Between Ideology, Strategy and Diplomacy: The Political Economy of Yugoslavia's Investment Treaties

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1. Introduction

In *The Communist Manifesto*, Karl Marx famously stated that '[t]he theory of the Communists may be summed up in the single sentence: Abolition of private property.'[1] By this, Marx was primarily referring to private property in the means of production: factories, land, resources, and tools used to produce goods and generate profit. Given this ideological stance, it may seem antithetical for a communist country to sign an international investment treaty designed to provide legal protections to foreign private investors, including their property rights. Yet, many communist countries have done precisely that,[2] raising the question: what motivates communist countries to adopt such economic policies, and how do they reconcile this approach with their ideology?

The article explores these questions through a historical lens, using Yugoslavia—the first communist country to admit foreign investors and grant them protections under investment treaties—as a case study. In 1967, Yugoslavia enacted domestic legislation on the protection

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[1] K Marx and F Engels, *The Communist Manifesto* (1848).

[2] The number of BITs signed by the existing communist states according to the United Nations Trade & Development (UNCTAD) Investment Policy Hub: China (148), Cuba (61), Laos (25), Democratic Republic of Korea (24), Vietnam (67).

of foreign investment, paving the way for a series of bilateral investment treaties (BITs) with Western countries, beginning with France in 1974. These developments followed intense disagreements and animated debates within the Yugoslav Communist Party, with some members perceiving them as a departure from Marxist-Leninist economic theory. Moreover, while Western countries welcomed this shift in economic policy, it faced sharp criticism from other communist countries in Eastern Europe, particularly the Soviet Union, which denounced it as ideologically heretical.[3] Notably, there was an awareness that Yugoslavia's economic and policy innovations could inspire other communist countries to defy Soviet rule—a trend that soon materialized, as exemplified by Romania's first BIT with the United Kingdom in 1976.[4]

This article examines the nuanced motivations behind Yugoslavia's foreign investment policy and legislative reforms during the late 1960s and 1970s, arguing that these were shaped by a complex interplay of domestic, geopolitical, and ideological considerations rather than purely economic goals, as commonly contended.[5] While promoting economic development was one objective, the policy primarily reflected the Communist Party's strategies to maintain political stability, secure international allies during uncertain geopolitical times, and advance a distinct

[3] H Clesner, 'Foreign Investment and Technical Agreements in Yugoslavia' (1967) 11(1) Patent, Trademark and Copyright Journal of Research and Education 21, 23–24.

[4] Romania signed 16 BITs in the 1970s and the 1980s. Other Soviet satellites began signing BITs primarily in the 1980s; thus prior to the fall of communism, Poland had concluded 11 BITs, Hungary 17, Bulgaria 10, and Czechoslovakia one. The Soviet Union concluded its first BIT with Finland in 1989 and went on to sign 14 more before its dissolution in 1991. China began signing BITs in the early 1980s as part of its economic reforms under Deng Xiaoping.

[5] Most of the literature focuses on foreign investment legislation rather than on bilateral investment treaties. See eg, Clesner (n 3); F R Artisien and P Buckley, 'Joint Ventures in Yugoslavia: Opportunities and Constraints' (1985) 16(1) Journal of International Business Studies 111; T P Neumann, 'Joint Ventures in Yugoslavia: 1971 Amendments to Foreign Investment Law' (1973) 6(2) New York University Journal of International Law and Politics 271; J Milutinovich, F Glenn Boseman and D Vrbanovich, 'Investment in Yugoslavia: Western Opportunities and Difficulties' (1975) 15(1) Management International Review 51; M Sukijasovic, 'Legal Aspects of Foreign Investment in Yugoslavia' (1972) 37(3) Law and Contemporary Problems 474; B M Pešelj, 'Yugoslav Law on Foreign Investment' (1968) 2(3) The International Lawyer 499; C R Chittle, 'Direct Foreign Investment in a Socialist Labor-Managed Economy. The Yugoslav Experience' (1975) 11(4) Weltwirtschafliches Archiv 770.

Yugoslav socialist model that harmonized workers' self-management, a market economy, and coexistence of various socio-economic systems.

On the domestic front, the policy was tied to the Communist Party's efforts to maintain power in the face of growing public dissent. By adopting foreign investment reforms, the Party sought to stabilize the political landscape and reinforce its authority. Geopolitically, Yugoslavia used investment treaties as strategic tools to build alliances, particularly in response to threats like the Soviet invasion of Czechoslovakia in 1968. Ideologically, the treaties showcased Yugoslavia's vision of socialism as outward-looking and adaptable, standing apart from rigid Cold War binaries. Crucially, Yugoslavia leveraged its unique geostrategic position to negotiate investment treaties on its own terms, using them to facilitate access to financial loans and assert agency in shaping its international economic relations. This counters the prevailing notion that such treaties were imposed by Western powers on developing nations, highlighting Yugoslavia's ability to assert its priorities and pursue agreements that aligned with its objectives.

While other scholars have argued that BITs are sometimes pursued for political, particularly foreign policy, reasons,[6] this article highlights an overlooked ideological dimension: Yugoslavia used BITs as a means to promote its own vision of socialism. It is argued that by adopting investment policies modelled on liberal capitalism while maintaining socialist foundations, it sought to demonstrate to other countries that such a 'middle way' was both possible and desirable. Thus, the term *'communist investment treaty,'* as used later in this

[6] See L Poulsen and E Aisbett, 'Diplomats Want Treaties: Diplomatic Agendas and Perks in Investment Regime' (2016) 7 Journal of International Dispute Settlement 72; L Poulsen, *Bounded Rationality and Economic Diplomacy: The Politics of Investment Treaties in Developing Countries* (CUP 2015); T Cohen and D Schneiderman, 'The Political Economy of Chinese Bilateral Investment Treaty Policy' (2017) 5(1) The Chinese Journal of Comparative Law 110.

article, does not denote a distinct type of agreement but rather underscores the ideological intent behind signing BITs—namely, to advance a hybrid economic and foreign policy approach that challenged both capitalist and Soviet orthodoxies.

The article aims to contribute to broader debates on the relationship between international law and political economy,[7] particularly in its historical context.[8] It focuses on investment treaties, which began to reshape the landscape of international law and the global economy during a period marked by the rise of newly decolonised and communist states. The article is particularly interested in the question of how the economic policies of communist states intersect with their political, social and legal values, and how these states justify engagement with what is often viewed as a hallmark of neoliberalism rooted in imperialism.[9] Scholars working within Third World Approaches to International Law (TWAIL) and Marxist traditions have alluded to the apparent paradox of a communist state, grounded in collective ownership rights, pursuing liberal economic policies premised on the protection of private property.[10] For instance, in his analysis of China's engagement with investment treaties, Sornarajah notes that 'this dilemma has not been sufficiently resolved.'[11] Yet he also argues that China's investment treaty programme in the 1980s did not represent a break from its socialist foundations, but rather

[7] J Bonnitcha, L Poulsen, M Waibel, *The Political Economy of the Investment Treaty Regime* (OUP 2017); J Haskell and A Rasulov, 'International Law and the Turn to Political Economy' (2018) 31 Leiden Journal of International Law 243–250; J D Haskell, 'Doing Things with Political Economy (As A Public International Law Academic)' in in J D Haskell and A Rasulov (eds.), *New Voices and New Perspectives*, European Yearbook of International Economic Law (Springer Publishing, 2020) 173.
[8] A Orford, *International Law and the Politics of History* (CUP 2021); V Vadi, 'International Law and Its Histories: Methodological Risks and Opportunities' (2017) 58(2) Havard Journal of International Law 311.
[9] M Sornarajah, 'Economic Neo-Liberalism and the International Law on Foreign Investment' in A Anghie, B Chimni, K Mickelson, O Okafor (eds.), *The Third World and International Order: Law, Politics and Globalization* (Brill 2003) 173–90; M Sornarajah, *Resistance and Change in the International Law of Foreign Investment* (CUP 2015) ch 2.
[10] M Sornarajah, 'India, China and Foreign Investment' in M Sornarajah and J Wang (eds), *China, India and the International Economic Order* (CUP 2015) 147; B Chimni, 'Marxism and International Law: A Contemporary Analysis' (1999) 34(6) Economic and Political Weekly 337, 339 (noting a shift from nationalism to pragmatism in the mid-1970s, reflected, among other things, in the conclusion of BITs between industrialised and Third World countries).
[11] Sornarajah, ibid, 147.

served as a way of signalling a shift towards a more outward-facing foreign policy.[12] Similarly, Schneiderman and Cohen contend that China's BIT policy was shaped more by internal political dynamics than by purely economic imperatives,[13] while Khoday and Bonnitcha view it as a unique policy shaped by China's own legal and cultural conditions, rather than as a capitulation to neoliberalism.[14] These insights resonate with the argument advanced in this article: Yugoslavia's adoption of BITs in the 1970s was not indicative of ideological retreat, but rather a strategic effort to safeguard and promote its distinctive model of market socialism and non-alignment within the international legal order. In making this argument, the article seeks to move beyond the dominant binary that structures much of the critical literature, namely, the narrative that the ordoliberal vision of international law simply replaced the New International Economic Order (NIEO) project of economic self-determination.[15] While these frameworks offer valuable insights, they often overlook the heterogeneity of state practice, particularly among countries positioned at the geopolitical margins of the Cold War. The Yugoslav case complicates this dichotomy by demonstrating how a socialist state could appropriate the tools of international law to pursue its own developmental and geopolitical objectives.

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[12] ibid, 145, 163. See also Orford's discussion on the history of China as narrated by international lawyers, noting that critical 'TWAIL scholarship is now being invoked to justify the authority of states like China and India taking the lead in the project of rethinking existing international law.' Orford (n 8) ch 2.4, 67.

[13] Cohen and Schneiderman (n 6) 112–13.

[14] K Khoday and J Bonnitcha, 'Globalization and Inclusive Governance in China and India: Foreign Investment, Land Rights and Legal Empowerment of the Poor' in M-C Cordonnier Segger, M W Gehring and A Newcombe (eds), *Sustainable Development in World Investment Law* (Kluwer Law International 2011) 483, 488.

[15] O Hailes, 'Putting to Work the Uncanny: Historical Argument in International Economic Law' (2024) 9(6) Global Intellectual History 712, 719; Q Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism* (Cambridge, MA: Harvard University Press, 2018); D Schneiderman, *Constitutionalizing Economic Globalization: Investment Rules and Democracy's Promise* (CUP 2008) 6; N Tzouvala, 'The Ordo-Liberal Origins of Modern International Investment Law: Constructing Competition on a Global Scale' in J D Haskell and A Rasulov (eds.), *New Voices and New Perspectives*, European Yearbook of International Economic Law (Springer Publishing 2020) 51 (noting that 'it is not possible to explain all the specificities of contemporary international investment law in reference to … ordo-liberal origins').

This article draws primarily on Yugoslav archival materials and British diplomatic documents related to Yugoslavia.[16] It does not examine the *travaux préparatoires* of specific BITs, as such records typically focus on the technical aspects of treaty negotiations, such as states' positions on particular provisions, interpretive disagreements, and the negotiation dynamics, rather than the broader strategic motivations for entering into BITs.[17] These materials rarely go beyond what is already articulated in treaty preambles. Instead, the research focuses on archival documents that predate treaty negotiations, particularly those produced in the context of the Congresses of the League of Yugoslav Communists and the preparatory working committees, since those were the principal venues where Yugoslavia's foreign and economic policy was debated and determined. Key sources include verbatim transcripts and minutes from the Ninth Congress (1969) and the Tenth Congress (1974), which provide insight into the strategic thinking, ambitions and political concerns that shaped Yugoslavia's foreign investment approach during the 1970s. The research also draws on documents from the UK National Archives, especially Foreign and Commonwealth Office (FCO) policy papers and diplomatic correspondence between British and Yugoslav officials. These records shed light on Western anxieties about Yugoslavia's political stability, how Yugoslav diplomats leveraged those concerns to secure financial support, and the role that investment treaties played in this broader diplomatic engagement.

[16] Existent archival research on Yugoslavia has primarily focused on its trade relations with Western European countries, leaving foreign investment largely unexplored. This article fills this gap in the literature. On Yugoslav trade relations, see M Broad, 'Deepening Ties but Unfulfilled Hopes: The EFTA Dimension of Western Europe's Relations with Tito's Yugoslavia' (2022) 44(3) The International History Review 595; I Obadić, 'A Troubled Relationship: Yugoslavia and the European Economic Community in Détente' (2014) 21(2) European Review of History 329.

[17] See eg, FCO, Negotiations between UK and Romania on an Investment Protection Agreement (IPA), 1976, FCO 59/1447.

The article is divided into two parts. The first part reviews the domestic and international legal frameworks governing foreign investment introduced by Yugoslavia in the late 1960s and 1970s, while the second part categorizes and analyzes the motivations behind this policy shift.

2. Yugoslavia's Foreign Investment Policy

After the Second World War, Yugoslavia transformed into a communist regime following the victory of the revolutionary army led by Tito over the Nazi occupiers. Unlike other Eastern European countries, where communism was externally imposed by the Soviet Union, Yugoslavia's communist system emerged from a grassroots revolution and civil war, and enjoyed broader popular support.[18] Initially, Yugoslavia's economic system closely mirrored the Soviet model, with the Communist Party exerting control over the economy through central planning and state ownership of the means of production. However, this began to change following the political split between Tito and Stalin in 1948, which led to Yugoslavia's expulsion from the Soviet bloc and the Cominform (the Information Bureau of Communist Parties), prompting the country to pursue its own independent path to socialism.[19]

Acknowledging the shortcomings of a centralized system of economic administration and grappling with economic challenges following the Cominform blockade, Yugoslavia sought to incorporate market elements into its socialist model by decentralizing the economy and granting workers in enterprises the authority to manage public property. The enactment of the

[18] M Uvalić, 'The Rise and Fall of Market Socialism in Yugoslavia' (2018) Contribution to the Project of the Dialogue of Civilizations Research Institute (DOC RI) Inequalities, Economic Models and the Russian October 1917 Revolution in Historical Perspective 2–3, referring to S Pavlowitch, *Serbia. The History behind the Name* (London: Hurst & Company 2002) 165.

[19] According to Pavlowitch, the split between Tito and Stalin was less a result of ideological differences than a 'conflict about power,' stemming from Tito's foreign policy ambitions beyond Yugoslavia. Pavlowitch (n 18) 165, citing A Ulam, *Titoism and the Cominform* (Cambridge: Harvard University Press 1952).

1950 *Basic Law on the Administration of State Enterprises by Workers' Collectives* marked the end of a fully centralized economy and the beginning of a system rooted in workers' self-management.[20]

The break with Moscow also facilitated increased international trade with the West, with Western European countries and the United States collectively accounting for approximately two-thirds of Yugoslavia's exports.[21] While this fostered economic growth, the costly import of Western raw materials and capital goods (necessary to transform Yugoslavia from an agriculture-focused economy to an industrialized one) created a trade imbalance with Western Europe and exacerbated balance of payments deficits.[22] To address these economic challenges, Yugoslavia implemented a series of reforms throughout the early 1960s, culminating in the radical economic reforms of 1965. These reforms also laid the groundwork for the development of domestic and international legal frameworks on foreign investment.

2.1 Yugoslav Law on Foreign Investment: Opening the Door to Western Companies

The first law permitting foreign direct investment in Yugoslavia was enacted in 1967, as part of the broader economic reforms of 1965. These reforms aimed to finalize Yugoslavia's transition to market socialism and facilitate its integration into the global economy. To support the opening of its economy to foreign trade and inward investment, Yugoslavia joined key international institutions and agreements, including the International Monetary Fund (IMF), the World Bank, and the General Agreement on Tariffs and Trade (GATT). During this period, a series of liberalizing measures were introduced, including the devaluation of the dinar, tariff

[20] The Basic Law on the Administration of State Enterprises by Workers' Collectives (Official Gazette of FNR Yugoslavia 1950).
[21] Broad (n 16) 597.
[22] ibid.

reductions, tighter credit policies, and the abolition of export subsidies. These measures sought to achieve full convertibility of the dinar, demonstrate fiscal responsibility to foreign partners, and enhance the competitiveness of Yugoslav enterprises in international markets.[23] Foreign direct investment was seen as a crucial element of this strategy, as it was expected to bring much-needed capital for domestic investment, modern technology and equipment, as well as advanced technical and managerial expertise.[24]

Before 1967, cooperation with Western companies was primarily limited to foreign debt—which provided capital but not technology or expertise, and licensing agreements—which proved unsatisfactory, as licensors had little incentive to ensure that the technology remained up to date.[25] The new foreign investment legislation, spread across ten separate acts,[26] allowed foreign investors to participate in joint ventures. This form of business cooperation required more active and sustained involvement from foreign investors in Yugoslavia's economic development. The joint venture model was expected to yield two key benefits. First, it would enhance industrial efficiency and improve Yugoslavia's international competitiveness. Second, it would help reduce unemployment in Yugoslavia, thereby curbing the emigration of Yugoslav workers and limiting their exposure to 'Western' influences.[27]

Since the rights of foreign investors were typically tied to asset ownership and managerial control, the primary challenge for lawmakers was to ensure that the foreign investment law did

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[23] Artisien and Buckley (n 5) 113; Clesner (n 3) 27.
[24] Artisien and Buckley (n 5) 113; Clesner (n 3) 27; Neumann (n 5) 272.
[25] Artisien and Buckley (n 5) 114; Neumann (n 5) 272.
[26] These included: The Law Amending and Supplementing the Law on Assets of Economic Organizations (Official Gazette No. 31/1967) [hereinafter the Law on Assets]; The Law Amending and Supplementing the Basic Law on Enterprises (Official Gazette No. 31/1967); The Law Supplementing the Law on the Establishment of Interest on Funds in the Economy (Official Gazette No. 31/1967); The Law Amending and Supplementing the Basic Law on Uniform Chambers of Economy and on Business Cooperation in the Economy (Official Gazette No. 31/1967); The Law Supplementing the Basic Law on Citizens' Contributions and Taxes, (Official Gazette No. 31/1967).
[27] Chittle (n 5) 771–72.

not compromise the core principles of Yugoslav socialism: workers' self-management and social ownership of the means of production. Both principles were enshrined in the Yugoslav constitution, which stated:

> The socio-economic system is based on free, associated labour with socially-owned means of production, and on self-management by the working people in production and in the distribution of the social product in work organizations and in the community.[28]

Under the system of workers' self-management, Yugoslav enterprises were governed by a workers' council, which functioned as the top management body, equivalent to a board of directors. The council's responsibilities included making decisions on business policy, approving financial accounts and plans for the enterprise. The workers' council was accountable to a broader body known as the 'working community', which comprised all the employees of the enterprise. By joining an enterprise's labour force, workers became equal members of the working community, acquiring both rights and responsibilities associated with their role within the enterprise.[29]

Social ownership of the means of production, on the other hand, signified that the assets of enterprises were not privately owned, as in capitalist economies, nor state-owned, as under the Soviet model of socialism. Instead, these assets were collectively owned by the Yugoslav people. Consequently, enterprises did not own social property but were merely granted the right to use it. They were obligated to preserve and manage these assets responsibly for the benefit of society as a whole.[30]

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[28] Constitution of the Socialist Federal Republic of Yugoslavia (1963) Article 6.
[29] Milutinovich *et al* (n 5) 53.
[30] Ibid, 275; Sukijasovic (n 5) 11. See also the Basic Law on Enterprises (1965), Articles 17 and 19.

The legislator regarded joint ventures as the only acceptable form of foreign investment capable of reconciling the capitalist expectations of foreign businesses with Yugoslav constitutional norms. Under the Law on Assets, a joint venture was established through a contract in which a foreign corporation or individual invested assets into a Yugoslav enterprise.[31] This arrangement preserved the principle of social ownership of the means of production, as foreign investors were not permitted to acquire ownership rights in the Yugoslav enterprise. At the same time, since Yugoslav enterprises could not own assets either, the investors' right to retain title to their invested assets was safeguarded.[32]

Workers' self-management was also preserved, as the workers' council remained the top management body within any Yugoslav enterprise in which foreign investment was involved. While foreign investors were not represented in the workers' council, they gained some managerial influence through their participation in a joint operating board (or business board), to which the workers' council could delegate responsibility for the day-to-day management of the joint venture.[33] Rather than being a threat to self-management, the decision to permit foreign investment was part of a deliberate strategy to strengthen it. By allowing enterprises to engage in joint ventures with foreign business actors, the system aimed to improve efficiency and resource allocation.[34]

While the joint venture agreement could be negotiated directly between the Yugoslav enterprise and foreign investors, granting a degree of autonomy not found in other socialist

[31] Milutinovich *et al* (n 5) 275; Sukijasovic (n 5) 32–33.
[32] Milutinovich *et al* (n 5) 276; Sukijasovic (n 5) 66–68. The Law on Assets provided for the retention of title in Article 64: 'A partnership agreement may provide for the right of the contracting parties to restitution of particular goods invested in joint operations.' The provision allowing an investment contract to stipulate the restitution of specific assets to the foreign investor lacked clarity, and its legal implications were subject to differing interpretations. See Pešelj (n 3) 506.
[33] Milutinovich *et al* (n 5) 277; Law on Assets, Article 64(1).
[34] Chittle (n 5) 771. See also Section 3.4 of this contribution.

countries, the Federal Secretariat for the Economy retained the power to deny its registration, and thus its validity, for several reasons. These included situations where the agreement did not ensure business cooperation leading to increased production, productivity, or exports, or the introduction of modern techniques and technologies into the domestic economic organization. Additionally, the agreement could be rejected if it was incompatible with domestic legislation or contradicted the country's security interests.[35] Contract freedom was further limited by the requirement that the total amount of invested assets could not exceed the contributions made by the Yugoslav partners.[36] While foreign investment was allowed in sectors such as industry, agriculture, tourism, and scientific research, it was expressly prohibited in certain areas, including banking, insurance, domestic transport, and public utility services.[37]

In terms of substantive treatment, the legislation did not grant foreign investors any legal protections beyond those afforded to domestic organizations. Consequently, the law did not include provisions prohibiting the nationalization or expropriation of foreign investors' assets, as the right to nationalize property was considered a sovereign prerogative of Yugoslavia.[38] Foreign investors were thus entitled to the same treatment as Yugoslav nationals under the law. Regarding procedural treatment, any disputes arising from investment contracts could be submitted to Yugoslav economic courts or arbitration, including *ad hoc* arbitration outside Yugoslavia. This marked the first time that such a concession had been made by a communist country.[39]

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[35] Milutinovich *et al* (n 5) 278; Law on Assets, Article 64(2).
[36] Milutinovich *et al* (n 5) 279; Law on Assets, Article 64(1).
[37] Law on Assets, Article 64 L.
[38] Pešelj (n 5) 516.
[39] Law on Assets, Article, 64. See also Pešelj (n 5) 513.

The amendments to the foreign investment law in 1971 addressed several of the more criticized aspects of the legislation, aiming to further enhance the investment climate. Three changes, in particular, were notable: first, the previous requirement that foreign investors reinvest 20% of their post-tax profits or deposit it with a Yugoslav bank was repealed; second, the right of foreign investors to repatriate capital was reaffirmed and further clarified; and third, perhaps the most radical change, provided for the so called statutory stabilization clause—a guarantee that legislative changes introduced after the registration of a joint venture would not apply to foreign investors if they adversely affected their interests.[40]

Despite these improvements, the fragmented legal framework and ambiguous terminology remained confusing and burdensome for foreign business actors.[41] As a result, in 1973, the existing provisions were consolidated into a single, more coherent act.[42] While the legislation on foreign investment continued to evolve over the next 15 years through new laws and amendments,[43] another unexpected development occurred in the 1970s: Yugoslavia began negotiating BITs.

2.2 Yugoslavia's BIT Programme in the 1970s: The First 'Communist Investment Treaty'

BITs are agreements between two states in which each undertakes certain obligations to protect private investors from the other state party. Typically, these obligations include non-discrimination, a prohibition on expropriating foreign investments without adequate, prompt,

[40] Law on Assets, Article 73. See also Milutinovich *et al* (n 5) 293; Artisien and Buckley (n 5) 118; Neumann (n 5) 293.
[41] OECD, *Foreign Investment in Yugoslavia* (Paris, 1974) 9, cited in Artisien & Buckley (n 5) 118.
[42] Law on Investment of Resources by Foreign Persons in Domestic Organizations of Associated Labour (Official Gazette No. 22/1973).
[43] A new amendment was introduced in 1976 as a Decree on Foreign Investment (Official Gazette No. 26/1976), followed by a new Law on Foreign Investment in 1978 (Official Gazette 1978), which was later amended in 1984 and 1988.

and effective compensation, and the commitment to provide fair and equitable treatment, as well as full protection and security for foreign investments.

BITs began to be negotiated in the 1960s, with the first such treaty being signed between Germany and Pakistan in 1959. These treaties were predominantly entered into between capital-exporting, Western countries and capital-importing, developing countries. The primary rationale behind BITs was to reassure Western companies that an international legal framework would offer effective substantive and procedural protections, such as independent international dispute settlement via arbitration, against the risks of investing in politically unstable, resource-rich countries, particularly the risk of nationalization.[44] In that nascent period, most BITs were signed between capitalist Western European countries and the countries from the Global South, particularly Africa and the Middle East.

In the mid-1970s, an interesting development took place: some communist countries began signing BITs. Yugoslavia led the way in 1974 by concluding a BIT with France, becoming the first communist state to do so. This was followed by agreements with the Netherlands (1976), Italy (1977), Sweden (1978), Egypt (1978) and Poland (1979). Lengthy negotiations with the Federal Republic of Germany resulted in the signing of a BIT in 1989, when communism in Europe was already on its last legs. The last BIT Yugoslavia signed was with Austria, coming into force in June 1991—just weeks before Croatia and Slovenia declared independence. Although the changes in Yugoslav domestic legislation that allowed for joint ventures with foreign investors, as well as the signing of the Trade Agreement with the European Community

[44] Poulsen, *Bounded Rationality* (n 6).

in 1970,[45] foreshadowed this development, Yugoslavia's embracement of BITs was still somewhat surprising.

It is worth noting that this policy shift coincided with the adoption of the 1974 Constitution, which further decentralized political and economic authority to the republics and autonomous provinces. While the treaty-making power remained at the federal level, the Constitution's emphasis on self-management and economic autonomy may have contributed to a more flexible and pragmatic orientation in foreign economic policy,[46] including greater openness to BITs. Crucially, the 1974 Constitution also provided greater legal clarity regarding the status of enterprises, explicitly stating that they were owned by no one.[47] This principle helped reduce ambiguity over ownership claims, potentially mitigating legal friction with international investment norms and making BIT commitments more compatible with Yugoslavia's domestic legal order.

While domestic laws maintained Yugoslavia's control over the regulation of foreign investment, the BITs marked a step into uncharted territory. Here, the degree of control was no longer entirely monopolized by the host state but was instead shaped through negotiations with the investor's home state. Depending on the objectives, leverage, and negotiating strength of the state parties, this could result in the erosion of state sovereignty on certain issues in exchange for expected economic and political benefits.

[45] Commission of the European Communities: External Relations Memo 20/79: Non-Preferential Trade Agreement with Yugoslavia, Brussels, March 1970. As noted in the memo, the 1970 agreement 'covered a period of three years and expired on 30 April 1973. It was succeeded by a five-year Agreement signed in 1973, which was in force up to 30 September 1978 and was tacitly extended.'
[46] Uvalić (n 18) 11, 15.
[47] Uvalić, ibid, 8, citing The Constitution of the Socialist Federal Republic of Yugoslavia (1974) (Beograd: Jugoslovenski Pregled, 1989), III part of Basic Principles, 13.

This trade-off is evident in the first 'communist' BIT between France and Yugoslavia, which was unusually transparent in its express asymmetry. It did not attempt to obscure the fact that one state party primarily undertook obligations of protection, while the investors benefiting from those protections would come from the other state party. The preamble of the BIT thus explicitly stated that its objectives were twofold: to protect and encourage French investment in Yugoslavian territory, and to contribute to the economic development and productivity of Yugoslavia.[48]

The BIT included several typical substantive standards that offered a higher level of protection than those provided under Yugoslavia's domestic foreign investment law. These included most-favoured-nation and national treatment standards, vaguely defined protection against both direct and indirect expropriation, and obligation to provide fair and equitable treatment (FET). Although today FET has become a standard that has been invoked most frequently and with the highest rate of success for investors in investor-state arbitrations,[49] its meaning remains contested. Often described as a 'catch-all' clause,[50] FET has been criticised for granting broad discretion to arbitral tribunals and for potentially encroaching on state sovereignty, particularly when used to challenge regulatory or policy decisions.[51] However, in

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[48] The agreement between the Government of the French Republic and the Government of the Socialist Federal Republic of Yugoslavia on the Protection of Investments (signed March 28, 1974, entered into force March 3, 1975) [hereafter France-Yugoslavia BIT]. No dispute ever arose out of this treaty, which is still in force, at least between France and some successor states of the former Yugoslavia, like Serbia and Montenegro.

[49] According to UNCTAD report, by 2023, claimants had invoked the FET provision in roughly 85% of investor-state arbitration cases, with tribunals finding FET breaches in about 65% of the cases decided in the investor's favour. See IIA Issue Note, UNCTAD, 'Facts and Figures on Investor-State Dispute Settlement Cases' (November 2024) 8, available on < https://unctad.org/system/files/official-document/diaepcbinf2024d5_en.pdf> (accessed on 3 June 2025). See also R Dolzer, C Schreuer and U Kriebaum, *Principles of International Investment Law* (OUP 2022) 186.

[50] F Sarmiento and S Nikiema, 'Fair and Equitable Treatment – Why It Matters and What Can be Done?' IISD Best Practices Series (November 2022) 5, available on <https://www.iisd.org/system/files/2022-11/fair-equitable-treatment-en.pdf >(accessed on 3 June 2025).

[51] It is often observed that the expansive interpretation of FET clauses by tribunals has been a key factor driving the backlash against investment arbitration. C Lim, J Ho and M Paparinskis, *International Investment Law and Arbitration*: *Commentary, Awards and other Materials (*CUP 2021) 332. For criticism, see eg, M Sornarajah, 'The Fair and Equitable Standard of Treatment: Whose Fairness? Whose Equity?' in F Ortino, L Liberti, A Sheppard and H Warner (eds), *Investment Treaty Law, Current Issues II: Nationality and Investment Treaty*

the 1970s, when the France–Yugoslavia BIT was signed, the legal contours of FET were still largely undefined. There was no case law interpreting the standard and little clarity about its precise content. At the time, FET was primarily modelled on the language of US Friendship, Commerce and Navigation treaties and was reproduced almost routinely in early BITs, without significant elaboration or discussion.[52] Against this backdrop, the inclusion of FET in the France–Yugoslavia BIT reflects the broader drafting practice of the era rather than a clearly defined commitment to the substantive obligations that the FET standard has come to entail in contemporary investment law.

On the other hand, Yugoslavia successfully negotiated some favourable provisions. For instance, France agreed to consider providing guarantees for French investors in Yugoslavia, thus reassuring them against political risks and offering another incentive for joint ventures. Additionally, the BIT provided for a 'just' standard of compensation in the event of expropriation,[53] reflecting the language of the 1974 Constitution.[54] In doing so, it sidestepped the contested 'Hull formula,' which required compensation to be adequate, prompt, and effective. At the time, the 'Hull formula' faced strong criticism from developing countries, as evidenced by major United Nations General Assembly resolutions,[55] and declarations of the Non-Aligned Movement,[56] which was formally established in Yugoslavia. For example, under

Claims and Fair and Equitable Treatment (London; BIICL, 2007); M Sornarajah, 'A Coming Crisis: Expansionary Trends in Investment Treaty Arbitration' in K Sauvant (ed), *Appeals Mechanism in International Investment Disputes* (OUP 2008) 39–77.

[52] Dolzer *et al* (n 49) 188–89; R Dolzer, 'Fair and Equitable Treatment: A Key Standard in Investment Treaties' (2005) 39(1) The International Lawyer 89.

[53] France-Yugoslavia BIT (1974), Section 5.

[54] Article 82 of the 1974 Constitution, which addressed expropriation, referred to the standard of 'just compensation.'

[55] In 1974, the UN General Assembly decisively rejected the 'Hull formula' in adopting the Charter of Economic Rights and Duties of States in favour of the question of compensation 'being settled under the domestic law of the nationalising State and by its tribunals.' General Assembly Resolution 3281 (XXIX) (adopted 12 December 1974).

[56] At its 4th Summit of the Non-Aligned Movement in Algiers in 1973, members adopted an Economic Declaration stating that compensation for nationalisation should be determined by each state in accordance with its national legislation.

the Charter of Economic Rights and Duties of States, a state expropriating foreign property, had to pay 'appropriate compensation … taking into account its relevant laws and regulations and all circumstances that the State considers pertinent.'[57] From a Yugoslav communist perspective, the indemnity required under the 'Hull formula' was seen as a 'conversion of capital' and, therefore, incompatible with a socialist framework.[58] In other words, paying full market-value compensation to foreign investors was seen as effectively reintroducing private ownership and capital accumulation, thereby undermining the ideological foundation of a socialist economy.

Furthermore, Yugoslavia limited access to international arbitration for investor–state disputes, one of the most controversial and far-reaching features of international investment law. Although Section 2 of the BIT includes a clause referring disputes between French investors and Yugoslavia to the International Centre for Settlement of Investment Disputes (ICSID),[59] the provision is ambiguously worded. Crucially, it does not clearly confer upon French investors the right to unilaterally initiate arbitration (or mediation) proceedings against Yugoslavia. This omission suggests a deliberate attempt to preserve state control over the dispute resolution process and reflects Yugoslavia's cautious approach to ceding sovereignty through binding international dispute settlement mechanisms.

Yugoslavia's position was not always consistent, however, and it shifted depending on the negotiating party. For example, in the BIT it concluded with Sweden, Yugoslavia accepted the

[57] The Charter of Economic Rights and Duties of States, Article 2(2)(c).
[58] Pešelj (n 3); B Pešelj, 'International Aspect of the Recent Yugoslav Nationalization Law' (1959) 53 AJIL 428–32.
[59] France-Yugoslavia BIT (1974), Section 2. The provision does not specify whether recourse should be to arbitration or mediation, thereby leaving the possibility of mediation open. Yugoslavia ratified the Convention on the Convention on the Settlement of Investment Disputes between States and Nationals of other States (ICSID Convention) in 1966.

'Hull formula' but kept recourse to ICSID arbitration difficult by conditioning it on the consent of the parties involved.[60] Furthermore, some negotiations faltered due to Yugoslavia's steadfast positions. For instance, West Germany engaged in intermittent negotiations of a BIT with Yugoslavia since the early 1970s.[61] One German diplomat complained to a UK government official about the difficulty of the Yugoslav negotiators, suggesting the entire process was a waste of time.[62] When Yugoslavia approached the UK to negotiate a BIT in 1981, the UK was unwilling to undertake the same cumbersome process, at least not until the Germans had achieved a breakthrough.[63] Moreover, at that time, the UK was busy negotiating BITs with other countries deemed to be of higher economic interest. In the words of a UK official, UK investment treaties were primarily intended for developing countries with large mineral deposits, not for the 'Yugoslavias of today's world.'[64]

The archival sources reveal three key points. First, while Western countries supported the liberalization of the Yugoslav economy, they did not view investment treaties as the primary mechanism for achieving that goal.[65] Second, contrary to the often-held belief that Western countries imposed investment treaties on their negotiating parties, with little agency exercised by the latter, the situation with Yugoslavia was different. Yugoslavia, aware of its unique geopolitical position, played its cards strategically, not only as an initiator but also as a resolute negotiator of these treaties, much to the frustration of Western diplomats.[66] Third, Yugoslavia's foreign economic policy faced resistance from both communists abroad and domestic communists within the Yugoslav Party.

[60] The Agreement between the Government of Sweden and the Socialist Federal Republic of Yugoslavia on the Mutual Protection of Investments (signed on November 10, 1978, entered into force November 21, 1979).
[61] Foreign and Commonwealth Office (FCO), Investment Promotion and Protection Agreement: UK /Yugoslavia, 1981, FCO 69/741.
[62] ibid.
[63] ibid.
[64] ibid.
[65] ibid.
[66] ibid.

Communists outside Yugoslavia, particularly in the Soviet Union, were critical of the country's economic direction, fearing that Yugoslavia was setting a dangerous precedent that other communist countries might soon follow—which, indeed, did occur.[67] Following Yugoslavia's introduction of joint venture legislation, Romania and Hungary enacted similar laws in 1972. Romania also followed Yugoslavia's approach to investment treaties, signing eight BITs during the 1970s.[68]

There was no consensus on the new economic policy among Yugoslav communists either. As early as the 1950s, two factions emerged within the Communist Party, each advocating a different vision for the country's future. On one side, the liberals pushed for decentralization, political and economic liberalization, and stronger ties with the West. On the other, the conservatives favoured a more centralized economy and governance, advocating closer relations with the Soviet bloc.[69]

Many Yugoslav communists were deeply sceptical of the liberal policy allowing foreign investment and granting legal protections to foreign investors.[70] They saw such measures as a potential tool for capitalist exploitation and urged caution. To them, prioritizing economic pragmatism in attracting foreign capital amounted to a betrayal of Marxist-Leninist principles.[71] Moreover, they feared that the power of foreign corporations could undermine the

[67] Clesner (n 3) 23–24; Milutinovich *et al* (n 5) 52.
[68] Romania entered into BITs with the following states: Austria, France, United Kingdom, Belgium, Pakistan, Sudan, Gabon and Germany.
[69] Obadić (n 16) 337.
[70] Archive of Yugoslavia, Arhiv CK SKJ, X Kongres, Fond 507/I, K 3, I/X-K 3/1-6, 10th Congress of the League of Yugoslav Communists, *Komisija za razvoj socialističkih samoupravnih društveno-ekonomskih odnosa i problema ekonomskog i društvenog razvoja* (28-29 May 1974) 19, (Rikard, 29 May 1974); K27 Arhiv CK, SKJ, I/X-k. 27/11-19, *Spoljna politika SFRJ, Komisija PSKJ za izgradnju rezolucije 'razvoj ekonomsko-političkih i društvenih odnosa u svetu', SKJ i spoljna politika samoupravne socialističke Jugoslavije* (27 July 1974).
[71] Clesner (n 3) 23.

autonomy of self-managed enterprises and weaken Yugoslavia's anti-imperialist stance, particularly given the role of Western companies in developing countries.[72]

During discussions within the Working Group of the Committee for the Development of Economic-Political and Social Relations with the World, ahead of the Tenth Congress of the League of Yugoslav Communists in 1974, one official remarked that Yugoslavia's approach to international economic relations did not simply represent the coexistence of different economic systems. Rather, it was based on the recognition that collaboration with capitalism was essential for addressing underlying contradictions.[73] If Yugoslavia were to engage in foreign trade and the international division of labour (elements of which involved signing international economic agreements), it would also need to confront the risks associated with these practices.[74] These risks included the role of multinational corporations in exploiting developing countries and the issue of technological imperialism.[75] Interestingly, the Committee members, confident in the strength of Yugoslavia's own socialist economic system, did not see the country as one that could be exploited by multinational corporations. Instead, their primary concern was how to justify Yugoslavia's participation in a system that perpetuated imperialism and neo-colonialism in other parts of the world.

Despite these concerns, Tito ultimately sided with the Party's liberal faction, arguing that Yugoslavia's search for a new path, tailored to its unique position and needs, was the only viable way forward.[76] Given the ideological rift that this new economic policy created both

[72] Artisien and Buckely (n 5); J Scriven, 'Yugoslavia's New Foreign Investment Law' (1979) Journal of World Trade Law; P Artisien and S Holt, 'Yugoslavia and the E.E.C. in the 1970s' (1980) XVIII(4) Journal of Common Market Studies.
[73] Archive of Yugoslavia (n 70), K27 (Tomašević, 27 July 1974) 14, 26.
[74] ibid, 26
[75] ibid (Tomašević, 14 January 1974) 14; Podgrupa 'Kretanje u nerazvijanom trećem svetu' (2 March 1973) 37.
[76] Herald Tribune – Washington Post International (Paris) 31 March 1967.

within and beyond Yugoslavia, it is essential to understand the likely motivations behind the signing of investment treaties. The next section explores this in detail.

3. The Motives for Yugoslavia's Foreign Investment Policy

The oft-cited justification for permitting foreign investment from Western countries in Yugoslavia was to foster economic development.[77] This rationale was first expressed by Yugoslav authorities in 1965, marking the beginning of economic reforms that sought to liberalize and open the Yugoslav economy. The subsequent challenges of high unemployment, inflation, and economic instability only reinforced the belief that the most effective solution lay in enhancing the competitiveness of the Yugoslav economy and its enterprises in international markets. In the lead-up to the Tenth Congress of the League of Yugoslav Communists, delegates from various sectors[78] and regions[79] highlighted economic stagnation and underdevelopment, stressing the urgent need for increased investment. The Committee for the Development of Socialist Self-Managed Socio-Economic Relations emphasized that expanding international trade was crucial to achieving long-term economic stability, making the accumulation and concentration of foreign capital essential.[80] In this context, foreign investment was seen necessary to enhance production capacity, modernize industry, and increase the competitiveness of Yugoslav goods in global markets. The enactment of foreign investment legislation in 1967 and subsequent reforms played a central role in advancing this goal.

[77] See authorities in note 5.
[78] Archive of Yugoslavia, Arhiv CK SKJ, X Kongres, Fond 507/I, K 3, I/X-K 3/1-6, 10th Congress of the League of Yugoslav Communists, *Komisija za razvoj socialističkih samoupravnih društveno-ekonomskih odnosa i problema ekonomskog i društvenog razvoja* (Roković, 28-29 May 1974) 34, (Bubić, 29 May 1974) 17.
[79] ibid, K 3 (Nedeljković, 28-29 May 1974) 56.
[80] ibid, 23–24.

On the surface, Yugoslavia's pursuit of BITs similarly appeared to be motivated by the goal of attracting foreign investment to stimulate economic development and productivity, as reflected in the preamble of the France–Yugoslavia BIT. However, archival materials from the Archives of Yugoslavia and the UK National Archives reveal that economic considerations were not the sole drivers of Yugoslavia's foreign investment policy. The decision to engage in investment treaty-making was shaped by a complex interplay of strategic, political and ideological factors, as the following discussion will show.

3.1 Tactical Motives: Leveraging Investment Treaties in Loan Negotiation

Archival sources reveal that Yugoslavia's decision to negotiate investment treaties was closely tied to its efforts to secure financial aid and loans from Western countries. In 1971, Yugoslav diplomats embarked on a tour of several Western nations, including France, Sweden, Italy, the Netherlands, West Germany, the UK, and the US, seeking financial assistance to alleviate the ongoing economic crisis.[81] During these meetings, it was made clear that Yugoslavia would offer more investment opportunities to countries that were most generous in providing financial support.[82] Furthermore, Yugoslav diplomat Toma Granfil outlined a strategy to improve the investment climate, which included amendments to the 1967 foreign investment law and the development of additional economic arrangements to facilitate foreign investment.[83] Consequently, the initiation of Yugoslavia's investment treaty programme can be seen as part of a broader diplomatic strategy aimed at securing economic aid, offering favourable investment conditions in return. It is therefore unsurprising that some of the countries that

[81] FCO, Foreign Credits for Yugoslavia, 1971, FCO 28/1651.
[82] ibid.
[83] ibid (Record of Conversation between the Foreign and Commonwealth Secretary and Mr Granfil (Member of the Yugoslav Federal Executive Council) at the Foreign and Commonwealth Office on Monday 24 May 1971, at 4.30 P.M.).

extended loans to Yugoslavia were also among the first to negotiate BITs with it. On the other hand, the fact that many lending countries neither signed BITs with Yugoslavia nor showed interest in initiating negotiations, even when prompted by Yugoslavia,[84] suggests that these treaties were not imposed as a condition for receiving loans. Rather, the evidence points to the opposite: Yugoslavia strategically employed BITs as a tool in its broader loan negotiation efforts.

While Western countries generally welcomed Yugoslavia's turn towards substantial economic liberalization, some expressed concerns that the pace of these reforms might be too rapid for the country's financial health.[85] Nevertheless, the prevailing view was that rather than relying on public borrowing, Yugoslavia should focus on attracting private foreign investment. In line with recommendations from the Organisation for Economic Co-operation and Development (OECD), Western governments advised Yugoslavia to improve its domestic legal framework for foreign investment to create a mora stable and predictable environment for investors.[86]

This position sheds light on why Western governments did not view BITs as a necessary or urgent mechanism for protecting their investors in Yugoslavia and why they did not impose them as a condition for extending loans. Instead, their policy emphasis was on Yugoslavia's internal regulatory reforms, which they saw as more critical to improving the investment climate.

This view also reflected the attitudes of Western companies: while domestic legislation permitting foreign investment in Yugoslavia and its subsequent amendments led to a gradual

[84] Foreign and Commonwealth Office (FCO), Investment Promotion and Protection Agreement: UK /Yugoslavia, 1981, FCO 69/741.
[85] FCO, Foreign Credits for Yugoslavia, 1971, FCO 28/1651.
[86] ibid.

increase in foreign capital (with 199 joint ventures signed between 1967 and 1980),[87] the same cannot be said for BITs. The majority of foreign capital during this period came from countries with which Yugoslavia had no BIT, such as the USA, the UK, Switzerland, and West Germany.[88] This suggests that investment treaties were not the decisive factor driving capital inflows. For instance, between 1968 and 1980, the US accounted for 32.8% of total foreign capital in Yugoslavia, despite the absence of a BIT between the two countries. What appeared to matter more to American investors was the US government's support for investment in Yugoslavia through guarantees[89] and political risk insurance provided by the Overseas Private Investment Corporation (OPIC).[90]

This pattern supports the conclusion that Yugoslavia's pursuit of BITs was not necessarily driven by foreign investor demand, nor were such treaties imposed by Western states as preconditions for financial assistance. Rather, BITs appear to have served other strategic and political objectives within Yugoslavia's broader foreign investment policy.

3.2 Internal Political Motives: Keeping Tito Afloat

Although the Communist Party held a central position in Yugoslav political life, there were significant internal frictions and ideological divisions between the 'dogmatic' old communists and the new 'reformists' within the Party. Externally, the Party also faced challenges to its

[87] Artisien and Buckley (n 5) 114, calculating data from the OECD Reports.
[88] ibid, 115, referring to the number of joint venture contracts between Yugoslav and Foreign Firms between 1968 and 1980.
[89] FCO 28/1651 (n 56), citing Financial Times (19 April 1971) reporting that Yugoslavia and Romania passed laws permitting foreign investment and that the US Government would encourage commercial investment in those countries by asking the Congress to extend to Yugoslavia and Romania the power to guarantee such investment.
[90] OPIC insured against the risk of expropriation, war, revolution, insurrection, inconvertibility. The Overseas Private Investment Corporation, Private Investors Abroad – Problems and Solutions in Int'L Bus. (1971) 215-16, cited in Neumann (n 5) 295.

dominance. Discussions during the Congresses of the League of Yugoslav Communists reveal the Party's awareness of these internal and external pressures. The Party recognized that achieving economic development was key to preserving its power, stability, and prestige. This urgency became particularly apparent in the aftermath of the 1965 economic reforms, which led to rising public dissatisfaction with the Party.

The 1965 reforms, which aimed to liberalize the economy, led to significant social and economic challenges. Nearly 700,000 workers were laid off, many of whom sought employment in Western countries with which Yugoslavia had bilateral arrangements, such as Austria and Germany. Additionally, the reforms exacerbated regional disparities—while some areas like Slovenia experienced minimal unemployment, regions like Kosovo and Macedonia faced high unemployment rates.[91] The rise of a managerial class further deepened social divisions, and corruption increased.[92] Public dissatisfaction with these outcomes manifested in continuing strikes and growing criticism of the Party, particularly in the cultural sphere through literature and film, culminating in the student protests of 1968.[93]

On June 2, 1968, protests erupted in the student dorms in Belgrade in response to excessive police violence, escalating into a full-scale student occupation of the University of Belgrade that lasted for seven days. The protests had revolutionary potential, drawing support from the working class and Marxist intellectuals.[94] The students' demands focused on the negative outcomes of the 1965 economic reforms, including calls to end corruption and opposition to

[91] P Alcoy, 'Yugoslav Students in the 1968 Wave of Revolt: An Interview with Dragomir Olujic' (6 July 2018). <https://www.versobooks.com/blogs/3913-yugoslav-students-in-the-1968-wave-of-revolt-an-interview-with-dragomir-olujic> accessed 10 January 2025; Uvalić (n 18).
[92] Alcoy, ibid.
[93] ibid.
[94] ibid.

the transformation of social property into shareholding.[95] While advocating for a 'radically different socialism,' the protesters expressed strong animosity towards the Party and Tito.[96] The protests eventually subsided after Tito's famous speech, in which he acknowledged the legitimacy of the students' demands, much to the Party's astonishment.

Despite making some concessions to the students' demands, the Party had no intention of abandoning the economic liberalization programme. In fact, as economic anxiety deepened, the Party's fear of potential revolt and internal conflicts, which threatened not only its stability but also the very existence of Yugoslavia, grew.[97] The perception that certain republics and regions, such as Bosnia-Herzegovina, Macedonia, Montenegro, and Kosovo, were receiving less investment, thereby fuelling ethnic tensions and feelings of economic exploitation, exacerbated these concerns. The immediate response was to continue along the path set by the 1965 economic reforms and seek economic development through foreign borrowing and investment. During the Ninth Congress, Tito addressed the post-reform economic problems that had triggered the protests, emphasizing the need to resist calls for a return to pre-reform policies.[98] He asserted that the direction of the economic and social reforms must remain the foundation for development and the realization of the self-management system. While acknowledging the understandable anxiety and doubts among youth, workers, and intellectuals, Tito attributed this to the lack of transparency and poor communication of political and ideological directions.[99]

[95] ibid.
[96] ibid.
[97] FCO 28/1651 (n 61).
[98] *Deveti Kongres Zveze Komunistov Jugoslavije* (Komunist Ljubljana, 1969) 8–11.
[99] ibid, 32.

In 1971, many liberal communists were replaced by older, more dogmatic figures, who were sceptical of the economic reforms.[100] Despite this conservative turn in leadership, the liberalization of foreign investment regulation continued. Rather than reversing course, the new leadership pursued expansive investment initiatives, often financed through international loans, as a means of consolidating their authority and garnering public legitimacy.[101] As Obadić observes, many of these investment projects were politically rather than economically motivated.[102] In the aftermath of the protests, the regime's image as a stable socialist government with popular support had been damaged. In this context, foreign investment policy, including the negotiation of BITs, served broader strategic objectives. Seeking to attract foreign investment and partners was not solely about economic development; it also functioned as a diplomatic tool aimed at reinforcing Yugoslavia's international position, enhancing the regime's prestige, and securing political support for Tito's continued leadership.

It is thus not surprising that in 1971, while seeking financial assistance and investment from Western governments, Yugoslav diplomats frequently emphasized that without external public and private investment, the threat of civil unrest and the potential overthrow of the Party and Tito would increase, ultimately destabilizing the entire region.[103] For Western diplomats, the stability of Yugoslavia was directly linked to the security of Europe, making it a key consideration when deciding whether to enter into economic arrangements with the country.[104] Diplomatic correspondence from the UK's Foreign and Commonwealth Office reveals that US and UK officials believed that, if left unresolved, Yugoslavia's economic challenges would exacerbate ethnic tensions and potentially lead to civil war.[105] Thus, 'keeping Tito afloat'

[100] Obadić (n 16) 341.
[101] Obadić (n 16) 341–42.
[102] ibid, 342.
[103] FCO 28/1651 (n 61).
[104] ibid.
[105] ibid.

became a significant aspect of Western economic strategy in dealing with Yugoslavia.[106] This underscores how Yugoslavia's foreign economic policy was inextricably tied to its internal political dynamics and the Party's efforts to maintain its power and dominance.

3.3 Geopolitical Motives: Building Alliances to Counter the Soviet Threat

External political considerations, particularly security threats posed by the Soviet Union and its allies, played a significant role in shaping Yugoslavia's foreign investment policy.[107] The idea that economic agreements are not solely driven by commercial interests but also by strategic foreign policy goals is well established in international relations literature on economic diplomacy and statecraft.[108] In the context of international investment law, Poulsen and Aisbett argue that some investment treaties are concluded for political reasons, aimed at strengthening diplomatic ties between states.[109] For Yugoslavia, these political motivations were not abstract or symbolic; rather, they were deeply embedded in its economic diplomacy long before the country pursued its BIT programme. Yugoslavia actively leveraged political and security concerns to negotiate international economic arrangements with Western states as early as the 1950s.

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[106] Foreign Office (FO), Yugoslav investment programme; demand for a capital equipment loan, 1952, FO 371/102212.

[107] Bandelj and Tester suggested that Yugoslavia signed BITs for geopolitical reasons, although their analysis does not provide evidence for this thesis. See N Bandelj and A Tester, 'Amplified Decoupling in the Global Economy: The Case of the Bilateral Investment Treaties' (2020) 6 Socius: Sociological Research for a Dynamic World 5.

[108] Poulsen and Aisbett (n 6) 83; J Gowa and E Mansfield, 'Power Politics and International Trade' (1993) 87 American Political Science Review 408; R Feinberg, 'The Political Economy of United States' Free Trade Agreements' (2003) 26 World Economy 1019; D Hamilton and S Blockmans, 'The Geostrategic Implications of TTIP' in D Hamilton and J Pelkmans (eds) Rule-makers or Rule-Takers: Exploring the Transatlantic Trade and Investment Partnership (Rowman & Littlefield 2015).

[109] Poulsen and Aisbett (n 6) 85.

Following the split between Tito and Stalin in 1948, Yugoslavia faced an economic blockade imposed by the Soviet Union and its satellite states, leading to significant economic hardships.[110] Fearing potential conflict with the Soviet Union, Yugoslavia increased its military expenditures, which further strained national resources and reduced funds available for public investment.[111] In this context, Yugoslavia turned to Western countries for economic assistance. When negotiating inter-state loans in 1952, the country's primary justification was political: without financial aid, Yugoslavia would be unable to sustain its investment programme, which would weaken its military capabilities and make it vulnerable to Soviet strategic ambitions.[112] Additionally, the economic struggles heightened the risk of domestic unrest, making the population more susceptible to Soviet anti-Tito propaganda, which intensified after 1948, and potentially pushing the country back under Soviet influence.[113] Despite concerns over Yugoslavia's economic management, Western powers largely agreed that supporting the country was essential, given its role in countering the Soviet threat.[114]

In the 1960s, Yugoslavia's relationship with the Soviet Union improved as both countries aligned in supporting the Global South's anti-colonial struggles. However, when Yugoslavia sought to negotiate new financial arrangements with the West in 1970, the issue of the Soviet threat resurfaced, particularly following the Soviet intervention in Czechoslovakia in August 1968.[115] Western powers once again recognized that maintaining Yugoslavia's prosperity and

[110] During the Cominform economic blockade, ie, until 1954, Yugoslavia almost entirely relied on trade with Western Europe and North America (in 1953, this amounted to 80.5% of exports and 88.9% of imports). See OECD, Economic Survey, Yugoslavia (Paris, 1984).
[111] I Banac, *With Stalin against Tito: Cominformist Splits in Yugoslav Communism* (1988 Cornell University Press) 131.
[112] Foreign Office (FO), Yugoslav investment programme; demand for a capital equipment loan (Conversation with Mr Zlataric of Yugoslav Embassy, Belgrade Telegram No. 8 to Foreign Office, 1952), 1952, FO 371/102211.
[113] ibid.
[114] ibid.
[115] FCO 28/1651 (n 61).

independence was crucial to their political and strategic interests.[116] Their concerns extended beyond the threat of a military invasion of Yugoslavia; they were also mindful of the broader impact its economic collapse would have on other communist countries. As noted in the UK Assessment of the Political Implications of Yugoslavia's Request for Assistance, if Yugoslavia's economic situation deteriorated, it could send a message that a shift toward a socialist market economy was not viable, potentially deterring other countries in the region from pursuing similar paths.[117] The report warned that it would diminish the hope of these nations ever breaking free from 'the straitjacket of COMECON and the Warsaw Pact.'[118]

During this period, Yugoslav diplomats began seeking economic assistance and partnerships from Eastern Bloc countries, which amplified Western concerns about the country potentially realigning with Moscow.[119] While this could be seen as a strategic manoeuvre in Yugoslavia's economic diplomacy, aimed at securing favourable loans and investments from the West to avoid being absorbed back into the Soviet sphere, Yugoslavia's foreign policy concerns were not without merit. The importance of economic cooperation with the West for strengthening Yugoslavia's ability to counter the security threat posed by the Eastern Bloc was a recurrent theme in discussions at the Congresses of the League of Yugoslav Communists. This argument gained prominence, particularly in light of Soviet military interventions in neighbouring countries, which Yugoslavia vocally opposed. Following Yugoslavia's swift and unequivocal condemnation of the Warsaw Pact's military invasion of Czechoslovakia in 1968, the Soviet Union and its satellites launched a harsh anti-Yugoslav campaign. Tito, in his speech at the Ninth Congress, underscored how these actions had negatively impacted Yugoslavia's

[116] ibid (Political Implications of Yugoslav Request for Assistance).
[117] ibid.
[118] ibid.
[119] ibid. For example, Yugoslav negotiator Granfil attempted to reassure the UK diplomat, albeit with little success, that Yugoslavia's outreach to other communist countries was not serious.

relations with the Eastern Bloc, presenting serious security risks.[120] Moreover, Yugoslavia was also concerned with Bulgaria's growing chauvinism and territorial claims on Macedonia,[121] alongside the rise of reactionary forces in Albania, which threatened to destabilize the economically vulnerable region of Kosovo.[122]

Yugoslav communists believed that one effective political strategy for mitigating security threats in the region was the negotiation of economic agreements with Western countries and the opening of the country to foreign capital.[123] Even when relations between Yugoslavia and the Soviet Union appeared outwardly peaceful, strengthening economic ties with Western nations was seen as both a foreign policy and national defense necessity.[124] For example, ahead of the Tenth Congress in 1974, the Working Group on the International Situation of Yugoslavia remarked that, while formal diplomatic relations with the Soviet Union may have seemed cordial, in practice, they were at their lowest point since the Tito–Stalin split.[125] Soviet diplomats were increasingly aggressive in their criticism of Yugoslavia's economic policies, particularly regarding self-management and its non-aligned stance.[126] In this context, Yugoslavia's decision to sign its first BIT with France in the same year, can be interpreted not only as a means of advancing economic cooperation, but also as part of a broader diplomatic strategy aimed at reinforcing ties with Western partners during a period of heightened sensitivity in Yugoslav–Soviet relations. While the treaty itself was not overtly political, the timing of the conclusion and the discussions within the working group suggest that Yugoslav

[120] *Deveti Kongres* (n 98) 63.
[121] *Deveti Kongres* (n 98) 69. See also Archive of Yugoslavia, Arhiv CK SKJ, IX Kongres, Fond 507/I, I/IX-K. 8/1-71, 38.
[122] *Deveti Kongres* (n 98) 27.
[123] Archives of Yugoslavia, Arhiv CK SKJ, X Kongres, K. 27 (July 1974) 59; (Tomašević, 17 May 1973) 18–19.
[124] ibid, p. 36–37.
[125] Archives of Yugoslavia, Arhiv CK SKJ, I/X-K.22/11-32, *Međunarodna situacija i položaj Jugoslavije* (17 July 1973) 22, 34.
[126] ibid.

officials may have viewed it as one of several tools to enhance the country's geopolitical positioning.

3.4 Ideological Motives: The Middle Way as the Best Way

Yugoslavia's foreign economic policy was also shaped by its unique ideological stance. It is submitted that the pursuit of investment treaties was seen by Yugoslav communists as a means to promote their distinct model of socialism, which was characterized by two central principles: workers' self-management (a unique blend of Keynesianism and Marxism) and active co-existence, reflected in Yugoslavia's non-aligned foreign policy. Yugoslav communists took great pride in the country's contributions to Marxism-Leninism, believing that these principles could be advanced through economic cooperation with nations of any economic system. They often drew reassurance from the recognition Yugoslavia received from other countries involved in the international labour movement.[127] For instance, ahead of the Tenth Congress of the League of Yugoslav Communists, the Subgroup for Developments in the Third World reported significant interest from developing countries in Yugoslavia's self-management model.[128]

Yugoslav communists viewed self-management as a valued aspect of Yugoslav socialism that could inspire similar economic solutions worldwide, both in socialist and capitalist contexts.[129] Yugoslavia promoted self-management planning as a viable solution for developing countries, particularly those advocating for NIEO.[130] As noted by Popović, Yugoslavia argued that

[127] *Deveti kongres* (n 98) 224.
[128] Archives of Yugoslavia, Arhiv CK SKJ, X Kongres, K. 22, *Podgrupa 'Kretanje u nerazvijanom trećem svetu'* (2 March 1973) 50.
[129] ibid.
[130] T Popović, L Adamović, J Minić and B Babić, 'The New International Economic Order: A Yugoslav Perspective' in E Laszlo and J Kurtzman (ed) *Eastern Europe and the New International Economic Order, Representative Samples of Socialist Perspective* (Pergman Press 1980) 32.

contemporary global conditions required abandoning both the orthodox, classical market-liberal and centrally planned economic models in favour of a dynamic equilibrium.[131] In contrast to the West's market-driven inequalities and the East's stifling centralization,[132] Yugoslavia positioned its 'middle way' as the ideal approach for NIEO countries.[133]

Throughout the Cold War, Yugoslavia remained committed to its unique system of workers' self-management, even in the face of persistent criticism from both within and outside the country.[134] One of the most vocal defences came during the Seventh Congress of the League of Yugoslav Communists in 1957, where Tito pushed back against Soviet and Chinese accusations that self-management was a deviation from true socialism.[135] He argued that such dogmatic views stifled socialist progress and emphasized the right of each country to pursue its own path to socialism.[136] After the Eighth Congress in 1964, the economic programme aimed to further entrench workers' self-management by granting greater autonomy to workers and self-managed organizations in areas such as business policy, income distribution and foreign economic relations.[137] This objective also underpinned the rationale for the economic reforms of 1965, which sought to create conditions for more independent decision-making by self-managed enterprises, including in their dealings with foreign partners.[138]

Economic success, therefore, hinged on the active participation of workers and self-management bodies in exploring both domestic and international markets, and in developing

[131] ibid, 33.
[132] ibid.
[133] In the words of a Croatian historian Jakovina 'the middle way was the only way for Yugoslav diplomacy'. cited in Obadić (n 16) 331.
[134] *Sedmi Kongres Zveze Komunistov Jugoslavije* (Cankarjeva založba Ljubljana 1958) 156; *Osmi Kongres Zveze Komunistov Jugoslavije* (Komunist Ljubljana 1964).
[135] *Sedmi Kongres* (n 134) 156.
[136] Ibid.
[137] *Deveti Kongres* (n 98) 211.
[138] ibid, 213.

business plans in collaboration with foreign business partners.[139] During the Ninth Congress in 1969, Communist leaders acknowledged that the partial failure of the economic reforms was, in part, due to the resistance from conservative bureaucratic forces who opposed the reforms and interfered with the investment initiatives of self-managed workers' organizations.[140] To ensure the unhindered development of self-management, it was deemed essential to create legal conditions that would allow workers' organizations to establish business partnerships with foreign companies free from bureaucratic and centralizing interference. In this broader context, foreign investment policy, including domestic legislation and, to an extent, the negotiation of BITs, could be seen as a way of supporting the autonomy of self-managed enterprises by formalizing and protecting their engagement with foreign investors.

Choosing the middle way shaped not only Yugoslavia's economic approach but also its foreign policy. The country maintained an independent position in global affairs, refusing to align with either of the superpower blocs. To solidify this stance, it was essential for Yugoslavia to foster cooperation with third world countries. Under Tito's leadership, Yugoslavia became a founding member of the Non-Aligned Movement (NAM), which opposed the great powers and their bloc politics, as well as imperialism, colonialism, neocolonialism, interference in domestic affairs and all forms of aggression.[141]

Yugoslav communists viewed non-alignment as a manifestation of the principle of active co-existence, which lay at the heart of Yugoslav socialism.[142] This principle was not limited to peaceful co-existence based on independence, equality, and territorial sovereignty; it also

[139] ibid.
[140] ibid, 218.
[141] The NAM was founded on the Brijuni Islands in Yugoslavia in 1956, and the first summit conference held in Belgrade in 1961.
[142] Arhiv Jugoslavije, Arhiv CK SKJ, X Kongres, K 27, *Radna grupa za pripremu 10. Kongresa saveza komunista Jugoslavije za razoluciju o međunarodni politiki* (9 January 1974) 20.

encompassed actively pursuing positive relationships and cooperation (economic partnerships included) with all countries, regardless of their political or economic systems, whether in the West or the East.[143] The Ninth and Tenth Communist Congresses emphasized the importance of strengthening ties with other non-aligned nations, particularly through economic collaboration. A similar stance was taken with respect to other international alliances with developing countries, such as NIEO. For Yugoslavia, economic cooperation and utilizing international mechanisms to facilitate investment became integral to its strategy for addressing the economic challenges faced by developing countries.[144] The BIT signed with Egypt in 1978, another key player in the NAM and NIEO, serves as an example of this approach. Promoting economic cooperation with developing nations was a significant focus, with over $1 billion in investment projects in such countries by 1978, constituting nearly 70% of Yugoslavia's total foreign investments.[145]

Active co-existence, however, also involved fostering relationships with capitalist imperialist powers, a position that Yugoslav communists justified as being in tune with realities of the modern world.[146] Economic cooperation with Western capitalist countries was not viewed as a departure from socialism; rather, it was seen as a way to further the NAM objectives.[147] In this context, BITs took on a symbolic role, reinforcing the idea that peaceful co-existence between different socio-economic systems was not only possible but beneficial. By engaging with capitalist, socialist and non-aligned countries, Yugoslavia aimed to strengthen the NAM and underscore its commitment to the principle of active co-existence, a core tenet of its socialist ideology.

[143] ibid, *Komisija PSKJ za izgradnju rezolucije 'razvoj ekonomsko-političkih i društvenih odnosa u svetu', SKJ i spoljna politika samoupravne socialističke Jugoslavije* (28 April 1974) 67.
[144] Popović *et al* (n 130) 40.
[145] ibid. 41.
[146] Archive of Yugoslavia, X Kongres, K27 (n 142) 39.
[147] ibid, 42.

4. Conclusion

This article has examined why Yugoslavia, a socialist and self-managed economy, began negotiating BITs in the 1970s. Rather than viewing these treaties as simple instruments for attracting foreign capital, the article has shown that Yugoslavia deployed BITs tactically to pursue a broader set of objectives. These included securing financial loans, reinforcing domestic political authority following internal crises, and enhancing Yugoslavia's international standing during a period of geopolitical uncertainty and ideological contestation.

One of the central findings of this article is that Yugoslavia's engagement with BITs cannot be understood solely through an economic lens. As archival evidence reveals, Yugoslav officials viewed BITs as a useful diplomatic concession in loan negotiations with Western states. These treaties were not imposed by creditors as formal conditions for financial assistance but were instead offered by Yugoslavia as part of a broader effort to secure Western political and economic support. The case of the France–Yugoslavia BIT illustrates how such agreements were perceived at the time: not as instruments of investor empowerment or legal constraint, but as relatively low-risk tools for advancing state interests, especially given that investor–state arbitration was still rare and underdeveloped in the early 1970s.

By situating Yugoslavia's BIT policy within the political and economic context of the Cold War, this article contributes to a more nuanced understanding of how non-capitalist states engage with the international investment regime. It challenges assumptions that investment treaties necessarily present a shift toward a capitalist market economy or are incompatible with socialist ideologies, showing instead how Yugoslavia integrated them into its distinctive system of market socialism and workers' self-management. Rather than signalling a departure from its ideological foundations, BITs were employed to protect and advance them through pragmatic international engagement.

This article emerged from a desire to better understand how socialist and communist states participate in the global economic order and how they rationalise their engagement with instruments typically associated with neoliberalism. By bringing Yugoslavia into the history of international law, the article seeks to shed light on the processes and political choices that shaped international economic engagement from a socialist, non-aligned perspective at a time when international law and its institutions were undergoing significant restructuring. In doing so, it contributes to a growing body of counter-histories that challenge the idea of international law as the exclusive domain of Western European or American internationalists. While Yugoslavia's case is in many ways unique, it illustrates that legal instruments originally designed to promote liberal economic agendas can be strategically appropriated, depending on a state's bargaining power, as tools for navigating geopolitical constraints, extracting strategic concessions, and asserting agency within an unequal global order. In this context, the adoption of investment treaties does not necessarily signal the abandonment of socialist commitments or a capitulation to market liberalism, nor must it entail surrendering resistance to the enduring legacies of imperialism. Rather, such instruments can be reimagined and embedded within alternative legal and political projects that reflect different ideological commitments.