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Conflict of Laws Approaches to Regulating Cross-Border Investment Disputes

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Annotation: The modern global economy, characterized by continuous change, is profoundly influenced by globalization, which plays a pivotal role in driving the development of international investment relations. Foreign direct investment serves not only as a key driver of economic growth for recipient countries but also as a foundation for their integration into the global economic system. In this context, ensuring legal safeguards for foreign investors and fostering favorable conditions for their operations have become crucial priorities for states aiming to attract capital. Conflict of laws plays a significant role in this process by determining the applicable legal framework in cross-border relations, including investment disputes. It establishes legal mechanisms to reduce uncertainty and balance the interests of investors and host states. In Uzbekistan, foreign investment protection is a cornerstone of state policy. Recent legislative reforms have significantly improved the investment climate and enhanced guarantees for investors. However, practical implementation of these principles often involves resolving conflict of laws issues, such as identifying the governing law in disputes between investors and the state. Together, these create a robust legal framework for addressing conflicts arising between different legal systems. A distinctive feature of Uzbekistan's legislation is its emphasis on protecting investor rights, reflected in provisions prioritizing international norms over domestic laws and enabling arbitration as a dispute resolution mechanism.

Key words: conflicts, investment activities, bilateral agreements, application of law, investor obligations, international arbitration, balance of interests, principles of investment law, dispute.

Introduction

The modern world economy, taking into account all the ongoing changes, is

characterized by globalization, which contributes to the active development of international investment relations. Foreign direct investment is not only a source of economic growth for recipient countries, but also the basis for integration into the global economy. In this regard, ensuring legal protection for foreign investors and creating favorable conditions for their activities are becoming priorities for states seeking to attract capital. Conflict of laws plays an important role in this process, which determines the applicable legislation in cross-border relations, including investment disputes. It creates legal mechanisms to minimize legal uncertainty, ensuring a balance of interests of investors and host states. In the Republic of Uzbekistan, the protection of foreign investment occupies a central place in state policy. In recent years, the legislation of Uzbekistan has undergone significant changes aimed at improving the investment climate and providing guarantees for investors. The Law of the Republic of Uzbekistan "On Investments and Investment Activities" dated December 26, 2019 enshrines the basic principles of legal protection of investors, including their right to a stable legal regime, protection from expropriation and freedom of income transfer [1]. However, the application of these principles in practice is often associated with conflict of laws issues, such as determining the competent law in disputes between investors and the state. Conflict of laws in Uzbekistan is regulated by a number of national and international sources, such as the Civil Code of the Republic of Uzbekistan, the Law on International Commercial Arbitration and international agreements, including bilateral investment treaties (BITs). These acts form a comprehensive legal framework that allows for the settlement of

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conflicts between different legal systems. An important feature of the national legislation is its focus on protecting the rights of investors, which is reflected in the provisions on the priority of international norms over national laws, as well as in the possibility of using arbitration to resolve disputes.

Materials and methods

International arbitration has become an integral part of the modern investment dispute resolution system, providing an effective and independent mechanism for protecting the rights of investors and states. This instrument has acquired particular importance in the context of globalization and the increase in cross-border investments. The article examines the main aspects of the role of arbitration in the settlement of investment disputes, including its legal basis, advantages, challenges and modern trends. Investment arbitration is based on international agreements, such as bilateral investment treaties (BITs), multilateral agreements (e.g. the Energy Charter) and free trade agreements. These treaties establish the rights and obligations of the parties and define dispute resolution mechanisms. Key roles are played by institutions such as the International Centre for Settlement of Investment Disputes (ICSID), the Permanent Court of Arbitration (PCA) and the Arbitration Institute of the Stockholm Chamber of Commerce (SCC). Their activities are regulated by relevant rules, such as the 1965 ICSID Convention and the UNCITRAL Arbitration Rules [2]. Investment arbitration applies both international public law and national law. The choice of applicable law may be determined by the parties or the arbitral tribunal, depending on the terms of the agreement. Arbitration provides investors with the opportunity to avoid the national courts of a state, which is especially important in countries with an unstable judicial system or corruption. The independence of the arbitrators ensures that the case is heard fairly. Arbitration procedures are more flexible than court proceedings. The parties can agree on the rules, language of the proceedings and the time limit. This allows the process to be tailored to the specific needs of the parties. Arbitration decisions have a high level of recognition and enforcement due to the New York Convention of 1958 [3]. This makes arbitration particularly attractive for cross-border disputes. Many arbitration proceedings are conducted confidentially, allowing the parties to avoid unwanted public attention.

Arbitration can be extremely expensive, especially for developing countries. High arbitrator fees and legal costs often make this mechanism unaffordable. Despite their flexibility, arbitration processes can take several years, especially in complex cases with extensive evidence. Arbitration decisions are generally final and have limited appeal, creating a risk of errors. Many states are concerned that arbitration mechanisms may limit their ability to implement public-interest reforms, such as environmental or health regulation. In recent decades, international arbitration has become one of the most popular mechanisms for resolving disputes between foreign investors and states. However, its use raises a number of questions related to the balance between protecting investors' interests and ensuring that states exercise their regulatory functions. Of particular concern is that arbitration mechanisms may limit states' ability to implement public-interest reforms, such as environmental, health, and other public-good regulations. This conflict between investment protection and states' sovereign rights to regulate requires detailed analysis [4]. Investment arbitration emerged as a means of protecting foreign investors from discriminatory or unfair practices by host states. The basis of this mechanism are bilateral investment treaties (BITs), free trade agreements (FTAs) and multilateral treaties such as the Energy Charter.

These agreements provide investors with the right to initiate arbitration proceedings against the state in case of violation of their rights. However, the original purpose of investment arbitration - to protect investors from excesses of state intervention - has gradually transformed into a system where investors have the opportunity to challenge reforms of public interest. This has led to a conflict between the obligations of states under investment treaties and their right to regulate domestic issues in the public interest. Environmental regulation is one of the most contentious areas where the interests of investors

Volume: 4 Issue: 1 | Jan–2025 ISSN: 2720-6882
http://journals.academiczone.net/index.php/jiphr

and states collide. For example, in Vattenfall v. Germany, the German government imposed strict environmental restrictions on the construction of a coal-fired power plant, which led to a multimillion-dollar lawsuit from the Swedish company Vattenfall. The investor claimed that the government's environmental measures violated his legitimate expectations and resulted in significant losses. The case demonstrated that international arbitration can create pressure on states, limiting their ability to make environmentally significant decisions. As British researcher Howard Mann notes, such cases create a "chilling effect" when states avoid taking necessary environmental measures because of the risk of arbitration claims. Philip Morris v. Uruguay was a striking example of the conflict between investment obligations and the regulatory rights of states. In 2010, Philip Morris filed a lawsuit against Uruguay, arguing that measures to restrict tobacco advertising and increase warnings on packaging violated their rights. The arbitration tribunal ruled that Uruguay acted in the interests of public health, but the process itself lasted several years and required significant resources.

A similar case occurred in Australia, which faced a challenge from Philip Morris over similar measures. These cases demonstrated that even when successful in arbitration, states face financial and time costs that may deter them from implementing such reforms. The Energy Charter, a key international investment protection instrument, has also been a source of controversy. For example, in Rockhopper v. Italy, the Italian government revoked an oil and gas permit to protect the environment. Rockhopper sued, arguing that the measures violated its rights as an investor. This case has sparked a major debate in the EU about the need to reform the Energy Charter. The main concern is that arbitration mechanisms may limit the ability of states to exercise their sovereign rights. As Professor Gassiel Garcia points out, the international arbitration system often prioritises investor interests, which reduces the ability of states to implement reforms. Moreover, in emerging economies, the risks of arbitration claims are even greater [5]. For example, in African and CIS countries, national governments sometimes avoid adopting radical social or environmental reforms for fear of negative consequences for the investment climate. The concept of legitimate investor expectations is one of the most controversial aspects of investment arbitration. It suggests that the state is obliged to take into account investor expectations regarding the stability of the regulatory environment. However, this contradicts the principle that states have the right to adapt their legislation in accordance with the public interest. As Russian scholar A. Kapustin emphasizes, excessive attention to legitimate expectations can limit the flexibility of state policy.

Many states, especially those with limited budgets, face financial difficulties when participating in arbitration proceedings. The cost of legal support and arbitration fees can reach millions of dollars. For example, in the Chevron v. Ecuador case, the Ecuadorian government spent significant funds to protect its interests, which had a negative impact on the country's budget. One of the most promising approaches is to introduce provisions into investment agreements confirming the right of states to carry out socially significant reforms. For example, the updated EU agreements with Canada (CETA) and Vietnam (EVIPA) include articles that explicitly recognize the right of states to regulate domestic issues in the public interest. This could reduce risks for states and strengthen the balance between the interests of the parties. Another initiative is the creation of a permanent international investment court to replace the current arbitration system. This approach was proposed by the EU in the agreement with Canada. A permanent court would ensure greater predictability of decisions and reduce the risk of conflicts of interest among arbitrators. The Energy Charter is of particular concern due to conflicts between investors and states in the area of climate policy. The EU and a number of states advocate reforming this document in order to limit the rights of investors to challenge environmental reforms. As German researcher Markus Krenek notes, such an approach could help accelerate the transition to sustainable energy [6].

Increasing the transparency of arbitration proceedings also plays an important role. Adoption of the UNCITRAL Rules on Transparency ensures public access to information on disputes, which

Volume: 4 Issue: 1 | Jan–2025 ISSN: 2720-6882
http://journals.academiczone.net/index.php/jiphr

contributes to greater confidence in the arbitration system. CIS scholars such as A. Rakhimov and O. Sadikov [7]emphasize the need to take into account regional specifics when reforming the arbitration system. They propose developing local mechanisms for resolving investment disputes that can better take into account public interests. European scholars such as Horst Eschinger support the creation of an international investment court and the reform of existing agreements. They also note that the European Union should play a leading role in promoting new standards in investment arbitration. Arbitration mechanisms are an important tool for protecting foreign investment, but their use is often criticized for limiting the ability of states to carry out socially significant reforms. The conflict between investor protection and the regulatory rights of states requires a comprehensive approach, including reforming investment agreements, creating permanent courts and increasing the transparency of arbitration proceedings. Only in this way can a fair balance be ensured between the interests of the parties and confidence in the international arbitration system be strengthened. In recent years, there has been growing interest in the establishment of permanent investment courts. An example is the EU project to establish a Multilateral Investment Court to replace traditional arbitration. The introduction of the UNCITRAL Arbitration Transparency Rules 2014 and the creation of the ICSID database of arbitration cases have contributed to increased transparency in investment disputes.

Mediation and negotiation are becoming increasingly popular as less expensive and faster ways to resolve investment disputes. Modern investment agreements increasingly include provisions on human rights and sustainable development, which influence the approach to dispute resolution. The Republic of Uzbekistan has signed more than 50 BITs, which provide a legal basis for investors to resort to arbitration. Among the most famous cases is Oxus Gold v. Uzbekistan. In recent years, Uzbekistan has carried out significant reforms to improve the investment climate, including the creation of specialized economic courts and the introduction of new arbitration rules.

The main challenges remain the development of an independent judiciary and the improvement of the qualifications of specialists in the field of investment arbitration. Arbitration plays a key role in resolving investment disputes, providing investors and states with a reliable and effective mechanism for protecting their rights. However, high costs, lengthy processes and the impact on state sovereignty require further reform. In the context of globalization and digitalization, investment arbitration continues to adapt to new challenges, including increased transparency and consideration of environmental and social factors. For countries like Uzbekistan, integration into the international investment arbitration system provides both an opportunity and a responsibility to create a favorable legal environment.

Research results

International commercial arbitration is one of the main mechanisms for resolving cross-border disputes. However, its effectiveness often depends on resolving conflict issues related to determining the applicable law, jurisdiction and recognition of decisions. In the practice of leading international arbitration centers, such as the International Court of Arbitration of the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA) and others, conflict issues occupy a central place. These issues are especially relevant in light of the diversity of approaches in different jurisdictions, which requires in-depth analysis taking into account the opinions of scholars from the CIS and European countries. One of the key conflict issues is the choice of the applicable law to the essence of the dispute. According to the New York Convention of 1958, the parties may choose the law governing their contractual relations. However, in the absence of such a choice, the arbitral tribunal must independently determine the applicable law, which leads to a number of difficulties. In the practice of the ICC, for example, the principle of "closest connection" is applied, which allows arbitrators to take into account the circumstances of the case. At the same time, the LCIA often follows English law unless the parties specify otherwise. As Russian scholar M. Boguslavsky notes, this

Volume: 4 Issue: 1 | Jan–2025 ISSN: 2720-6882
http://journals.academiczone.net/index.php/jiphr

approach increases the flexibility of the arbitration process, but may cause uncertainty for parties unfamiliar with the rules of the relevant arbitration center. Lex arbitri, or the law governing the arbitration process, is also a source of much debate. It determines the extent to which national legislation influences the arbitration process. For example, French arbitration courts adhere to the "autonomy of arbitration" approach, which minimizes the intervention of national courts. In contrast, in CIS countries such as Russia and Kazakhstan, national law plays a more significant role, which, according to E. A. Kryukova [8], may limit the effectiveness of the arbitration process. Another conflict of laws issue is the recognition and enforcement of arbitral awards. European states generally adhere to the provisions of the New York Convention, which ensures a relatively high degree of predictability. However, in the CIS countries, the practice of enforcing awards remains uneven. For example, in Uzbekistan and Kyrgyzstan, national courts sometimes refuse to recognize decisions made by international arbitration centers, citing public policy.

This, as Uzbek lawyer A. Rakhimov notes, demonstrates the need to unify approaches in the region. ICC practice is distinguished by a flexible approach to the choice of applicable law. According to its rules, arbitrators can choose the law they consider most appropriate. For example, in the case of Dow Chemical v. Isover-Saint-Gobain, the arbitrators applied lex mercatoria, citing the need to take into account international commercial customs. European scholars, such as Bertrand Ancel, emphasize the importance of using "hybrid" approaches that take into account both national law and international standards. However, in the CIS countries, as O. Sadikov notes, the use of lex mercatoria often causes mistrust due to insufficient integration of international standards into national legislation. LCIA, being one of the most authoritative arbitration centers, actively uses English law as a model. However, in some cases, arbitrators turn to principles of private international law to avoid "cultural bias". For example, in Black Clawson v. Papierwerke, the arbitrators applied German law to take into account the specifics of the contract. The London Court of International Arbitration (LCIA) is one of the world's leading centres for the resolution of commercial disputes [9]. Its practice is based on a flexible approach to the choice of law, which allows it to take into account the diversity of legal systems and cultural characteristics of the parties. Despite its commitment to English law as a model system, the LCIA actively integrates principles of private international law to ensure fairness and predictability of decisions. This approach helps to avoid accusations of "cultural bias" and contributes to the LCIA's reputation as a neutral and effective arbitration centre.

Discussion

English law is traditionally considered one of the most developed and predictable legal systems for resolving commercial disputes. It provides clear rules for the interpretation of contracts, which is especially important for cross-border transactions. The principles of English law, such as freedom of contract and a strict approach to the performance of obligations, create a favourable environment for business. This is why parties choosing the LCIA as an arbitration forum often also choose English law as the applicable law to their disputes. The LCIA Rules provide the parties with the freedom to choose the applicable law. At the same time, if the parties have not indicated a specific law, the tribunal may apply the law it considers most appropriate. In practice, this is often English law, especially in disputes related to international trade, finance and energy. This approach is explained by the high degree of institutional support for English law and its universality for commercial relations [10]. Despite the popularity of English law, the LCIA actively uses the principles of private international law in situations where the parties have not determined the applicable law or when the dispute involves several jurisdictions. The application of private international law allows arbitrators to take into account the specifics of each case, including the place of conclusion of the contract, the place of performance of obligations and the nationality of the parties. The LCIA pays special attention to issues of "cultural bias". This is especially important in disputes where the parties represent different legal and cultural traditions. The application of principles of private international law helps to avoid the perception of the

Volume: 4 Issue: 1 | Jan–2025 ISSN: 2720-6882
http://journals.academiczone.net/index.php/jiphr

arbitration process as one-sided. For example, in the case of Black Clawson v. Papierwerke, the arbitrators decided to apply German law to accommodate the specific nature of a contract between a British and a German party. Black Clawson v. Papierwerke was an important example of how the LCIA approaches conflict of laws issues. The dispute arose out of a contract for the supply of equipment between a British and a German company [11]. Although the contract did not explicitly state the applicable law, its terms and conditions were closely related to German law.

The arbitrators in this case decided that German law best suited the specific nature of the contract. Their main arguments were:

1. Place of performance: the majority of the obligations under the contract were performed in Germany.

2. Language of the contract and legal terminology: the contract was drafted in German and included references to German law.

3. Closer connection with the German legal system: the contract used standards and regulations adopted in Germany.

The arbitrators emphasized that their decision was dictated by a desire for fairness and taking into account the objective circumstances of the case.

The Black Clawson v. Papierwerke case cemented the LCIA’s reputation as an arbitration centre that can accommodate the diversity of legal systems. It also served as an example of how arbitrators can use a flexible approach to minimise the risk of ‘cultural bias’ and ensure that a case is heard fairly. The LCIA’s flexibility in applying conflict of laws rules helps to build trust among arbitrators. Parties know that arbitrators will take into account all relevant circumstances and not just follow standard decisions. This is especially important for parties from countries with different legal systems. The LCIA’s practice of integrating international private law makes it attractive to participants from different regions. For example, companies from the CIS countries, accustomed to a different approach to dispute resolution, can be confident that their interests will be taken into account. The Black Clawson v. Papierwerke case also demonstrated the importance of a comparative approach, where arbitrators study and apply elements of different legal systems. This not only improves the quality of decisions, but also contributes to the further development of international arbitration law. European scholars, such as Horst Eschinger, praise the LCIA's practice of applying international private law. They note that this approach allows for the specifics of each dispute to be taken into account and minimizes conflicts of rules. CIS scholars, such as E. Kryukova, believe that the LCIA's practice can serve as an example for arbitration centers in the region. They emphasize that the use of a flexible approach helps increase confidence in arbitration and increases its attractiveness to international investors. To further strengthen the LCIA's flexibility, it is necessary to improve the qualifications of arbitrators, especially in the field of international private law. This will allow for more effective resolution of complex conflict issues. The introduction of technologies such as artificial intelligence can help arbitrators analyze conflict rules and select the most appropriate law. To minimize conflict disputes, the LCIA can cooperate with other arbitration centers and international organizations to develop unified approaches to the choice of law.

Conclusion

Modern conflict of laws is a set of rules that determine the procedure for choosing the applicable law in cross-border relations. In the context of globalization, international integration and digital transformation of the economy, the importance of conflict of laws legislation is increasing. Modern realities require states to adapt their legal systems to new challenges associated with the dynamic development of international relations. In this regard, improving conflict of laws legislation is becoming an important task, aimed at ensuring legal certainty, effective protection of the rights and

Volume: 4 Issue: 1 | Jan–2025 ISSN: 2720-6882
http://journals.academiczone.net/index.php/jiphr

legitimate interests of the parties and harmonization of national law with international standards. Conflict of laws legislation performs an important function in regulating relations complicated by an international element. It determines the law of which jurisdiction applies to a dispute when the parties have not agreed on this independently, or in cases where agreements are violated. In addition, such rules contribute to:

1. Ensuring the predictability of legal consequences. Conflict of laws rules allow participants in legal relations to predict which laws will apply to their activities.

2. Elimination of legal uncertainty. In the presence of a conflict between the norms of different legal systems, conflict of laws legislation offers mechanisms for its resolution.

3. Harmonization of law enforcement practice. This is especially important in the context of cross-border trade, investment and electronic transactions.

Despite significant progress in the development of conflict of laws, modern realities reveal its shortcomings and gaps, which makes the issue of improvement relevant. Modern international law and conflict of laws legislation face a number of challenges that require rethinking existing approaches and amending the regulatory framework, including the increase in the number of cross-border transactions, migration of capital, goods and services, which require unification of approaches to the choice of applicable law. However, differences between national legal systems, including approaches to the recognition and enforcement of foreign decisions, create legal uncertainty.

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