

## Interpretation of the “Most Favoured Nation” Clause in Modern International Arbitration Practice

**Quronboyeva Shoxsanam Shuhrat qizi**

Master’s Student, International Commercial Law Tashkent State University of Law

E-mail: kuranboyevashohsanam01@gmail.com

**ABSTRACT.** This article examines the interpretation of the Most Favoured Nation (MFN) clause in modern international investment arbitration. The study analyses the legal nature of the MFN clause, its role within the investment treaty framework, and the leading practice of ICSID and other international arbitral bodies regarding its application. The author explores issues related to the invocation of the MFN clause with respect to both procedural and substantive norms, identifies conflicting approaches in arbitral jurisprudence, and pays particular attention to the national legislation of the Republic of Uzbekistan in the field of foreign investments, the bilateral investment treaty (BIT) network, and their conformity with international standards. On this basis, concrete proposals and recommendations are advanced.

**Keywords:** *most favoured nation clause, international investment arbitration, bilateral investment treaty, ICSID, investor-state disputes, Maffezini doctrine, procedural rights, substantive guarantees, Uzbekistan investment legislation.*

### “MOST FAVOURED NATION” BANDINING ZAMONAVIY XALQARO ARBITRAJ AMALIYOTIDA TALQINI

Toshkent davlat yuridik universiteti Xalqaro tijorat huquqi yo’nalishi magistranti

**Quronboyeva Shoxsanam Shuhrat qizi**

E-mail:kuranboyevashohsanam01@gmail.com

**ANNOTATSIYA.** Ushbu maqolada xalqaro investitsion arbitrajda “most favoured nation” (MFN) bandining talqini masalalari tadqiq etiladi. Maqolada MFN bandining huquqiy tabiati, uning investitsion shartnomalar tizimidagi o’rni, xalqaro arbitraj

organlarining, xususan, ICSID tribunallarining ushbu bandga oid ilg'or amaliyoti tahlil qilinadi. Muallif MFN bandining protsessual va moddiy normalarga nisbatan qo'llanilishi masalalarini ko'rib chiqib, amaliyotdagi ziddiyatli yondashuvlarni aniqlaydi. O'zbekiston Respublikasining xorijiy investitsiyalar sohasidagi milliy qonunchiligi, ikki tomonlama investitsion shartnomalar (BIT) tizimi va ularning xalqaro andozalarga muvofiqligi nuqtai nazaridan taklif va tavsiyalar ilgari suriladi.

**Kalit so'zlar:** *most favoured nation bandi, xalqaro investitsion arbitraj, ikki tomonlama investitsion shartnoma, ICSID, investor-davlat nizolari, Maffezini doktrinasini, protsessual huquqlar, moddiy kafolatlar, O'zbekiston investitsion qonunchiligi.*

**АННОТАЦИЯ.** В настоящей статье исследуются вопросы толкования оговорки о наиболее благоприятствуемой нации (МБН) в современном международном инвестиционном арбитраже. Анализируются правовая природа оговорки МБН, её место в системе инвестиционных договоров, а также передовая практика ICSID и других международных арбитражных органов. Автор рассматривает проблемы применения оговорки МБН к процессуальным и материальным нормам, выявляет противоречивые подходы в арбитражной практике. Особое внимание уделяется национальному законодательству Республики Узбекистан в области иностранных инвестиций, системе двусторонних инвестиционных соглашений и их соответствию международным стандартам, на основе чего формулируются конкретные предложения и рекомендации.

**Ключевые слова:** *оговорка о наиболее благоприятствуемой нации, международный инвестиционный арбитраж, двустороннее инвестиционное соглашение, ICSID, споры между инвестором и государством, доктрина Маффезини, процессуальные права, материальные гарантии, инвестиционное*

законодательство Узбекистана.

Xalqaro investitsion huquqda “most favoured nation” (MFN) bandi investorlarni diskriminatsiyadan himoya qilishning asosiy vositalaridan biri hisoblanadi. Bu band davlatga o‘z investorlari uchun imzolangan shartnomadagi muomala rejimidan kam bo‘lmagan rejimni uchinchi davlatlar investorlariga ham kafolat qilishni majbur etadi. Jahon Savdo Tashkiloti huquqiy tizimida qabul qilingan xalqaro shartnomalarda ushbu prinsipga to‘laqonli ta‘rif berib o‘tiladi. GATT (I-modda)<sup>1</sup>: “*Eng ko‘p qulaylik yaratilgan rejim (MFN) ning umumiy tamoyilini belgilaydi, ya’ni bir mamlakat mahsulotiga berilgan har qanday imtiyoz Jahon savdo tashkilotining boshqa barcha a‘zo davlatlariga ham tatbiq etilishi shart.*” GATS (II-modda)<sup>2</sup>: “*Xizmatlar savdosida MFN tamoyilini qo‘llaydi, ya’ni xizmatlar va xizmat ko‘rsatuvchilarga nisbatan kamsitmasdan munosabatda bo‘lishni talab etadi.*” TRIPS (4-modda): “*MFN tamoyillarini intellektual mulk huquqlariga nisbatan ham tatbiq etadi.*”<sup>3</sup>

Biroq ushbu mexanizmning arbitraj amaliyotida talqini hamon munozarali bo‘lib qolmoqda, tribunallar MFN bandini ba‘zan faqat moddiy huquqga, ba‘zan esa protsessual huquqlarga ham tatbiq etadilar.

Masalaning amaliy dolzarbligi shundaki, 2000-yillardan boshlab, ayniqsa *Maffezini v. Spain*<sup>4</sup> ishidan so‘ng, xalqaro arbitraj amaliyotida MFN bandini protsessual normalarga nisbatan ham qo‘llash tendensiyasi yuzaga keldi. Bu tendensiya investor manfaatlarini kengaytirgani holda, davlatlarning shartnomaviy ixtiyorligini va nizo hal qilish tizimiga oid muvofiq kelishuvini shubha ostiga qo‘ydi. O‘zbekistonda investitsion huquqning rivojlanishi 1994-yildan buyon izchil amalga oshirilib, 2019-yilda qabul

<sup>1</sup> General Agreement on Tariffs and Trade (GATT) 1994, [https://www.wto.org/english/res\\_e/publications\\_e/ai17\\_e/gatt1994\\_e.htm](https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_e.htm)

<sup>2</sup> General Agreement on Trade in Services, [https://www.wto.org/english/docs\\_e/legal\\_e/gats\\_e.htm](https://www.wto.org/english/docs_e/legal_e/gats_e.htm)

<sup>3</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights, [https://www.wto.org/english/docs\\_e/legal\\_e/27-trips\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm)

<sup>4</sup> Emilio Agustín Maffezini v. Kingdom of Spain, ICSID Case No. ARB/97/7, Decision on Jurisdiction, 25 January 2000.

qilingan “Investitsiyalar va investitsiya faoliyat to’g’risida”gi Qonun<sup>5</sup> bu sohadagi yangi qonunchilik asosini tashkil etdi. Shu bilan birga, O’zbekiston Respublikasining “Tadbirkorlik faoliyati erkinligining kafolatlari to’g’risida”gi Qonunga<sup>6</sup> kiritilgan o’zgartishlar investorlar himoyasi mexanizmlarini yanada mustahkamladi. Biroq milliy qonunchilikdagi ushbu kafolatlarning xalqaro BIT va arbitraj amaliyotidagi MFN band bilan munosabati hali to’liq o’rganilmagan. MFN prinsipi o’zining tarixi jihatidan savdo huquqiga borib taqaladi. XVII–XVIII asrlardagi Yevropa savdo shartnomalarida paydo bo’lgan bu tamoyil, keyinchalik WTO tizimining asosiy prinsiplaridaan biriga aylandi. Zamonaviy xalqaro investitsion huquqda MFN bandi investor mamlakatiga davlat tomonidan boshqa uchinchi davlatlar investorlariga beriladigandan kam bo’lmagan muomala kafolat qilinishini anglatadi<sup>7</sup>.

BIT amaliyotida MFN bandining ikki asosiy funksiyasi mavjud. Birinchi funksiya bu moddiy bo’lib, investor boshqa BITlardagi mulk himoyasi, adolatli va teng muomala (FET)<sup>8</sup>, to’liq himoya va xavfsizlik kabi yanada qulayroq me’yorlarga tayana olishini qamrab oladi. Ikkinchi funksiya esa protsessual va unga ko’ra ba’zi tribunallar ta’kidlashicha, MFN bandi nizo hal qilish mexanizmlarini jumladan, arbitrajga murojaat shartlarini ham boshqa shartnomalardan ko’chirma qilish imkonini beradi<sup>9</sup> Aynan ikkinchi funksiyaning doirasi bugungi kunda most bahs-munozara uyg’otmoqda.

Xalqaro huquq komissiyasining 2015-yilgi MFN bandiga oid hisobotida ushbu bandni qo’llash uchun uchta zaruriy mezon belgilangan: (1) *asosiy shartnomada MFN*

<sup>5</sup> O’zbekiston Respublikasining Qonuni, 25.12.2019 yildagi O’RQ-598-son, <https://lex.uz/uz/docs/-4664142>

<sup>6</sup> O’zbekiston Respublikasining Qonuni, 02.05.2012 yildagi O’RQ-328-son, <https://lex.uz/docs/-2006789>

<sup>7</sup> Dolzer R., Schreuer C. Principles of International Investment Law. 2nd ed. Oxford University Press, 2012. – 436 p <https://en.law.uoa.gr/fileadmin/depts/law.uoa.gr/www/uploads/Erasmus/iil20.pdf>

<sup>8</sup> Adolatli va teng munosabat (FET) xalqaro investitsiya huquqining asosiy standartlaridan biri bo’lib, u ko’pincha Jahon savdo tashkiloti tomonidan boshqariladigan savdo bitimlari hamda ikki tomonlama shartnomalar doirasidagi nizolarda qo’llaniladi.

<sup>9</sup> Newcombe A., Paradell L. Law and Practice of Investment Treaties. Kluwer Law International, 2009.

[https://www.researchgate.net/publication/228191041\\_Law\\_and\\_Practice\\_of\\_Investment\\_Treaties\\_Standards\\_of\\_Treatment\\_Chapter\\_1\\_Historical\\_Development\\_of\\_Investment\\_Treaty\\_Law](https://www.researchgate.net/publication/228191041_Law_and_Practice_of_Investment_Treaties_Standards_of_Treatment_Chapter_1_Historical_Development_of_Investment_Treaty_Law)

*bandi mavjud bo'lishi; (2) taqqoslanadigan vaziyatning mavjudligi – ya'ni investor asosiy shartnoma tomonining boshqa davlatdagi investorga bergan imtiyozidan bahramand bo'lishni so'rashi; (3) so'ralgan imtiyozning “to'g'ri manfaat” doirasida bo'lishi<sup>10</sup>. Ushbu mezonlarning qo'llanilishi tribunallar o'rtasida hamon turlicha talqin etiladi.*

O'zbekiston Respublikasining “Investitsiyalar va investitsion faoliyat to'g'risida”gi 2019-yilgi Qonunining 4-moddasida xorijiy investorlarga milliy muomala va MFN kafolatining bir vaqtda qo'llanilishi mustahkamlangan. Qonunning 15-moddasida esa investorlar huquqlarini cheklash faqat qonun hujjatlari asosida amalga oshirilishi va diskriminatsion choralar ko'rilishi taqiqlanishi belgilangan. Bu qoidalar O'zbekistonning xalqaro investitsion majburiyatlariga muvofiqligi nuqtai nazaridan muhim huquqiy asosni tashkil etadi.

Arbitraj amaliyotida MFN bandining qo'llanish doirasiga doir bir-biriga zid yondashuvlar shakllangan.

2000-yilda ICSID tribunali Emilio Agustín Maffezini v. Kingdom of Spain ishida MFN bandini protsessual normalarga nisbatan qo'llash imkoniyatini ilk bor tan oldi. Tribunal Argentina-Ispaniya BITidagi MFN bandiga tayanib, Ispaniya-Chili BITidagi arbitraj shartiga murojaat qilish huquqini berdi va ariza beruvchidan 18 oylik mahalliy sud muddatiga rioya qilishni talab qilmadi. Bu qaror dunyo arbitraj hamjamiyatida “Maffezini doktrinasi” deb ataluvchi siljishning boshlanishi bo'ldi va investorga qulay bo'lgan keng talqin yo'nalishini o'chdi. Biroq tanqidchilar ushbu yondashuv davlatlarning shartnomaviy balansni buzishi va “shartnoma almashtirish” (treaty shopping) amaliyotini rag'batlantirishini ta'kidladi<sup>11</sup>.

<sup>10</sup> International Law Commission. Most-Favoured-Nation Clause. Draft Articles and Commentaries. UN Doc. A/70/10, 2015. <https://legal.un.org/ilc/reports/2015/>

<sup>11</sup> Schill S.W. The Multilateralization of International Investment Law. Cambridge University Press, 2009 <https://jusmundi.com/en/document/publication/en-stephan-w-schill-the-multilateralization-of-international-investment-law-cambridge-university-press-2009>

*Siemens A.G. v. Argentine Republic*<sup>12</sup> ishida ICSID tribunali Maffezini yondashuvini yanada kengaytirdi. Tribunal Argentina-Germaniya BITidagi MFN bandiga asoslanib, Argentina-Chili BITidagi yanada qulayroq arbitraj muomala rejimini investorga tatbiq etdi. Tribunal “*muomala*” tushunchasi protsessual elementlarni ham o’z ichiga olishi mumkinligini, zero protsessual va moddiy huquqlarni mutlaq ajratib bo’lmasligini ta’kidladi. Ushbu yondashuv *Gas Natural SDG v. Argentina*<sup>13</sup> va *Suez v. Argentina*<sup>14</sup> ishlarida ham qo’llab-quvvatlandi.

*Plama Consortium Ltd. v. Republic of Bulgaria*<sup>15</sup> ishida ICSID tribunali teskari pozitsiyani oldi. Tribunalning ta’kidlashicha, MFN bandi orqali protsessual imtiyozlarni import qilish uchun asosiy shartnomada bunga aniq va ochiq izn berilishi talab etiladi; aks holda, davlatning nizo hal qilish tizimiga oid ongli kelishuvi buziladi. Tribunal shuningdek Maffezini doktrinasining keng qo’llanilishi investor-davlat nizo hal qilishni “protsessual kaos”ga olib kelishi mumkinligini ogohlantirdi.

2010-yillardan boshlab arbitraj amaliyotida yanada ehtiyotkorona va kontekstga asoslangan yondashuv kuchaydi. *Infinito Gold Ltd. v. Republic of Costa Rica*<sup>16</sup> ishida tribunal MFN bandining qo’llanish doirasini belgilashda shartnomaning maqsadi, umumiy konteksti va taraflarning niyatini (*treaty intent*) birinchi o’ringa qo’ydi.

Vena konvensiyasining 31–32-moddalari asosida shartnomani talqin qilishning obyektiv usuli bu ishda metodologik asos sifatida qo’llanildi<sup>17</sup>. “1. *Shartnoma*

<sup>12</sup> Siemens A.G. v. The Argentine Republic, ICSID Case No. ARB/02/8, Decision on Jurisdiction, 3 August 2004

<sup>13</sup> Gas Natural SDG S.A. v. Argentine Republic, ICSID Case No. ARB/03/10, Decision on Jurisdiction, 17 June 2005.

<sup>14</sup> Suez, Sociedad General de Aguas de Barcelona, S.A. v. Argentine Republic, ICSID Case No. ARB/03/17, Decision on Jurisdiction, 16 May 2006.

<sup>15</sup> Plama Consortium Ltd. v. Republic of Bulgaria, ICSID Case No. ARB/03/24, Decision on Jurisdiction, 8 February 2005. <https://jsumundi.com/en/document/decision/en-plama-consortium-limited-v-republic-of-bulgaria-award-wednesday-27th-august-2008>

<sup>16</sup> Infinito Gold Ltd. v. Republic of Costa Rica, ICSID Case No. ARB/14/5, Decision on Jurisdiction, 4 December 2017 <https://jsumundi.com/en/document/decision/en-infinito-gold-ltd-v-republic-of-costa-rica-award-thursday-3rd-june-2021>

<sup>17</sup> Xalqaro shartnomalar huquqi to’g’risidagi Vena konvensiyasi, <https://lex.uz/docs/2646414>

*shartnoma shartlariga ularning kontekstida beriladigan odatiy ma'noga muvofiq va shartnomaning obyekti va maqsadi nuqtai nazaridan vijdonan talqin qilinishi kerak.*

2. *Shartnomani talqin qilish maqsadida, matnga qo'shimcha ravishda, muqaddima va ilovalarni o'z ichiga olgan kontekst quyidagilarni o'z ichiga oladi:*

*a) shartnoma tuzilishi munosabati bilan barcha tomonlar o'rtasida erishilgan shartnomaga oid har qanday kelishuv;*

*(b) shartnoma tuzish munosabati bilan bir yoki bir nechta tomonlar tomonidan tuzilgan va boshqa tomonlar tomonidan shartnomaga tegishli hujjat sifatida qabul qilingan har qanday hujjat. (31-modda).*

”Glencore Finance (Bermuda) Ltd. v. Plurinational State of Bolivia<sup>18</sup> ishida esa tribunal moddiy va protsessual me'yorlar o'rtasida aniq chegara tortilishi zarurligini ta'kidlab, investorning MFN bandiga tayanib protsessual majburiyatlardan ozod bo'lish da'vosini rad etdi.

Shartnomalarni talqin qilishning umumiy metodologiyasi 1969-yilgi Shartnomalar huquqi to'g'risidagi Vena konvensiyasining 31-moddasida mustahkamlangan, shartnoma uning qoidalariga oddiy ma'nosi, konteksti, maqsadi va obyekti asosida talqin etilishi lozim. MFN bandi misolida bu mezon ayniqsa muhim, “muomala” va “imtiyozlar” tushunchalari turli ikki tomonlama investitsiya shartnomalarda turlicha formulalangan. Tribunallar bu tamoyilga amal qilgan holda shartnomaning matnini *grammatik, sistematik va teleologik* usullarda tahlil qiladi. 1965-yilgi Vashington konvensiyasi (ICSID Konvensiyasi)<sup>19</sup> MFN bandining bevosita protsessual ta'sirini tartibga solmaydi, biroq uning 25-moddasi investorning rozi bo'lishi va tribunalning kompetensiyasini belgilashda asosiy mezon sifatida qo'llaniladi.” *Markazning*

<sup>18</sup> Glencore Finance (Bermuda) Ltd. v. Plurinational State of Bolivia, PCA Case No. 2016-39, Award, 3 August 2021.

<sup>19</sup> Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), 18 March 1965, 575 UNTS 159. <https://icsid.worldbank.org/resources/rules-and-regulations/convention/overview>

*yurisdiksiyasi investitsiyadan bevosita kelib chiqadigan har qanday huquqiy nizoga nisbatan tatbiq etiladi, bunda nizo bir Ahdlashuvchi davlat (yoki ushbu davlat tomonidan Markazga belgilangan uning tarkibiy bo‘linmasi yoki agentligi) bilan boshqa Ahdlashuvchi davlat fuqarosi o‘rtasida yuzaga kelgan bo‘lishi kerak va nizoga taraflar uni yozma ravishda Markazga taqdim etishga rozilik bildirgan bo‘lishi lozim. Tomonlar o‘z roziligini berganidan so‘ng, hech bir tomon ushbu rozilikni bir tomonlama tartibda qaytarib olishi mumkin emas.”. Tribunallar MFN bandining 25-modda doirasidagi kompetensiyaga ta’sirini turlicha baholagan, bir qismi MFN bandi orqali rozi bo‘lish doirasini kengaytirish mumkin desa, boshqalari buni rad etgan.*

UNCTAD ma’lumotlariga ko‘ra, 2023-yil oxiriga qadar 1 286 ta xalqaro investitsion kelishuv kuchda bo‘lib, ularning aksariyatida MFN bandi mavjud<sup>20</sup>. Yangi avlod ikki tomonlama investitsiya shartnomalarida esa – masalan, EU-Canada CETA (2016)<sup>21</sup> va EU-Vietnam IPA (2019)<sup>22</sup> kabi hujjatlarda – MFN bandining doirasi aniq belgilanib, uning protsessual normalarga tatbiq etilishi bevosita cheklab qo‘yilgan. Bu tendensiya xalqaro investitsion qonunchilikda “*shartnoma reformasi*” deb ataladigan keng jarayonning bir qismidir.

2025-yil oxiriga kelib, O‘zbekiston BMTning Shartnomaga asoslangan investor-davlat arbitrajida shaffoflik to‘g‘risidagi konvensiyasi (Mavritiy konvensiyasi)ga qo‘shilmagan. Biroq, mamlakat UNCITRAL Xalqaro tijorat arbitraji bo‘yicha namunaviy qonuni (2006-yilgi tahrir)ni o‘z milliy qonunchiligiga joriy etgan bo‘lib, bu uning arbitraj tizimini zamonaviylashtirishga intilayotganidan dalolat beradi<sup>23</sup>. Ushbu islohotlar O‘zbekistonning xalqaro investitsion arbitraj sohasi uchun qulay huquqiy

<sup>20</sup> <https://unctad.org/publication/world-investment-report-2024>

<sup>21</sup> [https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/canada/eu-canada-agreement\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/canada/eu-canada-agreement_en)

<sup>22</sup> EU - Viet Nam Investment Protection Agreement (2019) <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/tips/3616/eu---viet-nam-ipa-2019->

<sup>23</sup> <https://investmentpolicy.unctad.org/investment-policy-monitor/measures/3775/uzbekistan-adopts-the-international-commercial-arbitration-law-based-on-the-uncitral-model-law>

muhit yaratishga intilayotganini ko'rsatadi. O'zbekiston Respublikasi bir qancha davlatlar bilan BIT imzolagan bo'lib, ularning ko'pchiligida MFN bandi mavjud. 2013-yilda imzolangan Rossiya-O'zbekiston ikki tomonlama investitsiya shartnomasining 3-moddasiga binoan *“Har bir Ahdlashuvchi tomon o'z hududida boshqa Ahdlashuvchi tomon investorlarining investitsiyalariga ularni boshqarish va tasarruf etish jarayonida adolatli va teng munosabatni ta'minlaydi. Ushbu moddaning 1-bandida nazarda tutilgan tartib investorga qaysi biri qulayroq deb hisoblanishiga qarab, o'z investorlarining investitsiyalariga yoki uchinchi davlat investorlarining investitsiyalariga beriladigan munosabatdan kam bo'lmasligi kerak. Har bir Ahdlashuvchi tomon xorijiy investorlar va ularning investitsiyalariga, shu jumladan qayta investitsiya qilingan investitsiyalarga nisbatan milliy rejimdan istisnolarni qo'llash va joriy etish huquqini o'zida saqlab qoladi.”*<sup>24</sup>

O'zbekistonning xorijiy investorlar manfaatlarini himoya qiluvchi milliy huquqiy asosi bir nechta muhim qonun hujjatlaridan tashkil topadi. “Tadbirkorlik faoliyati erkinligining kafolatlari to'g'risida”gi 2000-yilgi Qonunning 34-moddasi investorlarning mulkiy huquqlari va manfaatlariga davlat tomonidan aralashuvga oid kafolatlarni o'rnatadi. O'zbekiston Respublikasi Prezidentining 01.08.2018 yildagi PF-5495-son “O'zbekiston Respublikasida investitsiya muhitini tubdan yaxshilash choratadbirlari to'g'risida”gi Farmoni esa insofli faoliyat yuritgan investor va tadbirkorlik subyektiga davlat organi (mansabdor shaxs) tomonidan ularga nisbatan qabul qilingan ma'muriy hujjatning qonuniy kuchiga ishonishi sababli kelib chiqqan mulkiy zararining o'rni qoplanadi, agarda ushbu hujjatning qonuniy kuchiga ishonib mol-mulkdan foydalangan, bitim tuzgan yoki taqdim etilgan afzallik va ustunliklardan boshqacha tarzda foydalangan hamda mazkur hujjat keyinchalik haqiqiy emas deb topilgan yoki

<sup>24</sup> <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/2237/download>  
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bekor qilingan bo'lsa deb belgiladi<sup>25</sup>. O'zbekiston Respublikasi Prezidenti "Kapital bozorida investitsiya muhitini yaxshilashga doir qo'shimcha chora-tadbirlar to'g'risida"gi Farmoni qabul qildi. Farmon bilan fond bozoriga kamida 1 milliard dollarlik investitsiyalarni jalb qilish, shu jumladan, kamida 5 trillion so'mlik korporativ obligatsiyalar chiqarish orqali 2030 yilga qadar kapital bozorini rivojlantirishning ustuvor mezonlari belgilandi<sup>26</sup>. Xususan, 2019-yilgi "Investitsiyalar va investitsiya faoliyati to'g'risida"gi O'RQ-598-sonli Qonun sohadagi barcha tarqoq normalarni umumlashtirib, investorlar uchun "yagona darcha" va "huquqiy rejimning barqarorligi" (stabilizatsiya bandi) kabi fundamental prinsiplarni mustahkamladi.

O'zbekistonning Germaniya<sup>27</sup>, Xitoy<sup>28</sup>, Koreya<sup>29</sup>, Fransiya<sup>30</sup> va boshqa davlatlar bilan imzolagan BITlarida MFN bandi mavjud bo'lib, biroq ushbu bandlarning formulasi birmuncha umumiy tarzda bayon etilgan. Xususan, mazkur BITlarning aksariyatida MFN bandining protsessual normalarga nisbatan tatbiq etilishi yoki etilmasligi aniq ko'rsatilmagan. Bu esa kelajakdagi investor-davlat nizolarida *Maffezini* yoki *Siemens* yondashuvlariga asoslangan keng talqinlarga yo'l ochib qo'yishi mumkin.

Xorijiy tajriba shuni ko'rsatadiki, MFN bandining aniq formulalanishi davlat manfaatlarini himoya qilishda hal qiluvchi ahamiyatga ega. EU-Canada CETA kelishuvida MFN bandining doirasi aniq belgilanib, "protsessual muomala"ga nisbatan tatbiq etilmasligi to'g'ridan-to'g'ri ko'rsatilgan. Yaponiyaning yangi avlod BITlarida ham shu yondashuv qo'llanilmoqda. Ushbu xorijiy tajriba, xalqaro arbitraj amaliyoti

<sup>25</sup> O'zbekiston Respublikasi Prezidentining Farmoni, 01.08.2018 yildagi PF-5495-son

<sup>26</sup> <https://napp.uz/oz/news/o-zbekiston-respublikasi-prezidentining-kapital-bozorida-investitsiya-muhitini-yaxshilashga-doir-qo-shimcha-chora-tadbirlar-to-g-risida-gi-farmoni-qabul-qilindi>

<sup>27</sup> <https://edit.wti.org/document/show/86f7ca99-1c35-43b9-a433->

[eea118c6fba5#:~:text=Treaty%20between%20the%20Federal%20Republic%20of%20Germany,the%20promotion%20and%20mutual%20protection%20of%20investments.](https://edit.wti.org/document/show/86f7ca99-1c35-43b9-a433-eea118c6fba5#:~:text=Treaty%20between%20the%20Federal%20Republic%20of%20Germany,the%20promotion%20and%20mutual%20protection%20of%20investments.)

<sup>28</sup> <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bit/993/china---uzbekistan-bit-2011->

<sup>29</sup> <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bits/4898/korea-republic-of---uzbekistan-bit-2019->

<sup>30</sup> <https://edit.wti.org/document/show/cff49264-5477-4154-ba35-945a1cc3f9bb>

tahlili va O'zbekiston milliy qonunchiligining holati asosida quyidagi taklif va tavsiyalar ilgari suriladi:

*1. O'zbekiston BITlarida MFN bandini aniq tartibga solish.* Yangi BITlar tuzishda yoki mavjudlarini qayta ko'rib chiqishda MFN bandining faqat moddiy kafolatlarga nisbatan qo'llanishini aniq belgilab qo'yish va protsessual normalarga tatbiq etilishini istisno qiluvchi formulalar kiritish lozim. CETA tajribalari bu borada namuna sifatida xizmat qilishi mumkin.

*2. Nizo hal qilish mexanizmlarini BITlarda mustahkamlash.* O'zbekiston BITlarida arbitrajga murojaat qilishdan oldin muzokaralar va mahalliy imkoniyatlardan foydalanish majburiyatini aniq belgilab qo'yish va MFN bandi orqali bu majburiyatni chetlab o'tish imkonini bermaslik zarur.

4. O'zbekistonning ayni paytda Singapur mediatsiya konvensiyasi<sup>31</sup>ga qo'shilish arafasida ekanligini inobatga olib, investitsiyaviy nizolarni arbitrajsiz, mediatsiya orqali hal qilish tartibini BITlarda majburiy bosqich sifatida belgilash zarur<sup>32</sup>.

*3. Milliy sudlar va arbitraj organlarining vakolatini kengaytirish.* O'zbekiston Respublikasining "Sudlar to'g'risida"gi Qonuniga<sup>33</sup> va Iqtisodiy protsessual kodeksiga<sup>34</sup> muvofiq, milliy sudlar tomonidan xalqaro arbitraj qarorlarini ijro etish mexanizmi yanada takomillashtirilishi lozim. Bu esa O'zbekistonning xalqaro investitsion nizolar bo'yicha ishonchli huquqiy muhit sifatidagi obro'sini mustahkamlaydi.

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<sup>31</sup> <https://www.singaporeconvention.org/>

<sup>32</sup> <https://gov.uz/en/news/view/76434>

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