INTERNATIONAL INVESTMENT LAW AND THE CONTINUED RELEVANCE OF THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

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Abstract

Globalization in today's world brought about massive social, economical and technological advancement to man in his quest to rediscover himself. The zeal to explore and exploit a global market in his bid to control his economic sphere crested a proximity which became desirable for all stake holders to complete in accessing the benefits that is embedded in this global rat race. Advancement in modern technology with its attendant communication super highway made it possible for man to transfer large volume of finance and capital as well as market information across horizontal boundaries. This *invariably made the State to yield to fluid regulation as geographical boundaries were giving way to one commercial space. It then became imperative that there should be in existence; adequate legal measures that should be put in place to protect foreign investors and foreign capital investments both under the state laws of host communities and motional law. The extent to which; the rules of international law offers, protecting to foreign investment in their countries becomes the gravamen of this article.*

Introduction

Generally speaking, it is a well-known fact in international law that; international business practices require that foreign investors always want to seek legal guarantees to protect their investment in foreign countries. The normal process is for capital exporting and importing countries to adopt certain unilateral, bi-lateral or multilateral legal measure, all aimed at protecting investors against unpredictable changes in the legal conditions of overseas investment and its consequent impact. These guarantees are usually available to direct foreign investment and tied to specific risks arising from the political, economic and social conditions of importing countries it undertakes; not only to compensate the foreign investor for his losses but also to prevent the occurrence of losses. The rational for such protection**:** In the last four decades, the world, generally speaking, witnessed a rush of repudiation or termination of contract with foreign investors. It is quite obvious that most states have not been content to expect compensation for their nationals, by relying on the CorDell Hull Formula requiring state nationalization of alien property for public purpose without discrimination to pay prompt, adequate and effective compensation (Akinsanya. A1980), Indeed, most of these measures have certainly been accompanied by partial or no public compensation while lump sun compensation has acquired the character of customary international law.

Certainly, while it is agreed that there is no international law that compels a state to allow private foreign investors to be paid apart from a treaty (Akinsanya. A1980), it is however a convention with best international practices that once an investment has taken place i.e. once a property has been acquired by an alien, if it is in public interest, such a property acquired must be compensated. As "Bin Cheng (1958 - 1959) noted: The rationale for compensation of expropriation consists of the fact that, certain individuals without being in any way at fault are being asked to asked to make sacrifice of their property for the general welfare of the community, when other members of the community are not making corresponding sacrifices. The compensation paid to the owner of the property taken represent precisely, the corresponding contribution made by the rest of the community in order to equalize the financial incident of this private property.

The position of developed countries on expropriation:

It is on record that several capital exporting countries especially U.S.A and U.K have discouraged expropriation since they are of the view that it spoils investment climate and scares the much needed investment for economic development. And where expropriating states exercising their lawful tower of domain fails to make adequate representation to a dispose alien investor. The investing state should as a matter of duty and right make diplomatic representation on behalf of its national. And where local remedies are exhausted, recourse maybe to international arbitration or adjudication and where diplomatic negotiations and representation fail, covert or overt intervention is employed to obtain compensation or restore status ante.

Countries intervention in investment dispute:

It is on record that several countries have in one way or the other intervened in investment disputes on behalf of their nationals. Iran did it in (1954), Guotamala in (1954), Egypt in (1956)= Cuba in (1961), Brazil in (1964) and Chile in (1973). (Akinsanya. A1980). What these countries did was to enact legislations which they believe will ensure fair treatment of their national investors disputes, such measures include;

a. Company of the other party.
b. The interpretation or application of any investment authorization granted by the competing foreign investment authority.
c. An alleged breach of any right confined or created by this treaty with respect to an investment. (ICSID News 1-2,1985)

The situation on ground:

While some bi-lateral treatise on the protection of investment made reference to some facilities offered by ICSID between one contracting state

a. Suspension of bi-lateral foreign aid programmes in expropriating states.
b. Denial of trade preferential treatment.

c. Freezing of assets of such stand their nationals,
d. Voting against their loan application in multi-lateral financial institutions e.t.c

However these measures have been largely ineffective as it has only served to strengthen nationalistic hostility towards direct foreign investors in such state.

The International Centre for settlement of Investment Dispute (ICSID):
Founded in 1964, it is a body that is set to settle investment disputes article VII(I) of the body goes ahead to re-define investment dispute as:

a. The interpretation or application of an investment agreement between a party and a national or and the national of other contracting state, others simply provide investment agreement concluded between one contracting state and the nationals of others. “If the investor so refers include a submission of the dispute to ICSID”.

Conclusion:
It is now quite obvious from the arguments posited above that the ICSID is not solely the machinery for settlement of the investment disputes between contracting state and their nationals. The establishment of multilateral investment agency serves the same purpose as ICSID by encouraging direct foreign investment and elimination or reduction of political risk as a deterrent to such investment. Essentially, the ICSID has been largely rejected by most Latin American countries who regarded such arbitration as an impermissible external interference in their internal affairs. The rejection of this basic concept of the ICSID is contained in a document which later became known as "EL no de Tokyo" -annual meeting of the board of governors of the World Bank. In this regard, the ICSID is no longer relevant to settlement of investment dispute.