

Effect of Interpretative Challenges of Concept of Foreign Investment on the Secured Legal Environment

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Abstract

The supportive standards, treaties and regulations of host country are productive of a secured legal environment for attracting and supporting foreign investors. However, the variety of definitions and inefficiencies in the criteria for identifying foreign investors, has a direct effect on emerging many differences between the investor and the host government in identifying some property and income arising or related to foreign investment and attraction or exclusion of foreign investors. Based on this, the effectiveness of protection's standards, treaties and internal regulations for establishing and expanding the legal security environment is a fundamental question. This research considers the impact of diversified investor definition and its identification criteria on domestic regulations (Iran) and international documents (ICSID), and in response to the legal deficiencies introduces identification criteria and necessary legal mechanism for creating and develop a secure legal environment for foreign investors.

Keywords: *Foreign Investor, Secured Legal Environment, Supportive Standard, Investment Concept*

Introduction

Since the early 1990s, competition has begun to attract foreign investment between countries. The global financial crises of 2007-2008 also played a major role as a booster factor of countries' competition in attracting. Many countries accepted foreign investment as a factor in reducing the effects of the crisis. Similarly, various countries added "direct" attraction of foreign investment in their economic and social development policies. Countries believed that attracting foreign investment are effective in a number of ways, such as identifying and developing the capabilities of natural investment in the host country, transferring technology, managing and transferring knowledge. Of course, in contrast to this belief, should mention the effort to attract investment based on its impact on growth and development, which is part of the history of attracting foreign investment; thus, the attraction of foreign investment didn't impact growth and development of some countries. Although attracting foreign investment in different countries such as Malaysia, China, Brazil and the Republic of Korea has played a significant role in boosting their economies, but this role has been dimmed in many developing countries such as Ghana and ...¹.

Obviously, success in attracting and utilizing the attractiveness of foreign investors is also closely related to the capabilities of the host country's legal programs and policies. The highest investor demand, from spending the investment in the host country until the end of its goal, is legal protection of its own and its capital; a government who receive the investment is committed to the investor to take appropriate and reasonable care from him. Under this commitment and the will of the government to fulfill its commitment, the investor can use the investment in a safe and secure environment. (Also, concerns of the host government such as national security have been a controversial discussion that is out of the scope of this research². Legal security of investment can be studied in the following ways:

1- First period: Colonial countries dominated the country and carried out foreign investment themselves; consequently, legal security was assumed³

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2- Second period: Closed door-to-door foreign investment attraction is a security investor's legal security that has emerged in the form of diplomatic support due to the willingness of governments to enjoy the independence of legal security, and this diplomatic support was faced with problems in terms of type and type. Ultimately, to address the shortcomings Legal protections, countries moved towards legal unity⁴.

3- Third era: The era of open door policies that started from the beginning of the nineties and countries agreed on common principles. At this point, developing countries with open-door policies .welcomed foreign direct investment. According to Open Door Policy, the abovementioned countries, in order to attract foreign investment, have made extensive changes to the laws that prevented foreign investment from attracting or, by adopting appropriate laws, sought to create the necessary incentives and legal protections for foreign investment.

These countries have embarked on a peaceful path for the principles of international law and in dealing with foreign investment met criteria such as "national behavior" and "minimum international standards" .These terms are generally accepted by countries in multilateral and bilateral agreements between foreign investors⁵, But in general, governments considered legal security and enforcement policies in the form of international supportive standards, bilateral treaties, and domestic laws or policies⁶. Obviously, compliance with international standards of support and the existence of these standards in investment treaties or its crystallization in domestic and international laws is effective in providing a secure legal environment for investment, in a way that would lead to compliance by the host government and non-compliance with it. However, despite the attention of countries to the standards, there is still a legal concern: Is there any interpretative challenges regarding the concept of foreign investment in the field of internal regulations and international documents? And have interpretative challenges affected the creation of a secure legal environment? If there are any interpretative challenges, what are the shortcomings needed in order to extend the investor's legal security?

This research, initially aimed at realizing, guarantee and extending the legal security (the subject of the request for the foreign investor) will outline the standards of protection and treaties by a qualitative-library and a descriptive-critical approach, and in consequence, the legal shortcomings effective on the impact of these protections will address legal security environment and solutions for existing demands.

1. Legal Security in the Light of Protection

As above, these supports can be analyzed in three formats: international supportive standards, bilateral treaties and other treaties, rules and regulations or internal policies.

1-1 International Supportive Standards and Secure Legal Protection

As in customary international law, according to many lawyers, the rights of foreigners in the host country are generally recognized and examined under the term of "international criteria of at least behavior with foreign investors", is the most effective source of law that can be used to protect investors in the international arena.. Gradually and in the line of formation of international dialogues of countries for a joint solution to protect foreign investment, the number of usable standards by capitalist countries increased so that to provide the least security in the light of customary international law for protection of foreign investment.

The nature and scope of supportive standards are considered as follow in order to more accurately assess the extent of utilization in the domestic regulations governing the protection of foreign investment in Iran and ICCAT or convention of Washington:

- Full Protection Standard and Security

This was one of the supporting backgrounds in relation to foreigners in international law. Traditionally, it is observer of the host government's commitments to provide security of foreigners, and its the most important is the physical protection by the police, but in recent

decades, approach of arbitral courts in sentences exceeds physical security, and physical, legal, and commercial security are also subject to the full protection standard⁷.

- Fair and Just Behavior

As a supportive standard⁸, it is cited in most bilateral treaties and other investment treaties⁹. Introduction and prediction a fair and just behavior which is seen in very different forms, essentially addresses the various and different behaviors and practices of the state that effect on investments and behaviors. This standard specifically addresses rules that break down investor security; for example, the Bilateral Investment Agreement between the United States and Argentina, signed in 1991, in the introduction states that "fair and just behavior to investors is considered in order to maintain a stable system"¹⁰. The standard of fair and just behavior has a set of obvious and objective applications. Terms "fair and just" are included in the treaties as standards have different content, and governments do not follow the same pattern; therefore, Article 31 of the Vienna Convention on the Law of Treaties is used to interpret these clauses¹¹. Also, the host government will use this condition to show the investor's obligations¹².

By reviewing the procedures of the International Arbitration Tribunal, we find out some principles of this standard and included: 1) transparency and support for legitimate expectations of the investor; 2) compliance with the contractual obligations; 3) Fair hearing and legal procedure; 4) good faith 5) prohibition of coercion and commitment. It is very clear that these examples have an statistic aspect and they will expand and develop with legal developments in the tribunal proceedings¹³.

- Full Support and Security Standards

This is another standard rooted in the practice of traditional US treaties and is also under consideration in most treaties on foreign investment, which has been named "full protection and security" in the past. This standard indicates that the host country is committed to taking steps to protect the foreign investor against adverse effects. These harmful actions and acts to the investor may be carried out by the host government or affiliated entities of the government or third parties¹⁴.

- Pervasive Standard (or obligation condition)

This is support of investment¹⁵. It pursues this object that violation of obligations of the foreign investment contract is as violation of the international obligations contained in a bilateral treaty between the host government and the investor. The pervasive condition is an exception to this general rule that the violation of national laws or contractual requirements will not create the international responsibility of the host state¹⁶. The reason for such a condition in investment treaties is due to the investor's concern of violations of contractual obligations by the host government which have private aspect and domestic courts would consider this violation. This condition causes major investors and the country get investment to consider as much as possible their own investments, arrangements special conditions that will protect investors' rights to the extent possible and prevent them from creating an unfavorable situation; they will anticipate these arrangements in bilateral treaties or investment contracts, and the host government would be obliged to obey them, such as the Iran-British Petroleum License. There is still no definite definition for this standard.¹⁷

- The Standard of a Perfect State

This is most commonly seen in commercial contracts. Such provision in the bilateral treaties agree that if one of them sign a contract with a third country later, and granted concessions to a third country, The current party will also benefit from these privileges without any formalities. The purpose of this clause in investment treaties is to support investment rather than investor. In the international arbitral votes pointed to this condition more¹⁸.

In general, the nature of international behavior standards is such that all parties in the host state must appropriately understand the true meaning of it, in order to ensure its strict and practical conditions, and to provide legal security for the investor. The host government will create a secure legal environment for foreign investor by full understanding the international behavior standards, on the other hand, based on the "International Minimum Standard", the host government is required to respect the investor's rights in relation to regulatory action. The international minimum standard is a customary international law norm governing behavior of foreigners and include of principles in which the minimum rights of aliens have been considered, and the host country regardless of national law, should observe it in the current procedure regarding aliens. Legislative measures of the host government may be in the form of legislation that is necessary under international regulations or it is in opposed to international regulations or is cancel international rules. Also, the government's decisions and actions regarding investors should take into account certain constraints¹⁹ ; for example, taking a decision contrary to international rules, such as those that violate investor rights or violates international regulations or discriminatory behavior with investors, which the host government would be responsible under "international minimum standard". Violations or cancellations of investment contracts and the expropriation or confiscation of property of investor is also a violation of the investor customary international law and a violation of the international minimum standard. Due to the result of discussion about the international supportive standards, it can be said that a set of general principles are in the form of an international standard that does not interfere in the details of the investment and its concept; in other words, these mechanisms do not resolve the ambiguities and shortcomings resulting from the lack of definition of investment. . In general, it supports the investor as a conflict between the physical behavior and manner and legislation of the host government with the investor's interests.

2-1- Bilateral and Multilateral Treaties

Another mechanism effect on creating a legal secure environment for foreign investor is bilateral investment treaties (BITs). Governments are bound to comply with standards by bilateral (or multilateral) treaties that are effective in realizing a secure legal environment for investors. In these treaties, on issues such as definition of investment and investor, how to accept capital, how to deal with foreign investors, the conditions and how to transfer funds from the investment, including the origin and its benefits, avoidance of expropriation and seizure of investors' property and breach of the investment agreement by The host government, terms of dispute settlement and arbitration. These supports may be in the form of absolute standards or relative standards.²⁰ These treaties are signed between States at the bilateral, regional, inter-regional and global (multilateral) levels. According to UNCTAD in 2017, 3,324 treaties had been signed by that date: 40% of the total BITs were between developed and developing countries, 13% between developed countries and transition economies, 8% between developing countries and economies In transition, 28% are between developing countries and 3% between transition economies (8%) between developed countries; and according to the UNCTAD report, in 2018, new treaties were 18 ones, while the rate of cancellation of treaties were 22 ones that are historically unique..

Perhaps this is also due to investors' concerns about the quality of the domestic entities of the host country, the unilateral changes in investment laws, and inability to enforce their right in the domestic courts. In the absence of clear rules of investment protection, the best investing countries understand that they could provide the maximum possible support to their investors through negotiation and conclusion of clear treaties²¹. In fact, the developing countries also believe that the conclusion of bilateral investment treaties will help to expand the legal protections of foreign investors against investment risks and increase the flow and attraction of such investments to their country and attract them²² .

It is necessary to look at this matter from the other aspect; whether the treaties, along with the supportive standards have been effective in protecting the rights and obligations of the parties in strengthening the protection of foreign investment as described above? And is a desirable mechanism, or should we look for other mechanisms? In response it should be pointed out to the 2017 report that these treaties and agreements have failed to meet the pace of the market, while some countries, such as Canada and China, are negotiating about changes of former treaties and custom agreements.

Indonesia has stopped all treaties and contracts to support foreign investors and has called for a review and negotiation. In this regard, the role of the World Organization for the International Investment is a subject of discussion, which could be a reason for the ineffectiveness of international treaties and international supportive standards for foreign investment. In the light of treaties, it can be said that there are very good support, but these supportive mechanisms will be effective and efficient when the property and assets of the investor are subject to investment and the rules governing it. Therefore, clearance of the concept of investment should be the first priority in any treaty. However, in most treaties, an integrated approach and an inventory of assets and instruments are used as foreign capital; for example, the Agreement on Promotion and Protection of Interaction between the Government of the Islamic Republic of Iran and the Government of Singapore approved on March 2018 has used this approach. According to the Article 1 of this Agreement: For the purposes of this Agreement, the term "investment means any asset ... which is invested by investors of one promising Party in the territory and in accordance with the laws and regulations of the other promising Party. For example, Article 6 (1) of the Energy Charter Treaty refers to "investment" defines as any asset owned or controlled directly or indirectly by an investor and related to economic activity in the field of energy. There are, of course, also other agreements that, while adopting a valid approach to the concept of "investment," provide a limited list of types of assets subject to legal protection. (North American Free Trade Agreement)²³ . Some other treaties have defined investment in terms of economic applications; for example, the agreement between the United States and Chile in 2003: Investment means any asset owned directly or indirectly owned by investor, or controlled by him has specifications of an investment, including an obligation to supply capital or other funds, the expectation of profits and benefits, or the assumption of risk.

3-1 Legal Security Environment and Internal Regulatory Approach

In spite of the institutionalization of international supportive standards of investment in the customary international law and the development of bilateral treaties of foreign investment, in case of internal legal security and its continuity in the host country would influence in the investor's fate the three stages of: first, at the stage of entry and exit of capital; second in the stage of his activity in the host country and third one at the stage of disputes. Many countries seeking to attract foreign investment have provided favorable conditions for investment by adopting supportive and incentive laws. Accordingly, another mechanism to create a legal secure environment is internal laws and relevant and suitable regulations to this issue²⁴ . Among the national laws, the constitution of each country plays a significant role in creating a secure environment for attracting and supporting foreign investment.²⁵

In the last few decades, countries did some measures to create a more favorable legal environment for attracting more foreign investment: Brazil releases regarding the health; Maldives has allowed foreign investor to take ownership of property by abolishing restrictions; Vietnam approved the purchase of airport shares and Greece has granted 14 airports through privatization to foreign investors; Italy granted 38% of its post offices; Madrid has privatized 49% of its airport with foreign investors; Chile let foreign people access to exchange office,

Geneva has reformed the law for tax exemptions, and Myanmar has also abolished law of 2012 and investment of 2013 and has recently introduced a new law; Indonesia for encourage investors and secures its investment approved investment attraction and issuing licenses law for up to three hours²⁶.

In 2001, the Islamic Republic of Iran also approved the "Investment Promotion and Protection Act". This law is one of the most progressive and liberal laws among the laws of other countries and includes many sponsors, facilities and incentives for foreign and Iranian investors. The four main principles of foreign investment are as follows: (a) attitude toward investors; (b) guaranteeing investments for expropriation or nationalization; (c) monetary and currency regulations and transfer of funds; d) settlement of foreign investment as approved by this law; In fact these four principles form the framework of a legal secure environment. In line with the implementation of this law, its implementing regulations were approved by the council of Ministers in 2002, as well as foreign investment trusts to create a kind of concentration that could be considered as " Investment Organization, Economic and Technical Assistance of Iran" and " Foreign Investment Services Center".

The main object of the protection laws of foreign investor is to create a reliable environment for foreign investors whose activities enjoy full legal protection in the host country. Despite the provisions of international law and foreign investment treaties, domestic laws and the legal and administrative environment of the host country continue to play a significant role in attracting and supporting foreign investment, because the "principle of national behavior", which crystallizes in domestic law, would be a regulatory framework viewer of Foreign investment. Therefore, it is necessary that the host country's legal position in creating a safe environment for attracting investors should be clear. In addition to the law of encouraging and supporting investment, other internal laws, such as labor law, tax laws, free-zone customs laws, land ownership, company shareholdings, monetary and currency laws, environmental law, The dispute settlement system has a significant role in investing in a country's decision-making process²⁷. When it comes to legal security in the field of foreign investment that the principles and rules of law are applied equitably in disputes²⁸. Foreign investment and the rules governing it, on the one hand refer to domestic law and on the other hand refer to international law; so that in the event of a dispute, the domestic law of the host country first must be examined and then if rights of foreign investor does not respect by the country who receive the capital, then the investor will resigned his rights in the international arena. Since foreign investment has a major risk, a system of effective disputes is one of attraction tools of foreign investment and reduces its risk. These disputes also create special claims that should be subject to appropriate rules about it. The legal security investment features in the host country include the transparency of commercial and currency laws, property laws and especially intellectual property, customs and tax laws, labor law, international trade disputes or investment disputes. The important issues that are stipulated and guaranteed in the investment laws and other national laws to encourage, attract and protect foreign assets are: entry of capital and property, transfer of profits and capital abroad, expropriation and compensation, disputes and tax and customs privileges.

2- Good but Inadequate Support: Shortcomings and Challenges

The need for investor protection in the context of standards of support and treaties and domestic regulations are expanding, but it still has several shortcomings. Among the main challenges in the context of short supporting, we can point out the conceptual defects of definition of investor and flexibility of national sovereignty in the light of investment.

2-1- Investor Interpretative Approaches

Regarding discussion of foreign investment, we face interpretative challenges due to the conflicting interests of parties in the contracts and the bases of their desire to define foreign

investment and investor. There are different definitions in this regard: "Investment means" any type of investment ... including equity ...; and includes: tangible and non-tangible property, including all property rights ...; a company or ... Interests in a company or interests in its assets; ... issued permits under the law ... any rights granted by law or contract and any permits and permissions are permitted by law ". In this regard, Sornarajah defines it, transfer of international capital from an international geographic region to another country²⁹. While, in the history of US investment law, this insufficiency to define has been a subject for many years.

The necessary legal security environment for an investor includes having a precise definition of foreign investment, investor, property and foreign assets. Just this kind of definition leads to a difference in the interpretation of foreign investment contracts in an international arbitrary. Since any kind of interpretation, whether general or not, has different outcomes and has a very direct effect on investment attraction, so finding approaches and definition of investment is important.³⁰ Currently, legal literature confirms that there are dense and different rules relating to foreign investment, and existence of these criteria and not similar views leads to different results. Interpretations and definitions have a very close relation with the specifications of bilateral treaties; accordingly, countries apply three approaches to the definition and interpretation which we will discuss about shortcomings rules.

Approaches

In general, we face of different approaches to define foreign investor in investments treaties of countries:

First approach: it is a well-defined definition based on asset which is referred to "asset-based" approach³¹, and it is beyond the unilateral foreign direct investment. In this definition, the "control" or "ownership" of the foreign investor on the assets used in investing in the host country is considered as a determinant factor in the definition of investment. This definition includes "any assets" ³² or "all assets" that is associated with a list of titles. Five types of asset involves in this investment: 1- movable and immovable assets and any type of property rights such as mortgages or bonds. 2- Different types of corporate dividends such as shareholder-stock-bond and entrepreneur- 3-Claims or financial claims and investment-related loans; 4-Intellectual Property Rights; 5- Granting of business rights, which are the same as those granted by law or through treaties³³. Therefore, any assets and property that are related to foreign investment are included in the definition of investment.

In the second approach, they argue that the definition of investment not only requires a complete concept that cover a wide range of investment types, but must also be sufficiently flexible to provide new types of investment in the future; in other words, the " transaction-oriented " is named³⁴. Many bilateral investment treaties concluded by the United States with other countries, such as Bahrain in 1999, reflect this approach. Here, the term investment is defined as "any investment" that is defined as below: "Investment by individuals or corporations by means of any investment owned or controlled directly or indirectly by such persons or companies but not limited to [...]" ³⁵.

An agreement between the United States and Chile (2003) describes the term "specifications of an investment" that describes the financial liability commitment, profit expectation, or assumption of risk. According to this treaty, foreign investment is: investment means any type of asset that is directly or indirectly owned or controlled by the investor, which has characteristics of an investment; including obligation to provide capital or other funds, the expectation of profit or assume the risk of such a definition of investment with complexity. Sometimes the issue becomes more complicated, which, according to its review, refers to the word "investment" (for example, financial claims related to "investment") that sample of such clause can be seen in the Energy Charter; Article 16 of the Energy Charter states: " Financial claims and claims related to

executive obligations arising from a contract that has economic value and investment-related ". However, assigning the investment framework in this way is about any assets, interests and financial revenues in the benefit of investor, but in practice it will be difficult to distinguish the scope of foreign investment.

In the third approach, we do not have a widespread definition of investment, but in this approach we will have a closed list of examples of investment. This method by the broader definition "asset-based" is different from of investment and includes the prudence concept that includes a complete list of tangible and intangible assets (such as companies, loans, profits, checks, stocks, and bonds, etc.) in the treaties. Some treaties have provided a subtle definition of "investment", as they exclude certain assets and transactions from the definition of "investment".³⁶

However, another description (Juilliard, Carrera 2007) points out that in terms of different mechanisms, situations, and conditions, this difference can be based on the definition of probable knowledge and the absence of certain criteria, such as international business rules such as personal code (Business Objectives), commercial goals, or objective criteria of a spatial approach, such as a different country, nationality, etc., to determine this ambiguity and its effect on the nature and epistemology of foreign investment. It seems that the existing approaches, including asset-based, transaction-oriented and the third approach have a legal disadvantage and this can be addressed regarding the existing criteria because of not paying attention to the concept of investment and the conceptual transformations of capital in the current situation, which is in line with capital as Culture and is also due to the lack of separation of foreign investment with the investor. Assume that the Iranian investor is a resident of the outside; its relation to capital is the product of a transaction, or relation? He invests in an increase in income within the foreign investor who is not involved in the geographical transfer of his capital like Afagheneh brothers. Based on these shortcomings, it should be noted that the existing interpretive approaches do not contain specific criteria and in definition of the criteria do not pay attention to the relation of capital, investment and investor.

2.2. Legal Security Challenges Due to Interpretative Shortcomings

A: Internal Regulations (Iran)

The first law to attract and protect foreign investment in Iran was adopted in 1956. In the Act of Encourage and Protection of Foreign Investment of the Islamic Republic of Iran, there isn't a complete definition of foreign investment but more about proofs. Only clause (V) of Article 1 of this Act stipulates: Foreign investment is the use of foreign investment in a new or existing business after obtaining an investment permit. In fact, in a much more general context than the concept of foreign investment, it points out investment samples. The said Act indicates foreign investment as follows: a) cash funds as changeable currency that can be imported into the country through a banking system or other ways of transfer of funds approved by the Central Bank of the Islamic Republic of Iran. (B) Machinery and equipment; (c) Tools and spare parts, disintegrated parts and raw materials; Additives and auxiliaries. D) Patents, technical knowledge, brands and trademarks, and special services; (e) Transferable profit of foreign investors; and (g) other authorized items approved by the council of Ministers³⁷. The Iranian Foreign Investment Promotion and Protection Act also seems to have used a trade-focused approach that focuses on the origin of foreign capital, in the presentation of investment examples³⁸. The proof-based approach is not an answer to legal challenges, but also contributes to the expansion of the challenges. It can be said that mention of the above samples has many disadvantages; that it is depend on the foreign investor's foreign exchange and doesn't mention the rights and interests which assigns or controls by the foreign investor under the law or a contract, and, on the other hand, the contract views investor in contractual arrangements such as construction, management, production, privilege, income distribution, and other types of similar contracts is not supported by this law.³⁹

This Act, which has been approved mainly by encourage to return of Iranian capital abroad, unfortunately, provided a vague definition of the foreign investor and regarding rules on citizenship, will cause a lot of complications in the event of a dispute ⁴⁰. The Presidential Consensus Commission has defined "investment" as the use of property or assets. Here are some examples of investment cases. Since the provisions contained in the Commission have had an instance aspect rather than a limitative aspect, the phrase "including" was added in the text of bilateral investment treaties to mention the investment examples. Another point raised in this commission was that the definition of the above mentioned cases should be based on the laws and regulations of the viable promising party ⁴¹, such as Article 1 of the "Agreement on Mutual of encourage and protection of Investment Between the Islamic Republic of Iran and the Kuwaiti government "which defines the term" investment ": The term investment means any property, assets or its rights that is applied by investors of one promising Party in the territory of the other promising Party in accordance with the laws and regulations of the other promising Party and includes an asset or right which includes or is in the form of:) Movable and immovable property and any property rights such as rent, mortgage, right of imprisonment, bail. (B) Shares, equity interest, or any form of participation in companies and other debts, loans and bonds issued by any of the investors of the promising party. C) Claim to money or other receipts under a contract with economic value. D) intellectual property rights, including, but not limited to, trademarks, patents, industrial designs and samples, technical processes, technical knowledge, trade secrets and good repute. "

When, in a definition, "foreign investment" is discussed, the investment is considered to be any type of asset that the investor does in the other country provide but in accordance with the laws and regulations of the viable country. The description of a specific asset as foreign investment versus domestic depends on the relation of the owner of the asset and the investor. In general, considering specific assets as foreign capital seems easy; when the asset in question is owned by a natural or legal person, it is considered foreign property that is in line with the investment objectives.

However, it is very clear that the simplicity of this formula is very misleading, interpretive and challenging, because sometimes foreign investment is carried out through complex mechanisms consisting of various bill of rights of ownership. Maybe a large part of shareholders were multinational partners and have been scattered across different countries as vertical. Some of the bilateral treaties, by understanding this issue under the term of mentioning the word "oversight" do their support; for example, the contract between Austria and the United Arab Emirates in 2001 defined investment as follows: "Investments made by investors by each parties will mean any assets owned or controlled directly or indirectly by them in the territory of the other party"⁴². In the bilateral agreement of Iran, the scope of the treaty regarding the concept of an investor limited but based on the parties and the bargaining power of that country and specific situation of each treaty applied these indicators or criteria in combination or alternatives, but the legal shortcomings of the interpretative challenge arising from the legal concept of investment remain for discussion.

2- Legal Security Challenges Caused by the Foreign Investor's Interpretative Shortcomings in International Documents

(ICCAT or Convention for Investment Disputes between Governments and Nationals of Other States (Washington Convention))

In international documents, we do not have a single definition of the concept of investment. Foreign direct investment from the perspective of international organizations and international law also has a variety of definitions; for example, (the World Trade Organization) defines foreign direct investment as: When an investor residing in a country (origin country) purchase its

assets from the other country (host country) to manage this asset (FDI)(Foreign Direct Investment). In the traditional meaning of foreign investment, the term "property, rights and interests" was named.

This old formula was merged in the treaty of friendship, the treaties of disputes settlement and in human rights documents. New investment treaties use a perfect meaning in the definition of investment.⁴³ Multilateral treaties basically define the term "investor" and observe the requirements of that definition for competency of ICSID that as examples can point to the NAFTA, Energy Charter (ETC)) Or a draft of multilateral investment agreement that contains a definition of investment, of course this definition is partly a result of bilateral investment treaties.

Initially, the term investment was categorically defined broadly and vaguely. The term "property, rights and interests" of the foreign investor on the territory of the host government is one of the most common terms used in the definition of investment; but today, unlike the past, the current procedure tends to precisely define investment in order to avoid any ambiguity in treaties because, the most governments are reluctant to get any foreign investment into their country. Accordingly, by providing a precise definition of foreign investment, they attract and protect the foreign investment. What is clear about the way of defining investment in bilateral investment treaties is evident is that in these treaties, while providing a general definition of investment, the objective examples of investment are also counted. By considering bilateral investment treaties, it can be stated that, a foreign direct investment should have the following features:

- 1- Transfer of money and initial capital from abroad to the host country
- 2- a long term project
- 3- Intention and motivation of a regular income from the project by the investor
- 4- Project management by the foreign investor who has allocated the initial capital to the investment, at least in a limited manner.
- 5- A business risk for the investor⁴⁴

It can be said that one of the documents cited in the international arena especially foreign investment, is ICSID or the Convention on Investment Disputes between Governments and the nationals of other States (Washington Convention).

The ICSID Convention didn't define investment, which is itself a positive development of existing mechanisms to create a legal secure environment. The lack of definition of investment in the ICSID Convention means that there is no definition of the requirements and conditions for identifying an economic activity as an investment under Article 25 (1) and its inclusion under the jurisdiction of the Convention.

It seems that its causes, in one hand, can be found in the different language of stating investment material in bilateral and multilateral treaties that are usually suitable to the needs of the treaty states, and, on the other, to different interpretive approaches of different courts in addressing the concept of investment in accordance with Article 25 (1) of the Convention, which led to the issuance of controversial provisions regarding the definition of investment. The study of the ICSID procedure along with the legal doctrine and views of the experts in this field shows that the main source of disagreement and discrepancy in the ICSID procedure is the application of two different theories means Objective Theory⁴⁵ and Subjective Theory, in interpreting the concept of investment.

During the drafting of the convention and defining investment, many suggestions were made in this regard but were abandoned because of non-unity of views and disputes between the capitalist and capitalist countries, and country who got it finally they concluded that the definition of investment was due to the competence of the Convention is obliged to the parties of the contract. With reference to the phrase "the need for international cooperation for economic development and the role of investment in it," it can be said that in the objectives and the

introduction of the convention, the objective of the Economic Development Convention is in the light of investment; that is, the characteristics of foreign investment must necessarily be the economic development of the host government; herewith the opposite of this goal is not discussed and it is not clear if the investment is not for development or does not have any positive effects on development, will it still be eligible for investment and at the competence of the Convention?⁴⁶ The ICSID arbitration court has faced a challenge in identifying a foreign investor in the absence of a definition of this concept in the convention. The ICSID arbitration court decision in the "Salini against Morocco" case was a milestone in the evolutionary process of the ICSID jurisprudence related to the concept of investment. The Court's decision in this case was known as the "Saline Criterion." According to the court's decision, four criteria for determining investment are necessary. These criteria are: -Activity has a financial obligation;- The project will be carried out within a given time; - The investor tolerate the risk (profit and loss) of the economic activity of the partner; - This activity will be beneficial for the economic development of the host government.

Although the introduction of Saline criteria could provide a model for identifying investment, but because of the lack of compulsory history in the ICSID Convention, this view couldn't become a unified procedure. The arbitral courts have practiced two procedures for the qualification of the Convention:

A) "Qualitative attribute" approach: This approach was taken from the Salini case and states this the belief that, in order to identify an economic activity as an foreign investment, should have all the criteria set out in the salinity simultaneously and collectively based on clause 1 of Article 25. This approach uses objective theory to identify foreign investment.

B) The "Form feature" approach: Based on this approach, the Saline criteria not only serve as an official and fixed indicator, but also as criteria which arbitration courts can use it for qualification, and it is necessary to combine all the criteria for identifying economic activity as a foreign investment based on the concept of Clause 1 of Article 25 of the Convention⁴⁷.

Salini's qualification criteria had challenges in practice. The courts that have used the Saline criteria in practice added or reduced these criteria. Some courts have 3 criteria and some 5 criteria and some had 6 criteria. Most importantly, in one case, a court has failed to deal because of the lack of a standard and qualification and the same criteria wasn't paid attention in another case, and it is excluded from the list of criteria and the court has considered itself to be competent in accordance with other criteria. ; Therefore, these dual situations have challenged the Salini criterion⁴⁸. Since the convention does not have a clear and objective meaning of investment, it is doubtful that arbitration courts can impose a definition that be applicable to all cases and goals! But courts believe that a more flexible and functional approach for the meaning of "investmet" is more appropriate. An approach that takes into account the feature introduced in Salini's case simultaneously with all conditions as the nature of the documents shows the consent to the ICSID⁴⁹. While it has been accepted today that the above items are generally the basis of investment, but it is not clear whether these criteria should exist in all cases and scope of each one how much is⁵⁰.

In the course of arbitration, some of tremendous activities are considered as investments, namely: damming, road construction, hotel management, loan allocation, loans, replacement of fishing vessel equipment, drainage, construction of freeways and inspection before shipment. The arbitration courts have repeatedly emphasized that an investment typically consists of a series of related economic activities that should be taken into consideration in general and should not be considered solely for the purpose of establishing an investment. The court in CSIB against Slovakia, argued that "we assume that sue comes directly from the investment. Even if this

difference is based on the fact that it alone does not have the characteristics of investment under the Convention, of course if this is an integral part of a general operation that is considered an investment ". Under the Court decision, in this case," an investment is often a complex matter, consisting of several interrelated operations, each of them Lonely can't be considered as an investment in all cases. ⁵¹“According to Professor Christoph Schrouere, in the description of the materials of the ICSID Convention, despite of the definition of investment in the convention, there are certain features of investment that these features have taken into account in the ICSID procedure, including in the Fedex and Salini votes. According to him investment should have criteria and must be done under a given time and on the other hand, be accompanied by a commitment (usually financial commitment) valid for investment; investment must meet expectations of profits and benefits and also investment should has a great risk, because it is always exposed to risk, and ultimately, investment should play an important role in the economic development of the host state. ⁵²

Therefore, due to the lack of definition of the concept of investment in the ICSID convention, broad-ranging interpretations of this concept in the ICSID arbitration procedure have led to the development of ICSID qualification and almost every kind of economic activity within this concept ⁵³ Hence, international arbitration authorities do not properly limit their jurisdiction to the will of the parties and endeavor to define investment by interpreting the necessary regulations between the parties and their qualifications, which can challenge the legal security environment. The lack of the concept of investment in the ICSID Convention has led to the emergence of different interpretive views in the ICSID procedure, which has made much criticism of the ICSID arbitration, the lack of uniformity of its procedure ⁵⁴. So a number of developing and investment countries came out of the ICS as a sign of protest.

In general, investment law is contained of various treaties. In addition to the bilateral treaties, especially bilateral investment treaties, regional investment treaties such as NAFTA or the Energy Charter should be mentioned. The ICSID Convention as described is regularly interpreted and applied. In terms of the problems in the definition and concept of investment, these treaties are often interpreted by international authorities who have different title. This makes it very difficult in the investment law to have coherent development of procedural law in comparison with the situation where a permanent judicial authority interpreted in a coherent composition and structure. Different interpretations will result in different results. Arbitrators will occasionally have to interpret investment disputes in dealing; so, depending on the case and type of dispute, the arbitrator's interpretation may not be based on the investment party opinion. The investor expects that wherever he is interested in investing, he will face a single definition of investment and the framework of obligations and standards, and he will safely invest in it. With this difference in the definition of investment and its implications and presentation of different interpretations regarding a single issue from one country to another, it is clear that legal security will be unstable and, naturally, the investor will invest in a country that has a high degree of legal security in the form of treaties or the rules of the host country⁵⁵.

Conclusion

By reviewing the evolutions and statistics of countries in attracting foreign investment and the status of legal security by attention in the majority of international treaties regarding protection of foreign investors, it can be concluded that international standards and bilateral or multilateral treaties have failed to respond the concerns of foreign investors, and the efforts of countries due to the majority of treaties and internal changes of the laws of the countries – as indicated-confirm ineffectiveness of the available mechanisms to create a legal secure environment. In the internal arena (Iran), due to the changes in the regulations, which were studied and cited in the 2017 report of the UNCTAD (the existing law in terms of enhancing the chances of Iran's competition with other countries and in terms of attraction seems to need research by an

independent study), the lack of a comprehensive and clear definition of barriers to foreign capital and different literature in terms of the concept of investment in law and treaties jeopardizes the legal security environment and its impact on many conflicts between the investor and the host government for identifying some of the property, proceeds and tools of the property or related to foreign investment as foreign capital and the various opinions issued by arbitration courts out of the ICSID and arbitration under the ICSID system have been tangible and have reduced the willingness of investors to invest in countries with the highest disputes in terms of interpretation challenges of the concept of investment, so, despite the fact that foreign investors' rights in the international arena has grown, However it has not been able to provide efficient terms, regarding the interpretation of the concept of the foreign investor; in such a way that this defect exists at all levels of the law in all three types of interpretive approaches, and the foreign investment law, as well as asset- based, the transaction-oriented, and... does not have the required standards.

The ICSID or the Convention on the interaction of investment between governments and citizens of other states (Washington Convention) is not subject to any specific requirements which has a direct role in expanding the security of justice and which has been addressed in this study, namely the global and foreign investment rights in Iran. Accordingly, it should be noted that the investment rights in Iran will not receive adequate responses to the treaties. As said, these treaties signed under their own particular circumstances and conditions, and their criteria are not competitive. In the field of national law, it is in line with maintaining the value of the stability of laws on attraction and support, but only in terms of the definition of foreign investor, the necessary legal security is still debatable. It seems that the best criteria in terms of the economic, social and cultural concept of capital are a combination of personal (investor) and objective criteria (capital). The countries and entities who do foreign investment should act beyond A collective, inclusive and universal agreement, from a philanthropic, cross-sectional and island perspective to reach a consensus and via considering sustainable, philanthropic and humanitarian development, to have a sustainable economic relations could reach a transparent, tangible framework under a clear mechanism.

References

- 1- Alidousti Shahraki, Naser (2010). *Foreign Investment Rights. (First Edition).Tehran: Khorsandi Publications.*
- 2- Andrew T. Guzman (2004) .*Global Governance and the WTO. 45 HARV. INT'L L. J. 303, 307*
- 3- Anthony Sinclair (2005). *The origins of the Umbrella Clause in the International Law of Investment Protection. 20 Arb. Int'l 411.*
- 4- Ardeshir Atai (2011). *Arbitration of Investment Disputes under Iranian Investment Treaties. Journal of Laundering Control, Vol.14 , No2.*
- 5- Askari, Pouri (2012). *Foreign Investment Rights in International Arbitration Procedure.(First Edition),Tehran : Shahr-e-Danesh Publications.*
- 6- Blomstrom, M., Kokko, A., Zejan, M (2000). *Foreign Direct Investment: Firm and Host Country. Strategies,*
- 7- Brigitte Stern's *Concurring and Dissenting Opinion in Impregilo S.p.A. v. Argentina, ICSID Case No. ARB/07/17, Award (21 June 2011), para. 12.*
- 8- Broche, Aron (1972).*The Convention of Settlement of Investment Disputes Between State and Nationals of the Others. 136 Raildes, Couré 331, vol 2.*
- 9- C.Sindair, Anhtony (2004). *the Origins of the Umbrella Clause in the International Law of Investment Protection. Arbitration International, Volume 20, Issue 4, PP, 411–434, Published13 October 2014, <https://doi.org/10.1093/arbitration/20.4.411>.*

- 10- Catharine TITI (2006). *Most-Favoured-Nation Treatment: Survival Clauses and Reform of International Investment Law*, *Journal of International Arbitration*.
- 11- Christoph Schreuer (2010). *Foreign Investment Promotion and Protection Act (FIPPA) Full Protection and Security*, *Journal of International Dispute Settlement*, Volume 1, Issue 2, PP 353–369. <https://doi.org/10.1093/jnlids/idq002>, published: 15 June 2010
- 12- Conklin, D (1997). *Foreign Ownership Restrictions and Liberalization Reforms*. Farnham: Ashgate Publication.
- 13- CSOB v. Slovakia (1999). *Decision on Jurisdiction*, ICSID Reports 335.
- 14- D. Harvey (2006). *Neo – Liberalism as Creative Destruction*. Swedish Society for Anthropology and Geography Journal Compilation. *Geogr.Ann*, 88B (2).
- 15- Davan, Janat, Mohammad, Arian (2012). *Review and Analysis of the Nature of Developments in Foreign Investment Law: Past, Present, Future*. *Two Scientific-Research Journal of Islamic Law*. Year 13th , Number 2 (Successive 36), Autumn and Winter 2012.
- 16- Dolores, Rudolph, Schrouer, Christoph (2012). *Principles of International Investment Law*. Seyyed Qasem Zamani and Azin Hassibi, Tehran , Shahr-e-Danesh Publications..
- 17- Ebrahimi, Seyyed Nasrollah, Soltanzadeh, Sajjad (2015).*Investment Concept in The International Centre for Settlement of Investment (ICSID)*. *International Law Magazine*. No. 50 .
- 18- F, Lunfeld, Andreas (2011).*International Investment Law*. Mohammad Jafar Ghanbari Jahromi, Tehran , Forest Publications .
- 19- *Fair and Equitable Treatment-FET* (2012) ‘UNCTAD Series on Issues in International Investment. Agreements II’ UNITEDNATIONS ‘New York and Geneva .
- 20- Gerald M. Meier; *Legal-Economic Problems of Private Foreign Investment in Developing Countries*
- 21- Haddadi, Mehdi (2000). *The Role of National Legislation in Recruiting and Protecting Foreign Investments*. *Magazine of Qom Higher Education Complex*. First year. Vol. No. 4.
- 22- Hamzah (2018) *Bilateral Investment Treaties (Bits) In Indonesia: A Paradigm Shift, Issues and Challenges*. *Journal of Legal, Ethical and Regulatory Issues* Volume 21, Issue 1, Lampung Univesity,
- 23- Hanji, Seyyed Ali, Ostadzadeh, Abolfazl (2018). *The Concept of Foreign Investment in Internal Law*. *International Investment Treaties and International Arbitration Courts Decisions*. *Quarterly Journal of Legal Research*. No. 79.
- 24- Hassibi, Behazin (2011). *Government and Foreign Investors: International Standards* .Tehran , Shahr-e-Danesh Publications.
- 25- Hassibi, Behazin (2011). *Minimum International Standard and Support to Foreign Investors*, *Quarterly Journal of Research*. Year 13th. No. 33.
- 26- James K. Jackso, (2013). *Foreign Investment and National Security: Economic Considerations* *ForeignInvestment and National Security: Economic Considerations*, <https://fas.org/sgp/crs/natsec/RL34561.pdf>,*Journal Compilation*. *Geogr.Ann*.,88B (2): pp. 145
- Monica Barrios Gonzalez, *Investors versus people: the public nature of international Investment Law*, November 2016
- 27- Juillard & Carreau (2007). Juillard, P., & Carreau, D. (2007). *International Economic Law* (3rd ed). Paris, Dalloz.
- 28- Julian Davis Mortenson (2010).*The Meaning of “Investment”: ICSID’s Travaux and the Domain of International Investment Law*. *Harvard international law journal*, Vol 51, No 1.
- 29- Karl P. Sauvan,(2018). *Emerging Markets and the International Investment Law and Policy Regime*, *The Oxford Handbook of Management in Emerging Markets*, edited by Robert Grosse and Klaus Meyer due for publication in 2019.

- 30- Kenneth J. Vandeveld (2005). *A Brief History of International Investment Agreements*. 12 U.C. DAVIS J. INT'L L. & POL'Y 157.
- 31- Laura Alfaro and Jasmina Chauvin (2009). *Foreign Direct Investment, Finance, and Economic Development, Malaysian Historical Salvors v. Malaysia*, ICSID Case No. ARB/05/10, *Decision on Annulment*, 62 . [hereinafter *Malaysian Historical Salvors II*] (Shahabuddeen, dissenting).
- 32- M. Sornaraja, *Mutual Investment Treaties* (2004). Tavakol Habibzadeh, *Legal Journa. Office of International Legal Services of the Islamic Republic of Iran*. No. 30.
- 33- Marcel Klein, Bronfman (2005). *Fair And Equitable Treatment; An Evolving Standard*, University of Heidelberg, Max plank Institute for Comparative Public law And International Law And the university of chile. Vol,43.
- 34- Merritt B. Fo (2004). *What's So Special About Multinational Enterprises? A Comment on Avi-Yonah*. 42 COLUM. J. TRANSNAT'L L. 551, 566.
- 35- Miroveisi, Alireza (2014). *Investment Rights in the Framework of Bilateral Investment Treaties*. Pardis Publications.
- 36- Motranluei, Parsia (2013). *National and International Policy*. Tehran Chamber of Commerce, Industries, Mines and Agriculture Website. Deputy of Economic Review.
- 37- North American Free Trade Agreement (NAFTA)
- 38- ONCTAD (2014). *Fair and Equitable Treatment*. UNCTAD series on issues in international investment agreement. doi:[10.1787/518757021651](https://doi.org/10.1787/518757021651)
- 39- Paseban, Mohammad Reza, Asghari, Zainab (2014). *The Role of Fair Behavior in the Settlement of Foreign Investment Disputes with an Emphasis on the Concept of Corporate Responsibility of Transnational Corporations*. *Quarterly Journal of Private Law*, Vol. 3, No. 8.
- 40- Paulo Eliche Tembe, Kangning Xu (2008) *Attracting Foreign Direct Investment in Developing Countries: Determinants and Policies-A Comparative Study between Mozambique and China* *International Journal of Financial Research*, 2012 - sciedu.ca Plasma Consortium Ltd. v. Bulgaria, ICSID Case No. ARB/03/24.
- 41- Piran, Hussein (2010). *Legal Issues of International Investment*. (First Edition) Tehran.: Ganje Danesh Publications.
- 42- R Wilson (1952). *The International Law Standard in Treaties of United States*.
- 43- Reuven S. Avi-Yonah (2003), *National Regulation of Multinational Enterprises: An Essay on Comity, Extraterritoriality, and Harmonization*. 42 COLUM. J. TRANSNAT'L L. 5, 34 (2003). Cf.
- 44- Rousseau, Charles (2011). *General International Law*. Mohammad Ali Hekmat, University of Tehran, Tehran, Vol. I.
- 45- Salini v. Morocco, *Desisionon Jurisdiction*. 23 July 2001. Para.52 available at: <http://italaw.com/documents/saline-English.pdf>.
- 46- SCHREUER, C (2016). *The Development of International Law by ICSID Tribunals*. ICSID Review, Vol. 31, no. 3.
- 47- Soltanzadeh, Sajjad (2014). *The Structure and Procedure of the International Centre for Settlement of Investment (ICSID)*. Tehran: Khorsandi Publications.
- 48- Sornarajah, Sornarajah, M (2010). *The International Law on Foreign Investment*. Cambridge: Cambridge University Press.
- 49- Toudor, Ioana (2009). *The Fair and Equitable Treatment Standard in the International Law of Foreign Investment*. Oxford University Press.

50- *Treaty Between the United States of America and the Republic of Zaire Concerning the Reciprocal Encouragement and Protection of Investment, U.S.-Zaire, art. I(c), Aug. 3, 1984, S. TREATY DOC. No. 99-17*

51- Tudor, Ioana (2008). *The Fair and Equitable Treatment Standard in International Law of Foreign Investment*. Oxford University Press, New York .

52- Turkson, F., Gyeke-Dako, A., & Amissah, E(2015). *Foreign Direct Investment Spillovers and the Ghanaian Local Financial Environment*. *Modern Economy*, 6, 1078–1089. Doi:10.4236/me.2015.610104. Shirley Ayangbah, Liu Sun, *Comparative study of foreign investment laws: The case of China and Ghana*.

53- Wagner Vinicius de Oliveira (2017) .*Understanding The Most-Favored-Nation Clause In The International Investments Law*. *Rdiet, Brasília*, V. 12, n°2, .

54- William W. Burke-White & Andreas von Staden (2010). *Private Litigation in a Public Law Sphere: The Standard of Review in Investor-State Arbitrations*. 35 *YALE J. INT'L L.* 283, 299 (2010) (noting that inconsistent decisions threaten the legitimacy of the investment arbitral system).

55- Yannaca small, Katia (2006). *Interpretation of The Umbrella clause in The Investment Agreements, Working papers on International Investment, Paris: OECD publishing, Paris, no 3*.

¹ Turkson, F., Gyeke-Dako, A., & Amissah, E(2015). *Foreign Direct Investment Spillovers and the Ghanaian Local Financial Environment*. *Modern Economy*, 6, 1078–1089. Doi:10.4236/me.2015.610104. Shirley Ayangbah, Liu Sun, *Comparative study of foreign investment laws: The case of China and Ghana*

² James K. Jackso (2013). *Foreign Investment and National Security: Economic Considerations* Foreign Investment and National Security: Economic Considerations, <https://fas.org/sgp/crs/natsec/RL34561.pdf>, Journal Compilation. *Geogr. Ann.*, 88B (2): pp. 145 Monica Barrios Gonzalez, *Investors versus people: the public nature of international Investment Law*, November 2016

³ The United Kingdom, for example, set up an East Indian company in India, through this company in India which was colony did investment and its legal security was assumed.

⁴ F, Lunfeld, Andreas (2011). *International Investment Law*. Mohammad Jafar Ghanbari Jahromi, Tehran ,Tehran: Forest Publications, p 41

⁵ Piran, Hussein (2010). *Legal Issues of International Investment*. (First Edition)Tehran:. Ganje Danesh Publications, p133

⁶ Karl P. Sauvan (2018). *Emerging Markets and the International Investment Law and Policy Regime*, The Oxford Handbook of Management in Emerging Markets, edited by Robert Grosse and Klaus Meyer due for publication in 2019, p

⁷ Soltanzadeh, Sajjad (2014). *The Structure and Procedure of the International Centre for Settlement of Investment (ICSID)*. Tehran: Khorsandi Publications, p 274

⁸ UNCTAD: 2012, Marcelaklein, Bronfman (2005). *Fair And Equitable Treatment; An Evolving Standard*, University of Heidelberg, Max plank Institute for Comparative Public law And International Law And the university of chile. Vol,43.

⁹ ONCTAD (2014). *Fair and Equitable Treatment*. UNCTAD series on issues in international investment agreement. doi:10.1787/518757021651

¹⁰ Dolores, Rudolph, Schrouer, Christoph (2013). *Principles of International Investment Law*. Seyyed Qasem Zamani and Azin Hassibi, Tehran , Shahr-e-Danesh Publications, p201

¹¹ Hassibi, Behazin (2011). *Minimum International Standard and Support to Foreign Investors*, *Quarterly Journal of Research*. Year 13th. No. 33, p 203

¹² Paseban, Mohammad Reza, Asghari, Zainab (2014). *The Role of Fair Behavior in the Settlement of Foreign Investment Disputes with an Emphasis on the Concept of Corporate Responsibility of Transnational Corporations*. *Quarterly Journal of Private Law*, Vol. 3, No. 8, p 68.

¹³ Dolores, Rudolph, Schrouer, Christoph (2013). *Principles of International Investment Law*. Seyyed Qasem Zamani and Azin Hassibi, Tehran , Shahr-e-Danesh Publications, p201

¹⁴ Dolores, Rudolph, Schrouer, Christoph (2013). *Principles of International Investment Law*. Seyyed Qasem Zamani and Azin Hassibi, Tehran , Shahr-e-Danesh Publications, p242.

¹⁵ Yannaca small, Katia (2006). *Interpretation of The Umbrella clause in The Investment Agreements, Working papers on International Investment, Paris: OECD publishing, Paris, no 3*.

¹⁶ Askari, Pouri (2012). *Foreign Investment Rights in International Arbitration Procedure*, (First Edition), Tehran : Shahr-e-Danesh Publications, p 140.

-
- ¹⁷ Wagner Vinicius de Oliveira (2017) .Understanding The Most-Favored-Nation Clause In The International Investments Law.Rdiet, Brasília, V. 12, n°2k
- ¹⁸ Askari, Pouri (2012). Foreign Investment Rights in International Arbitration Procedure, (First Edition),Tehran : Shahr-e-Danesh Publications, p 193
- ¹⁹ Rousseau, Charles (2011). General International Law. Mohammad Ali Hekmat, University of Tehran, Tehran, Vol. I,p 207
- ²⁰ Miroveisi, Alireza (2014). Investment Rights in the Framework of Bilateral Investment Treaties. Pardis Publication,p37
- ²¹ Sornarajah, Sornarajah, M (2010). The International Law on Foreign Investment. Cambridge: Cambridge University Press,p325
- ²² Miroveisi, Alireza (2014). Investment Rights in the Framework of Bilateral Investment Treaties. Pardis Publication,p22.
- ²³ Hanji, Seyyed Ali, Ostadzadeh, Abolfazl (2018). The Concept of Foreign Investment in Internal Law. International Investment Treaties and International Arbitration Courts Decisions. Quarterly Journal of Legal Research. No. 79,p139
- ²⁴ Piran, Hussein (2010). Legal Issues of International Investment. (First Edition)Tehran:. Ganje Danesh Publications,p181
- ²⁵ Haddadi, Mehdi (2000). The Role of National Legislation in Recruiting and Protecting Foreign Investments. Magazine of Qom Higher Education Complex. First year. Vol. No. 4, p.119.
- ²⁶ Haddadi, Mehdi (2000). The Role of National Legislation in Recruiting and Protecting Foreign Investments. Magazine of Qom Higher Education Complex. First year. Vol. No. 4,p.118
- ²⁷ Piran, Hussein (2010). Legal Issues of International Investment. (First Edition)Tehran:. Ganje Danesh Publications,p156
- ²⁸ Alidousti Shahraki, Naser (2010). Foreign Investment Rights. (First Edition).Tehran: Khorsandi Publications,p.13
- ²⁹ Sornarajah, Sornarajah, M (2010). The International Law on Foreign Investment. Cambridge: Cambridge University Press,p.145
- ³⁰ Julian Davis Mortenson (2010).The Meaning of “Investment”: ICSID’s Travaux and the Domain of International Investment Law. Harvard international law journal, Vol 51, No 1.
- ³¹ Hanji, Seyyed Ali, Ostadzadeh, Abolfazl (2018). The Concept of Foreign Investment in Internal Law. International Investment Treaties and International Arbitration Courts Decisions. Quarterly Journal of Legal Research. No. 79,p19
- ³² Ebrahimi, Seyyed Nasrollah, Soltanzadeh, Sajjad (2015).Investment Concept in The International Centre for Settlement of Investment (ICSID). International Law Magazine. No. 50,p85
- ³³ Miroveisi, Alireza (2014). Investment Rights in the Framework of Bilateral Investment Treaties. Pardis Publication,p41-42.
- ³⁴ Hanji, Seyyed Ali, Ostadzadeh, Abolfazl (2018). The Concept of Foreign Investment in Internal Law. International Investment Treaties and International Arbitration Courts Decisions. Quarterly Journal of Legal Research. No. 79,p17
- ³⁵ Miroveisi, Alireza (2014). Investment Rights in the Framework of Bilateral Investment Treaties. Pardis Publication,p42.
- ³⁶ Miroveisi, Alireza (2014). Investment Rights in the Framework of Bilateral Investment Treaties. Pardis Publication,p43
- ³⁷ Soltanzadeh, Sajjad (2014). The Structure and Procedure of the International Centre for Settlement of Investment (ICSID).Tehran: Khorsandi Publications, p 382.
- ³⁸ Hanji, Seyyed Ali, Ostadzadeh, Abolfazl (2018). The Concept of Foreign Investment in Internal Law. International Investment Treaties and International Arbitration Courts Decisions. Quarterly Journal of Legal Research. No. 79,p17
- ³⁹ Ardeshir Atai (2011). Arbitration of Investment Disputes under Iranian Investment Treaties. Journal of Laundering Control, Vol.14 , No2.
- ⁴⁰Soltanzadeh, Sajjad (2014). The Structure and Procedure of the International Centre for Settlement of Investment (ICSID).Tehran: Khorsandi Publications, p 393.
- ⁴¹ Miroveisi, Alireza (2014). Investment Rights in the Framework of Bilateral Investment Treaties. Pardis Publication,p44
- ⁴² Miroveisi, Alireza (2014). Investment Rights in the Framework of Bilateral Investment Treaties. Pardis Publication,p46
- ⁴³ Dolores, Rudolph, Schrouer, Christoph (2012). Principles of International Investment Law. Seyyed Qasem Zamani and Azin Hassibi,Tehran , Shahr-e-Danesh Publications, p 113
- ⁴⁴ Hassibi, Behazin (2011). Government and Foreign Investors: International Standards .Tehran , Shahr-e-Danesh Publications

⁴⁵ Objective Theory suggests that there is an objective and independent definition of investment in order to qualify ICSID. The term investment has an "independent meaning" that outlines the "outer scope" of Article 25 (1), and stipulates that treaties is out of this boundary. Investment will not be considered an ICSID, regardless of any agreement between the parties. According to Subjective Theory, the term "investment" in Article 25 (1) of the ICSID Convention is out of an independent sense, but subjectively defined by the parties at the time of give positive reply to the ICSID; hence, if governments in the arbitration investment treaties The ICSID is defined, therefore, governments in their investment treaties clearly agree to consider a transaction as an investment. This agreement will be the basis for the ICSID qualification.

⁴⁶ Broche, Aron (1972).The Convention of Settlement of Investment Disputes Between State and Nationals of the Others. 136 *Raildes*, *Coure* 331, vol 2 , p 362

⁴⁷ Ebrahimi, Seyyed Nasrollah, Soltanzadeh, Sajjad (2015).Investment Concept in The International Centre for Settlement of Investment (ICSID). *International Law Magazine*. No. 50,p 92

⁴⁸ Ebrahimi, Seyyed Nasrollah, Soltanzadeh, Sajjad (2015).Investment Concept in The International Centre for Settlement of Investment (ICSID). *International Law Magazine*. No. 50,p 92

⁴⁹ Ebrahimi, Seyyed Nasrollah, Soltanzadeh, Sajjad (2015).Investment Concept in The International Centre for Settlement of Investment (ICSID). *International Law Magazine*. No. 50,p 210

⁵⁰ Dolores, Rudolph, Schrouer, Christoph (2012). *Principles of International Investment Law*. Seyyed Qasem Zamani and Azin Hassibi,Tehran , Shahr-e-Danesh Publications, p 126

⁵¹ Dolores, Rudolph, Schrouer, Christoph (2012). *Principles of International Investment Law*. Seyyed Qasem Zamani and Azin Hassibi,Tehran , Shahr-e-Danesh Publications, p 127

⁵² Askari, Pouri (2012). *Foreign Investment Rights in International Arbitration Procedure*.(First Edition),Tehran : Shahr-e-Danesh Publications.

⁵³ Soltanzadeh, Sajjad (2014). *The Structure and Procedure of the International Centre for Settlement of Investment (ICSID)*.Tehran: Khorsandi Publications, p 385

⁵⁴ Ebrahimi, Seyyed Nasrollah, Soltanzadeh, Sajjad (2015).Investment Concept in The International Centre for Settlement of Investment (ICSID). *International Law Magazine*. No. 50,p 103

⁵⁵ William W. Burke-White & Andreas von Staden (2010).Private Litigation in a Public Law Sphere: The Standard of Review in Investor-State Arbitrations. 35 *YALE J. INT'L L.* 283, 299 (2010) (noting that inconsistent decisions threaten the legitimacy of the investment arbitral system).