Lex Publica
Jurnal Ilmu Hukum Asosiasi Pimpinan Perguruan Tinggi Hukum Indonesia
e-ISSN: 2579-8855
p-ISSN: 2354-9181
https://journal.appthi.org/index.php/lexpublica

Analyzing the Most-Favored Nation Treatment Principle: A Study of Malaysia's Bilateral Investment Treaties and Their Implications

Mohammad Belayet Hossain[1*], Md Hasnath Kabir Fahim[2], Ramisa Jahan[3]

[1]Curtin University Malaysia, Sarawak, Malaysia
[2]University of New Haven, West Haven, United States
[3]Chittagong Independent University, Chittagong, Bangladesh

**Corresponding author: belayet.hossain@curtin.edu.my*

Abstract. This study critically examines the application of the Most-Favoured Nation (MFN) treatment principle within Malaysia's Bilateral Investment Treaties (BITs) and its broader implications for investment governance. Drawing from doctrinal legal analysis and expert interviews, including insights from Professor Zakiri of Universiti Utara Malaysia, the research explores how MFN clauses influence Foreign Direct Investment (FDI), investor-state relations, and Malaysia's regulatory sovereignty. The findings reveal significant inconsistencies and ambiguities in the interpretation of MFN clauses-particularly concerning their applicability to procedural rights such as dispute settlement. These gaps not only risk treaty shopping but also constrain Malaysia's ability to enact public interest regulations in areas like health, environment, and taxation. The study recommends the development of a Model BIT that includes clearly defined MFN scopes, sustainable development carve-outs, and alignment with ESG principles. It advances the ongoing discourse on how to balance investor protection with space policy and provides practical suggestions for reforming Malaysia's international investment treaty framework.

Keywords: Agreement, Bilateral Investment, Principles of Treatment, World Trade Organization.

Abstrak. *Studi ini mengkaji secara kritis penerapan prinsip perlakuan Most-Favoured Nation (MFN) dalam perjanjian investasi bilateral Malaysia dan implikasinya yang lebih luas terhadap tata kelola investasi. Berdasarkan analisis hukum doktrinal dan wawancara ahli, termasuk wawasan dari Profesor Zakiri dari Universiti Utara Malaysia, penelitian ini mengeksplorasi bagaimana klausul MFN memengaruhi investasi langsung asing, hubungan investor-negara, dan kedaulatan regulasi Malaysia. Temuan penelitian ini mengungkapkan inkonsistensi dan ambiguitas yang signifikan dalam interpretasi klausul MFN-terutama terkait penerapannya terhadap hak prosedural seperti penyelesaian sengketa. Kesenjangan ini tidak hanya berisiko terhadap treaty shopping tetapi juga membatasi kemampuan Malaysia untuk memberlakukan regulasi kepentingan publik di bidang-bidang seperti kesehatan, lingkungan, dan perpajakan. Studi ini merekomendasikan pengembangan model perjanjian investasi bilateral yang mencakup cakupan MFN yang didefinisikan secara jelas, pengecualian pembangunan berkelanjutan, dan keselarasan dengan prinsip-prinsip ESG. Hal ini mendorong wacana yang sedang berlangsung tentang bagaimana menyeimbangkan perlindungan investor dengan kebijakan ruang dan memberikan saran praktis untuk mereformasi kerangka perjanjian investasi internasional Malaysia.*

Kata kunci: *Perjanjian, Investasi Bilateral, Prinsip Perlakuan, Organisasi Perdagangan Dunia.*

1. Introduction

The Most-Favored Nation (MFN) treatment principle is a cornerstone of international investment law, intended to guarantee that foreign investors receive equal treatment in a host state, irrespective of their nationality. Initially arising from trade agreements, the MFN clause has been increasingly incorporated into Bilateral Investment Treaties (BITs), creating a legal framework that enhances foreign direct investment (FDI) flows across borders. In the Malaysian context, a developing country with strategic economic policies and a reliance on foreign capital, the implications of MFN treatment within BITs are both significant and complex. This principle ensures that Malaysia, like other host states, does not discriminate against investors from one country while offering preferential treatment to investors from another, thereby promoting a level playing field conducive to economic development.[1]

The practical application of MFN clauses has generated extensive scholarly debate, particularly within Malaysia's regulatory and investment landscape. The coexistence of numerous BITs, each embedding distinct MFN provisions, presents both opportunities and challenges. On one hand, MFN treatment discourages policies that favor domestic firms over foreign investors, signaling legal security and openness to global markets. On the other hand, it may constrain the government's ability to adapt domestic regulations without risking litigation from foreign investors.[2] The dual role of MFN clauses-as both incentives for investment and potential limitations on regulatory autonomy-underscores the delicate balance between attracting FDI and safeguarding national interests.[3] According to Prof. Zakiri, "MFN clauses are strategic tools for Malaysia, which relies on FDI for economic development. They signal legal security and openness to the global investment community."

Empirical studies further reveal that MFN clauses affect the broader investment ecosystem. Evidence suggests that robust BIT networks, while facilitating investment inflows, can inadvertently constrain government

[1] Zaibedah Zaharum, Mohamad Azwan Md Isa, Ruziah A Latif, and Muhammad Firdhaus Md Isa, "Determinants of foreign direct investment in Malaysia," *Insight Journal (IJ)* 11, no. 1 (2024): 89.

[2] Yunbing Li, "Research on the applicability of the mfn clause in bits in the dispute settlement procedure," *Asian Journal of Social Science Studies* 7, no. 4 (2022): 114.

[3] Thiago Ferreira Almeida, "As inconsistências da solução investidor-Estado na proteção internacional do investidor estrangeiro: análise das principais cláusulas substantivas dos BITs a partir dos casos arbitrais ad hoc, sob a perspectiva dos países receptores de capital," *Revista Fórum de Direito Financeiro e Econômico–RFDFE* 13, no. 23 (2023): 187. See also, Tanjina Sharmin and Emmanuel Laryea, "Application of MFN to investment dispute settlement: rule of law issues," *Journal of International Trade Law and Policy* 20, no. 1 (2021): 21.

policymaking, especially when fear of investor-state dispute settlement (ISDS) arises.[4] Malaysia's experience exemplifies this tension, as policymakers strive to reconcile FDI promotion with the protection of local regulatory sovereignty. Previous research has examined the economic effects of BITs and MFN clauses, highlighting positive impacts on FDI inflows in emerging economies, including Malaysia.[5] However, these studies also emphasize the risk of overextension, where commitments under MFN clauses may limit the country's flexibility in policy implementation.

Beyond economic and legal dimensions, MFN treatment intersects with environmental sustainability concerns. Several studies have shown that BITs frequently lack explicit environmental safeguards, creating potential conflicts between investor interests and ecological protection.[6] As Malaysia pursues sustainable development alongside economic growth, integrating environmental considerations into BIT frameworks is increasingly essential. The MFN principle, therefore, cannot be assessed solely from a commercial or legal perspective. Its environmental implications warrant critical evaluation, particularly when investments in sectors such as manufacturing, energy, and natural resources may impact ecological outcomes.[7] Existing literature also indicates that many BITs lack

[4] Yuanchao Bi and Wei Shen, "Universal Scale Tipping towards Balance-Applying the MFN Clauses in China-related Investment Arbitration: A New Haven School Reading," *China and WTO Review* 6, no. 2 (2020): 291. See also, Georgios Dimitropoulos, "National sovereignty and international investment law: sovereignty reassertion and prospects of reform," *The Journal of World Investment & Trade* 21, no. 1 (2020): 74; Anqi Wang, "Applying the MFN clause for higher substantive treatment," In *Interpretation and application of the most-favored-nation clause in investment arbitration,* (Leiden: Brill Nijhoff, 2022), 89.

[5] Surbhi Gupta, Arun Kumar Attree, Ranjana Thakur, and Vishal Garg, "Interlinkages between bilateral investment treaties and FDI flows to emerging economies: evidence from BRICS," *Journal of Advances in Management Research* 21, no. 4 (2024): 667. See also, Jaivir Singh, Vatsala Shreeti, and Parnil Urdhwareshe, "The impact of bilateral investment treaties on FDI inflows into India: Some empirical results," *Foreign Trade Review* 57, no. 3 (2022): 310; Miao Zhang and Rui Yang, "FDI and spillovers: New evidence from Malaysia's manufacturing sector," *Review of Development Economics* 26, no. 2 (2022): 847.

[6] Luqman Afolabi et al., "Unravelling the link between bilateral investment treaties and environmental sustainability in sub-saharan african countries," *Insight on Africa* 17, no. 1 (2025): 7. See also, James Temitope Dada et al., "Financial development–ecological footprint nexus in Malaysia: the role of institutions," *Management of Environmental Quality: An International Journal* 33, no. 4 (2022): 913; Mohammad Belayet Hossain, "Environmental Protection and BITs of Bangladesh, Malaysia and USA: A Comparison," *Jurnal Cita Hukum* 8, no. 3 (2020): 489.

[7] Olga Nosova, "Foreign Direct Investment's Impact on the Activity of Transnational Corporations," *Applied business: Issues & solutions.* 2 (2023): 3. See also, Wen Xiang and Olubayo Oluduro, "China's investment in the Nigerian energy sector: A prognosis of the dispute settlement paradigm," *Laws* 12, no. 5 (2023): 81; Norhidayat Zainal and Andrew Kam Jia Yi, "China's Foreign Direct Investment (FDI) in Malaysia: Impact on Malaysia's Sustainable Development Goals (SDGs)," *SINERGI: Journal of Strategic Studies & International Affairs* 3, no. 2 (2023): 47.

explicit environmental protections, potentially leading to conflicts when foreign investments prioritize profit over ecological sustainability.[8]

Moreover, the political dimension of MFN treatment shapes both domestic and international policy choices. BITs, including MFN clauses, are instruments of diplomacy and economic signaling, influencing Malaysia's bilateral relations and strategic positioning in the global market.[9] MFN treatment, therefore, is not only a tool to foster investment but also a mechanism for asserting Malaysia's credibility as a reliable partner in international economic law. The interplay between legal certainty, economic incentives, and political strategy forms the backdrop for understanding MFN clauses' multifaceted role within Malaysia's BIT regime.[10]

Despite extensive scholarship on MFN clauses, significant gaps remain in understanding their multidimensional impact within Malaysia's BIT framework. First, while prior studies have examined the economic and legal effects of MFN treatment, few have integrated environmental and sustainability considerations into their analyses.[11] The intersection between MFN clauses and ecological governance remains underexplored, particularly given Malaysia's commitment to balancing FDI with sustainable development. Second, most research focuses on aggregate FDI outcomes without critically assessing how MFN clauses influence domestic regulatory autonomy across sectors, leaving questions about policy flexibility and

[8] Mohammad Belayet Hossain, "Environmental Protection and BITs of Bangladesh," 490.

[9] Nina Bandelj and Aaron Tester, "Amplified decoupling in the global economy: The case of bilateral investment treaties," *Socius* 6 (2020): 23. See also, Julien Chaisse and Jamieson Kirkwood, "Chinese puzzle: anatomy of the (invisible) Belt and Road investment treaty," *Journal of International Economic Law* 23, no. 1 (2020): 245; Adam Chilton and Weijia Rao, "The limits of diplomacy by treaty: Evidence from China's bilateral investment treaty program," *Journal of Empirical Legal Studies* 21, no. 4 (2024): 1024.

[10] James M. Claxton, "The standard of most-favored-nation treatment in investor-state dispute settlement practice," In *Handbook of International Investment Law and Policy,* (Singapore: Springer Singapore, 2021), 286. See also, Frances Annmarie Duffy, "The Slow Demise of the Most Favoured Nation," *Prophetic Law Review* 3, no. 2 (2021): 111; Anil Yilmaz Vastardis, Most favoured nation treatment, In *Rethinking Investment Law*, edited by David Schneiderman and Gus Van Harten, (Oxford: Oxford Academic, 2023), 144.

[11] Luqman Afolabi et al., "Unravelling the link between bilateral investment," 9. See also, Surbhi Gupta, Arun Kumar Attree, Ranjana Thakur, and Vishal Garg, "Interlinkages between bilateral investment treaties and FDI flows to emerging economies: evidence from BRICS," *Journal of Advances in Management Research* 21, no. 4 (2024): 670; Mohammad Belayet Hossain, "Environmental Protection and BITs of Bangladesh," 494; Yunbing Li, "Research on the applicability of the MFN clause in bits in the dispute settlement procedure," *Asian Journal of Social Science Studies* 7, no. 4 (2022): 114; Tanjina Sharmin and Emmanuel Laryea, "Application of MFN to investment dispute settlement: rule of law issues," *Journal of International Trade Law and Policy* 20, no. 1 (2021): 25; Miao Zhang and Rui Yang, "FDI and spillovers: New evidence from Malaysia's manufacturing sector," *Review of Development Economics* 26, no. 2 (2022): 850.

public interest largely unanswered.[12] Third, while empirical studies have quantified FDI flows and investment patterns, there is limited research adopting a multidisciplinary approach that combines legal, economic, and political perspectives to provide a holistic understanding of MFN treatment in Malaysia.[13] Fourth, there is a scarcity of studies addressing investor-state arbitration implications for host-country sovereignty, which is critical given Malaysia's active engagement in ISDS cases under BITs.[14] Finally, the literature shows a gap in evaluating how MFN clauses interact with contemporary challenges, including global trade shifts, climate commitments, and the evolving landscape of international economic law.[15] Addressing these gaps will enable a more comprehensive understanding of MFN treatment's consequences, guiding both policymakers and investors in reconciling legal commitments with national interests, economic development, and environmental stewardship.[16]

---

[12] Thiago Ferreira Almeida, "As inconsistências da solução investidor-Estado," *Revista Fórum de Direito Financeiro e Econômico–RFDFE* 13, no. 23 (2023): 188. See also, Georgios Dimitropoulos, "National sovereignty and international investment law: sovereignty reassertion and prospects of reform," *The Journal of World Investment & Trade* 21, no. 1 (2020): 76; Anqi Wang, "Applying the MFN clause for higher," 87.

[13] Nina Bandelj and Aaron Tester, "Amplified decoupling in the global economy," 23. See also, Julien Chaisse and Jamieson Kirkwood, "Chinese puzzle: anatomy of the (invisible) Belt and Road investment treaty," *Journal of International Economic Law* 23, no. 1 (2020): 247; Adam Chilton and Weijia Rao, "The limits of diplomacy by treaty," 1028; Olga Nosova, "Foreign Direct Investment's Impact," 7; Jaivir Singh, Vatsala Shreeti, and Parnil Urdhwareshe, "The impact of bilateral investment treaties," 313.

[14] Yuanchao Bi and Wei Shen, "Universal Scale Tipping," 292. See also, Clara Amanda Musu, Dona Regina Napitupulu, and Marla Satika Qurratu'aini, "Outlook of arbitrary measures of fair and equitable treatment under health urgency: the waiver of pharmaceutical patent," *Transnational Business Law Journal* 2, no. 2 (2021): 151; Anqi Wang, "Applying the MFN clause," 91.

[15] D. Izotov, "The GATT/WTO participation and asia-pacific regional trade: long-term effects?," *International Organisations Research Journal* 18, no. 3 (2023): 49. See also, Anne Marie Thow, Wolfgang Alschner, and Faisal Aljunied, "Public health clauses in international investment agreements: Sword or shield?," *Global Policy* 14, no. 2 (2023): 261; Rita Mawufemor Tsorme and Joseph Amoah, "African Continental Free Trade Agreement's Conditional Most Favoured Nation: A Necessary Compromise?," *World Trade Review* 23, no. 1 (2024): 94.

[16] Mohong Liu, "Navigating the complexities of international economic law: implications for global trade and investment," *Lecture Notes in Education Psychology and Public Media* 53, no. 1 (2024): 3. See also, Surya Oktaviandra, "Creating a Balance in Bilateral Investment Treaty: A Perspective from Indonesia," *Andalas International Journal of Socio-Humanities* 4, no. 1 (2022): 9; Bambang Hadi Prabowo, "Relationship of Foreign Direct Investment and Other Macro Variables in Malaysia: ARDL Approach: English," *Tamansiswa Management Journal International* 4, no. 1 (2022): 21; Rana Saad Shakar, Mohammed Faroq Mahmood, Nibras Arif Abdulameer, Zahraa Mahdi Dahash, and Iskaliev Azat, "Balancing National Sovereignty: The Impact of Bilateral Investment Treaties on Contemporary Islamic Economic Law," *MILRev: Metro Islamic Law Review* 4, no. 1 (2025): 32; Lénárd Sándor, "The Constitutional Dilemmas of Terminating Intra-EU BITs," *Central European Journal of Comparative Law* 3, no. 1 (2022): 177.

Furthermore, as Malaysia continues to balance economic development with environmental stewardship, the integration of robust safeguards in BITs emerges as a critical necessity.[17] In this regard, exploring the position of MFN treatment alongside ecological imperatives becomes paramount in ensuring sustainable development.[18] In light of these complexities, this study aims to unravel the nuances of the MFN treatment principle within the context of Malaysia's BITs. It will harness a multidisciplinary approach, drawing from legal, political, and economic perspectives to provide a comprehensive analysis of how MFN clauses shape the investment landscape, influence regulatory frameworks, and affect Malaysia's economic trajectory.[19]

In light of these considerations, the present study aims to analyze the MFN treatment principle within Malaysia's BIT framework, integrating legal, economic, environmental, and political perspectives. By doing so, it seeks to provide a nuanced understanding of how MFN clauses influence FDI, affect domestic regulatory autonomy, and intersect with sustainability objectives. The study contributes to scholarly discourse while offering insights for policymakers seeking to design BITs that balance investor protection with national and ecological interests. The findings from this exploration will not only contribute to existing academic discussions but also inform policymakers about the potential need for reform in bilateral agreements to better align investor benefits with national interests.

[17] Zhengrong Chen, Suhaimi Ab Rahman, and Hanna Ambaras Khan, "Study on Bilateral Invesment Between China and Malaysia Under the Framwork of Regional Comprehensive Economic Partnership from Sustainable Development Perspective," *Russian Law Journal* 11, no. 5 (2023): 2738. See also, Jun Xiao, "How can a prospective China–EU BIT contribute to sustainable investment: in light of the UNCTAD Investment Policy Framework for Sustainable Development," *The Journal of World Energy Law & Business* 8, no. 6 (2015): 528; Zh T. Sairambaeva, and Zhang Ju, "Legal aspects of investment facilitation of the Shanghai Cooperation Organization member states," *Bulletin of the Karaganda University "Law Series"* 11429, no. 2 (2024): 44.

[18] Mark McLaughlin, "Mapping Sustainable Development in Investment Treaties: An Analysis of ASEAN States' Practice," *Asian Journal of WTO & International Health Law and Policy* 17, no. 1 (2022): 119. See also, Andrew Newcombe, "Sustainable development and investment treaty law," *The Journal of World Investment & Trade* 8, no. 3 (2007): 359.

[19] Feven Aberham, "Most Favored Nation Clauses and their Potential Effect on Ethiopia's Bilateral Investment Treaties: Substantive Protections, Perspectives and Stepping the Reconsiderations," *Hawassa University Journal of Law* 6, no. 1 (2022): 42. See also, Rana Saad Shakar et al., "Balancing National Sovereignty: The Impact of Bilateral Investment Treaties on Contemporary Islamic Economic Law," *MILRev: Metro Islamic Law Review* 4, no. 1 (2025): 39.

2. Methodology

This study employs a qualitative research methodology, combining doctrinal analysis with comparative legal studies to explore the implications of the MFN treatment principle within Malaysia's BITs. The research seeks to critically analyze the existing legal frameworks, their socio-economic impacts, and the challenges they present regarding national interests, regulatory autonomy, and environmental sustainability. The methodology consists of two primary components: document analysis and interview data collection.

The first phase of the research involves a comprehensive review of primary and secondary sources related to Malaysia's BITs, specifically focusing on those that include MFN provisions. This analysis encompasses seventy (70) BITs signed by Malaysia, which have been reviewed to ascertain the specific wording and applications of MFN treatment within these texts. This review has drawn upon existing research on BITs, particularly focusing on their protective and regulatory frameworks, and only BITs that are now 'in force' have been mentioned in the table below.[20] Secondary literature, including journal articles, books, and reports, was utilized to understand the theoretical underpinnings and practical applications of MFN treatment in investment law. The study also analyzed relevant international treaties, such as the General Agreement on Tariffs and Trade (GATT) and World Trade Organization (WTO) agreements, focusing on their interplay with MFN treatment and its implications for Malaysia's legal obligations and investment environment.[21]

To complement the document analysis, necessary insights were gathered through qualitative interviews with academic scholars involved in investment law and BIT negotiations in Malaysia. A semi-structured interview was conducted to provide flexibility and depth, allowing participants to express their views on MFN treatment and its ramifications. Key areas of inquiry included perceptions about the efficacy of BITs, concerns over regulatory sovereignty, and the implications of MFN clauses on environmental protections and social equity. Transcripts from the interviews were subjected to thematic analysis, identifying key themes and patterns in the responses. The outcome sheds light on the practical complexities surrounding MFN treatment and also complements findings from the legal document analysis.

[20] Thiago Ferreira Almeida, "As inconsistências da solução investidor-Estado," *Revista Fórum de Direito Financeiro e Econômico–RFDFE* 13, no. 23 (2023): 191.

[21] Frances Annmarie Duffy, "The Slow Demise of the Most Favoured Nation," *Prophetic Law Review* 3, no. 2 (2021): 115. See also, D. Izotov, "The GATT/WTO participation," 49.

3. Results and Discussion

3.1. Conceptual Framework of MFN Treatment

The concept of MFN treatment is crucial in the realm of international investment law, functioning as a significant principle designed to assure non-discrimination among foreign investors across different nations.[22] This principle, encapsulated within BITs, aims to enhance an investment-friendly environment by providing investors from one country the same benefits that are granted to investors from any other country. In the context of Malaysia, the MFN treatment impacts FDI inflows and poses complex challenges that intertwine with national sovereignty, regulatory autonomy, and sustainable development goals.[23]

Consequently, this literature review delves into the intricate relationship between MFN treatment and BITs in Malaysia, elucidating their implications, benefits, and the need for a sustainable framework in light of current investment trends.[24] Historically, BITs have played a pivotal role in shaping Malaysia's economic landscape, facilitating foreign investment while simultaneously raising concerns about the implications for domestic regulatory measures. Since the advent of BITs in the late 20th century, their proliferation has been seen as a method to secure investors against potential expropriation and to foster a stable investment environment.

However, as Bandelj and Tester[25] emphasize, the geopolitical implications of BITs have evolved, leading to a nuanced understanding of how these treaties function in today's global economic context. The effects of these treaties on national policy, particularly in developing countries like Malaysia, necessitate a balanced analysis of the MFN principle and its operationalization within the context of these agreements. The MFN treatment clause, while offering protection to investors, has been criticized for potentially undermining Malaysia's regulatory sovereignty. It allows foreign investors to procure preferential treatment not only from the host country but also in relation to standards set by other states with

[22] Tanjina Sharmin, "Evolution of MFN Treatment and Drafting Trends in the Older Generation of IIAs," In *Application of Most-Favoured-Nation Clauses by Investor-State Arbitral Tribunals: Implications for the Developing Countries*, (Singapore: Springer Singapore, 2020).

[23] George Forji Amin, "All that Glitters is Not Always Gold or Silver: Typical Bilateral Investments Treaties (BITs) Clauses as Peril to Third World Economic Sovereignty," *Athens JL* 6 (2020): 299.

[24] Mohammad Belayet Hossain, "Environmental Protection and BITs of Bangladesh, Malaysia and USA: A Comparison," *Jurnal Cita Hukum* 8, no. 3 (2020): 495. See also, Mohammad Hossain, and Haitham Mohammed, "Foreign Ownership Control and the Bilateral Investment Treaties in South Asian Countries," *Lex Publica* 10, no. 1 (2023): 108.

[25] Nina Bandelj and Aaron Tester, "Amplified decoupling in the global economy: The case of bilateral investment treaties," *Socius* 6 (2020): 23. See also, George Forji Amin, "All that Glitters is Not Always Gold or Silver," 299.

which Malaysia has signed investment agreements. This aspect of MFN triggers concerns about a potential surge in disputes between foreign and domestic interests, particularly as developing countries strive to enact regulations that protect vital national interests such as environmental conservation and public health.

Consequently, Hossain[26] argue that existing Malaysian BITs often lack adequate provisions to overtly protect national sovereignty and social equity. Moreover, the increasing reliance on Investor-State Dispute Settlement (ISDS) mechanisms within BITs has led to a proliferation of international investment disputes.[27] The invocation of MFN clauses in these disputes can create unforeseen legal scenarios wherein investors leverage favorable treatment from other agreements to challenge regulatory measures implemented by the Malaysian government. Prof. Zakiri commented, 'the interpretation of MFN clauses in Malaysian BITs remains problematic due to vague and inconsistent drafting. There's also ambiguity on whether procedural rights like ISDS are included.

The dynamics of these disputes necessitate a critical evaluation of the contracting processes and the broader implications of such treaties on Malaysia's economic and social frameworks. As the global investment landscape evolves, there is an urgent need for Malaysia to reassess its BITs through the lens of sustainable development and human rights. Scholars have suggested that BITs should accommodate environmental protections explicitly, ensuring the principles of sustainability are not overshadowed by the obligations of fostering foreign investment.[28] This consideration is particularly relevant in the wake of climate change and socio-economic equality discussions that dominate contemporary policy discourse.

This literature review endeavors to synthesize existing research around the MFN treatment principle and its implications for Malaysia's BITs, highlighting avenues for reform that align foreign investment interests with domestic regulatory goals.[29] It posits that achieving a balance between investor protections and state sovereignty is essential for the formulation of sustainable and equitable investment policies in Malaysia, ultimately fostering an improved investment climate that responds adequately to global challenges. Prof. Zakiri commented, the MFN

[26] Mohammad Belayet Hossain, "Environmental Protection and BITs," 502

[27] Stephen Fietta, "Most Favoured Nation Treatment and Dispute Resolution Under Bilateral Investment Treaties: A Turning Point?," *International Arbitration Law Review* 8, no. 4 (2005): 138. See also, Sufian Jusoh, Muhammad Faliq Abd Razak, and Mohamad Azim Mazlan, "Malaysia and investor-state dispute settlement: Learning from experience," *The Journal of World Investment & Trade* 18, no. 5-6 (2017): 898; Prabhash Ranjan, "Most favoured nation provision in Indian bilateral investment treaties: A case for reform," *Indian Journal of International Law* 55, no. 1 (2015): 45.

[28] George Forji Amin, "All that Glitters is Not Always Gold or Silver," 299.

[29] Jun Xiao, "The ASEAN-China Investment Agreement: A Regionalization of China's BITs," *Frontiers of Law in China* 6, no. 2 (2011): 247.

principle should evolve to reflect both investor interests and sovereign policy goals, including sustainable development'.

3.2. Doctrinal Interpretations of MFN Clauses in BITs

The MFN principle serves as a foundational element in international trade and investment law. This principle is enshrined in various BITs and multilateral agreements, establishing that a country must provide its trading partners with the most favorable treatment it offers to any other nation. This essential clause ensures that nations do not discriminate against foreign investors from one country while favoring those from another, thereby fostering a level playing field in international trade and investment.[30]

The application of the MFN clause in BITs significantly intertwines with the legal structures governing investor-state dispute resolution mechanisms. The assumption is that MFN treatment can facilitate increased FDI by legitimizing investment protections and guaranteeing non-discriminatory practices across borders.[31] However, several scholars point out that its ambiguous application in international arbitration cases can lead to contentious interpretations and implications for both host states and foreign investors.[32]

Historically, the MFN principle originated with the GATT in the mid-20th century to promote non-discriminatory trade practices among nation-states. Its application has extended to modern BITs, responding to the evolving landscape of international investment law where states seek to attract foreign investment while also mitigating risks associated with discrimination.[33] However, its transformation over the decades reflects broader geopolitical changes and the quest for economic sovereignty among developing nations. In contemporary legal discourse, the MFN clause is scrutinized for its impact on states' regulatory autonomy. As noted in the literature, states have increasingly been challenged to navigate the complex interplay between attracting FDI through favorable treaty obligations and retaining control over domestic regulatory policies. This tension has fuelled debates over the

[30] Anqi Wang, "Applying the MFN clause," 102. See also, Nargiz Bakhshali Zeynalli, "Most-favored nation treatment clause in investment arbitration," *Scientific Work* 65, no. 04 (2021): 379.

[31] Mohammad Belayet Hossain, Asmah Laili Bt Yeon, and Ahmad Shamsul Bin Abd Aziz, "Sovereignty, National Interest & Security and the Bilateral Investment Treaties of Bangladesh and the Netherlands: A Comparison," *African Journal of Legal Studies* 12, no. 2 (2019): 186.

[32] James M. Claxton, "The standard of most-favored-nation treatment in investor-state dispute settlement practice," In *Handbook of International Investment Law and Policy* (Singapore: Springer Singapore, 2021), 279. See also, Tanjina Sharmin and Emmanuel Laryea, "Application of MFN to investment dispute settlement: rule of law issues," *Journal of International Trade Law and Policy* 20, no. 1 (2021): 29; Anil Yilmaz Vastardis, Most favoured nation treatment, 49.

[33] Kyle Bagwell, Robert W. Staiger, and Ali Yurukoglu, "Quantitative analysis of multiparty tariff negotiations," *Econometrica* 89, no. 4 (2021): 1600.

legitimacy and efficacy of MFN provisions in protecting investor rights while respecting host countries' sovereignty.[34]

The MFN principle has been widely invoked in ISDS contexts to provide a broader scope of rights and protections to foreign investors. For instance, claimants often leverage MFN clauses to access more favorable dispute resolution mechanisms found in other treaties, thereby circumventing jurisdictional hurdles typical of specific BITs.[35] This practice raises legal ramifications concerning the predictability and coherence of ISDS processes, with critics arguing that it can lead to significant inconsistencies in arbitral rulings.[36] For example, the divergent interpretations of MFN provisions by various arbitral tribunals have led to disparate outcomes in similar cases, undermining the principle's intended purpose of fostering fairness and equality among foreign investors.[37] Notable arbitral decisions, such as Señor Tza Yap Shum v. The Republic of Peru, ICSID Case No. ARB/07/6, underscores how MFN clauses can be utilized strategically, yielding paradoxical results that sometimes favor investor claims at the expense of host state interests.[38] Furthermore, the extension of MFN treatment into procedural domains highlights concerns about potential abuse, as investors may use broad language within MFN clauses to challenge diverse domestic regulations enacted by host states, aimed at protecting public interests, including health and environmental regulations.[39] This situation raises fundamental questions about the scope of state sovereignty and the balance between investor rights and regulatory autonomy.

The increasing invocation of MFN clauses in international investment disputes unveils several critical challenges that demand scholarly attention. The lack of consensus on the precise scope of MFN treatment, compounded by varying interpretations by arbitral tribunals, creates unpredictability for both investors and host states. This inconsistency can deter states from entering into BITs or make them reluctant to invoke existing treaties out of fear of unintended legal

[34] Mark McLaughlin, "Mapping Sustainable Development in Investment Treaties: An Analysis of ASEAN States' Practice," *Asian Journal of WTO & International Health Law and Policy* 17, no. 1 (2022): 120.

[35] Tanjina Sharmin and Emmanuel Laryea, "Application of MFN to investment dispute settlement," 30.

[36] Facundo Pérez-Aznar, "The use of most-favoured-nation clauses to import substantive treaty provisions in international investment agreements," *Journal of International Economic Law* 20, no. 4 (2017): 779. See also, Anil Yilmaz Vastardis, Most favoured nation treatment, 84.

[37] Rita Mawufemor Tsorme and Joseph Amoah, "African Continental Free Trade Agreement's," 98.

[38] Yuanchao Bi and Wei Shen, "Universal Scale Tipping towards Balance-Applying the MFN Clauses in China-related Investment Arbitration: A New Haven School Reading," *China and WTO Review* 6, no. 2 (2020): 296.

[39] Mohammad Belayet Hossain, "Environmental Protection and BITs," 506.

consequences.[40] Moreover, the rise of populist and protectionist sentiments globally has prompted countries to reconsider their investment treaty commitments. While the MFN principle ostensibly promotes free investment flows, it simultaneously exacerbates tensions between nation-states striving to reclaim regulatory authority over their economic policies.[41] Reality underscores that the MFN principle, despite its noble aspirations of promoting equality, might hinder the necessary regulatory flexibility crucial for addressing pressing socio-economic challenges such as public health crises, climate change, and sustainable development initiatives.[42] Prof. Zakiri commented that 'inconsistent MFN applications across treaties allow for 'treaty shopping'. This undermines coherence and legal certainty.'

Therefore, the MFN principle remains a contentious yet pivotal aspect of international investment law, embodying both opportunities and challenges for states and foreign investors alike. While it intends to ensure non-discrimination and fairness in international economic relations, the principle's practical implications reveal a complex landscape rife with legal ambiguities and uncertainties. As the global investment regime continues to evolve, it is imperative for academics, practitioners, and policymakers to scrutinize the application of the MFN clause and pursue pathways for reform that not only protect investor rights but also prioritize state sovereignty and public welfare. Addressing these multifaceted issues from a holistic legal perspective can contribute to more balanced investment treaties that align with contemporary global priorities.

This shows that BITs have become a pivotal aspect of international economic law, serving as instrumental frameworks to protect foreign investment and foster increased Foreign Direct Investment (FDI). Since the first BIT was established in 1959 between Germany and Pakistan, the global landscape has evolved to encompass over 3,000 such treaties, demonstrating their significance in contemporary international relations.[43] BITs represent mutual agreements between two sovereign states that provide guaranteed protections to foreign investors against arbitrary measures and discriminatory practices by the host state. This commentary seeks to explore the multifaceted nature of BITs, analyzing their

[40] Tanjina Sharmin and Emmanuel Laryea, "Application of MFN to investment dispute settlement," 28. See also, Anil Yilmaz Vastardis, Most favoured nation treatment, 51.

[41] Julien Chaisse and Jamieson Kirkwood, "Chinese puzzle: anatomy of the (invisible) Belt and Road investment treaty," *Journal of International Economic Law* 23, no. 1 (2020): 250. See also, Georgios Dimitropoulos, "National sovereignty and international investment law: sovereignty reassertion and prospects of reform," *The Journal of World Investment & Trade* 21, no. 1 (2020): 83.

[42] Ladan Mehranvar and Sunayana Sasmal, "The Role of Investment Treaties and Investor–State Dispute Settlement (ISDS) in Renewable Energy Investments," *Available at SSRN 4322511* (2022): 72; Nargiz Bakhshali Zeynalli, Most-favored nation treatment clause, 380.

[43] Adam Chilton and Weijia Rao, "The limits of diplomacy by treaty," 1033.

implications, challenges, and interactions with both national legal frameworks and international principles.

At the core of BITs is the intention to grant and guarantee certain rights to foreign investors, including protections against expropriation, the assurance of Fair and Equitable Treatment (FET), and the establishment of mechanisms for dispute resolution.[44] By offering such assurances, BITs aim to mitigate risks that investors face in foreign markets, thereby encouraging the inflow of capital necessary for economic development, particularly in host countries striving to improve their infrastructure and public services.[45] However, the effectiveness and enforceability of BIT provisions are subjects of ongoing debate. The varying interpretations of "fair and equitable treatment" and the lack of uniformity in legal frameworks contribute to a complex landscape where investor expectations and host state capabilities may clash. Several commentators argue that BITs often reflect a pro-investor bias that may undermine states' ability to regulate in the public interest, particularly in sectors like health and environmental protection.[46] This underscores an essential critique: while BITs aim to protect investments, they may inadvertently constrain state sovereignty in the face of pressing societal needs.[47]

The dispute resolution mechanisms embedded within BITs typically include international arbitration as a means for investors to seek redress against host governments. This framework has garnered significant attention, as it allows private investors to bypass domestic courts and directly bring claims before international arbitral tribunals. This system's popularity stems from perceptions of impartiality and expertise that international arbitrators can provide.[48] However, it also raises concerns regarding transparency, accountability, and the potential for abuse of the system by powerful investors utilizing BITs to challenge legitimate governmental policies.[49] Critics of the Investor-State Dispute Settlement (ISDS) system have highlighted the risks associated with enforcing arbitral awards derived

[44] Luqman Afolabi et al., "Unravelling the link between bilateral investment," 10. See also, Surya Oktaviandra, "Creating a Balance in Bilateral Investment Treaty: A Perspective from Indonesia," *Andalas International Journal of Socio-Humanities* 4, no. 1 (2022): 10.

[45] Jaivir Singh, Vatsala Shreeti, and Parnil Urdhwareshe, "The impact of bilateral investment treaties on FDI inflows into India: Some empirical results," *Foreign Trade Review* 57, no. 3 (2022): 317.

[46] Sparsha Janardhan, "Harnessing trade and investment agreements to promote public health," *Drug and Alcohol Review* 40, no. 1 (2021): 43. See also, Anne Marie Thow, Wolfgang Alschner, and Faisal Aljunied "Public health clauses in international investment agreements," 263.

[47] Surya Oktaviandra, "Creating a Balance in Bilateral Investment Treaty: A Perspective from Indonesia," *Andalas International Journal of Socio-Humanities* 4, no. 1 (2022): 11.

[48] Mohong Liu, "Navigating the complexities of international economic law: implications for global trade and investment," *Lecture Notes in Education Psychology and Public Media* 53, no. 1 (2024): 5.

[49] Adam Chilton and Weijia Rao, "The limits of diplomacy by treaty," 1037.

from BITs, where favorable rulings for investors may undermine national legislation and social norms.[50] Additionally, cases involving health, environmental protections, and labor rights have illustrated how the invocation of BIT protections can lead to tension between investor rights and public policy objectives.[51] The reliance on arbitration can create a chilling effect on future regulatory practices as states may refrain from implementing necessary measures out of fear of potential claims from foreign investors.

A recurrent theme in the discourse surrounding BITs is the challenge of balancing investor protections with state regulatory functions. As BITs proliferate, countries have become more cautious regarding their commitment to such treaties, often recalibrating their positions in response to public criticism and a rising tide of anti-globalization sentiment.[52] The termination of intra-EU BITs, as seen in the context of the 2020 agreement among EU member states, illustrates how nations are grappling with the implications of being bound by historical treaties in an evolving legal framework where community laws increasingly shape investment protections.[53] Moreover, critiques extend to the substantive provisions within BITs, particularly the Most-Favored Nation (MFN) and national treatment clauses. These provisions are intended to ensure that investors from signatory nations are treated no worse than those from any other country. However, they can lead to unintended consequences, such as diluting nations' ability to enforce regulations and maintain adequate levels of protection for their inhabitants.[54]

The intersection of BITs with environmental sustainability remains a profound concern as states increasingly prioritize green initiatives amidst global climate change imperatives. While traditional BITs often lack explicit provisions addressing environmental protections, emerging frameworks and negotiations seek to incorporate sustainability considerations more overtly within their agreements.[55]

---

[50] Clara Amanda Musu, Dona Regina Napitupulu, and Marla Satika Qurratu'aini, "Outlook of arbitrary measures," 155.

[51] Luqman Afolabi et al., "Unravelling the link between bilateral investment," 12. See also, Anne Marie Thow, Wolfgang Alschner, and Faisal Aljunied. "Public health clauses in international investment agreements," 265.

[52] Rose Rameau, "The African Perspective: The Development of Investment Laws, the Pan-African Investment Code (PAIC), and the African Continental Free Trade Area in the New Economic World Order." In *Proceedings of the ASIL Annual Meeting,* (Cambridge: Cambridge University Press, 2020), 65. See also, Lénárd Sándor, "The Constitutional Dilemmas of Terminating Intra-EU BITs," *Central European Journal of Comparative Law* 3, no. 1 (2022): 179.

[53] Lénárd Sándor, "The Constitutional Dilemmas of Terminating Intra-EU BITs," *Central European Journal of Comparative Law* 3, no. 1 (2022): 182. See also, Odysseas Spiliopoulos and Dimitrios Petropoulos, "The Regime of International Investment in the Light of New EU Economic Agreements," *Business & Entrepreneurship Journal* 11, no. 2 (2022): 4.

[54] Moses Herbert Lubinga and Adrino Mazenda, "Empirical analysis of the effect of institutional governance indicators on climate financing," *Economies* 12, no. 2 (2024): 29.

[55] Luqman Afolabi et al., "Unravelling the link between bilateral investment," 13.

Jurisdictions are beginning to recognize the necessity to protect their natural resources and health standards, prompting calls for incorporating environmental exceptions in BIT provisions to exempt states from liability when implementing measures aimed at environmental conservation.[56]

As BITs continue to shape international economic relationships, ongoing reflections on their design, implementation, and implications will be crucial. The growing concern surrounding the effectiveness of BITs in promoting equitable and sustainable development will likely drive future treaty negotiations.[57] Both scholars and practitioners must engage in this dialogue to refine BIT provisions, ensuring that they strike a balance between safeguarding investor rights and empowering states to legislate in the public interest. Ultimately, adapting BITs to be more responsive to contemporary global challenges-such as climate change, public health, and social welfare-will be paramount in maintaining both investor confidence and public trust in international investment regimes.[58]

3.3. Malaysia's National Policies on FDI and Their Alignment with BITs

Malaysia has strategically positioned itself as an attractive destination for FDI through a comprehensive policy framework that aligns national interests with international investment treaties such as BITs. Since 1960, Malaysia has signed seventy (70) BITs with various countries; however, since the introduction of its first BIT in 1989, Malaysia's approach has evolved to enhance the economic inflow of foreign capital while addressing socio-economic priorities, including sustainability, local business development, and employment opportunities. This commentary analyzes Malaysia's national policies on FDI and examines how they harmonize with its BIT commitments, exploring implications for sovereignty, regulatory autonomy, and economic growth.[59]

Malaysia's national FDI policies are designed to attract, facilitate, and sustain foreign investments while ensuring that these investments contribute to the country's socio-economic development. The government has identified key sectors-such as technology, renewable energy, and high-value manufacturing-

[56] Anne Marie Thow, Wolfgang Alschner, and Faisal Aljunied, "Public health clauses in international investment agreements," 265. See also, Wen Xiang and Olubayo Oluduro, "China's investment in the Nigerian energy sector: A prognosis of the dispute settlement paradigm," *Laws* 12, no. 5 (2023): 81.

[57] Andrew Newcombe, "Sustainable development and investment," 362.

[58] Junianto James Losari, "Comprehensive or BIT by BIT: The ACIA and Indonesia's BITs," *Asian Journal of International Law* 6, no. 1 (2016): 18. See also, Mohammad Hossain, and Haitham Mohammed, "Foreign Ownership Control and the Bilateral Investment," *Lex Publica* 10, no. 1 (2023): 107.

[59] Asmah Laili Haji Yeon, Mohammad Belayet Hossain, and Ahmad Shamsul Abdul Aziz, "Sovereignty, national interest and security in bilateral investment treaties of Malaysia," *Journal of International Studies* 16, no. 3 (2020): 43.

where FDI is encouraged through various incentives, including tax exemptions and grants.[60] These incentives are crucial for attracting foreign capital and ensuring that such capital is directed toward sectors aligned with national economic goals, particularly in enhancing Malaysia's competitiveness in the global market. The government has also established agencies such as the Malaysian Investment Development Authority (MIDA), which plays a central role in providing guidance to foreign investors and streamlining the investment process. MIDA's initiatives include simplifying regulatory procedures, offering consultations, and facilitating access to government incentives. Furthermore, Malaysia's Economic Planning Unit (EPU) formulates policies for sustainable economic growth while ensuring that FDI contributes positively to broader developmental objectives, such as the United Nations Sustainable Development Goals (SDGs).[61]

Malaysia's BITs play a vital role in the context of its national FDI policies by providing a legal framework that safeguards the rights of foreign investors. These treaties typically include provisions for fair and equitable treatment and protection from expropriation.[62] Such guarantees not only enhance investor confidence but also align with Malaysia's broader objective of fostering a positive investment climate. However, it is essential to note that while these protections aim to enhance foreign investor rights, they may also raise concerns about the potential erosion of state sovereignty and the capacity to regulate investments in the public interest. The interaction between national policies and BITs in Malaysia reflects a balancing act between attracting foreign capital and maintaining regulatory space to promote domestic interests. The provisions contained in BITs can significantly influence the policy landscape for foreign investments, particularly in cases where foreign investors invoke BIT protections to contest domestic policy changes, raising questions over the regulatory authority of the Malaysian government.[63]

The socio-economic impact of FDI resulting from BITs is a crucial consideration for Malaysia. Studies indicate that FDI has significantly contributed to the Malaysian economy by fostering innovation, technological transfers, and skills development, especially within its manufacturing sector.[64] Foreign investments have historically been linked to enhanced productivity and job

[60] Mohammad Belayet Hossain, "Investing in Green: Bilateral Investment Treaties (BITs) Role in Malaysia's Renewable Energy Sector," In *International Conference on Energy Transition and Exhibition*, (Singapore: Springer Nature Singapore, 2024), 64.

[61] James Temitope Dada et al., "Financial development–ecological footprint nexus," 917.

[62] Sufian Jusoh, Muhammad Faliq Abd Razak, and Mohamad Azim Mazlan, "Malaysia and investor-state dispute settlement," 897. See also, Tanjina Sharmin, "Evolution of MFN Treatment," 37; Feven Aberham, "Most Favored Nation Clauses," 53.

[63] Norhidayat Zainal and Andrew Kam Jia Yi. "China's Foreign Direct Investment (FDI) in Malaysia: Impact on Malaysia's Sustainable Development Goals (SDGs)." *SINERGI: Journal of Strategic Studies & International Affairs* 3, no. 2 (2023): 52.

[64] Bambang Hadi Prabowo, "Relationship of Foreign Direct Investment," 20.

creation, providing essential employment opportunities for the local workforce. However, there are mixed findings regarding the actual benefits, as some scholars argue that the spill-over effects of FDI may not always align with the local economy's needs, particularly if the investments prioritize short-term profits over long-term sustainability.[65] As such, Malaysia's approach toward BITs has included efforts to ensure that foreign investments contribute sustainably to the local economy. This includes efforts to prioritize self-sufficiency, local sourcing, and sustainable practices, especially in light of market demands for environmentally-friendly products and services.[66]

While Malaysia has made strides in creating a conducive environment for foreign investment, several challenges remain in aligning its national policies with BIT commitments. One pressing concern is the potential conflict between investor rights enshrined in BITs and Malaysia's sovereignty to enact laws that serve national interests such as health, safety, and environmental regulations. For instance, as Malaysia seeks to promote green technologies and sustainable practices, foreign investors may view stricter environmental regulations as infringing upon their rights under BITs. This situation may lead to conflicts where foreign investors resort to ISDS mechanisms to challenge Malaysian laws, thereby limiting the government's ability to regulate in the public interest.[67] Moreover, Malaysia's agreements with major investors have raised concerns about the implications of heavy dependence on specific foreign investments for economic stability and the extent to which these arrangements can restrict local economic policies.[68]

Therefore, Malaysia's national policies on FDI demonstrate a committed effort to embrace foreign investments as a driver of economic growth. The alignment with BITs serves to bolster investor confidence and enhance the overall investment environment. However, navigating the complexities of investor protections while ensuring regulatory flexibility remains a challenging endeavor. As Malaysia continues to refine its FDI policies, it will be crucial to strike a balance that safeguards national interests and enables sovereign regulatory power. By fostering an environment that encourages sustainable investment while maintaining the capacity to legislate in the public interest, Malaysia can enhance its long-term economic resilience and social welfare alongside robust foreign investment.

---

[65] Miao Zhang and Rui Yang, "FDI and spillovers: New evidence from Malaysia's manufacturing sector," *Review of Development Economics* 26, no. 2 (2022): 854.

[66] James Temitope Dada et al., "Financial development–ecological footprint nexus," *Management of Environmental Quality: An International Journal* 33, no. 4 (2022): 922.

[67] Olga Nosova, "Foreign Direct Investment's Impact," 10. See also, Bambang Hadi Prabowo, "Relationship of Foreign Direct Investment," 23.

[68] Norhidayat Zainal and Andrew Kam Jia Yi, "China's Foreign Direct Investment," 58.

From the above analysis, it appears that each BITs incorporating the MFN treatment clause as a core investment protection mechanism. These clauses, while promoting non-discrimination and fairness, have complex implications for FDI inflows, regulatory sovereignty, and treaty coherence.[69] MFN clauses across Malaysian BITs generally promote investor confidence by ensuring parity of treatment with third-party investors. This has a positive impact on FDI inflows**,** as foreign investors are assured of fair and equitable treatment. BITs with countries like Germany, the Netherlands, Saudi Arabia, and China demonstrate Malaysia's alignment with global investment norms. However, the policy flexibility of the Malaysian government is often constrained by these clauses. Since MFN provisions require Malaysia to extend favorable terms from one BIT to all others, it limits Malaysia's ability to offer selective incentives or implement differentiated investment policies. In BITs with countries like India, Hungary, and the UK, this limitation is evident in critiques of how MFN hinders sovereign regulatory authority.[70]

Across most BITs, a key issue is the ambiguity in the scope of MFN clauses-specifically, whether they apply to substantive rights only (e.g., national treatment, expropriation protection) or also to procedural rights such as Investor-State Dispute Settlement (ISDS).[71] This vagueness could lead to legal uncertainty and disputes. Moreover, many BITs lack alignment between MFN provisions and Malaysia's regional/multilateral obligations (e.g., ASEAN agreements), creating potential treaty conflicts.[72] The absence of standardized language and clear carve-outs further compounds interpretive challenges, particularly in older treaties like those with France, Finland, and Sweden.

Malaysia's BITs reflect a delicate balance between investor protection and national interests. Treaties often include exemptions for regional economic integration (e.g., ASEAN) and taxation agreements, which help preserve regulatory sovereignty. Still, BITs such as those with Slovakia, Morocco, and the Syrian Arab Republic highlight the need for periodic reviews to ensure alignment with evolving economic and development priorities. To improve clarity and consistency, future BITs should: (a) clearly define the scope of MFN clauses, particularly regarding procedural rights; (b) standardize treaty language across all BITs to ensure

[69] Zh T. Sairambaeva, and Zhang Ju, "Legal aspects of investment facilitation," 46. See also, Zhengrong Chen, Suhaimi Ab Rahman, and Hanna Ambaras Khan, "Study on Bilateral Invesment," 2737.

[70] Elena Kotyrlo and Hryhorii M. Kalachyhin, "The effects of India's bilateral investment treaties termination on foreign direct investment inflows," *Economics of Transition and Institutional Change* 31, no. 4 (2023): 1009.

[71] Sokchea Lim, "Bilateral investment treaties, political risk and foreign direct investment," *Asia Pacific Journal of Economics & Business* 11, no. 1 (2007): 11.

[72] Mahani Zainal Abidin, and Nor Izzatina Abdul Aziz, "US foreign direct investment in East Asia: Strategy and policy issues," *Asian Economic Policy Review* 4, no. 2 (2009): 253.

coherence; (c) include specific carve-outs for public health, environmental protection, and national security; and (d) enhance transparency and streamline dispute resolution mechanisms to reduce uncertainty for investors.[73]

The analysis of Malaysia's Bilateral Investment Treaties (BITs) reveals significant inconsistencies in the drafting and application of the Most-Favoured Nation (MFN) clause.[74] While these clauses are intended to promote investor confidence by ensuring non-discriminatory treatment, they often lack clarity regarding their scope-particularly whether they apply to procedural rights, such as dispute resolution mechanisms, in addition to substantive investment protections. This ambiguity has exposed Malaysia to potential risks of "treaty shopping," where investors invoke MFN clauses to access more favorable terms from third-party BITs. As Professor Zakiri emphasizes, "inconsistent MFN applications across treaties allow for 'treaty shopping,' undermining coherence and legal certainty." These findings indicate an urgent need for Malaysia to revisit its BIT framework to safeguard national interests while continuing to attract Foreign Direct Investment (FDI).

A key recommendation arising from this research is the development of a Model BIT tailored to Malaysia's current economic goals and aligned with international best practices. Such a Model BIT would standardize the language used in MFN provisions, ensuring clarity and reducing the risk of misinterpretation.[75] Professor Zakiri advocates for this approach, suggesting that the model treaty should "exclude procedural aspects from MFN unless explicitly intended, and allow for sustainable development carve-outs." The adoption of a model instrument would enable Malaysia to renegotiate outdated treaties and guide future agreements with a coherent and strategic legal template.

Moreover, there is a strong case for embedding sustainable carve-outs and MFN limitations in Malaysia's BITs. In light of rising global emphasis on Environmental, Social, and Governance (ESG) standards, Malaysia must reserve regulatory space to enact policies in public health, environmental protection, taxation, and labor rights without fear of breaching treaty obligations. MFN clauses should therefore be framed narrowly and include explicit exclusions for such public

[73] Feven Aberham, "Most Favored Nation Clauses and their Potential Effect on Ethiopia's Bilateral Investment Treaties: Substantive Protections, Perspectives and Stepping the Reconsiderations," *Hawassa University Journal of Law* 6, no. 1 (2022): 39. See also, Sufian Jusoh, Muhammad Faliq Abd Razak, and Mohamad Azim Mazlan, "Malaysia and investor-state dispute settlement," 896.

[74] Andreas R. Ziegler, "The Nascent International Law on Most-Favoured-Nation (MFN) Clauses in Bilateral Investment Treaties (BITs)," In *European Yearbook of International Economic Law 2010*, (Berlin, Heidelberg: Springer Berlin Heidelberg, 2009), 88.

[75] Facundo Pérez-Aznar, "The use of most-favoured-nation clauses to import substantive treaty provisions in international investment agreements," *Journal of International Economic Law* 20, no. 4 (2017): 781.

interest measures. As Professor Zakiri points out, "Malaysia's regulatory power may be restricted, especially in public health and environmental policies, without proper carve-outs." Including such safeguards ensures that investment protection does not come at the expense of sovereign legislative authority.

Malaysia is at a critical juncture in its investment treaty policy.[76] To effectively balance investor protection with domestic policy autonomy, the country must modernize its BITs through a unified, development-sensitive framework.[77] Incorporating expert insight, such as that of Professor Zakiri's, into this process will be instrumental in crafting treaties that support both economic growth and sustainable governance.

4. Conclusion

The MFN clause remains a central yet contentious element in Malaysia's network of Bilateral Investment Treaties. While its purpose is to ensure fair and non-discriminatory treatment for investors, this study finds that inconsistent drafting, vague language, and lack of exclusions have led to legal uncertainties and potential overreach. Professor Zakiri aptly notes that such inconsistencies open the door to "treaty shopping" and undermine Malaysia's regulatory autonomy, particularly in addressing social, environmental, and economic reforms. In an evolving global investment landscape increasingly influenced by ESG norms and sustainable development goals, it is crucial for Malaysia to recalibrate its MFN commitments.

To this end, the creation of a comprehensive Model BIT should be prioritized-one that harmonizes MFN provisions, excludes procedural rights unless clearly intended, and includes explicit carve-outs for public interest measures. This approach would ensure that Malaysia remains an attractive and competitive investment destination without compromising its right to regulate in the public interest. Ultimately, a more strategic and development-oriented BIT policy, guided by both empirical analysis and expert advice, will strengthen Malaysia's legal and economic positioning in international investment relations.

[76] Hamzah, "Bilateral investment treaties (BITs) in Indonesia: A paradigm shift, issues and challenges," *J. Legal Ethical & Regul. Isses* 21, no. 4 (2018): 6.

[77] Fadhilah Nur Amalina, "Efforts of Indonesia and Singapore in Increasing Foreign Direct Investment (FDI) Cooperation Through Bilateral Investment Treaty (BIT) During the Covid-19 Pandemic," *Mediasi Journal of International Relations* 5, no. 1 (2022), 41. See also, Asmah Laili Haji Yeon, Mohammad Belayet Hossain, and Ahmad Shamsul Abdul Aziz, "Sovereignty, national interest and security in bilateral investment," 48; Mohammad Belayet Hossain, "Environmental Protection and BITs," 494.

Acknowledgement

The project is funded by Early Career Researchers (ECR) Start up Fund 2024 (Cost center-003013), Curtin Malaysia.

References

Aberham, Feven. "Most Favored Nation Clauses and their Potential Effect on Ethiopia's Bilateral Investment Treaties: Substantive Protections, Perspectives and Stepping the Reconsiderations." *Hawassa University Journal of Law* 6, no. 1 (2022): 34-74.

Afolabi, Luqman, Patrick Efe Ejumedia, Adebunmi Olusola Oduyoye-Ejumedia, Richard Kabanda, and Nnamdi O. Madichie. "Unravelling the link between bilateral investment treaties and environmental sustainability in sub-saharan african countries." *Insight on Africa* 17, no. 1 (2025): 7-29.

Almeida, Thiago Ferreira. "As inconsistências da solução investidor-Estado na proteção internacional do investidor estrangeiro: análise das principais cláusulas substantivas dos BITs a partir dos casos arbitrais ad hoc, sob a perspectiva dos países receptores de capital." *Revista Fórum de Direito Financeiro e Econômico–RFDFE* 13, no. 23 (2023): 187-222.

Amalina, Fadhilah Nur. "Efforts of Indonesia and Singapore in Increasing Foreign Direct Investment (FDI) Cooperation Through Bilateral Investment Treaty (BIT) During the Covid-19 Pandemic." *Mediasi Journal of International Relations* 5, no. 1 (2022): 34-55.

Amin, George Forji. "All that Glitters is Not Always Gold or Silver: Typical Bilateral Investments Treaties (BITs) Clauses as Peril to Third World Economic Sovereignty." *Athens JL* 6 (2020): 299.

Bagwell, Kyle, Robert W. Staiger, and Ali Yurukoglu. "Quantitative analysis of multiparty tariff negotiations." *Econometrica* 89, no. 4 (2021): 1595-1631.

Bandelj, Nina, and Aaron Tester. "Amplified decoupling in the global economy: The case of bilateral investment treaties." *Socius* 6 (2020): 23.

Bi, Yuanchao, and Wei Shen. "Universal Scale Tipping towards Balance-Applying the MFN Clauses in China-related Investment Arbitration: A New Haven School Reading." *China and WTO Review* 6, no. 2 (2020): 291-324.

Chaisse, Julien, and Jamieson Kirkwood. "Chinese puzzle: anatomy of the (invisible) Belt and Road investment treaty." *Journal of International Economic Law* 23, no. 1 (2020): 245-269.

Chen, Zhengrong, Suhaimi Ab Rahman, and Hanna Ambaras Khan. "Study on Bilateral Invesment Between China and Malaysia Under the Framwork of Regional Comprehensive Economic Partnership from Sustainable Development Perspective." *Russian Law Journal* 11, no. 5 (2023): 2734-2748.

Chilton, Adam, and Weijia Rao. "The limits of diplomacy by treaty: Evidence from China's bilateral investment treaty program." *Journal of Empirical Legal Studies* 21, no. 4 (2024): 1023-1101.

Claxton, James M. "The standard of most-favored-nation treatment in investor-state dispute settlement practice." In *Handbook of International Investment Law and Policy*, pp. 271-301. Singapore: Springer Singapore, 2021.

Dada, James Temitope, Adams Adeiza, Noor Azizi Ismail, and Marina Arnaut. "Financial development–ecological footprint nexus in Malaysia: the role of institutions." *Management of Environmental Quality: An International Journal* 33, no. 4 (2022): 913-937.

Dimitropoulos, Georgios. "National sovereignty and international investment law: sovereignty reassertion and prospects of reform." *The Journal of World Investment & Trade* 21, no. 1 (2020): 71-103.

Duffy, Frances Annmarie. "The Slow Demise of the Most Favoured Nation." *Prophetic Law Review* 3, no. 2 (2021): 111-130.

Fietta, Stephen. "Most Favoured Nation Treatment and Dispute Resolution Under Bilateral Investment Treaties: A Turning Point?." *International Arbitration Law Review* 8, no. 4 (2005): 136-151.

Gupta, Surbhi, Arun Kumar Attree, Ranjana Thakur, and Vishal Garg. "Interlinkages between bilateral investment treaties and FDI flows to emerging economies: evidence from BRICS." *Journal of Advances in Management Research* 21, no. 4 (2024): 667-687.

Hamzah. "Bilateral investment treaties (BITs) in Indonesia: A paradigm shift, issues and challenges." *J. Legal Ethical & Regul. Isses* 21, no. 4 (2018): 1-15.

Hossain, Mohammad Belayet, Asmah Laili Bt Yeon, and Ahmad Shamsul Bin Abd Aziz. "Sovereignty, National Interest & Security and the Bilateral Investment Treaties of Bangladesh and the Netherlands: A Comparison." *African Journal of Legal Studies* 12, no. 2 (2019): 183-214.

Hossain, Mohammad Belayet. "Environmental Protection and BITs of Bangladesh, Malaysia and USA: A Comparison." *Jurnal Cita Hukum* 8, no. 3 (2020): 489-524.

Hossain, Mohammad Belayet. "Investing in Green: Bilateral Investment Treaties (BITs) Role in Malaysia's Renewable Energy Sector." In *International Conference on Energy Transition and Exhibition*, pp. 55-64. Singapore: Springer Nature Singapore, 2024.

Hossain, Mohammad, and Haitham Mohammed. "Foreign Ownership Control and the Bilateral Investment Treaties in South Asian Countries." *Lex Publica* 10, no. 1 (2023): 101-122.

Inada, Mitsuo, and Naoto Jinji. "The impact of policy uncertainty on foreign direct investment: Micro-evidence from Japan's international investment agreements." *Review of International Economics* 32, no. 3 (2024): 934-957.

Izotov, D. "The gatt/wto participation and asia-pacific regional trade: long-term effects?." *International Organisations Research Journal* 18, no. 3 (2023): 48-73.

Janardhan, Sparsha. "Harnessing trade and investment agreements to promote public health." *Drug and Alcohol Review* 40, no. 1 (2021): 41-49.

Jusoh, Sufian, Muhammad Faliq Abd Razak, and Mohamad Azim Mazlan. "Malaysia and investor-state dispute settlement: Learning from experience." *The Journal of World Investment & Trade* 18, no. 5-6 (2017): 890-917.

Kotyrlo, Elena, and Hryhorii M. Kalachyhin. "The effects of India's bilateral investment treaties termination on foreign direct investment inflows." *Economics of Transition and Institutional Change* 31, no. 4 (2023): 1007-1033.

Li, Yunbing. "Research on the applicability of the mfn clause in bits in the dispute settlement procedure." *Asian Journal of Social Science Studies* 7, no. 4 (2022): 114.

Lim, Sokchea. "Bilateral investment treaties, political risk and foreign direct investment." *Asia Pacific Journal of Economics & Business* 11, no. 1 (2007): 6-24.

Liu, Mohong. "Navigating the complexities of international economic law: implications for global trade and investment." *Lecture Notes in Education Psychology and Public Media* 53, no. 1 (2024): 1-6.

Losari, Junianto James. "Comprehensive or BIT by BIT: The ACIA and Indonesia's BITs." *Asian Journal of International Law* 6, no. 1 (2016): 15-45.

Lubinga, Moses Herbert, and Adrino Mazenda. "Empirical analysis of the effect of institutional governance indicators on climate financing." *Economies* 12, no. 2 (2024): 29.

McLaughlin, Mark. "Mapping Sustainable Development in Investment Treaties: An Analysis of ASEAN States' Practice." *Asian Journal of WTO & International Health Law and Policy* 17, no. 1 (2022): 115-140.

Mehranvar, Ladan, and Sunayana Sasmal. "The Role of Investment Treaties and Investor–State Dispute Settlement (ISDS) in Renewable Energy Investments." *Available at SSRN 4322511* (2022).

Musu, Clara Amanda, Dona Regina Napitupulu, and Marla Satika Qurratu'aini. "Outlook of arbitrary measures of fair and equitable treatment under health urgency: the waiver of pharmaceutical patent." *Transnational Business Law Journal* 2, no. 2 (2021): 150-162.

Newcombe, Andrew. "Sustainable development and investment treaty law." *The Journal of World Investment & Trade* 8, no. 3 (2007): 357-407.

Nosova, Olga. "Foreign Direct Investment's Impact on the Activity of Transnational Corporations." *Applied business: Issues & solutions*. 2 (2023).

Oktaviandra, Surya. "Creating a Balance in Bilateral Investment Treaty: A Perspective from Indonesia." *Andalas International Journal of Socio-Humanities* 4, no. 1 (2022): 8-15.

Pérez-Aznar, Facundo. "The use of most-favoured-nation clauses to import substantive treaty provisions in international investment agreements." *Journal of International Economic Law* 20, no. 4 (2017): 777-805.

Prabowo, Bambang Hadi. "Relationship of Foreign Direct Investment and Other Macro Variables in Malaysia: ARDL Approach: English." *Tamansiswa Management Journal International* 4, no. 1 (2022): 20-26.

Rameau, Rose. "The African Perspective: The Development of Investment Laws, the Pan-African Investment Code (PAIC), and the African Continental Free Trade Area in the "New Economic World Order"." In *Proceedings of the ASIL Annual Meeting*, vol. 114, pp. 62-67. Cambridge University Press, 2020.

Ranjan, Prabhash. "Most favoured nation provision in Indian bilateral investment treaties: A case for reform." *Indian Journal of International Law* 55, no. 1 (2015): 39-64.

Sairambaeva, Zh T., and Zhang Ju. "Legal aspects of investment facilitation of the Shanghai Cooperation Organization member states." *Bulletin of the Karaganda University "Law Series"* 11429, no. 2 (2024): 41-47.

Sándor, Lénárd. "The Constitutional Dilemmas of Terminating Intra-EU BITs." *Central European Journal of Comparative Law* 3, no. 1 (2022): 177-193.

Shakar, Rana Saad, Mohammed Faroq Mahmood, Nibras Arif Abdulameer, Zahraa Mahdi Dahash, and Iskaliev Azat. "Balancing National Sovereignty: The Impact of Bilateral Investment Treaties on Contemporary Islamic Economic Law." *MILRev: Metro Islamic Law Review* 4, no. 1 (2025): 31-63.

Sharmin, Tanjina, and Emmanuel Laryea. "Application of MFN to investment dispute settlement: rule of law issues." *Journal of International Trade Law and Policy* 20, no. 1 (2021): 21-41.

Sharmin, Tanjina. "Evolution of MFN Treatment and Drafting Trends in the Older Generation of IIAs." In *Application of Most-Favoured-Nation Clauses by Investor-State Arbitral Tribunals: Implications for the Developing Countries*, pp. 25-69. Singapore: Springer Singapore, 2020.

Singh, Jaivir, Vatsala Shreeti, and Parnil Urdhwareshe. "The impact of bilateral investment treaties on FDI inflows into India: Some empirical results." *Foreign Trade Review* 57, no. 3 (2022): 310-323.

Spiliopoulos, Odysseas, and Dimitrios Petropoulos. "The Regime of International Investment in the Light of New EU Economic Agreements." *Business & Entrepreneurship Journal* 11, no. 2 (2022): 1-3.

Thow, Anne Marie, Wolfgang Alschner, and Faisal Aljunied. "Public health clauses in international investment agreements: Sword or shield?." *Global Policy* 14, no. 2 (2023): 260-269.

Tsorme, Rita Mawufemor, and Joseph Amoah. "African Continental Free Trade Agreement's Conditional Most Favoured Nation: A Necessary Compromise?." *World Trade Review* 23, no. 1 (2024): 93-111.

Vastardis, Anil Yilmaz. Most favoured nation treatment. In *Rethinking Investment Law*, edited by David Schneiderman and Gus Van Harten, pp. 38-63. Oxford Academic, 2023.

Wang, Anqi. "Applying the MFN clause for higher substantive treatment." In *Interpretation and application of the most-favored-nation clause in investment arbitration*, pp. 74-148. Brill Nijhoff, 2022.

Xiang, Wen, and Olubayo Oluduro. "China's investment in the Nigerian energy sector: A prognosis of the dispute settlement paradigm." *Laws* 12, no. 5 (2023): 81.

Xiao, Jun. "How can a prospective China–EU BIT contribute to sustainable investment: in light of the UNCTAD Investment Policy Framework for Sustainable Development." *The Journal of World Energy Law & Business* 8, no. 6 (2015): 521-541.

Xiao, Jun. "The ASEAN-China Investment Agreement: A Regionalization of China's BITs." *Frontiers of Law in China* 6, no. 2 (2011): 241-258.

Yeon, Asmah Laili Haji, Mohammad Belayet Hossain, and Ahmad Shamsul Abdul Aziz. "Sovereignty, national interest and security in bilateral investment treaties of Malaysia." *Journal of International Studies* 16, no. 3 (2020): 39-58.

Zaharum, Zaibedah, Mohamad Azwan Md Isa, Ruziah A Latif, and Muhammad Firdhaus Md Isa. "Determinants of foreign direct investment in Malaysia." *Insight Journal (IJ)* 11, no. 1 (2024): 86-96.

Zainal Abidin, Mahani, and Nor Izzatina Abdul Aziz. "US foreign direct investment in East Asia: Strategy and policy issues." *Asian Economic Policy Review* 4, no. 2 (2009): 248-266.

Zainal, Norhidayat, and Andrew Kam Jia Yi. "China's Foreign Direct Investment (FDI) in Malaysia: Impact on Malaysia's Sustainable Development Goals (SDGs)." *SINERGI: Journal of Strategic Studies & International Affairs* 3, no. 2 (2023): 46-66.

Zeynalli, Nargiz Bakhshali. "Most-favored nation treatment clause in investment arbitration." *Scientific Work* 65, no. 04 (2021): 379-382.

Zhang, Miao, and Rui Yang. "FDI and spillovers: New evidence from Malaysia's manufacturing sector." *Review of Development Economics* 26, no. 2 (2022): 847-877.

Ziegler, Andreas R. "The Nascent International Law on Most-Favoured-Nation (MFN) Clauses in Bilateral Investment Treaties (BITs)." In *European Yearbook of International Economic Law 2010*, pp. 77-101. Berlin, Heidelberg: Springer Berlin Heidelberg, 2009.

Appendix

Country	Signing date & Present status	MFN: Impact Analysis	MFN: Regulatory Framework Evaluation	MFN: Policy Implications
San Marino	27/09/2012, In force	MFN clauses, promoting FDI and investor-state relationships, may limit policy flexibility and regulatory sovereignty, potentially affecting the implementation of policies favoring local or foreign investors.	The BIT lacks clarity on the interaction of MFN clauses with Malaysia's regional and bilateral commitments, and lacks explicit dispute mechanisms for resolution.	Malaysia can leverage the BIT to attract San Marino investments in key sectors like financial services, technology, and sustainable industries, while maintaining regulatory autonomy and transparency.
Syrian Arab Republic	07/01/2009, In force	The MFN clause in Malaysia's investment policy ensures fairness and balances investor rights with regulatory sovereignty, allowing exemptions for regional agreements and taxation arrangements.	The MFN clause in Malaysia's regulatory framework is unclear, potentially leading to interpretational disputes and inconsistencies across the country's BITs.	MFN maintains exclusions for public policy, taxation, and regional cooperation, facilitating regional cooperation agreements, boosting investor confidence, and safeguarding national interests.
Slovakia	2/07/2007, In force	The MFN clause in Malaysia's investment treaty guarantees equal treatment for Slovak and Malaysian investments, boosting investor confidence, enhancing Malaysia's competitiveness, and reducing discriminatory practices.	The MFN clause in Malaysia's BITs lacks clarity on its scope, potentially leading to ambiguities in future agreements. To ensure consistency, it is recommended to clearly define its scope and harmonize language across agreements.	MFN allows regional agreement exemptions, enhances investor confidence, and safeguards national interests by maintaining exclusions for public policy, taxation, and regional agreements.
Islamic Republic of Iran	22/07/2002, In force	MFN may limit policy flexibility and limit Malaysia's ability to introduce differentiated policies for domestic and foreign investors, potentially reducing its regulatory space.	The BIT lacks clarity on MFN provisions' alignment with Malaysia's regional or international obligations, causing potential conflicts.	Strategies for enhancing investor confidence include increasing transparency in regulatory frameworks and conducting regular reviews.
Morocco	16/04/2002, In force	The MFN clause in Malaysia ensures the country's investment policy aligns with international norms, maintaining regulatory flexibility and balancing investor rights with regulatory sovereignty.	The MFN clause in Malaysia's regulatory framework faces clarity gaps, particularly in its applicability to procedural rights and substantive rights, potentially leading to inconsistencies and challenges.	MFN allows Malaysia to integrate its BIT framework with regional cooperation initiatives, enhance investor confidence, and safeguard national interests by retaining exclusions for public policy, taxation, and regional agreements.

Saudi Arabia	25/10/2000,	In force	The MFN clause in Malaysia allows for flexibility in domestic policy implementation while upholding treaty obligations, balancing investor rights with regulatory sovereignty.	The MFN clause's scope is unclear, potentially leading to ambiguities and potential inconsistencies if newer BITs offer more favorable provisions.	MFN boosts investor confidence by enhancing transparency, modernizing BITs, and safeguarding national interests by retaining exclusions for public policy, taxation, and regional cooperation.
Algeria	27/01/2000,	In force	The MFN clause aligns Malaysia's investment policy with international norms, allowing flexibility in economic strategies. It balances investor rights with regulatory sovereignty.	Gaps in MFN clause applicability and potential overlaps with other treaties, suggesting clear definition of scope and harmonization of BIT provisions.	The MFN clause promotes economic growth, sustainable FDI, investor confidence, and national interests through transparency and regular review, aligning with global investment norms.
Bahrain	15/06/1999,	In force	Malaysia's MFN clause aims to establish itself as a regional hub for foreign investment, balancing investor rights with regulatory sovereignty.	The MFN clause's scope in Malaysia's BITs may be unclear, potentially leading to inconsistencies if newer BITs offer more favorable provisions than the Bahrain-Malaysia BIT.	The MFN clause permits exemptions for regional and tax agreements, boosts investor confidence, and protects national interests by retaining exclusions for public policy and institutional capacity.
Senegal	10/02/1999,	In force	The MFN clause promotes transparency and competitiveness in the investment sector, balancing investor rights with Malaysia's regulatory sovereignty.	The MFN clause's scope is unclear, potentially leading to ambiguities and inconsistencies, especially in Malaysia's BITs, which may complicate uniform application.	The MFN clause in Malaysia's BITs aligns with economic goals, promotes sustainable development, enhances investor confidence, updates older BITs, and safeguards national interests.
Ethiopia	22/10/1998,	In force	Malaysia's MFN provisions limit exclusive incentives without Ethiopian benefits, balancing investor rights with regulatory sovereignty, and excluding regional arrangements and international taxation agreements.	The BIT's "fair and equitable treatment" for MFN obligations is unclear, potentially overlapping with other agreements, and lacks clear exclusions, requiring improvement.	To boost investor confidence, transparent dispute resolution mechanisms, public policy flexibility, and standardization across BITs can be implemented to reduce ambiguities, simplify compliance, and align with national priorities.
Burkina Faso	23/04/1998,	In force	The MFN clause enhances investor-state relationships by eliminating discriminatory practices and balancing investor rights with regulatory sovereignty, allowing Malaysia to exclude certain benefits from regional and tax agreements.	The scope of MFN clauses is broad and unclear, potentially leading to ambiguities and conflicts. Need precise definition of clause scope and standardization of BIT language.	The MFN clause aligns Malaysia's BITs with its economic and development goals, promoting non-discrimination and fair treatment of foreign investors.

Lebanon	26/02/1998,	In force	The MFN clause may limit Malaysia's policy flexibility, potentially restricting preferential incentives to specific nations. Despite these limitations, they protect investor rights and regulatory sovereignty.	The BIT lacks clarity on MFN obligations' alignment with Malaysia's international treaties and dispute resolution procedures, potentially leading to potential conflicts.	To enhance investor confidence, consistent enforcement of BIT provisions and periodic reviews are necessary, balancing investor protection and national interests.
Turkey	25/02/1998,	In force	The MFN clause enhances investor-state relationships by reducing disputes, aligning Malaysia's investment policy with international standards, preserving regulatory flexibility, and balancing investor rights with sovereignty.	The MFN clause's scope is unclear, causing potential ambiguities in interpretation. Newer BITs may have more favorable terms, posing challenges for uniform application.	MFN enables the integration of its BIT framework with regional partnerships, boosting investor confidence and safeguarding national interests by avoiding exclusions for public policy, taxation, and regional cooperation.
Yemen	11/02/1998,	In force	The MFN clause may limit Malaysia's policy flexibility, potentially favoring certain nations or local businesses.	The BIT lacks clarity on how MFN clauses align with Malaysia's obligations under regional agreements and treaties, leading to potential inconsistencies.	Policy safeguards, such as environmental protection, public health, and national security, can boost investor confidence through transparency and consistent enforcement.
Dem. People's Rep. of Korea	11/04/1998,	In force	The MFN clause in Malaysia limits its regulatory flexibility and allows for country-specific incentives, requiring a delicate balance between investor protections and national priorities.	The BIT lacks clear guidelines for Malaysia's MFN provisions, potentially creating inconsistencies, and lacks detailed dispute resolution mechanisms, causing interpretive challenges and inefficiencies.	Malaysia can achieve its BIT goals by utilizing North Korean investments in technology and infrastructure, adhering to international obligations, and incorporating public health, environmental sustainability, and national security policies.
North Macedonia	11/11/1997,	In force	The MFN clause may limit Malaysia's policy flexibility and may limit its ability to offer unique incentives to specific nations, potentially favoring other nations or local investors.	The BIT lacks clear interactions with Malaysia's obligations under other treaties and specific guidelines for dispute settlement procedures, posing potential interpretive challenges.	Policy carve-outs and consistent application of BIT provisions can enhance investor confidence, while periodic reviews ensure alignment with Malaysia's economic priorities.
Cuba	26/09/1997,	In force	The MFN restricts Malaysia's ability to implement preferential policies without Cuban investors, reducing flexibility in strategic agreements and excluding	The text highlights the need for improved "fair and equitable treatment" in Malaysian investment frameworks, including clarifying key terms, harmonizing obligations, and specifying exclusions to minimize disputes.	Malaysia can use its BITs to prioritize sector-specific investments in renewable energy, technology, and infrastructure, while promoting socially and environmentally responsible investments.

		regional arrangements and taxation agreements.		
Uzbekistan	06/10/1997, In force	MFN may limit Malaysia's policy flexibility, potentially limiting its ability to create incentives for other nations. These provisions also balance investor rights and regulatory sovereignty.	The BIT lacks clarity on how Malaysia's MFN clauses interact with regional obligations, and lacks detailed dispute mechanisms.	Malaysia can leverage the BIT to attract Uzbek investments in technology, infrastructure, and green energy, while ensuring transparency, consistency, and periodic reviews to boost investor confidence.
Egypt	14/04/1997, In force	The MFN clause aligns Malaysia's investment policies with international norms, allowing flexibility for domestic economic strategies. It balances investor rights with regulatory sovereignty, allowing Malaysia to retain policy autonomy.	The MFN clause in Malaysia's BITs lacks specificity and scope, leading to potential inconsistencies. To ensure clarity and consistency, future agreements should clearly define MFN clauses and standardize provisions.	The MFN clause in Malaysia enables the alignment of its Basic Income Tax with domestic and regional development goals, boosting investor confidence and safeguarding national interests.
Ghana	08/11/1996, In force	The MFN clause may limit Malaysia's flexibility in offering unique policies to third-party states, potentially limiting its regulatory sovereignty.	The BIT lacks clarity on MFN provisions' interaction with domestic laws and procedural gaps in dispute resolution, particularly in complex cases with overlapping treaties.	Implementing carve-outs for development goals can balance international obligations with domestic priorities, while consistent enforcement and monitoring can boost investor confidence.
Guinea	07/11/1996, In force	MFN restricts Malaysia's ability to implement preferential policies without Cuban investors, reducing flexibility in strategic agreements and excluding regional arrangements and taxation agreements.	The BIT's unclear MFN provisions pose potential conflicts and uncertainties for investors and the state, necessitating the inclusion of specific provisions and a structured dispute resolution mechanism.	Consistent enforcement and periodic reviews of BITs canindia enhance investor confidence while balancing national interests.
Czech Republic	09/09/1996, In force	The MFN clause, which balances investor rights with sovereignty, could potentially restrict Malaysia's regulatory independence by limiting its flexibility in implementing policies favoring foreign investors.	The MFN clause in Malaysia's BITs may cause ambiguities due to unclear definitions of procedural and substantive rights.	The MFN clause enables Malaysia to join larger economic frameworks like ASEAN without violating treaty obligations, thereby ensuring investor confidence and safeguarding national interests.
Romania	25/06/1996, In force	The policy aims to attract Polish investments in Malaysia's priority sectors like infrastructure, renewable energy, and manufacturing, ensuring	The BIT lacks clarity on MFN provisions' interactions with Malaysia's regional agreements and dispute resolution mechanisms, potentially leading	Malaysia can leverage the BIT to attract Romanian investments in renewable energy, infrastructure, and advanced technology, while ensuring environmental

		regulatory autonomy, compliance with MFN obligations, and investor confidence.	to ambiguities and potential conflicts.	protection and public health through transparency and consistency.
Kazakhstan	27/05/1996, In force	The MFN could restrict Malaysia's capacity to create tailored incentives and potentially hinder its regulatory authority, as new policies must avoid displacing Kazakh investors.	The BIT lacks clear provisions for the interaction of MFN clauses with Malaysia's regional trade obligations, potentially leading to legal disputes and interpretive challenges.	Malaysia can align its BIT with development goals by leveraging Kazakh investments in energy, technology, and infrastructure, while balancing regulatory flexibility with MFN obligations for investor confidence.
Peru	13/10/1995, In force	Malaysia's MFN restricts preferential treatment for Peruvian investors, potentially causing conflicts if Peruvian investors perceive new regulations favoring third-state investors.	The BIT's regulatory framework has identified gaps, such as an undefined scope of MFN obligations, potential overlap with regional and multilateral agreements, and broad exclusions for regional cooperation and tax agreements.	Future agreements should promote sustainable investments, enhance investor confidence through dispute resolution mechanisms, public policy safeguards, and standardization of BIT terms.
Uruguay	09/08/1995, In force	Malaysia's MFN may restrict exclusive benefits, regional arrangements, and tax-related international agreements, preserving sovereignty and investor treatment, but may face regulatory challenges if perceived favorably.	Need to clarify MFN scope, harmonizing with regional and multilateral policies, and improving transparency by including specific excluded benefits.	To boost investor confidence, strategies like enhancing dispute resolution mechanisms, incorporating public policy safeguards, and standardizing BIT language are recommended to ensure fairness, protect policy space, and simplify compliance.
Mongolia	27/07/1995, In force	The MFN clause in Malaysia allows for flexibility in policy formulation, balancing investor rights with sovereignty by excluding benefits from customs unions, free trade agreements, and taxation arrangements.	The MFN clause's scope is broad and unclear, potentially leading to inconsistencies due to variations in Malaysia's BITs, especially with newer agreements offering more favorable terms.	MFN boosts investor confidence by enhancing transparency, updating BITs to Malaysia's priorities, and protecting national interests by retaining exclusions for public policy, taxation, and regional agreements.
Spain	04/04/1995, In force	Malaysia's investment policy is influenced by MFN provisions, which restrict exclusive treatment for Spanish investors, but potential conflicts may arise when implementing regulations favoring third-state investors.	The BIT's regulatory framework evaluation reveals gaps in MFN treatment, including an undefined scope, overlap with regional and multilateral agreements, and broad wording of exclusions.	Malaysia should utilize BITs to attract foreign direct investment (FDI) in key sectors like renewable energy and infrastructure, thereby promoting sustainable investments in the future.

Bosnia and Herzegovina	16/12/1994, In force	Malaysia's MFN clause limits policy flexibility by limiting preferential terms with certain countries or sectors, while balancing investor rights with regulatory sovereignty.	Improvements needed include defining key terms, aligning BIT obligations with domestic and regional policies, and improving transparency in exclusions to minimize investor misinterpretation.	The BIT framework should align with Malaysia's economic priorities, promote technology, green energy, and infrastructure investments, enhance dispute resolution, provide sector-specific incentives, and ensure public policy flexibility.
Croatia	16/12/1994, In force	MFN provisions restrict its ability to negotiate exclusive agreements with specific countries or sectors, balancing investor rights with regulatory sovereignty, but may face challenges if investors contest discriminatory changes.	The text highlights the need for clearer definitions of "fair and equitable treatment" and more detailed exclusions in Malaysian Foreign Service (MFN) obligations.	Malaysia's BITs aim to align with broad economic and development goals by attracting investments in key sectors and promoting sustainable investments.
Bangladesh	20/10/1994, In force	The MFN clause limits Malaysia's ability to provide preferential treatment to specific countries, potentially limiting negotiation flexibility, while also ensuring regulatory sovereignty.	The text highlights gaps in understanding fair and equitable treatment, lack of clarity on conflict resolution, and broad exclusions, recommending clear definitions, harmonization, and transparency.	Malaysia should integrate its Balanced Budgets with strategies to boost investor confidence, such as enhancing dispute mechanisms, providing sector-specific incentives, and ensuring flexibility for national interests.
Jordan	02/10/1994, In force	Malaysia's regulatory autonomy may be restricted by MFN, as policy changes must avoid unintentionally favoring Jordan, potentially limiting its flexibility in adjusting incentives for specific countries.	The BIT lacks clarity on how MFN clauses align with Malaysia's regional obligations, potentially leading to conflicts and interpretive challenges in dispute resolution.	Malaysia can leverage the BIT to attract Jordanian investments in key sectors like infrastructure and renewable energy, in line with the country's development objectives.
Argentina	06/09/1994, In force	The MFN clause in Malaysia promotes a business-friendly environment by balancing investor rights with sovereignty, excluding benefits from customs unions, free trade areas, and tax agreements.		The MFN clause in Malaysia's Basic Income Tax aligns with international norms, attracts sustainable investments, and provides exemptions for regional and tax agreements, enhancing investor confidence.
Namibia	12/08/1994, In force	The MFN clause enhances investor-state relationships, providing more favorable terms and dispute resolution mechanisms under Malaysia's other BITs, while	The MFN clause in Malaysia's BITs is broad and unclear about its applicability to procedural rights. Future BITs should clearly define its scope and limitations, and standardize	The MFN clause in Malaysia's BITs promotes a non-discriminatory investment climate, updates older BITs, and safeguards national interests by maintaining

			balancing investor rights with Malaysia's sovereignty.	MFN language to prevent conflicts.	exclusions for public policy, taxation, and regional agreements.
Albania	24/01/1994,	In force	Malaysia's MFN provisions may restrict investor differentiation based on origin, potentially limiting investment strategies and potentially posing challenges in balancing investor rights with regulatory sovereignty.	The MFN clause has a vague interpretation of "fair and equitable treatment," unclear resolution of conflicts with other treaties, and broad exclusion provisions.	Malaysia should align its Basic Income Tax with development goals, prioritizing sectors like technology and green energy, and include environmental and social standards in future BITs for sustainable development.
Poland	21/04/1993,	In force	MFN clauses establish a predictable, non-discriminatory investment environment, potentially limiting Malaysia's policy flexibility. These clauses balance investor rights and regulatory sovereignty.	The BIT lacks clarity on treaty interactions and dispute mechanisms for Malaysia's MFN clauses, posing potential inconsistencies and interpretive challenges.	The policy aims to attract Polish investments in Malaysia's priority sectors like infrastructure, renewable energy, and manufacturing, ensuring regulatory autonomy, compliance with MFN obligations, and investor confidence.
Hungary	19/02/1993,	In force	The MFN clause restricts Malaysia's policy flexibility, requiring it to extend preferential treatment to Hungarian investors. This could potentially affect Malaysia's regulatory sovereignty.	The BIT's lack of clarity on MFN provisions' interaction with regional agreements and dispute resolution guidelines could lead to legal ambiguities, necessitating explicit language and improved procedural clarity.	Malaysia should enhance investor confidence by reinforcing regulatory transparency and implementing periodic reviews for future agreements focusing on development-oriented carve-outs.
Chile	11/11/1992,	In force	Malaysia's MFN allows it to exclude benefits from customs unions, free trade areas, and tax agreements, ensuring regulatory flexibility and non-discriminatory treatment, fostering a competitive investment climate.	The MFN clause's scope is unclear, potentially leading to ambiguities. Inconsistencies may arise if Malaysia's newer BITs offer more favorable terms than the Chile-Malaysia BIT. Clarity and consistency are needed.	MFN allows for exemptions for regional economic and tax agreements, improving investor confidence, and safeguarding national interests through refinements and capacity-building efforts.
Vietnam	21/01/1992,	In force	MFN may limit Malaysia's policy flexibility and limit its ability to implement domestic policies favoring local businesses without violating MFN commitments.	The BIT lacks clarity on how MFN clauses align with Malaysia's international obligations, and lacks specific guidelines for dispute resolution. Need to clarify provisions and enhancing dispute mechanisms for efficient resolution.	Malaysia's policy safeguards aim to boost investor confidence through transparency, consistency, and periodic reviews, aligning with the country's economic strategies and global standards.
Denmark	06/01/1992,	In force	The MFN clause in Malaysia promotes investor-state	The MFN clause in Malaysia's BITs lacks specificity and may	The MFN clause ensures that BITs are aligned with regional

		trust and reduces discriminatory practices, supporting Malaysia's investment strategy by balancing investor rights with sovereignty through exemptions for regional economic cooperation agreements and tax treaties.	cause ambiguities. To ensure clarity and consistency, it is necessary to clearly define its scope and standardize provisions across all BITs.	cooperation frameworks, boosting investor confidence and protecting national interests by retaining exclusions for public policy, taxation, and regional agreements.
United Arab Emirates	11/10/1991, In force	MFN obligations limit Malaysia's ability to offer exclusive incentives without extending similar benefits to UAE investors. They also protect Malaysia's regulatory sovereignty, allowing flexibility in key areas.	The BIT's MFN treatment lacks specific definitions, leading to potential misinterpretations and disputes. It also overlaps with regional and multilateral agreements, posing risks. The broad exclusions for regional arrangements and tax policies increase disputes.	To boost investor confidence, transparent dispute resolution mechanisms, public policy safeguards, and standardizing BIT language are recommended to simplify compliance and align with national priorities.
China	21/11/1988, In force	The MFN clause restricts Malaysia's ability to create targeted incentives or preferential agreements, but it may face challenges in maintaining regulatory changes perceived as preferential treatment.	Malaysia's Foreign Investment policy faces gaps such as unclear treatment scope, potential regional agreement conflicts, and vague exclusion provisions, requiring improvement in clarity, harmonization, and transparency.	Malaysia should align its BITs with national economic priorities, promoting investments in high-growth sectors and sustainable development goals.
Republic of Korea,	11/04/1988, In force	The MFN clause may restrict Malaysia's ability to create customized incentives or policies for specific nations and its capacity to implement regulatory modifications or preferential policies.	The BIT lacks clarity on how MFN obligations interact with Malaysia's international agreements or domestic policies, potentially leading to legal conflicts and inefficiencies in dispute resolution.	Implementing carve-outs for key policy areas and enhancing investor confidence through transparency and periodic reviews of BIT commitments.
Italy	04/01/1988, In force	The MFN clause restricts policy flexibility, potentially limiting Malaysia's ability to create unique bilateral incentives and potentially challenging its regulatory sovereignty.	The BIT lacks clear guidance on the interaction between MFN clauses and Malaysia's obligations under regional or international agreements, potentially leading to conflicts and inconsistencies.	Malaysia can use the BIT to attract Italian investments in sectors like green technology, automotive, and manufacturing, while maintaining regulatory autonomy.
Kuwait	21/11/1987, In force	MFN may limit Malaysia's ability to offer exclusive incentives to other countries and may limit its regulatory flexibility in favoring certain investors or sectors.	The BIT lacks clarity on the interaction of Malaysia's MFN provisions with other agreements or domestic policies, leading to potential conflicts.	Transparency and periodic reviews can enhance investor confidence, ensuring alignment with Malaysia's economic strategies.
Finland	15/04/1985, In force	Malaysia's MFN clause restricts preferential	The scope of fair treatment for MFN obligations in Malaysia is	Malaysia's Basic Income Tax should align with economic

		agreements without Finnish investors, potentially limiting investment strategies and excluding benefits from regional arrangements and tax-related international agreements.	unclear, conflicting with regional agreements and causing broad exclusions, necessitating improvement.	and development objectives, attracting investments in technology, renewable energy, and infrastructure development, and promoting socially and environmentally responsible investments.
Austria	12/04/1985, In force	MFN reflects Malaysia's commitment to transparency and balances investor rights with regulatory sovereignty, excluding benefits from customs unions, regional agreements, and tax arrangements.	The scope of Malaysia's newer BITs, particularly regarding procedural versus substantive protections, may cause ambiguities in the regulatory framework evaluation.	The MFN clause safeguards national interests by retaining and expanding exclusions for public policy and environmental protections.
Sri Lanka	16/04/1982, In force	Malaysia's MFN obligations restrict its investment policy flexibility by offering exclusive benefits to specific countries or sectors, while also excluding regional arrangements and international agreements.	The BIT's regulatory framework has identified gaps, such as an unclear scope of MFN obligations, overlap with regional and multilateral agreements, and ambiguity in exclusions.	Malaysia should enhance investor confidence by strengthening dispute resolution mechanisms, incorporating public policy safeguards, and standardizing BIT language to promote sustainable investments.
United Kingdom	21/05/1981, In force	Due to its MFN responsibilities, Malaysia is unable to offer unique advantages to particular nations or industries, which restricts investment flexibility while maintaining regulatory sovereignty in crucial areas.	The BIT's regulatory framework has identified gaps, such as an unclear scope of MFN obligations, overlap with regional and multilateral agreements, and broad exclusion provisions.	By implementing public policy measures, standardizing BIT terminology, and strengthening dispute resolution procedures, Malaysia could boost investor confidence and preserve national interests.
Belgium - Luxembourg Economic Union	22/11/1979, In force	Malaysia's MFN limits the flexibility of bilateral agreements, makes it difficult to target high-priority investors or vital industries, and eliminates gains from customs unions, trade agreements, and monetary unions.	Gaps, such as unclear scope of MFN treatment, potential legal disputes, and overlap with other multilateral or regional treaties. Need for improvement include clarifying MFN scope, harmonizing domestic policies with BIT obligations, and enhancing transparency.	Malaysia should leverage its BITs to attract strategic investments in high-priority sectors like green energy, technology, and infrastructure, enhancing investor confidence, introducing sector-specific policies, and incorporating public interest clauses.
Sweden	03/03/1979, In force	MFN may restrict its policy flexibility, potentially restricting Swedish investors' incentives, while MFN provisions safeguard	The BIT's regulatory framework for Malaysia's MFN clauses lacks clarity on its scope and dispute mechanisms, leading to	Policy carve-outs maintain regulatory autonomy while ensuring public health, environmental protection, and national security, while regular

		investor rights and regulatory sovereignty.	potential inconsistencies and interpretive challenges.	reviews balance investor protections with national interests.
Switzerland	01/03/1978, In force	MFN may limit Malaysia's policy flexibility, potentially limiting preferential incentives to specific nations. The clause also balances investor rights and regulatory sovereignty.	The BIT lacks clarity on how MFN clauses interact with Malaysia's regional agreements, leading to potential inconsistencies.	Malaysia can leverage the BIT to attract Swiss investments in finance, manufacturing, and green technology, while ensuring environmental protection and public health.
France	24/04/1975, In force	MFN obligations limit Malaysia's ability to offer exclusive benefits without extending them to French investors. The clause also excludes benefits from customs unions and taxation agreements, preserving Malaysia's regulatory autonomy.	The scope of MFN treatment is unclear, overlapping with regional and multilateral agreements, and exclusions are broad, requiring improvement to reduce disputes and enhance transparency.	Malaysia should align its BITs with national economic priorities, encourage French investment in renewable energy, advanced technology, and infrastructure, strengthen dispute resolution mechanisms, incorporate public policy safeguards, and standardize BIT language.
Netherlands	15/06/1971, In force	Malaysia's MFN clause restricts exclusive incentives to Dutch investors, limiting investment flexibility and preserving regulatory sovereignty by exclusions from customs unions and taxation-related agreements.	The BIT's MFN treatment guidelines have identified gaps, such as unclear definitions of MFN obligations, overlaps with regional and multilateral agreements, and broad exclusions.	Future agreements should promote investments aligned with Malaysia's environmental and social development objectives.
Germany	22/12/1960, In force	MFN clauses may limit Malaysia's ability to offer unique incentives without extending them to Germany. They also protect investor rights but could limit Malaysia's ability to tailor regulatory decisions.	The agreement in Malaysia lacks clear provisions on the relationship between domestic investment policies and international obligations under the BIT, potentially causing policy ambiguity and a lack of detailed dispute resolution mechanisms.	Malaysia should align its BITs with national development goals, focusing on sustainable investments, technology transfer, and skill development, and enhance investor confidence through transparency and periodic reviews.