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THE IMPACT OF GLOBALIZATION ON BILATERAL INVESTMENT TREATIES AND THEIR MODELS – THE CASE OF BOSNIA AND HERZEGOVINA

Abstract: One of main motors of modern globalization is internationalization of production via foreign direct investment (FDI). Therefore, FDI law mirrors general features of the globalization of law. The same is true for national bilateral investment treaties (BITs) and their Models. This paper is an attempt to quantify the unifying impact of globalization on BITs and Model BITs in Bosnia and Herzegovina. The results of our research show strong, but unequally distributed impact of globalization on 19 crucial content issues of BIH BITs and their Models.

Key words: *globalization, impact, FDI, BIH, BITs, Model BITs*

1. GLOBALIZATION AND FOREIGN DIRECT INVESTMENTS (FDI)

1. The end of the Second World War marked the beginning of the modern era of globalization. Today, globalization is ubiquitous, comprehensive, heterogeneous and controversial¹ process. It creates universal, supranational social structures, models and behavior patterns. The starting point of this paper is Scholte's general definition: "Globalization is a transformation of social geography marked by the growth of suprateritorial spaces".² All major societal processes are subject to globalization to varying extent and intensity. The driving forces behind globalization are technological development and international trade, especially the "internationalization of production through FDI".³

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¹ [15], p. 41: "...the only consensus about globalization is that it is contested"

² [16], p. 8. Elements of the Scholte's definition will be elaborated in accordance with their interpretation in the second edition of his book marked [15]. See: [15], pp. 49–85. Caselli's discussion on the key features and components of globalization is also important for our understanding of globalization (see: [4], pp. 9–13)

³ [12], p. 122. See also: [5].

“Much globality is also found in the area of law.”⁴ The body of supranational legal acts and norms has irreversibly initiated, but not yet finished, the creation of global law.⁵ This tendency is clearly visible in legal regimes of international trade⁶ and foreign direct investments. The later law reflects features generally present in globalization of law.⁷ First, every single FDI regime is the construct of law which by definition includes at least two subjects of international public law and an array of actors under private law regime. Therefore, FDI regulation must be open to and intertwined with other systems of national and international legal norms of public and private nature. This interconnection leads to the second characteristic of FDI law: transformation of accepted norms in line with general requirements of investment transactions and their at least partial denationalization. Third, following the standardization in technology, economy and business, FDI law is tending toward unification. Consequently, unification is the basic method of globalization. Thanks to it, behavioral patterns of all participants in FDI are also converging globally. Finally, the fourth main feature of FDI law is the transnational, i. e. global character of its principles⁸ and rules for most important issues. The content of these new juridical norms and constructs is more-or-less independent from national legal regimes even when technically incorporated into them.

According to Ulrich,⁹ the success of globalization¹⁰ can be measured by the territorial spread of global solutions, their duration and the density of transnational social nets they cover. The same criteria apply to law in general and FDI law in particular.¹¹

⁴ [15], p. 72.

⁵ [18], pp. 40–51.

⁶ [19], pp. 203–233.

⁷ [18], pp. 43–49. See also: [4], pp. 9–13.

⁸ Until recently it was the duty of the doctrine to distill principles of FDI law from sources of International Public and Economic Law, court an arbitral practice and generally adopted business standards (for example see: [7], pp. 360–373 for principles based on international customary law and pp. 380–414 for principles derived from treaties on investment protection). “Statement of the European Union and the United States on Shared Principles for International Investment” of April 2012 brings in a new quality in defining principles. The two subjects “as the world’s largest sources of and destination for foreign investments...” agreed on following core rules and values in FDI: Open and Non-Discriminatory Investment Climates, A Level Playing Field, Strong Protection of Investors and Investments, Fair and Binding Dispute Settlement, Robust Transparency and Public Participation Rules, Responsible Business Conduct and Narrowly-Tailored Reviews of National Security ([9], pp. 664–666).

⁹ [20], p. 12.

¹⁰ The success in the FDI globalization is not guaranteed. ECT regulation of FDI in the energy sector, broadly defined, is an example of successful globalization. The failure of MAI is the opposite (see: [14] and [1], p. 857). Recent South Africa’s policy to revoke its bilateral investment treaties with EU countries is another example of globalization’s retreat in FDI field (see: [23], p 3)

¹¹ Even in times of economic downturn, available data show that FDI is a universal phenomenon ([22], pp. 2–23). Especially indicative are Figures I. 12 (p. 11) and I. 20 (p. 19). For the density of transnational nets see data on BITs in this paper.

General measurement problems in economy, politics and culture are even greater in law.¹² Its normative nature, its specific dogmatic methods, discrepancies between legal norms and societal relations, deep interaction between particular legal and economic systems and influence of national cultural traditions on law make exact measurement of globalization of law difficult. The same goes for juridical regulation of FDIs and bilateral investment treaties (BITs) as an important part of foreign direct investments regimes. However, this measurement exercise is not impossible. This paper is an attempt to quantify the unifying impact of globalization on BIH BITs and their Models.

2. In contemporary globalization, the main types of cross-border movement of capital are: commercial transactions, financial transactions based on credit, portfolio investments and FDIs. The distinction between portfolio investment and FDI may be blurred,¹³ often depending on legislation of home and host states and on the facts of the case.

We define the concept of FDI as the lawful transfer of any kind of capital from one country to another, and its legal placement in a business enterprise or in connection with business activities under the full or partial, direct or indirect, managerial control of the owner whose aim is profit. In order to conform to BIH legislation, this paper will focus on foreign direct investment in “productive assets”¹⁴ of legal entities.¹⁵ Notwithstanding how broad or narrow the working definition might be, FDI is always a complex societal phenomenon deeply woven into the national, international and global economic and political context. We will deal with it primarily from the legal point of view. National legislation and the network of multilateral and bilateral international investment agreements (IIA) form the legal framework of FDI.

The main task of BITs is providing legal certainty in protection of home state investments in the territory of the host state. An additional goal is promotion of mutual bilateral investments.¹⁶ Such treaties are a desirable, but not sufficient condition for favorable investment climate in the host state.¹⁷

3. BITs have had explosive growth. In 1959 only two ratified BITs existed, between Germany and two other states. According to UNCTAD’s IPFSD,¹⁸ during the mid-1990’s, more than four international investment agreements were made every

¹² In their review of globalization indices, Julia Zinkina, Andrey Korotayev and Aleksey Andreev do not mention any widely used index which takes law as one of criteria for globalization ([28], pp. 323–325).

¹³ [17], pp. 28–29.

¹⁴ [21], p. 9.

¹⁵ [26], Art. 2. The latest LFDIP’s amendments explicitly exclude portfolio investments from the FDI. This approach is fully in line with Art. 207 of the TFEU (see: [1], p. 877).

¹⁶ [21], p. 7 notes that the investment promotion provisions of BITs are not sufficiently concrete or consistent with sustainable development objectives. Those BIT provisions are abstract and almost uniformly formulated across different BITs. This is true for BIH BITs as well.

¹⁷ [21], p. 37: “There is no mono-causal link between the conclusion of an IIA and FDI flows.” See also: [13] Printed version of this Index [12] contains detailed information on BIH on pp. 259–264.

¹⁸ [21], p. 101.

week. In 2012, there existed 2.857 BITs¹⁹ made among 173 states²⁰. The exponential growth of the number of BITs created many economic, legal and political difficulties. Their scope and consequences recently caused a decrease in number of new BITs.²¹ In spite of this slowdown, old systemic problems remained. The complexity of those problems,²² gradual equalization of outbound and inbound investments in developed countries, necessity of coherent investment policy,²³ legal certainty and productive negotiations, caused states to make their own model BITs.

A prominent example of rethinking bilateral investment policies and agreements is the 2012 U. S. Model Bilateral investment Treaty.²⁴ It is fully in line with NAFTA Chapter 11. This Model is sensitive to possible ambiguities in interpretation of WTO agreements. Special attention is paid to protection of public policy (environment, labor, health, security, etc.), and to the transparency of arbitral proceedings.²⁵ Canadian Model BIT 2003 has similar features,²⁶ as do European countries' BITs: Belgium's Model Treaty of 2002²⁷ and Germany's of 2008.²⁸ EU countries' Model BITs lost on importance after the Treaty in the Functioning of the European Union (TFEU)²⁹ explicitly made FDI a part of common commercial policy,³⁰ and therefore exclusive competences of the EU.³¹ In order to provide for legal certainty and protection of foreign investments from non-EU countries, the European Parliament and the Council passed Regulation (EU) No 1219/2012.³² It contains transitional arrangements for BITs made between Member States and third countries. When EU bodies fully take over their responsibilities in the FDI area, one may expect EU Model BIT to appear.³³

4. After independence, BIH joined the trend of making BITs and their models. By the end of May 2000 BIH ratified four BITs. By June 2012, BIH was party to an

¹⁹ [21], p. 101.

²⁰ [21], p. 4 states that there are more than 3100 BITs and other agreements regulating international investments.

²¹ [22], p. 101: only 20 BITs were concluded in 2012. For the overall drop of IIA to one per week see Figure III on page 102.

²² Gaps in regulation, ambiguities in treaty interpretation by arbitral tribunals, onerous arbitration procedures and unpredictability of arbitral awards (see: [21], p. 8). We could add: application of international customary law, interpretation of national treatment, "treaty shopping", etc.

²³ [21], p. 1.

²⁴ [24]. The first version of the Model was published in 1994, the second one in 2004.

²⁵ [8], pp. 662–664. Novelties in arbitral proceedings regulation were introduced in 2004 Model BIT. About them see: [10], pp. 383–395.

²⁶ [11]

²⁷ [2]

²⁸ [7], pp. 384–385.

²⁹ The TFEU was published in OJ C 115, May 9, 2008 and entered into force on December 1, 2009.

³⁰ Art. 207, s. 1.

³¹ Implication of the new EU policy towards FDI regulation see at: [1], pp. 851 ff.

³² OJ L 351/40 of 20. 12. 2012.

³³ [1], pp. 879–880.

additional 35 BITs, along with two agreements on FDI encouragement.³⁴ The ratification of the BIT with France is pending.

In order to cope with the number of BIT negotiations, BIH drafted its first Model BIT in 2000³⁵ and adopted it by the end of 2001. In spring 2012 BIH Ministry of Foreign Trade and Economic Relations (MOFTER), assisted by UNCTAD, updated the 2001 Model BIT. The new Model BIT was adopted by the BIH Council of Ministers on February 7, 2012 and approved by the BIH Presidency on April 3, 2012. The Model BITs 2012 serves as the draft of the BIH platform for each particular BIT's negotiation.³⁶ So far it has been used only in making BITs with U. A. E. and Russia. That is why it is necessary to analyze the new Model together with its predecessor and the already executed BITs with other countries. Only such an approach can answer the crucial question: do the salient features of the BIH BITs and Model BITs reflect recent global trends in FDI?

2. BIH BITS AND BIH MODEL BIT 2001

1. Out of existing 38 BIH BITs, 20 were signed prior to the adoption of the first Model BIT in 2001 (MBIT 2001). The content of those 20 agreements and experience from their negotiations provided the basis for MBIT 2001. Due to the purpose of this paper, the sample of 15 BITs included into comparative analysis is based on two selection criteria. The first is the home country development level: the sample includes six states and economies in transition,³⁷ and ten developed states and economies.³⁸ The number of countries is bigger than the number of BITs, because the Belgo-Luxembourg Economic Union (B-L), made a single BIT with BIH. With this exception, in Table 1 the countries from the sample will be denoted by their International Registration Letter.

The second criterion is the size of investment into BIH. From May 1995 to December 2012, the total inflow of investments into BIH was 5.6 billion Euro.³⁹ Of the top 10 home countries, Russia is not included into the sample because it has no BIT with BIH.⁴⁰ Except Serbia,⁴¹ all other major investors are developed economies.

³⁴ The Agreement with Overseas Private Investment Corporation (OPIC), acting on behalf of the U. S. Government, was signed on July 12, 1996 (Off. gaz. BH 5/96) and with the OPEC Fund for International Development (OFID) on March 4, 2003 (Off. gaz. BH 13/03)

³⁵ [17], p. 43.

³⁶ See: [27], Articles 4 and 6.

³⁷ Albania = AL, Belarus = BY, Macedonia = MK, Moldova = MD, Serbia = SRB and Ukraine = UA.

³⁸ Austria = A, Belgium = B, Croatia = HR, Germany = G, Italy = I, Luxembourg = L, The Netherlands = N, Slovenia = SLO, Switzerland = CH and Turkey = TR. The Belgo-Luxembourg Economic Union will be marked as B-L.

³⁹ BIH Foreign Investments Promotion Agency [25].

⁴⁰ The total amount of Russian investment in BIH is 471 million Euro.

⁴¹ Serbia is the second biggest investor home state in BIH economy. The value of its investments is 959 million Euro [25].

Amongst them only Italy is not in the top ten. The overall value of investments from nine biggest home states is 4.6 billion Euro. It means that nine BITs from the sample comprise 82% of total investments into BIH. Had investments from Italy and six economies in transition been included into the calculation, the total capital inflow covered by all the BITs from the sample would have been even bigger. We are therefore justified in assessing the impact of globalization on the BIH FDI legal regime through the lens of BITs from the sample and Model BITs.

2. Our juridical comparisons of BITs with MBIT 2001, as well as of the MBITs between themselves are based on 19 major topics extracted from the MBIT 2001 (see Table 1). A few BITs deviate slightly from the MBIT's layout. For instance, the BIT with Austria is divided in three chapters, and the chapter on dispute resolution in two parts; the agreement with Germany includes two, and with the Netherlands one protocol etc.

We compare three groups of provisions in the BITs and in MBIT 2001:

- a) materially identical provisions in the BITs and MBIT 2001,
- b) materially new provisions existing in the BITs, but not in MBIT 2001,
- c) provisions of MBIT 2001 omitted in the BITs.

The main difficulty in comparison was the interpretation of different phrasings used in the BITs for the same subject matter. In the first stage of the research, identical and similarly formulated provisions were tallied separately. Content analysis shows the two groups of norms can be combined without damage to the accuracy of the conclusions. Another problem was systematizing the diversity and the varying extent of regulation of the same topic in different BITs, e. g. regulation of disputes between investor and host state. The resulting quantitative data are the basis for assessment of MBITs' quality, results in practice, and compatibility with global trends.

Table 1. Quantitative comparison of MBIT 2001 and the BITs from the sample

No.	MBIT 2001 topic	BIH BITs		
		Materially same provision	Materially new provision	Omitted provisions
1	Preamble	11 (AL, B-L, BY, HR, MK, MD, SRB, UA, SLO, CH, I)	4 (A, TR, D, N)	0
2	Investment	14 (AL, B-L, BY, HR, MK, MD, SRB, UA, D, TR, SLO, CH, N, I)	1 (A)	0
3	(BIH) Investor	10 (AL, A, B-L, BY, MK, MD, SRB, UA, SLO, CH)	5 (HR, TR, D, N, I)	0
4	Foreign investor	Particular to individual BITs		

No.	MBIT 2001 topic	BIH BITs		
		Materially same provision	Materially new provision	Omitted provisions
5	(BIH) Territory	11 (A, B-L, BY, MD, AL, HR, MK, SRB, TR, UA, SLO)	4 (D, I, CH, N)	0
6.	Promotion and protection of investments	7 (AL, BY, MK, MD, SRB, UA, D)	7 (A, I, B-L, HR, TR, CH, N)	1 (SLO)
7	Fair and equitable treatment	10 (AL, B-L, BY, HR, MK, MD, SRB, UA, D, CH)	5 (A, TR, SLO, I, N)	0
8	National and MFN treatment	12 (AL, A, B-L, BY, HR, MK, MD, TR, UA, N, I, CH)	4 (SLO, D, N, I)	2 (!)* (CH, N)
9	“Nationalization and expropriation”	10 (AL, A, HR, MD, UA, SLO, B-L, CRO, MK, D)	5 (BY, TR, CH, N, I)	0
10	Compensation for nationalization and expropriation	10 (AL, A, BY, MD, SRB, CH, B-L, TR, SLO, D)	5 (I, HR, MK, UA, N)	0
11	Compensation for requisition and political risks	12 (AL, B-L, BY, MK, MD, SRB, UA, D, CH, CRO, N, I)	3 (A, TR, SLO)	0
12	Transfers	6 (AL, MD, SRB, HR, UA, CH)	8 (A, B-L, BY, MK, D, I, TR, SLO)	1 (N)
13	Subrogation	10 (AL, A, BY, HR, MK, MD, UA, B-L, SLO, D)	5 (SRB, N, I, TR, CH)	0
14	Settlement of disputes between Investor and Contracting Party	7 (AL, MD, CH, BY, UA, SLO, D)	7 (A, B-L, HR, TR, D, N, I)	5 (!) (A, HR, TR, UA, N)
15	Consultations and exchange of information	9 (AL, BY, HR, MK, MD, SRB, UA, CH, N)	0	6 (A, B-L, TR, SLO, D, I)
16	Settlement of disputes between Contracting Parties	8 (AL, BY, MK, MD, SRB, UA, SLO, CH)	6 (A, B-L, D, N, I, TR)	1 (HR)

* Rows marked by exclamation sign (!) contain more issues than the number of BITs. The reason is the complexity of regulation.

No.	MBIT 2001 topic	BIH BITs		
		Materially same provision	Materially new provision	Omitted provisions
17	Application of other rules	9 (AL, BY, MD, SRB, TR, UA, SLO, D, CH)	2 (B-L, I)	4 (A, HR, MK, N)
18	Application of the Agreement	5 (AL, MD, SRB, CH, I)	5 (A, B-L, SLO, D, CH)	5 (BY, HR, MK, TR, UA)
19	Entry into force, duration and termination of agreement	11 (AL, BY, B-L, HR, MK, SRB, SLO, CH, MD, TR, A)	4 (N, I, MK, D)	0

3. Table 1 points to the following conclusions relevant to assessing the impact of globalization on BITs:

a) at least two-thirds of the BITs from the sample have materially the same provisions as MBIT 2001 on 11 major issues. These issues relate to fundamental relations and core interests in FDI. A majority of these belong to international economic law (goals, investment, BIH investor, territory, national treatment of foreign investors, nationalization and expropriation, compensation for expropriation and political risks, subrogation, and duration of BITs). Obviously, international economic law nowadays champions globalization in FDI law in general, and in BITs in particular;

b) almost a half of the BITs from the sample have materially new provisions compared with MBIT 2001 on seven major issues. Some of them deal with matters closely connected to national or international public law (promotion and protection of investments, regime of transfers, consultations and exchange of information, application of other rules and of the treaty itself, settlement of disputes between contracting parties). It is clear that national specificities are opposing global uniformity using public *ius cogens*. The second cluster of materially new provisions refers to investor-host state disputes. The number of innovations in this area confirms that in dispute settlement, national sovereignty is trying to limit the impact of globalization on its legal system.

c) approximately a half of the BITs omitted some solutions from MBIT 2001 (promotion and protection of investments, compensation, transfers, etc). Maximum number of omitted issues is five (consultations and exchange of information, application and validity of the treaty, settlement of disputes between contracting parties). The omitted issues belong to the realm of domestic mandatory legislation or to international public law. Due to these facts, global solutions for omitted issues either do not exist, or are not broadly enough accepted to penetrate the BITs.

d) provisions on national and MFN treatment, investor-host state disputes and treaty application are the most diverse ones. In these matters the unifying force of globalization is weakest.

3. BIH BIT MODELS 2001 AND 2012

1. The text of MBIT 2012 is the outcome of experience in application of MBIT 2001, negotiations of additional 18 BITs, and acceptance of new developments in FDI law suitable for BIH. That is why the two BIH Model BITs share basic principles:

a) respect for general principles of FDI law and for their specific interpretation in BIH legislation and practice;

b) pragmatism in economic, political and legal standpoints. As FDI are useful both for foreign investors and BIH as the host country, their obligations and rights should be balanced;⁴²

c) absence of asymmetrical obligations for contracting parties and their investors. Omission of requirements for special treatment of BIH investors is the result of the economic position of BIH, as well as of the political philosophy behind BIT negotiations;

d) regulation of pre- and post-establishment investment phase;

e) protection public interests of BIH as a host country.⁴³ The introduction of this principle in BITs and MBIT 2012 is an attempt to reduce the influence of the unfavorable investment climate in BIH, especially as compared with countries in the region;⁴⁴

f) respect for limitations posed by the economic condition of the country, structure of BIH state, lacunae in legislation and problems in the judiciary;⁴⁵

g) creation of a transparent,⁴⁶ open and favorable environment for foreign investments and due respect for legitimate interests of foreign investors, without violating the domestic legal system;⁴⁷

h) adherence to international FDI standards as a tool for protection of foreign investors in BIH and domestic investors abroad (fair and equitable treatment, nationalization, political risk, regulation of compensation, transfer, settlement of disputes, etc.);⁴⁸

i) creation of a coherent system composed of domestic legislation and international treaties binding BIH.

2. MBIT 2012 has the same lay out as MBIT 2001. That is why we analyze their relation by comparing the same 19 major topics used in the Table 1. The comparison shows that MBIT 2012 took over completely and verbatim its predecessor's provisions on eight of the topics: definition of BIH investor, BIH territory, compensation for req-

⁴² Core principle No 5 of the UNCTAD's IPFSD "Balanced rights and obligations" (see: [21], pp. 11, 12).

⁴³ "Right to regulate" is UNCTAD's IPFSD Core principle No 6 (see: [21], pp. 11, 12-13).

⁴⁴ [3], p. 5.

⁴⁵ Adopted approach is one of "lessons learnt" from UNCTAD's Investment Policy Review Program started in 1999 (see: [6], pp. 47-48).

⁴⁶ [3], p. 6 defines transparent FDI regime as one which is: clear, published, applied on foreseeable basis, stable and just.

⁴⁷ Core principle 7 of the UNCTAD's IPFSD (see: [21], pp. 11, 13).

⁴⁸ On the grounds mentioned above, "Host countries have faced claims up to \$114 billion and awards up to \$867 million" ([21], p. 40).

acquisition and other political risks, subrogation, consultations and exchange of information, settlement of disputes between contracting parties, and application of other rules.

We will concentrate solely on the new substantive law provisions, listed in Table 2 that MBIT 2012 adds to its predecessor. The most important of them is the recent new definition of investment in domestic legislation.

Table 2, Comparison of MBIT 2001 and BIT 2012

No.	MBIT 2001 topic	Number and content of new MBIT 2012 solutions
1	Preamble	5 – added: transfer of technology, labor and human resources, CSR, sustainable development, public policy concerns
2	Promotion and protection of investments	1 – added: promotion and protection of investments “in accordance with customary international law”
3	Investment	4 – excluded: investment must be in connection with economic activities, exclusion of portfolio investments, claims from and credits for commercial contracts
4	Fair and equitable treatment	1 – added: fair and equitable treatment “in accordance with customary international law”
5	National and MFN treatment	3 – added: National Treatment of foreign investment and investors “in like circumstances”, MFN treatment “in like circumstances”, MFN treatment shall not be applied in investor-state disputes
6	Nationalization and expropriation	1 – added: non-discriminatory regulatory actions for public welfare are not indirect expropriation
7	Transfers	2 – added: freedom is guaranteed upon payment of fiscal and public law liabilities; possibility of temporal restriction of transfers in serious economic crisis
8	(None)	2 – added: new Art. 8, “Exceptions”: non-application of the BIT if required by domestic or international public order, membership in a customs, economic or monetary union, a common market or a free trade area
9	Settlement of disputes between investor and contracting party	4 – added: cause of dispute must be breach of obligation, mediation introduced, the deadline for amicable solution is 6 months after the request, statute of limitation for starting conciliation or arbitration (subjective term 3 years, objective term 5 years)
10	Application of the treaty	2 – added: validity of the treaty for investments existing at the moment of its entry into force, but not for disputes or claims from events which happened prior
11	Entry into force, duration and termination	3 – added: the treaty is valid for five years after entry into force, amendments as starting point for post-validity protection period, post-validity period is five years after the amendment’s entry into force

3. The most important conclusions from the Table 2 are following:

a) the new MBIT 2012 contains 28 amendments on 11 major topics from its predecessor;

b) only one new article is inserted into MBIT 2012 (Art. 8). The rest of the amendments are distributed across seven additional sections of different articles and some interpolations into the text of MBIT 2001;

c) most changes, 19 out of 28, belong to five areas: preamble, definition of investment, MFN clause, dispute settlement, and entry into force;

d) the preamble refers to broader development policy concerns, while the other four topics are technical.

CONCLUSIONS

1. Negotiations, signing and ratifications of 38 BITs played an important role in the progress of BIH foreign direct investment law and practice. The Model BITs, in 2001 and 2012, are milestones in this development process.

2. Quantitative analyses based on comparison of MBIT 2001 with BITs from the sample demonstrate the conformity of solutions adopted in MBIT 2001 with trends in global economic practice and law.

3. The impact of globalization is the strongest in 11 issues which refer to fundamental relations and core interests in FDI. International economic law predominantly regulates these issues and is therefore the leader in the globalization of FDI law.

4. The impact of globalization is weaker in seven issues in which specificities of national sovereignty are resisting global uniformity by relying on domestic or international public ius cogens. In these cases BITs either introduce regulation different from Model BITs or simply do not create norms for that particular issue.

5. In spite of some BITs' common solutions for Investor-state dispute settlement, the regulation of this topic is the most diverse one. We conclude that this issue is the one least impacted by globalization.

6. Comparison of BIH Model BIT 2001 with BITs from the sample demonstrates that those bilateral investment treaties are global in content and international in form.

7. Comparison of Model BIT 2012 with its predecessor shows continuing ability of BIH law for adoption of new global policies and regulatory trends in FDI generally, and in BITs particularly.

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