Chapter 7
Can International Investment Agreements support labour standards?

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1. Introduction: international investment as a challenge

The Sustainable Company respects and promotes a threefold dimension of sustainability: economic, ecological and social. With a view to satisfying these three dimensions investment plays a particularly significant role. Investment is a crucial factor for the achievement of the three sustainability factors because it preceeds and determines the operational functioning and the outcomes of production in enterprises. Whoever controls investment also he to a large extent controls conditions and impact of work. Whoever wishes to support the Sustainable Company hence should focus on investment as a potential source of (or obstacle to) sustainability.

Whereas the economic efficiency dimension will normally be addressed by companies themselves, the social and the environmental dimensions often require other – often firm-external - actors to be seriously and non-opportunistically achieved. 'Stakeholders' - those affected by the firms' working conditions and/or environmental impacts – have to address the firm with their respective 'stakes' via communication, and frequently even public pressure, in order to have these dimensions respected. This is why these stakeholders will also strive to have an impact on investment.

These considerations hold not only for the national level, but even more for the transnational and global level. Within the national setting social and ecological dimensions are often pursued and guaranteed by states. Multinational companies (MNCs), however, often operate transnationally in a 'state-free' zone. This makes it even more important to agglomerate non-state stakeholders to raise their voice and to try hard to impact company behaviour – not only to improve conditions in the less developed parts of the world, but also, indirectly, to protect the integrity of conditions in their western home countries (Gerlach *et al.* 2011).

For decades, international investment policy has been dominated, even monopolised, by MNCs and states. In recent years, however, several new trends have come to the fore. Due to rising public awareness and changing business ethics, more and more globally acting MNCs at least claim to follow Corporate Social Responsibility (CSR) rules, including in their investment strategies. More and more rule-setting documents confirm MNCs' social and environmental obligations when investing or operating in a host country (sections 5 and 6). And what is astonishingly little-known by the broad public: Since the Lisbon Treaty took effect in 2009, both foreign direct investment (FDI) and investment agreements fall under the competence of European Commission, Council and Parliament (Art. 206 and 207 FTEU), thus enabling a common European investment policy (section 7). Strangely enough: This new EU competence has been made visible, in a negative sense only, by the opaque EU - USA negotiations on TTIP (Transatlantic Trade and Investment Partnership) and their tendency towards liberalising and deregulating transatlantic markets. It could, however, equally be regarded as a tool, in a positive sense, of a welfare-oriented European foreign social policy. For the latter perspective, though not dealing with TTIP, I shall give some hints in section 7.

In this chapter I will draw attention to the hitherto neglected field of International Investment Agreements (IIAs) and show how they could become a component of a if hybrid (section 3) transnational regulatory system of work and ecology relations in firms' investment policies. I will try to shed light on changes within this part of international law which allows for interactions with CSR rules, codes of conduct and hitherto not legally binding MNC guidelines.

2. Weakness of current international labour laws

Purely state-based ways for globalising labour law are in a deadlock. Since this is well-known and needs no deepening here, I will summarise my position developed elsewhere. It is true that there is nearly one century's history of norm-building by the International Labour Organisation (ILO). This was, for the first time, a hybrid norm-building structure in the sense that representatives of employers and employees, together with state representatives, determine ILO Conventions and Recommendations. This creates an element of stakeholder voice, and hence of legitimacy, in ILO-norm-building. The weakness of ILO legislation is thus less a lack of legitimacy, but rather lack of effectiveness (Hepple 2005). Though created in a hybrid way, ILO norms form part of traditional international law. This is why they have to be ratified by member states, as they enjoy legal validity only via ratification. Even if ratified, ILO norms are frequently far from being properly implemented and complied with. The reporting and experts' assessment systems – in essence 'naming and shaming' – does not provide for real sanctions. The 1998 Declaration concerning four core labour standards – which is disputed under the aspect whether it can lead to universal standards even without member states' ratification - cannot compensate for this lack of effectiveness. Core labour standards, even if legally universally binding, would have the same implementation problems as 'normal' Conventions and recommendations have.

This is why for some time now there has been a quest for other, more effective state or international organisations' labour norms in the field of global trade and MNCs activities (Moreau 2006). But international organisations are either reluctant to articulate, recognise and support social and labour standards in their own field of activity (like the World Trade Organisation WTO), or they create 'norms' which are labelled as 'guidelines' rather than legally binding norms (like in the case of the OECD).

All attempts to internationally regulate labour and employment are, to a certain extent, important components of an emerging global social order. But on their own they are not enough to build a global legitimate and effective labour law. They need levers, actors and actor constellations which provide them with actual implementation power.

3. Transnational norm-building networks and global hybrid labour law

In the last couple of years I have done some work on how the architecture of a global labour regime which does not only rely on states and international organisations of states could look like.[1] What we observe is an emerging pluralism of legal phenomena concerning the worldwide activities of firms and their corresponding labour relations. Here we see a plurality not only among public norms, codes and guidelines, and among private codes of conducts, statements of intent and norm-building

1. See Mückenberger (2010; 2011a; 2011b; 2011c) and Mückenberger and Jastram (2010).

agreements (Hepple 2005; see also Anner *et al.* 2013), but actually a plurality of 'mixes', of mutual interdependency and interaction between public and private ordering concerning labour relations.[2] This is the source of what we can call global hybrid labour law.

The new component in this hybridity is the large amount of non-governmental ordering via firms and transnational norm-building networks. International-legal state regulation has a long history of regulation efforts and their ineffectiveness (see section 2 above). But it seems that in the last decades, long-term economic perspectives and civil society perspectives have been the main drivers of the emerging plurality of labour regimes. These provide both greater legitimacy of norms through bottom-up participation in norm-building and higher effectiveness of regulation through implementation and enforcement of rules near to the source of their origin. I called this mechanism 'voice-entitlement-nexus' (Mückenberger 2010). Due to the novelty of non-governmental norm-building in the transnational space I focussed, in my earlier work, on this side of hybrid labour law, i.e. on the non-governmental side.

However, it is equally possible – and in fact necessary - to start from the other side. The question, then, is: what type of intervention of states and international organisations is necessary in order to support and encourage, to 'empower' the labour regulating work of transnational norm-building networks (Jakobeit *et al.* 2010)? We know examples of state behaviour reinforcing global non-governmental regulation. Take as an example the ILO core labour standards, which were declared universally applicable in 1998. The effectiveness of this hybrid international norm requires reinforcement through state behaviour. The UN Global Compact for example (see Mückenberger and Jastram 2010), and the amended OECD Guidelines for MNCs (OECD 2011) both refer to the ILO core labour standards, as well as numerous procurement rules of states – this pattern of state behaviour gives higher authority, validity, and thus, effectiveness to the core standards, which otherwise would have remained 'good-will declarations'.

A similar lever for non-governmental rules can lie in binding rules for FDI, since these rules do not only constitute obligations of host states vis-à-vis private investors. They can also contain obligations of investors

2. This is well documented in Moreau (2006).

vis-à-vis the host country and its citizens, as well as social and ecological rules for sustainability, which may include core labour standards and/or CSR obligations which would otherwise not be legally binding (for a general overview see Prislan/Zandvliet 2013) . Let us look at International Investment Agreements (IIAs) as one such possible such tool.

4. Multilateral and Bilateral Agreements on Investment

IIAs have a long and complex history, and their frequency has accelerated due to the rapid increase of FDI worldwide. They try to regulate those issues related to FDI like protection of property of investors, free trade and fair treatment of investors. Only recently have they started to contain obligations on investors as well – and this is the line we want to follow after a short historical review.

Investment agreements are only the logical consequence of free trade agreements (FTAs) in that they extend the framework of market principles to the earlier stage of investment. This is why many IIAs form part of international FTAs. For a long time this type of regulation used to be dealt with mainly through bilateralism – i.e. states concluded agreements bilaterally (between investors' home and host countries), hence Bilateral Investment Treaties (BITs) or investment rules contained in bilateral FTAs (for legal detail see Bungenberg *et al.* 2014). BITs are frequently accompanied by Double Taxation Treaties (DTTs), which are not of interest here. The first BIT, between West Germany and Pakistan, was signed in 1959, and their numbers have grown steadily since then.

Due to the three facts 1) that FDI home states have relations with many potential or actual host states, 2) that home states, under the increasing FDI movement among OECD-countries, are frequently also host states and 3) that states want to ensure equal or comparable conditions for their investors, there have always been efforts to standardise and universalise IIAs. In the period of bilateralism, FDI home (and host) states began to develop 'model BITs' applied to the investment agreement negotiations with the bulk of host (or home) countries. We will encounter some of these model BITs later. Of particular interest will be the opportunity for an 'EU model BIT', which is an option since the coming into force of the Lisbon Treaty in 2009. It can provide an EU-wide frame for global investment, hence development and social policy. It is therefore of substantial interest for those who deal with sustainable investment.

Efforts to universalise investment conditions have failed so far. One of these efforts was the Multilateral Agreement on Investment (MAI), which was a draft agreement negotiated within an OECD-High level group in 1995-98. It encountered sharp opposition from civil society groups and developing countries, particularly because it threatened protective regulation in host countries. The host nation France announced in October 1998 that it was not supporting the agreement any longer.

The MAI draft (OECD 1998), in its preamble, renewed:

> …their commitment to the Copenhagen Declaration of the World Summit on Social Development and the observance of internationally recognised core labour standards, i.e., freedom of association, the right to organise and bargain collectively, prohibition of forced labour, the elimination of exploitative forms of child labour, and non-discrimination in employment, and noting that the International Labour Organisation is the competent body to set and deal with core labour standards worldwide (OECD 1998: 9).

In the Annex NOT LOWERING MEASURES it stated:

> A Contracting Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its domestic health, safety, environmental, or labour measures, as an encouragement to the establishment, acquisition, expansion, operation, management, maintenance, use, enjoyment and sale or other disposition of an investment of an investor (OECD 1998: 9).[3]

In the Annex of the OECD Guidelines for Multinational Enterprises (OECD 2011) the Declaration on International Investment and Multinational Enterprises (21 June 1976) is reaffirmed:

> 6. The Guidelines set out below are recommendations jointly addressed by Member countries to multinational enterprises operating in their territories. These Guidelines, which take into account the problems which can arise because of the international structure of these enterprises, lay down standards for the activities of these enterprises in the different Member countries. Observance

3. 'Interpretative Note: The Parties recognise that governments must have the flexibility to adjust their overall health, safety, environmental or labour standards over time for public policy reasons other than attracting foreign investment.'

> of the Guidelines is voluntary and not legally enforceable. However, they should help to ensure that the operations of these enterprises are in harmony with national policies of the countries where they operate and to strengthen the basis of mutual confidence between enterprises and States (OECD 2011: 3).

The MAI hence did not contain any binding social or environmental standards. The chairman of the Negotiating Group, in his report concerning the annex, summarised:

> Some delegations wish to consider the possibility of a more general provision on not lowering standards as well as additional ideas that would ensure that the MAI includes meaningful provisions on a range of issues related to labour and environment. It is still being considered whether the labour provisions should refer to domestic, or international core, labour standards. A few delegations oppose any provision on labour matters in the MAI (OECD 1998: 4).

One possible reason for the MAI's failure was the absence of 'meaningful provisions' concerning labour and environment. From 1998 onward therefore, a new shift towards BITs took place. Numerous BITs had already been concluded before the MAI negotiations (Picciotto 1998). We shall observe their continued increase in section 5. In the new millennium, however, an additional tendency has come to the fore. International investment agreements experience 'regionalisation', i.e. it is no longer individual home and/or host countries that are negotiating terms of investment, but rather home and/or host world regions (like COMESA in southern Africa). The newly established EU competence in FDI regulation thus follows this trend. This regionalisation possibly provides a better starting point to reconcile both the wish to universalise terms of investment and the necessity to take into account diversity in the current world of FDI home and/or host countries.

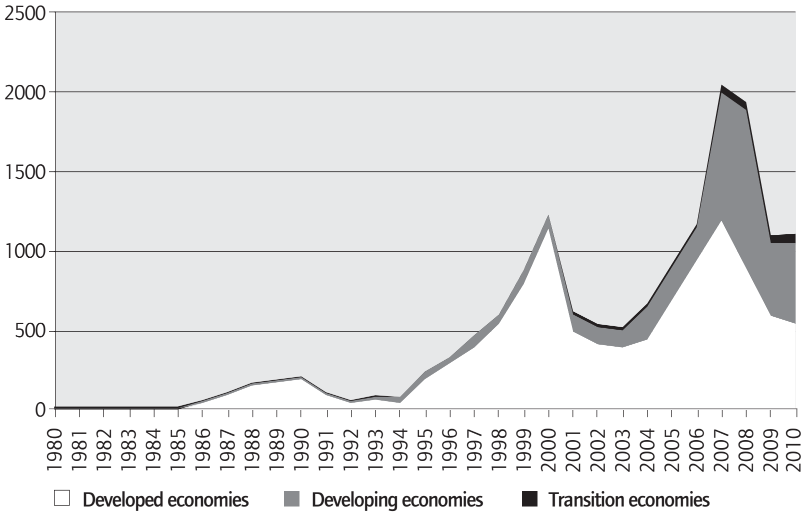
5. Empirical Data

5.1 Foreign Direct Investment trends

Concern with investment regulation is driven by the fact that, within the globalising economy, globalisation of investment (FDI) has gained a dominant position since the 1980s. FDI flows, which had experienced a decline during the financial markets crisis, have increased again in 2010 (UNCTAD 2011: Fig. I 1). In 2010, FDI amounted to 1.244 trillion dollars. It is true, however, that this is still 37% less than in the peak year 2008 and 15% less than the 2005-2007 average.

FDI inflows have undergone a substantial change during this period. Hitherto most of the FDI flew from developed to other developed countries. From the early 1980s onwards, FDI flows rose from nearly zero to over 1.4 trillion USD (2000) to a peak of nearly 2 trillion dollars (2006). Over the whole period most of the inflows went into the developed economies only a small share of FDI flows went into developing economies – e.g. over 1 trillion in 2006 (around 1.3 trillion). As against that, only ca. 20 per cent of a total of ca. 1.4 trillion dollars (2006) went to developing economies. In 2010, however, for the first time, FDI inflows of developing and transition countries surpassed those of developed countries (however with the level in transition countries remaining very low) (see Figure 1). This was the case, however, in a period of FDI inflows decline, due to the impacts of the financial markets crisis.

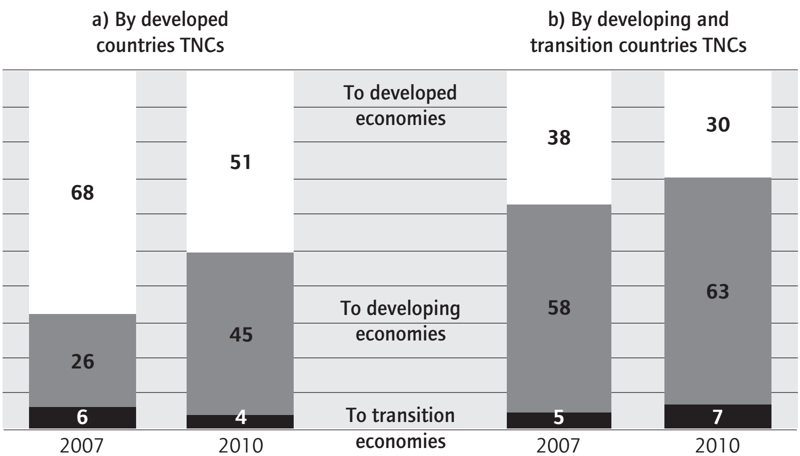
Figure 1 **FDI inflows, global and by group of economies, 1980-2010 (billions of dollars)**



Source: Based on UNCTAD (2011: 3, Figure I.3).

In contrast, FDI outflows of developing and transition countries stagnated over the last decade or so. Only South, East and South-East Asia showed a sharp and continuous increase till 2010 (UNCTAD 2011: Fig. I.7). FDI outflows from both developed and developing/transitional economies to developed economies, decreased, whereas these outflows to developing economies increased, at a higher rate from developed to developing countries, and at a lower rate but on a higher level from developing countries to developing countries (UNCTAD 2011: fig. I 8). Rising competition *between developing countries* thus expresses itself on the FDI field.

Figure 2 **Distribution of FDI projects, by host region, 2007 and 2010 (per cent)**



Source: Based on UNCTAD (2011: 8, Figure I.8).

A high proportion of FDI outflows takes place within global value chains of MNCs. What Gereffi *et al.* (2005) call 'disintegration of production and integration of trade' expresses an internationalisation not only of production but equally of investment. The production of components becomes internationalised via FDI and the components brought together via trade. Not only is there an increasing amount of FDI taking place, but also international investment is occurring in a way which creates mutual dependency and communication.

5.2 Bilateral Investment Treaty trends

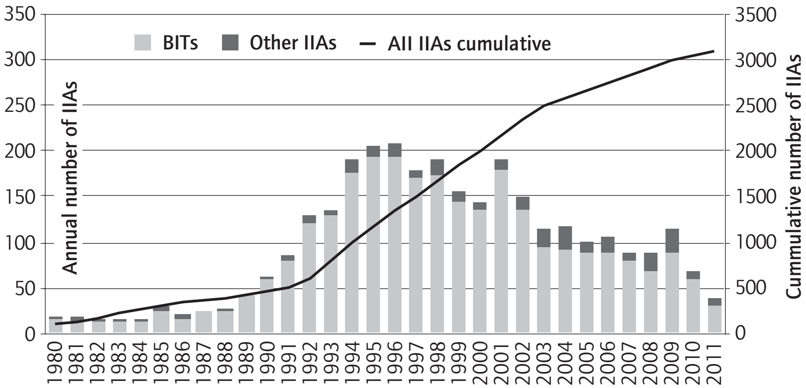
We can observe a substantial increase of BITs and other IIAs particularly during the early 1990s.This may explain the efforts from 1995 on to negotiate the MAI. But we can equally observe that the rate of growth of BITs has decreased since shortly before the millennium. Although the cumulative number of BITs rises the annual number of new IIAs decreases. The rise obviously has to do with rising global FDI (for other factors see Guzman 2009).

The decline possibly also has to do with the fact that regional IIAs which do not fall under the category of BIT have gained ground (see UNCTAD 2012: 84ff.). There are aspects of investment discussed in the *Trans-Pacific Partnership Agreement*, with nine countries participating (Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, the United States and Viet Nam).Canada and Mexico were also formally invited to join negotiations and Japan has expressed an interest. In 2012 a trilateral investment agreement was concluded between China, Japan and the Republic of Korea. The EU Member States account for about half of the world's BITs. New EU-wide investment treaties will replace BITs between the EU's respective treaty partners and individual EU member States. For example, once concluded, the EU–India FTA is expected to replace 21 BITs signed by India with individual EU members. The Association of Southeast Asian Nations (ASEAN)has concluded agreements with Australia and New Zealand (2008) and China(2010) and is negotiating one with India. Last but not least, there is investment regulation within the Mexico–Central America FTA, which includes Costa Rica, El Salvador, Guatemala, Honduras, Mexico and Nicaragua.

Notwithstanding this trend towards regionalisation of IIAs it is still remarkable that there has been an increase from less than 500 to more than 3000 BITs within two decades. A particular 'leap upwards' took place in the years from 1989 (less than 50 annual IIAs) to 1995 (more than 200 annual IIAs). From then on the annual number of IIAs stagnated or declined. The cumulative number of IIAs, however, continuously increased. The bulk of the increase of IIA numbers was due to BITs - only a small, although increasing, percentage was 'other IIAs'. This demonstrates the emergence of a novel instrument of economic and development policy (UNCTAD 2012: figure III.2.).

The World Investment Report 2012 quantifies this as follows (see Figure 3):

Figure 3 **Trends of BITs and 'other IIAs', 1980-2011**



Source: Based on UNCTAD (2011: 8, Figure I.8).

As I am interested in IIAs as instruments of developing and spreading global labour standards I turn now to the qualitative side of the BITs the contents of these agreements (Muchlinski 2009; Titi 2014) instead of the purely quantitative side (i.e. their numbers). In the last ten years or so, the trend towards investment liberalisation, though still prevailing, has been accompanied and partly even pushed back by trends towards regulation /limitation, in most of the national policies (UNCTAD 2011: ch. 3). Whereas regulation only concerned investors' rights and protection of property under the auspices of liberalisation, in the context of limitation regulation concerns a new balance between investors' rights and duties, such as in matters of the financial sector and of the control over natural resources.[4] Even if many IIAs still are more of a technical nature, some of them deal with social and environmental issues. The 2011 World Investment Report, in its last chapter, fully focused on Corporate Social Responsibility (CSR). It is not by chance that here the ten UN-Global Compact Principles on Sustainability – among them the four ILO core labour standards – are proposed as possible contents of BITs (WIR

4. It is an important background condition that among the ten countries with the highest number of BITs (June 2007: Germany 135, China 119, Switzerland 114, UK 103, Egypt 100, Italy 100, France 98, NL 91, Korea 86, Belgium and Luxembourg 84 – see Sauvant/Sachs (2009: xxxv)) all founder states of the EEC and a clear majority of western industrialised welfare states are present.

2011 last section).[5] The 2012 World Investment Report (UNCTAD 2012) even proposes a broad range of sustainability goals to be inserted into investment agreements.

From the analyses of experts on in this topic[6] one can reconstruct three layers or generations of BITs according to their function and contents. The two first contained only investors' rights, however, the third also includes investors' duties.

The first layer can be traced back to post-colonialism in Third World countries. These countries needed finance and investment; however, the new revolutionary governments represented risks for investors and their home countries. In this layer BITs had the primary function of protecting invested property against expropriation, unrest and political obstacles.

The second layer was more economic than political. Investors and their home countries wanted open markets and free trade. This is why these BITs provided for conditions of trade and treatment of commodities and personnel adequate for a capitalist functioning of the firm and the market. This is why in these BITs same principles were embedded which also govern the World Trade Organisation: the national treatment principle (i.e. foreign investors have to be treated the same as domestic investors) and the most-favoured nation principle (i.e. if you provide favourable treatment to one nation, any other nation may claim this favourable treatment too). This layer of BITs extended former GATT (later WTO) rules to territories which were not (yet) member states.

The third layer, however, also dealt with obligations of investors and their home countries. Among these rules were a historical novelty: social and ecological standards. This layer, however, is all but systematically developed, and is often piece-meal. There is a broad range of differentiation (see the examples in table III. 3 of UNCTAD 2012; Muchlinski 2009):

— Certain BITs only provide social or ecological points of view in their preamble.

5. This can be seen in a context with the 2011 Edition of the OECD Guidelines for Multinational Enterprises (OECD 2011) which contains the 'Declaration on international investment and multinational enterprises' of 25 May 2011. The latter tries to extend applicability of the sustainability rules of the Guidelines (ch. II. A and B) to the field of foreign investment.
6. See for example Picciotto (1998), Sauvant and Sachs (2009), Vandevelde (2009), Muchlinski (2009; 2010) and Bungenberg (2013; 2014).

— Others try to prohibit social or ecological dumping via host countries' lowering their social or ecological standards for their own investors only, thus creating competitive disadvantage for foreign investors.

— Others try to protect the freedom of host countries to regulate in the public (political, social, ecological) interest (cf. the recent monograph of Titi 2014) and thereby interfere with the free market and free competition.

— Some are positively setting standards which have to be complied with by investors – in most cases confirming standards with a certain transnational authority (like the ILO core labour standards, or the UN Global Compact principles).

Behind this range of differentiation we certainly find different concepts of and motivations for regulation. Some of them are possibly inspired by the objective of 'global social justice'. Most of them are far removed from this. Some preambles are pure 'window-dressing'. Some purely pursue the aim to free and protect competition and the market from distortion. Some can also involve a sort of hidden or open protectionism (Mückenberger 2011c) in that they try to eliminate comparative – social or ecological – advantage of less developed countries and thus to exclude them from the market.[7]

Nevertheless, if we strive to encourage universal social rights in the globalised world, we can reflect on whether this third layer of BITs (and regional IIAs) opens an arena of action with a perspective of sustainability. The UNCTAD, in its 2012 World Investment Report, favours an 'Investment policy framework for sustainable development' (UNCTAD 2012: 131 ff.) which builds on these new trends in BITs and other IIAs and their combination with new principles of sustainable investment (see below principles 5 and 10) and a fundamental change in national policies, in order to arrive at a 'new generation of investment policies'.

7. The UNCTAD (2012) World Investment Report, on page 90, analyses 20 BITs concluded in 2011, which contain examples of sustainable-development-friendly aspects - such as stimulating responsible business practices, avoiding overexposure of host states to ISDS claims, preserving their right to regulate in the public interest and focussing on investments conducive to development.

Table 1 **Examples of sustainable-development friendly aspects of selected IIAs signed in 2011**

Sustainable-development-friendly aspects of IIAs provisions (in order of frequency)	United Republic of Tanzania-Turkey BIT	Nigeria -Turkey BIT
Detailed exceptions from the free-transfer-of-funds obligation, including balance-of-payments difficulties and/or enforcement of national laws	X	X
Omission of the so-calles "umbrella" clause	X	X
Clarification of what does not constitute an indirect expropiation	X	X
Fair and equitable treatment standard equated to the minimum standard of treatment of aliens under customary international law	X	X
References to protection of health and safety, labour rights, environmental or sustainable development in the treaty preamble		X
Explicit recognition that parties should not relax health, safety or environmental standards to attract investment	X	
A carve-out for prudential measures in the financial services sector		
General exceptions, e.g. for the protection of human, animal or plant life or health; or the conservation of exhaustible natural resources	X	X
Exclusion of sovereign debt obligations from the range of assets protected by the treaty		
Exclusion of portfolio investments (shares representing less than 10 per cent of a company's capital) from the range of assets protected by the treaty	X	X
No provision for investor-State arbitration		

Mexico-Peru FTA			X		X	X		X	X	X	X
Republic of Korea-Peru FTA				X	X	X	X	X	X	X	X
Panama-Peru FTA			X	X	X	X	X	X	X	X	X
Japana-Papua New Guinea BIT					X	X	X				X
India-Slovenia BIT									X	X	X
India-Nepal BIT									X	X	
India Malaysia FTA				X	X			X	X	X	X
India Lithuania BIT									X	X	
India-Japan EPA				X	X			X	X	X	X
Guatemala-Peru FTA			X			X	X	X	X	X	X
Czech Republic-Sri Lanka BIT										X	X
Costa Rica-Peru FTA			X	X	X	X	X	X	X	X	X
Colombia-Japan BIT			X	X	X	X	X	X	X		X
China-Japan-Republic of Korea TIA					X	X	X		X	X	X
Central America-Mexico FTA			X	X	X	X	X	X	X	X	X
Bosnia and Herzegovina-San Marino BIT											X
Azerbaijan-New Zealand Investment Protocol							X			X	X
Australia-New Zealand Investment Protocol	X				X		X	X	X	X	X
Policy objectives											
Stimulate responsible business practices						X	X				
Avoid overexposure to ISDS claims	X		X	X	X			X	X	X	X
Preserve the right to regulate in the public interest	X			X	X		X	X	X		X
Focus on investments conducive to development		X				X	X				

Source: Based on UNCTAD (2012: 90, Table III.3).

Box 1 Key UNCTAD principles on sustainable development

Principle 5: Balanced rights and obligations

Investment policies need to serve two potentially conflicting purposes. On the one hand, they have to create attractive conditions for foreign investors. To this end, investment policies include features of investment liberalization, protection, promotion and facilitation. On the other hand, the overall regulatory framework of the host country has to ensure that any negative social or environmental effects are minimized. More regulation may also be warranted to find appropriate responses to crises (e.g. financial crisis, food crisis, climate change). Against this background, this core principle suggests that the investment climate and policies of a country should be "balanced" as regards the overall treatment of foreign investors. Where and how to strike this balance is basically an issue for the domestic law of host countries and therefore requires adequate local capacities. International policies vis-à-vis foreign investors likewise play a role and – if not carefully designed – might tilt the balance in favour of those investors. The principle does not mean that each individual investment-related regulation of a host country would have to be balanced.

Principle 10: Corporate governance and responsibility

This principle recognizes that corporate governance and CSR standards are increasingly shaping investment policy at the national and international levels. This development is reflected in the proliferation of standards, including several intergovernmental organization standards of the United Nations, the ILO, the IFC and the OECD, providing guidance on fundamental CSR issues; dozens of multi-stakeholder initiatives; hundreds of industry association codes; and thousands of individual company codes (WIR11). Most recently, the UN Human Rights Council adopted a resolution endorsing the Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. CSR standards are voluntary in nature and so exist as a unique dimension of "soft law". The principle calls on governments to actively promote CSR standards and to monitor compliance with them. Promotion also includes the option to adopt existing CSR standards as part of regulatory initiatives, turning voluntary standards into mandatory requirements.

Source: UNCTAD (2012: 108/9, 110).

It is worth seriously testing whether or not, and if so under which conditions, such an effort for sustainable development which starts at the source of production and reproduction – i.e. at investment – has a chance. It could provide for a synthesis between development goals and the goal to maintain and improve labour and ecological standards in the industrialised world.

6. The US-Uruguay Bilateral Investment Treaty of 2005/06

Certainly, when entering into the field of social and environmental standards, BITs tend to reproduce national labour law cultures internationally. I try to demonstrate that through one example of the American legal culture in order to compare it with a BIT that could better correspond to the European social model and the continental European law culture.

The United States (US) always reproduce the pattern of 'social' regulation set out in the NAFTA-Agreement which came into force in 1994 when it concludes international trade agreements. The side agreement on social standards (the North American Agreement on Labor Cooperation, or NAALC) establishes a legal regime which does not set social standards, let alone harmonise standards between the three contracting parties. It is rather an anti-social dumping measure insofar as it tries to set up a procedure against the situation where one of the NAFTA member state breaks its own social standards to achieve an unfair comparative market advantage vis-à-vis the other member states. This social regime is not a welfare-state system, but a rather a competition law system focused on preventing the distortion of competition.

To give one illustrative example of such a BIT: the 2005 US – Uruguay-Agreement (SICE 2004). In its preamble, it contains social objectives:

> *Desiring* to achieve these objectives in a manner consistent with the protection of health, safety, and the environment, and the promotion of consumer protection and internationally recognized labor rights (SICE 2004: 1).

The agreement, after establishing trade-oriented standards like the national treatment and the most-favoured nation principle, equally sets out an orientation towards 'internationally recognised labor standards' which seem similar to the ILO core labour standards (although the discrimination issue is missing):

> Article 13: Investment and Labor
> Para. 1 The Parties recognize that it is inappropriate to encourage investment by weakening or reducing the protections afforded in domestic labor laws. Accordingly, each Party shall strive to ensure

> that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces adherence to the internationally recognized labor rights referred to in paragraph 2 as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory. If a Party considers that the other Party has offered such an encouragement, it may request consultations with the other Party and the two Parties shall consult with a view to avoiding any such encouragement.
> Para. 2 For purposes of this Article, 'labor laws' means each Party's statutes or regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights:
> (a) the right of association;
> (b) the right to organize and bargain collectively;
> (c) a prohibition on the use of any form of forced or compulsory labor;
> (d) labor protections for children and young people, including a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and
> (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.
> Para. 3 Nothing in this Treaty shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure otherwise consistent with this Treaty that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to labor concerns (SICE 2004:17).

But when it comes to the enforcement procedures (Sections B and C) the agreement is totally silent about labour standards. Section B only allows 'claimants' (defined in art. 1 as 'an investor' of a BIT-party) to enforce their rights in the BIT. This excludes workers and their organisations, in other words investors' duties are not enforceable. Section C regulates 'State-State Dispute Settlement'. Art. 37 provides for access of 'either Party to arbitration for a binding decision or award by a tribunal in accordance with applicable rules of international law' (paragraph 1). The Agreement in para. 5, however, eliminates applicability of the dispute settlement procedure to labour (and environmental) standards (the latter contained in art. 12): '5. Paragraphs 1 through 4 shall not apply to a matter arising under Article 12 or Article 13.' Here we do not even find an effective anti-social dumping procedure as provided for in NAALC.

It is true that the recent 2012 model BIT is more comprehensive in its substantive rules (particularly Art. 13). It also makes the anti-social dumping intention of the social clause clear from the very beginning. But when it comes to implementation and enforcement, in Sections B and C, the same restrictions mentioned above are repeated: no enforcement with a view to the obligations of investors, no state-state dispute settlement with regard to labour (and environmental) standards. With a view to global labour law, one could conclude to forget about BITs.

7. Europe can become a global FDI actor

It was mentioned earlier in this chapter that the role of Europe changed when the Lisbon Treaty entered into force on 1 December 2009 (see the legal analyses in Bungenberg 2013; Prislan and Zandvliet 2013; Arnauld 2014). Art. 206 and 207 of the Treaty on the Functioning of the European Union (TFEU) have extended the Common Commercial Policies so that they are now including 'foreign direct investment' (see Mestral 2011). The development may be understood as follows. After the failure of MAI during the later 1990s, international investment relations shifted to the field of BITs. At the same time there was an immense increase of FDI – not only between developed and developing countries, but also between developing countries themselves and between developing and emerging countries. As one of the effects of this, UNCTAD (2012b) observed the already discussed trend towards regionalisation of negotiation and conclusion of IIAs and the development of regional model agreements (UNCTAD 2012: section 5). In this context we can also interpret the amendment of art. 207 FTEU (ex-art. 133 TEC) in that it now provides for a European agenda on FDI and dealing with IIAs. There are hundreds of BITs between EU member states and third states and even 191 BITs between EU Member States (Mestral 2011). This makes it an important issue how the EU deals with existing BITs after 2009 and whether, and by whom and with which contents, it elaborates an EU model BIT.

Let us first give an overview of the new competences. Art. 207 TFEU reads as follows (see Box 2).

Box 2 **Article 207 of the TFEU**

Article 207 (ex Article 133 TEC)

1. The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. The common commercial policy shall be conducted in the context of the principles and objectives of the Union' s external action.

2. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the measures defining the framework for implementing the common commercial policy.

3. Where agreements with one or more third countries or international organisations need to be negotiated and concluded, Article 218 shall apply, subject to the special provisions of this Article. The Commission shall make recommendations to the Council, which shall authorise it to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Union policies and rules. The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee and to the European Parliament on the progress of negotiations.

4. For the negotiation and conclusion of the agreements referred to in paragraph 3, the Council shall act by a qualified majority. For the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, as well as foreign direct investment, the Council shall act unanimously where such agreements include provisions for which unanimity is required for the adoption of internal rules.

Source: UNCTAD (2012: 108/9, 110).

Para. 1 states that 'uniform principles' for common commercial policy are necessary with respect to FDI – as one objective protection of trade against 'dumping' is mentioned. Paras. 2 and 3 provide for an interplay between regulations (para. 2), by EP and Council, and agreements with one or more third countries or international organisations, by the Council (and the Commission) in accordance with art. 218 (para. 3). One guideline for the Council and the Commission is that 'the agreements negotiated are compatible with internal Union policies and rules.' Qualified majority for the conclusion of agreements is sufficient provided that, for the adoption of internal rules, a unanimous vote is not necessary (para. 4). Apart from regulations, the EP – except for the cases mentioned in art. 218 para. 6 TFEU - only has a consultative role (art. 218 para. 6 b and para. 10; art. 206 para. 4 sent. 5).

According to these provisions the EU seems capable of concluding agreements, including investment agreements, in accordance with the objectives mentioned in art. 151 TFEU[8] and in the labour law provisions in art. 153 para. 1 TFEU. The EU thereby has to respect the requirement, if necessary, of unanimous vote in the Council according to art. 153 para. 2 TFEU.

The parties to the European legislative process seem to be well aware of the newly emerged opportunities for a common FDI policy. Their statements clearly focus on the issues combined with the two first layers of IIAs we identified earlier in this chapter (see section 5.b above): protection of invested property and of fair free-trade conditions. But all of them also hint at the third layer: social (and environmental) standards in global investment bargaining. There are, however, clear variations with regard to that general commitment. Two streams can be observed. One is to safeguard national autonomy in regulating issues that are of public interest (e.g. social standards). The other is to provide for an integrated FDI policy containing and encouraging social and environmental standards and their implementation vis-à-vis investors in the host countries. A third stream, and this currently seems to be the mainstream, is to avoid any decision between the first two – hence to wait and see ...

In its 2010 Communication (Reinisch 2013), the Commission stated that 'Investment agreements should be consistent with the other policies of the Union and its Member States, including policies on the protection of

8. 'The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion' (art. 151 TFEU).

the environment, decent work, health and safety at work, consumer protection, cultural diversity, development policy and competition policy' (European Commission 2010). It is in line with that that the Foreign Affairs Council, in its meeting concerning a comprehensive European international investment policy (Luxembourg, 25 October 2010) adopted the following conclusions:

> The Council ... 16. RECOGNIZES the importance of the social and environmental dimension of foreign direct investment as well as the rights and the obligations of investors, and EMPHASIZES the valuable contribution of organizations like the OECD, UNCTAD and the ILO and their international instruments to the EU investment policy, especially in the field of corporate social responsibility. At the same time, it remains crucial that the main focus of international investment agreements should continue to be effective and ambitious investment protection and market access; ... (Council of the European Union 2010:3).

Interesting is both a vague reference to CSR and a clear commitment to the two first (i.e. the market-liberal) layers of IIAs.

As against that, the European Parliament, in April 2011, in its resolution on 'European Investment Policy' (nr. 25) very clearly maintained that the two types of EU policy should now be adopted: protection of the right to regulate *and* inclusion of social and environmental standards.

> *Protecting the right to regulate*
>
> 23. Stresses that future investment agreements concluded by the EU must respect the capacity for public intervention;
> 24. Expresses its deep concern regarding the level of discretion of international arbitrators to make a broad interpretation of investor protection clauses, thereby leading to the ruling out of legitimate public regulations; calls on the Commission to produce clear definitions of investor protection standards in order to avoid such problems in the new investment agreements;
> 25. Calls on the Commission to include in all future agreements specific clauses laying down the right of parties to the agreement to regulate, inter alia, in the areas of protection of national security, the environment, public health, workers' and consumers' rights, industrial policy and cultural diversity;

26. Underlines that the Commission shall decide on a case-by-case basis on sectors not to be covered by future agreements, for example sensitive sectors such as culture, education, public health and those sectors which are strategically important for national defence, and asks the Commission to inform the European Parliament about the mandate it received in each case; notes that the EU should also be aware of the concerns of its developing partners and should not call for more liberalisation if the latter deem it necessary for their development to protect certain sectors, particularly public services;

Inclusion of social and environmental standards

27. Stresses that the EU's future policy must also promote investment which is sustainable, respects the environment (particularly in the area of extractive industries) and encourages good quality working conditions in the enterprises targeted by the investment; asks the Commission to include, in all future agreements, a reference to the updated OECD Guidelines for Multinational Enterprises;
28. Reiterates, with regard to the investment chapters in wider FTAs, its call for a corporate social responsibility clause and effective social and environmental clauses to be included in every FTA the EU signs;
29. Requests that the Commission assess how such clauses have been included in Member State BITs and how they could be included in future stand-alone investment agreements as well;
30. Welcomes the fact that a number of BITs currently have a clause which prevents the watering-down of social and environmental legislation in order to attract investment and calls on the Commission to consider the inclusion of such a clause in its future agreements (European Parliament 2011:7).

These two dimensions of EU FDI-policies - protection of right to regulate and inclusion of social and environmental standards - would be important both externally and internally. Both would recognise the obligation of the EU to behave not only as a market societal, but rather as a social-state or a federation of social states.[9] From an external (i.e. EU

9. I have given legal scholarly evidence for the claim that the EU is committed to comply with principles of social statehood derived from the constitutional values of human dignity, democracy and solidarity in European primary law cf. Mückenberger 2014.

external policy) perspective they provide for two functions. Host countries of FDI are thus protected against a potentially endless competition constraint to lower their social and ecological standards in order to attract FDI. And investors would be subjects, not only of rights, but equally of duties (e.g. the ILO core and other labour standards) which they owe to host countries and their working populations.

But the internal (i.e. EU social policy) perspective of such EU-foreign social policy should not be forgotten. The dimension of protection of right to regulate would be directed directly against the recent European Court of Justice invectives against national social policies challenging national autonomy under an alleged hegemony of freedom of competition – as known from the Viking/Laval-jurisprudence, particularly the Luxembourg case.[10] As against that, the inclusion of social and environmental standards in EU BITs would emphasise the European social model enshrined in art. 151 TFEU which prescribes for EU and their member states ‘as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.’ Such an emphasis could be understood as a recognition of European social-statehood (Mückenberger 2014) and as a cosmopolitan EU approach and would possibly ease the way to an agreement on Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms, as allowed in Art. 215 FTEU (see Lörcher 2013).

Disappointing is the ‘follow up’ of the European Commission from 5 July 2011 to the cited EP resolution:

> With regards to the inclusion of social and environmental standards in future EU agreements, there is a strong convergence between the views expressed by the European Parliament in the Resolution and the Commission’s own ideas expressed in the Communication towards a comprehensive European international investment policy, as well as with existing practices in Free Trade Agreements either concluded or currently under negotiation. Member States'

10. See European Court of Justice (ECJ) (2007a and b, 2008a and b): Viking 2007; Laval 2007; Rüffert 2008; Luxembourg 2008.

> practices and concrete ways to introduce such clauses in future stand-alone investment agreements will be further assessed on an informal and continuous basis, with a view of identifying and implementing the best relevant practices (European Commission 2011: 1).

The Commission stresses 'a strong convergence', then, however, instead of taking up the convergence practically, pleads for a 'further assessment on an informal and continuous basis' and for a look for 'best practices'. This reaffirms the before-mentioned third stream, the mainstream, of 'wait and see'.

So, on a European level, there is something like an open situation. There is a non-decision between a liberal-market-oriented and a sustainability-committed international investment agreement policy. The recent debates on TTIP, however, seem to hamper this open situation in a manner that the EU only broadens markets, not social and societal perspectives. The debates, mainly secret and without democratic transparency, concentrate on free trade, non-state dispute settlement etc. (see the superficial overview in European Commission 2014). They fail to identify and operationalise a world-wide social model which seriously takes into account the triangle of sustainability: economic, social and ecological progress.

8. Conclusion: trade unions as mid-wives of a new European FDI policy?

There seems to be a window of opportunity for trade union activism in the field of foreign common commercial investment policy - beyond TTIP and market-liberal only concepts. This specifically holds for the elaboration of guidelines for EU Member state-internal and -external BITs, possibly even for a European model-BIT (for a sceptical view see Mestral 2013). The FDI issue and its regulation are on the agenda worldwide. It has been pushed, through the Lisbon Treaty, on the EU agenda too. All legislative actors are, albeit differing considerably with regard to precision, in favour of adding sustainability aspects into the existing and future BITs. There is a lack of consensus, however, though not open, on whether these sustainability aspect should be limited to the conservation of national regulation autonomy or whether they could encompass harmonising global social and environmental regulation.

Here the European and global trade unions can enter into the game. They can provide active support to the side which wants to harmonise social standards, not only on a European level, but which moreover, in a cosmopolitan way, wants to pave the way for a global floor for social rights. This is a chance for the efforts to give momentum, not only to the European Charter for Fundamental Right, but equally to wider social standards like the European Convention for the Protection of Human Rights and Fundamental Freedoms and the ILO labour standards.

In doing so, however, trade unions should keep in mind the risk of hidden protectionism connected with the claim of universal social and environmental rights (Mückenberger 2011c). A trade union cosmopolitan strategy with respect to international investment agreements has to provide and encourage a two-step agenda: first supporting and strengthening universal labour rights; second caring for efforts to make less developed countries capable of complying with and implementing these standards.

This two-step agenda was already proposed in 2001 in the 'Manifesto Social Europe' edited by the European Trade Union Institute (Mückenberger 2001). Section 8 of the Manifesto – under the heading 'Global Economy – Global Solidarity' – reads as follows:

> The 1999 WTO Conference in Seattle demonstrated that Social Europe must include a global dimension. Not only the common agricultural policy, but also social policy in Europe can impact on less developed parts of the globe. Social rights are universal rights, but their achievement in the poorest countries of the world imposes an obligation of solidarity on the EU. If the EU expects poor countries to honour universal standards, it must undertake to shoulder the cost which they can less easily afford. Anything else is mere cynicism.
> Social Europe needs to shape and implement instruments and measures to enable poorer countries to adopt and implement social standards (Mückenberger 2001).

In conclusion, at present, there seems to be the 'kairos' (the window of opportunity) to take first steps in the direction of norm-building for sustainable foreign investment – in an important and up-to-date part of EU foreign policy: FDI and investment treaties.

References

Anner M., Bair J. and Blasi J. (2013) Towards joint liability in Global supply chains: addressing the port cases of labor violations in international subcontracting networks, Comparative Labor Law and Policy Journal, 35(1),Fall 2013, 1-43.

Arnauld A. v. (2014) Europäische Außenbeziehungen, Enzyklopädie Europarecht, 10, Baden-Baden, Nomos.

Bungenberg M., Reinisch A, Tietje Ch. (2013) EU and investment agreements: open questions and remaining challenges, Baden-Baden, Nomos.

Bungenberg M., Griebel J., Hobe S. and Reinisch A.(2014) International investment law, Baden-Baden, Nomos.

European Commission (2010) Communication from the Commission to the European Parliament, The Council, the European Economic and Social Committee and the Committee of the Regions: towards a comprehensive European international investment policy [Online], COM(2010) 343 final 4, 7 July 2010. http://trade.ec.europa.eu/doclib/docs/2010/july/tradoc_146307.pdf [Accessed 08 January 2014].

European Commission (2014): The Transatlantic Trade and Investment Partnership (TTIP). TTIP explained, May 5th, 2014.

European Court of Justice (ECJ) (2007a): , case C-438/05, Viking.

ECJ (2007b): case C-341/05, Laval.

ECJ (2008a): case C-346/06, Rüffert, Judgment of 3.4.2008.

ECJ (2008b): case C-319/06, Luxemburg, Judgment of 10.7.2008.

Gereffi G., Humphrey J. and Sturgeon T. (2005) The governance of global value chains, Review of International Political Economy, 12 (1), 78-104.

Gerlach F., Greven T., Mückenberger U. and Schmidt E. (2011) Solidarität über Grenzen: Gewerkschaften vor neuer Standortkonkurrenz, Berlin: sigma.

Guzman A. T. (2009) Explaining the popularity of bilateral investment treaties, in Sauvant K. S. and Sachs L. E. (eds.), the effect of treaties in foreign direct investment: bilateral investment treaties, double taxation treaties, and investment flows, Oxford, OUP, 73-98.

Hepple B. (2005) Labour laws and global trade, London, Hart.

Jakobeit C., Kappel R. and Mückenberger U. (2010) Zivilisierung der Weltordnung: Normbildung durch transnationale Netzwerke, Leviathan, 38(3), 411-427.

Lörcher K. (2013) Zum Beitritt der Europäischen Union zur Europäischen Menschenrechtskonvention, Arbeit und Recht, 2013 nr. 1, 23-27.

Mestral A. de (2011) Is a EU BIT possible – or even desirable ? in Sauvant K. *et al.* (eds.), FDI Perspectives, Vale Columbia Center.

Moreau M.-A. (2006) Normes sociales, droit du travail et mondialisation, Paris, Éd. Dalloz.

Muchlinski P. (2009) The framework of investment protection: the content of BITs, in Sauvant K. S. and Sachs L. E. (eds.), The effect of treaties in foreign direct investment: bilateral investment treaties, double taxation treaties, and investment flows, Oxford, OUP, 37-72.

Muchlinski P. (2010) The COMESA common investment area: substantive standards and procedural problems in dispute settlement, SOAS School of Law Legal Studies Research Paper Series, 11 / 2010, London.

Mückenberger U. (2001) Manifesto social Europe, Brussels, ETUI.

Mückenberger U. (2010) Civilising globalism: transnational norm-building networks as a lever of the emerging global legal order? Transnational Legal Theory, 1(4),Oxford: Hart Publ, 523-573.

Mückenberger U. (2011a) Chances and obstacles for international trade union strategies in the CSR field, in Vitols S. and Kluge N. (eds.), The sustainable Company: a new approach to corporate governance, Brussels, ETUI, 145-66.

Mückenberger U. (2011b) Hybrid global labour law, in Blanpain R. and Hendrickx F. (eds.),Labour law between change and tradition:Liber Amicorum Antoine Jacobs, Alphen aan den Rijn, Kluwer, 99-116.

Mückenberger U. (2011c) Globale Solidarität oder Protektionismus wider Willen? In Gerlach F. *et al.* (eds.),Solidarität über Grenzen: Gewerkschaften vor neuer Standortkonkurrenz, Berlin: sigma, 17-33.Mückenberger, U. (2014): Eine europäische Sozialverfassung? In: Europarecht (EuR), vol. 49. part 4, pp 369-399.

Mückenberger U. and Jastram S. (2010) Transnational norm-building networks and the legitimacy of Corporate Social Responsibility standards, Journal For Business Ethics, 97, 223-39.

OECD (1998)The multilateral agreement on investment, Negotiating Group on the Multilateral Agreement on Investment (MAI), Report by the Chairman to the Negotiating Group, DAFFE/MAI(98)17, 4 May 1998, Paris.

OECD (2011) OECD Guidelines for Multinational Enterprises, 2011 Edition, Paris.

Picciotto S. (1998): Linkages in international investment regulation: The antinomies of the draft Multilateral Agreement on Investment, in *University of Pennsylvania Journal of International Economic Law*, 19 (3) 731-768Prislan, V. and R. Zandvliet (2013): Labor Provisions in International Investment Agreements: Prospects for Sustainable Development, GROTIUS CENTRE WORKING PAPER SERIES, Leiden University.

Reinisch A. (2013)The EU on the investment path: *Quo Vadis* Europe? The future of EU BITs and other investment agreements[Online], Working Paper, University of Vienna. http://papers.ssrn.com/sol3/papers.cfm?abstract_id= 2236192[Accessed 25 May 2013].

Sauvant K. S. and Sachs L. E. (2009) The effect of treaties in foreign direct investment: bilateral investment treaties, double taxation treaties, and investment flows, Oxford, OUP.

SICE (2004) Treaty between the United States of America and Uruguay concerning the encouragement and reciprocal protection of investment[Online], http://www.sice.oas.org/TPD/URY_USA/Negotiations/text_e.pdf [Accessed 3 August 2015]

SICE (2013) United States – Uruguay: background and negotiations[Online], Foreign Trade Information System, OAS, SEDI, DEDTT. http://www.sice.oas.org/TPD/URY_USA/URY_USA_e.ASP[Accessed 31 December 2013].

Titi A. (2014): The Right to Regulate in International Investment Law, Studies in International Investment Law, vol. 10, Baden-Baden: Nomos/DIKE/Hart Publishing"

UNCTAD (2011) World investment report 2011: non-equity modes of international production and development, Geneva, United Nations.

UNCTAD (2012) World investment report 2012:towards a new generation of investment policies, New York and Geneva, United Nations.

Vandevelde K. N. (2009) A brief history of international investment agreements, in Sauvant K. S. and Sachs L. E. (eds.), The effect of treaties in foreign direct investment: bilateral investment treaties, double taxation treaties, and investment flows, Oxford, OUP, 3-36.