
Significance of protecting environment through the Bilateral Investment Treaties of Bangladesh: A Comparison with Netherlands

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Abstract: *In absence of any global treaty, the bilateral investment treaties are playing an important role of regulating foreign investments in the host countries. According to the United Nations Conference on Trade and Development, 2361 bilateral investment treaties are in force and like other members of the World Trade Organization Bangladesh also signed bilateral investment treaties 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 benefits of the home states. Bangladesh foreign investment laws and bilateral investment treaties mainly protects foreign investors, however, neither of them has any specific provision of protecting environment. The Bangladesh Environment Conservation Act 2010 only requires foreign investors to obtain a clearance certificate before establishing any industry but significantly lacks any provision to impose liability for environmental damages. This paper addresses two questions: (a) do the bilateral investment treaties of Bangladesh and Netherlands allow the host state to take measures to protect the environment? (b) should the environmental protection be considered during the entry of foreign direct investment in Bangladesh and Netherlands? Using doctrinal research method, the authors critically analyzed 27 bilateral investment treaties to explore whether there is any reference of protecting environment in both countries. The authors find that the existing Bangladesh and Netherlands bilateral investment treaties have provisions to promote and protect foreign investments but have no reference (except Bangladesh-Turkey BIT, Bangladesh-UAE BIT, Netherlands-U.A.E. BIT and Netherlands-India BIT) of protecting environment. Therefore, the authors recommend both governments to consider this important factor while signing any future bilateral investment treaties.*

Key-words: *Bilateral investment treaties, environmental protection, foreign direct investment, Bangladesh, Netherlands.*

1. Introduction

The bilateral investment treaties (BITs) are a kind of mutual agreement between two capital importing and exporting states, which regulates the foreign investment in host state. The key objective is to safeguard the foreign investment against nationalisation 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 determines 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. When a BIT is concluded, is applicable 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, till to date there is no global treaty which could regulate all BITs in the world.

Since independence, Bangladesh and Netherlands has signed 30 and 94 BITs respectively with different countries in the world. Bangladesh has signed its first BIT with United Kingdom in 1980 and Netherlands has signed the first BIT with Cote d'Ivoire in 1965. This paper will critically analyse 13 common countries with whom both Bangladesh and Netherlands signed BITs in order to find out if they cover (fully or partly) environmental protection.

2. Methodology

The aim of this study is to identify whether bilateral investment treaties has any provision in relation to protecting environment in Bangladesh and Netherlands. The questions of this study are: (a) do the bilateral investment treaties of Bangladesh and Netherlands allow the host state to take measures to protect the environment? (b) should the environmental protection be considered during the entry of foreign direct investment in Bangladesh and Netherlands?

Using doctrinal research method, we critically analyzed 27 BITs signed by Bangladesh with different countries. Our analysis focused on environmental protection factor as well as foreign investment protections such as - most-favoured nation treatment, national treatment, fair and equitable treatment, full protection and security, dispute settlement mechanisms.

3. Significance of Environmental Protection from FDI in the Host States

For a sustainable development and to protect the environment from damages such as – pollution of rivers and seas, damage to the health of worker and local citizens, air pollution, the host country requires the foreign investors to follow the environmental law of the country concerned. The concerning issue is that the host countries has environmental law 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 benzine solvents, pesticides, raw sewage and battery acid spewed out by foreign companies; in Papua New Guinea, disposal of cyanide and other hazardous chemical from OK Tedi copper mines into the river had severely damages fisheries, forests, wildlife, farming land; Bhopal disaster case in India where thousand of people died and injured.

Due to lax environment 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 damaging environment, these treaties raise the issue of expropriations. To tackle this situation, the NGOs argued that BITs should contain exemptions to allow host states to protect the environment. The US-Canada BIT has provision addressing this issue and article 1114(1) of NAFTA states:

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“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”.

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 defence 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 defence had no merit. The tribunal taken this view despite the fact that 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. 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 environmental exception in which case tendency has been to disregard environmental concerns and emphasise the protection of the FDI. Since an interference justified on the basis of 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 makes it an offence for any person to take an 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 own environment law to protect the environment.

4. Environmental Protection in Different Host States

When 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 General Agreement on Tariffs and Trade (GATT) was the liberalisation of international trade, and that remains the main objective of the World Trade Organization (WTO) regime. The system aims to achieve the liberalisation of trade by these principles: (a) most-favoured 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 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.

Table 1: Environmental protection covered by different jurisdictions

<i>Factor</i>	<i>Countries</i>	<i>Statutes</i>
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
	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
	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 own findings.

5. Bangladesh BITs with different countries

A. India

The People's Republic of Bangladesh signed the BIT with the Government of the Republic of India in 2009, which is still in force. The Preamble of the BIT desires to create conditions favourable for fostering greater investment by recognising the encouragement and reciprocal protection under international agreement for such investment. This BIT provides protection in accordance with the local laws and policy, fair and equitable treatment, most-favoured 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. Indonesia

The People's Republic of Bangladesh signed the BIT with the Government of the Republic of Indonesia in 1998 at Dhaka, which is still in force. The Preamble of the BIT intends to create favourable conditions for investment on the basis of sovereign equality and mutual benefit by recognising the promotion and protection of such investments. This BIT provides protection in accordance with the local laws and policy [article 2(1)], fair and equitable treatment [article 2(2)], most-favoured nation treatment (article 3); 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.

C. Democratic People's Republic of Korea

The People's Republic of Bangladesh signed the BIT with the Democratic People's Republic of Korea at Dhaka in 1999. The Preamble of the BIT desires to intensify economic co-operation to the mutual benefits of both States and intends to create and maintain favourable conditions for investments by recognising to promote and protect foreign investment. This BIT provides protection in accordance with the local laws and regulations, fair and equitable treatment, most-favoured 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 investor. The BIT has no specific reference to environmental protection.

D. Malaysia

The People's Republic of Bangladesh signed the BIT with the Government of Malaysia at Kuala Lumpur in 1994, which is still in force. The Preamble of the BIT desires to expand and strengthen economic and industrial cooperation on a long-term basis and in particular to create favourable conditions for investments by recognising the need to protect such investments. This BIT provides full and adequate protection and security in accordance with local laws, regulations and national policies, equitable treatment, most-favoured 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.

E. Netherlands

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. The Preamble of the BIT desires to extend and intensify economic relations between both States by recognising to stimulate the flow of capital, technology and the economic development with desired fair and equitable treatment of investments. This BIT provides full protection and security in accordance with the local laws and regulations, fair and equitable treatment, most-favoured 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.

F. Philippines

The People's Republic of Bangladesh signed the BIT with the Government of the Republic of Philippines in 1997 at Manila, which is still in force. The Preamble of the BIT desires to intensify the economic cooperation of both states on the basis of equality and mutual benefits. It also intends to create favourable conditions for investment by recognising the reciprocal encouragement, promotion and protection of such investments. This BIT provides protection in accordance with the local laws and regulations [article 2(1)], fair and equitable treatment [article 3(1)], most-favoured nation treatment [article 3(2)], national treatment [article 3(3)]; as well as other benefits such as – expropriation (article-4), compensation (article 5), transfer facilities (article 6). 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.

G. Poland

The People's Republic of Bangladesh signed the BIT with the Republic of Poland in 1997, which is still in force. The Preamble of the BIT desires to intensify economic cooperation between both States with intention to create and maintain favourable conditions for investments by recognising the need to promote and protect foreign investments. This BIT provides full protection and security in accordance with the local laws and regulations (article 2); fair and equitable treatment, most-favoured nation treatment, national treatment (article 3), 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 investor. The BIT has no specific reference to environmental protection.

H. Romania

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. The Preamble of the BIT desires to develop existing economic co-operation by creating favourable conditions and providing guarantee for investments of the capital. This BIT provides protection and guarantees as per the Agreement, most-favoured 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 investor. The BIT has no specific reference to environmental protection.

I. Singapore

The People's Republic of Bangladesh signed the BIT with the Government of the Republic of Singapore at Dhaka in 2004, which is in force now. The Preamble of the BIT desires to expand and strengthen economic and industrial cooperation by recognising the need to protect treatment with a view to promoting the economic prosperity of both parties. This BIT provides full and adequate protection and security in accordance with the local laws and regulations (articles 2-3). It also has provisions for fair and equitable treatment, most-favoured nation treatment, national treatment (article 4); as well as other benefits (article 5-6) for 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 investor. The BIT has no specific reference to environmental protection.

J. Thailand

The People's Republic of Bangladesh signed the BIT with the Government of the Kingdom of Thailand in 2002 at Dhaka, which is still in force. The Preamble of the BIT desires to create favourable conditions for greater economic cooperation by recognising the encouragement of such investment and the reciprocal protection of investments. This BIT provides protection in accordance with the local laws and regulations [article 2(1)], fair and equitable treatment [article 2(2)], most-favoured nation treatment [article 3(1)], national treatment [article 3(2)]. It also provides other benefits to the investors including compensation for expropriation (article 4), compensation for losses (article 5) and transfer facilities of the capital and profits (article 6). Article 8 to 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.

K. Turkey

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. The Preamble of the BIT desires to promote greater economic cooperation and recognises the treatment to be accorded to such investments. In the Preamble, both Parties desires fair and equitable treatment of investments without relaxing health, safety and environmental measures of general application as well as internationally recognised labour rights. There is separate provision under article 4 for protection of public health and environment. This BIT also provides full protection and security in

accordance with the local laws and regulations, minimum standard of treatment under international law, fair and equitable treatment, most-favoured 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.

L. United Arab Emirates (UAE)

The People's Republic of Bangladesh signed the BIT with the Government of the United Arab Emirates at Abu Dhabi in 2011. The Preamble of the BIT desires to expand and strengthen economic and industrial cooperation on a long-term basis and in particular, to create favourable conditions for investments by recognising 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 in relation to public health and/or environmental policies'. This BIT also provides full and adequate protection and security in accordance with the local laws and regulations, fair and equitable treatment, most-favoured 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.

M. Uzbekistan

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. The Preamble of the BIT desires to promote more extensive economic cooperation for mutual benefit by recognising the necessity of encouragement and protection of such investment. This BIT also provides protection in accordance with the local laws, fair and equitable treatment, most-favoured 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. Vietnam

The People's Republic of Bangladesh signed the BIT with the Government of the Socialist Republic of Vietnam at Hanoi in 2005. 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 favourable conditions for investments by recognizing the need to promote and protect such investments. This BIT also provides full protection and security in accordance with the local laws, fair and equitable treatment, most-favoured 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 investor. The BIT has no specific reference to environmental protection.

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

Table-2: Bangladesh BITs with different countries

Country	Signing date & present status	Environmental protection	FDI protections	Dispute settlement provisions
India	09/02/2009 In force	No	NT, MFN, FET	Yes
Indonesia	09/02/1998 In force	No	MFN, FET	Yes
Korea	21/06/1999 Signed	No	NT, MFN, FET	Yes
Malaysia	20/10/1994 In force	No	MFN, FET	Yes
Netherlands	01/11/1994 In force	No	NT, MFN, FET	Yes
Philippines	08/09/1997 In force	No	NT, MFN, FET	Yes
Poland	08/07/1997 In force	No	NT, MFN, FET	Yes
Romania	13/03/1987 In force	No	MFN	Yes
Singapore	24/06/2004 In force	No	NT, MFN, FET	Yes
Thailand	09/06/2002 In force	No	NT, MFN, FET	Yes
Turkey	12/04/2012 Signed	Yes	NT, MFN, FET	Yes
U.A.E.	17/01/2011 Signed	Yes	NT, MFN, FET	Yes
Uzbekistan	18/07/2000 In force	No	FET	Yes
Vietnam	01/05/2005 Signed	No	MFN, FET	Yes

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

6. Netherlands BITs with different countries

A. India

The Kingdom of the Netherlands signed the BIT with the Republic of India in 1995, which has been unilaterally terminated. The Preamble of the BIT desired to strengthen the traditional ties of friendship by extending the economic relations and recognising reciprocal protection of the investments. Article 4 has provisions for fair and equitable treatment, full security and protection, most-favoured nation treatment, national treatment, which shall be accorded in compliance with the relevant laws and policies of each Contracting Party. The BIT guarantees the transfer of

payments in relation to investments (article 7) and expropriation, which shall be non-discriminatory under due process of law with prompt, adequate and effective compensation (article 5). Article 6 guarantees compensation for losses as well as other benefits for the investors. Article 9 and 10 has provisions to settle the dispute between the Contracting Parties or any of its investor. Article 12 allows both parties to take necessary measure to protect their security interest, or to prevent diseases and pests in animals or plants.

B. Indonesia

The Kingdom of Netherlands signed the BIT with the Government of the Republic of Indonesia in 1994, which was terminated in 2015. The Preamble of the BIT intends to create favourable conditions for investments by recognising the promotion and protection of investment. The BIT has provisions for fair and equitable treatment, national treatment, and most-favoured nation treatment (article-3). The BIT has provisions for taxation (article 4) and also guarantees compensation for losses (article 6), transfer of payments (article 7); as well as other benefits including to the investors of the home state. Article 5 states that expropriation is possible only if it is non-discriminatory and for public interest with payment of prompt, adequate and effective compensation. 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.

C. Democratic People's Republic of Korea

The Kingdom of the Netherlands signed the BIT with the Democratic People's Republic of Korea at Seoul in 2003, which is still in force. The Preamble of the BIT desires to strengthen the traditional ties of friendship by extending the economic relations and recognising that fair and equitable treatment of investment is desirable. Article 3 of the BIT provides fair and equitable treatment, full security and protection, most-favoured nation treatment, national treatment shall be accorded in compliance with the relevant laws and regulations of each Contracting Party. The BIT guarantees the transfer of payments in relation to investments (article 4) and expropriation, which shall be non-discriminatory under due process of law with prompt, adequate and effective compensation (article 5). Article 6 guarantees compensation for losses as well as other benefits for the investors. Article 8, 10 and 11 has provisions to settle the dispute between the Contracting Parties or any of its investor. The BIT has no specific reference to environmental protection.

D. Malaysia

The Government of Malaysia signed the BIT with the Government of the Kingdom of Netherlands in 1971, which is still in force. The Preamble of the BIT desires to strengthen the ties of friendship and to foster and promote closer economic relations and to encourage investments on the basis of 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-favoured nation treatment principles

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(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 due period. This BIT also provides fair and equitable treatment, most-favoured 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 investor. 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.

E. Philippines

The Kingdom of Netherlands signed the BIT with the Republic of the Philippines in 1985, which is still in force. The Preamble of the BIT desires to strengthen the traditional ties of friendship between their countries, to extend and intensify their economic relations, and to encourage investments on the basis of equality and to the mutual benefit of both countries. The BIT has provisions for fair and equitable treatment (article-3) and most-favoured nation treatment (article-4). Article 5 states that expropriation is possible only if it is non-discriminatory and for public interest with payment of prompt, adequate and effective compensation. The BIT has provisions for transfer of payments (article 7), as well as other benefits for the investors of the home state. Article 8, 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. Poland

The Kingdom of the Netherlands signed the BIT with the Republic of Poland in 1992, which is still in force. The Preamble of the BIT desires to intensify economic cooperation to the mutual benefit of both countries by recognizing the encouragement and protection of investments. Article 3 of the BIT provides fair and equitable treatment, most-favoured nation treatment, and national treatment shall be accorded in compliance with the relevant laws and regulations of each Contracting Party. The BIT guarantees the transfer of payments in relation to investments (article 4) and expropriation, which shall be non-discriminatory under due process of law with prompt, adequate and effective compensation (article 5). Article 6 guarantees compensation for losses as well as other benefits for the investors. Article 8, 11 and 12 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. Romania

The Government of the Kingdom of Netherlands signed the BIT with the Government of the Socialist Republic of Romania in 1994, which is still in force. The Preamble of the BIT desires to strengthen the traditional ties of friendship by extending the economic relations and recognising that fair and equitable treatment of investment is desirable. The BIT provides fair and equitable

treatment with full physical security and protection, national treatment, and most-favoured nation treatment (article-3). The BIT guarantees the transfer of payments in relation to investments (article 4), as well as other benefits including to the investors of the home state. Article 5 states that expropriation is possible only if it is non-discriminatory and for public interest with payment of just compensation. Article 8 to 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.

H. Singapore

The Kingdom of the Netherlands signed the BIT with the Government of the Republic of Singapore in 1972, which is still in force. The Preamble of the BIT desires to strengthen their traditional ties of friendship, to extend and intensify their economic relations and to encourage investments on the basis of quality in order to develop the industrial and commercial activities of their countries. Article 7 of the BIT provides fair and equitable treatment, most-favoured nation treatment, and national treatment shall be accorded in compliance with the relevant laws and regulations of each Contracting Party. The BIT guarantees the transfer of payments in relation to investments (article 8) and expropriation, which shall be non-discriminatory under due process of law with prompt, adequate and effective compensation (article 9). Article 15 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. Thailand

The Government of the Kingdom of Netherlands signed the BIT with the Government of the Kingdom of Thailand in 1972, which is still in force. The Preamble of the BIT desires to strengthen the traditional ties of friendship by extending the economic relations and encouraging investment on the basis of equality and mutual benefit. The BIT provides national treatment (article 4), and most-favoured nation treatment (article-5). The BIT guarantees the transfer of payments in relation to investments (article 8), as well as other benefits including to the investors of the home state. Article 9 states that expropriation is possible only if it is non-discriminatory and for public interest with payment of just compensation. Articles 11 and 12 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. Turkey

The Kingdom of Netherlands signed the BIT with the Government of the Republic of Turkey in 1986, which is still in force. The Preamble of the BIT desires to strengthen the traditional ties of friendship by extending the economic relations and recognising that fair and equitable treatment of investment is desirable. The BIT provides fair and equitable treatment with full security and protection, national treatment, and most-favoured nation treatment (article-3). Article 5 states that expropriation is possible only if it is non-discriminatory and for public interest with payment of just compensation. The BIT guarantees the transfer of payments in relation to investments (article 4), compensation for losses (article 6) as well as other benefits including to the investors of the

home state. Article 8 to 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.

K. United Arab Emirates

The Kingdom of Netherlands signed the BIT with the Government of the United Arab Emirates at Abu Dhabi in 2013, which is signed but still not in force. The Preamble of the BIT desires to strengthen the traditional ties of friendship by extending the economic relations and recognising that fair and equitable treatment of investment is desirable. The BIT provides fair and equitable treatment with full physical security and protection, national treatment, and most-favoured nation treatment (article-3). The BIT has provision for fiscal treatment (article 4) and also guarantees the transfer of payments in relation to investments (article 5), compensation for losses (article 7) as well as other benefits including to the investors of the home state. Article 6 states that expropriation is possible only if it is non-discriminatory and for public interest with payment of prompt, adequate and effective compensation. Article 9, 11 and 12 of the BIT has provisions to settle the dispute between the Contracting Parties or any of its investor. Article 2(2) states that both parties shall establish its own level of domestic environmental protection and its own sustainable development policy and priorities, and to adopt or modify its environmental laws and regulations and shall strive as far as possible to continue to improve their laws and regulations.

L. Uzbekistan

The Kingdom of Netherlands signed the BIT with the Government of the Republic of Uzbekistan in 1996, which is still in force. The Preamble of the BIT desires to extend and intensify the economic relations and recognising that fair and equitable treatment of investment is desirable. The BIT provides fair and equitable treatment with full physical security and protection, national treatment, and most-favoured nation treatment (article-3). The BIT has provision for fiscal treatment (article 4) and also guarantees the transfer of payments in relation to investments (article 5), compensation for losses (article 7) as well as other benefits including to the investors of the home state. Article 6 states that expropriation is possible only if it is non-discriminatory and for public interest with payment of just compensation. Article 9, 11 and 12 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. Vietnam

The Kingdom of Netherlands signed the BIT with the Government of the Socialist Republic of Vietnam in 1994, which is still in force. The Preamble of the BIT desires to strengthen the traditional ties of friendship and recognising that fair and equitable treatment of investment is desirable. The BIT provides fair and equitable treatment with full physical security and protection, national treatment, and most-favoured nation treatment (article-3). The BIT has provision for fiscal treatment (article 4) and also guarantees the transfer of payments in relation to investments (article 5), compensation for losses (article 7) as well as other benefits including to the investors of the home state. Article 6 states that expropriation is possible only if it is non-discriminatory and for

public interest with payment of just compensation. Article 9, 11 and 12 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 Netherlands BITs with 11 different countries in relation to environmental protection:

Table-3: Netherlands BITs with different countries

Country	Signing date & present status	Environmental protection	FDI protections	Dispute settlement provisions
India	06/11/1995 Terminated	Yes	NT, MFN, FET	Yes
Indonesia	06/04/1994 Terminated	No	NT, MFN, FET	Yes
Korea	12/07/2003 In force	No	NT, MFN, FET	Yes
Malaysia	01/11/1994 In force	No	NT, MFN, FET	Yes
Philippines	27/02/1985 In force	No	MFN, FET	Yes
Poland	07/09/1992 In force	No	NT, MFN, FET	Yes
Romania	19/04/1994 In force	No	NT, MFN, FET	Yes
Singapore	16/05/1972 In force	No	NT, MFN, FET	Yes
Thailand	06/06/1972 In force	No	NT, MFN	Yes
Turkey	27/03/1986 In force	No	NT, MFN, FET	Yes
U.A.E.	26/11/2013 Signed	Yes	NT, MFN, FET	Yes
Uzbekistan	14/03/1996 In force	No	NT, MFN, FET	Yes
Vietnam	10/03/1994 In force	No	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 and Netherlands BITs with the same countries in relation to environmental protection:

Table-4: Comparison between Bangladesh and Netherlands BITs with same countries

Country	Signing date & present status		Environmental protection		FDI protections	
	<i>BD</i>	<i>NL</i>	<i>BD</i>	<i>NL</i>	<i>BD</i>	<i>NL</i>
India	09/02/2009 In force	06/11/1995 Terminated	No	Yes	NT, MFN, FET	NT, MFN, FET
Indonesia	09/02/1998 In force	06/04/1994 Terminated	No	No	MFN, FET	NT, MFN, FET
Korea	21/06/1999 Signed	12/07/2003 In force	No	No	NT, MFN, FET	NT, MFN, FET
Malaysia	20/10/1994 In force	01/11/1994 In force	No	No	MFN, FET	NT, MFN, FET
Netherlands	01/11/1994 In force	--	No	No	NT, MFN, FET	MFN, FET
Philippines	08/09/1997 In force	27/02/1985 In force	No	No	NT, MFN, FET	MFN, FET
Poland	08/07/1997 In force	07/09/1992 In force	No	No	NT, MFN, FET	NT, MFN, FET
Romania	13/03/1987 In force	19/04/1994 In force	No	No	MFN	NT, MFN, FET
Singapore	24/06/2004 In force	16/05/1972 In force	No	No	NT, MFN, FET	NT, MFN, FET
Thailand	09/06/2002 In force	06/06/1972 In force	No	No	NT, MFN, FET	NT, MFN
Turkey	12/04/2012 Signed	27/03/1986 In force	Yes	No	NT, MFN, FET	NT, MFN, FET
U.A.E.	17/01/2011 Signed	26/11/2013 Signed	Yes	Yes	NT, MFN, FET	NT, MFN, FET
Uzbekistan	18/07/2000 In force	14/03/1996 In force	No	No	FET	NT, MFN, FET
Vietnam	01/05/2005 Signed	10/03/1994 In force	No	No	MFN, FET	NT, MFN, FET

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

VII. Findings

From the above discussions and table-2-4, it appears that only Bangladesh-Turkey BIT, Bangladesh-UAE BIT, Netherlands-India BIT and Netherlands-U.A.E. BIT has specific reference to environmental protection. Apart from these four BITs, rest has no specific reference to environmental protection. All the BITs mainly cover dispute settlement mechanism and specific provisions for foreign investment protections. From the Bangladesh and Netherlands BITs, it also appears that all of them have specific provisions for full and adequate protection and security, fair and equitable treatment, most-favoured nation treatment, national treatment, compensation for expropriation and losses as well as other benefits for the foreign investors.

VIII. Importance of Protecting 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. The Foreign Private Investment (Promotion and Protection) Act (FPIA) 1980 or National Industrial Policy (NIP) 2016 or even bilateral investment treaties (BITs) do not impose an environmental requirement as an entry conditions for foreign investors. Article 6 of the Bangladesh Environment Conservation Act 2010 simply requires investors to submit an Environmental Impact Assessment report in order to obtain an environmental clearance certificate from the Department of Environment. Most of the Bangladesh signed BITs and MIAs also lacks specific reference of protecting environment.

IX. The Environment and Climate Change Law of Netherlands

Dutch environmental legislation covers a much broader range of activities and products. The Netherlands has a well-established system of environmental laws that is often perceived as detailed and complex. Furthermore, the Netherlands has a well-established system of inspections and enforcement. The Dutch government still has high policy ambitions in respect of various environmental topics, including climate change, the circular economy and promoting sustainability, including wind power.

The primary source of environmental law is the Dutch Environmental Management Act (EMA). Almost all-national legislation on the environment is incorporated in the Environmental Management Act. This Act sets out an integrated approach to environmental management in the Netherlands and provides the legal framework by defining the roles of national, provincial or regional, and municipal government. The Act stipulates the tools to be used in environmental management including environmental plans; environmental quality criteria for emissions and discharges of harmful substances; and environmental impact assessment.

The scope and complexity of current environmental laws have triggered what is the largest system reform of Dutch environmental laws to date. This legislative project is ongoing, and aims for a full integration of virtually all-environmental acts, including legislation on zoning and planning and on nature protection, into a single Environment and Planning Act. Both Chambers of Parliament have approved the new bill. The cabinet now draws up introductory legislation. The

expectation is that the Act will take effect in 2021. The new Act will result in fewer regulations and will reduce the burden of conducting studies. At the same time, decisions on projects and activities can be made better and more quickly. Moreover, the Act is more in line with European regulations and allows more room for private initiatives.

10. Recommendation

As can be seen from the above findings that Bangladesh BITs lacks to cover environmental issue. In absence of any global treaty, the BITs at present regulating the FDI in Bangladesh. The FDI related laws are scattered and environmental standards are lax. There are evidences which shows that only liberalisation does not necessarily result in the increased inflow of FDI in the host states. For example, according to the United Nations Conference on Trade and Development (UNCTAD) report in 1999, there are many African states that have a very liberal investment regulation but failed to attract the inflow of FDI. In contrast, China has a restrictive investment regime; even then it has been the largest recipient of FDI amongst the developing world since 1992. Similarly, Thailand, Vietnam have more strict regulation comparing to the Latin American states but they are receiving more FDI than the latter.

In practice, both liberalisation and restrictive regulation could have positive and negative effects in Bangladesh, so it should design its BITs in a balanced way to meet its peculiar needs at any particular time. Bangladesh should consider environmental protection to insert into the BITs in order to protect its legitimate interest and at the same time protecting the foreign investors interest as per WTO principles. Therefore, a well-balanced BITs need to be struck between liberalisation and restrictive regulation to ensure sustainable development of Bangladesh. Moreover, Bangladesh can follow the Environment and Climate Change Law of Netherlands as a guideline to protect the environment.

11. Conclusion

In recent years, many academics and scholars also expressed their concern on protecting the national and socio-economic interests of host states and suggested for strict regulation of FDI by minimising liberal approach. The scholars, such as - Seid proposed 'regulated openness' of investment regimes where both regulation and openness co-exist in a balanced and pragmatic manner. Sornarajah proposed a 'middle path' and Solomon and Mirsky hold that FDI legislations should be enacted in the consideration of some common problems that are significantly related to the development goals of FDI.

Referring to the two questions raised in this paper, (a) even though the BITs states that the host country can take measures in accordance with its national laws, regulations and policies but in absence of any specific provision of protecting environment, it may raise the issue of discriminatory expropriation or violation of national treatment and most-favoured treatment principles; (b) both Bangladesh and Netherlands should 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 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, is mainly depended upon the BITs. Based on the WTO principle of 'reciprocity' Bangladesh should design its BITs in such a way that all parties interest are preserved equally, thus the economic relations will sustain for a long time between them. Moreover, it is necessary to insert environmental protection requirement through legal or policy regime or BITs to control foreign investment in sensitive fields by setting conditions and FDI must satisfy for the purpose of national interest, fulfill social and economic development objectives, free from exploitation - a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens.

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