universität wien

MASTER THESIS

Titel der Master Thesis / Title of the Master's Thesis

„An economic analysis of Investor-State Dispute Settlement between developed countries“

verfasst von / submitted by

Elisabeth Puttinger, BSc

angestrebter akademischer Grad / in partial fulfilment of the requirements for the degree of

Master of Advanced International Studies (M.A.I.S.)

Wien 2018 / Vienna 2018

Studienkennzahl lt. Studienblatt Postgraduate programme code as it appears on the student record sheet:	A 992 940
Universitätslehrgang lt. Studienblatt Postgraduate programme as it appears on the student record sheet:	Internationale Studien / International Studies
Betreut von / Supervisor:	Prof. Werner Neudeck

diplomatische akademie wien

Vienna School of International Studies

École des Hautes Études Internationales de Vienne

Abstract

Even though investment agreements were meant to serve as a protection against an unstable rule of law, the number of treaties concluded is also on the rise between developed countries. Moreover, they started to include at least some kind of possibility to arbitrate specific provisions in front of a tribunal. By now, the all-encompassing umbrella clause for investor-state dispute settlement has arrived as a common standard in the international agreements of today. From a legal point of view, the possibility of arbitration is an important mean to grant certain rights to an investor to defend vital interests and invoke those privileges in front of a tribunal. For businesses, it is of essential importance to give force to the agreements concluded and decrease legal uncertainty. However, the topic is heatedly discussed in politics and in the public eye, especially surrounding the pending conclusion of agreements like CETA or TTIP. Arbitration is seen as a way to influence state decisions, as nations fear liability for their actions. Therefore, this thesis analyses if and how such clauses show valuable effects on economic growth through higher foreign direct investments in order to evaluate the benefits and drawbacks from a cross-disciplinary perspective.

Zusammenfassung

Angeheizt durch den bevorstehenden Abschluss von Verträgen wie CETA und TTIP, hat die aktuell herrschende Debatte über die Möglichkeit einer Schiedsgerichtsbarkeit viele politische Probleme und Komplikationen hervorgerufen. Nichtsdestotrotz ist diese Art von Einigung im Streitfall die beste Möglichkeit für Investoren um ihre Reche aus dem völkerrechtlichen Vertrag geltend zu machen. Um die Vor- und Nachteile aus beiden Lagern abzuwiegen, wird in dieser Arbeit der tatsächliche wirtschaftliche Effekt dieser Klausel überprüft. Durch Vergleiche der direkten Auslandsinvestitionen vor und nach Abschluss des Vertrages, unter Einbeziehung wichtiger Partnerländer, wird überprüft, in wie fern die Schiedsgerichtsklausel einen Einfluss auf das Wirtschaftswachstum getrieben durch Investitionen hat.

Table of contents

1. Overview

According to Agrawal (2016), an investor decides where to invest internationally based on tax rules, return on investment, the local justice system and the investment protection regime under international law. Investment protection is thus an important part of several international agreements, first and foremost in bilateral investment agreements (BITs) or treaties with investment provisions (TIPs). Not only is the declaration to protect investments via such agreements necessary to incentivize foreign investors, but also certain concrete mechanisms for enforcement have to be installed. Thus it is not surprising that more and more international agreements concerning investment include so-called investor-state dispute settlement (ISDS) clauses, enabling arbitration in front of ad-hoc tribunals or the International Centre for Settlement of Investment Disputes (ICSID) hosted by the World Bank. Nowadays, even other agreements not specifically concerning investment, such as agreements concerning free trade and economic partnership, have taken on such arbitration provisions to enable a monitored and common approach to dispute settlement.

Historically speaking, such protection clauses were invented in order to support the mostly unstable rule of law in developing countries - this was needed to attract foreign investment to help those unstable countries to grow. Nowadays, however, such protection clauses are seen as a common provision in every trade and investment agreement. From a legal point of view, such a protection clause is a way to support investments and ensure legal remedies. It was defined as a means to support direct (and indirect) investment in countries with low development, which typically suffer from low stability and corruption as well. Foreign investment boosts the economy but understandably, investors must seek legal certainty for their investments taken. Through the possibility of dispute settlement via arbitration, legal support can be given to foreign investors even in the most unstable regions of the world. In fact, despite greater levels of legal stability and well-developed judicial systems in highly developed countries, even agreements within developed countries often include such provisions nowadays, as they are seen as an effective way to attract foreign investment. Most importantly, the arbitration clause is the only way to actually invoke the rights given by international agreements, as this is not possible in the national jurisdiction. From an economic perspective, such international or bilateral agreements certainly boost investment and also deepen collaboration between partner countries in other spheres like trade and should thus be further supported. Nevertheless, dispute settlement clauses are highly disputed in the political world and their implementation in such international agreements is always heatedly discussed, as it is connoted to undermine national jurisdiction and to favour international over national investors. Therefore, it should be considered whether agreements including arbitration lead to significantly higher foreign direct investment and, if proven so, whether the economic benefits of higher foreign direct investment (FDI) thus outweigh the political disputes circling around the issue.

In order to evaluate the question of economic benefits, this thesis aims to research the existence of higher levels of foreign direct investment between developed countries after the entry into force of bilateral agreements including arbitration provisions. Based on two agreements serving as case study, the agreement between Switzerland and Japan as well as the agreement between Hong Kong and New Zealand, this thesis will examine the economic and legal aspects of those arbitration provisions and the respective influence on other fields concerning such agreements.

2. Research Question and Research Method

Based on the statements above, I would like to focus on the question of benefits of the investor-state dispute settlement clause in international investment agreements between developed countries. In order to evaluate the economic and legal aspects, the research question must be twofold: the first part is to prove the (in-) existence of higher foreign direct investment between the partner countries since the IIA. The second part needs to evaluate whether foreign direct investment is to a certain degree even beneficial for the country. In light of the above, my research question is:

“The legal and economic benefits and disadvantages of investor-state dispute settlement between developed countries: Do the benefits effectively outweigh the problems?”

On the one hand, I will look at the economic benefits in terms of increased investments and accelerated growth in specific regions. The existence of dispute settlement clauses should contribute to higher foreign direct investment in the partner countries, and this is what I will be investigating in my selected case studies. More specifically, I would like to focus on the bilateral treaty on economic partnership between Hong Kong and New Zealand, and the bilateral treaty on economic partnership and investment between Japan and the Swiss confederation. The two cases mentioned above have been selected based on a number of reasons. These cases offer a number of benefits for empirical research: both treaties have been in force for a number of years, 10 and 9 years respectively, and thus a good amount of data can be obtained. They also offer the possibility to draw a comparison between countries which are very different in terms of region and economic growth, as well as the political situation. Moreover, all four countries have concluded several bilateral investment agreements, some with and also some without the dispute-settlement provisions. As the main goal of investment agreements should be accelerated investments further leading to economic growth, I am going to analyse the levels of foreign direct investment between the countries involved, both before and after the bilateral agreement was put into effect. Furthermore, in order to see if the accelerated growth in foreign direct investments is due to the investor-state dispute settlement provisions, I am going to analyse the overall situation both with other bilateral treaty partners of those countries – more specifically those BIT partners without ISDS provisions – and also with other countries which are important due to economic, political or geographical reasons, to exclude the influence of other external factors leading to economic growth or higher foreign direct investment.

On the other hand, based on qualitative research with company representatives, I will research whether the (non-)existence of such a dispute settlement provision influences the decision-making process and if so, to what degree companies count on those provisions when it comes to their choice of investment location. Moreover, I want to look into the matter of “treaty-shopping”, which is often used as a political argument against the inclusion of ISDS provisions.

3. General Assumptions

First of all, as this thesis is focusing primarily on agreements between developed countries, a definition for “developed” has to be found. The World Trade Organization (WTO) abstains from an official definition mostly based on political reasons. However, the International Monetary Fund (IMF) as well as the World Bank clearly define developed countries based on certain key performance indicators (KPIs) and their respective thresholds. The IMF definition takes into account several values such as per capita income, export diversification and integration into the financial system on a global level. The World Bank considers countries with per capita income of more than 12.275 US dollars to be “developed” (World Bank Official Website).

This research will concentrate on the *Agreement on Free Trade and Economic Partnership between the Swiss Confederation and Japan*, concluded in 2009, and the *Government of Hong Kong and the Government of New Zealand Closer Economic Partnership Agreement*, based on an already existing bilateral investment agreement from 1995 with ISDS provision, concluded in 2010. The countries have been chosen based on a combination of both the above mentioned definitions in order to enable valuable results. According to the *World Economic Outlook* (maintained jointly with the IMF’s Research Department), there are 28 countries classified as “advanced”, including Japan, Switzerland, Hong Kong (SAR) and New Zealand. In light of the above, all four countries examined in this research can be classified as developed. Moreover, all four countries are currently part of international agreements enhancing trade and investments between developed countries which furthermore enables a certain degree of representation in terms of the current global investment situation.

Second, it has to be stated that this research solely focuses on the dispute settlement mechanisms, not on the investment agreement protecting foreign direct investment in general. This research aims to investigate the existence of economic and legal benefits due to investor-state dispute settlement mechanisms, not the existence of foreign direct investment due to international agreements specializing on investment. Therefore it is crucial to note that both agreements mentioned above include provisions for dispute settlement, including the right for international conciliation and arbitration at the International Centre for Settlement of Investment Disputes (ICSID) or an ad-hoc tribunal (*Agreement on Free Trade and Economic Partnership between the Swiss Confederation and Japan*, Article 94(3) and the earlier BIT *Agreement between the Government of Hong Kong and the Government of New Zealand for the Promotion and Protection of Investments*, Article 10(2) found in Annex 1 and 2).

4. Dispute Settlement in Investment Agreements

4.1. History of Investment Agreements

Bilateral Investment Treaties have started to take over international relations in terms of economic and investment partnerships. Such investment agreements in their basic form can be traced as far back as colonialist times, when nations found a way to incentivize and protect trade and investments between empires and their (former) colonies. Once independent, these nations started signing "friendship, commerce and navigation" (FCN) treaties (Agrawal, 2016). Since the first bilateral investment treaty was signed in 1959 between Germany and Pakistan, the number of BITs signed worldwide has risen exponentially. By now, over 3000 bilateral investment treaties have been signed with an overwhelming majority of them still in force.

The rise of bilateral investment treaties in the last half-century can, according to Jandhyala (2011), be separated into three distinct waves. In the first phase from 1960 to 1980, investment treaties were mainly used to offset or limit the risks of foreign direct investment in underdeveloped, mostly unstable countries. The institutions in the underdeveloped countries were not perceived as reliable and stable in comparison to those of the developed world, as corruption played (and still plays) a large role in the decision-making process around foreign investment. In order to attract investments from developed countries and therefore increase economic growth, the first BITs were mainly treaties signed between developed and underdeveloped countries across the globe.

During the second wave (1980-2000), however, such investment treaties were mainly signed within the developing world, which led to a number of agreements being made without actually calculating or taking into account the possible costs and risks of those investment agreements – they were seen as part of the "standard procedure". BITs were seen as the appropriate mechanism for states to show a certain degree of protection of investment, irrespective of the current situation or need of the country. Developing countries further saw the need to enter such agreements to "demonstrate adherence to what had become a global standard or norm" (Jandhyala et al., 2011, p.1049) and the signing of such agreements increased considerably compared to the first wave. In the 1960s, roughly 20 treaties were signed per year - this increased to over 100 conclusions per year in the 1990s. These include the IIA between Congo and Egypt in 1998 and most of the agreements with Niger (Tunisia 1992, Egypt and Algeria 1998). Argentina, for example, signed 57 international investment agreements with countries from all over the world in the decade between 1990 and 2000, most of them with developing or underdeveloped states.

In the third wave (since 2000), more and more countries have started to realize the potential costs of these agreements. To a large extent this is due to the introduction of investor-state dispute settlement mechanisms. In light of the rise of a universal investment regime, it was crucial to create mechanisms for dispute settlement in international agreements. Likewise, with the emergence of bilateral investment treaties, certain remedies had to be established for foreign investors in order to facilitate foreign direct investment. However, as the basis for most agreements was customary international law, the only official remedy for a private person in international law was non-legal diplomatic force. It must be stressed that diplomatic relations have often proven ineffective or unsatisfying for an investor. In a case where diplomatic protection is desired, the affected investor needs to exhaust all local remedies beforehand. Local remedies, however, are only considered exhausted where justice is denied, thus making the use of diplomatic force basically unreachable. Furthermore, foreign investors do not have the same legal personality in national courts when it comes to matters dealing with an international agreement. An international investor cannot claim rights given by an international agreement in front of a national court. Therefore, the pressure was high to find a way for a private entity to have legal rights and obligations in international law, and be able to enforce them.

Furthermore, countries had incentives to walk away from conflict resolution through diplomatic force and towards national jurisdiction. Carlos Calvo, an Argentinian diplomat, had already established 1868 in his book "*International Law of Europe and America in Theory and Practice*" that private persons holding property in Latin America should have the opportunity to redress matters in the national courts instead of seeking diplomatic intervention; this is now better known as the "Calvo Doctrine". He also argued that states should abstain from using armed force to collect debts. Therefore, the Calvo Doctrine stipulates that every dispute with a Latin American country has to have jurisdiction in that country rather than in the claimant's jurisdiction as it was the case before. The Calvo Doctrine was further supported by the later Drago Doctrine, named after the Argentinian foreign minister Luis María Drago in 1902. However, the provisions in those doctrines stood in direct conflict with the Monroe Doctrine of 1823 and the Roosevelt Corollary of 1904 (Encyclopaedia Britannica, 1998). Several attempts to regulate international investments, despite improving the situation not only for investors but also for governments, failed or collapsed before they began. As stated above, Latin America opposed the widely accepted international rules through the Calvo Doctrine. Despite being the first driver of the project, the US was not able to ratify the Havana Charter - thus killing the International Trade Organization before it even started. GATT remained the only organization regulating international trade, although without any provisions concerning investment until TRIMS in 1994. The OECD draft Convention on the Protection of Foreign Property 1967 was never opened for signature. The Multilateral Agreement on Investment collapsed in 1998 as France openly refused to support the agreement, effectively preventing it from being adopted due to the OECD procedural regulations.

It was due to the lack of legal standing of private entities in front of national courts when bringing claims based on international agreements that the so-called investor-state dispute settlement mechanism was established. The multi-stage approach consists of a mixture of direct discussions, international conciliation, mediation and as a last remedy, the creation of a tribunal or dispute settlement at the International Centre for Settlement of Investment Disputes (ICSID).

Investment tribunals only have as much jurisdiction as agreed upon in the treaty, as their power is referred to the tribunal by the parties involved. If vouchsafed in the treaty, several provisions may limit the extends of jurisdiction. However, generally speaking, tribunals appointed in international investment agreements are taken seriously by the parties in the matter and the jurisdiction of the tribunal is widely accepted.

Although the investor-state dispute settlement mechanism was first introduced in the Indonesia-Netherlands BIT, concluded in 1968, it only became popular decades later. According to the United Nations Conference on Trade and Development (UNCTAD), only 57 claims were brought in front of an arbitration tribunal until the turn of the millennium. In the following seven years, the number of claims amounted to nearly 300 - nearly four times the total amount brought previously (UNCTAD 2008b). In addition to the fear of being liable for political decisions, states furthermore expressed the concern over private tribunals being granted more power than national courts. However, capital-exporting countries continued to push for more specific rules on arbitration and investment protection in order to reduce the ambiguity of international law and uncertainty about possible outcomes and better secure their vital interests. It is not surprising, then, that developed, capital-exporting countries are still in favour of signing international investment agreements including those provisions, with the developing world as much as among themselves.

By now, the growing investment all over the world has led to a universal international regime of integrating national economics into an international framework through the removal of barriers or at least a certain degree of facilitation. Even though developed, capital-exporting countries continuously were the main driver of international investment agreements throughout history, the situation has changed considerably in the last decades. Through the introduction of the arbitration mechanisms, the situation all over has changed and thus there is much reason to look at the topic more closely.

4.2. Political aspects of Investor-State Dispute Settlement

Despite the legal aspects, there are currently heated discussions around the topic of the necessity of a tribunal. Several developed countries have stopped implementing the ISDS provisions in their international agreements altogether mostly due to unpopular political implications in the public eye. In the last years, we have seen several international agreements being changed or even cancelled in the last stages, due to public uproar. Those discussions more often than not circle around the investor-state dispute settlement mechanisms included in the treaty.

First of all, nation states have very diverse views on the inclusion of dispute settlement provisions in their investment agreements. Some countries have made it a standard to include such provisions, or at least to refer to the ICSID in their international agreements. Others are very tentative about including it – France, for example, had a long time tradition of including such provisions or even referral to the ICSID only if the investor in question insisted on a regulation concerning dispute settlement. The Republic of Germany has never included ISDS provisions in their treaties and hardly ever included a referral to the ICSID and even then, only for the whole treaty and not solely for the assessment of damages (Rubin et al., 1984).

Secondly, such provisions are badly perceived, as they are seen to undermine nation states and favour international investors. In order to be able to act independently and without bias, investment tribunals normally consist of three different judges - each contracting party may appoint one judge, plus one additional judge agreed upon by both as a neutral chair (see for example Agreement between the Government of Hong Kong and the Government of New Zealand for the Promotion and Protection of Investments, Article 10 (2)). This way, both parties have the same amount of influence on the matter. In comparison, national courts are seen to be biased in favour of their home state due to being created as a state institution.

Thirdly, when it comes to the argument of favouring international investors over nation states, there is no evidence in either direction: according to the investment policy hub of the UNCTAD, there are currently 855 known cases of treaty-based investor-state arbitration; 548 of them have been concluded, 297 are still pending and 10 are unknown. Out of the concluded original proceedings, 36.5% were decided in favour of the state, 27.9% in favour of the investor, and the rest were either settled, discontinued or decided in favour of neither party.

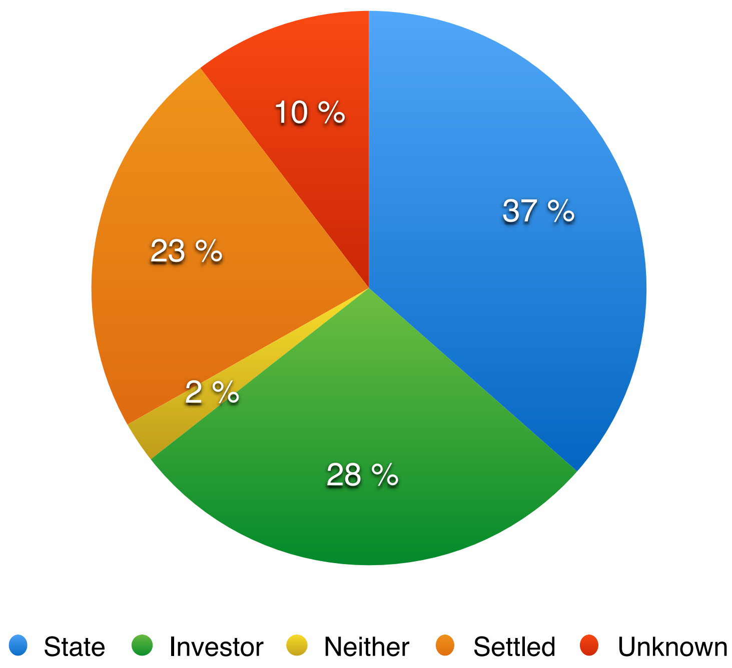

Figure 1: Source: Investment Policy Hub (UNCTAD)

Fourthly, another aspect of the dispute settlement provisions is the durability of such clauses. In some treaties, these provisions still apply even after the dissolution of the international agreement. This grants investors significant protection as they can still bring claims long after the actual treaty is not in force anymore (Rubin et al., 1984).

Fifthly, some multinational corporations may use the power granted by such provisions to the fullest. Through their investment structure, they can not only limit their liability but also decide, based on their company structure, where to use their dispute settlement options. The first refers to the degree of control they exercise over their foreign direct investments. The mechanisms on offer depend very much on how the foreign direct investment is set up: whether it is structured as a tandem business with countertrade, as a beneficial interest, or as a (dis-)joint venture influences the direct liability of the foreign investor and thus the effectiveness of investor-state dispute settlement mechanisms in the first place. Moreover, some may claim that multinational corporations make further use of their company structure to undergo claims or enhance their position by choosing the right location for their claims. For an investor to enjoy the arbitration privileges granted under an international investment agreement, the investor has to be counted as a national of one of the states involved in the agreement. Given the sometimes varying treatment of investors in the diverse range of BITs, a corporation may structure their investments accordingly: changing office location through a diverse structure of branches in order to obtain "nationality" wherever the "best" international agreement for protecting investments is in place, and thus, the best position for arbitration claims (Tekin, 2017). This tactic is also known as "treaty-shopping" and is a serious allegation concerning investor-state dispute arbitration. Even though one could argue that treaty-shopping contributes to the liberalization of international investment law, it also has a series of negative consequences for the host state. Most international investment agreements have been in force for a long time, when treaty-shopping did not exist and definitely was not practiced frequently. Therefore, states could not predict the possible consequences of such behaviour. In principle, the practice of treaty shopping is not prohibited under international law, as such agreements should encourage international investment. However, it is seen not only as a "bad faith manipulation" of the investment regime, but also as an abuse of rights which could lead to long-term consequences for the international investment regime. States may renegotiate BITs in order to cap treaty-shopping or deny some beneficial clauses in the short run to put a stop to unforeseeable consequences arising from such tactics. In addition, the practice sheds a bad light on investor-state dispute settlement mechanisms in general in the public eye, as it adds to negative perceptions of their potential to exploit nation states in favour of international investors (Tekin, 2017).

Due to the fact that there are certain serious political issues surrounding the topic of investment arbitration, it is understandable that the standard rules of international agreements are put into question. Moreover, some of the arguments outlined above do have its grounds and have to be taken serious from a state perspective. Nevertheless, the whole system is based on a weighted approach from different standpoints, thus this thesis is focussing on the arguments from all disciplines in order to make a considerate judgement on the benefits and drawbacks of arbitration.

4.3. The status of investment arbitration in the legal system

Due to the factors mentioned above, the compatibility of arbitration tribunals with both international and national settings is in question. Private or “commercial” arbitration is already a commonly used mechanism in national law. The installation of private arbitration tribunals can be agreed upon in the commercial contracts between corporations and also between corporations and their home state. In comparison to “normal” courts, arbitration tribunals are proven to be more effective in terms of costs and duration, especially in high-value cases, and are more flexible in terms of proceeding modes, location and languages. Private arbitration also allows the parties to select the judge in the proceedings, which enables them to put someone with special knowledge in the matter in charge (Kreindler and Rust, 2011). The exclusion of the public is also an important factor in commercial arbitration, as some corporations might prefer to avoid such (possibly negative) publicity. One of the most important aspects to consider about commercial arbitration though is the ability to deal with cross-border matters, which are not as easy to handle in the national courts system. Nevertheless, commercial arbitration is disadvantaged by its lack of remedies and legal right for compulsory execution, and despite all the benefits outlined above, cannot contribute to the common progress of law standards, as the disputes are not disclosed to the public and cannot be taken as a precedence in further proceedings (Kreindler und Rust, 2011).

Most of the arguments above are also valid for the international arbitration of investment disputes. Again, these tribunals are more efficient and less costly due to a lower degree of complexity in institutional structure. The most pressing issue in international arbitration, however, is the lack of legal standing in national courts making use of international law. Courts cannot provide necessary legal protection in international matters, especially given the legal immunity of states. Moreover, while the non-disclosed nature of such disputes is favourable for private matters, this is not the case in investor-state disputes, as nation state matters are always matters of public interest. However, supporters of arbitration tribunals argue that they are in fact more accessible than national courts - by now, the majority of the recent cases have been thoroughly documented online. This is especially due to Art. 48 ICSID arbitration rules and the 2013 UNCITRAL (United Nations Commission on International Trade Law) rules for transparency, which state that the publication of important case documents are legally required in order to counter such arguments.

When it comes to the interference of either commercial or investment arbitration legislature with national rule of law, the system is by now very diverse and complex. Most important is the acceptance of the tribunal by the nation state; whether the arbitration takes place at the ICC Court of Arbitration for commercial disputes or the ICSID (or any other ad-hoc tribunal under UNCITRAL rules) for international investment disputes, it is essential that the state in question has accepted the court as a legal remedy (Kreindler and Rust, 2011). In this case, all court rulings arising from such disputes are enforceable under national law and are thus given legal force. Thus the states in question must comply with the court rulings and are not able to make use of national remedies. It is this condition which has given rise to discussions surrounding the undermining of state sovereignty, as the state is required to give away jurisdiction in that case and is complying with international law through the acceptance as national law. Nevertheless, this is not the case, as states are freely agreeing to make use of international law and are giving away jurisdictional power to an unbiased international court (Kreindler and Rust, 2011). International arbitration - either private or investment - is therefore an important addition to the national legal system. Rather than undermining the jurisdiction or legal force of national courts, international arbitration is thus an important completion in fields where national institutions may be insufficient.

4.3.1. Treaty interpretation in International Law

As mentioned above, customary international law is the common standard of regulatory mechanisms between states. International agreements are based on some standard rules of international law in order to guarantee a minimum standard and rule of law. Due to the fact that all arbitration or dispute settlements in general have to be based on some generally applicable mechanisms and rules of procedure, interpretation of international law plays an important role in the jurisdiction of such dispute settlements. However, in order to shed light on interpretation for jurisdictional matters, treaty interpretation in general plays a major role.

For this thesis, we have to underline the difference between general rules of treaty interpretation and special provisions for bilateral investment treaties. In the former, the *Vienna Convention on the Law of Treaties* from 1969 contains several provisions on the general mechanisms of treaty interpretation. In the latter however, there are specific aspects that have to be taken into account which are only applicable in bilateral treaties. *The Vienna Convention on the Law of Treaties* from 1969 deals with general rules and the scope of application of customary law in the interpretation of treaty agreements. First and foremost, tribunals have to take into account the ordinary meaning of terms, according to Article 31(1) of the VCLT:

"a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purposes."

Moreover, the preambular statements can be taken into account in order to logically infer the ordinary meaning. In terms of investment agreements, treaties cannot be interpreted to have only investments as the greater indisputable goal - there is no general preference for the investor's interests over the host state, it requires a balanced approach. What is more, some general assumptions can be made concerning fair and equitable treatment, and parties can intentionally give special meaning to specific words (Art. 31(4) VCLT 1969). Any other agreements, subsequent agreements, practices and international law related to the treaty have to be taken into consideration as well (Art. 31(2)&(3) VCLT 1969). In addition, a treaty can derogate from custom if done so expressly. Thus we must further distinguish between regional and global custom in terms of customary international law. However, if none of the above lead to a satisfying outcome or if obscurities occur, which would lead to absurd provisions, supplementary means of interpretation have to be included. In multilateral agreements or founding treaties of international organizations for example, interpreters of such treaties have to take into account the "travaux préparatoires" – the preparatory work that went into drafting the treaty.

Nevertheless, there are specific exemptions to the concerning bilateral treaty interpretations. Most importantly, "travaux préparatoires" may simply not exist, as smaller bilateral negotiations are highly unlikely to include extensive preparatory work. In contrast to complex multilateral agreements, bilateral agreements are often very dependent upon their wider context. In general, bilateral investment agreements are typically based on a short catalogue of primary rules of investment protection with or without a provision for dispute resolution, either referring to national courts or the establishment of an arbitration tribunal. When it comes to the interpretation of arbitration clauses, the language analysis of such ISDS provisions is essential. As surveyed by the OECD, more than half of the current bilateral investment treaties include at least two arbitration fora; ICSID and ad-hoc tribunals under UNCITRAL rules. Nevertheless, only a small number of treaties include the explicit and exclusive settlement of disputes in front of independent tribunals, instead of primarily referring to jurisdiction of national courts. In those cases, only disputes based on expropriation issues can be settled. Moreover, an immense variety in rule sets can be found: the OECD observed over 1.000 different sets in only 1.660 bilateral agreements (OECD Working Papers, 2012). With such a high number of textual variety, obtaining a clear framework is crucial in order to effectively implement those agreements in a legal setting.

5. Foreign Direct Investment

As the central piece of this thesis is focussing on the topic of foreign direct investment, certain aspects to the matter have to be discussed. In order to evaluate the economic and legal benefits of the investor-state dispute settlement provisions in international investment agreements, we have to look at the benefits of economic growth in general and thus, foreign direct investment in particular. Foreign direct investment is, according to the World Bank, defined as following:

“Foreign direct investment are the net inflows of investment to acquire a lasting management interest (10 percent or more of voting stock) in an enterprise operating in an economy other than that of the investor. It is the sum of equity capital, reinvestment of earnings, other long-term capital, and short-term capital as shown in the balance of payments.”

There are several benefits and drawbacks of foreign direct investment, with different issues for the various stakeholders in the matter. Foreign direct investment is known to be a helpful source of state income via investment, especially not only for developing countries but also for highly developed countries to overcome stagnation. Developed states also rely on a certain level of investment coming from abroad, as FDI is known to boost the economy and strengthen economic bonds with other countries. Nevertheless, it also has its drawbacks which are even more concerning for developing countries. In the light of the potentially arising disputes concerning investment, it is even more crucial to weight off the economic aspects to the issue.

5.1. Foreign Direct Investment for Businesses

In order to evaluate the importance of dispute settlement mechanisms on economic factors, the business side of things needs to be carefully taken into consideration. Even though the level of foreign direct investment is certainly the decisive factor in providing arguments for the (non-) existence of benefits, the companies are ultimately the ones taking on those high-risk investments in the first place. Thus it is important to shed light on the foregoing process of foreign direct investment: the decision-making process within the internationally operating corporation. The investments taken on by companies are the parts constituting the levels of foreign direct investment, thus this is where to root of influence is taking place. In order to evaluate this decision-making process, I conducted a very insightful interview with Dr. Armin Toifl in April 2018, who is working as a consultant in the area of contract- and claim management specializing in the field of plant construction. He has also worked for SIEMENS and VOEST Alpine as the head legal consultant and thus has first-hand experience with the matter of international dispute settlement from an investor's point of view. In the following, I am going to highlight his most important standpoints – however, we need to take into consideration that this is taken from one qualitative interview partner and therefore cannot be seen as the overall standard. Nevertheless, it can certainly be seen as a very common point of view on such dispute matters from an investor perspective.

First of all, I learned that the decision-making process concerning such investments is not a knock-out system. It includes various factors ranging from all sorts of business parts including economics, but also politics, geography, labour conditions and many more. Hardly any one of them are black and white or a clear yes and no point to tick off a list - it is a puzzle of diverse aspects and the evaluation is based on the bigger picture. Moreover, those aspects - all of them - need to be weighed and put into perspective before a decision is reached.

Secondly, the investor-state dispute settlement clause is one of those important factors in the mix. In order to choose the strategically best investment location, some legal points have to be taken into consideration, especially the ISDS, because at the end of the day, the arbitration clause is the only viable mechanism to grant access to a possible settlement system. Given the fact that even the best contracts or agreements can have some fault lines and issues for discussion, a regulated discourse on how to deal with disputes arising out of contractual matters is essential for business operations as well as state matters. Moreover, concerning political changes in a country, there are hardly any possibilities for a non-national investor to intervene or even to get their point of view heard or their interests protected. Thus, from an investor perspective, the ISDS clauses are viable to the case.

Thirdly, the economic and political situation in a given country is the most important argument. Stability of the economy as well as stability of the government is essential - foreign direct investment, in comparison to portfolio investment, is planned out strategically and long-term. Thus, many of the problems arising from such investments are based on the situation in the country and the possible future changes, as they are going to have an effect on the investment as a whole. Investors also have to take into account logistical factors and the access to workforce and qualitative personnel. However, in order to successfully set up business there, or get involved with a managerial interest in a foreign investment, the legal situation certainly needs to be clearly defined. How a nation state deals with property, how property is perceived in a country and how it is protected is of high priority.

Lastly, I gained additional insights into the investor's stance towards ICSID versus ad-hoc tribunals under UNCITRAL. Most BITs offer both options in dispute settlement, leaving it to the claimant party to decide. Nevertheless, institutionalized processes are the preferred way, as they are perceived as being more structured and better organized than an ad-hoc tribunal created just for the case. This may be due to a lack of experience, but also due to the catalogue of rules underlying both institutions.

We can see, that the decision process for such investments is not a list of ticks in boxes, but a bigger puzzle of factors. The possibility of arbitration is probably not a reason to invest, as much as the lack thereof is not a reason not to. However, without a given recourse on dispute settlement, most companies question the added value of the agreement protecting investments in the first place. To summarise, the options for investor-state dispute settlement are quite limited in international agreements, with the only options being either ad-hoc tribunals or the ICSID. Both of these options are highly valuable for international corporations planning on investing on foreign grounds: there has to be a way for companies to make their interests heard and fight for their “rights” to protect their investments, and as such, clauses, or at least a possibility to go before a court, are indispensable. Nevertheless, it should be mentioned that, even though very valuable, the (non-) existence of the clause is just one of a number of factors taken into account in the process.

5.2. Benefits of Foreign Direct Investment

Companies benefit from investing internationally in several ways. By establishing production sites or acquiring a managing interest in a developing region, they can benefit from lower labour costs. In addition to this, establishing interest in such regions often comes with the advantage of proximity to raw materials. As a producer, using raw materials can minimise costs, which leads to higher revenue for the investing company. Moreover, by investing in key markets for their branch, firms can reduce transport costs by establishing on-site production rather than shipping the finalized materials to the markets. This offers the further advantage of being able to use local knowledge to enter new interesting markets. Meanwhile, with a subsidiary or managing interest, tariff barriers and other barriers to investment and trade can be avoided. Even though it may increase the complexity of setting up a business, it will allow for lower costs in the long run.

Countries seek to incentivize foreign direct investment due to the benefits of capital inflow; for example, companies setting up on-site businesses has several advantages for the host country. More capital leads to higher output and increased productivity, which in turn leads to more jobs, higher wages and improved working conditions. As we can see in economic theory, higher productivity and efficiency will lead to adaptation of all other working conditions until a certain point of equivalence is reached. Additionally, through capital inflow nation states may finance a current account deficit for the balance of payments. This is advantageous for the terms of trade and thus allows for a higher scope in terms of financial accounts. Knowledge spill-overs too are vital for the development of a national economy; as companies benefit from the intake of local knowledge about the market, so too does the local market benefit from outside knowledge about newer technologies and financial incentives to implement innovation, while also serving as a base of knowledge about further development of national companies in the region (OECD, 2002).

From an economic standpoint, the benefits of foreign direct investment are thoroughly observed in several common economic growth theories. First and foremost, the economic aspects of such investments can be explained by the Solow growth model (1956). Robert Solow created a neoclassical model of economic growth based on three pillars for GDP (Gross Domestic Product): labour, capital and knowledge. In the case of foreign direct investment, the theory underlines the importance of investment on GDP growth; via FDI, there can be more investment in a given economy, thus leading to higher GDP per capita in the long run. The Solow growth model says that output is a function of the quantity of capital $Y=F(K)$, which has a positive relationship. More capital leads to more output due to the enabling of the labour force to work more productively and efficiently. However, the more capital is invested in a certain economy, though its output will continue to grow, it will do so at a diminished rate until eventually a steady state is reached. Thus, outside capital is always welcome to boost further growth - higher investment shifts the curve up and adds to the capital stock to allow the economy to continue to grow until it again reaches a higher steady state, where economic growth equals zero. At the point of a steady state, no further growth is possible without an increase in capital, e.g. investment. In terms of foreign direct investment, this model of economic growth has different implications for developed countries and countries in development. Capital is more productive when the country has little of it (marginal product of capital). This is intuitive, as a country can grow more and faster when situated at a lower point in development, as it takes longer to reach a steady state. For developed countries, however, economic growth reaches a steady state, where economic growth equals zero, faster, and thus it needs further outside investment to boost it over a certain threshold and grow further. The issue of capital depreciation becomes relevant here; the more production sites, streets and infrastructure a certain country has, the more repairs and maintenance expenditure is needed. Thus, more and more capital is needed not only to grow, but just to exchange former capital and outweigh depreciation (Neudeck, 2018).

5.3. Drawbacks of Foreign Direct Investment

However, there are certainly also problems that come with accepting foreign investors and their stake of managing interest in a country. Some of the benefits listed above, which are certainly beneficial for multinational corporations, may be seen as problematic for the recipient country, especially for countries in development.

Multinational corporations can gain managing interests in companies which are taking care of vital national interests. As soon as a company is available for foreign investment, which they sometimes need to be to attract those benefits listed above, there may be a certain risk in terms of national interest. Foreign investors could, via their managing interest, become involved in national politics and, it is feared, might begin meddling with local politics to ensure their interests. This is understandably seen as problematic in the public eye. In developing areas especially, corporations may be tempted to bypass environmental laws or undermine working conditions as the recipient countries may feel the need to incentivize foreign investors in those cases even further, for the sake of capital inflow. What is more, giving foreign countries access to vital raw materials does not necessarily have positive effects for the country's economy, but can turn into the opposite direction. Wealth gained through cheaper raw materials can be transferred to the foreign investor's country, bypassing the actual area of production. Thus, the producing country may not actually benefit as much from on-site production as it may seem. Finally, the avoidance of tariffs and other barriers through investment which are offered to multinational corporations in order to attract their investment in the first place, leads to lower income, via taxes and others means, for the recipient government – though the boost of the economy in general may balance these losses.

There are also drawbacks for developed countries as host and home state. For the home country, it may seem disadvantageous to incentivize foreign direct investment. Logically, the more capital invested abroad, the less those investments are actually taken home to foster further growth, and foreign direct investment can have an influence on exchange rates, to the better or worse for both countries - thus developed countries can also feel the negative effects of investments. What is more, foreign direct investment either from abroad or taken abroad, can have negative consequences on the distribution of wealth in the developed country. As is the issue in many countries, the gap between the poor and the rich is expanding and investment possibilities with high rates of return tend to benefit only the already richer part of a society. However, most importantly, the political concerns discussed above are also more than valid for developed countries. Every investor - whether foreign or national - has a vested interest in the politics of the host country. Thus, even developed countries between each other may have difficulties finding the right balance between national politics and international handling of investments.

6. Economic Situation Case Studies

My empirical research in this thesis is going to deal with four specific countries, namely Hong Kong (SAR China), Japan, New Zealand and Switzerland. As all four countries involved are still all very different in their national structure, it is necessary to give an overview assessment of the current economic situation of the countries involved. As can be seen in chapter 3 (“General Assumptions”), Hong Kong, Japan, New Zealand and Switzerland can all be classified as developed/advanced countries, with all of the above maintaining a generally positive and stable economy. All these countries can be seen as very open to investment and highly integrated in the world investment regime. In order to facilitate comparison, all of the following data is obtained from the World Bank Database. Moreover, in order to increase comparability, GDP is given per capita and foreign direct investments are shown as a percentage of GDP in the given country.

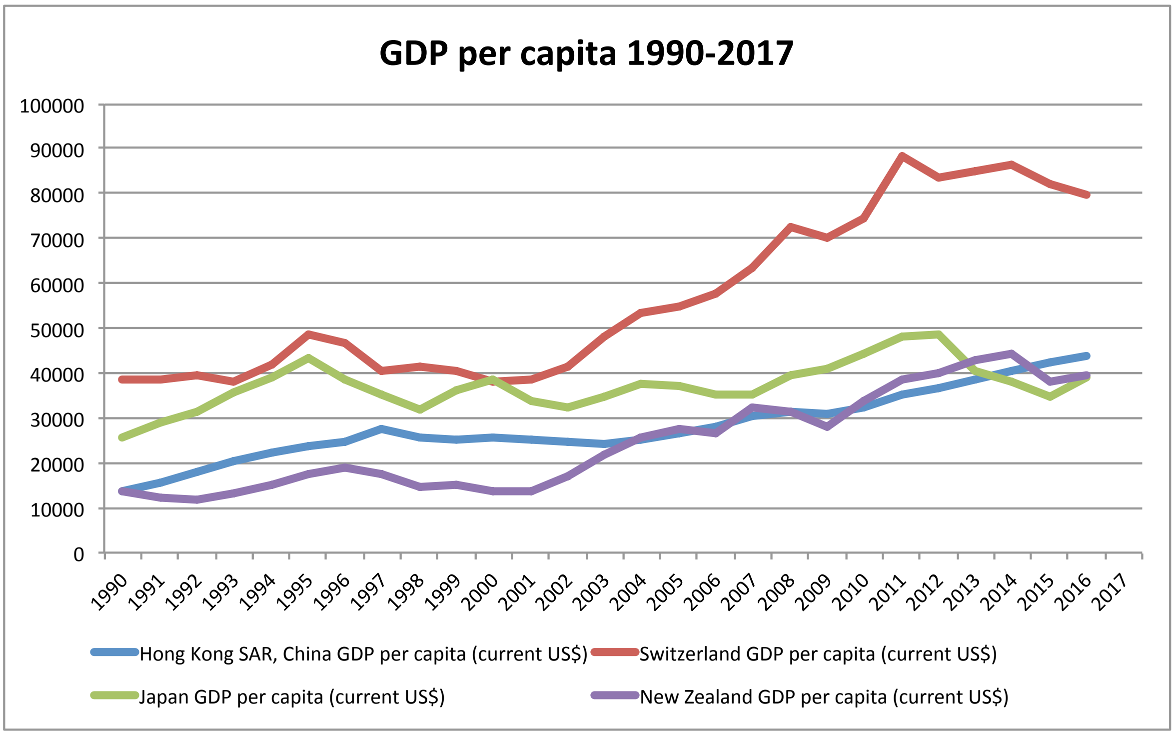

Figure 2: case studies: GDP per capita 1990-2017

6.1. Hong Kong (SAR China)

Hong Kong became part of the People's Republic of China in 1997 but is allowed a high degree of autonomy under the agreement of "one country, two systems" in all matters besides foreign and defence policy. It can be seen as a well-developed, stable country with a reliable rule of law. Currently, GDP per capita is at 43.7k dollars, showing steady growth in the last decades and further growth is under way, with an outstanding 2.04% annual growth rate.

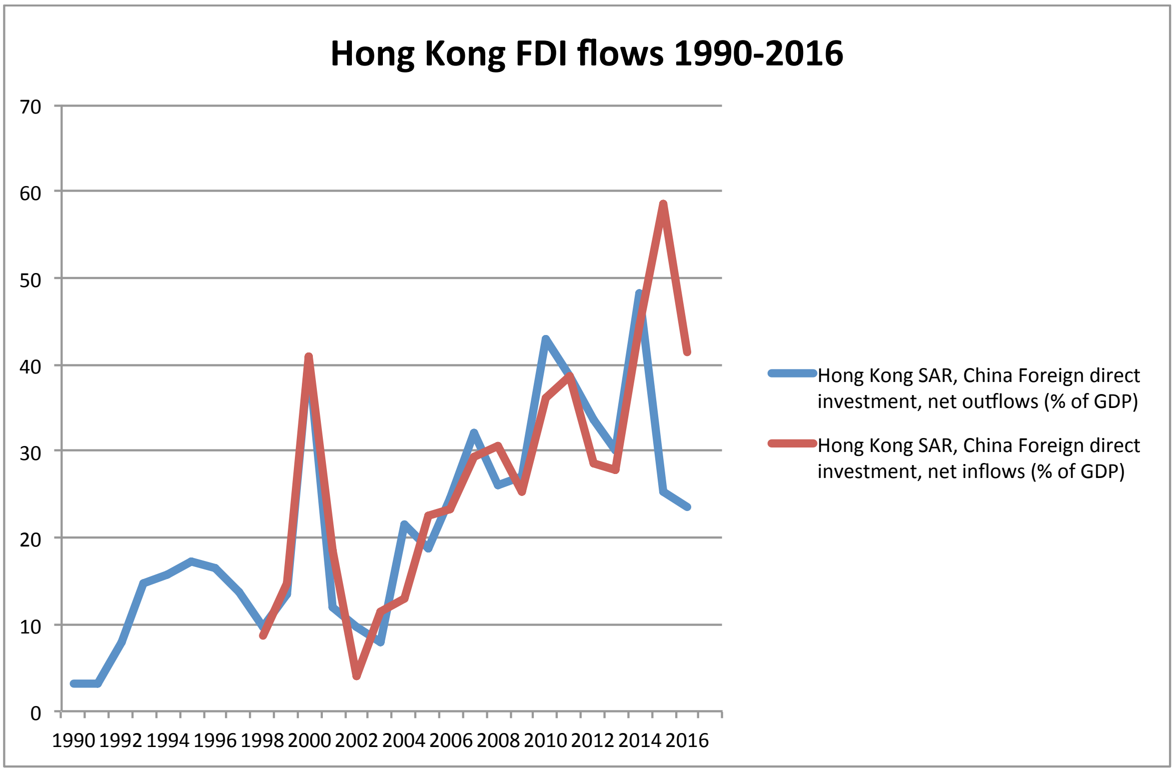

Figure 3: Hong Kong FDI Flows 1990-2016

Hong Kong is very open to investment and currently has in force bilateral agreements with 18 countries and is partner to 6 treaties with investment provisions, 5 of them in force at the moment (see Annex for full country list). It is important to note that 15 of those agreements were concluded with developed countries. Hong Kong has furthermore very active in- and outflows of foreign direct investment with the respective partner countries. In 2016, Hong Kong had inflows of 41.5% of GDP (133,3 billion dollars) and outflows of 23.5% of GDP (75,6 billion dollars). The in- and outflows as % of GDP are very balanced and there is no clear deficit or surplus in terms of foreign direct investment. However, there is no clear structure and the levels are very volatile. Hong Kong suffered a huge setback in 2002 in both in- and outflows but constantly grew the decade after, until a setback in 2012. Since then, flows are no longer stable as they do not show a clear structure overall.

In terms of regional split of foreign direct investments from Hong Kong, it is clear that most of the funds go to Mainland China and (East-)Asian countries in general. The biggest recipients of foreign direct investment from Hong Kong are China, followed by the British Virgin Islands. However, Hong Kong did get some considerable boost in terms of investment in the previous years and is eager to invest all over the world at the moment to establish itself as the Asian hub for investment. Thus more and more countries from the European side are starting to invest heavily in the metropole of Hong Kong.

6.2. Japan

Japan is currently in the process of overcoming economic stagnation, resulting in a large public debt - currently the highest in the developed world as a percentage of GDP. With a GDP of 39k dollars per capita they were able to report 1.03% growth in 2016. However, Japan only had net inflows of foreign direct investment of 0.8% of GDP (34,9 billion dollars) and net outflows of 3.5% (169,6 billion dollars). Japan is very connected and invested with nearly every country of the world. Japan currently has 28 bilateral investment treaties in force and is part of 19 treaties with investment provisions, with 17 currently in force (see Annex for full country list). Moreover, it is part of the currently heatedly discussed Trans-Pacific Partnership Agreement (TPP) with 11 states including the United States of America and Australia. However, with the presidential switch in the US from Barack Obama to President Donald J. Trump, the ratification of TPP is currently in question and set on hold.

This thesis is specifically looking at Japan's bilateral agreements involving developed countries and their respective levels of foreign direct investment (in- and outward). In the graph below, we can see the different levels of in and outflow of foreign direct investment from a Japanese perspective by year in the period between 1990 and 2016. As we can see, the FDI outflow shows a quite steady upwards trend, with a small setback between 2008 and 2010. Concerning FDI inflow, the levels are considerably lower but show similar structure. It is also important to note that Japan had suffered from very low, even negative numbers of FDI inflow in the past, though they have shown an upward trend in the latest years. We can also clearly see some major events impacting the levels of in- and outflows. For example since the Global Economic Crisis in 2007/08, both streams have experienced major declines until 2010. FDI outflows have crashed from 130,8 billion to 57 billion in only two years and inflows have gone down from 24.5 billion dollars in 2008 to even -1.3 billion dollars in 2010 and FDI inflows took until 2013 to recover and noticeably increase again.

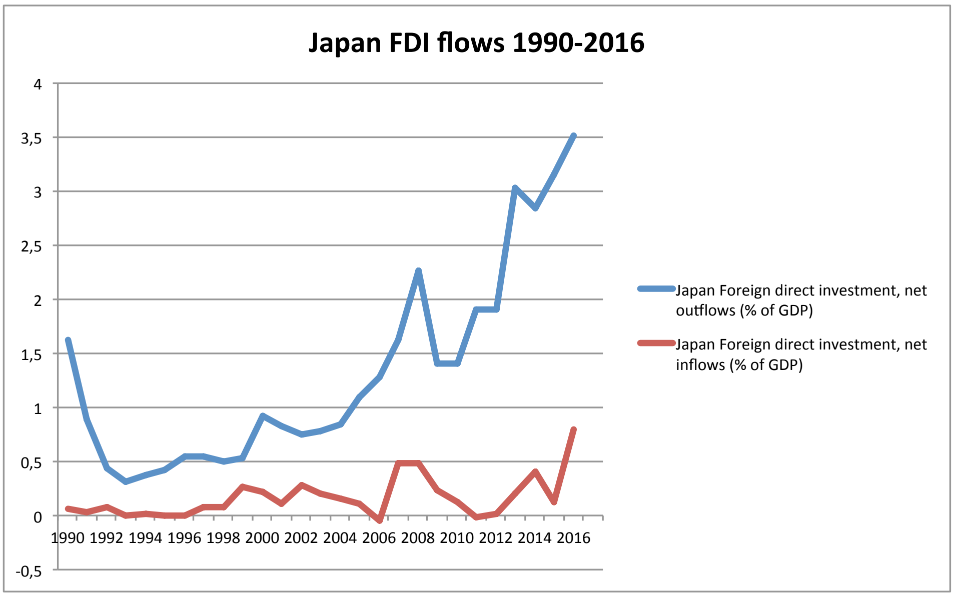

Figure 4: Japan FDI flows 1990-2016

Concerning the country specifics of these foreign direct investments, we find a very mixed picture concerning the regions. When it comes to FDI outflows, Europe is clearly the main beneficiary, taking up 39.5% of Japanese foreign direct investments. Europe is followed by North America with 30.2%. It is interesting to note here that most of it goes to investments in the US and only 0.6% of Japanese FDI is currently invested in Canada. Surprisingly, the Asian region follows in third place, with only 22%.

When we look at investments flowing into Japan, the composition looks completely different. Here, the highest amount of investment is flowing in from the neighbouring countries of the Asian region, making up 41.2%. They are followed by North America (36.1%) and Central- and South America with 13.3% of the foreign direct investments in Japan. Even though Japanese investors invest strongly in Europe, European investors do not seem to reciprocate: European direct investments only make up 9.2% and are one of the smallest blocks.

6.3. New Zealand

New Zealand is one of the most prosperous states in the Pacific region with a flourishing liberal economy, open to global trade and investment. New Zealand was able to augment their GDP per capita to 39.4k dollars, reporting a stunning 3.05% growth rate. However, even though there are fewer barriers to foreign investment, some may be screened by the government. In total, New Zealand is quite restrictive in terms of their Foreign Direct Investment activities.

In contrary to the other countries in the study, New Zealand has only obtained bilateral investment treaties with 4 countries and is part of 17 treaties with investment provisions. Those treaties however were mainly concluded with Australia and Asian states though, with exceptions for the US, Chile and Mexico (see Annex for full country list). Moreover, the majority of countries in agreement have not received high numbers of investment from New Zealand. Switzerland, for example, has invested over 800 million dollars in New Zealand territory, however, New Zealand did not invest in Swiss territory for the last decade and has even retracted money at some points. Thus, as we can see in the graph below, the level of FDI inflow is considerably higher than the FDI outflow in the years of 1990 to 2016. Interesting to note is that the flows in general are completely unstructured and do not show a clear trend overall. They vary very much between inflows of +5.2% (3.3 billion dollars) in 1995 and outflows of -7.9% (-4.1 billion dollars) of GDP in 2000. Currently, FDI inflows have reached a low of 1.46% or 1.9 billion dollars and outflows amount to -0.5% of GDP or -0.9 billion dollars.

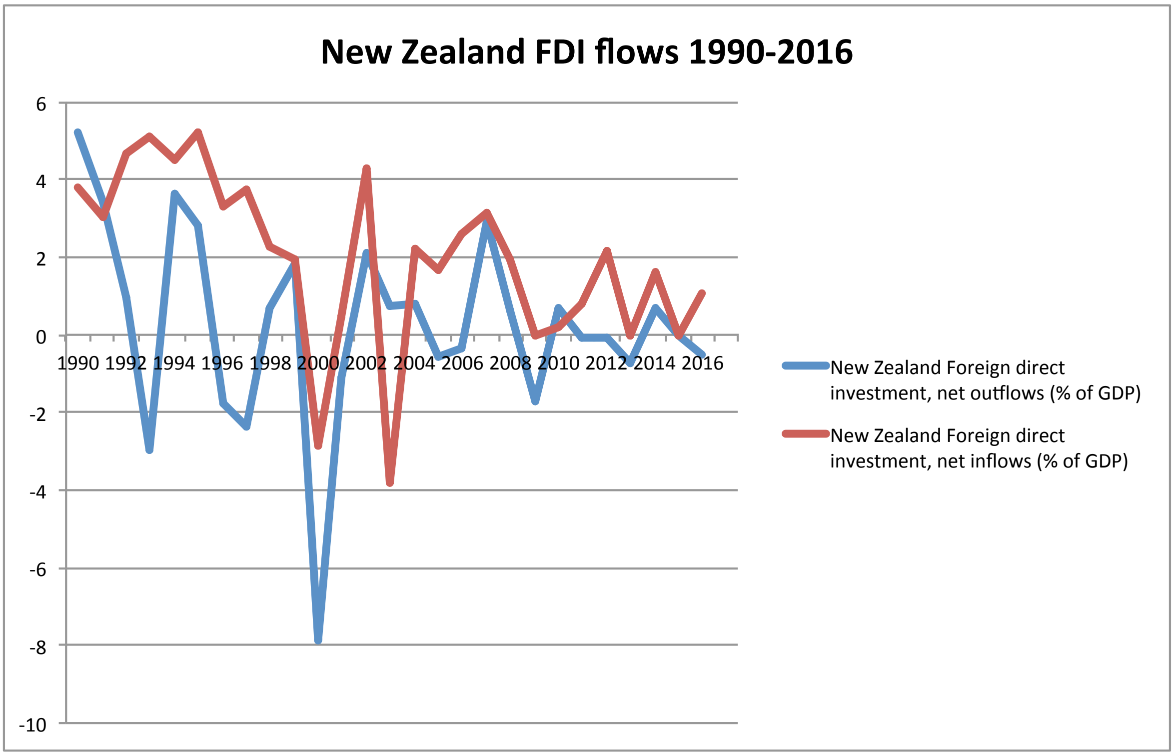

Figure 5: New Zealand FDI flows 1990-2016

In terms of regional split of in- and outflows, we see a very diverse picture. Taking up 55% of foreign direct investment per year, Oceania (mostly Australia) is by far the biggest beneficiary of investments taken abroad by New Zealand. They are followed by North America (20%) and Asia (15%). Europe only makes up 9% of the FDI outflow, which amounted to 1.3 billion dollars in 2016. The Middle East, Russia and Africa are minor participants in the FDI investment scheme.

When looking at FDI inflows, the overall picture is quite similar, although the level of inflows is nearly four times the amount of outflows, leaving New Zealand off with a net surplus of 77 billion dollars. In percentage, Oceania is again the biggest investor in the New Zealand territory with more than 37 billion dollars, more than four times the amount invested by New Zealand in return. This time, however, Asia has invested more than North America, followed by Europe. It is interesting to note that Central and South America make up four percent of the

FDI Inflows, which amounts to 2.8 billion dollars, however, they get investments of only 220 million dollars in return (1% of FDI outflows).

6.4 Switzerland

Due to its comparably small size, Switzerland is very open to international trade and foreign investment. Moreover, it is considered to be one of the global financial hubs, well-known for its innovative and dynamic environment. Switzerland managed to obtain a GDP per capita of 79.9k dollars in 2016, reporting a 1.3% growth rate. Therefore, Switzerland has by far the highest GDP per capita of all the countries in the study. Concerning foreign direct investment, Switzerland is a very famous and popular location for banks and investment groups. As such it has considerable flows of FDI relative to its size and is a very eager investment partner worldwide. In the last 20 years, foreign direct investments in percentage of GDP varied between 20% and -4%, considerably higher than the other countries in comparison. However, there is no clear trend visible as they very much depend on the current economic situation. Nevertheless, it is interesting to note that over the last decade Switzerland nearly always showed higher levels of outflow, thus leading to negative FDI statistics overall (with the exception of 2003 and 2009).

Net inflows of foreign direct investment to Switzerland are very volatile and South America even showed negative inflows in the recent years. In 2016, the FDI inflow from Central and South America amounted to an retraction of 5.5 million dollars. Unsurprisingly, Europe makes up the biggest group of investors in Switzerland, covering nearly 90% of the FDI inflow in Switzerland.

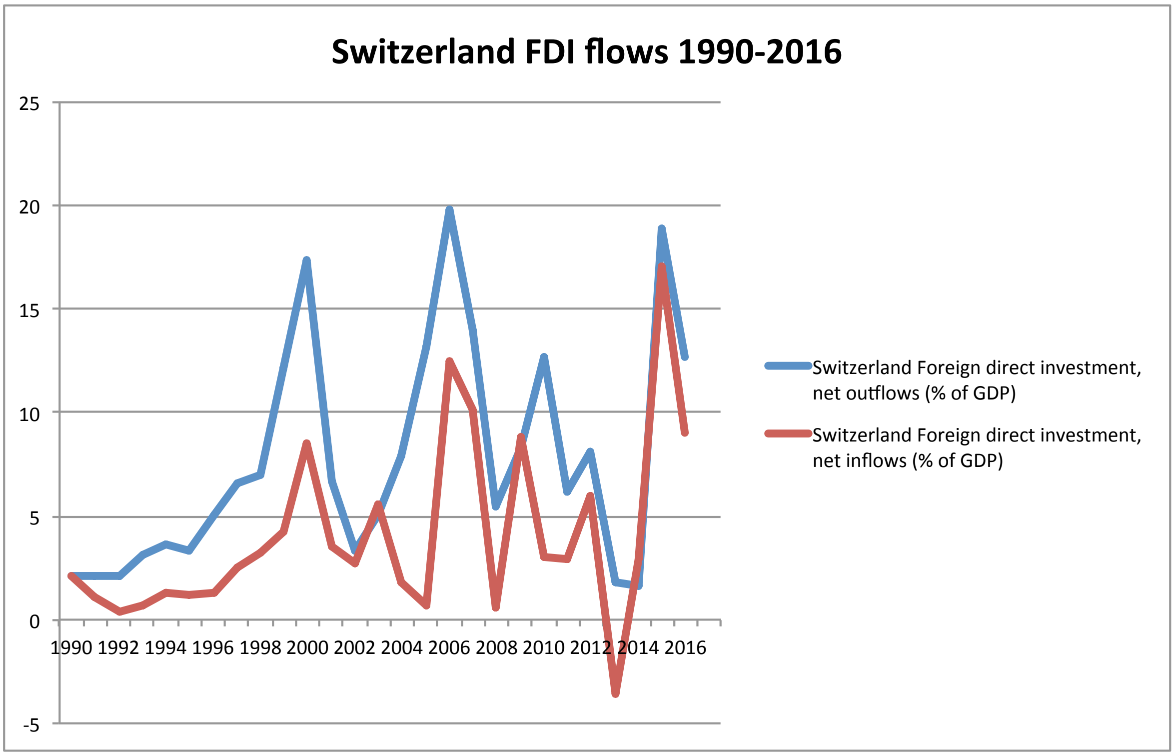

Figure 6: Switzerland FDI flows 1990-2016

In terms of FDI outflow, Switzerland is a very eager and interconnected investment partner all over the world. Currently, Switzerland has 102 bilateral investment agreements ratified and in force, 3 BITs pending on ratification and is a partner country to 35 treaties with investment provisions (TIPs) including a TIP with Hong Kong (see Annex for full country list). As for the biggest investment regions from a Swiss perspective, Europe is also unsurprisingly investment location number one, with over 80% of Swiss FDI. Europe is followed by North America, which both benefit from the considerably large retraction of money out of the Central and South America region (-29.02% / 20.5 billion dollars). The other regions, namely Asia, Africa and Oceania only play minor roles in the Swiss FDI structure.

7. Empirical Research

In order to evaluate the economic impact of the investor-state dispute settlement provisions in bilateral investment treaties between developed countries, I will conduct thorough empirical research in several matters. I want to identify economic advantages based on the existence of arbitration provisions. In detail, the existence of such provisions should lead to higher investment compared to other investment treaty partners. Through comparison of investment data, I want to, first and foremost, identify stronger investments since the conclusion of the BIT and, second, stronger investments within the partner country of the international agreement with an arbitration provision, than with other investment partner states.

To broaden my research and add insight into the investor side of such provisions, I conducted an interview with a former company representative and legal counsel from the steel producer VOEST Alpine in order to identify the key aspects of their investment decisions and position the importance of arbitration provisions in the decision process (for more details, see Chapter 5). Even though this thesis mainly focuses on the economic aspects for nation states and their level of FDI, it is still important to also take into account the business side of things as those corporations are very much affected by such provisions and regulations. Needless to say, this interview is of course limited to a very small, not representative part but it is necessary to include different standpoints on the matter in question.

To achieve representative figures, two bilateral investment treaties with arbitration provisions have been chosen, for several reasons. *The Agreement on Free Trade and Economic Partnership between the Swiss Confederation and Japan (2009)* as well as the *Government of Hong Kong and the Government of New Zealand Close Economic Partnership (2010)*, both entail provisions concerning dispute settlement, and both make use of the establishment of arbitration tribunals in case of failed conciliation/negotiation. Furthermore, the four countries concerned are different in terms of size, population, culture, economic development, geographical location, and political structure. It is important to note that all countries involved have concluded several bilateral agreements so far and moreover, the two agreements studied both entered into force at a similar time. Therefore, the two chosen bilateral agreements are able to represent a broad spectrum of countries with interesting differences to comment upon. In order to detect viable differences in their levels of foreign direct investment, I am going to compare them with several countries. In order to achieve a certain degree of representation and significance, I have grouped the countries in the research into three different subgroups: In the first group, I am going to look into the four specific countries partnering, thus Hong Kong, Japan, New Zealand and Switzerland and compare them. In the second, I group countries who have bilateral investment agreements with the four countries in the research but without the investor-state dispute settlement mechanism. The third and final group consists of countries with close ties to the four countries in the study, due to geographic proximity or political affiliation.

7.1. Bilateral Investment Agreement btw. Japan and Switzerland

The *Agreement on Free Trade and Economic Partnership between the Swiss Confederation and Japan* was concluded in 2009 and ratified in the same year. It is considered a treaty with investment provisions (TIP). In contrast to a bilateral investment treaty, a treaty with investment provisions can be multilateral and deal with more branches and barriers to economic exchange, like trade in goods and services. However, in this case, and most importantly, it entails investment provisions, including a chapter concerning dispute settlement. Furthermore, if a dispute cannot be solved via conciliation or in an amicable way, the treaty provides for a settlement at the ICSID or an ad-hoc tribunal.

As already discussed above, both countries are very active in terms of foreign direct investments and thus it is interesting to see how the levels of FDI differ from country to country. Concerning their investments with each other, first and foremost we should mention that there is no apparent trend visible in either direction. In fact, the investment levels seem to vary considerably and appear to be very volatile. For this purpose, even though the treaty was conducted in 2009, I will look at numbers from 1998 onwards in order to see if there are any reoccurring incidents to be found.

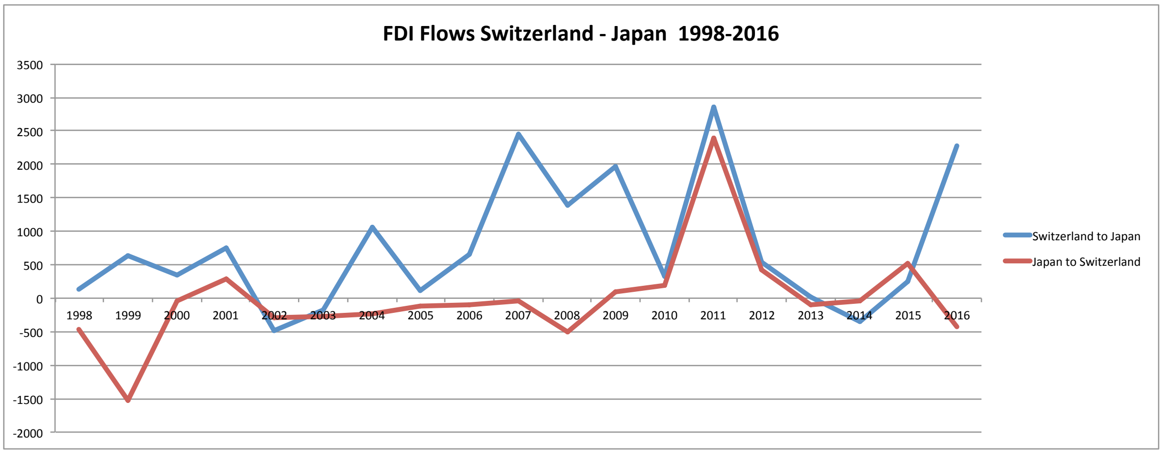

Figure 7: Levels of Foreign Direct Investment Switzerland - Japan (1998-2016)

Looking at the concrete numbers, we can further see that on average, Japan has received more investments from Switzerland than the other way around. On average, Japan has received 775 million dollars worth of investments, whereas Japanese investors even retracted money from the Swiss territory leading to outflows of 12 million dollars on average between 1998 and 2016. This is due to the fact that in 14 years out of the observed 19 years, Japanese investments showed up negatively in the Swiss balance of payments. From a Japanese perspective, they only had negative inflows in three years between 1998 and 2016.

If we take a closer look at the years surrounding the entry into force of the TIP, there is no obvious trend overall visible, thought in the years of 2009 to 2012, Switzerland received investments worth of 3,1 billion dollars. This is an abrupt change compared to the previous years. In the decade leading up to the conclusion of the agreement, Switzerland lost more than 2,8 billion dollars worth of investment due to retractions from the Japanese partners. In terms of levels of investment inflows, Switzerland nearly always received comparably low investments (or even negative ones).

The effects of the conclusion of the treaty are not as clearly visible on the Japanese side. In the years surrounding the conclusion, they had outstandingly high investments with the exception of 2010, amounting to 5.7 billion dollars in only three years (2009-2012). Moreover, they had already received 3.8 billion dollars in the two years before conclusion. Thus the surge in FDI inflow in Japan cannot be exclusively traced back to the bilateral agreement. In addition, it is also very interesting to note that even though Switzerland only received higher amounts of investment, Japan had a drop in 2010, in the first year of the treaty being in force.

	FDI Switzerland to Japan		FDI Japan to Switzerland	
	CHF	**USD**	**CHF**	**USD**
1998	123,50	125,07	-456,70	-462,50
1999	627,60	635,57	-1.509,00	-1.528,16
2000	335,50	339,76	-36,60	-37,06
2001	740,60	750,01	277,80	281,33
2002	-480,70	-486,81	-290,90	-294,59
2003	-165,30	-167,40	-262,80	-266,14
2004	1.045	1.058,27	-228,7	-231,60
2005	112,60	114,03	-116,70	-118,18
2006	644,40	652,58	-89,90	-91,04

	FDI Switzerland to Japan		FDI Japan to Switzerland	
2007	2.419,90	2.450,63	-44,00	-44,56
2008	1.371,40	1.388,82	-497,70	-504,02
2009	**1.945,40**	**1.970,11**	**86,70**	**87,80**
2010	316,80	320,82	198,20	200,72
2011	2.820,90	2.856,73	2.358,10	2.388,05
2012	523,60	530,25	418,70	424,02
2013	19,40	19,65	-93,20	-94,38
2014	-346,60	-351,00	-41,49	-42,02
2015	243,05	246,13	518,85	525,44
2016	2.256,38	2.285,04	-422,20	-427,57

Table 1: Levels of Foreign Direct Investment Switzerland - Japan (1998-2016)

Leading up to the present, both investment streams have however, quite simultaneously, dropped considerably after 2011. In 2016, Japan has again received high amounts of investment, whereas Switzerland has experienced outflows of money again, resulting in a difference between country investments of 1,8 billion dollars.

7.1.1. Switzerland Country Comparison

As described above, in order to evaluate the influence of the dispute settlement mechanisms in investment agreements, we need to check for the influence of an existing agreement first, and furthermore for the existence of other external factors influencing the investment behaviour between those countries.

First of all, we have to compare with other partnering countries, for example, countries with concluded international agreements with Switzerland as a party to the treaty, but without the provision for investor-state dispute settlement. Switzerland is very active and connected in terms of treaties with investment provisions all over the world. However, this research focuses on the effects of the arbitration provisions on developed countries, and as such the countries I will focus on in the following observations will be Hong Kong, the USA and China.

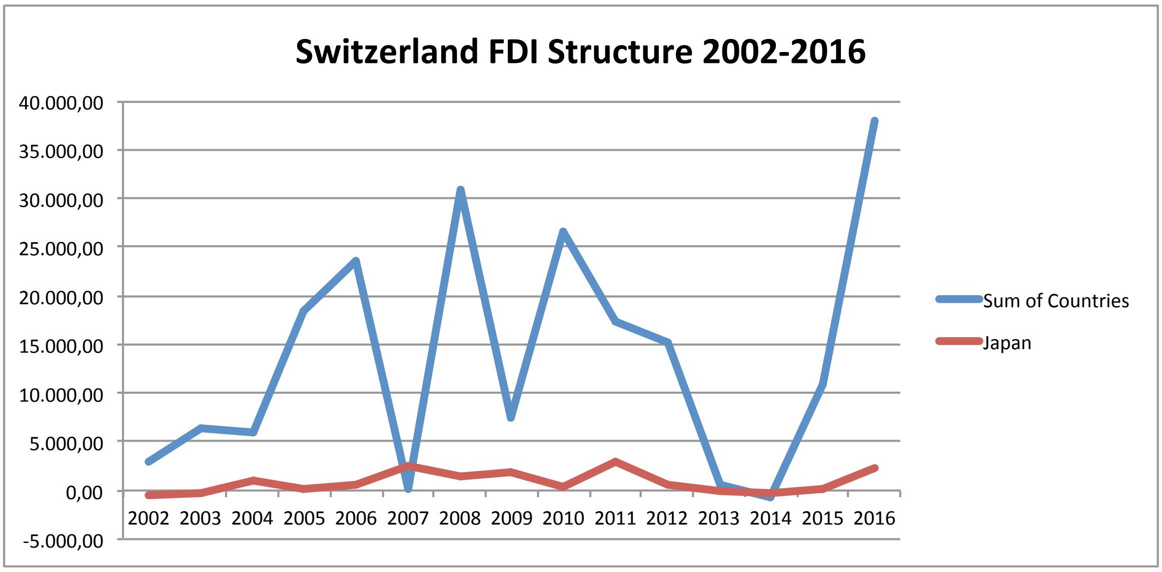

Figure 8: Comparison of Swiss FDI outflow levels 1998-2016

When looking at the foreign direct investment levels of those respective countries, there is no clear trend or movement. All the countries have very different levels of foreign direct investment with Switzerland (full table in annex). Nevertheless, if we look at the overall levels of Swiss investments abroad (FDI outflow), certain waves of investment are obviously visible. As can be seen in the graph above, Switzerland made investments in several waves: 2004-2006, 2007-2009 and 2009-2011. From 2014 onwards, FDI outflows are clearly going up again as well.

Comparing those data sets with the levels of FDI outflow to Japan, we can see a clear structure of movements behind those levels, even though they seem to occur with time lags. However there is also a wave structure behind those investments with several periods to observe: from 2002-2004, 2005-2007, 2010-2012, followed by a general upward trend since 2015. Of course, the levels of foreign direct investment are far lower and as a result the structure is not as obviously visible in the graph. Interestingly enough, 2010 was a year of lower investments in Japan during a high-level period in the first full year of the treaty being in force.

7.1.2. Japan Country Comparison

In order to put the effects of the IIA with Switzerland to the test, we need to look at the investment behaviour of the respective countries. It is important to observe how they behave in comparison to other countries with whom they have close ties or who are important trade and investment partners. For this reason, I chose China, Hong Kong and Korea as a group of comparison. These countries are very important trade partners for Japan and furthermore have always had close economic ties due to geographical proximity.

When looking at Japanese FDI outflow in relation to other countries, we can make several observations. First of all, China is obviously the biggest beneficiary of Japanese FDI outflows. Even in comparison with all the Asian countries, China receives by far the most means of investment and is also the controlling partner country in the structure of the overall FDI graph, depicted as a sum of countries. Korea and Hong Kong are seemingly similar recipients of Japanese direct investments, and have additionally had a similar structure to the agreement partner country, Switzerland.

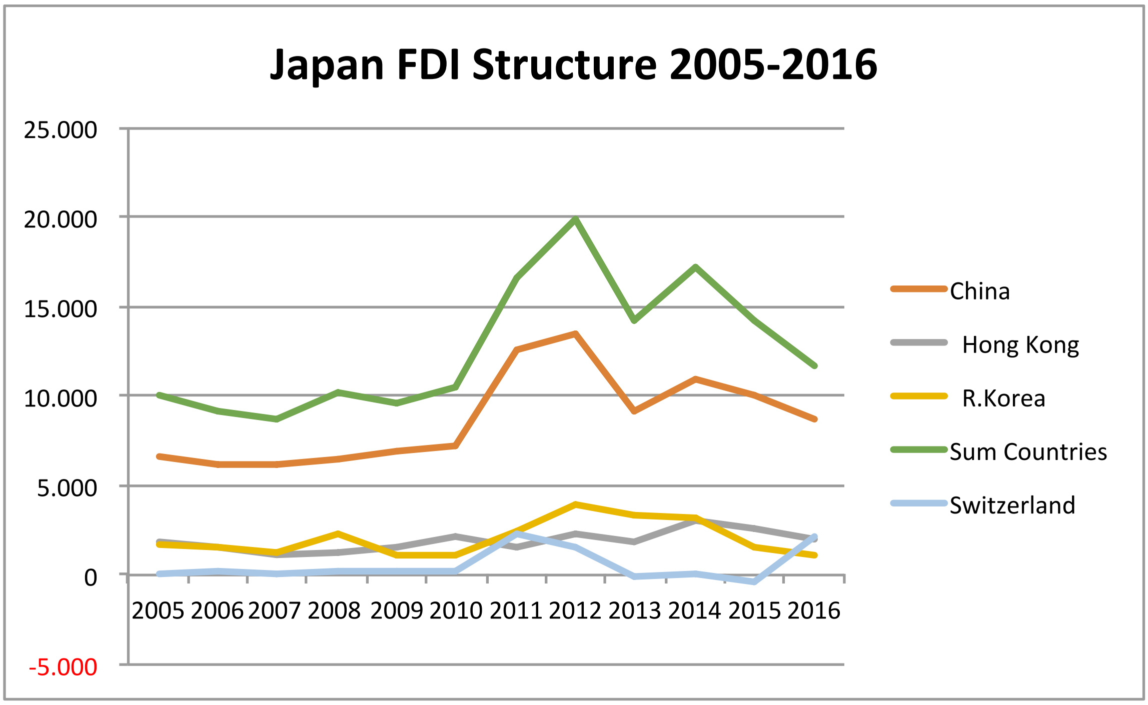

Figure 9: Levels of Japanese FDI Outflow 2005-2016

When we consider all the countries included, all of them seem to show a strong upward movement beginning in 2009/2010 until 2012. We can observe this even more clearly when we look at the direct comparison between the sum of the countries and Switzerland as the bilateral investment agreement partner in question. Both have a similar structure, which could lead us to question the effects of the agreement on the overall investment structure of Japan. As we can see in the graph below, it could mean that the spike we see in the Swiss investment structure is only a result of Japanese investment structure in general and cannot be traced back to the agreement in particular. Both incidents show quite similar steepness and both incidents start in 2010, peaking in 2011/12 and returning to former levels in 2013.

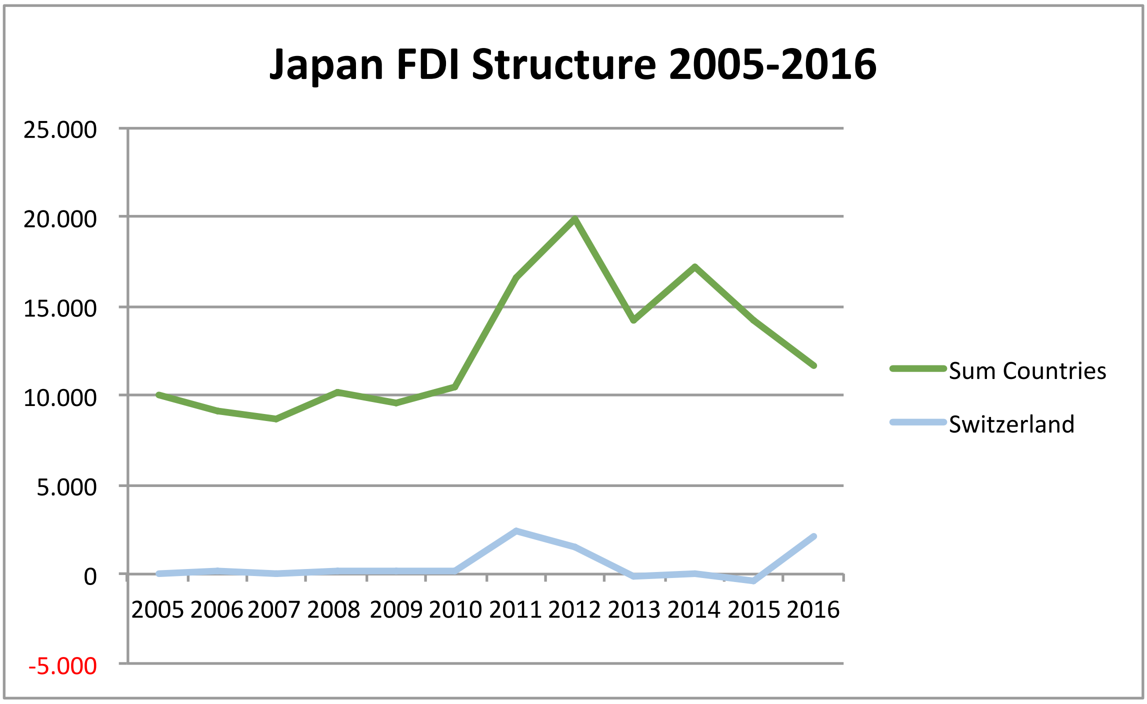

Figure 10: Levels of Japanese FDI Outflows Sum and Switzerland 2005-2016

7.2. Bilateral Investment Agreement btw. Hong Kong and New Zealand

The *Agreement between the Government of Hong Kong and the Government of New Zealand for the Promotion and Protection of Investments* was signed in July 1995 and entered into force only a month later in August 1995. It was conceived in order to reciprocally incentivize investments and give their respective nationals a sign of support for their investments. Hong Kong and New Zealand are both party to more than one international agreement with each other: in 2010, another agreement affecting the intra-state economic situation has been enforced: the so-called *Closer Economic Partnership Agreement (CEPA)*. Both parties stated, however, that this agreement would not exclude previous agreements but rather serve as a completion. Thus, both previous treaties are still in force and are applied today. It is very interesting to see the question of a free trade area also taken into consideration. Such treaties do not necessarily include provisions concerning investment but instead focus more on trade related issues. In this case, Hong Kong and New Zealand already had an established investment agreement, increasing the degree of relationship by the establishment of a free trade area between those two countries. This clearly shows their mutual interest in improving the intra-state conditions and thus the levels of foreign direct investment.

Moreover, since CEPA has been put into force, investors (and states for that matter) can now also put disputes arising from both agreements up for arbitration in front of the ICSID or an ad-hoc tribunal. Thus, for this research, both agreements are of interest and should be thoroughly reviewed. However, as the CEPA treaty is by now the prevailing one, I will focus on the last 15 years in order to create comparable results with the other nation states in the research.

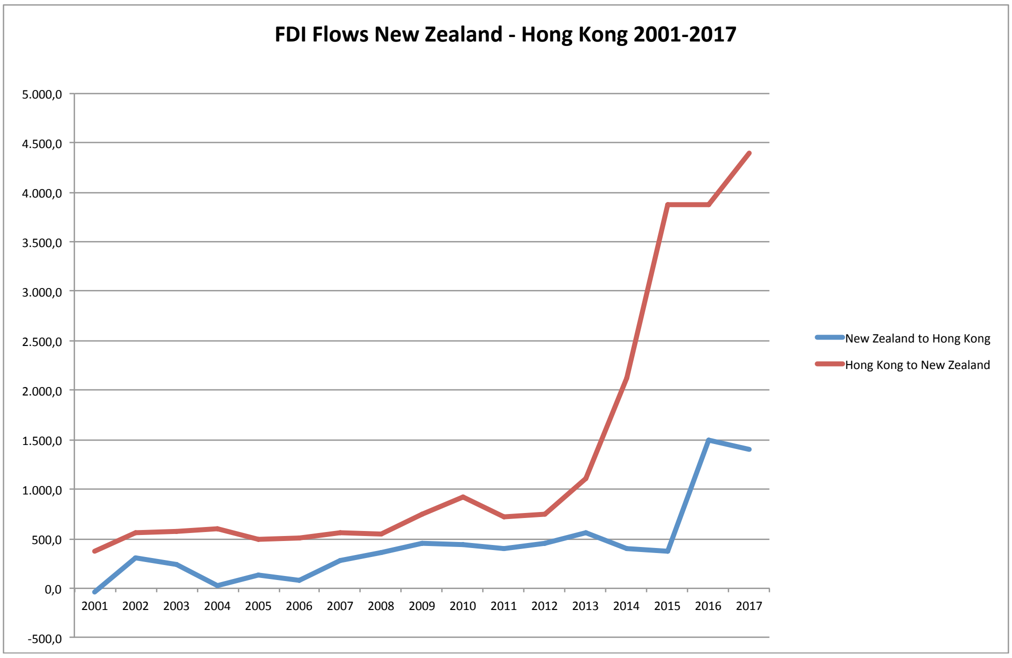

Figure 11: FDI flows between Hong Kong and New Zealand 2001-2016

As we can see in the graph above, the FDI levels between Hong Kong and New Zealand were relatively stable from 2002 onwards, with a slight upwards trend. However, there is a clear point in the outflows in 2012 for Hong Kong and 2015 for New Zealand after which the reciprocal levels of outflows have skyrocketed and have not gone down ever since. One could conclude, that this is due to the agreement of economic partnership. For the Hong Kong outflows, this is a viable argument as the reactions are visible in the outflows only two years later. However, the 5 year delay in the figures for New Zealand makes it harder to trace the increase in outflow back to the agreement concluded in 2010. In contrast, we can definitely see a spike in the Hong Kong outflows in 2010, as well as a sharp increase shortly afterwards - this can be interpreted as a reaction to the conclusion of the treaty. In this case, the agreement had direct economic effects in terms of international investment. When it comes to the reaction of New Zealand several years later, it is hard to trace back, even though it could still be a reaction to the treaty. Five years are a seemingly long time, but this kind of gap is not unusual in the international setting when it comes to foreign direct investment. As stated above, foreign direct investment is made based on long-term, stable interests and it would thus make sense to require a longer period of preparation to fulfill all the criteria and choose the best investment set-up.

If we look at the specific numbers of in- and outflows between the two countries in question, we can see the surge in the aftermath of the treaty ratification even clearer. The investment inflow for Hong Kong shows a quite steady increase each year, with an incredible increase from 2015 to 2016 of over 390%, or 1.1 billion dollars. From the New Zealand perspective, we see a smaller steady in- or decrease each year until 2009, with higher steady levels. Between 2013 to 2014, there is also a sudden change in structure with an increase of over 45%, followed by an even higher 80% increase in the following year. In those three years, Hong Kong increased its investment in New Zealand by 3.1 billion dollars.

	FDI New Zealand to Hong Kong	FDI Hong Kong to New Zealand
2001	-37,0	373,7
2002	310,1	565,1
2003	243,1	581,2
2004	23,8	600,7
2005	132,7	496,7
2006	78,9	504,3
2007	275,2	566,5
2008	366,0	549,0
2009	452,0	748,8
2010	**447,1**	**926,3**
2011	407,2	723,0
2012	456,1	755,1
2013	566,5	1.107,2
2014	398,2	2.126,3
2015	380,0	3.874,1
2016	1.499,1	3.872,7
2017	1.403,4	4.399,4

Table 2: Levels of FDI Flow Hong Kong - New Zealand

7.2.1. Hong Kong Country Comparison

When comparing Hong Kong with other countries, the control group for outside factors consists of Singapore and the mainland of China. These two countries are the most important partner countries for Hong Kong concerning FDI besides the British Virgin Islands. This country, however, cannot be included in the study, as it is not comparable to countries like China and

Singapore, and would thus lead to misleading results. It is not surprising that China is one of the main investors in Hong Kong, as Hong Kong is a Special Administrative Region of mainland China. Singapore is also a very important partner for Hong Kong in terms of trade and investment. Both countries share close regional proximity and both of them are viable for the economic status and development of Hong Kong as a partner.

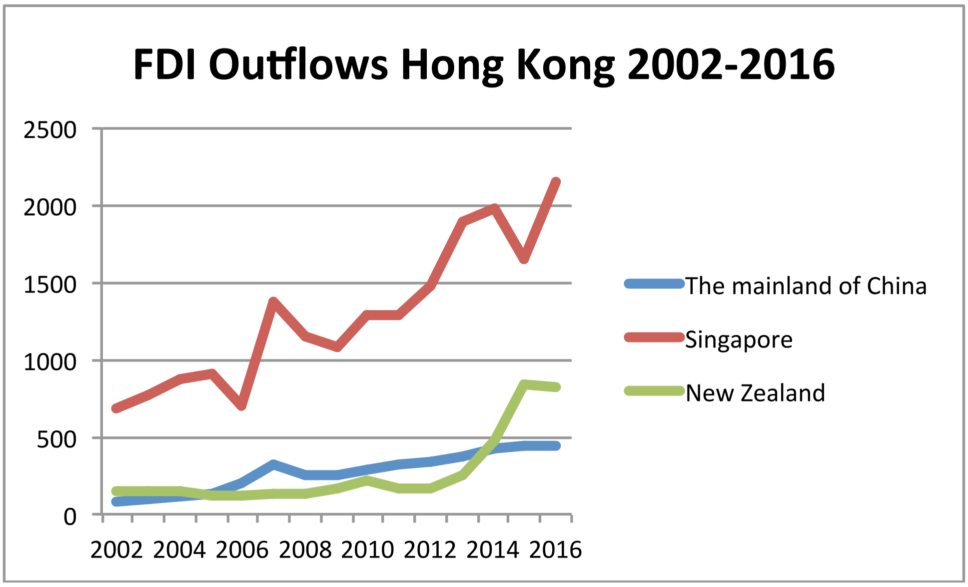

Figure 12: FDI Outflows Hong Kong 1998-2016

If we look at the graph above, we can see that all three countries are very different in their investment structure. Singapore is currently at very high levels and is continuing to rise. The country shows a steady upwards trend since 2002 with an interesting spike in 2007 and 2014. China shows a similar structure to New Zealand in the beginning and both are on a very low level compared to Singapore. However, they also both show a very slight upwards trend in the last 15 years. Interestingly, it seems that neither the world economic crisis nor any other incident since 2002 has had a strong effect on the investment structure and levels from Hong Kong besides the increase in outflows to New Zealand. Thus, it will be important to follow up on the development of New Zealand FDI from Hong Kong in the years to come to see if this investment will last long term.

7.2.2. New Zealand Country Comparison

In order to compare the foreign direct investment flows of the countries from the study, we must also compare them with other investment countries. Therefore, I will compare them here with the outflows of Australia, China, the United States and Singapore to show a pattern of investment structure.

First of all, it is not surprising that Australia is the biggest investor country in the region. 2002 especially was a good investment year for New Zealand: both Australia and Singapore invested an incredible amount of over 43 billion dollars in the country. Singapore and the US, meanwhile, did not invest heavily a regular basis. Despite its geographical proximity and New Zealand's good relations with its special administrative region Hong Kong, China does not seem to be an important investment partner for New Zealand in terms of FDI.

Looking at outflows from New Zealand, we get a very similar picture, which suggest a degree of reciprocity. The sudden rise of FDI inflow from Singapore was basically returned a decade later through a huge increase in investments in 2013. Australia again is by far the biggest beneficiary of foreign direct investments from New Zealand, whereas China falls low as a receiver of foreign direct investment. However, besides a small increase in 2009 in investments to the United States, there are no greater incidents to acknowledge.

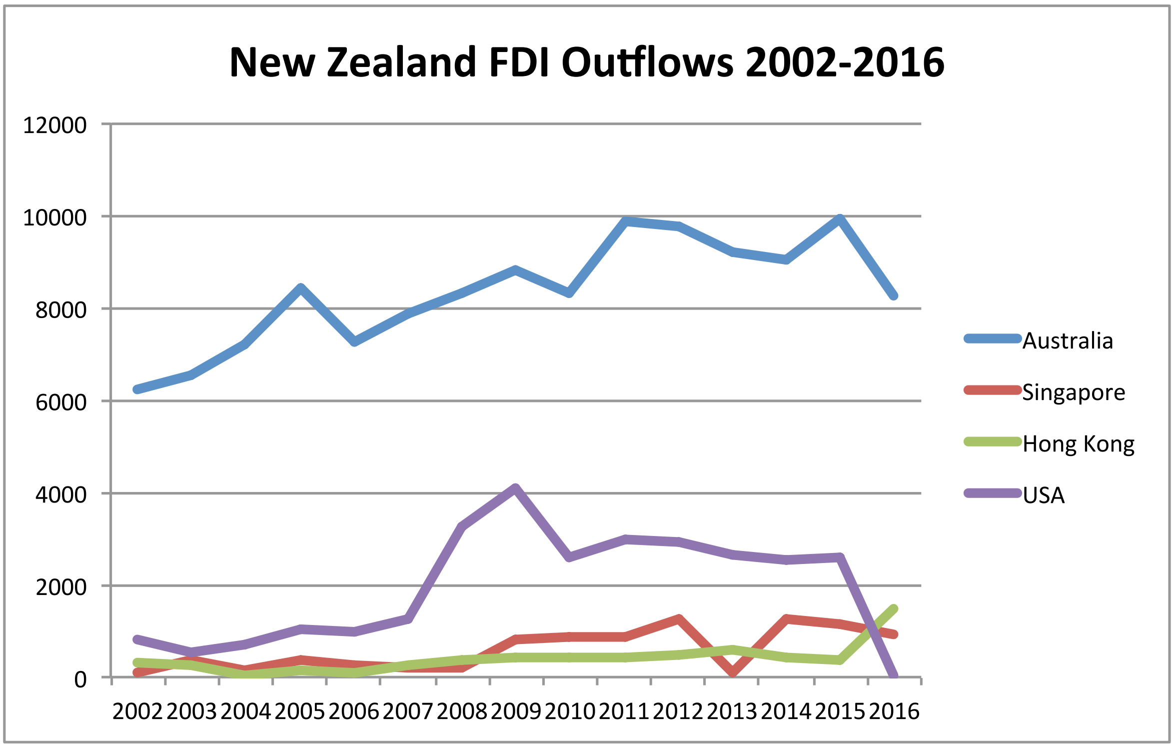

Figure 13: Levels of FDI Outflow New Zealand 2001-2017

In comparison to the levels of investment sent to Hong Kong, we can see that there are hardly any reoccurring trends or certain schemes to identify. Moreover, the incidents in the data sets are not comparable in intensity and length, thus there is little evidence to conclude the overall investment structure offers similarities to the New Zealand-Hong Kong investments taken in the last decades.

7.3. Regression Analysis

Even though we can see some clear patterns in the analysis above, it is important to prove the (in-)existence of significant changes. In order to test for higher levels of foreign direct investment outflows since the ratification of such treaties as mentioned above, this paper concluded a regression analysis between both agreements and the countries in the country comparison. In this case, the regression analysis includes both agreements as a variable before and after the respective treaties came into force. In order to increase comparability between the countries in the study, the research has been based on foreign direct investment per capita. This is necessary because while only economically stable and developed countries are included, the country size and thus economic and investment power can vary accordingly. Through the analysis of foreign direct investment outflows per capita, such discrepancies can be avoided.

Thus, the regression analysis was conducted with the following countries:

Japan:	**Switzerland:**	**Hong Kong:**	**New Zealand:**
Switzerland	Japan	New Zealand	Hong Kong
China	Hong Kong	China	Australia
Hong Kong	USA	Singapore	USA
Korea	China		Singapore

Table 3: List of Countries included in Regression Analysis

As we can see in the table above, the same countries reoccur in several study groups, in order to increase the viability of results. Additionally, the study focuses on period between 2002 and 2016. Both agreements were concluded during this period, which means the selected data reflects the situation both before and after the ratification of the international investment agreements.

Due to the arguments mentioned above, the study includes 225 observations from 8 different countries. The dependent variable tested in this case is, as already mentioned above, the foreign direct investment outflows of the four countries (Japan, Switzerland, Hong Kong, New Zealand) by capita, i.e. divided by population. Agreement 1 in the results is the agreement between Japan and Switzerland, whereas Agreement 2 represents the agreement between Hong Kong and New Zealand. This model is supposed to test for the following null hypothesis for

agreement 1: β_0= the international agreement between Japan and Switzerland has led to higher foreign direct investment (outflows) per capita after the entry into force in 2009

and

agreement 2: β_0= the international agreement between Hong Kong and New Zealand has led to higher foreign direct investment (outflows) per capita after the entry into force in 2010

As we can see in the results below, the constant C shows an increase in foreign direct investment on average between the countries observed, keeping every other variable in the model constant. Unfortunately, however, the FDI levels observed in the regression analysis do not lead us to any significant results. The probability levels for both agreements are not significant on any given significance level. For Agreement 1, the significance level observed is 0.117, which cannot be taken as significant on any common significance level. For Agreement 2, this level is considerably higher with 0.542 thus also not classified as significant. Therefore we cannot conclude that the entry into force of either one of the agreements had significant effect on the levels of foreign direct investment on average. As this is the case, the null hypothesis has to be rejected for both agreements.

Moreover, the levels of investment in the study seem to vary considerably, as the model shows high standard errors (90.534 and 96.325 respectively). This leads to the conclusion that the levels in the study include a lot of unreliable data. In addition to that, the value for R-Squared is close to zero (R^2=0.013) which is a further indicator that the levels of investment are not dependent on the existence of the agreement.

Dependent Variable: FDI_POPULATION
Method: Least Squares
Date: 06/01/18 Time: 21:50
Sample: 1 225
Included observations: 225

Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	192.1929	24.93044	7.709164	0.0000
AGREEMENT1	-142.4235	90.53391	-1.573151	0.1171
AGREEMENT2	58.80884	96.32503	0.610525	0.5421

R-squared	0.013332	Mean dependent var	185.7242
Adjusted R-squared	0.004443	S.D. dependent var	348.9107
S.E. of regression	348.1347	Akaike info criterion	14.55630
Sum squared resid	26905906	Schwarz criterion	14.60185
Log likelihood	-1634.584	Hannan-Quinn criter.	14.57468
F-statistic	1.499843	Durbin-Watson stat	0.321442
Prob(F-statistic)	0.225418		

Regression Analysis Results FDI Outflows, tested with EViews10

Moreover, similar results can further be found if tested against foreign direct investment inflows per capita of the respective countries. In the case of foreign direct investment inflows, the countries in the study as well as the time period remains the same. If tested with the same parameters overall, but with foreign direct investment inflows as the dependent variable, the results do not change considerably. Both agreements show no viable results on any given significance level (Probability = 0.194 and 0.756 respectively). Moreover, R-Squared is even closer to zero (R^2=0.009) and therefore the null hypothesis would have to be rejected also in this case.

Dependent Variable: FDI_POPULATION
Method: Least Squares
Date: 06/05/18 Time: 19:56
Sample: 1 195
Included observations: 195

Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	167.3385	28.14816	5.944919	0.0000
AGREEMENT1	-123.3605	94.67369	-1.303008	0.1941
AGREEMENT2	31.35529	100.6497	0.311529	0.7557

R-squared	0.009673	Mean dependent var	159.4678
Adjusted R-squared	-0.000643	S.D. dependent var	361.4535
S.E. of regression	361.5697	Akaike info criterion	14.63405
Sum squared resid	25100665	Schwarz criterion	14.68441
Log likelihood	-1423.820	Hannan-Quinn criter.	14.65444
F-statistic	0.937675	Durbin-Watson stat	0.179694
Prob(F-statistic)	0.393323		

Regression Analysis Results FDI Inflows, tested with EViews10

In light of the above, it can be concluded that both of the agreements in this study do not show significant influence on the levels of foreign direct investment between the partner countries. Keeping everything else constant, there is no statistical proof for higher investments on average between the countries as a result of the conclusion of the treaty in comparison to the control countries in the study in the given time period. Despite the insignificant results of the regression analysis, there are several findings in this paper which need to be considered. In order to successfully answer the research question outlined, all arguments made above have to be put into the mix.

7.4. Findings

Even though the regression analysis did not show significant results, there are still some important findings to mention. First and foremost, this study is based on the comparison between developed countries. The countries chosen in the regression model and also in the data analysis are big players in today's world. The international investment regime is by now a huge spaghetti bowl of agreements, with all countries to some degree or another involved with each other to foster international investment and economic growth. This is important to keep in mind, as the results from the study are highly dependent on the countries involved in the analysis. The countries chosen are based on a mixture of fit, size, economic power and the premise of keeping the numbers of countries involved to a minimum, to make the results as comparable as possible. This, however, also has several implications.

Due to the low number of countries, the study is only applicable to those cases and thus limited as a representation of the global investment situation. The results are only viable for the two agreements researched upon and only reflect those countries referred to in the study. However, as this research did focus on the effects of arbitration between developed countries, the chosen study groups did offer the highest degree of representation within those limited possible partners. Moreover, the countries involved have partly already entered into agreements with each other (without investor-state dispute settlement or comparable arbitration provisions) and thus do foster higher levels of foreign direct investment with each other.

In addition to that, the origins of international investment agreements in general, and the arbitration provisions researched in particular were mainly meant to focus on higher levels of foreign direct investment by incentivizing investors through legal stability. Between developed countries on the contrary, such contracts mainly focus on insurance and less on incentive. Countries want to stabilize their investment efforts against each other and grant a certain system of support for their national investors abroad. Thus, the focus to some degree shifts away from higher levels of foreign direct investment to the overall structure of cooperation on an intra-state level and between their respective nationals.

Furthermore, when looking at the data above, there are clearly some findings which are not mirrored in the regression analysis. To some degree or another, the countries in the study are heavily involved in bilateral investments. Even though the regression analysis may not seem to find significantly higher levels, this does not mean that there was no change in investment in general. The national investors of the respective countries did take on high investments in the partnering countries, which, ultimately, is the main goal of such agreements in the first place. The agreement between the Swiss confederation and Japan does show spikes in the overall investment path between those two countries. The agreement between Hong Kong and New Zealand clearly shows considerable changes since the conclusion of the treaty. It is indisputable that their investment structure did change after 2010, whether or not this can be proven on a significance level in the regression analysis. Hong Kong as well as New Zealand benefitted from high investment levels in their territories, which is an important incentive to higher growth and future investments.

Some general assumptions underlying the results of the study have to be further taken into account. First of all, the levels of foreign direct investment, and thus the results and the data in the study, are very volatile due the economic situation on a global and national scale. Even though the study does include other countries to check for overall investment structure, such levels can be highly influenced firstly by individual actors, e.g. international corporations and secondly, by the overall economic cycle a country currently is in. Here it is also pertinent to mention that during our observed time periods, the world economic crisis took place, which had severe influence on all levels and led to a huge recession crisis and massive debt both for nation states and private entities. Moreover, country specific changes can highly influence a state’s openness to receive or take on investments. Political instability or certain changes in their current state can lead to insecurity from an investor’s perspective whether to invest or not at a certain stage, to wait for the changes to occur for the better or worse or invest somewhere else.

Another important factor to mention here is the time period observed. As agreements including arbitration provisions are a fairly new occurrence, most of the agreements between developed countries including such provisions have not been in force for very long yet. Even though the agreements chosen have been in force for 9 and 8 years respectively, official statistics concerning foreign direct investments are often released with a certain time lag. Due to the fact that data of 2017 will be available only later on, the agreements have only been active for 7 and 6 years in the observed time frame, and therefore the data included in the study could be insufficient to show significant results. The levels of investment between those respective countries should thus certainly be subject to further observation in the years to come. The time lags are a further subject to research, as there is no viable way to substantiate a fixed amount of time needed for observable reactions.

What is more, due to the complexity of the global investment regime, the outcome and influence of certain agreements are further dependent on other existing agreements or ones in the making. This is certainly true for pending decisions on investment. As concluded in the interview in 5.1., investment decisions are always taken based on the overall picture rather than certain individual factors. Therefore, agreements currently in the making can have an influence if a certain treaty leads to more or less investment in the years after the conclusion. Thus it remains to be seen if these two agreements may have led to higher investments in the foreseeable future.

8. Conclusion

In the light of the above, the investor-state dispute settlement mechanisms in international investment agreements between developed countries remain a very complex topic. The inclusion of such a provision is first and foremost a declaration of protection of foreign direct investments, to worship certain standards and a degree of stability. Such international agreements in general, are a commitment towards positive and fruitful interaction on an intra-state level as well as on an investor-state level. The provisions concerning arbitration in particular are a commitment towards a guided, well-planned and common standard on how to settle certain disagreements. In a world where interaction on a global level takes place on a constant rate, rules of procedure are much needed in order to ensure limitations. For every interaction, certain means of settling disputes - exchange, discussion, mediation or arbitration - have to be installed in order to transfer force to such contracts. It is only logical to install a mechanism to settle disagreements up front, rather than deal with those issues at occurrence. Something which is already standard in commercial arbitration does also have its merits in disputes concerning states.

Several different schools of economic theory have proven the necessity of investment for economic growth - not only for countries in development, but also for the bigger economic powers of this world. Outside investment is not only needed to counter decline, but also to push over stagnation and fuel growth even further. An increase in capital through investment leads to higher output and productivity in a given economy, therefore to better conditions, higher wages and more jobs in the long run. More capital can further help to finance deficits and increase the terms of trade, exchange former capital and counter depreciation. From an investors perspective, it has several advantages in the areas of cost reduction, knowledge, entrance barriers and the reduction of complexity.

Moreover, the conducted interview with an experienced consultant in the area of claim- and contract management on investment disputes further underlined the importance of arbitration provisions for businesses. The interview partner confirmed the fact that certain clear rules on how to proceed with such disputes need to be given in order to provide the necessary level of stability and protection. Companies are taking on high levels of risks when investing internationally, thus it is necessary for them to have a base of legal security in the foreign country. Even though the arbitration provisions are not an isolated factor in the decision-process, the lack thereof would lead to insecurities about the actual worth of those treaties in the first place. Thus, despite the criticism circling around the issue of arbitration from other spheres, it is undoubtedly important for the investor.

From an historic perspective, the balance between states entering in such agreements was very much tilt to one side until recently. The imbalance in terms of state power, economic power, stability and a certain rule of law had to be outweighed via economic and legal remedies. This was not only necessary in order to support economic growth in the most unstable regions, but also to protect a state's vital interest and its nationals. Nowadays, more and more countries on the same level of development are entering in such bilateral treaties. Even though the imbalance and instability is not a factor between developed countries entering in such agreements, the incentive for economic growth still very much is. Means of arbitration, as given by such dispute settlement clauses, are a necessary mean to invoke certain rights on both sides of the dispute based on reasons anchored in the legal system. Through the diverse structure of interference between national and international law, neither the state, nor an investor can resort to national courts to solve certain disagreements arising out of an agreement put into place on an intra-state level. National courts simply do not have the jurisdiction to decide over state matters; national courts do have to decide based on national law. Moreover, a state institution is also simply not supposed to undermine state decisions. Taken this as a whole, it is not feasible for the parties to a dispute arising out of an international agreement to resort to national institutions for settlement of those. Other means, such as diplomatic force, are mostly unavailable or just not feasible for this specific type of disagreement. Global attempts to agree on certain arbitration procedures, such as the Multilateral Agreement on Investment, collapsed before adoption. In the absence of a global accordance on how to deal with arising disputes and their solution, this matter was left up to the bilateral and multilateral understanding.

In the light of the above, there are several factors of such international investment agreements to take into account. The dispute settlement is one of them, which is very crucial to the stakeholders in the matter. Nevertheless, such agreements on intra-state level are always open to attack on several sides. Not only the agreement is up for open debate in the first place, but also the issue of arbitration was subject to an increasing amount of criticism. The political debate around the issue of arbitration between states and investors is to some degree justified mostly due to the ability of multinational corporations to meddle with the affairs of a sovereign nation state. The fear of being liable for actions a state needs to take in his responsibility to successfully govern a nation, is a present and very believed problem in the system of investment arbitration. The common belief of undermining state sovereignty through the possibility of arbitration however is only partly true, as states are deciding voluntarily to transfer certain powers to outside tribunals. Those tribunals moreover can be seen as impartial, in the contrary to national courts, due to the composition of judges and the process behind the matter of investment arbitration.

In order to evaluate the effects of the investor-state dispute settlement on economic growth between developed countries through enhanced levels of foreign direct investment, an empirical study of two bilateral agreement has been conducted. To provide arguments for the existence of economic benefits, the study examined four countries and their respective levels of foreign direct investment prior and after the conclusion of the treaty in comparison to their most important investment partners and geographically important players in the region. The first BIT, the *Agreement on Free Trade and Economic Partnership between the Swiss Confederation and Japan*, did not show viable results in terms of significantly higher levels of foreign direct investment between the partnering countries. Moreover, the regression analysis conducted with 225 observations showed insignificant influence on the increase in investment. The second BIT, the *Closer Economic Partnership Agreement (CEPA),* based on an earlier investment agreement, between Hong Kong and New Zealand however did clearly show numerical increase in investment since the treaty was concluded. This effect was especially visible in the FDI flows from New Zealand to Hong Kong, but also can also be found in the flows from Hong Kong to New Zealand after time. When it comes to the findings of the regression analysis conducted, the effects show a positive sign. However, they cannot be found significant on any given significance level. In the light of the above, the null hypothesis stating that the agreements had led to significantly higher levels of foreign direct investment between the partnering countries, had to be rejected in both cases.

This thesis has focussed on the question of balance between economic and legal benefits and disadvantages of investor-state dispute settlement between developed countries. The purpose of this thesis was to evaluate the balance between those factors in order to stimulate a fruitful discussion on the political criticism around the issue of arbitration. Not only is the possibility to resort to such arbitration tribunals a necessity from a legal perspective, it is also crucial from an economic perspective. From an historic standpoint, the arbitration clauses established only in the later decades did lead to significant change in the current investment regime and furthermore give grounds to believe in the necessity thereof. Despite the missing findings of significantly higher levels of foreign direct investment since conclusion of the treaties in question, all other findings of this thesis show the significance of arbitration provisions in such bilateral investment agreements. Taking everything into consideration, it can be concluded that the benefits of the existence of such provisions from a legal and economic perspective do outweigh the problems coming along with them and are thus a necessary mechanism in the global investment regime.

9. Annex

Agreement On Free Trade And Economic Partnership Between The Swiss Confederation And Japan, Article 94 (3)):

If the investment dispute cannot be settled through consultations within six months from the date on which the disputing investor requested such consultations in writing, the disputing investor may submit the investment dispute to international conciliation or arbitration at the following institutions or under the following rules:

(a) the International Centre for Settlement of Investment Disputes (hereinafter referred to in this Article as "ICSID") established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States done at Washington, on 18 March 1965;

(b) the Additional Facility Rules of ICSID, provided that either Party, but not both, is a party to the ICSID Convention; or

(c) an ad hoc arbitral tribunal which, unless otherwise agreed upon by the disputing parties, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) adopted on 28 April 1976.

Agreement between the Government of Hong Kong and the Government of New Zealand for the Promotion and Protection of Investments, Article 10 (2):

If the Contracting Parties fail to reach a settlement of the dispute by negotiation, it may be referred by them to such person or body as they may agree on or, at the request of either Contracting Party, shall be submitted for decision to a tribunal of three arbitrators which shall be constituted in the following manner:

(a) within sixty days after receipt of a request for arbitration, each Contracting Party shall appoint one arbitrator. A national of a State which can be regarded as neutral in relation to the dispute, who shall act as President of the tribunal, shall be appointed as the third arbitrator by agreement between the two Contracting Parties, within sixty days of the appointment of the second;

(b) if within the time limits specified above any appointment has not been made,, either Contracting Party may request the President of the International Court of Justice, in a personal and individual capacity, to make the necessary appointment within thirty days. If the President considers that he is a national of a State which cannot be regarded as neutral in relation to the dispute, the most senior Vice-President who is not disqualified on that ground shall make the appointment.

Vienna Convention on the Law of Treaties 1969, Section 3; Article 31:

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) Any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;

(b) Any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty

3. *There shall be taken into account, together with the context:(a) Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;*

(b) Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) Any relevant rules of international law applicable in the relations between the parties.

4. *A special meaning shall be given to a term if it is established that the parties so intended.*

Vienna Convention on the Law of Treaties 1969, Section 3; Article 32:

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(a) Leaves the meaning ambiguous or obscure; or

(b) Leads to a result which is manifestly absurd or unreasonable.

Partnering Countries:

Treaties with Investment Provisions (TIP)

Japan	Switzerland	Hong Kong	New Zealand
• Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) • Trans-Pacific Partnership Agreement (TPP) • Mongolia • Australia • Peru • India • Switzerland • Viet Nam • ASEAN • Indonesia • Brunei • Thailand • Chile • Philippines • Malaysia • Mexico • Singapore • The Energy Charter • RCEP	• Georgia • Philippines • China • Bosnia and Herzegovina • Costa Rica - Panama • Montenegro • Hong Kong • Peru • Ukraine • Serbia • Albania • CGG-EFTA • Japan • Colombia • Canada • EFTA - Egypt • EFTA - SACU • USA TIFA • EFTA - Korea Investment Agreement • EFTA - Tunisia • EFTA - Lebanon • EFTA - Chile • EFTA - Singapore • EFTA - Jordan • EFTA • EFTA - Mexico • EFTA - Mazedonia • EFTA - Palestine Interim • Canada • EFTA - Morocco • The Energy Charter • EFTA - Israel • EC - EFTA • Gabon • Rwanda	• ASEAN • CEPA China • CEPA China Investment Agreement • Chile • EFTA • New Zealand CEPA	• Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) • PACER Plus • Trans-Pacific Partnership Agreement (TPP) • Korea • Taiwan • Australia Investment Protocol • Hong Kong CEPA • Malaysia • AANZFTA • China • P4 Agreement • Thailand CEPA • Mexico TIFA • USA TIFA • SPARTECA • RCEP

Bilateral Investment Agreements (BIT)

Japan	Switzerland		Hong Kong	New Zealand
Bangladesh	Albania	Lebanon	Australia	Argentina
Cambodia	Algeria	Lesoto	Austria	Chile
China	Argentina	Liberia	BLEU (Belgium,	China
Colombia	Armenia	Libya	Luxembourg, EU)	Hong Kong
Egypt	Azerbaijan	Lithuania	Canada	
Hong Kong	Bangladesh	Mazedonia	Chile	
Iran	Barbados	Madagaskar	Denmark	
Iraq	Belarus	Malaysia	Finland	
Israel	Benin	Mali	France	
Kazakhstan	Bolivia	Mauritania	Germany	
Kenya	Bosnia and	Mauritius	Italy	
Korea	Herzegovina	Mexico	Japan	
Kuwait	Botswana	Moldova	Korea	
Lao	Brasil	Mongolia	Kuwait	
Mongolia	Bulgaria	Montenegro	Netherlands	
Mozambique	Burkina Faso	Morocco	New Zealand	
Myanmar	Cabo Verde	Mozambique	Sweden	
Oman	Cambodia	Namibia	Switzerland	
Pakistan	Cameroon	Nicaragua	Thailand	
Papua New Guinea	Central African	Niger	United Kingdom	
Peru	Republic	Nigeria		
Russian Federation	Chad	Oman		
Saudi Arabia	Chile	Pakistan		
Sri Lanka	China	Panama		
Turkey	Colombia	Paraguay		
Ukraine	Republic of Congo	Peru		
Uruguay	Costa Rica	Philippines		
Usbekistan	Côte d'Ivoire	Poland		
Viet Nam	Croatia	Quatar		
	Cuba	Romania		
	Czech Republic	Russian Federation		
	Djibouti	Saudi Arabia		
	Dominican Republic	Senegal		
	Equador	Serbia		
	Egypt	Singapore		
	El Salvador	Slovakia		
	Estonia	Slovenia		
	Ethiopia	Sri Lanka		
	Gambia	Sudan		
	Georgia	Syria		
	Ghana	Tajikistan		
	Guatemala	Tanzania		
	Guinea	Thailand		
	Guyana	Togo		
	Honduras	Trinidad and Tobago		
	Hong Kong	Tunisia		
	Hungary	Turkey		
	India	Turkmenistan		
	Indonesia	Uganda		
	Iran	Ukraine		
	Jamaica	UAE		
	Jordan	Uruguay		
	Kazakhstan	Uzbekistan		
	Kenya	Venezuela		
	North Korea	Viet Nam		
	Korea	Zamibia		
	Kuwait	Zimbabwe		
	Kyrgyzstan			
	Lao			
	Latvia			

9.1. Interview Transcript

Interview Dr. Armin Toifl
30.04.2018
Duration: 15min

Ich habe mir angesehen, dass Sie sehr lange für die VOEST zuständig waren, und mich würde interessieren, aus ihrer Sicht, wie der Entscheidungsprozess, ob und wie man direkte Auslandsinvestitionen tätigt, wie dieser Prozess intern strukturiert ist. Auf welcher Grundlage diese Entscheidung basiert, welche Bereiche man sich hier genauer ansieht - ob Geografie, Politische und Wirtschaftliche Lage des Landes vorab in Betracht gezogen werden und wann die rechtliche Grundlage und vor allem die Rechtssituation auf zwischenstaatlicher Ebene ins Spiel kommt.

Die Wirtschaftspolitische Situation steht natürlich in diesem Fall über allem. Vor allem die wirtschaftliche und wirtschaftspolitische Stabilität in dem Land ist ausschlaggebend. Dann weiters natürlich sämtliche Kostenfaktoren die hier ins Spiel kommen, Logistikfaktoren, Zugang zu entsprechendem Personal, auch qualifizierten Personal - das sind so die wirtschaftlichen Faktoren die hier relevant sind. An rechtlichen Faktoren geht es natürlich auch um Eigentum, und wie Eigentum gehandhabt wird, Eigentum in gesellschaftsrechtlicher aber auch in sachenrechtlicher Hinsicht. Da kommen dann die ICSID-Abkommen ins spiel und dann sieht man sich das auch genauer an. Die Schiedsgerichtsklausel ist hier eine sehr hilfreiche Sache, weil im worst case gilt es sich ja Dinge auszustreiten, da hilft ja nichts. Vor allem wenn es um Veränderungen, politische Verändungen geht, in dem Land, da hilft dann möglicherweise nur mehr der Streitweg. Ich würde sagen, ja die Schiedsgerichtsklausel spielt eine Rolle, allerdings vermutlich nicht die oberste Priorität, sondern irgendwo in dieser Kette: Wirtschaftspolitik, Stabilität des Landes, wirtschaftliche Faktoren im Land, dann gehen wir in die rechtliche Sphäre. Eigentum in dem Land, wie ist Eigentum in dem Land abgebildet aus heutiger Sicht, und dann Investitionsschutzabkommen. Dann natürlich in der Kette, im Investitionsschutzabkommen, die Schiedsgerichtsbarkeit und die Klausel. Natürlich ohne entsprechendes Streitforum muss man sich fragen, was ist das Investitionsschutzabkommen wert. Außer vielleicht politischer Druck von aussen, wenn das Eigentum ausländischer Investoren beeinträchtigt werden soll. Letztlich am Ende des Tages muss man es ausstreiten. Also es spielt eine Rolle, aber meiner Meinung nach nicht die erste.

Und generell, Verträge zwischen den Ländern sollten schon in irgendeiner Art und Weise vorhanden sein, dass man sich das Land überhaupt ansieht? Oder ist der Investitionsvertrag zwischen den Ländern jetzt mal grundsätzlich nicht so relevant sondern eher die anderen Faktoren?

Ist schon relevant, ist relevant aber erst in einer Kette von Aspekten die man durchprüft und dann kommt dies irgendwann zum Tragen. Ist relevant, aber die Frage müsste man umdrehen: Würde ich nicht investieren in einem Land, wenn es dort keine Investitionsschutzabkommen gäbe? Wenn es eines gibt, würde ich dann nicht investieren, wenn dieses Investitionsschutzabkommen keine Schiedsgerichtsklausel enthält?
Das ist um es auf den Punkt zu bringen. Naja, das hängt natürlich auch von der Attraktivität der anderen Faktoren ab. Daher kann ich dies nicht mit Ja oder Nein beantworten, ob die Investition an der Schiedsgerichtsklausel scheitern würde. Aber es ist sicher ein relevanter Faktor in der Gesamtbeurteilung.

Ok. Und was sagen Sie da, ist es grundsätzlich egal, ob die Schiedsgerichtsklausel an den ICSID oder an ein Ad-Hoc Tribunal (solange es unter UNCITRAL Rechten) verweist? Gibt es hier Präferenzen?

Das ist dann in der Investitionsentscheidung dann vermutlich schon nicht mehr relevant. Natürlich, alles was strukturiert ist, UNCITRAL ist etwas „freihändig“, hat logischerweise einen höheren Wert. Daher ist alles was institutionell gelöst ist, ist hier zu bevorzugen. Aber da sind wir bereits beim „fine-tuning“. Das macht aus meiner Sicht keinen Ausschlag auf die Investitionsentscheidung ob im Land A oder im Land B investiert wird.

Da gibt es grundsätzlich keine Präferenz, aber das Vorhandensein der Klausel ist hilfreich.

Genau, ja.

Vielen international agierenden Unternehmen wird ja auch vorgeworfen dies auszunutzen. Insofern, dass sie dann ihre Investitionen dahingehend strukturieren, sich den Standort in dem Land aussuchen, wo sie das beste Standing (durch die Schiedsgerichtsklausel) haben. Diest ist ja bekannt unter dem Begriff „treaty-shopping“. Haben Sie da irgendwelche Erfahrungen, ob dies ernsthaft relevant ist für die Unternehmen oder wie viel ist davon nur ein Gerücht?

Ich würde sagen, das ist mit ein Aspekt, aber ob das jetzt der entscheidende Aspekt ist wage ich zu bezweifeln. Also dies ist wahrscheinlich nicht der investitionsentscheidende Aspekt, aber er spielt auf jeden Fall auch mit. Man würde hier viele Faktoren nebeneinander legen, und diese auch dann dementsprechend gewichten. Ja und je nach Attraktivität der anderen Faktoren, dies ist ja nur einer davon, würde man dies dann entscheiden.
Investitionsentscheidungen sind ja kein K.O.-System wo man sagt ja/nein und nur wenn ja, dann gehe ich weiter. Es gibt viele Faktoren die sind nicht schwarz oder weiß sondern liegen irgendwo dazwischen, die würde man gewichten, und dann fällt das hier auch hinein und ist auch ein Thema, und dementsprechend das Gesamtbild beurteilen.

Eine letzte Frage: Sobald es kein Investitionsabkommen zwischen den Ländern gibt, ist es ja auch eine Frage bezüglich des Versicherungsschutzes der Auslandsinvestitionen. Viele Versicherungen bieten diese Versicherungsleistungen ja gar nicht an, solange kein Internationaler Vertrag diesbezüglich vorliegt. Inwiefern ist die Möglichkeit zur Versicherung relevant? Oder ist es mehr der internationale Vertrag als Rückhalt und Unterstützung von staatlicher Seite?

Mit Versicherungspolizzen habe ich mich nicht beschäftigt, daher kann ich hier leider keine qualifizierte und konkrete Antwort geben. Hier habe ich leider keine sinnvolle Antwort zu diesem Punkt.

9.2. Abbreviations

BIT	*Bilateral Investment Treaty*
CEPA	*Closer Economic Partnership Agreement*
FCN	*Friendship, Commerce and Navigation Agreement*
FDI	*Foreign Direct Investment*
GATT	*General Agreement on Tariffs and Trade*
GDP	*Gross Domestic Product*
IIA	*International Investment Agreement*
ICC	*International Chamber Of Commerce*
ICSID	*International Centre for Settlement of Investment Disputes*
IMF	*International Monetary Fund*
ISDS	*Investor-State Dispute Settlement*
KPI	*Key Performance Indicator*
OECD	*Organisation for Economic Cooperation and Development*
SAR	*Special Administrative Region (f.ex. Hong Kong)*
TIP	*Treaty with Investment Provisions*
TRIMS	*Agreement on Trade-Related Investment Measures*
UNCITRAL	*United Nations Commission on International Trade Law*
UNCTAD	*United Nations Conference on Trade and Development*
VCLT	*Vienna Convention on the Law of Treaties*
WTO	*World Trade Organisation*

10. Bibliography

Adler, Barry and Kahan, Marcel (2013), "The technology of creditor protection" in *University of Pennsylvania Law Review*, Vol. 161 No. 7, pp. 1773-1814, http://www.jstor.org/stable/23527853 accessed: 19.11.2017

Agrawal, Kanu (2016), "Bilateral investment treaties: a developing history" in *Jindal Global Law Review* Vol. 7(2), pp. 175-199

Agreement between the Government of Hong Kong and the Government of New Zealand for the Promotion and Protection of Investments (1995)

Agreement on Free Trade and Economic Partnership between the Swiss Confederation and Japan (2009)

Alfaro, Laura et al. (2016), "How does foreign direct investment promote economic growth? Exploring the effects of financial markets on linkages", working paper

Allee, Todd and Peinhardt, Clint (2010), "Delegating Differences: Bilateral Investment Treaties and Bargaining Over Dispute" in *International Studies Quarterly*, Vol. 54 No. 1 (March 2010), pp. 1-26, http://www.jstor.org/stable/40664235 accessed: 11.01.2018

Allee, Todd and Peinhardt, Clint (2011), "Contingent Credibility: The Impact of Investment Treaty Violations on Foreign Direct Investment" in *International Organization*, Vol. 65 No. 3 Summer 2011), pp. 401-432, http://www.jstor.org/stable/23016160 accessed: 11.01.2018

Colen, Liesbeth and Guariso, Andrea (2012), "What Type of FDI is attracted by Bilateral Investment Treaties?", from *LICOS Centre Institutions and Economic Performance, KU Leuven*

Economy Watch (2010), „Benefits of Foreign Direct Investment“, in http://www.economywatch.com/foreign-direct-investment/benefits.html accessed: 22.02.2018

Encyclopædia Britannica, "Calvo Doctrine" in https://www.britannica.com/topic/Calvo-Doctrine, accessed: 22.01.2018

FACC AG (Fischer Advanced Composite Components), Official Website: www.facc.com, accessed: 24.01.2018

Greenwald, Joseph A. (1993), "Dispute Settlement in a North American Free Trade Agreement" in *The Annals of the American Academy of Political and Social Science*, Vol. 526 (March 1993)

ICSID Convention (2006), "ICSID Convention, Regulations and Rules", *International Center for Settlement of Investment Disputes*, April 2006
Jandhyala, Srividya et al. (2011) "Three waves of BITs: The Global Diffusion of Foreign Investment Policy" in *The Journal of Conflict Resolution* Vol. 55 No. 6 (December 2011), pp. 1047-1073, http://www.jstor.org/stable/23208015 accessed: 19.11.2017

Kim, Yong Kyun (2017), "States Sued: Democracy, the Rule of Law, and Investor-State Dispute Settlement (ISDS)" in *International Interactions Empirical and Theoretical Research in International Relations*, pp. 300-325

Kreindler and Rust (2011), "Beck'sches Rechtsanwalts-Handbuch", 10th Edition, Paragraph §7

McLachlan, Campbell (2008), "Investment Treaties and General International Law", in *The International and Comparative Law Quarterly*, Vol. 57 No. 2 (April 2008), pp. 361-401

Neudeck, W. (2018), „Economics of the European Union“, class held at the Diplomatic Academy of Vienna, January-March 2018

New Zealand - Hong Kong, China Closer Economic Partnership Agreement (2010)

OECD (2008), "International Investment Law - understanding concepts and tracking innovation", Companion Volume to *International Investment Perspectives*

Pauwelyn, Joost (2014), "The Re-Convergence of International Trade and Investment Law: Causes, Questions, and Reform" in *Proceedings of the Annual Meeting (American Society of International Law)* Vol. 108, pp. 255-258

Pohl, J., K. Mashigo and A. Nohen (2012), "Dispute Settlement Provisions in International Investment Agreements: A Large Sample Survey", *OECD Working Papers on International Investment*, 2012/02, OECD Publishing.http://dx.doi.org/10.1787/5k8xb71nf628-en

Red Bull GmbH, Official Website: www.redbull.com, accessed: 24.01.2018

Rubin, Seymour J. et al. (1984), "Avoidance and Settlement of International Investment Disputes" in *Proceedings of the Annual Meeting (American Society of International Law)* Vol. 78 (April 1984), pp. 38-58

Schneidermann, David (2000), "Investment Rules and New Constitutionalism", in *Law & Social Inquiry*, Vol. 25 No. 3 (Summer 2000), pp. 757-787

Tekin, Zeynep (2017), "International Investment Law and Treaty Shopping Through Corporate Nationality Structuring", in *University of Pennsylvania Journal* *of international law* April 2017, accessed: 25.03.2018, http://pennjil.com/international-investment-law-and-treaty-shopping-through-corporate-nationality-structuring/

The Heritage Foundation (2017), "2017 Index of Economic Freedom", US Think Tank https://www.heritage.org/index/, accessed: 24.01.2018

Tienhaara, Kyla (2017), "Investor-state dispute settlement" in *Regulatory Theory - Foundations and Applications* by ANU Press

UNCITRAL Arbitration Rules (2013), "UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration", United Nations Commisson on International Trade Law

UNCTAD (2008), "Latest Developments in Investor-State Dispute Settlement", United Nations Conference on Trade and Development 2008b in *International Investment Agreements Monitor,* New York and Geneva: United Nations.

UNCTAD (2008), "Recent developments in international investment agreements (2007-June 2008)", *IIA Monitor No.2* 2008 United Nations New York and Geneva

UNCTAD (2014), "The Impact of International Investment Agreements on Foreign Direct Investment: an overview of empirical studies 1998-2014", *Issues Note - Working Draft of the UNCTAD*, retrieved from: http://investmentpolicyhub.unctad.org/Upload/Documents/unctad-web-diae-pcb-2014-Sep%2024.pdf

UNCTAD Investment Policy Hub, http://investmentpolicyhub.unctad.org/ISDS accessed: 25.03.2018

Vandevelde, Kenneth J. (1997), "Toward an Effective International Investment Regime" in *Proceedings of the Annual Meeting (American Society of International Law)* Vol. 91, pp. 485-488

Vandevelde, Kenneth J. (1998), "The Political Economy of a Bilateral Investment Treaty" in *The American Journal of International Law*, Vol. 92 No. 4 (October 1998), pp. 621-641

Vienna Convention on the Law of Treaties (1969), *United Nations Multilateral Treaty No. 18232*, https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf accessed: 24.01.2018

Wang, Yu (2008), "The Effect of State-endorsed Arbitration Institutions on International Trade" in *New Political Economy*, pp. 419-445

Wellhausen, Rachel (2016), "Recent Trends in Investor-State Dispute Settlement" in *Journal of International Dispute Settlement*, pp. 117-135

World Bank (1992), "Legal framework for the treatment of foreign investment (Vol. 2) : Guidelines (English)",. Washington, D.C. : The World Bank. http://documents.worldbank.org/curated/en/955221468766167766/Guidelines accessed: 24.01.2018

World Bank Official Website: https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups, accessed: 19.11.2017

Young, Michael K. et al. (1993), "ICSID and New Trends in International Dispute Settlement" in *Proceedings of the Annual Meeting (American Society of International Law)* Vol. 87, pp. 2-14

10.1. Table of Figures

<u>Note:</u>

All the data used for the figures and tables above have been retrieved from the official statistics data agencies of the respective countries and the Word Bank Database.

Pledge of Honesty

On my honour as a student of the Diplomatic Academy of Vienna, I submit this work in good faith and pledge that I have neither given nor received unauthorized assistance on it.

Elisabeth Puttinger