Journal of Social Sciences & Humanities
Publisher: Kabul University

Available at https://jssh.edu.af

Formulations of Fair and Equitable Treatment Standard in South Asian Investment Agreements

Mujeeb Rahman Emami[1*], Mohammad Hamid Muhajer[2], Sunatullah Ansari[3]

[1,3] Kabul University, Faculty of Law and Political Science, Department of Public Law, Kabul, Af
[2] Kabul University, Faculty of Law and Political Science, Department of Private Law, Kabul, Af

Received: February 18, 2026
Revised: April 18, 2026
Accepted: June7, 2026
Published: July 31, 2026

Keywords

- BITs
- FET
- International Investment Law
- Investor Protection
- Model Investment Treaties
- South Asia

Abstract: Fair and equitable treatment (FET) is a central standard in international investment agreements (IIAs) that protects foreign investors. In South Asia, bilateral investment treaties (BITs) and other investment agreements adopt diverse formulations of FET, reflecting differences in treaty drafting and policy priorities. Despite South Asia's growing importance in international investment law, no comprehensive study has examined FET formulations across the region. Existing research focuses mainly on individual countries or arbitral decisions. This study employs a comparative doctrinal methodology to examine 209 BITs and related investment agreements concluded by six South Asian countries—India, Pakistan, Bangladesh, Sri Lanka, Nepal, and Afghanistan. The treaties were classified according to the type of FET clause they contain: combined with other investment protection standards, standalone, or qualified by international or domestic law. The analysis covers treaties in force, signed but not yet in force, or terminated treaties, and relevant model BITs. The findings show that combined FET clauses are the predominant drafting approach in South Asia, whereas standalone clauses occur less frequently and qualified clauses remain comparatively limited. India and Pakistan exhibit the greatest diversity in FET formulations, while Bangladesh, Sri Lanka, Nepal and Afghanistan demonstrate more limited drafting variations. The study contributes to international investment law by providing the first systematic regional comparison of FET formulations in South Asian investment agreements and offers insights for treaty negotiators, policymakers, and researchers concerned with contemporary investment treaty practice.

To Cite this Article: Emami, M. R., Muhajer, M. H., & Ansari, S. (2026). Formulations of Fair and Equitable Treatment Standard in South Asian Investment Agreements. *Journal of Social Sciences & Humanities 3*(3), 759-778. https://doi.org/10.62810/jssh.v3i3.286

INTRODUCTION

The Fair and Equitable Treatment (FET) principle is a cardinal element of international investment law designed to shield foreign investors from any arbitrary, discriminatory, or unfair actions by the State. This provision is entrenched in numerous BITs and IIAs, and it is considered an essential component of investor protection (Dolzer & Schreuer, 2012). FET

Corresponding author E-mail: mujeebemami@gmail.com

Available online at https://jssh.edu.af/jssh/article/view/286

helps to reconcile the reasonable expectations of investors with the sovereign authority of states in regulating in the interest of the general welfare. According to Salacuse (2010), the principle ensures that regulations do not threaten the stability of the investment climate.

The increasing prominence of the FET standard has coincided with the rapid growth of bilateral and regional investment agreements over the last three decades. As foreign investment has become an increasingly significant component of international economic relations, investment treaties have progressively incorporated substantive standards aimed at enhancing legal certainty and facilitating cross-border investment. Among these protections, FET has emerged as one of the most frequently invoked provisions in investor-State dispute settlement owing to its broad formulation and its important function in balancing the protection of investors with the sovereign authority of States to regulate in pursuit of legitimate public policy objectives. Consequently, the drafting of FET clauses has become a central feature of modern investment treaty practice.

Despite its central role in international investment law, the scope and content of the FET standard remain the subject of extensive scholarly discussion. A major theme in the literature concerns the indeterminate nature of the standard and the resulting interpretative challenges for arbitral tribunals. Scholars generally agree that the application of FET depends on treaty language, factual circumstances, and the evolution of international investment jurisprudence, leading to different approaches across arbitral decisions. This flexibility allows states considerable discretion in treaty drafting while simultaneously requiring tribunals to balance investor protection against the regulatory autonomy of host states (Tudor, 2008; Dolzer & Schreuer, 2012).

Another prominent theme in the literature concerns the substantive elements that constitute the FET standard. Existing studies identify several core components, including the protection of investors' legitimate expectations, procedural due process, administrative transparency, and protection against arbitrary or discriminatory conduct. These elements have become widely accepted as the principal indicators for assessing compliance with FET and guide both treaty negotiators and arbitral tribunals. Furthermore, the literature recognizes that, depending on treaty drafting, FET may be linked with other investment protection standards such as FPS, NT, and MFN (Dolzer & Schreuer, 2012).

A further theme addressed in previous scholarship relates to the historical evolution and treaty formulation of the FET standard. The literature explains that FET has gradually evolved from a general principle associated with customary international law into a codified treaty obligation incorporated in BITs and IIAs. Existing studies also distinguish different drafting techniques, including standalone clauses, combined clauses integrating other standards, and qualified clauses that expressly connect FET with international law, domestic law, or customary international law (Vandevelde, 2010; UNCTAD, 2022).

While these studies explain the evolution and principal characteristics of the FET standard, considerably less attention has been devoted to how different treaty formulations operate within specific regional investment treaty networks, particularly in South Asia.

The South Asian region, consisting of India, Pakistan, Bangladesh, Sri Lanka, Nepal, and Afghanistan, makes an interesting example in terms of FET research because all these states belong to the South Asian Association for Regional Cooperation (SAARC) and have signed various BITs to stimulate investments and economic cooperation (SAWTEE, 2020). It should be noted that there is great variation in the way FET clauses are crafted in South Asian BITs.

Regional variability is reflected in how the South Asian states incorporate FET into the set of standards. Both India and Pakistan include several BITs that contain FET alongside such standards as FPS, NT, MFN, or prohibitions on arbitrariness or discrimination (UNCTAD, 2021). In other cases, states like Sri Lanka, Bangladesh, and Nepal exhibit differences in the formulation of the standard as either FET on its own or qualified FET. These differences in treaty drafting make South Asia a particularly appropriate region for comparative analysis.

With the presence of so many BITs in South Asia, it is surprising that there is no substantial literature that deals with the comparative analysis of FET clauses within South Asia. Most available studies either deal with global developments or examine the development of FET clauses within one particular country. At the same time, there is no regional analysis of the development of FET clauses (UNCTAD, 2022).

This study attempts to fill this lacuna by analyzing the structure of the FET provisions in South Asian BITs and other relevant treaties. The clauses in question have been classified under three main categories: combined, independent, and qualified. Through this comparison of the different formulations used in various countries, the study reveals important commonalities and distinctions within regional treaty practice.

Accordingly, this study pursues the following research objectives:

- To examine the formulations of Fair and Equitable Treatment (FET) clauses in South Asian bilateral investment treaties (BITs) and other investment agreements.
- To classify FET clauses into combined, standalone, and qualified formulations based on their drafting characteristics.
- To compare the drafting approaches adopted by India, Pakistan, Bangladesh, Sri Lanka, Nepal, and Afghanistan.
- To identify regional similarities and differences in the formulation of FET provisions and their implications for contemporary investment treaty practice.

This paper will contribute to theoretical and practical knowledge of the FET principle by highlighting its regional manifestations in South Asia in light of wider developments within international investment protection and by highlighting country-specific approaches. Policymakers, drafters of international investment treaties, and researchers will find useful information on approaches to treaty drafting, interplay with other principles, and implications for the settlement of disputes. The importance of the study derives from the growing significance of the South Asian region in the global investment picture.

RESEARCH METHOD

Research Design

In this study, a comparative legal research methodology will be applied to examine the drafting of the FET provisions in the investment treaties of South Asian countries. Comparative studies are frequently conducted in international investment law research to examine commonalities and differences in drafting treaties among various states. The research method allows for an objective examination of the treaty documents and also provides insights into how FET is defined and implemented in other legal systems.

Data Set and Scope of Study

The data set consists of 209 BITs between six South Asian countries, namely India, Pakistan, Bangladesh, Sri Lanka, Nepal, and Afghanistan. Rather than selecting a sample, this study examines the complete population of investment treaties involving these six countries that met the inclusion criteria at the time of data collection. The inclusion criteria comprised all BITs available in official treaty sources and containing investment protection provisions, irrespective of whether they were in force, signed but not yet ratified, or terminated. The comprehensive inclusion of all eligible treaties was intended to avoid sampling bias and to provide a complete comparative assessment of regional treaty practice.

The data set also includes other international agreements containing investment-related provisions, such as Free Trade Agreements (FTAs), Comprehensive Economic Partnership Agreements (CEPAs), the ECO Investment Agreement, and the Energy Charter Treaty. These agreements were included because they contain investment protection provisions relevant to the Fair and Equitable Treatment (FET) standard, thereby providing a broader perspective on the incorporation of FET beyond traditional BITs. Accordingly, the scope of the study covers treaties that are in force, signed but not yet ratified, and treaties that have ceased to be in force.

Classification of FET Clauses

The classification of FET clauses is a crucial part of this paper. For systematic analysis, the FET clause is treated as the principal variable of the study and is operationalized according to the wording of each treaty provision. Every treaty containing an FET provision was examined article by article and classified based on explicit textual language rather than interpretative assumptions.

The FET clauses were divided into three broad groups according to predefined coding criteria:

(i) Combined (Composite) FET Clauses: A clause was counted as combined if the FET standard showed in the same treaty provision together with one or more additional investment protection standards. These included Full Protection and Security (FPS), National Treatment

(NT), Most-Favoured-Nation (MFN) treatment, or prohibitions against arbitrary, unreasonable, discriminatory, or unjustified measures. The main criterion was the express textual combination of FET with at least one additional substantive standard.

(ii) Independent FET Clauses: A clause was classified as independent if the treaty established Fair and Equitable Treatment as a separate and autonomous obligation without explicitly linking it to any other investment protection standard or legal qualification. The main criterion for this classification was the existence of a standalone FET obligation that could function independently.

(iii) Qualified FET Clauses: A clause was determined as qualified when the treaty expressly restricted or defined the scope of FET by reference to another legal standard or source of law. Such references included international law, customary international law, the minimum standard of treatment under customary international law, denial of justice, domestic law, or other specific legal qualifications. The primary criterion for this classification was the presence of explicit language that conditioned or defined the application of FET by linking it to another legal standard.

In cases where a treaty included multiple formulations of FET, the classification relied on the substantive wording of the operative investor protection provision. To maintain consistency in the comparative analysis, each treaty was coded under the formulation that best reflected its primary approach to FET.

Analytical Framework

The framework adopted for analysis entails a close textual examination of the treaty provisions. Each FET provision analyzed is assessed concerning its structure and formulation, and the connection between the provision and other norms. The comparative method of assessment is employed to evaluate similarities and differences in the formulation of FET provisions in various countries, forms of treaties, and through time. For combined FET provisions, the identification of the combination made and its occurrence within the treaties is included.

Sources of Data

Sources of data for this research have been obtained from reliable primary and secondary sources. Examples of primary sources used in this research include UNCTAD International Investment Agreements (IIA) Navigator, official websites of governments of South Asian nations, and Model BITs of India and Sri Lanka. On the other hand, examples of secondary sources include critical scholarly works on FET clauses by authors such as Dolzer and Schreuer (2012), Salacuse (2010), and Vandevelde (2010).

Limitations of the Study

Several limitations must be mentioned here. The first is that 12 BITs are unavailable in text form to the general public. The second one is that some treaties contain FET either in the preamble of the document or in other articles, but without an explicit designation of such a clause. The third limitation is that while the present research is based on a textual comparison, it does not take into account other sources of law, such as arbitration awards and state practice.

Significance of the Methodology

The use of methodology becomes clear when it comes to the relevance of its application with respect to research and practical needs. Through an analysis of the categories of FET clauses in BITs and other international investment agreements, the researcher can reveal regional drafting practices, show discrepancies in the legal treatment of foreign investors, and add to the existing literature on the development of the standard of FET in South Asia.

FINDINGS

Overview of FET Clause Distribution in South Asia

Analysis of the investment treaties concluded by India, Pakistan, Bangladesh, Sri Lanka, Nepal, and Afghanistan identified 209 bilateral investment treaties (BITs), together with investment-related provisions contained in regional and bilateral agreements such as FTAs, CEPAs, the ECO Investment Agreement, and the Energy Charter Treaty. The review of these instruments shows that the Fair and Equitable Treatment (FET) standard is incorporated in the majority of the treaties examined. However, its formulation differs across countries and treaty types (UNCTAD, 2021).

Table 1. *Fair and Equitable Treatment (FET) under South Asian BITs and TIPs (SAARC States)*

State	Total BITs	In Force	Signed	Terminated	Model BIT (FET)	FET in BITs	FET in TIPs / FTAs	Dominant FET Formulation
India	86	8	4	74	Model BIT 2003; Model BIT 2015	Yes (selective)	ASEAN–India IA (2014); Japan EPA (2011); Korea CEPA (2009); Malaysia FTA (2011)	Qualified FET; limited standalone
Pakistan	53	32	16	5	—	Yes	China–Pakistan FTA; Malaysia–Pakistan CEPA; ECO IA	Standalone; combined FET–FPS
Bangladesh	31	24	5	2	—	Yes	—	Standalone; combined
Sri Lanka	29	24	2	3	Sri Lanka Model BIT	Yes	Singapore–Sri Lanka FTA (2018); Japan BIT (1982)	Standalone; combined

Nepal	6	4	1	1	—	Limited	—	Standalone (limited practice)
Afghanistan	4	3	1	0	—	Limited	ECO IA; Energy Charter Treaty	Standalone; preambular

Source: Author's compilation from South Asian BITs and FTAs; UNCTAD International Investment Agreements Navigator.

Table 1 shows that the incorporation of FET is not uniform across the investment treaties examined. While most treaties contain an express FET provision, some do not include the standard, and others refer to FET only in the preamble rather than in the operative provisions. The review of the treaty texts also indicates differences in drafting across treaty periods, with earlier treaties generally employing broader formulations than more recent agreements (UNCTAD, 2021).

India and Pakistan account for the largest investment treaty networks in South Asia, with 86 and 53 BITs respectively. India has terminated most of its BITs, with only eight treaties currently in force and four signed but not yet in force. In contrast, Pakistan retains a substantially larger proportion of its treaty network, with 32 BITs remaining in force. Both countries incorporate FET in most of their investment treaties, although the drafting approaches differ across agreements (UNCTAD, 2021).

Bangladesh and Sri Lanka occupy an intermediate position within the region, with 31 and 29 BITs respectively. Most of their treaties remain in force and include FET provisions, although the wording of the clauses varies between standalone, combined, and qualified formulations. Nepal and Afghanistan maintain comparatively smaller treaty networks consisting of six and four BITs respectively. Despite the limited number of treaties, FET provisions are present in most of the reviewed agreements involving these two countries (UNCTAD, 2021).

Across the South Asian treaty network, combined FET clauses occur more frequently than standalone and qualified formulations. In addition to BITs, FET provisions also appear in several regional and bilateral investment agreements, including FTAs, CEPAs, the ECO Investment Agreement, and the Energy Charter Treaty. These findings demonstrate that FET has been incorporated across different treaty instruments throughout the region, although its textual formulation varies among countries and agreement types (UNCTAD, 2021).

Combined FET Clauses

Table 2 presents the distribution and drafting characteristics of combined Fair and Equitable Treatment (FET) clauses identified in the reviewed South Asian bilateral investment treaties. The table records the number of treaties containing combined FET clauses, their legal status, the standards combined with FET, the principal drafting techniques, and representative treaty examples for each country. The classification is based on the operational criteria described in the research methodology and the textual analysis of the treaty provisions (UNCTAD, 2021).

Table 2. *Combined Fair and Equitable Treatment (FET) Clauses in South Asian BITs*

State	BITs with Combined FET	Status (In force / Signed / Terminated)	Main Standards Combined with FET	Typical Drafting Techniques	Illustrative Treaties
India	31	3 / — / 28	FPS/APS/FLPS; NT/MFN; unreasonable, unjustified or discriminatory measures	Multi-layered clauses; repetition across articles; occasional preambular FET	India–UK (1994); India–UAE (2013); India–Italy (1995); India–Denmark (1995)
Pakistan	28	19 / 8 / 1	FPS; NT; MFN; arbitrary/unreasonable/discriminatory measures; umbrella clause	Highly composite clauses; single-article and multi-article combinations	Pakistan–UK (1994); China–Pakistan (1989); Lebanon–Pakistan (2001); Netherlands–Pakistan (1988)
Bangladesh	22	18 / 3 / 1	FPS/FAPS/APS; NT/MFN; unreasonable/discriminatory measures	Sequential combinations; repetition under MFN provisions	Bangladesh–Austria (2000); Bangladesh–Malaysia (1994); Bangladesh–Indonesia (1998)
Sri Lanka	18	17 / — / 1	FPS/APS; NT/MFN; unreasonable/discriminatory measures; umbrella clause	Concentrated combinations; repeated FET references	Sri Lanka–UK (1980); Sri Lanka–Egypt (1996); Sri Lanka–Indonesia (1996)
Afghanistan	2	2 / — / —	FPS; unreasonable/discriminatory measures	Compact combined clauses; reliance on TIPs	Afghanistan–Germany (2005); Afghanistan–Turkey (2004)
Nepal	3	2 / 1 / —	FCPS/FPS; unreasonable/discriminatory measures; umbrella clause	Dual-stage drafting	Nepal–UK (1993); Mauritius–

across articles	Nepal (1999)

Source: Author’s compilation from South Asian BITs and FTAs; UNCTAD International Investment Agreements Navigator.

Table 2 identifies combined FET clauses in the treaty practice of all six South Asian countries included in this study. The reviewed treaties combine FET with a range of additional investment protection standards, including Full Protection and Security (FPS), National Treatment (NT), Most-Favoured-Nation (MFN) treatment, umbrella clauses, and prohibitions against arbitrary, unreasonable, or discriminatory measures. The combinations and drafting techniques vary across countries and treaty texts (UNCTAD, 2021).

India and Pakistan account for the largest number of treaties containing combined FET clauses. India records 31 BITs with combined FET provisions, of which three remain in force, and twenty-eight have been terminated. Pakistan records 28 BITs with combined FET clauses, including nineteen treaties in force, eight signed treaties, and one terminated treaty. In both countries, FET is most frequently combined with FPS, NT, MFN treatment, and provisions addressing arbitrary or discriminatory measures, although the drafting techniques differ among individual treaties (UNCTAD, 2021).

Bangladesh and Sri Lanka also make extensive use of combined FET clauses. Bangladesh contains 22 BITs with combined formulations, while Sri Lanka records 18. In both countries, FET is commonly combined with FPS, NT, MFN treatment, and non-discrimination provisions. The reviewed treaties show differences in drafting style, including sequential combinations, repeated references to FET, and concentrated multi-standard provisions (UNCTAD, 2021).

Nepal and Afghanistan have comparatively smaller treaty networks but also incorporate combined FET clauses. Nepal records three BITs containing combined FET provisions, whereas Afghanistan records two. The reviewed treaties combine FET primarily with FPS, umbrella clauses, and provisions addressing unreasonable or discriminatory measures. However, the drafting techniques are more concise than those observed in the larger treaty networks (UNCTAD, 2021).

Overall, combined FET clauses were identified across all six South Asian jurisdictions examined in this study. The treaty texts demonstrate variation in the number of combined clauses, the legal status of the agreements, the standards accompanying FET, and the drafting techniques employed. Despite these differences, the inclusion of FET together with one or more additional investment protection standards is a common feature of the reviewed treaty practice (UNCTAD, 2021).

Standalone FET Clauses

Table 3 presents the distribution and principal drafting characteristics of standalone Fair and Equitable Treatment (FET) clauses identified in the reviewed South Asian investment treaties. The table records the number of treaties containing standalone FET provisions, their legal status, and the principal drafting features observed in each country's treaty practice. The classification is based on the operational criteria described in the research methodology and the textual analysis of the treaty provisions (UNCTAD, 2021).

Table 3. *Standalone Fair and Equitable Treatment (FET) Clauses in South Asian Investment Treaties*

Country	Total BITs	BITs with Standalone FET Clauses	In Force	Terminated / Other Status	Typical Drafting Features
India	86	48	5	43 terminated	Highly uniform formulation; typical clause: “shall at all times be accorded fair and equitable treatment”; minor stylistic variations in Austria (1999), Portugal (2000), Saudi Arabia (2006); all clauses unqualified
Pakistan	53	8 BITs + 1 FTA	6 BITs + 1 FTA	1 terminated; 1 signed not in force	No uniform drafting; formulations include “shall ensure”, “shall in any case accord”, “equitable and reasonable treatment”, “in accordance with this Agreement”, and territorial/maritime extensions
Sri Lanka	29	6	4	2 terminated	Mixed drafting styles; passive and active forms; German-style “in any case” clauses; some use “equitable and reasonable treatment” instead of “fair and equitable”
Nepal	6	3	2	1 terminated	Non-uniform drafting; clauses include territorial and maritime coverage, German-style formulations, and Indian-style “shall at all times” language
Bangladesh	31	2	2	—	Limited use; German-style “it shall in any case” formulation and Indian-style “shall at all times” clause
Afghanistan	—	0	—	—	No standalone FET clause identified in reviewed BITs

Source: Author’s compilation from South Asian BITs and FTAs; UNCTAD International Investment Agreements Navigator.

Table 3 identifies standalone FET clauses in 67 bilateral investment treaties and one free trade agreement across the six South Asian jurisdictions examined. India records the largest number of standalone FET clauses, followed by Pakistan, Sri Lanka, Nepal, and Bangladesh. No standalone FET clause was identified in the reviewed Afghan bilateral investment treaties (UNCTAD, 2021).

India and Pakistan account for the majority of standalone FET clauses identified in the study. India records 48 BITs containing standalone FET provisions, although only five remain in force and forty-three have been terminated. The reviewed Indian treaties employ highly consistent wording with only minor textual variations. Pakistan records eight BITs and one FTA containing standalone FET clauses and demonstrates greater variation in drafting, including differences in wording, territorial scope, and references to approved investments or treaty-specific obligations (UNCTAD, 2021).

Sri Lanka, Bangladesh, and Nepal exhibit more limited use of standalone FET clauses than India and Pakistan. Sri Lanka records six BITs containing standalone provisions, Nepal records three, and Bangladesh records two. The treaty texts show differences in drafting style, including passive and active formulations, references to territorial coverage, and minor linguistic variations. However, all three countries employ substantially fewer standalone clauses than the larger South Asian treaty networks (UNCTAD, 2021).

The treaty review also identified instances in which references to fair and equitable treatment appear in both the operative provisions and the preamble of the same agreement. This drafting feature was observed in a limited number of treaties, including the Pakistan–Sweden BIT, where FET is referred to in both parts of the treaty text.

Overall, standalone FET clauses are unevenly distributed across the South Asian treaty network. Their frequency, legal status, and drafting language differ among countries, with India accounting for the largest number of standalone clauses and Afghanistan containing none in the reviewed bilateral investment treaties. The reviewed treaty texts also demonstrate variations in drafting style despite the common use of standalone FET as a separate treaty obligation (UNCTAD, 2021).

Qualified FET Clauses

Table 4 presents the qualified Fair and Equitable Treatment (FET) clauses identified in the reviewed South Asian investment treaties and other investment-related agreements. The table records the treaty type, treaty partner, form of qualification, and treaty status for each agreement containing a qualified FET formulation. The classification is based on the operational criteria described in the research methodology and the textual analysis of the treaty provisions (UNCTAD, 2021).

Table 4. *Qualified Fair and Equitable Treatment (FET) Clauses in South Asian IIAs*

Country	Treaty Type	Treaty Partner (Year)	Form of FET Qualification	Treaty Status
India	BIT	France (1997)	In accordance with principles of international law	Terminated
India	BIT	Mexico (2007)	Minimum Standard of Treatment (MST) under customary international law (CIL)	Terminated
India	BIT	Colombia (2009)	FET includes prohibition of denial of justice consistent with due process	Signed (not in force)

India	BIT	Belarus (2018)	CIL-based standard limited to denial of justice, due process, discrimination, and abusive treatment; local remedies requirement	Signed (not in force)
India	BIT	Kyrgyzstan (2019)	Same CIL-based limitation as Belarus BIT	Signed (not in force)
India	BIT	Brazil (2020)	Treatment based on international law and national law; expanded CIL elements	Signed (not in force)
India	TIP	India–Korea CEPA (2009)	MST under CIL including denial of justice	In force
India	TIP	India–Malaysia FTA (2011)	MST under CIL (without express denial of justice)	In force
India	TIP	India–Japan EPA (2011)	MST under CIL and treatment in accordance with international law	In force
India	TIP	ASEAN–India Investment Agreement (2014)	CIL-based MST; expressly excludes treatment beyond CIL; denial of justice included	Signed (not in force)
Pakistan	BIT	France (1983)	In accordance with principles of international law	In force
Pakistan	BIT	BLEU (1998)	Consistent with universally recognized principles of international law	In force
Pakistan	BIT	Kuwait (2011)	Consistent with international law and treaty provisions	In force
Pakistan	BIT	Germany (2009)	In accordance with customary international law	In force
Pakistan	BIT	Turkey (2012)	MST under international law including FET	In force
Pakistan	BIT	Kazakhstan (2003)	FET guaranteed in accordance with domestic legislation	In force
Pakistan	BIT	Tajikistan (2004)	FET defined narrowly as obligation not to deny justice under CIL	In force

Sri Lanka	BIT	France (1980)	In accordance with general principles of international law	In force
Sri Lanka	BIT	Finland (1985)	Subject to domestic law and conformity with international law	In force
Sri Lanka	BIT	United States (1991)	Treatment no less than that required by international law	In force
Sri Lanka	FTA	Singapore–Sri Lanka FTA (2018)	MST under CIL; denial of justice included	In force
Bangladesh	BIT	United States (1986)	In accordance with domestic law and no less than international law	In force
Bangladesh	BIT	Turkey (2012)	MST under international law	Signed (not in force)

Source: Author's compilation from South Asian BITs and FTAs; UNCTAD International Investment Agreements Navigator.

Table 4 identifies qualified FET clauses in the treaty practice of India, Pakistan, Sri Lanka, and Bangladesh. No qualified FET clause was identified in the reviewed bilateral investment treaties of Nepal or Afghanistan. The identified qualifications include references to international law, customary international law, the minimum standard of treatment, denial of justice, and domestic law, although their frequency and formulation differ among countries and treaty types (UNCTAD, 2021).

India and Pakistan account for the largest number of qualified FET formulations identified in the reviewed treaties. India employs qualified FET clauses in several bilateral investment treaties as well as investment chapters of regional and bilateral economic agreements. The reviewed Indian treaties contain qualifications referring to international law, customary international law, the minimum standard of treatment, denial of justice, and specific categories of prohibited conduct. Pakistan also incorporates qualified FET clauses in several bilateral investment treaties, using formulations linked to international law, customary international law, the minimum standard of treatment, and domestic legislation (UNCTAD, 2021).

Sri Lanka and Bangladesh employ qualified FET clauses less frequently than India and Pakistan. The reviewed Sri Lankan treaties contain qualifications referring to international law, domestic law, and the minimum standard of treatment. In contrast, the identified Bangladeshi treaties link FET primarily to domestic law and international law. Compared with India and Pakistan, both countries exhibit a more limited range of qualified formulations in the reviewed treaty texts (UNCTAD, 2021).

Overall, qualified FET clauses represent the least common of the three drafting approaches identified in this study. The reviewed treaties demonstrate variation in both the legal sources used to qualify FET and the treaty instruments in which these formulations appear. The identified qualifications most commonly refer to international law, customary international law, the minimum standard of treatment, denial of justice, and domestic law, although their distribution differs across the South Asian treaty network (UNCTAD, 2021).

The FET provisions contained in the qualified BITs of Pakistan show more variation compared to those found in India's BITs. Certain BITs of Pakistan provide for the definition of FET based on principles which have been globally acknowledged as part of international law. In some cases, however, customary international law or MST has been specifically cited in defining FET. What is more, there are certain agreements in which FET has been qualified in accordance with national law (Salacuse, 2010).

The FET provisions in Sri Lanka typically provide for a moderate approach to the provision of protection through an interpretation of treatment in accordance with international law or in conformity with at least the level of international law. The FET provisions in Bangladesh also provide for a balanced approach to the extent that the investor is protected in accordance with the minimum standards of international law. These formulations do not eliminate arbitral discretion entirely but significantly constrain it by rejecting autonomous interpretations of FET divorced from international legal norms (Dolzer & Schreuer, 2012).

From a doctrinal point of view, a qualified FET provision represents a major shift in the approach taken by arbitration tribunals when interpreting such provisions. The fact that qualified FET is anchored in either CIL/MST means that the tribunals must consider consistent State practice and opinio juris as opposed to basing the interpretation on previous awards concerning investment disputes. This shift raises the evidentiary threshold for claimants and reduces the likelihood of findings based on legitimate expectations or regulatory change alone (UNCTAD, 2013).

The qualifying FET provisions contained in the investment treaties from South Asia serve as a transition between the classic BIT framework and more modern ones that completely prohibit or significantly limit FET provisions. These provisions arise out of lessons learned through arbitration and growing concerns with regulatory autonomy. While not as stringent as the model adopted by India after 2016, the provisions still indicate regional convergence towards stricter investment protections (Roberts, 2018).

DISCUSSION

The findings demonstrate that the Fair and Equitable Treatment (FET) standard has evolved unevenly across South Asian investment treaties through three principal drafting models: combined, standalone, and qualified formulations. Rather than reflecting inconsistency in treaty practice, the coexistence of these drafting techniques illustrates the diversity of approaches adopted by South Asian States in defining the scope of investor protection. The progression from broader formulations toward more qualified treaty language also indicates that FET has developed as a dynamic treaty standard whose content depends largely on treaty context and drafting choices rather than on a single uniform model. This diversity in treaty formulation supports the view that the legal content of FET is shaped by both negotiating practice and the policy objectives pursued by individual States (Emami & Gul, 2021; UNCTAD, 2022).

The discussion regarding the combination of FET provisions shows that the accumulation of such a provision makes it possible for arbitral tribunals to develop a tendency towards its inflated interpretation. If a State is obliged by FET together with FPS, NT, MFN, and bans on the taking of any arbitrary or discriminatory action, then arbitral tribunals can understand such obligations as complementary rather than separate obligations for the State. This situation has been reflected in some early South Asian BITs (Indian and Pakistani treaties), showing how this method of drafting can make State obligations expand to something that negotiating parties did not anticipate (Dolzer & Schreuer, 2012; Tudor, 2008). The interaction between FET and other substantive treaty standards may also broaden the scope of treaty protection where provisions such as MFN clauses influence the interpretation or application of FET obligations, reinforcing the importance of careful treaty drafting and precise treaty language (Dumberry, 2016; Sarmiento & Nikièma, 2022).

FET clauses that stand alone also present unique issues of interpretation. The clarity of their wording has led to the development of a well-developed yet contentious body of case law concerning terms like “legitimate expectations,” “transparency,” and “regulatory stability.” The mass cancellation of Indian BITs with FET clauses that are not qualified indicates discontent with how tribunals have interpreted FET clauses, rather than with the idea of protecting investors (Bonnitcha et al., 2017). This experience demonstrates the practical challenges associated with broadly drafted FET provisions and reflects continuing efforts to recalibrate the relationship between investor protection and the regulatory authority of host States (Haynes, 2013; Emami, 2021).

Fragmentation arising out of having several FET regimes operating in one particular territory creates issues concerning the consistency and predictability of investment law. From a systemic perspective, the coexistence of different drafting models may generate legal uncertainty for both investors and host States. However, the experience from South Asia suggests that treaty fragmentation also provides States with greater flexibility to recalibrate their investment commitments without withdrawing from the international investment regime altogether. Rather than indicating institutional weakness, the diversity of treaty formulations reflects an adaptive approach to treaty-making that accommodates changing economic priorities and regulatory concerns (Roberts, 2018). Empirical studies on the evolution of investment treaty practice similarly indicate that treaty reform has increasingly focused on improving legal certainty while preserving sufficient policy space for States (Echandi, 2019).

FET provisions qualified through interpretive limitations constitute the clearest reaction to arbitral jurisprudence on FET, which interpreted it as an open-ended and progressive principle. Through associating the FET standard with either the rules of customary international law, the minimum standard of treatment, or denial of justice, South Asian States have attempted to limit the room for interpretation. The recent development in Indian foreign investment treaties is just one example of this growing worldwide phenomenon (UNCTAD, 2020). This evolution reflects a broader movement in international investment treaty practice towards defining the substantive content of FET more precisely through express treaty language, thereby reducing uncertainty surrounding its interpretation and responding to wider debates on the reform of investor–State dispute settlement (UNCTAD, 2012; UNCTAD, 2013).

It is important to note that qualification does not remove interpretative elasticity; it simply shifts it. Treaties that only mandate conformity with international law will still afford tribunals some degree of discretion in interpreting international law, while those that list specific characteristics of breach considerably reduce discretionary scope. Practice in Pakistan and Sri Lanka represents an approach that occupies the middle ground, balancing regulatory discretion and assurance of investors' confidence (Dolzer & Schreuer, 2012). This demonstrates that the effectiveness of qualified FET clauses depends not only on the decision to qualify the standard but also on the precision of the drafting technique adopted in each treaty (Salacuse, 2015).

However, such a debate highlights an increasing interplay between FET and domestic law. International agreements that refer to national laws or require the exhaustion of local remedies presuppose a greater role for domestic judicial institutions in the protection of foreign investment. This development departs from earlier conceptions of international investment arbitration, under which arbitration functioned primarily as an alternative to domestic dispute settlement (Schreuer, 2005). At the same time, the interpretation of these treaty provisions must remain consistent with the general principles governing treaty interpretation under international law, particularly those reflected in the Vienna Convention on the Law of Treaties (1969).

The South Asian approach to FET reflects a regional learning process shaped by arbitral experience, international reform initiatives, and the exchange of treaty practice among neighboring States. The gradual movement from broader combined and standalone formulations towards more qualified drafting techniques demonstrates that treaty practice within the region has evolved alongside broader developments in international investment law. This evolution supports the view that South Asia has participated actively in the continuing modernization of investment treaty practice rather than merely following developments elsewhere (Salacuse, 2010). Comparative studies of Asian investment treaties similarly demonstrate increasing convergence in treaty drafting while preserving important national differences in investment policy objectives. This pattern is also consistent with broader developments in international investment policymaking reflected in successive World Investment Reports (Chaisse, 2018; UNCTAD, 2019; UNCTAD, 2022).

From a normative perspective, the South Asian experience demonstrates that the legitimacy of the Fair and Equitable Treatment standard depends less on its inclusion in investment treaties than on the manner in which it is defined and implemented. If drafted too broadly, the standard may constrain the regulatory autonomy of host States; if drafted too narrowly, it may reduce the level of legal certainty and protection expected by foreign investors. The comparative findings of this study suggest that careful treaty drafting provides an effective means of balancing these competing objectives while maintaining the credibility of the international investment regime (Sarmiento & Nikièma, 2022).

CONCLUSION

This study analyzes the evolution of the fair and equitable treatment (FET) standard in South Asian investment treaties through a systematic review of bilateral and selected multilateral agreements. It classifies FET clauses into combined, standalone, and qualified formulations, demonstrating significant diversity across the region. Early treaty practice predominantly relied on broadly framed combined clauses, often merging FET with full protection and security and non-discrimination obligations. While such formulations aimed to enhance investor confidence, they also generated interpretive ambiguity and expanded arbitral discretion. A smaller number of treaties retained standalone FET clauses, whose open-ended character enabled tribunals to develop interpretations beyond customary international law constraints. The gradual retreat from such clauses, particularly by India, reflects increasing awareness of their legal and systemic implications. More recent treaties show a clear shift toward qualified FET clauses, linking the standard to customary international law and specific elements such as denial of justice.

From a theoretical perspective, the findings confirm that treaty text plays a decisive role in shaping arbitral interpretation and that States actively influence normative development through drafting strategies. Practically, the study underscores the need for clarity, coherence, and restraint, as overly broad formulations have proven costly, whereas qualified clauses offer greater legal certainty and balance. The South Asian experience illustrates how States recalibrate investment obligations in response to arbitral practice and global reform dynamics. Regional comparison further reveals divergent treaty strategies shaped by domestic legal traditions and political economy factors. These variations highlight the importance of contextual factors in treaty design and implementation. Future research should assess how arbitral tribunals interpret these evolving clauses and whether recent reforms effectively constrain expansive readings. Overall, the trajectory reflects a broader transition toward a more balanced and disciplined framework of investor protection.

Policy Recommendations

Based on the above study findings, the following policy recommendations were made:

i. South Asian States must have a refined mechanism in place regarding FET clauses. Experience from treaties within the South Asian States indicates that either a general combined approach or total non-inclusion of FET clauses cannot be regarded as ideal. What is required instead is qualified language that specifies both the nature of the protection that one seeks to achieve through the FET clause, while simultaneously leaving room for the exercise of regulatory autonomy. Evidence from treaty practice between India and Pakistan shows that tying FET clauses to customary international law or a minimum standard of treatment can help ensure greater certainty without the loss of substantive provisions.

ii. While this is happening, treaty construction must refrain from combining too many standards under one provision. For instance, the conflation of FET and FPS, NT, MFN, and umbrella clauses has caused overlap and, in some instances, even created inflated norms. A better approach would be to list the standards separately. If both FET and FPS provisions must remain in a treaty, their linkages should be defined, especially by restricting FPS to physical security and preventing the latter from extending to broader legal protection. Also, care needs to be taken when treating the issue of legitimate expectations. Though arbitral panels have tended to elevate this notion in FET considerations, treaty wording can stress that legitimate expectations are those that are not only reasonable but also objective and based on representations made by a government entity.

iii. Procedural aspects deserve further consideration as well. Enhancing the role of the national legal order through means like the exhaustion of domestic remedies or the taking into account of domestic procedures would serve as a way of achieving subsidiarity. Regional cooperation in South Asia beyond particular treaties could help prevent fragmentation of treaties. While total convergence cannot be expected, negotiations through regional organizations could assist in converging on best practices in drafting and increase negotiating power. Lastly, including provisions for periodic reviews and issuing joint interpretations can be useful as a means of adapting FET clauses to new developments in international law, without resorting to treaty termination.

Author Contributions

Pohanmal Dr. Mujeeb Rahman Emami conceptualized the study, designed the research methodology, conducted the primary analysis, and drafted the manuscript. Pohanyar Mohammad Hamid Muhajer contributed to data collection, classification of treaty materials, and assisted in the comparative analysis. Pohanyar Sunatullah Ansari supported the literature review, verification of sources, and manuscript editing. All authors reviewed and approved the final version of the manuscript.

Acknowledgements

The authors express their appreciation to colleagues and reviewers who provided valuable comments and suggestions on earlier drafts of this manuscript. The authors also acknowledge the use of publicly available databases, including the UNCTAD International Investment Agreements (IIA) Navigator, which supported the collection of treaty materials. Any errors or omissions remain the sole responsibility of the authors.

Funding Information

No funding is available for the manuscript.

Conflict of Interest Statement

The authors declare that they have no conflict of interest.

Data Availability Statement

All the data produced and investigated in this study are available in this article. You can also find it in its supplementary files. If you need additional findings supporting data, you can reach out to the corresponding authors by reasonable request, subject to ethical approval from Kabul University's research committee.

REFERENCES

Bonnitcha, J., Poulsen, L. N. S., & Waibel, M. (2017). *The political economy of the investment treaty regime*. Oxford University Press.

https://doi.org/10.1093/law/9780198719540.001.0001

Dolzer, R., & Schreuer, C. (2012). *Principles of international investment law* (2nd ed.). Oxford University Press. Link

Dumberry, P. (2016). *The importation of the FET standard through MFN clauses: An empirical study of BITs. ICSID Review – Foreign Investment Law Journal, 32*(1), 116–137. Link

Emami, M., & Gul, R. (2021). Diversity in the formulation of fair and equitable treatment in international investment agreements. *Journal of East Asia and International Law, 14*(1), 79–100. Link

Emami, M. R. (2021). Fair and equitable treatment standard in international investment law: The customary status. *Journal of Law, Policy and Globalization, 105*, 111–124. Link

Haynes, J. (2013). The Evolving Nature of the Fair and Equitable Treatment (FET) Standard: Challenging Its Pervasiveness in Light of Developing Countries' Concerns – The Case for Regulatory Rebalancing. Journal of World Investment & Trade, 14(1), 114–146. Link

Sarmiento, F., & Nikièma, S. H. (2022). *Fair and equitable treatment: Why it matters and what can be done.* International Institute for Sustainable Development. Link

Salacuse, J. W. (2015). *The law of investment treaties* (2nd ed.). Oxford University Press. https://doi.org/10.1093/law/9780198703976.001.0001

Roberts, A. (2018). Incremental, systemic, and paradigmatic reform of investor–state arbitration. *American Journal of International Law, 112*(3), 410–432. Link

Salacuse, J. W. (2010). *The law of investment treaties*. Oxford University Press. Link

Schreuer, C. (2005). Fair and equitable treatment in arbitral practice. *Journal of World Investment & Trade, 6*(3), 357–386. https://doi.org/10.1163/221190005X00118

Echandi, R. (2019). The debate on treaty-based investor–State dispute settlement: Empirical evidence (1987–2017) and policy implications. *ICSID Review – Foreign Investment Law Journal*, 34(1), 32–61. https://doi.org/10.1093/icsidreview/siy024

Tudor, I. (2008). *The fair and equitable treatment standard in the international law of foreign investment.* Oxford University Press. Link

UNCTAD. (2013). *Reform of investor–state dispute settlement: In search of a roadmap*. United Nations. Link

UNCTAD. (2012). *Fair and equitable treatment: A sequel* (UNCTAD Series on Issues in International Investment Agreements II). United Nations Conference on Trade and Development. Link

UNCTAD. (2019). *World investment report 2019*. United Nations. Link

UNCTAD. (2020). *World investment report 2020*. United Nations. Link

UNCTAD. (2021). *International investment agreements navigator*. United Nations Conference on Trade and Development. Link

UNCTAD. (2022). *World investment report 2022: International tax reforms and sustainable investment*. United Nations. Link

SAWTEE. (2020). *Investment treaties in South Asia: Trends and implications*. South Asia Watch on Trade, Economics & Environment. Link

Chaisse, J. (Ed.). (2018). *International investment treaties and arbitration across Asia*. Brill Nijhoff. https://doi.org/10.1163/9789004360105_002

Vienna Convention on the Law of Treaties. (1969). Link

Vandevelde, K. J. (2010). *Bilateral investment treaties: History, policy, and interpretation*. Oxford University Press. https://doi.org/10.1093/law/9780199651795.001.0001