

The Implementation of International Legal Standards in the Investment Legislation of Uzbekistan

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Abstract: This research seeks to identify distinctive inhibitions in the implementation of international legal standards in international laws of Uzbekistan. This study is necessitated by the continued disparity between implementation of international commerce laws and their dismal efficiency in draw foreign investment. Despite the country's effort towards enforcement of international trade laws, there is persistent low FDI in the country compared to other central Asia countries. This is happening despite the central placing of Uzbekistan in the region, the superior human resource base, compared to its neighbors, and the expansive indigenous resources in the country. This highlights the need to identify the cause of these inhibitive phenomena. In sight of decreasing GDP and the global continued pressure on fossil energy, more investment in oil the nation is a priority. Western investors are not eager to invest in the country, while trade volumes with china are low. This study focuses on relationship between Uzbekistan and PRC. A proposed cause of this problem was the disproportion between the domestic laws in both countries. The researcher evaluates the possibility of the differences in the source and nature of domestic laws in both countries as being an inhibitor in the development of effective international investment law that meet international standards, and are efficient in attracting FDI. The research employs comparative law research methodology. This involves the evaluation of the two legal systems, and identifying disparities in local laws that could be detrimental to effective implementation of international law

Keywords: International investment law; a principle of a freedom in choosing the investor of object of investments, a principle of independent realisation by the investor of the activity, a principle of protection of the rights and legitimate interests of investors, a principle of mutual benefit of investments.

Introduction

Since autonomy in 1991, Uzbekistan has significantly transformed, departing from a centrally-planned to a market financial system. Due to its recognition of the fact that foreign direct investment (FDI) contributes to economic growth and fastens the change to a market-based economy, the country has increasingly welcomed foreign investors. The FDI is hoped to increase the cross-national competitiveness of the country's industrial sector, increase job opportunities and develop the SME sector.

According to a 1999 UN report, Uzbekistan has internal strengths as an investment destination, but at that time, it showed investment policy weaknesses leading to investment levels below the potential of the country. The report opined that the country had both opportunity and risk. The opportunity is presented in taking gain on the country's numerous resources. The danger is in the risk of stagnating and fall behind other competitors in attracting FDI.

The foreign investment law in Uzbekistan is noninterventionist. It receives foreign investments, and legally, numerous businesses are open to FDI (Gurgen 33). There an almost equal treatment of foreign and national investors. Through the establishment of a legal framework, the country has managed to provide rights and assurance to cross-border investors preventing disputes which plague other nation's investment atmosphere. Among such measures are taxation incentives. There has been a deliberate move towards a conversion policy of economic restructuring that has avoided privatization of state institutions. The approach of the country towards the market system is acclaimed as hesitant. This is supported by the administration's incursion in foreign exchange and trade management. It is also evident in the country's negotiations of trade terms with foreign investors.

Though liberal foreign laws exist, investors find it hard and exacting while trying to establish tolerable trade terms with government institutions. This results in incongruence and non-transparency in outcomes. Investors opine that more synchronization of government institutions would be a remedy, but critically, there is need for radical overhaul and re-invigoration of industry investment policy (Gurgen 34-36). These policies would serve to provide a basis for unity and a direction to favorable terms and opportunities availed to investors.

Among the CSI countries, Uzbekistan is acknowledged as the most advanced in terms of IIAs. However, it continues trailing other countries in attracting investors. Though these rules are present, their effectiveness depends on the quality and applicability of the same. In times of arbitration, oversight bodies such as UNCITRAL, only apply the rules the parties concur as prevailing the disputed issue. This was reiterated in the case of Romak vs. Uzbekistan (PCA 1999). The presiding arbitrators noted that according article 33 of the UNCITRAL rules, the arbitrator is required to use only the law identified by the disputing parties as the one applicable to the dispute in question.

The above conditions underscore the importance of IIAs conformity to international standards. In order to attract investors, the IIAs should meet international legal standards. The international investment law in Uzbekistan is a combination of customary law, legislations and presidential decrees. The later are common phenomena in developing grappling with the structure and form of their democracy. Evidently, these laws are somewhat inefficient in advancing cross-border commerce.

Analysts cite them as being state-supervised and managed by regime members. Though it is an advantage in times of economic crisis, the country's economy is detached from the world market. Perceived informal actions and legal restrictions are accused of averting foreign trade freedom. The government continues to practice harsh payment, transactions, funds transfer and repatriation of profits control. Monetary institutions are mainly state-owned. This results in the absence of a capital market. Due to lack of proper regulations, the actions of these institutions often interfere with the operations of financial intermediaries and commerce forecast. After the USSR break-up, most CSI countries suffered a reduction in their GDP in the following years. The government's attempts were directed in curbing this decline.

International investment law and international economic relations

International investment agreements (IIA), refer to treaties prepared between countries, and attend to relevant international investments. The purpose of such pacts is the defense, advocacy and liberalization of investments across borders. Commonly these agreements in-cooperate direct (FDI) foreign investment and portfolio investment. These agreements bind the host country to treat foreign investment in an agreed way. Additionally, they include the directions of resolution of disputes arising between the host country and the investors, and the consequences thereof. There are several forms of IIAs: bilateral investment treaties (BITs), preferential trade and investment agreements (PTIAs), international trade agreements and double taxation treaties (DTTs). BITs cover agreements between one country and its investment partner, often I areas regarding admittance and security of investment. PTIAs cover significantly larger areas and include more details, and cover a wider range of issues. These agreements have become more indispensable as regards international investment. UNCTAD reports that each country has signed an IIA. This has resulted in a web like relation in the IIAs, which the UNCTAD refers to as the spaghetti bowl. International investment law is hooked on several principles. Key among them being the definition of investor. This definition sets the margins of the application of rights and commitments of investment accords. Investors are categorized into two; natural and legal persons. For natural individuals, accords are based on the national law. This may sometime require proof of residence in the country. Various hurdles accompany this division, major among them, determination of the nationality of companies in modern operational settings. This is mostly overcome by including the criteria for determining nationals in the agreement.

International investment accords, are often, proposed by the investors' country. This seeks to ensure that the multinationals feel confident. Multinationals also act as pressure groups to ensure restructuring is done to favor their operation. This is achieved through treaties and to ensure profit protection and repatriation. Issues relating to foreign investment give rise to pertinent concerns about sovereignty, utilization of natural resources and national economic laws. Developed nations seek to solve these issues through investment accords. Developing nations counter this attempt through the NIEO. This aims at establishing national control over all foreign investment.

In increasing volumes of global trade and investment, and due to the mounting complexity of the nature of such interactions, treaties have become basic requirements. Parties agree to such accords to protect their interests and to provide avenues for the resolution of any arising concerns. To investors, this is often viewed as goodwill of the host country, and is often used to gauge the appropriateness of a country as an investment destination.

Research Problem

The need for special investment legislation in Uzbekistan

Uzbekistan is the most densely inhabited in the central Asia region. Additionally, it has a vast resource base. These include estimated 5.5 billion toe of oil, about 1.5 toe of natural gas and 1.7 toe of natural gas. Uzbekistan ranks among

the top manufacturers of natural gas in the world. In recent years the external income from natural gas has overtaken cotton which has been the major exchange earner since USSR. In 2009, earnings from natural gas increased from 21 percent to 34.2 percent in the preceding year. The country, however, is a net importer of oil. Additionally it is a net importer of hydrocarbons.

This phenomenon increases the prospects of investors flowing to Uzbekistan in present and future years. The exploitation of these resources is inevitable. In the sight of receding oil reserves in other countries, there will be an increased need for oil and the country will be an option for investors in the energy industry. Since its 1991 independence, the Uzbekistan authorities have sought to propagate soviet-style control of economy. This consisted of subsidies and strict control of production and prices. This has been heightened by government measures that increase government control of trade rather than the reduction of the same. This in return, provides an opportunity and a risk concurrently. The risk is in the country being bypassed as an investment destination due to unfavorable trade climate, and the opportunity is in the investment prospects provided by the natural and human resources in the country. The government has in various occasions been pressured into international commerce accords. For example, in 2003, the government agreed to article VIII requirements instigated by IMF. This concerns itself with full currency convertibility. Despite their implementation, their effect is still minimal due to strict currency control and border restrictions.

There are prospects of improved economic growth from investments from Russia, Europe and China. This is most likely in the gas and oil sector. However, without international commerce agreements, this growth may not be realized. The economic climate is majorly considered unsafe despite the liberal trade laws (Rumer, Trenin & Zhao 174). The perceived massacre of peaceful demonstrators has worsened relations with numerous countries, especially, in the west. The 2005 response to peaceful demonstrations in Andijan has been condemned as a human right violation. Consequently, this has drawn lots of criticism from western countries. This has resulted in a perceived inclination towards trade with China and Russia. Initially, when China opened its market to investors, the out flux of investors to other countries was less than the in flux. However, due to increasing energy needs in China, which has come to rely increasingly on imports, there are an increasing number of Chinese investments in other countries (Rumer, Trenin & Zhao 176). These are numerous in countries rich in energy resources in Africa and Asia, among them, Uzbekistan. An observed trend in China's economic relations with other nations has been the signing of trade treaties. China has increasingly relied on the signing of international commerce treaties to safeguard its investment internationally. This means that without these treaties Uzbekistan may be bypassed by the opportunity, and instead, experience the risk in the dichotomies explained earlier.

Role of bilateral (China and Uzbekistan) agreements of Uzbekistan is in the legal adjusting of foreign investments

Since 1991, Uzbekistan has maintained positive relationship with China. This relationship has continued to grow, and with it an increasing number of BITs. In 2010, the trade volume between China and Uzbekistan reached US dollar 2.48 billion, with an accompanying FDI of 1.65 billion. The volume of this trade is expected to reach \$ 5 billion by 2015. The range of these agreements includes energy, commerce, FDI, transport and communications among others. However, according to Medeiros (137), the current upgrade in BITs and other trade accords is hypocritical; having ignored the CSI countries in early 1990s. In 2005, there was a high profile delegation from Uzbekistan to China. This involved the president. During this time, the two countries agreed to a treaty meant to promote comradeship cooperative partnership. This was the first treaty the two countries had signed since 1992. During this trip, the presidents also signed a \$ 600 million accord for China to help Uzbekistan in the improvement of oil fields. It would be an injustice to consider these activities without the surrounding political climate of the time in Uzbekistan. This was only two weeks after the violent response to peaceful demonstrations in Andijan. During the time the country's leadership was experiencing criticism from the US and EU, China offered fiscal opportunities. These attempts by China to improve trade relationships with Uzbekistan have largely bore fruits. China has mainly concentrated in leveraging positive political relationship as the basis for further economic collaboration. China's bilateral and multilateral agreements in central Asia countries show an increasing interest in the region. The focus on spending is on infrastructure, accessing resources, political manipulation, and supporting martial programs against terrorism. Apparently, the target is to gain a regional role that assures China of access to the markets it needs. This is amidst concerns about US and Russia, and their roles in the region.

Early findings

Examining the general issues of implementation norms of international law in the domestic sphere of Uzbekistan.

Uzbekistan has numerous favorable factors that make it easy to form treaties with china. Among these factors is the lack of a common boundary. This eliminates the probability of boundary disputes between china and Uzbekistan. This was also the reason cited for its refusal to join the Shanghai five prior to 2001. however, there has been various issues that make the implementation of the much needed international laws to be an arduous task.

One of the obvious reasons for the hardships encountered in the implementation of international law is the differences domestic laws. Uzbekistan has traditionally adopted laws inclined towards state control of major facets of trade. This includes price control, funding and repatriation of profits. Internally, there have been policies that have sought to control the cost of production and pricing. This has shielded the economy from experiencing fully the market forces. This means predicting business trends become awfully hard. These regulations also lead to the absence of a capital market. All this factors inhibit the implementation of international laws. The implemented laws may not meet legal standards of international investment laws.

Another difference between Uzbekistan and China, with possible effects on the implementations of such laws, is the government control of banks (Luo 404- 407). Most monetary institutions are state-run. These institutions are mainly not exposed to market forces. Their modes of operation may be quite different from banks in china and other countries. This in turn results in complex monetary procedures in accessing funds and repatriation of profits.

For example, whereas in Uzbekistan currency convertibility was as a result of coercion from international bodies in 2003, china has strong regulations concerning currency issues. In 2008, china restructured its policies regarding foreign exchange. Among the changes was the removal of repatriation requirement on all companies working outside china and the compulsory selling of foreign currency to domestic banks imposed of domestic firms. Generally, these reforms leaned towards giving freedom to monetary institutions to be more responsive to international market forces. The Uzbekistan policies on such issues take a contradictory approach. They are inclined towards government control of monetary institutions. This was even tightened during the world economic crisis.

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