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THE IMPACT OF BILATERAL INVESTMENT AGREEMENTS ON ATTRACTING FOREIGN DIRECT INVESTMENTS

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Review paper

Abstract: Foreign investors' fear of expropriation led to the emergence of the idea of new ways of protection and adequate treatment of foreign investments on the international level. Primarily, the home countries wanted to protect their interests and became the main proponents of the creation of bilateral investment agreements. Developing countries that aspire to become and remain part of international economic flows, had to provide additional protection to investors, as investment host countries. They saw bilateral investment agreements as an opportunity to attract foreign direct investment. They provide a certain standard in the treatment and protection of investments and thus influence the creation of an environment that favors the transfer of capital from one country to another. In modern economic conditions, there are almost no entities that are absolutely risk-averse. For this reason, bilateral investment agreements are counted on to play one of the key roles in minimizing the risks of investing in developing countries.

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1. Introduction

At the end of the 80s, the process of globalization created the conditions for the emergence and development of a new world order. All the economies had become more closely interconnected, and that close bond also had the effect on the foreign direct investments to take an upward path. At the global level, there was noted a general increase in foreign investments. Foreign investments, overall, can improve both the performance of the company invested in and the performance of the host country, if their economic and legal framework is designed adequately. As any investment is associated with different types of risks, foreign direct investments also include the risk that the investor must take over. For the investor, that risk is partly determined by the expectations that the host country complies with certain standards, in order to ensure optimal treatment and protection of foreign capital and profits, while the foreign investor operates on its territory. In order to reduce the risk to the minimum, countries sign bilateral investment agreements.

Bilateral agreements on the treatment and protection of foreign investments are the most important source of international investment law. With these agreements, the contracting parties ensure a certain standard of conduct and treatment of investments of entities, under the sovereignty of one contracting state on the territory of another contracting state with the aim of mutual protection of capital and achievement of legal safety (Cvetković, Zdravković, 2020). Most often, these agreements are signed between developed and developing countries, because the investment in developing countries carry both legal and institutional risks, as well as highly pronounced political risks.

The main goal of these agreements is to facilitate the investment between the country of origin of the capital and the host country. One such contract creates a legal framework for the investment between two countries, and specifies rights and obligations for both parties. From a historical point of view, the emergence of bilateral investment agreements is related to the rise of the first ideas about the protection of foreign investments. Back in 1930, the famous Hull's rule (Hull's formula) was created, which refers to the existence of the minimum protection of foreign investments, all with the aim of more effective protection of investors from expropriation, which at that time was not fully legally regulated from the aspect of protection of the foreign investor. (Lundblad, 2016). Although this rule never had much significance in practice, the views advocated by Hull are considered to be the forerunners of modern bilateral investment treaties. The first bilateral investment agreement was signed between Germany and Pakistan, back in 1959. However, a significant number of signed agreements have been signed since the end of the 70s and the beginning of the 80s. The main proponents of such interstate agreements were developed countries (such as Germany, the USA, Great Britain), mainly the countries of the origin of capital, and which demanded certain guarantees for the investment of their entities in developing countries. This is what initiated a new

wave in international investment law, characterized by the wide use of bilateral investment agreements. The reason for their expansion should be found in the fact that during the 80s the developing countries had to attract foreign direct investments, and bilateral investment agreements acted as a means for the liberalization of their investment policies (Lundblad, 2016).

Most lawyers and economists believe that the purpose of bilateral investment agreements is to attract foreign investment by providing safety to foreign investors, primarily when investments move from developed countries to developing countries. The fear of expropriation, but also of other risks (risk of value transfer, risk of political violence and war, risk of breach of contract) could otherwise deter investors from investing. Bilateral investment agreements can provide safety for investors in several ways. Perhaps the most obvious is that they should regulate in detail the conditions under which expropriation can be carried out, as well as the methods of calculation and payment of compensation in that case. In addition, it would affect the reduction of this type of non-commercial risk, the risk of expropriation (confiscation and nationalization). Also, these agreements can determine the conditions for the repatriation of profits, the application of the principle of national treatment and the principle of the greatest privilege. Finally, bilateral investment agreements establish rules for settling disputes arising from the investment.

One of the significant legal and economic phenomena after the Second World War is certainly the emergence and rapid growth of the number of trade agreements, primarily the agreements on free trade and the agreements on the formation of customs unions. However, the emergence and development of bilateral investment agreements was at least as significant as the development of the aforementioned trade agreements. Unlike the literature related to free trade agreements and customs unions, which deals not only with the theoretical and legal aspects, but also with the measurement of their economic effects on international trade flows, the literature related to bilateral investment agreements is somewhat more modest in scope. What mostly prevail are the analyses of the contracts from the legal aspect. On the other hand, the analyses of the impact of bilateral investment agreements on foreign direct investments appear sporadically.

It should be emphasized that achieving a balance in rights and obligations from these agreements is very difficult and arduous. From the legal aspect, it is necessary to strive to achieve a state of balance between the traditional international values and the relatively new needs of investors. This certainly implies an influence on the behavior of the host country and the setting of borders for the countries that have the right to enact rules and laws on their own territory, but whose actions significantly affect the interests of the foreign investors. For this reason, the host country will sometimes have a very complicated, even hostile attitude towards the foreign investor. On the other hand, the foreign investor, aware of his influence on the development of the local economy, and the development of the performance of the entire economy of the host country, rightfully expects a

certain type of protection against a potential damage that may be caused by the actions of the host country.

In the broadest sense, the term foreign investment means the transfer of capital from the economy of one country (the country of origin) to the economy of another country (the host country). There are many types of foreign investment according to different criteria. Certainly, foreign direct investments are one of the most significant and widespread types. Direct foreign investment implies an investment relationship of a permanent nature between a foreign investor and the company in which it invests, or which is founded with the capital of a foreign investor. This type of investment can be present in different forms. They can be the independent establishment of a company in the host country, a takeover, a merger with an existing company of a domestic investor or the establishment of a joint venture with a domestic investor. Which of these forms will be present depends on the options allowed by the legal order of the host country, but also on the business strategy of the investor (Cvetković, Zdravković, 2020).

What foreign investors can and most often bring in, apart from money, is land, financial resources, machines, facilities, industrial property rights, managerial knowledge and skills, and know-how. As the authors Cvetković and Zdravković state, the goal of foreign direct investment is the acquisition of a permanent interest of a legal entity of one state in a legal entity under the sovereignty of another state. Permanent interest implies the existence of a long-term relationship between the direct investor and the company, as well as the essential influence of the investor on the management of the company. From all this, we can conclude that the basic elements of foreign direct investment are as follows: economic profit - the goal of doing business in the host country is to make a profit; long-term strategy - a permanent interest in the company of the host country is acquired; international transfer of capital - from the countries where this resource is abundant to those where the resource is in deficit; direct impact on production, bearing economic and entrepreneurial risk. Being aware of all this, it is a very important question whether and in what way the conclusion of bilateral investment agreements affects the encouragement and attraction of foreign direct investment.

2. Bilateral or multilateral investment agreements - a challenge for developing countries

Modern international economic law is largely based on international agreements - bilateral, regional, plurilateral and multilateral agreements (UNCTAD, 1999). They are the most effective means for the development and application of international norms, both in terms of foreign direct investment and in other areas. On the one hand, their content reflects the common and agreed positions of more than one country, and on the other hand, the norms resulting from these agreements are

legally binding and the countries are obliged to comply with them. The efforts to create a comprehensive multilateral instrument for the regulation of foreign direct investment have repeatedly failed. Of all the relevant multilateral agreements that exist, some of them touch the broader issues relevant to foreign direct investment. This primarily refers to the GATT agreement, international conventions concerning intellectual property (within the World Intellectual Property Organization - WIPO) and agreements created within the World Trade Organization (WTO). The norms from the existing legal infrastructure are directly or indirectly addressed to foreign direct investment.

The most important sources of law for foreign direct investment are interstate agreements, within which both bilateral investment agreements and multilateral ones occupy an important place. On the international level, extraordinary efforts have been recently made for a better positioning of multilateral investment agreements. That activity has been taking place within the framework of the World Trade Organization (WTO), the United Nations (the UN Conference on Trade and Development) and within the OECD. Although a certain number of multilateral regional investment agreements (Energy Charter Treaty, NAFTA) have been concluded since the 90s of the last century, the regulation of foreign direct investment through bilateral agreements still prevails. The reasons for this should be sought in the characteristics of both agreements.

Multilateral investment agreements enable the formulation and application of universal rules, agreed upon and applicable to all states, or to its vast majority. Such agreements often provide an institutional mechanism for their implementation and contain provisions for their development and review. At the same time, the need to find a common language among a large number of states often makes their provisions either very general or riddled with possible special cases and exceptions (UNCTAD, 1999). Furthermore, it is very difficult to reach an agreement on a topic such as foreign direct investment, because the approaches and policies of the countries on this issue are extremely different. This is what explains the lack of comprehensive instruments of this kind.

Bilateral investment agreements today represent the main framework for foreign direct investment. Their primary focus from the very beginning has been to protect foreign investment. That term implies a broader concept of policies that favor and promote foreign direct investment: first of all, protection of investments from nationalization or expropriation, guarantees on the free transfer of funds and provision of a mechanism for resolving disputes. These agreements also cover a number of other areas, notably non-discrimination in treatment. An important feature of the newer generation of BITs is the existence of considerable uniformity in the broad principles on which the agreements are based, together with many specific provisions and formulations used.

It is very difficult to answer the following question: which type of agreement is a more adequate framework for foreign direct investment, especially for developing countries? Due to bilateral investment agreements, the contracting parties provide a certain standard of conduct and treatment of investments of subjects under the sovereignty of one contracting state on the territory of another, with the aim of mutual protection of capital and realization of legal certainty. They allow a greater flexibility compared to the multilateral. The agreement is more easily adapted to the conditions required by the two parties. In the case of multilateral agreements, in order to achieve consensus, it is necessary to reconcile the different interests of a large number of states. However, the reality is a little different. In practice, the majority of bilateral investment agreements does not allow negotiations on the content of rights and obligations, but rather follow the form and model imposed by the economic power of capital exporting countries. It is true that the existence of one general form, or model of bilateral investment agreements, ensures uniformity of rules and easier conclusion of these agreements. At first glance, this may seem like their advantage. However, this is precisely the reason why multilateral agreements can be preferred in this matter. It is emphasized that the autonomy of the will as the basic principle of contract law is more pronounced in multilateral agreements. Finally, we cannot absolutely claim that bilateral investment agreements are more flexible than multilateral ones.

If flexibility cannot be attributed as a characteristic only to bilateral agreements, the question arises as to what gave them an undoubted advantage and a more significant presence in practice. Bilateral investment agreements flourished at that historical moment when international lawyers and developing countries promoted a new economic order. The emerging order explicitly anticipated that developed countries have an obligation to transfer resources and technologies to developing countries (Ginsburg, 2006). The practice recognizes the examples when the same developing countries, in the investment environment created by multilateral agreements, were obliged to provide a lower level of investment protection and, at the same time, conclude bilateral agreements that obliged them to guarantee a high level of protection to foreign investments. This kind of contradictory behavior of individual states raises a question to reflect on. Why would any developing country provide a lower level of protection for foreign investors through multilateral investment agreements, and then turn around and guarantee a higher level of protection by signing bilateral agreements? Guzman seeks the answer in the following - each of the developing countries is individually heavily influenced by the collective actions of all other developing countries. As long as developing countries, as a group, were better off if expropriation was cheaper, each individual developing country had an interest in grabbing the largest possible share of the investment pie and attracting as many investments as possible. Of course, they did so by guaranteeing a higher level of investment protection. Once Pakistan separated itself from the group by demanding a lower level of investor protection, developing countries competing to offer a higher level of

protection through bilateral investment treaties began to deviate from the collectively accepted understanding (Ginsburg, 2006). The foregoing illustrates the dilemma and challenges developing countries face in the context of bilateral and multilateral agreements.

At this point, let us note that there are differences between bilateral investment agreements and international investment agreements (or simply investment agreements). We can point out that the latter are actually contracts on a specific project, containing all the particulars and details, including the rights and obligations of the parties, that is, the obligations of the foreign investor and the host state (a state or an entity that will represent the state). In terms of their project-oriented content, they differ from interstate agreements and broad protectionist conditions planned by bilateral investment agreements. These are usually contracts that contain a set of commercial rules and they promote a specific project. Also, it should be noted that disputes arising between the host state and a foreign investor may represent either a violation of bilateral investment agreements or an investment contract, or both (Al-Adba, 2014).

The widespread and rapid expansion of bilateral investment agreements sets numerous puzzles to the professional public and practice. The first question is why trade remains subject to regulation in a multilateral environment, while the investments were regulated by a series of bilateral agreements? However, efforts to adopt such a multilateral investment agreement that will be universal have repeatedly failed. Another dilemma that arises is included in the following question: why countries conclude bilateral investment agreements? Here, we are primarily referring to the economic and legal impact of these agreements for developing countries. What are the benefits and what does the host country sacrifice with these agreements? Although the majority would agree that the primary purpose is to attract foreign direct investment, some of the best statistics show that bilateral investment agreements have no effect or little positive effect on the investment flows. Attracting foreign investment is a big challenge for developing countries. Bearing in mind the simple legality of capital movement (the capital moves from those countries where it is in surplus and where the price is low, to those countries where it is in deficit and where its price is higher), the motive of capital exporting countries is quite clear. Developing countries must respond wisely and meaningfully to these challenges, in order to preserve their position in the market competition.

3. Content of bilateral investment agreements – extensive interpretation of investor rights vs. interest of the host country

Since there are a large number of contracts concluded by different countries nowadays, at different levels of economic development and legal system, there are also significant differences in the scope and content of existing bilateral investment

agreements. Nevertheless, it is possible to single out the basic parts that all bilateral investment agreements contain, regardless of their specificities (Lundblad, 2016).

Bilateral investment agreements traditionally contain the following parts: the preamble, the admission clause, the definition of investment, the definition of investor, the standards of protection in the form of guarantee of national treatment and the treatment of the most favored nation, the fair and equal treatment of investors, the guarantee of free transfer of monetary amounts, the issue of expropriation and accompanying compensation , as well as the mechanisms for resolving the potential disputes.

The preamble to the agreement briefly describes the goal and essence of the agreement, as well as a brief review of the content of the specific agreement. Since the initial part of the contract does not contain binding rules, it does not specify definite rules of conduct for the parties. What may be important in this part is the determination of the purpose of the agreement. Is the contract targeted at specific sectors or is the goal of the contract determined generally as an increase in investment. Some agreements in the preamble also contain goals such as environmental protection and the promotion of labor rights. This underlines the fact that bilateral investment agreements often have broader goals than the promotion of foreign direct investment.

Then comes the part of the agreement that gives the right to foreign investors to enter the market of the host country (the admission clause). Therefore, this part is an essential in bilateral investment agreements. No one can force sovereign states to allow foreign investors to enter their market, so this issue is regulated by domestic legislation. Over time, practice has given rise to two types of clauses - the European type of admission clause and the North American model. The European model of the clause refers to the solution that the entry of a foreign investor into the host country is regulated by the existing laws of that country. It could be concluded that unless something else is agreed upon in the bilateral investment agreement, the host country may have legislation that will be discriminatory towards foreign investments. The North American type, on the other hand, opts for non-discrimination and takes the stand that any domestic law that would regulate this issue differently should not apply to investments from the capital's country of origin.

The treatment protection standards refer primarily to the national treatment, the most-favoured one, and fair and equal treatment of the investors (Cvetković, Zdravković, 2020). At this point, it is unnecessary to distinguish between the objective and the subjective standards of treatment of foreign investment. The principle of fair and equal treatment means the general standard of the host country's treatment of foreign investment. It represents either an independent clause or appears in the part of the bilateral investment agreement that refers to expropriation. The stated principle can be violated by the non-transparent regulation of foreign investment, the non-respect of the legitimate expectations of

investors regarding the treatment of the investment based on the previous behavior of the government, and the like. The principle of the greatest privilege is the clause of the agreement by which each of the contracting parties undertakes to recognize (in a certain area of mutual relations) the other contracting party/parties' rights, advantages, privileges and facilities that it has given or will give in the future to any third country. This is how the equality of investors from different countries on the domestic market is ensured. And while applying the principle of the most favored nation ensures the equality of foreign investors from different countries of origin who invest in the same host country, the principle of national treatment equates the legal position of foreign and domestic investors.

A special part of bilateral investment agreements is the dispute settlement mechanism. Specific rules apply if there are disputes between the investor and the host country, as well as disputes between the country of origin and the host country. In most cases, the agreements provide for the action of ICSID (International Centre for Settlement of Investment Disputes), as a very effective forum for resolving disputes arising from investments. An essential characteristic of the Center, which gives it the necessary authority, is its independence from the domestic legal system. The dispute settlement method and the ICSID Convention will be discussed in more detail below.

Expropriation and compensation is a part of the bilateral investment agreement, which regulates in detail the expropriation procedure and the way the compensation is calculated and paid. Expropriation is the taking away of an investor's ownership of property in the host country, which is done by the host country for public purposes. In order for expropriation to be legitimate from the point of view of international law, the following conditions must be cumulatively met: the expropriation has to be carried out in a legal procedure, it has to be non-discriminatory and undertaken for the purpose of achieving or protecting the public interest; finally, it must be followed by prompt, adequate and realistic compensation (Cvetković, Zdravković, 2020). Expropriation can be direct or indirect - the direct refers to a situation when the host country seizes the property of a foreign investor, and the indirect when the policy of the host country or a certain law deprives the foreign investor of the benefits of the investment.

Undoubtedly, the existence of a general model of bilateral investment agreements is a distinct advantage in the dynamic conditions prevailing on the international market. Relying on the standardized contracts saves time during the negotiations and in the phase of concluding the agreement. However, the insisting on creating the traditional content of these agreements can lead the participants of such a complex undertaking into a trap. Ending the negotiations in a very short time without a detailed determination of the rights and obligations of the parties, and the consequences of the concluded agreements, can lead to numerous disputes in the phase of realization of foreign investment. What can be objected to the content of bilateral investment agreements is certainly the vagueness of the

investor's obligations regarding a socially responsible management of the investment and a respect for human rights on the territory of the host country (Pavićević, 2019). In contrast, the investor enjoys a plentitude of rights, which can represent a significant obstacle when interpreting certain provisions of bilateral investment agreements. The general and very imprecise formulation of these agreements opens up space for various types of abuse. As the goal of the contract is a state of balance between the conflicting interests of the parties, based on the above, we can hardly say that this state is almost always achieved by bilateral investment agreements. This affects the increase in the number of disputes between the contracting parties. The following table shows the trend of the increase in the number of disputes from bilateral investment agreements over time.

Table 1 Disputes arisen from bilateral investment agreements

Time period	Number of disputes
1987. – 2000.	43
2001. – 2010.	292
2011. – 2022.	605

Source: UNCTAD Database. Available at: https://investmentpolicy.unctad.org/investment-dispute-settlement , accessed: 5/4/2023.

Based on the official UNCTAD statistics available at the given link, the following can be concluded. The fewest disputes arise from bilateral investment agreements signed after 2010, and the largest number from those that arose in the period from 1990 to 1999. The reasons for such a trend should perhaps be seen through the prism of the global trends present at the time. Namely, plan-oriented economies tended to take the path of transition. The desire to switch to a market model of business led them to create an environment suitable for the greatest possible influx of foreign capital. In this aspiration, the transition economies wanted to attract as much foreign direct investment as possible. Unpreparedness, but also carelessness during the negotiations and conclusion of bilateral investment agreements undoubtedly had an effect on the subsequent emergence of disputes.

In these disputes the state is almost always in the role of the defendant and the costs of such disputes are high, as well as the compensation awarded to foreign investors. The data in favor of the defendant state show us that in the period from 1987 to 2021, a slightly larger number of disputes were resolved in favor of the state (about 40%), and about 30% in favor of the investors (World Investment Report, 2022).

We can conclude that the reform of bilateral investment disputes should move in the direction of precise definition of the investor's obligations. As the broad rights of investors are determined in detail by these agreements, and the obligations

are provided by general and common formulations, it is necessary to change such a situation in order to achieve a balance. It is desirable to bypass general provisions concerning obligations, such as the most common one that foreign investment must comply with the regulations of the host country. A very small number of concluded bilateral investment agreements specify precisely specific areas in which the investors are obliged to comply with standards (for example, protection of human rights, protection of the environment, protection of workers' health,...). The responsibility for concretizing the obligations to comply with the stated standards in bilateral investment agreements lies with the host country. In that fact is the core of the problem. The countries of origin of the capital, very often the politically and economically superior party, impose their ideas regarding the content of bilateral investment agreements. Their interests will best be served through a general determination of the obligations of the investors that are the product of the agreement. On the other hand, the investment host countries, driven only by the desire for quantitative attraction of foreign capital, do not take into account the quality of foreign direct investments. Their vital interests are overshadowed by those of the investors. At the moment when the investor and the host country are truly and realistically equal parties, and not just formally, we can also expect a reform of the content of general models of bilateral investment agreements that would enable foreign direct investment to be legally and economically rational for all the participants in such a complex assignment.

4. Effects of bilateral investment agreements on foreign direct investment flows

In order to analyze and consider the overall effects of bilateral investment agreements on foreign direct investment, first of all, it is necessary to point out the economic effects of these agreements. As stated above, the fear of foreign investors of expropriation caused the emergence of new ways of protection and adequate treatment of foreign investments on the international level. That is why bilateral investment agreements were created and are increasingly used. There are many types of risks in expropriation. One of the most pronounced is the risk of payment of compensation, i.e. the fee. If the governments of the host countries do not pay compensation to the investors in the amount of the market value of their resources, the expropriation will turn into an involuntary transfer of funds from the investor to the host country. In this way, the investors will be disincentivized to invest capital. From an economic point of view, a full compensation should make the investor indifferent when choosing between the expropriation and the retention of the investment. However, even if the full compensation is present, there may occur situations where the host country wishes to divert the investment from the foreign to the local entities and thus favors them. This can be characterized as a problem of moral hazard on the part of the host country. The resulting problem can be

mitigated by the requirements that the expropriation is carried out only in certain cases in the public interest and with the prohibition of the host state to act in the private interest.

Much more uncertainty can be provoked by the imposition of certain requirements by the host country on the investor, and they concern the performance of the investment. The host country may require investors to transfer certain technology, to purchase a certain amount of components and resources from domestic firms, or to export some part of production (Ginsburg, 2006). Some constraints may prevent both parties from acting conscientiously and entering into an agreement without negative externalities. For example, technology transfer requirements can be of significant benefit to developing countries. Similarly, the requirements related to the free transfer of capital back to the country of origin may reduce the risk for the investor, but may also disadvantage the developing countries as the host countries for foreign investment. And while the developing countries can constrain themselves with such restrictions and favor foreign investors, it remains unclear why these restrictions are adopted in advance and not left to negotiations between the two parties.

Let's try to answer the question whether and what impact bilateral investment agreements had on foreign direct investment? At first glance, the rapid increase in the number of bilateral investment agreements corresponds to a huge increase in foreign investment worldwide. Determining the exact causality and correlation between these two phenomena is a very complex task. Some analyses have so far shown that these agreements have an insignificant impact on the increase in foreign direct investment and that the increase is, in fact, influenced by some other factors. The countries that signed bilateral agreements did not have a better chance of attracting foreign direct investment. Most of the prior analyses assumed that these agreements were effective in attracting investors. Author Guzmán states that without bilateral agreements, a developing country would have a much lower level of investment than the opposite (quoted from Ginsburg, 2006). In support of this view, the following question emerges: why would developing countries sign bilateral investment agreements if their impact on investment flows is minimal and negligible? Ginsburg gives three alternative answers, but does not claim that any of them is a universal solution for all the cases. First, bilateral agreements can signal to foreign investors and domestic entities that the government plans to pursue a liberal economic policy. In this way, the developing country wants to send a message that it has realized the importance of conducting the policy that is favorable for foreign investment. Another possible answer lies in the fact that during the 90s there was such an atmosphere in which developing countries tended to copy everything current and modern in order to join the global trends at the time. Bilateral investment agreements seemed like one of the items that should be present. Third, bilateral investment agreements exist to legally standardize foreign investments that would certainly occur even without their existence. If we assume

that the flow of foreign direct investment in some developing countries is inelastic in relation to the overall level of protection provided to investors, it is true that foreign direct investment would occur whether the level of investment protection is high or low, for example – the developing countries that export natural resources. The existence of bilateral investment agreements in this case has no impact on the aggregate level of investment. Without bilateral investment agreements and assuming that the demand for natural resources is inelastic, a low level of investment protection would increase the cost of natural resources in developing countries. This would result in increased gains for developing countries. Conversely, a higher level of investor protection would lower the cost of resources and this would lead to a gain on the investor's side. This also explains why some countries did not sign bilateral investment agreements, but still recorded high levels of foreign direct investment. These countries have outwitted foreign investors in negotiations and managed to maintain a low level of investment protection, most likely because the supply of inward investment is inelastic with respect to the degree of investment protection.

Since we have briefly emphasized the economic effects and problems of bilateral investment agreements, and for the purpose of grasping their impact on the volume and flows of foreign direct investment, we should refer to the number and types of these agreements in relation to the characteristics of the countries that conclude them. First, as a starting point for the analysis, let's take the total number of signed bilateral investment agreements. In the period from 1990 to 2000, that number experienced a sudden growth. In the following years, until 2020, there is a trend of decreasing the number of signed agreements (UNCTAD, 2021). The following tabular presentation allows us to see which bilateral agreements (abbreviated BITs: Bilateral Investment Treaties) are more numerous and in which period they experienced an expansion in relation to which countries concluded them.

Table 2 Number of concluded BITs between different countries

<table>
<tr><th>Year</th><th>BITs concluded between developed countries (number of BITs)</th><th>BITs concluded between developing countries (number of BITs)</th><th>BITs concluded between developed and developing countries (number of BITs)</th></tr>
<tr><td>1960</td><td rowspan="3">< 50</td><td rowspan="3">< 50</td><td>< 50</td></tr>
<tr><td>1970</td><td><100</td></tr>
<tr><td>1980</td><td><200</td></tr>
<tr><td>1990</td><td><200</td><td><400</td><td><500</td></tr>
<tr><td>2000</td><td><300</td><td><500</td><td>>1000</td></tr>
<tr><td>2010</td><td><500</td><td>>500</td><td>>1500</td></tr>
<tr><td>2017</td><td><500</td><td>>500</td><td>>1500</td></tr>
</table>

Source: Frenkel, M., & Walter, B. (2017). Do bilateral investment treaties attract foreign direct investment? The role of international dispute settlement provisions. The World Economy, 42(5), 1316-1342.

We can see from the table that bilateral investment agreements have experienced an expansion in recent decades. It refers to agreements concluded between developed and developing countries. The changes in the world order also had an effect on the number of these agreements, starting to grow from 1990. In the period between 1990 and 2000, the number of concluded bilateral agreements began to grow rapidly due to an increased competition among the countries to attract foreign direct investments. Around 2010, the number of new agreements began to stagnate, and in the last few years the number of concluded bilateral investment agreements remained almost constant. As one can see from the tabular presentation, the agreements concluded between developed and developing countries are far more prevalent. Bilateral agreements between developed countries and the ones between developing countries are incomparably less frequent.

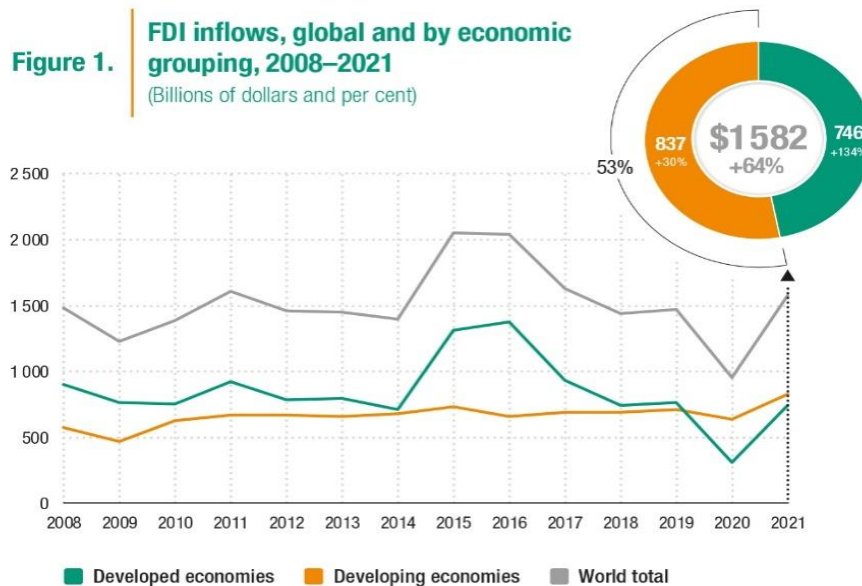
According to Frenkel and Walter, as the number of concluded bilateral investment agreements increased, the first discussions in the professional literature appeared regarding the relationship between these agreements and foreign direct investment. There are different opinions about it. According to one group of authors, no causality can be found between bilateral investment agreements and the increase in foreign direct investment. Contrary to them, there are studies that show significant positive effects of these agreements on attracting foreign investments. They even point out that positive effects exist even before the bilateral investment agreement enters into force. It may be the result of anticipatory behavior of investors. Therefore, only the information about the bilateral investment agreement entering into force is sufficient and investors already incorporate it into their behavior and take actions accordingly.

The logic of the functioning of these agreements is closely related to the characteristics of foreign direct investment. They are long-term oriented and can lead to significant losses for investors if their property is expropriated and confiscated. This indicates that there may be a change in bargaining power from the investor to the host country when the investment is realized. The high sunk costs that come with foreign direct investment can create incentives for the host country to change investment conditions and their protection after the start of the investment. Such a change can take different forms. In the beginning, direct expropriation represented the greatest risk for foreign investors, while today host states are creating more subtle ways to discriminate against them. Changes in regulation or taxation or other discretionary measures that take a portion of the profits from the investors have become more common than a simple expropriation. A change in investment conditions after the realization of the investment creates a problem of time inconsistency. Even governments that want to attract foreign investors with adequate treatment and level of protection will sometimes change the terms of investment. The reason for such behavior is that the short-term benefits of violating the rights of investors may be greater than the costs associated with a bad reputation among foreign investors and in the international community

(Frenkel, Walter, 2017). Bilateral investment agreements can help in overcoming this problem of time inconsistency by committing the parties not to make any changes to the terms of the investment once it starts to be realized. In addition, bilateral investment agreements contain provisions concerning the settlement of disputes arising from foreign direct investment. So it can be concluded that the effect of bilateral investment agreements on foreign direct investment becomes stronger with more rigorous provisions on dispute settlement in these agreements.

Bilateral investment agreements can also help in attracting foreign direct investment from the third countries that are not signatories of these agreements. They are legally binding only for the contracting parties and can be applied only to those investments originating from the countries that have signed the agreement. However, bilateral investment agreements can act as a positive signal for other countries that are not contracting parties. They can send a signal to investors that the host country is willing to guarantee a certain level of treatment and protection. In this way, the host country wants to send a message that in the future it will lead a liberal policy towards foreign direct investment.

Graph 1 Foreign direct investment flows in billions of dollars.



Source: World Investment Report 2022, available at: https://unctad.org/system/files/official-document/wir2022_overview_en.pdf, accessed: 20.04.2023.

For the purpose of this paper, the flows of foreign direct investment in developed and developing countries should be analyzed below. In the previous part, we presented the number of signed bilateral investment agreements over the

years. Since we noticed a sharp increase in the number of bilateral investment agreements in 2010, we will analyze the flows of foreign direct investment in the period from 2008 to 2021 in developed and developing countries. Foreign direct investment recovered in 2021 compared to the previous year. They amounted to $1.58 billion globally in 2021, a 64% increase from their extremely low level in 2020. M&A markets have boomed and there has been a rapid growth in international project finance due to more liberal financing conditions and large infrastructure stimulus packages (World Investment Report, 2022). From the graph that follows, we can see the present global trends.

The graph shows us that in the period from 2008 to 2019, the value level of foreign direct investment was at a higher level in developed countries than in developing countries, which is quite logical. In 2019, there will be a gradual decline in foreign direct investment flows in developed countries and a sharp decline in 2020. Since 2019, the level of foreign direct investment in developing countries has been higher than that in developed countries. Also, we observe that the level of foreign investments in developing countries remained approximately the same from 2010 to 2019. Then, after a slight decline, there was an increase in FDI in 2020. The level of FDI in developing countries is at a constant level, with a slight growth tendency. One of the reasons for this trend (certainly not the only one) is greater security for foreign investors, which is provided through bilateral investment agreements.

The recovery of foreign direct investment in 2021 brought growth in all regions. However, almost ¾ of global growth was due to growth in developed countries. The increase was mainly due to mergers and acquisitions and high levels of retained earnings of multinational companies. This led to significant fluctuations in foreign direct investment (Randjelovic, Martinovic, 2022). The high levels of retained earnings are the result of the high profits of multinational companies. The profits were particularly high in developed countries due to low financing costs and a significant support from the governments of those countries (World Investment Report, 2022).

As stated in the World Investment Report, the flows of foreign direct investment directed to developing countries grew more slowly than those in developed countries, but they still recorded a growth of 30%, that is, they amounted to 837 billion dollars. The increase was mainly the result of strong growth in Asia, a partial recovery in foreign direct investment in Latin America and the Caribbean, and a strong rise in Africa. The share of developing countries (more precisely, FDI in them) in global investment flows remained slightly above 50%. For example, foreign direct investment on the African continent reached 83 billion dollars, while the previous year they amounted to 39 billion dollars. In Asia, they grew for the third year in a row and reached a record of 619 billion dollars. In Latin America and the Caribbean, foreign direct investment increased by 56%, amounting to 134 billion dollars. As for the countries that are among the top 10 host countries, they include: USA, China, Hong Kong (as a special economic territory), Singapore, Canada, Brazil, India, South Africa, Russia, and Mexico. The

top 10 countries that are traditionally capital source countries include: USA, Germany, Japan, China, Great Britain, Canada, Hong Kong, Russia, Ireland and Korea (World Investment Report, 2022).

Numerous authors have constructed mathematical and statistical models that show the dependence and influence of bilateral investment agreements on the attraction of foreign direct investment. Some of them came to the conclusion that such agreements have a positive effect on attracting foreign investment by eliminating the risk of investment through the guarantee of protection and certain treatment. Some have pointed out that agreements attract investors only in conjunction with other factors, and that there is no direct causality between these two phenomena (Lundblad, 2016). Of course, the impact of bilateral investment agreements on creating a climate that favors the movement of capital at the international level is unquestionable.

5. Legal protection of bilateral investment agreements in the function of attracting investments

Bilateral investment agreements have special features that distinguish them from regular and usual trade agreements concluded by the state with foreign partners. They have a significant impact on the GDP, and at the same time generate significant financial obligations for both parties - both the host country and the investors. This suggests that a high level of cooperation is needed when designing bilateral investment agreements in order to avoid any hindrances and obstacles to foreign investment. Whenever there was a disturbance of any kind, the foreign investor would lose a significant part of his funds, and at the same time trust in his partner, i.e. the host country. All this can cause damage to national investment plans and economic interests of the host country. Therefore, we can conclude that the entire investment relationship is shrouded in a natural aspiration and desire to maximize benefits in circumstances of large potential losses (Al-Adba, 2014). It is necessary to invest extraordinary efforts in the complex and long-term negotiations leading to the conclusion of these agreements, in order to reduce the risks to an acceptable level. Negotiations, as a pre-contractual phase, lead to the specification of the duties and responsibilities of the sovereign host state and foreign investors, but they should also be able to solve potential problems and disputes that may arise from the investment.

Governments attract investments with attractive incentives, tax breaks, interest-free loans or other similar financial and non-financial boost. In this way, the foreign investor is convinced that if he invests his expertise, money and technology, he will reap all the promised benefits of such an undertaking. If the promised benefits do not occur or if they are not realized at all, the disputes naturally arise. Countries understandably want to protect their national security and autonomy (both domestically and internationally), but at the same time not to give

up foreign investments that would accelerate their economic growth (we do not refer to development here, since it is a broader and more complex category than economic growth). Here lies a potential conflict of interest between the investor's desire to maximize the profit function and the sovereignty of the host country. International investment law therefore strives to achieve a balance of rights and obligations, which is an arduous task, and find acceptable and applicable solutions that will improve the protection of the interests of both parties.

On a universal level, there is still no interstate agreement that exclusively governs the substantive regime of foreign investment. On the other hand, the procedural legal regime of foreign investment is regulated uniquely at the global level. The procedure for protecting the rights of the subjects of the investment relationship is regulated by the ICSID Convention - the International Centre for Settlement of Investment Disputes between the countries and the citizens of other countries. It is the result of the climate that prevailed due to the conflict between the developed countries and developing countries regarding the treatment and protection of foreign investment. This convention established the International Center for the Settlement of Investment Disputes (ICSID) and it was established under the auspices of the World Bank (Cvetković, Zdravković, 2020). It acts as a neutral forum for the direct settlement of disputes between the host country and the foreign investor.

Seen through the prism of legal protection of bilateral investment agreements, firstly, it is necessary to conduct a consistent and cohesive analysis of the investment relationship and define the nature and status of the parties within the agreement. This actually determines which types of investment enjoy the legal protection of international investment law, and the characteristics of those investments that distinguish them from others that do not enjoy such protection. It is extremely important to identify the fields that would cause problems during the realization of foreign direct investment. This identification would more precisely depict the interaction between the host country and the foreign investor, which begins with the investment contract. The investment agreement identifies the nature of the foreign investment that is protected under the international investment law. The investment contract begins with the definition of the contracting parties. At first glance, it may seem superfluous to refer to this fact, but it indicates the importance of a country's representative in dealings with a foreign investor. Also, the nationality of the foreign investor is of particular importance as well. For the application of the ICSID Convention, the terms "investment" and "nationality" are of vital importance and are left to the parties to define them in the context of a bilateral investment agreement. Such discretion often led to decisions that exceeded the jurisdictional boundaries. If we take into account the principle that no one can be a judge in his own case, in this situation the judge is, actually, an arbitrator in his own case and, thus, the decisions contrary to the goals of the Convention can be made. (Al-Adba, 2014)

In order to examine, in detail, what is the role of the legal protection of bilateral investment agreements in attracting foreign direct investment, we should look at the provisions on the resolution of disputes that may arise with regard to those investments in the context of the existence of stronger and weaker provisions in the agreements themselves. The strength of the provision on the settlement of the investment disputes ranges between two poles – one is the lowest possible, and the other represents the highest security force. In most bilateral investment agreements, various individual provisions are either identified as very weak or provide very high security, but it is possible to find the agreements in which this level of security is somewhere in the middle (Frenkel, Walter, 2017). According to these authors, there are several aspects of resolving disputes arising from foreign direct investment. The first aspect is represented by the provisions on the settlement of disputes arising between the host country and the capital exporting country (State-State Dispute Settlement - SSDS). These provisions enable only an indirect possibility for investors to protect their interests, as they cannot directly sue the authorities of the host country. However, in some cases, countries may act on behalf of investors and their interests may be protected through the diplomatic protection of the country of residence. Thus, bilateral investment agreements that include SSDS provisions enable a greater protection for foreign investments compared to those agreements that do not include such provisions. Another aspect is reflected in the provisions on the settlement of disputes between the investors and the host country directly (Investor-State Dispute Settlement - ISDS). The agreements containing such provisions allow investors to take direct action against the host governments to protect their interests. In this way, greater protection of residential direct investment is ensured compared to the agreements that do not contain these provisions. The next aspect concerns the alternatives to arbitration. In addition to the formal arbitral tribunals whose rules are provided for in the ISDS provisions, some agreements allow conciliation as an additional informal arbitration method.

This method leads to a flexible and quick resolution of the dispute while achieving a balanced solution for both parties. In that case, the position of investors improves, because they have an additional tool at their disposal for representing their interests. The next aspect of protection relates to the scope and type of claims that may be the subject of a dispute. Bilateral investment treaties may differ in relation to the type of disputed issues that may be subject to ISDS arbitration. There are agreements that cover only the cases arising from a direct violation of the terms of the contract, but there are also those that include a broader concept - any dispute related to investment can be subject to ISDS arbitration. There are also bilateral investment agreements that provide investors with an intermediate level of protection. In such agreements, the violation of the contract itself is overcome, but at the same time they do not cover every dispute arising from the investment. The disputes covered by the agreement are incorporated through an explicit list found in the text of the agreement. Also, bilateral investment agreements can be divided in relation to following: whether their provisions can be subject to ISDS arbitration or

whether only certain parts and provisions of the agreement can be. Some agreements limit the provisions that may be subject to ISDS arbitration. Usually, such limitation of provisions is done by explicitly stating the issues that may or may not be resolved before ISDS arbitration. The next aspect of protection relates to the possibility that some bilateral investment agreements exclude the protection of investment in politically sensitive sectors of the host country. This naturally reduces the level of protection for foreign investors. Some bilateral investment agreements provide that consent to arbitration is given generally, for all disputes between the parties, while others provide for consent to be given on a case-by-case basis. As there are a number of forums before which ISDS arbitration can be conducted, the decision on which forum will be used is usually made by the investor. The more options it has on its side, the more favorable the position of the foreign investor. The two most common forums are the International Center for Settlement of Investment Disputes (ICSID) and the UN Commission on International Trade Law (UNCITRAL). Very often some bilateral investment agreements contain clauses such as "fork on the road" or "no U turn". The first clause requires the investor to choose between the local courts or the ISDS arbitration. For example, if the dispute is initiated before a domestic court, the investor loses the right to seek arbitration at the international level. Similarly, the "no recourse" clause means that, once a claim has been referred to the international arbitration, the investor loses the right to appeal to a local court. Obviously, a greater protection is provided by bilateral investment agreements that do not contain the above clauses. Related to the aforementioned, we also distinguish the agreements in relation to the provisions on the statute of limitations for submitting requests. Those agreements that foresee a limited period of time for submitting ISDS arbitration requests are "weaker", i.e. they provide a lower level of protection to the investor. It is also possible in legal procedures to encounter the agreements that provide for temporary measures intended to preserve the rights of investors or those that seek to protect evidence while the arbitration is in progress. Finally, there are bilateral investment agreements that limit the available remedies or limit that the compensation for the violation of property rights can only consist of money, and not in the restitution of the property of the foreign investor (Frenkel, Walter, 2017). All this will reduce the level of investor protection provided by bilateral agreements.

ICSID arbitration is today a generally accepted method of settling investment disputes. In support of this claim, the following facts can be presented: almost without exception, bilateral agreements on the treatment and protection of investments, and multilateral agreements (such as the NAFTA Agreement and the Energy Charter), refer to arbitration by the Center as the exclusive or alternative forum before which disputes between states and foreign investor; and quantitative indicators, i.e. the number of disputes that have been resolved or are being resolved in arbitration proceedings before the ICSID Center indicate its importance in practice (Cvetković, 2016). The ICSID Convention links the term "investment"

with the term "dispute". Article 25 (1) of the Convention states that the jurisdiction of the Center extends to all the legal disputes arising directly from foreign investment. According to the Article of the Convention, the jurisdiction of the Center includes any legal dispute between a signatory state (or a constituent area or body of a signatory state notified by that state Center) and a citizen of another signatory state, which arose directly from the investment and for which the parties to the dispute signed a written consent to bring it before the Center. When the parties agree to this, neither party can unilaterally withdraw its agreement (ICSID Convention, 1965). Therefore, the Convention determines three cumulative conditions for establishing the competence of the Center. The first, there is an agreement of the parties in the written form. The second concerns the characteristics and the origin of the dispute, and refers to the fact that the dispute must be a legal dispute arising directly from the investment. The third refers to the characteristics of the parties. One of the parties to the dispute must be a country that has acceded to the Convention, and the other must be a citizen of another contracting country.

What leaves the room for controversy is the fact that the ICSID Convention does not define the term "investment". As the author Cvetković states, this "silence" was done on purpose. This also opens up the space to apply the Convention not only to traditional types of investment (FDI, portfolio), but also to new forms of investment that the practice of foreign investment generates over time, such as service contracts or technology transfer contracts. The question arises: can the agreement of the parties on the "investment" character of their transaction (in order to establish the jurisdiction of the Center) be subject to examination by ICSID arbitrations? In contrast to the treatment of the consent of the parties, when it comes to other conditions for establishing the competence of the Center, in the Report of the Executive Directors of the World Bank it is stated that the absence of the definition of "investment" in the Convention leaves the possibility for the parties to establish, by their consent, their business relationship as an "investment transaction", in order to establish the competence of the Center. This enables the disputes related to new investment practices, with the consent of the parties, to be arbitrable before the ICSID arbitrations. Notwithstanding the stated reasoning from the Report, in the ICSID arbitration decisions, the agreement of the parties on the "investment character" of the transaction did not prevent the arbitrators from considering this issue. At the same time, the ICSID Convention provides that the dispute is arbitrable if it arises directly from the investment. The Convention does not define criteria, the fulfillment of which would mean that the dispute arises directly from the investment. When it comes to the available arbitration practice of the ICSID Center, the conclusion is that the condition of "direct" connection between the dispute and the investment is interpreted depending on the circumstances of the specific case, but from the standpoint of realizing the Center's *in favorem jurisdictionis* principle (Cvetković, 2016).

Bilateral investment agreements represent the basis of the investment relationship between two sovereign states; they determine the set of conditions that will apply between them in the context of foreign investment. Therefore, they serve to attract foreign direct investment and reduce the probability of arbitrary behavior of the host country. It should further contribute to good governance, as a necessary condition for achieving the economic progress of the host country. Investment agreements of this type offer foreign investors a set of specific substantive rights that include fair and equal treatment by the host state. This, further, implies the double protection of foreign direct investment - both physical and legal, and all through the application of the laws of the receiving country. The home state of the investor and the receiving state shall endeavor to ensure that the investment is treated according to the standards of international law. A properly negotiated bilateral investment agreement will enable the capital exporting country to anticipate and insure against non-commercial risks by creating a basic set of norms to protect its entities, individuals' or corporations'. From the moment when these agreements were created (in the literature it is pointed out that the first bilateral investment agreement was signed between Germany and Pakistan in 1959), they have existed as a foundation for the protection of the interests of foreign investors in international law.

6. Conclusion

The increased importance of foreign direct investment in the last few decades has been accompanied by an increase in the number and popularity of bilateral investment agreements. While the number of new bilateral investment agreements continuously increased from 1990 until 2000, their number has stagnated in recent years. Due to an intense political impact, some countries have even begun the trend of withdrawing from such contracts. This phenomenon takes place simultaneously with the discussion of the effectiveness of attracting foreign direct investment through the bilateral agreements. In particular, the provisions related to the settlement of investment disputes are disputed. The extremely high compensation claims in some cases have raised the host country's awareness of the risk of high costs associated with ISDS arbitration. In addition, most of the countries have become increasingly aware of the disadvantages that are a product of the limitation of their policy autonomy when they sign this type of agreement (Frenkel, Walter, 2017). The increasing awareness of possible problems leads countries to the question of sovereignty conflicts and the potential high benefits they would have from limiting it. For this reason, more and more attention must be paid to the way negotiations are conducted and the precise drafting of bilateral investment agreements.

Bilateral investment agreements initially referred exclusively to the relations between the home country and host countries, developed and developing countries. However, over the years they have shown a remarkable capacity for modification,

moving to different patterns and arranging different relationships. This is how the agreements between developing countries or the agreements with economies in transition were created, which certainly have different characteristics due to the specific contracting parties. Therefore, although they can be attributed to numerous shortcomings, it seems that these agreements are able to adapt to special circumstances. They have been successfully used, for example, in the past decade during the process of transition of Central and Eastern European countries towards a market-type economy. The increase in the number of agreements between developing countries suggests that they may also be useful in solving some of the problems in such relations. However, the developing countries would have to be cautious and careful when negotiating the content of bilateral investment agreements. The legal construction of the agreement should enable the realization of the economic interests of both parties, and not only the interests of the more powerful one. Once the developing countries realize that volume is not always more important than quality and that the quantity of foreign direct investment is less important than quality, their increased interest in specifying all obligations from bilateral investment agreements is expected, avoiding general and generalized provisions. Little is discussed about this use of bilateral investment agreements, which the developing countries often used. Their most important function seems to be to signal an attitude favoring foreign direct investment. Their proliferation alone has made them standard features of the investment climate for any country interested in attracting foreign investment.

As for foreign direct investments, as already mentioned, there is no comprehensive global international convention dealing with them, and various efforts in this direction, both in the past and recently, have not been successful. However, several smaller-scale multilateral instruments are directly relevant for this type of investment. In addition, regional agreements increasingly deal with foreign direct investment, sometimes pioneering in expressing international trends in this area. Instead, an expanded network of bilateral investment treaties has developed principles directly related to the treatment and protection of foreign investment, which in some ways compensated for the lack of a multilateral framework for the substantive legal aspect of foreign direct investment.

Foreign direct investment can be of vital importance to the conduct of economic policy and the achievement of economic growth for a country, promoting the innovation and competition in domestic markets. They should influence the creation of new and more efficient methods of capital investment, and especially encourage the investment in human capital. It is very often expected that foreign direct investment by itself will significantly boost the macroeconomic indicators of the host country in the short term. However, we cannot claim that such expectations are rational and justified. The productivity and success of an economy depend on many other factors, which can override the effects of foreign direct investment. In the first place - unemployment, gross domestic product, inflation and the price level, and

finally, the state of the environment and people's health. It is necessary to do a complex economic analysis of the impact and correlation of foreign direct investment and the macroeconomic indicators of developing countries, so that we can conclude what are the real benefits and costs for the economy of those countries from the presence of international capital. Although, they can nominally have a positive effect on some indicators (often on employment), the quality of the long-term effects produced by multinational companies as the generators of foreign direct investment must be taken into account; and with all of the above mentioned, pay attention to a serious study of the motives of foreign investors for entering a certain market (whether it is the search for resources or the conquest of new markets or, perhaps, simply the reduction of business costs). Only then one can expect that the developing countries could take better positions in an agreement conclusion. In such an environment, bilateral investment agreements should have a direct impact on stimulating growth, but through connecting foreign investments and trade flows and through strengthening the key sectors of the host country. According to the World Investment Report, last year foreign direct investment flows recovered compared to the period of the pandemic caused by the Covid-19 virus. We are talking about a very weak growth, especially in developing countries. This state of affairs will probably last this year as well, being aware of the consequences of the war affecting Europe and the whole world, as well as the food crisis, climate change and the rise in energy prices. Being in a very complicated international atmosphere and relations, there is a legitimate fear that foreign investment flows will stop and create problems for the concept of sustainable development and sustainable finance in developing countries.

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UTICAJ BILATERALNIH INVESTICIONIH SPORAZUMA NA PRIVLAČENJE STRANIH DIREKTNIH INVESTICIJA

Rezime: Strah stranih investitora od eksproprijacije uslovio je na međunarodnom planu pojavu ideje o novim načinima zaštite i adekvatnom tretmanu stranih ulaganja. Prvenstveno, zemlje porekla kapitala želele su zaštititi svoje interese i postale su glavni zagovornici nastanka bilateralnih investicionih sporazuma. Zemlje u razvoju koje teže da postanu i ostanu deo međunarodnih ekonomskih tokova, morale su da pruže dodatnu zaštitu investitorima, kao zemlje domaćini ulaganja. One su u bilateralnim investicionim sporazumima videle mogućnost za privlačenje stranih direktnih investicija. Njima se obezbeđuje određeni standard u tretmanu i zaštiti investicija i na taj način utiče na stvaranje ambijenta koji pogoduje transferu kapitala iz jedne zemlje u drugu. U savremenim uslovima privređivanja skoro da ne postoje subjekti koji su apsolutno odbojni prema riziku. Iz tog razloga, računa se na to da bilateralni investicioni sporazumi odigraju jednu od ključnih uloga u minimiziranju rizika ulaganja u zemlje u razvoju.

Ključne reči:bilateralni investicioni sporazumi, strane direktne investicije, međunarodno investiciono pravo, multilateralni investicioni sporazumi, zaštita stranih ulaganja, ICSID konvencija

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