

The Mega-Regional Trade Agreements (TTP, TTIP) vs. Bilateral Investment Treaties

Critical Issues and Policy Choices

By [Kavaljit Singh](#)

Theme: [Global Economy](#), [Law and Justice](#)

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A spate of mega-regional trade agreements with strong investment protection standards have been recently concluded or are currently under negotiations. The TPP (Transpacific Partnership) and TTIP (Transatlantic Trade and Investment Agreement) are prime examples of this growing trend. Way back in 1959, Germany and Pakistan signed the first Bilateral Investment Treaty (BIT) in the world. Without knowing, they marked a new era as many countries have followed their example since then. Currently, the international legal system that governs international investment flows consists of about 3000 BITs and other international investment agreements (IIAs).

In recent years, however, a large number of countries have faced costly international investment treaty claims on matters of economic policy, financial stability, and environmental and health regulation. This in turn has sparked many governments to rethink and revisit their current bilateral investment treaties regime. Serious questions are being raised by citizens and their representatives about the legitimacy and effectiveness of the BIT regime. The ongoing policy debates on reforming the multi-layered investment treaty regime call for collective thinking and constructive engagement by all stakeholders – governments, inter-governmental organizations, the private sector, civil society, think-tanks and academia.

A new book published by Both ENDS, Madhyam and SOMO takes stock of current developments and explores alternative approaches to reform investment treaties. It provides an up-to-date account of the model BIT reviews undertaken by South Africa, India and Indonesia. Some of the authors have suggested a broad gamut of useful policy solutions. The book attempts to launch a dialogue among government officials, legal experts drawn from academia, international organizations and civil society groups to address the systemic shortcomings of the current BIT regime.

“Almost all investment treaties include a so-called ‘Investor to State Dispute Settlement mechanism’ (ISDS), allowing investors to sue their host state when changes to regulations threaten to reduce profits. Many countries have already faced unexpected claims against them, because they wanted to implement new laws or rules to ensure financial stability, or to protect the environment or the health of their people,” – Kavaljit Singh, director of Madhyam, New Delhi.

“In recent years the awareness about the implications of prior little known international investment agreements has been growing significantly, and the call to roll back their regime is getting stronger. Several developing countries already terminated their BITs or are in the process of doing so. But also in the northern hemisphere the negotiations of new transatlantic trade and

investment agreements (CETA and TTIP) have led to a fast growing opposition against the ISDS-system amongst citizens as well as politicians.” – Burghard Ilge of Both ENDS, the Netherlands

The free-to-download ebook contains 19 distinct analyses by leading experts in the field, covering both national and international perspectives. Some contributions are written by current or former government officials, others are written by legal experts, researchers and economists based in academia, think tanks and NGOs. It is very rare to find contributions by authors from such diverse backgrounds in a single publication. The book covers a wide range of topics – from current trends in investor-state arbitration to the wider ramifications of investment treaties on sovereign debt restructuring, the extractive industry, intellectual property rights and human rights.

“The book fills an important void in our understanding of bilateral investment treaty regime that has evolved over the decades. I hope that this free-to-download publication will trigger a constructive public debate on the nature and the quality of cross-border investments. I am sure that such a debate will facilitate cross-border investment flows which are benign and consistent with the interests of the people at large in the recipient countries” – E. A. S. Sarma, *Former Secretary, Department of Economic Affairs, Ministry of Finance, Government of India.*

This book will be of prime interest to anyone concerned with issues surrounding bilateral investment treaties and international law. In particular, the book will be useful to policymakers, parliamentarians, private sector companies, NGOs, academics, lawyers, scholars and journalists.

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Book Announcement

Rethinking Bilateral Investment Treaties: Critical Issues and Policy Choices

Edited by Kavaljit Singh and Burghard Ilge

The cross-border investment flows are currently governed by bilateral and regional investment treaties. Today, more than 3,000 BITs are in existence globally. However, there are signs of growing unease with the BIT regime across countries and regions. The growing number of investor claims against sovereign states challenging a wide array of public policy decisions and regulatory measures has evoked deep concerns about the potential costs associated with such treaties.

A number of countries have been revisiting their BITs program since the early 2000s. In recent years, a backlash against BITs has gained momentum in the global South, particularly in the Latin America. Bolivia, Ecuador, Venezuela, and Nicaragua have all rolled back their BIT commitments. South Africa has replaced its BITs regime with a new domestic

legislation that aims to protect investor rights while safeguarding policy space to regulate in the public interest. In Asia, several countries are taking steps to protect themselves from costly investor-state arbitration. All these important developments call for collective thinking and constructive engagement by all stakeholders – governments, inter-governmental organizations, the private sector, civil society, think-tanks and academia.

This free-to-download ebook takes stock of current developments and explores alternative approaches to reform investment treaties. The book covers a wide range of topics – from current trends in investor-state arbitration to the wider ramifications of investment treaties on sovereign debt restructuring, the extractive industry, intellectual property rights and human rights. It provides an up-to-date account of the model BIT reviews undertaken by South Africa, India and Indonesia. Some of the authors have suggested a broad gamut of useful policy solutions. The book presents a debate that is very relevant to the ongoing initiatives to reform the BITs regime. It raises some critical policy issues which are missing in the current debates. The book attempts to launch a dialogue among government officials, legal experts drawn from academia, international organizations and civil society groups to address the systemic shortcomings of the current BIT regime.

The book contains 19 distinct analyses by leading experts in the field, covering both national and international perspectives. Some contributions are written by current or former government officials, others are written by legal experts, researchers and economists based in academia, think tanks and NGOs. It is very rare to find contributions by authors from such diverse backgrounds in a single publication.

This book will be of prime interest to anyone concerned with issues surrounding bilateral investment treaties and international law. In particular, the book will be useful to policymakers, parliamentarians, private sector companies, NGOs, academics, lawyers, scholars and journalists.

Contributors: Sarah Anderson, Brook K. Baker, Nathalie Bernasconi-Osterwalder, Martin Dietrich Brauch, Xavier Carim, Lorenzo Cotula, Patrick Dumberry, Pia Eberhardt, Michael Ewing-Chow, Kevin P. Gallagher, Saurabh Garg, Katrina Geddes, Burghard Ilge, Abdulkadir Jilani, Junianto James Losari, Cecilia Olivet, Manuel Pérez-Rocha, Prabhash Ranjan, Sudhanshu Roy, Kavaljit Singh, Ishita G. Tripathy, Gus Van Harten, Roos Van Os, Zoe Phillips Williams and James X. Zhan.

“The authors deserve special congratulations for bringing out this much needed well debated treatise, knitting together various strands of the subject. The bilateral investment treaties are unknown to the people, although they affect their lives substantially and for a long time to come. This book will help place the subject on public anvil for debate.” – *P. B. Sawant, Former Judge, Supreme Court of India*

“The book fills an important void in our understanding of bilateral investment treaty regime that has evolved over the decades. I hope that this free-to-download publication will trigger a constructive public debate on the nature and the quality of cross-border investments. I am sure that such a debate will facilitate cross-border investment flows which are benign and consistent with the interests of the people at large in the recipient countries.” – *E. A. S. Sarma, Former Secretary, Department of Economic Affairs, Ministry of Finance, Government of India*

“A comprehensive, critical and competent treatment of important aspects of bilateral

investment treaties, particularly their provision of investor-state dispute settlement mechanism, at a time when the current regime has come in for severe contestation on social, economic and environmental grounds, by governments and civil society organisations in both developed and developing countries, and alternative approaches are being seriously explored.” – *Muchkund Dubey, Former Foreign Secretary, Government of India*

“Rethinking, reforming, and where necessary terminating bilateral investment treaties is an imperative because of superior treaty obligations under the UN Charter and human rights conventions. This book tackles such complex issues in a lucid and readable style. Highly recommended.” – *Alfred de Zayas, Independent Expert on the Promotion of a Democratic and Equitable International Order, Human Rights Council, UN*

“Pertinent and urgent! This collection of contributions on the complex dangers of investor-state arbitration and a wide range of new attacks on the state’s legal order by transnational corporations should trigger academic, policy-makers and citizens’ mobilization for systemic reform.” – *Pedro Páez, Superintendent for Market Power Control (Ecuador) and Former Minister for Economic Policy Coordination*

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