INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed JournalMulti Disciplinary
Peer Reviewed Edition :

www.ijlra.com

 ISSN: 2582-6433

DISCLAIMER

ISSN: 2582-6433

EDITORIAL TEAM

EDITORS

Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board

ISSN: 2582-6433

Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India.India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020).Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi.Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.

Avinash Kumar

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship.He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi.Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi.He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ISSN: 2582-6433

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANLAYSIS ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

www.ijlra.com
Volume 2 Issue 7 | Aug 2023
ISSN: 2582-6433

INVESTMENT PROTECTION TREATIES: SAFEGUARDING GLOBAL INVESTMENT[1]

AUTHORED BY - PRIYA RATHORE

INTRODUCTION:

Our world is becoming more interconnected, and conventional borders are no longer a barrier to business and enterprise. This era is distinguished by significant foreign investment. The worldwide trends of globalization and liberalization that have taken hold across the globe are to blame for the sharp increase in foreign investments. Today, a country's ability to draw in foreign direct investments (FDI) is frequently used to measure that country's economic development. There are a startling 2,946 international investment agreements in existence, 2,363 of which are in effect, according to data from the United Nations Conference on Trade and Development (UNCTAD). Therefore, protecting these investments has become of the utmost importance.

While Bilateral Investment Treaties (BITs) have significantly broadened the scope of these restrictions in addition to reaffirming long-standing norms of customary international law related to foreign investment. To entice and protect foreign money, these treaties have clauses that have been painstakingly drafted to offer the highest level of protection to international investors.

However, it has become clear that a sizable percentage of the BIT-related disputes filed with the International Centre for Settlement of Investment Disputes (ICSID) involve claims of host-state liability for actions resembling indirect expropriation without just compensation or violations of the fundamental principle of fair and equitable treatment (FET). A system known as "Investor to State Dispute Settlement" (ISDS), intended to speed up the resolution of such issues, is present in almost all investment treaties.

It has become a hotly debated topic to allow investors to sue their host country when regulatory changes could potentially jeopardize their financial benefits. Many nations have already had to deal with unforeseen claims resulting from their attempts to pass new laws or regulations intended

[1] Priya Rathore (5th year student, BBA.LLB, The Northcap University, Gurugram)

ISSN: 2582-6433

to protect their financial stability, environmental integrity, or citizens' well-being. Essentially, a lot of disagreements come up when a host state asserts its sovereign power over foreign investments made within its borders.

The management of changes in international investment law is causing increasing worry in the global community, particularly with regard to expropriation issues. The idea that some investment tribunals have gone too far in restricting the sovereign powers of host countries is the basis for this worry. Notably, recent judgements against Argentina in a number of instances adjudicated by international investment tribunals have brought attention to this problem.

This article aims to analyses the fundamental ideas regulating foreign investment by host states in this context. With the ultimate goal of striking a delicate balance between the host state's sovereignty and the necessity of preserving the rights of home states for investment protection, the author's objective is to critically examine the most recent interpretations and applications of these principles by international investment courts and tribunals.

The Evolution of the Concept of 'Investment':

The Development of the Term "Investment" It is crucial to understand the subtleties of the Investment Protection framework under International Investment Law by delving into the constantly changing definition of the Term "Investment." Within the field of investment law, the definition of "investment" has changed over time. Surprisingly, there isn't a specific definition of what counts as a foreign investment that is acknowledged by all parties. When countries join into investment agreements, they frequently adopt an open-ended approach, which broadens the definition of the word "investment." It is noteworthy that not even the ICSID Convention (International Centre for Settlement of Investment Disputes) provides a detailed definition of "investment."

However, a number of arbitral tribunals have highlighted some crucial characteristics of investments made under the ICSID Convention that have come to be recognized more and more, guided by important instances in the area of investment law. These characteristics include: (i) the project's longevity; (ii) the project's regularity of profit and return; (iii) the presence of risks for all parties engaged; (iv) a significant resource commitment; and (v) the operation's relevance for the host state's development.

ISSN: 2582-6433

Investment Protection:

(Standards of Investment Protection and Host State Obligations)

The latter half of the 20th century saw a substantial evolution in the field of international investment law, particularly with the end of colonialism. Concession agreements between host states and investors at first governed investments. These agreements gave foreign investors significant privileges, giving host countries little control over the actions of foreign companies. The establishment of bilateral investment treaties, free trade agreements, and international investment agreements in the modern world is primarily intended to protect and promote foreign investments.

These agreements therefore provide investors with protection within a host state by covering compensation for a variety of events, including expropriation, armed conflicts, revolutions, discrimination against foreign investors, requisitioning, or property destruction by a state's authorities, among other political, economic, and environmental disruptions. Most agreements provide that in the event of a dispute, any difference between the state and the investor on how the treaty should be interpreted or applied that cannot be settled through negotiations may be sent straight to arbitration.

It is significant to highlight that these international accords outline the requirements for host states to protect investors and provide the framework for safeguarding investments.

The host state's obligations to protect investments:

Transferring physical or intangible assets across borders with the goal of using them to create prosperity in the host nation is what is meant by foreign investment. The owner has either complete or partial authority over these assets. The concepts of diplomatic protection and state accountability are applicable, and customary international law serves as the legal foundation for the protection of physical assets owned by foreign investors. This protection is supported by the argument that foreign investors syphon off funds that could otherwise be used to advance the economy of their own nation. As a result, it is decided that the home state has a legitimate reason to protect the resources that foreign investors have put in the host state.[2]

[2] https://www.scconline.com/blog/post/2020/06/26/bilateral-investment-treaty-and-investment-arbitration-a-critique-from-india-perspective/ (last visited on 29-08-2023)

ISSN: 2582-6433

Investment Protection Standards: Specific standards of protection are frequently established through international investment protection treaties, particularly bilateral investment treaties (BITs). These requirements include:

- Fair and Equitable Treatment (FET): Independent of the legislation of the host State, the FET standard is of utmost importance and functions as a principle of international law. A breach of the FET standard may take place even if a foreign investor receives treatment that is identical to that given to citizens of the host State. This means that even in the absence of a most-favored-nation clause establishing preferential treatment for investors of other nationalities, an investor may be considered to have been treated unfairly and unjustly.

  Certain guiding principles have emerged as a result of investment tribunals applying the FET standard throughout time. These principles include things like operating in good faith (bona fide), maintaining freedom from pressure and harassment, safeguarding the investor's reasonable expectations, adhering to contractual duties, procedural propriety, and due process. It's significant to remember that the prospective application of the Fair and Equitable Treatment requirement is not completely covered by these categories.

- Comprehensive Investment Protections: These clauses include the idea that the host State has a duty to actively carry out measures assuring the protection of investments from negative effects. This obligation includes providing physical safety and security against incursions by public or private entities.

- Protecting Against Arbitrariness and Discrimination: The word "or" is frequently used to connect the words "arbitrary" and "discriminatory." Therefore, a particular action need not be both arbitrary and discriminatory at the same time to violate these requirements. The International Court of Justice (ICJ) offered the following definition of "arbitrary" in the Elettronica Sicula Case, which is frequently cited:

  "Arbitrariness is essentially averse to the very nature of the rule of law. It is not just against a rule of law. It entails a willful contempt for the rule of law, which shocks or, at the very least, surprises one's sense of judicial decorum."

  Different manifestations of discrimination exist. The most frequent problem with how foreign investments are handled is nationality-based discrimination. Although not all nationality-based distinctions are automatically prohibited by international law, the

ISSN: 2582-6433

majority of bilateral investment treaties (BITs) include particular non-discrimination requirements. Most-favored-nation agreements and clauses ensuring national treatment frequently contain these norms. The International Centre for Settlement of Investment Disputes (ICSID) decided in the Lauder v. Czech Republic3 case that a determination of discrimination stands independently of a breach of domestic law, even when domestic legislation can be the main reason for an infringement of the international standard.

- National Treatment: The majority of Bilateral Investment Treaties (BITs) contain the essential principle of national treatment. Articles 10(3) and (7) of the Energy Charter Treaty (ECT) and Article 1102 of the North American Free Trade Agreement (NAFTA) both make reference to this idea. In essence, it states that a foreign investor and their interests must be treated equally to that accorded to a citizen of the host State. Furthermore, a foreign investor must be treated even better if international standards are greater than those that are applied to citizens.

- Most-Favored-Nation Treatment: Although it is not a requirement of customary law, almost every BIT includes the Most-Favored-Nation (MFN) treatment premise. The ECT's Article 10(3) and (7) and NAFTA's Article 1103 both reflect it. MFN clauses in treaties are primarily intended to ensure that the parties involved treat one another at least as favorably as they treat outside parties. The level of care varies depending on the benefits provided to other countries and their citizens. A relevant advantage that a state bestows immediately extends to the state protected by the MFN clause. The ejusdem generis principle governs the application of an MFN clause, which implies it applies to all matters coming under its purview.

- Transfer Provisions: These rules cover investors' rights with respect to money transfers, accepted payment methods, currency convertibility, and exchange rate caps, among other things. They also place constraints on uncontrolled transfers. Depending on the treaty, the right to transfer cash may only apply to transfers made from the host nation or it may also include transfers made to that nation. While the majority of agreements include both situations, some just deal with outbound payments.

[3] Lauder v. Czech Republic (Award of 3 September 2001)

ISSN: 2582-6433

- Umbrella Clauses: An investment protection treaty provision known as a "umbrella clause" ensures the host State's compliance with commitments relating to investments. Contracts and other commitments are covered by the treaty's safeguards. The degree and conditions under which umbrella provisions offer protection to contracts between the host State and the investor are the most divisive issues surrounding them. Tribunals' opinions on this subject show a significant difference. According to some tribunals, such a provision "constitutes a breach of the BIT when the host State fails to fulfil binding commitments, including contractual obligations, related to particular investments."

  In the case of El Paso Energy v. Argentina, a tribunal attempted to strike a balance by stipulating that an umbrella clause would only bind a State in the context of sovereign contracts and not commercial contracts. In the case of SGS Societe Generate de Surveillance SA v. Islamic Republic of Pakistan4, a tribunal sought to reduce the scope of umbrella clauses.

- Expropriation: When there are foreign investments and a contract is made between the host state and the foreign investor, the foreign investor initially has the upper hand in negotiations. This is because foreign investment has the ability to help the host nation's economy grow overall and provide employment, money, and technology. However, the dynamics could alter after the venture is a success. In order to receive the promised returns on their investments, the investor commits to a long-term partnership with the state. The investor can find themselves in a hazardous situation if the government decides to change or end the contract with the foreign investors for political or other reasons.[5]

  The host state's government is free to use its legislative and executive power to further its political goals. The contract is thus vulnerable to political risks within the host state in addition to the typical business risks. As a result, the goal of international investment law is to balance the rights of the host state with the interests of the investors.

  Expropriation can occur in a number of ways, such as (i) direct property seizures, (ii) contract violations or forced renegotiations that make the investment unprofitable for the company, (iii) extralegal interventions or transfers of ownership carried out by private entities without government approval, and (iv) forced property sales. All of these situations involve the investor's ownership rights being forfeited without just recompense.

[4] SGS Societe Generale de Survellance SA v. Republic of the Phillipines (Decisions on Objections to Jurisdiction of 29 January 2004)
[5] Sovereignty and Investment Protection Obligations in International Law (2018 Special Issue IJLIA 28)

ISSN: 2582-6433

Expropriation is the government's seizure of property, for which the host state is obligated to reimburse the investor. One can classify expropriation as legitimate or unlawful. It is seen as legal since states have the authority to expropriate property located on their soil. Expropriation can also be classified into:

i) Direct expropriation: This involves nationalizing and transferring the investor's property's ownership.

ii) Indirect expropriation: This refers to state actions that significantly lower the investor's investment's value. Examples include regulatory involvement, such as the suspension of a license, or the progressive loss of investor rights over time as a result of a succession of actions.

- Under international law, necessity and its use in state actions: A State's activities may be exempt from being deemed unlawful under customary international law if they are necessary. According to the widely held belief, customary international law is encapsulated in Article 25 of the UN International Law Commission's Draught Articles on the Responsibility of States for Internationally Wrongful Acts, adopted during the ILC's 53rd session in 2001 (known as the "2001 ILC Articles"). There are provisions relating to necessity in a number of Bilateral Investment Treaties (BITs), particularly those that involve the United States. For instance, the US-Argentine BIT's Article XI concerning the reciprocal encouragement and protection of investment between the United States of America and the Argentine Republic states:

  This Treaty "shall not prevent either Party from taking such steps as may be required for the preservation of public order, the performance of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its fundamental security interests."

  In numerous situations relating to the economic crisis in Argentina between 2001 and 2003, the customary international law norm, which is represented in Article 25 of the 2001 ILC Articles, as well as Article XI of the US-Argentine BIT, have both been invoked. Tribunals found that the requirements for proving necessity were not met in the majority of these situations. This was primarily due to the fact that Argentina's responses were not the only options available and that Argentina had exacerbated the issue. These requirements are commonly found in the majority of investment protection treaties.

ISSN: 2582-6433

Using Sovereignty to Control Foreign Investment:

(Juggling Investment Protection and Sovereignty)

The consequences of international investment agreements have recently come to the attention of more people than they previously did. The call for the rethinking of these accords has grown greater as a result of this awareness. Bilateral Investment Treaties (BITs) have been terminated by a large number of developing nations, or they are in the process of doing so. For instance, India has established a new model BIT in response to legal lawsuits brought by foreign investors under several BITs. For failing to strike a balance between safeguarding foreign investments and India's right to regulate, this new pact has drawn criticism. It is considered to be in opposition to the Indian government's efforts to draw in foreign investment through programmers like 'Make in India' and 'Digital India.'

This conflict may be caused by difficulties that host countries have in enforcing their sovereignty while managing foreign investments. The ability of host states to exercise their sovereign rights over private agreements they engage into with foreign investors is frequently constrained. Multilateral investment agreements sometimes prioritize the interests of foreign investors while ignoring environmental and human rights concerns associated to foreign investments, which has led to protests against these accords as a result of globalization. Critics claim that these agreements only effectively satisfy the concerns of the international community or the host state for the protection of their essential principles and instead only protect the interests of foreign companies. Many contemporary BITs now include clauses permitting host states to employ their sovereign rights in controlling foreign investments in order to meet these problems and circumstances. These sections provide a framework for host governments to reconcile their sovereign authority with their obligations in defending the principles that are important to their country and the larger international community. They address a variety of issues, including environmental protection and human rights.

- Multinational Corporations (MNCs) and Environmental Issues: Environmental advocacy groups have constantly blamed MNCs for contributing to environmental contamination, particularly in developing nations where environmental standards are frequently low. In some situations, MNCs have taken advantage of these lax restrictions in developing countries, seeing them as lucrative havens where they can conduct business without having to worry about the costs of compliance and the harsher regulations they face in their home countries. With some international agreements, such as the US-Canadian treaties and NAFTA (Article 1114(1)), starting to address environmental issues, there has been a

ISSN: 2582-6433

progressive change in this environment.

The tribunal's interpretation of such phrases generated issues in the case of S.D. Myers v. Canada[6]. It referred to the language in these agreements as "hortatory," implying that it only provided advice as opposed to binding rules. Despite Canada's agreement with the Basel Convention on the Transboundary Movements of Hazardous Wastes, the tribunal did not find merit in its claim that hazardous waste produced within its borders should be disposed of domestically rather than being sent across the border into the United States.

In contrast, the US and Canada's model investment treaties contain far greater language establishing exceptions to liability in situations where foreign investments are interfered with for environmental reasons. Even without explicit treaty provisions, government interference on environmental grounds should be seen as a justifiable form of regulatory intervention, allowing host states to exercise their sovereign powers in the regulation of foreign investments. This is because of the challenges faced by developing and underdeveloped countries.

- Bilateral Investment Treaties (BITs) and Human Rights: Human rights issues are rarely covered in bilateral investment treaties (BITs), much like environmental issues. Multinational corporations (MNCs) frequently participate in human rights violations in a number of developing countries, but so do the state or its ruling class. While successive host state governments might try to stop these violations, they might be reluctant to step in for fear that it might be seen as a violation of the investor's rights as outlined in the treaty. Furthermore, fundamental jus cogens principles are anticipated to supersede BITs in conformity with the Vienna Convention on the Law of Treaties. This raises the question of whether the arbitrators chosen to settle investment disputes are qualified to decide complicated international legal conflicts, leading to the frequent avoidance of these concerns.

  It is necessary to give host governments the freedom to use their sovereign power to deal with investments that violate human rights as a result.

- Emergency and Necessity: As previously discussed, host states may need to limit foreign investments in order to protect their national security during times of economic or national emergencies.

[6] (2000) 40 ILM 1408

ISSN: 2582-6433

Balancing Investment Protection and Sovereignty:

A contradiction between two fundamental principles state sovereignty over natural resources and state duty for protecting the rights of foreign investors has frequently defined the history of international investment law. This duality can be seen in a number of ways, including conflicts between local laws and universally accepted norms of treatment and the Charter of Economic Rights and Duties of States and restrictions on expropriation. The legitimate expectations of investors may also be at odds with domestic public policy, and local court disputes may contradict with arbitral awards made elsewhere.

The parties participating in the area of foreign investment have a variety of interests. Investors look for chances to increase their earnings, broaden their market reach, and create strategic partnerships. States, on the other hand, see investments as a way to, among other things, encourage economic growth, acquire cutting-edge technology, increase productivity, generate jobs, and combat poverty. While states prioritise their sovereignty to control internal affairs, as was previously discussed, investors prioritize the protection of property rights as their main defence. Bilateral investment treaties (BITs) are not without implications, and both governments and investors must exercise caution when entering into them, according to the jurisprudence of investor-state arbitration over the previous ten years. When states must balance the conflicting interests of their population and investors, this caution is especially clear. Similar concerns can be present for investors, and arbitration may be their only option. Due to the fact that most treaties place restrictions on sovereignty, host states are frequently forced to offer significant compensation for interfering with foreign investments.

It is crucial to understand that every state has the authority to expropriate property located on its soil in specific circumstances. Legal expropriation must satisfy the following requirements:

a) avoiding treating investors unfairly
b) serving a civic function
c) obeying the law as it is written
d) accompanied by complete, fast, sufficient, and efficient payment

According to Tipples v. TAMS-ATTA[7], constructive expropriation happens when occurrences

[7] Iran-U.S.C.T.R. 219 at 225 (1985)

ISSN: 2582-6433

show that the owner has been deprived of fundamental ownership rights and that this deprivation is permanent. Expropriation that is illegal results in state accountability. nations have the freedom to alter their economic policies, but this freedom has been limited by the expanding number of trade and investment agreements that nations are signing on to.

However, as stated in the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States, which states that "each state has the right to freely choose and develop its political, social, economic, and cultural systems," states continue to have the authority to alter economic and political policies due to their sovereignty. Various issues, such as ideological transformations, nationalism, racial factors, changes in industrial patterns, contracts from the previous regime, burdensome contracts, economic regulation, human rights, environmental concerns, and preserving law and order, may cause states to contemplate changing their policies.

As a result, although host governments retain the right to control foreign investments made within their borders, current trends have seen states voluntarily curtail their regulatory authority by signing trade and investment treaties. Understanding the evolution of international investment law and policy requires an understanding of the idea of "the right to regulate." In this situation, there are two basic arguments:

I. national sovereignty appears to be eroding in the face of growing commitments related to international trade and investment.
II. Regulations governing public welfare may be challenged under trade and investment agreements, where host countries may be held liable for compensation when seizing foreign property.

Conclusion and Recommendations:

The cornerstone of international investment law is investment protection, but it must be balanced with defending the interests of host states. Undoubtedly, the host country's legal and administrative regulations apply to foreign investments. These assurances must provide a safe environment for international investors without undermining a state's rightful regulatory power. The wellbeing of the local community is at stake in some investment-related areas, highlighting the crucial role of international investment law in achieving a careful balance between potentially competing interests.

ISSN: 2582-6433

Bilateral Investment Treaties (BITs) that promote FDI place a number of structural pressures on the host countries. The first step in this process is when host states offer incentives to entice investment, such as tax breaks, tariff reductions, customs exemptions, environmental credits, infrastructure improvements, and other advantages. While these actions might have short-term benefits, the host state's long-term gains are still under consideration. Therefore, before signing BITs, host countries must carefully consider a number of factors. Before agreeing to investment treaty agreements, host governments should engage in vigorous talks to address their concerns. Additionally, creating a strong administrative framework that is backed by an engaged legislature and an effective court is essential for protecting their interests in the complex world of international law.