

## OUR FUTURE IS IN THE EYE OF THE BEHOLDER – AN INITIATIVE FOR A GLOBAL INVESTMENT TREATY

*The existing international investment regime is not based on a multilateral international organization. This essay argues for the conclusion of an international, legally binding, global investment treaty (GIT), under the auspices of the United Nations (UN). Its wide mandate and equality of votes will ensure the appropriate context for creating a fairer international investment regime, balancing between a strong capitalist agenda and a contemporary outlook on social justice. Concluding a GIT under the auspices of the UN would primarily mean the systematic overseeing of its implementation across the globe and would provide the necessary context, resources and forum for discussion. It should emphasize the right to development, and consolidate and harmonise the main principles of international economic law, balancing them with other competing principles of international law, and moreover constitute an international investment court. Further, a GIT should promote investment and address the topic of corporate social responsibility related to the operations of multinational enterprises. The conclusion of a GIT would open new investment opportunities worldwide and provide an organised framework for development, with more legal certainty for investors. Public international law should offer new guidance.*

**Key words:** *global investment treaty; international economic law; international law; investment; development economics; poverty alleviation.*

---

<sup>1</sup> Sandra Simic, mag. iur., LL.M. (University of London, Queen Mary & University College London), Chief Adviser at the Croatian Financial Services Supervisory Agency (Agency). This paper is not in any way connected with the Agency. It represents the personal opinion of the author; e-mail:sandra\_law@europa.com; SandraSimic©2015. Acknowledgement: The author would like to thank the University of London, Queen Mary & University College London, for the postgraduate course in International Economic Law (International Programmes), which inspired her towards further reflection and research.

## 1. INTRODUCTION

This paper will argue for the conclusion of an international, legally binding, global investment treaty (GIT), under the auspices of the United Nations (UN), aiming to create a fairer world by balancing between the interests of developed and developing countries; as well as between a strong capitalist agenda and a contemporary outlook on social justice. Investment is the key for economic growth, innovation and development. However, it must not be taken out of context and become a value in itself. Investment should be seen as a tool for achieving the greater good, most importantly sustainable growth for all countries. The author believes that innovative legal thinking is needed to address these issues. This essay aims to explore various legal possibilities and practical approaches for changing the current state of the law.

## 2. CONTEXT

### 2.1. International Investment Agreements

According to the United Nations Conference on Trade And Development (UNCTAD) International Investment Agreements database, there are currently more than 3400 treaties and model agreements.<sup>2</sup> The existing body of investment treaties constitutes a regime.<sup>3</sup> Such treaties share many similarities in structure, language, purpose and principles. This regime, however, is not based on any multilateral international organization.<sup>4</sup> As a comparison, the global trade regime is covered by the World Trade

---

<sup>2</sup>Available at:

<http://unctad.org/en/pages/DIAE/International%20Investment%20Agreements%20%28IIA%29/IIA-Tools.aspx>; [17.10.2015.] “The IIA Navigator is the world's most comprehensive free International Investment Agreements database. It contains more than 3,400 treaties and model agreements, and allows for advanced searches by type of agreement, geographical region, country grouping, treaty status, full text, and treaty language”. More on this topic also in *Salacuse* 2010, 428-429.

<sup>3</sup> *Salacuse*, 2010, 431-432.

<sup>4</sup> *Salacuse*, 2010, 468., further elaborates that “individual international organizations – such as ICSID, which only facilitates the resolution of investor-state disputes; the Energy Charter Treaty organization and secretariat, which only concerns trade and investment in the energy sector; and the North American Free Trade Commission, which only deals with the application of the NAFTA – serve to support parts of the regime, but do not do so in a comprehensive fashion similar to that of the WTO.”

Organization<sup>5</sup> (WTO), which as of 26 April 2015 consisted of 161 member states, a Secretariat staff of 640 persons, and a budget of 197 million CHF for 2013.<sup>6</sup> Therefore, concluding a GIT under the auspices of the UN would primarily mean the systematic overseeing of its implementation across the globe and provide the necessary context, resources and forum for discussion.

## **2.2. Historical background**

An initiative for a global investment treaty was debated and drafted through a proposal for a Multilateral Agreement on Investment (MAI), under the auspices of the Organisation for Economic Co-operation and Development (OECD) between 1995-1998. The objective was to create multilateral rules regulating international investment in a more harmonised way, with high standards for the liberalisation of the investment regime, investment protection and effective dispute resolution procedures. Although the agreement was negotiated between the member states of the OECD, the intention was to create an agreement open to non-OECD states as well.

The initiative failed because of pressures from civil society which regarded the agreement as an excess of capitalism. The opposition came from many capitalist countries.<sup>7</sup> The draft was not balanced, since developed countries put forward primarily their own interests. As the title of this paper says, our future is in the eye of the beholder<sup>8</sup>. Therefore, a second attempt should be made under the auspices of the UN, since its mandate is broader (including not only economic but also social matters), and member states have equal votes.

## **2.3. Challenges**

Finding a single voice between the developed and developing countries would be a complex process, focused on a fine balance between many

---

<sup>5</sup> Marrakesh Agreement Establishing the World Trade Organization, 1994, available at:[https://www.wto.org/english/docs\\_e/legal\\_e/04-wto\\_e.htm](https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm) [17.10.2015.]

<sup>6</sup> Source:[https://www.wto.org/english/thewto\\_e/whatis\\_e/whatis\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm) [17.10.2015.]

<sup>7</sup> *Subedi, S.P.*, 2007, "International Economic Law – Evolution and Principles of International Economic Law, Section A", 19.

<sup>8</sup> Part of the title of this paper has paraphrased a commonly used phrase: <http://www.phrases.org.uk/meanings/beauty-is-in-the-eye-of-the-beholder.html> [17.10.2015.]

interests. Relations between member states of the WTO may serve as an illustration of such complexity. The idea behind the WTO and its efforts in ensuring fair global trade is positive. However, it is focused primarily on trade. Moreover, the Doha round of negotiations has stalled<sup>9</sup> for many reasons, the most important being: protectionism by developed states in relation to their own agricultural products, and difficulties in defining the special and differential treatment of developing countries.<sup>10</sup> The WTO was unable to make progress with respect to the elaboration and implementation of these principles. Moreover, the WTO had committed itself under the Doha Declaration to the objective of duty-free, quota-free market access for products originating from least developed countries (LDC).<sup>11</sup> It is evident that the playing field is not truly level<sup>12</sup> because of inequality among the players. The quality and competitiveness of products varies significantly between developed and developing countries. Developing countries are not in the same position to compete in a global market. Millennium Development Goals (MDG) emphasize that trade should be an engine for development. However, focus should also be on investment. The need for “global rules to encourage and protect overseas investments” was emphasized as well in an article<sup>13</sup> published by the Cato Institute. *Griswold* points out that the WTO encourages trade but no similar body of ground rules exists to foster the flow of investment among nations, even though, since 1980, annual global flows of foreign direct investment (FDI) have grown 5 times faster than trade and 10 times faster than production. The UNCTAD report shows that, although there was a decline due to the financial crisis, the trend for FDI is still positive.<sup>14</sup> According to the OECD

---

<sup>9</sup> Please visit the website [www.wto.org](http://www.wto.org) for more information on progress in this area of law.

<sup>10</sup> *Subedi, S.P.*, 2007, *International Economic Law – Public International Law of Trade*, Section D, 48-49.

<sup>11</sup> *Subedi, S.P.*, *ibid.*, and point 42 of the Doha Ministerial Declaration of the WTO of November 2001.

<sup>12</sup> *Subedi, S.P.*, 2006, The notion of free trade and the first ten years of the World Trade Organisation: how level is the “level playing field”? For more information see also Smith, F., 2007, 89-115.

<sup>13</sup> *Griswold, D.*, 1998, *Exporting Fair Play With a Global Investment Treaty*, available at: [www.cato.org/publications/commentary/exporting-fair-play-global-investment-treaty](http://www.cato.org/publications/commentary/exporting-fair-play-global-investment-treaty).

[17.10.2015.] The article originally appeared in *World Trade* magazine on June 17, 1998.

<sup>14</sup> <http://unctad.org/en/pages/PressRelease.aspx?OriginalVersionID=143>, please see figure 1 – projections 2013-2015 [17.10.2015.]

report from April 2015<sup>15</sup>, “global FDI flows picked up in the second half of 2014, increasing 17% in Q3 and 3% in Q4, representing an overall 9% increase in the second half of 2014 compared to a year earlier.” The United States of America (USA) concluded a number of Bilateral Investment Treaties (BITs), which contain classic provisions such as: protections for American firms, transparency, the Hull formula, dispute resolution, etc. The new generation of BITs<sup>16</sup> under the Obama administration also contain provisions related to labour rights and the environment. It is a fact that many BITs are concluded without consequent investment. Promoting investment is dependant upon many factors, such as good governance, political issues, levels of development, potential for sales, etc. The provisions of contemporary investment treaties have received significant scrutiny in scholarly and policy circles.<sup>17</sup> Moreover, the impact of such treaties on economic growth has been questioned as well.<sup>18</sup> Therefore, a GIT would cover additional topics, offering a broader perspective on the subject.

### **3. ARGUMENTS FOR CONCLUDING A GIT**

A GIT should primarily create a structured framework for the implementation of an investment regime, as argued earlier in this essay. It should emphasize the right to development, and consolidate and harmonise the main principles of international economic law, balancing them with other competing principles of international law, and constitute an international investment court. Furthermore, a GIT should promote investment and address the topic of corporate social responsibility related to the operations of multinational enterprises.

---

<sup>15</sup> Available at: <http://www.oecd.org/corporate/mne/statistics.htm> [17.10.2015.]

<sup>16</sup> 2012 U.S. Model Bilateral Investment Treaty: Treaty Between The Government of the United States of America and the Government of (Country) Concerning The Encouragement And Reciprocal Protection of Investment (standard treaty available at the web site: <http://www.state.gov/e/eb/ifa/bit/>). More in International economic law – Recent developments 2013, University of London, p. 8.

<sup>17</sup> *Van Harten, G. & Porterfield, M.C. & Gallagher, K.P.*, (2015), Issue 005.

<sup>18</sup>”A number of studies have examined the extent to which trade and investment treaties have an independent impact on attracting foreign investment to host nations. The majority of these studies have found weak or nonexistent correlations between treaties and attracting investment flows.” *Ibid.*, p.5

### **3. 1. Right to development**

The MDG 8 is calling for a global partnership for development, which should mean multilateral cooperation. An MDG is not legally binding, which is why its impact has been limited. In order to achieve sustainable human development, it is necessary to create an internationally binding right to development. This means that a specific clause emphasizing this right needs to be inserted into the text of a GIT.<sup>19</sup> It is worth noting that there are other international agreements which emphasize the right to development, such as the UN International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR).<sup>20</sup> In his article, related mostly to trade and development<sup>21</sup>, *Senona* points out that bilateral and regional deals are “politically easier to conclude but economically less beneficial than a global trade deal. For instance, they do not address problems related to domestic support payments and export subsidies, which are some of the critical issues causing underdevelopment due to the distortions they sometimes cause in global markets.” In the same article, *Senona* points out the importance of the legally binding right to development as well.

### **3.2. Harmonising legal principles and constituting an international investment court**

In order to harmonise and unify interpretations in international investment law, it would be beneficial to set out the main principles of this legal area, such as: most-favoured nation treatment, national treatment, reciprocity and non-discrimination, and their balance with competing principles of international law, such as human rights and the protection and preservation of the environment. In particular, it is worth noting that the cardinal principle of WTO law – the most-favoured nation treatment - is gradually being eroded, by being undermined by a number of trading blocks, bilateral investment treaties, and a series of waivers, concessions and special deals.<sup>22</sup>

---

<sup>19</sup> The same idea is supported by *Senona, J.M., 2009.*

<sup>20</sup> Article 2.1.:”Each State Party to the present Covenant undertake to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

<sup>21</sup> *Senona, J.M., 2009.*

<sup>22</sup> *Subedi, S.P., 2006, 291*

Therefore, a unified approach to the main legal principles in one global treaty would be positive for the development of court practice in this area and would bring about more legal clarity for investors. Court practice in the area of international investment law has been inconsistent and controversial, due to the lack of hierarchy of international tribunals required to follow precedent, as well as the absence of a global treaty. There are still no internationally agreed definitions<sup>23</sup> of terms such as: “fair and equitable treatment”, “effective”, “full protection and security” and others. Case law on expropriation has been ambiguous as well, as each arbitrator adopts a different approach related to compensation.<sup>24</sup>

Consequently, an international court with a standing panel of judges may be established by a GIT. Continuous expertise by economic experts should be provided to the court as well. This might speed up the process of trials and add legal certainty which is crucial for investors. It is also important to bear in mind that such a dispute resolution system must be affordable for the developing and the least-developed countries as well.

### **3.3. Promoting investment**

The author proposes creating a global plan of investment and then monitoring its realisation in stages. It would be fair to envisage a gradual investment plan, connected to the development priorities of a particular country. Direct flows of investment without prior planning would lead to further imbalances. The following approach might be considered. Firstly, composing a list of countries according to their development levels. Perhaps the three categories (developed, developing and least-developed) could be further sub-categorized in order to better plan investment priorities. It is important to be sensitive to the natural development of countries, and therefore gradual investment from abroad ought to be encouraged in investment cycles. Many different legal forms and concepts may be further

---

<sup>23</sup> More in *Subedi, S.P.*, 2010, 196.

<sup>24</sup> More in *Lowenfeld, A.F.*, 2008., 495-510, see the Libyan Nationalization Cases (BP, 1974; Topco/Calasiatic, 1977; Liamco, 1977), *Aminoil vs Kuwait*, 1982. Furthermore, the following cases are analysed: *Anglo-Iranian case*, 1952; *The Barcelona Traction Case*, 1970; *The Elsi case*, 1989 and others (p.512-534). More also in *Subedi, S.P.*, 2006, *The Challenge of Reconciling the Competing Principles within the Law of Foreign Investment with Special Reference to the Recent Trend in the Interpretation of the Term “Expropriation”*.

explored. The approach would, of course, depend on the policies of a particular country. The multidimensional poverty index<sup>25</sup> (MPI) presented by the United Nations Development Programme shows data from 91 countries worldwide. “Almost 1.5 billion people in the 91 countries covered by the MPI—more than a third of their population — live in multidimensional poverty — that is, with at least 33 percent of indicators reflecting acute deprivation in health, education and standard of living. This exceeds the estimated 1.2 billion people in those countries who live on \$1.25 a day or less. And close to 800 million people are vulnerable to fall into poverty if setbacks occur – financial, natural or otherwise.”<sup>26</sup> Sustainable economic growth is necessary for the prosperity of these countries, as well as developed countries. Investments are needed on both sides of the spectrum. A balanced agenda for investment under the auspices of an internationally trusted organisation such as the UN would offer new guidance, in view of its wide mandate.

### **3.4. Multinational enterprises**

While drafting a GIT, it will be necessary to examine the role of multinational enterprises (MNEs). Definitions of the term MNE vary greatly. “Generally speaking, an MNE is a company or enterprise operating in several countries and having 25% or more of its output capacity located outside its country of origin.”<sup>27</sup> According to *Subedi*, “they are more powerful - as well as richer - than many states in some respects: their influence is global; their operation is not transparent; they are not accountable to any elected authority; there is no cohesive body of law to regulate their activities; they often pursue wealth ruthlessly<sup>28</sup> at the expense

---

<sup>25</sup> Available at: <http://hdr.undp.org/en/content/multidimensional-poverty-index-mpi>

“The Multidimensional Poverty Index (MPI), published for the first time in the 2010 Report, complements monetary measures of poverty...The MPI can help the effective allocation of resources by making possible the targeting of those with the greatest intensity of poverty; it can help addressing MDGs strategically and monitoring of impacts of policy intervention” . (17.10.2015.)

<sup>26</sup> Available at:<http://hdr.undp.org/en/content/table-6-multidimensional-poverty-index-mpi>. and link *ibid.* (17.10.2015.)

<sup>27</sup> *Subedi, S.P.*, 2007, 8.

<sup>28</sup> “In Bangladesh and Cambodia, women workers seem to earn less than \$40 a month sewing clothes for fashion companies such as Gap. The situation seems equally unbalanced in the so-called “export-processing zones” of countries such as China and Bangladesh.”



of the environment, human rights and human values, and many states are not able to exercise any effective control over their activities.”<sup>29</sup> These topics might be addressed as well by a GIT, since there would be a binding legal instrument as an underlying idea for the global operation of business. A GIT may also contain articles about the greater transparency of MNEs in terms of respecting human rights and the environment. A GIT would have to be addressed to both states and corporations. It should be said that MNEs have evolved over time, as information about their activities abroad have become public. Many companies have introduced internal codes to deal with ethical issues, some companies have started to cancel contracts if they are based on child labour, etc. Worth noting too is the UN framework under the title "Protect, Respect and Remedy" which was adopted in 2011.<sup>30</sup> The classic debate about whether MNEs should be self-regulated or not is very extensive for the purpose of this essay.<sup>31</sup> Suffice to say for the moment that there should be an international binding treaty which would address the problems identified above, open opportunities for investment in them, and provide legal certainty and clarity. The bottom line is that the state should provide a binding legal framework for the operations of MNEs, while matters of internal organization and practice will be left for industry self-regulation. The most important point in this discussion is the non-accountability of MNEs. In a democratic society, the power originates from people and belongs to people, who elect their representatives to organise society. MNEs lack democratic legitimacy and cannot, in the author's view, regulate themselves. In particular, it is worth mentioning the "free rider" problem. This means that those MNEs investing more time and money in human rights protection would be at a competitive disadvantage in relation

---

Subedi, S.P., 2007, *ibid.* p. 31., data retrieved from the Oxfam International, *Rigged rules and double standards: trade, globalisation, and the fight against poverty*, 191-193. Another example is the case where *Bristol-Myers Squibb* (HIV/Aids drug) “held exclusive manufacturing rights at a price that could not be afforded by millions of sufferers in developing countries”, -*Subedi*, 11.

<sup>29</sup> *Ibid.*, p. 10.

<sup>30</sup> “Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie – Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework”, UN General Assembly, Human Rights Council, A/HRC/17/31, 21 March 2011.

<sup>31</sup> More also in *Muchlinski, P.T.*, 1998, 31-47; *Malanczuk, P.*, 1998.

to those investing less. Therefore, they may lose business opportunities. They are private persons engaged in lawful private activities and have no wider public responsibilities, but to obey the law. A GIT would put all corporations in an equal position. Furthermore, a single legal framework for investment would be more coherent and simpler to follow.

#### **4. THE DRAFTING PROCESS AND THE PENHOLDER**

When an international treaty is concluded, it needs to be either incorporated into laws (dualist concept), or it automatically becomes law after ratification in the national parliament (monist concept). Thus, the process of acceptance into domestic jurisdiction varies depending on whether a country has adopted a dualist or a monist concept of international law. In practice, states generally abide by international treaties. On the contrary, non-binding legal instruments represent more promises than action, as their character is of moral value only (for example, the MDG<sup>32</sup>). The author believes that a GIT should be legally binding under international law, reflecting a sincere commitment to positive social change.

The author proposes setting up an international working group under the auspices of the UN, which would equally represent all countries of the world. It would have to be transparent and open to receive comments from various interest groups, in order to consider all perspectives. This is usually done in the form of public consultations. In order to include a wider public into discussions, good quality analysis and synthesis of information is key, along with reasonable deadlines for submitting papers. The future belongs to everyone, so everybody should be able to comment and participate. It is essential to nominate the UN as the penholder of this project, considering its wide mandate<sup>33</sup> and equal representation of states.<sup>34</sup> The WTO should not

---

<sup>32</sup> United Nations Millennium Development Goals; available at: <http://www.unmillenniumproject.org/goals/index.htm>. [17.10.2015.] For more about this topic in *Subedi, S.P.*, 2007, *International Economic Law – International monetary and development law and policy*, Section B, 23-24.

<sup>33</sup> UN Charter, 1945, “Article 1. The purposes of the United Nations are: 3. to achieve international co-operation in solving international problems of an economic, social...etc. character...Article 55: With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: a. higher standards of living, full employment, and conditions of economic and

lead since it is not a development agency, nor is it designed to promote international justice in the wider sense of the term. However, a link of cooperation between the UN and the WTO should be established; for instance, between the UN Working Group on the Right to Development and the WTO's Trade and Development Committee. Further cooperation between other institutions as well would be highly beneficial, keeping in mind that the final penholder and decision maker is the UN.

## 5. FURTHER THOUGHTS

While drafting a GIT, it would be interesting to explore other ideas as well. For instance, there is a similar legal ground as that in the MDG 8 in Article 4 of the UN Convention on the Rights of the Child (CRC)<sup>35</sup>, which emphasizes “international cooperation”<sup>36</sup>, seeking to develop a concept of international responsibility for child poverty alleviation beyond state borders, which is consistent with the principle of the best interests of the child.<sup>37</sup> This international cooperation should also be inserted into a GIT. For example, it may be inserted into the text of a GIT that a fixed amount or a small percentage of investment must be transferred to a special international fund created by the GIT, which would be tasked with eradicating child poverty. With this money, houses or institutions can be built and equipped for life and quality education for orphaned children

---

social progress and development; b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation”.

<sup>34</sup>Subedi points out: “What is needed is a comprehensive international treaty on foreign investment prescribing uniform standards of treatment of foreign investors in the host countries, and the UN should be the organization to lead the way on this matter”, in *Surya P. Subedi, S.P., 2006, The Challenge of Reconciling the Competing Principles within the Law of Foreign Investment with Special Reference to the Recent Trend in the Interpretation of the Term “Expropriation”, 141.*

<sup>35</sup> UN Convention on the Right of the Child, 1989

<sup>36</sup> Article 4: “States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.”

<sup>37</sup> More in UN Committee on the Rights of the Child, General Comment Nr. 5. Also, see in *Van Bueren, G., 2008, Committee on the Rights of the Child in Longford (ed.) Social rights jurisprudence. Emerging trends in international and comparative law, 573.* For more about this topic see in *Van Bueren, G., 2006, International Rights of the child – Combatting child poverty, Section D, with Recent developments 2011, University of London.*

provided. The author would like to remind the reader that, according to Article 27 of the CRC, there is a tripartite responsibility for ensuring an adequate standard of living, shared by the family, state and international community. The legal basis for such a standard can also be found in the ICESCR (Articles 2 and 10.3.)

There is another argument for concluding a GIT, which is connected with the contemporary<sup>38</sup> topic of economic migrants. In light of the significant differences between developed and developing countries, the numbers of economic migrants are likely to rise in the future. This calls for a concerted approach by the international community aimed at balanced economic growth worldwide. Development economics is going to play an important role in finding suitable solutions within an appropriate legal framework.

## **6. CONCLUSION**

As the title of this paper says – our future is in the eye of the beholder. Who that beholder will be is going to make all the difference. The reality is that any idea or undertaking is being scrutinised through the eyes of the particular interests of an individual or a group. The highest ethical goal of attorneys at law is to find legal solutions which are in the best interests of their clients only. Finding legal solutions which are in the best interests of all people is intellectually and ethically more challenging, and requires a broader perspective and a higher level of creativity. We live in a highly cosmopolitan world, interconnected with modern technologies and financial interests, which makes partial solutions not feasible. Public international law should offer new guidance in the creation of global solutions. Innovative legal thinking is needed, supported by expertise from different specialist areas, especially development economics. It is necessary to focus on how to connect the two groups: developed countries looking for new markets and investment opportunities, and developing countries in need of growth in order to change the lives of its citizens through job creation. The conclusion of a GIT would open new investment opportunities worldwide and provide an organised framework for development. It would offer a clear and harmonised vision for global investment, with more legal certainty for

---

<sup>38</sup> "Europe migrant crisis:EU to speed up deportations of economic migrants in bid to reduce numbers"; available at: <http://www.abc.net.au/news/2015-10-09/eu-to-speed-up-deportations-to-tackle-migrant-crisis/6842882> [17.10.2015].

investors. A GIT might also be an instrument for addressing the problem of child poverty worldwide. Our future is in the eye of the United Nations as the beholder. Its wide mandate and equality of votes will ensure an appropriate context for creating a fairer international investment regime.

#### **LITERATURE:**

1. Griswold, D., (1998). *Exporting Fair Play With a Global Investment Treaty*, commentary, Cato Institute. Washington DC. (link to web site below).
2. Lowenfeld, A. F., (2008). *International Economic Law*, Second Edition, Oxford University Press Inc. New York.
3. Malanczuk, P., (1998). *Globalization and the future role of sovereign states*, in Weiss, F., et al. (eds), *International economic law with a human face*, Kluwer Law International, The Hague, 45-65.
4. Peter T. Muchlinski, P. T. (2001). *Human rights and multinationals: is there a problem?*, *Royal Institute of International Affairs*, Vol 77, I, 31-47.
5. Salacuse, J. W., (2010). *The Emerging Global Regime for Investment*, *Harvard International Law Journal*, Vol 51, 2010, 427 – 473.
6. Senona, J. M., (2009). *EPAs and the Doha round: development or discontent*, *Journal of International Trade Law&Policy*, 8 (1), 60-83.
7. Smith, F., (2007). *Non-trade concerns and agriculture in a post-Doha environment: thinking outside the green box*, *Environmental Law Review*, 9 (2), 89-115.
8. Subedi, S. P., (2006). *The Challenge of Reconciling the Competing Principles within the Law of Foreign Investment with Special Reference to the Recent Trend in the Interpretation of the Term “Expropriation”*, *The International Lawyer*, Vol. 40, No. 1, 121-141.
9. Subedi, S. P., (2007). *International Economic Law – Evolution and Principles of International Economic Law*, Section A, University of London, Queen Mary & University College London, University of London Press. London.
10. Subedi, S. P., (2007). *International Economic Law – International monetary and development law and policy*, Section B, Revised edition, University of London, Queen Mary & University College London, University of London Press. London.
11. Subedi, S. P., (2007). *International Economic Law – Regulation of Foreign Investment*, Section C, Revised edition, University of London, Queen Mary & University College London, University of London Press. London.
12. Subedi, S. P., (2010). *International Investment Law – Reconciling Policy and Principle*, Hart Publishing. Oxford and Portland, Oregon.
13. Subedi, S.P., (2006). *The notion of free trade and the first ten years of the World Trade Organisation: how level is the “level playing field”?* *The Netherlands international law review* vol. LIII:273-296.
14. Subedi, S.P., (2007). *International Economic Law – Public International Law of Trade*, Section D, Revised edition, University of London, Queen Mary & University College London, University of London Press. London.
15. University of London International Programmes (2011). *International rights of the child – Recent developments 2011*, University of London. London.
16. University of London International Programmes (2013). *International economic law – Recent developments 2013*, University of London. London.

17. Van Bueren, G., (2006). *International Rights of the child – Combatting child poverty*, Section D, University of London, Queen Mary & University College London, University of London Press. London.
18. Van Bueren, G., (2008). *Committee on the Rights of the Child in Longford* (ed.) *Social rights jurisprudence. Emerging trends in international and comparative law*, Cambridge University Press, p. 569 - 591. Cambridge.
19. Van Harten, G. & Porterfield, M.C. & Gallagher, K.P., (2015). *Investment Provisions in Trade and Investment Treaties*, Boston University, Pardee School of Global Studies, Pardee Center for the Study of the Longer-Range Future, Center for Finance, Law & Policy, A Global Economic Governance Initiative Policy Brief, September 2015, Issue 005.
20. 2012 U.S. Model Bilateral Investment Treaty: Treaty Between the Government of the United States of America and the Government of (Country) Concerning the Encouragement and Reciprocal Protection of Investment.
21. Doha Ministerial Declaration of the WTO of November 2001.
22. Marrakesh Agreement Establishing the World Trade Organization, 1994.
23. Oxfam International, *Rigged rules and double standards: trade, globalisation, and the fight against poverty*, Oxfam, Oxford, 2002.
24. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie – *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*”, UN General Assembly, Human Rights Council, A/HRC/17/31, 21 March 2011.
25. UN Charter, 1945.
26. UN Committee on the Rights of the Child, General Comment Nr. 5.
27. UN Convention on the Right of the Child, 1989.
28. UN International Covenant on Economic, Social and Cultural Rights, 1966.
29. United Nations Millennium Development Goals, 2000.

**Web pages:**

30. UNCTAD database of International Investment Agreements, <http://unctad.org/en/pages/DIAE/International%20Investment%20Agreements%20%28IIA%29/IIA-Tools.aspx> (17.10.2015.);
31. Marrakesh Agreement Establishing the WTO, [https://www.wto.org/english/docs\\_e/legal\\_e/04-wto\\_e.htm](https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm) (17.10.2015.);
32. WTO, Fact file, [https://www.wto.org/english/thewto\\_e/whatis\\_e/whatis\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm) (17.10.2015.);
33. Griswold, D., commentary, Cato Institute, [www.cato.org/publications/commentary/exporting-fair-play-global-investment-treaty](http://www.cato.org/publications/commentary/exporting-fair-play-global-investment-treaty) (17.10.2015) ;
34. UNCTAD Press Release, <http://unctad.org/en/pages/PressRelease.aspx?OriginalVersionID=143> (17.10.2015.);
35. OECD, statistics, <http://www.oecd.org/corporate/mne/statistics.htm> (17.10.2015);
36. U.S. Department of State, *Diplomacy in Action, Bilateral Investment Treaties*, <http://www.state.gov/e/eb/ifa/bit/> (17.10.2015.);
37. UNDP, Multidimensional Poverty Index, <http://hdr.undp.org/en/content/multidimensional-poverty-index-mpi> (17.10.2015); <http://hdr.undp.org/en/content/table-6-multidimensional-poverty-index-mpi> (17.10.2015.);

38. UN Millennium Project, <http://www.unmillenniumproject.org/goals/index.htm> (17.10.2015.);
39. Europe migrant crisis article, <http://www.abc.net.au/news/2015-10-09/eu-to-speed-up-deportations-to-tackle-migrant-crisis/6842882> (17.10.2015.).

## Sažetak

---

### NAŠA JE BUDUĆNOST U OČIMA PROMATRAČA – INICIJATIVA ZA GLOBALNI INVESTICIJSKI MEĐUNARODNI UGOVOR

*Postojeći međunarodni investicijski režim nije utemeljen na multilateralnoj međunarodnoj organizaciji. Autorica se zalaže za sklapanje pravno obvezujućeg globalnog investicijskog međunarodnog ugovora (GIT) pod okriljem Ujedinjenih nacija (UN). Široki mandat i jednakost glasova u UN-u, omogućit će odgovarajući kontekst za stvaranje pravičnijeg investicijskog režima, balansirajući između snažnih kapitalističkih težnji i suvremenog pogleda na društvenu pravednost. Postojanje takvog međunarodnog ugovora prvenstveno će značiti njegovu sustavnu implementaciju diljem svijeta, te dati potreban kontekst, resurse i forum za diskusije. GIT bi trebao istaknuti pravo na razvoj, konsolidirati i harmonizirati glavne principe međunarodnog prava ekonomije s ostalim principima međunarodnog prava, te uspostaviti međunarodni investicijski sud. Jednako tako, GIT bi trebao promicati investicije i društvenu odgovornost multinacionalnih kompanija. Sklapanje GIT-a otvorilo bi nove investicijske mogućnosti diljem svijeta, te dalo organizirani okvir za razvoj, s više pravne sigurnosti za ulagače. Međunarodno javno pravo treba ponuditi novi smjer.*

**Ključne riječi:** globalni investicijski međunarodni ugovor; međunarodno pravo ekonomije; međunarodno pravo; investicija; razvojna ekonomija; borba protiv siromaštva.