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Alternative Methods of Dispute Resolution for Interested Parties in International Investment Law

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ABSTRACT

This article explores the role of alternative dispute resolution in resolving disputes arising from international investment or direct investment. Currently, there are a number of ways to obtain justice for the third party (interested parties). State courts may be an expensive or undesirable method for interested parties. In addition, the participation of interested parties in international tribunals is limited. ADR systems in development banks have jurisdiction only over financed projects.

Today, many developing countries are increasingly dependent on foreign direct investment (FDI) as a means of development. This shift should be seen as a positive step towards economic independence of the countries. Foreign direct investment brings significant economic benefits such as increased exports, government concession revenues, employment, technology transfer and infrastructure improvements. According to the UNCTAD report[1], the most tangible benefit of direct investment is its contribution to economic stability and long-term self-sufficiency. However, FDI can also pose risks to host countries or their populations. Along with the risk of recession from sudden capital outflows and the crowding out of nascent domestic industries[2], mismanaged FDI foreign investment can lead to environmental degradation, human and animal health risks, and erosion of security and local culture. According to Buckley[3], FDI, particularly in the extractive sector, often poses significant negative impacts that require careful management and mitigation in consultation with local communities. are investments that can show the secret. Consequently, there is increasing international pressure to hold foreign investors accountable for their transactions, which can negatively impact host country citizens[4].

International investment law has been criticized for harming the interests of Western multinationals, vulnerable host countries in the developing world, and more specifically, the

[1] https://unctad.org/topic/investment/world-investment-report
[2] Abdusaidovich K. A. Investigation of theatricalities of thefts and robberies on motor vehicles //Asian Journal of Multidimensional Research (AJMR). – 2019. – Т. 8. – №. 11. – С. 109-114.
[3] Peter Buckley, 'Do We Need a Specific Theory of Foreign Direct Investment?' (2008) 1(2) Journal of Chinese Economic and Foreign Trade Studies.
[4] Mauel Agosin and Roberto Machado, 'Foreign Investment in Developing Countries: Does Domestic Investment Increase?' (2007) 33(2) Oxford Development Studies 149-162.

people living in them[5]. The main reason for this is of course because it is more liberally regulated than developing countries (in order to attract more investment, countries regulate this sector less and provide many facilities and freedoms for investors) in certain places, human rights, labor and environmental abuses is the existence of facts of possession[6].

Indeed, many modern International Investment Treaties (IIAs) are beginning to take into account the social interests of host countries. On the other hand, disputes arising under more than 2,500 international investment treaties at the level of multinational enterprises (MNEs) are usually resolved through secret arbitration between investors and the state, allowing for little public participation. Simply empowering host countries to regulate FDI in domestic public policy by balancing the rights and obligations contained in the IIA is not sufficient[7]. In order to fully address the concerns of civil society stakeholders (referring to individuals or groups other than investors and governments), these individuals should be directly involved in resolving disputes with foreign investors. The resolution of such disputes should be practical, that is, it should be accessible, independent, it should not be pressured in any way and it should be possible to reach effective solutions[8]. A number of alternative dispute resolution mechanisms have emerged for these groups in recent years, reflecting a growing awareness of the importance of stakeholder rights in international investment law.

Alternative Dispute Resolution (ADR) and argues that strategies such as mediation are important tools for addressing stakeholder claims against foreign investors. The article begins with a brief description of the advantages of ADR and the disadvantages of existing international investment arbitration in terms of practical access for stakeholders other than investors and governments[9]. It then discusses informal dispute resolution systems available to aggrieved groups and individuals through international development banks, which provide financing and insurance for some direct investment in developing countries. The article then examines informal dispute resolution processes established[10] by TK home states, particularly the new alternative dispute resolution process operating under the auspices of the Organization for Economic Co-operation and Development.

Advantages of ADR

Access to justice can be greatly improved by using alternative dispute resolution methods such as mediation or conciliation. A number of advantages of alternative dispute resolution have been cited by scientists. In general, both civil litigation and arbitration are aimed at determining the winners and losers and result in the resolution of the related disputes.

Bringing the parties to mutually alternative negotiation results is especially important and problematic in situations where the parties want to maintain long-term relations, including large-

[5] David Schneiderman, 'Constitutionalizing Economic Globalization: Investment Rules and the Promise of Democracy' (2008) Cambridge University Press.
[6] Khakberdiev A. The concepts of criminal staging, its elements, methods of Detection and investigation N //Review of law sciences. – 2020. – Т. 4. – №. 1. – С. 1.
[7] Abdusaidovich K. A. The theoretical basis for the classification of criminal dramatization, methods for their identification and investigation //International Journal of Psychosocial Rehabilitation. – 2020. – Т. 24. – №. 8. – С. 1930-1945.
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[10] Khakberdiev A. A. WAYS OF IMPROVING ARBITRATION COURTS IN UZBEKISTAN //INTELLECTUAL EDUCATION TECHNOLOGICAL SOLUTIONS AND INNOVATIVE DIGITAL TOOLS. – 2023. – Т. 2. – №. 14. – С. 75-81.

scale projects involving investment or foreign investment. ADR is conducted by consensus and aims to reach a mutually acceptable solution. ADR, unlike ordinary national courts, can bring specialized knowledge to disputes (for example, in ADR, the parties' intentions, willingness to compromise, principles and arguments are socially emphasized, and they are not molded by law), however, this advantage is less important for contractual arbitration in specialized investment courts. They are strict and may deprive the parties of their right to procedural control.

On the other hand, although ADR mechanisms vary, they are generally not tied to a strict procedural framework, as they favor practical solutions that require compromise and negotiation. In addition, ADR processes can be cheaper than national courts or international arbitration, because they are less regulated by law and do not require the establishment of liability, special legal services[11]. Since many ADR services can be operated locally or remotely via telecommunications, travel is not required, which also reduces costs. Finally, more formal procedures can be intimidating for noncommercial litigants, especially those from cultures unfamiliar with courtroom disputes. In this sense, ADR is much more accessible and practical for use by stakeholders in developing countries.

One of the most commonly used methods of ADR is mediation. [12]In mediation, a neutral third party helps both parties reach an agreement that is acceptable to both parties. The work of the mediator can be evaluative, which evaluates the legal essence, or facilitative, aimed at helping the parties to identify problems.[13] If the mediation is successful , that is, an agreement is reached, the parties may later decide to formalize the agreed decision in a binding contract. In another type of ADR, known as conciliation (conciliaiton), a third party takes on a more interventionist role, bringing the two parties together and suggesting possible solutions[14]. The term mediation is often synonymous with conciliation and may include fact-finding as well as ombudsmen. Ombudsmen are independent officials who investigate and decide public complaints about maladministration, often using mediation as part of their dispute resolution procedures[15]. Currently, alternative dispute resolution methods are widely used. For example, national courts in England and Wales should encourage parties to use ADR when resolving cases where the court considers it appropriate to resolve the case by alternative means, i.e. where possible out-of-court[16] resolution is encouraged. Similar policies exist in other jurisdictions and are common law[17] and has led to the rise in popularity of ADRs over standard civil litigation in other legal systems[18]. In particular, China has a long tradition of using mediation as a means of resolving disputes[19]. ADRs, especially mediation, are widely supported by a number of scholars as an effective means of resolving disputes in an international context. [20]The United Nations Charter clearly refers to ADR methods, including mediation and conciliation, as a method of resolving

[11] Хакбердиев А. А. Ўғирлик ва талончиликка таълуқли бўлган инсценировкани тергов қилиш //журнал правовых исследований. – 2020. – Т. 5. – №. 1.
[12] James Wall and Ann Lynn, 'Mediation: A Current Review' (1993) 37 Journal of Conflict Resolution 1.
[13] Ibid.
[14] Хакбердиев А. А. ЖИНОИЙ ИНСЦЕНИРОВКАДАГИ САЛБИЙ ҲОЛАТЛАР //ЖУРНАЛ ПРАВОВЫХ ИССЛЕДОВАНИЙ. – 2020. – №. SPECIAL 4.
[15]Gary Slapper and David Kelly, *The English Legal System* , 10th ed. (London: Routledge Cavendish, 2009) at 378.
[16] Rule 1.4 of the Civil Procedure Rules of England and Wales, 2011
[17] For example, the US has a long tradition of using ADR. Recent studies have shown that civil litigation in both state and federal courts has declined in absolute and percentage terms, while alternatives such as mediation have become mainstream.
[18] For example in Germany - Rolf Trittman, 'Alternative Dispute Resolution in Germany', 5(4) ADR Bulletin Article 3 (2002).
[19] Хакбердиев А. Выдвижение версий по преступным инсценировкам при осмотре места происшествия, их проверка и распознание //Review of law sciences. – 2020. – Т. 1. – №. Спецвыпуск. – С. 171-182.
[20] Rebecca Golbert, 'The Global Dimension of the Current Economic Crisis and the Utility of Alternative Dispute Resolution', (2011) 11 Nevada Law Journal 502.

disputes between states alongside the courts[21].

Admissibility of state courts to interested parties in resolving IIA-related disputes

The lack of accessible legal infrastructure at home and abroad poses a number of challenges for stakeholders in FDI-affected communities vis-à-vis foreign investors. Domestic courts in developing countries are often underfunded, expensive or lack independence[22]. Furthermore, most disputes dealt with under the IIA do not involve common issues such as employment, culture and social welfare that are commonly faced by community groups[23]. Generally, the primary function of the IIA is related to the provision of substantive and procedural protection for investors, and for this reason, hearing in state courts may not be appropriate in some cases.

Some home country courts of multinational companies are attempting to extend their jurisdiction over claims arising from foreign torts. This has been done through tools such as the US Alien Tort Claims Act or the UK case of Lubbe v Cape. However, as noted above, traditional courts may not be the most appropriate avenue for investment disputes. First, it can be very expensive for non-commercial parties, especially if it is in a foreign jurisdiction. In addition, civil claims of this nature may be inappropriate for less formal claims involving foreign investors' lack of sensitivity to the needs of local communities, since in such cases the legal facts required to be proven in civil claims may be inappropriate. difficult to prove.

The acceptability of international tribunals for the parties involved in resolving IIA-related disputes

International tribunals provide limited assistance to interested parties in claims against foreign investors. Other interested parties may be allowed to participate as[24] *amicus curiae* in investor-state arbitration of IIA violations before the International Center for Settlement of Investment Disputes (ICSID), but this requires the consent of the investor and the parties and has been done in limited circumstances[25]. Moreover, such cases are highly formalized and can be difficult to implement, especially if the arbitration is organized abroad.

ICSID offers an informal conciliation procedure to resolve disputes, but unlike the ICSID arbitration mechanism, conciliation is only available to government parties or investors; There is no provision allowing non-participating but interested persons to participate. [26]The UNCITRAL Arbitration Rules, which are frequently used in international commercial arbitration between two investors[27], also do not involve third parties and do not provide for the use of ADR. Some agreements of the World Trade Organization (WTO) are related to international investment, such as the General Agreement on Trade in Services (GATS), but the WTO dispute settlement system is available only to its member states (sometimes involving NGO the right is granted).

Settlement of disputes with development banks

Addressing the above-mentioned stakeholder engagement gap in investment disputes Study internal accountability mechanisms for resolving disputes in the world's leading development

[21] United Nations, Charter of the United Nations, Article 33.
[22] Developing countries generally score lower on rule of law indicators such as access to civil justice and lack of corruption: World Justice Project, 'World Justice Project Rule of Law Index 2021' http://worldjusticeproject.org/sites/default /files/wjproli2011_0.pdf
[23] Abdumurad K. Ensuring Confidentiality in the Detection and Investigation of the Crimes of Money Laundering //Rechtsidee. – 2019. – Т. 5. – №. 2. – С. 10.21070/jihr. 2019.5. 65-10.21070/jihr. 2019.5. 65.
[24] For example, Biwater Gauff (Tanzania) v United Republic of Tanzania, ICSID Case No. ARB/05/22 (2007).
[25] Хакбердиев А. А. Об инсценировке в сфере страхования //теоретические аспекты юриспруденции и вопросы правоприменения. – 2020. – С. 46-51.
[26] ICSID Convention, Article 28. Stakeholders do not satisfy the definition of "investor" found in most IIAs because they do not have a significant financial interest in the activity.
[27] Arbitrations under the UNCITRAL Rules may admit non-parties under UNCITRAL Rule 15(1), which allows the tribunal to “conduct the arbitration in such manner as it may deem fit”.

banks that finance development-related projects is reflected in installation trends[28].

Development banks' dispute resolution systems are largely similar in terms of objectives and processes across all banks. Stakeholders can claim violations of the lender's own policies and, in some cases, actions by the investor or borrower that have caused or will cause environmental and social harm. A mediation option is a common feature of this process, allowing for preliminary review and disclosure of disputes while maintaining confidentiality. Scholars note that development bank accountability mechanisms are generally very easy to use and user-friendly, which ensures effective participation of claimants in the process. However, the effectiveness of various banking dispute resolution systems in addressing stakeholder concerns is still unclear. The main reasons for this are, of course, their relatively short-term experience and the abbreviated presentation of publicly available information. However, there are also reports that mediation has been used successfully in a number of cases.

While Development Bank ADR systems have been lauded as a way of increasing access to justice for interest groups that may be disadvantaged by the effects of direct investment, Development Bank-financed investments is a very small part of all direct investment for developed countries. Development banks' dispute resolution jurisdiction extends only to projects financed by that bank[29].

It should be noted that many of the world 's leading private investment banks have adopted the Equator Principles, which guide the assessment and management of social and environmental risks in project financing. The Equator Principles require borrowers, not lending banks, to provide "grievance mechanisms" for aggrieved communities, the specifics of which vary by lending institution[30].

A more detailed analysis of how this principle has been implemented in the context of FDI in developing countries is beyond the scope of this article. While many investors profess adherence to the Equator Principles, they do not clearly state how and when these processes are used or whether they use ADR methods such as mediation in such situations.

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