1. Introduction

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The relationship between intellectual property and investment law has long been underexplored.¹ This seems quite surprising since many of the International Investment Agreements (IIAs) – be it in the form of bilateral investment treaties (BITs) or combined free trade and investment agreements – concluded until today, include specific references to intellectual property rights in the list of ‘investments’ protected under these agreements.² This is also not a new phenomenon since what is often presented as the first BIT mentioning intellectual property – the treaty between the Federal Republic of Germany and Pakistan for the Promotion and Protection of Investments – already dates back to 1959³ and the number of IIAs concluded since is very impressive.⁴ And when the reference to IP is not explicit, the inclusion is made implicit by a general reference in the list of protected investments to ‘any kind of assets’ or ‘intangible property’ or any open non-limitative wording that would extend to non-physical property and to intellectual assets.⁵ As it has been underlined in a foundational article on the issue:

¹ Among many others making this assessment, see T. Voon, A. Mitchell and J. Munro, ‘Intellectual Property Rights in International Investment Agreements: Striving for Coherence in National and International Law’, in: C.L. Lim and B. Mercurio (eds), *International Economic Law After the Crisis: A Tale of Fragmented Disciplines* (Cambridge University Press, 2015), 380, shedding light on that relationship and revealing both uncertainty and fragmentation, as well as deliberate attempts at constructively integrating intellectual property regulation and international investment law.

² See S. Frankel, ‘Interpreting the Overlap of International Investment and Intellectual Property Law’ (2016) 19 *Journal of International Economic Law* 121, with further examples (at p. 127).

³ Treaty between the Federal Republic of Germany and Pakistan on the Promotion and Protection of Investments, signed in Bonn on 25 November 1959, United Nations – Treaty Series 1963, 24. According to article 8(1)(a) of this BIT, ‘the term “investment” shall comprise capital brought into the territory of the other Party for investment in various forms in the shape of assets such as foreign exchange, goods, property rights, *patents and technical knowledge*’ [emphasis added].

⁴ See the reference report of the United Nations Conference for Trade and Development (UNCTAD), *World Investment Report 2017, Investment and the Digital Economy* (United Nations Publications, 2017), xii: ‘Many countries govern cross-border investment through specific investment laws that address a similar set of issues as international investment agreements (IIAs). At least 108 countries have such a law. Investment laws and IIAs share common elements in preambles, definitions, entry and treatment of investors, investment promotion and dispute settlement [...]. The universe of IIAs continues to grow amid greater complexity. In 2016, 37 new IIAs were concluded, bringing the total number of treaties to 3,324 by year-end (an additional 4 have already been concluded during 2017). In 2016, 37 new International Investments Agreements (IIA) were concluded, *bringing the total number of treaties to 3324*’ [emphasis added]. According to the *World Investment Report 2019* (United Nations Publications, 2019), xii: ‘International investment policymaking is in a dynamic phase, with far-reaching implications. In 2018, countries signed 40 international investment agreements (IIAs)’.

⁵ R. Lavery, ‘Coverage of Intellectual Property Rights in International Investments Agreements: An Empirical Analysis of Definitions in a Sample of Bilateral Investment Treaties and Free Trade Agreements’ (2009) 6(2) *Transnational Dispute Management* 4.

[W]hile existing literature on international investment agreements and investor-state dispute settlement is both rich and diverse, the relative absence of literature reviewing and analyzing the legal requirements and potential effect of intellectual property (IP) provisions in IIAs is striking. The absence of scholarly attention is even more surprising given the voluminous literature on IP chapters of free trade agreements (FTAs). Thus [...] it seems that the scholars, public health advocates and other interested parties who so feared the potential effects of the World Trade Organization's (WTO) Agreement on Trade-Related Aspects of Intellectual Property (TRIPS Agreement) did not recognize the potential impact that IP-related provisions in IIAs could have on the ability of governments to adequately protect areas of domestic interest (such as public health).⁶

The reason for this relative ignorance of both areas of law has been very well described by Henning Grosse Ruse Kahn:

For long, the practical relevance of the IP and investment overlap – caused by the incorporation of IP rights as a form of investment that is covered by most IIAs – seemed negligible. In recent years, however, several high-profile cases have emerged where right holders rely on international investment protection to challenge various host state measures affecting IP rights. In the three most contested and publicly visible disputes, the measures challenged implement, directly or indirectly, important policy choices of the host state to protect public interests such as reducing tobacco consumption (by limiting the way logos and brand names can appear on packaging) or protecting access to medicines (by applying strict patentability requirements that often affect pharmaceutical products).⁷

These cases, where both legislation and court decisions on IP of a particular state were challenged by multinational corporations claiming the violation of their investment interests based on international investment law, amounted to what Bryan Mercurio elegantly called the 'awakening of the sleeping giant'.⁸ Since then, there has been a considerable and growing interest from commentators in trying to determine the exact implications of the protection of IP as investment on the regulatory powers of states and the protection of non-monetary public interest values in IP norms.⁹ If ultimately the victories of the states in the above-mentioned disputes

⁶ B. Mercurio, 'Awakening the Sleeping Giant: Intellectual Property Rights in International Investment Agreements' (2012) 15(3) *Journal of International Economic Law* 871 et seq.

⁷ H. Grosse Ruse-Khan, 'Challenging Compliance with International Intellectual Property Norms in Investor-State Dispute Settlement' (2016) 19 *Journal of International Economic Law* 241, at 244.

⁸ B. Mercurio, 'Awakening the Sleeping Giant: Intellectual Property Rights in International Investment Agreements', *supra*, p. 871.

⁹ See for example H. Grosse Ruse-Khan, 'Investment Law and Intellectual Property Rights', in: M. Bungenberg et al. (eds), *International Investment Law: A Handbook* (Baden-Baden, C.H. Beck/Hart/Nomos, 2015), p. 1692 (with further references); C. Correa and J.E. Viñuales, 'Intellectual Property Rights as Protected Investments: How Open are the Gates?' (2016) 19(1) *Journal of International Economic Law* 91; P.K. Yu, 'The Investment-Related Aspects of Intellectual Property Rights' (2017) 66 *American University Law Review* 829; L. Vanhonnaeker, *Intellectual Property Rights as Foreign Direct Investments: From Collision to Collaboration* (Cheltenham (UK) and Northampton, MA (USA), Edward Elgar Publishing, 2015); L. Liberti, *Intellectual Property Rights in International Investment Agreements: An Overview*, OECD Working Papers on International Investment, Publications of the OECD, 2010/01; Simon Klopschinski, *Der Schutz geistigen Eigentums durch völkerrechtliche Investitionsverträge* (Carl Heymanns Verlag 2011); D. Gervais, 'Investor-State Dispute Settlement: Human Rights and Regulatory Lessons from *Lilly v Canada*' 2018 8(3) *UC Irvine L. Rev.* 459; I. Stepanov, *Eli Lilly and Beyond: The Role of International Intellectual Property Treaties in Establishing Legitimate Expectations in Investor-State Dispute Settlement*, MIPLC Studies, Vol. 33 (Baden-Baden, Nomos, 2018); R.L. Okediji, 'Is Intellectual Property "Investment"?' *Eli Lilly v. Canada and the International Intellectual Property System* (2014) 35 *U. Penn. J. of Int'l L.* 1121; C. Geiger, 'The TTIP and its Investment Protection: Will

have slightly diminished the initial fears, the exact consequences of the investment protection of intellectual property rights are still uncertain and a subject of controversy in scholarly discussion.¹⁰ Some scholars have even argued that the understanding of intellectual property as investment was only a sign of a more profound change and of a broader reconceptualization through international law of IP from a mechanism to incentivize innovation to a commodity and finally to an asset,¹¹ thereby profoundly affecting its underlying social function.¹²

It is true that the intellectual property landscape at the international level has been changing. The ongoing crisis of multilateralism and the resulting proliferation of bilateral¹³ or plurilateral treaties such as the Anti-Counterfeiting Trade Agreement¹⁴ or the Trans-Pacific Partnership¹⁵ among like-minded countries to define the normative framework for IP at the global level certainly play a significant role in this change of perspective.¹⁶ Where once delicate balances were needed and compromises hardly negotiated multilaterally within international organiza-

the EU Still be Able to Regulate Intellectual Property?' 2018 (49) *International Review of Intellectual Property and Competition Law (IIC)* 631; C.M. Ho, 'Sovereignty Under Siege: Corporate Challenges to Domestic Intellectual Property Decisions' (2015) 30(1) *Berkeley Technology Law Journal* 213.

¹⁰ See R.C. Dreyfuss and S. Frankel, 'Reconceptualizing ISDS: When is IP an Investment and How Much Can States Regulate It?' (2018) 21(2) *Vand. J. Ent. & Tech. L.* 377, showing that 'the awards in these ISDS cases, while closing the door on specific contentions, were framed in a manner that invites further challenges to IP-related regulations', and noting that 'the appetite for investment protection has not diminished. More cases are emerging and newer international instruments do not appear [...] to be carving out IP from their investment chapters' (at p. 378).

¹¹ R.C. Dreyfuss and S. Frankel, 'From Incentive to Commodity to Asset: How International Law Is Reconceptualizing Intellectual Property' (2015) 36(4) *Michigan Journal of International Law* 557. See also in this sense J. Gathii and C. Ho, 'Regime Shifting of IP Law Making and Enforcement from the WTO to the International Investment Regime' (2017) 18(2) *Minnesota Journal of Law, Science and Technology* 427.

¹² On this crucial justification for the IP system and its legitimacy see C. Geiger, 'The Social Function of Intellectual Property Rights, Or How Ethics can Influence the Shape and Use of IP Law', in: G.B. Dinwoodie (ed.), *Methods and Perspectives in Intellectual Property* (Cheltenham (UK) and Northampton, MA (USA), Edward Elgar, 2013), p. 153.

¹³ For a detailed analysis of these bilateral treaties, X. Seuba, 'Intellectual Property in Free Trade Agreements: What Treaties, What Content?' (2013) 16 *Journal of World Intellectual Property* 240, and, in the field of IP enforcement, X. Seuba, 'Checks and Balances in the Intellectual Property Enforcement Field: Reconstructing EU Trade Agreements', in: C. Geiger (ed.), *Constructing European Intellectual Property: Achievements and New Perspectives*, EIPIN Series Vol. 1, 394 (Cheltenham (UK) and Northampton, MA (USA), Edward Elgar, 2013), p. 409.

¹⁴ On this agreement, C. Geiger, 'Assessing the Implications of the Anti-Counterfeiting Trade Agreement for the European Union: Legitimate Aim but Wrong Means', in: P. Roffe and X. Seuba (eds), *The ACTA and the Plurilateral Enforcement Agenda: Genesis and Aftermath* (Cambridge, Cambridge University Press, 2014), p. 313.

¹⁵ For an analysis of ISDS in the TTP-context see P.K. Yu, 'Investor-State Dispute Settlement and the Trans-Pacific Partnership', in: C. Geiger, C.A. Nard and X. Seuba (eds), *Intellectual Property and the Judiciary*, EIPIN series Vol. 4 (Cheltenham (UK) and Northampton, MA (USA), Edward Elgar Publishing, 2018), p. 463.

¹⁶ See in the field of IP enforcement, C. Geiger, 'Weakening Multilateralism in Intellectual Property Lawmaking: A European Perspective on ACTA' (2012) 3(2) *W.I.P.O.J.* 166; X. Seuba, 'International Intellectual Property Enforcement: From Multilateralism to Plurilateralism and Bilateralism', in P. Roffe and X. Seuba (eds), *Current Alliances in International and Intellectual Property Lawmaking: The Emergence and Impact of Mega-Regionals*, CEIPI/ ICTSD publication series on 'Global Perspectives and Challenges for the Intellectual Property System', Issue No. 4 (Geneva/Strasbourg, 2017), p. 137. More generally on the crisis of multilateralism in IP lawmaking, see A.A. Latif, 'Change and Continuity

tions when elaborating IP rules, in order to ensure that flexibilities were preserved for states to regulate to preserve their local interests, the bilateral rulemaking process reflects more the result of power games and non-transparent compromises.¹⁷ The will to ensure effective and tougher enforcement possibilities¹⁸ for IP right holders also led to the multiplication of fora to bring their claims, in the hope that one of them would be successful, leading to significant forum shopping.¹⁹ As one scholar has convincingly put it:

enforcing intellectual property rights abroad is not easy – not least because international IP treaties do not create global rights that can be invoked in national courts. International investment law offers potential routes for overcoming these hurdles. Whenever investment treaties include IP rights as an investment and allow for investor-state dispute settlement (ISDS), investors can challenge host states measures affecting their IP rights in ISDS proceedings.²⁰

In fact, the particular enforcement mechanism set up in these treaties, allowing private parties, in general transnational corporations that can afford the very costly proceedings, to challenge state measures directly in front of some ad hoc investment arbitration tribunals (or, more recently, in some cases an investment court)²¹ enables economic actors ‘that have no standing

in the International Intellectual Property System: A Turbulent Decade in Perspective’ (2011) 3(1) *W.I.P.O.J.* 36.

¹⁷ T. Cottier, ‘Embedding Intellectual Property in International Law’, in: P. Roffe and X. Seuba (eds), *Current Alliances in International and Intellectual Property Lawmaking: The Emergence and Impact of Mega-Regionals*, *supra*, p. 17, noting that, ‘the advent of TRIPS-plus provisions in preferential trade agreements (PTAs) and mega regional agreements further reinforces the position of holders of exclusive rights, changing the balance of rights and obligations initially negotiated in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Paris and Berne Conventions as incorporated into the law of the World Trade Organization (WTO). Preferential trade agreements largely fail to right the balance, because of successful lobbying by industries of industrialized countries and a willingness of developing countries to envisage higher levels of protection in return for other market access rights and opportunities under the preferential agreements.’

¹⁸ And in particular very controversial criminal enforcement measures, due to the fact that current international provisions on the subject, established for example in article 61 of the TRIPS Agreement, only provide for a minimum standard level. This situation was perceived by many developed nations as the result of an ineffective multilateral approach and led them to advance tougher TRIPS-plus provisions on criminal enforcement in bilateral, plurilateral or regional agreements. See C. Geiger ‘Towards a Balanced International Legal Framework for the Criminal Enforcement of Intellectual Property Rights’, in: H. Ullrich, R.M. Hilty, M. Lamping and J. Drexler (eds), *TRIPS Plus 20 – From Trade Rules to Market Principles* (Berlin/Heidelberg, Springer, 2016), p. 645; H. Grosse Ruse-Khan, ‘Criminal Enforcement and International IP Law’, in: C. Geiger (ed.), *Criminal Enforcement of Intellectual Property: A Handbook of Contemporary Research* (Cheltenham (UK) and Northampton, MA (USA), Edward Elgar Publishing, 2012), p. 171; C. Geiger, ‘The Rise of Criminal Enforcement of Intellectual Property Rights ... and its Failure in the Context of Copyright Infringements on the Internet’, in: S. Frankel and D. Gervais (eds), *The Evolution and Equilibrium of Copyright in the Digital Age* (Cambridge, Cambridge University Press, 2014), p. 113.

¹⁹ See in this sense e.g. R.C. Dreyfuss, ‘Hedging Bets with BITS: The Impact of Investment Obligations in Intellectual Property Norms’, in: T. Mylly and J. Griffiths (eds), *Constitutional Hedges of Intellectual Property* (Oxford, OUP, forthcoming 2020).

²⁰ H. Grosse Ruse-Khan, ‘Challenging Compliance with International Intellectual Property Norms in Investor-State Dispute Settlement’, *supra*, at 241.

²¹ In the context of CETA, see Chapter 8, Section F, art. 8.18 of the Agreement. On this issue, see the report of the European Parliament, *From Arbitration to the Investment Court System (ICS) – The Evolution of CETA Rules* (2017). In the context of the TTIP, see the European Commission’s Concept

in fora where states can adjudicate compliance with international IP norms (such as the WTO dispute settlement system)²² to take their enforcement interests into their own hands, and thus puts significant pressure on states taking measures that they consider detrimental to their interest, no matter how legitimate these can be in the light of the public interest of the fundamental rights involved.²³

However, for the very same reasons, investor-state arbitration has never been more contested in public opinion, and has even become ‘the most controversial form of international litigations’.²⁴ The US and Canada have decided to abolish it in their own bilateral relations in the United States-Mexico-Canada Agreement (USMCA) of 30 November 2018,²⁵ which is replacing the NAFTA Agreement. In the European Union, ISDS is also facing strong criticism, the European Parliament in an official report underlining that this dispute settlement system can be criticized ‘on several grounds’, among which are: inconsistency and incoherence between awards; reduction in states’ power to regulate; forum shopping; lack of transparency; arbitrators’ impartiality; and high costs.²⁶ For this reason, the more recent bilateral trade and investment agreement between the EU and Canada, the Comprehensive Economic and Trade Agreement (CETA) or the planned Transatlantic Trade and Investment Partnership (TTIP) between the EU and the US have tried to implement institutional improvements, in particular through the creation of an investment court system with an appellate mechanism, in order to ameliorate some of these deficiencies.²⁷ At the international level, discussions are also ongoing on the possible establishment of a multilateral court on investment²⁸ in the context

Paper, ‘Investment in TTIP and Beyond – the Path for Reform. Enhancing the Right to Regulate and Moving from Current ad hoc Arbitration towards an Investment Court’, 5 May 2015.

²² *Ibid.*, at p. 242.

²³ J. Gathii and C. Ho, ‘Regime Shifting of IP Law Making and Enforcement from the WTO to the International Investment Regime’, *supra*, 428 et seq., ‘Intellectual property rights are entering a new, yet largely under-studied era in which multinational companies challenge domestic as well as international laws and regulations that recognize, and in some cases are explicitly designed to protect public health before a tribunal of three private individuals without any required public health or human rights expertise in what is known as investor-state arbitration’. C.M. Ho, ‘A Collision Course Between TRIPS Flexibilities and Investor-State Proceedings’ (2016) 6 *UC Irvine Law Review* 74.

²⁴ R. Howse, ‘International Investment Law and Arbitration: A Conceptual Framework’, IILJ Working Paper 2017/1 (MegaReg Series), p. iii.

²⁵ The United States-Mexico-Canada Agreement (USMCA). Text available at: <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between> (accessed 22/07/2019).

²⁶ European Parliament, *From Arbitration to the Investment Court System (ICS) – The Evolution of CETA Rules*, *supra*, pp. 9–11.

²⁷ See on these improvements R.C. Dreyfuss, ‘Hedging Bets with BITS: The Impact of Investment Obligations in Intellectual Property Norms’, *supra*, remaining however cautious, stating that the changes implemented in the CETA ‘could make a difference, albeit a modest one’. For some interesting proposals to ameliorate the ISDS system, see P.K. Yu, ‘The Investment-Related Aspects of Intellectual Property Rights’, *supra*, p. 875.

²⁸ CETA foresees in addition the possibility to establish a multilateral investment court (Sect. F, art. 8.29), which is sometimes considered as a superior forum to investor-state arbitration because it is ‘best suited to offering standing or intervention to a wide range of actors who have concerns of international justice that relate to foreign investment’ (R. Howse, ‘International Investment Law and Arbitration: A Conceptual Framework’, *supra*, p. 69). See on this issue at EU level the ‘Recommendation for a Council Decision published by the European Commission authorising the opening of negotiations for a Convention establishing a multilateral court for the settlement of investment disputes’, COM (2017)

of the United Nations Commission on International Trade Law (UNCITRAL),²⁹ the outcomes of which are however very uncertain given the current international context. In the EU in particular, the new investment court system established by CETA has been challenged for not securing sufficiently the taking into account of the core legal principles of the EU such as fundamental rights and not securing the primacy of the Court of Justice in the interpretation of EU law.³⁰ And even if the Court finally considered the CETA agreement as being compatible with EU law,³¹ this decision also attracted some harsh criticism, and several questions remain with regard to the future functioning of this new judicial body.³²

For all these reasons, it seemed appropriate to gather in this Research Handbook a large group of outstanding scholars who have already worked and reflected on this issue, in order to shed light on all the potential questions that the overlap of intellectual property and investment law may bring, both from a conceptual and from an enforcement point of view. The topic is particularly suitable for a Research Handbook, since, like all other ‘IP and ...’ topics,³³ it confronts rationales, doctrines and rules from different legal environments and tries to draw perspectives for the future, thus bringing an external perspective to existing principles with the potential to renew the internal established mechanisms of both IP and investment law. This Research Handbook also has the aim of serving as background work for further reflections on policy guidelines for the future drafting and implementation of international investment

493 final. Discussions on the possible creation of a Multilateral Investment Court (MIC) started in 2017 under the auspices of the United Nations Commission on International Trade Law (UNCITRAL). On this discussions, *see* the presentation made by C. Kessedjan, ‘Towards a Multilateral Investment Court: Current Proposals’, during the EIPIN conference organized by the CEIPI on the topic ‘Enforcing Intellectual Property in Trade and Investment Agreements: What Safeguards for its Social Function?’, Strasbourg, 26 April 2018, available online at: www.ceipi.edu (accessed 22/07/2019). On 20 March 2018, the Council adopted and published the negotiating directives authorizing the Commission to negotiate, on behalf of the EU, a convention establishing a MIC (Council of the EU, Brussels, 20 March 2018, 12981/17 ADD 1 DCL 1 FDI 25 WTO 229). *See also* the Speech by European Commissioner for Trade Cecilia Malmström, ‘A Multilateral Investment Court: A Contribution to the Conversation about Reform of Investment Dispute Settlement’, Brussels, 22 November 2018.

²⁹ The sound recordings of the UNCITRAL Working Group III on Investor-State Dispute Settlement Reform from 2017 to present are available at: http://www.uncitral.org/uncitral/en/commission/working_groups/3Investor_State.html (accessed 22/07/2019).

³⁰ Belgium had sought the opinion of the CJEU on the compatibility of the proposed ICS with EU law, *see* Request for an opinion submitted by the Kingdom of Belgium on 7 Sept. 2017 pursuant to Article 218(11) TFEU (Opinion 1/17) (2017/C 369/02), with the following question submitted to the Court: ‘Is Chapter Eight (“Investments”), Section F (“Resolution of investment disputes between investors and states”) of the Comprehensive Economic and Trade Agreement between Canada, of the one part, and the European Union and its Member States, of the other part, signed in Brussels on 30 October 2016, compatible with the Treaties, including with fundamental rights?’

³¹ Opinion 1/17, *EU-Canada CET Agreement* [2019], Opinion of the Court (Full Court) of 30 April 2019, ECLI:EU:C:2019:341.

³² For a critical comment, *see* the chapters by R. Geiger, ‘The Compliance of Investment Protection Mechanisms in Free Trade Agreements with EU Law’ and S. Gáspár-Szilágyi, ‘The EU’s Cumbersome Investment Law and Policy, and its Effects on the Protection of Intellectual Property Rights’ in this volume.

³³ *See* the two previous Research Handbooks edited by the editor of this volume, dedicated to the intersection of IP with human rights and criminal law: C. Geiger (ed.), *Research Handbook on Human Rights and Intellectual Property* (Cheltenham (UK) and Northampton, MA (USA), Edward Elgar Publishing, 2015); *Criminal Enforcement of Intellectual Property: A Handbook of Contemporary Research* (Cheltenham (UK) and Northampton, MA (USA), Edward Elgar Publishing, 2012).

agreements as well as informing the possible design of a judicial body for the adjudication of IP in the context of investment agreements. With this purpose, Part I of this volume first tries to conceptualize the relationship between intellectual property and investment protection by looking at their interaction in the context of trade and investment treaties. This mapping exercise includes delicate and fundamental questions such as the object and purpose of mingling IP, trade and investment, as well as some historical perspectives, to interrogate the notion of IP as investment and what exactly is and/or should be the protection that needs to be granted in this context, but also what is the relevance of basic principles of international law such as national treatment, most favoured nation and fair and equitable treatment in the context of IP and investment disputes. Of course, one of the most crucial policy questions is then examined in detail, namely the regulatory freedom left to states to regulate IP while taking into account the flexibilities of international law, in particular the TRIPS agreement, in order to foster public interest values and non-economic rationales. The volume then turns in Part II to the enforcement mechanisms, as they are so specific and different from the usual IP adjudication procedures at international and national level. In particular, the judicial overlaps resulting from disputes in state-to-state and investor-state adjudication are analysed, taking the *Plain Packaging* dispute that led to judicial actions in several fora; mainly the WTO and ISDS, as an example of the risk of forum shopping in this context. Some proposals for the conceptual and institutional improvement of ISDS are made, *inter alia* by taking the GATT/WTO practice as a point of reference. The role of human rights and ethics in IP and investment litigation is then scrutinized, looking in particular at the impact that the fundamental right to property might have in the context of ISDS. The potential impact of equity as a general principle of international economic law is also explored in order to address the imbalances in IP and investment law. The final section of the volume is dedicated to the particular situation in the EU and its Member States, addressing recent controversies that emerged in relation to treaties signed or negotiated by the EU with third countries such as CETA or TTIP and their possible compliance with EU law in the context of the challenge to the investment chapter of CETA before the Court of Justice of the EU.

It is worth briefly recalling the history of this challenging project. It originated with a conference of the European Intellectual Property Institutes Network (EIPIN)³⁴ organized by the Center for International Intellectual Property Studies (CEIPI) at the European Parliament in Strasbourg in April 2018 entitled ‘Enforcing Intellectual Property in Trade and Investment Agreements: What Safeguards for its Social Function?’,³⁵ with the support of the European Parliament liaison office and the EIPIN Innovation Society.³⁶ The excellent quality of the papers presented and the need for more comprehensive analysis and research in this field led the editor to invite additional renowned experts to further complete the topics that could not be covered during the conference, and to conceptualize the entire project as a Research Handbook. Not all the contributions could be included in the volume, in particular the policy discussions among the representatives of the European institutions (a negotiator from the

³⁴ www.eipin.org.

³⁵ The recordings of the presentations made at this conference are available at: <http://www.ceipi.edu/en/library-and-publications/proceedings-of-conferences/enforcing-intellectual-property-in-trade-and-investment-agreements-what-safeguards-for-its-social-function/>.

³⁶ <https://www.eipin-innovationsociety.org>.

European commission, Members of the European Parliament) around the recently adopted and currently negotiated EU agreements.

At this point, I would like to warmly thank the series editor Jeremy Phillips for his trust and of course the publisher, in particular Luke Adams, for sharing the same enthusiasm for this project and for showing the necessary patience to bring it to fruition, as well as more generally for our excellent collaboration over the years. My heartfelt thanks then go out to all the highly recognized and prominent academics who participated in this ambitious project and drafted their chapters despite time constraints. As mentioned previously, the book originated within the framework of the European Intellectual Property Institutes Network (made up of the Queen Mary Intellectual Property Research Institute (QMIPRI) at Queen Mary, University of London; the Munich Intellectual Property Law Center (MIPLC); the Magister Lvcentinvs at the University of Alicante; the Master for Intellectual Property Law and Knowledge Management (IPKM) at Maastricht University, and the Centre for International Intellectual Property Studies (CEIPI) of the University of Strasbourg). I would therefore like to express my warmest thanks to the directors of the network, in particular Professors Guido Westkamp, Josef Drexl, Manuel Desantes and Anselm Kamperman Sanders, as well as all the members of the network, Anke Moerland, Seth Ericsson, Pilar Montero, Xavier Seuba, Giancarlo Frosio and Ana Ramalho, for chairing some of the panels, and of course to all the students from the five academic institutions who participated at the conference. Finally, this volume could not have been possible without the decisive and dedicated assistance provided by Sunimal Mendis, post-doctoral researcher at the CEIPI, and Clara Ducimetière, doctoral student at the CEIPI and Early Stage Researcher in the EIPIN Innovation Society European Joint Doctorate. Their help was invaluable during the editing phase of the volume and they deserve full recognition for their editorial and substantive contribution to the success of this project. The important input and support of Clara Ducimetière and Oleksandr Bulayenko, doctoral candidate at CEIPI, during the preparatory work of the conference that served as a starting point for this volume also need to be especially mentioned and acknowledged. Our warmest thanks and gratitude are addressed to all three, not forgetting my assistant at CEIPI Stéphanie Strasser for helping to coordinate the enormous amount of correspondence that this Handbook has generated.