Solutions from BITS, RTAs and MIAs for the Current Issues Involving in the International Investment Law

Junyi Hu[1+] Jing Hu[2+] Ziyang Peng[3+] Zixin Pu[4+]Haozhi Xu[5+] Linhui Zhu[6+]

[1]*School of international law, East China University of Political science and Law, Shanghai 201620, China*
[2]*School of law, Anhui university, Anhui 230039, China*
[3]*Valley Catholic High School*
[4]*School of foreign languages, Southeast University, Nanjing 211189, China*
[5]*Worcester Academy 01604，corresponding author. Email: haozhixu030628@gmail.com*
[6]*School of law, Shandong University, Qingdao 266237, China*
**These authors contributed equally to this work.*

ABSTRACT
With the advancement of globalization, the current international investment legal system has gradually encountered problems such as lack of transparency, lack of consistency, excessive protection of investors, difficulty for policy makers in transforming into domestic legislation, unfairness to developing countries. Solving the above problems will contribute to the further development of economic globalization to some extent. In this regard, this paper analyzes the problems faced by the current international investment legal system. This work first starts from the existing regional investment agreements to find out whether it is possible and to what extent those agreements can solve the above problems. Then, this paper analyzes whether this scheme is valuable based on the multilateral investment treaties that have appeared in the past years but eventually failed. Finally, it puts forward the solution of introducing a new system combining regional and multilateral investment treaties.

Keywords*: *International investment law, regional investment agreements, multilateral investment treaty

1. INTRODUCTION

International investment law is a set of law systems designed to regulate commercial activities and disputes between foreign investors and sovereign states. The existence of commercial entities from one state appearing in the territory of another is a phenomenon that can be interpreted as foreign investment. Such cross-national investment has occurred throughout the history of the entire world. The current foreign direct investment is conducted by multinational enterprises. Today, there are almost a million foreign affiliates controlled by some multinational enterprises; half of the entire world's greatest economic entities are multinationals rather than countries.

This article argues that the international society should take essential steps in order to improve the current international investment law that has five major problems: the lack of transparency, the inconsistent provisions, over-protection of foreign investors, difficulties for policymakers, and challenges for developing countries. There are not perfect ways, but the combination of solutions from bilateral treaties, multilateral treaties, regional treaties, and a possible new structure that will consist of a multilateral investment treaty, several regional investment agreements, and several bilateral investments treaties, if necessary, would provide some solutions as follows in the conclusion.

2. ADVANTAGES AND DISADVANTAGES

The international investment law is the public international law that governs the commercial activities of a multinational enterprise that would be undertaken in the foreign states. Under the development of the international investment law, international investment became more regulated. One of the biggest advantages or functions brought by the international investment law was investor protection. The purpose of the international investment agreements (IIAs) is to yield the economic benefits that would be for the societies or states involved in the trade. The Preamble of Canada-Kuwait BIT (2011) states that "Recognizing that the 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, to the development of economic cooperation between them and to the promotion of sustainable development."

Under the current international investment law, countries are benefiting from mutual trades, but there are still a lot of unsolved problems involved in international investment law. The four major problems that are involved in the current international investment law are the lack of transparency, inconsistency of provisions, overprotection of the foreign investors, trouble for policymakers, and difficulty for developing countries.

First, under globalization and more bilateral or multilateral business interactions occurring in the world, the international investment rules started to change. The international investment agreements are mainly based on two approaches. The first approach was exemplified by NAFTA that provides the actual liberalization subject to a list of country exceptions. Countries such as Australia, Chile, Japan, Singapore, Mexico, and the U.S. followed the agreements that were shaped by NAFTA. Another approach is to provide for the step-by-step abolition of restrictions or limitations on the entry, establishment, and operation of the investment. Following these complex developments, foreign investors and countries are confronted with more complicated investment rules, which causes the issue of overlapping or even inconsistent provisions. For example, IIAs require payment of compensation for the expropriation of investment according to the expropriation provisions, but it is inconsistent with the nature of the asset protected by this provision.[1]

Second, other than the concern about the overlapping or the inconsistent provisions, there is another problem related to it, the overprotection of the foreign investors at the expense of the regulatory ability of the state that is hosting the investment. The current investment arbitration regime works as a substitute for the domestic court to provide an effective legal privilege to the foreign investors over local investors and other subjects of the hosting state law. The current investment agreements also become more protective to foreign investors. The combination of the predilection of the investment agreements and the investment arbitration regime tips the balance between the hosting state investors and the foreign investors.[2]

Third, the ongoing international investment and different kinds of business interactions also present new challenges for policymakers. The various interactions make it a task for policymakers to judge and weigh the full legal and policy implications of the agreement, and the risk of investment disputes would also increase. In addition, as the global interactions proliferate, policymakers need to manage the impacts of the integration of the domestic economy to become complex and the challenge from the IIAs. Policy coherence is an important consideration for policymakers. They need to guarantee that provision of a country's IIA is consistent with the country's investment policy to avoid being over-inclusive or underinclusive.

Fourth, the issues as mentioned before post a particular challenge for the developing countries. First, developing countries need to find the best way to integrate IIAs into their economic development policy that would provide a stable and transparent investment environment for people. Second, developing countries need to guarantee policy coherence when facing many ideas. Third, developing countries need to find a balance between the national and international R&D policies when domestic capabilities increase nationally and more technological and scientific collaboration between foreign and domestic firms. Fourth, the developing countries also need to ensure that they have sufficient capacity to take the responsibility of concluding an IIA and understand the implication of it. Fifth, developing countries need to implement treaty commitments that they assumed and bring national law and practices to confirm the treaty commitments. From these tasks that post to the developing countries, developing countries would struggle when making a commitment to the IIA. Finally, one of the biggest concerns for the developing countries was whether investment agreements increase and attract foreign investors or investments into the countries. When these developing countries signed these BITs or MITs, they assumed that there would be an increasing flow of investment to their countries, but it was not the truth, and there was no data to support that.[3] For example, in May 2001, nine of the world's poorest countries, mostly from francophone Africa, signed 29 bilateral investment treaties, but the foreign investment to their countries did not grow a lot. As a result, these developing countries would feel that they did not get anything in return by making a promise to the investors. Entering the bilateral treaties is not the problem of the developing countries at all, but the real problem is the content of these treaties. The content of these bilateral treaties poses many challenges to the developing countries, as mentioned before. For example, the content of the agreement seems attractive for most developing countries, but the reality is cruel. These international investment treaties did not help them to attract enough foreign investors.[4]

These are issues that exist in the current international investment law from the transparency, inconsistency caused by the complication, policy coherence, and the challenge for the developing countries. In order to solve these problems, this article would provide suggestions from the bilateral perspectives and the multilateral perspectives.

3. BITs+RTAs

3.1. Description of the system

The global network of international investment agreements has expanded very rapidly in recent years, and one of the important developments has been the emergence and development of free trade agreements or other economic cooperation agreements that include investment norms. Bilateral investment treaties (BITs) are the general term for bilateral agreements and treaties between capital-exporting and capital-importing countries aimed at encouraging, protecting, and promoting private direct investment activities between the two countries [5], and it is an important part of international investment treaties. Regional Trade Agreements (RTAs) refer to a treaty signed by two or more countries to encourage the free flow of goods and services across the borders of its members [6]. RTA investment norms are part of RTAs on investment arrangements, and they take various forms, appearing in separate chapters or specific articles in the agreements, such as Chapter 11 of NAFTA, Article 89 of China-Costa Rica FTA, etc. Although the number of such RTAs is relatively small at present, they have an important place in international investment treaties as well, and their number is growing year by year [7] and will have an increasingly important position in the international investment treaty system.

BITs and RTAs investment norms are an important part of the IIA system. According to a study by UNCTAD, the total number of IIAs was less than 3,400 before 1998, and by the end of May 2011, more than 6,140 IIAs had been concluded, of which more than 2,830 were BITs and 314 were FTAs and other types, involving 63 countries [8]. BITs are undoubtedly the oldest in the IIA field, sitting at the top of the IIA hierarchy, but their development has been slowing down in recent years, in contrast to the emergence and rapid development of investment norms in regional trade agreements, which the UNCTAD study claims may replace the traditional BITs [9].

Therefore, in this chapter, we intend to combine the characteristics of BITs and RTAs and try to find ways that can solve the four problems that exist in international investment law.

Among various types of regional trade agreements, free trade agreement (FTA) has become the favorite type of regional trade agreement. As of December 2006, 84 percent of existing regional trade agreements had adopted free trade agreements. The speed of FTA negotiation, the flexibility of FTA relative to other RTA types, i.e. Customs Union (c.u.) and partial scope agreement (PSA), and the less loss of autonomy encourage the constituent parties to choose FTA[10]. Compared with other types of regional trade agreements, developing countries even prefer free trade agreements [11].

3.2. Solutions on current challenges

3.2.1. Inconsistency

The geographical scope of existing bilateral investment treaties and regional investment treaties is different, and there are also great differences in substantive content, specific content and legal nature. Even if they are put together, it is impossible to establish a completely consistent and comprehensive international framework for FDI.

In addition, the production and today’s enterprises’ distribution process often include more and more countries simultaneously. The bilateral investment treaties concluded by EU member states are distinct from these by the US in many perspectives. Simultaneously, many investment agreements, especially bilateral investment agreements, promote the concept of investment (national treatment, most favoured nation treatment, fair and equitable treatment, adequate protection and security), This may lead to different understandings of the same general obligations under various agreements.

When evaluating bilateral investment treaties and regional trade agreements, the principles of interpretation of the Vienna Convention on the law of treaties should be observed. It indicates that the treaty "shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.".

Therefore, the provisions of international agreements must be interpreted in the general sense of their provisions. Article 30, paragraph 2, provides that "when a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.". However, a later treaty, having less generous provisions, would not necessarily be compatible with the previous one. The Chairman of the Drafting Committee of the Vienna Convention on the Law of Treaties paves the way the following example: "if a small number of States concluded a consular convention granting wide privileges and immunities, and those same States later concluded with other States a consular convention having a much larger number of parties but providing for a more restricted regime, the earlier convention would continue to govern relations between the States parties thereto if the circumstances or the intention of the parties justified its maintenance in force[12]."

The public's understanding of provisions and uncertainty in the obligations of the contracting governments may be confused. Therefore, the member states need to set up an appellate body and add investor obligations and social responsibility clauses to the agreement. MERCOSUR Protocol did a great job in this area. Most of the characteristics of Brazilian ACFIs are shown in the MERCOSUR Protocol, while it also increases provisions or commitments that would not be fo in previous ACFIs, for example, the substantive provisions include "access to justice" and "due process" (Articles 4.1 and 4.2), and the article relating to the" obligations of investors" (Article 13).

3.2.2. Policymakers

The fundamental nature of international investment behavior being regulated by both international and national laws makes conflicts from two different legal systems inevitable in international investment behavior. These conflicts become the main source of frequent interactions between international and national laws in the regulation of international investment behavior. In the context of BIT and domestic law, direct interaction is manifested in the direct application of each other's laws, while indirect interaction is manifested in the domestication of international law and the internationalization of domestic law.

The domestication of international law is of greater interest today. The deviation of domestic law from the BIT is one of the major reasons for the domestication of international law in international investment law. And this kind of legislative deviation is significantly obvious between the foreign investment of developing countries and the BITs that they have signed previously. Take Vietnam - domestic foreign investment law as an example [13]. In the process of interaction between BIT and domestic laws, the domestication of international law will make domestic laws on foreign investment reflect the characteristics of BIT in terms of value pursuit, i.e., promotion and protection of international investment, with less attention to the protection of domestic laws. Therefore, in the process of domesticating international law, legislators need to pay attention to optimizing the domestic legal system so that there are laws that can regulate and control the problems that may arise in the future so that foreign enterprises can develop in their own countries according to the track predetermined by their own governments. Enterprises will also be able to grasp the direction of national policies and develop themselves better. While improving the law, we should also be alert to the variants of BIT so as to clarify the definition of investment, add special provisions, and explain the industries that do not appear in the negative list but may appear so as to provide a guarantee for future negotiations; establish an international arbitration institution in line with the world on the mechanism of investment dispute settlement, increase transparency, so that cases with differences can be selectively arbitrated in the national arbitration institution of the country; and increase the cost of litigation. The cost of litigation should be increased to prevent abuse, and the remedy mechanism should be increased to provide an opportunity to appeal after an unfair award. The Constitution, individual laws, administrative regulations, departmental regulations, local laws, and local government regulations should be harmonized and systematized to strengthen the supervision and management of foreign investment.

3.2.3. Challenges for developing countries

Theoretically speaking, developed countries have higher levels of economic development and more advanced technology than developing countries, and the signing of RTA between developed countries and developing countries is of great significance to the industrial transformation and upgrading of developing countries. In addition, the economic operation mechanism of developed countries is more mature, and the market mechanism is better; developing countries can learn from and improve their economic system. However, due to the different levels of economic development between the North and the South, the difference in interests makes the North and South countries constantly diverge, so developing countries, while relying on developed countries to drive, should also strengthen cooperation among themselves to promote a further increase in trade and narrow the gap in trade volume with developed countries. Member countries should further reduce tariffs and establish a regional economic integration organization with a higher degree of liberalization; strengthen financial and technical cooperation among countries to develop mutually beneficial cooperation among countries and strengthen cultural and policy exchanges among countries to achieve synergistic national development. But policies for regional economic integration in developing countries are often difficult to coordinate. There is a lack of policy unity among the member countries of developing country integration organizations, and the capacity and attitude of each member country to implement integration policies vary, and many policies remain only in words but not in practice. There are also the disadvantages of small domestic markets that make it difficult to absorb goods from other member countries.Moreover, most of the member countries, especially the new ones, have small domestic markets, and intra-regional trade cannot develop better due to the limitation of market size. Thus, it seems that only through self-reliance and development can developing countries make progress, gradually narrow the gap with developed countries, and better integrate into regional economic integration.

4. MULTILATERAL INVESTMENT TREATY + RIA + BIT

For challenges of the current international investment law regime mentioned in Part I, a possible solution is to establish a new system containing bilateral investment treaties (BITs), regional investment agreements (RIAs), and a multilateral investment agreement (MIA).

4.1. Description of the system

The system with all three possible agreements on international investment affairs should work like: First, an MIA should be signed and ratified by most of the countries in the world. Therefore, the agreement can work as a baseline rule of all international investment affairs. Then, considering possible loopholes in the multilateral treaty, countries may sign several RIAs. Those RIAs will not be a necessity for a state to join the new system, but they will help those countries who want to keep more power on regulating foreign investors. So countries may join any RIA, and they can also establish one by themselves if they want. Contents of RIAs should show more protection on the rights of countries, and thus the interest of investors may be reduced. Such a balance between regulating power and attractiveness to investors should be taken into consideration while a state wants to join an RIA. Finally, if countries are still not satisfied with limits on regulating power based on the RIAs they have joined, and such a claim has not been recognized by more than two countries, those countries can sign and ratify BIT with other countries individually. The content of BITs will further strengthen the national regulation power, although it may reduce the attractiveness of investors.

Together with all three kinds of agreements, countries can weigh their needs for foreign investment against their needs for regulating power and thus choose to which extent of agreements they would sign and ratify.

4.2. Solution on current challenges

4.2.1. For the challenge of inconsistency

For this issue, the new system is based on MIA. RIAs, as supplementary norms, only enter into force in the region, and BITs, as a further supplement, only enters into force for Contracting Countries. Under such a system, if a dispute arises, the two parties involved shall first comply with the BIT signed by the two countries, if not, the RIA belonging to the two countries, and if still not, the MIA. In this way, the dispute can find a unique specification, and thus the consistency is reached.

And the inconsistency problem is partly caused by the conflict of interests among various parts of the world, which is the primary reason for the tragic failure of MIA (short for multilateral investment agreement) [14]. First, there exists a huge discrepancy in the political values, economic institutions, and cultures of different States. The developing countries raised strong opposition against the proposals contemplated during the negotiations. Second, the difference also exists among different parties involved. Parties that desire to draft this agreement organized by the OECD (Organization for Economic Cooperation and Development) involve State governments, the business community, and the labor movement. Each of them has their own requirements. As for the labor movement, which is the most mobilized one, instead of making suggestions through their representatives, it debated and lobbied. Later, it partially joined the NGO anti-MAI campaign and appealed for a so-called balanced approach. Finally, the NGOs were excluded from the eligible parties to negotiate such an international investment treaty [15].

However, the WTO can mend these conflicts. If the incremental negotiation round is transplanted into investment issues, the conflict of interest can be made up. One example is the concept of "investment", which leads to great differences between countries. For example, South Korea advocates a narrow definition of investment, including only foreign direct investment, but the United States prefers a broad definition of investment, including portfolio investment. As the characteristics of foreign investment, especially foreign direct investment, have changed significantly over time, negotiators should adhere to the basic principles [16]. In that regard, the view that it was up to the host country to determine what FDI was also worth considering. This definition can be gradually expanded in the periodic incremental negotiation rounds.

Meanwhile, the WTO can ensure the sustainable development of the international investment law regime [17]. Instead of creating separate BITs between them and other States or forming regional interest groups in conflict with other regions in the world, all member States of the WTO will be able to seize the opportunity of the negotiation grounds set in the WTO system to save transaction costs and push the development of the investment law framework.

4.2.2. For the challenge of policymakers

The main problem encountered by policymakers is that different bits have different requirements for countries. Therefore, there will be contradictory problems in translating BIT into domestic law. However, under the new system, the transformation of international investment law into domestic law can be based on MIA. On top of this, add the contents of the participating RIA. If BIT is signed, it can be used as an exception. In this way, contradictions can be minimized in the transformation into domestic law.

Meanwhile, the complex exchanges between investment and other commercial fields make it more difficult for policymakers to assess the legal significance, risks, and policy implications of the treaty. For this issue, the new system based on Mia and RIA will be updated every three to five years to strike a balance between solving new problems faced by international investment and ensuring relative stability. A relatively stable mechanism can help policymakers better assess the legal significance, risks, and policy implications of the treaty.

4.2.3. For the challenge of developing countries

The challenges facing developing countries are multifaceted.

First, developing countries need to incorporate international investment law into their economic development policies. In this regard, the new system can provide multiple RIAs for selection, from which developing countries can choose the most suitable policies for their own economic development. In addition, developing countries can establish their own RIA so that the treaty can be well integrated with economic development policies.

Second, developing countries need to ensure the consistency of domestic policies. In this regard, under the new three-tier system, MIA will only change by absorbing the same parts of each RIA, and this process will not be very frequent. Therefore, developing countries will not have much problem in ensuring policy coherence.

Third, developing countries lack the ability to fulfill their responsibilities and understand the treaty. In this regard, the MIA in the new system not only gives investors freedom but also reduces the state's protection of investors so that developing countries are also able to fulfill their responsibilities. For the understanding of the treaty, we can only expect developing countries to understand it by themselves in the process of development.

The fifth challenge is the attraction to investors after commitment. In this regard, MIA will be the most favorable policy for investors all over the world. Developing countries cannot join RIA or join RIA with fewer restrictions on investors to increase their attraction to investors.

In addition, developing countries have more demand for funds, so it is easy to make concessions on the treaty, which will lead to the loss of their basic rights. In this regard, under the new system, MIA will be the most relaxed specification for investors. RIA and BIT can only strengthen the national regulatory power but cannot strengthen the protection of investors. Thus, at least the basic rights of developing countries can be guaranteed.

In short, the new system can solve most of the difficulties encountered by developing countries, but there are still some problems that cannot be solved.

4.2.4. Imbalance between home states and investors

Under the structure provided in the article, it is mentioned that multilateral investment agreement will set an upper bound for foreign investors to limit the maximized benefit they may achieve while no other limits will be added to investors. It seems to be a scaling back on protections on investors. However, such a goal could be achieved by providing only for the fundamental rights of the host country. In this way, due to the application of the principle of private law autonomy, investors can get the maximum freedom if they do not infringe the basic rights of the host country when signing investment contracts. Of course, the opposite to freedom is risk. Also, the risk can be reduced by services of international investment insurance such as MIGA. This may cause both sides of the balance to be reversed, that is, investors are too strong. However, with the accession of RIAs and BITs, the host country will be able to further restrict investors at the cost of reducing its attraction to foreign investment. In addition, the system proposed in the article will also be updated over time, which will gradually achieve a balance between the host country and investors.

Although the system can not directly solve the imbalance between investors and host countries, in the long run, such a system can provide hope to solve this problem.

5. CONCLUSION

The combination of a new structure and the solutions either from part II of the paper (regional treaties with BITs) or part III of the paper (multilateral treaties with regional and BITs)

5.1. Solutions on current challenges

5.1.1. Inconsistency

The combination of the solution from part II and part III would solve the issue of the inconsistency involved in the current international investment system. In order to avoid the vagueness of words, terms, or treaties in the international investment agreements, at the time of drafting agreements, attention should be paid to the wording and language, detailed provisions, terminology, and nomenclature. When specifying and creating provisions, terminology, professional terms should have clear and straightforward definitions and specific distinctions between jurisdictions. Structurally, the creation of the baseline would be necessary to solve this problem. Although there are still BITs that vary from country to country, all BITs cannot cross the baseline established internationally, and all regional agreements are not able to go beyond the floor set by multilateral treaties. Thus, under this situation, regionally, investment law has a consistent minimum standard; globally, investment law also has a uniform minimum criterion. The establishment of a single and authoritative dispute settlement organization would address the problem of too many different dispute settlement mechanisms.

5.1.2. Over-protection of foreign investors

For the issue of overprotection of the foreign investors under the international investment law, BITs and regional treaties did not provide very great ideas here. However, under the structure built from part III, the share and equal obligation of foreign investors and the hosting states, the future would be promising.

5.1.3. Policymakers

The current international investment law also creates difficulty for policymakers to integrate the new international investment agreements into their domestic economic provisions. Because the regional treaties and BITs still have geographical limitations, they could not solve the problem fundamentally. However, the combination of multilateral agreements would provide some new ideas. The frequency of updating the MIAs and rewriting of MIAs' contents would be restricted, which paves the way for policymakers to have enough time to process these new agreements into their domestic economic situations. In addition, under the framework from Part II, policymakers would also have the right to decide what would be beneficial to them the most, joining a BIT or MIA.

5.1.4. Developing countries

The challenges posed by the international investment law to the developing countries would be another significant issue. Either Part II and Part III would not have a perfect solution. However, the combination of BITs and regional treaties, Part II, provides a potential idea. Developing countries should cooperate to form an alliance according to their common interests. The reality is always cruel. The Association of Southeast Asian Nations is a great example here. Although Southeast Asian nations came together and formed the association, the fruits were not desirable, and they did not achieve what is expected. In order to further help developing countries, the establishment of the baseline protects the basic rights of developing countries to prevent any excess. Under the case of ensuring the basis, developing countries could seek over foreign investors by signing more stringent regional treaties that would be more beneficial domestically. Meanwhile, the existence of an investment insurance agency like MIGA reduces the impact on uncontrollable variables for foreign investors or companies.

5.2. Potential Political challenges

Under the structure that is proposed in the article, there would be some unavoidable political challenges. For example, most states need to ratify a universal multilateral treaty in order to solve the problems that are posed in Part I. However, this would be impossible, because different countries have various political environments and structures. China holds communism with the central government. The US utilizes federalism with three government branches. The distinct political values raise the difficulty for most states to hold one common idea to sign a uniform multilateral treaty. Therefore, it would not be realistic politically to have a common multilateral treaty. Under the situation, a global economic crisis, such as the one in the 1990s, many states would cooperate to accept and sign such as a treaty. The G20 was established in order to overcome the emerging economic problems in the 1990s and to respond to a growing recognition that some countries would not be properly represented in global economic discussion and governance. The G20 successfully addressed the global financial and economic crisis of 208 under the cooperation of many countries. The formation of the G20 is a great example to demonstrate that under the common economic crisis, countries would put down their political conflicts and work together to fight the problem [18]. The universal economic goal and the consensus of this multilateral treaty from different countries would be necessary for this treaty to be widely adopted. In order to achieve this goal, states should strive to explore a common economic goal that is beneficial globally and take off the political conflicts or ignore the unnecessary political difference or conflicts between them.

REFERENCES

[1] Julie, A.M. (2013) Transparency in International Investment Law: The Good, the Bad, and the Murky. In: Andrea, B. & Anne, P. (Eds.), Transparency in International Law. Cambridge University Press, Cambridge. pp. 142-171

[2] Roberto, E. Pierre, S. (2013) Prospects in International Investment Law and POLICY: World Trade Forum. Cambridge University Press, Cambridge.

[3] Ivar, A. (2020) The Justification of Privilege in

International Investment Law: Preferential Treatment of Foreign Investors as a Problem of Legitimacy. European Journal of International Law 31, no.1: pp. 289-312.

[4] UNITED NATIONS, (2006) SYSTEMIC ISSUES IN INTERNATIONAL INVESTMENT AGREEMENTS (IIAs).

[5] UNCTAD, (2021) 29 Bilateral Investment Treaties Signed by Least Developed Countries in Brussels. https://unctad.org/press-material/29-bilateral-investment-treaties-signed-least-developed-countries- brussels.

[6] Yu Jinsong and Wu Zhipan: International Economic Law (2nd ed.), Beijing University Press and Higher Education Press, 2007 edition, p. 284.

[7]See https://corporatefinanceinstitute.com/resources/knowledge/economics/regional-trading-agreement

[8] At present, the number of such RTAs reaches 314, and more than 100 are under negotiation. See WIR 2011，UNCTAD

[9] See WIR 2011, UNCTAD [10]Id, p. 1.

[11] Investment Compact Regional Roundtable on Bilateral Investment Treaties for the Protection and Promotion of Foreign Investment in South East Europe 28-29 May 2001, Dubrovnik, Croatia, pp.6-7.

[12] Investment Compact Regional Roundtable on Bilateral Investment Treaties for the Protection and Promotion of Foreign Investment in South East Europe 28-29 May 2001, Dubrovnik, Croatia, pp.7, 10-11.

[13] Quoted in I. Sinclair, The Vienna Convention on the Law of Treaties, Manchester University Press, 1984, p. 97.

[14] Ruan Yingde，Study on Foreign Direct Investment Policy in Vietnam [D], Anhui: Anhui University, 2013:28

[15] Tieleman, K. (2000) The Failure of the Multilateral Agreement on Investment and the Absence of a Global Public Policy Network, Case study. In: UN Vision Project on Global Public Policy Network. Washington DC. pp. 1-28.

[16] Kavaljit Singh (2003), Multilateral Investment Agreement in the WTO: Issues and Illusions.

https://www.madhyam.org.in/multilateral-investment-agreement-in-the-wto-issues-and-illusions/

[17] Berger, A., Sauvant, K. (2021) Investment Facilitation for Development: A toolkit for policymakers. International Trade Centre (ITC) Publishing, Geneva.

[18] “G20 Finance as Prelude,” The Group of Twenty (G20), April 2013, pp. 48-66, https://doi.org/10.4324/9780203071236-11.