

investors alongside providing more protection to the foreign investors. Further, the paper will also investigate the role of internal reform to attract foreign investors.

Keywords: Bilateral Investment Treaties, Foreign Direct Investment, Investment Law in Iraq, Investment Law in Kurdistan Region of Iraq, Foreign Investor Protection.

Introduction

Bilateral Investment Treaties (BIT) is basically known as agreements between two sovereign states. As it can be noticed from its name, the prime aim of signing each BIT is providing certain standard protection for investors in order to encourage them to invest in these countries. According to these treaties, each state party to the agreement has to provide certain provisions for investors from the other state party such as fair and equitable treatment, protection and security; providing freedom for investors to transfer their benefits.¹

Bilateral investment treaties are considered as a tool to attract the foreign investors by offering the same rights as national investors and providing them with fair and equitable rights and contracts. It guarantees certain standards of treatment that can be enforced via binding investor to state dispute settlement outside the domestic jurisdiction system. The preambles of thousands of existing BIT state that the purpose of BITs is to promote the flow of FDI and there is tendency by the decision makers that signing such agreements will increase the level of foreign investment.²

Most importantly, providing the full protection and security, in accordance with the investment treaties, encourage them to invest in the host country. One of the major landscapes of many of bilateral investment treaties is that they permit the foreign investors to use the international adjudication against the host country when their rights are violated. In other words, the foreign investors that come under the bilateral investment treaties are allowed to use arbitration against the host country. There are huge numbers of signed bilateral investment treaties in the worldwide for the aim of boosting economy and prosperity development. Also, the government needs to be crystal clear on its concepts and model of dealing with investors in order to avoid any conflicts that might happen in the future.³ Furthermore, it is very significant to attract foreign investment from very standpoints such as FDI which is a source of foreign exchange earnings that needed to increase investment levels and enhance domestic savings. There are also some other benefits that might accumulate from increasing foreign investment. These include the transfer of labor skills and technology and human capital. Existence of the foreign investors in the host country leads to the transference of knowledge and skills of the employment.⁴

The bilateral investment treaties refer to establishing an agreement, which highlights the conditions for private investment by companies of one state to another state. This can be called foreign direct investment. It happens between two countries that came up to agree on conditions and terms for the investment. It is very vital to have BITs as it protects the companies from unfair action from the government. As a simple instance, China and America, two largest economies in the world; they are using BITs for settling disputes. More importantly, they are making BITs relevant for coping issues that are faced by investors during their investment outside their countries as the level of risk will be increased. Having the BITs give more opportunity to the state to access the foreign market. For example, the US has signed BITs with 42 states that grant them fair terms and conditions. The main benefit of BITs is the protection of investors, it protects the rights of the investors, and it guarantees them equal treatment just as domestic companies. Foreign direct investment benefits developing

1JeswaldSalacuse, *The Law of Investment Treaties* (Oxford University Press 2010) 1

2Denisia, V., *Foreign direct investment theories: An overview of the main FDI theories*. European Journal of Interdisciplinary Studies, 2010, at p. 53-59.

3 Ghassan F.Hanna and others, *Foreign Direct Investment in Post-Conflict Countries: The Case of Iraq's Oil and Electricity Sectors*, International Journal of Energy Economics and Policy, 2014, at 137-139.

4Denisia, V., note 2, at p. 53-59.

countries and bring technical knowledge and skills, increases employment opportunities, develops human resources and etc. Iraq is a conflict affected country and it can be a very motivating destination for FDI as it still needs investment in reconstruction and infrastructure development. The national investment law grants the foreign investors with fair and equitable rights as national investors, which attracts them to invest in Iraq in various sectors. The investors can deport capital that is brought into Iraq through the proceeds, bearing in mind that Iraq is the world's second largest proven oil reserves' country. Though, there are some weak points that this country hampers the FDI, such as the high dependence on the oil, corruption, dysfunctional visa procedures, electricity shortage, and customs regulations. More importantly, a very weak and restricted banking is considered as a weak factors that hinder the FDI. The political risks and the persistence of instability in many places have a great influence on foreign investment.

Research objectives

There are many studies conducted to indicate the impact of bilateral investment treaties on foreign direct investment. However, the influence of such agreements in internal reform has not been addressed adequately, in particular when conducting such reform is considered a strong signal to the foreign investors to invest their capital in any country. The paper will also help decision makers to pay a serious attention to internal reform in various sectors in Iraq. This paper shed lights on the impact of the bilateral investment treaties on foreign direct investment after the overthrowing of Saddam Hussein's regime in 2003 and the role of the national investment law on FDI. As Iraq faces several challenges mostly the alarming being security, sovereignty and the struggle for control of the war-torn regions. It is necessary to build a dense legal framework that preserves strong contract rights, property and protection against political risks and also security risks. Internal structural reform as a result of concluding investment agreements is another area that the research will discuss.

Research problem

Due to the recentness of investment in Iraq and openness toward foreign countries, finding multiple sources is considered a main obstacle in conducting such paper. There are many gaps within the Iraqi legal system when it comes to foreign investment. The flow of terrorism and continues financial crisis in Iraq have made investment even more challenging. Iraq is in the position to adopt adequate system to sign investment treaties with the foreign investors. It also needs to remove all the anti-reform barriers from its internal structure to have a healthy environment for investment.

Research methodology

The paper has adopted an analytical method by examining existing legislations and agreements in the investment field. Further, many juristic opinions have been analysed to provide a better understanding to the impact of bilateral investment treaties and internal reform on direct investment.

Research outline

The paper has been divided into four parts. In the first part, the overview of foreign direct investment will be discussed by focusing on the events after 2003. The second part is dedicated to argue the correlation between bilateral investment treaties and foreign direct investment. The Foreign Direct Investment and Investment Law will be indicated in the third part. Finally, enablement of internal reform will be discussed in the fourth part.

Part one: Iraq and Foreign Direct Investment after 2003

Before the overthrow of Saddam Hussein's regime in 2003, foreigners were not allowed to direct investment in Iraq through direct control of Iraqi companies. The idea of not having foreign investors have changed after 2003 and foreign direct investment commenced to be permitted. Thus, Iraq needs lots of reconstruction and development projects as the conflict is dying down.⁵ On the post-upheaval of the political dictatorship in Iraq, the laws that were amended by the Coalition Provisional Authority were explicitly investment laws while many other laws have not been updated. The purpose behind it was to align these amended laws along with Iraq's commitment to start making relevant

⁵ Ghassan F. Hanna and others, note 3, at p. 138.
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reforms to develop its businesses and create an attractive climate for the foreign investors. In addition to that the main purpose behind opening the door of investors is to boost Iraq's economy. The amended Iraqi Investment Law is the domestic law which regulates foreign investment in every sector except petroleum, banking and insurance sectors in Iraq.⁶ Despite having this restriction, under Article 10 of the KRG Investment Law, foreign investors have the same rights as the Iraqi national investors and also, they have the same privileges as Iraqis. It facilitates any contract that the public sector has concluded with foreign investor or any term in bilateral treaties that gives foreign investor a base in Iraqi national law for the consideration of fair investment without any discrimination with the Iraqi nationals.⁷ Iraq is considered as having the second largest proven oil reserve and in spite of the continues security concerns and difficulties, but that not influenced the appetite for investment in Iraq in a larger extent. The Iraqi government ensured full commitment to secure the foreign investment and to make the country much more attractive to foreign investors on a domestic level and privileging the same rights as well.⁸

To the extent that bilateral investment treaties attract foreign direct investment is that during 1990s the investment agreement were taken relatively safe and more likely to be used merely in occasional situations. This has changed and no longer the case as it was used to be by the end of 2010. In this case, arbitration started to become a common means to settle the dispute down. Furthermore, arbitration considered to be seen as threatens to display that they do mean business and are willing to continue the bilateral relation.⁹ There is not a clear data on how many BITs have been adopted by Iraq so far. It is announced that there are two main bilateral investment agreements between Iraq are Kuwait and Japan, and perhaps Jordan. In the meantime, according to the Iraqi Chairman of National Investment Commission, Iraq also has signed investment agreement with European countries, such as Italy, France, Belgium and many others. The first bilateral investment agreement between Iraq and Japan, which was signed in 2012, and it is a significant commitment by Iraq to protect the rights of the foreign investors under this treaty. In order to attract the foreign investment Iraq must undertake the creation and reconstruct of the destroyed infrastructure transition from war economy to the marketing environment. In addition to that, Iraq needs to recommence relations with international community.¹⁰ A state in transition represent a major challenge to FDI since it exacerbate the investment risks due to the lack of the institutions and systems required to guarantee an investment.

In order to attract foreign investment and improve the living standards of its citizens, a post conflict state, such as that of Iraq, must undertake the creation or rebuilding of the destroyed infrastructure, transition from war economy to market, resume relations with the international community, and finally transition to the rule of law (Ghani et al., 2006). A state in transition represents a major challenge to FDI since it exasperate the investment risks due to the lack of the institutions and systems required to guarantee an investment.

Part two: The correlation between Bilateral Investment Treaty and Foreign Direct Investment

Bilateral Investment Treaties (BITs) have a fairly long history that can be traced to the 1960s.¹¹

Both Dolzer and Stevens have indicated that "FDI can experience a boost provided that the ratification of the BIT yields a credible guarantee by the host economy of a certain standard of

6O'Leary, B., McGarry, J., and Salih, K. (2005), *The Future of Kurdistan in Iraq*. Pennsylvania: University of Pennsylvania Press. P.4-6.

7Poelhekke, S. (2015), Do Global Banks Facilitate Foreign Direct Investment? *European Economic Review*, Vol. 76, pp. 25-46.

8Asiedu, E. (2013), *Foreign direct investment, natural resources and institutions*. International Growth Center.

9O'Leary, B., McGarry, J., and Salih, K. note 6, at P. 6-10.

10Asiedu, E. note 8.

11Tobin, J. and Rose-Ackerman, S., (2006), "Bilateral investment treaties: Do they Stimulate foreign direct investment?", Yale Law School Center for Law, mimeo.

treatment of foreign investment”¹². In the international law, the bilateral investment treaty (BIT) has emerged to govern and control foreign investment. BITs are signed between core and periphery country, and the main purpose behind it is to protect and promote foreign investment. Having said that, the BIT is growing and has been seen to be very important and getting in large as the multilateral attempts has failed on treaty over the laws and rules of governing international investment.¹³

One of the optimal characteristics of globalization is the progress of multinationals and internationalization of products and manufactures. The firms engage in foreign direct investment when companies and businesses swing and transfer products overseas, preserve and manage the quality of control of that investment. Explicitly, foreign direct investment is an achievement of an enterprise in a foreign country in which the quality control of management is kept by investor.

The privilege of FDI can benefit both the foreign investor and the national investor.¹⁴ At the national level, transferring the production overseas increases the profit among national investors by exploiting natural resources and serving the local market. It is also considered as an added job and a stable source of foreign capital. If the positive spillover effects are recognized in the local economy, then FDI can bring about the economic progress and development for its country. The positive spillover effects happen through increased labor productivity, technology transfers, and transfer of managerial proficiency.¹⁵ As a simple instance, multinational corporation may import input of product, preserve the control over its technology and employee merely expats to managerial positions. In addition to that it can be a trench on host country's economy by putting local firms out of business and monopolizing the local capital and its resources. In this sense, while the foreign investors ask for full autonomy over the allocation of resource and its decisions, the hosted country and government want those decisions to meet their progress and development objectives. It creates tension between the host government and foreign investors as both sides have their own objectives and interests of development.¹⁶ In a sense, it will be a basis of contradiction. The host country attracts foreign investment by offering favorable deal to foreign investors. After 1980s, the capability to attract FDI commenced and became important. The host country attracts foreign investors by increasing the profitability of an investment and offering attractive location incentives, such as direct financial transfers. In addition to that the host country can improve the regulation in order to reduce the risks of investment. The bilateral investment treaty designed to attract the foreign investment and reduce the risk of investment.¹⁷

The findings of quantitative studies that have been done on the impact of bilateral investment treaties on foreign investment have shown the positive relation. In the review of 35 published and unpublished studies in 2014 by the United Nation Conference on Trade and Development on the impact of investment treaties on FDI suggested that there is a positive relation between the two with only few who suggested the opposite opinion.¹⁸

The foreign direct investment interestingly promoted bilateral international treaties between international institutions. When it comes to the developing countries, the cost of sovereignty is questionable, as they do not have the contractual guarantee of new investment. Notwithstanding, when the countries build the bilateral relation that does not mean that they are obliged to promote foreign investment. It gives the sense that BIT has not increased the foreign direct investment, but rather

12Dolzer, R., and Stevens, M., (1995), *Bilateral Investment Treaties*, The Hague: Martinus Nijhoff Publishers.

13Tobin, J. and Rose-Ackerman, S., note 11.

14Wheeler, D., and A. Mody, 1992, “International Investment Location Decisions: The Case of U.S. firms,” *Journal of International Economics*, 33, pp. 57–76.

15Tobin, J. and Rose-Ackerman, S., note 11,

16 Ghassan F. Hanna and others, note 3, at p. 141-143.

17 Jonathan Bonnitche, *Assessing the Impacts of Investment Treaties: Overview of the evidence*, 2017, at p.3-4.

18Ibid.

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indirectly promoted for the objectives of development and stabilizes the environment.¹⁹The following are the characteristics of having bilateral relation treaties between countries, which has positive. BITs guard the autocracy and bigoted treatment and it guarantee the capital transfer in and outside of the country. In addition to that, BITs protect the investors from the host country of siding and violating the treaties, and it grants the foreign investors to maintain their treaty free of violation, which may be committed by the host country. The above provision assists the host government to practice regulation and strong commitment to the foreign investors and provide regulatory environment and promote the flow of foreign direct investment into the host country. The strength of these provisions is different among countries that hold the bilateral relation treaties in which it is shown that how credibly the BITs are, and strengthen its commitment. As a point of view, merely the strong bilateral relation treaty should attract the foreign direct investment and practice the mentioned above provision and regulation in Iraq.²⁰

As it was highlighted, BITs should attract the flow of foreign direct investment into the host country. The main focus on the relation between BITs and FDI is to open new gate for the new investment and attract new investors. Depending on many studies on BITs and their impact that BIT is considered as a commitment tool to overcome the host country's problem and respect the FDI. In addition to that BIT also is considered as an indicator to foreign investors out of the treaty that the host country is committed to respectfully protect the rights of the foreign investors. Realistically, BITs attract the flow of FDI explicitly under low risk of political situation and favor domestic regulation.²¹ On the other side, BITs are considered as an alternative to a good quality of doing businesses. The ability of BIT to promote FDI is a function size of a country. Thus, bilateral relation treaty signed with large capital exporter, such as United States should promote more foreign direct investment than building a treaty with a small capital exporter as New Zealand. Based on the research findings there is a positive impact of the relationship between US BITs and foreign direct investment, but rather insignificant relationship between other countries bilateral investment treaties and foreign direct investment and negative impact and irrelevant relationship between countries that are not in the list of the mission of Organization for Economic Cooperation and Development BITs and FDI. Furthermore, the purpose behind US BIT is not merely promoting FDI but also facilitating the entry of investment in host countries and particularly to developing countries and has positive impact in promoting influential foreign direct investment into the developing world.²²

Moreover, through the analysis of the impact of BITs on FDI is that the BIT promotes foreign direct investment because it reduces the cost of insurance, on the other side BIT has not direct impact of FDI and significantly at the end of it has positive impact on foreign direct investment. It determines that the impact of BITs on FDI might be conditional on the type of investment. Also, the more the BIT is legal and legitimately provides protection for foreign investors, the more they will promote foreign direct investment.

Part Three: The Foreign Direct Investment and Investment Law, Case of Iraq

After 2003, the Post war era in Iraq, the national investment law was enacted, as an object to reconstruct the infrastructure, which had been ruined by the war occupation. Thus, it was conceived as a tool to govern the investment and provide a regulatory environment in Iraq. According to the national investment law, the national and foreign investors receive the same privilege, facilities and guarantees which attract the investors into the host of Iraq. As in the article of 10 indicated that 'The Iraqi or foreign investor enjoy the same privileges, facilities, and guarantees, and submit to the

19Herzer, D. &Schrooten, M. (2007). *Outward FDI and domestic investment* (Discussion Paper No. 679). Berlin: German Institute of Economic Research.

20Sattorova, M., Omiunu, O., & Erkan, M. (in press). How do host states respond to investment treaty law? Some empirical observations. *European Year Book of International Economic Law* (Special Issue), Springer.

21Herzer, D. &Schrooten, M. note 19.

22 Ghassan F.Hanna and others, note 3, at p. 143-144.

obligations stated in this law.’²³ In this sense, it does not discriminate between national and foreign investors. It allows the foreign investors to get profit from Iraq and transfer capital and open bank account. As a simple example, a foreign company might invest in Iraq through a local company in which it incorporates. Though the foreign investors enjoy the same profits and privileges, they cannot own land as it indicated in Article 11 of the national investment law that ‘the right of foreign investors to lease real estate up to 50 years, which may then be renewed with the approval of the National Investment Commission’.²⁴ Further, it allows the foreign investors to rent the land of the state and make profit out of it. These provisions attract foreign investors to invest in Iraq and doing business to get profit on it and it gives them the motivation to be more interested in investing in Iraq. When it comes to the BITs, even the foreign investors enjoy the privileges over the international agreement. From the legal perspective, if Iraq decided to join the international agreement whether it is bilateral or multilateral, the foreign investors will acquire benefits in accordance with the international agreement, which might be signed by Iraq and other countries that are interested in investment in Iraq. It gives a sense to the foreign investors that their rights will be protected and maintained in accordance with the international standards. The foreign investors obtain benefits in many sectors except in oil and gas extraction and their production as well as banking and insurance.²⁵ Therefore, the foreign investors do not obtain any benefit related to oil and gas extraction. Depending on this law that there is no guarantee of conducting action for foreign direct investment in these mentioned sectors above and no benefit provided or allowed under any international agreement that approved by Iraqi government. Meaning, the Iraqi investment law do not give any space for foreign direct investment in the oil sector and for foreign investors to get any benefit from it. It means that the national and foreign investors and their companies do not receive the same privileges and they are not treated equally. As well as the products that imported into the host of Iraq and products produced locally are not treated equally.²⁶ Interestingly, the bilateral relation treaties have impact on the foreign direct investment indirectly, when the government of Iraq ratifies the international agreement and at the same time it does not give any space for the foreign investors in some sectors explicitly oil and gas extraction, banking and insurance. There are some of main treaties that Iraq has ratified such as International Monetary Fund, International Standard Organization, and United Nations Convention on Contracts for International Sale of Goods and the Global System of Trade Preferences, and World Customs Organization. In a nutshell, the Iraqi investment Laws allow the foreign investors to enjoy the right that national investors are entitled to it, except in some of the sectors, such as oil and gas extraction, banking and insurance in which both investors will not be treated equally. Merely in this regard the profit and privileges are not given to foreign investors as well as local investors.²⁷

The national investment law merely and simply applies to the Iraq, but in the semi-autonomous region of Kurdistan the Iraqi Kurdistan law No.13 of 2006 applies. It means that different investment law can be applied to Iraq and KRI, as Kurdistan is a quasi-state. Under the Article 3 of this investment law ‘the foreign investor and capital shall be treated as the national investor and capital. The foreign investor shall have the right to own the entire capital of any project that he establishes in the region under this law.’²⁸

Though the positive side of the investment law is attracting the foreign investors due to having the benefit of it, the other reasons may play a different role for not having enough investors as needed. There are lots of different reasons that may affect the foreign investment not to be fully effective, such as lack of security, corruption, and lack of transparency the disputes over oil rights. Due to

23 Article 10 (one) of Investment law No13 of 2006.

24 Article 11 (second, B) of Investment law No13 of 2006.

25 Gliberman, Steven, Shapiro, Daniel. The impact of government policies on foreign direct investment: The Canadian experience. *Journal of International Business Studies*. 1999;30(3):513-532.

26 Ibid

27 Ghassan F.Hanna and others, note 3, at p. 143-146

28 Article 3 of Iraqi Kurdistan Investment law No.13 of 2006

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having these reasons Iraq does not considered as a good place to do business and it is in a very low rank to the world. The vast direct foreign investment in the oil sector created incredible positive attraction of bringing and attracting foreign investors in importing the foreign technology, human capital and the exceed of foreign direct investment in Iraq into non-oil sectors.

Part Four: Enablement of internal reforms (investment facilitation)

Investment facilitation refers to “systems and processes designed to ease procedures for investors to establish or expand their investments. Effective one-stop shops are critical to simplifying complex administrative burdens and cutting down investors’ transaction costs. Investment facilitation involves filling the information gap and reducing the number of steps in the decision-making process, which in turn helps to reduce opportunities for corruption.”²⁹ To facilitate investment reforms, there is a need to have a smooth shift from dominated public sector into a more diversified sort of economy where economic growth can be achieved as a result of private investment. Further, Establishing, financing and insuring projects now advantage from a stronger legal framework which provides safeguards to alleviate security risks and intends to streamline procedures to facilitate investment projects. It is an important initial step which could lead to further impact if accompanied by strong political vision, institutional stability and co-ordination, business-related measures and improved communication.³⁰ It is discussed that the quality of domestic institutions of the host state is proven to have significant impact on foreign investment compare to the international agreements.³¹

Some Author believe that the foreign investors will value a rational and transparent policy making process. They argue that despite the fact that having an attractive and guaranteed set of investment regulation is crucial, but there is a special attention to the way these policies made.³²

Moreover, as Hewko mentioned, “foreign investors value an efficient bureaucracy. Apart from the institutions that create laws and regulations, businesses must be concerned about the range of government officials who implement and administer them. Excessive red tape interferes with the efficient conduct of business”³³. Corruption is another major concern for the foreign investors as one commentator states “Corruption similarly produces bottlenecks, heightens uncertainty, and raises costs”³⁴. Another area that foreign investors are eagerly looking at is having a reliable judiciary system that can settle contractual disputes and protect property rights, particularly in trials that do not lead to international arbitration. In any contractual relationships, disputes are inevitable; thus, contractors are seeking an ultimate source of protection, particularly in the foreign country where foreign contractors are uncertain about the whole legal system.³⁵

According to the World Bank, there are some restrictions that hardens foreign direct investment and they should be eradicated to allow the flow of investment in Iraq and Kurdistan Region in particular. These restrictions include: legal uncertainty (sometime conflicting requirements from different authorities, e.g., for tax exemptions [there is uncertainty about exemptions that might be granted by one ministry and then denied by another] or reporting schedules, or rules regulating the professions that may vary across Iraqi regions), nationality requirements, equivalence for diplomas,

29 Promoting Investment in a Fragile Context; the OECD Iraq Project, 2016, at p.33.

30 Ibid, at p. 35-36.

31 Richard C.Chen, Bilateral investment Treaties and Domestic Institutional Reform, Colombian Journal for Transnational Law, p.549-550.

32 Kyeonghi Baek & Xingwan Qian, *An Analysis on Political Risks and the Flow of Foreign Direct Investment in Developing and Industrialized Economies*, ECON., MGMT., & FIN. MARKETS, Dec. 2011, at 64-65.

33 John Hewko, Special Report, *Foreign Direct Investment in Transitional Economies: Does the Rule of Law Matter?*, E. EUR. CONST. REV., Fall 2002, at 71

34 Mohsin Habib & Leon Zurawicki, *Corruption and Foreign Direct Investment*, 33 J. INT'L BUS. STUD. 291, 292 (2002).

35 Richard C.Chen, note 31, p571-572.

residency requirements for visas.³⁶ Moreover, there are some restrictions related to financing and accounting such as: restrictions on the performance of audits by foreign firms and professionals (need signature of local auditor) only advisory services; use of old accounting standards (need for double reporting that is costly for companies).³⁷ The World Bank report has also indicated that many regulations inherited from the old regime, they need to be upgraded to meet international standards.³⁸

Many scholars believe that starting structural reform is an indication for the foreign countries to see investment risks. It is believed to be the signal of strong foreign investment flow in any country.³⁹ In the meantime, it is believed that attracting foreign investment does not solely depend on the creation of legal structure through bilateral investment treaties but rather political and economic climate.⁴⁰ As far as Iraq is concerned, according to a study by Middle East Monitor (2009) published by the World Bank indicates that Iraq is a very unfavourable location for FDI consideration. According to this study, Iraq is among those countries which have the highest levels of political risk.⁴¹ Despite having all business potentials in Iraq, the ethnic tensions between Shi'is and Sunnis, fierce competition among political figures to get power and constitutional disputes between the Kurdistan Region and Federal Government have hindered the facilitation of foreign direct investment.⁴² These also lead to the limited number of bilateral investment treaties between Iraq and developed countries to invest their money in Iraq. Fairness in dealing with international investors is another area of concern to foreign investors which is directly related to the success of host government in conducting reform. Another commonly cited formulation of the fair and equitable treatment standard provides as follows:

“The foreign investor expects the host State to act in a consistent manner, free from ambiguity and totally transparently in its relations with the foreign investor, so that they may know beforehand any and all rules and regulations that will govern its investments, as well as the goals of the relevant policies and administrative practices or directives, to be able to plan its investment and comply with such regulations.”⁴³ Thus, there is always a high expectation from foreign investors toward host government in reflecting fair treatment.

Conclusion

Foreign direct investment can play a major role in developing economies of many countries if it parallels with internal reform. One of the effective tools to achieve this objective is through signing bilateral investment treaties. Investors are seeking internal guarantees inside host country where they can invest their capitals. After the collapse of Saddam regime in 2003, many international investors have sought potential environment to invest their capitals. In 2006, Kurdistan Region of Iraq has adopted investment law in a hope to regulate aspects of investment within the region and provide attractive incentives to foreign investors by having an equal treatment between national and international investors. However, when it comes to bilateral investment treaties, no serious progress can be noticed as Iraq is considered one of the countries who signed minimum number of treaties. Moreover, the high levels of corruption and terrorism have hindered the flow of foreign investment in Iraq. The paper has indicated the concept of bilateral investment treaties and its impact on foreign

36The World Bank report, “Kurdistan Region of Iraq, Reforming the Economy for Shared Prosperity and Protecting the Vulnerable”, p.44.

37Ibid.

38 The World Bank report, note 36, at p.49.

39Nauro Campos and Yuko Kinoshita, Foreign Direct Investment and Structural Reforms: Evidence from Eastern Europe and Latin America, The William Davidson Institute, January 2008, p.1-2.

40 Eric Neumayer and Laura Spess, “Do bilateral Investment Treaties increase Foreign Direct Investment to Developing Countries? May 200, LSE research online, at p.3

41Middle East Monitor, (2012), Regional and Country Risk/ Reward Rating, Iraq: Risk Summary. *Iraq Oil and Gas Report*, Vol. 12, No. 4, pp. 32-34.

42 Shahin Hossin, PhD thesis titled “Determinant of Foreign Direct Investment in Kurdistan Region”, 2009, at 43-44.

43Técnicas Medioambientales Tecmed S.A. v. United Mexican States, ICSID Case No. ARB(AF)/00/2, Award, 154 (May 29, 2003).

direct investment within the Iraqi legal system; it shed light on the correlation between the two. Most importantly, the paper focused on how informal reforms affect the flow of investment in the host country. Despite the fact that the bilateral investment treaties would indirectly work to encourage internal reform which has positive impact on foreign direct investment, the process of internal reform needs a straight forward policy to be adopted by the host country.

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