DOI 10.52468/2542-1514.2024.8(2).139-148

SALINI TEST: HISTORY AND TRENDS OF LAW ENFORCEMENT PRACTICE

Oleg Yu. Skvortsov
St. Petersburg University, St. Petersburg, Russia

Article info
Received –
2023 June 06
Accepted –
2023 December 20
Available online –
2024 June 20

Keywords
Salini test, investments, arbitration, investment arbitration, Washington convention, international investment law, investment disputes, enforcement in investment disputes

The subject of this article is the international law enforcement practice developing in relation to the concept of investment. The formation of this practice takes place in numerous decisions of investment arbitration. The Salini test plays an important role in this practice, which is an investment arbitration decision that has become the flagship of the development of the practice of applying international investment law and its principles.
The purpose of the article is to identify trends in the decisions of investment arbitration, in which the concept of investment is interpreted, as well as in the doctrinal justification of approaches to this problem.
The methodology of the study is a comparative legal analysis of those concepts that are the basis of the Salini test, as well as competing theories with it.
Main results. The reason for the appearance of the Salini test was the impossibility of a total consensus of states regarding the legal formalization of the concept of "investment". This impossibility has an objective character, since the investments of resources in one or another sphere have such significant differences that they cannot be taken into account within the framework of a single legal paradigm. In addition, the subjective factor is also important for the formulation of this concept, since states endowed with different roles – either as recipients of investments or as investors - have divergent interests that cannot be realized within the framework of a single legal approach.
Conclusions. Investment arbitration has to a certain extent demonstrated the ability to overcome the differences that exist between different states regarding the key concept of investment law. It was in the arbitration decisions, and above all in the Salini test, that the signs of the key concept of investment law were identified, which together constitute its content. The content of the Salini test is that the concept of investment is formulated based on the identification of the following criteria: (1) investment of assets; (2) a certain duration of the investment of assets; (3) risky nature of investments; (4) significant economic importance for the recipient state.
In addition, the author of the article comes to the conclusion that, despite the fact that the Salini test accumulated the main legal ideas about the regulation of investment activity, the amorphous nature of the concept of investment determines a high degree of its uncertainty in relation to specific situations. This provokes a continuation of the discussion regarding legally significant investment criteria.

ISSN 2542-1514 (Print)

1. Introduction

The development of international investment law is a winding road that humanity overcomes, sometimes stopping, then going back, then rushing forward again. Many divergent interests collide when formulating the norms of international investment law. This is the reason why the international community cannot agree on a common framework for regulating international investment activities.

Despite the fact that in 1965 the Convention on the Settlement of Investment Disputes between States and Individuals or Legal Entities of Other States (hereinafter referred to as the Convention) was adopted, which, it would seem, should have streamlined investment relations, nevertheless it is not necessary to talk about satisfactory unified regulation.

The impossibility of creating a comprehensive system of regulation of investment activity recognized by all States is largely compensated by the practice of investment arbitrations.

The subject of this article is the law enforcement practice that develops in relation to the concept of investment. The Salini test[1] plays an important role in this practice, which is an arbitration decision that has become a kind of flagship for the development of the practice of applying international investment law.

Despite the appearance of the Salini test over 20 years ago, there are heated discussions around its concept, which indicates the relevance of the issues focused in this arbitration decision (E. Babkina and E. Trakhalin [1] R. Dolzer [2], E. Gaillard [3], O. García-Bolívar [4], A. Grabowski [5], L. Malintoppi [6; 7], J. Mortenson [8], C. Schreuer [6; 7; 9; 10; 11], V.N. Anurov [12; 13; 14], E.V. Popov [15], I.V. Rachkov [16], etc.).

The purpose of this article is to show the evolution of a doctrinal and law enforcement approach to understanding investments based on the Salini test and to summarize trends in this area of international investment law.

2. The history of the Salini Test

The international community, being interested in creating an optimal system for regulating the investment market, nevertheless failed to realize this goal. One can hear an objection: in 1965, a Convention was adopted, which eventually was joined by more than 150 States of the world. However, the drafters of the Convention were unable to prepare a text that would regulate the substantive aspects of the movement of investments; its purpose was to regulate the dispute resolution procedure, as well as the establishment of an institution designed to resolve investment disputes. Such an institution was the International Center for Settlement of Investment Disputes (ICSID), established in 1966.

Since attempts to create a system of international investment law acceptable to most countries of the world have not been successful, filling regulatory gaps fell on the shoulders of investment arbitration. This process has taken about a third of a century since the adoption of the Convention and its results have found their concentrated expression in the Salini test[2].

The theoretical prerequisites of the Salini test were largely the developments of the Austrian jurist Christoph Schreuer [17], which formed the basis for approaches to this problem in law enforcement practice [6; 7; 9; 10; 11).

[1] *Salini Costruttori S.p.A. and Italstrade S.p.A. v. The Kingdom of Morocco*, ICSID Case No ARB/00/4, Decision on Jurisdiction of 23 July 2001 // URL: https://www.italaw.com/sites/default/files/case-documents/ita0738.pdf (date of access 30.04.2024)

[2] The Salini test has an ideological predecessor – the Howey Test - the decision of the U.S. Supreme Court in the case *Securities and Exchange Commission v. W. J. Howey Co*., adopted in 1946. In this case, the issue of the concept of investment was considered on the basis of the norms of the American Securities Act, which did not provide for the concept of an "investment contract". The Supreme Court pointed out that such an agreement should be understood as such, according to which a person (1) invests money (2) in a common enterprise and (3) expects to make a profit (the text of the court decision is available: https://www.law.cornell.edu/supremecourt/text/328/293 (date of access 30.04.2024)

ISSN 2658-4050 (Online)

The Salini test itself is the quintessence of the arbitration decision on the dispute between the Italian companies Salini Costruttori S.p.A. and Italstrade S.p.A. with the Kingdom of Morocco, which concluded the ICSID arbitration proceedings in 2001.

However, this arbitral award has some kind of predecessors: (1) the case of Fedax N.V.v. the Republic of Venezuela[3], which was decided in 1998 and (2) the case of Ceskoslavenska Obchodni Banka, A.S. v. the Slovak Republic, which was decided in 1999[4]. In both of these proceedings, the arbitrators set the direction of research, pointing out the need to identify objective criteria for the concept of "investment", without making any attempts to establish the content of these criteria. Such attempts were made several years later by the arbitrators in the Salini case.

3. Prerequisites for the appearance of the Salini test and its content

The reason for the appearance of the Salini test was the impossibility of a total consensus of states on the legal formalization of the concept of "investment"[5]. This is explained by the fact that investments of resources in a particular area have significant differences that cannot be taken into account within the framework of a single legal paradigm [21, pp. 28-29].

In addition, a subjective factor is also important for the formulation of this concept, since States endowed with different roles – either as recipients of investments or as investors - have divergent interests.

The significance of the Salini test is that arbitration has legitimized the features of the economic concept of investment[6]. At the level of global[7] conventional regulation, such legitimization, as the entire post-war practice of the development of international investment law has shown, proved impossible. For this reason, the developers of the Convention deliberately abandoned the formulation of the concept of "investment", leaving room for the law enforcement officer to rely on the amorphous provisions of economic theory [22, p. 152; 23, p. 32; 14, p. 102; 12, p. 262].

Investment arbitration has demonstrated its ability to overcome the differences that exist between different states regarding the key concept of investment law, immediately generating new discord. It was in the arbitral awards, and above all in the Salini test, that the signs of the key concept of investment law were identified, which together constitute its content. The content of the Salini test is that the concept of investment is formulated based on the identification of the following criteria: (1) investment of assets; (2) a certain duration of investment of assets; (3) the risky nature of investments; (4) significant economic importance for the recipient State.

4. Discussions around the Salini test (doctrinal and law enforcement aspects)

Despite the fact that the Salini test accumulated the main ideas of legal approaches to regulating investment activity, the amorphousness of the concept of "investment" determined a high degree of uncertainty in relation to specific situations. This provoked theoretical discussions regarding those legally significant criteria that were used to

[3] *Fedax N.V. v. The Republic of Venezuela*, ICSID Case No ARB/96/3, Decision on Jurisdiction of 9 March 1998 // https://www.italaw.com/sites/default/files/case-documents/ita0316_0.pdf (date of access 30.04.2024)

[4] *Ceskoslovenska Obchodni Banka, A.S. v. The Slovak Republic* ICSID Case No. ARB/97/4, Decision of the Tribunal on Objections to Jurisdiction of 24 May 1999 // https://www.italaw.com/sites/default/files/case-documents/ita0144.pdf (date of access 30.04.2024)

[5] To this circumstance attention is paid almost exclusively to the work of the International Investment Law [5; 7; 1, p. 3-9; 18, p. 55; 19, p. 356; 20, p. 33; 15, p. 16; 12, p. 262]

[6] At the same time, the literature emphasizes that the concept of investment is primarily a field of research in economics, which does not simplify the task of establishing the content of the term in question, but on the contrary, significantly complicates it [13, p. 126]

[7] At the same time, within the framework of regional regulation of investment activity, it is possible to find consensus on the normative definition of the concept of "investment". This is evidenced, for example, by the Energy Treaty Charter (ECT) (1994), the Seoul Convention on MIGA (1985), etc. acts within the framework of which it was possible to formulate this concept

ISSN 2542-1514 (Print)

formulate the concept of "investment". The duration of these discussions is estimated for decades, but there is no end in sight [3, p. 403; 8, p. 257; 24, p. 151; 5; 2, p. 82; 14, p. 101-110].

The Salini test became the basis for the adoption of a number of subsequent investment arbitration decisions[8].

At the same time, arbitration decisions can be found in practice (see, for example, Saba Fakes v. Republic of Turkey[9]), which *conceptually* deny the significance of this test with reference to the fact that its application can lead a number of transactions out of the jurisdiction of the Convention.

At the same time, each of the criteria of the Salini test has become an occasion for discussion, which seems, on the one hand, quite natural, and, on the other hand, a prerequisite for the widest discretion of arbitrators.

The discussions around the Salini test are developing in different directions.

The first area of dispute is the assessment of the criteria on the basis of which the concept of investment is determined. A special discussion was aroused by the fourth feature - significant economic importance for the recipient state. The arbitration, which adheres to the concept of the Salini test, bases its conclusions on the significance of this criterion on the preamble of the Convention, although the text itself does not contain such an indication of attachments[10].

At the same time, there are cases in practice in which the arbitration refused to recognize the materiality of the contribution to the economy of the host State as a criterion of investment[11]. Thus, in the Quiborax S.A. v. Bolivia case, the arbitration, although it recognized that the Convention was intended to promote the economic development of States, refused to recognize such development as a criterion for investment. At the same time, the arbitration pointed out that the preamble of the Convention does indeed refer to economic development, but this represents the purpose of investments, but not their characteristics. In other words, according to the arbitrators, economic development is a consequence of investment, but not a condition for it.

Often, the rejection of the fourth feature of investment is justified by the fact that the materiality of the contribution to the economy of the recipient state is difficult to establish, and in addition, this feature is implicitly contained in other investment criteria[12].

A number of legal scholars consider it necessary to introduce new criteria to qualify investments as investments. Thus, Z. Douglas, speaking about the subject of an investment dispute, indicates that such is determined by the rights arising from the investment project [25, c, 430].

In the case of Phoenix Action Ltd v. The Czech

[8] See, *Joy Mining Machinery Limited v. The Arab Republic of Egypt*, ICSID Case No ARB/03/11, Decision on Jurisdiction of 23 July 2001 // URL: https://www.italaw.com/documents/JoyMining_Egypt.pdf (date of access 30.04.2024); *Jan de Nul N.V., Dredging International N.V. v. The Arab Republic of Egypt*, ICSID Case No ARB/04/13, Decision on Jurisdiction of 16 June 2006. URL: https://www.italaw.com/sites/default/files/case-documents/ita0439.pdf (date of access 30.04.2024); *Helnan International Hotels A/S v. The Arab Republic of Egypt*, ICSID Case No ARB/05/19, Decision on Jurisdiction of 17 October 2006. URL: https://www.italaw.com/sites/default/files/case-documents/ita0398_0.pdf (date of access 30.04.2024); *Malaysian Historical Salvors Sdn, Bhd v. The Government of Malaysia*, ICSID Case No ARB/05/10, Award on Jurisdiction of 17 May 2007. URL: https://www.italaw.com/sites/default/files/case-documents/ita0496.pdf (date of access 30.04.2024)

[9] *Saba Fakes v. Republic of Turkey*, ICSID Case No. ARB/07/20. URL: https://www.italaw.com/cases/429 (date of access 30.04.2024)

[10] Literally, the preamble of the Convention reads as follows: "The Contracting States: Taking into account the need for international cooperation for economic development and the importance of foreign direct investment in this ...". The commented feature is derived from this phrase

[11] *Saba Fakes v. Republic of Turkey*. ICSID Case No. ARB/07/20. Award of 14 July 2010 (date of access 30.04.2024*); Victor Pey Casado and President Allende Foundation v. The Republic of Chile*. ICSID Case No. ARB/98/2 (https://www.italaw.com/sites/default/files/case-documents/ita0638.pdf (date of access 30.04.2024)

[12] *LESI S.p.A. et Astaldi S.p.A. v. People's Democratic Republic of Algeria*, ICSID Case N ARB/05/3 // https://www.italaw.com/cases/618 (date of access 30.04.2024))

ISSN 2658-4050 (Online)

Republic, in addition to the "classic" features of the Salini test, the arbitration analyzed additional criteria – legality and integrity[13]. However, paradoxically, there are discussions regarding legality that relate to various aspects of this feature. Thus, in the case of Alvarez v. Republica de Panama, the arbitral tribunal pointed out that a violation of the law must be substantial in order to be considered as a criterion for refusing to apply the Salini test[14]. And in Yukos Universal Limited (Isle of Man) v. The Russian Federation court refused to recognize this feature, citing the fact that the ECT does not contain a requirement on the legality of investments [16, p. 118].

O. García-Bolívar, a researcher of the practice of applying the Salini test, summarizing a number of disputes, came to the conclusion that arbitrators, when evaluating investments, identify other signs that, in their opinion, characterize investments. In particular, they can be made in the form of know-how and, being significant for the recipient state, should significantly increase the country's GDP [4, pp. 599-600]. Such a position represents an expansive interpretation, the tendency of which is the increase in the legalized signs of investments. The approaches of arbitrators seeking an expansive interpretation are based on a pro-investor policy, which finds its justification in the doctrine, in particular, in the writings of one of the most prominent experts in international investment law, M. Sornarajah [26, p. 7]. The development of the pro-investor direction leads to specific proposals that, in the normative definition of the concept of "investment", one should focus on approximate formulations, abandoning closed lists of investments [27, p. 58].

The second line of discussion regarding the Salini test is that its ideology is primarily aimed at protecting the rights of the investor. The rights of public entities that act as recipients of investments are on the sidelines [29]. For example, the status of investors and recipients is not equal when initiating proceedings [30, p. 345; 31, p. 480]. The protection of investors' rights is becoming predominant over the interests of consumers of investment products [32, p. 573]. This cannot but cause dissatisfaction among States that face a disparity in their rights compared to investors. Meanwhile, socially significant interests such as human rights, environmental issues, and labor rights often require the empowerment of public actors involved in arbitration proceedings. The trend that characterized the development of investment law in the period after the adoption of the Convention and consisting in increasing guarantees to the investor at the expense of the rights of recipient States should change. At the same time, the evolution of practice is also possible by adjusting the Salini test used in qualifying investments in arbitration proceedings.

The third area of discussion related to the application of the Salini test concerns the ratio of investment and commercial activities. When developing the Convention, its authors set out to remove commercial transactions from the scope of ICSID competence [33, p. 117]. However, this formulation of the problem did not exclude disputes about the ratio of commercial and investment transactions. It should be noted that there are also various aspects to these discussions. So, for example, how true is the statement that any commercial activity is an investment activity? Or, on the contrary, is any investment activity commercial? Or should we fundamentally contrast commercial and investment activities, which turns out to be essential for determining the jurisdiction of investment arbitration? The litmus tests of contradictory approaches in this area were the cases against the Central Asian states: Romak S.A. v. The Republic of Uzbekistan[15] and Petrobart Ltd v. Kyrgyz Republic[16],

[13] *Phoenix Action v. the Czech Republic*. Case No. ARB/06/5. Decision on provisional measures. 06 April 2007. URL: https://www.italaw.com/sites/default/files/case-documents/ita0668.pdf (date of access 30.04.2024)

[14] *Álvarez y Marin Corporación S.A.*, *Bartu van Noordenne*, *Cornelis Willem van Noordenne*, *Estudios Tributarios AP S.A.*, *Stichting Administratiekantoor Anbadi v. Republica de Panama*. ICSID Case No. ARB/15/14. Award of 12 October 2018 (https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/619/-lvarez-y-mar-n-corporaci-n-and-others-v-panama (date of access 30.04.2024))

[15] *Romak S.A. v. The Republic of Uzbekistan*. PCA Case No. AA280, Award, November 26, 2009 // https://www.italaw.com/sites/default/files/case-documents/ita0716.pdf (date of access 30.04.2024)

ISSN 2542-1514 (Print)

as well as in the case of Joy Mining Machinery Limited v. The Arab Republic of Egypt[17] .

Thus, in the case of Romak S.A. v. The Republic of Uzbekistan, the Permanent Court of Arbitration in The Hague, having considered the claim of the Swiss company, came to the conclusion that the plaintiff's simple supply of grain is not an investment [34, p. 358].

The exact opposite approach was demonstrated in the case of Petrobart Ltd v. Kyrgyz Republic. Arbitration has approached the concept of investment very broadly, extending the investment regime to commercial relations. The dispute considered by the arbitration arose from the contract for the purchase and sale of gas condensates. Since the supplier company from Gibraltar did not receive payment for the invoices, it filed a claim with arbitration. The arbitrators' conclusions are based on the fact that the plaintiff's right to pay for the goods in accordance with the contract is an asset that falls under the concept of investment formulated in the ECT. On the substantive side, such an investment is the conclusion of a purchase and sale agreement, which falls under the scope of Article 1, paragraph 6f of the ECT [26, p. 40].

In the case of Joy Mining Machinery Limited v. The Arab Republic of Egypt arbitration recognized as an investment a commercial transaction for the supply of equipment for a phosphate mining project, which also became an example of the identification of investment and commercial activities.

The fourth area of discussion is centered around the question of whether the concept of investment is objective or subjective. This issue is of a fundamental nature. Depending on the answer to it, conclusions follow about the possibility of arbitration to establish its own jurisdiction based either on how investments are defined in the contract between the parties. As is often the case in conditions of significant uncertainty, lawyers split into two diametrically opposed camps.

Proponents of the subjective approach say that one should proceed from the importance that investors and recipients of investments attach to it when concluding an investment agreement. Arbitrators, according to proponents of this approach, are bound by a subjectively formed establishment [36, p. 332].

Their opponents argue that the concept of investment is objective, which allows arbitrators to broadly interpret the concept of investment [37, p. 305; 38, p. 267]. It is this trend that is increasingly being recognized by both academic jurists and practicing lawyers.

5. Conclusions

The significance of the Salini test lies in the fact that it helps to fill lagoons in the regulation of investment activity to a certain extent. Moreover, even the fact that the discussions around the Salini test not only do not stop, but also develop, indicates the significant impact that they have on the practice that develops in relation to investment disputes. The past two decades of the Salini test are an indicator that this case has become the flagship of investment arbitration. Even in those arbitral awards that reject this concept, the study of the concept of investment begins with the analysis of the Salini test, which thus becomes the magical dominant around which the theories of international investment law are concentrated. The emergence of the Salini test as a concept on the basis of which arbitration should formulate the concept of investment in a specific dispute was a kind of reaction to the inability at the conventional level to offer a definition satisfying all participants in international investment activities.

Despite all the discussions surrounding the Salini test, its positive impact on law enforcement practice and investors' confidence in the predictability of protecting their rights in the event of a conflict with the state accepting investments are generally recognized.

[16] *Petrobart Ltd v. Kyrgyz Republic*. SCC Case N 126/2003, Arbitral Award, March 29, 2005 // https://www.italaw.com/sites/default/files/case-documents/ita0628.pdf (date of access 30.04.2024)

[17] *Joy Mining Machinery Limited v. The Arab Republic of Egypt*, ICSID Case No ARB/03/11, Decision on Jurisdiction of 23 July 2001 // URL: https://www.italaw.com/documents/JoyMining_Egypt.pdf (date of access 30.04.2024)

REFERENCES

1. Babkina E., Trakhalina L. Some Issues of Qualifying the Notion of Investment: Criticism of the Salini Test. *Zhurnal mezhdunarodnogo prava i mezhdunarodnyh otnoshenii = Journal of International Law and International Relations*, 2017, no. 3–4, pp. 3–9. (In Russ.).

2. Dolzer R., Kriebaum U., Schreuer C. *Principles of International Investment Law*, 3rd ed. Oxford University Press, 2022. 560 p.

3. Gaillard E. Identify of Define? Reflections on the Evolution of the Concept of Investment in ICSID Practice, in: Binder C., Kriebaum U., Reinisch A., Wittich S. (eds.). *International Investment Law for the 21st Century*, Essays in Honour of Christoph Schreuer, Oxford, Oxford Academic Publ., 2009, pp. 403–416. DOI: 10.1093/acprof:oso/9780199571345.003.0022.

4. García-Bolívar O.E. Economic development at the core of the international investment regime, in: Brown C., Miles K. (eds.). *Evolution in Investment Treaty Law and Arbitration*, Cambridge, 2011, pp. 586–605.

5. Grabowski A. The Definition of Investment under the ICSID Convention: a Defense of Salini. *Chicago Journal of International Law*, 2014, vol. 15, no. 1, pp. 287–309.

6. Schreuer Ch., Malintoppi L., Reinish A., Sinclair A. *The ICSID Convention*, A Commentary, 2nd ed. Cambridge, 2009. 1596 p.

7. Schill S., Malintoppi L., Reinisch A., Schreuer C., Sinclair A. (eds.). *Schreuer's Commentary on the ICSID Convention*, A Commentary on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, 3rd ed. Cambridge, 2022. CXC + 2026 p. DOI: 10.1017/9781316516584.

8. Mortenson J.D. The Meaning of «Investment»: ICSID's Travaux and the Domain of International Investment Law. *Harvard International Law Journal*, 2010, vol. 51, no. 1, pp. 257–318.

9. Schreuer C. Commentary on the ICSID Convention, ICSID Review. *Foreign Investment Law Journal*, 1996, vol. 11, iss. 2, pp. 318–492. DOI: 10.1093/icsidreview/11.2.318.

10. Schreuer C. Decisions Ex Aequo et Bono Under the ICSID Convention. *ICSID Review - Foreign Investment Law Journal*, 1996, vol. 11, iss. 1, pp. 37–63. DOI: 10.1093/icsidreview/11.1.37.

11. Schreuer C. *The ICSID Convention*, A Commentary. Cambridge, 2001. 1466 p.

12. Anurov V.N. *Competence of the arbitration court*, in 3 volumes. Moscow, 2022. Vol. 2: Investment disputes. 352 p. (In Russ.).

13. Anurov V.N. Definition "investment". *Treteiskii sud = Arbitration*, 2016, no. 2–3, pp. 125–141. (In Russ.).

14. Anurov V.N. *International investment Arbitration: issues of competence*. Moscow, 2019. 208 p. DOI: 10.31085/9785392305483-2019-208. (In Russ.).

15. Popov E.V. *Resolution of international investment disputes*. Moscow, 2018. 305 p. (In Russ.).

16. Rachkov I. Setting aside international investment arbitration awards by state courts at the seat of arbitration (inspired by the Yukos saga): show must go on?. *Mezhdunarodnoe pravosudie = International Justice*, 2020, no. 1, pp. 107–124. (In Russ.).

17. Lauterpacht E. Christoph Schreuer: An Appreciation, in: Binder C., Kriebaum U., Reinisch A., Wittich S. (eds.). *International Investment Law for the 21st Century*, Essays in Honour of Christoph Schreuer, Oxford, Oxford Academic Publ., 2009, p. 3. DOI: 10.1093/acprof:oso/9780199571345.003.0001.

18. Voznesenskaya N.N. *Foreign investments: Russia and world experience*. Moscow, 2002. 220 p. (In Russ.).

19. Vel'yaminov G.M. *International economic law and process*. Moscow, 2004. 496 p. (In Russ.).

20. Viktorova N.N. The problems concerning the interpretation of the term "investment" in private international law. *Vestnik Universiteta imeni O.E. Kutafina (MGYuA) = Courier of Kutafin Moscow State Law University (MSAL),* 2016, no. 12, pp. 33–43. (In Russ.).

21. Carreau D., Juillard P. *International Economic law*. Moscow, 2002. 583 p. (In Russ.).

22. Farkhutdinov I.Z. *International investment law and process*. Moscow, 2015. 416 p.

23. Doronina N.G., Semilyutina N.G. *International private law and investments*. Moscow, 2012. 272 p. (In Russ.).

24. Vadi V. *Cultural Heritage in International Investment Law and Arbitration*. Cambridge, 2014. 344 p. DOI: 10.1017/CBO978113982598.

25. Douglas Z. The Enforcement of Environmental Norms in Investment Treaty Arbitration, in: Dupuy P.-M., Viñuales J.E. (eds.). *Harnessing Foreign Investment to Promote Environmental Protection: Incentives and Safeguards*, Cambridge, 2013, pp. 415–444. DOI: 10.1017/CBO9781139344289.019.

26. Sornarajah M. *The international law on foreign investment*, 2nd ed. Cambridge, 2004. 525 p. DOI:

10.1017/CBO9780511617027.

27. Subedi S. *International Investment Law: Reconciling Policy and Principle*. Oxford, Portland, 2008. 244 p.

28. Mbengue M., Florou G. Evolutionary Interpretation in Investment Arbitration: About a Judicial Taboo, in: Abi-Saab G., Keith K., Marceau G., Marquet C. (eds.). *Evolutionary Interpretation and International Law*, Hart, 2019, pp. 253–266.

29. García-Bolívar O.E. The surge of investment disputes: Latin America testing the international law of foreign investments, in: *The Second Biennial General Conference Of the Asian Society of International Law*, Tokyo, Japan, August 1-2, 2009, available at: http://asiansil-jp.org/wp/wp-content/uploads/2012/07/garcia-bolivar.pdf (accessed: May 30, 2023).

30. Burova E. Investment Arbitration as a Two-Line Highway: Counterclaims by States against Investors in Light of the Recent Arbitral Practice and New Generation Investment Treaties, in: Asoskov A.V., Zhiltsov A.N., Khodykin R.M. (eds.). *Novye gorizonty mezhdunarodnogo arbitrazha*, Collection of Articles, iss. 6, Moscow, Russian Institute of Modern Arbitration publ., 2020, pp. 344–379. (In Russ.).

31. Grebelskiy A.V. End of an Epoch? The Fate of Investment Arbitration in Light of Attempts to Establish the System of an Investment Court of the EU, in: Muranov A.I. (ed. & comp.). *V.A. Kabatov, S.N. Lebedev: In Memoriam*, Recollections, Articles, Other Materials, 2nd ed., Moscow, Statut Publ., 2017, pp. 476–502. (In Russ.).

32. Simma B. Foreign Investment Arbitration: A Place for Human Rights?. *International and Comparative Law Quarterly*, 2011, vol. 60, iss. 3, pp. 573–596. DOI: 10.1017/SOO20589311000224.

33. *History of the ICSID Convention: Documents concerning the Origin and Formulation of the Convention on the Settlement of Investment Disputes between States and Citizens of Other States*, in 4 vol. Washington, DC, ICSID Publ., 2009. Vol. 2, pt. 1. 645 p.

34. Beloglavek A.I. *International legal protection of investments in the electric power industry*. Kyiv, 2011. 396 p. (In Russ.).

35. Wordsworth S., Investment Arbitration: Mass Claims. *World Arbitration and Mediation Review*, 2014, no. 8, pp. 328–340.

36. Cole T., Vaksha A. Power-Conferring Treaties: The Meaning of 'Investment' in the ICSID Convention. *Leiden Journal of International Law*, 2011, vol. 24, no. 2, pp. 305–330.

37. Sattorova M. Defining Investment Under the ICSID Convention and BITs: Of Ordinary Meaning, Telos, and Beyond. *Asian Journal of International Law*, 2012, no. 2, pp. 267–290. DOI: 10.1017/S2044251312000112.

INFORMATION ABOUT AUTHOR

Oleg Yu. Skvortsov – Doctor of Law, Professor,
Department of Commercial Law
St. Petersburg University
7, 22-ya liniya V. O., St. Petersburg, 199106, Russia E-mail: oleg.skvortsov@mail.ru
ORCID: 0000-0001-9697-5264
ResearcherID: K-3098-2013
Scopus AuthorID: 57202982833
RSCI SPIN-code: 8942-9453

BIBLIOGRAPHIC DESCRIPTION

Skvortsov O.Yu. Salini test: history and trends of law enforcement practice. *Pravoprimenenie = Law Enforcement Review*, 2024, vol. 8, no. 2, pp. 139–148. DOI: 10.52468/2542-1514.2024.8(2).139-148. (In Russ.).