INTERNATIONAL EFFORTS TO REGULATE FOREIGN INVESTMENT AND MULTINATIONAL ENTERPRISES

Mohammad Belayet Hossain*

Abstract

International economic law is a massive body of law, which is growing rapidly and changing fast. It seeks to regulate more or less all aspects of international economic relations between states. This article is shall cover most important issue or topic within international economic law. The law of foreign investment is one of the oldest areas of international law. It has developed over the centuries, mainly through bilateral transactions between states. It is also one of the most complex areas of international law. It is explained in: diplomatic exchanges between states and decisions of international courts and tribunals. Owing to the complexities involved, it remains one of the last major areas of international law not yet regulated by any international treaty of universal character. This article will examine international efforts to regulate foreign investment and the activities of multinational enterprises (MNEs).

Keywords: Foreign investment, international economic law, multinational enterprises, foreign direct investment, bilateral investment treaties

PREFERRED CITATION

- Mohammad Belayet Hossain, International efforts to regulate foreign investment and multinational enterprises, *The Lex-Warrier: Online Law Journal* (2018) 9, pp. 401 - 414, ISSN (O): 2319-8338

* Lecturer, School of Law, Chittagong Independent University of Bangladesh

Introduction

Sources of international economic law are also sources of general international law, as codified in Article 38 of the Statute of the International Court of Justice (ICJ). This article is generally regarded as providing the most authoritative listing of international law sources. They are:

- treaties;
- international customs;
- general principles of law;
- judicial decisions of international courts and tribunals and the teachings of the most highly qualified international lawyers as subsidiary means for determining the rules of law.

Treaties have the pre-eminent role in developing international economic law, but the practice of states is also important. The practice of states acquires the character of customary law when a particular practice meets the test of generality, uniformity and consistency and is coupled with a legal conviction on the part of states that they are obliged to follow it by law. This psychological element is called *opinio juris*.

The role of the United Nations (UN)

In spite of frenzied attempts made since the establishment of the UN to regulate all main areas of international activity, there is not yet a single comprehensive international instrument outlining the main principles of the law of foreign investment. Attempts have been made within the UN to regulate foreign investment. The UN General Assembly has adopted several resolutions of differing legal weight, which touch on some of the central elements of the law of foreign investment. Examples include:

- the Resolution on the Permanent Sovereignty of States over their Natural Resources and Wealth 1962;
- the 1974 Charter of Economic Rights and Duties of States.

During the heyday of the idea of a new international economic order (NIEO), various attempts were made to adopt a comprehensive and legally binding code of conduct for multinational enterprises (MNEs)[1] (the primary vehicle of foreign investment), under the auspices of the UN

[1] Definitions of the term MNE vary greatly. Generally speaking, an MNE is a company or enterprise operating in several countries and having 25% or more of its output capacity located outside its country of origin. The world's four largest multinationals in 1994 were General Motors, Ford, Exxon and Shell. Their total sales exceeded the gross national product of all of Africa, and the top 100 multinationals controlled $3.4 trillion in financial assets. In 1993, MNEs accounted for one-third of the world's industrial output, with sales of $4,800 billion. The network of companies operating under MNEs tends to be massive and complicated. For instance, about 50 companies listed in The Times top 1,000 UK Companies in the early 1990s had over 10,000 subsidiaries.

Commission on Transnational Corporations (CTC).

However, with the triumph of capitalism over socialism and the return of *laissez-faire* ideals following the tumultuous political changes of 1989–1990, the NIEO became an idea of the past and the CTC was disbanded altogether in the early 1990s.

Changing nature of regulating foreign investment

The 1990s belonged to capitalism and to the MNEs. Assisted by the World Bank and the IMF, the capitalist world clamped down on any traces of NIEO and on the idea that foreign investment had to be regulated to protect the interests of host states. Rather, the idea promoted by the World Bank (WB), the International Monetary Fund (IMF) and the World Trade Organisation (WTO) in the 1990s was to restrict the powers of sovereign states to regulate foreign investment. Attempts made in the 1990s indicated that the 'law of foreign investment' had to transform itself into the 'law of foreign investment protection' or 'foreign property protection'. Examples include:

- the 1992 World Bank Guidelines on the Treatment of Foreign Direct Investment;
- the OECD's draft Multilateral Agreement on Investment (MAI).

However, capitalism saw a setback in the late 1990s at the hands of those opposed to its excesses. The WTO had to abandon its Seattle meeting in 1999 in the face of massive public protests, and the OECD had to abandon its draft MAI and adopt a softer instrument in the form of guidelines issued in 2000 as a face-saving measure. Consequently, by the time the WTO met in Doha in November 2001, there was quite a bit of reckoning and stocktaking among the assembled delegates. Capitalism had been forced to take some heed of the concerns of the environmentalists, human rights activists and many ordinary people who were troubled by what they saw as its excessive power.

The Doha meeting set in motion a new round of multilateral trade negotiations dubbed the 'development round'. Foreign investment was on the agenda of the new round of negotiations in Geneva. However, when the so-called 'mid-point deal' was agreed at the WTO, in July 2004 the idea of regulating foreign investment was abandoned by the WTO.

The current situation

Multinational enterprises (MNEs) are the main vehicles of foreign investment. Hence, any regulation of foreign investment has to involve regulating MNEs. At this juncture they enjoy relatively unfettered freedom in the pursuit of profit. Accordingly, the central question here is: should we let the MNEs carry on their respective businesses without any regulation, even when they engage in:

- creating designer babies;
- cloning animals and possibly human beings;
- forcing the production and thus consumption of GM food;
- depriving our poorer fellow human beings of essential medical supplies;
- polluting the environment;
- exhausting the natural resources of the planet;
- Violating workers' rights and other human rights in their drive for ever-larger profits?

The state is generally in retreat. The capitalist world encourages the expansion of the activities of MNEs because it is the ultimate beneficiary of such expansion. The developing world is unable to exercise any meaningful control and has been put under tremendous pressure to subscribe wholesale to the tenets of the market economy. The question that arises is: who, then, should intervene and how?

The need to regulate MNEs

As critics of 'corporate globalisation' continue to make their point in the streets of Western capitals, there appears to be a general inclination towards some regulation of the activities of multinational corporations. However, the question remains: is it practicable to regulate the activities of these corporations through international law?

Although most MNEs exist to meet a social need, they are driven primarily by a desire to make profit. Whether it is called wealth creation or profit-making, the name of the game in popular parlance is money-making. This activity in itself is not bad since most people would like to make money. The desire to create wealth is one of the activities that has brought our civilisation this far and made our world this prosperous. However, there are limitations imposed on our activity by certain internal and external factors. A problem arises when we put the pursuit of profit above people, societal values and national interests. If we, as individual citizens, do that then the state may intervene through the long arm of the law!

However, the same cannot be said of MNEs since there is no well-developed body of law to intervene if they put the pursuit of profit above the people, social values and national interests of the countries in which they operate. MNEs should not be criticised for making a profit as such, no matter how large that amount may be. Every business needs to grow and expand to stay competitive, or simply to stay in business. Indeed, the opportunity to create wealth is important in:

- fostering human ingenuity;
- rewarding human invention;
- funding the advancement of civilisation.

Yet when wealth creation undermines its very purpose – enhancing human freedom and human civilisation – observers are entitled to be concerned. People are also entitled to be concerned that the MNEs are not regulated by any comprehensive body of law that could hold them accountable for their activities, even though they are among the most powerful private actors in existence today. Directly or indirectly, they dictate our daily activities, from the type of food we consume to the medicine we take and the clothes we wear, in a manner more influential than the state.

The size, nature and scope of activities of certain MNEs give the impression that they are perhaps more powerful than states. Indeed, according to some estimates about 51 per cent of the largest economic units are corporate groups rather than nation states. However, MNEs are certainly not more powerful than sovereign states, even though the total annual turnover of some of them is larger than the combined GDP of 40 or 50 states.[2] However, they are more powerful – as well as richer – than many states in some respects:

- Their influence is global;
- Their operation is not transparent;
- They are not accountable to any elected authority;
- There is no cohesive body of law to regulate their activities;
- They also often pursue wealth ruthlessly, at the expense of the environment, human rights and human values, and many states are not able to exercise any effective control over their activities.

Contrary to popular perceptions, most MNEs are not controlled by shareholders either. It is often difficult to say to whom these companies do belong and in whose interests they are being run. The invisible shareholder is not always present at the AGM of the company. As the Enron debacle demonstrates, national regulatory mechanisms are also often incapable of controlling MNEs' activities when the management of a giant MNE is bent on doing something 'creative'.[3] The Enron and Mittal sagas and other, similar, incidents give the impression that MNEs exert a huge influence over the decision-making processes

[2] Wolf, M. 'Countries still rule the world', Financial Times (London), 6 February 2002, p.17.

[3] 'Democrats use Enron to seize on deregulation', Financial Times (London), 27 February 2002, p.11.

of governments by giving big donations to political parties.

Indeed, in the absence of any meaningful regulatory mechanism the MNEs have already started to control people's lives – and even to buy the essence of life. Certain MNEs are claiming exclusive development rights over natural processes in the human body. The rate of such applications was 34,500 a month in the year 2000[4] and has most probably increased since then.

The business practices of companies in the pharmaceutical sector, and the protection that these companies enjoy under agreements such as the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), are worth noting. For instance, researchers working at a university in America invented a HIV/Aids drug, d4t. Under an agreement with the university, Bristol-Myers Squibb, a pharmaceutical company, held exclusive manufacturing rights at a price, which could not be afforded by millions of sufferers in developing countries.

An Indian drug company offered to produce the drug, an antiretroviral treatment, at 1/34 of the price charged by Bristol-Myers Squibb. This would make it affordable to most sufferers in sub-Saharan Africa where the disease is widespread. However, it was difficult for the Indian company to do so due to the protection accorded to Bristol-Myers Squibb by the TRIPS Agreement of the WTO.[5]

Multinational companies have long been accused of representing the unacceptable face of capitalism. A long list of accusations ranges from the dumping of nuclear waste from Europe in West African countries to human rights violations. For instance, the present Mayor of London, the citadel of capitalism, stated recently that capitalism kills more people each year than the Second World War.[6]

Mr George Fernandes, a senior figure in Indian politics, justified his opposition to certain foreign MNEs such as Pepsi operating in India thus:

'In the name of liberalisation we are mindlessly handing over the resources and markets in this country to foreigners. Why do we need them? They bring simple products without any great technology transfer. They don't bring any value addition to our exports. Everything they do can be done by Indians. So who needs them?[7]

[4] The Guardian (London), 15 November 2000, p.1.
[5] The Guardian (London), 13 March 2001, p.3.
[6] 'Capitalism more lethal than Hitler', The Times (of London), 11 April 2000, p.4.
[7] Interview with George Fernandes: 'I'm no MNC basher', Business India, 23 March 1998, p.256.

He said that he criticised these MNEs on the basis that they were not abiding by the laws of India: 'These firms have violated national laws as well as legally valid agreements with their Indian partners."[8]

The regulation of MNEs is necessary so that they cannot flout the laws of host states, but must become law-abiding partners in the process of wealth creation. There is no reason why juridical persons should not become as law-abiding as natural persons! Regulation is also necessary to promote the flow of foreign direct investment (FDI) to developing countries. One of the reasons given for the limited flow of FDI from developed countries to the developing world is the absence of harmonised and internationally accepted norms to regulate the relations between foreign investors and recipient states.

Regulation is in the best interests of MNEs

Regulation is in the interests of MNEs too. A cunning justification of regulation would be to say that 'foisting complex regulations on local competitors in the Third World can help multinationals', but a more sincere view would be that it 'is often easier for them to operate under one set of standards everywhere than to tailor standards for individual countries'.[9] In fact, computer companies such as Compaq and IBM have pushed for higher environmental standards.[10]

At present, different countries have different sets of regulations governing the activities of MNEs, and the MNEs constantly have to adapt to such differences. In business, people want legal certainty and the law can provide that. Responsible MNEs, governed by sensible directors, realise that investment in sustainable economic activities would ultimately result in sustainable profit and longer life for them.

It would be much better for them to carry out their business worldwide if there was a harmonised system of international regulation in place. The legal and political certainty that such regulation would offer to the business community would outweigh what it cost them to comply with it. This would be relatively small in any case compared to other costs of production and distribution.

In the absence of international regulation, some MNEs have been forced to cobble together their own codes of conduct in the face of mounting public criticism of their trade practices. For instance, in the aftermath of protests in 50 US cities and in 11 countries in 1997 against the exploitation by Nike of

[8] *Ibid.*
[9] The Economist, 20 July 1996, p.57.
[10] 'Big is back: a survey of multinationals', The Economist, 24 June 1995, p.15.

workers employed by its subsidiaries in developing countries, the company was forced to adopt its own industry-wide code of conduct.

Home country versus host-country regulation

A company whose facilities and other business activities are located in a single state has no alternative but to comply with the laws of that state. However, a multinational company with facilities and business operations in more than one country can move production and other business facilities from one state to another to avoid particular jurisdictions.

Moreover, their home states are reluctant to regulate MNEs' overseas activities. An attempt to regulate unilaterally the activities of MNEs abroad would be an ambitious task for many home countries, requiring not only political will, but also the allocation of adequate resources. No home state would be prepared to act as a self-appointed economic police officer of the world to its own detriment. With even the most powerful and economically successful not willing or able to do the job, it is beyond the means of most home states to regulate the activities of foreign companies operating in more than one country. Therefore the idea of home country regulation alone is unlikely to work in this independent world.

Host-country regulation has not worked either, as many host countries compete to attract foreign investment and are constantly in the process of changing and even lowering standards in order to make themselves more and more attractive to foreign investors.

States used to have their own national regulatory mechanisms according to their own interests, but these regulatory mechanisms have gradually been eroded or abandoned due to pressure for deregulation and liberalisation from international economic institutions such as the World Bank and the IMF, the WTO regime and the need for countries to attract foreign investment by relaxing their rules. Moreover, market-based reforms such as privatisation and trade liberalisation have rendered the states of many developing countries weak. There is a state of chaos in many developing countries and they have lost the ability to control multinationals or their subsidiaries.

In fact, in many developing countries the MNEs are taking over the running of banks and other financial institutions. The policy advice coming out of international financial institutions such as the World Bank and the IMF is that these states should make policies and then hand over the task of implementing them to private firms and individuals. In short, developing countries are constrained by the need for foreign direct investment and cannot regulate MNEs. The priority –

protecting foreign investment – leads to measures designed to this end.

Attempts have been made to regulate certain activities of MNEs abroad through national legislation or regional treaties. Examples include:

- the Foreign Corrupt Practices Act 1977 of the US;
- the OECD Convention designed to outlaw international bribery and corruption of December 1997.[11]

However, these limited measures are not likely to solve the major problems concerning the regulation of MNEs.

Self-regulation

Those who have opposed the mandatory regulation of MNEs under international law have advocated self-regulation instead. They argue that it is not the function of international law to regulate private business activities. Any regulation of the activities of MNEs should be done through the intermediary of states. They also argue that mandatory rules imposed under an international instrument are not necessarily likely to lead to better behaviour.

They claim that if willing companies, host states and civil societies work together, they can promote human rights and sustainable development. They further argue that international law already regulates certain activities of the MNEs since they are also regulated by the principles of:

- sustainable development;
- national human rights law.

The rest should be left to self-regulation. They cite the Business Charter for Sustainable Development of the International Chamber of Commerce as an example.[12] Attempts at self-regulation to date present an interesting picture. For instance, in the 1980s the US defence industry started adopting a set of ethical guidelines and Shell was forced to rewrite its business principles and create an elaborate mechanism to implement them[13] after controversy over its attempt to dump the Brent Spar oil rig in the North Sea and its decision to do business with the military dictatorship in Nigeria, which had executed the writer and human rights activist Ken Saro-Wiwa.

According to a survey of MNEs, most well-known companies had 'high-minded internal mission statements and codes of conduct'. A

[11] Another example of some control of the activities of MNEs relates to the decision of the state of Massachusetts to ban contracts with firms doing business in Myanmar. See The Economist, 20 July 1996, p.57.

[12] The Economist, 20 July 1996, p.57.

[13] 'Doing well by doing good', The Economist, 22 April 2000, p.83.

few of them had full-time ethics officers who monitored the company's conduct:

- Levi-Strauss, an American clothing company, was reported to be cancelling contracts with suppliers if they were found employing child labour;
- Nike was forced in 1997 to adopt its own industry-wide code of conduct to prevent overseas operations from exploiting cheap labour;
- After being subjected to an 11-year boycott of its products by certain consumers between 1973–1984 for pushing some controversial products in developing countries, Nestle responded by introducing its own rigid corporate charter and appointed an 'independent' ombudsman to discipline its managers if they were engaged in unethical behaviour.[14]

Other examples include:

- the 'Sullivan principles' applied by many American firms operating in South Africa to advance the cause of oppressed people during the Apartheid era;
- the formation of the Caux Round Table, an organisation representing business in Europe, North America and Japan, to provide a vehicle for dialogue for the resolution of tensions arising as a result of trade imbalances;
- most top MNEs also responded to the call for a global compact by the Secretary-General of the UN.[15]

However, the reliance on self-regulation could be a very slippery slope. Under existing models of self-regulation the MNEs:

- make their own rules;
- appoint their own ombudsmen;
- decide themselves who should be disciplined and how.

This allows MNEs to become their own judge and jury. They are accountable to no one but to themselves. In spite of the existence of hundreds of self-regulatory codes of conduct adopted by many multinationals, the idea of self-regulation has not worked effectively and is unlikely to work.

14 'Swiss cash cow in search of richer pastures', Financial Times (London), 8 April 2002, p.12.

15 'Business rallies to UN ethics scheme', The Guardian (London), 26 July 2000, p.12. The Secretary-General had asked world business to respect a set of nine principles relating to human rights, labour standards and the environment. See http://www.unglobalcompact.org/gc/unweb.nsf/content/thenine.htm

Regulation by international law

The idea of regulating the activities of MNEs through international law sounds attractive. Yet it too is fraught with problems, since many people question whether there really is anything called international law. Mr Charles de Gaulle, the former president of the French Republic, is reported to have said that 'international agreements are like roses and young girls; they last while they last'. Indeed, the very existence of international law depends on the consent of the countries involved. That consent may not be granted or may be withdrawn later. Comparing international law with municipal law, a journalist drily noted that 'a burglar does not claim exemption from arrest on the ground that he had not given his consent to the law he is accused of breaking'.[16]

However, unlike municipal law, which is binding on all individuals within a country whether or not they happen to agree, international law cannot bind states, which have not consented to be bound by it. What is more, critics of international law argue that international rules are made by the powerful states for the weak. The major powers do not themselves always abide by the laws they enact. There is a measure of truth in such statements, especially if we look at the application of the law governing the political conduct of states.

However, the record of the application of international law concerning international economic relations by both major and minor powers is rather encouraging. Regulatory mechanisms are by and large acted upon by states. Examples include:

- the International Civil Aviation Organisation (ICAO);
- the International Telecommunications Union (ITU);
- the World Postal Union.

It is in the long-term self-interest of states to abide by the rules of international law. Most states usually abide by most of the rules of international law. This is one reason why regulating multinational corporations through international law has been high on the international agenda since the 1970s, when ambitious developing countries sought to control the ever-increasing power and influence wielded by these corporations.

However, those who viewed these corporations as primary engines of economic growth and prosperity rejected the idea of regulating them through international law.[17]

[16] The Economist, 24 December 1994, p.18.

[17] Various attempts were made within the UN to adopt a binding Code of Conduct for MNEs, but all failed due to differences of opinion mainly between the developing and developed countries, and eventually the body entrusted with the task of negotiating a Code, the UN Commission on Transnational Corporations (CTC), was taken out of business. For a summary of the work done by the CTC and the proposed text of the draft Code of Conduct on Transnational

The idea has acquired new currency in the recent past and received support from different quarters – particularly from those concerned about human rights violations and pollution of the environment by MNEs.

The role of bilateral investment treaties (BITs)

Foreign investment has traditionally been regulated mostly by bilateral investment treaties (BITs). These are supplemented by the case law of international courts and tribunals[18] and a few specific treaties such as the International Convention for the Settlement of Investment Disputes (ICSID).[19] Currently, there are some 1,700 such treaties and 1,900 double-taxation treaties regulating foreign investment between the states concerned. However, the sheer number of treaties has simply added to the confusion in regulating MNEs.[20]

Moreover, owing to unequal power relations between host and home states, most of these treaties are lopsided: the developed world has been able to impose its standards on the developing world. Desperate for foreign investment, developing countries have accepted the conditions of developed countries through such treaties. Even attempts made in the 1960s within the UN focused on establishing the right of host states to expropriate the assets of foreign MNEs under certain narrowly defined conditions. In other words, expropriation could only take place if it was:

- in pursuance in good faith of a public purpose;
- without discrimination;
- involved the payment of compensation.

In fact, much of the international legal literature in foreign investment of the 1960s, 1970s and 1980s was devoted to analysing the conditions under which the assets of foreign companies could be expropriated and the level of compensation to which they would be entitled. The debate focused on whether they were entitled to 'prompt, adequate and effective' compensation, or 'just' or 'appropriate' compensation.

While developing countries argued for a 'just' or 'appropriate' measure of compensation, they concluded bilateral investment treaties with the developed countries incorporating the 'prompt, adequate and effective'

Corporations, see UN Doc.E/1990/94 of 12 June 1990.

18 These include international claims tribunals such as the Iran-US Claims Tribunal and other ad hoc tribunals. See, for instance: Texaco v Libya 17 ILM 1 (1978); Amoco International Finance Corp. v Iran (US v Iran), Iran-US Claims Tribunal, 15 Iran-US CTR 189; Starrett Housing Corp. v Iran (US v Iran) (1983), Iran-US Claims Tribunal, 4 Iran-US CTR 122.

19 4 ILM 532 (1965).

20 WTO briefing paper, 'Trade and investment: negotiate, or continue to study?', http://www-chil.wto-ministerial.org/en...minist_e/min01_e/brief_e/brief/12_e.htm

compensation measure preferred by the developed countries.[21]

More was on offer for MNEs or developed countries throughout the 1990s as developing countries competed with each other for the little foreign direct investment that was flowing to them from developed countries to developing countries. For instance, the bilateral investment treaty concluded between Jordan and the US in July 1997 contains the following provision with regard to expropriation and compensation for it:

> "Article III - Neither contracting party shall expropriate or nationalize a covered investment either directly or indirectly through measures tantamount to expropriation or nationalization ('expropriation') except for a public purpose; in a non- discriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general principles of treatment provided for in Article II (3)".[22]

An identical provision can be found in Article III of the bilateral investment treaty concluded between the Russian Federation and the US in June 1992.[23] A bilateral investment treaty concluded between India and the UK in 1994 regulates expropriation in the following words:

> "Article 5: Expropriation - Investments of investors of either contracting party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as 'expropriation') in the territory of the other contracting party except for a public purpose related to the internal requirements for regulating economic activity on a non-discriminatory basis and against fair and equitable compensation. Such compensation shall amount to the genuine value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at a fair and equitable rate until the date of payment, shall be made without unreasonable delay, be effectively realisable and be freely transferable.
>
> The investor affected shall have a right, under the law of the contracting party making the expropriation, to review, by a judicial or other independent authority of

[21] An example is the 1998 Agreement between Japan and Bangladesh concerning the Promotion and Protection of Investment. See 43 Japanese annual of international law (2000), pp.229 ff.

[22] 36 ILM 1498 (1997).

[23] 31 ILM 794 (1992).

that party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph. The contracting party making the expropriation shall make every endeavour to ensure that such review is carried out promptly.

Where a contracting party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other contracting party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such investors of the other contracting party who are owners of those shares."[24]

As the 1990s progressed, foreign investors were offered all sorts of incentives, including tax holidays. States were reluctant to invoke the right to expropriate the assets of foreign companies even under the narrowly defined conditions of traditional public international law on foreign investment. International financial institutions stepped in to accord as strong a level of protection as possible to foreign investors, with as few obligations and responsibilities as possible, and to ensure that expropriation or the notion of host- country regulation was consigned to history.[25] Indeed, the 1990s was the return of the 'golden age'[26] for foreign investors. The OECD tried to perpetuate it through its proposal for a Multilateral Agreement on Investment (MAI).

Conclusions

There have been various efforts to regulate the activities of foreign investors in general and the MNEs in particular through legal instruments of global character. However, there is as yet no comprehensive legal instrument to do so. States' approach to this issue has been piecemeal. A number of bilateral and multilateral instruments deal with the protection of foreign investment but not necessarily with the negative impacts of foreign investment on the environmental and human rights standards of host states.

[24] 34 ILM 935 (1995).

[25] 'World Bank: Report to the Development Committee and Guidelines on the Treatment for Foreign Direct Investment', 21 September 1992. 31 ILM 1363 (1992).

[26] Marglin, S.A., and J.B. Schor (eds), The golden age of capitalism: reinterpreting the post-war experience (Oxford: Clarendon Press, 1990).