The article was received on July 22, 2018.
It was recommended for publication on August 25, 2018.

Abdujalilov Abbos,

Phd student University of world economy and diplomacy

http://dx.doi.org/10.26739/2181-9130-2018-4-3

GLOBALLY USED FOREIGN INVESTMENTS LEGAL PROTECTION METHODS

Abstract: The analysis of the current globally used methods for foreign investments protection is provided. Particular attention is paid to the practice of the intergovernmental agreements on promotion and mutual protection of investments conclusion. The basicdisputing points of the international minimum standard principle application are reflected, lines on investment regimes granting are framed.

Keywords: foreign investments, investment regimes, international agreements, international minimum standard, national treatment principle.

Abdujalilov Abbos,

Phd studentUniversity of world economy and diplomacy

МЕЖДУНАРОДНЫЕ СПОСОБЫ ПРАВОВОЙ ЗАЩИТЫ ИНОСТРАННЫХ ИНВЕСТИЦИЙ

Аннотация: Дается анализ современного состояния международных способов защиты иностранных инвестиций. Особое внимание уделено практике заключения межправительственных соглашений о поощрении и взаимной защите капиталовложений. Отражены основные дискуссионные моменты применения принципа международного минимального стандарта, сформулированы направления по предоставлению инвестиционных режимов.

Ключевые слова: иностранные инвестиции, инвестиционные режимы, международные соглашения, международный минимальный стандарт, принцип национального режима.

Abdujalilov Abbos,

Phd student University of world economy and diplomacy

ХОРИЖИЙ ИНВЕСТИЦИЯЛАРНИ ҲУҚУҚИЙ ҲИМОЯ ҚИЛИШНИНГ ХАЛҚАРО МЕТОДЛАРИ

Аннотация: Хорижий инвестицияларни ҳимоя қилишнинг халқаро усулларини бугунги кундаги ҳолати таҳлили ёритилмоқда. Инвестицияларни ўзаро ҳимоя қилиш ва рағбатлантириш бўйича ҳуқуматлараро битимларни тузишига алоҳида эътибор каратилган. Асосий мунозарали ҳолатларда халқаро минимал стандартларни қўллаш, инвестицион тартибларни жорий этиш бўйича кўрсатмаларни шакллантириш акс эттирилган.

Калит сўзлар: хорижий инвестициялар, инвестициявий тартиблар, халқаро келишувлар, халқаро минимал стандартлар, миллий тартиб тамойили.

The main challenge of the international investment legislation is foreign investments legal protection maintenance. By making investments in developing countries and transition economies with their inherent political and economic instability, the investor risks to have his capitals be subject to certain restrictions or to be the subject of any measures to forcibly on his property withdrawal in case if political situation changes. In other words, there is a real danger that foreign investments can be nationalized, requisitioned without any timely and full compensation as required by the international legal norms.

Taking over the guarantees before the investor, the state undertakes not to carry out certain actions in regards to his property (not to encumber the repatriation of capital, not to withdraw investments that can be destroyed during the war or civil unrest, etc.). But nevertheless, despite of the fact that legal guarantees of foreign investments are fixed by law, the recipient state in practice cannot always ensure accurate and strict observance of these guarantees due to the political instability being typical for the developing countries and the countries with the so-called transition economy. It is clear that Uzbekistan is also not an exceptionin this respect.

In other words, the problems of foreign ownership protection are of particular importance for the country's unsustainable developed economy and society as a whole. Uzbekistan, like any other state, is interested in attraction of foreign investments into the national economy and for this purpose an appropriate investment policy is being developed. By establishing a certain foreign investmentsregime this policy determines the specific nature of the directions and means for regulating the admission of foreign capital to the economy of the recipient country, as well as measures to stimulate and protect foreign investors. For Uzbekistan recent years have emphasizedessential and progressive development of legislation in the investment sector. This stage for Uzbekistan is characterized by the active role of the state in investment policy implementation.

The main task in attraction of foreign investmentsto the Uzbek economy is to provide foreign investors with favorable conditions for their inflow.

Various forms and methods for prevention or at least reduction of risks have been developed in the course of long-term international practice. In legal terms, the mechanisms for prevention or reduction of commercial and non-commercial risks are completely different as each of these methods has a special meaning and contentby its nature, principles and subjects in the respective references. But, nevertheless, the ultimate purpose of application of forms and methods forrisks elimination is the same: to prevent risks for foreign investments.

One of the main legal instruments for improving the legal protection of foreign investments is international legal practice, which provides international bilateral agreements on the mutual encouragement and protection of foreign investments, the so-called bilateral investment treaties (BITs).

The role of international investment agreements, especially bilateral ones, is to guarantee the stability of the regime for foreign investors, to provide them with the appropriate incentives, to reconcile the interests of both foreign investors and countries where the investments are made.

These foreign investment agreements are intended to provide international legal protection, primarily from non-commercial risks. The establishment of clear, accessible and implementable rules that improve the investment climate and thereby strengthen the trust between the states is a kind of stimulus for foreign investments.

Another important instrument in foreign investments protection is the application of the international minimum standard principle, which was formed under the influence of the concept of state responsibility for any harm to foreign citizens and their property.

The international minimum civilization standard is applied when regulating the legal regime of foreign investments and the status of foreign citizens serving their operation. It became necessary for protection of human rights and property rights, as well as for the normal implementation of criminal and civil proceedings. This international standard is difficult to define clearly, since it has not been legally fixedin written form in any current international legal instrument. Some attempts in this direction were made within the framework of the codification conference of the League of Nations in 1930 in the context of the state responsibility regulation. Despite the fact that they were unsuccessful, it is still possible to generalize some of the principles that characterize the relevant legal regime.

1. Respect for the legislation of the state receiving the investments - a foreign investor shall comply with laws and not violate the customs of the state where he resides for the investment purpose.

2. Provision of the international minimum standard regime to foreign investors - the state the citizens of which are foreign investors, are in position to expect the application of the regime not lower than the international minimum standard for its citizens from the state receiving the investments.

3. Nationalization - in spite of the fact that each state has the sovereign right to nationalize foreign private property located on its territory, the state can use this right only under certain circumstances stipulated by the norms of the international law.

4. Legitimacy - when taking measures affecting the rights and interests of non-residents, the state receiving foreign investment is obliged to base only on the legislation and apply these measures only in accordance with the procedure established by the law giving the non-resident an opportunity to appeal illegal actions of the state authorities.

5. Use of local legal remedies - in case of a dispute between a foreign investor and the authorities of the state receiving investments, such a dispute shall be considered in the appropriate court of the state receiving investments.

Only after all domestic legal remedies have been exhausted, if a satisfactory solution to the dispute has not been reached, foreign investor is eligible to apply to the competent international bodies for the disputes settlement.

The principle of the national regime as one of the ways to protect investments found its scientific consolidation in the works of the outstanding Argentine lawyer C.Calvo. Subsequently, this theory became known as the Calvo doctrine. Calvo wrote, "Non-residents participating in the commercial turnover of the host country are subject to the similar protection as the residents, but they have no right to demand a higher level of legal protection". This provision on the rights protection of non-residents only within the framework of the national regime is recognizedin the final document of the First International Conference of American States (Washington, 1889), as well as in the Convention on the Rights and Duties of the States adopted at the Seventh International Conference of American States (Montevideo, 1933).

In the opinion of the Argentine academic, the international legal practice requires the state to grant the same rights to foreigners as to its own citizens. On this basis, the laws and constitutions of many Latin American countries formalized the provision that the national regime applied to foreign investors shall meet the requirements of the international law. However, these laws did not guarantee the protection of foreign property from

seizures in the course of economic reforms held in these countries. Calvo doctrine, in contrast to the international minimum standard, introduces the idea of a national standard based on the principles of territorial sovereignty of the states:

1) principle of legal equality of residents and non-residents;

2) principle of regulating the legal status of non-residents and their property by the domestic legislation;

3) principle of non-interference of other states in settlementof disputesbetween foreign investors and national governments regarding the legal status of non-residents and their property, in particular of those states whose citizens are foreign investors;

4) principle of theobligation deficiency of the stateto compensate foreign investors for damage to their property caused as a result of a civil war or acts of public order violation, since such compensation is not provided by the legislation of the state.

Calvodoctrine does not reject the principles typicalto the international standard for foreign property expropriation (based on principles of "public needs", "non-discrimination" and "adequate compensation"). All these concepts are found in the constitutions and laws of Latin American states. However, according to this doctrine, these principles are not of an international legal nature but of a national legal nature, and all disputes arising in connection with their application shall be settled by the national courts and in accordance with the domestic law.

The globalization process leads to an ever more massive movement of people across state borders, to an increase in the number of foreign citizens residing permanently or for a long time in the territory of certain states. As a result, the issue of importance to ensure their rights increases. Diplomatic protection has been the main means in solving the issue. Presently in the current conditionsitacquiresanewmeaning.

The most recognized interpretation of diplomatic protection is perhaps that it is a procedure by which the state protects personal and property rights of its citizens in case of their violation as a result of the internationally unlawful conduct of another state.

The Institute of Diplomatic Protection is universally recognized in contemporary international law. The Permanent Chamber of International Justice in the Mavrommatiscase (1924) defined the right of the state to protect its citizens as the basic principle of the international law. The right of the state to exercise diplomatic protection was confirmed by the UN International Court of Justice.

The Institute for Diplomatic Protection is also recognizedby such universal conventions as the ViennaConvention on Diplomatic Relations of 1961 and the Vienna Convention on Consular Relations of 1963.

The Institute of Diplomatic Protection is also recognized by the internal law of states as being both constitutional and related to external relations bodies.

The rights of the state, both personal and property rights of citizens in the foreign state jurisdiction are the subject of diplomatic protection in legal terms. This concerns the rights of both individuals and legal entities.

It is worth noting that the rights of foreigners in the field of entrepreneurial activity and the rights of foreign legal entities arebetter ensured than other rights. Companies have much greater actual opportunities to protect their rights than individuals. These opportunities are realized in legal acts too. Large companies seek to include provisions on protection of their investments when concluding agreements with foreign states. As evidenced by the experience of the Western powers, the rights of companies are protected by them more vigorously [8, p. 47-60].

The rights of companies are protected also on international level. The Convention on Settlement of Investment Disputes between States and Individuals or Legal Bodies of Other States of 1965 allows foreign companies to bring cases against the state at the International Center for Investment Disputes Settlement. The process requires the respondent state and the resident state where the company is registered to reach an agreement on the relevant procedure. Similar remedies include numerous bilateral investment treaties.

In recent decades, foreign investors as well as national entrepreneurs interested in attraction of foreign capital try to develop a system of additional guarantees to protect investors against non-commercial (political) risks following from the unstable political environment and repressive measures taken by the state. The system of non-commercial risks insurance is one of the elements of such a system of additional guarantees. In many countries non-commercial risks are managed by various organizations which can be divided into the following groups: a) private (non-governmental) organizations; b) state organizations engaged in insurance of non-commercial risks of national entrepreneurs acting as foreign investors abroad; c) interstate regional organizations engaged in insurance of non-commercial risks at the regional level.

In such conditions, the subrogation institute operating in the system of the international investment law acquires even great importance. The application of this traditional investment insurance institution against non-commercial risks is complicated by the fact that the respondent is a sovereign state with judicial immunity which at the request of the insurer claimed for subrogation, and this fact makes it very difficult for a private insurance company to compensate its costs on insurance compensation payment by collecting the amount of insurance compensation from the state receiving investments in the order subrogation.

In most cases insurance of investments from political risks was assigned to the state organizations engaged in insurance of export credits. Thus, the English Overseas Investment & Export Guarantees Act law of 1972 provided the functions of an insurer against political risks to be entrusted to the Export Credit Guarantees Department (ECGD). The same path was taken by Japan, Canada and other countries. Today, most insurance companies insure both investments and export credits. The exception, apart from the ORIC, is made by Denmark, where the Danish International Development Agency (DANIDA) was established solely for insurance of investments. With the exception of Belgium, national insurance agencies for political risk investments do not offer additional non-political risks insurance (for example, insurance against natural disasters available to Belgian investors) -in order not to compete with private insurers.

The main and inevitable disadvantage of the state investment insurance is its national limitedness - national agencies insure only their "own" investors, without paying enough attention to investments carried out jointly by investors who belong to different states. Whatis meant here is investments implemented within the framework of an international consortium (an association of persons who does not have the rights of a legal entity established for the cooperative implementation of work carried out by a partner in a third country).

Partici pationagreements are especially common in capital-intensive sectors of economy (for example, energy and resource development). Since national investment insurance agencies deal only with national investors, it turns out that each of the partici pants of the consortium shall negotiate independently with its national agency only its investments

share, and in case of damage each of them shall receive different compensation from insurers (due to differences in national insurance programs, especially in terms of the recoverable loss amount), and then difficulties will raise inevitably in settling the relations of insurers with the receiving state, which will be based, once again, on different treaties on promotion and mutual protection of investments.

To conclude, the availability of a wide range of international organizations engaged in consideration of issues related to protection of foreign investments and seeking to strengthen cooperation in the international legal development of investment legal relations gives hope that this will lead undoubtedly to creation of universally recognized international legal principles in the field of foreign investments regulation. Despite of the fact that presently this area of international law is characterized by an abundance of contradictory views and opinions, there is a reason to state the existence of an independent sub-sector of international economic law, the subject of which is the regulation of international investment relations. Moreover, the mere fact of existence of a large number of conflicting views and positions on this issue shows the urgency of problems requiring an urgent legal solution to be implemented on international level.

References/Иқтибослар/Сноски:

1. Legal structure of foreign investments: Legislative regulation and practice of relations between thestate and investors in the Russian Federation. Rev.5 / Basyrova Z.A., KonischevaT.Yu., MelentievA.Yu. et al. - M.; Publishing Center for Business Information. Economics and Life weekly publication, 1996.

2. Farkhutdinov I.Z. International investment law. Theory and practice of application. Moscow: VoltersCluver, 2005.

3. Labin D.K. International law on protection and promotion of foreign investments. M.: Walters Cluver, 2008.

4. International private law /Edited byN.I.Marysheva. M., 2001.

5. CalvoC. Le Droit International. Vol. 5. Paris. 1885. P. 231 - quoted by: Sornarajah M. Op. cit.

6. Doronina N.G. Multilateral international treaties and Russian legislation on investments. Russian Law Journal, 2002, N 11.

7. Brovkina S.S. Legal maintenance of foreign investors guarantees in the national legislation of the Russian Federation and international private law. Author's abstract. PhD in Law. M., 2005.