and Singapore, also EU-China trade agreements), rich material for scientific analysis is provided. There is a growing number of investment disputes between Asian States, foreign (but Asian) investors and both. Hsu interprets the 'Belt and Road Initiative' as a blueprint for a future multilateral investment dispute settlement system in Asia (see pp. 363-389 (p. 387 in particular)). The controversial *Philip Morris v. Australia* dispute as well as the conclusion of the Trans-Pacific-Partnership (TPP) and the 2016 amendments of the Singapore-Australia Free Trade Agreement are stated by Mitchell. The balance between the protection of the governments' regulatory sovereignty (the right to regulate) and the interests of the investors have recently to be re-negotiated in Australia. For the European Union, investment law has gained importance during the last eight years, as it is evi-

denced by the Lisbon Treaty of 2009, the negotiation of the Comprehensive Economic and Trade Agreement between Canada and the EU which was signed in 2016, but is not yet ratified in all EU member states, as well as the EU´s reform paper for a multilateral investment court following the famous and eagerly awaited dispute of *Slovak Republic v. Achmea B.V.*

In 2015, the European Commission presented proposals for the further development of investment protection, which is intended to increase transparency, particularly with regard to the dispute settlement mechanisms and their procedural design. There is still a need for reform in the following four areas: (i) Protection of the state's autonomous right to regulate; (ii) the creation of a consensus-based regulation on the dispute settlement mechanism (investor-state arbitration using the example of the International Centre for Settlement of Investment Disputes at the World Bank in Washington); (iii) the clarification of the relationship between domestic legal protection and investor-state dispute settlement, and (iv) an evaluation of the relationship between substantive investment standards and domestic standards, particularly with regard to investments in land, real estate, renewable energy supply systems and transport. The issues of dispute settlement and arbitration have been particularly contentious. After considerable criticism of investor-state dispute settlement – an unjustifiable circumvention of the national court system and the creation of a double court instance that is unnecessary in constitutional states (see Böttcher 2015) – a concept paper of the EU Commission is now available in which the need for a permanent, bilateral appeal mechanism with a supranational trade and investment court is expressed. The high number of Investor State Dispute Settlement cases against Eastern Europe states is obvious and gives reason for concern (chapter by Sándor, see pp. 457-493). The situation is different in Latin America where numerous initiatives and movements against the modern investment law and legal security measures for Foreign Direct Investment can be observed (Fach Gómez). There are challenges ahead, but also multiple research possibilities and fields for scientific collaborations between the law, the economy, and the geography: International investment law and sustainable development (chapter by Schacherer and Hoffmann, see pp. 563-595), the protection of the environment and international investment law – tensions arise between investment and the environment protected by national laws – towards a 'greenisation' of International Investment Agreements (chapter by Robert-Cuendet, see pp. 596-618), the human rights protection as a major concern in investment law (chapter by De Brabandere), and the current topic of investment agreements and the financial crises (chapter by Binder and Janig, see pp. 646-684), to name just a few potential 'hot spots'.

My final recommendation: Geographers should contribute to the highly relevant geo-systematic-related connections between the – still vague – phenomenon of foreign direct investment in view of the (re-)negotiation and perception of the legal framework and practice. The newly emerged interdisciplinary field of Environmental Peacebuilding (see recently: Hamilton 2020) should play a pivotal role in establishing main new types of environmental provisions in International investment Agreements with propositions turning to the investor's responsibility. This also includes 'regulatory chill', i.e. early involvement in legally binding negotiations, for example on higher standards in the area of environmental protection, energy efficiency or construction products, which can lead to a standstill in regulatory issues from the time the mandate is granted. This may mean that under a mega-regional deal such as CETA, regulations on the rent price ceiling, special urban development law such as milieu protection statutes, prohibitions on conversion and change of use in the sense of 'luxury redevelopment' may become impossible, more difficult or delayed in the future as a result of the early warning system. Investors, for example, internationally active investors who have acquired municipal housing stocks in a package sale interpret disadvantageous urban development or rent law regulations as a violation of the substantive investment protection standard of fair and equitable treatment. Hence, I totally agree with the editor´s findings: FDI is highly ideologised which makes sound and sober scientific analysis at times difficult, but all the more needed (Krajewski and Hoffmann, p. xiii) – especially when it is embedded in a geographical and geo-systematic context.

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