

## Sovereignty Issues and Legal Framework Challenges for Foreign Direct Investment in Developing Countries

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Received: 2023-March-20

Rev. Req: 2023-April-09

Accepted: 2023-May-16



10.59683/ijls.v2i2.41

How to cite this paper: Keita, K., Yeon, A.L.B., Razak, A.B.A. & Abdullah, N.A. (2023). Sovereignty Issues and Legal Framework Challenges for Foreign Direct Investment in Developing Countries. *International Journal of Law and Society (IJLS)*, 2(2), 142-154. <https://doi.org/10.59683/ijls.v2i2.41>

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**ABSTRACT:** *A host state has faced sovereignty issues and challenges in adopting and applying a legal framework for Foreign Direct Investment (FDI) governed by International Investment Law (IIL). IIL provides certain protection to FDI in a host country. The protections have been considered standard in the liberation of the FDI, which could positively impact the FDI attraction into countries. However, the host state's ability to regulate the public interests for a common concern of the peoples, such as social, economic, environmental, and human rights achievement, is indeterminate in IIL, and it became mostly a challenge for the host states. These needs are increasingly being requested by the population from governments. This study looks at how the state's sovereignty power can be met in the adoption and application of laws and policies for the public's interest and assessment methods which are mostly used by the court in foreign investment disputes. An empirical analysis of the legal issue based on available literature is made. The findings of this study show that the necessity to understand the fears for sovereignty underpins the debate on its legitimacy in investment arbitration. The established sovereignty of state laws is shown in FDI and the desired areas of public interest regularisation. The international arbitral tribunals may reveal the right to balance between private and public interests in applying the national laws, which significantly show unclear and or open-textured international investment agreements (IIAs) provisions. The public interests are mostly applied to national laws over international law.*

Sebuah negara tuan rumah telah menghadapi masalah kedaulatan dan tantangan dalam mengadopsi dan menerapkan kerangka hukum untuk Penanaman Modal Asing (FDI) yang diatur oleh Hukum Investasi Internasional (IIL). IIL memberikan perlindungan tertentu kepada FDI di negara tuan rumah. Proteksi telah dianggap standar dalam pembebasan FDI, yang dapat berdampak positif terhadap daya tarik FDI ke negara-negara. Namun, kemampuan

negara tuan rumah untuk mengatur kepentingan publik untuk kepentingan bersama rakyat, seperti pencapaian sosial, ekonomi, lingkungan, dan hak asasi manusia, tidak dapat ditentukan di IIL, dan itu menjadi tantangan bagi negara tuan rumah. Kebutuhan ini semakin banyak diminta oleh penduduk dari pemerintah. Kajian ini melihat bagaimana kedaulatan negara dapat dipenuhi dalam penetapan dan penerapan undang-undang dan kebijakan untuk kepentingan umum serta metode penilaian yang banyak digunakan oleh pengadilan dalam sengketa penanaman modal asing. Sebuah analisis empiris dari masalah hukum berdasarkan literatur yang tersedia dibuat. Temuan penelitian ini menunjukkan bahwa kebutuhan untuk memahami ketakutan akan kedaulatan mendasari perdebatan tentang legitimasinya dalam arbitrase investasi. Kedaulatan hukum negara yang mapan ditunjukkan dalam FDI dan bidang-bidang regularisasi kepentingan publik yang diinginkan. Pengadilan arbitrase internasional dapat mengungkapkan hak untuk menyeimbangkan antara kepentingan pribadi dan publik dalam menerapkan undang-undang nasional, yang secara signifikan menunjukkan ketentuan perjanjian investasi internasional (IIA) yang tidak jelas dan atau bertekstur terbuka. Kepentingan umum lebih banyak diterapkan pada hukum nasional daripada hukum internasional.

**Keywords:** *International Investment, State Sovereignty, Investor Responsibility, Public Regulations, Investment Agreements.*

## I. INTRODUCTION

The world investors have been protected by IIAs in which the countries sign the treaty at the bilateral, regional, and multilateral levels. It is conceivable that most developing countries relinquish their sovereignty for international laws to regulate a specific rule relative to their responsibilities. Therefore, sovereignty is exercised when host States consent to investment protection standards in IIAs and legitimately regulate any subsequent practice restricted by reference to these standards (Guntrip, 2016). The debate over the extent to which IIAs delimit State sovereignty and has emerged in international arbitral courts (Cotula, 2014). For instance, The right of sovereign control over social, economic, and environmental issues is being compromised by investment treaties. While most treaties do not specifically indicate the circumstances in which the host state may restrict investors' rights, they have still imposed some significant obligations on hosts without aligning these rights with their obligations (Mengie, 2016). The rights and duties must be reciprocated between investors and host states, as shown in most national legal frameworks on FDI. The FDI is governed under IIL, such as bilateral investment treaties (BITs), regional investment treaties (RITs) and multinational investment treaties (MITs) and others. Thus, the country's sovereignty suffers as a result of supranational rules, and the state is unable to balance foreign investors' interests in the country.

"The main claim that has caused the inequality is that capital-exporting countries are constantly determined to maintain their political and commercial control in IIAs (Miles, 2010). Host states have raised a serious concern about the notion of indirect expropriation, for example, which is established to protect the FDI from invasive

regulatory measures applied broadly in many domestic regulations. Whereas the tribunal's interpretation causes concern, this is because the open-ended language in investors' rights may be abridged for public interests. The rationale of specific abstract and general laws implemented to defend the public interest, whether for social, environmental, human rights, or to fulfil emergency demands, is far too rarely stressed in the function of states as regulators, in particular. Additionally, investment-related issues are the main focus of investment treaties in arbitration courts, which looks to be dangerous to the efficacy of other international legal systems, especially those pertaining to human rights and environmental regulations (Kingsbury & Schill, 2010). Therefore, developed nations have control over an IIL and continue to use it to support the most disadvantaged people.

On the other hand, the tribunal has repeatedly expressed concern about the state's abilities. The interests have been misinterpreted as IIL standards, such as in the narrow framework of investor claims and IIL, in the concepts of fair and equitable treatment, and indirect expropriation has been formed without sufficient consultation with other international law authorities (OECD, 2004). In this regard, the study addresses the concerns raised and accounts for the impact of non-investment-related issues within the IIL and arbitration system. Or the host country exercises its sovereignty over its affairs with no oversight from developed countries. However, investment tribunals use this supervisory authority in host state legislation to resolve conflicts between investor rights and other public interests based on host state policies and regulatory frameworks. As a result, state legislation must often appear sufficient in the case between the parties concerned. In order to balance rights and rights-restricting policy options, the arbitral tribunals could depend on international investment norms and national law conceptions.

In this light, the host state's regulatory difficulties and issues are based on an interpretation method through the IIL principles, which is similar to the methods used by various dispute resolution agencies to settle disputes through the competition between rights and obligations (OECD, 2004). These competing rights and duties are seen as uncountability of host state sovereignty in a specific principle imposed for public interests. In the context of indirect expropriation and fair and equal treatment, for instance, anytime the state's regulatory discretion is constrained by IIL. The finding of this paper will be useful because the primary measures for protecting foreign investors and property rights are those implemented by the home state (Saghir, 2019). At the same time, developing countries continue to bear the brunt of developed countries.

The legal framework for FDI is required to guide host state law enforcement bodies from a legal and policy perspective and guide government agencies in contracting bilateral investment treaties (BITs) with developed countries. The IIAs were influenced by contracting nations, which immediately impacted the host state's national sovereignty and its ability to take legal action against foreign corporations (Bernasconi-Osterwalder, 2003a). Therefore, they ought to promote public policies that serve the public interests of the state and the entire international community must be passed as laws and regulations that apply to both investors and states in controversial situations (Schill & Djanic, 2018). In addition, the creation of defined regulations and standards of treatment between the parties significantly protects FDI and investors from the unlawful conduct of

host States even though the inconsistencies and incoherence with IIL regimes have been seen as issues and breaches between the expropriation provision and other essential investment treaty standards (Levy, 2015). The state's regulatory and policy actions must be examined to see if they breach IIA rules. Kidane, W. examines the right-to-regulate exceptions provision as an IIA-compliant provision and the ability of treaty-making practice is providing substance to the broadly conceived notion of the right to regulate; all IIA stakeholders are therefore in need of support (Kidane, 2017).

Consequently, it is confirmed that a multilateral agreement and national investment law play important roles in determining the obligations of the investing partners (Sauvant & Grosse, 2018). In this view, they warned that all businesses operating abroad are subject to the laws and policies of their host countries, including their rights and obligations. However, it has also expressed an essential regulator for ensuring neutrality in the forum and reaffirmed the recent arbitral awards on foreign investment, which had determined the line between the legitimate need for state regulation in the pursuit of the public interest and the protection of private interests against state interference (Vadi, 2020). For example, in the case of Philip Morris Brands Sarl v. the Oriental Republic of Uruguay, competing interests, the public health interests of Uruguay's public health measures aimed at restricting the marketing of tobacco products were involved (Lencucha, 2010). In this case, the tobacco company claimed that the Uruguay measure had breached its obligations under the Switzerland-Uruguay BITs. The tribunal upheld the legality of these regulatory measures.

The failure to apply national law may lead to conflict between governments and investors because the state's ability to regulate under national law is limited by IIL, which primarily serves to safeguard foreign investors (Zamir, 2017). It has been shown that the country's regulations do not include dispute resolution procedures for resolving potential conflicts between host states and foreign investors to advance the public order's vital security. However, the bid titles of protection given by IIAs mainly focus on foreign investor protection. In contrast, unlike the state view, an agreement binds investors' social and environmental responsibilities subject to legally binding law. According to the government, the national legislation and administration violated international investment responsibilities (Zhu, 2017). However, pointing out how the host state's environmental regulations are inconsistent with the foreign investment agreements when fair and equitable treatment laws are passed to execute international environmental duties through investment agreements (Zhu, 2018).

It can be argued that no doubt, the addition of investor and state settlements provisions in more bilateral treaties continues to have an impact on the flow of FDI, and it might be maintained. The interpretation of ISDS may limit the sovereignty of the country for controlling foreign direct investor activities (Amariles & McLachlan, 2017). However, defending the application of the host state's law as a standard of protection should be in open end assessment of arbitrators for competing public interests in FDI (Kingsbury & Schill, 2010). Because developed countries did not adopt the open foreign investment policies that they now demand of developing countries when they were developing countries themselves, the purpose of IIL and ISDS is to liberate FDI (Chang, 2004a). The argument behind this is the significant differences between legal terms used by

developed countries and current terms used in bilateral, multinational, and regional agreements. Most current analysts concur that industrialised countries used both formally implemented policy measures and unofficial restrictions to balance the interests of domestic and international businesses. In summary, the liberalisation of FDI harms hosts state policy spaces due to the weight of developed countries in the application of their political and commercial influence into developing countries.

## II. METHOD

The study employs legal theories to investigate micro-social phenomena and cultural understanding of investors, state experience, interactions, and FDI institutional framework for FDI. The research analysed and provided an interpretation of the existing literature and the theory and practice applied to regulatory issues. The method used is valuable to identify the mechanism underpinning the related processes, especially those that develop and occur over time. However, the strategy is to emphasise the host state's control over its legal system and to favour the nation in cases of uncertainty (Sattorova, 2019). The process can be altered to emphasise the goals of an investment treaty, such as those listed in the pertinent preambles, and can finish, for instance, by fostering an environment that is favourable to investments. While the agreement results in a typical requirement in favour of the investor's legal interests over that of the state. Finally, in some cases, it may be possible to avoid these two positions by basing a decision solely on the language of a treaty and its ordinary meaning (Dolzer, 2004).

## III. RESULT AND DISCUSSION

### *Regulatory Development and Protection of Foreign Direct Investments*

Undoubtedly, the development of IIL in this last half-century has left a remarkable achievement of international cooperation in the form of liberalisation of the finances through a plaque form of IIAs, such as multinational, regional and BITs between the countries. These IIAs are becoming increasingly important in the development of developing countries (Bird-Pollan, 2018). The treaties may be signed by developing and developed countries or among developed or developing countries to improve themselves. Therefore, the right of a state to regulate FDI and exercise jurisdiction over foreign direct investors' activities in its territory is firmly established in customary international law as a feature of state sovereignty or more properly, territorial jurisdiction (Chang, 2004b). Only where the host state has made treaty commitments to protect this right for qualified foreign direct investors in powers of entry, establishment, or special treatment, as well as general international law rules governing the treatment of aliens, is protected. Also, the current network of international law instruments has dramatically influenced the content of national laws and policies on FDI. The efforts of many international organisations are to reconcile the national law and IIAs, which involved the complexity of the relationships between foreign direct investors and their host countries because of their impact on national investment regimes (Drabek & Payne, 2002). Thus, the countries' legal approaches to shaping their FDI regimes vary greatly and

depend on domestic political considerations, economic theories, developmental goals, and perceived national interests (Shihata, 2010).

The right approach adopted by developed countries is generally not to have specific laws for the encouragement or promotion of FDI in developing countries through such existing policies. Still, developing countries' legislation and regulations dealing with investment matters tend to exclude FDI in certain areas of concern. On the other hand, particular rules governing FDI by developing nations may have a tight reflection on the requirements of local people that FDI directly impacts. Separately from allowing national FDI legislation to regulate these issues, the questions may differ dramatically between two broad groups of countries. Changes taking place in the two nations (Brazil and South Africa) come into being in the backdrop of heightened opposition to the conventional investment protection model and may have an impact on reforms aimed at expanding policy options for development. Therefore, the developed countries are unilaterally imposed external protections in bilateral and multilateral movements in customary international law. The movement of these agreements took two forms, the first being investment treaties and the second being investment insurance (Saghir, 2019). The most common method of protecting FDI in importing countries is investment insurance, which consists of safeguarding foreign assets against political risk. These dangers can lead to legal uncertainty for FDI. Furthermore, some authors asserted that diplomatic pressure as a method of FDI protection is politically risky (Gertz, 2015). As a result, most home countries use diplomatic protection for their respective investors in importing countries over political risk. State policy constraints are manifested in strict controls on FDI entry and establishment while foreign capital investors are permitted to invest, but there are several performance requirements.

Foreign investors' requirements are typically subject to various assessments in importing countries, such as a license of operation, which is required authorities' consent. The protection methods are frequently time-consuming and based on imprecisely written rules to allow for a significant amount of administrative discretion. Transfers of capital and earnings are subject to general currency controls, and foreign worker employment is strictly regulated (Abdul-Rahman et al., 2012). The policy concerning foreign employment depends on the countries; some require the minimum local inputs, export ratios, and local employment ratios in importing countries. The right approach to attracting FDI in a specific sector is based on incentives. This type of legislation focuses on fiscal (tax exemption) or other incentives to attract and channel FDI to specific areas or sectors of the national economy. Such strategies have been shown to distort global FDI flows while providing little or no benefit to the host country's economic development. In contrast to enhancing the exercise of these rights by foreign investors, FDI regulation under such regulations is designed to restrict it.

The general legal guarantees of FDI protection are usually stipulated as "fair" or "appropriate" compensation in the case of foreign property expropriation in importing countries. This mostly occurs in the application of public interests such as environmental protection and public health, but it is noted that the statutes need to be more specific or more specific on the issue of the valuation of such property. The request for arbitration is seen as acceptance of the foreign investor's offer to significantly reduce its investment to



accomplish this goal. Additionally, most BITs employ similar clauses that give foreign direct investors a remedy against abuse of state power that may apply to virtually every asset owned in the host state's territory because these kinds of agreements typically contain a broad but non-exhaustive definition of "investment" (Pupolizio, 2016).

In short, most visions for investors' protection include the most favoured national standards and the right to fair and equitable treatment, even though these protections do limit state powers through the implementation of national law. However, the guarantee permits foreign investors' attraction to the host state. Therefore, the issue of sovereignty in IIAs has provoked many indigenous people in most developing countries. The host state's ability to enact social, environmental, and economic rules that do not discriminate between domestic and foreign direct investors although, it is what limits the agreement. Therefore, As soon as states recognised the scope of the restrictions at the national level, IIAs would prompt them to take appropriate responses. In this light, constraints that the host state will not accept include any interference with the protection of public interests for the population's needs, for example, legal framework limitation based on social, environmental and economic development. Then, any host state will also refuse to accept the restoration of the tradition of sovereignty in these cases. Accordingly, most experts in international law believe that sovereignties tend to affirm FDI in the country, and the IIAs are merely suggested as a means of implementing freedom rather than serving as a symbol of its restriction. Thus, the exercise of sovereignty is unlimited and the state's power regulates the state's power regarding their needs.

### ***International Investment Agreements' Impact on Host State Regulatory Powers***

It can be argued that the pressing impact of the FDI agreement on the host state is the restriction of the state power, in which is reducing the scope of sovereignty to a multilateral or bilateral investment treaty. The investment treaty may limit the state's ability to subject foreign investors to its domestic administrative and legal system (Dolzer, 2004). Therefore, the framework of investment treaties is a critical instrument to promote the flow of investment between countries' parties to an agreement and ensure the protection of investments in the event of policy changes. This mechanism is considered the way of international law diversity on the contracting state's sovereignty in IIAs. Moreover, FDI flows are unaffected by the host country's worries about FDI regulation, which instead serve to maintain a balance between investor and state interests. FDI's interest balancing has become a point of contention. While if the objectives of investment have been maintained in the economic base of the host country, and as the most recent improvements in IIAs have demonstrated, the majority of host nations are more willing to welcome FDI and create a favourable investment climate than to concentrate on their sovereignty rights in regulating FDI. In this regard, the founding rules are transparent and investor-friendly, thereby boosting FDI inflows into the host nation. Thus, the host country's entry-stage control over FDI can be based on several standards.

In this sense, the hosting nations may feel obligated to uphold their own national interests in economics, security, public safety, and other crucial areas of the public

interest for FDI because these FDI regulations manifest sovereignty and economic self-determination (Muminov, 2019). However, investment tribunals reinforce the regulatory freedom approach when they prioritise the terms of IIAs over host State sovereign powers. As a result, Foreign investors have been accused of undermining the regulatory powers of host States through the use of investor-state dispute settlement (ISDS), which has drawn criticism (Guntrip, 2016). However, the legislative framework established by an IIA is just one tool among several that states develop to attract foreign direct investors. Still, it is now crucial and, in some ways, even though the requirement is part of these efforts. Acceptance of such a regime's impact on domestic law is frequently seen as a necessary result of an environment that encourages investment rather than a drawback that should generally be avoided. Thus, states' legislative priorities have shifted from protecting sovereignty to attracting FDI.

In contrast, the priorities of developing countries should be independent of the activities of transnational corporations within their governmental jurisdiction. However, whether the FDI agreement is consistent with its national objectives and priorities must be determined. Neither country takes measures to ensure that such activities comply with its laws, rules, and regulations and conform with its economic and social policies (Popa, 2017). This thinking is the impact of FDI principles. The principle required taking note of the issue of international organisations. This essay explains why the foreign investment treaties contain only rights for foreign investors and minimal powers, if any, for investors from the host country, as well as responsibilities for the host state to increase these rights for investors. It is known that these duties result in limitations on the sovereignty of the host countries. Moreover, the treatment and protection of FDI are defined by national law, particularly the domestic law of the state objective. Therefore, the IIAs ensure the treatment and protection of the parties, whereas the national state must guarantee a transfer for investment offers.

The increasing protectionist nature of IIAs and the growing hostility towards ISDS. It stimulated the majority of the balance of substantive investment protection standards. Focuses on the procedural aspects of international settlement dispute resolution responses by states seeking to address ISDS detractors while maintaining investor protections (Wisner & Campbell, 2018). However, the international investment agreement should include a new provision that would protect the investor in cases where a host country applies its legislation in a substantially discriminatory manner to result in a de facto expropriation of a foreign asset or a considerable reduction of this asset. The multinational agreement should demand that an international tribunal determine that the legislation is materially detrimental to the investor to prevent this provision's overzealous invocation. As a result, the inconsistency between host states' government needs and the traditional aim of agreement differs, while balancing became challenging.

### ***Challenges Faced in the Application of International Investment Agreements***

The majority of legal challenges involving FDI are mostly occurring the adoption and the applicable law and policy between the parties. Numerous investors and multinational corporations (MNCs) seek statutory guarantees regarding FDI. From this perspective,



foreign investors exploring new markets by properly understanding the limits of protection available to them becomes of paramount importance (Saghir, 2019). Therefore, the link between IIAs and the conception accurately describes the scopes of investment protection within the contract and whether the agreements contain, for example, an arbitration clause which is allowing the establishment of a contracting state for suing any other contracting state. Arbitrators are also tasked with determining whether the host state directly or indirectly expropriated FDI to exercise its sovereign powers (Pupolizio, 2016). Arbitration provisions may offer these multinational entities permanent security against any law change that reduces their profit expectation, which is protected under IIAs, as the concept of indirect expropriation is largely unclear.

In this light, through a shared agreement that the other parties will not arbitrarily use their sovereign power to peril the value of assets, IIAs seek to entice investments by international firms in each of the contracting states. However, it claims that the IIAs should establish mutually beneficial rules that apply to governments' regular non-discriminatory exercise of regulatory authorities (Graham, 1998). The government should have the power to exercise sovereignty to regulate any circumstances where it might want the expropriation provisions in FDI regulations and policies without referring to the multilateral agreements. This aim is to cover a regulatory taking, for example, when a seemingly regular control actually had discriminatory impacts. Also, investor-state arbitral tribunals are requested to comment on actions taken by a state in exercising its regulatory authority against the financial harm caused to a foreign investor by that action. Thus, the host nations can exercise their sovereign right to control foreign investment entry and establishment on their territory by using a variety of policy instruments. The state's growing political concerns are reflected in the simultaneous introduction of the new policy or reinforcement of the current systems and procedures, specially dedicated to national security-related investment screening.

The current FDI procedure involves the need for firm registration and approval, and many states forbid or restrict FDI in particular economic sectors of the host country. Some host states prohibit FDI in the media and military materials open to national investors. Consequently, the evolving legislation about these distinct investment screening mechanisms focuses primarily on broadening the screening scope, expanding the disclosure obligations of foreign direct investors during screening procedures, or extending the statutory deadlines for the duration of screening procedures investment agreements. The majority of these criteria pertain to "national security," "public order," "defence," or "public safety". Because early IIAs did not positively impact the host state, and capital-exporting countries have also strengthened investor protection to ensure their political and commercial control over IIAs (Mengie, 2016). The principles are also addressing the potential for host states' systematic in devoting intervention.

As a result, governments and public interest groups have voiced worry over the potentially terrifying impact of such clauses on the government's ability and desire to create and implement policies for the advancement of the environment, society, the economy, and other forms of public welfare (Bernasconi-Osterwalder, 2003b). Due to the host nation's economic sovereignty, which threatens the interests of these foreign entities, there is a possibility that these issues will be implemented. It is also a well-worn

refrain that economic power should not be concentrated in the hands of foreign companies (Balasubramanyam, 2002).

In fact, all FDI-related challenges focus on the host country's desire to maximise FDI benefits while retaining solid control over the decision-making of foreign businesses. In addition, the relevant issue for discussion here, however, is the development of an appropriate legal framework that serves to mitigate the costs of investments while boosting their benefits to host countries. It means that the issue is whether or if there should be a set of universal laws and rules, with some exclusions, and whether or not they should be preferred to nation-specific laws and bilateral agreements (Balasubramanyam, 2002). At the same time, other performance criteria, such as the application of local content for particular sectors in developing nations, have been used to guarantee that FDI contributed to their growth. This condition has historically been applied by developing nations to make sure that FDI helped them to develop. Because of their development, developing countries meet local and national priorities, which is a critical lever for private investment for advancing environmentally and socially sustainable development. Thus, these requirements significantly weaken the negotiating position of developing country governments in their efforts to promote national environmental and social goals. IIL and practice exclude the regular exercise of sovereign regulatory powers.

#### IV. CONCLUSION

The IIAs are widely acknowledged for playing a crucial role in the economic development of underdeveloped regions of the world by affluent countries. One could argue that developed nations and a few potent developing nations are the main drivers of IIAs, defining and upholding the sovereignty question in IIL. Therefore, the investment provider must eliminate all legal obstacles and guarantee that a portion of the capital is invested in other countries with the most severe barriers before relief is granted. Comparatively, the transfer is investors' concern that their investments will be exposed to political risks. Furthermore, indirect expropriation by the host state government and other interference such as the non-observation of contractual obligations are based on IIAs, not national laws.<sup>51</sup> These agreements are the result of the state's responsibility to foreign investors. The investment was contractual is assumed to ensure the obligations based on the expenditures' readiness. The agreement, which is mostly affected by the investment providers, is therefore the title element of each investment's obligations.

The primary objective of this research touches a reasonable conclusion after analysing the portion of duty contained in these IIAs, i.e., to assess if a measure is generally acceptable to attain the goal and serves a genuine government interest in advancing FDI before the government or agency approves it of a developing country. Therefore, the agreements' provisions would not restrain the host state government's ability to make laws and policies on the social, environmental, and economics of their objective. No matter how the circumstances were, but those laws and policies do not discriminate between domestic and foreign businesses in the countries. The balancing rights between the parties on the protection of FDI is a legitimate exercise of police power by a host

state. For those reasons, regulation of the laws and policies that discriminate on the basis of nationality would likely not withstand a constitutional challenge. Actually, the more peculiar state sovereignty considerations relate to market involvement and regulation that can disfavour foreign investors are constitutionally endorsed legal statute for environmental, social and economy purposes.

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