

## Original Paper

# Foreign Ownership of Land—Theoretical Challenges and Justifications

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### Abstract

*This work addresses the theoretical issues pertaining to alien land ownership by devoting systematic attention to the economic, human rights and national security perspectives. It suggests that an integrated system could be established with respect to states' regulation on foreign land ownership. Firstly, alien property investors should be granted national treatment regarding land as the internationalization of the real estate market will offer optimum capital utilization and facilitate overall global economic prosperity. Secondly, in the case of investors' free access to domestic real estate markets, states may maintain flexibility in protecting their public policies with respect to human rights and national security. However, there must be a rational justification for invoking such a reservation. Therefore, alien land law originating from human rights and agricultural security concerns may need to be closely examined to distinguish those regulations which genuinely entail public interest concerns from those which do not. Thirdly, the deep participation of states in the international regime has greatly changed the traditional views towards alien land ownership. If a free real estate market is to be established, the trend of globalization has to be further advanced.*

### Keywords

*foreign ownership of land, economic analysis, human rights, national security*

### 1. Introduction

While the magnitude of capital influx assisted by overseas land investment benefits national economies in different respects, it also stirs up strong domestic concerns due to the special sociological and political character of land. The acquisition and possession of domestic real estate by aliens may be taken as a movement towards sovereignty takeover. States have responded to such concerns by making strong attempts to impose restrictions on the alien ownership of land and emphasizing the significance

of protectionist measures with regard to foreign real estate investment. In times of strong public distress, states can even inhibit the entry of aliens to domestic real estate land so as to alleviate public anger. All these measures largely frustrate aliens' hopes of investment and the booming of the international real estate market. As a response to these concerns, different rebuttal arguments are invoked to rationalize the liberalized policies on alien land ownership, which involves economic, human rights and national security perspectives. The economic perspective is the one that tends to receive the greatest amount of attention. Almost all works concerning alien land ownership refer to the economic motives behind tightening or loosening land restrictions. The human rights perspective attempts to identify the human rights implications of international real estate, in particular, the housing rights codified in the Universal Declaration of Human Rights. The national security perspective involves concerns over agricultural and food security which are used to advance discriminatory policies against aliens. These multi-tier perspectives, which overlap and even conflict, ultimately contribute to the formulation of a more comprehensive vision of alien land ownership. This article will examine the economic perspective in section 2 where comparative advantage theory is employed to examine the economic justification of alien land policies. Section 3 examines the human rights perspective, which takes the theoretical debates over the different human rights values that are involved in international real estate investment as a starting point and goes on to examine their coherence. In section 4, the policy legitimacy of the national security perspective is evaluated. Section 5 concludes this chapter by establishing an integrated system for all of these perspectives and the underlying common theme behind them.

## **2. Economic Concern over Foreign Ownership Rights and Challenges**

### *2.1 Introduction*

This section will attempt to explore how economically valid the arguments in favor of foreign real estate investment are, primarily by looking at the theoretical justification and the practical implications of alien land ownership. Most of the current studies on alien land ownership focus on the economic analysis and attempt to explore alien land ownership from the economic perspective, which are widely observed to take a novel approach of practice-based assessment. Such an approach tends to have a narrow focus and therefore may provide contradictory proposals for states' policy making. For example, those in favor of land ownership liberalization hold that foreign investment in real estate brings many economic advantages, including the creation of employment, the introduction of new managerial techniques, and the acquisition of tax benefits, and more importantly, it is consistent with the global trend of encouraging foreign investment. Opponents, on the other hand, proclaim that foreign investors change the structures of local communities by neglecting indigenous institutions and businesses and superimposing new labor patterns. They also argue that the economic turmoil, that has resulted from speculative undertakings, with increased real estate prices as well as reduced supply, seems to be

closely related to the continuing participation of foreign investors in domestic real estate markets. In order to create a consistent regulatory framework, the fundamental theoretical principle that shapes the practice of foreign real estate investment will be particularly scrutinized in this section.

### *2.2 The Theory of Comparative Advantage and Its Application to International Real Estate Investment*

The issue of alien land ownership has initiated a wide range of debates over its economic value. The strongest opponents of alien land investment contend that land does not create income. It only moves capital from buyers to sellers who achieve unearned increments “with zero sums of capital transfers”. Hence international land investment serves little economic function and produces no net gain of social wealth for the host state. Furthermore, since the first priority of overseas property investment is to pursue future capital returns, capital reverses will be generated at certain point and ultimately surpass the original capital inflows. If so, states will suffer losses rather than benefits from a liberalized policy towards alien property purchases.

The arguments about unearned increments and capital reverses are both influenced by the principle that trade, as opposed to production, does not create anything new. Under this principle, the total resources in the exchange remain the same before and after the exchange take place. Thus, when one party receives a benefit from a given transaction, the argument runs, the other party will suffer from a corresponding loss, in other words, a capital reverse.

This view, however, fails to take into account the possibility of mutual gains from the market. The parties to the exchange will possibly be better off after the exchange than either party was before. Otherwise, one party would refuse to engage in the transaction. Mutual gain occurs when both parties acquire resources uniquely valuable to themselves. Therefore, real estate investment will be successfully undertaken when mutual economic benefits are pursued by both parties. Local landowners will proceed with a property transaction as they can achieve economic gains from doing so. Alien investors, on the other hand, are willing to pay higher prices for the control of the host state’s land as they can achieve higher economic efficiencies in the use of the land.

The reliance on mutual gains pushes states to specialize in certain productions in which they have a comparative advantage and, furthermore, promotes the development of the whole national economy. In other words, the principle of comparative advantage is the theoretical ground which engenders international capital movements and creates economic gains. The theory of comparative advantage in international economics has gained a position as the paramount economic rationale explaining global investment. In terms of the real estate market, a state should specialize in what it can do best and must also recognize its comparative disadvantage in order to achieve efficient use of its land resources. The local market, in particular in transitional states, often lacks capital resources and the international expertise necessary to manage real estate projects, which often involve complex financing and technical packages. Foreigners with sufficient ready capital may be better suited than needy nationals to

finance national land titles and carry holding costs. On the other hand, international investors are attracted by foreign property markets in the belief that real estate assets can produce high yielding profits in return for a low risk. Indeed, the primary reason for taking real estate as an investment asset is due to investors' need to balance returns against risks within the international scope. Real estate has traditionally been valued as an efficient diversifier to alleviate risky investments in a multi-asset portfolio. The process of removing obstacles to capital movements and the increasing formulation of the global economy makes the implementation of such a strategy more convenient and efficient, by creating a greater range of opportunities for diversification.

### *2.3 Impact of International Real Estate Investment on Economic Growth*

Real estate investment by foreigners is also greatly restricted as states feel their economies might be disadvantaged if it is permitted. Such concerns persist in various circumstances in which the restrictions are embedded.

Firstly, states are concerned about foreign real estate investment due to the high likelihood of speculative investment in this market. While short-term speculative land investment tends to benefit from the currency instability of the host state, the state might experience sudden capital outflows that will affect the local economy. Exchange rate fluctuations and generated speculative investment are believed to have catastrophic impacts on the stability of the local economy. Also, the volatility of short-term capital flows tends to be greater in the real estate sector which generates further concern about the stability and productivity of the economy. A large body of empirical research holds that exchange rate fluctuations and speculative interests are two of the compelling forces which influence foreign investors' purchases in the overseas real estate market. In the past, Japanese investors took advantage of the soaring yen relative to the US dollar and purchased a significant number of residential homes in the US. These speculative investments drove up local real estate values to outrageous prices and severely affected the local real estate market.

Secondly, it is argued that foreign investors will increase prices through bidding wars due to their large amounts of ready cash. As land is a raw resource, the increased acquisition of land by foreign investors may reduce its availability and raise prices to a level that domestic people will struggle to afford. Indeed, foreign investors could easily provide serious competition for their domestic counterparts, due to their capability and willingness to pay higher prices for real estate. Increasingly, therefore, domestic real estate investors face the threat of being priced out of the real estate market.

However, the increased real estate prices not only benefit foreign investors, but existing domestic owners as well. Domestic owners may receive greater capital returns due to property being purchased by foreign investors at higher prices.

Such capital inflows into domestic states are favored as they not only benefit individual owners but the state economies in general. They may help offset trade deficits and promote social welfare. Foreign

investment also provides an efficient mechanism for creating jobs. Greater job opportunities produce a greater desire to spend at the local level and as a result a greater demand for ancillary services. Foreign investment can further bring about the introduction of new managerial techniques and production technology. The new technologies often work a dramatic turnaround to revitalize failing businesses or improve already well-performing companies. The enhanced competitiveness of local businesses may ultimately benefit state economies as well as the whole world. An increased level of foreign investment may also produce higher tax revenues and a higher tax base than existed before the investment. Although tax authorities around the world have many diverse criteria for evaluating their real estate tax, the reliance on the market value of property to establish tax payments is universally accepted as one of the dominating principles. As the value of real property increases due to the participation of foreign investors, the tax revenues collected from the property will also increase. Foreign investment thus benefits states by adding on to a higher basis of tax revenue received by the state tax authorities.

Thirdly, land, as a valuable natural resource, is also valued in that it provides the physical ground upon which other commercial undertakings depend. The permission to use land is one of the most significant elements of almost all types of business. While businesses may be established with the fulfillment of various conditions depending on the commercial purposes in question, the acquisition of land remains the basis for them all. The alien's ability to obtain the land needed for his enterprises is therefore the primary consideration in the decision-making process and, therefore, if alien land ownership is denied, this may present a significant impediment to their plans or at least act as a severe disincentive. The disabilities of aliens in holding land distort the pattern of business operations "by ignoring the logic of normal plant location criteria".

Fourthly, a restrictive domestic policy in the real estate sector will push foreign governments to enforce correspondingly restrictive policies on the host state's investments and hurt both economies in the end. Such an economic friction is avoidable if both parties enforce more cooperative policies to begin with. Finally, there seems to be no effective approach for barring foreign buyers from purchasing land. Restrictive regulations seem to be too fragile and easy to circumvent, especially with the attractive high profits expected from real estate foreign greedy buyers. Methods of circumvention include creating trusts for landholding, establishing local subsidiaries instead of branches, which come under the law of the host state, or seeking long-term leases of land. There is always an alternative available. However, these mechanisms do not guarantee complete landholding security. States, if compelled by public feeling, might strictly enforce the law to avoid such evasions and alien investors could have to pay the costs. A fear of policy insecurity can cause considerable numbers of potential investors to divert their investments to other environments where more favorable investment policies are found. The state is thus pushed into a "double losses" position: while the effort to exert control over its land does not entirely succeed, at the same time, much foreign capital goes to other states. Such a tragedy is

avoidable if the state frames its policy more carefully in advance. It is widely recognized that states' attempts to exclude aliens from land control primarily serve the desire for national security. Such a concern could be efficiently eliminated by establishing monitoring mechanisms on a rational basis. The prior curtailment through policy announcements against all aliens makes no sense and simply serves as an encumbrance to foreign capital inflows. For the sake of investment security, the states need to enhance their legal predictability by clarifying the rules of alien landholding.

#### *2.4 Conclusion*

The section concludes that the theoretical and practical economic justifications for the regulation of alien land ownership are weak or valid only in limited cases.

In terms of the theoretical arguments, the economic rationales for using the idea of unearned increments to justify restrictive alien land laws do not hold up, due to the twisted interpretation of the economic realities. The more justifiable economic argument is in favor of alien land laws, coming from the possibility of mutual gains due to states' comparative advantages. Linked to the integration of global networks and the liberalization of the financial markets, the principle of comparative advantage has been fully recognized as the most dominant principle regulating the international real estate market. The interest in the potential of the market is primarily based on the belief that the materialization of potential advantages at the national level can benefit both the host and the investing state and bring overall economic achievements for the whole economy. The host state can utilize the resources generated from real estate investment to achieve higher levels of development. With regards to foreign investors, the internationalization of real estate assets can produce high yielding profits but also spread their risk, by diversifying their asset base to an international scope.

In terms of practical arguments, liberalized alien land laws for the most part provide great benefits to the host countries. Real estate capital currently not in productive use, or not adding to the tax basis, can be promoted to more efficient uses. The improved efficiency in capital utilization will in turn strengthen job opportunities and introduce new managerial techniques and manufacturing technologies. As more people are employed and new knowledge is applied, the whole economy is likely to grow and social stability increase. The relaxation of the land market is also highlighted as a prerequisite for normal business operations. States' restrictive policies on land thereby lead to the feeling that they are attempting to refuse foreign investment as a whole. Restrictive policies will also risk bring a measure of retaliation from foreign governments and the strategic evasion of state regulations by strong-minded investors. The only valid concern in favor of protectionism stems from the speculative side of real estate investment and the economic fluctuations this might cause. However, such a problem can best be alleviated by addressing particular issues, such as capital outflows, and not by restricting alien ownership of land in general. The preceding analysis indicates that the economic benefits of alien land investment dramatically outweigh its disadvantages. Therefore, while restrictive policy-based

regulation may be imposed with reference to particular areas, such as speculative investment, the general policy of attracting foreign capital to the real estate sector should not be held back. States may re-think their approach to alien land ownership, recognizing the substantial benefits that stem from such investment. States' alien legal policies may require further amendments to ensure restrictions do not extend too widely and unnecessarily impede the free influx of capital to the real estate sector.

Indeed, many world economies have achieved high levels of real estate investment with few adverse consequences, including for example the US and the UK. The reason is that the extensive and concentrated capital inflows into a particular state will build up the confidence of investors from other states to pursue their own economic interests there. Therefore, countries with a tradition of liberal foreign economic policies tend to attract more diversified sources of investment. Globalization is increasingly forcing states to recognize that the economies of the world are universally integrated. The investment inflow into one country may promote international economic cooperation to the world's overall benefit. Therefore, foreign investment in real estate should be encouraged rather than discouraged, consistent with the general trend of global integrity.

### **3. Human Rights Concerns over Foreign Ownership Rights and Their Justification**

This section seeks to analyze the human rights challenges inherent in the issue of foreign land ownership. It is suggested that foreign real estate investment may pose considerable risks to the land and housing rights of the host population, particularly in the case of large-scale land acquisition, and thus give rise to potential tensions between the property rights of foreign real estate investors and the housing rights of the host community. On this issue, the author holds that states may need to place limits on the ownership rights of foreign real estate investors so as to fulfill local people's demand for housing.

#### *3.1 Tensions between Different Human Rights Values Concerning International Real Estate Investment*

International investment and human rights have been correlated for a long time. The real estate sector, while being one of the strongest forces sustaining the global economy, has engendered human rights concerns at the same time. However, different views about what makes up the core thrust of the human rights movement have led to disputes concerning whose human rights should take precedence when looking at foreign real estate investment. Those in favor of investors' property protection believe that liberty is the central theme of human rights and that the respect of property rights is the primary guarantee of such liberty. On the other hand, those in favor of protecting the host state's interests take the basic living standards of people as the main focus of human rights and, as a result, define human rights as the instruments guaranteeing national public interests and remedying the basic quality of life of local people. The two claims will be addressed in the following part. However, this work will not only analyze these human rights values from a purely human rights perspective, but will also examine

them by looking at the specific characteristics of land and how these specific features develop the new interpretation of human rights values with regard to investment in land.

The last two decades have witnessed an accelerating globalization process. One of the basic features of globalization is the increasingly free movement of capital in the global market. In this process, the security of property rights performs an important role in attracting international capital to the host state. The destruction of aliens' fundamental rights to their property by a state's laws might have a serious political risk of deteriorating capital inflows. As the state acquires investment by granting property rights to investors in exchange, investors' expectations regarding the property have to be fulfilled and secured, as this is the guarantee of free capital movement.

The protection of property rights has important implications for the fulfillment of human rights due to its close correlation with many of the basic notions involved in human rights, including freedom, liberty and independence. Cranston argues that freedom constitutes the only appropriate factor in human rights. Hart presents the same idea by claiming freedom as the fundamental general human right upholding all other rights discourses.

Strong relationships between property rights, freedom and liberalism are analyzed extensively in the theory of autonomy. Autonomy theory takes the full respect of autonomic choices as the primary guarantee of individual freedom. It suggests that the arrangement of private property can enhance the autonomic freedom of people as private property serves to increase opportunities, diversify options and facilitate autonomic choices. Without the jurisdiction of property, individuals may not widely engage in exploratory social activities or promote the innovation of the society. Hayek's defense of private property and the free market can be placed within this area. He maintains that a system of private property allows people to maximize their options and optimize their use of available resources to completely fulfill their desires. It is the freedom of human nature and the uncertainty of exploring available national resources that justifies the emphasis on private property ownership. Hayek asserts that "it is freedom that justifies property". His idea is echoed by Hegel who state that when the foundation of property is negated, the man "would be deprived of life" and "he would be destined to forfeit all his rights". The same idea is found in the work of Harris.

The independence aspect is also instrumentally connected to property. Under the independence theory, the private holding of property is valuable as it can facilitate the independence of an individual's political and cultural rights.

As discussed above, property rights are valued not only due to their significance in generating potential economic interests for investors, but also due to their centrality in safeguarding the freedom and independence that are upheld by basic human rights principles.

However, property rights are not absolute or limitless. The government of a state may restrict property rights in order to maintain and develop the society. Real estate investment is particularly seen as having



a strong correlation with the public interests of the host state. There are mainly two reasons for this. Firstly, unlike other investment, real estate investment can affect almost all types of business activities. An alien enterprise will be excluded from entering into any category of commercial activities by the simple inability to obtain the desired land. Secondly, real estate investments are often closely correlated to large international projects. These projects can be put in place over long periods of time and are quite likely to produce direct and strong social impacts on the core issues of a society. These activities might easily intrude into the wide range of resources necessary for the basic lives of nationals and may have adverse effects on their access to water, their land rights, their health and safety and even the whole environment. Access to these public facilities is often viewed as the primary objectives which public policies claim to secure. Such a deterioration of people's basic living conditions constitutes a violation of the main principle of international human rights law as well as other related regulations concerning environmental protection. The scope and weight of the influences of real estate investment are therefore liable to set it on a significant collision course with the national community as well as basic human rights.

### *3.2 Case Study of Housing Rights as Basic Human Rights*

Among the universally recognized human rights, housing rights may be those that are most correlated to real estate investment since both notions share common physical grounds. The requisite imperative of establishing a personal habitat for private peace, security, and overall quality of human life entails housing rights implications in international human rights regimes.

On the other hand, the limited nature of land indicates that land possession by alien investors will reduce the amount available to domestic people and thereby impose potential detriments on their enjoyment of housing rights. This section addresses the potential tensions between the right to adequate housing, and real estate investment rights; a theoretical analysis and assessment is made, with the aim of proposing a solution to the problem. The study reveals that the right to adequate housing is not only an international human rights obligation that states have to respect, protect and fulfill, but also an essential aspect of minimum living requirements that supersedes foreigners' property rights. In light of these considerations, the conclusion is drawn that the right to adequate housing may constitute an exception to the general principle of non-discrimination between nationals and foreigners with respect to land acquisition.

#### *3.3.1 International Human Rights Instruments—Housing Rights*

The requisite imperative of establishing a personal habitat for private peace, security, and overall quality of human life entails housing rights implications in international human rights regimes.

The Right to housing was initially codified as an international human right in the Universal Declaration of Human Rights (UDHR) (1948), which stipulates that the right to adequate housing applies to everyone:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, *housing* and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control (*Emphasis added*) (Article 25(1)).

The right to housing is also included in several international legally-binding documents, including, *inter alia*, International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognizes the right of everyone to an adequate standard of living, in particular the right to “adequate food, clothing and housing” and “the continuous improvement of living conditions”.

The right to adequate housing is identified with a broader and deeper reach to be “the right to live somewhere in security, peace and dignity” in General Comment 4 issued by The UN Committee on Economic, Social and Cultural Rights (CESCR). General Comment 4 also includes more holistic and specific standards for the definition of adequacy, including legal security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy.

General Comment 5 (1997) specifically addresses the issue of forced eviction, one of the fundamental threats to security of housing. General Comment 7 further clarifies the terms for “determining the circumstances under which forced evictions are permissible” and also spells out the types of protection required to “ensure respect for the relevant provisions of the Covenant”. Although these statements are important, they leave undefined one of the most critical issues, namely, the circumstances under which forced evictions are permissible.

Habitat I states that:

[T]he improvement of the quality of life of human beings is the first and most important objective of every human settlement policy. These policies must facilitate the rapid and continuous improvement in the quality of life of all people, beginning with the satisfaction of the basic needs of food, *shelter*, clean water, employment, health, education, training, social security without any discrimination as to race, colour, sex, language, religion, ideology, national or social origin or other cause, in a frame of freedom, dignity and social justice (*Emphasis added*).

The Istanbul Declaration on Human Settlements of 1996 (Habitat II) reaffirms the above principle, stipulating, under paragraph 8:

We reaffirm our commitment to the full and progressive realization of the right to adequate housing as provided for in international instruments. To that end, we shall seek the active participation of our public, private and non-governmental partners at all levels to ensure legal security of tenure, protection from discrimination and equal access to affordable, adequate

housing for all persons and their families of the Habitat Agenda agreed separately at the Habitat II conference. It notably reaffirms the commitment of world governments to better standards of living in larger freedom for all humankind.

The Declaration on the Right to Development (1986) calls for states to undertake necessary measures for the realization of the right to development and to ensure equality of opportunity to access basic resources, including, *inter alia*, housing.

### 3.3.2 Correlation between Real Estate Investment Rights and Housing Rights

The boom in foreign real estate investment has substantially promoted the available resources in national budgets required for the progressive realization of housing rights. However, this investment may prove to be a “double-edged sword” for host states, often dispossessing local communities of natural resources that are indispensable to their livelihoods.

The local community’s access to land may be affected as a result of the government’s policies in favor of foreign real estate investors. For example, there has been a general practice among developing countries to grant land to foreign investors for the development of high-standard real estate projects, at the expense of the fulfillment of the social housing needs of the local population.

In other contexts, forced eviction for economic pursuits may also be carried out by foreign developers and is a widespread problem, although this practice has been fundamentally prohibited by international law as a *prima facie* violation of international obligations. This has particularly been the case for indigenous communities. In view of the discrimination and marginalization indigenous people have historically experienced, their forced eviction is now regarded as a last resort to be used only when no suitable alternative is available; it is subject to stringent procedures and must have the free, prior and informed consent of the indigenous community. Despite these measures, however, the forced eviction of indigenous people has become one of the main sources of land-related disputes in some developing countries.

Moreover, large-scale acquisition of land by foreign real estate investors may result in the monopoly of local market by alien investors which may decrease the domestic availability of land and increase local housing prices. The housing rights of the host state’s population will consequently be affected.

In addition, although short-term speculative land investment tends to benefit from the currency instabilities of the host state, the state might experience a sudden reverse of capital which could strongly affect the local economy. The volatility of short-term capital flows tends to be larger in the real estate sector and consequently generates more concern towards guaranteeing the stability and productivity of the economy.

While foreign investors might focus on reducing the barriers to the movement of real estate investment and enhancing economic efficiency for a more productive investment return, the state focuses on a higher objective of national economic and social development, by reducing the amount of short-term

speculative investment and directing investment towards models with an increased economic stability. This tension requires compromise. The state, when entering into real-estate-related investment agreements, not only needs to consider investors' free access to the domestic real estate market, but must also maintain flexibility in meeting its overall national development goals and achieving its international human rights objectives. The obligations of housing rights in this process should be substantially taken into account due to their direct correlation with the expansion of foreign land undertakings.

To the extent that real estate investment affects human rights, especially housing rights as a directly related matter, market liberalization may be introduced in a manner consistent with the secure and peaceful enjoyment of habitats by local people. Investors, states and local participants will all benefit from the improvement of the overall social environment.

Housing rights are valued due not only to their universal recognition as a binding human right, but also to their higher value in sustaining human lives from a more philosophical perspective. Housing rights are recognized as "civil, cultural and economic" rights, which are protected to ensure basic human living standards and dignity. Real estate investors' rights, on the other hand, are "instrumental" rights, which are established to promote communities' economic objectives. The contents of investors' rights accorded in investment agreements consequently vary among states and over time. Housing rights are labeled as rights of survival while the capability to invest falls into the regime of rights which sustain development. Although there are close ties between the two notions, it can almost be taken as common sense that people have to survive first before they can pursue the higher level of economic interests. As Hegel argues, if someone is deprived of basic living, "he is deprived of life; his entire freedom would be negated". The pursuit of the liberalization of the real estate market must give consideration to housing rights. In conclusion, while the state's protection of the right of the host community to adequate housing, over the property rights of foreigners, may entail, by its very purpose, a restriction on the equal treatment of foreigners and nationals, such a restriction could be justified by imperative requirements that are in the general public interest of the host state, and thus constitutes an intentional exception to the principle of non-discrimination with respect to foreign land ownership.

#### **4. National Security Concerns over Foreign Ownership Rights and their Justification**

National security concerns over land ownership generally arise in two areas—land of military significance and agricultural land. It is still generally held that land in border areas and other areas of military significance may not be held by foreigners due to national security concerns. Agricultural landholding by aliens raises another concern. Such claims have been made in many works about alien land investment.

It is declared that the allegiance of those who own, possess and use farm land within a state's borders is a matter of highest importance, as it affects the national security of the state. If aliens are entirely free to invest, it is held that they will pursue agricultural land expansion and eventually monopolize the agricultural market. Setting aside economic losses, the national citizens will be dependent upon aliens to provide food and will bear the risk of higher food prices. Meanwhile, the reservation of certain agricultural land to domestic citizens has become necessary due to much pressure from major trans-national players in occupying and exploiting agricultural land and reaping profits by controlling the food market. The driving force behind such developments is the continually increasing prices on the international food market. As a result of this, it is felt that domestic people will be unable to exercise significant control over the key resources they need for sustainable livelihoods. To support the weak position of those without access to adequate food and ensure the fundamental rights of everyone to sufficient food, the state may exercise its authority and regulate the ownership rights of foreign investors on agricultural land.

## 5. Conclusion

This work addresses the theoretical issues pertaining to alien land ownership by devoting systematic attention to the economic, human rights and national security perspectives. The economic consideration of the issue indicates that international land investment could bring a wide range of benefits, including promoting the inflow of capital, creating jobs, introducing new techniques and producing greater tax revenues. Economic benefits are possible as both host and home states have comparative disadvantages in exploring land resources and only cooperation can overcome such gaps and bring mutual gains for all. As this can benefit the entire world economy, host states must remove their negative rules on alien ownership if high economic efficiency is to be pursued. These analyses lay the foundation to develop a legal framework which will ensure that nationals are treated in the same way as those foreign nationals, thus prohibiting all discrimination on the grounds of nationality, and applying national treatment in the real estate sector.

The pursuit of national treatment towards alien investors by no means delivers absolute land rights to alien investors. States have their public interests to consider even while looking after aliens' interests. The protection of social welfare and national security (such as agricultural security) are introduced as the two public policy considerations which most affect alien land ownership. To the extent that the host state may need to maintain its own social welfare regarding citizens' basic human rights, it should be allowed to impose restrictions on aliens' real property rights. Housing rights fall into such a category and states should be allowed to protect them against the property interests of foreign investors. However, human rights are international concerns which not only demand deference at the international investment level, but also at the domestic investment level. Domestic as well as foreign investors both

have the duty to follow states' overall development goals and advance the enjoyment of international human rights. Hence, the protection of human rights should not be undertaken as the grounds for issuing differential treatments between domestic and alien real estate investors.

Thus an integrated system has been established based on three points. Firstly, alien property investors should be granted national treatment regarding land as the internationalization of the real estate market will offer optimum capital utilization and facilitate overall global economic prosperity.

Secondly, in the case of investors' free access to domestic real estate markets, states may maintain flexibility in protecting their public policies with respect to human rights and national security. However, there must be a rational justification for invoking such a reservation. Therefore, alien land law originating from human rights and agricultural security concerns may need to be closely examined to distinguish those regulations which genuinely entail public interest concerns from those which do not.

Thirdly, the deep participation of states in the international regime has greatly changed the traditional views towards alien land ownership. From an economic perspective, trans-national real estate investment is appreciated by international investors as it can produce higher yielding profits and also spread risk by diversifying their asset base to a broader international scope. International economic and political convergence seems to have found universal expression in all these theoretical justifications of alien land ownership. Therefore, the continuing integration of domestic economic policies into the global system might be the strongest force promoting the liberalization of alien land ownership thus far. The deeper the connection between domestic and global economic systems, the more states will take the interests of alien investors into account in their policy-making. In other words, if a free real estate market is to be established, the trend of globalization has to be further advanced.

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