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The Impact of Bilateral Investment Treaties on FDI Inflows into India: Some Empirical Results

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Table of Contents

List of Tables

Abstract

Commencing in the 1990s, India signed a number of bilateral investment treaties (BITs), however, after a spate of adverse investor-state dispute settlements (ISDS), India has recently denounced all its erstwhile investment treaties. New investment treaties now need to be negotiated on the basis of a new Model Treaty that substantially privileges state rights over investor rights. We study the impact of bilateral investment treaties on foreign direct investment inflows into India over the period these treaties were in force, to give us a sense whether the advent of the new regime will perhaps subtract some incentives in relation to FDI inflows. The impact of such institutional variables on FDI have been typically studied using large cross-country data sets – our work here is distinct in that we try to capture the effects of international investment agreements on foreign direct investment inflows *specifically* into India. To do this we construct an empirical model drawing on the Gravity Model, and estimate parameters using Generalised Method of Moments. Our results show that while the individual signing of bilateral investment treaties does not influence the inflow of foreign direct investment, the effect of the cumulative bilateral investment treaties signed is statistically very significant. The significance of the cumulative variable suggests that the spillover effect of signing a series of bilateral investment treaties are important, signaling a regime of overall protection to investors. The importance of institutional variables in influencing FDI into India tells us that overall participation in a system governed by international investor agreements did influence the inflow of foreign direct investment positively.

Key Words: *BITS, International investment Agreements, FDI inflows, Gravity Model, Generalised Method of Moments*

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The Impact of Bilateral Investment Treaties on FDI Inflows into India: Some Empirical Results*

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1. Introduction

International investment treaties or as they are broadly referred to as International Investment Agreements (IIAs) allow individual private foreign investors to move legally against host states when they feel that the activities of the host state have had an adverse impact on their investment. The basis for such action lies in the investment treaties signed between states - such treaties can be in the form of bilateral investment treaties (BITs) or sometimes as a chapter of a bilateral or multilateral trade agreements between countries. These treaties typically consist of three parts[1], with the first part defining *investment* for the purpose of the treaty, the second listing substantive standards against which violations by the state in question are measured and the third identifies the dispute resolution mechanisms (often referred to as Investor-State Dispute Settlement or ISDS) identifying the nature and scope of adjudicating international tribunals. In many quarters it has come to be felt that international investment treaties have been constructed to privilege investor rights over state rights that enable the regulation of economic activity and there have been a number of worldwide moves to counter this.

Turning to the Indian involvement in this system, commencing in the 1990s, India signed a number of BITs and by 2016 it had one of the largest investment treaty arrangements in the world, having signed 83 BITs and 13 other IIAs. India probably signed these treaties to signal that it was a reform-minded country that was seeking the inflow of foreign capital to develop its economy, without paying too much attention to the terms imposed by the treaties. About two decades after India signed its first BIT, much to the consternation of the Indian government, a number of cases were filed by foreign investors against the Indian state. Since the arbitral awards have awarded large damages against the Indian state, India has come to change its position with respect to international investment treaties – in 2017 it denounced the bulk of the treaties it had signed[2] and furthermore insisted that all BITs have to be renegotiated using a template provided by the new Model Treaty. The new Indian Model Treaty, which was finalized in December 2015, substantially privileges state rights over

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[1] See R. Dolzer and C. Schreuer. 2012. *Principles of International Investment Law*. Oxford: Oxford University Press

[2] By merely denouncing treaties does not mean that the Indian state can escape liability – many of the treaties have sunset clauses and many of the ongoing cases have yet to be resolved.

investor rights, reversing the orientation of the older treaties. This change in emphasis has meant that only a handful of new treaties have been signed by India. These include two BITs signed with Taiwan and Belarus in 2018, one treaty with the Kyrgyz Republic in 2019, and in 2020 India signed an Investment and Facilitation Treaty with Brazil[3]. India has also signed a BIT with Cambodia which is not in operation yet. There is little chance that these treaties will influence an inflow of foreign direct investment – none of these countries are the usual major exporters of capital.

It is hard to predict the future impact of this new set of international investment agreements on foreign direct investment in India because currently we do not have sufficient points of data to discern any trends. However, we can get a sense of the impact of bilateral investment treaties by empirically studying their effect on foreign investment inflows into India over the period they were in force – i.e. before they were denounced. It is important to fathom this effect because it helps us comprehend the role of institutional structures in governing individual investor risk in cross border investment. The advent of the new regime has perhaps subtracted this element of support for foreign investors and the primary purpose of this paper is to detect the magnitude and nature of the effect of IIA protection on the inflow of foreign direct investment into India. The analysis of the impact of IIAs has typically been performed using large cross-country data sets – our work here is distinct in that we try to capture the effects of international investment agreements on foreign direct investment inflows *specifically* into India.

We begin in Section II by providing a brief background and explaining the context of our study and then proceed to describe the model we use to pursue our empirical investigation in Section III. Section IV presents the results and discusses the implications of our findings. Section V concludes the paper with some comments that look out to the future in light of our results.

2. Background and Context

As noted earlier, starting around 1991 India started signing a series of bilateral investment treaties and continued to do so over the next two decades. For a number of years, the treaties were not invoked by foreign investors except in a set of Enron related cases around 2003 where matters were settled for an undisclosed amount by 2004[4]. In 2010 an Australian Coal mining firm *White Industries*, using the MFN clause in the Australia-India Bilateral Investment Treaty invoked a clause in the India-Kuwait BIT to sue India and ended up receiving AUS $ 11 million in 2011[5]. After this a slew of cases invoking bilateral investment

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3 The texts of the terminated and new treaties and JISs, as well as other details can be found on the Ministry of Finance Government of India website. https://dea.gov.in/bipa

4 See Preeti Kundra (2008) 'Looking Beyond the Dabhol Debacle: Examining its Causes and Understanding its Lessons' *Vanderbilt Journal of International Law* Volume 41 907

5 *White Industries Australia Limited v. The Republic of India*, UNCITRAL http://www.italaw.com/cases/1169#sthash.U7WppHBT.dpuf

treaties came up against the India, many of which are still pending final awards.[6] To illustratively point to one recently decided high-profile case involving action against India by Deutsch Telekom, an arbitration tribunal awarded $1 billion damages in favor of the company.[7] India has challenged the award and while the tribunal hearing the challenge has decided not to set aside the judgment, the final quantum of payment has yet to be announced.[8] This and the many other similar cases against the Indian State have been perceived as not only imposing financial costs but also regulatory costs - inhibiting public policy by attacking the Indian judiciary, taxation policy and anti-corruption measures. The foremost reaction to this spate of cases has been to redraft the Model Treaty in 2015. The new Model Treaty works by giving the sovereign state much stronger rights than was the case earlier. Furthermore, in 2016 India took the position that all existing bilateral investment treaties would be denounced (terminated) in 2017 and it has since proceeded to carry out this plan. In addition to denunciation, many treaties have also been allowed to lapse, with India taking on the stance that any future treaties have to follow the new Model Treaty. As recent work by legal scholar Prabash Ranjan argues, the excessive tilt towards state rights in the new Model Treaty means that very few countries seeking to protect its investors are willing to agree to the stringent terms required by the Model Treaty[9]. One can only speculate about the empirical effects of denunciation and/or renegotiation of international investment treaties at this stage because empirical evidence on the effects will be visible only with the passage of time. To understand the role of international investment treaties on foreign investment that is empirically defensible, one is perforce obliged to study their impact over a period when these treaties have explicitly governed investment flows.

There is by now a good deal of research that has tried to quantify the impact of international investment agreements on foreign direct investment flows. The early literature – for instance Hallward–Driemieier[10] and UNCTAD[11], did not find much of an empirical link between international investment treaties and FDI. Most probably, these inconclusive findings were on account of the fact that these empirical investigations had not allowed a sufficient passage of time to lapse from the time the treaties had been signed so that discernable empirical effects were not evident. However, subsequently a series of more recent studies show that the signing and ratification of international investment treaties does have an impact on FDI flows[12]. It is standard practice in this literature to work with large cross-country data sets but

6 As per answers received to questions regarding bilateral investment treaties from the Ministry of Finance, Department of Economic Affairs in the Lok Sabha in March 2020, it was stated that ten disputes were being actively pursued. See Lok Sabha Unstarred Question No. 3545 (Answered March 16, 2020)

7 *Deutsche Telekom AG v India*, UNCITRAL, PCA Case No 2014-10, Interim Award (13 Dec. 2017) (DT)

8 *Deutsche Telekom v India, PCA Case No 2014-10*, https://www.italaw.com/cases/2275

9 Prabash Ranjan (2019) India and Bilateral Investment Treaties: Refusal Acceptance and Backlash New Delhi Oxford University Press

10 Hallward-Driemeier, M. (2003), 'Do Bilateral Investment Treaties Attract FDI? Only a Bit . . . and They Could Bite', Working Paper No. 3121 (The World Bank, Washington, DC).

11 UNCTAD (1998), Bilateral Investment Treaties in the Mid 1990s, United Nations Conference on Trade and Development (New York and Geneva).

12 For instance, *see* Eric Neumayer & Laura Spess, *Do BITs Increase FDI to Developing Countries?*, 33(10) World Development 1567-1585(2005); Peter Egger & Valeria Merlo,. *The impact of BITs on FDI dynamics*, 30(10) The World Economy 1536-1549 (2007); Peter Egger & Valeria Merlo, *BITs Bite: An Anatomy of the Impact of BITs on Multinational Firms*, 114(4) Scandinavian J. of Economics 1240-1266

few studies look at the impact of international investment agreements on particular countries. Our attempt to study the impact of international investment treaties on foreign investment seeks to understand whether these treaties have had an impact on foreign investment flows *specifically* in the Indian case or not. Of course, his task throws up challenges as to how to precisely model and estimate relationships to get answers to our queries.

3. Empirical Model

Generally speaking, the literature on the links between international investment treaties and inflows of foreign direct investment use the tenants of the Gravity Model to model relationships. To briefly recapitulate the Gravity Model, the model is formulated on the premise that the volume of trade between two countries is proportional to the product of their mass (measured as GDP) and is inversely proportional to the distance between them. This simple formulation is surprisingly empirically robust and over the years it has been found that a variety of theoretical foundations are compatible with the standard empirical specification[13] of the model. While initially conceived as a model to study trade of goods, the model has been successfully extended to study trade in services[14] as well as to study the flows of FDI.

There is a set of common features that run across studies that look at FDI flows, whether they specifically address the role of BITs or not, which we need to note before attempting to establish the empirical significance of BITs for FDI inflows into India. These studies are oriented towards looking at FDI as an outflow, typically conceived of as a decision made by MNEs (Multinational Enterprise) of home countries looking to invest in host countries. With this basic frame in place, these studies often ask whether the FDI is aimed at horizontally duplicating production activities in host countries or seek to establish separate vertical activities downstream in host countries.[15] Other questions typically investigated include

(2007); Matthias Busse, Jens Königer & Peter Nunnenkamp, *FDI Promotion through BITs: More than a Bit?* 146(1) Rev. of World Economics 147-177 (2010); Axel Berger et al., *Do Trade and Investment Agreements Lead to More FDI? Accounting for Key Provisions Inside the Black Box,* 10 Int'l Economics and Econ. Policy 247-75 (2013);; Shiro Patrick Armstrong & Luke R. Nottage, *The Impact of Investment Treaties and ISDS Provisions on Foreign Direct Investment: A Baseline Econometric Analysis* (2016). Sydney Law School Research Paper No. 16/74, available at https://ssrn.com/abstract=2824090 (with a version forthcoming in Langford Behn et al., *The Legitimacy of Investment Tribunals: Empirical Perspectives* (Cambridge Univ. Press, 2020).

13 Brought to the fore by Tinbergen in Jan Tinbergen (1962) *Shaping the World Economy.* New York: The Twentieth Century Fund it is now extensively used in empirical work pertaining to trade. For an overview see Robert C. Feenstra (2002) Advanced International Trade: Theory and Evidence University of California, Davis, and National Bureau of Economic Research; See also J. H. Bergstrand, "The Gravity Equation in International Trade: Some Microeconomic Foundations and Empirical Evidence," *Review of Economics and Statistics*, Vol. 67, No. 3, 1985, pp. 474-481

14 Among other works, see Fukunari Kimura and Hyun-Hoon Lee (2006) 'The Gravity Equation in International Trade in Services' Review of World Economics Vol 142 No 1 PP 92-121; Carolina Lennon, Daniel Mirza and Giuseppe Nicoletti (2009) 'Complementarity of Inputs across Countries in Services Trade' Annals of Economics and Statistics no 93/94 pp183-205

15 For instance, see J. R. Markusen and K. E. Maskus, "Discriminating among Alternative Theories of the Multinational Enterprise," *Review of International Economics*, Vol. 10, No. 4, 2002, pp. 694-707; H. Braconier, P. J. Norbäck and D. Urban, "Reconciling the Evidence on the Knowledge-Capital Model," Review of International Economics, Vol. 13, No. 4, 2005, pp. 770-786

whether the outflow of trade and FDI should be viewed as substitutes or as complements.[16] In addition to this, of course, some studies take on institutional questions such as the role of BITs and FTAs[17] in influencing FDI.

As we seek to look at the role of BITs and FTAs on inducing FDI inflows to India, it is impossible to directly mimic these studies because they are oriented to studying outflows, trying to capture the forces that influence the decisions of MNEs in the home country. One is tempted to apply the Gravity Model directly to the specific Indian case by trying to see the relationship between the inflows of FDI and the usual correlates suggested by the Gravity Model such as GDP and the distance between countries and then going on to append institutional features. This is perhaps not the correct way to approach the issue because only a fraction of FDI outflow of home countries shows up as Indian FDI inflows and while this fraction can be thought of in terms of feeding a general Gravity Model the causality fueling the model will be picked up only very weakly if we were to force a Gravity equation directly on the FDI inflows into India.

To overcome these problems, we exploit one of the key findings suggested in the FDI-Gravity Model literature, namely that the empirical evidence suggests that FDI and trade tend to be complementary rather than substitutes. Thus, in the model we specify we suggest that FDI inflows follow trade and therefore we place a trade variable on the right-hand side of the equation. The volume of trade itself is presumably a product of the forces that make up the Gravity Model but additionally indicates the tenor of the unilateral policy regime, marking the degree of openness, exchange rate policy and capital control regimes. If the trade variable captures dynamic interactions between India and other nations alongside signaling aspects of the unilateral policy regime, a bilateral policy variable in the form of BITs and FTAs can be thought of as signifying the certainty with which investors can expect a protection of their rights.

Using this broad sense, we specify three empirical models to test the impact of BITs on FDI, as well as more broadly the impact of a system governed by international investment treaties on FDI.

The model specifications are:

Model I

$$\mathbf{Y_{it} = \alpha + \beta_1 Y_{it-1} + \beta_2 X_{it} + \beta_3 B_{it} + \beta_4 CC_{it} + \varepsilon_{it}}$$

Model II

$$\mathbf{Y_{it} = \alpha + \beta_1 Y_{it-1} + \beta_2 X_{it} + \beta_3 B_{it} + \beta_4 CBI_{it} + \beta_5 CC_{it} + \varepsilon_{it}}$$

Model III

$$\mathbf{Y_{it} = \alpha + \beta_1 Y_{it-1} + \beta_2 X_{it} + \beta_3 B_{it} + \beta_4 CBP_{it} + \beta_5 CC_{it} + \varepsilon_{it}}$$

16 See Valeriano Martínez, Marta Bengoa, Blanca Sánchez-Robles (2012) ‘Foreign Direct Investment and Trade: Complements or Substitutes? Empirical Evidence for the European Union’ Technology and Investment, 3, 105-112

17 Apart from the references cited in note 12 above, on FTAs specifically see P. Brenton, F. di Mauro and M. Lucke ‘Economic Integration and FDI: An Empirical Analysis of Foreign Investment in the EU and in Central and Eastern Europe (1999) *Empirica* Vol 26 pp 95-121

where

i) Y_{it} *is the inflow of FDI into India from country i in year t.*

ii) Y_{it-1} *is the inflow of FDI into India from country i in year t-1.*

iii) X_{it} *is the bilateral trade (total exports and imports) from country i in year t.*

iv) B_{it} *is a dummy variable taking the value 1 if a BIT was signed with country i in year t and all years thereafter, or takes the value 0 otherwise.*

v) CC_{it} *is a dummy variable which takes the value 1 if a CECA/CEPA was signed with country i in year t and all years thereafter, or takes the value 0 otherwise.*

vi) CBI_{it} *is the cumulative number of BITs signed by India in year t.*

vii) CBP_{it} is the cumulative number of BITs signed by partner country in year t.

viii) ε_{it} *is the error term (which includes country specific fixed effects) for country i in year t.*

The three model specifications differ from each other in that while *Model 1* incorporates the presence of a BIT as a binary variable, *Model 2* includes the total number of BITs signed by India in year t as an additional cumulative variable and *Model 3* contains the total number of BITs signed by partner country in year t as the additional cumulative variable. Thus, each Model incorporates the BIT variable differently. The other variables reflect relationships that follow from our general discussion above. Following the observation that foreign direct investment follows trade in a complementary manner, we include the volume of bilateral trade as an explanatory variable. Capturing an institutional dimension of this relationship, the models also include a binary variable as to whether a trade agreement in the form of a Comprehensive Economic Cooperation Agreement (CECA) or Comprehensive Economic Partnership Agreement (CEPA) has been signed with a trading partner or not. We have only included trade agreements of the CECA/CEPA variety because they have a chapter dedicated to investment that is more or less along the lines of a BIT. (It may be noted that standard trade agreements were not included for technical reasons discussed below.) Finally, all models incorporate the lagged inflow of foreign direct investment, which is commonly thought to influence current levels of similar investment.

Turning to the data sets used in our estimation - To capture the inflow of FDI into India from country i in year t, we used FDI data published by the Department of Industrial Policy & Promotion, Government of India. Our bilateral trade data (total exports and imports from country i in year t) were obtained from the World Integrated Trade Solutions (WITS), World Bank database. The information on the various international investment treaties signed by India was gathered from the website of the Ministry of Finance, Government of India.

Since we have a dynamic panel data set and are studying FDI inflows into India from its partner countries over time, it is likely that the model will have country specific fixed effects, which might lead to endogeneity in the regression model. Additionally, since we expect the FDI inflow from country i in year t to be determined in part by the FDI inflows from country i in year t-1, in effect, it is likely that the error terms will not just be white noise but are serially correlated. To correct for serial correlation and country specific fixed effects, we use the Generalized Methods of Moments (GMM) to estimate this model. We use the Arellano-Bond GMM estimator, which is commonly used for dynamic panel data. Furthermore, to correct for any heteroskedasticity, we report robust standard errors.

The results of our estimation across all three specifications can be seen in Table 1 and the figures for the post estimation diagnostics can be seen in Table 2. Table 2 shows the results of the statistical test to check if the Arellano-Bond assumptions[18] were satisfied while estimating the models. Since the results of the test support the inference that errors are autocorrelated in order 1 but not in order 2, it can be concluded that using the Arellano-Bond GMM estimator was indeed appropriate for our estimation exercise. It is indeed the case that while the use of GMM to estimate parameters resolves issues of endogeneity, however we further investigated the possibility of endogeneity by plotting the residuals against the independent variables and found no evidence of any correlation between them. Thus, we were able to rule out endogeneity, ensuring the robustness of our results. It also needs to be mentioned that while performing our estimation exercises (as stated above) we were forced to not include the variable as to whether India had signed a foreign trade agreement (FTA) with the partner country because inclusion of this variable raised the problem of multicollinearity.

Table 1: Parameters Estimated Using Generalised Method of Moments

S. No.	Variable	Model 1	Model 2	Model 3
1.	FDI Lagged ($\mathbf{Y_{it-1}}$)	0.122** (0.053)	0.078 (0.051)	0.096*** (0.051)
2.	Bilateral Trade ($\mathbf{X_{it}}$)	0.508* (0.14)	0.206*** (0.122)	0.272** (0.11)
3.	BIT Signed ($\mathbf{B_{it}}$)	0.271 (0.33)	-0.56 (0.432)	-0.589 (0.441)
4.	Cumulative BITs signed by India ($\mathbf{CBI_{it}}$)		0.034* (0.007)	
5.	Cumulative BITs signed by Partner Country ($\mathbf{CBP_{it}}$)			0.068* (0.01)
6.	CECA/CEPA Signed ($\mathbf{CC_{it}}$)	1.88* (0.67)	1.16*** (0.616)	1.56** (2.40)
7.	Constant	-1.81*** (-0.98)	-0.96 (0.72)	-2.95* (0.95)

* Significant at 1% level of significance **Significant at 5% level of significance *** Significant at 10% level of significance

The values in brackets are the robust standard errors

[18] Arellano-Bond GMM estimator assumes that the errors are autocorrelated in order 1 (e_{it} and e_{it-1}) but not autocorrelated in order 2 (e_{it} and e_{it-2}).

Table 2: Result of Diagnostic Test Arellano-Bond test for zero autocorrelation in first-differenced errors

Order	Model 1		Model 2		Model 3	
	z	Prob > z	z	Prob > z	z	Prob > z
1	-4.815	0.0000	-4.6501	0.0000	-4.6219	0.0000
2	1.3439	0.1790	1.0736	0.2830	1.2329	0.2176

4. Results

Turning to Table 1, which shows the values of estimated parameters over the three model specifications. The first point to note is that the bilateral trade variable is significant in all the models, albeit with varying degrees of significance. The coefficients associated with the variable as to whether a CECA or CERA was signed with the partner country are also significant and additionally show the largest marginal effects in all the models. The lagged FDI variable is significant but only in Model 1 and Model 3. However, from our perspective the interesting result visible across all three models is that the variable capturing whether India signed a BIT with a partner country or not is insignificant. This effectively means that the individual signing of bilateral investment treaties does not influence the inflow of foreign direct investment.

This result does not of course allow us to conclude that bilateral investment treaties do not have an impact on the inflow of foreign direct investment into India. The truly remarkable result of our study can be observed in Model 2 and Model 3. In Model 2 where the presence of an additional variable – the cumulative bilateral investment treaties signed by India, captures the effects of international investment treaties differently from the individual signing of such treaties. As can be seen the estimated coefficient of this viable is very significant. This tells us that while the individual signing of a BIT with a partner country cannot be said to have an effect on FDI inflows, the collective consequence of signing a series of investment treaties by India has had a beneficial effect on the inflow of FDI. In Model 3 the presence of investment treaties is captured differently from Model 2 – here as the cumulative bilateral treaties signed by the partner country. The estimated coefficient is again very significant. This could be understood as capturing the attitude of the partner country towards investment – thus the greater the number of BITs signed by the partner country, the more conducive it is for investors to invest abroad, and consequently the greater is the volume of FDI inflow into India. Of course, as can be seen in Table 1, the estimated marginal effects are quite small but the high statistical significance of the coefficients demands our attention

These results support the view that institutional support is important for investment flows. Our Model 2 tells us that while signing a particular BIT with a partner country does not necessarily translate into a foreign investment inflow, but rather the cumulative effect of signing a series of treaties has influenced the inflow of foreign investment into India. The cumulative effect is a positive externality or a spillover effect of a series of individual acts of signing bilateral investment treaties. Thus, once a whole set of international treaties come into place, they act as a collective signal that international investment arbitration would protect investors in the face of exigencies arising from the actions of host states. The results of Model 3 reinforce this – here the cumulative effect of international investment treaties signed by the partner country seem to assure and encourage investors to invest abroad – in other words investors in countries attuned to an orientation towards signing international investment treaties are influenced to invest in a country like India. In broad terms these findings point to the fact that the overall governance regime that oversees investment is an important determinant of cross-country investment flows. Of course, immediate forces such as the volume of trade are important factors in these flows – it is unfortunate due to issues of multicollinearity the precise impact of foreign trade agreements could not be discerned in this study. However, the variable that captures whether India has signed a comprehensive economic cooperation agreement (CECA/CEPA), which has both a trade dimension as well as a chapter that is akin to a bilateral investment treaty and thus combining both the forces of trade flows and governance, is both statistically significant across all models and shows the highest marginal coefficients.

Overall the findings of our empirical exercise seem to point to the importance of institutions of governing investment flows. While the presence or absence of a grievance redressal mechanism – that is whether a BITS was signed between the partner countries, does not seem to matter to investors in specific cases, the collective institution of having a regime in which investments are protected by the presence of international investment treaties did help investment flows into India.

5. Concluding Comments: Looking out into the Future

As we look out to the future, the Indian government has stated at the beginning of 2020 that it is thinking of replacing the BITs oriented protection of investment with a domestic investment law that is aimed at protecting foreign investments[19]. To the extent this is tantamount to India shying away from international law, this is an act that goes against improving the system of governance of investment flows globally.[20] In fact the current Indian government has on many occasions voiced complete antipathy to any multilateral governance of international investment.[21] Instead the faith seems to reside in soliciting foreign investment, supported by indices such as an escalation in the Ease of Business ranking[22]. However mere improvement in this kind of ranking may not be sufficient to encourage substantive foreign direct investment. One way of interpreting our results – that the collective presence of an overall investor protection is positively and significantly linked to foreign

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19 Aditi Shah & Aftab Ahmed, *Exclusive: India Plans New Law to Protect Foreign Investment – Sources*, Reuters (15 Jan. 2020), https://uk.reuters.com/article/us-india-investment-law-exclusive-idUKKBN1ZE151 (accessed 10 Apr. 2020)

20 See the op ed. Prabash Ranjan, *A Domestic Law May Not Protect Foreign Investments in India*, Hindustan Times (4 Feb. 2020), https://www.hindustantimes.com/analysis/a-domestic-law-may-not-protect-foreign-investments-in-india/story-x4QNAT1o2jBtFhJ1Hq4C2M.html

21 *Won't Allow Investors to challenge government: Nirmala Sitharaman*, The Economic Times (24 Jan 2017), https://economictimes.indiatimes.com/news/economy/policy/wont-allow-investors-to-challenge-government-nirmala-sitharaman/articleshow/56744128.cms

22 For example, see *Budget 2020 to attract more FDI, improve 'ease of doing business' in India, say US industry leaders* https://www.cnbctv18.com/economy/budget-2020-to-attract-more-fdi-improve-ease-of-doing-business-in-india-say-us-industry-leaders-5195431.htm

investment flows – is to invoke support for the view that the risk borne by individual foreign investors is quite importantly served by ISDS protection, rather than the many other values that go into the construction of economy wide indices. Our empirical study shows that over a period when the ISDS protection was in place, though India may have had to confront some adverse rulings against its regulatory actions, the overall participation in a system governed by IIAs did influence the inflow of foreign direct investment positively. This in itself tells us that in the future we should be supporting multilateral international institutions that benefit the global economy – institutions that can simultaneously take away the negative aspects of the current ISDS system that overly impose restrictions on the regulatory space of host states, but retain overall international law protection to cross country investors. As we confront the current world-wide pandemic crisis, it may be useful to think of the world that will emerge after the crisis – if the world is to be a better place, then multilateral institutions that are able to govern across borders are going to be an essential ingredient of the new order – or alternately we will all have to work with a more insular economy.

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381	STRENGTHENING INDIA-NEPAL ECONOMIC RELATIONS	NISHA TANEJA SHRAVANI PRAKASH SAMRIDHI BIMAL SAKSHI GARG RIYA ROY	JULY 2019
380	A STUDY OF THE FINANCIAL HEALTH OF THE TELECOM SECTOR	RAJAT KATHURIA MANSI KEDIA RICHA SEKHANI	JUNE 2019

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