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The Nationality of the Investor in International Investment Arbitration and the Dual Nationality Problem

1. International Investment and Investment Arbitration

The global economy has grown dramatically and evolved at an impressive rate over the past several decades. Today, it is widely accepted that domestic capital alone is not sufficient for the development of countries. Foreign investments[1] that enter the host state thus constitute important financial resources for developing economies.[2] States, especially developing countries, need foreign investment to strengthen their economies and continue their development; thus they need foreign investors to meet their various needs such as technological infrastructure, capital and expertise which they do not have or have only in limited amounts.[3]

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[1] Foreign investments may take the form of indirect investment (portfolio investment) or direct investment. However, at international and national level, the term "foreign investment" often refers to "foreign direct investment". In this article, the term "foreign investment" is used in a way that indicates "foreign direct investment".

[2] Foreign investments play major role in shaping the global economy as they enable economic globalization, help domestic economies grow, create new job opportunities, enable establishment of new markets, transfers new technologies and know-how all over the world, facilitate access to raw materials, builds value chains that stretch across the planet and facilitates the trade that allows goods and services to be moved to where they are needed. (NOVIK, ANA: *Investment, Investment, Investment.* In: OECD: How International Investment is Shaping the Global Economy. 2015. p. 5. Available at http://www.oecd.org/investment/2015-international-investment-blog-compilation.pdf. Accessed June 1, 2020.) These investments can also contribute to training of the workforce and improvement of the management. Foreign investors can offer necessary information on foreign markets, knowledge about how to reach and use these markets. Additionally, foreign investors can facilitate privatization process. *See* ZOLTAN, VIG: *Taking in International Law.* Budapest, 2019. p. 11; SALACUSE, JESWALD: *The Law of Investment Treaties*. Oxford, 2015. p. 47.)

[3] Although the views in the literature defines international investment as the investments from developed countries to developing economies, this view began to lose its validity with the changing conditions. In today's economic order, it is seen that FDIs to developed countries are as much as FDIs to developing countries.

Foreign direct investment can be defined as the transfer of movable or immovable assets in whole or in part, from the country of origin to the host country for the purpose of using it to improve the welfare of the host country, under the control of the owner.[4] According to a more general definition, which also takes into account the objectives of investors, a foreign direct investment can be defined as a long-term investment made by a firm or an individual in one country, into business interests located in another country, with all risks and profit opportunities.[5] In the context of FDI, it is possible for an investor to invest in an enterprise in another country, as well as start a new business, complete its investment through direct acquisition or even transfer solely know-how.[6]

Profit making is the main purpose of foreign investors; but profit potential in itself is not a reason sufficient enough for foreign investors to invest in one country. Investors wish to secure themselves and their investments by making them in countries where the investment climate is safer.[7] Foreign investors want to safeguard themselves and their investments in the country they will invest in, to protect and isolate themselves as much as possible from political and economic risks.[8] Apart from the country's general investment climate, its political and economic stability, its regulations related to foreign

4 SORNARAJAH, MUTHUCUMARASWAMY: *The International Law on Foreign Investment*. Cambridge, 2010. p. 4. This definition ignores that the main objective of the investor, whether it is operating in its own country or in a foreign country, is always to make profit rather than to increase the welfare of the country. *See* VIG 2019, p. 11. The most significant indicator of this is FDIs in the African continent. With the exception of some countries with rich oil and natural resources, direct investments in African countries account for only 0.8% of all direct investments. As can be seen from here, it is clear that foreign investors do not act with the motive of increasing the welfare of countries, but with the aim of making a profit.

5 The Organisation for Economic Co-operation and Development (OECD) defines the FDI as a category of cross-border investment made by a resident in one economy (the direct investor) with the objective of establishing a lasting interest in an enterprise (the direct investment enterprise) that is resident in an economy other than that of the direct investor. *See* OECD: *Benchmark Definition of Foreign Direct Investment.* 2008. p. 17. Available at https://www.oecd.org/daf/inv/investmentstatisticsandanalysis/40193734.pdf. Accessed June 1, 2020.

6 In the field of international agreements law, there is no uniform definition of the concept of "foreign investment". Also, there is no comprehensive document regulating all aspects of foreign investment, including all or the majority of the relations between home and host states. Even the Convention for the Settlement of Investment Disputes between States and Nationalities (ICSID) and the Multilateral Investment Guarantee Institution Agreement (MIGA) do not include an investment definition. Governments define investment through bilateral investment agreements signed among themselves and thus determine the definition and scope of the investment.

7 Investment climate is defined as the institutional, policy and regulatory environment in which firms operate. Key determinants of the investment climate include economic and political stability, rule of law, infrastructure, approaches to regulations and taxes, functioning of labor and finance markets and roader features of governance, such as corruption. *See* FAN, QIMIAO-REIS, JOSE GUILHERME-JARVIS, MICHAEL-BEATH, ANDREW-FRAUSCHER, KATHRIN: *The Investment Climate in Brazil, India and South Africa.* Washington D.C., 2007. p. 5. A good investment climate provides opportunities and incentives for firms – from microenterprises to multinationals – to invest productively, create jobs, and expand. It thus plays a central role in growth and poverty reduction. As a result of investment climate improvements in the 1980s and 1990s, private investment as a share of GDP nearly doubled in China and India; in Uganda it more than doubled. (*See* WORLD BANK: *World Development Report 2005 - A Better Investment Climate for Everyone.* New York, 2004. p. 1-2. Available at http://documents.worldbank.org/curated/en/554071468182337250/pdf/288290WDR00PUB0r0investment0climate.pdf. Accessed June 5, 2020.)

8 These risks may arise in various ways, such as political or economic instability in the host country, nationalization, expropriation, hidden expropriation, violation of property rights, the application of high taxes, confiscation, amending foreign investment legislation and expulsion of foreign investors. *See* VIG 2019, p. 13.

investments, investment protection history or past issues that have arisen, and the resolution methods accepted by the host state may play an important role in the decision of foreign investors to invest in a country. In this context, countries that wish to attract foreign investors, tend to sign bilateral investment treaties (BITs) and multilateral investment treaties (MITs), in which they accept international dispute settlement.[9] These treaties caused significant change in international investment law by allowing a private investor to bring a claim directly against its host state without any involvement of the investor's home state. This dispute settlement is called international investment arbitration, and it is a procedure aimed to resolve disputes between foreign investors and host states (also called investor-state dispute settlement). The possibility for foreign investors to sue a host state in front of an international arbitral body is a guarantee for the investors that, in case of a dispute, they will have access to independent and qualified arbitrators who will solve the dispute and render an award. This allows the foreign investor to bypass national jurisdictions that might be perceived to be biased or to lack independence, and to resolve the dispute in line with different guarantees afforded under international treaties.[10]

There are different types of arbitration mechanisms in investment arbitration; but considering the enforcement mechanism, basically it can be classified as ICSID or non-ICSID arbitration.[11] In this article, the issues of nationality and dual nationality will be

[9] When investing in a foreign country, investors should rely on fair and effective remedies in respect of their investments with the host country, in the event of a confiscation of his property or expropriation or in the event of a transfer of profit. Otherwise, even if it is a very favorable investment climate, investors will not invest in a country that they cannot claim their rights. (*See* MUCHLINSKI, PETER: *Policy Issues.* In Peter, Muchlinski-Frederico, Ortino-Cristoph, Schreuer (ed.*)*: The Oxford Handbook of International Investment Law. New York, 2008. p. 40.)

[10] Before arbitration becomes widespread in the resolution of disputes related to international investments, an investor's only resource is one of a few highly politicized and largely ineffectual mechanisms for resolving disputes; these were bringing the claims in a host states' national courts or through state to state diplomatic protests. Before investment arbitration, potential liability of a sovereign's political activities would have been immune from independent review. In investment arbitration state and investor stand as equal litigants seeking to persuade their correctness of their legal positions through established procedures. (ROGERS, CATHERINE-ALFORD, ROGER: *Confidentiality and Transparency in Commercial and Investor-State International Arbitration.* New York, 2009. pp. 1–2.)

[11] The International Centre for Settlement of Investment Disputes (ICSID) is an international arbitration institution established in 1966 for legal dispute resolution and conciliation between international investors and states. (For further information about ICSID *see* https://icsid.worldbank.org/about.) Unlike other institutions, ICSID only plays a role in resolving disputes related to investment arbitration. Non-ICSID arbitration includes both institutional arbitration (rather than ICSID) and ad-hoc arbitration. There are two main differences between ICSID and non-ICSID arbitration. First of all, an award of an ICSID tribunal is binding on all parties to the proceeding and each party must comply with it pursuant to its terms. The Convention limits the role of domestic courts to the recognition and enforcement of these awards. In recognizing and enforcing ICSID awards, the domestic courts of each contracting state to the ICSID Convention are required to enforce the pecuniary obligations imposed by an ICSID award as if it were a final court judgment of the contracting state. The signatory state of ICSID Convention has no right to refuse the enforcement. By contrast, non-ICSID awards are subject to enforcement procedures in state courts and state courts have right to refuse the enforcement mainly subject to certain, limited defenses. Other difference is about the annulment mechanisms. Pursuant to Article 53(1) of the ICSID Convention, ICSID awards are not subject to any appeal or to any other remedy except those provided for in this Convention. Only an ad hoc committee established under the Convention regulations has right to review the award. ICSID Convention restricts outside review of awards and strictly limits the grounds on which the awards can be annulled, erecting strong shields around tribunals' awards, and raising the stakes of investor-state arbitration for respondent states even higher.

examined in terms of both ICSID and non-ICSID arbitration; also problems that dual nationality creates in practice and case study regarding this issue will be emphasized.

2. Definition of "Nationality"

It would be appropriate to consider the definition of the foreign investor before proceeding to define the nationality of an investor. Investor, in general, can be defined as a person or organization that puts money into financial schemes, property or other means of investment with the expectation of achieving a profit.[12] Accordingly, a foreign investor can be defined as a real person investor who is the national of home state, companies with legal entities established in accordance with the legislations or partnerships created by investors from different states to make large-scale investments aiming to invest in a foreign country in order to make a profit.[13]

All investment treaties provide definitions of whom they consider to be investors[14]; but in international law there are no common principles applicable to the determination of particular investors. While there are no general principles, there are certain common trends. Regarding all investment treaties, in general, it can be concluded that the decisive criterion in the definition of investor is the "nationality".[15]

The right to have a nationality and the right not to be arbitrarily deprived of the nationality is one of the main human rights by the Universal Declaration of Human Rights.[16] The term "nationality" is a politico-legal term denoting membership of a state and it is distinguished from nationality as a historico-biological term denoting membership of a nation.[17] International Court of Justice defines nationality as "*a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with existence of reciprocal rights and duties*".[18] In addition, European Convention on Nationality

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[12] Oxford English Dictionary Online. http://www.oed.com/viewdictionaryentry/Entry/11125. Accessed June 1, 2020.

[13] Today, the definition of foreign investors is changing. Investments by poorly organized individuals or groups are lagging behind, with the vast majority of investments being made by multinational companies and for long terms. (TIRYAKIOĞLU, BILGIN: *Doğrudan Yatırımların Uluslararası Hukukta Korunması.* Ankara, 2003. p. 32.)

[14] For example, Article 1(2) of the BIT between Republic of Belarus and Hungary defines investor as: *"The term investor shall mean any natural or legal person of one Contracting Party that has made an investment in the territory of the other Contracting Party.*

a. The term natural person shall mean any individual having the citizenship of either Contracting Party in accordance with its laws and regulations.

b. The term legal person shall mean with respect to either Contracting Party, any legal entity incorporated or constituted in accordance with the laws and regulations having its central administration or principal place of business in the territory of one Contracting Party." Available at https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/5915/download. Accessed June 1, 2020.

[15] SCHLEMMER, ENGELA: *Investment, Investor, Nationality and Shareholders*. In Peter, Muchlinski-Federico, Ortino-Cristoph, Schreuer (ed.): The Oxford Handbook of International Investment Law. New York, 2008. p. 69.

[16] Article 25: "*Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.*" Universal Declaration of Human Rights, Paris, 10 December 1948. Available at https://www.un.org/en/universal-declaration-human-rights/. Accessed June 4, 2020.

[17] WEIS, PAUL: *Nationality and Statelessness in International Law.* Alphen aan den Rijn, 1979. p. 3. The current phrasing more strongly indicates natural persons, nationality in the context of legal persons is discussed later in the article.

[18] *The Nottebohm Case* (Liechtenstein v. Guatemala): ICJ. Available at https://www.icj-cij.org/en/case/18.

describes nationality as the legal bond between a person and a state and does not indicate the person's ethnic origin.[19]

Sometimes term "nationality" is used interchangeable with "citizenship"; although both involve a legal relationship between person and state, "nationality" must be distinguished from "citizenship". First of all, "nationality" emphasizes international aspects of a legal relationship, while the "citizenship" emphasizes domestic concerns. Secondly, citizens have the right to participate in the political life of a state; while nationals do not necessarily have these rights. In addition, it is possible to hold a nationality without being a citizen; that is, to be legally subject to a state and entitled to its protection, without having the right of political participation; it is also possible to have political rights without being the national of a state.[20]

3. Nationality Requirement in Investment Arbitration

Investment treaties include substantive provisions that provide protection to foreign investors and private foreign investments. In addition, these treaties provide the foreign investor with direct recourse to international arbitration. Determining the nationality of an investor plays an important role in international investment arbitration; because this nationality is crucial in deciding an individual's or juridical person's right to initiate arbitral proceedings against a state. Additionally, the nationality requirement generally prevents any national from seeking treaty protection against its own home state. The jurisdictional requirement *ratione personae* depends on the determination of the investor's nationality, and possession of the nationality of the host state can be a barrier to becoming a party to arbitral proceedings against that state.[21] The reason for the nationality requirement is obvious; individuals' nationality accord them a particular position in international law. Nationality gives individuals the benefit of the additional right or privilege to refer an investment dispute to international arbitration without having to rely on state for protection or intervention.[22]

Both ICSID and other investment treaties require that the individual or private investor[23], who have the advantage of being able to use dispute settlement mechanisms

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[19] European Convention on Nationality, Strasbourg, 6.11.1997. Available at https://www.unhcr.org/protection/Statelessness/451790842/european-convention-nationality.html. Accessed June 1, 2020.

[20] TIRYAKIOGLU, BILGIN: *Multiple Citizenship and its Consequences in Turkish Law.* In: Ankara Law Review (pp. 1–16). Volume 3. Issue 1. 2006. p. 3.

[21] LIM, CHIN LENG-HO, JEAN-PAPARINSKIS, MARTINS: *International Investment Law and Arbitration: Commentary, Awards and Other Material.* Cambridge, 2018. p. 234; ISMAIL, MOHAMMED: *International Investment Arbitration: Lessons from Developments in the MENA Region.* New York, 2013. p. 98; TREVINO, CLOVIS: *Treaty Claims by Dual Nationals: A New Frontier?* Retrieved from Kluwer Arbitration Blog, 2015. Available at http://arbitrationblog.kluwerarbitration.com/2015/10/08/treaty-claims-by-dual-nationals-a-new-frontier/. Accessed June 1, 2020.

[22] SCHLEMMER 2008, p. 72.

[23] In principle, investors must be private investors; but this does not exclude wholly or partly government-controlled companies acting as investors to comply as a private investor. The decisive criteria here is that whether the company is discharging governmental functions or is acting in a commercial capacity. (*See* UCTAD: *Dispute Settlement - International Centre for Settlement of Investment Disputes - Requirements*

thanks to investment treaties, must be a national of another contracting state.[24] To illustrate, according to Article 25(1) of ICSID convention "*The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre.*" Based on this article, for the competence of ICSID, the dispute shall be between a contracting state and a national of another contracting state; this is the jurisdictional requirement *ratione personae*.

Additionally, Article 25(2)(a) of the Convention defines national of another contracting state as: "*Any natural person who had the nationality of the Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration as well as on the date on which the request was registered pursuant to paragraph (3) of Article 28 or paragraph (3) of Article 36, but does not include any person who on either date also had the nationality of the Contracting State party to the dispute*." According to this article, investors are required to meet a positive and a negative nationality requirement. To satisfy the positive requirement, investors are required to be nationals of a contracting state. To satisfy the negative requirement, investors must not have the nationality of the host state.[25]

4. Nationality of the Investor who is a Natural Person[26]

4. 1. Base of the Nationality According to International Law

For natural persons, investment agreements generally base nationality exclusively on the law of the state of claimed nationality.[27] Although investment treaties are governed

Ratione Personae. New York, 2003. p. 16. Available at https://unctad.org/en/Docs/edmmisc232add3_en.pdf. Accessed June 1, 2020.)

[24] Although the main purpose of all investment treaties is to attract investments and investors to the host state, every treaty has its own objectives; because of this reason contracting states are free to choose the nationality requirements, according to according to relations and political order between states, that in their view better suit a particular BIT.

[25] Also, Article 25(2)(b) of the Convention defines nationality for a juridical person as: "*any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration and any juridical person which had the nationality of the Contracting State party to the dispute on that date and which, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of this Convention.*"

[26] The definition of the term "natural person" may vary from one IIA to the other with possible terms such as "nationals", "physical persons" or "citizens".

[27] TITI, CATHERINE: *Scope of International Investment Agreements and Substantive Protection Standards.* In: Krajewski, Markus-Hoffmann, Rhea Tamara (ed.): Research Handbook on Foreign Direct Investment. Northampton, 2019. p. 174; SCHREUER, CHRISTOPH: *The ICSID Convention: A Commentary*. Cambridge, 2001. p. 267. Some IIAs, less frequently, use "the residence of the investor" to determine nationality. Both criteria may be used either alone or in combination. Under the Energy Charter Treaty, the terms "citizenship", "nationality" or a "permanent residence" in the territory of the contracting party are all deemed to fall within the scope of the definition of a natural person as investor. It has been stated that: "*Investor means with respect to a Contracting Party a natural person having the citizenship or nationality of or who is permanently residing in that Contracting Party in accordance with its applicable law*" (*See* THE INTERNATIONAL LAW ASSOCIATION GERMAN BRANCH SUB-

by international law, international law will refer back to national law for the purpose of determining nationality.[28] For example, according to Article 1(2)(a) of the BIT between Hungary and Turkey[29] the term investor shall mean "*natural persons having the nationality of a Contracting Party in accordance with its laws*". This approach was also recognized by the Hague Convention on Nationality in 1930 in Article 1, which states that "*It is for each State to determine under its own law who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality*."[30]

This issue was also emphasized in case law; in the ICSID case of *Hussein Nuaman Soufraki v. The United Arab Emirates*[31], dispute arose out of a concession contract that Mr. Soufraki had signed with the United Arab Emirates for the development of ports in that country. Mr. Soufraki claimed Italian citizenship and claimed for breach of the Italy–United Arab Emirates BIT; while respondent had objections to jurisdiction of the Tribunal on the basis that claimant had not established that he was a national of Italy in order to meet the nationality requirement of Article 25(2)(a) of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States.[32] Article 1(3) of the BIT between Italy–United Arab Emirates[33] defines investor of the other contracting state as a "*natural person holding the nationality of that State in accordance with its law*". Although Mr. Soufraki submitted five certificates of citizenship including a declaration of the Italian Foreign Affairs Minister that he is an Italian citizen and could present a claim under the BIT, the Tribunal rejected the claim after making their own investigation about citizenship in Italian Law[34]. The Tribunal found that, according to Italian law, Mr.

Committee on Investment Law: *The Determination of the Nationality of Investors under Investment Protection Treaties*. Beiträge zum Transnationalen Wirtschaftsrecht 2011. p. 17.)

[28] On the other hand, in addition to referring back to domestic law, some investment agreements such as "ASEAN Comprehensive Investment Agreement" introduce alternative criteria for nationality, such as a requirement of residency or domicile. According to article 4/g of this agreement "*Natural person means any natural person possessing the nationality or citizenship of, or right of permanent residence in the Member State in accordance with its laws, regulations and national policies.*" (ASEAN Comprehensive Investment Agreement, 29.03.2012. Available at https://investmentpolicy.unctad.org/international-investment-agreements/treaties/treaties-with-investment-provisions/3273/asean-comprehensive-investment-agreement-2009-. Accessed June 1, 2020.)

[29] BIT between the Republic of Hungary and the Republic of Turkey. Available at https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/1554/download. Accessed June 14, 2020.

[30] Although it never became effective, the Hague Convention is often referred to as reflecting the current international law principles on nationality of individuals. Another international convention reflecting the international law principles is 1997 European Convention on Nationality. (Available at https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/166. Accessed June 1, 2020.)

[31] *Hussein Nuaman Soufraki v. The United Arab Emirates,* ICSID Case No. ARB/02/7. Available at https://www.italaw.com/cases/1041. Accessed May 1, 2020.

[32] Under Article 41(1) of the ICSID Convention "*the Tribunal shall be the judge of its own competence*". Pursuant to that provision and Rule 41 of the ICSID Arbitration Rules, the tribunal has to decide whether the dispute falls within the jurisdiction of the Centre. The tribunal must determine whether claimant is a national of Italy according to Article 25(2)(a) of the Convention.

[33] BIT between the United Arab Emirates and the Italian Republic. Available at https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/1715/download. Accessed June 1, 2020.

[34] It would also be appropriate to emphasize what will be taken into account in determining citizenship. The Working Paper of the ICSID Convention foresaw a complicated preliminary procedure for determination of the nationality of a non-state party, as the Preliminary Draft required a written affirmation of nationality signed by

Soufraki was not an Italian national at the time he made the claim; because he lost his Italian nationality automatically when he acquired Canadian nationality and took up residence in Canada[35]. By leaving Italy for Canada in 1991, he had abandoned his Italian citizenship under Italian law.[36]

On the other hand, although the Hague Convention on Nationality refers that each state has the right to determine under its own law who are its nationals, the Convention also states that this law shall be consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality. This permits of some control of excessive attributions by states of their nationality, by depriving them of much of their international effect. In literature, it is expressed that "*Such control is needed since, although the grant of nationality is for each State to decide for itself in accordance with its own laws, the consequences as against other States of this unilateral act occur on the international plane and are to be determined by international law*."[37] This issue causes the concept of "effective nationality" to be brought to the agenda.

4. 2. Effective Nationality[38]

Effective nationality doctrine is confined to situations where an individual possesses lawfully two or more nationalities and where it is necessary to choose which of them is effective for given purposes.[39] In international law, the issue of "effective nationality" was famously considered by the International Court of Justice in the *Nottebohm case*[40]. The Court considered whether Liechtenstein could espouse the case of Mr. Nottebohm, a national of both Liechtenstein and Germany, against Guatemala. Mr. Nottebohm had a long-standing and close connection with Guatemala, where he had lived for most of the previous thirty years, but only a minor connection with Liechtenstein. Accordingly, the Court held that Mr. Nottebohm's case could not be espoused by Liechtenstein because he did not have sufficient connection with that country.[41] In this case, with emphasizing on effective nationality, it was decided that the existence of a genuine link between a person and a state is required in order to get diplomatic protection.

or on behalf of the Minister of Foreign Affairs of the state whose nationality is mentioned. But this procedure did not receive enough support, so the procedure for certification of nationality did not appear in the Convention. Hence, the decision as to whether the investor meets the nationality requirements is incumbent upon the tribunal. A certificate of nationality will be treated as the part of other evidences or documents that will be examined by the tribunal in accordance with Article 43 of the Convention. (SCHREUER 2001, p. 268.)

[35] Article 8, paragraph 1 of the Italian Law No. 555 of 1912 reads as follows: Whoever spontaneously acquires a foreign citizenship and establishes his residence abroad loses the Italian citizenship.

[36] *See* WISNER, ROBERT-GALLUS, NICK: *Nationality Requirements in Investor–State Arbitration*. In: Stephan, Schill-Helene Ruiz Fabri (ed.): The Journal of World Investment & Trade (pp. 927-945). Leiden, 2004. p. 928.

[37] JENNINGS, ROBERT-WATTS, ARTHUR (ed.): *Oppenheim's International Law*. London, 1996. p. 853.

[38] In this section, only the issue of "effective citizenship" will be examined, the "dual nationality" issue, which is the essence of the subject, will be examined in detail in the following sections.

[39] SIMPSON, JOHN LIDDLE-FOX, HAZEL: *International Arbitration: Law and Practice.* Westport, 1959. p. 107.

[40] ICJ: Liechtenstein v. Guatemala. Available at https://www.icj-cij.org/en/case/18. Accessed June 1, 2020. Also, in other cases like *Nuaman Soufraki v. The United Arab Emirates* (ICSID Case No. ARB/02/7) the *Nottebohm Case* was referred by the tribunals.

[41] WISNER-GALLUS 2004, p. 930-931.

The principle developed in the *Nottebohm case* has been used by various international tribunals. It was famously applied by the Iran–United States Claims Tribunal[42] to determine if dual nationals of both US and Iranian could claim against Iran. The Tribunal stated that, with the *Nottebohm case*, the acceptance and the approval by the International Court of Justice of the search for the real and effective nationality based on facts of a case, instead of an approach relying on more formalistic criteria.[43]

In literature, it is argued that an international tribunal is not bound by the national law in all circumstances. Nationality provisions of national law may be disregarded by tribunals in cases of ineffective nationality when there is a lack of a genuine link between the state and the individual.[44] However, there is no agreement whether the nationality principles developed in the field of "diplomatic protection" can be automatically applicable in investor-state arbitration.[45] On contrary, legal doctrine and case law have emphasized some important differences between the two.

In *Saba Fakes vs Turkey* case[46], the Tribunal stated that, according to Article 25 of the Convention, natural persons holding the nationality of both contracting-states are excluded from the jurisdiction of the ICSID; Tribunal also noted that treaties for the promotion and protection of investments, as well as the ICSID Convention, establish a separate mechanism of direct recourse to international arbitration against the host state, so there was no need for an effective citizenship research.[47] In another ICSID case, *Champion Trading Company v. Arab Republic of Egypt*[48], the Tribunal held that the

[42] Iran – United States Claims Tribunal: Case No. A/18. The Iran-United States Claims Tribunal was established on 19 January 1981 by the Islamic Republic of Iran and the United States of America to resolve certain claims by nationals of one state Party against the other state Party and certain claims between the state parties.

[43] WISNER-GALLUS 2004, p. 931.

[44] SCHREUER 2001, p. 267.

[45] As an opposite view, Schreuer has stated that, until international practice develop new criteria, the rules as developed in the context of diplomatic protection would appear to be the only reliable source. (SCHREUER 2001, p. 268.)

[46] *Saba Fakes v. Republic of Turkey*: ICSID Case No. ARB/07/20. Available at https://www.italaw.com/cases/429. Accessed May 5, 2020.

[47] The tribunal stated that: "*Pursuant to Article 27(1) of the ICSID Convention, Contracting Parties have waived their right to grant diplomatic protection to, or bring an international claim on behalf of, their nationals who pursue arbitration under the auspices of the Centre. The rules of customary international law applicable in the context of diplomatic protection do not apply as such to investor-State arbitration… While the Nottebohm case set forth a requirement of a genuine link with the State of nationality, that requirement was applied in the context of diplomatic protection of nationals by way of claims filed by the State whose nationality they hold. The issue in that case was not one of dual nationality and its consequences, if any, on an individual's right to bring a direct claim against a third State, but whether a State could exercise diplomatic protection on behalf of an individual who had no "genuine link" with that State.*"

[48] *Champion Trading Company, Ameritrade International, Inc. v. Arab Republic of Egypt,* ICSID Case No. ARB/02/9. Available at https://www.italaw.com/cases/245. Accessed May 5, 2020. In this case, shareholders of National Cotton Company claimed against Egypt at ICSID for breaches of the Egypt–United States bilateral investment treaty. The claiming shareholders were two U.S. companies, Champion Trading Company and Ameritrade, and three U.S. citizens who were all members of the Wahba family. Although these three individuals were born in the United States to parents who were both U.S. citizens, the father also held Egyptian citizenship. Under Egyptian law, the sons of Egyptian nationals retain that nationality for one hundred generations, regardless of where they are born or where they live. The Tribunal relied on Egyptian law to determine that the Wahbas were Egyptian nationals. While they had never even been to Egypt, the Wahba children were all the sons of an Egyptian national and therefore squarely

Nottebohm and Iran–United States Claims Tribunal's (A/18) decisions find no application in investment arbitration because the Convention in Article 25(2)(a) contains a clear and specific rule regarding dual nationals;[49] the principle of effective nationality has no role in cases interpreting Article 25(2) of the ICSID Convention.[50] Although this point is stated, the Tribunal also expressed that "*It might for instance be questionable if the third or fourth foreign born generation, which has no ties whatsoever with the country of its forefathers, could still be considered to have, for the purpose of the Convention, the nationality of this State.*"; in this context, the Tribunal thus determined that the investigation of effective nationality in investment arbitration is not entirely out of practice.[51] Finally, in *Siag and Vecchi v. Arab Republic of Egypt* case[52], the Tribunal noted that the provisions of Article 25 were clear and the *Champion Trading* case left no room for a discussion of "dominant" or "effective" nationality[53]. Additionally, during the ICSID Convention's preparatory work, dual nationality was debated by the Drafting Working Group, but the convention's final version did not contain the provision on effective nationality, so the drafting history can be an assistance in this manner.[54]

Although the ICSID Convention contains clear and specific rules regarding the exclusion of nationals of both states from the jurisdiction of the ICSID, other treaties regulate the position of dual nationals as to include effective nationality research.[55] For example, Article 10.28 of the CAFTA-DR[56] defines investor of a party as follows: "*a Party or State enterprise thereof, or a national or an enterprise of a party, that attempts to make, is making, or has made an investment in the territory of another Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality.*" According to the CAFTA-DR, jurisdiction *ratione personae* is dependent upon the investor's dominant and effective nationality, a dual national should be deemed to be exclusively a national of the state of his or her dominant and effective nationality.

fell within this bracket. So, the Tribunal held that it has jurisdiction to hear the claims of the U.S. companies but not the Wahbas. (*See* WISNER-GALLUS 2004, pp. 928–929.).

[49] Although, Article 25 (2)(a) contains a clear and specific rule regarding natural persons who are du nationals, Article 25 (2)(b) does not contain any prohibition for dual nationals.

[50] The Tribunal also noted that: "*The decision of Case No. A/18of the Iran-United States Claims Tribunal contained an important reservation that the real and effective nationality was indeed relevant unless an exception is clearly stated. The Tribunal is faced here with such a clear exception.*"

[51] The Tribunal noted that: "*This Tribunal does not rule out that situations might arise where the exclusion of dual nationals could lead to a result which was manifestly absurd or unreasonable.*"

[52] *Waguih Elie George Siag and Clorinda Vecchi v. The Arab Republic of Egypt*, ICSID Case No. ARB/05/15. Available at https://www.italaw.com/cases/1022. Accessed May 5, 2020.

[53] The Tribunal also noted that "*While it may be asserted that if this were a diplomatic protection case it could be argued differently, the parties have consented to have their dispute resolved under the ICSID Convention and it sets out a particular regime for the determination of jurisdiction.*"

[54] SCHREUER, CHRISTOPH: *Commentary on the ICSID Convention (Article 25)*. In: ICSID Review - Foreign Investment Law Journal (pp. 60–150). Volume 12, Issue 1, 1997. p. 95. Available at https://doi.org/10.1093/icsidreview/12.1.60. Accessed May 6, 2020.

[55] In order to avoid the dual nationality exclusion that has been set by the ICSID Convention, investors may try to bring their claim in another forum, if authorized by the relevant IIA.

[56] Dominican Republic-Central America Free Trade Agreement, Available at https://ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta, Accessed May 5, 2020.

In this context, defining what the dominant and effective nationality is the critical legal issue determining jurisdiction *ratione personae*. The *Ballantines v. Dominican Republic* case[57], which was decided by a PCA Tribunal under the CAFTA-DR, set a legal standard to determine the dominant and effective nationality of the claimants. The Ballantines were American-Dominican dual nationals who accused the Dominican Republic of violating its obligations under the CAFTA-DR by giving them less favorable treatment than its nationals and failing to give fair and equitable treatment. After analyzing the juridical objection, the Tribunal pointed out that it is necessary to give effect to the customary rules of international law. The Tribunal also stated that customary international law cases are instructive, as such, the Tribunal referenced the ICJ decision of *Nottebohm case* and identified four elements to determine the effective and dominant nationality: (i) the state of habitual residence; (ii) the circumstances in which the second nationality was acquired; (iii) the individual's personal attachment to a particular country; (iv) the center of the person's economic, social and family life.[58]

5. Nationality of the Investor who is a Legal (Juridical) Person

The nationality of a juridical person is more complicated than a natural person's, as in today's highly globalized world, companies operate in ways that can make it very difficult to determine their nationality. A foreign investor may exercise control of a company through holding the equity shares in the company, through managerial control or by having the necessary voting power to affect the decision-making process in the investment[59]. Additionally, most international investments are channeled through complex structures consisting of companies incorporated in different jurisdictions and owned by nationals of different countries.[60] Layers of shareholders, both natural and juridical persons themselves, operating from and in different countries make the conventional situation of a company

[57] *Lisa Ballantine and Michael Ballantine v. The Dominican Republic*. Permanent Court of Arbitration (PCA): Case No. 2016-17. Available at https://www.italaw.com/sites/default/files/case-documents/italaw10818.pdf. Accessed May 7, 2020.

[58] The Tribunal decided that, although Ballantines maintained connections to the U.S., from 2006 to the moment the claim was submitted, the Ballantines had moved or relocated their economic and family center to the Dominican Republic. Even though they often visited the U.S., their children continued their education in the U.S. and they kept social relations in the U.S., the Tribunal pointed out that the Ballantines both established their "main" business and reorganized their way of living in the Dominican Republic for several years around the investment. In consequence, the Tribunal concluded that the Dominican Republic was the center of their economic, family and social life, despite maintaining ties with the U.S. (*See* BREGANTE, PABLO MORI. *New Trends For Dual Nationals Claims. Is the Ballantines Award Relevant for Cases Where A Dual Nationals-Related Provision Is Not Incorporated In The Relevant Treaty?* Retrieved from Kluwer Arbitration Blog, 2019. Available at http://arbitrationblog.kluwerarbitration.com/2019/10/30/new-trends-for-dual-nationals-claims-is-the-ballantines-award-relevant-for-cases-where-a-dual-nationals-related-provision-is-not-incorporated-in-the-relevant-treaty/?doing_wp_cron=1592032588.12476396. Accessed May 7, 2020.)

[59] UNCTAD 2003, p. 15.

[60] WISNER-GALLUS 2004, p. 927.

established under the laws of a particular country and having its center of operations in the same country, more of a rarity than a common situation.[61]

Although determining the nationality is not easy, it is particularly important for the purpose of bringing international claims for protecting the company's assets and activities abroad.[62] For juridical persons, investment agreements generally base nationality on a test like, (a) the place of constitution of juridical person in accordance with the law in force in the country of origin[63]; (b) the place of incorporation or where the registered office is of juridical person[64]; (c) the country of the corporate seat, for example, where the headquarters or the place of administration is[65], or (d) less frequently, the country of control, to determine the nationality of a juridical person.[66] These listed criteria specified above can be used alone, in combination or as alternatives. But there is no single test used by all treaties to define the link required between a juridical person that is seeking protection under the treaty and the contracting state. In case law, tribunals in investment arbitration usually apply the test of incorporation or seat rather than control, when determining the nationality of a juridical person, unless the test of control is

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[61] OECD: *Definition of Investor and Investment in International Investment Agreements.* In: International Investment Law: Understanding Concepts and Tracking Innovations. 2008. p. 18. Available at https://www.oecd.org/daf/inv/internationalinvestmentagreements/40471468.pdf. Accessed May 7, 2020.)

[62] AUST, ANTHONY: *Handbook of International Law*. New York, 2010. p. 166.

[63] Such as, according to Article 1(2)(b) of the BIT between the Hungary and Turkey the term legal person investor shall mean "*Corporations, companies, firms and business associations constituted, or incorporated in the territory of either of the Contracting Parties in accordance with the laws of that Contracting Party.*" Additionally, some treaties set a low threshold for a corporation to qualify as an investor of a party. Article 1(2) of the Ukraine–Lithuania BIT, for example, defines a "Lithuanian investor" as "*any entity established in the territory of the Republic of Lithuania in conformity with its laws and regulations*". While, others set a higher threshold; such as Article 1(1)(b) of the Indonesia–Chile BIT not only requires that the corporation be "constituted or otherwise duly organized under the law" of the home state, but also requires that its "effective economic activities" be in that state.

[64] This is the most widely used test for determination of nationality. (SCHREUER 2001, p. 277.) According to Chapter 2 of the Chile-United States Free Trade Agreement: Enterprise means "*Any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association*" and enterprise of a Party means "*An enterprise constituted or organized under the law of a Party.*"

[65] According to BIT between Germany and India, company means: "*Companies means, in respect of the Federal Republic of Germany, juridical persons as well as commercial or other companies or associations with or without legal personality having its seat in the territory of the Federal Republic of Germany, irrespective of whether or not its activities are directed at profit.*" Treaties do not always use the term "seat", but instead they may refer to "main office", "residence" or the "siège social". These terms could be interpreted as referring to either the administrative seat or to the statutory seat of a company. (*See* THE INTERNATIONAL LAW ASSOCIATION GERMAN BRANCH SUB-COMMITTEE ON INVESTMENT LAW 2011, p. 15.)

[66] Some treaties limit corporations' standing based on who controls the corporation. The NAFTA for example, states that, following consultations with other NAFTA Parties, a Party may deny the benefits of the Treaty to an investor of another Party "if investors of a non-Party own or control the enterprise and the enterprise has no substantial business activities" in the putative home state. Similarly, the Indonesia–Australia BIT is representative of several BITs deeming that companies incorporated in states that are not party to the treaty still have standing if nationals from one of the parties control those companies. (*See* TITI, CATHERINE 2019, p. 174) Countries like Finland, Netherlands and Sweden selectively use this criterion; in so doing, these countries broaden the definition of the term "investor" to include juridical persons that are established in the host state or in a third country but controlled by an investor from the home state. (THE INTERNATIONAL LAW ASSOCIATION GERMAN BRANCH SUB-COMMITTEE ON INVESTMENT LAW 2011, p. 16.)

provided for in the investment agreement. Accordingly, it is the general practice in investment agreements to specifically define the objective criteria which make a juridical person a national or investor of a party for purposes of the agreement.[67]

The ICSID Convention regulates the nationality requirements of juridical persons for the jurisdiction of the Centre. According to the Convention, a juridical person must be a national of a Contracting state other than the state party to the dispute; so, as natural persons, juridical persons are also required to meet a positive and a negative nationality requirement. To satisfy the positive requirement, juridical person investors are required to be nationals of a contracting state; to satisfy the negative requirement, they must not have the nationality of the host state.

The Convention does not directly define the concept of "juridical person", instead it defines the "national of another contracting state" for juridical persons[68]; according to Article 25(2)(b) juridical persons will qualify as nationals of contracting states through their "place of incorporation" or "seat of business".[69] ICSID tribunals have consistently adopted the test of "place of incorporation" or "seat" in determining the nationality of a corporation, so the case law also reflects a reluctance to adopt the control test in defining the nationality of a juridical person outside the narrowly defined exception in Article 25(2)(b).[70] A corporation may also be shared by nationals of several states. In this case, if all possible nationalities link the juridical person to a contracting state then no problem will arise.[71] The situation is more complicated if one of the possible nationalities of the corporation is a non-contracting state. Such a situation will not directly restrain the jurisdiction of the Centre, and the decisive test of "place of incorporation" or "seat" will be applied for determination of the nationality.[72]

The purpose of the Convention is the settlement of investment disputes between states and foreign investors; but many host states require that foreign investors operate through locally incorporated companies, so the consequence of incorporating under the host state's law is that these companies have the nationality of the host state. A juridical person may, however, possess the host state's nationality and still qualify as a national of another

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[67] OECD Benchmark Definition, p. 18-19.

[68] The Preliminary Draft defined a company as "*any association of natural or juridical person, whether or not such association is recognized by the domestic law of the contracting State*". Bu there were oppositions to extending the definition of the term company to mere association of natural person or to unincorporated partnership. It was decided that the matter would be left to be worked out by a tribunal in practice. But it can be concluded that, the juridical personality is required for the application of Article 25(2)(b) and mere association of individuals or of juridical persons would not qualify. (*See* SCHREUER 2001, p. 276.)

[69] The Preliminary Draft offered two criteria for determination of the nationality of a company: nationality under domestic law of a contracting state, same as the criteria for natural persons, or controlling interest of the nationals of such state. Nationality under a state's domestic law was later explained as the company either was incorporated under the law of that country or had its seat in that country. (*See* SCHREUER 2001, p. 277.)

[70] UNCTAD 2003, p. 15.

[71] Although the Convention's phrasing is in singular as "a contracting state", this will not prevent two or more nationalities of contracting states. (*See* SCHREUER 2001, p. 287.)

[72] After the application of this test, a determination of concurrent possession of the nationality of a non-contracting state will not exclude jurisdiction. Additionally, if the control of the corporation is exercised by nationals of both contracting and non-contracting state, the form and extend of the control should be treated with flexibility. (For further explanation and the risk of application of diplomatic protection by non-contracting state at the same time with ICSID arbitration *See* SCHREUER 2001, p. 287.

contracting state under an exception contained in Article 25(2)(b) : "*any juridical person which had the nationality of the Contracting State party to the dispute on that date and which, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of this Convention.*" In principle, such companies would be excluded from jurisdiction of the Convention since the Convention requires that the nationality of an investor should be that of a contracting state other than the state party to the dispute. However, through the drafting period, drafters of the Convention realized that an important portion of foreign investments could thus be excluded from the Centre's jurisdiction; so, they have included this provision among "national of another contracting state".

Article 25(2)(b) enables access to ICSID for foreign investors that operate through locally incorporated companies. For the application, the Convention requires two elements: First there must be an agreement with the host state that reflects its undertaking to treat the locally incorporated company as foreign.[73] This agreement of consent can be in any mean as there are no formal requirements for such an agreement. For example, in case law, from the mere existence of an ICSID clause, tribunals have concluded that there is an agreement between parties to treat the locally incorporated company as a foreign national.[74] Although such an agreement will carry much weight, it cannot create a nationality that does not exist, because of this reason, the existence of such an agreement will not prevent the tribunal from examining

[73] *In MINE v. Guinea* case (*Maritime International Nominees Establishment v. Republic of Guinea*, ICSID Case No. ARB/84/4. Available at https://www.italaw.com/cases/3361. Accessed May 7, 2020.) there was an agreement on the nationality of the investor. MINE had concluded an agreement with the Government of Guinea to settle disputes through ICSID, this agreement also includes that MINE was a Swiss national. When MINE instituted proceedings with ICSID, Guinea objected to the Centre's jurisdiction and stated that the Tribunal did not explicitly refer to the investor's nationality. (MINE was incorporated in Liechtenstein. Although Switzerland was a contracting State, Liechtenstein had not ratified the ICSID Convention.) The Tribunal's assumption of jurisdiction over the case implied that it had accepted MINE's nationality as Swiss as the agreement between the parties stipulated the investor's nationality to be Swiss.

[74] In *Klöckner v. Cameroon* (*Klöckner Industrie-Anlagen GmbH and others v. United Republic of Cameroon and Société Camerounaise des Engrais*, ICSID Case No. ARB/81/2. Available at https://www.italaw.com/cases/3373, Accessed May 11, 2020.) the foreign investor had participated in the establishment of a joint venture company (SOCAME) in Cameroon. The Establishment Agreement between the company and Cameroon contained an ICSID arbitration clause. Cameroon sought to challenge the validity of the ICSID clause because SOCAME was a Cameroonian company. The Tribunal held that the mere existence of an ICSID arbitration clause between parties indicated an agreement on foreign nationality. In another case of *Amco v. Indonesia* (*Amco Asia Corporation and others v. Republic of Indonesia*, ICSID Case No. ARB/81/1. Available at https://www.italaw.com/cases/3475, Accessed May 7, 2020.) Amco put forward an application to establish a foreign business in Indonesia. Amco Asia, as a parent foreign company, was controlling the Amco company which is locally incorporated. Parties have made an agreement stating that if there is a disagreement and dispute between the company and the government, this disagreement will be put before the ICSID. Indonesia argued that it had not expressed its agreement to treat Amco as a foreign corporation. As there are no formal requirements for such agreements, tribunal have determined whether an implicit agreement exist between parties of the dispute. The Tribunal referred to the consent agreement which indicated the Indonesian Government's acknowledgment of Amco's status as a locally incorporated but foreign controlled corporation. The Tribunal stated that: "*Two conditions of Article 25(2)(b) were fulfilled in the instance case, at the date on which the parties consented to submit possible future disputes to arbitration (which date is relevant, according to Article 25(2)(b)), and as a matter of fact, are still fulfilled today.*"

the compliance with nationality requirement.[75] Secondly, as an addition to this requirement, the objective element of foreign control of the juridical person must be present.[76] As expressed in the *Vacuum Salt v. Ghana* case, shareholding is one of the elements showing the foreign identity; but in addition to shareholding, indirect control, voting powers or managerial control were taken into account by ICSID tribunals.[77]

With the emergence of "shell" and "mailbox" companies, investment agreements started to add new conditions in order to avoid granting protection to such companies. For example, the EU-Canada Comprehensive Economic and Trade Agreement (CETA) requires that an enterprise of a party shall have substantive or substantial business activities. On the other hand, recent decisions confirm that investments only indirectly owned by requisite nationals still satisfy the nationality requirements. In the well-known ICSID case of *Waste Management v. Mexico*[78], under the ICSID Additional Facility Rules, and alleging breaches of NAFTA Articles, the investors have owned the investment through a Cayman Island company. Mexico denied that the claimant had the status of an investor for the purposes of Chapter 11 on the grounds that the Claimant did not have a direct interest in the investment in Mexico, because Acaverde's direct shareholder was a company registered in the Cayman Islands, which is not a NAFTA party; so a company incorporated in a non-party to the NAFTA suffered the damages. The Tribunal rejected this argument of Mexico, holding that: "*There is no hint of any concern that investments are held through companies or enterprises of non-NAFTA States, if the beneficial ownership at relevant times is with a NAFTA investor.*"[79] It

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[75] SCHREUER 2001, p. 281. On the other hand, an agreement on an investor's nationality where the juridical person is registered in a non-contracting state; but controlled by a national of a contracting state may allow for the Centre's jurisdiction.

[76] *See* UNCTAD 2003, p. 15-23. In *Vacuum Salt v. Ghana (Vacuum Salt Products Ltd. v. Republic of Ghana*, ICSID Case No. ARB/92/1. Available at https://www.italaw.com/cases/3282. Accessed May 13, 2020.), there was an agreement between the Ghanaian Government and Vacuum Salt containing an ICSID clause. Vacuum Salt was a corporation organized under the law of Ghana. When Vacuum Salt initiated arbitration proceedings before ICSID, the Ghanaian Government objected to the Centre's jurisdiction arguing that Vacuum Salt was national of Ghana and was not controlled by foreign nationals. Also, the government stated that there was no agreement with the investor to treat Vacuum Salt as a national. The Tribunal noted the practice of previous tribunals to infer an agreement on nationality from the existence of a consent to ICSID's jurisdiction. But the Tribunal also insisted that it had to determine whether foreign control did exist or not. The Tribunal noted that: "*The parties' agreement to treat Claimant as a foreign national "because of foreign control" does not ipso jure confer jurisdiction. The reference in Article 25(2)(b) to "foreign control" necessarily sets an objective Convention limit beyond which ICSID jurisdiction cannot exist and parties therefore lack power to invoke same no matter how devoutly they may have desired to do so.*" While deciding on the case the Tribunal examined whether Vacuum Salt was effectively controlled by foreign nationals. It has been found that the foreign investor only held 20% of the shares, whereas 80% were in Ghanaian hands. Under these circumstances, the Tribunal decided that local company did not objectively meet the requirement of foreign control under the Convention. The Tribunal also looked at other elements of control besides shareholding, such as the foreign investor's management role, but was not, in the end, satisfied of the existence of foreign control.

[77] For further information and list of cases *See* UNCTAD 2003, p. 24.

[78] *Waste Management, Inc. v. United Mexican States* (Number 2), ICSID Case No. ARB(AF)/00/3. Available at https://www.italaw.com/cases/1158. Accessed May 1, 2020.

[79] The Tribunal has also stated that: "*Article 1117 deals with the special situation of claims brought by investors on behalf of enterprises established in the host State. But it still allows such claims where the enterprise is*

appears that a tribunal can look through to a second layer of shareholders to determine if the true controller of a company holds the requisite nationality.[80]

6. Critical Dates in Determination of the Nationality

Most of the investment treaties explicitly set out the critical dates on which an investor claiming treaty protection must possess the requisite nationality. Starting with ICSID Convention, which contains special regulations about the dates in determination of the nationality of an investor. According to Article 25(2)(a) of the Convention, the nationality requirements for a natural person have to be satisfied at two separate dates. An individual investor has to be a national of a contracting state at the time the parties' consent to submit to the Centre's jurisdiction, and also on the date the request for arbitration or conciliation is registered by the Centre. In addition, the individual investor must not be a national of the host state on these two dates. The individual investor's possession of other nationalities is irrelevant in the interim period between the date of consent and the date of registration. The Convention does not speak of a requirement for the investor to continuously hold its nationality between these two dates. [81]

By contrast, the nationality requirement that the juridical person has to satisfy only applies on the date of consent; according to Article 25(2)(b) the juridical person must have the nationality of a contracting state rather than the host state only on the date the parties consented to submit to the Centre's jurisdiction. The double test, which is valid for natural persons, does not apply for juridical persons.[82] Additionally, any change in the juridical persons' nationality, after the date of consent, will not affect the jurisdiction of the Centre, so there is no requirement of continuous nationality.[83]

Although not written as clear as the ICSID Convention, other investment treaties often set out critical dates for nationality requirement as well. For example, according to Article 1(2) of the BIT between the Hungary and Turkey[84], the term investor shall mean "*Any natural or legal person of one Contracting Party that has made an investment in the territory of the other Contracting Party*". It can be concluded from this statement that, an investor invoking the relevant BIT as a foreign national is only eligible for treaty

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owned or controlled "directly or indirectly", i.e., through an intermediate holding company which has the nationality of a third State."

[80] WISNER – GALLUS 2004, p. 934.

[81] LIM-PAPARINSKIS 2018, p. 235; UNCTAD 2003, p. 13.

[82] The preliminary draft, without distinguishing between two types of investors, took the date of consent as the critical date. After subsequent debates, a double test was accepted for natural persons, but "date of consent" stayed same for juridical persons. (*See* SCHREUER 2001, p. 289.)

[83] On the contrary, in the *Loewen* case (*Loewen Group, Inc. and Raymond L. Loewen v. United States of America*, ICSID Case No. ARB(AF)/98/3. Available at https://www.italaw.com/cases/632. Accessed May 1, 2020.) under NAFTA, it was stated that "*In international law parlance, there must be continuous nationality identity from the date of the events giving rise to the claim, which date is known as the dies a quo, through the date of resolution of the claim, which date is known as dies ad quem.*" (*See* SCHLEMMER 2008, p. 76.) For further information on change of nationality during proceedings *see* DUGAN, CRISTOPHER-WALLACE, DON-RUBINS, NOAH-SABAHI, BORZU: *Investor-State Arbitration.* New York, 2008. p. 341-345.

[84] BIT between the Republic of Hungary and the Republic of Turkey. Available at https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/1554/download. Accessed May 9, 2020.

protection if it possessed the nationality on two critical dates. The first one is when the investment was being made, as the BIT clearly indicates that the investment must be made by a foreign investor; and the second is when the claim for treaty protection is submitted to arbitration.[85]

This issue was also discussed in case law. In the *Serafin Garcia Armas and Karina Garcia Gruber v. Venezuela* case[86], the Garcias who are dual Spanish and Venezuelan nationals, acquired their shares in two companies in 2001, but their Spanish citizenships in 2003 and 2004. The alleged expropriation of the companies took place in 2010. The Garcias initiated UNCITRAL arbitration proceedings in October of 2012, relying on the Spain-Venezuela BIT. In 2014 jurisdictional decision the Tribunal upheld jurisdiction over the dispute. In particular, the tribunal found that it was irrelevant whether or not Garcias had Spanish nationality when they invested; only their nationalities at the time of the alleged breach and at the time of the filing of the arbitration were relevant for jurisdictional purposes. But, in 2017, the Paris Court of Appeal partially set aside the jurisdictional award, noting that the Tribunal had failed to examine the claimants' nationalities at the date of the investments. The remaining elements of the jurisdictional award remained intact. This decision was also overturned in 2019 by a ruling from the French Supreme Court, which held that the Court of Appeal had not drawn all the necessary legal consequences from its own reasoning. Finally, in June 2020, Court of Appeal annulled the jurisdictional award in its entirety. The court found that the ordinary meaning of the underlying Spain-Venezuela BIT required that only investments made in one state by individuals who held the nationality of the other contracting state at the time of the investment could benefit from the treaty's protection.

7. Dual Nationality Problem

"Multiple nationality" is a status in which a person is concurrently regarded as a citizen under the laws of more than one state. "Dual nationality," being a citizen of two states, is the most common type of multiple nationality and therefore the various definitions of "multiple nationality" is always inclusive of the term "dual nationality.". In Article 2 (b) of the European Convention on Nationality, "multiple nationality" is defined as "the simultaneous possession of two or more nationalities by the same person."[87]

In today's highly globalized world, an investor may have more than one nationality, including the ones of both home and host state; this kind of situation can complicate the

[85] LIM-PAPARINSKIS 2018, p. 235. Likewise, according to BIT between Government of the United Kingdom of Great Britain and Northern Ireland and Republic of Colombia (Available at https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/3253/download. Accessed May 9, 2020.) Article (1)(2)(a), investment means "*every kind of economic asset, owned or controlled directly or indirectly, by investors of a Contracting Party in the territory of the other Contracting Party*". According to this article, an investment has to been made by a foreign investor, so nationality requirement has to be satisfied at two separate dates: When the investment was being made and when the claim for treaty protection is submitted to arbitration.

[86] *Serafín García Armas and Karina García Gruber v. Bolivarian Republic of Venezuela*, PCA: Case No. 2013-3. Available at https://www.italaw.com/cases/2869. Accessed May 9, 2020.

[87] TIRYAKIOĞLU 2006, p. 4.

protection of an investment and the jurisdiction in arbitration.[88] In such a case, the question arises, whether an investor who holds a dual nationality of both the state where the investment has been made and of the home country can initiate arbitration proceedings against host country.

Many IIAs contain provision related to multiple nationals. Some of these investment agreements are keeping the dual nationals within the scope of the agreement, while others exclude them from its scope. The EU-Canada Comprehensive Economic and Trade Agreement (CETA) is an example that is keeping the dual nationals within the scope of the agreement. Article 8.1 provides that "*A natural person who is a citizen of Canada and has the nationality of one of the Member States of the European Union is deemed to be exclusively a natural person of the party of his or her own dominant and effective nationality.*"[89] But according to this Agreement, natural person's dominant and effective nationality shall be determined for the purpose of the protection. If this determined nationality is that of the host state, then the protection of investment cannot be claimed under investment arbitration.

On the other hand, some BITs have provisions that exclude dual nationals from protection. Such as, in the Turkey-Colombia BIT[90] it has been expressed in Article 1(5) that: "*This agreement shall not apply to investments made by natural person who are nationals of both Contracting Parties*". The Romania-Canada BIT[91] also excludes dual nationals form the protection in Article 1(g)(i) declaring that: "*the investor is, in the case of Romania, any natural person who according to the Romanian law is considered to be its citizen and who does not possess the citizenship of Canada*".[92] The situation is same in the Mauritius-Egypt BIT[93], in Article 1(3)(a) it is stated that "*the natural person derives his or her nationality in virtue of the laws of one of the contracting parties and is not simultaneously a national of the other contracting party*", so the treaty is not applicable to a national of one state that is simultaneously a national of the other contracting state.[94]

As explained above, the ICSID Convention contains a clear and specific rule regarding dual nationals. According to Article 25(2)(a), national of another contracting

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[88] Additionally, investors find their ways to "internationalize" their claims against their own states through the acquisition of a second nationality when a treaty regulates and covers dual nationality or when a treaty is silent on this issue.

[89] Additionally, Article 8.1. states that: "*A natural person who has the nationality of one of the Member States of the European Union or is a citizen of Canada, and is also a permanent resident of the other Party, is deemed to be exclusively a natural person of the Party of his or her nationality or citizenship, as applicable.*"

[90] BIT between the Republic of Colombia and the Republic of Turkey. Available at https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/3249/download. Accessed May 9, 2020.

[91] BIT between the Canada and Romania. Available at https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/4905/download. Accessed May 9, 2020.

[92] On the other hand, in the case of Canada, same BIT does not exclude the investor who is a natural person possessing the citizenship of or permanently residing in Canada to apply to arbitration if the investor is also a national of Romania.

[93] BIT between the Republic of Mauritius and the Arab Republic of Egypt. Available at https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/3285/download. Accessed May 11, 2020.

[94] Some other BITs incorporate a similar rule. For example, the Canada-Venezuela BIT expressly excludes dual nationals from its scope of protection by stipulating that an investor cannot possess the citizenship of the host state of the investment. Similarly, the Italy-Venezuela BIT excludes from its protection nationals of both parties who reside or are domiciled in the Territory of one of said parties at the time the investment is made.

state is a natural person who had the nationality of a contracting state other than the state party to the dispute; the Article also specifies that a national of another contracting state does not include any person who had the nationality of the contracting state party to the dispute.[95] By this regulation the Centre explicitly deals with the issue of dual nationals, prescribing that a definition of investor does not include a person who also has a nationality of the contracting state that is a party to the dispute. This feature was also emphasized in Executive Directors' report as follows, "*It should be noted that under clause (a) of article 25 (2) a natural person who was a national of the State party to the dispute would not be eligible to be a party in proceedings under the auspices of the Centre, even if at the same time he had the nationality of another State. This ineligibility is absolute and cannot be cured even if the State party to the dispute had given its consent.*"[96] On the other hand, the Convention does not contain any exclusion of dual nationals as shareholders of companies of the other contracting state, contrary to the specific exclusion of Article 25(2)(a) of the Convention regarding natural persons.[97]

Like natural persons, juridical persons may also have more than one nationality. For instance, because of the tax purposes, many companies are incorporated in one state, but have their headquarters in another state. ICSID convention in Article 25(2)(a) only regulates dual nationality restriction for natural persons; Article 25(2)(b) of the Convention does not contain any provision about the dual nationality of juridical persons. This can be concluded as the Convention does not preclude juridical persons that have dual nationality to apply to arbitration. In this regard, if all nationalities of these corporation are those of contracting states, the Centre will have jurisdiction.[98] But problem arises when one of the nationalities of the corporation is that of the host state. From the wording of the Convention, it can be understood that, such a situation will not directly restrain the jurisdiction of the Centre; a tribunal may therefore look behind the legal veil of incorporation to determine in which state the control and ownership of the company really lies. The decisive test of "place of incorporation" or "seat" should be applied for determination of the nationality and the state which company has a close, substantial and effective may then be treated as the nationality of that state.[99] After the application of this test, a determined effective nationality will be shape the jurisdiction of

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[95] ICSID Convention Article 25(2)(a): "*National of another Contracting State means: any natural person who had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration as well as on the date on which the request was registered pursuant to paragraph (3) of Article 28 or paragraph (3) of Article 36, but does not include any person who on either date also had the nationality of the Contracting State party to the dispute.*"

[96] WORLD BANK: *Report of the Executive Directors on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States*. Washington D.C., 1965. Available at http://www.worldbank.org/icsid. Accessed May 14, 2020.

[97] In Champion Trading Company v. Arab Republic of Egypt, the Tribunal noted that: "*Neither the Treaty nor the Convention contain any exclusion of dual nationals as shareholders of companies of the other Contracting State, contrary to the specific exclusion of Article 25 (2)(a) of the Convention regarding natural persons*."

[98] If one of the nationalities belongs to a non-contracting state, the juridical person has to demonstrate that it holds the nationality of a contracting state on the basis of incorporation or seat. The concurrent possession of the nationality of a non-contracting state, established on the basis of these same criteria, would not exclude jurisdiction. (*See* UNCTAD 2003, p. 15)

[99] AUST 2010, p. 166.

the Centre. Additionally, a concurrent possession of the nationality of host state will not exclude jurisdiction.

Likewise, the CETA only regulates the status of natural persons; there is no provision about judicial persons. The reason for such an approach can be that, a company can have businesses in many different countries, but still, it has a nationality of one single state. This nationality is determined in BITs through tests already mentioned *supra*. Thus, when a dispute arises, the tribunal will determine the nationality and decide about jurisdiction accordingly. There is no need for a provision about dual nationality for the juridical persons.

Finally, some BITs are silent about dual nationality, they neither regulate nor prohibit the protection of dual nationals under the investment agreement.[100] In such case another question arises: "When an investment treaty is silent about the standing of dual nationals, should dual nationals get protection as foreign investors (and should their effective nationality eb examined by the tribunal) or should such investors get no treaty protection at all?"

8. Lack of Provisions in BITs

Arguments that dual nationals may be allowed to sue their own country rest on the simple ground that there is no provision in the IIAs prohibiting them from doing so. At this stage, it would be appropriate to look at the purpose of states in signing an investment agreement with other states. In general, the purpose of IIAs are attracting investors by creating favorable conditions for investments, increasing economic cooperation between the states, ensuring the protection and encouragement of foreign investments, increasing the flow of capital and technology transfer, opening to new markets, protecting foreign investor against changes in national legislations, expropriation, hidden expropriation or similar unjust treatment such as nationalization.[101]

For the interpretation of purpose of the treaties, one must follow the interpretation rules of the Vienna Convention on the Law of Treaties[102] that prescribe that a treaty should be interpreted in the light of its object and purpose which is usually stated in its preamble.[103] Thus, IIAs are aiming to encourage foreign investments, settle the disputes between parties through arbitration and avoid resolving them before a host state's local court; they are regulating foreign investors and investments. So, considering the purpose of these treaties according to Vienna Convention, when negotiating and concluding a treaty, states never give consent to application to arbitration for their nationals against themselves. Thus, if it is

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[100] For instance, Turkey-Cambodia BIT, Argentine-Japan BIT and Turkey-Uzbekistan BIT has no provisions about dual nationals.

[101] DOLZER, RUDOLF-STEVENS, MARGRETE: *Bilateral Investment Treaties.* The Hague, 1995. p. 12; FRANCK, SUSAN: *The Legitimacy Crisis in Investment Treaty Arbitration: Privitazing Public International Law Through Inconsistent Decisions*. Fordham Law Review (73) 2005, 1521-1625. p. 1527; VANDEVELDE, KENNETH: U.S. International Investment Agreements. New York, 2009. p. 3.

[102] Vienna Convention on the Law of Treaties. Available at https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf. Accessed May 11, 2020.

[103] According to Article 31(1) and (2): "*A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes*." Relating to interpretation of BITs *see* ISMAIL 2013. p. 98.

accepted that the tribunals should apply the customary rule of effective nationality and uphold jurisdiction, if the investor has a stronger connection with his home state, it will be a broad interpretation of the state's consent and would contradicts the parties' intentions.

The topic of "lack of provisions in BITs" was discussed in case law. In *Serafín and Karina García v. Venezuela* case[104], the Tribunal have analyzed the text of the Spain-Venezuela BIT, which is silent about the status of dual nationals, for the purpose of determining if the dual national claimants had standing to sue Venezuela under the treaty. Respondent argued that, the BIT's definition of investor is "a physical person having the nationality of one of the Contracting Parties who invests in the other Contracting Party", so this BIT excluded physical persons with the nationality of both contracting parties. Venezuela also argued that allowing dual nationals to sue their own state would go against the object and purpose of the investment treaty, as applicable rules of international law impede the admission of claims brought by physical persons with dual nationality, especially if the nationality of the respondent state is the predominant or effective nationality of the claimant. Claimants rejected Venezuela's statements and pointed to Venezuela's treaty practice and argued that other BITs that Venezuela had entered into with other states, such as Italy, Canada, and Iran have provisions about dual nationality; so, when treaty parties have sought to exclude dual nationals, they have done it expressly. Claimants also retorted that neither the treaty nor applicable rules of international law exclude dual nationals from enjoying the protection of the treaty.[105]

The Tribunal decided in favor of claimants, holding that the Spain-Venezuela BIT fails to regulate the status of dual nationals and did not impose any limitation on them, so it is not possible to devoid of effect the nationality granted freely by a state and accepted as valid by the other. The Tribunal also noted that, dual nationals may qualify as investors under the Spain-Venezuela BIT as the Tribunal finds that customary nationality rules are not applicable in the BIT context; the respondent's argument on the application of the principle of effective and dominant nationality for purposes of interpreting and applying BITs in general in not acceptable.[106] This award sets an important precedent in treaty arbitration because it enables dual nationals to apply to arbitration against the country of their own nationalities when there is no provision in the BIT about dual nationals.[107] This decision

[104] *Serafín García Armas and Karina García Gruber v. Bolivarian Republic of Venezuela*. PCA: Case No. 2013-3. Available at https://www.italaw.com/cases/2869. Accessed May 11, 2020. This case was already mentioned before in the text, but in a different context.

[105] TREVINO 2015, p. 2. Additionally, the claimants pointed to the exclusion of dual nationals under Article 25 of the ICSID Convention to support their contention that the ICSID exclusion cannot be generalized to other forms of arbitration that might be available under the BIT.

[106] According to Tribunal, BITs constitute *lex specialis* between the parties and that resorting to customary international law is only necessary when the letter of the treaty is not sufficiently clear for its interpretation. Also, the Tribunal laid emphasis on the fact that Venezuela and Spain had entered into other BITs with other states that explicitly excluded dual nationals from the protection of the BIT. This led the Tribunal to assume that denial of benefits to dual nationals must be explicitly provided for in the text of the treaty.

[107] This situation also opens a door for manipulation of the nationality by investor as a tool to gain access to the dispute settlement mechanism contained in the relevant BIT. Additionally, this case highlights the asymmetry that may arise in the resolution of the question of standing of dual nationals by tribunals constituted under the ICSID Convention and under other arbitral institutions or ad hoc committees.

also highlights a major difference of potential permissiveness between the UNCITRAL rules and those of ICSID, both of which are present as options in the Spain-Venezuela BIT.

If it is accepted that dual nationals can apply to investment arbitration when the BIT is silent about this issue, investors that are holding dual nationalities of both home and host states and wish to apply for arbitration based on IIAs that do not regulate the status of dual nationals and did not impose any limitation on them, can choose ad hoc arbitration or other arbitral institutions so that they can avoid the restrictions of ICSID. Also, domestic investors seeking to internationalize and secure their investment may be well-advised to get a second or maybe more nationalities to secure their investments.

9. Conclusion

Determining the nationality of an investor plays an important role in international investment arbitration; because this nationality is crucial in deciding an individual's or juridical person’s right to initiate arbitral proceedings against a state. Also, the nationality requirement may prevent any national from seeking treaty protection against its home state, so a possession of the nationality of the host state can be bar to becoming a party to arbitral proceedings against that state. The reason for nationality requirement is obvious; individuals’ nationality accord them a particular position in international law and nationality gives individuals the benefit of the additional right or privilege to be able to refer an investment dispute to international arbitration without having to rely on state for protection or intervention.

Both ICSID and other investment treaties require that the individual or private investors, that have the advantage of being able to use dispute settlement mechanisms, must be a national of another contracting state. This is the positive requirement for the nationality. Also, for most of the treaties, investors must not have the nationality of the host state; this is the negative requirement.

For natural persons, investment agreements generally base nationality exclusively on the law of the state of claimed nationality. Although investment treaties are governed by international law, international law will refer back to national law for the purpose of determining nationality. On the other hand, the nationality of a juridical person is more complicated than natural person; because today in a highly globalized world, companies operate in ways that can make it very difficult to determine their nationality. Layers of shareholders, both natural and juridical persons themselves, operating from and in different countries make the conventional situation of a company established under the laws of a particular country and having its center of operations in the same country, more of a rarity than a common situation. For juridical persons, investment agreements generally base nationality on test like, (a) the place of constitution of juridical person in accordance with the law in force in the country of origin; (b) the place of incorporation or where the registered office is of juridical person; (c) the country of the corporate seat for example where the headquarters or the place of administration is, or (d) less frequently the country of control, to determine the nationality of a juridical person. These criteria can be used alone, in combination or as alternatives; but there is no single test used by all treaties.

An investor may also have more than one nationality, including the ones of the both home and host state; this kind of situation can complicate the protection of an investment and the jurisdiction in arbitration. Many IIAs contain provision related to multiple nationals. Some of these investment agreements are keeping the dual nationals within the scope of the agreement, while others exclude dual nationals from its scope. If the situation of multiple nationals is clearly stated in a treaty, it is certain that the provisions of this treaty will be applied for dispute resolution. The main conflict arises when a treaty neither regulates nor prohibits the protection of dual citizens.

In the case of no provision about dual nationality, it would be appropriate to look at the purpose of states for signing an investment agreement with other states. For the interpretation of purpose of the treaties, the interpretation rules of the Vienna Convention on the Law of Treaties has to be followed which prescribes that a treaty should be interpreted in accordance with its object and purpose usually stated in its preamble. As, IIAs are aiming to encourage foreign investments, settle the disputes between parties through arbitration and avoid resolving them before a host state's local court; they are regulating foreign investors and investments. So, considering the purpose of these treaties according to the Vienna Convention, when negotiating and concluding a treaty, states never give consent to application to arbitration for their nationals against themselves.

By the globalization of world economy, claims against host states will continue to increase. As the decisive criterion in definition of investor is the "nationality," it would be appropriate for states to gather in a common point on the determination and conditions of the nationality of investors. New and comprehensive treaties especially on the situation of dual nationals will remove most of the uncertainties in practice.

Also, while regulating BITs, states should consider addressing the issue of dual nationality clearly; and BITs that accept dual nationals right to apply to arbitration should deal with the application of the doctrine of effective nationality. In this condition, the legal certainty in investment arbitration will be secured and the potential abuse of nationality by investors will be avoided.

KOLUMAN, EMRE

A BERUHÁZÓ ÁLLAMPOLGÁRSÁGA A NEMZETKÖZİ BERUHÁZÁSİ VÁLASZTOTTBÍRÓSÁGİ ELJÁRÁSOKBAN ÉS A KETTŐS ÁLLAMPOLGÁRSÁG PROBLÉMÁJA

(Összefoglalás)

A nemzetközi beruházásvédelmi szerződések biztosítják a külföldi befektetők számára nemzetközi választottbírósági eljárás igénybevételét. A befektető állampolgársága jogha-tósági szempontból meghatározó tényező annak eldöntésénél, hogy választottbírósági útra lehet-e terelni egy jogvitát. A fogadó állam állampolgárságának megléte a beruházó esetében pedig akadálya lehet a fogadó állam ellen indított választottbírósági eljárásnak. Tehát, az állampolgárság döntő jelentőséggel bír annak eldöntésében, hogy egyéneknek

vagy jogi személyeknek joguk van-e választottbírósági eljárást kezdeményezni egy állam ellen egy adott nemzetközi szerződés alapján. A nemzetközi jogban a befektetési szerződések megkövetelik, hogy a befektetők, akik számára ezen egyezmények biztosítják, hogy jogvita esetén nemzetközi választottbírósághoz forduljanak, hogy egy másik szerződő állam állampolgárai legyenek. Másrészről, egy erősen globalizált világban lehetséges, hogy a befektetőknek egynél több állampolgárságuk van, beleértve a székhely és a fogadó állam állampolgárságát is; ez a helyzet bonyolíthatja a befektetés védelmét és a választottbírósági joghatóságot. Jelen tanulmány az állampolgárság követelményét vizsgálja a nemzetközi befektetési választottbíráskodásban, valamint kettős állampolgársággal kapcsolatos kérdéseket is konkrét jogeseteken ker