



Environmental Protection and BITs of Bangladesh, Malaysia, and USA: A Comparison*

Mohammad Belayet Hossain¹

Chittagong Independent University of Bangladesh (CIUB), Bangladesh



[10.15408/jch.v8i3.17801](https://doi.org/10.15408/jch.v8i3.17801)

Abstract

In absence of any global treaty, the bilateral investment treaties (BITs) are playing an important role in regulating foreign investments in the host countries. According to the United Nations Conference on Trade and Development, there are 2361 BITs in force and like other members of the World Trade Organization, Bangladesh, Malaysia, and the USA also signed BITs to facilitate trade. The primary purpose of economic globalization is the economic development of the developing and least-developed countries as well as to facilitate the benefits of the home states. Bangladesh and Malaysia foreign investment laws have no specific provision of protecting the environment and fails to maintain high standard like USA environment laws. This paper addresses two questions: (a) do the bilateral investment treaties of Bangladesh, Malaysia, and USA have any specific provisions to protect the environment in the host country? (b) should environmental protection be considered during the entry of foreign investments in Bangladesh, Malaysia, and USA? Using the doctrinal research method, we critically analyzed 40 BITs signed by Bangladesh, Malaysia, and USA with different countries to explore whether there is any specific reference to protecting the environment. We find that the existing BITs mainly have provisions to promote and protect foreign investments, and 7 out of 40 BITs have a specific reference to protecting the environment. Therefore, governments should consider this important factor to insert while signing any future BITs.

Keywords: Bilateral investment treaties, environmental protection, Bangladesh, Malaysia, United States of America.

* Received: June 12, 2020, revised: July 20, 2020, accepted: August 23, 2020, Published: December 5, 2020.

¹ **Mohammad Belayet Hossain** is a Lecturer, School of Law, Chittagong Independent University of Bangladesh (CIUB). Ph.D. candidate, School of Law, Universiti Utara Malaysia, Malaysia. LLM in Commercial and Corporate Law (University of London, UK). LLB (Hons). (University of Northumbria, UK). Diploma in Law (University of London, UK).

Perjanjian Perlindungan Lingkungan dan investasi bilateral dari Negara Bangladesh, Malaysia dan AS: Suatu Perbandingan

Abstrak

Jika tidak ada perjanjian global, maka perjanjian investasi bilateral (BIT) memainkan peran penting dalam mengatur investasi asing di negara setempat. Menurut Konferensi Perserikatan Bangsa-Bangsa tentang Perdagangan dan Pembangunan, ada 2.361 BIT yang masih berlaku, dan seperti anggota Organisasi Perdagangan Dunia lainnya, maka negara Bangladesh, Malaysia, dan AS juga menandatangani BIT untuk memfasilitasi perdagangan. Tujuan utama globalisasi ekonomi adalah pembangunan ekonomi negara-negara berkembang dan negara tidak berkembang, serta untuk memfasilitasi keuntungan negara asal. Undang-undang investasi asing Bangladesh dan Malaysia tidak memiliki ketentuan khusus untuk melindungi lingkungan dan gagal mempertahankan standar tinggi seperti undang-undang lingkungan AS. Makalah ini membahas dua pertanyaan: (a) apakah perjanjian investasi bilateral Bangladesh, Malaysia, dan AS memiliki ketentuan khusus untuk melindungi lingkungan di negara asal? (b) haruskah perlindungan lingkungan dipertimbangkan selama masuknya investasi asing di negara Bangladesh, Malaysia dan Amerika Serikat? Dengan menggunakan metode penelitian doktrinal, penulis menganalisis secara kritis 40 BIT yang ditandatangani oleh negara Bangladesh, Malaysia dan AS dengan berbagai negara untuk mengeksplorasi apakah ada referensi khusus untuk melindungi lingkungan. Kami menemukan bahwa BIT yang ada terutama memiliki ketentuan untuk mempromosikan dan melindungi investasi asing, dan 7 dari 40 BIT memiliki referensi khusus untuk melindungi lingkungan. Oleh karena itu, pemerintah harus mempertimbangkan faktor penting ini untuk dimasukkan saat menandatangani BIT di masa mendatang.

Kata Kunci: Perjanjian investasi bilateral, perlindungan lingkungan, Bangladesh, Malaysia, Amerika Serikat.

Охрана окружающей среды и Двусторонние Инвестиционные Договоры (ДИД) Бангладеш, Малайзии и США: Сравнение

Аннотация

В отсутствие какого-либо глобального договора Двусторонние Инвестиционные Договоры (ДИД) играют важную роль в регулировании иностранных инвестиций в принимающих странах. По данным Конференции Организации Объединенных Наций по торговле и развитию в настоящее время действует 2361 ДИД, и, как и другие члены Всемирной Торговой Организации, Бангладеш, Малайзия и США также подписали ДИД для облегчения торговли. Основная цель экономической глобализации – это экономическое развитие развивающихся и наименее развитых стран, а также получение выгод для стран базирования. Законы Бангладеш и Малайзии об иностранных инвестициях не содержат конкретных положений о защите окружающей среды и не поддерживают высокие стандарты, такие как законы США об окружающей среде. В настоящей статье рассматриваются два вопроса: (а) есть ли в Двусторонних Инвестиционных Договорах Бангладеш, Малайзии и США какие-либо конкретные положения по защите окружающей среды в принимающей стране? (б) следует ли учитывать защиту окружающей среды при ввозе иностранных инвестиций в Бангладеш, Малайзию и США? Используя метод доктринального исследования, мы критически проанализировали 40 ДИД, подписанных Бангладеш, Малайзией и США с разными странами, чтобы выяснить, есть ли какие-либо конкретные ссылки на защиту окружающей среды. Мы обнаружили, что существующие ДИД в основном содержат положения о поощрении и защите иностранных инвестиций, а 7 из 40 ДИД содержат конкретные ссылки на защиту окружающей среды. Таким образом, правительству следует учитывать этот важный фактор при подписании будущих ДИД.

Ключевые слова: Двусторонние инвестиционные договоры, охрана окружающей среды, Бангладеш, Малайзия, Соединенные Штаты Америки

A. INTRODUCTION

'Globacolonisation' is a concept that derives from 'globalization' and 'colonization'. There was a time when the developed countries colonized the developing and least-developed countries in the world through land but since the independence of these countries during 1940-50s, the developed states invented a new idea to colonize them that is through the economy. In doing so, after the Second World War, by Bretton Woods Conference in 1944, the developed countries established gradually the World Bank, International Monetary Fund, and General Agreement On Tariffs And Trade (GATT) (replaced by World Trade Organization) to ensure their supremacy over the undeveloped states by pretending to help them economically (providing financial aid and loan) (Hettne, 1990, p. 82). Due to the protest from a few developing countries in 1970s, the developed countries invented another idea in 1990s, called 'globalization'. Through globalization *i.e.* 'free-trade without any barrier' helped the developed countries to enter into the sovereign territory of the host states and take control over almost every activity (Hettne, 1990). The developing and least-developed (LDCs) countries have consumed the idea of 'globalization' so well that they started to compete with each other to liberate their trade barrier to attract more foreign investments with the expense of sovereignty, national interest, and security or even human rights of citizens (Sherif H. Seid, 2018, p. 17). These countries find themselves into an economic trap, if any of them try to come out of it; they are seriously hit economically and politically by the developed states. For example, Argentina, Zimbabwe, Brazil, Iran, and recently Turkey has experienced the other side of globalization (Subedi, 2008).

The supporters of 'neoclassical theory' propounds that FDI has contributed positively to the economic development of the host country (Bergten, 1978). The argument continues: (a) foreign investors usually bring capital into the host state, thus increases total savings and revenue via tax of the country, reduces balance of payment constraints and makes domestic capital available for other uses and so on (Bureau of Industry Economics, 1995); (b) FDI through multinational enterprises (MNEs) plays the role of a 'tutor' in the host state by replacing the inferior production function with a superior one from the advanced industrialized countries through transferring technology, managerial and marketing skills, market information, organizational experience, innovation in products and production techniques, training of workers and so on (Kojima, 1978); (c) FDI increases competition in an industry with a likely improvement in productivity, which can led to reallocation of resources to more productive activity across the economy, reduction of overmanning, efficient utilization of

capital, removal of poor management practices and linking local producers with the world markets (Kojima, 1978, p. 153); (d) FDI generates employment, influences favourably the distribution of income and power, development of infrastructures, reduction of poverty and illiteracy and so on (G.L. Reuber et al, 1973). The example includes, in Indonesia people living in absolute poverty dropped from 58% in 1960 to 10.12% in 2017, in Malaysia from 37% in 1960 to 0.2% in 2016 (the Jakarta post, 2018), in China from 88% in 1981 to 6.2% in 2012 (World Bank, 2017).

The bilateral investment treaties (BITs) are a kind of mutual agreement between two capital importing and exporting states, which regulates the foreign investment in the host state. The key objective is to safeguard the foreign investment against nationalization or expropriation and in case any of them occurs, obtain compensation as per international minimum standard. Depending on the individual investment concerned, the negotiators of both countries determine the terms and conditions of the BITs. So there may be many BITs between the same countries but each of them may have different terms and conditions to determine their obligations (Kishoiyian, 1993; Subedi, 2008). When a BIT is concluded, applies to nationals and companies in both countries under the local foreign direct investment (FDI) laws and policies. As BITs are mainly created by the negotiation of the two countries and by nature, differ from each other, therefore, to date there is no global treaty that could regulate all BITs in the world (Hossain & Rahi, 2018).

Since independence, Bangladesh and Malaysia have signed 30 and 66 BITs respectively with different countries in the world. Bangladesh has signed its first BIT with the United Kingdom in 1980 and Malaysia has signed its first BIT with Germany in 1960 (Investment Policy Hub, 1994). The USA took its time to sign the first BIT comparing to other developed countries and has signed the first BIT with Panama in 1982, and in total 45 so far. The USA signed the BIT with Bangladesh in 1986 but to date, there is no BIT with Malaysia. In this article, we shall critically analyse the BITs signed by Bangladesh, Malaysia, and the USA with the same (or common) countries and compare them with each other to find out if they cover (fully or partly) environmental protection.

Literature Review

Dunning's so-called OLI model states that FDI is undertaken if ownership-specific advantages ("O") like proprietary technology be existent concurrently with location-specific advantages ("L") in host countries, *e.g.*,

low factor costs, and potential benefits from internalization (“I”) of the production process overseas (Dunning, 1977; Dunning, 1988). Since 1990s due to the growth of multinational enterprises, the world witnessed a rapid proliferation of BITs. As such, the number of BITs in the world reached 2971 as of January 2019, up from 385 at the end of the 1980s (UNCTAD, 2019). Therefore, the analytical focus of empirical models on the factors determining FDI has shifted from conventional determinants of locational advantages to policy-oriented issues, like exchange rate and openness as well as to the governance and human development areas and lately to liberalization under BITs, bilateral trade agreements (BTAs) and regional trade agreements (RTAs) (Ullah & Inaba, 2014).

There is an inadequate and alternate indication of the FDI effects of BITs, especially in the perspective of developing and least-developed host states. Egger and Pfaffermayr analyzed OECD data and found that due to the signing of BITs by the developing host states, it encourages the foreign investors to choose to invest in the developing states (Egger & Pfaffermayr, 2004). Busse also concluded the same as Egger and Pfaffermayr (Busse, 2010). Plummer and Cheong (Plummer & D Cheong, 2009) reveals that BITs signed by the ASEAN states exert affirmative but trivial effects on inward FDI but Ullah (Ullah & Inaba, 2014) found a negative important effect for the complete example of 34 home and 74 host states. Mina asserts that FDI-seeking host states may perhaps make an effort to sign BITs in tandem with improving their institutional functions (Mina, 2012). Hallward-Driemeier finds modest proof that BITs have encouraged FDI flows from the OECD countries to the least-developed and developing states (Hallward-Driemeier, 2003).

Blonigen and Wang contend that in the least-developed and developing states the factors determining the location of FDI differ steadily in a way that is not captured by the present experimental models of FDI (Blonigen & Wang, 2004). Chantasawat analyzed Asian host states of both major FDI-making countries (*eg.* the Republic of Korea, Malaysia, and Singapore) and major FDI-seeking countries (*eg.* Indonesia and Thailand) and found that countries’ performances in hosting FDI differ significantly (Chantasawat, 2010). Plummer and Cheong (Plummer & D Cheong, 2009), and Vogiatzoglou (Vogiatzoglou, 2007) also concluded that the FDI effects of BITs and institutional characteristics are quite insufficient in the perspective of states that are principally FDI-receiving, instead of FDI-making. Therefore, it is noticeable that the literature lacks consensus on the relationship between FDI and BITs.

If the proper regulatory mechanisms are not in place, FDI may cause considerable environmental damage that includes pollution of rivers and groundwater, damage to fishing and farming, disruption of the local population, and damage to the health of workers and local population (Smith, 1992). Sometimes foreign investors apply hazardous technology with disastrous consequences. The Bhopal disaster in India, caused by gas leakage in a plant set up by the US company Union Carbide, resulted in enormous damage to life and property (Oh, 2019). In some cases, such environmental destructions have led to major social unrest, including calls for secession (Oh, 2019, p. 439). Environmental protection is costly and some multinational enterprises may resist elaborate environmental protection requirements because of their impact on profit. Some may even seek investment in a developing country to escape the burden and costs of the stringent environmental regulations in their home countries (Porter, 2011).

B. METHODS

This study aimed to identify whether bilateral investment treaties have any provision concerning the protection of the environment in Bangladesh, Malaysia, and USA. The questions of this study are: (a) do the bilateral investment treaties of Bangladesh, Malaysia, and USA have any specific provisions to protect the environment in the host country? (b) should environmental protection be considered during the entry of foreign direct investment in Bangladesh, Malaysia, and USA?

Using the doctrinal research method, we critically analyzed 21 BITs signed by Bangladesh, Malaysia, and USA with different (common) countries. Our analysis focused on environmental protection factors as well as foreign investment protections such as - most-favored-nation treatment, national treatment, fair and equitable treatment, full protection and security, dispute settlement mechanisms.

C. RESULTS AND DISCUSSION

1. Environmental Protection from FDI in Different Jurisdictions

When the World Trade Organization (WTO) came into existence in 1995, replacing General Agreement on Tariffs and Trade (GATT), provided guidelines on how to regulate FDI in host countries. The main objective of the General Agreement on Tariffs and Trade (GATT) was the liberalization of

international trade, and that remains the main objective of the World Trade Organization (WTO) regime. The system aims to achieve the liberalization of trade by these principles: (a) most-favored-nation treatment (MFN); (b) national treatment (NT); (c) reciprocity; (d) non-discrimination and (e) dispute settlement mechanism. On the one hand, following the World Trade Organization (WTO) principles, the developing countries are liberalizing their national laws and policies on FDI but on the other hand, many developed countries (who are also members of the World Trade Organization) imposing restrictions on the flow and activities of FDI. The various laws and policies of the developed and other countries most commonly cover environmental protection (Smith S. D., 1992; Handl & Lutz, 1989, pp. 3-39).

Table 1: Environmental protection covered by different jurisdictions²

Factor	Countries	Statutes
Environmental protection	Albania	Article 2 of the Foreign Investment Act 1990
	Australia	Part 3 of the Environment Protection and Biodiversity Conservation Act 1999
	Azerbaijan	Article 7 of the Law on the Protection of Foreign Investments 1992
	Belarus	Article 5-6 of the Law of the Republic of Belarus on Investments 2013
	Burkina Faso	Article 8 of the Code des Investissements 1995
	The central African Republic	Article 9 of the Charte Communautaire de l'Investissement 2001
	Chad	Article 11 of the Charte des Investissements 2008
	China	Article 6 of the Environmental Protection Law of the People's Republic of China 2014
	Cuba	Article 20 of the Foreign Investment Act 2014
	Dominican Republic	Article 5 of the Ley Sobre Inversión Extranjera 1995
	Gambia	Article 28 of the Investment and Export Promotion Agency Act 2010
	Guinea	Article 5 of the Code Des Investissements 2015
Guyana	Section 6 of the Investment Act 2004	

² These are different jurisdictions whose legislations also cover environment issue, due to limitation some of them has been selected as examples.

	Nigeria	Articles 2 of the Nigerian Environmental Impact Assessment Act 2004
	Indonesia	Article 1 of the Environment and Climate Change Law 2018
	Myanmar	Article 3 of the Myanmar Investment Law 2016

Source: Researcher's findings.

2. Significance of Environmental Protection in the Host States

For sustainable development and to protect the environment from damages such as – pollution of rivers and seas, damage to the health of the worker and local citizens, air pollution, the host country requires the foreign investors to follow the environmental law of the country concerned (Handl & Lutz, 1989). The concerning issue is that the host countries have environmental laws but in the developing states the environmental standards are lax. As a result, several environmental damages had occurred in different host states in the world, such as – US-Mexico border case, where Mexican border towns have become garbage dumps for millions of barrels of benzene solvents, pesticides, raw sewage, and battery acid spewed out by foreign companies (Atkinson, 1995, p. 80); in Papua New Guinea, disposal of cyanide and another hazardous chemical from OK Tedi copper mines into the river had severely damages fisheries, forests, wildlife, farming land (Smith S. D., 1992); Bhopal disaster case in India where thousands of people died and injured.

Due to lax environmental laws and escaping the burden and costs of the stringent environmental regulations on the home countries, the multinational enterprises choose developing states as havens to make their profit. The BITs arguably secure exporting highly polluting industries into the developing states and if any action being taken against them for the damaging environment, these treaties raise the issue of expropriations (ICSID Reports, 2000). To tackle this situation, the NGOs argued that BITs should contain exemptions to allow host states to protect the environment (Sornarajah, 2010, p. 225). The US-Canada BIT has provision addressing this issue and article 1114(1) of NAFTA states:

“Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure, otherwise consistent with this Chapter, that it considers appropriate to ensure that the investment activity in its territory is undertaken in a manner sensitive to environmental concerns” (NAFTA, 1944).

However, in *S.D. Myers v Canada* case, the tribunal interpreted the above provision and said that its nature was merely 'hortatory'. Canada argued in its defense that Canadian hazardous waste should be disposed of in Canada and not sent across the border into the US for disposal but the tribunal thought this defense had no merit. The tribunal has taken this view even though Canada's action to prevent the export of the waste was consistent with obligations under the Basel Convention on the Transboundary Movements of Hazardous Waste. The tendency of tribunals has been read down the effect of the rare environmental provisions that are to be found in investment treaties, thus preserving the original basis of these treaties as investment protection treaties. (Sornarajah, 2010, p. 226) However, article 10 of the Canadian model treaty contains far stronger statements of the exception to liability for interference with the FDI on environmental grounds. Article 10 states as follows:

"1. Subject to the requirement that such measures are not applied in a manner that would constitute arbitrary or unjustifiable discrimination between investments or between investors, or a disguised restriction on international trade or investment, nothing in this Agreement shall be construed to prevent a Party from adopting or enforcing measures necessary:

- (a) to protect human, animal, or plant life or health;
- (b) to ensure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement; or
- (c) for the conservation of living or non-living exhaustible natural resources."

The above article 10 ensures that a wide range of environmental concerns fall within the exception and preserves the validity of all domestic laws and regulations on the environment. Therefore, this provision can no longer be dismissed as 'merely hortatory' as was the case in *S.D. Myers v Canada*. Most importantly, this Canadian BIT also contains a prohibition against the reduction of environmental standards as a means of attracting FDI and entitles Canada to ask for a consultation with the host state if it believes that this has been done. However, most BITs do not have an environmental exception in which case the tendency has been to disregard environmental concerns and emphasize the protection of the FDI. Since an interference justified based on environmental protection will amount to a regulatory interference, the changing legal perceptions will require the nature of the

interference to be taken into account in assessing liability, which could be justifiable.

Moreover, the host states such as - Australia's national environment law (Part 3 of the Environment Protection and Biodiversity Conservation Act 1999) makes it an offense for any person to take any action that is likely to have a significant impact on matters protected by the Act unless they have the approval of the Australian environment minister. Protected matters are matters of national environmental significance as well as the environment of Commonwealth land. Similarly, China has adopted the Environmental Protection Law of the People's Republic of China 2014 (article 6), as well as Nigeria (article 2 of the Nigerian Environmental Impact Assessment Act 2004), Indonesia (article 1 of the Environment and Climate Change Law 2018) and Myanmar (article 3 of the Myanmar Investment Law 2016) has enacted their environment law to protect the environment.

3. Bangladesh BITs with different countries

A. Austria³

The Preamble of the BIT reaffirms both contracting parties' commitment to the observance of the internationally recognized labor standards. This BIT provides fair and equitable treatment, full and constant protection and security, most-favored-nation treatment, national treatment, as well as other benefits to the investors of the home state. Chapter two of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investors. The BIT has no specific reference to environmental protection.

B. Belgo-Luxembourg Economic Union (BLEU)⁴

The Preamble of the BIT desires to create favorable conditions for greater economic cooperation and recognizes the reciprocal encouragement and protection under international agreements to promote investments for the mutual prosperity of the Contracting States. This BIT provides at all times fair and equitable treatment, full protection and security, most-favored-nation treatment, national treatment, as well as other benefits to the investors of the

³ The People's Republic of Bangladesh signed the BIT with the Republic of Austria at Dhaka in 2000, which is still in force.

⁴ The People's Republic of Bangladesh signed the BIT with the Belgo-Luxembourg Economic Union (BLEU) in 1981 at Dhaka, which is still in force.

home state. Article 6 and 7 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investors through the International Centre for Settlement of Investment Disputes (ICSID). The BIT has no specific reference to environmental protection.

C. Denmark⁵

The Preamble of the BIT desires to create favorable conditions for investments and recognizes a fair and equitable treatment of investment on a reciprocal basis. Article 2(2) of the BIT states that investment objectives should be achieved without relaxing health, safety, and environmental measures, and the Party who suffers any loss or damages, shall be accorded adequate and effective compensation as per its laws and regulations and if necessary, as per international law. This BIT provides full protection and security, most-favored-nation treatment, national treatment, as well as other benefits to the investors of the home state. Article 9 and 10 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investor. The BIT has specific reference to e environmental protection.

D. Germany⁶

The Preamble of the BIT desires to intensify economic co-operation between both States and intends to create favorable conditions for investments by recognizing promotion and reciprocal protection of such investments. This BIT provides fair and equitable treatment, full protection and security, most-favored-nation treatment, national treatment, as well as other benefits to the investors of the home state. Article 10 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investors. The BIT has no specific reference to environmental protection.

E. India⁷

The Preamble of the BIT desires to create conditions favorable for fostering greater investment by recognizing the encouragement and reciprocal

⁵ The People's Republic of Bangladesh signed the BIT with the Kingdom of Denmark at Dhaka in 2009, which is still in force.

⁶ The People's Republic of Bangladesh signed the BIT with the Federal Republic of Germany at Bonn in 1981, which is still in force.

⁷ The People's Republic of Bangladesh signed the BIT with the Government of the Republic of India in 2009, which is still in force.

protection under international agreement for such investment. This BIT protects following the local laws and policy, fair and equitable treatment, most-favored-nation treatment, national treatment, as well as other benefits to the investors of the home state. Article 9 and 10 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investor. The BIT has no specific reference to environmental protection.

F. Democratic People's Republic of Korea⁸

The Preamble of the BIT desires to intensify economic co-operation to the mutual benefits of both States and intends to create and maintain favorable conditions for investments by recognizing to promote and protect foreign investment. This BIT protects following the local laws and regulations, fair and equitable treatment, most-favored-nation treatment, national treatment, as well as other benefits to the investors of the home state. Article 7 and 8 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investors. The BIT has no specific reference to environmental protection.

G. Netherlands⁹

The Preamble of the BIT desires to extend and intensify economic relations between both States by recognizing to stimulate the flow of capital, technology, and economic development with desired fair and equitable treatment of investments. This BIT provides full protection and security following the local laws and regulations, fair and equitable treatment, most-favored-nation treatment, national treatment, as well as other benefits to the investors of the home state. Article 9 and 13 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investor. Article 14(4) only entitles the Government of the Kingdom of Netherlands to terminate the application of the present Agreement separately in respect of any of the parts of the Kingdom. The BIT has no specific reference to environmental protection.

⁸ The People's Republic of Bangladesh signed the BIT with the Democratic People's Republic of Korea at Dhaka in 1999.

⁹ The People's Republic of Bangladesh signed the BIT with the Government of the Kingdom of the Netherlands in 1994, which is still in force.

H. Romania¹⁰

The Preamble of the BIT desires to develop existing economic co-operation by creating favorable conditions and providing a guarantee for investments of the capital. This BIT provides protection and guarantees as per the Agreement, most-favored-nation treatment, as well as other benefits to the investors of the home state. Article 8 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investors. The BIT has no specific reference to environmental protection.

I. Switzerland¹¹

The Preamble of the BIT desires to intensify economic co-operation to the mutual benefits of both States and intends to create and maintain favorable conditions for investments by recognizing the need to promote and protect foreign investments. This BIT provides full protection and security following the local laws and regulations, fair and equitable treatment, most-favored-nation treatment, national treatment, as well as other benefits to the investors of the home state. Article 8 and 9 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investor. The BIT has no specific reference to environmental protection.

J. Turkey¹²

The Preamble of the BIT desires to promote greater economic cooperation and recognizes the treatment to be accorded to such investments. In the Preamble, both Parties desire fair and equitable treatment of investments without relaxing health, safety, and environmental measures of general application as well as internationally recognized labor rights. There is a separate provision under article 4 for the protection of public health and the environment. This BIT also provides full protection and security following the local laws and regulations, the minimum standard of treatment under international law, fair and equitable treatment, most-favored-nation treatment, national treatment, as well as other benefits to the investors of the home state.

¹⁰ The People's Republic of Bangladesh signed the BIT with the Government of the Socialist Republic of Romania at Dhaka in 1987, which is still in force.

¹¹ The People's Republic of Bangladesh signed the BIT with the Swiss Confederation at Dhaka in 2000, which is still in force.

¹² The People's Republic of Bangladesh signed the BIT with the Government of the Republic of Turkey at Ankara in 2012, which replaced earlier BIT of 1987.

Article 10 and 11 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investor. The BIT has specific reference to environmental protection.

K. United Arab Emirates (UAE)¹³

The Preamble of the BIT desires to expand and strengthen economic and industrial cooperation on a long-term basis and in particular, to create favorable conditions for investments by recognizing the need to protect such investment. Article 4(5) states that ‘Investor of a Contracting Party as far as possible shall comply with the international laws and regulations of the other Contracting Party concerning public health and/or environmental policies’. This BIT also provides full and adequate protection and security following the local laws and regulations, fair and equitable treatment, most-favored-nation treatment, national treatment, as well as other benefits to the investors of the home state. Article 9 and 10 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investor. The BIT has specific reference to environmental protection.

L. United Kingdom (UK)¹⁴

The Preamble of the BIT desires to create favorable conditions for greater investment by recognizing the encouragement and reciprocal protection of such investment. This BIT also provides full protection and security following the local laws, fair and equitable treatment, most-favored-nation treatment, national treatment, as well as other benefits to the investors of the home state. Article 8 and 9 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investor. The BIT has no specific reference to environmental protection.

M. Uzbekistan¹⁵

The Preamble of the BIT desires to promote more extensive economic cooperation for mutual benefit by recognizing the necessity of encouragement and protection of such investment. This BIT also protects following the local

¹³ The People’s Republic of Bangladesh signed the BIT with the Government of the United Arab Emirates at Abu Dhabi in 2011.

¹⁴ The People’s Republic of Bangladesh signed the first BIT with the Government of the United Kingdom of Great Britain and Northern Ireland at London in 1980.

¹⁵ The People’s Republic of Bangladesh signed the BIT with the Government of the Republic of Uzbekistan at Tashkent in 2000, which is still in force.

laws, fair and equitable treatment, most-favored-nation treatment, national treatment, as well as other benefits to the investors of the home state. Article 9 and 10 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investor. The BIT has no specific reference to environmental protection.

N. Vietnam¹⁶

The Preamble of the BIT desires to expand and deepen economic and industrial cooperation on a long-term basis and in particular to create and maintain favorable conditions for investments by recognizing the need to promote and protect such investments. This BIT also provides full protection and security following the local laws, fair and equitable treatment, most-favored-nation treatment, as well as other benefits to the investors of the home state. Article 7 and 8 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investors. The BIT has no specific reference to environmental protection.

O. Malaysia¹⁷

The Preamble of the BIT desires to expand and strengthen economic and industrial cooperation on a long-term basis and in particular to create favorable conditions for investments by recognizing the need to protect such investments. This BIT provides full and adequate protection and security following local laws, regulations and national policies, equitable treatment, most-favored-nation treatment, as well as other benefits to the investors of the home state. Article 6 and 7 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investor. The BIT has no specific reference to environmental protection.

The following table is the summary of the Bangladesh BITs with 15 different countries concerning environmental protection:

¹⁶ The People's Republic of Bangladesh signed the BIT with the Government of the Socialist Republic of Vietnam at Hanoi in 2005.

¹⁷ The People's Republic of Bangladesh signed the BIT with the Government of Malaysia at Kuala Lumpur in 1994, which is still in force.

Table-2: Bangladesh BITs with different countries

Country	Signing date & present status	Environmental protection	FDI protections	Dispute settlement provisions
Austria	22/12/2000 In force	No	NT, MFN, FET	Yes
BLEU	22/05/1981 In force	No	MFN, FET	Yes
Denmark	05/11/2009 In force	Yes	NT, MFN, FET	Yes
Germany	06/05/1981 In force	No	NT, MFN, FET	Yes
India	09/02/2009 In force	No	NT, MFN, FET	Yes
Korea	21/06/1999 Signed	No	NT, MFN, FET	Yes
Netherlands	01/11/1994 In force	No	NT, MFN, FET	Yes
Romania	13/03/1987 In force	No	MFN	Yes
Switzerland	14/10/2000 In force	No	NT, MFN, FET	Yes
Turkey	12/04/2012 Signed	Yes	NT, MFN, FET	Yes
UAE	17/01/2011 Signed	Yes	NT, MFN, FET	Yes
UK	19/06/1980 In force	No	NT, MFN, FET	Yes
Uzbekistan	18/07/2000 In force	No	FET	Yes
Vietnam	01/05/2005 Signed	No	MFN, FET	Yes
Malaysia	20/10/1994 In force	No	MFN, FET	Yes

NT=National treatment, MFN=Most-favoured nation treatment, FET=Fair, and equitable treatment

4. Malaysia BITs with different countries

a. Austria¹⁸

The Preamble of the BIT desires to create favorable conditions for greater economic cooperation and recognizes the promotion and reciprocal protection of the investments. This BIT provides fair and equitable treatment, full protection, most-favored-nation treatment, national treatment, as well as other benefits to the investors of the home state. Article 9 and 10 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investor. The BIT has no specific reference to environmental protection.

B. Belgo-Luxembourg Economic Union (BLEU)¹⁹

The Preamble of the BIT desires to create favorable conditions for greater economic cooperation and recognizes the encouragement and reciprocal protection of the investments. This BIT also provides fair and equitable treatment, full protection, most-favored-nation treatment, national treatment under international law, as well as other benefits to the investors of the home state. Article 10 and 11 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investor. The BIT has no specific reference to environmental protection.

C. Denmark²⁰

The Preamble of the BIT desires to create favorable conditions for investments and to promote greater economic cooperation and also recognizes a fair and equitable treatment of investment on a reciprocal basis. This BIT also provides full protection and security, most-favored-nation treatment, national treatment, as well as other benefits to the investors of the home state. Article 10 and 11 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investor. The BIT has specific reference to environmental protection.

¹⁸ The Government of Malaysia signed the BIT with the Republic of Austria in 1985, which is still in force.

¹⁹ The Government of Malaysia signed the BIT with the Belgo-Luxembourg Economic Union (BLEU) at Kuala Lumpur in 1979, which is still in force.

²⁰ The Government of Malaysia signed the BIT with the Kingdom of Denmark in 1992, which is still in force.

D. Germany

The Government of Malaysia signed the BIT with the Federal Republic of Germany at Kuala Lumpur in 1960, which is still in force. The Preamble of the BIT desires to foster and strengthen economic cooperation and intends to create favorable conditions for investments by recognizing the contractual protection of such investments. This BIT also provides the most-favored-nation treatment, national treatment, as well as other benefits to the investors of the home state. Article 9 states that both countries 'shall co-operate with each other in furthering the interchange and use of scientific and technical knowledge and development of training facilities particularly in the interest of increasing productivity and improving standards of living in their territories'. Protocol 9 states that both countries shall refrain from any measures which contrary to the principles of free competition, may prevent or hinder sea-going vessels of the other Contracting Party from participating in the transport of goods that are intended for investment within the meaning of this Agreement'. Article 10 of the BIT has provisions to settle any dispute between the Contracting Parties or any of its investors. The BIT has specific reference to environmental protection.

E. India²¹

The Preamble of the BIT desires to expand and strengthen economic and industrial cooperation on a long-term basis and in particular, to create favorable conditions for investments by recognizing the need to protect such investments. This BIT also provides full and adequate protection and security at all times, fair and equitable treatment, most-favored-nation treatment, as well as other benefits to the investors of the home state. Article 7 and 8 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investors. The BIT has no specific reference to environmental protection.

F. Democratic People's Republic of Korea²²

The Preamble of the BIT intends to create favorable conditions for investments and recognizes the need to promote and protect such investments. This BIT also provides fair and equitable treatment, full protection and security,

²¹ The Government of Malaysia signed the BIT with the Government of the Republic of India at Kuala Lumpur in 1995, which is terminated in 2017.

²² The Government of Malaysia signed the BIT with the Democratic People's Republic of Korea at Seoul in 1988, which is still in force.

most-favored-nation treatment, national treatment under international law, as well as other benefits to the investors of the home state. Article 3 states that concerning investments and returns in banking and insurance sectors, most-favored-nation treatment and national treatment shall be accorded in compliance with the relevant laws and regulations of each Contracting Party. Article 9 and 10 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investor. The BIT has no specific reference to environmental protection.

G. Netherlands²³

The Preamble of the BIT desires to strengthen the ties of friendship and to foster and promote closer economic relations and to encourage investments based on mutual benefits. As per Article 2(2), both States agree to promote co-operation within the framework of their respective laws and regulations, which would contribute towards the improvement of the standards of living of the people. Also, both States undertake to promote the development of international shipping services and in all respects of vessels in waters (except coastal trade and fisheries), shall accord national and most-favored-nation treatment principles (Article-4). Article 7 facilitates the importation without payment of customs duties of goods, material, and equipment for purposes of exhibitions and displays, provided that they are re-exported within the due period. This BIT also provides fair and equitable treatment, most-favored-nation treatment, national treatment under international law, as well as other benefits to the investors of the home state. Article 12, 13, and 15 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investors. Article 17(4) only entitles the Government of the Kingdom of Netherlands to terminate the application of the present Agreement separately in respect of any of the parts of the Kingdom. The BIT has no specific reference to environmental protection.

H. Romania²⁴

The Preamble of the BIT desires to expand and deepen economic and industrial co-operation on a long-term basis and in particular to create favorable

²³ The Government of Malaysia signed the BIT with the Government of the Kingdom of Netherlands in 1971, which is still in force.

²⁴ The Government of Malaysia signed the BIT with the Government of the Socialist Republic of Romania at Bucharest in 1996, which is still in force and replaced earlier signed BIT of 1982.

conditions for investments by recognizing the need to protect such investments. This BIT also provides equitable treatment at all times, full adequate protection and security, most-favored-nation treatment, as well as other benefits to the investors of the home state. Article 6 and 7 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investor. The BIT has no specific reference to environmental protection.

I. Switzerland²⁵

The Preamble of the BIT intends to create favorable conditions for capital investments by recognizing the need to protect such investments. This BIT protects following the local legislation, fair and equitable treatment, most-favored-nation treatment, national treatment, as well as other benefits to the investors of the home state. Article 9 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investors. The BIT has no specific reference to environmental protection.

J. Turkey²⁶

The Preamble of the BIT desires to expand and deepen economic and industrial co-operation on a long-term basis and in particular to create favorable conditions for investments by recognizing the need to protect such investments. This BIT provides full and adequate protection and security at all times following the local legislation, fair and equitable treatment, most-favored-nation treatment, as well as other benefits to the investors of the home state. Article 7 and 8 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investors. The BIT has no specific reference to environmental protection.

K. United Arab Emirates (UAE)²⁷

The Preamble of the BIT desires to create favorable conditions for greater economic co-operation for investments by recognizing the need to

²⁵ The Government of Malaysia signed the BIT with the Government of the Swiss Confederation at Kuala Lumpur in 1978, which is still in force.

²⁶ The Government of Malaysia signed the BIT with the Government of the Republic of Turkey in 1998, which is still in force.

²⁷ The Government of Malaysia signed the BIT with the Government of the United Arab Emirates at Kuala Lumpur in 1991, which is still in force.

protect such investments. This BIT provides full protection and security at all times following the local legislation, fair and equitable treatment, most-favored-nation treatment, as well as other benefits to the investors of the home state. Article 9 and 10 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investor. The BIT has no specific reference to environmental protection.

L. United Kingdom (UK)²⁸

The Preamble of the BIT desires to create favorable conditions for greater investment by recognizing the encouragement and reciprocal protection under the international agreement of such investments. This BIT provides full protection and security at all times following the local legislation, fair and equitable treatment, most-favored-nation treatment, national treatment, as well as other benefits to the investors of the home state. Article 7 and 8 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investors. The BIT has no specific reference to environmental protection.

M. Uzbekistan²⁹

The Preamble of the BIT desires to expand and strengthen economic and industrial cooperation on a long-term basis and in particular to create favorable conditions for investments by recognizing the need to protect such investments. This BIT provides full and adequate protection and security at all times following the local laws, regulations, and national policies, equitable treatment, most-favored-nation treatment, as well as other benefits to the investors of the home state. Article 7 and 8 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investors. The BIT has no specific reference to environmental protection.

N. Vietnam³⁰

The Preamble of the BIT desires to expand and deepen economic and industrial cooperation on a long-term basis and in particular to create favorable conditions for investments by recognizing the need to protect such investments.

²⁸ The Government of Malaysia signed the BIT with the Government of the United Kingdom of Great Britain and Northern Ireland at London in 1981, which is still in force.

²⁹ The Government of Malaysia signed the BIT with the Government of the Republic of Uzbekistan at Kuala Lumpur in 1997, which is still in force.

³⁰ The Government of Malaysia signed the BIT with the Government of the Socialist Republic of Vietnam at Kuala Lumpur in 1992, which is still in force.

This BIT provides full protection and security at all times following the local laws, regulations, and administrative practices, fair and equitable treatment, most-favored-nation treatment, as well as other benefits to the investors of the home state. Article 7 and 8 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investors. The BIT has no specific reference to environmental protection.

The following table is the summary of the Malaysia BITs with 15 different countries concerning environmental protection:

Table-3: Malaysia BITs with different countries

Country	Signing date & present status	Environmental protection	FDI protections	Dispute settlement provisions
Austria	22/12/2000 In force	No	NT, MFN, FET	Yes
BLEU	22/05/1981 In force	No	NT, MFN, FET	Yes
Denmark	05/11/2009 In force	No	NT, MFN, FET	Yes
Germany	06/05/1981 In force	Yes	NT, MFN	Yes
India	09/02/2009 In force	No	MFN, FET	Yes
Korea	21/06/1999 Signed	No	NT, MFN, FET	Yes
Netherlands	01/11/1994 In force	No	NT, MFN, FET	Yes
Romania	13/03/1987 In force	No	MFN, FET	Yes
Switzerland	14/10/2000 In force	No	NT, MFN, FET	Yes
Turkey	12/04/2012 Signed	No	MFN, FET	Yes
UAE	17/01/2011 Signed	No	MFN, FET	Yes
UK	19/06/1980 In force	No	NT, MFN, FET	Yes

Uzbekistan	18/07/2000 In force	No	MFN, FET	Yes
Vietnam	01/05/2005 Signed	No	MFN, FET	Yes
Bangladesh	20/10/1994 In force	No	MFN, FET	Yes

NT=National treatment, MFN=Most-favoured nation treatment, FET=Fair, and equitable treatment

5. The USA BITs with different countries

A. Albania³¹

The Preamble of the BIT desires to promote greater economic cooperation between both parties and agrees to a stable framework for effective utilization of economic resources and improving living standards. The Preamble also recognizes to promote international standards of worker rights and not to relax health, safety, and environmental measures. This BIT provides full protection and security, fair and equitable treatment, most-favored-nation treatment, national treatment (article - 2). The BIT guarantees compensation for expropriation (article - 3), damages due to war (article - 4), transfer of capital (article - 5) as well as other benefits to the investors of the home state. Articles 8 to 10 of the BIT have provisions to settle the dispute between the Contracting Parties or any of its investors. So, the BIT has specific reference to environmental protection.

B. Bangladesh³²

The Preamble of the BIT desires to promote greater economic cooperation between both parties and recognizes that foreign investment will stimulate the flow of private capital and the economic development of the parties. This BIT provides full protection and security, fair and equitable treatment, most-favored-nation treatment, and national treatment (article-2). The BIT guarantees compensation for expropriation (article -3), damages due to

³¹ The Government of the USA signed the BIT with the Government of the Republic of Albania at Washington in 1995, which is still in force.

³² The Government of the USA signed the BIT with the People's Republic of Bangladesh at Washington in 1986, which is still in force.

war (article - 4), transfer of capital (article - 5) as well as other benefits to the investors of the home state. Articles 7 and 8 of the BIT have provisions to settle the dispute between the Contracting Parties or any of its investors. The BIT has no specific reference to environmental protection.

C. Czech Republic³³

The Preamble of the BIT desires to promote greater economic cooperation between both parties and agrees fair and equitable treatment of investment. The Preamble also recognizes to raise living standards for the inhabitants as well as improving the well-being of workers and promoting international standards of worker rights. This BIT provides full protection and security, fair and equitable treatment at all times, most-favored-nation treatment, and national treatment (article-2). The BIT guarantees compensation for expropriation (article - 3), damages due to war (article - 4), transfer of capital (article - 5) as well as other benefits to the investors of the home state. Articles 6 to 8 of the BIT have provisions to settle the dispute between the Contracting Parties or any of its investors. The BIT has no specific reference to environmental protection.

D. Jordan³⁴

The Preamble of the BIT desires to promote greater economic cooperation between both parties and agrees to a stable framework for effective utilization of economic resources and improving living standards. The Preamble also recognizes to promote international standards of worker rights and not to relax health, safety, and environmental measures. This BIT provides full protection and security, fair and equitable treatment, most-favored-nation treatment, national treatment (article-2). The BIT guarantees compensation for expropriation (article -3), damages due to war (article - 4), transfer of capital (article - 5) as well as other benefits to the investors of the home state. Articles 8 to 10 of the BIT have provisions to settle the dispute between the Contracting Parties or any of its investors. So, the BIT has specific reference to environmental protection.

³³ The Government of the USA signed the BIT with the Czech and Slovak Federal Republic at Washington in 1991, which is still in force.

³⁴ The Government of the USA signed the BIT with the Government of the Hashemite Kingdom of Jordan at Amman in 1997, which is still in force.

E. Kazakhstan³⁵

The Preamble of the BIT desires to promote greater economic cooperation between both parties and agrees fair and equitable treatment of investment. The Preamble also recognizes to raise living standards for the inhabitants as well as improving the well-being of workers and promoting international standards of worker rights. This BIT provides full protection and security, fair and equitable treatment at all times, most-favored-nation treatment, and national treatment (article-2). The BIT guarantees compensation for expropriation (article - 3), damages due to war (article - 4), transfer of capital (article - 5) as well as other benefits to the investors of the home state. Articles 6 to 8 of the BIT have provisions to settle the dispute between the Contracting Parties or any of its investors. The BIT has no specific reference to environmental protection.

F. Morocco³⁶

The Preamble of the BIT desires to promote greater economic cooperation between both parties and recognizes the creation of favorable conditions for investors. This BIT provides full protection and security, fair and equitable treatment, most-favored-nation treatment, and national treatment (article-2). The BIT guarantees compensation for expropriation (article - 3), transfer of capital (article - 4) as well as other benefits to the investors of the home state. Articles 5 to 7 of the BIT have provisions to settle the dispute between the Contracting Parties or any of its investors. The BIT has no specific reference to environmental protection.

G. Romania³⁷

The Preamble of the BIT desires to promote greater economic cooperation between both parties and agrees fair and equitable treatment of investment. The Preamble also recognizes to raise living standards for the inhabitants as well as improving the well-being of workers and promoting international standards of worker rights. This BIT provides full protection and

³⁵ The Government of the USA signed the BIT with the Republic of Kazakhstan at Washington in 1992, which is still in force.

³⁶ The Government of the USA signed the BIT with the Kingdom of Morocco at Washington in 1985, which is still in force.

³⁷ The Government of the USA signed the BIT with the Government of Romania at Bucharest in 1992, which is still in force.

security, fair and equitable treatment at all times, most-favored-nation treatment, and national treatment (article-2). The BIT guarantees compensation for expropriation (article - 3), transfer of capital (article - 4) as well as other benefits to the investors of the home state. Articles 5 to 7 of the BIT have provisions to settle the dispute between the Contracting Parties or any of its investors. The BIT has no specific reference to environmental protection.

H. Sri Lanka³⁸

The Preamble of the BIT desires to promote greater economic cooperation between both parties and agrees fair and equitable treatment of investment. The Preamble also recognizes to raise living standards for the inhabitants as well as improving the well-being of workers and promoting international standards of worker rights. This BIT provides full protection and security, fair and equitable treatment at all times, most-favored-nation treatment, and national treatment (article-2). The BIT guarantees compensation for expropriation (article - 3), transfer of capital (article - 4) as well as other benefits to the investors of the home state. Articles 5 to 7 of the BIT have provisions to settle the dispute between the Contracting Parties or any of its investors. The BIT has no specific reference to environmental protection.

I. Turkey³⁹

The Preamble of the BIT desires to promote greater economic cooperation between both parties and agrees fair and equitable treatment of investment. This BIT provides full protection and security, fair and equitable treatment, most-favored-nation treatment, and national treatment (article-2). The BIT guarantees compensation for expropriation (article - 3), transfer of capital (article - 4) as well as other benefits to the investors of the home state. Articles 5 and 7 of the BIT have provisions to settle the dispute between the Contracting Parties or any of its investors. The BIT has no specific reference to environmental protection.

³⁸ The Government of the USA signed the BIT with the Democratic Socialist Republic of Sri Lanka at Colombo in 1991, which is still in force.

³⁹ The Government of the USA signed the BIT with the Republic of Turkey at Washington in 1985, which is still in force.

J. Uzbekistan⁴⁰

The Preamble of the BIT desires to promote greater economic cooperation between both parties and agrees to a stable framework for effective utilization of economic resources and improving living standards. The Preamble also recognizes to promote international standards of worker rights and not to relax health, safety, and environmental measures. This BIT provides full protection and security, fair and equitable treatment, most-favored-nation treatment, national treatment (article-2). The BIT guarantees compensation for expropriation (article - 3), damages due to war (article - 4), transfer of capital (article - 5) as well as other benefits to the investors of the home state. Articles 8 to 10 of the BIT have provisions to settle the dispute between the Contracting Parties or any of its investors. So, the BIT has specific reference to environmental protection.

The following table is the summary of the USA BITs with 10 different countries with environmental protection:

Table-4: The USA BITs with different countries

Country	Signing date & present status	Environmental protection	FDI protections	Dispute settlement provisions
Albania	11/01/1995 In force	Yes	NT, MFN, FET	Yes
Bangladesh	12/03/1986 In force	No	NT, MFN, FET	Yes
Czech Republic	22/10/1991 In force	No	NT, MFN, FET	Yes
Jordan	02/07/1997 In force	Yes	NT, MFN, FET	Yes
Kazakhstan	19/05/1992 In force	No	NT, MFN, FET	Yes
Morocco	22/07/1985 In force	No	NT, MFN, FET	Yes
Romania	28/05/1992 In force	No	NT, MFN, FET	Yes

⁴⁰ The Government of the USA signed the BIT with the Government of the Republic of Uzbekistan at Washington in 1994.

Sri Lanka	20/09/1991 In force	No	NT, MFN, FET	Yes
Turkey	03/12/1985 In force	No	NT, MFN, FET	Yes
Uzbekistan	16/12/1994 Signed	Yes	NT, MFN, FET	Yes

NT=National treatment, MFN=Most-favoured nation treatment, FET=Fair, and equitable treatment

The following table is the summary of the *Bangladesh, Malaysia, and the USA* BITs with different countries with environmental protection:

Table-5: Comparison between Bangladesh, Malaysia, and the USA BITs with different countries

Country	Environmental protection			Dispute settlement provision			FDI protections		
	BD	ML	USA	BD	ML	USA	BD	ML	USA
Albania	--	--	Yes	Yes	Yes	Yes	--	--	NT, MFN, FET
Austria	No	No	--	Yes	Yes	Yes	NT, MFN, FET	NT, MFN, FET	--
Bangladesh	--	No	No	Yes	Yes	Yes	--	MFN, FET	NT, MFN, FET
BLEU	No	No	--	Yes	Yes	Yes	MFN, FET	NT, MFN, FET	--
Czech Republic	--	--	No	Yes	Yes	Yes	--	--	NT, MFN, FET
Denmark	Yes	No	--	Yes	Yes	Yes	NT, MFN, FET	NT, MFN, FET	--
Germany	No	Yes	--	Yes	Yes	Yes	NT, MFN, FET	NT, MFN	--
India	No	No	--	Yes	Yes	Yes	NT, MFN, FET	MFN, FET	--
Jordan	--	--	Yes	Yes	Yes	Yes	--	--	NT, MFN, FET
Kazakhstan	--	--	No	Yes	Yes	Yes	--	--	NT, MFN, FET
Korea	No	No	--	Yes	Yes	Yes	NT, MFN, FET	NT, MFN, FET	--
Malaysia	No	--	--	Yes	Yes	Yes	MFN, FET	--	--
Morocco	--	--	No	Yes	Yes	Yes	--	--	NT, MFN, FET
Netherlands	No	No	--	Yes	Yes	Yes	NT, MFN, FET	NT, MFN, FET	--

Environmental Protection and BITs of Bangladesh, Malaysia, and USA: A Comparison

Romania	No	No	No	Yes	Yes	Yes	MFN	MFN, FET	NT, MFN, FET
Sri Lanka	--	--	No	Yes	Yes	Yes	--	--	NT, MFN, FET
Switzerland	No	No	--	Yes	Yes	Yes	NT, MFN, FET	NT, MFN, FET	--
Turkey	Yes	No	No	Yes	Yes	Yes	NT, MFN, FET	MFN, FET	NT, MFN, FET
UAE	Yes	No	--	Yes	Yes	Yes	NT, MFN, FET	MFN, FET	--
UK	No	No	--	Yes	Yes	Yes	NT, MFN, FET	NT, MFN, FET	--
Uzbekistan	No	No	Yes	Yes	Yes	Yes	FET	MFN, FET	NT, MFN, FET
Vietnam	No	No	--	Yes	Yes	Yes	MFN, FET	MFN, FET	--

BD=Bangladesh, ML=Malaysia, Y=Yes, N=No, NT=National treatment, MFN=Most-favoured nation treatment, FET=Fair, and equitable treatment

6. Findings

From the above discussion of the BITs and table-2 to 5, it can be seen that only a few BITs has specific reference to environmental protection. Out of 40 BITs, only 7 of them (Bangladesh-Denmark, Bangladesh-Turkey, Bangladesh-UAE, Malaysia-Germany, USA-Albania, USA-Jordan, and USA-Uzbekistan) or 2.8% has specific reference to environmental protection. Apart from these seven BITs, the rest has no specific reference to environmental protection. All the BITs mainly cover dispute settlement mechanisms and all of them have specific provisions for full and adequate protection and security, fair and equitable treatment, most-favored-nation treatment, national treatment, compensation for expropriation, and nationalization as well as other benefits for the foreign investors.

7. Importance of protecting the environment in Bangladesh

In Bangladesh, there are many multinational enterprises (MNEs) who brought banned or outdated technologies from their home countries, as a result, damaging the environment significantly (Abdin, 2015). The Foreign Private Investment (Promotion and Protection) Act (FPIA) 1980 or National Industrial Policy (NIP) 2010 or even bilateral investment treaties (BITs) do not impose an

environmental requirement as an entry condition for foreign investors. Article 6 of the Bangladesh Environment Conservation Act 2010 simply requires investors to submit an Environmental Impact Assessment report to obtain an environmental clearance certificate from the Department of Environment (International Labour Organisation, 1995). Most of Bangladesh signed BITs and MIAs also lack specific reference to protecting the environment. (Investment Policy Hub, 1994)

8. Importance of protecting the environment in Malaysia

In Malaysia, it has been reported that there were 149 cases of the oil spill in Malaysian waters between 2009 to 2017 (Reduan, 2017). The foreign investors are concerned to maximize their profit and take less care about the degradation of the environment, for example – the dumping of hazardous waste by Asia Rare Earths – a subsidiary of Mitsubishi in Malaysia. During the last decade, projects such as Bakun Dam, Kuala Lumpur Outer Ring Road, Forest Plantation Development, Empire Residence Development, Pan Borneo Highway created controversies and completed with the sacrificing the natural forest (Frumkin, 2016).

During the screening of investment, the relevant authority studies the impact of the FDI on the environment before permitting the entry of the FDI. The authority will refuse permission if the effects on the environment are too serious but the environmental standards in Malaysia are not high like many developed countries (Mustafa, 2019). When there is a definite clash between the protection of the environment and FDI, arbitral tribunals usually decides in favor of investment protection. It is also difficult to determine whether the motive behind the interference is a concern for the environment or whether the interference is a protective measure designed to keep foreigners out of the economy. After granting permission of entry, if the authority interferes, then it becomes more problematic because the authority must have the weight of rhetoric as well as the principle behind it to support such interference. The Environmental Quality Act 1974 seems insufficient to deal with these new and complex environmental issues as well as it has no provision regarding sustainable development (Embong, 2015). Moreover, apart from Malaysia-Germany BIT, other bilateral investment treaties signed by Malaysia has no specific reference to environmental protection.

9. The United States Federal Environmental Statutes

Consistent with the federal statutes that they administer, US federal agencies promulgate regulations in the Code of Federal Regulations that fill out the broad programs enacted by Congress. Primary among these is Title 40 of the Code of Federal Regulations,⁴¹ containing the regulations of the Environmental Protection Agency (EPA). Other important CFR sections include Title 10 (energy), Title 18 (Conservation of Power and Water Resources), Title 21 (Food and Drugs), Title 33 (Navigable Waters), Title 36 (Parks, Forests and Public Property), Title 43 (Public Lands: Interior) and Title 50 (Wildlife and Fisheries).

The federal and state judiciaries have played an important role in the development of environmental law in the United States, in many cases resolving significant controversy regarding the application of federal environmental laws in favor of environmental interests. The decisions of the Supreme Court in cases such as *Calvert Cliffs Coordinating Committee v. U.S. Atomic Energy Commission* (broadly reading the procedural requirements of NEPA), *Tennessee Valley Authority v. Hill* (broadly reading the Endangered Species Act), and more recently, *Massachusetts v. EPA* (requiring EPA to reconsider regulation of greenhouse gases under the Clean Air Act) have had policy impacts far beyond the facts of the particular case.

D. CONCLUSIONS

Referring to the two questions raised in this paper, (a) even though the BITs states that the host country can take measures following its national laws, regulations, and policies but in absence of any specific provision of protecting the environment, it may raise the issue of discriminatory expropriation or violation of national treatment and most-favoured treatment principles; (b) Bangladesh, Malaysia and the USA should consider to insert specific environmental protection clause into the future BITs to allow the host state to protect its environment without any hindrance for future generations.

The FDI laws of Bangladesh and Malaysia have provisions only to promote the inflow of FDI and after post-entry, provide different incentives and protections to the foreign investors. In the absence of a global treaty or specific Act, regulating the FDI in Bangladesh and Malaysia is mainly dependent upon

⁴¹ Title 40 is a part of the United States Code of Federal Regulations. Title 40 arranges mainly environmental regulations that were promulgated by the US Environmental Protection Agency (EPA), based on the provisions of United States laws (statutes of the U.S. Federal Code). Parts of the regulation may be updated annually on July 1.

the BITs. Based on the WTO principle of 'reciprocity' both countries should design their BITs in such a way that all party's interest is preserved equally, thus the economic relations will sustain for a long time between them. Moreover, it is necessary to insert environmental protection requirements through legal or policy regime or BITs to control foreign investment in sensitive fields by setting conditions and FDI must satisfy for national interest, fulfill social and economic development objectives.

Recommendation

As can be seen from the above findings that most of Bangladesh and Malaysia's BITs lack to cover environmental issues. In absence of any global treaty, the BITs at present regulating the FDI in both Bangladesh and Malaysia (Hossain, 2018). The FDI related laws are scattered and environmental standards are lax. The Bangladesh Environment Conservation Act 2010 and the Environmental Quality Act 1974 of Malaysia fail to meet the standard maintained by the developed states like USA. From the case list of lawsuits about environmental damages, it is noticeable that most of the cases were filed in the USA, which shows the greater standard and implementation of the environmental laws (Wikipedia, 2020). On the other hand, there is no international litigation complained by either Bangladesh or Malaysia against any foreign investors with environmental damages. Therefore, this is the time when both countries should consider raising their environmental standards to an international level, in which case, they can follow the USA Federal Environmental Statutes as a model.

Furthermore, in practice, both liberalization and restrictive regulation could have positive and negative effects in both Bangladesh and Malaysia, so they should design their BITs in a balanced way to meet their peculiar needs at any particular time. Both countries should consider environmental protection to insert into the BITs to protect its legitimate interest and at the same time protecting the foreign investors' interest as per WTO principles. Therefore, well-balanced BITs need to be struck between liberalization and restrictive regulation to ensure the environmental protection of both countries.

Limitation of the study

The main limitation of this study is that it lacks interviews on the subject matter. As mentioned earlier that Bangladesh, Malaysia, and USA have

signed 30, 66, and 45 BITs respectively and in this paper 40 BITs in total have been analyzed. Therefore, further research in this space would be strengthened by including interviews with government officials, foreign investors, and academicians.

REFERENCES

- Abdin, J. (2015). Foreign Direct Investment (FDI) in Bangladesh: Trends, Challenges, and Recommendations. *International Journal of Sustainable Economies Management (IJSEM)* 4, no. 2, 36-45.
- Atkinson, J. (1995). *APEC-Winners and Losers*. Canberra.
- Bergten, C. (1978). *American Multinationals and American Interests*. Washington: Brookings Institution.
- Blonigen, B., & Wang, M. (2004). Inappropriate pooling of wealthy and poor countries in empirical FDI studies. In *Working paper 10378*. Cambridge: NBER.
- Bureau of Industry Economics. (1995). *Foreign Direct Investment in APEC: A Survey of the Issue. Report 95/21*. Canberra: Australian Government Publishing Service.
- Busse, M. (2010). FDI promotion through bilateral investment treaties: more than a BIT? *Rev World Econ* 146, no.1, 147-177.
- Chantasawat, B. (2010). FDI flows to Latin America, East and Southeast Asia, and China: substitutes or complements? *Rev Dev Econ* 14, no. 3, 533-546.
- Dunning, J. (1977). Trade, location of economic activity and MNE: a search for an eclectic approach. In B. Ohlin (Ed.), *The International Allocation of Economic Activity* (pp. 395-418). London: Macmillan.
- Dunning, J. (1988). *Explaining International Production*. London: Unwin Hyman.
- Egger, P., & Pfaffermayr, M. (2004). The impact of bilateral investment treaties on foreign direct investment. *J Comp Econ* 32, no. 4, 788-804.
- Embong, T. S. (2015). Environmental Justice in Malaysia: Issues and Challenges. *2nd National Seminar on Environmental Justice*.
- Frumkin, H. (2016). *Environmental health: from global to local*. John Wiley & Sons.

- G.L. Reuber et al. (1973). *Private Foreign Investment in Development*. Oxford.
- Hallward-Driemeier, M. (2003). *Policy research working paper 3121*. Washington: World Bank.
- Handl, G., & Lutz, R. (1989). *Transferring Hazardous Technologies and Substances*. London.
- Hettne, B. (1990). *Development Theory and the Three Worlds*. New York: Wiley.
- Hossain, M. B. (2018). International efforts to regulate foreign investment and Multinational Enterprises (MNEs). *Lex-Warrier: Online Law Journal*, vol 9, issue 9, 401-414.
- Hossain, M. B., & Rahi, S. T. (2018). International Economic Law and Policy: A Comprehensive and Critical Analysis of Historical Development. *Beijing Law Review* 9, no. 04, 524.
- hub, i. p. (n.d.). *Malaysia signed BIT*. Retrieved from <https://investmentpolicyhub.unctad.org/IIA/CountryBits/127#iiaInnerMenu>
- ICSID Reports. (2000). *Santa Elena v Costa Rica*. ICSID.
- International Labour Organisation. (1995). *Bangladesh Environment Conservation Act of 1995*. Retrieved from http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=87960.
- Investment Policy Hub. (1994). *Bangladesh and Malaysia signed BITs*. Retrieved from <httphttps://investmentpolicy.unctad.org/international-investment-agreements/treaties/tips/378/bangladesh---malaysia-bit-1994->
- Kishoiyan, B. (1993). The utility of bilateral investment treaties in the formulation of customary international law. *Nw. J. Int'l L. & Bus.* 14, 327.
- Kojima, K. (1978). *Direct Foreign Investment: a Japanese model of multinational business operations*. London: Croom Helm.
- Mina, W. (2012). The institutional reforms debate and FDI flows to the MENA region: the "best" ensemble. *World Dev* 40, no. 9, 1798–1809.
- Mustafa, M. (2019). Progression of Policies and Laws Towards Addressing Climate Change and Sustainability Issues: Recent Initiatives from

- Malaysia. In *Human and Environmental Security in the Era of Global Risks* (pp. 133-147).
- NAFTA. (1944). *The North American Free Trade Agreement (NAFTA) - Chapter 11 - Investment*. <https://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/disp-diff/nafta.aspx?lang=eng>.
- Oh, R. S. (2019). The Claims of Bodies: Practices of Citizenship After Bhopal in Survivor Testimony and Indra Sinha's *Animal's People*. *Interventions* 21, no. 1, 70-91.
- Part 3 of the Environment Protection and Biodiversity Conservation Act 1999. (n.d.).
- Plummer, M., & D Cheong. (2009). FDI effects of ASEAN integration. *Rég Dev* 29, no.1, 49–67.
- Porter, M. E. (2011). *The competitive advantage of nations: creating and sustaining superior performance* (Vol. 2). Simon and Schuster.
- Reduan, H. (2017, November 9). *New law being prepared to deal with new environmental complexity*. Retrieved from The Straits Times: <https://www.nst.com.my/news/nation/2017/11/301179/new-law-being-prepared-deal-new-environmental-complexity-doe>.
- Sherif H. Seid. (2018). *Global regulation of foreign direct investment*. Routledge.
- Smith, D. (1992). Foreign Investment in Natural Resources: What Can Go Wrong. In H. Kee (Ed.), *Current Developments in International Investment Law*. Butterworths.
- Smith, S. D. (1992). *Foreign Investment in Natural Resources: What can go wrong,* in *Current Developments in International Investment Law*. (H.P.Kee, Ed.) Singapore: Butterworths.
- Sornarajah, M. (2010). *The international law on foreign investment*. Cambridge: Cambridge University Press.
- Subedi, S. P. (2008). *International Investment Law: Reconciling Policy and Practice*. Hart Publishing.
- the Jakarta post. (2018, January 04). *Indonesia to strive for poverty rate below 10 percent*. Retrieved from the Jakarta post:

<https://www.thejakartapost.com/news/2018/01/04/govt-to-strive-for-poverty-rate-below-10-percent.html>

Ullah, M. S., & Inaba, K. (2014). Liberalization and FDI Performance: evidence from ASEAN and SAFTA member countries. *Journal of Economic Structures* 3, no. 1, 6.

UNCTAD. (2019). *Bilateral Investment Treaties*. Retrieved from <https://investmentpolicyhub.unctad.org/IIA>

Vogiatzoglou, K. (2007). Vertical specialization and new determinants of FDI: evidence from South and East Asia. *Glob Econ Rev* 36, no. 3, 245-266.

Wikipedia. (2020). *List of environmental lawsuits*. Retrieved from Wikipedia: https://en.wikipedia.org/wiki/List_of_environmental_lawsuits

World Bank. (2017, December 28). *Overview*. Retrieved from World Bank: Worldbank.org