THE ROLE OF BILATERAL INVESTMENT AGREEMENTS IN FREE FLOW OF FDI–A GLOBAL PERSPECTIVE

GayathriBai S*

Dr. T. R. Maruthi**

Abstract

FDI is a debt free capital flows from capital-exporting state to capital-importing state for economic development of developing state. The basis for flow of FDI in international regime is international treaties which cover regional and bilateral investment agreements. The regional investment agreements like NAFTA, SAARC and ASEAN Investment Agreements are helping in development of their respective regions and creating regional economic disparities. The Bilateral Investment Agreements (BITs) signed between two states developed or developing states are playing a key role in free flow of FDI which can remove the economic disparities created by regional agreements. Apart from regional investment agreement, GATT and TRIMS emerged as a basis for protection of FDI. According to the study conducted by the World Bank in 1994,there were nearly 700 BITs signed across the globe. At present, more than 3000 BITs are enforced between developed and developing states.FDI seek a long term protection under special laws and it can be provided under international law or more effective protection in the recent years is possible by BITs. Various clauses can be included in BITs to protect FDI against various risks such as commercial risk and non-commercial risk. The traditional international principles cannot protect FDI against above risk, in such instances state will seek additional safeguard measures under BITs which are designed as per international standards. Even though FDI protected under local laws of host state, but these laws have to be confirmed with BITs. World Bank Guidelines on the 'Treatment of Foreign Direct Investment' is issued in September 1992, unfortunately this has no binding effect on the world members but it became guiding principles for BITs. The main reason for growth of BITs is promotion of FDI and failure to conclude Multilateral Investment Agreements (MIA) to protect FDI.

Keywords: Commercial risk, FDI, BITs, investment arbitration, MAI

Introduction

Rules and regulations play a pivotal role in the field of foreign investment. While framing rules & regulations, the member states must provide provisions for stability, transparency, predictability, non-discrimination to protect investors' interest. The protection of foreign investment is one of the key issues for those who invest outside their state jurisdiction. One of the major developing areas in the present situation is the protection of foreign investment by means of treaty signed between two states who intended to assure investors about protection of their investment in host states. The state where capital is originated is called the home states and state where capital is invested is identified as host state. In the present scenario, a number of bilateral treaties and free trade agreements are signed to protect FDI.FDI flows in various forms such as 1) Greenfield investment- fresh

* Research Scholar, DOS in Law, University of Mysore

** Senior Assistant Professor, Dos in Law, University of Mysore.

investments, 2) Mergers and acquisitions and 3) Setting up of a joint venture between foreign and domestic company.

Historical development of BITs

The origin of present BITs lies in commercial treaty signed between US and France in 1778 to promote trade between the two states.[1] In 1919, Friendship Commercial Navigation (FCN) treaties between US and with many states were signed to protect foreign trade.[2]BITs are the basis for protection & promotion of FDI and these BITs are called as LexSpecilais,[3]the first BIT was signed between Germany & Pakistan in 1959. The idea of the modern BITs was emerged in 1980 consisted of rules according to which the foreign investments are protected in international regime. During this period, BITs were signed between developed and developing states where developed states were capital exporting states and developing states used to import capital. BITs are capable of strengthening the customary rules of international law related to foreign investments. On the basis of principles introduced in BITs, the arbitration tribunal has decided many cases such as Aminoil case[4] and Sedco case[5], where tribunal held that BITs constitute an accurate measure of international standards to protect investments at international level. In 21st century, BITs are signed between two developing states example India & Bangladesh, India &Srilanka. In the initial stage, these BITs were consisted of customary principle of international law which was on the vanishing point. When BITs entered between developed and developing states as mentioned earlier, few argued that BITs are between two unequal partners. The idea behind the BIT is to protect FDI in every circumstance as agreed by the parties[6]. On the basis of FCN treaties as mentioned earlier, US later in 18th century entered into many bilateral treaties with friendly states. These treaties dealt only with trade and did not contemplate direct investment by corporation, but they accorded protection to individual aliens as trade was largely conducted by the individual traders. Even though FCN treaty did not cover foreign investment but certain principles are evolved by it such as treatment of alien, freedom of worship and travel within host state and it had also included due process of law and procedural rights in civil &criminal cases. The most-favoured nation treaty of FNC was adopted in BITs later National treatment and dispute settlement mechanism is also included in BITs.

Growth of BITs in 1970s, 1980s and 1990s

States signed very less number of BITs during 1970s, by the end of 1979 nearly 100 BITs are signed.[7] During 1970, the BITs were characterized the difference between capital-exporting-states and capital-importing states and on the other hand the developing states started barrowing loans from international bodies for industrialization and for development of infrastructure which affected the balance of payment and led to the situation of financial

[1]Treaty of amity concluded between US & France after American Revolutionary War
[2]Rudolf Dolzer& Christopher Schreuer, Principle of International Investment Law, (Ed, 1st , Oxford University Press, Oxford, 2008), at 1
[3]M. Sornarajah, ‘State Responsibility & BITs’, (Journal of World Trade Law, 1986), at 82
[4] (1982)21 ILM 976
[5]Sedco case is a second inter country Award, Iran-USLTR 180, 184-185 (1986)
[6]M. Sornarajah, The International Law on Foreign Investment, (Cambridge University Press , 2004), pp 206 & 298
[7]UNCTAD Report

crisis. By the end of 1980s, the developing states completely indebted to the developed states and they were not able to repay the debt amount and were found defaulted.[8]

After this situation, the capital exporting states specially US started negotiations for BITs with developing states for which US adopted BITs programmes. In 1970, US investors started influencing the US Government to conclude BITs due to which US Government started BITs in 1977, the idea of US behind BITs was to provide legal framework to protect investments in abroad and to settle investment disputes outside the internal politics of host states[9], but same was not accepted by the US Government as it opposed the outward flow of capital from US to other states. In 1982, US concluded its first BITs with Egypt and by the end of 1987,nearly 265 BITs were concluded between developed and developing states. Due to the increased number of BITs, the flow of FDI into the developing state was increased. In 1990, international investment agreements are increased because of two reasons a) the political commitment of all the states' government for economic liberalism and accepted the flow of investment which paved way for promotion of FDI, b) the developing states did not find any alternative to FDIas it was a debt free capital. In 1980s, the states had barrowed lot of debt and failed to repay the same which forced the developing states to accept FDI as a source of economic development. Simultaneously, the liberal economic policy and privatization became a good ground to conclude BITs for free flow of FDI into states.

Reasons for growth of BITs

The main reasons for growth of BITs are promotion of FDI and failure ofOECD's negotiation for conclusion of Multilateral Investment Agreements (MIA) to protect FDI. BITs are adopted to promote and protect FDI effectively, the World Bank and IMF encouraged states to conclude BITs to attract FDI and to develop international investment arbitration mechanism.[10]Brazil without signing BIT has attracted more FDI and Bolivia inspite of strict regulations, it is successful in attracting huge FDI into its territory. Looking into these developments, one can say that without BITs states can attract more FDI, but the home state prefers BITs to safeguard their investments. There are various issues such as sovereignty, exploitation of natural resources, nationalization of foreign investments, control of home states on its investment in host states and compensation for expropriation were not answered by MAI which compelled the states to conclude BITs. Depending upon the convenience and mutual interest of the parties, the BITs were concluded.[11]BITs provided opportunity for both developed and developing states to set out definite rule and regulations that would apply to their own citizen's investment in their respective territory. As pointed out by ICJ in Barcelona Traction Case[12] there is a need for rapid development of norms to protect FDI which can be met by BITs. The Court held that due to expansion of foreign investments by individuals and MNCs which are moving revolutionary but the law relating to foreign investment is not able to cope up with the fast flow of FDI, in such situation the gap can be bridge by BITs. This shows how BIT is playing an important factor in free flow of FDI.

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[8]Andrew New &LluisParadell, Law & Practice of Investment Treaties- Standards of Treatment, (Andrew New &LluisParadell, 2010), at 46
[9]Id at 47
[10]Surya P Subedi, International Investment Law-reconciling Policy & Principle, (Ed, 2[nd],Oxford & Portland Organ, 2012,) at 84
[11]Supra Note 6, pp 212 & 298
[12]1970 ICJ Report 3

Characteristic Features of BITs

As we know thousands of BITs are concluded so far to protect FDI, BIT contains common features such as 1) definition of investment &investor, 2) procedures to admit FDI, 3) standard of treatment to investors, 4) legal condition as to requirements, 5) expropriation of FDI, 6) repatriation process, 7) protection against risks, 8) dispute settlement mechanisms, 9) reservation and exemptions and 10) termination clause.

BITs include clauses related to incentives provided in host states for MNCs to attract more FDI. **Inventive approach** is adopted by host state which includes fiscal incentives such as less import duties, subsidies, income tax holidays, exemption from internal tax and the cheap labour forces. But these incentives may be for limited period or sector wise depending upon the BITs. Sometimes the fiscal incentives can be changed or cancelled by the FDI authorities if the foreign entity achieves its goals or the political decisions, changes in priority sectors and shortage of fiancé. When we look at the economy of many states, the fiscal incentive facilities are unstable and unpredictable which will change according to the interest of host states and the same is shaking the confidence of foreign entity to invest FDI in host state especially in developing states. China is a best example in present day which gives more importance to incentive based FDI and is able to attract more FDI to compete with developed state in global economy.

In **Market approach**, the decision regarding the entry and operation of MNCs in host state is in hands of manager of MNCs, but the host states' regulatory agencies will control misuse of economic powers, currency, environment protection and security interest. In the present situation, the foreign investors prefer market oriented system where they can invest according to the situation prevailed in host states. The **third** approach is middle path between incentive approach and market approach, this approach is based on the market oriented approach and the host states relied on market forces to attract FDI into their economy. The above 3 mentioned approach can be adopted by the host state to attract FDI but finally the Foreign Investment Promotion Board (FIPB) decides FDI Policy.[13]

Generally, BIT covers investments made before and after the conclusion of BIT in order to protect the investment made before the conclusion of BIT. The BITs of US is based on broad principles such as Most Favored Nation (MFN) treatment which enables the prospective investors to have access to the disputes settlement mechanism provided by BITs, the principle says that the investors of different origins must be treated equally without any discrimination and host state shall not make any favour to a particular investor.[14] Most of the international treaty and conventions support MFN treatment to protect the interest of developing and least developed states.

Principles incorporated in BITs

1. National treatment
2. Most Favoured Nation treatment (MFN)
3. Fair and equitable treatment

These principles are recognized as minimum standard of treatment which must be provided for investors to encourage the free flow of FDI and the host state should provide

[13]Supra Note 8, at 31
[14]Alfred Escher &DamielD.Bradlow, Kluwer Law International Legal Aspects of FDI, (Ed, 1st, Kluwer International Law, The Hague, London, Boston, 1999), at113

complete protection to FDI in its territory. This issue was raised in AAPL v. Srilanka,[15] in this case the British company took contention of application of strict liability standard saying that due to the action of government force, the company suffered loss and government is strictly liable for it. The arbitration tribunal held that the government is liabile to pay compensation to AAPL but however refused to apply strict liability standards.[16] Most of the BITs include provisions prohibit performance requirement which is supported by TRIMs.

The main objective of flow of FDI from home states is to expand their market in global economy by taking advantage of free trade facilities which are available in international regime. Another objective for flow of FDI is to exploit human resource and natural resource available in host states especially in developing stateswith vast semiskilled labour. But on the other side, FDI has to face certain risks in host states such as tariff barriers, import substitute risk, political risk, import barriers, taxation, etc. While investing abroad, the investor must take the following aspects into consideration:

1. The protection against double taxation

2. The facilitation of an individual investment

3. The means of dispute avoidance and dispute resolution

Apart from commercial risk mentioned above, the investor must also faces non-commercial risk such as legal disputes and political risk related to FDI which are as follows:[17]

1. Unreasonable delay in approval and monitoring process of license to MNCs.

2. The unstable investment environment related to incentives, tax rates& conditions of export zones, import duties and unpredictable administrative expenses.

3. Repatriation of profits and exchange of money process is burdensome.

4. The judicial system in developing states is not effective and speedy.

5. Change in political government of host states leading to nationalization, expropriation of foreign property.

6. Red tappism.

In general, the risk related to FDI can be classified into macro-economic, political, infrastructure, commercial and specific risk. The macro-economic risk includes fluctuating exchange rates, devaluation of currency, recession or inflation. The infrastructure risk includes pathetic transportation, lack of communication, shortage of power supply and lack of other facilities. The specific risk coversthe uncertainties related to administrative process of entering and operating FDI in host states.

Procedures to allowFDI

FDI must pass through four stages in host state such as:

1. Planning stage
2. Feasibility study stage

[15]30 I.L.M 577 (1991)
[16]Supra Note 14, at114
[17]Supra Note 14, at 36

3. Implementation stage
4. Operating stage

The following legal documents must be given significance for effective protection of FDI:[18]

1. The legal statementsrelated to the laws of host and home state pertaining to the projects.
2. Letter of approval from state agencies.
3. Applications to protect IPRs related to FDI.
4. Setting up of joint venture with domestic partners & letter of approval.
5. Labour contracts.
6. Insurance coverage and financing contracts with private and public institutions.

The host and home state legal counsels shall in depth analyse the legal position and the risk management related to FDI. Due to liberalization policies, during 2009, 211 new IIAs, 82 BITs and 109 Double Taxation Treaty were signed. By the end of 2006, 5,500 IIAs, 2753 BITs, 2651 DTT and 241 free trade agreements were signed,[19]

Methods of interpretation of Treaty

The international treaties are interpreted as per the principles laid down in Article 31 of Vienna Convention on Law of Treaty which says, the treaty shall be interpreted in good faith according to the plain meaning of the words used in treaty provisions and in context of object and purpose for which the treaty is signed.[20] In case of BITs, the main object is to protect FDI and economy of host state. If any disputes arise regarding the interpretation of treaty, it shall be referred to the tribunal as agreed by the partiesto BIT.

The repatriation of profits is also a debatable issue related to protection of FDI. Few BITs permits the repatriation and few do not. BIT allows repatriation with certain restrictions such as: a) contracting parties must submit report on currency transfer, b) the host state to withhold taxes on dividends or other transfer c)the host states may restrict transfer to protect the rights of creditor and to ensure the satisfaction of judgment against the investors, but the real fact is most of the BITs will not allow these exceptions.

BIT between Chile and Norway said ‘the equity can only be transferred after 1 year of flow of FDI in contracting party unless it is supported by Most-FavouredNation treatment. The US-Jamaica BIT allowed the transfer of profits after a period 3 years from the date of request for transfer is made.[21]

Duration and Termination of BITs

Most of the BIT are signed for a stipulated period and depends upon the instrument of ratification. Usually, the BITs will be in force from 5 to 30 years or until it is terminated. Sometimes, foreign investment will be protected even after the termination of BITs for 10 to 15 years.[22]According to the World Investment Report 2003, new BITs & RTA were signed on the basis of survey conducted by TNCs and IPAs (Investment Promotion Agency) of UNCTAD which expressed optimistic opinion related FDI in 2003. IPA expected more

[18]Supra Note 14, at 37
[19]World Investment Report 2007, p10.
[20]Article 31, Vienna Convention of Law of Treaty
[21]Supra Note 14, at 120
[22]Supra Note 10, at 86

number of Greenfield investment in developing states and also pointed out that tourism sector and telecom sector will attract more FDI in 2003 which proved positive.[23] In 2002, due to financial incentives, large FDI projects were increased as competition was also increased.

There were many efforts being made by OECD to frame MAI,due to difference of opinions between capital-exporting and capital-importing states on standard of treatment which derailed the scope of framing MAI till today. As a result, states signed many BITs for promotion and protection of FDI. These BITs will be mutually beneficial to both home and host states, in Nicaragua v.US, FCN treaty 1956 contributed more comprehensive substantive standard of protection to FDI than earlier time of BITs in Europe.[24] The first BIT was signed between Germany and Pakistan in 1959-'Treaty for Promotion and Protection of Investment' (Federal Republic Germany v. Pakistan), subsequently the treaty became a foundation for other BITs and it defined 'Investment' in wider scope.[25]BITs includes various liberal policy such as encouragement of foreign investment, right of admission of foreign investment which will be determined by national laws, refrain from discrimination based on nationality of the investor and there will be no discrimination against investment activities and investor will enjoy protection and security.[26] The treaty had also provided for giving compensation for expropriation of each other investors' property and included the insurance coverage in it, provided guarantee to transfer capital, return of investment and finally it provided for referring the disputes to ICJ if the parties agree otherwise the dispute may be referred to arbitration tribunal upon the request of either party.[27] According to the BIT, the arbitration tribunal has 3 arbitrators for the first time which developed in Post-World War II agreement especially in Nicaragua and US's FCN treaty.

Germany and Pakistan BIT followed by other capital-exporting states Switzerland in 1961, Netherlands in 1963, Italy and Belgo-Luxembourg Economic Union(BLEU) in1964, Sweden &UK in 1975, Norway in 1966, Japan in 1977. The BITs signed during this period was quite short in period,[28] found more on principles such as national treatment, MFN treatment, fair compensation, right to transfer profits and capital. During the period, BITs were drafted on the basis of OECD draft Conventions 1962.[29]

BITs and Investor-State Arbitration

In the initial period, the international investment disputes created havoc in international regime, the issue was whether investment dispute can be referred to the local courts of host state or any other authority. The traditional form of consent to arbitration was given in arbitration clause in a contract such as concession contract or foreign investment agreement. In order to make international arbitration more effective, ICSID Convention was enforced in1966. During the drafting of ICSID,it recognized that if parties want, they can include arbitration clause in international law or BITs. The investors can accept the arbitration clause by submitting their claim to arbitration forum. According to ICSID,the consent of parties to refer the claim to arbitration must be included in BITs or they must be the national of contracting parties of ICSID Convention. [30]

[23]World Investment Report 2003 overview,http://www.unctad.org, visited on 22/09/15
[24]Supra Note 8, at 41
[25] Supra Note 8, at 42
[26]Supra Note 8, at 42
[27]Article 11(2), Germany and Pakistan (1959) BIT
[28]The whole treaty consisted of 5 to 6 pages only
[29]Supra Note 8, at 43
[30]Supra Note 8, at 44

Until 1966, all the BITs were provided only‘state to state’ dispute resolution which wasreferred to ICJ, but after 1966 when ICSID Convention 1965 came into force, it recognized ‘investor-state’ dispute and the same can be referred to ICSID also. When the interest of investor is violated he can refer his claim to ICSID arbitration directly.[31] It is supported by Indonesia and Netherlands in 1986 by signing a BIT which expressly incorporated provision for investor-state arbitration with efficient and qualified arbitrator. In 1968,BIT between China& Italy is the first BIT provided for investor–state arbitration with state’s consent.The validity of unilateral arbitration clause which is called as ‘arbitration without privity’[32] was first upheld in Southern Pacific Properties Limited v. Egypt,[33] the case came before ICSID arbitration tribunal, Egypt foreign investment laws provided consent for ICSID arbitration which proves that the investors have accepted the arbitration mechanism to resolve the disputes. The ICSID tribunal heldthat it has jurisdiction to decide the investment disputes. Later in 1990 disputes between Sri Lanka and UK related to BITs in 1980, the ICSID issued the first award where the jurisdiction was based on an arbitration clause in BITs. Thus the era of arbitration tribunal started which had proved to be successful for the investors.

BITs include provisions relating to responsibilities of MNCs to protect human rights and to adopt all the measures to fulfil its obligations. The ILO has drafted conventions related to protection of worker’s rights which is a part of human rights.

There are a few principles of international human rights, international environmental laws which can be regarded as basic principle. Further there are many rule of customary international law or general principles of international law that are binding on all states except the persistent objector. In recent times the decisions of tribunals have gone beyond the commercial and touched on public policy objectives such as protection of Human rights and environmental issues.

Issues relating to impact of FDI on human rights in the present scenario

Expropriation of FDI

The international investment law has not laid down proper guidelines to award compensation in case of acquisition of FDI by the host states which has resulted into injustice to the investors because of which flow of FDI has come down in present day. When host state is exercising sovereign power to nationalise FDI it must provide adequate compensation to foreign investors, if adequate amounts is not paid it violates right of investors.

Expropriation & Compensation: Article 1110 of NAFTA

FDI is accepted by host state only when there is a clause included in BIT for nationalization of foreign investments or MNCs. The Havana Charter 1948 provides for expropriation of FDI for public purpose. The same principle is also included in GATT & TRIMs. Right to take away the foreign property is a sovereign right of all the state, provided due process of law shall be followed. It means before expropriating FDI there must be existence of public purpose of any kind which is in the interest of public and fair &adequate compensation should be given to the investors. This Article clearly says when FDI is expropriated there shall not be any discrimination between the FDI from various states. When

[31]ICSID Convention 1965
[32]The consent for arbitration does not occur in an investment contracts, this form of arbitration is called arbitration without privity
[33](1985)3 ICSID Report 112

the compensation amount is fixed they should see that amount should be equivalent to the fair market price of the property which is being expropriated. While fixing the compensation, the nature and value of the assets shall be taken into consideration and same shall be made fully without any delay.

Environmental protection provisions: Article 1114 of NAFTA

The next issue which is bothering in the present scenario is FDI will have adverse effect on environment of host state. To address these allegations the OECD Guideline 2011 is issued which contain provisions to regulate MNCs, the MNCs are bound by the environmental guidelines of host state. The Earth Summit 2002 also states that the private sector including both small and large industries have duty to contribute to the evolution of equitable and sustainable communities and societies. It also states that there is a need for private sector corporations to enforce corporate accountability which should take place within a transparent and stable regulatory environment.

When FDI is allowed inside the territory of state party in the form MNCs, the manufacturing activities always threatens the environment. The concept of sustainable development is well recognized after Stockholm Conference, for the sake of international co-operation and economic development no state has any right to degrade the environment of another state. The state party can take any measures to prevent investment activities which damage the environment. After enforcement of NAFTA the environmental issues have become major topic for debate in the world. In the year 2000 many environmental agreements have signed by U.S, North America, Canada, Mexico etc.

The international environment tribunals have also upholding the above approach which can be seen in Methanex Corporation v. United States of America where tribunal analyzed Chapter 11 of NAFTA which deals with the regulatory powers of states in favour of the environment with the minimum standards of protection guaranteed to foreign investors. In this case the tribunal dismissed the claim of the company for compensation and lay down that environment protection should be taken into consideration by government acting within their margin of appreciation and by the court in its review of that margin.

There is another issue related to international investment such as regulatory measures to protect Human Rights. There is a scope for foreign investors to challenge human rights inspired regulatory measures taken by host states. If a state takes regulatory measures designed to protect and promote such rights they stand to be valid measures even if they have a detrimental impact on foreign investors. The UN's Global Compact programme launched by the UN Secretary General in 1999 in collaboration with business leaders sets out distinct duties of corporations relating to human rights such as i) to respect human rights within their sphere of influence and ii) to avoid conflict with human rights .

FDI and impact of Human rights

The issue of protection of environment and human rights has created instability in the area of protection of FDI. The idea of protection of human rights and environment from abuse of MNCs has given host states to interfere in business of MNCs when these MNCs try to violate human rights. But these regulating rights of host state will become hurdle in framing liberalised FDI policies. Foreign investors have right to challenge human rights related regulatory measures in court of law, but preference would always be given to protection of human rights, therefore the host state and MNCs must adopt sustainable development principle effectively to maintain the balance between human rights and protection FDI. Article 17 of UDHR lays that each person has a right to own the property and the same shall not be deprived by the government arbitrarily unless by the due process of law. This principle is included in all most all BITs by the state parties. This humanitarian approach of FDI also highlights the right to fair labour and also the development of human life in sustainable environment.

Article 1105 of NAFTA: Minimum standard of treatment

Minimum standard of treatment includes fair and equitable treatment, full protection and security provided to the foreign investors. This plays a role when investors suffer loss due to armed conflict or civil war in the territory of host state. When such situation occurs, effective measures shall be taken by the host state to protect foreign investments along with investment of its own citizens where both investments should be treated equally.

Review

The BITs are helping the states to include terms and conditions as per their convenience depending upon their economic needs. The present BITs are between developing states and the MNCs which are the driving force behind flow of FDI. Developing states include clauses in BIT to protect their domestic economy and domestic producers and on the other side the investors will include clauses in BIT to protect their FDI in host state territory. Hence, BIT will balance the interest of both investor and host state, as a result of which investors will enter states with their FDI with confidence which will help the free flow of FDI.

Conclusion

BITs among states in the present scenario are playing a key role in protection of FDI. In absence of multilateral investment treaty, the BITs are trying to bridge the gap between the laws and protection of FDI which is strengthening the standard of treatment to foreign investors and also provide security to foreign investors. But the need of the hour is the BITs must include provisions for protection of human rights and environment in host states. At present, BITs can remove the regional economic disparities which are created by regional agreements and helps in flow of FDI across the globe. The unilateral termination of BIT by developed states is also an issue which shall be addressed by the world authorities effectively. The above mentioned issue can be solved by MAI which will not provide any scope for termination of investment agreements and it will protect the interest of both investor and host state.

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