

Stages of Formation of International Legal Regulation Investment Activity

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Abstract: This article examines the development of international legal regulation of investment activity, the emergence of the first investment relations, the stages of development of investment activity and the classification of investment activity. And also the modern stage of development of international legal regulation of investment activity of the country is considered.

Keywords: foreign investment, investment activity, investment policy, investor, international legal regulation of investment activity, investment efficiency, investment project.

The emergence and subsequent gradual development of international legal regulation of investment activity took place over a fairly long historical period. This problem is the subject of this study, since the study of the initial stage of investment activity and the historical experience of various states in this area helps to better understand the problems of modern investment relations, and also contributes to the development of more effective mechanisms for the international legal regulation of foreign investment at the present stage of historical development.

There is no consensus among scientists regarding the time of the emergence of the first investment relations. For example, I.Z. Farkhutdinov notes that the beginnings of investment relations appeared in the 11th century. in Florence with the development of the merchant class and banking capital. Another specialist V.N. Lisitsa believes that the process of investment began after the English bourgeois revolution of 1640¹. A.A. Derevyakin, conducting a historical and legal analysis, comes to the conclusion that investment relations arose in the middle of the 17th century.

There is no unified approach among specialists in the issue of periodization of international legal regulation of investment activity. So, I.Z. Farkhutdinov distinguishes five stages in the development of investment activity: 1) XIII century. - XV century. - medieval stage; 2) XV century. 17th century - the stage of the Great geographical discoveries; 3) XVIII century. - 19th century - colonial stage; 4) XX century. - post-colonial stage; 5) the turn of the XX - XXI centuries. globalization phase².

French scientists D. Carro and P. Juillard offer their own periodization of investment activity based on the development of its international legal regulation. According to these scholars, the first stage is distinguished by the creation by industrial countries of international norms that ensure the protection of foreign investment; the second stage is characterized by the denial by developing countries of international norms in the field of protection of foreign investments created by industrial countries; the third stage is the joint creation by industrial and developing countries of international norms in the field of protection of foreign investment³.

¹ Farkhutdinov IZ International investment law: theory and practice of application. - M.: Wolters Kluwer, 2005. - C. 109-110.

² Farkhutdinov I. Z. Formation and development of international investment law in the context of globalization: basic parameters // Modern law. - 2006. - No. 7. - S. 10.

³ Carro D., Zhyuyar P. International economic law. - M., 2002. - S. 400-411.

In turn, M. Sornaraja, also based on the criterion for the development of international legal regulation of foreign investment, suggests identify three stages in the development of investment efficiency.

According to D.K. Labin implementation of investment activities should be classified into four periods:

- 1) colonial period;
- 2) post-colonial period;
- 3) the period of rational economic behavior of states;
- 4) modern period⁴.

As can be seen, specialists offer various criteria as the basis for the periodization of investment activity. Considering periodization based on the criteria for the development of legal regulation of investment activity, it should be taken into account that the development of law always lags behind the development of relations regulated by this law. For this reason, the above classification criteria, as well as the chronological periods of the evolution of international investment relations, should be considered as rather conditional. It is indisputable that the first foreign investments began to be made with the development of international trade. Therefore, one should agree with I.Z. Farkhutdinov that the beginnings of investment relations appeared with the development of the merchant class.

However, foreign investment activity could only fully develop when entrepreneurs had surplus capital that could be invested abroad. The emergence of such capital surpluses is due to the achievement of a high level of development of economic relations, the development of the capitalist mode of production and the banking system.

Based on this, it is possible to classify the evolution of international legal regulation of investment activity into four stages. The first stage falls at the time of the formation of international legal regulation of investment activity in the conditions of the existence of dependent (colonial) states in the period from the 2nd half of the XVII century to the beginning of the XX century. The second stage is characterized by the formation and development of international legal regulation of investment activity in the context of the practice of nationalization of foreign investment and falls on the period from the beginning of the 20th century to the beginning of the 20th century. to the 60s of the XX century.

The beginning of the third stage is the emergence of independent states as a result of the collapse of the colonial system with which the former metropolises had to build international legal regulation of investment activity based on national and international law. This stage is characterized by the strengthening of the economic interdependence of states and it falls on the period from the 60s of the XX century. until the end of the 20th century. The modern historical period is the fourth stage, which began at the end of the 20th century. At this stage, the mechanism of the international legal regime of foreign investment is being transformed in the context of globalization.

The peculiarity of the first stage in the development of international legal regulation of investment activity is that at that time the metropolises invested capital in their colonies. The movement of capital by investors from one colonial system to the territory of another colonial system was not welcomed, which is why it was practically absent.

At this stage, investors did not need any special investment protection mechanisms, since the colonial states were under the jurisdiction of the mother countries. Legislative acts adopted by the colonies were controlled by the mother country, which guaranteed the rights of investors. At the same time, through the adoption of legislative acts, the investors of the metropolises sought for themselves favorable conditions for the implementation of investment activities in the territory of the colonies.

⁴ Labin DK International legal regulation of investment relations: (historical essay) // Law and Politics. - 2000. - No. 9. - S. 30-37.

For these reasons, there was no need for international legal regulation of foreign investment. Investment disputes that arose during this period between metropolitan and colonial investors, as well as between investors belonging to different colonial systems, were settled by diplomatic protection or by force.

However, over time, there was a need for international legal regulation of investment activity. To do this, the industrial states at the end of the nineteenth century. was developed and used until the middle of the twentieth century. the doctrine of the "international minimum standard of civility", which required from the host states of investments (mainly colonial ones) to observe certain rules in relation to foreign citizens and their property.

The international minimum standard of civility was not accepted by the developing states of Latin America, which at the same time were opposed to diplomatic protection and the use of force to resolve investment disputes. For this reason, the Argentine lawyer and diplomat C. Calvo in 1868, in the context of the intervention of European powers in Latin American states in order to collect the debts of their subjects from the governments of these countries, proclaimed the principle of the inadmissibility of diplomatic or armed intervention of states to collect debts from another state. This principle was included in a number of treaties concluded by the Latin American countries among themselves and with the European powers. At this stage in the development of international legal regulation of investment activity, states that were not part of the colonial system attracted foreign investment on the basis of international bilateral agreements or on the basis of concession agreements concluded between the state and a private foreign investor. As a result of the conclusion of concession agreements, investments were attracted, as a rule, for the construction of railways, the development of mineral deposits, etc.

According to V.A. Vinogradov, the nationalization in the country was actually a confiscation, since it was carried out without payment of remuneration to the former owners. As T.N. Neshataeva notes, the nationalization of property, including foreign property, carried out without payment of compensation, was negatively perceived in the world, especially in the USA and Western Europe⁵.

At the third stage of the development of international legal regulation of investment activity, the newly formed independent states as a result of the decolonization process attempted to develop their economies by establishing control over national natural resources and foreign property acquired through investments from former metropolitan countries.

The practice of nationalization of the Eastern European states had a direct impact on the processes of nationalization of foreign investment in the states that had freed themselves from colonial dependence. Due to the fact that, from the financial and technical side, nationalization was not always beneficial for the former colonial states, they made compromise agreements with foreign investors. On the basis of such agreements, the state acquired a part of the block of shares of foreign companies while retaining the management of the enterprise and the sale of products in the hands of foreign investors, i.e. partial nationalization took place.

However, these agreements were by no means always reached, so many states in Asia, Africa and Latin America quite often resorted to unilateral acts of nationalization of foreign investments with payment of compensation.

This period is also characterized by the appearance of a significant number of investment disputes between the recipient states and foreign investors regarding the payment of compensation for nationalized foreign investments. The main issue that worried foreign investors at that time was the development and adoption of international legal mechanisms that provide guarantees and protection of foreign investment. In this regard, investment activity began to be regulated on the basis of bilateral and regional investment agreements actively concluded between states.

⁵ Нешатаева Т.Н. Международное частное право и международный гражданский процесс: учебный курс: в 3 ч. М.: Городец, 2004. - С. 13.

The current stage of development of international legal regulation of investment activity, which according to the classification is the fourth, is taking shape in the conditions of globalization of the world economy. One of the main factors of modern world economic processes is a significant increase in the volume of foreign investments attracted by states. According to experts, the volume of foreign direct investment today exceeds the volume of trade and services between states.

In connection with the influx of large volumes of foreign investment into the economies of developing countries and countries with economies in transition, the most urgent for them is the problem of maintaining economic sovereignty, which in the era of globalization is both domestic and international. Threats to the economy of the state associated with foreign investment are that investments can be withdrawn from the country in a short time, as a result of which the economic situation in the country may worsen.

The study of world experience shows that the purpose of investment by foreign investors is to make a profit in a short time without taking into account the national interests of the recipient country. In most cases, foreign investors do not intend to make long-term investments in the national economy.

A feature of modern international legal regulation of investment activity is also the fact that transnational corporations, non-governmental organizations and public associations occupy an important place in the international arena, whose activities are multidirectional and often do not correspond to the national interests of the states in which they were established. Situations often arise when public interests give way to corporate interests.

It should be noted that many states today restrict the access of foreign investors to economic sectors that are of strategic importance for the country's security, including economic. These measures are related, among other things, to the fact that transnational corporations, in the event of insufficient regulation of their activities by the state, attracting especially large investments, can cause significant damage to the economic sovereignty of the state, its national security, the natural environment, etc.

Analysis of the consequences of the Argentine financial crisis of 2001-2002 clearly showed how the problems in the social sphere that emerged as a result of such a crisis can affect the foundations of the national security of the state.

Economically developed states, in turn, using the opportunities of globalization and the related activities of international organizations, are trying to achieve liberalization and complete freedom in the implementation of capital investments by foreign investors.

In connection with the foregoing, in the context of globalization, the activities of states to protect their national interests are relevant and in demand.

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