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THE STRUCTURE OF INTERNATIONAL INVESTMENT LAW WITH A SPECIAL VIEW TO RESOURCE NATIONALISM

A nemzetközi befektetési jog szerkezete, különös tekintettel az erőforrások nemzeti kézben tartására

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Abstract: International investment law is a game of mutual interest, yet, a venue for profit maximization. Therefore, there are usually conflicts in the parties' interests. A solid legal background is essential on which foreign investment contracts can be built. The more critical the investment environment is, the more the host governments are inclined to grab resource nationalism as a weapon for securing national economic interest. How effective is the legal basis, what impact have the resource nationalism had on the structure of transborder co-operations? These questions are investigated in the present paper

Keywords: *international investment law, MIGA, ICSID, risk mitigation, resource nationalism*

Absztrakt: A nemzetközi befektetési jog a kölcsönösen gyümölcsöző együttműködések terepe, ahol azonban a profitmaximalizálás szempontjai is érvényesülnek, így a felekre az érdekellentét a jellemző. A fentiek alapján tehát szilárd jogi alap szükséges az ilyen szerződések megkötéséhez. Minél problémásabb a befektetési környezet, a fogadó államok annál szívesebben nyúlnak az erőforrások nemzeti kézben tartásának módszeréhez. Menyire hatékonyak a jogi alapok, milyen hatása van a nemzeti érdekek erőteljes képviseletének, ezeket a kérdéseket vizsgálja a tanulmány.

Kulcsszavak: *nemzetközi beruházások joga, MIGA, ICSID, kockázatminimalizálás, erőforrások nemzeti kézben tartása*

Introduction

Investing into a foreign country may be a risky adventure. On the one hand, it may seem to be alluring as high profit can easily be gained on a foreign and untouched market. However, there are multiple types of risk that may threaten the investor's

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assets. Furthermore, the investment contracts are, with no exception, concluded directly by the host government (or a state-owned entity of the host country), namely the state itself. Since the host State has got home court advantage, this area is full of hidden traps that can only be avoided on the basis of a solid legal environment protecting the interests of the foreign investor.[1] The foreign investor is, overwhelmingly a private party such as a business entity which is another disadvantageous aspect regarding the ability to assert its interests. Accordingly, the relation of the parties may be regulated by different kind of legal methods. The basic idea, to be able to avoid the legal procedures, namely the arbitration, is to provide clear and enforceable rules to protect foreign investment and reduce country or political risks, in order to encourage investment activities on both sides.

It is vital to emphasize that until the conclusion of the investment contracts the contracting parties share common interests as they aim at the fruit of their contractual relation. Once the contract has been concluded, the situation is going to change. The host country would like to preserve their national economic interests including even expropriation while the investor's intention is to maximize the profit. Thus, in case of an unsolvable financial and economic dispute, the parties' legal relation will usually end up in a legal procedure. Doing so, two fundamental and crucial factors need to be taken into consideration, the applicable law on the one hand and the jurisdiction on the other. As a matter of fact, investors would like to avoid that the above mentioned two factors might have any connection with the host state. Accordingly, they wish an applicable law other than the host state's legal regulations and a forum of investment arbitration other than the host state's venues. Conversely, the host state has got radically different perceptions of a procedure of dispute settlement.

What are the tools for creating the secure legal background of foreign investments are they effective enough to be applied and what impact have the currently more and more popular resource nationalism had on the structure of trans-border cooperation? This paper attempts to answer these questions.

1. The tools for setting the legal background

The main question is what chances the investors in such a dispute against a host state have. A foreign investor's power to sue a host state that is to say to try to as-

[1] While in theory this issue is of importance for both the host State and the foreign investor, in practice it has more significance for the foreign investor. When a foreign investor enters the territory of a host country, that investor is usually inclined to seek protection in the form of specified treatment standards – such as most-favored-nation treatment, national treatment and fair and equitable treatment – as well as guarantees on matters such as compensation for expropriation and the right to transfer capital, profits and income from the host State. Dispute settlement: investor-state united nations conference on trade and development united nations unctad Series on issues in international investment agreements 1. https://unctad.org/system/files/official-document/iteiit30_en.pdf 16 April 2022.

sert its financial interest plays a vital role in investment protection. Investment arbitration is undertaken to resolve disputes between foreign investors and the host state and is also known as Investor-State Dispute Settlement (ISDS) and its most common venue is the International Centre for Settlement of Investment Disputes.[2]

To be familiar with the topic, it is useful to clear the ways that can determine the applicable law to such disputes and legal processes and to outline the procedure of ICSID.

In the light of the above, it is of great significance what weapons a foreign investor can protect itself with in the jungle of an unknown legal system and regulations of a foreign country.

We can distinguish five of them. These are:

1. Single international investment agreements (SIIAs).
2. Bilateral Investment Treaties (BITs).
3. Multilateral Investment Treaties (MITS).
4. Legal regulations of the host country.
5. Special insurance protections (MIGA).

It is the parties' choice how they can negotiate the conditions of their legal relationship trying to keep each others' rights and obligations in a balanced position. Thus, it is worth taking a closer look at each of those measures that are to regulate foreign investments and to create their legal environment.

1.1. Single International Investment Agreements (SIIAs)

Single International Investment Agreements are concluded between a foreign investor and the host State. These instruments have generally drawn on a limited number of models, which predominantly assume that the central problem to be solved is the protection of foreign investors from discriminatory actions by the host state.[3] They are usually very detailed contracts that enumerate both parties' rights and obligations. From the view of the foreign investor, one of the crucial issues is how to protect the assets that are brought to the *imperium* of a foreign country and legal regime while the host States are determined to protect their domestic economic priorities. Every country in the world needs capital to develop and expand its economy, most of them, however, is in lack of financial instruments. This perception is overwhelmingly applicable for developing countries, where even the basic conditions of an expanding economy are moderate. That is the reason why foreign capital is usually welcome worldwide. The most common types of risks for a foreign investor can be either economic/commercial or political. Economic risks are

[2] ICSID is an international arbitration institution established in 1966 for legal dispute resolution and conciliation between international investors and States

[3] Konrad von MOLTKE: *A Model International Investment Agreement for the Promotion of Sustainable Development*. International Institute for Sustainable Development November 2004, 1, https://edit.wti.org/wti-filesystem/20210512/3161457a-df2c-47949853--0e9b46a7b315/IISD%20Model%20BIT%202004.pdf, 16 April 2022.

usually known, expected and calculated in advance and are born by the investor. They can be, consequently, removed or mitigated by conducting due diligence on the parties involved and on the economic viability of the proposed business. Political risks, however, cannot be foreseen and means changes in the investment climate.[4] There are, furthermore, authors, who see more detailed risks as far as foreign investments are concerned. Risks may be for example commercial risk (prices for a commodity or good may drift above or below estimates), financial risk (interest rates may rise or fall beyond an anticipated range), natural disasters, and political risk – the risk a change in law will diminish the value of the investment.[5] Commercial, financial risks and natural disasters can barely be avoided, while for political risks a well formulated investment agreement may offer high level protection.

The parties of such SIIAs are more or less free to elaborate the content of their economic cooperation, although, serious concerns are to observe on each side. As international commercial connections and investments are the fuel of the extension and development of world market, these well functioning relations are vital for the contractual parties. Accordingly, the parties are interdependent and mistrustful at the same time.[6] This kind of fundamental antagonism can be solved by a well elaborated and balanced agreement taking into consideration the interest of all parties.

1.2. Bilateral Treaties (BITs)

BITs are treaties signed between two sovereign states designed to protect and encourage foreign investment so that private investors may have certain scope of

[4] Investment climate refers to the economic, financial, and socio-political conditions in a country or region that impact whether other countries, individuals, banks, and institutions are willing invest in the businesses operating there. More on Investment Climate: Investment Climate Reforms An Independent Evaluation of World Bank Group Support to Reforms of Business Regulations. https://ieg.worldbankgroup.org/sites/default/files/Data/Evaluation/files/investment_climate_final.pdf,16 April 2022.

[5] Sam Foster HALABI, Efficient Contracting between Foreign Investors and Host States 31 *Nw. J. Int'l L. & Bus*. 261 (2011), 263. Those scholars are e.g. Joseph E. STIGLITZ, Regulating Multinational Corporations: Towards Principles of Cross-Border Legal Frameworks in a Globalized World Balancing Rights with Responsibilities, 23 *AM. U. INT'L L. Rev*. 451 (2008); William W. Burke-WHITE & Andreas von STADEN, Investment Protection in Extraordinary Times: The Interpretation and Application ofNon-Precluded Measures Provisions in Bilateral Investment Treaties, 48 *VA. J. INT'L L*. 307 (2008); Gus VAN HARTEN, Five Justifications for Investment Treaties: A Critical Discussion, 2(1) *TRADE L. & DEV. (SPECIAL ISSUE)* 19 (2010).

[6] The security of foreign investment will turn not only on specified safeguards, but also on the assurance that these safeguards are available on a non-discriminatory and timely basis to all foreign investors. Conversely, the host country wishes to ensure that, in the event of a dispute with foreign investors, it will have the means to resolve the legal aspects of that dispute expeditiously and taking into account the concerns of the State, as well as those of foreign investors. UNCTAD 1.

protection for investments made in the host State. Signatory countries agree to abide by certain main principles, such as treating foreign investors in the same manner as investors in the host country or not expropriating foreign-owned assets without adequate and prompt compensation.[7] In BITs the parties regularly appoint the *forum* of an occurent legal dispute[8] arising from the foreign investment to be awarded by a designated independent arbitration body, such as the ICSID.[9] The basic idea is to provide clear and enforceable rules to protect foreign investment and reduce country or political risks, which should encourage investment. The substantial majority of BITs are signed between a developed economy and a developing economy[10] that is in need of capital or other financial or intellectual resources.[11] Just as discussed above, the developing countries are keen to attract investment in many sectors to develop their economy. For that cause, they are even willing to negotiate unbalanced conditions, to allure the foreign capital to their countries. Nevertheless, the role of BITs in promoting the foreign investment has been debated for decades. *'Advocates and scholars criticize both the economic rationale behind BITs and their effects on developing countries. First, they question whether BITs increase investment in developing states; second, they argue BITs undermine the legitimate regulatory authority of the state; finally, they allege BITs feed an international arbitration industry that, at best, lacks transparency and, at worst, issues inconsistent decisions shaped by conflicting motives*.'[12] Actually, a foreign investment agreement based on a BIT is a straight way to international investment disputes.

1.3. Multilateral Investment Treaties (MITs)

Basically, what have been said for BITs is true for MITs, as well. The only but rather significant difference is that MITs are signed and concluded by more than two independent states. Consequently, their territorial scope is much broader. However, the role of MITs in protecting the investment in a foreign market is less

7 Vineet BHAGWAT – Jonathan BROGAARD – Brandon JULIO: A BIT goes a long way: Bilateral investment treaties and cross-border mergers. *Journal of financial Economics* Volume 140, Issue 2 May 2021, 514.

8 Jurisdiction.

9 See below in paragraph 3.

10 HALABI, op. cit. 263.

11 Also known as intellectual capital. intellectual resources. These are non-physical, intangible resources like brand, patents, IP, copyrights, and even partnerships. Customer lists, customer knowledge, and even your own people, represent a form of intellectual resource. Intellectual resources take a great deal of time and expenditure to develop. https://psichologyanswers.com/library/lecture/read/43405-what-are-intellectual-resources-in-business, 16 April 2022.

12 HALABI, op. cit. 261.

significant. Examples for MITs are the ECT[13] and several free trade agreements such as EFTA[14], CEFTA[15], NAFTA[16], MERCOSUR[17] and AFTA[18]

1.4. Legal regulations of the host country

The next method to minimize the risk of a foreign investment is to trust in the legal environment of the host country. This belief can be, nevertheless, deceptive as the legal regulations of the venue of the investment can be modified easily. And the one who may be responsible for the amendment of the law is exactly the contracting partner, the government of the host country itself. Yes, it is not easy not to remember that the host government is actually one of the contracting parties either of a single investment agreement or BITs and MITs. Once the host state attracted the foreign capital, it was placed and running, the story can take its turn when the investor is not welcome anymore and they are to deprive from their invested assets. One of the most serious and threatening measures is to amend the law in favor of the of the host country to make it impossible carry out the certain business activity any longer. This phenomenon is the so called resource nationalism (RN), which usually emerges in case of high market prices, such as in 2003–2013.[19] The shades of threat of another world wide crisis are starting to emerge, consequently, the RN of the host states will raise as well.

1.5. Special insurance protection (MIGA)

MIGA is the Multilateral Investment Guarantee Agency, member of the World Bank Group.[20] This point is a slight exception as not a legal source itself, but an

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[13] Energy Charter Treaty is a legally binding multilateral agreement covering investment promotion and protection, trade, transit, energy efficiency and dispute resolution. The treaty was signed in Lisbon in December 1994 and came into effect in April 1998.

[14] The European Free Trade Association is a regional trade organization and free trade area consisting of: Iceland, Liechtenstein, Norway, and Switzerland. It was founded in 1960.

[15] The Central European Free Trade Agreement was established on 21 December 1992 as a trade agreement by the Visegrad Group. Most of the former member states became a member state of the EU. Today it consists of Albania, Bosnia and Herzegovina, Kosovo, North Macedonia, Moldova, Montenegro and Serbia.

[16] The North American Free Trade Agreement (NAFTA) is a treaty entered into by the United States, Canada, and Mexico; it went into effect on 1 January 1994.

[17] MERCOSUR is an economic and political bloc comprising Argentina, Brazil, Paraguay, Uruguay, and Venezuela, established by the Treaty of Asunción in 1991 and Protocol of Ouro Preto in 1994.

[18] The ASEAN Free Trade Area (AFTA), was established on 28 January 1992, consists of Brunei, Indonesia, Malaysia, Philippines, Singapore, Thailand. Vietnam, Laos, Myanmar and Cambodia.

[19] Sam PRYKE, Explaining Resource Nationalism, *Global Policy* Volume 8. Issue 4 . November 2017, 474.

[20] *See more* www.worldbank.org, 16 April 2022.

effective method to mitigate the risk connected to trans-border businesses. The main goal of the foundation of MIGA was actually the core mission in making the foreign investment more attractive and safe. It is to enhance the flow to developing countries of capital and technology for productive purposes under conditions consistent with their developmental needs, policies and objectives, on the basis of fair and stable standards to the treatment of foreign investment.[21] MIGA offers guarantees for special kind of risks in the field of international investment. Its guarantee policy covers political risk that is the Political Risk Insurance (PRI). PRI is a tool for businesses to mitigate and manage risks arising from the adverse actions or inactions of governments. As a risk-mitigation tool, PRI helps provide a more stable environment for investments into developing countries, and to unlock better access to finance. On the basis of the above, MIGA gives a hand to foreign investors to avoid political risk caused by the actions of authorities of the host country (for example in the case of expropriation) but only when the political issues are affected. No commercial risk of any foreign investment shall be covered by MIGA.

2. International Centre for Settlement of Investment Disputes (ICSID)

In the above, we took a closer look at the tools of an investor when trying to avoid or minimize the jeopardy arising from an investment in a foreign country. The next question seems to be evident: what happens if the host country's authorities do not accept and/or violate the regulations of the investment agreement or the treaties. In case of an international investment dispute, the aggrieved party is entitled to seek legal answers for the damnification. The forum depends on the legal characteristic of the parties. We can distinguish between investor-state and state-to-state disputes.

Dispute settlement provisions provide direct investor-state, state-to-state arbitrations or adjudication for disputes between the contracting parties of the BIT or the ICSID Convention.[22] State-to-state disputes may concern a number of different issues, such as interpretation, termination, breach, responsibility, attribution, reparation, or diplomatic protection and even procedural aspects such as the relationship between investor-state or state-to-state arbitrations.

As far as the foreign investments are concerned, the investor-state disputes seem to be more specific. In that case, the best way to have an international dispute settled is to turn to the ICSID. The ICSID is an international arbitration institution established in 1966 for legal dispute resolution and conciliation between international investors. The ICSID, just as the MIGA, is part of and funded by the World Bank Group. State-to state disputes are to settle for example by the WTO dispute settlement understanding (DSU).

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21 *See more* www.miga.org, 16 April 2022.

22 Z. DOUGLAS: Other Specific Regimes of Responsibility: Investment Treaty Arbitration and ICSID', in J. CRAWFORD – A. PELLET, and S. OLLESON (eds): *The Law of International Responsibility*. Oxford: Oxford University Press, 2010, 815.

As the most typical tool for the dispute settlement we would like to focus on the ICSID system. Within the ICSID two main parts of dispute settlement can be distinguished, the arbitration on the one hand, and the conciliation on the other. The rules for both procedures are regulated by the ICSID Convention.[23] The specialty of ICSID is that it applies both regulations of civil law and public international law. An essential precondition of the procedure is the consent of the parties to the arbitration. This consent is strictly based upon the free-will acquiescence of the parties, and is to be considered as a chosen jurisdiction. The jurisdiction can be deducted either from international treaties (BITs and MITs), national laws or single investment agreements.

The main difference between the two types of procedure is the outcome, namely an award by the Tribunal or a report by the Commission. As to the arbitration, the final decision is an arbitration award, which is final, to be recognized and enforceable. There is only one award in an ICSID case, and it is the Tribunal's last decision, which disposes of the case. The award is final and binding and can be recognized and enforced in any ICSID Member State. Usually there is no appeal against an award.[24] As far as the conciliation is concerned, the goal of the Commission is to clarify the issues in dispute between the parties and to endeavor to bring about agreement on mutually acceptable terms. The parties must cooperate with the Commission in good faith to achieve this goal. To that end, the Commission may ask the parties for relevant documents or explanations, hear witnesses and experts, make site visits and issue recommendations at any time during the proceeding.[25] At the end of the conciliation proceeding, the Commission issues a report, which is only a recommendation for the parties and does not have binding force in public international law. Up to now, the ICSID regime is the most effective and powerful way to settle international investment disputes. However, other forms of resolution also come into view.

In November 2015, the EU agreed on a reformed investment dispute settlement approach to stay up-to-date with the highest standards of legitimacy and transparency by creating a permanent dispute settlement mechanism, namely the Investment Court System. Nowadays, one of the eminent efforts of the European Commission is to set up a multilateral investment court to rule on investment disputes.[26] This system makes sure that each party follows the same rules on investment protection, and seeks to strike a balance between protecting investors in a transparent

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[23] ICSID Convention, also known as Washington Convention is a treaty ratified by 154 Contracting States, entered into force on 14 October 1966.

[24] https://icsid.worldbank.org/en/Pages/process/Award-Convention-Arbitration.aspx, 16 April 2022.

[25] https://icsid.worldbank.org/en/Pages/process/Convention-Conciliation-Procedure.aspx, 16 April 2022.

[26] European Parliament's recommendations to the European Commission on the negotiations for the Transatlantic Trade and Investment Partnership (TTIP), P8_TA (2015) 0252, European Parliament 2015, texts adopted (2014–2019).

manner and safeguarding a state's right to regulate to pursue public policy objectives. This approach favors multilateral solutions and adds a much needed piece to the multilateral rules-based system. The ISDS (Investor state dispute settlement) was a progressive initiative to help investors to bring claims against the host state supposing the latter violated the terms of the agreement. Nowadays, many believe, the ISDS became a tool of multinational corporations to bring actions against governments if any act of the state has negative impact on their investment.

3. Risks of foreign investments

Let us commence this part with the survey of the principles of international investments. These principles are addressed to try to tackle or minimize the menace involved in cross-border investments. These requirements can be

(i) fair and equitable treatment (FET), (ii) treatment no less favorable for investors than for host state nationals (national treatment NT), (iii) treatment no less favorable for investors than for nationals of other states ("most favored nation" treatment MFNT), (iv)- protection against, and compensation for, expropriation or nationalization, (v) compensation for losses due to war or other conflict, (vi) rights to repatriate profits in free convertible currency or the investor state's currency and (vii) umbrella clauses to honor the terms upon which an investment is made, therefore elevating contractual commitments to treaty obligations under international law.

The above mentioned most common provisions can also be found in WTO law, where the purpose of these obligations is to prevent states from discriminating against and between foreign products, services and service-providers.[27]

These principles, as worldwide acknowledged methods, are frequently applied in international investment agreements. Nevertheless, host states are inclined to break their promises when falling into the trap of RN. Now, let us survey what kind of breaches may occur in case of such an agreement.

First, this is the breach of FET, which is in very close connection to NT.

FET occurs when the host country provides advantages (legal, economic background, taxation etc.) for national companies to the prejudice of the investor company even if the latter is usually a subsidiary company set up in the host country.[28]

The typical risk of an international investment is the expropriation and nationalization by the host state. In the event of a political change it may occur that the new government will no be friendly towards the foreign investor anymore and the economic relation will be ceased with a radical step. This happened for example in

[27] Andrew D. MITCHELL – David HEATON–Caroline HENCKELS, *Non-Discrimination and the Role of Regulatory Purpose in International Trade and Investment Law*. Edward Elgar Publishing Limited, 2016, 15.

[28] To this issue see Foreign Control Clause that is: 'Foreign control means that the controlling institutional unit is resident in a different country from the one where the institutional unit over which it has control is resident.' https://www.lawinsider.com/ dictionary/foreign-control, 16 April 2022.

Cuba in 1958. Such a measure by the host state cannot be foreseen but the damage can be anticipated with risk insurance by MIGA. Undoubtedly, the host state has the right to expropriate or nationalize the foreign property, however, due compensation shall be paid to the investor. We call it permanent sovereignty over natural resources and it was adopted in 1962 by the UN General Assembly.[29]

Another sensitive issue is the rights to repatriate profits in free convertible currency. Host states do not really like if an investor is willing to repatriate the profit obtained in there. There are various methods to prevent the investor from transferring the profit out of the host country. From the legal regulations to administrative measures, the list can be long and exhausting. It is of great significance that the profit, once allowed to transfer out, shall be available in a worldwide accepted currency or, at least, it shall be freely converted. It is easy to understand that the investor would not be happy if the profit was available only in the local currency of the host state

If the parties of an international investment agreement can co-operate in the long term in order to secure the mutual benefit and maximize the profit, their connection will be fruitful. If they cannot agree the economic relation will end up in a legal dispute.

4. Resource nationalism

As it has been outlined above, parties of a foreign investment usually share the same interest. It is essential for developing countries to allure capital into their market plus to obtain those technical and financial solutions that can make their economy more competitive. For the investor, it is also of crucial importance where to place their funds in order to get the highest profit possible. Accordingly, it is desirable to promote international co-operation for the economic development of developing countries, and that economic and financial agreements between the developed and the developing countries must be based on the principles of equality, equity and legality. Furthermore, due regard should be paid to the rights and duties of States under international law and to the importance of encouraging international cooperation in the economic development of developing countries.

The economic co-operation shall be fruitful for each contracting party through the provision of economic and technical assistance, loans and increased foreign investment. This activity shall be carried out carefully so it should not be subject to conditions which conflict with the interests of the host State. In case of any con-

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29 https://legal.un.org/avl/ha/ga_1803/ga_1803.html, 17 April 2022.
’Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign. In such cases the owner shall be paid appropriate compensation, in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law.’ https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/resources.pdf, 16 April 2022.

flict, the host party may take unexpected and unfriendly steps on the basis of resource nationalism (RN).[30]

The phenomenon of RN seems to be more current than ever.[31] After a 2-year period of pandemic and in the middle of Russian-Ukrainian war, the world market is to fall in deep crisis. Several factors may contribute to the strict actions of the host nations. Growing public debt, higher commodity prices, decreasing supply in raw material and stronger public environmental consciousness all of them show governments the way to apply restrictive measures in front of foreign investors.

These steps usually hit companies in mining and energy sectors. Nowadays, plenty of clear examples are there to face the difficulties. The new presidents both in Chile and Peru are determined to raise taxes and stop projects with negative effect on environment. Big companies had severe difficulties in Mongolia and Kyrgyzstan being forced to restructure mining projects. Hungary, after the overwrought process of privatization in the 1990's, nationalized every foreign interest in the energy sector in the last 7 years.

It is easy to see, the host countries would like to have more and more contribution from investors in exchange that they let them carry out business activity there. The methods of the governments are various. From the increasing tax burden to administrative legal measures the host states are inventive enough to find out the ways to take advantage of the current situation. It is, however, to underline that these steps are not only of economic or fiscal character as politicians may be focused on positioning themselves for an upcoming election, or navigating in accordance with complex local, domestic or geopolitical interests. RN means increased national control over resources, raw materials and commodities. This phenomenon may not sound politically correct, however, the independent nations as sovereign states have got the fundamental rights to their resources. This also includes the decision who, how and on what extent can exploit and utilize the resources. It should be kept in mind that the already referred UN General Assembly Resolution 1803 has created the legal basis for this kind of persuasion as undisputed right of the host nations.

The countries with rich resources may also have negative experiences from the colonial past, when their values were exploited without due compensation. Beside the political factor, this can be the other aspect to consider that strong belief that Western countries always wanted to misuse the opportunity to the disadvantage of

30 Resource nationalism is a term used loosely to describe the tendency for (nation) states to assert economic and political control over natural resources found within its sovereign territory. John CHILDS, Geography and resource nationalism: A critical review and reframing *The Extractive Industries and Society Volume 3 Issue 2* April 2016, 539.

31 Although it is not a new phenomenon, it could be observed Centuries ago. The first wave of RN took place In the 20th century, when in the 1940s Bolivia took over Standard Oil and Mexico nationalized its oil industry. After the more or less full decolonization RN became a very popular tool for the newly independent states. See more PRYKE: op. cit. 475.

the host nations. Now, it seems their turn to toughen tax and other rules governing foreign-owned resource projects

As the prospective crisis might be deepening the more powerful the RN will be in the host countries. In economic sense, this would lead to rise in prices and a strong inflation spiral worldwide.

Conclusion

The challenge of the present paper was to identify the different possible legal sources in the field of international investment that can serve as solid legal background in those legal relationships, and to discuss the questions arising from the current political and economic situation in the world market. The paper has shown that the legal methods are effective enough to be applied as legal basis for this kind of trans-border co-operations. As far as the interests of the host countries are concerned, RN is an adequate method for host states to protect their financial and economic interests against foreign investors and, moreover, the parties can elaborate the mutually acceptable conditions through long negotiations. The more serious the market situation is, the stricter actions the host governments will take including those of RN. The parties of the foreign investment agreement depend each other, consequently, the RN is only a certain but very serious tool of assertion of interest for the host state.

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