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LIST OF ABBREVIATIONS

AIOC	Azerbaijan International Operations Company
ASEAN	Association of South East Asian Nations
BITs	Bilateral Investment Treaties
CARICOM	Caribbean Community
CIL	Customary International Law
COMESA	Common Market for Eastern and South Africa
CU	Customs Union
ECHTR	European Court of Human Rights
EU	European Union
FDI	Foreign Direct Investment
FPI	Foreign Portfolio Investment
FTA	Free Trade Area
GA	General Assembly
GATS	General Agreement on Trade in Services
GTA	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
IBA	International Bar Association
ICC	International Chamber of Commerce
ICJ	International Court of Justice
ICSID	International Centre for Settlement of Investment Disputes
IIA	International Investment Agreement
ILO	International Labour Organization
IMF	International Monetary Fund
ITO	International Trade Organization
LCIA	London Court for International Arbitration
MAI	Multilateral Agreement on Investment
MFN	Most Favoured Nation
MNC	Multinational Corporation
NAFTA	North American Free Trade Agreement

NIEO	New International Economic Order
NT	National Treatment
OECD	Organization for Economic Cooperation and Development
PCA	Permanent Court of Arbitration
SEZ	Special Economic Zone
TRIM	Trade-Related Investment Measure
UK	United Kingdom
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
US(A)	United States (of America)
VCLT	Vienna Conventional on the Law of Treaties
WB	World Bank
WTO	World Trade Organization

1 INTRODUCTION

1.1 BACKGROUND OF STUDY

Regulation of International trade and investments has turned out to be one of the fastest advancing areas of international law (Azman-Saini, Baharumshah, & Law, 2010). The continued advancement of global investment laws has been supported by the spread of various international trading agreements, regional agreements, free trade agreements, or eve bilateral investment treaties. It is within these treaties that provisions that support and regulate international investments are held (Aharoni, 1966; BIS, 2011).

There are about 3,400 different investment treaties put into effect across the world. This figure is inclusive of BITs, free trade agreements and regional agreements. Historically, main reason behind the demand for regulations and security of international investments is the desire of developed countries (Aitken & Harrison, 1999). Developed countries desire to ensure that the investments of their businesses and investors in developing countries is secure, as to ensure that they are not faced with losses. Nevertheless, there no legal instrument exists on the global scale that can effectively capture all of the essential needs and rules on investment protection. In essence, this implies a lack of any authority or legally enforceable treaty that can subject all countries to the same, international standards of investment protection regulations (Benacek, Gronicki, Holland, & Sass, 2000). In contrast, the present context of international investment treaties is context-dependent, highly diverse and complex. It would be appropriate to claim that the present international investment treaties and agreements around the world feature differing standards and rules, making them unique in their objective, scope and meaning (McLachlan, 2008).

The need and application of an international standard on international investments is a rather controversial subject (Asiedu, 2006). As already explored, investment treaties are often considered as a political-economic medium through which developed countries are able to influence and dominate developing countries. Furthermore, a great majority of the present international investment treaties do not feature any element to developmental provisions, which makes it difficult to create a set of standards that might be acceptable for all of the parties involved. Nevertheless, this idea of incorporating developmental clauses into a hypothetical international trading agreement, such as the one adopted by the International Trade Organization (ITO) might be feasible (Aitken, Hanson, & Harrison, 1997). This is because the presence of such clause would facilitate a unique and distinctive implementation of minimum standards. Likewise, it must also be stressed that international economies tend to be highly influenced by the neoliberal ideology, inferring that development objective is of lesser importance, shifting it onto a secondary priority rather than primary (Aliber, 1970) (Alvarez, 2008). As a consequence of this, developing countries seem to prefer Bilateral Investment Treaties, as compared to international trading agreements. The personalized nature of BITs mean that developing countries are able to negotiate different elements of treaties. This allows them to create balance between investment protection measures and developmental goals (Asante, 1988).

In this context, facilitating a detailed account for all of the existing platforms and legal frameworks for the protection of international investments is daunting task. This chapter implements a strategy to recognize and elaborate specific voluntary, binding, and non-binding legislation that form the basis of various international legal frameworks for investment protection, specifically against the context of Foreign Direct Investment (FDI).There is one trend that is apparent in the context of modern international investment laws, and that is the fact that it is a fundamental goal to achieve protection of foreign investments under minimum standards. In this perspective, there are numerous dedicated treaties and laws on foreign investments that facilitate a detailed understanding on the standards for the protection of FDI around the world. As such, it becomes important to understand the characteristics and features of each of these treaties and laws. Appropriately, this thesis will present detailed information behind the creation of said minimal international standards for the protection of investments on the international scale (Azman-Saini, Baharumshah, & Law, 2010).

Similar to other elements of international law, international investment laws are derived fundamentally from the concept of law: it is formed by treaties, conventional laws and the conventional dispute settlement processes (BIS, 2011). This leaves little doubt that the sources of public international laws incorporated into Article 38 (1) of the International Court of Justice (ICJ) are significant towards sharping the fundamental structure of international investment laws. In a similar manner, the modern progression of international laws has been the growing prominence of other form of international regulations, i.e. soft laws and peremptory norms amongst other such types (Benacek, Gronicki, Holland, & Sass, 2000). It should also be noted that non-related but essential elements such as international human rights and the principles of fairness, equity, justice, and other aspects are incorporated into the widespread context of laws built for the protection of international investments. It is the opinion of academics that international laws are mere rules and regulations that undertaking countries agree upon when drafting treaties, customers or other forms of collaboration. Appropriately, this chapter will resent minimal standards, norms and best practices on the security facilitated to international investments through the vessels of international agreements, treaties, customary international laws (CIL), general law principles and soft law (Blalock & Paul, 2008).

It needs to be taken into account that this research attempts to elaborate credible and definite arguments on the reasons behind the importance of international investment laws for the protection of international investments (Borensztein, Gregorio, & Jong-Wha, 1998). The rhetoric of this argument will be based on economic advantages for both developed and developing countries that can be gained from the presence of sufficient legal frameworks for the protection of international investments. The research recognizes how minimal international laws can force countries into an efficient governance system that keeps them from undertaking any negative decisions. A negative decision will have a negative impact for the entire global economy. (Borensztein, Gregorio, & Jong-Wha, 1998) This can threaten the stability of the global economic system, by this means making it much more stable.

1.2 RATIONALE

The fundamental purpose behind this research is to elaborate international investment laws as a standard for understanding domestic investment laws and relevant policies of Azerbaijan (Bos, Sanders, & Secchi, 2013). Furthermore, global investment regimes are elaborated as the basis for standards, norms, and best practices sustaining investment protection measures within the country. Appropriately, this chapter facilitates important background information through which discussion of Chapter 4 will be examined and elaborated. The fundamental questions, that this chapter will address, have been defined as follows: foremost, what the present global regulation frameworks for the protection of FDI and how sufficient are to their purpose? The second question is to understand the norms, standards, and best practices that such legal frameworks create in relation to foreign investment regulations and protection. Finally, what are the fundamental international and regional obligations on Azerbaijan, in the context of FDI protection (Bénassy- Quéré, Maylis, & Thierry, 2007)?

The fundamental laws of Azerbaijan verify the implementation of international laws along with domestic laws. As such, international laws and norms for FDI protection will be utilized to assess the investment regulation systems of Azerbaijan (Lauterpacht, 1996). Through referring to voluntary, foreign and non-binding norms on FDI, this research aims to understand whether there are any potential lessons that can be learned from the implementation of such standards and practices. It is understood that voluntary and non-binding rules might have an influence towards policies and laws surrounding the protection of FDI. This research will aim to address if whether such international FDI protection laws can be implemented in full effect in the context of Azerbaijan (Waelde & Kolo, 2001).

A rather significant extent of this widespread economic growth in Azerbaijan can be credited to international investments, particularly during the later 1990s, following its immediate independence from the Soviet Union. When the country obtained its independence, the economic influence of the broken communist system and in particular, Russia was struggling. In the face of a fast-developing world, Azerbaijan turned to the global markets for economic sustenance. The prime focus of this expansion was the Oil and Gas sector. Through foreign investment initiatives harboured by the Azerbaijani government, i.e. 'contract of the century' through the creation of Azerbaijan International Operations Company (AIOC), a conglomerate of petroleum multinational corporations that were invited to invest in the Azerbaijan petroleum sector. Other critical efforts of the government as a measures to improve environment for the international investments were adoption of laws as such the Law on Protection of Foreign Investments (1992), Law on Investment Activity (1995), and Law on Privatization of State Property (2000).

Azerbaijan has signed several bilateral investment treaties with other countries such as United States, Turkey, and Pakistan. The purpose of these treaties is to create a legal framework through which corporations of different countries can invest and conduct business in the Azerbaijani markets. A premier example of this includes the country's expansive trade relations with the European Union, as well as the Bilateral Investment Treaty with the United States of America (1997). There are a plenty of other treaties that makes an impact on the country's reception to foreign investments. All these treaties cover various business sectors, and are specifically aimed at reducing duties on imports and exports of certain resources and commodities to target countries. In other cases, these treaties facilitate the export and import of certain resources and commodities that would otherwise not be facilitated in international trades with the subject countries.

Despite the government's historically progressive and dedicated efforts to increase foreign investment in the country and to bring Azerbaijan at the forefront of economic progress in its region and the wider world, the efforts have been leading to declining results (Hubner, 2010). The volume of Foreign Direct Investment into Azerbaijan has been following a cyclic, declining trend for the past decade. The number of foreign corporations entering Azerbaijan has declined substantially (US Department of State, 2015). Likewise, investments from existing multinational corporations are now declining as well. Domestic investment activity has declined rather substantially as well, given poor economic conditions of the country (World Bank Group, 2016). This trend is expected to continue for the entirely of 2017, until the Gross Domestic Products (GDP) reaches a middle point and edges towards a small but insignificant growth.

The arguments thus far present Azerbaijan at a troubled economic situation. Following its independence in 1991, the country was able to bring in an unprecedented economic growth. In fact, the growth in the country's GDP has been phenomenal since its independence. International investments and expansion of its petroleum extraction sectors bestowed significant boons to the country's economy. The country was experiencing stable growth rates exceeding 10% GDP growth. In fact, during the years 2004-2007, the growth of GDP was phenomenal (EBRD, 2012). Growth rates surged between 20% to 40% growth, the highest rates in the world (IMF, 2011). This rate of expansion is often considered unsustainable, but bring rather significant good fortunes for an economy. Despite this massive growth, the economy entered into a gradual decline that has now matured a decade later. GDP growth rates have consistently failed since reaching a 2005 peak. In 2016, this decline culminated into a negative growth rate, which meant that the economy was actually decreasing.

In this context, there is one important trend that can be observed here. During the years of stable GDP growth, following the country's effective independence in 1991, economic growth, and development in the country was sound. During this time, foreign investment soared as a large amount of international organizations entered the Azerbaijani markets. The prospect of extracting petroleum from the Caspian presented a significant economic opportunity. The entire region is a haven of natural resources, particularly natural gas and petroleum. This made Azerbaijan a subject of significant economic growth and expansion, especially compared to other Soviet successor states. Azerbaijan leveraged the support of international investments to catapult its economy towards development and expansion. However, it should be recognized that Azerbaijan's hydrocarbon reserves are not too significant in comparison to other oil-rich countries such as Russia, Iran, and Saudi Arabia. This meant that exploration in the country had a limited potential, and therefore when all potential sites are explored and investment is poured in for extraction, there is no more room for growth.

Perhaps it might be possible that the Azerbaijani government failed to recognize this limit to economic growth, as that its energy resources are finite and smaller, creating an effective upper cap to potential foreign investments. Nevertheless, the petroleum sector has now come to account for a majority input in the Azerbaijani economy. This is despite the government's recent and extensive efforts to bring other economic sectors into international limelight. Unlike petroleum, however, these business sectors are not a considerable opportunity for international investments. As petroleum is a widely-sought resource, it is considerably easier for achieve foreign investments in the sector. Other business sectors of Azerbaijan simply might not have the same attraction, i.e. services and industry. There are a number of potential resources behind this. The country's population is minimal, with a relatively stable population growth rate. This statistic is unlike of other developing countries, which are struck with a vastly growing population. Though a fast-growing population is unstable and consumes more resources, it also presents a potential for business growth and expansion. Another reason behind this might be the country's poor economic performance. As already explored, the poor state of national economy might be another reasons that multinational corporations, particularly non-oil businesses might avoid expansion into Azerbaijan.

At the same time, Azerbaijan features an intimidating potential of other national resources. It has a rich and diverse geography, rich natural resources, and a high potential for tourism. Nevertheless, the country is not performing well on all of these indicators. The reason might be the same as explored, however, relatively, Azerbaijan should be achieving international expansion in other business sectors besides the petroleum sector as well. Likewise, its potential for tourism also needs to be harboured by the government.

Although it can be expected for economic conditions in the country to improve in the coming years, particularly as a GDP growth of 1% is targeted by the last quarter of 2017. However, the focus of this research is on the current state of affairs. The main idea behind this research is to elaborate international investments in Azerbaijan, and therefore it will be the dominant theme of this research. The scope of this research is to understand the current scope of international investment-friendliness of Azerbaijan. This context will be explored through understanding the underlying legislative and treaties that guide the Azerbaijan trading systems. The focus here will be to understand if whether the government's current laws and legal policies are friendly or attractive towards international investors.

1.3 AIMS AND OBJECTIVES

This research aims to elaborate the current conditions of International Investment laws in Azerbaijan to understand their potential influence in the inflow of foreign direct investment in Azerbaijan. A primary focus will be detailed onto understand if whether the current laws are friendly towards international investments, or if whether they are focused on supporting and subsidizing the local markets.

This context will be fulfilled through a systemic review of academic literature, government literature, expert opinions, and case studies on similar contexts in other countries. As such, the context of this research is qualitative in nature. Important information will be acquired from credible sources, including credible journals, credible multinational organizations and credible new sources to understand if whether the current incarnations of laws affecting foreign direct investment into Azerbaijan are positive or not. It might be reasonable to suggest that the present methodology will adhere to a case study, in which systemic information will be presented and discussed. This research does not focus on generation of primary data, and rather employs existing secondary data and information in order to complete its specified research objectives.

1.4 STRUCTURE OF THESIS

This thesis consists of four major parts. The introductory chapter sets out the background of the study and the main rationale behind conducting current research. The second chapter primary focuses of the theoretical setting and reviews extensive body of literature pertained to international standard on the foreign investment and protection measures. The third chapter provides information and outline of the research methodology and techniques employed to collect data and run analysis. The fourth chapter is a rather empirical part of the study. This part sheds light on the BITs concluded by Azerbaijan, and scrutinized various natures and legal contents. Moreover, the second sub-section analysis FDI activities of Azerbaijan from multidisciplinary perspectives and provides review of challenges and prospects in this terrain. The final chapter wraps up the key findings and conclusions drawn upon the analysis. In addition, the conclusion sections puts forth several recommendation vis-à-vis the development of foreign investment framework from the legal and economic standpoints.

2 LITERATURE REVIEW AND THEORETICAL SETTINGS: INTERNATIONAL STANDARDS ON FOREIGN INVESTMENT PROTECTION

2.1 INTERNATIONAL PRACTICES ON ADMISSION OF FOREIGN INVESTMENTS

The preliminary phase of an international investment is the admission of investment. This is the phase when an investor is actively seeking access into the country where they intend to make an investment. From an historical perspective, the process of allowing entrance to a foreign investor was largely facilitated through national immigration (Dolzer R. , 2004). A foreign investor was treated as more of an immigrant making an investment into the country. This is because there did not exist any frameworks or rules on foreign investment. The concept of foreign investments and its protection is a relatively novel concept from such a perspective. In the present times, admission of foreign investors is commonly facilitated through either IIAs or BITs. These legal elements subject a country to facilitate foreign investors into its territories according to the specifications of their characteristics. This means that countries have certain rights and obligations when it comes to collaborating with foreign investors (Azman-Saini, Baharumshah, & Law, 2010). This does not imply that Customary International Laws (CILs) does not have any relevance when it comes to admission investment. CIL facilitates an essential right to a country to either allow or disallow the entrance of some foreign investors into its territories (Salacuse, 1990). Therefore, the host country maintains the sovereign CIL right to control the flow of investors entering its economies. Depending on their political, social, economic, and legal conditions, countries either allow the entrance of FDI into its local markets, or disallows it (Zerk, 2006).

In the modern IIA and BIT practice, countries, and more specifically developing countries control the right to regulate the trance of FDI as a measure to encourage their own public and economic policies. This implies that the entrance of a foreign investor in a country might be subject to certain requirements, i.e. joint ventures with domestic businesses, transfer of technology, employment of the local population, research development, performance requirements, or other essential elements of regulations (Miller, 1959). In essence, this violates the conventional international standards for the liberalization of investments in the global context. This means that countries are discouraged from implementing restrictive regulative measures, i.e. forcing investors to partner or performance requirements. The principle idea is that investors should be free to conduct business according their requirements and strategies (Wang & Magnus, 1992). This particularly ensures that no discrimination against certain foreign investors is possible. As an example, the World Bank Guidelines Article II guides that member countries should facilitate the admission and subsequent implementation of investments from foreign entities, without making them subject to any specific regulations or imposing conditions that must be fulfilled as part of maintaining their admissions into the country (Wei, 2000).

It is standard for investment treaties to declare the essential requirement for investors to meet the regulation and legal frameworks of the host countries under which they are making investments. As example, this has been recognized under Article 2 (1) of Annex 1 of SADC FIP which guides that all countries should ensure that investments of foreign investors are facilitated in accordance with their own laws and regulations (Asiedu, 2006). This is a restrictive measure, which greatly limits the operations, ownership, and future operations of foreign businesses in a country. The fundamental motive behind this sort of implementation is that countries are able to facilitate admission of foreign investments into their countries in consistency with their plans for their national economic development. It also allows countries to control certain business sectors where it would not want foreign investors to conduct business (Wang & Magnus, 1992). In essence, exercising this sort of requirements on foreign investors is the concept of governments regulating foreign investments into their country. Nevertheless, it should also be taken into account that countries are required to develop economic policies and investment laws on actual demand and good faith, rather than an arbitrary discourse. The World Bank's guidelines encourage countries to implement *bona fide* regulations for the admission of foreign investors lacking prejudice to binding international laws (Sauvant & Sachs, 2009).

The fundamental right of countries and governments to exercise control on the entrance and operations of foreign investments is rather limited now, in the modern context (Schwebel, 2004). A sovereign right such as this is influenced through elements such as *inter alia* principles of national treatment (NT) and most favoured nation (MFN), or provisions for investment liberalizations, transparency of regulations, alongside derogations to treaty-based right to admission. The main principles of MGN and NT in investment laws are applied following the implementation of FDI. According to general international laws, countries are mandated not to unfairly handle or discriminate against foreign investors when accepting foreign investments into the local economy (Sornarajah M. , 2010). However, this position appear to have changed in the new millennium, given that certain BITs and other agreements, signed by countries such as Canada, Japan, and the United States have extrapolated these standards to the pre-admission stage. This change might be credited to a widespread international pressure to facilitate liberalization guarantees in treaties. The evolved version of these treaties do not require governments to ensure that investors are conducting investment in accordance to their laws(Zerk, 2006). The principles of both MFN and NT factor in by making sure that countries do not treat foreign investors any less special compared to domestic investors, or those investors hailing from preferred countries, respectively. This ensures a balanced and fair approach when dealing with foreign investments. As an example, the Multilateral Agreement on Investment (MAI) drafted by the Organization for Economic Cooperation and Development (OECD) mandated the principles of both MFN and NT dealing with foreign investors both before and after the admission of investor. One more example is with the General Agreement on Trade and Services (GATS), the Article II of it guides a MFN standard to before and after admission phases in all service business sectors, unless otherwise preserved by local laws, i.e. exceptions. It is evident that both of these approaches in regards to the before-admission phase limit the governments' right to either accept or reject foreign investment based on their laws and policies (BIS, 2011).

2.1.1 International Treaty Models on Admission of Investment

UNCTAD recognizes a set of five models that have evolved in response to the mounting pressure in the international climate to regulate and protect foreign investments. These models include investment control; regional industrialization programme, selective liberalization, combined MFN and NT, and mutual NT. These models represent an evolution of complete control and authority over the right to entrance, to a stage where governments can only limit admission of foreign investments on certain, specified and established exceptions. It should be kept in mind that these models only represent international policies and options on the admission of foreign investment in countries. A more important fact is that these models might have an academic role in suggestion to governments the best and efficient approaches that can be executed (Haddad & Harrison, 1993).

2.1.1.1 INVESTMENT CONTROL

The investment control model surrenders the right of admission of foreign investment on a single criteria, which being that the investment must be compliant of all the national laws and policies. The Article 2 (I) of the SADC FIP resonates with this model. Under this model, the government of host country maintains the authority to decide the regulations and conditions through which foreign investors might enter into the country (McLachlan, 2008).

The investment control model maintains the right of host government, through CIL, to regulate the entrance of foreign investment in its economy. These provision of control are standard as in the conventional IIAs and BITs. According to the World Bank, each country and government has the essential right in determining regulations and laws that foreign investors must comply when investing in that country (Lowenfeld, 2003). This includes the provision of restricting access. The various restrictions implemented by a host government in exercising control right to allow FDI may include complete restriction or quota on maximum foreign presence. Other measures of regulation might include authorizations directly from the government, detailed registrations, and mandatory reporting (Vasciannie, 2000).

2.1.1.2 SELECTIVE LIBERALIZATION

This model is much more flexible than the former. The essential principle behind this model is that governments that do not wish to facilitate liberalization across all of its economic sectors might instead turn to a model of selective implementation. In this model, governments can liberalize select industries (Neumayer & Laura, 2005). This model has also been defined by in the GATS, through the provision of Article VXI. Governments can facilitate market access to foreign investors based on a defined legal framework clearly specifying the extent and scope of liberalization, and in which economic sectors (Aliber, 1970). In this provision of this model, the host government is barred from creating any specific requirements or limitations that might hinder market access for the foreign investor within the specified business sector. This only method through which this can be reserved is the right of the government to revoke liberalization, or make alterations to the characteristics of it (Neumayer & Laura, 2005). Nevertheless, this model does not impose any limit or restriction on how the extent of liberalization policies that can be implemented by the government in any specific business sector. The government reserves the fundamental right to reverse and make changes to this model (Aharoni, 1966). In practical application, this model has been clarified for countries to create detailed characteristics of the applied liberalization. As an example, a government using this model is required to adhere with Article XX of the GATS, which includes provisions such as setting up clear commitments and schedules (Wang & Magnus, 1992).

2.1.1.3 REGIONAL INDUSTRIALIZATION PROGRAMME

This model mandates the creation of programmes, organizations, and legal frameworks that serve as effective platform for investment collaboration between various countries (Haddad & Harrison, 1993). Under this model, various countries and governments can create a common legal investment framework. Through this framework, investors from these countries will be able to invest in any of the organizations' members (Elkins, Andrew, & Beth, 2006). The specific benefit of this framework being that these investors will be facilitated a NT position. This means that they will be treated as if they were domestic investors of the country. This sort of favourable treatment is not commonly relayed to third-party countries that do not have membership in the programme or organizations. This model has been implemented by various different countries. An example of this is the Common Market for Eastern and Southern Africa (COMESA). Article 101 (1) guides that all member countries should collaborate for the creation of an organization through which investors and businesses from one country might be able to invest and conduct business is another country of the organization, while being regarded and treated as a domestic investor and business of the host country would be (Asante, 1988).

2.1.1.4 MUTUAL NATIONAL TREATIES (NT)

This model resonates with the previous model. This model entails that investors from other member states of a single organization should be granted preferential rights for admission and exercise. The fundamental different between this model and the previous being that the former restricts access to certain sectors (Wei, 2000). There is no such requirement in this case. Investors from all member countries share the same access through the national economy. In this model, the right of admission is based on the NT rights accorded to member countries (Waelde & Kolo, 2001).

It should be kept in mind that even through liberalization is facilitated, there might still be restrictions based on criteria such as national security, public health, and public policy. This means that countries might be able to restrict or cancel access to certain business sectors based on the aforementioned criteria, or other essential elements of government control (Azman-Saini, Baharumshah, & Law, 2010). This model has been implemented by a number of prominent international organizations, i.e. OECD, European Community Treaty, Caribbean Community, Treaty Establishing the Economic Community of Central African States (ECCAS), Framework Agreement on the Association of Southeast Asian Nations (ASEAN), ECOWAS Revised Treaty, Community Investment Code of the Economic Community of the Great Lakes Countries, and various other international treaties (Benacek, Gronicki, Holland, & Sass, 2000).

2.1.1.5 COMBINED NT AND MFN TREATMENT

This combination model is the most common in the United States, where it has been exercised in BIT practices. This model enforces a requirement on host governments to facilitate investments from foreign sources (Aharoni, 1966). This model requires a government to ensure that foreign investors are treated no less than domestic investors and neither investors from favoured countries. This model suggests that the these combined principles hinder and limit a government’s power to control and regulate flow of investments in the country. Due to these characteristics, this model has been adopted by international treaties such as NAFTA, ASEAN and Free trade agreements between different countries (Salacuse, 1990).

An investor from a non-member country does not have the same access to investment opportunities in a country as compared to an investor from one of the member countries. It should be noted that the European Community does not incorporate this sort of elements into its treaties. Regardless, this model still allows for governments to restrict access to certain business sectors based on non-economic concerns, i.e. national security and public health. It should be noted that this sort of restriction is not discriminatory, given that all investors will be barred from investment. The exceptions and preferential treatments accorded by MFNs and NTs are facilitated in international law, given that they are reasonable and effective (Benacek, Gronicki, Holland, & Sass, 2000).

Based on the discussion thus far, it can be understood that countries maintain a sovereign right through CIL to regulate the right of investor admission in their territories (Dolzer & Schreuer, 2012). Though this stance is not exactly challenged, there is mounting international pressure to liberalize the entire concept of international investments. The principle idea behind this demand is that governments should not be able to restrict the access of foreign investors to the local market through unfair and discriminating requirements. The idea behind liberalization is that all investors should be treated as the same, i.e. similar to the way a domestic investor is treated (Bénassy- Quéré, Maylis, & Thierry, 2007). The government reserves the right to make restrictions and limitations on investor access to various business sector. However, these restrictions can only be implemented if the entire investor base of the country is subject, rather than a single investor or group (Dolzer R. , 2004). This sort of evolution has been pioneered with treaty frameworks such as the MFN and NT. There are now five major models that influence the regulation of foreign investments from governments. All these five models have been explored and discussed in this chapter thus far (Folsom, Gordon, Spanogle, Fitzgerald, & Van Alstine, 2012). One important element in all of these discussed models is that all foreign investors need to respect and comply with the laws, rules, and regulations of the host countries in which they are investing. Likewise, the World Bank's guidelines recommend that standards can be implemented as sort of a criteria for the allowance of foreign investment into an economy. Although this recommendation has no binding value, it can be considered an integral step towards the creation of an international standard for FDA that can be applied by all countries (Douglas, 2009).

2.2 INTERNATIONAL LAW RULES ON EXPROPRIATION

This element resonates with the prominent case *Grand River Enterprises v. US.* The term expropriation denotes to the nationalization of the investments, properties, assets of foreign investors by the host country (Zerk, 2006). Due to its nature, expropriation is often considered one of the most integral risks to foreign investments. It is also highly controversial, and is always surrounded by numerous questions over its legitimacy. The regulations controlling expropriation of such properties refer to the intricate balance amidst investor security and government authority. It was established through the prominent case of *ADC vs. Hungary* in which governments reserve the authority to expropriate foreign investments and assets (Asante, 1988). This right has been similar stated and enforced in a wide variety of international agreements, and is nearly a norm with IIAs. It can be recommended that the governments' authority to expropriate investments and assets is based out of its natural authority to commandeer and control natural resources within its territories. Nevertheless, this ability to expropriate investment and assets is not without its own bounds, and is subject to certain requirements (Elkins, Andrew, & Beth, 2006).

These requirements include public purpose, due process, non-discrimination, and compensation. These are other different requirements as well however these four are the most common and significant. The essential requirement behind expropriation is some sort of public purpose (Lillich). It is necessary that there be no discrimination when it comes to expropriation, ensuring that all investors are treated on the same standard (Aharoni, 1966). The entire process must adhere to all relevant laws. These essential principles and standards are all covered in the general law of Azerbaijan, along with the legal frameworks of international organizations, including the SADC. This paper will examine the background and development of these standards before explaining more on their characteristics, as this will help explore the fundamental purpose behind their existence (Wei, 2000).

2.2.1 Origins of International Standards of Expropriation

The expropriation of foreign investments, properties, and assets started in the early 20th century with nationalization movements across the world (Douglas, 2009). At the forefront was the South American nationalization movement during the 1900s. The Soviet Union took part in this post First World War. Mexico joined this list during the 1930s. These movements started to gain momentum particularly following the Second World War (Schwebel, 2004). This naturally led to much debates on their controversial nature. Disputes rose in volumes and too much expropriation expressed an urgent need for the creation of proper legal rules and precedents. The concern was primarily for developed countries that wished to ensure that the investment interests of its nationals were secure from government nationalization in other countries (Dolzer & Schreuer, 2012). During the 1930s, Mexico nationalized a number of US oil investments and assets in its territories. This promoted the United States to lobby for the recognition of the Hull Formula as a mean to regulate expropriation on an international level (Dees, 1998). The primary critics of the Hull Formula recommended that the Calvo Doctrine instead be adopted. Based on this divergence, there lacked a consensus within the international community on the requirements of host countries in the context of expropriation of foreign assets (Miller, 1959).

In 1962, the United Nations General Assembly passed the *Resolution on Permanent Sovereignty over Natural Resources,* otherwise also known as Resolution 1803. The resolution declares that expropriation or requisition of personal investment and asset shall be conducted only on the basis of public utility, national interest, and national security (Neumayer & Laura, 2005). The action cannot represent individual or private interest in any form or manner. In the case that expropriation takes place, the owner of the requisitioned asset should be compensated appropriately, subject to rules in accordance to laws enforced in the country implementing the measure, during the exercise of its sovereignty appropriate to international laws (Dolzer & Schreuer, 2012).

Though this resolution was in more manner an accord between the developed and developing countries, it did reflect a consensus over the concept of expropriation (Salacuse, 1990). The following resolutions of the United Nations introduced altered provisions on the principles of expropriation, specifically in the context of compensation (Vasciannie, 2000). Amidst these resolutions, the protection if international investments was surrendered to local laws of hosting countries. Despite these efforts, case such as the *Texaco Overseas Petroleum Company (TOPCO) v. Libya* and other international law entities confirm that Resolution 1803 represents CIL, however subsequent implementations do not represent CIL. From a historical perspective, it can be implied that this rule applies to all countries except in scenarios of its obvious rejection. Furthermore, during 1967, the OECD contributed to the protection of foreign assets through its Draft convention. This effort included Hull Formula for Article 3 on the rules of compensation (Lee & Edwin, 1996). Though this effort did not gain momentum, its provisions towards expropriation worked as a model for a majority of BITs (Aitken & Harrison, 1999).

Following the Second World War, both developing and developed countries around the world initiated the process of complete nationalization of oil businesses (McLachlan, 2008). These countries included France, United Kingdom, Canada, and Libya amongst other prominent oil producers. During the period 1971 to 1974, the government of Libya nationalized all investments, properties, and assets of foreign oil industries (Douglas, 2009). This expropriation was in some cases not supported with appropriate compensation. As a consequence of this, many investors filed their cases in international tribunals. The next part of this discussion will focus on minimum standards for expropriation of foreign property and assets (Elkins, Andrew, & Beth, 2006).

2.2.2 International Minimum Standards of Expropriation

As has been observed and discussed thus far, there does not appear to be an international standard wherever expropriation is concerned (Davies & Ellis, 2007). Nevertheless, the more troubling question in this context refers to legal consequences to the subject minimum global standards. However, there are a few common standards that include public purpose, due process, non-discrimination, and compensation (Caves, 1971). Due to the diverse contexts under which expropriation might be exercised, it should be noted that BITs and IIAs do not tackle expropriation issues in a list form, but rather each treaty has its own composition for expropriation (Lillich). In general, the interpretation of expropriation is subjective (Douglas, 2009). It will be observed in the following discussion that some of these expropriation standards have evolved to become commonly observed principles in international investment treaties. The objective of this section is to elaborate the acceptable minimal standards for the expropriation of foreign investments in the international context (Schwebel, 2004).

2.2.2.1 PUBLIC PURPOSE

The fundamental principle behind expropriation, the requisition of private assets and investments on the basis of public interest and utility (Aitken, Hanson, & Harrison, 1997). In the *Amoco v. Iran* tribunal, it was ascertained that an appropriate definition cannot be determined, as that it is not an element that has been agreed in international laws, or even suggested for such matter (Zerk, 2006). It was established that governments have the complete authority to nationalize assets and investments within its territories. It was also ascertained that governments can exercise this fundamental right as per their own discretion (Lim, 2001).

In the similar manner, the case of European Court of Human Rights in the prominent case *James v. United Kingdom* brings up an interesting discussion (Miller, 1959). The court ascertained that it will respect the judgement of a country's legislative, in light of appropriate evidence that the decision is taken in public interest. The court will not accept a decision to expropriate if it does not have a reasonable basis. The case established that a government can only expropriate private property if it is in public interest. This element is considered to be a part to CIL. However, this context might also be disputed. Furthermore, this standard has been reinforced in most BITs and IIAs (Ginsburg, 2005). This legal requirement of public interest might differ greatly on the subjective interpretation of different legal tribunals (Sauvant & Sachs, 2009). As an example, the tribunal *BP v. Libya* specifically elaborated the public purpose requirement and discovered that expropriation was not lawful given that this measure was not taken in public interest, but rather political interest as the government had a conflicted relation with the United Kingdom government (Asante, 1988). It is inferred that this public purpose element will reinforce the perspective of host countries that expropriate foreign assets with purpose of disseminating this property to the public sector (Folsom, Gordon, Spanogle, Fitzgerald, & Van Alstine, 2012).

2.2.2.2 DUE PROCESS

The concept of due process roots from Anglo-American laws, incorporating both substantive and procedure jurisprudence (Lillich) (Dolzer R. , 2004). In the context of international laws, due process mandates that expropriation be conducted in procedural fairness and justice. This entire process includes proper notification to foreign investors, transparency in the entire process, and administrative proceedings prior to and following the expropriation (Davies & Ellis, 2007). This entire process should also give investors and businesses to appeal for review and reversal of the entire expropriation process. The prominent case *ADC v. Hungary* established that, in general context, the legal procedure should grant investors sufficient time and opportunity to make appeal against the entire process and to voice their concern and protest to the fullest extent. Furthermore, the tribunal stated that a legal procedure should be preceded with a reasonable notice in advance, a fair trial, and impartial adjudication to elaborate the disputed actions (Caves, 1971). This Due Process standard is not acknowledged as CIL, however its implementation is quite common in IIAs, albeit with differing interpretations. Likewise, it appears that due process is obliged and subject to laws of the host country (Lee & Edwin, 1996). In this case *ElettronicaSiculaS.p.A (ELSI) (US v. Italy)*, the ICJ elaborated arbitrariness to incorporate a disregard to law process. Nevertheless, due process remains subject to subject interpretations, thereby contributing to a theme of uncertainty (Benacek, Gronicki, Holland, & Sass, 2000).

2.2.2.3 NON-DISCRIMINATION

The principle of non-discrimination mandates that governments of host countries can in no way or form discriminate against a foreign investor on the basis of their nationality, race, or other personal characteristics (Wei, 2000). This includes singling out individual groups. Unless appropriate evidence is produced along with a discriminatory move, the entire idea move is considered to be illegal and a violation of international investment laws (Lauterpacht, 1996). The concept of non-discrimination has already been widely covered in international treaties as well as the CIL. It was established through the case *Amoco v. Iran* that expropriation exercised on the basis of discrimination is illegal. Nevertheless, Article 6 (1) to SADC Model BIT identifies all of the specified requirements of legal expropriation except non-discrimination (Farla, De Crombrugghe, & Verspagen, 2016). A wide volume of international case laws have declared it essential that expropriation cannot be performed on discriminatory grounds. One such example is *Mike Campbell v. Zimbabwe.* The government expropriated agriculture land owned by a white person in the interest of resettlement, citing the 17th Amendment of the Constitution of Zimbabwe (Neumayer & Laura, 2005). In specific, the section 16B. The applicant contested that the government's decision to expropriate was discriminating, given that it was based on taking land away from white farmers. It was their claim that the entire move was racially motivated (Loree & Stephen, 1995).

As a mean to appeal their case, the applicants referred to the Article 6 (2) of SADC treaty (Sauvant & Sachs, 2009). According this section, no member state holds the right to discriminate against any specific person based on their personal characteristics (Douglas, 2009). The tribunal concluded with a decision that if expropriation was not exercised randomly but rather through reason and objective and fair compensation was awarded to requisitioned parties, the entire move can be considered legal (Lowenfeld, 2003). The court specified that differential treatment for foreign investors does not represent discrimination. It should be taken into account that the concept of expropriation of an asset held by a foreign entity does not automatically translate to a case of discrimination. If a requisitioned party wishes to enforce a claim that expropriation was performed on discriminatory grounds, then appropriate evidence and reason should be brought forward (Simmons, 2000). In the case of *Kuwait v. American Independent Oil Company (Aminoil),* the court concluded that it was discriminating of the government to nationalize investments and assets of American companies, but not nationalizing the investments and assets of other Arabian businesses (Lim, 2001).

Furthermore, a discriminating expropriation that has rational basis for supporting the national or economic security of a country might be considered reasonable (Wei, 2000). However, the application of this element is subject to extensive scrutiny and regulations, as a mean to ensure that assets are distributed where they are needed thee most and that the recipients are appropriately entitled (Sauvant & Sachs, 2009). It must be noted that even this sort of expropriation should be exercised in good faith and should not interfere with the legal interests and rights of foreign investors. Though foreign investors are the most common recipient of discriminatory expropriation, in some cases, there might be little distinction between foreign and national investors of an expropriating country (Douglas, 2009). In the prominence case *ADC v. Hungary*, the court established that by nationalizing only foreign companies, and not domestic companies, was a discriminating action taken by the government (Dees, 1998).

2.2.2.4 COMPENSATION

The term compensation is used to refer to any sort of payment that a government transfers to requisitioned parties in the case of expropriation of their investments and assets. It is considered a traditional obligation for countries to grant appropriate compensation to investors in case when it nationalizes their properties and investments (Neumayer & Laura, 2005). This standard has been confirmed through various international tribunals (Simmons, 2000). These include *Amoco v. Indonesia*, *Santa Elena v. Costa Rica*, and *Benvenutti & Bonfant v. Congo* amongst other cases. These courts established that all requisitioned parties should be compensated in consideration of the conventional standards of international laws (Elkins, Andrew, & Beth, 2006). However, as a method to counteract this requirement, a number of countries have entered IIAs with reservations to expropriation provisions in order to secure their regulatory rights and therefore regulate the provisions of compensation in the case of nationalization of private investments and assets (Lee & Edwin, 1996). This move has been motivated by the general fear in host governments to compensate foreign entities for the loss of their investments, particularly when in violation of a clause to legal nationalization (Tudor, The fair and equitable treatment standard in the international law of foreign investment, 2008).

Compensation is the most commonly litigate element of legal expropriation. This trend has occurred because of differing interpretations the appropriate measures and rules to govern compensation (Neumayer & Laura, 2005). As an example, the *American International Group*

Inc. v. Iran, both parties demanded means of resolution. The United States requested the implementation of Hull Formula, whereas Iran requested appropriate compensation based on Resolution standard 3281. The measure and volume of compensation is to be a long and detailed assessment given the differing concepts incorporated with the subject. Given that the fundamental objective of this research is to elaborate the current international minimum standard on the compensation for nationalization, a brief summary of compensation divergent for nationalization is to be facilitated (Tudor, 2008).

The policies implemented for elaborating compensation are dependent on the customary regulations for expropriation, applicable treaty or both particularly when a treat is not certain As such, the current theme of international investment laws are driven through treaty laws. As explained through *Amoco v. Iran,* in a majority of cases, a treaty supersedes CIL in regards to the payment of compensation in the benefit of nationalization (Lowenfeld, 2003). However, this does not mean that CIL has no sort of relevance. Instead CIL will be implemented to fulfil any potential lacunas within the treaty (Asante, 1988). It comes with no surprise that contemporary tribunals concerned with the issue of compensation elaborate such on the basis of a particular IIA or BIT. This could be credited to the fact that most treaties feature an exhaustive amount of rules to govern the appropriate compensation provision (Bos, Sanders, & Secchi, 2013).

The Hull Formula, created by the United States, dictates that in the case of nationalization of an asset or investment, the government should facilitate immediate, sufficient, and effective compensation (Dees, 1998). This resonates with the SADC FIP in its Article 5. In this case, immediate refers that investors should not have to wait prolonged amounts of time for compensation on their requisitioned assets. Sufficient refers that the volume of compensation should take into account the potential losses caused by the requisition, the total value of the assets, and the expected profits that the investment might have generated in case that the investment or asset was not nationalized. In essence, the compensation should be targeted at benefiting the former owner of an asset or property (Guisinger, 1986). Therefore, compensation has to be disseminated in a currency of preference of the former owner, i.e. convertible or freely transferrable currency (Lowenfeld, 2003). Though this formula has been implemented throughout the United States, and has been incorporated into various BITs and IIAs, it does have any status in the CIL. Nevertheless, if these model was to be implemented, this would have been inferred as a major sign towards the establishment of international minimum standards for the protection of investments, specifically in terms of compensation in return of nationalization (Neumayer & Laura, 2005).

In the New International Economic Order (NIEO) movement, it was the principle argument of developing countries that compensation in the Hull Formula needs to be termed ‘appropriate’ rather than ‘adequate.’ The fourth paragraph of Resolution 1803 obligated ‘appropriate’ compensation, with the same being enforced through the United Nations resolution 3281 (Hallward-Driemeier, 2003).

Most of the contemporary BITs and IIAs employ different but synonymous terms, i.e. adequate, appropriate, just, full, equitable, fair or simply compensation for defining the volume of compensation to be disseminated (Lillich) (Wei, 2000). Regardless to the choice of words, compensation should be evaluated and paid relative to the market value of assets. In a majority of cases, the stated terms refer to the fair market value of subject assets. As an example, the World Bank guides that compensation can only be considered adequate if based on fair market value. This market value is to ascertain the moment that an investment or asset is requisitioned for nationalization. However, it should be noted that this guide is not binding (Wang & Magnus, 1992). It is on the members’ discretion to implement this provision. In comparison, a nationalization that is bound in a binding provision will have to be completed at the fullest (Schachter, 1976).

As an example, the case of *American International Group Inc. v. Iran* concluded that there is no difference between the terms *adequate* and *full.* Despite the question of its appropriateness for CIL rules, the aforementioned provisions on nationalization are consistent within most BITs and IIAs (Lowenfeld, 2003). International laws necessitate countries to ensure that nationalization of investments and assets is performed in good faith (Carkovic & Levine, 2002). Furthermore, court cases on international investments often question the legal status of nationalization in consideration of nearly all standards of conventional international law (Neumayer & Laura, 2005). It should be considered that BITs and IIAs tend have different interpretations and value behind each provision. This lack of a global standard is because of a lack of global authority to regulate investments on the international scale. However, a standard in virtually all these treaties and organizations is that nationalization exercised on the basis of discrimination against an individual or group is strictly prohibited (Simmons, 2000).

2.3 INTERNATIONAL RULES ON PERFORMANCE REQUIREMENTS

It has become a consensus within international economics that the flow of Foreign Direct Investment is the most significant method through which countries can assimilate their economic system with the global economy, with intention to derive certain benefits (Wang & Magnus, 1992). These benefits might include economic development and sustenance, technology procurement, employment generation and a wide variety of other benefits. Nevertheless, simply making a liberalized economic framework to attract foreign investors does not guarantee these benefits to the local economy. As such, governments have adopted certain measures through which they can maximize the economic benefits of foreign investments entering their markets(McLachlan, 2008). These measures have now come to be known as *performance requirements.* In essence, a performance requirement is a condition mandated on foreign investors from the host government that require foreign investors to fulfil a certain criteria in order to be allowed admission into the country (Sauvant & Sachs, 2009). These conditions may extent to the post-admission phase as well, with investors being required indefinitely to fulfil certain conditions and criteria. This has become a rather controversial element of international investments (Lee & Edwin, 1996). Developing countries impose these obligations on foreign investors in order to maximize their own economic benefits. In contrast, developed countries from where most of this investment originates are of the view that performance requirements are similar to protectionism, and therefore an unattractive element of investment (Wei, 2000).

In essence, there are three different categories of performance requirements. One category is the list of requirements that have been forbidden by the Trade-Related Investment Measures (TRIMs) signed by the World Trade Organization (WTO) (Aitken & Harrison, 1999). TRIMs, and in specific the Article 2 (1) of its charter forbids all members from implementing any sort of trade-relation investment provisions that conflict with the provisions started under Article III and XI of the General Agreement on Tariffs and Trade (GATT). The main restricted features include embargo on performance requirements, i.e. trade balancing, local content, and limits on foreign exchange (Hallward-Driemeier, 2003). The second category refers to performance requirements that are forbidden or facilitated under the standards of different BITs and IIAs. A few of these requirements include: mandating investors to join a partnership with a domestic business, requiring a minimum initial investment limit, making it mandatory to employ a local workforce, to place headquarters in a specific area or region, requirement for industrial process to be derived in any specific area using area of an specific supplier or area (Lim, 2001). There may also be a requirement to transfer technology to domestic competitors, requirement of maintaining adequate research and development efforts, and a wide variety of other requirements on performance. The third category is much broader, encompassing performance requirements that have not been captured in conventional BITs and IIAs (Büthe & Milner, 2008).

As aforementioned, the discussion and analysis of this chapter will be used extensively in the upcoming chapters (Lillich). Therefore, this research aims to understand the global norms on performance requirement in context to Azerbaijan's legislature. In this context, it may be important to understand the specified performance objectives. It should be acknowledged that not all BITs or IIAs might feature these performance requirements. They might also be prohibited in certain treaties and organizations (Hallward-Driemeier, 2003).

2.3.1 Joint Venture and Local Equity Requirements

A common performance requirement on foreign investors is that their business must be conducted in collaboration with a domestic business (Franck, 2004). As such, a joint-venture model works best to facilitate this sort of move. This requirement has most often been implemented in developing countries. One example of this requirement is the legislature of Myanmar (Hallward-Driemeier, 2003). When making investments in Myanmar, a foreign investor can hold up to a maximum 80% equity. The leftover 20% equity requirement must be fulfilled by a local national. The essential meaning behind this requirement is that foreign businesses cannot be allowed to start their business in the country without having the participation of the local markets (Lim, 2001). This is an express condition that is most commonly emplaced in the pre-admission phase, as to ensure that only foreign investors compliant to this requirement can proceed into investing in that country (Lillich) (Dolzer R. , 2004).

This is in fact a growing trend, and in the past few years, there has been a significant increase in the adoption of this requirement by various developing countries including China, Brazil, South Africa, and Nigeria amongst a variety of other countries (Haddad & Harrison, 1993). This requirement has been emplaced for a wide amount of reasons. At the forefront of this reasoning is that governments wish to avoid the condition where a foreign business might completely dominate a local economic sector. Another reason for this requirement is to ensure that technology transfer from foreign companies can strengthen the competitive ability of domestic businesses (Lim, 2001). The government might also wish to reduce unemployment in the economy, and therefore mandate foreign investors only to employ a local workforce. A country that has staple amounts of natural resources might also introduce these performance requirements as to ensure that it is receiving appropriate compensation for allowing foreign investors to exploit natural resources (Sornarajah M. , 2010).

2.3.1.1 INTERNATIONAL STANDARDS AND NORMS

The essential requirement to start business in the form of joint-venture is a subject of considerable controversy and debate, particularly in the context of international law (Findlay, 1978). This could be a consequence to the lack of any treaty of global authority to govern the rules of international laws. In a variety of treaties, governments are prohibited from requiring foreign investors to collaborate a joint-venture with local businesses. An example of this can be taken from GATS (Hallward-Driemeier, 2003). The Article XVI (2) of it mandates that there be no requirements of joint ventures on investors, and neither should there be other provisions that aim to restrict the shareholding ratio of foreign investors in their own investments. The article elaborates that in cases of where market-access commitments are elaborated, no member states are allowed to create requirements based on foreign investors being required to collaborate with a local business (Salacuse, 1990). The article continues to elaborate that there also be no restriction or regulation on the shareholding rights of the foreign investor on their own business, and neither should there be any requirements on a minimum investment capital when an investor seeks admission into a country (Lim, 2001).

The expert panel of the *China – Publications and Audio-visual Products* concluded that any such performance requirement that places a local business to be recipient of more than 50% shares from an international investment should be disallowed, based on the specifications of the

GATS provisions (Dolzer & Schreuer, 2012). In terms of performance requirements, MAI draft intend to exceed the contributions of TRIMS. The main provision of it is to draft an extensive list of prohibited performance requirements, in particular those that had no direct influence on trading, i.e. joint ventures, minimal capital requirement, and domestic participation(McLachlan, 2008). Nevertheless, it is worth nothing that all three organizations GATT, GATS, and TRIMS facilitate exceptions on the prohibition of performance requirements(Lim, 2001). It is rather common feature, from a legal point of view, that governments generally implement joint venture and capital requirements as part of their measure to regulate the exploitation of their natural resources. As an example, the United Nations resolution 1803 identified an essential right of governments to exercise control over the businesses held and operated by foreign investors(Miller, 1959).

In most cases, investors prefer not to be obligated in such performance requirements. Investors tend to prefer a liberalized legal and economic structure where they allowed to conduct business according to their own strategies. It has been seen that most developed countries and entities, i.e. United States, United Kingdom, Canada, and the European Union do not facilitate performance requirements in their international investment treaties. As an example, the Canada-European Union Trade Agreement disallows the existence of any performance requirements, i.e. joint ventures, maximum shareholding levels, or monopolies(Bos, Sanders, & Secchi, 2013).

2.3.2 Employment and Training Requirements

Governments have the authority to implement provisions that mandate foreign investors and businesses to provide complete training and employment opportunities for the citizens of host countries. The fundamental purpose behind this sort of performance requirement is the demand to address skill deficits in the labour market, to promote domestic businesses to engage in proper human resources management, to promote the creation of important talent and skills within the national workforce(Dolzer & Schreuer, 2012). One example for this can be found in Malaysia, where it is mandatory for foreign businesses to provide appropriate training to the local workforce in order to mitigate skill deficit in the country's population(Lim, 2001).

2.3.2.1 INTERNATIONAL LAW ON EMPLOYMENT AND TRAINING REQUIREMENTS

Similar to other provisions, there is a lack of a global authority to govern and regulate the rules on training of employees from foreign investors and businesses(Guisinger, 1986). The International Labour Organization (ILO) created the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy establishes certain provisions in the context employment and training, among other provisions. It is recommended for international organizations and foreign investors to adopt their principles on their own accord(McLachlan, 2008). This declaration recommends that international organizations and investors should take into account the legal make-up of a country under which they are directing their investment. It recommends that investments should be in compliance to the country's development and social aims, as to contribute towards that country.

The declaration recommends that foreign investors should hire from the local workforce of country under which they are investing. In a similar manner, foreign investors should also make that sure appropriate training is facilitated to the local workforce as to make them highly efficient in performing their duties. The investor should provide sufficient opportunities for professional growth and career advancements of employees(Lim, 2001).

Given their diversity, it is naturally expected for both IIAs and BITs to have certain differences and variations when it comes to this performance requirement(Lillich). As expected, developed countries raise their concern against this sort of requirement given that it restricts foreign investors abide by certain rules that may be in conflict with its strategy(Ginsburg, 2005). As an example, the Canada-Tanzania and US-Rwanda BIT prohibit all sorts of performance requirements pertaining to employment and workforce training(Davies & Ellis, 2007).

The latter BIT explains that governments have the authority to enforce a performance requirement that requires foreign investors to train workers within its territory. Nevertheless, this rule is subject to exceptions. A performance requirement on training cannot be set if the host government is demanding the transfer of some specific technology, process or knowledge through the employment training process(Lee & Edwin, 1996).

In a consistent trend with other performance requirements, host countries are generally of favour in implementing these performance requirements. The reason is evident, as that the entire national workforce benefits from appropriate training that includes transfer of knowledge on advanced processes, technology, and knowledge(Schachter, 1976).

2.4 INTERNATIONAL TREATMENT STANDARDS

As a disclaimer, the phrase 'treatment' has never been mentioned in treaties themselves. Nevertheless, in the case *Suez v. Argentina,* the court established that the specific meaning behind 'treatment' refers to the provision of all the appropriate rights, privileges, obligations, and burdens implemented by a government towards all foreign investors(Benacek, Gronicki, Holland, & Sass, 2000). The standard of treatment for foreign investors became a rather controversial issue, particularly when the Mexican government announced that it would implement the Calvo doctrine as a standard of treatment. The United States government was opposed to this measure. According to the doctrine, foreign investors were subject to no special treatment, i.e. foreign protection(Elkins, Andrew, & Beth, 2006). Instead, foreign investors were to be treated on the same levels as domestic investors. In contrast, the United States drafted and promoted the creation of an international treatment standard that gave foreign investors definite protection apart from the normal measure of protection that is afforded to local businesses of host countries(Hallward-Driemeier, 2003).

Following the Mexican revolution, the country entered into autonomous agreements with European countries and the United States(Lee & Edwin, 1996). The investors from these countries had been inflicted physical injuries during the revolution. The US-Mexico Commission was given the authority on the concept of International law, in order to reach a decision on the *Robert Claims* and *Neer Claims*(Guisinger, 1986). The decisions reached by this commission have been termed as credible formulations that can contribute to the creation of minimum international laws to govern the treatment of foreign investors. A set of customary standards already exists as a source of assurance for foreign investors to receive specific protection standards. It was established by the Commission that there was no actual damage or loss to property of investors, even if they were physically harmed during the revolution.

Subsequently, the US government lobbied for the creation of CIL to expand minimum standards to all aspects of treatment for foreign investors(Bos, Sanders, & Secchi, 2013).

These minimum standards stand in stark opposition and counter to the NT standard prescribed in the Calvo doctrine. However, there is little material to convince that minimum treatment standards are included in the CIL(Dolzer & Schreuer, 2012). The split opinion on treatment standards was rather evident during the Hague conference of 1930 when the matter of drafting CIL provisions on *Responsibility of States for Damage Caused in their Territories to the Persons and Properties of Foreigners.* The division was in two zones. Developing countries that sought foreign investments wanted to create a treatment standard that left no distinction between national and foreign investors(Blalock & Paul, 2008). In contrast, developed countries that sent investment to other countries were of the preference that there should be minimum standards when it comes to treatment of foreign investors. The conference was not able to achieve any draft due to this conflict between countries. During the early 1930s, specifically at the International Conference on Treatment of Foreigners, governments tried to conclude the convention under the framework of the League of Nations. The convention created a draft, Article 16 (8) of which infers that foreign investors should be provided the same treatment as domestic investors, with certain exceptions possible(McLachlan, 2008). The fundamental reason behind the failure of the convention was that developed countries could not come up to an effective agreement with developing countries on a potential standard for treatment. Sometime later in 1933, the Seventh International Conference of American States, the Convention of the Rights and Duties of states (Montevideo Convention) was drafted. The 9th Article of it states that domestic and foreign investors are subject to identical protection from the law, and that none of the foreign investors cannot claim any protection more extensive than what is granted to domestic investors(Folsom, Gordon, Spanogle, Fitzgerald, & Van Alstine, 2012).

The existence of so many different BITs and IIAs covering treatment standards do allow for the inference that virtually all countries must have at least some sort of provision on how foreign investors are to be treated(Guisinger, 1986). This shall be further explored in the following discussion. Certain international investment treaties necessitate governments to facilitate investments spanned under treaty treatment in no less favour compared to what might be required by the CIL as minimum standard(Ginsburg, 2005). Whereas international agreements mandate host governments to facilitate foreign investors a treatment package than the treatment allocated to domestic investors or investors from preferred countries. These standards of treatment facilitated under international law involves complete security and protection, fair treatment, and assurance of no discrimination(Lim, 2001).

Generally, the specific contents of such standards are not defined. As such, the essential meaning behind them might have to be elaborated in consideration of circumstances under which they are applied. In recent times, these standards have been subject to differing interpretation by different courts(Aliber, 1970). This research will elaborate non-discrimination treatment, alongside FET standards, as they appear appropriate to the present conditions of Azerbaijan investment climate(Haddad & Harrison, 1993).

2.4.1 NON-DISCRIMINATION PRINCIPLE

The principle of non-discrimination is often thought to have been created in international trading framework through the 1947 GATT framework(Caves, 1971). It was slowly integrated into the concept of investments. Concerning the treatment for foreign investors, the principles of non-discrimination restricts a host country from providing a treatment to foreign investors that is less favourable compared to treatment given to domestic investors. This has been further solidified with the case *The Pope & Talbot v. Canada* where the court established that any provision that creates a distinction between foreign and nations investors is a case of discrimination(Ginsburg, 2005). Both the MFN and NT are the fundamental models through which non-discriminating treatment standards are based. They have to be accepted as elements essential to BITs and other global investment provisions associated with FDI(Lee & Edwin, 1996).

In essence, both the NT and MFN standards comply the host government to facilitate international investors with the same treatment that is accorded to domestic investors, as well as those investors hailing from preferred countries. As an example, the Article 4 (1) in the Switzerland-India BIT elaborates that the contracting parties investing in either of countries shall have the same standard of treatment to the treatment standards that are facilitated to domestic and preferred international investors in either countries(Franck, 2004).

Nevertheless, the provision of non-discrimination does not imply that virtually any measure that is taken against foreign investors and not domestic investors is a source of discrimination. Depending on the circumstances, a different treatment might be reasonable(Lauterpacht, 1996). In fact, a great deal of international investment treaties concerning discrimination in foreign investments do permit the existence of certain exceptions(Loree & Stephen, 1995). To explain this, we can refer to the Article 7 of SADC FIP, which elaborates that though governments have an obligation never to discriminate against certain foreign investors. However, a government, through the virtue of its domestic laws, can provide preferential and differential treatment to certain investors if the action can help the country achieve national development objectives(Dolzer R. , 2004). In the perspective of CIL, and as also resonated under *Methanax v. US,* the concept of non-discrimination necessitates the claimants to facilitate sufficient evidence on the host government's intention to discrimination. The existing case laws demonstrate that before a conviction, the intent of discrimination must be established(Dees, 1998).

2.4.1.1 NT STANDARD

The obligations of NT has a history that can be tracked back to Greek city-states. In the present context, it can be seen in the global economic legal system that includes investment laws(Dolzer & Schreuer, 2012). NT standards have been defined by the UNCTAD as principles through which a government provides foreign investors with a treatment standard that is perfectly comparable to its treatment with domestic investors. The concept of NT principle even extends beyond trade treaties(Folsom, Gordon, Spanogle, Fitzgerald, & Van Alstine, 2012). In the case *Total v. Argentina,* the court declared that the reason behind NT provision is to establish if whether protected investors have been given a worse treatment on reasonable grounds, particularly in relation to their nationality. Aside from a handful of countries such Japan, Canada and United States, most BITs in the world limit the requirements of NT to present foreign investors, or in the post-establishment stage(Caves, 1971). It is acknowledged that effective implementation of the NT principle would restrain the capacity of host country to facilitate a preferential treatment for domestic investors, whilst not offering the same to foreign investors(Lim, 2001).

In association with this argument, the provision of NT is often related with a volume of certain exceptions, mentioned, and agreed either in the treaties, or through the virtue of established provisions. These exceptions are most commonly associated with national security, public health, and public order(Dolzer R. , 2004). The Doha Declaration states that economic mediums should facilitate governments their right to regulate investment as part of their public interest, specifically when an investment can influence developmental goals and policies. Therefore, the obligations of NT are not considered automatically applicable without any conditions. It there is a reasonable cause of public interest in a decision, discrimination might be permissible(Blomstrom, 2014). It is a fundamental duty of governments to fulfil their responsibilities on public policies. Unless a decision is completely reasonable and important, the government cannot discriminate against any sort of investors(Franck, 2004). In the case *GAMI Investments v. Mexico,* the court established that an exercised discrimination was based on a reasonable argument of public policy interest. The court acknowledged that the exercised decision was not discriminating, and neither did it create a barrier of equal opportunity in the overall market. In addition, in *Cross-Border Trucking Services (Mexico v*(Neumayer & Laura, 2005)*. US),* the panel specified that differential treatment cannot be higher than required for legal regulation reasons, i.e. safety. It specifies that domestic investors should be subjected to the same standards(Ginsburg, 2005).

2.4.1.2 MFN STANDARD

According to the UNCTAD, the treatment provision based on MFN refers that a host government treats all foreign investors on the same standard, regardless of their origin country(Findlay, 1978). This standard is the consistent with the government providing MFN treatment to beneficiary countries that the treatment appropriated to third states, in case this treatment is preferable over the treaty-prescribed treatment between two countries(Guisinger, 1986). In essence, the government makes sure that investors from one foreign country are treated no differently than investors from another country(Lim, 2001). As an example, the Free Trade Agreement (FTA) between Chile and United States is based on the provision that all investors should be treated according to a single standard, even if an investor was to approach from a third country(Neumayer & Laura, 2005).

Apart from the different versions of treaties created by Japan, Canada, and the United States, most treaties facilitate the provision of MFN in the post-establishment stages(Findlay, 1978). The provisions of MFN within investment treaties are commonly mutual, indeterminate and without conditions(Elkins, Andrew, & Beth, 2006). The fundamental reason behind this standard is the creation of a level playing field amongst various foreign countries by forbidding discrimination against other nationalities. The MFN context does facilitate certain exceptions to be made. These exceptions are normally the result of regional integrations, i.e. the creation of BITs, FTAs, or custom unions (CUs.)(Fawcett & Janeen, 2008)

2.4.2 FET STANDARD

From an historical perspective, FET appeared to be the preferred standard for treating foreign investors. Havana Charter's Article 2 (2) explored that foreign investors should be guaranteed a fair and equitable treatment(Douglas, 2009). Even though the charter was not implemented, it has been suggested for it to be used as a precedent for following attempts to create an international agreement on treatment standards for foreign investments in the global law context(Elkins, Andrew, & Beth, 2006). As an example, the International Chamber of Commerce (ICC) detailed International Code of Fair Treatment for Foreign Investment, OECD draft convention of the Protection of Foreign Property, Abs-Shawcross Draft Convention on Investment Abroad, and the MAI draft represented the standard of FET. Besides the aforementioned international treaties, the FET standard was also included into various regional cooperation and friendliness treaties(Salacuse, 1990).

Presently, at the collaborative stage, there is no universal provision or treaty that can work as a standard for the FET principle. It has been incorporated into numerous BITs, and as well the SADC FIP. Similarly, the World Bank has also elaborated certain guidelines towards the implementation and appreciation of FET in certain investment problems(Guisinger, 1986).

It comes with little surprise that FET standard has no definition in term of international treaties. It is also one of the most conflicted elements in international arbitration(McLachlan, 2008). It can thus be inferred that this is a major fault in recognizing the proper content or meaning behind FET. Nevertheless, there are various legal bodies that have interpreted the concept of FET standard(Farla, De Crombrugghe, & Verspagen, 2016). In essence, FET refers to non-discrimination based on origin or nationality, in association to variables such as access to fair and proper government taxation and regulation and access to local courts to obtain justice(Miller, 1959). There appear to be two different approaches through which FET standards and implemented International investment laws. These approaches are plain meaning and association of FET to CIL minimum standard(Dolzer & Schreuer, 2012).

2.4.2.1 PLAIN MEANING APPROACH

When implemented in a contract, the FET standard is not subject to any sort of additional conditions or requirements. As an example, the BITs signed between China and Germany feature only a slight mention of FET, without going into even the briefest details. In these cases, the authority shifts to the court to elaborate on the meaning behind FET(Aliber, 1970). These sort of BITs consider FET to amongst independent treatment standard, and therefore, holding no actual significance to the CIL minimum standard. The plain meaning approach is appropriate with the conventionally accepted norms of interpretation in international laws(Asiedu, 2006). Generally, the procedure of creating a definition on the FET clause begins with a citation on the VCLT Article 31 (1), which facilitates that a treaty is to be understood in accordance to the general meaning to be anointed to the treaty terms in their setting, and in consideration of its purpose and objective. Based on this background, the standard of FET needs to be understood in its general meaning, in the setting the concept FET is described and in relation to the purpose and objective of this associated investment treaty. The court case in *Biwater v. Tanzania* and *National Gird PLC v. Argentina* described that FET on its own is an independent treatment standard, and has not relation with CIL(Benacek, Gronicki, Holland, & Sass, 2000).

The general meaning of FOT does not necessarily imply a concise assortment of legal remedies in some cases. In essence, in any of its variations, FET is acknowledged as a subjective principle, broadly open for interpretation(Tudor, 2008). As an example, the *Lemire v. Ukraine* court sustained that FET is an abstract term, and therefore any attempts to interpret the context behind the world would simply nothing but a continuum of its confusion and abstractness. While this does not necessarily imply that FET is a pointless and empty standard, instead, in cases of disputes, it can be expected that courts will be open towards objective interpretation of the context. From this perspective, the legal essence of the FET standard is a situation for the court's interpretation in light of the presented context. There are certain studies that suggest the idea that implementing the FET standard in a treaty strengthens the principle of proper treatment on host countries, even higher than CIL(Dolzer & Schreuer, 2012).

2.4.2.2 INTERNATIONAL MINIMUM STANDARD APPROACH

The second approach is of the view that FET standard is simply one more element of the CIL minimum. This approach has been supported by the SADC BIT, specifically Article 5. International minimum standard is a major aspect of CIL, which regulate investors' treatment standard around the world by creating minimum policies that need to be respected by governments, regardless of their local laws and regulations(Folsom, Gordon, Spanogle, Fitzgerald, & Van Alstine, 2012). The *S D Myers v. Canada* court expressed that an offense on the international minimum standard happens when it can be proven that investors have been treated to unfair treatment. This sort of offence is not acceptable from the global perspective. The court further stated that minimum standards facilitate a stable platform over which foreign investors should never need to depend, even when a governments' action against them have not been discriminatory(Franck, 2004).

It is necessary to take into account hat FET, within the international minimum standard, has absolute treatment. These principles even apply when a domestic investor of the same country is not facilitated with any form of treatment standard. As of the present, FET has been incorporated into numerous treaties around the globe. The most prominent inclusion of the standard is observed in NAFTA, of which Article 1105 (1) claims that either party in the contract, when considering action on their investment, should take into account the principles of fair and equitable treatment. In a similar manner, the BIT between United Kingdom and Mexico facilitates that all investors should be facilitated with a treatment in accordance to the CIL, which includes fair and equitable treatment(Dolzer R. , 2004). During 2001, NAFTA prescribed that the Article 1105 (1) alludes to a treatment over the CIL minimum. The note from the FTC confirms that FET including complete security and protection does not need treatment in concurrence to CIL. It also recommends that a violation of a provision or certain international treaty does not necessarily imply the violation of Article 1105 (1). The *ADF v. US* court established that FTC elaboration was important for continuity and consistency of interpretation on the minimum standard for treatment. Rather recently, the FTC note, without conditions, has been accepted by NAFTA courts in spite of certain earlier decisions that did not conclude on the same note. The *Methanex v. US* court expressed that binding force for the FTC note is not consistent only for NAFTA, but rather also compares to the conventional treaty laws(Franck, 2004).

There are numerous case laws on the international level that have been focused around understanding the context and meaning of the CIL minimum standard. The General Claims Commission drafted a standard for this during the case *Neer v. Mexico.* This standard appears be to incorporated in roughly all FET claims. In specific, this standard identified that a treatment is in violation of international standards if treatment towards foreign investors was appropriate to outrage, dishonesty, lack of duty, or lack of due process from the government. The treatment and attitude of the government will be so poor that even the uneducated witness will be able to discern on it(Sauvant & Sachs, 2009).

It is stated that Article 5 (2) for the SADC model BIT incorporates the concept of *Neer Claims* for *Mondev v. US,* a legal case associated to justice denial, perceived the ICJ Chamber's view on judicial power for the ELSI case as an effective criteria for justice denial. Therefore, the court for *Mondev. US* expressed that, in regards to the international level and conventionally accepted standards of justice, a court has the authority to elaborate in considerable of all presented evidence and facts that the questioned decision was apparently discreditable and improper, with a consequence that the investor have been the victim of inequitable and unfair treatment(Dolzer & Schreuer, 2012).

The case of *ADF v. US* was associated to minimum standard for implementation of a regulatory standard. The court expressed a lack of apparent reasonable necessity and no government standard to support the principle that *Neer Claims* can be extrapolated to the modern setting and standard of treatment of foreign standards from a host government(Folsom, Gordon, Spanogle, Fitzgerald, & Van Alstine, 2012).

2.4.2.3 CONTENT OF FAIR AND EQUITABLE TREATMENT

In essence, the Fair and Equitable Treatment (FET) is based on a volume of important sub-elements covering various elements of the interest of foreign investments. Regardless of the perceived uncertainty in the standard, major elements have been elaborated by courts around the world in order to help ascertain potential breaches. These elements include arbitrariness, denial of justice, breach of legal expectations, a lack of due process, apparent lack of transparency, and bad faith or dishonesty(Sauvant & Sachs, 2009). The *Glamis v. US* court tribunal contended that FET violation is exercised in presence of an adequately shocking event, i.e. justice denial, unfairness, lack of due process, discrimination, or arbitration. Furthermore, the *Meffizi v. Spain* and *Tecmed v. Mexico* courts elaborated that FET is breached by a host government when it works against the basic and legal expectations of investors. It can be inferred from this approach the FET contents have a strong association to these elements. This is not to suggest that breach of such elements directly leads to recognition of FET breaches, however the FET standard is implemented subject to the conditions of each case(Tudor, 2008).

2.5 INTERNATIONAL RULES OF INVESTMENT DISPUTE RESOLUTION

The standards and rules on dispute resolution are perhaps the most significant element of knowledge to foreign investors, as that these rules guarantee the scope and extent of protection and security that is conveyed to them from the host government. From the historical perspective, local courts implement domestic laws, this practice since been at the forefront of dispute resolution. The only exception to this is that the case under question is modified by one or more international law treaty. It can be expressed that both the NIEO and Calvo Doctrine attempted to implement a standard that disputes should be applied solely to the administrative courts of the host country(Douglas, 2009). Nevertheless, a consistent fear that domestic courts cannot be dependent upon to provide a decision on the international scope led to the proposal of creating an international mechanism that could be used in order adequately to solve investment disputes. The present agreements on investment facilitate a recourse to involved third part dispute settlement standards, i.e. negotiation and consultation, or arbitration if both of these process fail to produce sufficient results. Article V (1) of the WB guidelines recommend that disputes are generally resolved with negotiation, local tribunals, and other acceptable provisions that includes autonomous arbitration and conciliation. It must be stated that arbitration is perceived as the most effective and efficient provision for the resolution of disputes, in the context of provisions to safeguard investments(Neumayer & Laura, 2005). The provision of Arbitration facilitates foreign investors not to seek the assistance of domestic courts, nor the embassy of their origin country to invoke diplomatic protection. The benefits of arbitration come from the fact that dispute is transferred to an independent international forum that is not involved in any political influence and protects investors from unfair incidents which might be exercised from host governments to reduce the competitive ability of foreign investors(Douglas, 2009).

Regardless of such an advantage, parties engaging a dispute resolution process generally have a difficult time seeking arbitration. The scope of these difficulty and scope of the case differs based on the nature of the individuals involved for evaluating appropriate laws, domestic laws, and the issues of sovereign immunity held by governments, the basis for identification and implementation of foreign arbitral awards and the process of domestic courts in relation to the international process of arbitration(Lowenfeld, 2003). The issues rendered above as amongst the most significant questions that this part attempts to elaborate. The principle question to be elaborated is the exiting international standards and practices relevant to investment dispute resolution. These minimal international standards will be elaborated later in the study as base of understanding investment dispute settle in Azerbaijan.

2.5.1 International Law Practices on Investment Dispute Resolution

2.5.1.1 INSTITUTIONAL FORA

The previously elaborated fragmentation element of international investment law is implementable based on the institutional fora of dispute settlement processes implementable in the field. In comparison to other departments of international law where permanently established courts, i.e. International Criminal Court (ICC), Inter-American Court of Human Rights, and European Court of Justice are present, there is no necessary investment dispute forum under the international context(Findlay, 1978). Regardless, there are numerous exiting international organizations facilitating investors with arbitration against their host government. Given high sustenance of conflicted arbitral awards, the organizational fore generally selected for dispute resolution includes United Nations Commission on International Trade Law (UNCITRAL), International Criminal Court, Permanent Court of Arbitration (PCA), Stockholm Chamber of Commerce’s (SCC) Institute of Arbitration, London Court for International Arbitration (LCIA), and International Centre for the Settlement of Investment Disputes (ICSID) among other international institutions. As matter of fact, the current practices provide investors the right to select arbitral provision through organizations such as ICSID and its facilities for host countries that are not associated with the Washington Convention, UNCITRAL or ICC(Zerk, 2006).

It should be taken into account that ICSID is generally recognized as the main platform for settlement of disputes. The Washington Convention Article 1 (2) states that the objective of ISCID is to facilitate for arbitration and conciliation of investor disputes between host governments and investors. The framework of this was facilitated by the provision of Washington Convention. The arbitration rules of ICSID implement only towards the subset of investment cases that are taken upon by ICSID court systems(Tudor, 2008). The decision undertaken by tribunals facilitated through SCC, PCA, ICI or UNCITRAL have their own provisions that are pre-established and agreed upon by either parties. A note of mention is that IIAs and BITs might either state the fora to be implemented, present a choice to parties or the parties might select the option to resolve disputes on the basis of ad hoc arbitration. It should be taken into account that selected law is not limited to the domestic laws, or the legal framework of the host country. Instead, the procedure can be governed through conventional law principles, alongside international conventions and legal bodies. The incorporation of such different options for the process of arbitration is generally also considered to be an expression of consent. Generally, courts decide matters in light of the provisions granted by treaties. Legal principles consented by both parties and the conventional principle of international law. In essence, parties have the option to select one of the various legal frameworks through which their conflict can be resolved. If both parties cannot establish a consensus on the implemented rules, the Washington Convention Article 42 states that arbitration will commence with a combination of host country laws and the conventional international laws(Simmons, 2000).

Taking into account the decentralization of international investment laws, courts add towards harmonization of conventional investment laws, specifically through the provision of *de facto* practice on precedents covering most investment problems. This is not to imply an existence of some sort of doctrine of judicial precedent for international investment laws. The presence of *state decisis*is a complex question, even for international investment laws. Under conventional investment laws, a judicial precedent cannot exist. The concept has been fundamentally reject by the ICJ Statue Article 59, NAFTA Article 1136 (1), and Washington Convention Article 51 (1)(Sauvant & Sachs, 2009).

This infers that investment courts are not influenced by previous decisions, undertakings, and precedents set by courts. Nevertheless, a few empirical studies demonstrate that a trend of precedence does exist within investment tribunals, which though are not bound by legal requirement, do follow a certain line given that a need to maintain a form of consistency in awards. These studies argue the influencing purpose of judicial decisions is specifically prominent in association to awards handed by ICSID courts, however decision for non-ICSID court are consistently referred to by the ICSID and other courts. Furthermore, investment courts' jurisprudence demonstrates a growing citation of ICSID courts' undertakings along other undertakings in other similar cases. Furthermore, a large amount of case laws demonstrate contexts under which investment courts depended on award granted by other courts(Haddad & Harrison, 1993).

There currently exist two models in international agreements for the resolution of investment disputes, in particular, state-to-state and investor-state disputes. In the conventional international laws, only a recognized country has the eligibility to sue another country. As such, individuals had little influence in international law. In other words, countries with active diplomatic protection can establish *ad hoc* commissions and arbitral courts to facilitate justice on the treatment of foreign investments and investors from host governments. Therefore, countries pursued each other in legal battle to earn justice for their investors(Dees, 1998). This only increased the uncertainty of if whether the investor will be compensated for any potential loss of their investment. The most common methodology for resolving disputes is through the investor-state platform. The modern investment laws demonstrate a growing trend for this model, whereas the conventional model of country v. country is now becoming increasingly rare. A few BITs also have the provision of requiring investors to undertake all potential local remedies before moving onto arbitration for their cases(Schwebel, 2004).

The draft of MAI was made with intent to create a particular dispute settlement provision that would facilitate cases on both formats. For investor-state conflicts, the investor would select if whether to relay the case to a competent court(Hallward-Driemeier, 2003). The agenda of the resolution would be to attempt resolving the dispute through any of the resolution measures that were consented by either parties since before the actual dispute had risen. Likewise, contracting parties would provide complete consent to provision of dispute to arbitration through ICSID, UNCITRAL, and ICC(Benacek, Gronicki, Holland, & Sass, 2000).

2.5.1.2 CONSENT REQUIREMENT

Consent is an essential requirement for the entire dispute resolution process. It forms the fundament of justice without which the case cannot proceed any further. It is of fundamental importance that when international courts arbitrate on a case, the consent of all parties in the case must be acquired and presented(Lowenfeld, 2003).

Therefore, international arbitration is derived on the consent of all involved parties to solve all of their conflicts and disputes in front of a court(Wang & Magnus, 1992). The consent has to be presented in a written form. A consent might also be acquired in the form of an investment contract, which was originally signed by the involved parties and potentially contains agreed-upon provisions through which the case will be arbitrated(Lowenfeld, 2003). The provision might enlist how the arbitration will be exercised, and what body will preside over it. Consent is an essential requirement for all events in the case, ranging from consultation to negotiation and lasting till arbitration. Furthermore, it a common cause that where parties have given their express consent to dispute resolution, it will be impossible for them to remove their consent. A consent can only be removed if all involved parties are willing to remove their consent(Franck, 2004). Furthermore, once the process has been started, any set of local remedies are restricted, with the sole exception being a part of original contract mandating such to happen. As an example, the Washington Convention Article 25 (1) mandates consent from all parties involved in conflict resolution on either a specific agreement or in relation to a specific dispute. Nonetheless, it facilitates that consent of parties cannot be removed. Likewise, the UN Convention on Jurisdictional Immunities of States and their Property Article 7 states that a country cannot obtain immunity from jurisdiction under a proceeding in front a court from another country in case that the country provided its express agreement to the entire event. The written consent then serves as a grant of authority to the legal body undertaking arbitration(Waelde & Kolo, 2001).

2.5.1.3 INDEPENDENCE AND IMPARTIALITY

It is a rather common inference that a court presiding over a case should be completely independent and impartial. The principle of impartiality and independence holds paramount importance to the process of dispute settlement. In a traditional sense, arbitration in front of an independent court is viewed as the most effective method of safeguarding total justice in dispute resolution(Douglas, 2009).

International Bar Association (IBA) guidelines on Conflict of Interest in International Arbitration part 1 states the fundamental principle of arbitrator impartiality and independence and facilitates that all arbitrators should be autonomous and impartial from the time of admission of the conflict and throughout the process of arbitration, ending after the point of which the conclusion of the case is granted(Lowenfeld, 2003).

There are numerous international investment treaties that facilitate conflict settlement by requiring arbitration of conflicts to be placed under autonomous and impartial bodies. The ICSID Arbitration Rules necessitate arbitrators to implement impartial and autonomous judgement(Lim, 2001). Furthermore, Rule 11 of the ICC requires arbitrators to be autonomous and impartial from all of the involved parties in the case. In similar manner, the Arbitration Rules of the Arbitration Institution of the SCC Article 14 (1) necessitates all arbitrators to remain impartial and independent. This is further reinforced by Article 14 (2) which contributes that arbitrators need to specify any potential doubts though which their impartialness or autonomy might be compromised for the case. Rule 10 of the PCA asserts that an arbitrator remains open to be challenged if there is reasonable doubt that their autonomy and impartialness to preside over the case might be compromised(Dees, 1998). The NAFTA Article 1139 creates a provision for investment dispute settlements that guarantees both equal treatment to the principle of international collaboration and due process in front of an autonomous court(Wei, 2000).

The *ConocoPhillips v. Venezuela* court case elaborated that the reason of autonomy and impartiality necessities would be the safeguard parties from arbitrators that have been influenced from any factor that does not has a relation with the case merits(Tudor, 2008). The *Suez vs. Argentina* court gave the opinion that autonomy and impartiality are conditions of the mind. The court further stated that creating evidence on the mind condition is rather impossible, inferring that challenges against a court’s autonomy and impartiality has to be communed through the court’s actions and through the action of parties directly associated with the case. Furthermore, the *UrbaseSa v. Argentina* tribunal elaborated that either autonomy and impartiality are considered of equal pertinence and content under the framework of the Washing Conventional Article 14 (1) and 57(McLachlan, 2008).

Impartiality refers to an arbitrator's subjective relation to the parties or case issue, and the mental condition of the person. In accordance with the IBA Rules of Ethics Paragraph 3 (1) which an arbitrator is in support of a party or outcome, the arbitrator can be considered partial and therefore wrong to preside over the case(Dolzer R. , 2005).

Autonomy is referred to be associated with the arbitrator's objective relation to the parties or case issue. Impartiality refers to a lack of relations under a party that could influence the arbitrator. The *Suez v. Argentina* court specified that in elaborating a lack of corporeal autonomous judgement, the concerned party must provide substantial facts, evidences, and argument that would be sufficient to convince that the arbitrator is influenced towards a certain party or outcome(Borensztein, Gregorio, & Jong-Wha, 1998). The tribunal recommended that the linguistics featured in the Washington Convention Article 57 places a rather considerable burden of proof towards the concerned parties to facilitate sufficient evidence and arguments that the alleged arbitrator is not fully impartial and autonomous(Miller, 1959).

2.5.1.4 ENFORCEMENT OF AWARDS

Amongst the most essential problems for foreign investments is the implementation of the acquired judgement, whether it be on the organizational or national level. It is acknowledged that arbitral awards have no purpose if they have no legal enforcement. Generally, host countries do not accept the implementation of awards from international courts, particularly if the award is not in their favour. The main argument is that the tribunal does not has jurisdiction in the host country(Guisinger, 1986).

A majority of international investments provisions do not provide any measure of enforcement, and rather leave the entire issue to domestic laws or relevant treaties. The New York Convention regulates the identification and implementation of awards in international conflict resolution. The implementation of ICSID reward is facilitated under the Washington Convention(Aharoni, 1966). The convention Article 54 (1) states that contracting parties will need to recognize the award from arbitration as binding, therefore completing all the obligations entailed under the award. The conventional preamble identifies that reciprocal consent from parties to arbitration or conciliation forms a binding agreement that necessitates in specific any award that could be complied to(Asiedu, 2006).

Non-ICSID awards are binding under conventional rules regulating the identification and implementation of arbitral awards facilitated by national laws, the New York Convention – concerned with the implementation of awards in international commercial arbitration and other appropriate treaties, giving them principle role towards domestic legal bodies(Douglas, 2009). The New York Convention Article III mandates contracting states to identify arbitral awards to be binding and implement them in accordance to the procedures of territory upon which the award is based. Article V provides a comprehensive list on the number of reasons upon which identification and implementation of the award might be rejected. If a requirement to follow the arbitral award is facilitated through the investment treaty, all citations to the New York Conventional has to be regarded as the surplus(Fawcett & Janeen, 2008).

Article 35 of UNCITRAL model law on International Commercial Arbitration facilitates that an award, regardless of the state under which it was given, has to be recognized as binding and has to be implemented in accordance to the provision of Article 36(Elkins, Andrew, & Beth, 2006). The PCA Optional Rules Article 32 (2) for arbitrating disputes between two parties, of which one is a country declares that an award has binding and conclusive relevance on both parties. In a similar manner, Article 40 of the Arbitration Rules of the Arbitration Institute of the SCC recommends that awards are final and binding, and therefore should be implemented with no delay or conflict(Lowenfeld, 2003).

This chapter has thus far discussed, *inter alia,* that governments have the complete authority to regulate the entrance of investors into its markets. The necessary conditions and contexts were also described. Other essential concepts were also understood, i.e. liberalization, modes of investment, NT and MFN, and arbitration among other elements. In essence, this chapter has covered the essential meaning and practices of international investments and its characteristics, including the conventional and modern standards and practices.

3 METHODOLOGY

This section presents the methodology employed in this research. The design and scope of this research will be explored in this research. Relevant methods for data collection will be explored as well. Other important information pertaining to this research, including potential limitations and ethical considerations will be explored in this section as well.

3.1 RESEARCH DESIGN

The fundamental design of this research is qualitative. It seeks to understand the different procedures employed in the Azerbaijan legal and economic system towards foreign investments. In specific, this research will focus on state contracts as a medium to understand the country's reception to foreign investments. This research intends to fulfil its objectives through a systemic review of relevant, credible, and official sources.

Foremost, relevant literature on Azerbaijan's legal system will be consulted. Important information on how foreign contracts are played out, settled, disputed, or dissolved will be understood. Afterwards, information on historical foreign investments will be acquired as well. This includes reviewing major state contracts with foreign investors, as well as case studies of various foreign investments in the country. Focus will be on understanding the effectiveness of the current legal and economic framework to support foreign investments.

Through the presentation of vital information and case studies, this research will attempt to reason an objective conclusion. This conclusion will be towards if whether the present incarnation of economic laws in the county are receptive for foreign investment.

3.2 RESEARCH SCOPE

The scope of this research is to grasp foreign investment laws in the Azerbaijani context. It attempts to understand if whether the current legal and economic framework of the country is receptive and attractive for foreign investments. This scope is expansive, and covers the entire economy of Azerbaijan rather than any specific business sector. The empowerment behind this idea is that the national economy is struggling due to a lack of robust economic activities in the country, declining foreign investment and low global oil prices. All these elements have triggered an economic depression in the country.

The factor of interest here is that foreign investment has been the single most significant source for economic development in Azerbaijan. In particular, the oil extraction sector has received the highest proportion of foreign investments. As the potential to invest in the oil sector has mitigated due to limited resources and high competition, the country now needs to seek alternative business sectors for foreign investment. However, there is no apparent solution to this. As such, understanding if whether present laws are receptive to foreign investors will be a major boon. Appropriately, the literature review has covered the benefits and drawbacks of foreign investments. Completing its specified objectives, this research will aim to reach a recommendation on the importance of localization for the acquirement of competitive business advantage in the Azerbaijani markets.

There are numerous limitations to this research design. This research does not follow a theoretical framework for qualitative research, and makes its own model of elaboration. This model is quite untested, and might not lead the most effective results. In a similar manner, this research does not collect any new data. Rather this research is based on the collection of existing data and its interpretation, based on the tenants of reason and logic obtained through an extensive literature review. Had this research collected new data as part of its fulfilment, the value of results would have been greater. Nonetheless, owning to a lack of resources, the present methodology was selected as the best possible, efficient alternative towards credibly completing the specified research aims and objectives.

3.3 ETHICAL CONSIDERATIONS

A number of important ethical considerations were taken into account for the completion of this research. It is of essential importance for research to be ethically acceptable, as that they should be derived from credible sources and provide an honest and factual insight, rather than a subjective insight that has no objective implementation. This subsection will elaborate only the most significant considerations, given space constraints.

The most significant ethical consideration was the processing of results. It was ensured that no information is altered or taken out of context through a biased interpretation. All interpretation was done in accordance to the announced understanding gained from the literature review. It was also ensured that all of the information and data collected for the completion of this research was obtained from legal and credible sources. This includes creating a strict criteria for the incursion of academic journal articles and other sources of information. Only articles published in credible journals were accepted. Reports were acquired directly from credible international organizations, or portals of the Azerbaijani government. All non-credible and open sources such as websites and blogs were ignored as part of the criteria for information collection. In a similar manner, another ethical consideration was to make sure that all resource objectives and aims were clearly communicated. This is to make sure that the audience understands and appreciates the full scope of this research, and to make sure that the interpretation does not overstep its specified boundaries.

4 A CASE OF AZERBAIJAN: LEGAL FRAMEWORK FOR FDI AND ANALYSIS

4.1 BITS WITH AZERBAIJAN

The fundamental objective of Azerbaijan's BIT are to enhance bilateral exchange of technology and capital with trading countries, ensuring the sustenance and safety of investors. In consistency to these aforementioned elements, BIT concludes with nations featuring substantial investor relations with Azerbaijan or featuring an effective potential to, or with countries featuring effective development potential.

Azerbaijan has, till date, engaged in BITs with at least 44 different developed economies, including developed European and North American countries, as well as different developing countries such as Russia and Turkey. A country's admission into a BIT is not a direct guarantee for it to receive foreign investment, given that a foreign investor will only considering an investment is the country has any attractive or distinctive features, i.e. talented workforce, natural resources, infrastructure, developed nature of local markets and other factors. A BIT between two countries generally decreases political problems in investing in either countries (McGhie, 1999).

Nonetheless, a number of BITs implemented by Azerbaijan have never been published, despite having been accepted and passed by the Azerbaijan parliament. The 98th provision in Azerbaijani Constitution states that "If not specified otherwise in the law and decree of MilliMajlis [parliament] of Azerbaijani Republic themselves the law and decree become valid from the date of their publication" (Constitution of Azerbaijan Republic). As observed in this provision, the lack of disclosure and transparency of these legislations raises serious questions about these treaties. Foreign investors who might be willing to invest in the country might need to contact and requisition these treaties and their details, making the entire process unattractive for them. This is a dangerous trend from the government, particularly given that transparency is a very important element of attracting foreign investments.

4.1.1 TREATIES PREAMBLE

The preamble to Azerbaijan's BITs, the parties' wish is represented as "to intensify economic cooperation to the mutual benefit of both countries and to maintain fair and equitable conditions for investments by investors of one Contracting party in the territory of the other contracting party as a way for simulation of business initiatives and flow of capital." Some BITs signed with countries such as Pakistan, Iran and France also provide details on technology transfer. The Azerbaijan's BIT with the USA feature details on greater living standards, improved worker rights, and maintenance of proper environmental, safety, and health measures. Likewise, BITs signed with Syrian, Estonia and Albania include provision on public health improvement and sustainable development. Furthermore, BITs signed with Austria provides commitments for compliance to international standards. BITs signed with Lebanon, Pakistan, and USA also facilitate objectives such as maximum and efficient used of all present economic resources.

A common factor about the BITs that have been engaged by Azerbaijan is that their definition on the terms "investor, return, investment, and territory" are consistent with international standards. All investments feature complete definition of the entire investment and involved assets, involving an expansive list of investment forms. The concept of investment in Azerbaijan is covered in the initial section of BITs, categorized into two different parts

Azerbaijan's BITs make a clear distinction that investment lists are expansive and inclusive, representing a trend towards a larger context off protection under BITs for investments. Nonetheless, the country's BIT with USA facilitates a broad and effective definition (McGhie, 1999). In a similar manner, Azerbaijan's treaty with Croatia facilitates an added paragraph when explaining the definition of investment.

4.1.2 Regulatory Transparency in Azerbaijan

The past several years has seen a considerable increase in Azerbaijan government's attention on the mitigation of corruption from the governance system. The government has attempted to implement greater transparency and efficient legislature to facilitate better governing rules for the entire system. Legislative, regulative, and accounting frameworks are progressing towards international norms. Nonetheless, recurrent issues with transparency and rampant corruption even in the public regulatory system poses a significant challenge towards the country's growth. The government needs to create informal processes for regulation of the system, operated through the private sector. At present, the country's problems with corruption and transparency pose a considerable threat to sustenance of foreign investments in the country(Pashayev, 2013).

In 2013, the Azerbaijan government implemented a new law, legislating mandatory inspection of entrepreneurial businesses and the creation of sufficient business rights. This new legislation broken down businesses into three distinctive groups; high, medium, and low risks. Businesses were assigned to these categories by their regulative inspections. A business whose owners have maintained a clear or minimal criminal record will have to face few inspections and will get lesser opportunities to receive payments from informal channels (Pashayev, 2013).

In 2011, the Azerbaijan government established a new legislature on Law on License and Permits. The Azerbaijan government requisitioned the support of other governments including the United States, in the development of this legislature. Nevertheless, even though Azerbaijan had initially declared its intention to adhere to the International Financial Reporting Standards by 2009 in 29 different sectors, only three sectors (energy, finance, and banking) have successfully implemented the standards(US Department of State, 2015).

4.1.3 Capital Markets and Portfolio Investment

The country's financial sector remains quite undeveloped and slow, with banks alone accounting for over 90% of the entire volume, disallowing progressive economy, growth, and diversification. Other parts of the financial markets, i.e. capital markets and insurance are still undeveloped. The market does not provide enough liquidity and is even harder for businesses to exit, making it an unattractive choice for businesses. The Azerbaijan government, however, has made some progress such as by accepting IMF Article VIII by avoiding constraints and limitations on transfers and payments for current international transactions, while also facilitating credit on market terms. Businesses are granted access to credit in the domestic market, giving private sector businesses a wide array of crediting solutions to choose from.

4.1.4 Dispute Settlement: Legal System

The Azerbaijani legal system is centred on Civil Laws. All conflicts and disputes between the government (including held public organizations) and foreign investors will undergo resolution in three different ways. One is conflict resolution held by a court, the second is arbitration, and the third is arbitration from an international body. Nevertheless, the present legal process cannot be depended on. Though the Azerbaijani government claims to have made law friendly for foreign investors, foreign businesses tend to be at risk when competing against politically-connected domestic businesses.

The judicial structure of Azerbaijan includes the Constitutional Court, Supreme Court, and different appellate courts that include trial and specialized courts. The Supreme Court is the dominant structure, having departments on economic, administrative, criminal, military, and civil sectors. The legal system maintains a decent standard of transparency in operations, necessarily publishing the proceedings of all cases heard and resolved in the court (US Department of State, 2015).

Azerbaijan's Civil Procedure Code is the central legislative guiding the enforcement of foreign judgements in the Azerbaijan context. The government facilitates the application of foreign judgements if both parties are agreed to that sort of regulation. However, it is necessary that the foreign judgement does not threaten or bypass domestic laws, in which case the same will be disallowed. One such example is the country's 2001 trade treaty with the United States, allowing US businesses to attain dispute resolution services from the International Centre for the Settlement of Investment Disputes (US Department of State, 2015).

The Law on Protection of Foreign Investments, being legislated back in 1992, facilitates important guidelines to foreign businesses looking to complete dispute resolution through appropriate dispute resolution channels or the Azerbaijan legal system. The former might include international arbitration, from entities existing either in Azerbaijan or other countries. During 1999, the Azerbaijan government implemented the Law on International Arbitration, facilitating arbitration from international entities if so be required(Pashayev, 2013).

The Azerbaijan government has also gained admission in various bilateral trading agreements, mostly with neighbour countries, to implement a strong case of foreign judgements, an essential element of Commonwealth of Independent States (CIS) 20004 convention. Furthermore, Azerbaijan is a part of convention titled Resoling Business Disputes implemented in 1992. The country is also aaprt of the Multilateral Interment Guarantee Agency.

The government's bankruptcy laws are problematic given their poor performance and rare application, which continue to be a problem with economic sustenance and progression, given that international crediting agencies score Azerbaijan's credibility at low levels. The current legal system maintains that bankruptcy can be filed by a debtor who is facing a bankrupt situation, or a creditor to the debtor. The mainstay of resolution is focused on liquidation, with most court proceedings leading to a multiple-year rehabilitation plan.

The Azerbaijan government does not have any specific disputes or issues with foreign investors operating in the country, with the past decade being free from any conflicts. This is a positive outcome, representing the government itself tries to maintain a positive and constructive environment to avoid poor outcomes with foreign investors.

4.2 LAW ON PROTECTION OF FOREIGN INVESTMENT

Amongst the first initiatives taken by the Azerbaijani government was the creation of a powerful legislative framework that could facilitate admission of foreign investments into the country. This came in 1992 in the form of Law on Protection of Foreign Investment, representing a major importance to foreign businesses, particular from countries that have not been covered in an existing BIT or trading agreement with Azerbaijan and other countries. In such cases, foreign investment laws are considered on the same scale as domestic laws when considering a foreign business (Huang & Candidate, 2016).

According to the Azerbaijan government, the main definition of foreign investment refers to "any kind of property and proprietary rights, including right for results of intellectual activity and other immaterial rights being contributed by foreign investors to objects of business activity and other kinds of activity with the objective of obtaining the profits". The third article of this law recommends that foreign businesses and investors might be allowed to invest in the country through the following channels(Bayulgen, 2005):

- A collective entity formed with partnership with a local business.
- Creation of a business with sole-ownership of foreign investors.
- Purchasing of assets and infrastructure that might be purchasable by foreign entities.
- Acquirement of land rights and permits for exploring different natural resources, as issued by the Azerbaijani government.

The second article of this law classifies foreign investor as either foreign citizens, legal entities, foreign countries, and international organizations. The modes of admission defined above are consistent across these different classifications. Nevertheless, the law avoids make any explicit reference to terms such as ‘foreign investment dispute’, ‘territory’, and ‘income’. This is a confusing and negative element, as that the government is avoiding potential challenges when it comes to dispute resolution. This problem should be necessarily resolved in order to make Azerbaijan an attractive entity for investments(Bayulgen, 2005).

4.3 FOREIGN INVESTMENT ADMISSION

The 1992 Law on Protection of Foreign Investment was implemented with the idea of making Azerbaijan an effective recipient of foreign investors, allowing the country to effectively utilize foreign materials and access to robust financial sector, transitioning the country into positive development, technology, and perseverance of foreign investors. With exception of a few activities that might be possible following a special permit, foreign corporations could participate in a variety of activities not disallowed by the laws. A certain few territorial restrictions might apply to foreign investors, particularly relevant to defence sectors, national security, and environmental conservation (Dolzer & Christoph, 2012). The aforementioned trend adheres completely to the guidelines prescribed by the World Bank for effective admission of foreign investment.

4.3.1 FOREIGN INVESTMENT TREATMENT

The fifth article of the 1992 Law on Protection of Foreign Investment declares national principles towards treatment of foreign businesses and investors, asserting that legal regime and activities of foreign investors in relation to their application might not be any preferable than regime for land, proprietary rights, as well as implementing legal entity activities.

The law facilitates numerous guarantees to foreign investors, including Guarantee to access profits, transfer profits in a foreign currency, security from investment cancellation, compensation for losses caused by government, protection against nationalization, protection against sudden legislative change, and a recognition of their investment as foreign investment (Bayulgen, 2005).

Regarding legal safety, the ninth article states that foreign investors in Azerbaijan will have complete legal support under the current law and all applicable laws relevant to businesses operating in the country in general. The tenth article of it recommends a decade-long safety net for foreign investors in the case of fundamental legislative chances in the country, promising that foreign investors will only have to follow the legal system that was implemented as the time of their arrival in the country and they will not be subject to changing laws until after ten years have passed. There are certain exceptions to this promise, when changes in laws concerning defence, national security, environmental conservatism, public health, and public morals are considered and implemented.

The eleventh article recommends protection against nationalization of private assets. The law recognizes that such a practice is harmful for the national economy. The law promises that foreign investors will not be subject to such behaviour, however, requisition of assets will be in order in the cases of natural disasters, accidents, epidemics and other unexpected situations (Coskun & Mammadova, 2015). The law also promises that in the case of nationalization or requisition, appropriate measures will be taken to compensate foreign investors fully and effectively, being emphasized as “prompt, adequate, and effective.” These standards seem once again consistent those prescribed by the World Bank.

4.3.2 Labour Laws

Labour and employment laws are an important part of considering foreign investments, particularly relevant to FDI. Azerbaijan regulates the labour structure of businesses through its law called the Labour Code, supported by a wide variety of other relevant local laws that might be of influence.

A positive element about Azerbaijan is that the government does not facilitate any bias or distinction between different sort of workers. Both local and foreign workers are considered the same, although the latter has to acquire work permit from appropriate government sources. One flexibility is that the Azerbaijan government provides work permits for customized durations, though generally for only a single year, that can be extended indefinitely for as long as appropriate working contract with another business exists(Dolzer & Schreuer, 2012).

4.3.3 Recent Foreign Investment Reforms

The past decade has observed a tremendous increase in the focus of Azerbaijani government in relation to reforming the legal framework to make the country more attractive to foreign investors. One such measure is the creation of Azerbaijan Investment Company in 2006, where the main purpose was to provide more equity to domestic and foreign investors, pioneered by the government to stimulate economic growth and sustenance in the local markets.

The next important step taken was the creation of one-stop solutions, as explored prior in this paper, this new solution centralized the creation and registration of a new business, making it much easier for businesses to gain incorporation status and to conduct business in the country. In 2009, the government attempted to strengthen smaller foreign and domestic enterprises by passing a law titled "The Law on Special Economic Zones." Though the law introduced refined and categorized existing business sectors and characteristics (simplification), the law did not actually create any SEZs, which have been a positive and attractive investment choice for foreign investors(Hubner, 2011).

4.4 ANALYSIS OF AZERBAIJAN'S FDI CHALLENGES AND PERSPECTIVES

Azerbaijan's performance against the criteria of proper investment-friendly investment laws demonstrates a unique development path compared to the nominal CIS performance, particularly given its tremendous reserves of hydrocarbon. Foremost, following its independence, Azerbaijan managed to attract rather significant amount of foreign investment, a supermajority of which could be categorized as Foreign Direct Investment. This foreign investment began during the latter part of the 1990 decade, though there is another smaller period of foreign inflow, in particular for construction of the Supsa line to create a direct oil line leading into Georgia(Hubner, 2010). The bigger investment flow sustained for nearly a decade, lasting until 2007. Throughout 1993 and leading to 2010, Azerbaijan's total received foreign investment valued up to 54.3 billion USD (IMF, 2010). A majority 36.6 billion USD was accumulated through FDI. In a similar manner, investment focus on fixed capital progressed in concurrence, accounting for roughly half of the entire foreign investment, at 27 billion USD(Central Bank of Azerbaijan, 2011)

In accordance to the country's capital account details, Azerbaijan received foreign direct investment amounting up to 4 billion USD on a netter base. Though the country had a population of only 9 million residents, it featured a net FDI per capita valued at 450 USD towards the end of 2010(State Statistic Committee, 2010). This figure dominates similar measures in others, more developed European countries. An initial impression demonstrates that these figures are rather decent. However, the tremendous spike in foreign investments observed throughout the world during the years 2005 leading to 2009. Azerbaijan was a recipient of this global trend, when the tremendous amounts of capital entered into the local economy, revitalising and stimulating its growth. Therefore, caution should be exercised when considering Azerbaijan's status in foreign investments, given that a supermajority of these investments were centred on the oil sector (Pashayev, 2013).Virtually all foreign investments coming into the country are focused on resource exploitation, taking advantage of the country’s rich resources, both in volume and diversity. This can be observed with the fact that only 12% of foreign investments in Azerbaijan went towards non-oil sectors (World Bank Group, 2015). The largest foreign investor in the country, British Petroleum, is an oil-focused company. Likewise, other largest foreign investors include Lukoil, Statoil, Itochu, Exxon, Amoco and Unocal. All these companies are oil companies hailing from different regions of the globe.

The volume of non-oil FDI accounted at a meagre 4.4 billion USD since 1993, demonstrating only minimal increasing during the past few years(State Statistical Committee, 2015). A detailed overview of the non-Oil investments demonstrates a similar trend, where investments tend to be focused on certain business sectors rather than the wider economy. In this perspective, the top investors in the country are once again the United Kingdom, United States, and Turkey. These investments are largely concentrated in business sectors with higher market potential and non-tradeable goods, i.e. services. These sectors include telecommunications (invested on by the United States and Turkey). Food and beverage businesses are also invested on from other countries (i.e. Coca Cola Turkey). Other smaller sectors include tourism, whereby entire hotels are owned by foreign corporations(Hubner, 2010).

4.4.1 Qualitative and Quantitative Aspects

Under a diversified setting, FDI can lead to a tremendous boon on the local technology and know-how, involvement in the global economy, and creation of a robust financial sector that can trigger further economic development. Foreign investments also create local employments and increase national prosperity. Likewise, these factors also affect the education sector, given that the experience of the entire national workforce increase with the import of knowledge and technology. This progress is often concentrated on Research and Development activities. There appears to be a strong causation between economic development and foreign direct investments. This is apparent when observing Azerbaijan, where the significant economic boon triggered by oil investments lead to development and progression in other economic sectors as well, including construction, transportation, and finance(Bayulgen, 2005).

The Azerbaijan government spares no effort to praise its own performance over attracting foreign investment, and stimulating economic development throughout the country. The main indicators highlighted by the government include the chartered poverty rate and investment ratings by foreign crediting agencies. The government claims that it has reduced unemployment by almost a half, leading to national unemployment levels below the 10% mark(Hubner, 2011). One must give appropriate praise to these achievements, as they have changed the Azerbaijan economy. This economic success is emboldened through the wide and prosperous urban developments and skyscrapers showing Baku's economic prosperity. However, the problem with this approach is that it is purely quantitative rather than qualitative (Ciarreta & Nasirov, 2012). The government fails to credit the fact that FDI is rarely ever directed outside the Oil industry. It also does not spread the fact that investors tend to avoid Azerbaijan for efficient power projects, but rather as a marketplace for selling products.

The extent to which market and resource-seeking investments contribute towards economic development can be argued, for example, though the oil sector accounts for about half of Azerbaijan's GDP, the oil sector itself receives more than 88% of the country's entire foreign investment(Hubner, 2010). Interestingly, the proportion of employees in the mining sector of the national workforce accounted for only a mere one percent, or forty-one thousand workers, which means that there was at least one million USD of foreign investment per worker in the previous twenty years. In comparison, foreign investments in other sectors, i.e. Agriculture was a mere 4.5 million USD in the past twenty years. This is less than 1% of the aggregate foreign investment received. At the same time, agriculture dominates the national workforce, employing roughly 40% of the entire population. Whereas the FDI per capita in the oil sector was 450 USD, the agriculture sector's FDI per capita is a mere 3 USD (Hubner, 2011). This is a shocking figure for an industry that is 500 times the size of the mining sector, although it is still smaller than the construction, tourism, and transportation sector. Nevertheless, these statistics represent an important insight into wealth distribution in Azerbaijan's economy (Huang & Candidate, 2016).

Despite this rather bleak picture, there is no imminent threat to Azerbaijan's economic sustenance. However, the long-term survivability solely on the oil sector is a factor of doubt and dispute. It is rather unstable to continue this long-standing dependence on a single sector for economic development, particularly given that these resources are finite, and the fact that as technology progresses, the global dependence on oil might decrease in the future.

4.4.2 Constraints and Opportunities for FDI in Azerbaijan

There exist multiple reasons for Azerbaijan's investment attractiveness beyond its oil industry. The global perception of Azerbaijan is that of an autocratic government where corruption is rampant, markets and economic sectors are informal and poorly regulated, established monopolies in certain markets, and overall poor economic condition and performance beyond its famous oil sector. The established regulatory institutions are evidently in their adolescence, not having developed to the point of effectively managing an economy and market the size of Azerbaijan. There is a major lack of transparency as well. The domestic market, already small, is further slowed due to regional trading barriers. In this perspective, the World Bank ranks Azerbaijan in the ranks of poorest performing countries. The country's banking and financial sector is also small and undeveloped, with minimal investments coming from foreign countries. The government maintains a high proportion of state-owned assets. The stable nature of Azerbaijan currency until 2015, though it was positive for Azerbaijan nationals, did not represent attractiveness to foreign investors who would rather perform on a weaker currency as it complements attractive foreign exchange rates. Likewise, Azerbaijan is still as lack of joining the World Trade Organization, despite having started negotiations for entrance way back in 1997. The geopolitical situation of the country does not play to its benefit either, given its underlying territorial dispute with Armenia in the Nagoro-Karabakh region (Hubner, 2011).

On a lighter perspective, the Azerbaijan government has implemented various legal reforms to stimulate economic freedom in various parts of the economy. The government has signed into different international trading treaties and implemented regulations to stimulate business growth. One of the government's effective measures to boost investment was the creation of

Azerbaijan Investment Company, and self-promotion on the global stage through AZPROMO. The government also created an expansive solution for investors to easily enter local markets. The government reduced corporate taxation by 4%, reducing it to 20%(US Department of State, 2015). The government also encouraged the strengthening of the banking sector, encouraging the sector to offer positive interest rates and reduced collateral requirements compared to other countries in the region (Coskun & Mammadova, 2015). Furthermore, the past four years have witnessed an increase in foreign investment entering non-oil sectors.

There are two prominent indices used to gauge a country's potential of conducting profitable business. These are the *Index of Economic Freedom* published by collaborating of Dow Jones & Company and the Heritage Foundation. The other is the *Doing Business Report* published by the World Bank. The latter has a refined focus on formal elements of business in a nation. In this perspective, Azerbaijan was ranked amongst the top reformer in the year 2009, ascending the ranks by many dozens, holding the 33rd position. However, this achievement was short-lived and Azerbaijan's rank declined again in the following year. The former index ranked Azerbaijan at a mere 92nd position in 2011, placing it well below its neighbour countries including Armenia and Georgia. The former index is focused more on ground-reality, as it is the gauged opinion of professional businessmen. In this perspective, Azerbaijan is a powerful performer in terms of financial freedom, business freedom, and labour freedom. However, the country's performance in terms of corruption and property rights is very low, with the former ranked at 143rd (Hubner, 2011).

5 CONCLUSION

The lack of a binding and expansive agreement in the international community in regards to investment contracts means that there is significant amount of complexity when it comes to elaborating the generally consented standards on the safeguarding of foreign investment. As compared to other areas of international agreements that all have clear structure and methodologies in terms of law and legal policies, the context of International Investments is lacking the same. In contrast, it depends on investment treaties and international agreements to come up with a coherent legal structure. This fragmented nature is often considered a source of uncertainty and recurrent conflict, particularly when covering investors who are about to invest in a country with whom their home country does not has any specific trading treaty or formal relation. Nevertheless, as has been demonstrated thus far by the arguments of this paper, the creation of a minimal international standard for the protection of international investments is already underway.

Azerbaijan has developed from rags to riches in a phenomenal manner, showcasing a positive outlook to the world. However, hidden beneath this sudden prosperity is an unstable foundation grounded on a finite resource. The objective of this research was to understand the effectiveness and friendliness of Azerbaijan's laws in context of foreign investment. A literature review was specified, detailing various international standards. It was found that international standards in context of foreign investments are very well developed and expansive.

The understanding gained through the review was then applied to the analysis of this paper, which demonstrated that Azerbaijan has actively sought and depended on foreign investment since its independence in in 1991; the government has attempted and challenged to create Azerbaijan as an attractive market. It has been seen that the bulk of foreign investment entering Azerbaijan is focused solely on the oil market, demonstrating Azerbaijan's unattractiveness to other sort of foreign investments, despite having a highly literate population. Although, liberalisation measures in registration of a small and medium business in the country as entity is slightly simplified through one-stop solutions introduced by the Azeri government (Hubner, 2010).

As part of this analysis, the research aims specified in the first section were answered as well. It was discovered that though Azerbaijan has a strong and competitive foreign investment law, the government's attitude towards non-Oil sectors is depressing and the main reason behind the slow growth of foreign investments in the country. It was also recognized that this focus on oil sector is unsustainable because it is a finite resource.

The reason behind this unattractiveness could be the various limitations that have been exposed in the Analysis. The rampant corruption and key legal weaknesses in legislature might be a blockade to foreign investments, especially given that recent few years has seen a slight increase in non-oil sector foreign investments. This paper also established that current trend of foreign investments is simply not sustainable because oil is a finite resource and investments will end when the oil ends. In such perspectives, the research objectives and questions that were specified in the first section have been effectively answered and completed in the previous chapter.

During assessment of the domestic investment policies in Azerbaijan, one trend was apparent that the country has a positive and friendly attitude to foreign invest. A range of local laws in Azerbaijani pertaining to investment accredit foreign investors to the same treatment standards as national investors, creating a system based on equality and harmony. Nevertheless, there have been instances where the rights of foreign investors have been constrained, for example, constraints on foreign equity ownership in the country's media sector.

Moreover, one discriminatory element recognized in this research is that the Azerbaijani government does not bestow the same extent of attention and care to other business sectors as compared to the oil and gas sector, and that particularly to foreign investors. The extensive focus on the oil sector means that other sectors of the local economy do not receive as much investments from foreigners, therefore lowering their effectiveness.

It is expected that Azerbaijan will gain complete membership status in the World Trade Organization, therefore opening the country to a wide new realm of foreign investment opportunities. It is also expected that this admission will introduce many changes into the national legislature, as that the standards of the WTO tend to be stringent and Azerbaijan would need to comply to them all in order to gain membership in the organization. This major shift might also impact the credibility of government policies and relevant laws, albeit in a positive manner. The provisions required for the WTO will include several key regulations pertaining to investments. Furthermore, it will be the government's responsibility to facilitate equal treatment for national investors and countries inventing from the WTO umbrella. As equitable treatment is also a common part of Azerbaijan's legislature in the form of different BITs that the government has signed with other countries, it can be expected that the WTO will facilitate improved investment outlook to the country.

The assessment of international treaties with a particular focus on BITS, elaborates that Azerbaijan facilitates important types of guarantees to foreign nationals, being in complete compliance to conventional international standards. Nonetheless, from the government perspective, various BITs undertaken by the government have never been implemented despite receiving approval from the parliament. The lack of implementation of signed treaties raised questions on the authenticity and legality of such treatments, regardless, the AzerbaijanAzerbaijani government implements their treaties. This paper makes a conclusion that the government's lack of attention and shortsightedness should not become a long-term trend and rather that legal concerns need to be facilitate more efficiently.

In conclusion, the author has aimed to provide the selected aspects of international and domestic legal framework for foreign direct investments in Azerbaijan. The proposals recommended by the author may help Azerbaijani Government to further develop legal framework for FDI to establish a more favourable investment climate for foreign direct investments in future.

5.1 RECOMMENDATIONS

The analysis of this paper places forth the following recommendations:

- Despite decent performance in legal economic reforms and an expanding economy, there are numerous persistent challenges, specifically geared towards systemic and legal reforms. Expanding economic diversification in this sense might require the government to capitalize on upstream elements of the oil-sector, manufacturing sector, and the services sector. This would require the country to improve on its labour and export performance, which could be facilitated through import of new technology, human expertise, and know-how.

- Recurrent reforms and restructuring is required to expand on Azerbaijan's experienced and educated national workforce and enhancing the entrepreneurial spirit. Though the country features a high rate of literacy, the workforce is still lacking engineers and specialists in different market sectors. There is a need to introduce investment in the education sector to enhance the country's curriculum. In concurrence, the Transition Report of 2010, published by the EBRD assessed that Azerbaijan's corporations invested much less in Research and Development compared to other similar countries. Thus, per-capita FDI has to be paired with legislature implemented to allow smooth technology and know-how between corporations. The government needs to provide incentives for businesses and corporations to invest in their human capital, particularly in relation to Research and Development activities, as they are precursor to innovative development.
- The AzerbaijanAzerbaijani government need to lend more support to the country's still weak financial and banking sector in order to stimulate and facilitate economic development across various different market and economic sectors. The government has to promote competitive actions and policies, i.e. acquisitions and mergers to create consolidated, powerful financial entities that can stimulate economic activity. If this new legislature approach turns effective, the entrepreneurial base of the country will gain access to financial solutions, facilitating them better business relations.

In conclusion, the government should implement effective and immediate measures to mitigate the high level of corruption prevalent across Azerbaijan's public institutions. The remedy of this infectious problem will mitigate many of the national deficits and shortcomings, i.e. poor financial liberty and poor institutional transparency. It appears that the Azerbaijani government has taken some positive steps since 2011. The exact performance and effectiveness of the government's improvement still remain to be soon. The review of Azerbaijan's future economic performance is one that will take a lot of patience and detailed outlook to gauge, understand, and elaborate.

5.2 LIMITATIONS

There are a number of key limitations of this research. The first limitation is that the analysis focuses solely on Azerbaijan in relevance to its adherence with global standards of foreign investment treatment. It does not offer comparison between different countries that could place a greater context on Azerbaijan's performance relative to other countries, though only a certain few indicators were explored in the Analysis chapter. Another important limitation is that this paper does not expose any explicit case studies of successful or failed investments from the perspective of an investor, that could highlight practical weaknesses in the country's foreign investment platform. This paper has covered only the legal and theoretical basis.

Zusammenfassung der Dissertation auf Deutsch

Der Umfang dieser Forschung ist eine detaillierte Bewertung der internationalen Konzessionsverträge überhaupt und insbesondere in Aserbaidschan, insbesondere die Praktiken und Klauseln in Bezug auf die Zusammenarbeit und die Konzession unter anderen wichtigen Aspekten des Investitionsvertrages. Aus historischer Perspektive wird Aserbaidschanisch weit unter den investitionsfreundlichsten Ländern der Region und sogar in der Welt betrachtet, was vor allem durch seine internationale Auftragsvergabe und Investitionen in den Öl- und Gassektor gezeigt wird.

Daher konzentriert sich diese Forschung auf das Verständnis, wie freundlich und einladend die Investitionsgesetze von Aserbaidschan sind. Es analysiert auch eine Empfehlung darüber, ob die Gesetze und die rechtliche Haltung freundlich und positiv genug sind, um Investitionen von internationalen Gremien zu gewinnen.

Diese Forschung erreicht ihr bestimmtes Ziel durch eine systemische Überprüfung der vorhandenen Daten, sowohl aus akademischen Quellen als auch aus staatlichen Quellen. Die abgedeckten Daten sind eine bestehende Erzählung von Rechtsexperten von Investitionsgesetzen und -politik auf der ganzen Welt und in Aserbaidschan. Diese Forschung sammelt auch offizielle Daten und Informationen über die aktuellen Politiken und wie internationale Verträge in Aserbaidschan festgestellt werden und prüfen früheren Fällen und Gerichtsurteile über vertragliche Streitigkeiten in Bezug auf internationale Investitionen.

Diese Forschung berücksichtigt alle potenziell beeinflussen ethischen Fragen und erleichtert eine Studie, die ethisch akzeptabel ist und hat aussagekräftige Ergebnisse für die praktische Welt.

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