***Asia's Changing International Investment Regime: Sustainability, Regionalization and Arbitration,* Julien Chaisse, Tomoko Ishikawa and Sufian Jusoh (eds)**, Springer, 2017, xii + 260pp, ISBN 978-981-10-588

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This 14-chapter book published in late 2017 provides a succinct and quite comprehensive overview, as well as some detailed analysis, of key developments and themes in the rapidly evolving field of Asia-Pacific international investment treaties. It is particularly useful for readers in the antipodes, given for example Australia's emphasis on concluding bilateral investment treaties (BITs), and especially more recently Free Trade Agreements (FTAs) with investment chapters, with counterparties in the Asia-Pacific region. Although the book's title refers to "Asia", several chapters refer to foreign direct investment (FDI) and treaties extending around the Pacific Rim, as well as some developments in Central Asia (a very different sub-region to South or especially East Asia).

The editors' short Introduction, comprising helpful chapter summaries, explains that the book derived from the recent "rapid evolution of the international investment regime in the Asia-Pacific region". It aims "to help predict the future regulatory framework in the region, and how the regional trends affect the development of global rules for foreign investment" (p1). Part I sets the scene by outlining "regional trends in an evolving global landscape", including a growing concern about rebalancing FDI and treaties to promote sustainable patterns. Part II focuses on the "regionalization of investment law and policy", especially key intra-regional treaties concluded recently or under negotiation. Part III ends by asking whether we will see a trend "towards a greater practice of investment arbitration in the Asia-Pacific?". The backdrop is that treaties and FDI flows are triggering somewhat belated, but nonetheless sometimes controversial, increases in both inbound and outbound investor-state dispute settlement (ISDS) claims involving Asian states or investors.

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In **Part I**, the editors elaborate their own perspectives on "the changing patterns of investment rule-making issues and actors" in the region. Referring to 2016 data, Julien Chaisse, Tomoko Ishikawa and Sufian Jusoh note that "Asia is now the world's centre for foreign

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investment", as "the largest recipient region" (p16), while also making increasingly significant contributions to global FDI outflows. They further point out the concentration and proliferation of BITs and more recently FTAs, including "regional trade agreements with investment chapters like the Trans-Pacific Economic [sic] Partnership Agreement (TPPA), the ASEAN Comprehensive Investment Agreement (ACIA) and the continued negotiation of the Regional Comprehensive Economic Partnership (RCEP) involving ASEAN member states and parties to the ASEAN+6 regional trade agreements" (p17). Despite more ISDS cases, and critiques of this enforcement mechanism exemplified by causes celebres such as *Philip Morris Asia v Australia* under the latter's BIT with Hong Kong, the region's investment treaties "including the mega regional trade agreements, continue to adopt ISDS provisions" albeit with some innovations (p19).

The editors note the prospect of the mega regionals building up towards an overarching Free Trade Agreement of Asia and the Pacific (FTAAP), connecting all 27 Asia-Pacific Economic Cooperation (APEC) economies. But they observe that as the TPPA took "many years to negotiate", any FTAAP will take much longer and "it will probably be the second half of the 21st century before it is being fully implemented" (p21). Even this timeframe may be optimistic, in our opinion, given the difficulties in securing re-signing of the TPPA (renamed the Comprehensive and Progressive TPPA) without the United States after the Trump Administration withdrew signature in January 2017 – not mentioned in this volume. Meanwhile, the editors suggest that "the actual action on he changes and reform to take place will be more at the regional or sub-regional level based on existing treaties", such as ACIA as a "standard-bearer" not just for subsequently signed and negotiated ASEAN treaties but also for newer ASEAN member states recalibrating their domestic laws regulating FDI for all comers (p21).

Next, in Part I, Bekzod Abdullaev and Douglas Brooks (from the Australian APEC Study Centre in Melbourne) delve into global as well as regional FDI trends. They emphasise the shift towards cross-border investment in services, rather than resources or manufacturing. (An interesting question re-examined further below is how this shift may impact on ISDS claim activity, given the greater risks involved in foreign investment in resource projects – illustrated, for example, by the outbound ISDS claims brought mainly by Australian resource companies across Asia). Abdullaev and Brooks also point out that although China is the dominant country within "developing Asia" for inbound FDI both over 1990-95 and 2010-2014, many other smaller economies have emerged as major destinations in the latter period,

such as India, Indonesia and even Kazakhstan (p36). However, FDI appears to have remained highly concentrated by sector in APEC economies over 2003-14, potentially limiting positive spillover effects, except for larger economies like Russia, the US and China (p38).

The latter point could be usefully connected to the next very short chapter by Karl Sauvant, specifically his argument that definitions need to be developed and implemented regarding "sustainable" investment, for treaty drafters, ISDS tribunals judging disputes, and policy-makers developing national regimes for regulating FDI. He also urges an international support program for sustainable investment facilitation that, analogous "to the WTO efforts … would be entirely technical in nature, focusing on practical actions" as under the Trade Facilitation Agreement in force since 2017 through the World Trade Organization (p44). Sauvant also reiterates the (quite longstanding and increasingly widespread) call to establish an "Advisory Centre on International Investment Law", to assist especially developing countries engaged in potentially expensive ISDS cases, again inspired by an analogue in the WTO system since 2001.[1]

In "Investment Protection and Host State's Right to Regulate in the Indian Model Bilateral Investment Treaties: Lessons for Asian Countries", Prabhash Ranjan examines the dramatic shift away from a pro-investor 2003 Model BIT (consolidating Indian BIT practice) towards a very pro-host-state 2016 Model BIT. The move was triggered by a recent suite of ISDS claims, notably a small but high-profile award rendered in 2011 in favour of an Australian mining company, under an old BIT. The latter was in fact terminated unilaterally by India on 23 March 2017, as part of its review of BITs associated with developing the 2016 Model BIT as a framework for future negotiations. Ranjan concludes with two wider lessons, especially for other South Asian countries (p64). First, a country need not wait for its first inbound ISDS claim before critically reviewing its older BITs to restore more balance between foreign investor and host state interests. Secondly, in doing so a country can nonetheless remain engaged in the system and retain some form of ISDS. This occurred with the 2016 Model BIT, albeit hemmed in by safeguards in procedures (such as a prior 5-year exhaustion of local remedies requirement combined with limitation periods for ISDS) and substantive safeguards (such as exclusion of taxation, local

[1] Sauvant notes that these two proposals are elaborated in a 2016 policy paper by the E15 Initiative Task Force on Investment Policy, entitled *The Evolving International Investment Law and Policy Regime: Ways Forward*, which can be found at <http://e15initiative.org/publications/evolving-international-investment-law-policy-regime-ways-forward/>.

government measures, and Most-Favoured Nation or MFN treatment), which Ranjan argues tip the scales too far towards the host state's right to regulate.

Leon Trakman turns to China's regulation of FDI, identifying a more variable and pragmatic approach towards BITs that he suggests is likely to continue. He highlights the dilemma faced by China from having now achieved roughly equal flows of inbound and outbound FDI, as well as experience with both inbound and outbound ISDS claims. As such, Trakman argues that China will likely press for more extensive protections "in treaties in which the primary purpose is to benefit its out bound investors in discrete partner states" (p75), while limiting protections in treaties primarily aimed to regulating inbound FDI flows. He notes that the current-generation Model BIT and related treaties continue to provide for extensive ISDS protections. However, they were limited to National Treatment obligations in the 2015 China-Australia FTA, albeit subject to an ongoing bilateral work program to negotiate further provisions, in light of the BIT that meanwhile remains in existence. Trakman notes that China may still "intervene, diplomatically or otherwise, on behalf of private outbound investors" (p87), as in the case of Huawei being excluded by Australia from government procurement for a national broadband program. Overall, he concludes that China is likely to continue to rely on ISDS while "rebalancing its treaties to provide for greater regulatory control by host states" (p88).

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Part II of this book begins with a chapter focusing on "regionalization" within Southeast Asia through ASEAN. However, those reading the Trakman chapter may like to jump ahead one chapter to an excellent analysis of the "China-Japan-Korea Trilateral Investment Treaty". Shintaro Hamanaka (from Japan's Institute of Developing Economies [not: "Economics"]) adds clear explanations of the historical development of investment treaty programs in China compared to Japan, which is emerging as a more aggressive player now in regional treaty-making (as we saw in the TPPA negotiations) to support Japanese investors' longer-standing large-scale outbound investments throughout Asia.

For example, in Table 1 (p124) Hamanaka points out that in a first phase (1980s-1990s), China's BITs had no or limited National Treatment (NT) commitments, a stance extending into the second phase (2000s) only for developing countries, whereas China's BITs with developed countries agreed to post-establishment NT and MFN

treatment. In the third phase (from 2007), treaties extended to pre-establishment MFN but not pre-establishment NT. In Table 2 (p127), Hamanaka suggests that China's second-generation treaties were pro-investor as China began emerging as an outbound FDI exporter, whereas the third generation incorporates "more balanced and detailed" provisions in line with greater appreciation of the. By contrast, Japan's treaties demonstrated a pro-investor generational shift from 2002, consistently with its large FDI outflows. Hamanaka's Table 2 suggests that this stance has persisted since 2007. In our view, that is certainly true regarding Japan's program for standalone BITs, which has been ramped up in recent years especially with high-risk investment destinations in Africa and the Middle East. However, investment chapters within Japan's FTAs (like the TPPA or bilaterally with Australia in 2015) can be seen as more balanced and detailed, although compared to China these treaties remain pro-investor by committing to more pre-establishment NT (ie freer market access or liberalisation of FDI).

Hamanaka then shows how China's renegotiated BIT with Korea (agreed in 2007) was more pro-investor than the 1989 China-Japan BIT, especially regarding prohibitions on performance requirements, protections against expropriation and access to full ISDS (pp129-31, Table 3). This prompted negotiations for a trilateral BIT, agreed in 2012 with most (even more pro-investor) features of the 2003 Japan-China BIT, but still without commitments to pre-establishment NT (with a "negative list", requiring countries then to negotiate and schedule all exceptions to NT). Hamanaka goes on to show how pre-establishment NT with a negative list remains a major issue in negotiations for an investment chapter in a trilateral FTA (and presumably now also RCEP). However, he astutely points out that Japan at least may be able to "free ride" on China's negotiations that are also ongoing with the EU and particularly the US, which has been pressing hard for pre-establishment NT in a new China-US BIT (p137). This is because Japan has kept in force its 1989 BIT with China, alongside the 2012 trilateral BIT including Korea, and the 1989 BIT has a broad MFN clause allowing Japanese investors to "import" better liberalisation provisions in subsequent treaties concluded by China with third countries – whether BITs or FTAs.

Another China-related chapter further into Part II of this book deals with the "One Belt, One Road" initiative, announced by President Xi Jingpeng in late 2013. The subtitle of the chapter by Jun He (from China's Ministry of Agriculture) is "China's New Strategy and its Impact on FDI", with a heavy focus (unsurprisingly) on the country's interest in investing offshore in agricultural land developments. It is

interesting to learn that this project to promote cross-border economic cooperation with 63 other countries westward from the Middle Kingdom in fact involves two "roads" or "lines" (pp163-4), Beijing – Russia - Northern Europe and Beijing – Central / West Asia – Europe, as well as the maritime "belt" through Southeast Asia – South Asia – East Africa – Europe. (Perhaps for this reason, the project is now more often referred to as the "Belt and Road Initiative.)

Unfortunately, this chapter by He is very general, and has more than usual typos (eg multiple examples on p175). It does not connect with the other chapters unpacking China's investment treaty program, except briefly to urge negotiations over BITs to protect (outbound) investors, as well as efforts by firms to assess and minimize FDI risks (pp174-5). Perhaps only after this book went to press, the China International Economic and Trade Commission (CIETAC) inaugurated tailor-made Investment Arbitration Rules in October 2017, following the lead of the Singapore International Arbitration Centre (SIAC) in January 2017. There is also now talk of China establishing an international commercial court (perhaps also influenced by Singapore's initiative since 2015), as another type of hub for cross-border investment dispute resolution along the Belt and Road(s).[2]

Anyway, Part II of this book begins not with the further China-focused chapters by Hamanaka and He, but instead with an explanation by Jusoh and Chaisse about "ASEAN regulation on foreign investment". Their discussion centres on ACIA, which was signed in 2009 to reflect "a consensus that cross-border investment has a positive role to play in all ten ASEAN member states" (p117). A focus is on this intra-ASEAN treaty's centrality for the creation of the ASEAN Economic Community bringing Southeast Asia even closer together. This project was mostly achieved by the end of 2015, but remains subject to ongoing work programs – especially in the services sectors. This chapter could have placed more emphasis on significant historical ambivalence towards inbound FDI on the part of several Southeast Asian states. That can be seen in two earlier intra-ASEAN investment treaties. This would also help explain some significant restrictions on investments subject to liberalisation and protections even through ACIA; it covers investments only in manufacturing, agriculture, fisheries, forestry, mining, and services related to these sectors, but not for example those in other services sectors.

[2] See eg Susan Finder, "Update on China's International Commercial Court" Supreme People's Court Monitor (11 March 2018) available at <https://supremepeoplescourtmonitor.com/2018/03/11/update-on-chinas-international-commercial-court/>.

Some differences as well as mostly commonalities could also have been signposted between ACIA and the five ASEAN+ investment agreements, including even the Australia-NZ-ASEAN FTA investment chapter that was signed in the same year (2009). However, some features of those ASEAN+ agreements (except the ASEAN-India Investment Agreement, despite being signed in late 2014) are mentioned instead in Junianto James Losari's later chapter entitled "A Baseline Study for RCEP's Investment Chapter: Picking the Right Protection Standards". In assessing standards likely to find common ground in the (still ongoing) ASEAN+6 RCEP negotiations, Losari's careful and comprehensive study also compares provisions in bilateral FTAs concluded by major Southeast Asian economies as well as the WTO's agreement on trade-related investment measures (an important precedent given the tendency of Southeast Asian states to retain performance requirements impacting on foreign invetors), the TPPA, and recent FTAs with the European Union (EU). In the context of the EU's FTA signed in 2015 with Vietnam, substituting a two-tier investment court (with members pre-selected only by the states party) for the one-shot ISDS procedure (with arbitrators selected, by host states and foreign investors, if and when a claim is filed), Losari suggests that: "Although finality may be compromised, … ensuring increasing governance in the system and more harmonized interpretation … should prevail over such concern" (p158).

We should now add that the Singapore-EU Investment Protection Agreement concluded in April 2018 also adopts this investment court procedure now favoured by the EU,[3] replacing an earlier TPPA-like ISDS procedure in the Singapore-EU FTA investment chapter originally signed in 2015. This may bolster the chances of a permanent investment court model, or at least core features like a built-in appellate review mechanism for serious errors of law, being introduced into the ASEAN+6 FTA. This seems particularly likely given broader concerns about conventional ISDS evident in other Asian states negotiating RCEP, such as India and Indonesia, as well as even some developed countries like Australia (particularly over 2011-2013) and the Ardern coalition government elected in New Zealand in November 2017.

By contrast, Mark Feldman, Rodrigo Monardes Vignolo (from the OECD) and Cristian Rodriguez Chiffelle (World Economic Forum) are quite upbeat in their insightful chapter on "The Role of Pacific Rim FTAs in the Harmonization of International Investment Law: Towards

[3] Available at <http://trade.ec.europa.eu/doclib/press/index.cfm?id=961>.

a Free Trade Area of the Asia-Pacific".[4] They identify a convergence in state practice across the region (such as liberalisation commitments combined with greater clarifications about host state regulatory space), contributing to harmonization of international investment law, as well as the current or future conclusion of mega regional agreements. In particular, they suggest that the pending China-US BIT could help bridge differences between the TPPA (which they described still as including the US, but not China) and RCEP (including China but not the US), while acknowledging divergent views of China and US regarding market access for FDI (including pre-establishment NT), prohibitions on performance requirements, transparency in ISDS, and so on.

Feldman et al suggest that such remaining challenges to regional harmonisation could be addressed in various ways (p199). One approach is the China-Australia FTA, leaving some issues to be further negotiated through a work program (albeit, it should be noted, in the shadow of a BIT that remains in existence). A second is a plurilateral opt-in approach, as with the 2014 Mauritius Convention on Transparency in Treaty-based Investor-State Arbitration (which Australia signed on 18 July 2017). A third is a more pro-active role by APEC in brokering a broad FTAAP. However they note that four RCEP negotiating states are not APEC members (notably India), while four APEC members have not been involved in either the TPPA or RCEP (Hong Kong, Taipei, Russia and Papua New Guinea). Feldman et al also note the complication of the EU shift since 2015 to an investment court system in lieu of conventional ISDS, impacting on EU treaties already concluded in the region (including already the EU-Vietnam FTA) or under negotiation (for example with China).

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Part III focuses squarely on arbitration, particularly ISDS. The last chapter by Andrea Bjorklund and Bryan Druzin intriguingly argues that the preference of investors to file ISDS arbitration cases through the International Centre for the Settlement of Investment Disputes (ICSID) is due primarily to "network effects". This occurs, as with a language becoming widely used, "where the implicit value of a product or service increases as the number of other agents using the product or services grows, which in turn draws more users" (p245). Network effects arise to favour ICSID, which continues to administer the large majority of ISDS cases, by creating a "general impression of

[4] This chapter seems to be based on the authors' 2016 Think Piece for the E-15 Initiative Task Force, available at <http://e15initiative.org/publications/the-role-of-pacific-rim-ftas-in-the-harmonisation-of-international-investment-law-towards-a-free-trade-area-of-the-asia-pacific/>.

legitimacy", "predictability and familiarity regarding the rules and procedures of the institution", and "the general quality and scope of arbitral service" (pp246-7). Other institutions struggle to compete due to a lack of critical mass.

However, the authors suggest that such a "lock-in" may be subject to "disruptive events" (p249), notably the EU's push for an investment court alternative to ISDS. ICSID anyway faces challenges from the Permanent Court of Arbitration's growing caseload (administering mainly ad hoc ISDS), and the ambitions of SIAC as well as a reinvigorated Kuala Lumpur Regional Centre for Arbitration (renamed in 2018 the Asian International Arbitration Centre). But their bottom line is that "ICSID's consistent strength and its network-effect-reinforced position of dominance will be hard to unseat" (p258).[5]

The EU's new approach is also mentioned in the chapter on "The Future of Investor-State Arbitration", written by Rahul Donde and Chaisse to open Part III, along with one of an EU-style court's core features – an "appeals mechanism", which anyway could be developed for ISDS through future treaties. They also sketch some other "recent developments" generally and in the region, in the context of some recent public concerns about ISDS as cases have grown due to more FDI, treaties and arbitration claims. These are: control of treaty interpretation through inter-state decisions, possible counterclaims by host state, more transparency in ISDS, and even perhaps reversion to inter-state dispute settlement. (However, their example of Australia and Malaysia omitting ISDS in their 2012 FTA needs to be understood in the context of ISDS-backed protections under the 2009 Australia-New Zealand-ASEAN FTA, as well as under the TPPA if it comes into force.)

Donde and Chaisse suggest that "contradictory conclusions" have been reached about investment arbitration trends in Asia. They suggest that Nottage and Romesh Weeramantry (writing in 2012 based on data through to 2010) predicted that "there would be few Asia-centric claims possibly because of 'institutional barriers', including costs and a paucity of experienced counsel and arbitrators, rather than any specific 'cultural aversion'" to arbitration (p214). In fact the latter two authors had argued that such barriers, disproportionately impacting on potential ISDS parties in East and South Asia, were the best explanation *historically* for the very low levels of ISDS cases filed involving such parties relative to the very large FDI flows and stocks into and increasingly out of that sub-region. The implication was that

[5] Bjorklund and Druzin add that a more detailed exposition is forthcoming in the *Pennsylvania Journal of International Law*, available via <https://scholarship.law.upenn.edu/jil/>.

more cases would ensue if barriers could be brought down. This seems to have happened in recent years, with somewhat more availability of arbitrators from the region (although still many "repeat players") and international law firms competing more vigorously to provide cost-effective ISDS services to both Asian host states and investors. So there is not necessarily any tension with the views of other studies cited (published by Joongi Kim in 2012, and Chaisse in 2015) noting some uptick in ISDS claims involving Asian parties, and predicting more over future years.

It is also important to be clear about what is meant by "Asia" in this context. Donde and Chaisse cite generally to UNCTAD's online Investment Dispute Settlement Navigator when stating that "21% of all investment disputes involve Asian parties" (p210). But it is possible that they included Central Asia, with very different economies to those in East and even South Asia (analysed by Nottage with Weeramantry). Perhaps also they included Pacific Rim countries, notably the US – whose investors have brought the most claims (although not on a per capita basis) – so they meant "Asia-Pacific parties" rather than Asian parties.

It also not obvious which countries are covered in the chapter by Martina Francesca Ferracane entitled "Investor-State Dispute Settlement (ISDS) Cases in the Asia-Pacific Region – The Record".[6] She notes for example that "investors from *Asia-Pacific* countries have started only 4% of all ISDS cases … 24 cases out of the 696 ISDS [sic] recorded by the end of 2015 … significantly less than proportional to the share of the Asia-Pacific regional FDI stock" (p 231, emphasis added). Annex tables later indicate that these countries, which have also not experienced many inbound ISDS claims (except India recently), include Central Asia (notably for example Kazhakstan) and Australia (as an western Pacific Rim country) as well as South and East Asia – but not countries in the Americas (along the eastern Pacific Rim). Other chapters in the book, by contrast, generally seem to refer to the "Asia-Pacific" to include the entire Pacific Rim and South Asia.

As well as Ferracane noting that such "Asia-Pacific" ISDS cases have slowly increased off a very low base, tracking for example outbound FDI stock growth, she discusses:

[6] Although not cited, the author also published a quite similarly structured analysis focused on APEC (which excludes notably India) in *Current Issues in Asia-Pacific Foreign Direct Investment* (The Australian APEC Study Centre at RMIT, 2016) 61-70, available at <http://mams.rmit.edu.au/cwgz1keqt2r8.pdf>.

- the sectoral distribution of claims – finding that:
  - 66% of claims against Asia-Pacific states relate to the "tertiary" or services sector (similar to 61% against states world-wide in 2014 according to an UNCTAD study);
  - 10% involve the secondary sector (manufacturing); and
  - 24% involve the "primary sector (mainly mining and quarrying)" (p234);
- outcomes of ISDS claims – finding below-global-average proportions of cases won by Asia-Pacific host states, but above-average proportions when Asia-Pacific investors pursued cases; and
- awards – finding that Asia-Pacific investors prevailing received on average 39% of the amounts claimed.

Ferracane's dataset appears to be ISDS claims recorded on the UNCTAD Navigator as of May 2016. Further, it is limited to treaty-based claims, rather than for example claims where consent to ISDS arbitration through ICSID was given by host states under individually-negotiated contracts with foreign investors.

It would have been useful to drill down further into the UNCTAD Navigator dataset. Its online search engine groups sectors into primary, secondary and tertiary.[7] These three categories are also used by Ferracane to generate her pie charts comparing claims against Asia-Pacific or world-wide states. But the tertiary sector category encompasses 17 seemingly disparate sub-sectors. It seems more useful for statistical analysis to group sub-sectors according to theoretically relevant characteristics. Accordingly, updating also for ISDS claims concluded by end-2017, Table 1 divides the tertiary sector into "infrastructure" (attracting 42% of claims world-wide) and "other" services (23%).

[7] See <http://investmentpolicyhub.unctad.org/ISDS/FilterByEconomicSector>. This categorisation seems to follow the three-sector theory originally developed by Allan Fisher, Colin Clark and Jean Fourastié,

Table 1: Treaty-based ISDS Claims World-wide (concluded by end-2017)

CODE	SECTOR/INDUSTRY	#	%
	Resources:	**103**	**19.0**
A	Agriculture	26	4.8
B	Mining and Quarrying	77	14.2
C	**Manufacturing**	**85**	**15.7**
	Infrastructure:	**226**	**41.7**
D	Electricity, gas, steam and air conditioning supply	87	16.1
E	Water Supply; sewerage, waste management and remediation activities	30	5.5
F	Construction	50	9.2
H	Transportation and storage	24	4.4
J	Information Communication	35	6.5
	Other:	**127**	**23.4**
K	Financial and insurance activities	50	9.2
G	Wholesale and retail trade; repair of motor vehicles and motorcycles	10	1.8
I	Accommodation and food service activities	6	1.1
L	Real estate activities	27	5.0
M	Professional, scientific and technical activities	13	2.4
N	Administrative and support service activities	5	0.9
O	Public administration and defence, compulsory social security	2	0.4
Q	Human health and social work activities	3	0.6
R	Arts, entertainment and recreation	6	1.1
S	Other services and activities	1	0.2
U	Activities of extraterritorial organisations and bodies	4	0.7

We then find higher claim rates for infrastructure investments (especially for electricity/gas supply and construction) – as well as for "mining" within the resources or primary sector – which could be explained by large sunk costs over long periods, creating more risk of "hold-up" or calls to renegotiation by successive host governments. By contrast, most other services sectors attract few claims, except interestingly for "financial and insurance activities" (9%). Although those activities involve fewer sunk costs, the investment amounts may still be large and the sectors may be subject to extensive economic and political tensions. It would be useful next to compare claim patterns regarding financial (and other) services investments compared to ISDS claims in the Asian region, given the shift towards more cross-border FDI in services world-wide (noted earlier by

Abdullaev and Brooks) as well as gradual liberalisation across Asia (for example through ASEAN, as outlined by Jusoh and Chaisse).

In addition, Ferracane does not examine the extent to which ICSID is chosen by investors for treaty-based ISDS claims, despite the chapter by Bjorklund et al focusing on the extent to which ICSID is and may remain the pre-eminent dispute resolution forum. Adopting the same four-way sectoral categorization and UNCTAD Navigator data through to end-2017, our Figure 1 below finds that ICSID's dominant share of ISDS cases is attenuated in sectors "other" than infrastructure, manufacturing and resources.

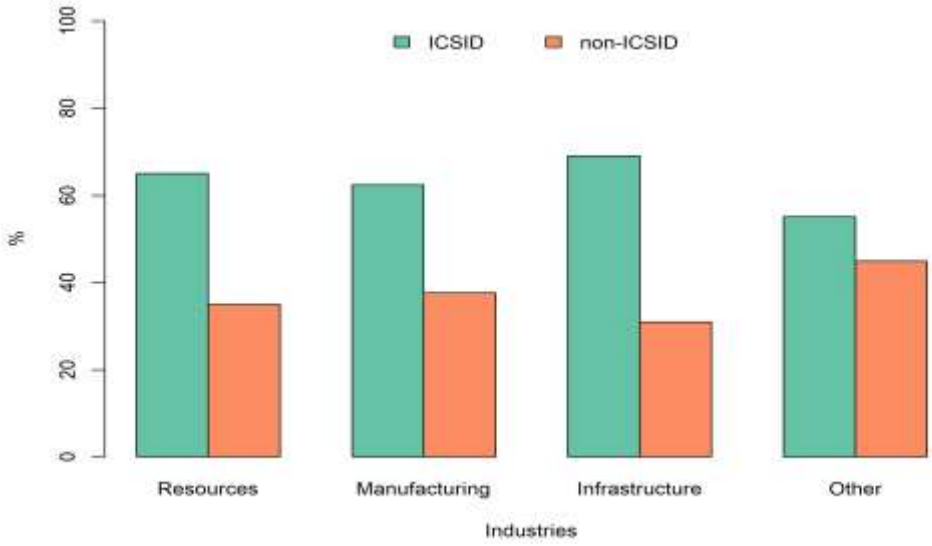

Figure 1: ICSID or Other Forum for Treaty-based ISDS Claims (concluded by end-2017)

More specifically, out of 50 concluded cases in the Finance sector, 54% were referred to ICSID but 46% to Non-ICSID forums. Again, this begs the question about what is happening in the Asia-Pacific subset of cases, particularly with financial services investments, and the underlying drivers as well as implications of such tendencies. Further research is also needed into cases where ICSID takes jurisdiction based on consent provided in an investment contract with a particular investor, rather than more broadly through a treaty (or national law on investment).

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Overall, therefore, this book provides much food for thought and useful information as well as analysis of trends in FDI, regional investment treaties, and treaty-based dispute settlement, in "Asia" – in a very broad sense. It is definitely worth a closer read.

Some of the information seems to date back to early 2016 or even before, perhaps reflecting the fact that the book is based on the first "Asia FDI Forum" conference hosted by the Chinese University of Hong Kong, in late 2015. But investment treaty law and practice is anyway a rapidly evolving field. There are also a few gaps in coverage, such as the wider treaty practice of Korea, Australia and New Zealand that may punch above their weight in ongoing regionalization. It would also have been useful to dig down into the national laws on FDI regulation, and international arbitration generally, especially in Southeast Asian countries that have displayed historical ambivalence towards foreign investors. Perhaps through a concluding chapter, the editors could have added further and more explicit connections among the different chapters, as this review has tried to do. They could have elaborated on broader themes such as whether Asian state generally are, or may increasingly become, rule-makers rather than rule-takers in international investment law.

However, at least some of these lines of further inquiry would require another book. Fortunately, readers can now turn to a complementary 21-chapter volume on *International Investment Treaties and Arbitration Across Asia*. It is also co-edited by Chaisse, but this time with Luke Nottage.[8] That covers cross-border investment trends, national FDI regulation and arbitration laws, investment treaty practice, and treaty- as well as sometimes contract-based investment law dispute resolution issues, assessing the 16 RCEP negotiating states as potential investment law rule-makers.

[8] Published by Brill in January 2018, available also electronically via <https://brill.com/view/title/36129>.