The Evolving of Investments in the National and International Regime: The Way Forward

Dr. Shadi A. Alshdaifat
Associate Professor of Public International Law
College of Law, University of Sharjah, UAE

Abstract

The majority of developing countries, if not all, desire to attract foreign investment, as a means of achieving a sustainable economic and social development in financing. Further, there has been an acceleration of these developing countries to enter into international agreements, bilateral and multilateral, hoping to encourage the flow of these investments into their territories. Such agreements are the real guarantees that encourage the flow of foreign capital into developing countries.

In recent years, there has been a long debate among economists about the importance of foreign investments in the host countries, but other opinions suggest that such investments are kind of a new-colonialism, which aims to exploit and plunder the economic surplus of the developing countries. At this point, it is essential to clarify the most important potential effects of international investments, since it is the major means of development and diversification of financial resources in a modern economy. It is no exaggeration to say that international investments are the main basis of the economies of many countries.

However, the diversification of, and increasing the financial resources of international investments depend on many variables including organizing and directing the investment, policies, procedures, and incentives to attract investments and removing barriers to achieve success. Yet, despite the economic importance of international investments, there is no overarching set of rules governing this subject matter. Instead, the regime consists of over 3,000 international investment agreements, the great majority of them are bilateral investment treaties.

Keywords: International Investments, Evolving, National Policy, International Policy, Regime, Sustainability.

"The most important quality for an investor is temperament, not intellect. You need a temperament that neither derives great pleasure from being with the crowd or against the crowd."

- Warren Buffett, an American business magnate, investor, and philanthropist.

I- Introduction

Despite the economic importance of international investments[(1)], there is no overarching set of rules governing this subject matter[(2)]. Instead, the international investment regime consists of over 3,000 international investment agreements[(3)] (IIAs)[(4)], the great majority of them are bilateral investment treaties (BITs)[(5)]. The investment regime, in turn, increasingly provides the legal yardstick for national rule-making on investment. The international and national investment frameworks together regulate what international investors and governments can and cannot do.

Having the right international investment framework in place is not an objective in itself[(6)]. In the face of prospects that the world economy[(7)] may

(1) *See* World Investment Report, year of 2019, which supports policymakers by monitoring global and regional foreign direct investment trends and documenting national and international investment policy developments. Available at https://unctad.org/en/pages/PublicationWebflyer.aspx?publicationid=2460.

(2) However, existing laws governing foreign investment dated back to 1979. Bernasconi, N., Rethinking Investment-Related Dispute Settlement, International Institute for Sustainable Development, Investment Treaty News, 6 (2), 2015. Hindelang, S., Krajewski, M., Shifting Paradigms in International Investment Law, More Balanced, Less Isolated, Increasingly Diversified, Oxford: Oxford University Press, 2015.

(3) It consists of more than bilateral investment treaties (BITs). Also, *see* UNCTAD and its navigator for updated treaties. Available at https://investmentpolicy.unctad.org/international-investment-agreements.

(4) An International Investment Agreement (IIA) is a type of treaty between countries that addresses issues relevant to cross-border investments, usually for the purpose of protection, promotion and liberalization of such investments. For detailed discussion, *see* Dolzer, Rudolf, Schreuer, Christoph, Principles of International Investment Law, Oxford University Press, pp. 119-194, 2008. Meunier, S., Morin, J F., Negotiating TTIP in a Dense Regime Complex, In: The Politics of Transatlantic Trade Negotiations, JF Morin, T. Novotna, F. Ponjaert and M. Telò, eds, Ashgate, pp. 173-185, 2014. Meunier, Sophie, Jean-Frédéric, Morin, The European Union and the Space-Time Continuum of Investment Agreements, Journal of European Integration, 39 (7), 891-907, 2017.

(5) A bilateral investment treaty (BIT) is an agreement establishing the terms and conditions for private investment by nationals and companies of one state in another state. This type of investment is called foreign direct investment (FDI). BITs are established through trade pacts. *See* Reisman, Micheal *et al.,* International Law in Comparative Perspective, p. 460, 2004. Wong, Jarrod, Umbrella Clauses in Bilateral Investment Treaties: Breaches of Contract, Treaty Violations, and the Divide between Developing and Developed Countries. In: Foreign Investment Disputes, 14 Geo. Mason L. Rev. 135, 2007.

(6) Dolzer, *supra* note 4, at 2. Also *see* UNCTAD, World Investment Report, XVII, 26, 2006.

(7) The world economy or global economy is the economy of all humans of the world, considered as the international exchange of goods and services that is expressed in monetary units of account. World Economy, Definition, American English Definition, Macmillan Dictionary, 2015.

face a decade or more of slow growth, it is unfortunate that world FDI[(8)] inflows declined substantially from their peak of US $2 trillion in 2007 as a result of the financial crisis, and US $1.3 trillion in 2018. Flows need not only to recover but surpass this earlier record. There is no economic reason why FDI flows could not be double or triple what they were in 2007[(9)], although the issue is not only more FDI, but more FDI that helps to put the world on a sustainable development path.

Mobilizing such investment requires, first of all, that the economic, regulatory, and investment-promotion determinants in individual countries are in place. But the international framework dealing with the relations of governments and international investors needs to be enabling as well the framework needs to provide clear rules of the road and a suitable mechanism for resolving disputes between these two actors, should disputes arise[(10)]. Moreover, the framework needs to provide international support to help all economies that are not members of the Organization for Economic Co-operation and Development (OECD)[(11)] - be they developing countries or economies in transition - become more attractive for international investors. An improved investment regime, with enhanced legitimacy, provides the enabling framework for increased flows of sustainable FDI for sustainable development[(12)].

One particular aspect of the purpose and contents of the international investment regime deserves special attention, namely the efforts of virtually all governments to attract FDI and benefit from it as much as possible. But many governments, especially of the least developed countries, have weak capabilities to compete successfully for such investment in the world FDI market[(13)]. For that reason, an international support program for sustainable investment facilitation should be launched, focused on improving national

(8) A Foreign Direct Investments (FDI) is an investment in the form of a controlling ownership in a business in one country by an entity based in another country. It is thus distinguished from a foreign portfolio investment by a notion of direct control. Dunning, J., Pitelis, C., Contribution to International Business Scholarship: An Assessment and Extension, Journal of International Business Studies, 39 (1), 167–176, 2008.

(9) Sauvant, Karl, The Evolving International Investment Law and Policy Regime: Ways Forward, 2016. Available at http://www.ictsd.org/bridges-news/bridges-africa/news/the-evolving-international-investment-law-and-policy-regime-ways.

(10) *Id.*

(11) The Organization for Economic Co-operation and Development (OECD) is an intergovernmental economic organizations with 36 member countries, founded in 1961 to stimulate economic progress and world trade. Warren, Christopher. In: The Stream of History, Shaping Foreign Policy for A New Era, Stanford University Press, p. 165, 1998.

(12) Sauvant, *supra* note 9.

(13) Agosin, M.R., Mayer, R., Foreign Investment in Developing Countries: Does it Crowd in Domestic Investment? Discussion Paper, No. 146, UNCTAD, 2000.

FDI regulatory frameworks and strengthening investment promotion capabilities[14]. Such a program should concentrate on practical ways and means of encouraging the flow of sustainable FDI to developing countries and, in particular, the least developed among them[15].

It should be geared towards strengthening the capacity of investment promotion agencies (IPAs)[16] in developing countries. It would fully complement the various efforts to facilitate trade, notably, those governed by the WTO[17]-led Aid for Trade Initiative[18] and the recently adopted WTO Trade Facilitation Agreement[19], by creating an integrated platform for promoting sustainable FDI[20].

One option to implement such a program would be to extend the Aid for Trade Initiative to cover investment as well, and fully so, into an Aid for Investment and Trade Initiative[21]. Another medium-term, option would be to expand the Trade Facilitation Agreement to cover sustainable investment,

(14) Blomstrom, M., Kokko, A., How Foreign Investment Affects Host Countries? Policy Research Working Paper, No. 1745, World Bank, 1997.

(15) Lall, S., Foreign Direct Investment, Technology Development and Competitiveness: Issues and Evidence, In: Lall, S., Urata, S., (eds.), Competitiveness, FDI and Technological Activity in East Asia, Cheltenham, 2003. Elgar, Edward, Lall, S., Narula, R., FDI and its Role in Economic Development: Do We Need a New Agenda? European Journal of Development Research, 16 (3), 447–464, 2004.

(16) An investment promotion agency (IPA) is most often a government agency (or occasionally a non-profit organization functioning similar to a chamber of commerce or business consulting corporation) whose mission is to attract investment to a country, state, region or city. Campisi, J., Sottilotta, C.E., Unfriendly or Unwanted? Reflections on FDI Attraction Policies in Italy, Rivista Italiana di Politiche Pubbliche, Vol. 11, No. 2, pp. 223-250, 2016. Bellak, C., Leibrecht, M., Stehrer, R., Policies to Attract Foreign Direct Investment: An Industry-Level Analysis, OECD VII, Global Forum on International Investment, 2004.

(17) The World Trade Organization is an intergovernmental organization that is concerned with the regulation of international trade between nations.

(18) The WTO-led Aid for Trade initiative encourages developing country governments and donors to recognize the role that trade can play in development. In particular, the initiative seeks to mobilize resources to address the trade-related constraints identified by developing and least-developed countries. *See* Aid for Trade. Available at https://www.wto.org/english/tratop_e/devel_e/a4t_e/aid4trade_e.htm.

(19) The WTO Trade Facilitation Agreement (TFA) entered into force on 22 February 2017. It is a result of the Doha Round of Trade Negotiations, which was launched in 2001. ... With the trade facilitation agreement, WTO Members aim: to “expedite the movement, release and clearance of goods, including goods in transit”. *See* available at http://tfig.unece.org/contents/WTO_Agreement.htm.

(20) McIntyre, J., Narula, R., Trevino, I., The Role of Export Processing Zones for Host Countries and Multinational: A Mutually Beneficial Relationship? International Trade Journal, 10 (4), 1996.

(21) Extensively and scholarly discussed in Ancharaz, V.D., Sultan, R.A., Aid for Trade and Climate Change Financing Mechanisms, ICTSD, 2010. Available at http://www.iadb.org/intal/intalcdi/PE/2010/04946.pdf. Busse, M., Hoekstra, R., Königer, J., The Impact of Aid for Trade Facilitation on the Costs of Trading, Kyklos, 6, 143–163, 2012. Cadot O., Melo, J., Aid for Trade: What have we Learned? Which Way Ahead? CEPRI and FEDRI, London and Clermond-Ferrand, 2014. Gamberoni, E., Newfarmer, R., Aid for Trade: Do Those Countries that Need it, Get it?, World Economy, Special Issue: Aid for Trade, Melo, J.M., ed, Vol. 37, Issue 4, pp. 542–554, 2014. Helble, M.C., Mann, C.L., Wilson, J.S., Aid for Trade Facilitation, Review of World Economics, Weltwirtschaftliches Archiv, Springer, vol. 148 (2), pp. 357-376, 2014.

turning it into an Investment and Trade Facilitation Agreement(22). A third option is for all —or a group of interested— countries to launch a Sustainable Investment Facilitation Understanding(23) that focuses entirely on practical ways to encourage the flow of sustainable FDI to developing countries. Work on such an understanding could be undertaken, in due course, in the WTO. It could also begin within another international organization with experience in international investment matters, perhaps UNCTAD(24) or the World Bank(25)or the OECD or, a group of the leading outward FDI countries could launch such an initiative. The impetus could come from the G20(26), which could mandate the initiation of such work.

The present paper focuses on a limited number of topics that have systemic implications(27), intending to suggest ways of enhancing the international investment regime. These topics are discussed separately for analytical reasons, but they are closely interrelated.

The main objective of the present paper also examines the state of the international investments and policy regime on the national and international level, and how its governance might be enhanced. Following a thorough analysis of the background to rule-making in international investment, the paper puts forward a set of policy options with the overall objective of increasing sustainable investment flows, particularly to developing and least developed countries, and any discussion of strengthening the international investment regime needs to begin with the very purpose of the regime.

---

(22) The Aid for Trade Agreement presents the following: trade policy and regulation, economic infrastructure, productive capacity building and adjustment assistance.

(23) *See* Novik, A., Crombrugghe, A., Towards an International Framework for Investment Facilitation, (OECD Investment Insights), p. 1, 2018.

(24) UNCTAD is the part of the United Nations Secretariat dealing with trade, investment, and development issues. The organization's goals are to: "maximize the trade, investment and development opportunities of developing countries and assist them in their efforts to integrate into the world economy on an equitable basis". UNCTAD was established by the United Nations General Assembly in 1964 and it reports to the U.N. General Assembly and United Nations Economic and Social Council. Available at https://unctad.org/en/Pages/Home.aspx.

(25) With 189 member countries, the World Bank Group is a unique global partnership fighting poverty worldwide through sustainable solutions.

(26) The G20 (Group of Twenty) is an international forum for the governments and Central Bank governors from 19 countries and the European Union (EU). Founded in 1999 with the aim to discuss policy pertaining to the promotion of international financial stability. Gilpin, Robert, Global Political Economy: Understanding the International Economic Order, Princeton, New Jersey: Princeton University Press, 2001. Markwell, Donald, John Maynard Keynes and International Relations: Economic Paths to War and Peace, Oxford University Press, 2006.

(27) For more detailed systemic implications *see* Zimmermann, F., Smith, K., More Actors, More Money, More Ideas for International Development Co-operation, Journal of International Development, Vol. 23, Issue 5, pp. 722-738, 2011.

As it is indicated in the title, this paper outlines the research methodology of the paper. As such, the proposed research took the form of new research but on an existing research subject. In order to satisfy the objectives of the paper, an analytical and descriptive method was held. The main characteristic of analytical and descriptive research is that it is most appropriate for such a title. Its basic advantage is that it offers a complete description and analysis of a research subject, without limiting the scope of the research and the nature of the subject matter.

II- Background of International Investments

In light of the above, this part, therefore, proposes a history of international investments. As early as 1796, John Adams, after having negotiated for the United States the first Treaty on Friendship, Commerce, and Navigation with France(28), emphatically highlighted the protection of alien property by the rules of international law.

There is no principle of the law of nations more firmly established than that which entitles the property of strangers within the jurisdiction of another country in friendship with their own to the protection of its sovereign(29) by all efforts in his power(30). To tell this complex history that has put at the forefront of IIL(31) the public interests attached to the concept of the right to development and sustainable development as well as to decipher its intricacies, and distinguishes between two periods when the focus and attention of foreign investment policy-makers have been respectively on economic development and sustainable development(32).

At the time of the New International Economic Order(33), when developing

(28) More analysis on the treaty *see* Giunta, Mary, Documents of the Emerging Nation: U.S. Foreign Relations 1775–1789, Wilmington, Del: Scholarly Resources Inc., 1998. Middlekauff, Robert, The Glorious Cause: The American Revolution, 1763–1789, New York: Oxford University Press, 1982.

(29) However, and regarding this issue, a great deal has been discussed by Professor Angus Armstrong in his Foreign Investment and Shared Sovereignty. My analysis shows that the more stringent investment protection provisions in foreign direct investment the less on FDI inflows in OECD countries.

(30) Dolzer, Rudolf, Schreuer, Christoph, History, Sources, and Nature of International Investment Law From: Principles of International Investment Law, 2nd ed, Oxford Scholarly Authorities on International Law, 2012.

(31) International Investment Law is an important field of international law that grants rights to foreign investors to foster States' development.

(32) This distinction pursues didactic motives. It goes without saying that the history of international investment and development does not reflect such 'clear-cut' divided periods.

(33) *See* Declaration on the Establishment of a New International Economic Order, UNGA Res 3201 (S-VI) (1May 1974), UN Doc A/RES/29/3201, Charter of Rights and Economic Duties of States, UNGA Res 3281 (XXIX) (12 December 1974), UN Doc A/RES/29/3281.

states were dismantling the customary international law[34] of the protection of aliens abroad[35], foreign investors[36] were faced with the risk of being expropriated without compensation or of suffering discriminatory and arbitrary treatments[37]. As a result, they became reluctant to operate in developing states. Such mistrust threatened the economy of these newly independent states, which was largely dependent on foreign direct investment[38].

In light of this context, it is first argued that IIL was conceived of and designed, first and foremost, with the view to promote economic development[39]. Second, it is put forth that this focus on economic development and the traditional 'absence' of the public interests attached to the right to development and sustainable development in the 'old' and the great majority of IIA still in force should not lead to the conclusion that IIL has 'sacrificed' development considerations[40].

However, there are various forms of FDI, in which one of them is the ownership of the full penalty of the shares of the national firm or possession of the project before the acquisition of the foreign investor. A joint venture is another form of FDI, in which a company is being set up in the host country with the collaboration of local partners[41].

---

(34) Customary International Law "... consists of rules of law derived from the consistent conduct of States acting out of the belief that the law required them to act that way." Rosenne, Shabtai, Practice and Methods of International Law, p. 55. 1984. Germain, Claire, Germain's Transnational Law Research, Guide to International Legal Research (2004), and Contemporary Practice of Public International Law, Ellen G. Schaffer and Randall J. Snyder, eds., 1997. Anthea, Elizabeth, Traditional and Modern Approaches to Customary International Law: A Reconciliation, 95 Am. J. Int'l. L. 757 (2001).

(35) As to the relation between the international law of the protection of aliens abroad and international investment law, *see* L'évolution, Juillard, du droit des investissements', 250 Recueil des Cours de l'Académie de Droit International 9, 76, 1994.

(36) () When investment in the form of a controlling ownership in a business in one country by an entity based in another country by foreign investors.

(37) Customary International Law provided indeed the minimum standard of treatment as embodied in the Neer decision of the Mexico-USA Claims Commission and the compensation of expropriation as formulated by the U.S. Secretary of States, *see* Neer, L., Pauline, F.H., (U.S.A.) v. United Mexican States, (15 October 1926), 4 RIAA 60: Letter of the US Secretary of States to the Mexican embassy (21 July 1938), quoted in A F Lowenfeld, International Economic Law, 398, Oxford University Press (2002).

(38) *See* Broches, A., The Convention for Settlement of Investment Disputes, 136 Recueil des Cours, 331, 343, 1972.

(39) Sattorova, M., International Investment Law and Development: Bridging the Gap, Stephan W. Schill, Christian J. Tams and Rainer Hofmann, ed., Cheltenham: Edward Elgar, 473, 2017.

(40) Yannick, Radi, International Investment Law and Development: A History of Two Concepts, Edward Alger Publication, 2015.

(41) Foreign Direct Investment and Performance Requirements: New Evidence From Selected Countries, UNCTAD, New York, 2003.

Due to the partnership and the experience of the local market, this form is generally preferred. Another reason that makes it less risky is that foreign partner is not given the right to fully intervene over the operation of the project. Also, FDI could be in the form of setting up new subsidiaries or branches of foreign parent companies, as well as marketing goods in the host country(42).

III- The Rise of International Investment

International investment has resulted in greater interconnectedness among markets around the world and increased communication and awareness of business opportunities in the far corners of the globe(43). More cash flow and many investors can access new investment opportunities at a greater distance than before.

Investments became opportunities within easier reach for the reason of political and economic stability and the improvement of communications technology(44). Countries with positive diplomatic relations of today's international arena can increasingly unify their economies through increased investment and trade(45).

Products and services(46) previously available within one country are made more readily available to new markets(47), resulting directly in improved economic opportunities for workers in those economies and leading to improved household incomes(48). In our opinion, the increased number of investors improved constantly for the reason that present opportunities present a wider range of investment options and new ways to profit. As a result, most national investments try to stay competitive with their counterparts in other parts of the world(49), broadening their competitive horizons past their local

(42) *Supra* note 41, at UNCTAD.
(43) Hall, Mary, Globalization and International Investment, Macroeconomics, 2018.
(44) Mussa, Michael, Factors Driving Global Economic Integration, Global Opportunities and Challenges, IMF, August 25, 2000.
(45) The translation of Part I of the Diplomatic Bluebook 1985 Edition published by the Ministry of Foreign Affairs. The edition mainly covers the 1984 calendar year. The translation was prepared by the Foreign Press Center, Japan.
(46) In a landmark article, Robert D. Buzzel pointed out the rapidity with which barriers to standardization were falling. In all cases they succumbed to more advanced and cheaper ways of doing things. *See* Buzzell, Robert, Can You Standardize Multinational Marketing?, Harvard Business Review 46, 102-113, 1968.
(47) There is powerful new evidence for this, even though the opposite has been urged by analysts of PIMS data for years. *See* Philip, Lynn, Chang, Dae, Buzzell, Robert, Product Quality: Cost Production and Business Performance—A Test of Some Key Hypotheses, Harvard Business School, Working Paper No. 83-13, 1983.
(48) For a discussion of multinational reorganization, *see* Bartlett, Christopher, MNCs: Get off the Reorganization Merry-Go-Round, Harvard Business Review, 1983.
(49) Palepu, KG., Sinha J., Khanna, T., Strategies that Fit Emerging Markets, Harv Bus Rev. 83 (6), 63-74, 76, 148, 2005.

areas and home countries. Subsequently, to maintain competitiveness often requires sourcing materials and outsourcing labor from other countries(50).

Competitive investors have increasingly turned to FDI as a source not only of the new market but also of partnerships and ventures(51). National and international policies have facilitated this and made the transition to international investments easier than any time before(52). Over time, international investment as a profit toll resulted in increased cultural commonalities between states and increasingly connected economies that have more mutual interests and challenges.

At any point, international investment and cash flow(53) tied together and lead into one another(54) as companies act internationally by increasing their international investment out of mutual interest and the need to stay internationally competitive.

The reasons behind the increase of international investments are many, one is the pricing differences(55), or arbitrage(56), in different markets for labor(57) and supplies(58).

(50) Jean-Jacques, Laffont, Tirole, Jean, A Theory of Incentives in Procurement and Regulation, MIT Press, p. 1, 1993.

(51) Weele, Arjan, Purchasing and Supply Chain Management: Analysis, Strategy, Planning and Practice, ed., Andover: Cengage Learning, 2010.

(52) Kirkman, Marshall, The Handling of Railway Supplies: Their Purchase and Disposition, Chicago, 1887. Hysell, Helen, The Science of Purchasing, New York: Appleton, 1922. Lewis, M.A., Roehrich, J.K., Contracts, Relationships and Integration: Towards A Model of the Procurement of Complex Performance, International Journal of Procurement Management, 2, pp. 125-142, 2009.

(53) A cash flow in its narrow sense is a payment (in a currency), especially from one central bank account to another; the term 'cash flow' is mostly used to describe payments that are expected to happen in the future, are thus uncertain and therefore need to be forecast with cash flows; a cash flow is determined by its time t, nominal amount N, currency CCY and account A; symbolically CF = CF (t,N,CCY A). *See* Auerbach, A.J., Devereux, M.P., Consumption and Cash-flow Taxes in an International Setting (No. w19579), STICERD, Public Economics Programme Discussion Papers 3, Suntory and Toyota International Centres for Economics and Related Disciplines, LSE, National Bureau of Economic Research, 2013.

(54) David H., Dorn, D., Gordon H., The China Shock: Learning from Labor-Market Adjustment to Large Changes in Trade, Annual Review of Economics, 8, 205–240, 2016.

(55) Each seller has the same, constant marginal cost. The set of permissible prices is finite. Sellers, with long-term experience in the market. Pratt, John W., *et al.,* Price Differences in Almost Competitive Markets, The Quarterly Journal of Economics, vol. 93, no. 2, pp. 189–211, 1979.

(56) In economics and finance, arbitrage is the practice of taking advantage of a price difference between two or more markets and striking a combination of matching deals that capitalize upon the imbalance, the profit being the difference between the market prices at which the unit is traded. Shleifer, Andrei, Vishny, Robert, The Limits of Arbitrage, Journal of Finance, 52, 35–55, 1997.

(57) The labor market refers to the supply and demand for labor in which employees provide the supply and employers the demand. *See* Bown, Chad, Why the U.S. Needs Allies in a Trade War Against China, Harvard Business Review, 2018. Ghose, Ajit, Global Inequality and International Trade, Cambridge Journal of Economics, Vol. 28, Issue 2, 229–252, 2004.

(58) Any ordinary goods needed by people in a daily basis.

International investments compel connected economies to continue to invest in each other to protect their economic health and acquire new profits(59). International investments also have increased as a direct result of international stability(60) in different parts of the world and this is pulling more economies into FDI(61). The competitive nature of FDI(62), in other words, ultimately has a social(63) and economic(64) impact that transforms economies in pursuit of investment and greater economic activity. This knits economies into each other and results in increased international investment(65).

The only danger that might face the rise of international investments is the climate risks(66), resource scarcity(67), and sustainable energy(68) in one part and

(59) More detailed analysis *see* Bradford, Jensen, Global Trade in Services: Fear, Facts, and Offshoring, Washington: Peterson Institute for International Economics, 2011. Keynes, Soumaya, Bown, Chad, It's Fun to Discuss the USMCA—the New NAFTA, Trade Talks Episode, 57, 2018.

(60) The term "stability" was brought into international relations studies by Lewis F. Richardson (1960). The concepts of stability and equilibrium of international systems thoroughly developed by Morton Kaplan (1957), Karl W. Deutsch, J. David Singer (1964) and Kenneth Waltz (1964). *See* Fukuyama, F., The End of History and the Last Man, The Free Press, New York, 1992. Gilpin, R., War and Change in World Politics, Cambridge University Press, Cambridge, 1981. Gleick, J., Chaos Making a New Science, Viking, New York, 1987. Kaplan, M., Balance of Power, Bipolarity and other Models of International Systems, American Political Science Review, 51, 267-279, 1957.

(61) Bagchi-Sen, S., in International Encyclopedia of the Social & Behavioral Sciences, vol. 20, 2001.

(62) A significant portion of the FDI consists of imports of small capital sums into markets that are clearly operational from the point of view of competition structure, so that they are of no specific concern for competition-policy purposes. Vissi, Ferenc, Foreign Direct Investment and Competition, Russian & East European Finance and Trade, vol. 31, no. 3, pp. 58–73, 1995. The largest FDI project in the Russian Federation since 1991 is materializing with British Petroleum's recently announced acquisition of a 50% stake in a new petroleum firm. The exceptional size of this investment $6.5 billion would give a major boost to the country's hitherto sluggish FDI inflows. With its technological capabilities and labour skills, Russia possesses sizeable untapped FDI potential to become an international engineering hub. Available at https://unctad.org/en/pages/PressReleaseArchive.aspx?ReferenceDocId=3459

(63) For social impact of FDI, *see i.e.,* Arnal, E., Hijzen, A., The Impact of Foreign Direct Investment on Wages and Working Conditions, OECD Social, Employment and Migration Working Papers, No. 68, OECD Publishing, Paris, pp. 58–73, 2008.

(64) For economic impact of FDI, *see i.e.,* Sokang, K., The Impact of Foreign Direct Investment on the Economic Growth in Cambodia: Empirical Evidence, International Journal of Innovation and Economic Development, 4 (5), pp. 31-38, 2018. Borensztein, De Gregorio, Lee, J.W., How Does Foreign Direct Investment Affect Economic Growth?, Journal of International Economics, vol, 45, 115-135, 1998.

(65) For further discussion *see* Cosbey, Aaron, The Road to Hell? Investor Protections in NAFTA'S, Chapter 11. In: Lyuba Zarsky, ed., International Investment for Sustainable Development: Balancing Rights and Rewards, London: Sterling, VA: Earthscan, 2005.

(66) The Global Risks Report 2020 aware of such risk and in specific climate-linked issues like extreme heat and ecosystems loss highlighted.

(67) Demand for water, food, energy, land and minerals are rising substantially, making natural resources increasingly scarce and more expensive. Debates regarding the issue by the European Commission. Available at https://ec.europa.eu/knowledge4policy/foresight/topic/aggravating-resource-scarcity_en.

(68) Sustainable energy is the practice of using energy in a way that "meets the needs of the present without compromising the ability of future generations to meet their own needs." *See* Smil, Vaclav, Energy and Civilization: A History, Cambridge, MA: The MIT Press, 2017. Tester, Jefferson, Sustainable Energy: Choosing Among Options, Cambridge, MA: The MIT Press, 2012.

the social impact such as diversity, human rights, and cybersecurity. Other impacts also such as governance related to business ethics[69], transparency[70], and anti-corruption[71].

Simply put, sustainable investing emerged in the 1970s[72], the movement has gained impressive traction in the last two decades. In my opinion, FDI also plays an important role on a microeconomic level. Domestic companies that expand into foreign markets can realize significant growth. Moreover, exposure to more than one country through international investments also enhances diversification. On the flip side, foreign companies operating in emerging markets can be targets for FDI, creating opportunities for investors.

Regardless of the high rise of international investments, many challenges might affect such rise includes the host country regulations[73], such as how much control[74] an international can have in their domestic companies. For instance, China's[75] joint ventures with foreign companies are notorious for their structural complexity.

Another factor is a risk, where some international investments, in particular,

(69) More in the issue, *see* Doane, D., The Myth of CSR, Stanford Social Innovation Review, Stanford University Graduate School of Business, 23–29, 2005. Dodd, E. M., For Whom Are Corporate Managers Trustees?, Harvard Law Review 45, 1145, 1932, In: T. Clarke (ed.), Corporate Governance Critical Perspectives on Business and Management, London: Routledge, 61–75, 2005.

(70) *See* Donaldson, T., Thomas Dunfee, Toward a Unified Conception of Business Ethics: Integrative Social Contracts Theory, Academy of Management Review, 19 (2), 252–284, 1994.

(71) *See* Hemphill, T. A., Lillevik, W., The Global Economic Ethic Manifesto: Implementing a Moral Values Foundation in the Multinational Enterprise, Journal of Business Ethics, 101, 213–230, 2011. Jones, Thomas, Instrumental Stakeholder Theory: A Synthesis of Ethics and Economics, Academy of Management Review, 20 (2), 404–437, 1995.

(72) Logue, Ann, Socially Responsible Investing for Dummies, p. 196, 2008. Lemke, Thomas, Lins, Gerald, Regulation of Investment Advisers, 2, 158, Thomson West, 2014. Richardson, Benjamin, Socially Responsible Investment Law: Regulating the Unseen Polluters, Oxford University Press, 2008.

(73) () Host country regulations play major role in international investments, the better the regulations are the more investments in.

(74) Certain developing states push back regarding the control by multinational companies.

(75) A great deal has been discussed by Vanhonacker in his 1997 article, Entering China: An Unconventional Approach. Vanhonacker, W., Entering China: An Unconventional Approach, Harv Bus Rev. 75 (2), 130-1, 134-6, 138-40, 1997.
Foreign direct investment into China dropped 6.1 percent year-on-year to CNY 286.55 billion, in the first four months of 2020 due to the Covid-19 outbreak. Still, investment in the high-tech service industry rose by 2.7 percent. Among them, information services, e-commerce services, and professional technical services increased by 46.9 percent, 73.8 percent, and 99.6 percent respectively. Meanwhile, the investment from countries along the Belt and Road went up by 7.9 percent, and that from ASEAN countries rose by 13 percent. But the investment from the EU dropped by 29.1 percent. In April 2020 only, the FDI surged 11.8 percent from a year earlier. Available at https://tradingeconomics.com/china/foreign-direct-investment

might have the risk of nationalization(76), political conflicts(77), and other potential problems that may arise. Such risks might very well decrease the diversification(78) FDI can offer.

All in all, FDI can be used by international investors on both a macro(79) and microeconomic(80) level. Countries with sustainable and growing levels of foreign direct investment are preferable, while companies investing abroad can often benefit from higher growth rates. On the other level, FDI has many drawbacks, despite its overall effectiveness in promoting growth. It can cause problems for a country's domestic labor markets and drain capital in the long-run(81).

IV- Rule-Making on International Investments

Over the last decades, states and international organizations have placed issues of interest for the international community as a whole at the core of their policy agenda.

In addition to democracy, the rule of law, one finds among their priorities the protection and promotion of sustainable development and its various components: labor rights, human rights, the environment(82), and economic development(83).

As mentioned earlier, FDI flows would have to rise considerably to help meet

(76) Nationalization is a great risk to international investments. It is the process of transforming private assets into public assets by bringing them under the public ownership of a national government or state. Alistair, Mason, Pyper, Hugh, Hastings, Adrian, eds., The Oxford Companion to Christian Thought, Oxford University Press, p. 677, 2001.

(77) Political conflicts do not concern individuals as such but groups of various kinds. They involve directly or indirectly state institutions. Canivez, Patrice, Qu'est-ce qu'un conflit politique? Revue de métaphysique et de morale, No. 58, p. 163-175, 2008.

(78) For more analysis in diversification *see* Adura, Jeff, Whyte, Ann Marie, Diversification Benefits of Direct Foreign Investment, Management International Review, vol. 30, no. 1, pp. 73–85, 1990.

(79) Economics is divided into two different categories: microeconomics and macroeconomics. Macroeconomics looks at the decisions of countries and governments. *See* Doukas, John, Foreign Direct Investment, Diversification and Firm Performance, Journal of International Business Studies 34 (2), 153-172, 2003.

(80) Microeconomics is the study of individuals and business decisions.

(81) *See* Kuepper, Justin, Foreign Direct Investment: What It Means for Investors, 2019. Available at https://www.thebalance.com/what-is-foreign-direct-investment-1979197.

(82) Due to the complex nature of the global environment, it is required by those who formulate international environmental law to each deal in depth with a limited range of problems where they must resort to delicate negotiations and skillful diplomacy, the Paris Agreement on Climate Change is still considered the most valuable tool in policy implementation. One of the major obstacles concerning FDI and the environment is the economic implications which is an increasing concern of developing states and particularly economic competitiveness and how it would somewhat set boundaries to it.

(83) *See i.e.,* United Nations Millenium Declaration, UN Doc A/55/L.2., 8 September 2000.

the world's investment needs and thus make a substantial contribution to global economic growth and sustainable development. This requires a further enhancement of the economic determinants, as well as of the regulatory framework[(84)] and investment promotion[(85)].

International and national rule-making on international investment take place against the backdrop of distinct sets of tensions that governments need to reconcile when seeking to attract FDI and benefit from it as much as possible[(86)], even if some of these tensions do not necessarily involve objectives that are opposite to each other.

Such tensions can include: the global corporate interests of MNEs vs. the national development interests of countries[(87)]; foreign vs. domestic ownership[(88)], especially in sensitive industries; policies to attract FDI vs. policies[(89)] to maximize the domestic benefits and minimize any negative effects of such investment; a country's interests as host vs. home country for investment; and, the constraints of the emerging integrated international production system, a globalizing world economy and international investment law vs. the need to preserve policy space in pursuit of legitimate public policy objectives[(90)].

Therefore, an international investment framework remains an important goal, although there is currently little prospect to make substantial progress in this area. A collective effort could significantly contribute to making the existing system of international investment rules function more effectively and efficiently, and making it more conducive to growth and development[(91)].

(84) Previous studies that attempted to answer whether FDI contributes to economic development of the host economy came up with conflicting results. Scientific community is still divided over the very concept of spillover effects, which is based on the thesis that FDI has a positive effect on local companies, thus stimulating the host economy. Rapaić, Stevan, The impact of FDI on the economic development of Serbia, Ekonomika preduzeća, LXV (5-6), pp. 381-392, 2017.

(85) A series of activities that seeks to market/promote a particular location (country, city, province, region) as an attractive location for foreign direct investment.

(86) Sauvant, *supra* note 9.

(87) Ramamurti, Ravi, Developing Countries and MNEs: Extending and Enriching the Research Agenda, Journal of International Business Studies, vol. 35, no. 4, pp. 277–283, 2004.

(88) Bamiatzi, Vassiliki, Efthyvoulou, Georgios, Jabbour, Liza, Foreign vs. Domestic Ownership on Debt Reduction: An Investigation of Acquisition Targets in Italy and Spain, International Business Review, 26 (5), pp. 801-815, 2017.

(89) Zanatta, Mariana, *et al,*. National Policies to Attract FDI. In: R&D: An Assessment of Brazil and Selected Countries, Research Paper, 2008.

(90) Sauvant, *supra* note 9.

(91) *See* International Investment Rule-Making: Stocktaking, Challenges and the Way Forward, UNCTAD Series on International Investment Policies for Development, 2009. Full report available at https://unctad.org/en/pages/PublicationArchive.aspx?publicationid=418.

This could gradually increase the clarity and stability of investment relations, improve consistency of rules, serve as the main reference for international investment rule-making at all levels, and ensure that all countries irrespective of their level of development can equally participate in the process. As long as countries are not ready to come together at the negotiation table, multilateral discussions of the further evolution of the IIA universe in a forum like UNCTAD remain crucial[92].

International rule-making concerning foreign investment during the past 60 years has occurred in two stages[93]. The first stage began with the end of the Second World War and continued until the late 1980s when the former Soviet Union collapsed and a global movement towards economic liberalization set in[94]. The second stage started in the late 1980s and continues to the present day[95]. Understanding the origin and development of the current IIA system is critical to evaluating the challenges for countries, in particular developing countries, posed by that system as well as the prospects for effectively addressing them[96].

Somewhat greater success was achieved through regional or plurilateral instruments, where agreement could be reached among countries in the same geographic area or at the same level of economic development. The most complete integration took off in 1957 with the formation of the European Economic Community[97], which later evolved into the European Union; numerous other examples of such instruments exist, including the 1957 Agreement on Arab Economic Unity[98], the 1969 Cartagena Agreement to establish an Andean Common Market[99], and the 1973 Agreement creating the

(92) *Id.*

(93) Butler, N., Subedi, S., The Future of International Investment Regulation: Towards a World Investment Organization? Neth. Int'l L. Rev. 64, 43–72, 2017.

(94) Yannaca-Small, K., Parallel proceedings. In: Muchlinski, P., *et al* (eds), The Oxford Handbook of International Investment Law, Oxford University Press, pp. 1008 - 1048, 2008.

(95) Trakman L., Australia's Rejection of Investor-state Arbitration. In: Trakman, L., Ranieri, N., (eds), Regionalism in International Investment Law, Oxford University Press, New York, pp. 344–373, 2013.

(96) Salzman, J., Labor Rights, Globalization and Institutions: The Role and Influence of the Organization for Economic Cooperation and Development, Mich. J, Int'l Law 21, 769–848 (2000).

(97) The European Economic Community (EEC) was a regional organisations that aimed to bring about economic integration among its member states. It was created by the Treaty of Rome of 1957. Theiler, Tobias, Political Symbolism and European Integration, Manchester University Press, pp. 61–65, 2005.

(98) The Agreement on Arab Economic Unity was signed on 3 June 1957 and came into force on 30 April 1964.

(99) The trade bloc was called the Andean Pact until 1996 and came into existence when the Cartagena Agreement was signed in 1969. Pate, John, ANDEAN PACT: Official Codified Text of The Cartagena Agreement Incorporating the Quito Protocol, International Legal Materials, vol. 28, no. 5, pp. 1165–1211, 1989.

Caribbean Common Market(100). In some cases, countries signed liberalization agreements that initially did not address investment issues, although they would do so later.

Examples include the European Free Trade Association (EFTA)(101) and the Latin American Free Trade Association (LAFTA)(102), both dating from 1960. Within a few years, Canada and Japan would add to their BITs liberalization commitments similar to those found in the United States' BITs. Liberalization obligations also appeared, for instance, in the 1998 ASEAN Framework Agreement on the ASEAN Investment Area(103), the Free Trade Agreement (FTA) between Panama and Singapore in 2006(104), and the Economic Partnership Agreement (EPA) between New Zealand and Thailand in 2005(105). Both trends also were reflected in the 1992 North American Free Trade Agreement (NAFTA)(106) among Canada, Mexico, and the United States.

In 2018 EU members' own FDI screening rules contributed to blocking seven deals for a value of $1.5 billion, mainly on national security grounds(107).

The NAFTA deals primarily with trade but includes an extensive investment chapter with liberalization and protection provisions similar to those found in the BITs concluded by the United States, though more extensive and detailed in some respects.

The late 1980s and early 1990s saw additional investment agreements at the plurilateral level, as well as the regional and sectoral level. In 1987, the ASEAN countries adopted the Agreement on the Promotion and Protection of Investments(108).

---

(100) The Treaty of Chaguaramas established the Caribbean Community and Common Market, later known as CARICOM.

(101) The European Free Trade Association (EFTA) is the intergovernmental organisations of Iceland, Liechtenstein, Norway and Switzerland. It was set up in 1960.

(102) The Latin American Free Trade Association (LAFTA), by the 1960 Treaty of Montevideo by Argentina, Brazil, Chile, Mexico, Paraguay, Peru and Uruguay. Nattier, Frank E., The Latin American Free Trade Association (LAFTA), The Business Lawyer, vol. 21, no. 2, pp. 515–536, 1966.

(103) 1998 Framework Agreement on the ASEAN Investment Area was signed in Makati, Philippines on 7 October 1998.

(104) The Panama-Singapore Free Trade Agreement (PSFTA) was signed in Singapore on 1 March 2006.

(105) Thailand-New Zealand Closer Economic Partnership Agreement signed 19 April 2005, entered into force 1 July 2005.

(106) NAFTA is an agreement signed by Canada, Mexico, and the United States, creating a trilateral trade bloc in North America.

(107) Chinese FDI into North America and Europe in 2018 Falls 73% to Six-Year Low of $30 Billion, report by Newsroom, Baker McKenzie.

(108) The ASEAN Agreement for the Promotion and Protection of Investments signed in Manila, Philippines on 15 December 1987.

In 1994, the Energy Charter Treaty (ECT)(109) was concluded among some 50 countries, including all in Europe, the former Soviet Union, as well as Australia, Japan, and Mongolia(110). It includes both investment protection and liberalization provisions, although it only applies to investment in the energy sector.

As the new century began, several countries began to negotiate bilateral free trade agreements (FTAs)(111) similar to NAFTA in three important respects. First, these agreements included an extensive investment chapter that contained provisions similar to those appearing in BITs(112). In effect, it was as if a BIT had been incorporated within a free trade agreement. Second, they were often between a developed and a developing country.

They went beyond NAFTA in that they often were between countries that were not even in the same region. Third, NAFTA had included many provisions that were more elaborate than those typically found in BITs, especially concerning investor-State dispute resolution, and these more elaborate provisions found their way into the post-2000 FTAs, particularly those concluded by the United States(113).

These agreements have given rise to a new type of IIAs encompassing both trade and investment components. These agreements also typically include provisions that are more specific, complex, and sophisticated(114). A significant new development in international investment rule-making in more recent years has been to establish investment rules as part of preferential trade and investment agreements (PTIAs)(115).

---

(109) ECT is currently the major multilateral treaty in the energy field around and in terms of investment. Konoplyanik, Andrei, Walde, Thomas, Energy Charter Treaty and Its Role in International Energy, 24 J. Energy Nat. Resources L. 523 (2006).

(110) However, the ECT has not been ratified by Australia, Belarus, Iceland, Norway, and the Russian Federation.

(111) A Free Trade Agreement (FTA) or treaty is a multinational agreement according to international law to form a free-trade area between the cooperating states. Mavroidis, Petros, Free Lunches? WTO as Public Good, and the WTO's View of Public Goods, European Journal of International Law, 23 (3), 731–742, 2012.

(112) Neumayer E., Spess, L., Do Bilateral Investment Treaties Increase Foreign Direct Investment to Developing Countries? World Dev. 33, 1567–1586, 2005.

(113) Legum B., Options to Establish an Appellate Mechanism for Investment Disputes. In: Sauvant K., (ed), Appeals Mechanism in International Investment Disputes, Oxford University Press, New York, pp. 231–240, 2016.

(114) The number of such agreements is growing rapidly. *See* Investment Policy Hub in the International Investment Agreements Navigator. Available at https://investmentpolicy.unctad.org/international-investment-agreements.

(115) Preferential Trade and Investment Agreements (PTIAs) both bilateral and regional in nature aim at creating preferential market access.

By the end of 2007, 254 PTIAs existed, involving 63 countries. While the total number of PTIAs is still small compared with the number of BITs (less than 10 percent), it has nearly doubled over the past five years. In addition, at least 75 agreements involving 110 countries were under negotiation at the end of 2007. This suggests an even more pronounced increase in such treaties in the future(116). International investment rules are becoming increasingly complex in content(117). This phenomenon may reflect efforts to address more dimensions of a transaction than had been done in other agreements.

As already noted, IIAs have increasingly become multi-faceted and are no longer limited to investment issues per se(118). The evolution of international investment rules over the past decades has resulted in a complex patchwork of thousands of agreements(119). Despite its huge size and variety in approaches, a number of characteristics of this system are discernable.

V- Rule-Making on National Investments

The evolution of national investment rules is a dynamic process, which offers new opportunities, but also poses new challenges on the national level, particularly in developing countries(120), at the beginning of the 21st

(116) *See* UNCTAD Report of 2008, available at https://unctad.org/en/pages/PublicationArchive.aspx?publicationid=2155

(117) In 2018, no country had a higher foreign direct investment (FDI) position in the United States than the United Kingdom, followed by Canada and Japan. At that time, the UK had over 560 billion U.S. dollars invested in the United States.

(118) *Supra* note 116. At UNCTAD Report of 2008.

(119) “The system is universal, in that nearly every country has signed at least one BIT and the majority of them are members to several, if not numerous, IIAs. This remarkable level of treaty-making activity reflects the willingness of the countries involved to provide an additional layer of protection, stability, predictability and transparency that goes beyond their unilateral efforts to attract FDI. The structure of agreements is atomized.

That is, it consists of thousands of individual agreements that lack any system-wide coordination. In the absence of global investment rules, countries continue to conclude investment treaties, thereby further perpetuating and accentuating the IIA universe. The IIA universe is multi-layered. IIAs now exist at the bilateral, regional, intraregional, interregional, sectoral, plurilateral and multilateral level, and IIAs at different levels may overlap.

Thus, two countries may have mutual obligations created by agreements at different levels that are simultaneously applicable to the same investment. The system is multi-faceted. IIAs include not only provisions that are specific to investment, but also rules that address other related matters, such as trade in goods, trade in services, intellectual property, labour issues or environmental protection. These other provisions may have an impact on the establishment or operation of an investment.

Accordingly, a host country’s obligations with respect to investment may arise from many facets of an IIA that are not only investment- specific and that may not have been designed with investment policy primarily in mind.” UNCTAD, The Development Dimension of International Investment Agreement, TD/B/C. II/MEM.3/2, para. 21 (2008).

(120) A developing country is also known as an LMIC, or a low- and middle-income country. It is less developed than countries classified as “developed countries” but these nations are ranked higher than “less economically developed countries.” Developing Countries Population, 2020. Available at http://worldpopulationreview.com/countries/developing-countries/

century. The challenges of capacity arise from the fact that many countries lack the resources to participate fully and effectively in the development and implementation of the national investment system(121). Although the challenges of capacity affect every country, they are of special significance to developing countries. Developing countries by definition possess fewer resources than developed countries and thus are more burdened by challenges of capacity(122). This may adversely affect their participation in the international investment system quantitatively or qualitatively.

Governments need to consider what role they want inward FDI to play in their economies' development process, and then design their FDI policies accordingly(123).

Thus, the broad policy objectives are to attract in particular investment that is in line with the identified development objectives; to maximize the potential benefits of FDI; and to minimize negative effects, *i.e.,* balance-of-payments problems, crowding out, transfer pricing, and abuse of market power, labour issues, and environmental effects. Government intervention -by a host or home country- may be motivated by two primary types of market failures: information or coordination failures in the investment process; and the divergence of private interests of investors (foreign and/or domestic) from the economic and social interests of host economies(124).

(121) United Nations Conference on Trade and Development (UNCTAD) (2000). Flexibility for Development, UNCTAD Series on Issues in International Investment Agreements (New York and Geneva: United Nations), United Nations Publication, (2003). World Investment Report, FDI Policies for Development: National and International Perspectives (New York and Geneva: United Nations), United Nations Publication, 2008. Investor–State Disputes Arising from Investment Treaties: A Review. UNCTAD Series on International Investment Policies for Development (New York and Geneva: United Nations), United Nations Publication, 2005.

(122) Less-developed countries (LDC) are low-income countries that face significant structural challenges to sustainable development… economic and environmental shocks and have fewer human assets than other nations. The Least Devolved Countries Report, UNCTAD, United Nations, 2019.

(123) Zampetti, Beviglia, Fredriksson, Torbjörn (eds.), The Development Dimension of FDI: Policy and Rule-making Perspectives, VIII, New York: The United Nations, 243, 2003.

(124) Haaland, J.I., Wooton, I., International Competition for Multinational Investment, Scandinavian Journal of Economics, 101 (4), pp. 631–649, 1999. Head, C.K., Ries, J.C., Swenson, D.L., Attracting Foreign Manufacturing: Investment Promotion and Agglomeration, Regional Science and Urban Economics, 29 (2), pp. 197–218, 1999. Huizinga, H., Foreign Investment Incentives and International Cross-Hauling of Capital, Canadian Journal of Economics, 24 (3), pp. 710–716, 1991. Taylor, C.T., The Impact of Host Country Government Policy on United States Multinational Investment Decisions, World Economy, 23 (5), pp. 635–648. UNCTAD (1995). World Investment Report 1995, Transnational Corporations and Competitiveness, New York and Geneva: United Nations, UNCTAD (1996). Incentives and FDI, Current Studies, Series A, No. 30. UNCTAD, New York and Geneva: United Nations, 1996.

Countries thus need to ensure that policies undertaken at the national level in pursuit of specific development objectives are enhanced, and not hindered, by international rulemaking(125). Certain aspects of international rule-making deserve particular attention from a development perspective(126). Most developing countries are still predominantly net recipients of FDI; very few of them have so far emerged as significant sources of outward FDI(127).

Another area of concern with regard to FDI is the political stability of not only the host country in question but also the whole region(128). FDI normally goes where there is relative political stability. Most developing countries, especially in Africa, have a major problem in satisfying this condition(129).

The national investment policy is intended to guide the country in its investment program by ensuring:

1) Prioritization of investments based on strategic goals, which also guides long-term budgeting and debt-management;
2) Improving implementation through feeding back execution data to ensure strategic and efficient management of the project portfolio;
3) Transparency and accountability over the investment cycle to enable budget agencies on a central and local level to plan and prioritize effectively;
4) Engaging the private sector and leveraging alternative sources of financing by increasing confidence in a credible pipeline of projects and systematically targeting a wider range of strategic investment forms(130).

(125) Blomström, M., Kokko, A., The Economics of FDI Incentives, Paper presented at Conference on FDI in the Real and Financial Sector of Industrial Countries, Bundesbank, Frankfurt, May 3-4, 2002. Blomström, M., Kokko, A., Zejan, M., FDI: Firm and Host Country Strategies, London: Macmillan, 2000. Bond, E.W., Guisinger, S.E., Investment Incentives as Tariff Substitutes: A Comprehensive Measure of Protection, Review of Economics and Statistics, 67 (1), pp. 91-97, 1985. Clark, S.W., Tax Incentives for FDI: Empirical Evidence on Effects and Alternative Policy Options, Canadian Tax Journal, 48 (4), pp. 1139-1180, 2000. Easson, A., Tax Incentives for FDI Part 1: Recent Trends and Countertrends, Bulletin for International Fiscal Documentation, 55 (7), pp. 266-274, 2001.

(126) Zampetti, *supra* note 123, at 124.

(127) *Id.,* at 124.

(128) *Id.,* at 125.

(129) Antalóczy, K., Sass, M., Greenfield investments in Hungary: Are They Different from Privatization FDI?, Transnational Corporations, 10, pp. 39-59, 2001.

(130) "Policy mainly deals with publicly driven investments on central and local government level as well as investments of commercial nature. In theory, investments are defined as long-term commitment of funds in real or in intangible assets. Since the National Investment Policy also applies to development assistance programs and technical assistance projects, as included in the development budget, a broader understanding of investments is applied. In that sense, the policy deals on the one hand with "public investment", which refers to capital investment in public goods, like physical assets/

Any national investment policy must have key principles that will support its achievement and help to transform its logical framework into practice such as alignment with national priorities[131], leveraging the private sector[132], value for money[133], effectiveness and impact orientation[134], the efficiency of investments[135], investment designs and selection[136], transparency and reliability[137], sustainability[138], coordination and accountability[139], and autonomous[140] decisions[141].

VI- Investment Rule-Making in the Context of Various Tensions

International investment needs are tremendous[142]. This requires that the international investment regime constitutes a framework for increased flows of sustainable foreign direct investment for sustainable development[143]. As mentioned earlier, FDI flows would have to rise considerably to help meet the world's investment needs and thus make a substantial contribution to global

infrastructure (*i.e.,* property, roads and government buildings), and soft assets/ infrastructure (*i.e.,* human capital development, innovation support, research and development). On the other hand, the National Investment Policy raises strategic ways of organizing capital expenditure on commercial goods and businesses. This means investing in enterprises involved in the buying and/or selling of goods and/or services that are expected to generate positive cash flows and/or beneficial effects for the development of key sectors in the Rwandan economy." National Investment Policy, Republic of Rwanda, MINCOFIN Report, 2017.

(131) Identification and selection of all projects shall be guided by national priorities laid out in strategic documents.

(132) National investments will as much as possible leverage additional private sector financing.

(133) All projects, regardless how they are implemented, shall deliver optimal value for money and contribute to growth by maximizing the efficiency through better selection, preparation and management of investments.

(134) The selection and design of future projects shall be driven by systematically assessed experiences about achieved impacts and lessons learnt from ongoing and completed projects.

(135) This will be achieved by ensuring investment selection and design take into consideration the importance of reducing fragmentation and scattering of resources wherever possible while increasing complementarity of projects.

(136) States consider the objectives of knowledge transfer and promotion of the local economy, especially targeting the creation of local jobs as much as possible.

(137) All procedures and decisions within the public investment management shall be transparent to all stakeholders ensuring a sound understanding and good predictability of resource allocation.

(138) Investment design and selection will be driven by sustainability considerations including long term environmental and social impacts among others.

(139) Roles and responsibilities of all involved stakeholders shall be clearly designed to ensure coordination across sectors and government levels and to enable all institutions to plan and implement investments.

(140) Following the principle of decentralization, investment management on the level of local governments will be autonomous.

(141) National Investment Policy, *supra* note 130.

(142) Sauvant, *supra* note 9.

(143) *Id.*

economic growth and sustainable development(144). This requires a further enhancement of the economic determinants, as well as of the regulatory framework and investment promotion(145).

The international investment law and policy regime increasingly sets the parameters, and provides the legal yardstick, for national policy-making on investment(146).

Trends in national FDI laws and regulations, in turn, are important because they foreshadow the orientation of international investment rules, as governments seek to promote and protect their national policy objectives in this area. Together, the national and international frameworks regulate what international investors can and cannot do, and they determine, to an important extent, the distribution of benefits between international investors and host countries.

International and national rule-making on international investment take place against the backdrop of distinct sets of tensions that governments need to reconcile when seeking to attract FDI and benefit from it as much as possible, even if some of these tensions do not necessarily involve objectives that are opposite to each other(147).

The above tensions create dilemmas for policy-makers, who typically need to consider various -often conflicting- objectives in the context of contradictory pressures from various stakeholder interests.

Among stakeholders, non-governmental organizations have become vocal and important actors at the national and international levels, and their views need to be taken into account. These dilemmas and pressures impose limitations on the formulation of national laws and regulations and affect the terms of entering into IIAs (IIAs also include certain WTO agreements, notably the General Agreement on Trade in Services (GATS) and the TRIMs Agreement)(148).

(144) Guzowska, M., Foreign Direct Investment in Poland and Vietnam: A Compare Analyses, M., Studia i prace, 2017.

(145) Nguyen, TB., *et al.,* Commercial Real Estate Investment in Ho Chi Minh City – A level Playing Field for Foreign and Domestic Investors? Habitat International, 2014.

(146) Weiler, T., Who, Then, Shall Judge? The Interpretation of International Investment Agreements and the Rule of International Law. In: A. Rovine, ed., Contemporary Issues in International Arbitration and Mediation, The Fordham Papers, 2013, Martinus Nijhoff: Leiden, 299-236, 2014.

(147) Sauvant, *supra* note 9.

(148) Roughly two-thirds of FDI consists of services FDI; the "commercial presence" provisions of the GATS are therefore of immediate relevance for the lion's share of FDI.

Given the underlying tensions in the relationship between foreign investors and host countries outlined above, the task of policy-makers is to maximize the positive effects of FDI and, for that matter, investment in general in their countries and minimize any negative ones. Hence, national policies regarding FDI, and the international regulatory framework within which national policies are formulated, are of key importance for host countries to attract FDI and benefit from it[149].

The national regulatory framework for FDI defines whether and under what conditions foreign investors can enter a host country, operate in it, and exit it[150]. It is therefore of central importance to both host countries seeking to attract FDI and benefit from it, and to MNEs seeking to establish a portfolio of locational assets that serves their international competitiveness best. At the same time, the broader national regulatory framework, as well as the business climate in general, is also of key importance to domestic investors, typically, what is good for foreign investors is also good for domestic investors[151].

Over time, national FDI frameworks have changed considerably, inspired often by policy benchmarking.[152] After not being welcoming towards foreign investors during the 1960s, 1970s, and early 1980s[153], (a policy stance frequently enforced through national screening agencies), host country policies turned decisively welcoming during the 1990s[154].

During that decade, some 95% of national FDI policy changes that UNCTAD recorded worldwide went in the direction of making the investment climate more hospitable for foreign investors. Governments liberalized economic sectors to FDI, removed caps on investments, or raised ownership ceilings for such investment. They generally facilitated the operations of MNEs and their foreign affiliates in host countries among other measures, relaxing performance and approval requirements and simplifying business registration procedures.

They marketed their countries to investors. They offered incentives to attract

(149) The Development Dimension of FDI: Policy and Rule-Making Perspectives, Proceedings of the Experts Meeting held in Geneva from 6 to 8 November, United Nations Publications, 2002.
(150) *Id.*
(151) *Supra* note 149, at The Development Dimension of FDI.
(152) Sauvant, *supra* note 9.
(153) Velde, D.W., Foreign Direct Investment and Development: An Historical Perspective, World Economic and Social Survey, 2006.
(154) Venables, S., Vertical Specialization, presented at ILO workshop of the World Commission on the Social Dimension of Globalization, 19-20 September 2002. Warner, M., Fowler, J., Velde, D.W, Linking Corporate Investment and International Development, in ODI working paper, 2002.

FDI, with locational competition unleashing fiscal wars at the sub-national level in some countries. They assisted incoming investors in various ways, including offering information, coordinating investor visits, and providing after-investment services[(155)].

They liberalized the repatriation of earnings and other capital. And they codified various protections in national regulations, laws, or even constitutions. In the 1990s[(156)], countries also began to establish investment promotion agencies whose specific aim was -and remains- to attract as much FDI as possible[(157)].

Since the turn of this century, however, national approaches towards incoming FDI have become more nuanced and guarded, primarily in OECD countries. This is so even as the majority of policy changes continue to go in the direction of making the investment climate more welcoming, in particular in non-OECD economies.

However, the number of regulatory changes that do the opposite has risen considerably since 2000, reaching between 20-30% of total national investment policy changes during the past few years[(158)].

Not surprisingly, the number of treaty-based investment disputes - many of them based on legitimate claims, many not- has risen markedly over the past decade, although the total remains small in light of the potential for disputes discussed earlier[(159)]. Their cumulative number had reached 608 known treaty-based cases at the end of 2014, involving the governments of 99 countries from across the world[(160)].

---

(155) Page, S., South-North Investment by Developing Countries in the EC: A Sign of the Emergence of New Investors. In: Hickman, B.G. and L. Klein, Link, Proceedings, World Scientific, 1991-1992.

(156) Sauvant, Karl, *et al.,* Trends in FDI, Home Country Measures and Competitive Neutrality. In: Yearbook on International Investment Law & Policy, Andrea K., ed, Bjorklund, 3-108, New York: Oxford University Press, 2012.

(157) Sauvé, Pierre, Towards a Plurilateral Trade in Services Agreement (TISA): Challenges and Prospects, Journal of International Commerce, Economics and Policy, p. 5, 2014.

(158) Yackee, Jason, Do Bilateral Investment Treaties Promote Foreign Direct Investment? Some Hints from Alternative Evidence, Virginia Journal of International Law, 51, 397-441, 2010.

(159) Sauvant, *supra* note 9.

(160) To be sure, FDI flows have also grown considerably since the end of the 1990s, when the number of treaty-based investment disputes became considerably higher. By that time (say, 1999), the world's FDI stock stood at nearly US $5 trillion, with few treaty-based investment disputes recorded. Moreover, after reaching a peak of about US $2 trillion in 2007, world FDI flows fell to US $1.1 trillion and still have not recovered, while the number of disputes remained roughly at the same level. This may suggest that there is no direct relationship between the size of FDI stocks/flows and the number of disputes; rather, other factors are at work, such as the propensity of investors to utilize the dispute-settlement mechanism. (UNCTAD 2015b, 112).

The international investment law and policy regime, in its current form, is a relatively young construct(161). It has evolved and continues to do so, in response to experience, pressures, and changing interests(162).

VII- The Way Forward

In brief, expanding the purpose of IIAs, providing greater clarity of key concepts where possible, acknowledging interrelationships with other legal regimes, and recognizing investor responsibilities should be part of a reform agenda. The best approach would be a combination of clarifying "the content and scope of the traditional substantive provisions of IIAs," fine-tuning or recalibrating "the kinds of protection afforded to investors by traditional provisions" and "addressing the limited object of IIAs(163). Such a process would be helped by the fact that the great majority of IIAs contain certain principles and basic concepts that are sufficiently similar across treaties(164).

On the national institutional side, IPAs, as one-stop shops, could be the focal points for matters related to a sustainable investment support program, possibly coordinating with the national committees on trade facilitation to be established under the WTO's Trade Facilitation Agreement(165).

Within a country's long-term development strategy, IPAs could undertake various activities to attract sustainable FDI and benefit from it as much as possible(166). They could, among other things(167), Improve the regulatory framework for investment by drawing lessons from best practices in countries that have successfully attracted sustainable FDI projects.

Policy benchmarking could help in this respect as follows(168):

(161) Although the International Centre for Settlement of Investment Disputes (ICSID) had already been established in 1966, and the first BIT had been concluded in 1959.

(162) For an overview of the history and components of international investment law and how it operates as a complex adaptive system, *see* Pauwelyn, Joost, At the Edge of Chaos?, Foreign Investment Law as a Complex Adaptive System, How It Emerged and How It Can Be, 29 ICSID, Rev. FILJ 372 (2014).

(163) Muchlinski, Peter, Multinational Enterprises and the Law, 2nd ed, Oxford University Press (2007).

(164) In his book, Schill described as the multilateral structures underlying international investment law. Schill, Stephan, The Multilateralization of International Investment Law, Cambridge: Cambridge University Press, 2009.

(165) In some countries, the trade and investment promotion functions are combined in one agency. Even in the absence of an investment support program, it would make sense for the trade and investment focal points at the national level to cooperate.

(166) In this context *see* also OECD (2015b).

(167) Chaisse, Julien, China's International Investment Strategy: Bilateral, Regional, and Global Law and Policy, Oxford University Press, 2019.

(168) Policy Framework for Investment, Organization for Economic Co-operation and Development, 2006, pp. 45-54.

1) Establish time-limited and simplified procedures for obtaining permits, licenses, when feasible, and when these do not limit the ability of governments to ensure that the regulatory procedures can be fully complied with by investors and government officials(169).
2) Identify and eliminate unintended barriers to sustainable FDI flows.
3) Engage in policy advocacy (part of which could relate to promoting the coherence of the investment and trade regulatory frameworks).
4) Render after-investment services.
5) Facilitate private-public partnerships. Identify opportunities for inserting the country in global value chains.
6) Promote backward and forward linkages between foreign investors and domestic firms.
7) And - very importantly - find ways and means to increase the sustainable development impact of FDI in host countries(170).

Investment promotion agencies could also play a role in the development of investment risk-minimizing mechanisms badly needed to attract investment into, especially, various types of infrastructure(171). They could also have a role in the prevention and management of conflicts between investors and host countries through providing information and advice regarding the implementation of applicable IIAs and the preparation of impact assessments to avoid that liability arises under these agreements. If conflicts arise, they could seek to resolve them before they reach the international arbitral level. Institutionalized regular interactions between host country authorities and foreign as well as domestic investors would be of particular help in this respect(172).

VIII- Final Reflections

International investment can be used by international investors on both a macro and microeconomic level. Countries with sustainable and growing levels of foreign direct investment are preferable, while companies investing

(169) Chaisse, *supra* note 167, at 323.
(170) *Id.*
(171) For detailed discussion of home country measures, *see* Sauvant *et al.,* Trends in FDI, Home Country Measures and Competitive Neutrality. In: Bjorklund, A.K., (ed), Yearbook on International Investment Law & Policy, Oxford University Press, pp. 3-107, 2014.
(172) Chaisse, *supra* note 167, at 323.

abroad can often benefit from higher growth rates(173). Insofar, FDI has many drawbacks, despite its overall effectiveness in promoting growth. On a macro level, it can cause problems for a country's domestic labor markets and drain capital in the long-run. On a micro level, the investments have several risks that should be carefully considered(174).

Transparent information on how governments implement and change rules and regulations dealing with investment is a critical determinant in the investment decision.

In short, international agreements can promote investment by reducing restrictions on a broadly defined range of investments, by making the regulatory environment more predictable, thereby reducing the policy risks faced by investors, both domestic and foreign, and through other basic disciplines, such as limits on trade-related investment measures, expropriation procedures consistent with international law standards and guarantees for the free transfer of capital in a convertible currency.

Performance requirements, such as local content, export performance, and other trade-related investment measures, tend to discourage and distort investment by imposing additional costs on firms, which is why they often go hand in hand with incentives to invest. Many international organizations work with IPAs(175), facilitating the exchange of best practices on investment promotion strategies, and assisting in building policy capacity.

For instance, the World Association of Investment Promotion Agencies (WAIPA)(176), assists IPAs in advising their governments on the formulation of investment promotion strategies; the Foreign Investment Advisory Service(177), within the World Bank Group provides investment climate diagnostic studies(178) at the request of host governments, consisting of

(173) Kuepper, *supra* note 81.
(174) Kuepper, *supra* note 77.
(175) The Investment Promotion Agency (IPA), Promoting Investment for Sustainable Development in Cities, IPA Observer 7, 2019 (UNCTAD/DIAE/PCB/INF/2019/1).
(176) The World Association of Investment Promotion Agencies is an international Non-governmental organization established in 1995 by the United Nations Conference on Trade and Development that acts as a forum for investment promotion agencies, provides networking and promotes best practice in investment promotion. Available at https://waipa.org/.
(177) During FY98 the Foreign Investment Advisory Service (FIAS) assisted 38 Bank Group member countries to take actions in attracting more, and more productive, foreign direct investment (FDI). World Bank, Foreign Investment Advisory Service, FIAS, Annual Report, FY98, Washington, DC, World Bank, 1998.
(178) Today, consultancy services are needed for FDI, since such investment is considered to be very lucrative and completely secure in most states, and therefore, more states have become most popular and preferred investments destinations. The most impressive features of such states favoring FDI for its vast, varied market and large population.

recommendations for a combination of policy, regulatory and procedural reform, institutional frameworks for investment promotion and methods for monitoring effectiveness; and UNCTAD's Advisory Services on Investment and Training (ASIT)[(179)], is experienced in instruction programs for IPA staff to improve capacity.

Laws and regulations should be developed openly and transparently, with appropriate parliamentary control and procedures for effective and timely inputs from interested national and foreign parties. This should include potential domestic and foreign investors as well as affected business, trade unions, other civil society, wider interest groups, and other levels of government. There is also a role for international co-operation in the fight against corruption.

For example, the OECD Convention of Combating Bribery of Foreign Public Officials in International Business Transactions[(180)] aims to stop the flow of bribes to public officials in host countries.

It is difficult to assume how resilient foreign investment in financial crises, but indeed, the financial crisis[(181)] and economic downturn affected firms' plans for future foreign investments. A UN survey on global investment prospects showed that the current financial crisis and economic downturn are making corporations more cautious about future foreign investments. According to the survey's results, only 21% of companies anticipate a large increase in their FDI expenditures over the next three years, compared to 32% the previous year. Evidently, the global financial crisis has already had a significantly

(179) The UNCTAD Advisory Service on Investment and Training (ASIT) strengthens the capacity of developing countries to create and manage their FDI policy. *See* full reports of OCED in Investment for Development. Also *see* Nguyen, Thanh, Foreign Direct Investment in Real Estate Projects and Macroeconomic Instability, ASEAN Economic Bulletin, vol. 28, no. 1, pp. 74-96, 2011.
2011.

(180) The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions went into force in February 1999. For more analysis *see* Hudson, Pacinin, Swingen, Rogers, The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions: A New Tool to Promote Transparency in Financial Reporting, Advances in International Accounting, vol. 15, p. 1, 2002.

(181) To recover post – COVID -19, the world - and developing countries in particular - will require a significant influx of resources. FDI inflows can bring in some of those resources, but governments will need to put conditions in place to help attract and retain productive investments and, more importantly, to maximize their development benefits. This crisis may offer a window of opportunity for governments to re-examine their approaches to investment attraction and retention, with a view towards increasing the embeddedness of FDI within their local economies. To this end, the world may still need to require novel policy approaches and thus deserve increased attention from policymakers. Seric, Adnan, COVID-19 and the global contraction in FDI, 2020, available at https://iap.unido.org/articles/covid-19-and-global - contraction - fdi.

negative impact on FDI plans for the next three years[182].

Other intergovernmental organizations such as the United Nations, the World Bank, the Asian Development Bank[183], and the International Monetary Fund[184] have likewise developed policies aimed at fostering good governance and sanctioning corruption and related malpractices.[185]

(182) Meltem, Ucal, Relationship between Financial Crisis and Foreign Direct Investment in Developing Countries using Semiparametric Regression Approach, Journal of Business Economics and Management, 11 (1), p. 22, 2010.

(183) The Asian Development Bank (ADB) is committed to achieving a prosperous, inclusive, resilient, and sustainable Asia and the Pacific. Available at https://www.adb.org/.

(184) The International Monetary Fund (IMF) is an organization of 189 countries, working to foster global monetary cooperation, secure financial stability, facilitate international trade, promote high employment and sustainable economic growth, and reduce poverty around the world. Available at https://www.imf.org/en/About. Studies that examine the impact of International Monetary Fund (IMF) programs on domestic economies have generated some puzzling results. Scholars still debate the impact of IMF programs on the balance of payments, current account balance and long-run economic growth. These results are perplexing because, in addition to providing capital to countries in crisis, the IMF "negotiates: conditions on lending, encouraging domestic governments to make policy change for fiscal solvency". Jensen, Nathan, Crisis, Conditions, and Capital, The Effect of International Monetary Fund Agreements on Foreign Direct Investment Inflows, The Journal of Conflict Resolution, Vol. 48, No. 2, p. 194, 2004.

(185) Policy Framework for Investment, Organization for Economic Co-operation and Development, pp. 23-59, 2006.

References

- Adura, Jeff, Whyte, Ann Marie, Diversification Benefits of Direct Foreign Investment, Management International Review, vol. 30, no. 1, 1990.
- Agosin, M.R., Mayer, R., Foreign Investment in Developing Countries: Does it Crowd in Domestic Investment? Discussion Paper 146, UNCTAD, 2000.
- Alistair, Mason, Pyper, Hugh, Hastings, Adrian ed., The Oxford Companion to Christian Thought, Oxford University Press, 2001.
- Ancharaz, V.D., Sultan, R.A., Aid for Trade and Climate Change Financing Mechanisms, ICTSD, 2010.
- Antalóczy, K., Sass, M., Greenfield investments in Hungary: Are they Different from Privatization FDI?, Transnational Corporations, 2001.
- Anthea, Elizabeth, Traditional and Modern Approaches to Customary International Law: A Reconciliation, 95 Am. J. Int'l. L. 757 (2001).
- Arnal, E., Hijzen, A., The Impact of Foreign Direct Investment on Wages and Working Conditions, OECD Social, Employment and Migration Working Papers, No. 68, OECD Publishing, Paris, 2008.
- Auerbach, AJ., Devereux, MP., Consumption and Cash-flow Taxes in an International Setting (No. w19579), STICERD, Public Economics Programme Discussion Papers 3, Suntory and Toyota International Centres for Economics and Related Disciplines, LSE. National Bureau of Economic Research, 2013.
- Bagchi-Sen, S., International Encyclopedia of the Social & Behavioral Sciences, vol. 20, 2001.
- Bamiatzi, Vassiliki, Efthyvoulou, Georgios, Jabbour, Liza, Foreign vs. Domestic Ownership on Debt Reduction: An Investigation of Acquisition Targets in Italy and Spain, International Business Review, 26 (5), 2017.
- Bartlett, Christopher, MNCs: Get off the Reorganization Merry-Go-Round, Harvard Business Review, 1983.
- Bellak, C., Leibrecht, M., Stehrer, R., Policies to Attract Foreign Direct Investment: An Industry-Level Analysis, OECD VII Global Forum on International Investment, 2004.
- Bernasconi, N., Rethinking Investment-Related Dispute Settlement, International Institute for Sustainable Development Investment Treaty News, 6 (2), 2015.

- Blomstrom, M., Kokko, A., How Foreign Investment Affects Host Countries? Policy Research Working Paper 1745, World Bank, 1997.
- Blomström, M., Kokko, A., The Economics of FDI Incentives, Conference on FDI in the Real and Financial Sector of Industrial Countries, Bundesbank, Frankfurt, May 3-4, 2002.
- Blomström, M., Kokko, A., Zejan, M., FDI: Firm and Host Country Strategies, London: Macmillan, 2000.
- Bond, E.W., Guisinger, S.E., Investment Incentives as Tariff Substitutes: A Comprehensive Measure of Protection, Review of Economics and Statistics, 67 (1), 1985.
- Borensztein, De Gregorio Lee, J.W., How Does Foreign Direct Investment Affect Economic Growth?, Journal of International Economics, vol. 45, 1998.
- Bown, Chad, Why the U.S. Needs Allies in a Trade War Against China, Harvard Business Review, 2018.
- Bradford, Jensen, Global Trade in Services: Fear, Facts, and Offshoring, Washington: Peterson Institute for International Economics, 2011.
- Broches, A., The Convention for Settlement of Investment Disputes, 136 Recueil des Cours 331, 343, 1972.
- Busse, M., Hoekstra, R., Königer, J., The Impact of Aid for Trade Facilitation on the Costs of Trading, Kyklos, 65, 2012.
- Butler, N., Subedi, S., The Future of International Investment Regulation: Towards a World Investment Organization?, Neth. Int'l L. Rev. 64, 2017.
- Buzzlle, Robert, Can You Standardize Multinational Marketing?, Harvard Business Review 46, 1968.
- Cadot O., Melo, J., Aid for Trade: What have we Learned? Which Way Ahead? CEPRI and FEDRI, London and Clermond-Ferrand, 2014.
- Campisi, J., Sottilotta, C.E., Unfriendly or Unwanted? Reflections on FDI Attraction Policies in Italy, Rivista Italiana di Politiche Pubbliche, Vol.11, No. 2, 2016.
- Canivez, Patrice, Qu›est-ce qu›un conflit politique?, Revue de métaphysique et de morale, No. 58, 2008.
- Chaisse, Julien, China's International Investment Strategy: Bilateral, Regional, and Global Law and Policy, Oxford University Press, 2019.

- Clark, S.W., Tax Incentives for FDI: Empirical Evidence on Effects and Alternative Policy Options, Canadian Tax Journal, 48 (4), 2000.
- Contemporary Practice of Public International Law (Ellen G. Schaffer and Randall J. Snyder, eds., 1997).
- Cosbey, Aaron, The Road to Hell? Investor Protections in NAFTA'S, Chapter 11. In: Lyuba Zarsky, ed., International Investment for Sustainable Development, Balancing Rights and Rewards London: Sterling, VA: Earthscan, 2005.
- David H., Dorn, D., Gordon H., The China Shock: Learning from Labor-Market Adjustment to Large Changes in Trade, Annual Review of Economics, 8, 2016.
- Declaration on the Establishment of a New International Economic Order, UNGA Res 3201 (S-VI) (1 May 1974), Doane, D., The Myth of CSR, Stanford Social Innovation Review, Stanford University Graduate School of Business, 2005.
- Dodd, E. M., For Whom Are Corporate Managers Trustees?, Harvard Law Review 45, 1145, 1932. In: T. Clarke (ed.), Corporate Governance Critical Perspectives on Business and Management, London: Routledge, 2005.
- Dolzer, Rudolf, Schreuer, Christoph, History, Sources, and Nature of International Investment Law from Principles of International Investment Law, 2nd ed, Oxford Scholarly Authorities on International Law, 2012.
- Dolzer, Rudolf, Schreuer, Christoph, Principles of International Investment Law, Oxford University Press, 2008.
- Donaldson, T., Thomas Dunfee, Toward a Unified Conception of Business Ethics: Integrative Social Contracts Theory, Academy of Management Review, 19 (2), 1994.
- Doukas, John, Foreign Direct Investment, Diversification and Firm Performance, Journal of International Business Studies 34 (2), 2003.
- Dunning, J., Pitelis, C., Contribution to International Business Scholarship: An Assessment and Extension, Journal of International Business Studies. 39 (1), 2008.
- Dunning, J., Pitelis, C., Contribution to International Business Scholarship: An Assessment and Extension, Journal of International Business Studies, 39 (1), 2008.

- Easson, A., Tax Incentives for FDI Part 1: Recent Trends and Countertrends, Bulletin for International Fiscal Documentation, 55 (7), 2001.
- Elgar, Edward, Lall, S., Narula, R., FDI and its Role in Economic Development: Do We Need a New Agenda? European Journal of Development Research, 16 (3), 2004.
- Foreign Direct Investment and Performance Requirements: New Evidence from Selected Countries, UNCTAD, New York, 2003.
- Framework Agreement on the ASEAN Investment Area, 1998.
- Fukuyama, F., The End of History and the Last Man, The Free Press, New York, 1992.
- Gamberoni, E., Newfarmer, R., Aid for Trade: Do Those Countries that Need it, Get it?, World Economy, Special Issue: Aid for Trade, Melo, J.M., ed, vol. 37, Issue 4, 2014.
- Germain, Claire, Germain's Transnational Law Research, Guide to International Legal Research (2004).
- Ghose, Ajit, Global Inequality and International Trade, Cambridge Journal of Economics, vol. 28, Issue 2, 2004.
- Gilpin, R., War and Change in World Politics. Cambridge University Press, Cambridge, 1981.
- Gilpin, Robert, Global Political Economy: Understanding the International Economic Order. Princeton, New Jersey: Princeton University Press, 2001.
- Giunta, Mary, Documents of the Emerging Nation: U.S. Foreign Relations 1775–1789, Wilmington, Del: Scholarly Resources Inc., 1998.
- Gleick, J., Chaos Making a New Science, Viking, New York, 1987.
- Guzowska, M., Foreign Direct Investment in Poland and Vietnam: A Compare Analyses, M., Studia i prace, 2017.
- Haaland, J.I., Wooton, I., International Competition for Multinational Investment, Scandinavian Journal of Economics, 101 (4), 1999.
- Hall, Mary, Globalization and International Investment, Macroeconomics, 2018.
- Head, C.K., Ries, J.C., Swenson, D.L., Attracting Foreign Manufacturing: Investment Promotion and Agglomeration, Regional Science and Urban Economics, 29 (2), 1999.

- Helble, M.C., Mann, C.L., Wilson, J.S., Aid for Trade Facilitation, Review of World Economics, Weltwirtschaftliches Archiv, Springer, vol. 148 (2), 2014.
- Hemphill, T. A., Lillevik, W., The Global Economic Ethic Manifesto: Implementing a Moral Values Foundation in the Multinational Enterprise, Journal of Business Ethics, 2011.
- Hindelang, S., Krajewski, M., Shifting Paradigms in International Investment Law, More Balanced, Less Isolated, Increasingly Diversified, Oxford: Oxford University Press, 2015.
- Hudson, Pacinin, Swingen, Rogers, The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions: A New Tool to Promote Transparency in Financial Reporting, Advances in International Accounting, vol. 15, 2002.
- Huizinga, H., Foreign Investment Incentives and International Cross-Hauling of Capital, Canadian Journal of Economics, 24 (3), 1991.
- Hysell, Helen, The Science of Purchasing, New York: Appleton, 1922.
- International Investment Rule-Making: Stocktaking, Challenges and the Way Forward, UNCTAD Series on International Investment Policies for Development, 2009.
- Investor-State Disputes Arising from Investment Treaties: A Review. UNCTAD Series on International Investment Policies for Development (New York and Geneva: United Nations), United Nations Publication, 2005.
- Jean-Jacques, Laffont, Tirole, Jean, A Theory of Incentives in Procurement and Regulation, MIT Press, 1993.
- Jensen, Nathan, Crisis, Conditions, and Capital, The Effect of International Monetary Fund Agreements on Foreign Direct Investment Inflows, The Journal of Conflict Resolution, Vol. 48, No. 2, 2004.
- Jones, Thomas, Instrumental Stakeholder Theory: A Synthesis of Ethics and Economics, Academy of Management Review, 20, (2), 1995.
- Kaplan, M., Balance of Power, Bipolarity and other Models of International Systems, American Political Science Review, 1957.
- Keynes, Soumaya, Bown, Chad, It's Fun to Discuss the USMCA—the New NAFTA, Trade Talks Episode 57, 2018.
- Kirkman, Marshall, The Handling of Railway Supplies: Their Purchase and Disposition, Chicago, 1887.

- Konoplyanik, Andrei, Walde, Thomas, Energy Charter Treaty and Its Role in International Energy, 24 J. Energy Nat. Resources L. 523 (2006).
- Kuepper, Justin, Foreign Direct Investment: What It Means for Investors, 2019.
- L'évolution, Juillard, du droit des investissements', 250 Recueil des Cours de l'Académie de Droit International 9, 76, 1994.
- Lall, S., Foreign Direct Investment, Technology Development and Competitiveness: Issues and Evidence. In: Lall, S., Urata, S., (eds.) Competitiveness, FDI and Technological Activity in East Asia, Cheltenham, 2003.
- Legum B., Options to Establish an Appellate Mechanism for Investment Disputes. In: Sauvant K (ed), Appeals Mechanism in International Investment Disputes, Oxford University Press, New York, 2016.
- Lemke, Thomas, Lins, Gerald, Regulation of Investment Advisers, 2, 158, Thomson West, 2014.
- Lewis, M.A., Roehrich, J.K., Contracts, Relationships and Integration: Towards a Model of the Procurement of Complex Performance, International Journal of Procurement Management, 2, 2009.
- Logue, Ann, Socially Responsible Investing for Dummies, 2008.
- Markwell, Donald, John Maynard Keynes and International Relations: Economic Paths to War and Peace, Oxford University Press, 2006.
- Mavroidis, Petros, Free Lunches? WTO as Public Good, and the WTO's View of Public Goods, European Journal of International Law, 23 (3), 2012.
- McIntyre, J., Narula, R., Trevino, I., The Role of Export Processing Zones for Host Countries and Multinational: A Mutually Beneficial Relationship? International Trade Journal, 10 (4), 1996.
- Meltem, Ucal, Relationship between Financial Crisis and Foreign Direct Investment in Developing Countries using Semiparametric Regression Approach, Journal of Business Economics and Management, 11 (1), 2010.
- Meunier, S., Morin, J F., Negotiating TTIP in a Dense Regime Complex. In The Politics of Transatlantic Trade Negotiations (edited by JF Morin, T. Novotna, F. Ponjaert and M. Telò), Ashgate, 2014.
- Meunier, Sophie, Jean-Frédéric, Morin, The European Union and the Space-Time Continuum of Investment Agreements, Journal of European Integration, 39 (7), 2017.

- Middlekauff, Robert, The Glorious Cause: The American Revolution, 1763–1789, New York: Oxford University Press, 1982.
- Muchlinski, Peter, Multinational Enterprises and the Law, 2nd ed, Oxford University Press (2007).
- Mussa, Michael, Factors Driving Global Economic Integration, Global Opportunities and Challenges, IMF, August 25, 2000.
- National Investment Policy, Republic of Rwanda, MINCOFIN REPORT, 2017.
- Nattier, Frank E., The Latin American Free Trade Association (LAFTA), The Business Lawyer, vol. 21, no. 2, 1966.
- Neer, L. Pauline, F.H., (U.S.A.) v. United Mexican States, (15 October 1926) (1926), 4 RIAA 60: Letter of the US Secretary of States to the Mexican embassy (21 July 1938), quoted in A F Lowenfeld, International Economic Law, 398, Oxford University Press (2002).
- Neumayer E., Spess, L., Do Bilateral Investment Treaties Increase Foreign Direct Investment to Developing Countries? World Dev. 33, 2005.
- Nguyen, TB*., et al.,* Commercial Real Estate Investment in Ho Chi Minh City–A level Playing Field for Foreign and Domestic Investors?, Habitat International, 2014.
- Nguyen, Thanh, Foreign Direct Investment in Real Estate Projects and Macroeconomic Instability, ASEAN Economic Bulletin, vol. 28, no. 1, 2011.
- Novik, A., Crombrugghe, A., Towards an International Framework for Investment Facilitation (OECD Investment Insights), 2018.
- Page Sheila, South-North Investment by Developing Countries in the EC: A Sign of the Emergence of New Investors. In: Hickman, B.G. and L. Klein, Link, Proceedings, World Scientific, 1991-1992.
- Palepu, KG., Sinha J., Khanna, T., Strategies that Fit Emerging Markets, Harv Bus Rev. 83 (6), 2005.
- Pate, John, Andean Pact: Official Codified Text of The Cartagena Agreement Incorporating the Quito Protocol, International Legal Materials, vol. 28, no. 5, 1989.
- Pauwelyn, Joost, At the Edge of Chaos?: Foreign Investment Law as a Complex Adaptive System, How It Emerged and How It Can Be, 29 ICSID, Rev. FILJ 372 (2014).

- Philip, Lynn, Chang, Dae, Buzzell, Robert, Product Quality: Cost Production and Business Performance—A Test of Some Key Hypotheses, Harvard Business School Working Paper No. 83-13, 1983.
- Policy Framework for Investment, Organization for Economic Co-operation and Development, 2006.
- Pratt, John W., *et al.,* Price Differences in Almost Competitive Markets, The Quarterly Journal of Economics, vol. 93, no. 2, 1979.
- Ramamurti, Ravi, Developing Countries and MNEs: Extending and Enriching the Research Agenda, Journal of International Business Studies, vol. 35, no. 4, 2004.
- Rapaić, Stevan, The impact of FDI on the economic development of Serbia, Ekonomika preduzeća, LXV (5-6), 2017.
- Reisman, Micheal *et al.,* International Law in Comparative Perspective, 2004.
- Richardson, Benjamin, Socially Responsible Investment Law: Regulating the Unseen Polluters, Oxford University Press, 2008.
- Rosenne, Shabtai, Practice and Methods of International Law, 1984.
- Salzman, J., Labor Rights, Globalization and Institutions: The Role and Influence of the Organization for Economic Cooperation and Development, Mich. J, Int'l Law, (2000).
- Sattorova, M., International Investment Law and Development: Bridging the Gap, Stephan W. Schill, Christian J. Tams and Rainer Hofmann, ed., Cheltenham: Edward Elgar, 2017.
- Sauvant, Karl, *et al.,* Trends in FDI, Home Country Measures and Competitive Neutrality. In: Yearbook on International Investment Law & Policy, Andrea K. ed, Bjorklund, 3-108, New York: Oxford University Press, 2012.
- Sauvant, Karl, The Evolving International Investment Law and Policy Regime: Ways Forward, 2016.
- Sauvé, Pierre, Towards a Plurilateral Trade in Services Agreement (TISA): Challenges and Prospects, Journal of International Commerce, Economics and Policy, 2014.
- Schill, Stephan, The Multilateralization of International Investment Law, Cambridge: Cambridge University Press, 2009.
- Seric, Adnan, COVID-19 and the global contraction in FDI, 2020, available at https://iap.unido.org/articles/covid-19-and-global-contraction-fdi

- Shleifer, Andrei, Vishny, Robert, The Limits of Arbitrage, Journal of Finance, 1997.
- Smil, Vaclav, Energy and Civilization: A History, Cambridge, MA: The MIT Press, 2017.
- Sokang, K., The Impact of Foreign Direct Investment on Economic Growth in Cambodia: Empirical Evidence, International Journal of Innovation and Economic Development, 4 (5), 2018.
- Taylor, C.T., The Impact of Host Country Government Policy on the United States Multinational Investment Decisions, World Economy, 23 (5), UNCTAD (1995).
- Tester, Jefferson, Sustainable Energy: Choosing Among Options, Cambridge, MA: The MIT Press, 2012.
- Thailand-New Zealand Closer Economic Partnership Agreement, 2005.
- The ASEAN Agreement for the Promotion and Protection of Investments, 1987.
- The Development Dimension of FDI: Policy and Rule-Making Perspectives, Proceedings of the Experts Meeting held in Geneva from 6 to 8 November, United Nations Publications, 2002.
- The Diplomatic Bluebook 1985 Edition published by the Ministry of Foreign Affairs, Japan.
- The Least Devolved Countries Report, UNCTAD, United Nations, 2019.
- The Panama-Singapore Free Trade Agreement (PSFTA).
- Theiler, Tobias, Political Symbolism and European Integration, Manchester University Press, 2005.
- Trakman L., Australia's Rejection of Investor-state Arbitration. In: Trakman, L., Ranieri, N., (eds), Regionalism in International Investment Law, Oxford University Press, New York, 2013.
- UN Doc A/RES/29/3201, Charter of Rights and Economic Duties of States, UNGA Res 3281 (XXIX) (12 December 1974), UN Doc A/RES/29/3281.
- UNCTAD, The Development Dimension of International Investment Agreement, TD/B/C. II/MEM.3/2, para. 21 (2008).
- UNCTAD, World Investment Report, XVII, 26, 2006.
- United Nations Conference on Trade and Development (UNCTAD) (2000).

- United Nations Millennium Declaration, UN Doc A/55/L.2. 8 September 2000.
- Vanhonacker, W., Entering China: An Unconventional Approach, Harv Bus Rev. 75 (2), 130-1, 134-6, 138-40, 1997.
- Velde, D.W., Foreign Direct Investment and Development: An Historical Perspective, World Economic and Social Survey, 2006.
- Venables, S., Vertical Specialization, presented at ILO workshop of the World Commission on the Social Dimension of Globalization, 19-20 September 2002.
- Vissi, Ferenc, Foreign Direct Investment and Competition, Russian & East European Finance and Trade, vol. 31, no. 3, 1995.
- Warner, M., Fowler, J., Velde, D.W., Linking Corporate Investment and International Development, in ODI working paper, 2002.
- Warren, Christopher. In: The Stream of History: Shaping Foreign Policy for A New Era, Stanford University Press, 1998.
- Weele, Arjan, Purchasing and Supply Chain Management: Analysis, Strategy, Planning and Practice, ed., Andover: Cengage Learning, 2010.
- Weiler, T., Who, Then, Shall Judge? The Interpretation of International Investment Agreements and the Rule of International Law. In: A. Rovine, ed., Contemporary Issues in International Arbitration and Mediation, The Fordham Papers, 2013, Martinus Nijhoff: Leiden, 2014.
- Wong, Jarrod, Umbrella Clauses in Bilateral Investment Treaties: of Breaches of Contract, Treaty Violations, and the Divide between Developing and Developed Countries. In: Foreign Investment Disputes, 14 Geo. Mason L. Rev., 2007.
- World Bank, Foreign Investment Advisory Service, FIAS, Annual Report, FY98, Washington, DC, World Bank, 1998.
- World Economy, Definition, American English Definition, Macmillan Dictionary, 2015.
- World Investment Report 1995, Transnational Corporations and Competitiveness, New York and Geneva: United Nations. UNCTAD (1996).
- World Investment Report, FDI Policies for Development: National and International Perspectives (New York and Geneva: United Nations), United Nations Publication, 2008.

- Yackee, Jason, Do Bilateral Investment Treaties Promote Foreign Direct Investment? Some Hints from Alternative Evidence, Virginia Journal of International Law, 51, 2010.
- Yannaca-Small, K., Parallel proceedings. In: Muchlinski, P., *et al* (eds), The Oxford Handbook of International Investment Law, Oxford University Press, Oxford, 2008.
- Yannick, Radi, International Investment Law and Development: A History of Two Concepts, Edward Alger Publication, 2015.
- Zampetti, Beviglia, Fredriksson, Torbjörn (eds.), The Development Dimension of FDI: Policy and Rule-making Perspectives, VIII, New York: The United Nations, 2003.
- Zanatta, Mariana, *et al,*. National Policies to Attract FDI. In: R&D, An Assessment of Brazil and Selected Countries, Research Paper, 2008.
- Zanatta, Mariana, *et al,*. National Policies to Attract FDI. In: R&D: An Assessment of Brazil and Selected Countries, Research Paper, 2008.
- Zimmermann, F., Smith, K., More Actors, More Money, More Ideas for International Development Co-operation, Journal of International Development, Vol. 23, Issue 5, 2011.

Table of Contents