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The foreign investment and using modern communication technologies in the disputes resolution

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Abstract

The paper aims to investigate the foreign investment and using modern communication technologies in the disputes resolution via qualitative comparative analysis. As a result, the Investment Law in force allows the Investment Commission to use electronic means of communication to simplify procedures between the commission and investors. In conclusion, we suggest adding the organization of electronic notification to traditional notification methods in order to keep pace with technological developments and use modern means of communication.

Keywords: Foreign Investment, Modern Communication, Technologies.

La inversión extranjera y el uso de modernas tecnologías de la comunicación en la resolución de conflictos

Resumen

El documento tiene como objetivo investigar la inversión extranjera y el uso de tecnologías de comunicación modernas en la resolución de conflictos a través de un análisis comparativo cualitativo. Como resultado, la Ley de Inversiones en vigor permite que la Comisión de Inversiones utilice medios electrónicos de comunicación para simplificar los procedimientos entre la comisión y los inversores. En conclusión, sugerimos agregar la organización de la notificación electrónica a los métodos de notificación tradicionales para mantener el ritmo de los desarrollos tecnológicos y utilizar medios de comunicación modernos.

Palabras clave: inversión extranjera, comunicación moderna, tecnologías.

1. INTRODUCTION

Investment is an innovative subject with many branches. From the 1950s to the early 1970s, direct international investment flourished in Iraq under the influence of ideology of development. In recent years, foreign investment has increased, benefiting from a surge in the socio-economic and political health of Iraq. While the country has a vast natural wealth and is in the process of reconstruction (see opportunities), the industrial countries will obtain many investment

concessions to exploit its multiple resources, including through the participation of the national governments of these countries by payment of funds for investment in these key resources. In reality, the quality of investment in underdeveloped countries is due to the participation of foreign capital. Since then, most of the legislatures of underdeveloped countries, such as Iraq, have enacted laws that attract foreign capital, with the aim of exploiting these investments to develop new industries on their territory. Attracting investment has become a major concern of the Iraqi state, because of the benefits it brings. Iraq has emerged recently in global development after the political and economic change of 2003, and we know that investment plays a key role in technological flows and in the development process. In fact, the basis of investment in Iraq rests on two pillars: first, the exploitation of natural resources, and second, the creation of new markets for large industrial companies to sell their products.

Faced with this situation, in order to develop foreign direct investment in the country, the Iraqi legislator has adopted a new law on investment. It has also tried to adopt more flexible criteria, allowing judges a wider spectrum of interpretation and the use of the more modern tools. For example, Article 6 of the Iraq Investment Law of 2006 allows the Investment Commission to use electronic means of communication completing the traditional means of communication between the Commission, the authorities and the local authorities. Officials and investors, irrespective of their nationality (Iraqi and / or foreign).

These modern tools make it possible, among other things, to facilitate exchanges and the transmission of information. This is a key factor in the decision-making process of investors seeking guarantees of respect for their rights. This article will underscore the real advance in Iraqi law of the modernization of justice in the service of the citizens as inscribed in the program of justice in the 21st century. A modernization that aims to ensure a closer and more effective justice serving citizens. Thus, Article 6 of the Investment Law states that if there is a dispute between the Commission and the investors, the parties will be notified via modern means of electronic communication. While knowing that the Iraqi Code of Civil Procedure has not yet followed the technological development on the subject as, for example, the French civil procedural law and the European regulation of 2000 and 2015. An advance that suggests progress in resolving disputes in these matters. In this context, we will approach the Iraqi Investment Law, integrating the issue of the use of new technologies in the resolution of conflicts in this area. Specifically, we will discuss respectively the characteristics of the Iraqi Investment Law, factors of the attractiveness of investments in Iraq and the role of new technologies in the resolution of disputes related to foreign direct investment.

Although international commercial activity is on no account a recent phenomenon, as A. de Nanteuil points out, there is growing interest in investment law in debates and studies on international law. He says, "Undoubtedly, international investment law is today, one of the most dynamic branches of international law" (Mohamed, 1978:

21). One of the reasons is the opening of economic borders in the 20th and 21st centuries. In other words, the internationalization of market activities and the phenomenon of globalization entail the law to position oneself on the legal nature of new forms of economic and investment relations. To understand the main guidelines of the Iraqi Investment Law, it seems essential to us to make a point on the definition of the concept of foreign direct investment and its legal nature. Next, we will discuss Iraq's Investment Law No. 13 of 2006 as amended with Law No. 2 of 2010 and Law No. 50 of 2015.

1.1. The concept of foreign direct investment and its legal nature

1.1.1. Definitions

According to the definitions of IMF and OECD, direct investment reflects the objective for a resident entity of an economy (direct investor) to obtain a lasting interest in a company that resides in another economy (enterprise of direct investment). The concept of sustainable interest implies the existence of a long-term relationship between the direct investor and the direct investment enterprise, as well as a significant degree of influence over the management of the direct investor. Direct investment involves both the initial transaction establishing the relationship between the investor and the enterprise and all subsequent capital transactions between them and between

affiliated enterprises, whether incorporated or unincorporated. It should be noted that non-settlement capital transactions, such as an exchange of shares between affiliates, must also be recorded in the balance of payments and in the PEG.

For Hisham, foreign direct investment is "an international movement of long-term private capital, so that the (direct) investor directly supervises the foreign institution" (Hisham, 1988: 13). Bayaa also defined this form of investment as "capital movements aim for primarily at controlling the management and profits of foreign firms" (Bayaa, 1989: 11). In other words, foreign or international direct investment refers to investments outside the country, pursuing economic, financial and political objectives. For the terms direct investor and direct investment enterprise, the IMF and the OECD define them as follows. A direct investor may be an individual, an incorporated or unincorporated private or public enterprise, a government, a group of related persons or a group of incorporated and / or unincorporated affiliated enterprises that have a direct Investment enterprise in a country other than the country of residence of the direct investor. A direct investment enterprise is an incorporated or unincorporated enterprise in which a foreign investor holds 10% or more of the common shares or voting rights of an incorporated business or the equivalent of an unincorporated business in society. Direct investment enterprises may be subsidiaries, but also associates or branches. Finally, it is often debated what the position and role of foreign direct investment should be in the economic planning of a

country. In fact, it must be determined whether it completes trade or substitutes the trade of countries engaged in foreign direct investment.

On the one hand, a number of authors believe that foreign direct investment is a substitute for foreign trade in the investing country. The steady increase in outflows from foreign investment projects is like substituting exports of commodities by selling projects that will inevitably lead to reduced employment opportunities at home. For this reason, many professional and political actors (including unions in the Western world) oppose foreign direct investment. He considers that this maneuver ultimately leads to the export of jobs from the investing country to the host country. Their main concern is that workers cannot move freely between different countries and, therefore, employment opportunities and well-being must be considered in the context of a national economy. On the other hand, a study on the role of foreign direct investment could reveal that its main purpose is to promote attempts to expand free trade around the world. The goal of free trade is that each country, assuming that neither labor nor capital is transferred internationally, promotes the international division of labor according to comparative costs. He suggests that the principles of trade reveal how each country can develop in the international economy. Foreign direct investment should then complement the lack of capital or management skills of the host country. In other words, foreign direct investment boosts other factors of production such as labor, resources and management to stimulate cheap production, which was not possible before because of the lack of assimilation conditions. Its role,

because it favors structural adjustments, is then to establish a harmonious trade throughout the world.

1.1.2 The legal nature of the investment

The law on investment, in general, is a branch of law consisting of a set of rules that regulate investment. The law on investment can be either an international law on foreign investment, or a national law. And, international law of foreign direct investment can be defined as a set of rules governing international investment. International law on foreign direct investment has been and is shaped by the interaction of various economic, political and historical factors. It is generated by the final resolution of conflicting national interests. The interests of the capital-exporting States ran up against those of the capital-importing States. The International foreign investment law is then seen as a solution to these conflicts. It is an area in which economic theories, political science and related fields have helped shape the arguments on the ground. It is also an area of international law that calls for the creation of an alternative theory, because it cannot be explained in accordance with an existing theory of international law and because the rules are not clear (Kojima, 1982).

For the national investment law, the investment is considered a commercial or business activity. Commercial activities are governed by the Commercial Code and the laws of commerce. Commercial law deals with both the law of obligations and the law of property. This

means that commercial law includes a part of the law of obligations and the right of ownership. For example, business transactions in general and investment, in particular, require the application of contract law since they are contractual transactions and the properties are the subject of investment contracts. Consider another example. An investor may import or export products or other goods related to his investment. An investor should import machinery and equipment for his investment. These machineries and equipment should be transported to Iraq. In such a case, a bill of lading (receipt of goods) may be used. A bill of lading is a receipt for the deposit of a specific object and has the quality of being negotiable. Thus, he represents the goods in a certain way. It is also a document that contains a contract for the transportation of goods.

Investment activity is governed by commercial law. Commercial law has developed through traders' practice and the state has integrated it into a legal system. In short, both include the contract and the property. This shows that an investment involves the application of the law of the contract and the property. Recently, various state regulations have developed to regulate the industry and with the creation of state-owned public services have led to the intrusion of public law in the field of trade. This shows that commercial law is also a public law. Public law is a set of laws dealing with relations between individuals and the government. Investors are individuals and the government regulates investment. Therefore, the law on investment is also a public law. Finally, the Investment Law

regulates investment in general and addresses the following issues, among others:

- It defines important terms such as investment and investor: International investment agreements are international investment laws that define these terms. National laws also set out certain provisions for defining investment and the investor. In doing so, the law on investment regulates investment.

-Admission and Investment Establishment: The Investment Law governs the entry of foreign investment into a host country. Each State may wish to restrict investment in certain sectors of the economy to the State or national inventors. The law on investment puts requirements to create businesses; to undertake investment activities; and, business forms. It also includes ownership restrictions and related issues.

- National Treatment: A host country is required by international investment law to treat foreign investors in the same manner as domestic investors. However, the host country may not treat foreign investors in the same way as domestic investors. It should be noted that customary international law does not impose states to extend national treatment to foreign investors. This national treatment is provided by bilateral investment treaties and / or national laws.

- Guarantees: The Investment Law provides guarantees to investors. International investment law aims to guarantee foreign investors. History has shown the nationalization and expropriation of foreign direct investment. Thus, the customary law on international investment guarantees investors against these forms of expropriation and other forms of investment.

- Environmental issues: They are also dealt with by the law on investment. Today, we realize that economic activities are closely linked to the protection of the environment. For example, investment treaties have begun to include provisions dealing with the protection of the environment.

- Labor Issues: The inclusion of labor provisions in investment treaties is growing, although they are still included. Investment treaties may provide for minimum standards of wages and working conditions. It may also concern the right of workers to organize unions.

1.2. The Iraqi Law on Foreign Direct Investment

According to Iraqi law, foreign direct investment is divided into two main types: intended to invest in the assets of another country, through the creation of companies or mergers in a national company, in short, any asset of the company mother in the host countries. It is also known as money coming into a country other than its own and used

directly for the purposes for which it was provided in accordance with the national legislation of the host country. Similarly, Iraqi law recognizes joint investment and wholly-owned investments by the foreign investor. With regard to joint investment, a joint venture enters into a long-term agreement involving two or more countries in two different countries, where the participation is not limited to a portion of the capital, but may involve the provision of expertise, knowledge, work or technology in general. Participation in a portion of the capital may be delegated to the other party to provide the technology, or it may take the form of information, marketing knowledge or market presentation. The rules of the Iraq Investment Law No. 13 of 2006 apply to State investments and persons, domestic and foreign, on the one hand, to individuals on the other hand. The description of the investor is different in the case of the natural person than for the legal person, which is indicated by Article (1) of the Iraqi Investment Law. This description is based on the criterion of nationality in order to determine the legal description of a natural person and determine his political subordination. Article 1 paragraph 9 describes the Iraqi investor as the one who holds the Iraqi nationality in the case of the natural person ... This means that the foreign investor is the one who does not have the Iraqi nationality (Hymer, 1960).

In fact, under Iraqi law, the investor may be a legal or natural person. As a legal entity, both Iraqi law and comparative law have adopted the criterion of nationality as a determining factor. Some laws adopt the place of incorporation and the main place of the administrative center to determine the investor's nationhood. Other

laws have also adopted the national adjective of ownership of invested capital. This is a criterion that was adopted by the founding of the Arab Investment Guarantee Corporation in 1971. In contrast, under the Investment Law, the Iraqi legislature has adopted the registration standard to determine the nationality of the invested enterprise. He thus drew a distinction between the national legal people on the one hand and the foreign legal person on the other. Thus, a person registered abroad must take the description of the foreign investor as stipulated in the same article (i). Given the position of the Iraqi legislator, the investment is therefore classified according to the nationality of the investor regardless of the foreign status of the invested capital. It is the foreign nature of the investor that influences the determination of the nature and description of the investment. It thus weakens the effect of the foreign characterization of capital in this context.

It should be noted that the Investment Law allows investment in all areas for the Iraqi investor or foreign investor, except for investment in the oil and gas extraction and production sector; or, investment in the banking and insurance sectors. In addition, Iraq's law on foreign direct investment led to the creation of two entities, called investment commissions in Iraq: the National Investment Commission, with legal personality and managed by a board of directors (consisting of nine people with experience, a specialization for a period of at least ten years and an undergraduate degree). This committee is responsible for the development of national investment policies, the preparation of plans, regulations and controls, as well as the monitoring of the implementation of these regulations, particularly investment

projectsexclusively federal. The Council of Ministers is appointed at the request of its Chairperson as Chairperson of the Investment Committee with the Vice-Chairperson as Deputy Secretary of the Ministry for a five-year term. This selection is then approved by Parliament.

For regions or governorates that are not organized in a region, the law will approve the provincial authority, while the unorganized provinces in the province will have extended financial and administrative powers. The Investment Commission for Regions and Governorates has the power to grant investment licenses. It encourages investments and the opening of branches in its regions in consultation with the National Commission in accordance with this law. This commission is composed of seven experienced and competent members for seven years. It is linked to the prime minister of the region and the Governor of the governorate and is subject to the supervision of the Provincial Council. Finally, the law allowed regions and governorates to form commissions, as well as to have investment plans that do not contradict federal investment plans (Robert, 2008).

2. The factors of attractiveness of investments in Iraq

There are many factors that influence foreign direct investment decisions. The international geopolitical climate, the social, economic and political climate of the country, the nature of its market and the reality of its national legislation are all elements that will be taken into

consideration by sophisticated investors. Other points of attention will also attract the foreign investor's eye, such as the balance between the obligations and rights of the state and his rights as a foreign investor. These different factors will be addressed in this second point, with regard to the Iraqi case (Kogan, 2008).

2.1 Attractiveness for investing in Iraq despite a tense social, economic and political climate

Foreign direct investment is a new phenomenon in Iraq, a post-conflict country with an abundance of natural resources. With a state-dominated public sector, attracting foreign investment is an additional challenge for an economy devastated by years of war. The lack of security, political instability, corruption and the inadequacy of government policies on foreign direct investment, as symptoms detected, are also generally shared by other countries emerging from a conflict. In the face of endemic socio-economic and political difficulties, the dormant Iraqi economy has received renewed impetus in recent years. While the country hopes to overcome a long period of conflict and stagnation, economic opportunities have opened. The combination of several factors makes Iraq a favorable business and investment destination. The need to build new and modern infrastructure, to develop housing, health systems and other public services, to improve human resources through training in marketable skills, and to promote the expansion of exports, to offer a wide range of choices to international Companies are all opportunities for direct

investors. Some believe that the reconstruction of Iraq offers one of the greatest investment opportunities in the world for decades, although continued political turmoil creates a risky business environment. A relative improvement in the country's security situation over the past two years with the decline of insurgency is helping to stimulate growth. However, the challenges of doing business in Iraq abound. Currently, Iraq ranks among the worst places in the world to do business, languishing in 168 out of 186 countries, according to a report by the World Bank²⁴. For starting a business, Iraq ranks even lower, in 174 places. Yet this has not stopped foreign companies from entering the market. Some of the specific problems are security, corruption, lack of transparency, a dated and under-equipped banking system, intellectual property rights issues, undeveloped arbitration law and litigation on oil rights.

The recent innovations in Iraq's investment law, with Law No. 2 of 2010 and Law No. 50 of 2015, aim to facilitate foreign and domestic investment in the country. But even so, the more flexible legal framework that is close to international standards must guarantee sustainable investments in many sectors of activity, without weakening the strategic position of national investors in the main areas of activity. As a result of these few legislative reforms, foreign investment increased from \$ 3.87 billion in 2003 to \$ 55.67 billion in 2016, an estimated increase of 40.3% in the total value of transactions over the previous year, according to Frontier (2016) Consultants.

Thus, the immense potential of the Iraqi economy attracts more and more foreign investors. The above-mentioned Dunia study found more than 45 active countries in Iraq in 2016, in the areas of investment, service contracts and other business activities in the country. Foreign investments were made in key sectors such as telecommunications, residential real estate, oil and gas, electricity, water and sanitation, defense, medicine, and commercial real estate, despite an uncertain security situation and political uncertainties. In 2015, Asian countries were the top investors, accounting for 42% of total investment in Iraq, followed by Europe at 25.1% and the United States at 12.4%. Among Asians, South Korea tops the list, capturing 25.5% of total investment. Turkey in the West Asia region was far behind at 6.6%, followed by China, the UAE and Iran.

2.2 The balance between the rights of the host State and the rights of the investor

The investment rules apply to the different parties involved in the investment relationship to determine their rights and obligations²⁶. According to the legal description, whether foreign or domestic investors, these rules are at the same time intended to regulate the provisions and effects of the investment relationship to which they are parties. The foreign character of the parties, then determines the nature of the investment, according to the terms of the Iraqi legislator in the Investment Law No. 13 of 2006. For the Iraqi legislator, direct investment is classified according to the nationality of the investor

regardless of the foreign status of the invested capital. Therefore, nationality plays a decisive role in the legal position of the natural or legal person, because it refers to the affiliation of a person to a legal system of a particular State. By this affiliation, the natural or legal person will see his rights and obligations determined by the laws of the investing State as well as by the laws of the host country for the investment. This determination depends mainly on the laws applicable in the host country to the rights and obligations of investment. Thus, nationality is only a tool of the distinction between the national investor and the foreign investor.

As a result, Iraq's law stresses the rights of domestic and foreign investors. These rights take the form of duty exemptions, banking facilities and privileges, allow foreigners to invest in most regions and ensure the non-confiscation of their property, nationalization or seizure by the State. . The rights of the investor also include the granting of the freedom to transfer legislative and judicial jurisdiction outside the state's legal system of investment in investment disputes. In this way, the investor has the right to resort to arbitration instead of the law of the State of Investment provided that the nationality of the investor differs from the nationality of the host country for the investment.

On the other hand, the law on investment imposes certain obligations, in particular, civil security rules such as: the protection of the environment and public health, the prevention of pollution²⁸, the respect of the rules of labor law. As a result, all these obligations are subject to the domestic laws of the investor of the host country. He

cannot agree on his disagreement, because it is a rule that applies to nationals and foreigners. It relates to public order and is expressed by the doctrine of private international law. These rules are called rules of immediate and direct application. And, the foreign investor cannot transfer or change the jurisdiction in the above commitments outside the perimeter of the legal organization of the investing State.

The Iraqi legislator has expressed its position on the investor's obligations in Article 14 of the Investment Law. It can be divided into three types: organizational obligations, investor notification obligations to the National Investment Commission and its training in the regions and governorates³¹ of completion of the installation of the requirements of the project; as well as the investor's obligations to hold accounts / or investments from the beginning of the project. Similarly, the investor must submit the project feasibility study / integrity to the examination of a chartered accountant in Iraq³³. It must also undertake to keep records of imported and exempt / economic and technical materials for the project, and assume investment costs. To maintain the integrity of the environment and to respect the quality control systems in force in Iraq and the global regulations adopted in this field and the laws relating to safety, health, public order and the values of Iraqi society.

Finally, the substantive commitments concern the obligations related to the preservation of the environment and the quality control systems in force in Iraq. The various investments must comply with international standards and compliance with the security laws³⁵, the

minimum wage / health, public order and the values of Iraqi society, according to Iraqi laws³⁶. The third type of procedural obligation is to provide the investor with an agenda that corresponds to the reality not exceeding six months. He then undertakes to train Iraqi employees and qualify them to increase their efficiency and their ability to use them.

3. The role of new technologies in resolving disputes related to foreign direct investment

Modern communication and information technologies (ICTs) are an important part of our lives. The professional world, and in particular the judiciary, does not escape this observation with an increasingly significant position of ICT, digital data (Big Data), their stakes and challenges in the active society. In this context, the legislator is gradually becoming aware of the need to change the law in order to avoid possible legal loopholes. Indeed, certain behaviors, including commercial, business and investment behaviors unfold in this virtual world, leaving behind physical contact and traditional relationships. They lead to new contractual forms, new clauses, but also new disputes. These must be mastered by justice.

New technologies can also play an interesting role in the resolution of disputes. Their mastery can be useful to the general efficiency of the handling of the files, to the communication of the documents of a file between foreign jurisdictions, to the speed of the exchanges and the procedure ... as many advantages which deserve to

be apprehended by law research. Therefore, this third point allows us to illustrate technology as a driver of change in litigation management, and in particular to take stock of the integration of the issue of new technologies into Iraqi law and their perceived usefulness in resolving foreign direct investment disputes (Haddad, 2001).

3.1 Technology as a driver of change in litigation management

Technology is a driver of change in the field of dispute resolution. For example, revisions to disclosure rules in court proceedings in many European countries demonstrate that the majority of disclosures are electronic today rather than paper-based and are intended to counter the massive proliferation of electronic multi-addressee e-mails and endlessly reproducible materials that have overwhelmed the disclosure process. Predictive coding, data analysis and keyword research help to filter the mountain of information available, most of which is not strictly relevant to the issues in dispute, which threatens to overwhelm the system and slow down the procedure. In addition, the cost being a constant pressure in the judicial world, the advent of technologies that seek to reduce this cost, whether by reducing the time spent doing expensive tasks in labor or using initiatives virtual spaces to reduce travel and associated expenses can be very useful. The digital applications and tools of the legal industry play an increasingly important role in mediations and arbitrations. Also, the technology allows counsel to present their argument in a

more attractive and visual way. Information can be shared much more easily, and processes can be considerably speeded up.

However, the caveat to this situation is that new challenges will be posed by future technological developments. Huge amounts of data will have to be processed. New ways of storing data will have to be developed and at the same time, the processing and use of real-time data will become more difficult simply because there will be many. As a result, dispute resolution processes (and the legal system itself) will need to address issues such as the effect that block chain technology and smart contracts will have on the structuring of legal and contractual relationships. The precise meaning assigned by counsel to the term contract with its characteristics of offer and acceptance, of consideration and certainty of terms does not accord with the more flexible definition of a smart contract as an automated or self-executable written in software code that is essentially a series of logical statements. Complex contracts do not seem to be reducible to such a structure, yet it seems likely that we will begin to see hybrid smart contracts that include both self-executable terms and terms that are outside software code. It will then be necessary to ask the question of how to resolve disputes that arise in this context?

More fundamentally, are there any structural changes that could be made to the dispute resolution process (including those related to foreign direct investment), which would make it more user-friendly, more directly applicable to the business world in the 21st century? Technology is a means to an end, not an end in itself. If there is a

general trend that can be identified in the development of civil justice in many countries, it may be towards reducing unnecessary bureaucracy and rules and adopting new technologies to help dispute resolution process. The following questions remain unresolved: how can we build a dispute resolution process that meets the needs of parties in this process? How can we make this process flexible enough to adapt to the changing demands of citizens over time? Technology and changes to the dispute resolution process will undoubtedly play a role, but what else can be done? (Brooks et al., 2003).

3.2 New technologies and the modernization of Iraqi law: the example of judicial notifications

In Iraqi law, as regards the consideration and legislation of new technologies, there is a real legal lacuna³⁸. It goes back to the 1969 law of civil procedure in Iraq, where modern means of communication are absent. However, the situation is changing in recent years, a result of the rapid development in the electronic field and the emergence of the use of computers and Internet networks in Iraq. Indeed, it has brought about fundamental changes in the economic, social and political system of the state, which has begun to rely on modern advances in the exercise of public functions. So, there are many modern methods that have gradually taken hold in daily relations in the Iraqi judiciary. For example, judicial notifications now use modern means of communication (telephone, telex and photo transmission by fax, as well as the Internet³⁹), allowing for instant communication

anywhere in the world. Regarding the legitimacy of recourse to new technology in judicial notifications, most legislation aims to formulate legal texts adopted by flexible formulations. They will have the capacity to absorb all future developments that may not exist at the time of writing these texts. This maneuver makes it possible to develop solutions and treatments for a large number of innovations. It also underlies the obligation of the judge of modern interpretation of the law (Albayaa,1989).

Indeed, no matter how the legal texts were designed by the legislator, they can hardly follow social developments, which makes it imperative for the legislator to develop texts enjoying full flexibility. Here we can highlight the positive role of the judge, who is asked to exercise all his intellectual energies to overcome all cases where no explicit provision has been made among the legal texts. However, in interpreting the rule of law, the judge must know the real purpose of the legislator and his intention when enacting the rules. Under Iraqi law, the judge is obliged to put his judgment into play. Through his interpretation of the texts, the judge can overcome legal loopholes in order to find solution for the trial. In other words, he interprets the legal article for the use and explanation of similar and common Arab laws, particularly with respect to the law compared with the Iraqi texts. The factors that help the judge to follow the interpretation advanced are the following: a legal culture that helps him to conceive and analyze this legal article, a thorough knowledge of the judicial logic and the judicial art. In addition to the judge's use of the jurisprudential

interpretation of the law, the judge has a positive role to play in interpreting the law and delivering a fair verdict in the litigation.

The evolutionary interpretation, as it appears above in various legal subjects, is the same with regard to judicial notifications. The nature of notifications should not be interpreted in its abstract concept, but should go beyond that to include the evolving interpretation of judicial notifications. The purpose of these is to inform the parties to the trial who must understand their broader meaning and the form assigned to them. They must inform the person of the court documents and the measures taken against them, regardless of the mechanism. Therefore, the emergence of new technologies in the judicial system, especially in the use of modern means of communication, requires the Iraqi judge to take into account the evolution of judicial notifications. In order to give the judge the first step in the process, he must be able to use the evolutionary interpretation of notifications. We propose to the Iraqi legislator to amend Article 12 in the first paragraph of the Code of Civil Procedure as follows:

The task of judicial notifications is appointed by the Minister of Justice; the judicial notification can be made by registered mail or by telegram of summary in case of urgency by decision of the court. The judicial notifications can also be made by modern means of communication such as telephone, telex, fax, internet and any means of communication allowing to notify the persons in the process, also, the police officers can take care the judicial notifications (Bakr, 2002: 19).

The wisdom of the law changes with time. Therefore, the judge must analyze the wisdom of judicial notifications and the purposes for which they were enacted in accordance with changes in living conditions (1). For example, the Iraqi Court of Cassation overturned a decision of the Mosul court because it dismissed the applicants' claim on the ground that they were seeking the dissolution of the contract before making the judicial notifications provided for in Article 177 of the Civil Code, although the plaintiffs made the judicial notifications by telex. The Court of Cassation then considered apologies by telex valid and approved by law⁴². In this context, if the Court of Cassation considered that the judicial notifications given by the telex were valid and acceptable by law, nothing prevents to accept the other modern means of communication including internet. This trend seems to be a step in the right direction towards the evolutionary interpretation of the law and the apprehension of the influence of new technologies. It is clear that the judge has the right to resort to the new technology and to use it in the field of judicial notifications, this legitimacy being established by Article 2 of the Law of Evidence which obliges the judge to follow the evolutionary interpretation of the law⁴³. In truth, if we have looked at the judicial notifications and the evolutionary interpretation of the law in the previous point, it is because we consider that these aspects can simplify the formality in the disputes of the investment (Abdelhamid, 2005).

3.3 New technologies and dispute resolution in the field of foreign direct investment

As noted above, information and communication technologies offer opportunities to facilitate communication and assistance in the areas of prevention and litigation management. In the case of foreign direct investment litigation, legal services generally replace traditional face-to-face interventions. Information technology can in turn play a valuable role in the practice of dispute resolution in this area through faster supervision, training of judges, information management, search and evaluation of themore efficient files, as well as a reduction in fees. Not to mention, the ability they have to bring together people and institutions from different countries.

Let us not forget that in the context of foreign direct investment, the fear of litigation between foreign jurisdictions or interstate disputes has the effect of curbing investment. As Carter et al. (2016) point out, 44 in view of the increased risk associated with countries involved in controversial inter-state conflicts, of which Iraq is a risky area, the conventional wisdom is that financial actors in general and multinational companies in particular are reluctant to invest in these countries. Iraq therefore has every interest in simplifying the management of disputes in this area, in order to guarantee its growth and ensure investments. New technologies will play a central role.

Indeed, the quality of the exchange of information and the speed at which it is received by the investor can prevent litigation from escalating for example with the host State. For Legum:

For the host State, the most effective way to avoid or resolve disputes quickly is to adopt a strategy that combines information, prevention and institutional cooperation. Allowing an investor who feels aggrieved to make quick contact with qualified interlocutors within the government is also a good approach (2006: 18).

We emphasizes the role of prevention.Preventing the disputes between the investor and the State from occurring or escalating into formal dispute resolution procedures is in the interest of investors and host governments. In addition, the main concern of an investor is to conduct his business, and that of a government to encourage and support investments that generate growth and jobs. As a result, neither party has an interest in entering into disputes. When such disputes result in formal procedures, they can be costly, lengthy and their results unpredictable. The risk of loss of reputation can be suffered by both the state and the investor, and litigation can unnecessarily sever mutually beneficial relationships. By ensuring the flexibility of its legislation on the use of new technologies in law, on judicial notifications and the evolutionary interpretation of the law by judges, the Iraqi legislator will promote prevention (alsuri, 1982).

More recently, innovations in telecommunications and global computer networks have led to international trade arbitrations in the digitized space - often referred to as cyberspace. Geographic barriers in

arbitrations have been eliminated through the use of data transmission via computer networks and communication technologies such as videoconferencing. It is now possible to conduct international commercial arbitration in the digitized space, with data transmission via high-speed computer networks and holding the arbitration hearing via sophisticated computer-based videoconferencing technology. In addition, the growth and development of e-commerce via the Internet has led to the demand for new types of services and procedures for the settlement of international trade disputes. For example, cyberspace arbitration systems have been developed by institutions such as the World Intellectual Property Organization to resolve intellectual property disputes and Internet domain name disputes. This rapid development of cyberspace arbitration also poses various jurisdictional and governance problems for the current system of international commercial arbitration. While Iraq's law on foreign direct investment has been modernized, it also has some progress to make in the field, taking into account future means to resolve or prevent litigation.

4. CONCLUSION

The study has allowed us to show a number of factors that lead to the positive investment climate in the country, in a context of intense competition between states and globalization. It is certain that the new investment law will bring a significant change in the Iraqi economy through the advent of capital and foreign expertise. It sets the rules for the investor and offers him guarantees and protection, which

is a sine qua non condition in the field of investment. This will contribute in fine to the foundation of the basic infrastructure of the Iraqi economy, while the country suffers from a lack of capital for construction and development due to the accumulation of debt and a lack of accumulated experience as a result of ongoing wars. In fact, improving the legislative framework is an important factor that reflects the state's ability to attract foreign direct investment. It follows previous legislation that was not compatible with current economic and technological developments and dispute resolution methods between the investor and the official or private authorities of the host country. However, it is crucial for the Iraqi legislator to continue to develop investment laws, to make them transparent, stable and to intensify promotional efforts for investment opportunities. Thus, the decline of the role of national legislation as a catalyst and protector of foreign investment will be avoided, except as reproduced in the rules of international law.

Moreover, the main objective of the judiciary is to ensure the legal protection of all persons. To achieve this objective, the law on civil procedure regulates the methods of litigation; the procedures must, therefore, be uninterrupted. In addition, it is not enough that the judgments are fair, but also they must be fast, cheaper and respect the guarantees of the court of procedure especially in the disputes related to the investment. This article has also allowed us to characterize the contribution of new technologies in the context of dispute resolution, through a simplification or rapid exchange of key data and information on file. They also help to overcome many obstacles and difficulties in

conducting judicial notifications in the traditional way. Conscious of the increasing use of information technologies in our daily lives, and in order to save time and avoid costly travel, the Committee promotes the recognition and use of information technologies. Reliability can be assured. We hope that the revision of the Iraqi Code of Civil Procedure will allow the development of a new judicial culture in this important area. We suggest adding the organization of electronic notification to traditional notification methods in order to keep pace with technological developments and use modern means of communication.

REFERENCES

- ABDELHAMID, S. 2005. **The Role of Investment in the Development of Private International Law Provisions**, House of Publications, Alexandria. Romania.
- AIBAYAA, H. 1989. **Explanation of the Law of Evidence** N^o 107, p.1, Baghdad. Iraq.
- ALSURI, M. 1982. **Comparative Commentary on the Law of Proof**, Part I, Shafiq Press, Baghdad. Iraq.
- BAKR, I. 2002. **Problem of Evidence Using Scientific Techniques, Research published in the Judicial Review**, first and second issue, sixth year, Baghdad. Iraq.
- BAYAA, H. 1989. **Explanation of the Law of Evidence**, N^o 107, Baghdad. Iraq.
- BROOKS, D., FAN, E., & SUMULONG, R. 2003. **Foreign direct investment in developing Asia, trends, effects and likely issues for the forthcoming WTO negotiations**, Ed. Working paper, N^o 38. Philippines.
- CARTER, D., WELLHAUSEN, R., & HUTH, P. 2016. **International Law, Territorial Disputes and Foreign Direct Investment**. Unpublished Manuscript. USA.

- FRONTIER, D. 2016. **Consultants, Foreign Commercial Activity in Iraq**.Iraq.
- HADDAD, H. 2001. **Contracts between Countries and Foreign Persons**, University House, Alexandria.Romania.
- HISHAM, K. 1988. **Characteristics and Nature of the Arab Investment Guarantee Contract**, Youth Foundation University, Alexandria.Romania.
- HISHAM, K. 2006. **International Standard for Commercial Arbitration**, Alexandria.Romania.
- HYMER, H. 1960. **The International Operations of National Firm: A Study of Direct Foreign Investment**, Thesis of Doctorate, McGill University, Canada.
- KHATER, N. **Electronic Contracts, 1st Edition**, International Scientific House and Publishing and Distribution, Dar Al-Thaqafa, P. 1.Amman. Jordan.
- KOGAN, L. 2008. **Arbitration in Investment Contracts between State and Foreign Investor**, Legal Zain Publications, Beirut, Lebanon.
- KOJIMA, K. 1982. **Direct Foreign Investment, Guildfed**, Billing and Sons Ltd., London. UK.
- LEGUM, B. 2006. **Defining Investment and Investor: Who is entitled to claim?** Arbitration International, Vol. 22, N^o 4. UK.
- MOHAMED, I. 1978. **Technology Transfer: Studying Legal Mechanisms**, Dar Al Mustaqbal Al Arabi, First Edition, p. 190.Cairo, Egypt.
- ROBERT, S. 2008. **Protection of the Power of Environmental Regulation of the State in the Framework of Litigation of Indirect Expropriation**, International Investment and Environmental Protection. USA.
- ZORILA, C. 2007. **The Evolution of International Law on Foreign Direct Investment**, PhD thesis of the University of Auvergne Clermont 1, Paris. France.



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