

## Conventional International Law and Promotion of Foreign Investment in Algeria

القانون الاتفاقي الدولي وتشجيع الاستثمار الاجنبي في الجزائر

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### Abstract:

*The desire for development, and the enormous natural resources that Algeria possesses, has made it in need of foreign investment to qualify and benefit from it, due to its material and technical capabilities that national institutions may not possess. Encouraging foreign investors to come to Algeria may need to provide a set of guarantees in its domestic laws, to motivate and protect it, but besides that, International Law provides a mechanism which contains of the will of the two states and equals them; the exporter and host of investment, which are International Investment Agreements, which have become to form a branch called the Conventional International Investment Agreement. In this regard, Algeria resorted to the aforementioned convention rules to encourage foreign investment, and it worked to modify its internal legal system, to give international agreements place a source of confidence for foreign investors. In addition, it has ratified a significant number of foreign investment promotion agreements.*

**key words:** Conventional International Law– Investment Agreements– National Law– Encouraging Foreign Investment– Financial Incentives–

### المخلص:

إن الجزائر، وعلى غرار باقي البلدان النامية الأخرى، هي في حاجة إلى الاستثمار الأجنبي لدفع عدلة التنمية، ولتأهيل ثروتها الهائلة وتمكين استخدامها، بسبب قدرته المادية وخبرته التقنية التي قد لا تمتلكها المؤسسات الوطنية. ويتطلب جلب الاستثمار توفير مجموعة من الضمانات في القوانين الوطنية، من أجل تحفيزه وحمايته، لكن هذا لا يكفي لضمانة المستثمرين الأجانب، لذلك يوفر القانون الدولي آلية اتفاقية تضرغ فيها ارادو الدولتين الطرفين، المصدرة للاستثمار والمستظيفة له، وهي الاتفاقيات الاستثمارية الدولية، والتي أصبحت تشكل في مجموعها فرعاً جديداً يسمى القانون الاتفاقي الدولي للاستثمار.

ولقد سعت الجزائر إلى الاستفادة من ذلك القانون لتشجيع الاستثمار الأجنبي، حيث عملت على تهيئة نظامها القانوني لتقبله، وضمنت له مكانة سامية فيه تبعث على ثقة المستثمرين الأجانب. كما صدقت على عدد من تلك الاتفاقيات ووافقت على التدابير التشجيعية المدرجة فيها.

**الكلمات المفتاحية:** القانون الاتفاقي الدولي- الاتفاقيات الاستثمارية- القانون الوطني- تشجيع

الاستثمار الاجنبي- الحوافر المالية للاستثمار.

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### **Introduction:**

The control of resources and the search for foreign markets were the worry for the liberal ideology in the 18th and 19th centuries, in order to satisfy the needs of growing capitalism, and the solution came in the major colonial movements. After the Second World War, and the accumulation of primitive capital for Western companies, competition began about opportunities to develop their assets and develop them abroad, and this coincided with the wave of emancipation from colonialism, and the need of the liberated countries for foreign investment to rehabilitate their infrastructure, and promote the development in various fields.

At this stage, the Western constitutionalism developed legal techniques for liberal ideology, to assure the lawfulness of transferring Western capital abroad, protecting it, and taking into account the interests of the host countries in it. These techniques are mainly in international investment agreements, which have become an important element in encouraging investment, for the conventional nature of their rules, where the will of the two parties is equal in drafting them, - The will of the host and export countries for investments-, which contains the measures to encourage and protect investment, voluntarily provided by the contracting states in agreements between them, and by ratification become binding on their parties with the force of rules of international law.

The adoption of these international rules is extremely important for Algeria, as an emerging country, possesses great and diversified wealth and resources, the most important of which is oil and gas, as well as mines, and after its transformation towards capitalism and a market economy, it was appropriate for it to join this international legal development, and to adopt the investment treaty law to attract foreign investment, for its role in developing the national economy and benefiting from the country's resources, so the question arises about the state's approach in this regard, and how is executed it?

In this regard, it is noted that the Algerian government has worked to prepare its legal system to be consistent with the adoption of the Conventional International Law<sup>1</sup> (first), and then resorted to international investment agreements (secondly), to benefit from this legal system in attracting foreign investment.

### **Section I: Initialize of the Internal legal System for Accepting the Conventional International Law**

Foreign direct investment (FDI) is defined as an investment involving a long-term relationship and reflecting a lasting interest and control by a resident entity in one economy (foreign direct investor or parent enterprise) in an

enterprise resident in an economy other than that of the foreign direct investor (FDI enterprise or affiliate enterprise or foreign affiliate)<sup>2</sup>, which in the State of Law is necessary be framed by distinct legal rules, Because the foreign investor's presence in the investment relationship will make its legal organizing transcending the internal law system to the public international law, International Investment Agreements in particular, as a set of legal rules directed to regulate foreign investment.

From that standpoint, it is concluded that to attract and encourage investment, as well as its regulation, requires the adoption of international treaty law, either bilateral or collective agreements, to secure a legal position for the foreign party's will to draw that relationship ( A ). In addition to clarifying the privileges will provided by the host country for that ( B ).

**A) subtitle: Adoption of Monism of Legal System:**

From the foregoing, it is concluded that the host country of investment must prepare its legal system to accept the international convention provisions, for harmony with them, and let them execute in.

In this regard, along juristic discussion has arisen about the nature of the relationship between internal law and public international law in general, and the conventional law in particular, where two schools of jurisprudence have appeared in this issue, namely a Monism and Dualism schools<sup>3</sup>. The scholars of this last consider that the international and internal legal systems are separated from each other, and for each of them an area of its application, so, the international law can't be applied by national courts unless it is incorporated into domestic law, in accordance with national constitutional forms and conditions.

While the Monism School idea revolves around considering the international and the national law as a single legal system, and the international legal rules occupy different positions in it, but they produce direct legal implications in the face of those they address<sup>4</sup>.

From the above, appears the compatibility extent of each school idea with the purpose of encouraging foreign investment. For the Dualism school, it denies the complementary relationship between international and national law in framing the same social phenomena, and considers that the field of application of general international law is only the international community, thus its implementation at the internal level is no possible, unless it was adopted by the national normative producer in the form of national rules, and that will allow them to be modified or cancelled just in according to the national legal system.

As for the Monism school idea, it revolves around recognizing the possibility of to apply the public international law at the internal level, and to address the state institutions as well. And considers that international agreements are part of the national legal system, so, to merge them into it hasn't needed to reproduce their provisions, and therefore, national institutions can't prejudice, amend or abrogate the provisions of the agreement<sup>5</sup>, and that is a guarantee for the foreign investor for maintaining his will and perceptions of the investment relationship with the host country.

In this context, and as a constitutional will to encourage foreign investment, the Algerian constitutional founder expressed his want to adopt the monism school idea, for admitting the possibility of international provisions being applied at the national level. It stipulated that "Armistice agreements, treaties of peace, alliance and union, treaties relating to the borders of the State as well as treaties concerning the status of persons and those which involve expenditures unforeseen in the budget of the State, bilateral and multilateral agreements pertaining to free trade zones and economic associations and integrations shall be ratified by the President of the Republic after explicit approval by each of the two Chambers of Parliament"<sup>6</sup>. And that "The treaties ratified by the President of the Republic in the conditions specified by the Constitution shall prevail over Acts of Parliament"<sup>7</sup>.

It appears from the mentioned two texts that the Algerian constitutional founder explicitly adopted the idea of the monism legal system, and admitted of the possibility to apply the international law for investment in the internal legal system, as a branch of the public international law, by stipulating on "bilateral and multilateral agreements pertaining to free trade zones and economic associations and integrations... ". This provision is stipulated in the highest text in the country, will help to stimulate investment and attract investors.

**B) subtitle: The supremacy of international law in the domestic legal system:**

Persuading foreign capitals to invest and to transfer their assets to the host country, is mainly related to the nature of the legal guarantees that provide by it, and here the commitment to apply its international contractual obligations may not suffice, but rather, it requires ensuring a high position for the investment agreement's rules in the national legal system, to ensure that they will not prejudice. In this regard, in Algerian experience, the question of the rank of international agreements in legal hierarchy of norms was related to the adopted ideology; Where there were granted in the socialist era the force of the law

(legislation) (1), while they considered superior to it during the capitalist era (2), but inferior to the constitution in the two eras.

1- The legislation and the investment agreements in socialist era

The Algerian state adopted the Socialism as an economic system of communist ideology, with the constitutions of 1963 and 1976, and set its economic principles in them, such as collective ownership of the means of production, and a state bearing on the task of promoting the national economy and development.

In addition to that, the constitutional founder of 1976 adopted the monism school's philosophy of the legal rules, but gave the international treaties a modest position among the legal rules, as article 159 stipulated that "the treaties ratified by the President of the Republic in accordance with the constitutional provisions acquire the force of law"<sup>8</sup>.

The law means here in its narrow sense; legislation, means giving the treaty legal force equal to the legislation, which enables the repeal or amendment of an international treaty that has been ratified by a subsequent law, and individually<sup>9</sup>, what may hold the host state an international responsibility for its violation of its treaty obligations, and that is not reassuring to foreign investors.

2- The primacy of investment agreements on the law in the Capitalist era

The features of the country's new economic system began to appear before the 1989 constitution, with the ratification of the Vienna Convention on the Law of Treaties on in 1988<sup>10</sup>, to admit the supremacy of international law over domestic law, given the role of this hierarchy in attracting and encouraging investment as explained above, and its compatibility with the new economic orientation towards capitalism and foreign investment.

Later in April 1989, the country left the Socialism system, by embracing the liberalism and her capitalist economic system. Whereupon the founder established that "the regulation of foreign trade is the prerogative of the state"<sup>11</sup>, after it was totally forbidden in the socialist era. Then later, the 1996 constitution affirmed this new approach by stipulating that "freedom of investment and trade is recognized and exercised within the framework of the law", and that "the state works to improve the business climate and encourage the prosperity of institutions ..."<sup>12</sup>.

These texts raise the issue of the relationship between the rules governing the mentioned fields, the most important of which is external investment, that is, the relationship between the investment agreements and the internal laws of investment. This issue has been treated within Article 150 of the Constitution, by

stipulating that "the treaties ratified by the President of the Republic, according to the conditions stipulated in the constitution, transcend the law."<sup>13</sup>

Here, the term of treaties takes the expanded concept mentioned in article 150 above, which includes bilateral or multilateral agreements related to aspects of investment and economic integration. As for the condition for approval here, it is the explicit approval of both chambers of Parliament.

As for the rank of the agreements in the internal legal system, the founder made them transcend the law in its narrow sense, that is legislation, and inferior of the constitution, and therefore subjected it to constitutional control under article 186 of the Constitution<sup>14</sup>.

The philosophy of this legal hierarchy is in line with the interests of the state and the will of its political authority, whereby in the socialist era the state has shown some caution towards the rules of all international law, and considered it merely a reflection of the interests of the great powers<sup>15</sup>. But after its openness and desire for development and prosperity, it had to encourage investment and submit to the rules governing it, the basis of which is the investment agreement.

On the other hand, the investment agreements supremacy on legislative texts — and the rules below them —, will secure the legal security idea in the field of investment, as it prevents the legislator from affecting agreements by alone, and obliges him to respect them, because they form a reference rules for his actions, what encourages investors and protects their assets.

In this context, the Constitutional Council examined the conformity of a legislative text to the provisions of a ratified agreement on the occasion of its study of the electoral law's constitutionality and considered that *"In view of the fact that any agreement after its ratification and publication will be include in the national law and, according to Article 123 of the Constitution (1989), acquires the authority of supremacy over the law, and it authorizes every Algerian citizen to invoke it before the judicial authorities, and this is the case especially with regard to the United Nations Charter for the year 1966 ratified by Law No.: 89-08 of (...) April 25, 1989, to which Algeria joined by Presidential Decree No. 89-67 of (...) May 16, 1989, and the African Charter on Human and Peoples' Rights, ratified by Decree No. 87- 37 of the (...) February 3, 1987, ..."*<sup>16</sup>. With this decision, the Council includes the agreements in the constitutional bloc of the reference rules for the legislation<sup>17</sup>, and its jurisprudence came general with the phrase "every agreement", which also covers the investment agreements.

## **Section II: Towards the International Agreements to attract the Investment**

Foreign investment agreements include legal provisions similar to those stipulated in the national investment law, in terms of their subjects and legal issues, are different just in the contractual nature of their provisions, so that agreements create rights and obligations between their parties, therefore, cannot be amended or cancelled by the sole will of one of the parties, that's giving a guarantee to the foreign investor against the instability of the investment rules<sup>18</sup>.

In this endeavor, Algerian politics have shown interest in the conventional law, for its role in attracting investment, and this is clear from the size of the ratified agreements in the field; collective ones (a) and bilateral (b), as well as from the nature of the encouraging provisions they contain.

### **A) subtitle: Join to the collective agreements to investment promotion:**

In the world today, a large group of collective agreements to encourage investment, concluded by groups from countries combined from their regional bloc, such as the Maghreb Union, the European Union and the North American group, or their ethnic such as the Arab countries, or for religion like the Islamic countries. These international blocs resorts to collective agreements to set provisions for encouraging investment and protecting them, are binding on all of them, and Algeria has ratified the most important of them<sup>19</sup>;

#### **1- Investment promotion and protection agreement between the countries of the Arab Maghreb Union:**

Since the establishment of the Arab Maghreb Union in 1989, the countries of the Union had expressed in their desire to strengthen economic relations between them. Convinced that the promotion and guarantee of investments under an agreement, would support the development and promote trade and mutual benefits between them in various fields, the said agreement was signed in Algiers in 1990<sup>20</sup>.

The agreement started by stipulating that “every country of the Arab Maghreb Union encourages, and within the framework of its provisions, the transfer of capital owned by its citizens to other countries of the Union, the transfer of capital owned by citizens of other countries of the Union to it, and its investment in it freely, in all areas not prohibited to citizens of The host country and not limited to them, ... ”<sup>21</sup>.

In addition, the agreement provided a set of incentive measures for mutual investment between its parties, such as granting preferential treatment to Maghreb investors, ensuring the freedom of movement of their capital, facilitating

procedures in front of them, and the compensation for losses and damages resulting from the investment. The Algerian government has ratified the agreement on its conclusion date, and it is an important agreement for Algeria, given its economic position among the countries of the Union, as may facilitate the export of Algerian capital to nearby markets and not strange of it.

## **2- The Unified Agreement for the Investment of Arab Capital in the Arab States:**

Proceeding from the aim of strengthening overall Arab development and Arab economic integration, believing that investment dealings between Arab States are an essential part of joint Arab economic action, the regulation of which will mobilize production and thus enhance joint development on the basis of reciprocal benefits and national interests, therefore the aforementioned agreement was concluded in Amman in 1980, to provide a suitable investment climate to stimulate Arab economic resources in the field of joint Arab investment, requires that legal investment regulations be drawn up in integrated legal system, which seeks to facilitate the transfer and use of Arab capital within the Arab States, in such a manner as to further their development, freedom, progress and improve the living standard of their citizens. For Algeria, ratified it on October 07, 1995<sup>22</sup>.

From the promotion investment measures in this collective agreement is that "The Arab investor shall be free to invest within the territory of any State Party in fields which are neither prohibited nor restricted to the citizens of that State and within the percentage limits for shared ownership as prescribed in the law of the State. He shall also enjoy the related facilities and guarantees required under the provisions of this agreement".<sup>23</sup>

And for the investment treatment, " The State Party may establish additional privileges for the Arab investor in excess of the minimum stipulated within this Agreement. In the according of preferential privileges.

After that, the agreement arranged a set of principles and measures to promote and protect Arab investment, as well as ways to settle disputes related to it.

## **3- The Agreement on Promotion, Protection and Guarantee of Investments among Member States of the Organization of the Islamic Conference**

In keeping with the objectives of the Organisation of the Islamic Conference as stipulated in its Charter, and implementation of the provisions of the Agreement for Economic, Technical and Commercial Cooperation among the Member States of the Organisation of the Islamic Conference, the member governments signed the agreement mentioned seeking to avail of the economic



resources and potentialities available therein and to mobilize and utilize them in the best possible manner, within the framework of close cooperation among Member States. And the Algerian government joined this collective agreement in 1996, in its will to attract Islamic capital to invest in Algeria<sup>24</sup>.

The agreement stated that "the contracting parties shall permit the transfer of capitals among them and its utilization therein in the fields permitted for investment in accordance with their laws. The invested capital shall enjoy adequate protection and security and the host state shall give the necessary facilities and incentives to the investors engaged in activities therein<sup>25</sup>."

Furthermore, the agreement arranged for preferential treatment for investors of the member states, by stipulating that " the investors of any contracting party shall enjoy, within the context of economic activity in which they have employed their investments in the territories of another contracting party, a treatment not less favorable than the treatment accorded to investors belonging to another State not party to this Agreement, in the context of that activity and in respect of rights and privileges accorded to those investors<sup>26</sup>."

These are the most important collective agreements that the Algerian government has joined at that time, in a political will to attract foreign investment and advance the national economy. Alongside it, and in the same endeavour, the government took the initiative to adopt the second category of international contractual rules, which is bilateral investment agreements.

### **B) subtitle: Conclusion of bilateral investment treaties to attract foreign direct investment:**

The Algerian government resorted to concluding bilateral agreements with certain countries, in a desire to attract their investors or to cooperate and partner with them in a certain economic field, even if it didn't constitute a regional bloc with them. This is the benefit of bilateral agreements and what distinguishes them from the collective ones.

The importance of adopting bilateral agreements in attracting investment is come from the nature of their provisions (1), and from the measures which they provide. (2)

#### **1- The flexible nature of the rules of bilateral investment agreements:**

The topics of bilateral agreements are not different from those arranged by the collective agreements, as they usually specify the concepts and terms of investment, the fields concerned with it, the mechanisms for its promotion and protections, which are general topics agreed upon by most of the bilateral agreements to encourage investment.

What distinguishes bilateral agreements in the field of foreign investment is their flexibility to control the level of encouragement between the contractors, so the host country uses them to increase the preference of their investment relationship with another country, as they enable it to formulate provisions for that according to their political, economic or other motives with that country<sup>27</sup>, such as expansion in the fields of investment with it, for example, or raising the level of the treatment to the national, or granting it special financial concessions from other countries.

Besides, the bilateral agreement, as mentioned above, is the most appropriate means of encouraging investment with another country is not with us in any collective investment agreement.

The promotion investment provisions in bilateral agreements may be completely themselves, and may they refer to a follow-up mechanism for monitoring their implementation in practice. On the other hand, the investment promotion provisions can also be in the form of voluntary obligations, or in the form of legally binding obligations<sup>28</sup>.

In this regard, Algeria has paid great attention to this type of agreements, for their effective role in encouraging investment and protecting it, and in the rapid recovery of the economy and development. It has concluded since 1990 until now more than 60 bilateral agreements to encourage investment, with countries from all over the world, with Arab countries, African countries European, Asian and American<sup>29</sup>. This number affirm of the Algerian government's intention to make the most of the conventional investment law.

## **2- Investment Promotion Measures in international agreements:**

By extrapolating the investment agreements that Algeria has ratified, it clears that the government has agreed to a number of measures to encourage the foreign investor to come to country. The most important of them;

### **2-1- Financial incentives:**

Incentives are frequently used as a policy instrument to attract foreign direct investment (FDI) and to benefit more from it. They can be classified as financial, fiscal or other (including regulatory) incentives.

Financial incentives are the measures most used to attract foreign investment, as host countries prefer tax tools for that, such as tax exemptions, concessional tax rates, rebates in exchange for consumption, customs exemptions and refund of customs duties upon re-export<sup>30</sup>. This is mainly due to the financial inability of developing countries to provide direct support for investments, especially foreign, so they resort to pledge to reduce the tax burden on them if

they come, and the international investment agreements should refer to the ability of granting these incentives and benefits.

In this regard, the Algerian legislator has offered, in the investment law, to those wishing to invest in Algeria a set of tax benefits, in article 09 thereof, namely;

- Exemption from customs rights regarding non-excluded and imported goods that are directly involved in the completion of the investment.

- Exemption from the fee for value added in respect of goods and services not imported or locally acquired, which are directly involved in the completion of the investment.

- Exemption from payment the fee to transfer the property at all real estate acquisitions that were made within the framework of the investment in question.

- Exemption from tax on corporate profits.

- Exemption from drawing on professional activity<sup>31</sup>.

## **2-2- Foreign investment treatment privilege:**

The conventional international law has developed various provisions for the treatment of the host country for foreign investment, which are taken according to the degree of their desire to encourage the investors of a particular country, starting from the fair and equitable treatment and non-discrimination, to national or most favoured nation treatment;

Where **the fair and equitable treatment** obliges the host country with a guarantee to the investor of a pattern of treatment consistent with the rules of customary international law and the requirements of justice and equity<sup>32</sup>.

As for **non-discrimination in treatment**, foreign investors in the host country need to be placed in conditions similar to those of their local counterparts<sup>33</sup>.

A country may grant the investors of the second state the treatment of **the most-favored-nation (MFN)**, which means no less than the treatment it gives to any third country<sup>34</sup>. However, this condition does not give the investor equal treatment for patriots.

**The National treatment** is a legal rule of agreement, according to which the host country shall grant the foreign investor a treatment no less than the treatment granted to the national investors<sup>35</sup>. Thus, the foreign investor enjoys the same competition conditions as the national investor in the host country market.

National treatment is more important than a Most-favoured-nation clause in encouraging foreign investment, but it may harm national investment and local products, whose quality may not compete that foreign, so many countries limit

this treatment, by only guaranteeing it in fields where investment and domestic production are weak, or Granted it to some countries only for political and economic reasons between them.

In the Algerian legal system, the legislator stipulated all forms of treatment of foreign investment, stipulating that taking into account the provisions of bilateral, regional and multilateral agreements signed by the Algerian state, foreign natural and legal persons of affairs receive a fair and equitable treatment, in terms of rights and duties regarding their investments.<sup>36</sup> That is, the legislator sets the principle of fair and equitable treatment as a minimum for foreign investment treatment, and over of that which grants by the Algerian government to the investors of a particular country, he referred it to the investment agreement concluded with their country.

In this context, the Algerian government granted German investors fair and equitable treatment as a minimum, in agreement with her that "each contracting party accepts and encourages on its territory, accordance with its legislation, the citizens and companies investments of the other contracting party, and in every case gives it fair and fair treatment."<sup>37</sup>

In another agreement, Algeria government granted Tunisian investors the national treatment, and a treatment of the most-favored nation, by stipulating that "each contracting party in its territory grant the investments of the investors of the other contracting party a treatment no less favorable than that granted to the investments of investors, or to the investments of another country, whichever is more Preference for the investor"<sup>38</sup>.

### **3- Compensating the investor for damages and losses:**

According to the foundations and concepts of international responsibility, the foreign investor has the right to compensation for damages to his property and investments within the host country, provided that he does not cause it. Today, the risks to foreign investment are numerous, in light of internal political turmoil, ethnic conflicts, riots and national revolutions, armed conflicts or wars, in which the foreign investor has no income. It is the duty of the host country to protect it first, and then compensates it for its losses if they occur, and a commitment to this compensation is one of the measures to encourage foreign investment.

In this context, all the foreign investment agreements concluded with Algeria stipulated of the commitment to compensate for the foreign investor losses. For example, the investment promotion agreement with the Republic of South Africa stipulated that "investors of a contracting party are granted, their investments in the territory of the other contracting party are damaged by war,

armed conflict, revolution, emergency, disobedience, rebellion, or riots that occurred on the territory of this contracting party, treatment, in respect of restitution, compensation or any other settlement, no less favourable than that granted by this latter contracting party to its investors or to the investors of any third country"<sup>39</sup>.

### **Conclusion:**

Algeria's adoption of international investment law and its enforcement within the national legal system was a response to the state's desire to attract foreign investment, which it had begun since the early 1990s after the transition towards a market economy with the 1989 constitution. The study clarified the philosophy of the role that the investment law provides in encouraging and stimulating investment, through its flexibility in meeting the interests of the contracting parties in the investment process. It also showed, in addition, the legal mechanisms for that; the collective and bilateral international investment agreements. It also discussed the most important measures contained in those agreements to encourage and protect investment.

Indeed, this is a bold step by the government towards benefiting from the liberalization of investment in the development, but it is still below the required level to enter into global competition to attract foreign investment, as the size of the signed agreements is modest compared to the needs of the national economy, and the requirements for development in a vast country like Algeria. In addition, the selection of the contracting states was mostly for political purposes, regardless of the capabilities of those countries' investors.

As for the subject of ratified agreements, it is noted that it did not establish free trade areas for goods and services, which have become the advantage of encouraging international investment today. Also, most of them did not allocate agencies and institutions to follow up the investment, especially in bilateral agreements, such as investment guarantee institutions, which Algeria did not establish national counterparts, despite the importance of this measure in attracting foreign investors.

From studying for Algeria's adoption of the International law on the promotion of Investment, we offer some suggestions for improving its utilisation, and the most important of which are;

- More bilateral agreements should conclude to encourage investment, with diversification between direct investment and investment partnership; And the establishment of investment companies in partnership, according to the ability of national investors in each area.

- Reconsidering of the agreements rules in the internal legislation, as most of them are still inconsistent with the internal legal system, whether in the investment law, or in other laws, especially the rules of private law.

- Reviewing the concessions and investment incentives, and rearranging them according to the fact of the national market, also allocating them according to the priority of the need for investment, not to be granted just for political or regional considerations with the countries of foreign investors.

### **Bibliography:**

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<sup>1</sup> - As is well known, Public International Law consists of two types of rules; International customary principles formed for the branch of Customary International Law; which is a kind of international common law based on widespread state practice and acknowledgment of obligation; on the judgments of domestic and international tribunals; and on "the general principles of law recognized by civilized nations" and "the teachings of the most highly qualified publicists of the various nations." It is binding on all nations and on non-state actors.

And contractual international rules; which form the branch of International Conventional Law, or Treaty Law ; is based on international agreements, conventions and treaties: it is binding only on ratifying nations. Conventional Law is governed by the Vienna Convention on the Law of Treaties. And that's later is the subject of this study.

For the difference between the nature of the two parts of Public International Law, see; Mark Eugen Villiger, **Customary International Law and Treaties: A Manual on the Theory and Practice of the Interrelation of Sources**, Martinus Nijhoff Publishers, London, England, 1997.

<sup>2</sup> - United Nation, World Investment Report 2007: Transnational Corporations, Extractive Industries and Development, United Nations Conference on Trade and Development on May 2007, Geneva, 2007, p: 247.

<sup>3</sup> - To find out about this juristic discussion, see; Starke, Joseph Gabriel. "**Monism and dualism in the theory of international law**", *British Year Book of International Law*", vol: 17, Britin, 1936, p: 66.

<sup>4</sup> - Guishi Elkhair, **The application of international treaty law in Algeria**, *Social and Human Sciences Review*, Batna university, Algeria, No: 4, 1994, p: 11 - 13.

<sup>5</sup> - Spaak, Torben. "**Kelsen on monism and dualism**", *Basic Concepts of Public International Law: Monism & Dualism*, 2013, p: 327.

<sup>6</sup> - Article 149 of Constitutional amendment of 2016 to constitution of 1996, Law No 16-01, in 06 Mars 2016, *Official Journal No 14*, in 07Mars 2016.

<sup>7</sup> - Article 150 of the same Constitutional Amendment.

<sup>8</sup> - Constitution of 1976, issued by Decree No. 76-79 of November 22, 1976, *Official Journal No. 94*, issued on November 24, 1976.

<sup>9</sup> - Guishi Elkhair, *op. cit.*, p: 15.

<sup>10</sup> - Vienna Convention on the Law of Treaties. (VCLT). Done at Vienna on May 23, 1969. Entered into force on 27 January 1980. And Algeria joined it by Decree No: 87-222, issued on October 13, 1987, *Official Journal No: 42*, on October 14, 1987.

<sup>11</sup> - Article 19 of the Constitution of 23 February 1989, issued by Presidential Decree no. 89-18 of 28 February 1989, *official journal of Algeria No. 09 of 01 March 1989*.

<sup>12</sup> - Article 43 of the constitutional amendment of 2016 mentioned above.

<sup>13</sup> - Article 150 of the same amendment.

<sup>14</sup> - In this regard, article 186 of the Constitution states that "Aside from the other functions which are expressly conferred upon it by other provisions of the Constitution, the Constitutional Council shall rule on the constitutionality of treaties, laws and regulations by an opinion". Article 186 of the 2016 Constitutional Amendment, mentioned above.

<sup>15</sup> - Algeria's position has been characterized by great caution towards the rules of traditional international law, and hostility to its institutions, such as the International Court of Justice, which had doubted its integrity and the credibility of its composition. This was stated by President Houari Boumediene before the Ministerial Conference of the Group of 77, and before the session of the oil-exporting country (OPEC) in March 1975. See: Gushi Elkhair, *op. cit.*, p: 19.

<sup>16</sup> - The decision No: 1/L / CC/ 1989/ of August 20, 1989, on the constitutionality of the election law, Official Journal No: 36, in 30/08/1989.

<sup>17</sup> - For further information on including the constitutional Council of treaties into the reference rules formed for the constitutional bloc, see; Hassani, Mohamed Mounir. **The Impact of Constitutional Jurisprudence on the Role of the Algerian Parliament**, PhD diss., University of Muhammad Khaydar, Biskra, Algeria, 2015. p: 169-171. [ On Arab ]

<sup>18</sup> - The researcher had a previous study on one side of the topic, in an intervention entitled "Algeria's adoption of the international legal law system to encourage investment", at the "Legal Framework for Foreign Investment in Algeria" forum, on November 18 and 19, 2015, at the Faculty of Law and Political Science, Kasdi Merbah University, Ouargla, Algeria, in Arabic. But this study came wider than previous ones, as it dealt with the philosophy of the legal law, and its role in encouraging investment, and stood on the latest state agreements in this regard. To find out that intervention, visit; <https://manifest.univ-ouargla.dz/>

<sup>19</sup> -The Algerian government has concluded and ratified nearly 80 agreements and treaties on promoting and protecting investment with countries from the five continents, and on the most important international treaties in this field. To find out it, please visit the Official website of National Agency of Investment Development, (ANDI) Algeria, **Agreements and Conventions**; <http://www.andi.dz/index.php/en/> . November 23, 2019.

<sup>20</sup> - Agreement on the Promotion and Guarantee of Investment between the Countries of the Arab Maghreb Union, concluded in Algeria on 07/23/1990, and ratified by Presidential Decree issued on 23/07/1990, Official Journal No. 06 issued on February 06, 1990.

<sup>21</sup> - First article of above- mentioned agreement.

<sup>22</sup> - The Unified Agreement for the Investment of Arab Capital in the Arab States, signed on 26 November 1980 in Amman, Jordan, during the Eleventh Arab Summit Conference. It entered into force on 7 September 1981. The draft statutes of the Arab Investment Court came into force on 22 February 1988. And ratified by Presidential Decree No. 65-306 on 07/10/1995, Official Journal No. 59 issued on 11/11/1995.

<sup>23</sup> - Article 5 of the same agreement.

<sup>24</sup> - The Agreement on Promotion, Protection and Guarantee of Investments among Member States of the Organization of the Islamic Conference, approved by resolution 7/12-E of the Twelfth Islamic Conference of Foreign Ministers held in Baghdad, Iraq, on 1-5 June 1981. It entered into force on 23 September 1986. Ratified by Presidential Decree No. 96-144 on 23/04/1996, Official Journal No. 26 issued on 24/04/1996.

<sup>25</sup> - Article 2 of above-mentioned agreement.

<sup>26</sup> - Article 8 of the same agreement.

<sup>27</sup> - Mohamed Mounir HASSANI, *Algeria's adoption of the international ...*, op. cit., p: 6 and 7.

<sup>28</sup> - *Ibidem*.

<sup>29</sup> - To find out that, visit the official website of National Agency of Investment Development, the previously mentioned.

<sup>30</sup> - *United Nations Conference On Trade And Development (UNCTAD), Incentives, Unctad Series on Issues in International Investment Agreements, No: 05/2003, Geneva 2004. p: 5. On: [https://unctad.org/en/Docs/iteiit20035\\_en.pdf](https://unctad.org/en/Docs/iteiit20035_en.pdf) Visited on November 14, 2019.*

<sup>31</sup> - Article 12 of Law No 16-09, issued on August 03, 2016, related of Investment Promotion, Official Journal No 46, of August 03, 2016.

<sup>32</sup> - *United Nations Conference On Trade And Development (UNCTAD), Incentives, op. cit., p: 16-17.*

<sup>33</sup> - *INTERNATIONAL INVESTMENT AGREEMENTS: KEY ISSUES, Volume II, Geneva, 2004, p: 55-56. On: [https://unctad.org/en/Docs/iteiit200410v2\\_en.pdf](https://unctad.org/en/Docs/iteiit200410v2_en.pdf). Visited on November 14, 2019.*

<sup>34</sup> - *United Nations Conference On Trade And Development (UNCTAD), Incentives, Ibidem.*

<sup>35</sup> - *Ibidem*.

<sup>36</sup> - Article 21 of Algerian Investment Promotion Law, above-mentioned.

<sup>37</sup> - Article 2 of the Agreement on the Promotion and Protection of Investment, between the Algerian Republic and the Federal Republic of Germany, signed in Algeria on March 11, 1996, and ratified by Presidential Decree No. 2000-280 of October 07, 2000. Official Journal No.: 58, issued on 08 / 10/2000.

<sup>38</sup> - Article 3 of the Agreement on the Promotion and Protection of Investment between the Algeria and the Tunisian government, signed in Tunisia on February 17, 2006. And ratified by Presidential Decree No. 06-404 of November 14, 2006, Official Journal No. 73 issued on November 19, 2006.

<sup>39</sup> - Article 50 of the Agreement for the Promotion and Reciprocal Protection of Investments, between the Government of Algeria and the Government of South Africa, signed in Algeria on November 24, 2000, ratified by Presidential Decree No. 01-206 of 07/23/2001, Official Journal No 41 issued on 07/29/ 2001.