James J. Nedumpara *Editor*

India's Bilateral Investment Treaties 2.0

Perceptions, Emerging Trends, and Possible Architecture

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Foreword

The maxim "may one live in interesting times," whose specious Chinese origin is today broadly acknowledged, nonetheless seems very apposite when discussing the latest trends in international investment law and policy. Few areas of international governance have, or continue to exhibit, as fundamental a rethinking as that of international investment law. Long rooted in the highly asymmetrical confines of (mostly bilateral) treaties affording maximalist protection to capital abundant investors from the Global North in their quest for higher rates of return in potentially risky Global South settings, international investment law has undergone a sea change in recent years. Several factors have been at play in this process, including rapidly changing economic landscapes characterized by relative hegemonic decline and emerging country ascendance, rapid advances in technology, shifts in geopolitical dynamics, a quest to reclaim lost policy space, and increasing concerns over sustainable development.

As a major source and destination of cross-border investment activity, India has not escaped the trends depicted above. Its policy makers confront, like their brethren around the world, the need to evolve, adapt, and balance a range of policy aims in navigating the choppy waters of today's more complex and friction-prone global investment landscape. The penetrating insights offered by this edited volume, advanced by many of the country's leading investment law and policy experts, usefully situate, contextualize, and inform the rethinking of global investment norms in an Indian setting. Such a contribution could not have come at a better time.

The volume usefully chronicles the major challenges India faces in revamping its investment policy framework. This task is made more urgent by the quickening pace at which some of the country's most prominent outward looking firms are today expanding abroad and by the rapidly growing network of preferential ties the Indian government is pursuing with a diverse group of developed and developing country partners even as it somewhat paradoxically shuns efforts afoot in Geneva at crafting a set of disciplines aimed at facilitating two-way investment flows.

As with all countries pondering the future of their investment treaty instruments, India seeks answers to several key questions. These include the following:

(i) *The increasing role that developing countries as host and destination countries are playing in investment treaty reform.* Developing countries are today playing a far more active role in shaping international investment law, asserting their interests in negotiations with considerably more agency than in earlier decades of investment rule making. Such a trend shows no sign of abating.

(ii) *Balancing investor rights and state sovereignty.* Concerned by the risk of undue encroachment on domestic policy autonomy posed by mounting litigiousness in the investment field, host nations are increasingly denouncing older treaties or renegotiating them with a view to correcting past asymmetries and securing a better overall balance of rights and obligations, notably by including provisions that safeguard their regulatory autonomy in areas such as public health, environment, and social welfare. Such provisions help mitigate concerns about regulatory chill and ensure that states can pursue legitimate policy objectives.

(iii) *Clarifying (and circumscribing) the scope of investment disciplines.* Considerable efforts are being made to ensure that key investment treaty provisions are drafted in ways that make clear what is and is not actionable. This concerns issues such as the very definition and scope of the terms "investment" and "investors," fair and equitable treatment, direct and (especially) indirect expropriation or the right to regulate in the public interest, among others. Agreements also exclude specific sectors from investment protection to prevent litigation in sensitive policy areas. By incorporating the above and other clarifications and limitations, modern IIAs aim to preserve the right of states to regulate within their territories while still providing meaningful protection to foreign investors. This reflects a shift toward a more balanced approach in investment treaty practice, seeking to reconcile investment protection with the need for adequate regulatory flexibility in the face of evolving public policy objectives.

(iv) Reminding investors that they *while IIAs confer rights, they also entail obligations.* Recalling that investment is a long-term relationship between host countries and investors, an increasing number of IIAs now include obligations for investors to ensure that investments are responsible and align with host country regulations and policy aims.

(v) *Seeking alternative routes to settling investment disputes.* The latest generation of international investment agreements (IIAs), both bilateral investment treaties (BITs) and the investment chapters embedded in preferential trade agreements (PTAs), increasingly feature mechanisms for resolving investment disputes through strengthened transparency, fairness, and efficiency. More emphasis is being placed on mediation, negotiation, and other non-arbitral methods of dispute resolution to reduce the costs and time involved in settling investment disputes. Efforts to prevent disputes from escalating to arbitration are more common, including consultation and negotiation requirements before formal proceedings can begin. Privatizing access to justice through investor-state dispute settlement has in the last few years become more exception than norm or is being subjected to more stringent, narrower, and clearer operating procedures, a trait characterizing even some of the world's leading source countries. IIAs increasingly feature provisions calling on parties to establish

offices where investors can raise concerns about government actions affecting their investments, and these offices work to resolve issues without formal legal proceedings. Some host states are emphasizing the use of their own domestic legal systems to resolve disputes with foreign investors, arguing that their courts are fair and competent, while others require that recourse to domestic courts be exhausted before opting for arbitral proceedings. Finally, as discussed below, some regional groupings are also developing their own dispute resolution mechanisms, which are seen as more attuned to the specific legal and business environments of the member states.

(vi) *Promoting sustainable development*. Considerable emphasis is today being placed on assigning to investment treaties a key role in speeding up the green transition and securing the achievement of sustainable development aims. New IIAs typically include provisions on labor rights, environmental protection, and corporate social responsibility to ensure that investment projects benefit the host country and its people. A growing range of IIAs also address the human rights impacts of investments and provide mechanisms for holding investors accountable for human rights violations.

Overall, the ongoing (r)evolution of international investment law reflects a broader shift toward more balanced, sustainable, and inclusive approaches to foreign investment that takes into account the interests of both investors and host states. Among the reasons depicted above, perhaps the single most important factor behind the quest for revisiting the aims and substantive remit of IIAs centers around the controversies spawned by the spectacular recent rise in investor-state disputes. Such a rise was prompted in no small measure by the incorporation of a comprehensive body of investment protection and liberalization measures governing investment ties between parties to the 1994 North American Free Trade Agreement, an agreement sealed during the halcyon days of the Washington Consensus that was replicated at scale in the large number of BITs and PTAs brokered in the years that followed NAFTA's entry into force.

That was then, this is now, with several factors having recently led host states to reverse course on ISDS. These include concerns over *sovereignty*, with critics arguing that ISDS can undermine national sovereignty by allowing foreign investors to sue host state governments in international tribunals over laws and regulations that affect their investments, potentially leading to decisions that may conflict with a country's own policies and the public interest. The threat of arbitration is seen as making governments more cautious in enacting new regulations, particularly in areas such as environmental protection, health, and safety, for fear of potential claims by foreign investors.

Vocal concerns over the lack of *transparency* of ISDS procedures have also been heard, pointing to the fact that many are not open to the public and that documents relating to the disputes, a rising share of which address sensitive public policy issues, can remain confidential, raising concerns about the very accountability of the arbitral process. ISDS concerns have also focused on the issues of *high costs and large-scale compensation* flowing from adverse arbitral decisions. The costs associated with

investor-state arbitration are indeed typically significant, favoring those with deeper pockets. A number of ISDS rulings have also ordered host states to pay substantial amounts in compensation to investors, which can be a significant burden on public finances. This is so even as the notion of holding host states ultimately accountable for their conduct toward foreign investors retains obvious legitimacy.

A further set of concerns over private investor access to dispute settlement relates to questions of *inconsistency and unpredictability of panel decisions and potential bias* in the selection of arbitral panels. The practice of ISDS has revealed non-trivial patterns of arbitral inconsistencies, with different tribunals interpreting legal standards in different ways. Such unpredictability, which creates uncertainty for both host states and foreign investors, lies behind attempts at crafting far more precise (and circumscribed) treaty provisions. Meanwhile, perceptions have taken root over the potential bias in the arbitration process favoring investors to the extent that arbitrators, whose remuneration can be contingent on the size of rulings, are often drawn from a small pool of legal experts seen by many to be potentially conflicted. The sum total of the above concerns has led to calls for reform or even the replacement of the current ISDS system with alternative mechanisms for resolving disputes between investors and states.

In considering the case for—and the substantive provisions—of a new investment treaty model, Indian policy makers can draw on the growing number of reform experiments currently underway within BITs, preferential trade agreements (PTAs) as well as under the aegis of UNCITRAL's 2023 Model Provisions on Mediation for International Investment Disputes, all of which aim to strengthen transparency, improve the process of arbitrator selection, and ensure a better balance between investor rights and state regulatory authority. Host states and regions have indeed been exploring and sometimes implementing regional dispute resolution mechanisms as alternatives to the traditional investor-state dispute settlement (ISDS) system. Examples include the following:

(i) *European Union (EU)*: The EU has proposed the Investment Court System (ICS) as an alternative to ISDS. This system would include a tribunal of first instance and an appeal tribunal. It aims to address concerns about arbitrator impartiality and the consistency of decisions. The ICS has been incorporated into recent EU trade agreements, such as the Comprehensive Economic and Trade Agreement (CETA) with Canada.

(ii) *Association of Southeast Asian Nations (ASEAN)*: ASEAN member states have the ASEAN Comprehensive Investment Agreement (ACIA), which includes provisions for the settlement of disputes between member states and investors. It encourages the use of conciliation and consultation before proceeding to arbitration.

(iii) *Mercosur (Southern Common Market)*: The member states of Mercosur, which includes Argentina, Brazil, Paraguay, Uruguay, and Venezuela, have established the Protocol of Olivos for Dispute Settlement in Mercosur. This protocol provides mechanisms for state-to-state disputes and includes the possibility of using ad hoc arbitration tribunals.

(iv) *Caribbean Community (CARICOM)*: CARICOM has its own dispute resolution mechanism through the Caribbean Court of Justice (CCJ), which, among other functions, serves as an avenue for resolving trade and investment disputes within the community.
(v) *African Union (AU)*: The African Union is working on the Pan-African Investment Code (PAIC), which is a framework for investment protection among African countries. It is expected to include dispute resolution mechanisms that are tailored to the specific needs and context of African states.

These regional mechanisms reflect a growing desire among states to have greater control over investment disputes and to create systems that are perceived as more legitimate, transparent, and fair. They also often aim to be more in line with regional legal traditions and economic integration goals.

As the above discussion has attempted to make clear, there is considerable—indeed unprecedented—movement in the field of investment law and policy that can inform where India heads next in its development trajectory. Readers of this volume stand to be enriched by the quality of the diagnosis on offer and the relevance of the recommendations put forward. Its authors are to be congratulated for producing a rich and timely blueprint on future directions in a policy domain which, alongside trade and competition law and policy, can be expected to play an increasingly prominent role in India's economic destiny.

Geneva, Switzerland Pierre Sauvé[1]

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International Investment Law (IIL) is a fertile area of academic and scholarly work. There has been a growing interest in understanding and exploring this field in the last decade and a half, and in India especially after publication of the *White Industries* arbitral award. At the Centre for Trade and Investment Law (CTIL) several of my colleagues have been engaged in studying the recent developments in IIL and its implications for other areas of international law.

The edited volume is an outcome of individual and team-based research activities that several of my colleagues at CTIL have been involved in. In many ways, it is also sequel to a special issue of Jindal Global Law Review published in 2017 on India's 2015 Model BIT that I had edited with Rodrigo Polanco (World Trade Institute, Bern). In the special issue, we asked the question, "Does India Need a Model BIT?" Since then, India has faced a number of ISDS cases and the churn within field have led to initiatives at various levels for ushering in substantive and institutional reforms. The discussions taking place in UNCITRAL Working Group III is one such example.

In this context, I would to express my gratitude to several scholars including some of my colleagues at CTIL. I am grateful to Rishabh Gupta, a leading practicing lawyer, for impressing me on the need for conducting an empirical study on the investor perceptions to investment treaties. The debate on the causal connection between investment treaties and investment flows is a long-standing one; however, there are areas where this book can make potential contributions in advancing this enquiry. In addition, I am very grateful to Gregory Shaffer and Terence Halliday for offering their incisive comments on a paper exploring the alternative approach to ISDS, which I had presented at the Law and Society Annual Meeting in Washington D. C. This book has also comprehensively covered emerging areas such as anti-corruption and sustainable investment, topics that had received limited attention in the past. I would like to specially thank all authors for their insightful and timely contributions.

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James J. Nedumpara

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Editor and Contributors

About the Editor

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Suvrajyoti Gupta is an Associate Professor at Jindal Global Law School. He completed his first degree in law from the NUJS, Kolkata in May 2006. Between 2006 and 2009, he practiced as an appellate litigator, primarily based in the Supreme Court of India and the High Court of Delhi. Thereafter he completed his master's

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Sparsha Janardhan is a lawyer specializing in international trade and investment law. She is an Associate at the Centre for Trade and Investment Law, Government of India, where she assists the government with WTO disputes, trade negotiations, and related domestic policies. Sparsha holds an LL.M. from Columbia Law School, where she was a recipient of the Jagdish Bhagwati Fellowship. She also holds a Bachelor of Laws from National Law University, Jodhpur.

Shreyas Jayasimha read law at the National Law School of India University, Bengaluru and was a Chevening Scholar. With over 23 years of experience in litigation, and domestic and international dispute resolution, Shreyas has advised and represented clients across a variety of industrial sectors before various Tribunals, High Courts and the Supreme Court of India. He is a trained mediator and has been appointed as an arbitrator in India and internationally and he has co-founded Simha ADR, Singapore and Aarna Law, India. Shreyas has acted as a co-counsel for the Republic of India in two significant investment treaty arbitrations. Shreyas is also a member of the executive committee of the Foundation for International Arbitration Advocacy (FIAA), Geneva since 2012, the National Coordinator for the UNCITRAL National Coordination Committee of India (UNCCI) and a member of the Mumbai Centre for International Arbitration (MCIA) Council.

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Aditya Laddha is an international disputes lawyer and a doctoral candidate at the University of Geneva. His research focuses on the limits of jurisdiction *ratione materiae* of international courts and tribunals, and international judicial function. He is involved in various international proceedings before the International Court of Justice and other tribunals. After completing his LL.M. from the Geneva International Dispute Settlement (MIDS) programme, he served as a Judicial Fellow at the International Court of Justice (2020–2021) in The Hague. He has also worked at the Centre for Trade and Investment Law (CTIL), New Delhi where he assisted the Government of India in legal disputes, international negotiations and policy relating to international trade and investment law.

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Abbreviations

A&C Act	Arbitration and Conciliation Act
AFCFTA Protocol	African Continental Free Trade Area on Investment
APEC	Asia-Pacific Economic Cooperation
ARSIWA	Responsibility of States for Internationally Wrongful Acts
ASEAN	Association of Southeast Asian Nations
BIPA	Bilateral Investment Promotion and Protection Agreement
BIT	Bilateral Investment Treaty
BRICS	Brazil, Russia, India, China and South Africa
CAFTA	Central America Free Trade Agreement
CBTS	Cross Border Trade in Services
CCSD	Columbia Center on Sustainable Development
CECA	Comprehensive Economic Cooperation Agreement
CEPA	Comprehensive Economic Partnership Agreement
CETA	Comprehensive Economic Trade Agreement
ChAFTA	China-Australia Free Trade Agreement
CPC	Code of Civil Procedure
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CSR	Corporate Social Responsibility
CTIL	Centre for Trade and Investment Law
DEA	Department of Economic Affairs
DFC	Development Finance Corporation
DOC	Department of Commerce
DPIIT	Department of Promotion of Industry and Internal Trade
DPPs	Dispute Prevention Policies
DR	Domestic Regulation
DT	Deutsche Telekom
DTAA	Double Taxation Avoidance Agreements
EFTA	European Free Trade Association
EU	European Union
EU-Angola SIFA	EU-Angola Sustainable Investment Facilitation Agreement

FCN	Friendship, Commerce and Navigation
FDI	Foreign Direct Investment
FET	Fair and Equitable Treatment
FIPA	Foreign Investment Promotion and Protection Agreement
FTA	Free Trade Agreement
FTAs	Free Trade Agreements
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GE	General Electric
GEA	Green Economy Agreement
GEC	General Exceptions Clause
GESF	GE Structured Finance
HBT	Haldia Bulk Terminals Private Limited
IAECTA	India-Australia Economic Cooperation and Trade Agreement
ICC	International Chamber of Commerce
ICFT	Investment Cooperation and Facilitation Treaty
ICSID	International Centre for Settlement of Investment Disputes
IFD	Investment Facilitation for Development
IIAs	International Investment Agreements
IISD	International Institute for Sustainable Development
IMF	International Monetary Fund
IPA	Investment Protection Agency
IPR	Intellectual Property Rights
ISDS	Investor-State Dispute Settlement
ISO	International Organisation for Standardization
ITO	International Trade Organisation
KOWEPO	Korea Western Power Company Limited
KPT	Kolkata Port Trust
LCIA	London Court of International Arbitration
LDA	Louis Dreyfus Armatures SAS
LDCs	Least-Developed Countries
MIGA	Multilateral Investment Guarantee Agency
MNCs	Multinational Corporations
NAAEC	North American Agreement on Environmental Cooperation
NAFTA	North American Free Trade Agreement
NCC	Netherlands Commercial Court
NCM	Non-Conforming Measures
NIEO	New International Economic Order
NITI	National Institution for Transforming India
NT	National Treatment
NYC	New York Convention
OECD	Organisation for Economic Co-operation and Development
OPEC	Organization of the Petroleum Exporting Countries
PMLA	Prevention of Money Laundering

POCA	Prevention of Corruption Act
PPR	Prohibition of Performance Requirements
RCEP	Regional Comprehensive Economic Partnership
SADC	South African Development Community
SICC	Singapore International Commercial Court
SMBD	Senior Management and Board of Directors
TCA	Trade and Cooperation Agreement
TIS	Trade in Services
TNCs	Transnational Corporations
TPP	Trans-Pacific Partnership
TRIMS	Trade-Related Investment Measures
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UAE	United Arab Emirates
UK	United Kingdom
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
US	United States
USD	United States Dollars
USMCA	United States-Mexico-Canada Agreement
VCHL	Vodafone Consolidated Holdings Limited
VCLT	Vienna Convention of Law of Treaties
VG	Vodafone Group Plc
WTO	World Trade Organization

Introduction: India's Bilateral Investment Treaties 2.0: Imagining a New Model of Investment Promotion and Protection

James J. Nedumpara

1 Introduction

International Investment Law (IIL) is one of the vibrant areas of public international law.[1] According to some scholars, international investment treaty negotiations and practice constitute one of the most active areas of international law-making during the last fifty years.[2] IIL is formed through a network of bilateral investment treaties (BITs), investment-related chapters that are part of preferential or free trade agreements (FTA), and certain categories of economic cooperation treaties. In other words, the IIL is built on a heavily decentralised regime.[3] According to the UNCTAD, at present, there are more than 2200 bilateral investment treaties (BITs) and an additional 386 treaties with investment provisions as part of trade agreements.[4] Although minor distinctions remain between different categories of investment treaties, especially BITs and other categories of investment treaties, they can be broadly referred to as international investment agreements (IIAs). A bulk of these IIAs were signed post 1980. At a broader level, these IIAs seek to establish a set of norms relating to international investment through a treaty framework.

[1] Hugh Thirlway, The Sources of International Law 135 (2nd ed., Oxford University Press, 2019).

[2] Jeswald W. Salacuse, *Off Handcuffs and Signals: Investment Treaties and Capital Flows to Developing Countries*, 58(1) Harv. Int'l L.J 127 (2017).

[3] Dolzer, R., and C. Schreuer, Principles of International Investment Law 201 (2nd ed., Oxford University Press).

[4] *International Investment Agreements Navigator*, UNCTAD Investment Policy Hub (Mar. 18, 2024, 4:26 PM), https://investmentpolicy.unctad.org/international-investment-agreements [hereinafter 'IIA Navigator'].

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The origin of IIAs can be traced to the nineteenth-century Friendship, Commerce, and Navigation Treaties (FCN Treaties).[5] The FCN Treaties were often used to provide a framework within which navigation, inter-state trading rights, and occasionally rights over property of foreign nationals were protected. The FCN Treaties signed after World War I also sought to provide diplomatic protection to the investors, including the ability to resolve disputes through state-to-state dispute settlement.[6]

IIAs have been an essential component of the investment policy framework of many countries at least for the last half a century. In a global economy, IIAs are considered to make available the tools and remedies of public international law to private investors for putative violations of investment treaty provisions by host governments. IIAs also subject various governmental assurances, which are otherwise enforceable under national law, to international law. Private foreign investors receive an opportunity to seize the jurisdiction of international tribunals to resolve disputes which arise from international treaties and sometimes from certain contractual arrangements which can qualify for treaty protection. Some of these disputes deal not only with tangible investments, but also with an array of incorporeal rights such as claims over debt, shares, stocks, debentures, bonds, intellectual property rights, and chose in action and relate to state measures that can vary from direct to indirect expropriation.[7] The violation of the treaty provisions is typically resolved through an arbitral system of investor–state dispute settlement (ISDS), which invariably extends a sovereign's prior consent to international arbitration. The ISDS mechanism enables a private investor to challenge a sovereign state's actions and policies. It provides for a method of a party-appointed, purportedly depoliticised panel of arbitrators to resolve disputes, which can often bypass the domestic court system. The offending states are liable to provide monetary compensation determined by investment tribunals to investors, in cases of treaty violations. In short, findings of violations or breaches of IIAs can have serious consequences for the respondent states.

What is outlined above is a broad summary of existing IIAs; however, their structure and contents are constantly evolving. The first modern BIT signed between Germany and Pakistan had some basic investment protection obligations.[8] Most

[5] *See*, e.g., Treaty of Amity, Commerce and Navigation Between His Britannic Majesty and the United States of America ("The Jay Treaty"), Article 14, Nov. 19, 1794); Herman Walker, Jr., *Modern Treaties of Friendship, Commerce, and Navigation*, 42 MINN. L. REV. 805, 805 (1958); John F. Coyle, *The Treaty Of Friendship, Commerce And Navigation In The Modern Era*, 51 COLUM.J. TRANSNAT'L L. 302, 308 (2013).

[6] J. Vendevelde, *The Bilateral Investment Treaty Program of the United States*, 21 CORNEL INT'L L. J. 201, 201–203 (1988).

[7] For example, see Philip Morris Brands Sàrl v. Oriental Republic of Uruguay, ICSID Case No. ARB/10/7, Award, ¶ 193, 313 (Jul. 8, 2016); Eli Lilly & Co. v. Canada, ICSID Case No. UNCT/14/2, Final Award, (Mar. 16, 2017). To examine the extent of ISDS disputes, *see* Daniel Gervais, *Intellectual Property: A Beacon for Reform of Investor-State Dispute Settlement*, 40 MICH. J. INT'L L. 289 (2019).

[8] Treaty for the Promotion and Protection of Investments, Nov. 25, 1959, West Germany–Pakistan, 457 U.N.T.S. 23 (entered into force Apr. 28, 1962).

of the IIAs signed since then contained well-defined investment protection standards including "fair and equitable treatment", equal treatment of investors vis-à-vis investors of other countries and domestic investors, free transfer of funds and repatriation of capital and profits, as well as a commitment to "prompt, adequate, and effective" compensation in the event of expropriation, for example. IIAs also include provisions related to transparency of domestic laws and procedures, obligations relating to performance requirements and, in certain cases, specific commitments on the movement of foreign personnel including senior management. At a fundamental level, the IIAs seek to guard against risks including the government's confiscation of property without compensation or manifest violations of due process, or discriminatory or unfair treatment. These objectives are achieved by (i) applying specific standards of treatment concerning foreign investment through treaty obligations; (ii) extending the application of customary international law obligations, as applicable; and (iii) exerting diplomatic pressure.

At its core, the key objective of IIAs is to attract foreign investment by providing a good and robust investment climate.[9] In recent times, IIAs have been signed as part of an overall process of economic liberalisation and trade integration. Most IIAs herald the intention of the contracting parties to make credible and meaningful commitments to liberal economic policies including the flow of capital.[10] The Preamble to India's 2015 Model BIT, for instance, states: "promotion and the protection of investments of investors of one Party in the territory of the other Party will be conducive to the stimulation of mutually beneficial business activity, [and] to the development of economic cooperation between them…".[11] At the same time, while the IIAs encourage capital-exporting countries to invest in developing countries, such treaties do not generally place obligations on the parties to take steps to encourage or induce investments.[12] Most IIAs, however, require the parties to create favourable investment conditions, especially in the investment destinations or the host nations but without any reciprocal obligations on investors. Generally speaking, most of the IIAs concluded during the period 1970–2015 had asymmetrical obligations and were one-sided treaties.

Even after several decades of experience with IIAs, an important debate is whether such treaties achieve the goal of higher payoffs in the form of increased foreign direct investment (FDI) flows into countries taking additional obligations. If IIAs are considered as confidence-building measures concerning a country's receptivity to foreign investment, do such treaties make a material contribution to fostering investment? A significant amount of research has focused on whether IIAs indeed spur investment and whether investors care about the investment protections these

[9] Ecuador v. United States, Expert Opinion concerning Jurisdiction of Professor W. Michael Reisman, 14–9 (Perm. Ct. Arb. Apr. 4, 2012).

[10] Andrew Guzman, *Why LDCs sign treaties that hurt them: explaining the popularity of bilateral investment treaties*, 38 VIRGINIA J. OF INT'L L. 639 (1998).

[11] Preamble, India's Model BIT.

[12] Jeswald W. Salacuse, *BIT by BIT: The Growth of Bilateral Investment Treaties and their Impact on Foreign Investment in Developing Countries*, 24(3) INT'L LAWYER 655, 661(1990).