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The Equilibrium of National Sovereignty and Economic Prosperity: A
Legal Economic Analysis of FDI in Iran

Doctor of Philosophy in Law

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Abstract

This Thesis strives to establish a direct correlation between the jeopardised national sovereignty and economic prosperity due to FDI. In order to elaborate the argument, the first chapter sets forth the key determinants of FDI. This will assist in explaining the destinations and the fields of investment, which are of interest to the FDI exporters. The second chapter presents the evolution of economic trends in the past 100 years in order to examine the impact of different approaches towards FDI. The impact of FDI and globalisation on developing countries is also presented. It is then argued that, although free market economics boost growth, the interference of the state is a necessity in times of crisis. The third chapter incorporates the historic roots of FDI in Iran. It will be argued that the sovereignty of Iran has been gravely endangered as a result of foreign influence, which explains the current mind-set of Iranians in relation to foreign clout. Such influence is evidenced to have taken place through political and economic treaties. The fourth chapter examines the validity of the abovementioned hypothesis in the context of the current political establishment of Iran. The recent history of Iran since 1979 is thus presented with emphasis on the legal and economic evolution of the country decade by decade. It is argued that the key hurdle towards the FDI flow in Iran, has been economic sanctions. It is concluded that, there is a direct correlation between FDI and jeopardised sovereignty, and, in the case of Iran, its endeavour to adhere to international law with view to increase the FDI inflow has been futile.

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Introduction

The ascending trends of nationalism, trade wars and protectionist approach towards markets is challenging the discourse of global integration, which has dominated the economic spectrum of the world in the post-World War II (WWII) era. The concept of globalisation has been embraced by the public, scholars and politicians for decades and have rooted its legal belief on the concept of post sovereignty with the aspiration of global gains. Nonetheless, the aspiration has become obfuscated for various reasons. The Thesis attempts to identify the core of such shift through the analysis of the impact of the Foreign Direct Investment (FDI) and the potential discontent it may convey.

In doing so, chapter one will set forth the global determinants of FDI. This chapter will set the scene and introduce the reader to the globally accepted components of FDI and the desirable destinations for FDI. As the focus of the Thesis is on Iran, the natural resources sector has attracted a considerable level of attention as the key sector of investment. It will be proposed that in this chapter other fields of investment, including the service and manufacturing sector, have high capacity of becoming a FDI hub. Hence, it will be argued that Iran by diversifying its economy through enhancing the identified determinants could attract FDI in the secondary and tertiary fields of investment. Thus, chapter one will answer the basic, yet vital, question of what is FDI and what potentially attracts FDI in a state. In doing so, evidence has been provided from various scholars concentrating on different states and economic zones (Latin American countries, China, West Asian countries, and European countries) and 7 major determinants of FDI have been identified most of which are chiefly of economic nature.¹

In addition, economic data and reports have been gathered and presented by the United Nations Conference on Trade and Development (UNCTAD) and United Nations Commission on International Trade Law (UNCITRAL) to demonstrate the global FDI trends.² Moreover, some verdicts of the International Centre for Settlement of Investment Disputes (ICSID) have been accumulated in order to provide a clear overview on this subject matter. Rudolf Dolzer, Christoph Schreuer, Muthucumaraswamy Sornarajah and Zachary Douglas are the key scholars whose works

¹ Peter Nunnenkamp and Julius Spatz, 'Determinants of FDI in developing countries: Has globalization changed the rules of the game?' (2002) 11 *Transnational Corporations* 1

² World investment report 2017; *Investment and Digital Economy*, (United Nations Publication 2017)

have been relied on in the definitive and conceptualisation part of the Thesis. While there is a clear line of understanding of the subject by the abovementioned scholars, there are minor differences in the findings of the different scholars on the general determinants. This can be attributed to the different geographical focus of their respective researches. These differences indicate that each country and potential FDI destination should be examined on its own merits.

Chapter two will then examine the evolution of the global economic trends since the late 1920s. In doing so, the global economic crisis is used to identify the appropriate remedies which had been applied in 1930s and in 1980s. The first part of this chapter focuses on the contradictory approaches of two prominent economic figures, Keynes (1950s - late 1970s) and Hayek (early 1980s -2008). The pertinence of this historic economic comparison lies in the fact that the former was a profound advocate of state-driven economy within a capitalist market and the latter was an avid advocate of the concept of non-intervention of the state in the economy. It will be argued that each had different approaches towards allocating investment and eventually foreign investment. While Keynes was of the belief that public investment is a necessity in economic turmoil, Hayek postulated that it is the market that should allocate the destination and the scale of the investment.³ While Keynes promoted nationalisations, public expenditure and public investment in order to lower the unemployment rate, for Hayek inhibiting inflation was the ultimate economic responsibility of the state.⁴ It will be illustrated how legal economic approaches, including nationalisation versus deregulation, have shaped not only economic facts, but also the whole socio-political spectrum. The final part of this Thesis argues that, in the absence of FDI and private investment in Iran, mainly as a result of economic sanctions, the inevitable likelihood that the state of Iran would reach for quasi Keynesian methods is considerable. This will increase the role of the government by exerting its sovereign rights over the economy of Iran, but, as it is elaborated in this part, such empowerment of the government and its interference in the market cannot be sustained for ever.

The second part of this chapter will again basis its argument on the impacts of the International Monetary Fund (IMF) on the developing countries. it will be questioned to what extent the IMF was responsible for the unbridled deregulations around the world. In this part of the chapter the discontent that has been created by the global financial integration will be analysed.

³ Friedrich Hayek, *The Road to Serfdom* (Routledge, 2001)

⁴ Ibid

This chapter will establish the existence of an exogenous clout and its ramifications on the economic sovereignty of the FDI recipient countries. To this end, examples will be used from Russia, East Asia and Latin American countries. It will be shown that the sovereignty of the FDI recipient state could be open to threats arising from the very same FDI, which are deemed to contribute to the countries' GDP. It will be posited that the existence of such threat has been an ongoing reality for most developing countries.

It will be in chapter 3 that the main focus of this Thesis, Iran, will come under the spotlight. The reason of examining Iran in chapter 3 is the fact that, without adequate foundation, studying Iran in a vacuum of conceptualisation would have been to no avail. Before moving on to introduce and present the arguments made in chapter 3 and 4 it is necessary to explore the concept of sovereignty.

A key component of this Thesis is the question of Sovereignty. What should be constitute as sovereignty? To what extent sovereign and its legitimacy should be upheld either by domicile subjects or the foreign states? Whence the sovereign obtains its legitimacy? Under what circumstances the sovereign's right may be jeopardised by its foreign enemies? Although these are some of the underlying questions in light of the subject which will be tackled later in this Thesis, there remains issues of Self-determinism and the Rule of Law. While this Thesis strives to answer the questions of sovereignty against the potential encroachments by foreign forces through economic means, it is necessary to explicate and define the concept in this introduction. Not only defining sovereignty is a matter of necessity to familiarise the reader whilst providing an initial understanding of the core of the Thesis, the explanation of this concept against the Rule of Law and Self-determinism is also a vital prerequisite to discern the materials from one another. Perhaps it is valid to presume that, all three principals have one thing in common; the relationship between the ruler and its subjects. Nonetheless, to expound the concept and the relativity of the three principles it is best to start the definitions with the concept of sovereignty.

As it will be observed in the later chapters, precisely in chapter 4, the yardstick of this Thesis to define the concept of sovereignty has been the works of Jean Bodin, Thomas Hobbes and Stephen Krasner. The reason behind the choice of these three scholars and their work have been provided in chapter 4 and in the later part of this introduction. Moreover, in chapter 4 there is an extensive illustration of the Peace of Westphalia in 1648 which resulted in establishment of the concept of Westphalian Sovereignty. Such sovereignty refers to the adherence of the equality of

each state while prohibiting states to interfere in the domestic affairs of one another regardless of their position and power. The Westphalia Sovereignty, its background and the recent exemptions by which countries have in fact undermined the core principles of it, have been extensively studied in chapter 4. As for this part and the introduction to the principle of sovereignty the most comprehensive definition could be of the Declarative Theory of Statehood. This theory was most notably expressed in the Montevideo Convention in 1933.⁵ According to this theory, a state needs to meet four criteria in order to be recognised as a state in the realm of international law; 1. to possess a defined territory, 2. to have a permanent population, 3. to have a government, and 4. The capacity to enter into relationship with other states.⁶ There are two imperative points in the convention; Article 3 of the convention exempts the requirement of the political recognition by other states. This is what distinct the Declarative theory from the Constitutive theory of statehood.⁷ The latter would be part of the definition which Krasner provides in the chapter 4 by which it is expressed that a state obtains its political sovereignty and legitimacy from international recognition by other states. Also, Article 11 of the convention prohibits the establishment of a sovereignty through the use of military force.⁸ This is yet another crucial point as, if this notion was to be taken granted countless states would fail the requirements of the Montevideo Convention; states who have obtained (or were bestowed) their sovereignty as a result of a coup, or separatist movement who have established their sovereignty by the annexation from the original territory and its sovereignty by the use of militia, states who have been given a sovereign-state status by the military forces of a foreign state against the former sovereign of the targeted territory are vivid models of the proposition which negate the requirements of Declarative theory. With regard to Iran, the Ajax coup of 1953 will be referred to as a clear example of the attainment of sovereignty as a result of the foreign led military coup; In 1953 USA and Britain orchestrated a military coup to overthrow the legal and legitimate prime minister of Iran due to the oil nationalisation of Iran.⁹ It will be posited and concluded in chapter 3 that henceforth, the legitimacy of the sovereignty of the Pahlavi Kingdom is questionable, as it was attained through a military coup. Furthermore, in

⁵ Original text of Montevideo Convention 1933:

<https://treaties.un.org/doc/Publication/UNTS/LON/Volume%20165/v165.pdf>

⁶ Hersch Lauterpacht, *Recognition in International Law* (Cambridge University Press 2012) 419

⁷ William Thomas Worster, 'Law, Politics, and The conception of the State in State Recognition Theory' (2009) 27 B.U. Int'l L.J. 115

⁸ Ibid

⁹ The National Security Archive <https://nsarchive2.gwu.edu/NSAEBB/NSAEBB435/>

chapter 2 the Chilean coup of 1973 have been identified as a crucial example of encroached sovereignty by military force and foreign led coup. The similarity of Iran and Chile have been extensively scrutinised in chapter 2.

The issues raised by Article 3 and 11 of the Montevideo Convention perhaps are the overarching piece to link the argument of Sovereignty to that of Self-determinism; The foreign recognition and the use of military force as the prohibited substances to establish a sovereignty. The United Nations adheres and recognises the *jus cogens* nature of the right of Self-determinism¹⁰, based on which people have the right to choose their sovereign. By a historic analysis it can be comprehended that, such notion has been promoted mainly by the powerful states; Fisch has identified that both Vladimir Lenin the founder of the USSR and Woodrow Wilson then president of the United States have been avid supporters of the notion.¹¹ Furthermore in 1941 this principle was explicitly declared in the Article 3 of the Atlantic Charter by US president Roosevelt and Churchill the PM of the United Kingdom.¹²

It can be fathomed that, the key proponent of the notion have been the dominant states of the post-World Wars. Nonetheless it begs the question that to what extent the sovereign states are fully in recognition of the principle? While both principles of Territorial Integrity and the principle of Self-determinism have valid justifications in the international law and concurrently they both enjoy legal protection by the very same international law, there seems to be a contradiction in the academia and in the real world. The most justified and comprehensive source of law to clarify the contradiction is the Helsinki Final Act of 1975 in which the principles have been discerned and the ambiguities have been clarified through legal analysis.¹³ Article 2 reads that: ‘All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.’¹⁴ It can be understood that, the validity of the principle of National Sovereignty (Territorial Integrity) have been given precedent over the principle of Self-determinism according to the Helsinki Final Act.

¹⁰ United Nations General Assembly Resolution 1514 Adopted by the UN General Assembly Resolution 1514 (XV) (14 December 1960)

¹¹ Jörg Fisch, *A History of the Self-Determination of Peoples: The Domestication of an Illusion* (Cambridge University Press 2015)

¹² Original text of Atlantic Charter 1941 <http://avalon.law.yale.edu/wwii/atlantic.asp>

¹³ Original text of Helsinki Final Act of 1975 <https://www.osce.org/helsinki-final-act?download=true>

¹⁴ Ibid

To bring the context into real world few instances can be of assistance to evince the level of concern of the sovereign states over their territorial integrity. As the topic of this Thesis is on Iran, the constitutional law of Iran can direct the proposition; in various articles and chapters of Iran's constitutional law which is codified (as will be extensively explored in chapter 4) Territorial Integrity and the National Sovereignty have been upheld as the utmost duty of the state. Chapter V entirely signifies the concept and values of National Sovereignty.¹⁵ Article 78 not only prohibits the change and intrusion of the Territorial Integrity of the country but also requires 4/5 of parliaments vote to change the interior borders only if it does not jeopardise the Territorial Integrity and the independence of the country.¹⁶ Article 152 also put emphasis on the Territorial Integrity of the country while demonstrating the general foreign policy of the country towards what is referred to as imperialist states.¹⁷ As the history of Iran will be studied in chapter 3, it will be understood that the concern of the current political establishment of Iran has legitimate historic roots, as remarkable proportion of Iran's territory have been annexed mainly by foreign forces. Thus, as a country with multiple ethnicities including Azeri, Arab and Kurds it is of vital importance for Iran to maintain its borders intact. As it will be discussed in chapter 3 countries like Iran and China are mostly of Civilisation-States nature rather than Nation-States. It will be revealed that most of the territories which Iran had lost in the past two centuries were as a result of wars and concessions with foreign forces mainly Russia. Hence, it will be argued that domestic separatism has rarely been the key reason of the lost territories. While there have been domestic figures who served the interest of foreign forces in Iran, as it will be supported by valid evidences in chapter 3, the foreign pressure and economic shortcomings have become a security concern in Iran over some of its border cities. It will be concluded that protecting borders and Territorial Integrity of the country have been a prime priority in the general policies of the country. Some of these policies includes the expansion of the military capabilities of the country including its missile programmes. Precisely the missile programme and the nuclear programme of Iran have been a source of dispute between Iran and the USA which has resulted in the economic sanctions over Iran and the waves of divestments fleeing Iran. Hence, while Iran does not feel to be prone to domestic threat of separatism, nonetheless bearing in mind that the region of West Asia has been facing catastrophic circumstances from foreign led wars and coups and revolutions, the concern of

¹⁵ Constitution of Islamic Republic of Iran https://rc.majlis.ir/fa/content/iran_constitution

¹⁶ Ibid

¹⁷ Ibid

Iran over its ethnic population including Azeris, Kurds and Arabs provides a legitimate ground to give precedent over its defensive capabilities rather than surrendering them in the often-vain hopes of foreign investment. Another recent example which justifies the premise of Sovereignty's priority over Self-determinism is the issue of the autonomous community of Catalonia in Spain; regardless of the background of the conflict what is relevant to this part of this Thesis is the fact that, the independence referendum of 2016 was not tolerated by the Spanish central government and it was confronted by the sovereign state of Spain.

The other principle which should be studied in line with the concept of sovereignty is the Rule of Law. The Secretary General of the United Nations defines Rule of Law as: 'a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.'¹⁸ From this definition the main principles of the Rule of Law can be acknowledged to be; accountability, equality, separation of powers, legal certainty and supremacy of law. To examine the concept for this introduction the evolution of the Rule of Law and Sovereignty which are to some degree intertwined shall be assessed. While the concept of Sovereignty was classified (if not introduced) by Bodin and Hobbes, the principle of the Rule of Law also, was introduced simultaneously in the 17th century. Having said that, a historical analysis of both principles would lead us to the ancient times of the Greek empire; Plato and Aristotle each had their own definition and understanding of the subject of the Rule of Law. While Plato was of the belief that the 'Philosopher King' would be the legitimate sovereign and thus putting his ideal benevolent sovereign above the law, Aristotle distanced his notions from the utopian and anti-democratic philosophies of Plato. Aristotle believed that it is the law which should rule and govern any subject and citizen. Hence it can be understood that, to Aristotle no one including the sovereign (being a sole king, a group of elite or a group representors of the public) was above the law.

¹⁸ Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies (S/2004/616)

As mentioned above the concept started to rematerialize along with the notion of Sovereignty in the 17th century; Samuel Rutherford in 1644 established what today can be identified as constitutionalism, by writing a book named, *Lex Rex The Law and the Prince*. In his contribution he put emphasis on the Rule of Law and explicitly as it reads in the title of his book, *Lex Rex*, he ascertains the law as the king.¹⁹ John Locke is another remarkable enlightenment philosopher who have vastly contributed to the concepts of Liberty, Social Contract and the Rule of Law. As for the latter he believed that: ‘The liberty of man, in society, is to be under no other legislative power, but that established, by consent, in the commonwealth. Freedom of men under government is, to have a standing rule to live by, common to every one of that society, and made by the legislative power erected in it.’²⁰ In addition to supremacy of the law and the equality before the legislated rule by everyone, he also points out the crucial fact of consent as it can be observed. Consent is also a crucial part of Hobbesian philosophy. The issue of consent will be assessed not only in chapter 4 when the Hobbesian philosophy is presented, but also in some examples in the history of Iran (in chapter 3) with regard to the relationship of the public and the sovereign. It is worthy to remind that, following the European Renaissance, the Scottish Enlightenment, the English Industrial Revolution and so forth came along new political, legal, social and economic principles which have either contributed or have been inspired or have been contested against each other. As for the Rule of Law, it can be postulated that, its advocacy was carried out by the Social Contract mainly known by the work of Jean-Jacques Rousseau and the Separation of Powers advocated by Montesquieu. Although it would be a fascinating study to identify their correlation and their historical evolution, it is most relevant to continue this part with the correlation of the Rule of Law and Sovereignty with regard to the topic in hand.

Having briefly introduced the concept of the Rule of Law, it is necessary to link the notion with Iran and the main question of the Thesis. Article 19 of Iran’s constitution provides that, the people of Iran from any tribe and ethnicity are equal and shall enjoy equal rights.²¹ Also, Article 20 of Iran’s constitution reads that, every individual is under protection of the law equally.²² Furthermore Article 56 which directly defines the type of Sovereign’s rights, initially asserts the

¹⁹ Li-ann Thio, ‘Lex Rex or Rex Lex? Competing Conceptions of the Rule of Law in Singapore’ (2009) Volume 20, Issue 1 Pacific Basin Law Journal

²⁰ John Locke, *Slavery in Second Treatise of Civil Government*, 1690
<http://www.earlymoderntexts.com/assets/pdfs/locke1689a.pdf>

²¹ Constitution of Iran (n 15)

²² Ibid

rule of god as the ultimate ruler, nonetheless, it follows by stating that, the god has appointed the man as the ruler of his own social destiny.²³ It continues that, no one can deprive man from this god given right for the benefit of a single person or a group of elites.²⁴ The last sentence of this article clears any ambiguity with regard to the Rule of Law in Iran's constitution which in fact does acknowledge the notion of the Rule of Law.²⁵ Also, the following articles (57,58,59,60) explicitly grant the vote of people as the utmost pillar of the political establishment of Islamic Republic of Iran based on the principle of the Separation of Powers.²⁶ Having read the relevant Articles of the Iranian constitution it can be comprehended that despite the fact that Iran's political establishment has become Islamic Republic since 1979, thus Islamic rules have been embodied in the nature of the establishment, by the law of the Islamic Republic of Iran the Rule of Law and the equality of all men before the law have been conceded.

Having introduced Iran's legal vantage point, the argument still begs the question of the relevance of the Rule of Law and the Sovereignty. As it will be concluded in the last part of the Thesis the domestic corruption is a detrimental factor against the inward flow of FDI. It will be argued throughout the Thesis that, in the past 200 years Iran has suffered domestic arbitrary monarchies until 1979. It will be posited that ever since the 1979 revolution the monarchy has been abolished and replaced by a republican establishment which has Islamic nature at its core. It will be argued that, the Constitutional Revolution of 1905-1911 and the Islamic Revolution of 1979 of Iran, were significant strides against the lack of accountability of the monarchies and the ultimate power which had been vested in the hands of the single sovereign of the country. The absence of accountability had resulted in the non-performance of the polity when it was necessary to act for the benefit of the country along with the rampant corruption which was ensued as a result of opacity and the lack of accountability of the sovereign. It will be reminded that although the Qajar dynasty was more of a tutelage system rather than a centralised polity, nonetheless the practice of their dynasty leaned towards a centralised establishment in comparison to the neighbouring tribal establishments. However as for the current political establishment of Iran it will be argued that despite the fact that the Separation of Powers and the Rule of Law have been embodied in the Iranian constitution there have been occasions in which the principles have been undermined for

²³ Ibid

²⁴ Ibid

²⁵ Ibid

²⁶ Ibid

different reasons. The initial reason which comes to mind and will be discussed in chapter 4 is corruption. It will be argued that, amid other reasons, the more the government and quasi-public organisations expand their radius of influence in the market the probability of corruption have been and will be increased. This of course is not limited to the current establishment of Iran, as revealed above and will be illustrated in chapter 3 the expansion of the government in the last decade of Pahlavi dynasty also resulted in the surge of governmental corruption. With regard to the corruption it will be argued and concluded that, a key reason of the surge of corruption in the past 4 decades in Iran have been the foreign induced sanctions. Whilst the Rule of Law and accountability as one of its key pillars are considered to be normal perquisite of managing a state's affair, in an abnormal state of affairs like the acceleration of the pressure of economic sanctions over four decades, normal and idealised paradigm of governance may not be easily attained. It will be indicated that, there is a direct correlation between the enhancement of sanctions and the increase of public corruption. This as will be discussed in later chapters has two fundamental reasons; in the absence of foreign investment and FDI, it is inevitable for the government to expand its presence in the economic affairs of the country hence the increased probability of wasted public funds and thus corruption. The second reason is that, under the duress of economic sanction, the state needs to replace the normal method of commerce with the exceptional methods to circumvent the sanction and provide the necessary needs of the country for the public and the sovereign's subjects. Under such circumstance, as it has been found out in chapter 4, the domestic corruption will relatively increase. Hence the Rule of Law, accountability and the supremacy of the law may have to be forgone for a period of time for the facilitation of the economic needs and public good.

Another reason that the Rule of Law may have been compromised in Iran is the issue of the Executive Order by the Supreme Leader of the country. Although under Article 107 of Iran's Constitution and in practice the Supreme Leader should be and has been appointed by the votes of the Assembly of the Experts of the Leadership, which itself is an electoral body of the political system of Iran, based on the Article 5 of the constitution the power of the ruling of the state have been devolved in the cleric who must have five main traits of a leader who is Just, pious, fully aware of the circumstances of his age, courageous, resourceful, and possessed of administrative ability.²⁷ This categorisation of the ideal leader has stark reminiscent to the Philosopher King notion of Plato. Nevertheless, as elaborated above and discussed in the later chapters, there are

²⁷ Ibid

Articles, Acts of Parliaments and procedures which have paved the way for the presidency of the Rule of Law in Iran. Having said that, the Executive Order of the leader which was mentioned above may seem to contradict the notion. It has to be reminded that the Executive Order of a leader or a President or Prime Minister or a Monarch is not against the expectation in the current political realm of the world. There can be found occasions in which the president of the US has implemented the executive order, and in light of the UK it should be reminded that the Royal Prerogative provides sovereign immunity precisely in terms of criminal law under which no criminal proceedings can be brought against Her Majesty's Government. With regard to the UK's Royal Prerogative it should be reminded that, the Crown Proceeding Act 1947 have reduced the sovereign immunity in favour of the Rule of Law enabling civil proceedings to be brought against the state, but the criminal hearings still require the specific the expressed permission of the Act.

Perhaps the most controversial use of Executive Order in the recent history has taken place in the USA under George W. Bush administration in light of Iraq war and its aftermath.²⁸ A key source of the Unitary Executive Order amongst the American lawyers and politicians derives from Article 2 of the US constitution which reads that: 'The executive Power [of the United States] shall be vested in a President of the United States of America'.²⁹ Although Calabresi and Yoo found out that all 43 presidents (up to the date of their article) believed in the theory of the Unitary Executive Order, they discard the scope of the use of the Unitary Executive Order when scrutinising the authorities of the president over the foreign policy affairs; '[T]he cost of the bad legal advice that [President Bush] received is that Bush has discredited the theory of the unitary executive by associating it not with presidential authority to remove and direct subordinate executive officials but with implied foreign policy powers, some of which, at least, the president does not possess.'³⁰ In light of the Rule of Law and the exceptions which are either embodied in the constitution (of any given state) or customary legal protection which sovereigns may enjoy, the opinion of Krasner is crucially interesting. As in the later part of this Thesis Krasner's sets of argument are used as a yardstick to expound the main question of the Thesis, his beliefs on this matter is also valuable to better comprehend his approach to this arena of law as a well-known legal scholar. It has to be

²⁸ Richard J. Pierce, 'Saving the Unitary Executive Theory from Those Who Would Distort and Abuse it: A Review of the Unitary Executive, by Steven G. Calabresi and Christopher Yoo' (2010) GWU Law School Public Law Research Paper No. 452 602

²⁹ Constitution of the United States http://www.senate.gov/civics/constitution_item/constitution.htm

³⁰ Pierce (n 28) 604

reminded that, his contribution and the reason of the importance of his scholarship in this Thesis has been presented in chapter 4. While Pierce criticises Bush administration and its legal consultants on the unlimited power they provided to the president for the foreign policy (which were used in the 2003 invasion of Iraq), Krasner few decades earlier begs the question that to what extents the policies on foreign affairs should be delegated to Bureaucrats? In 1972 (in the midst of the Vietnam war) Krasner lambasted the bureaucratic orders with regard to foreign policy by stating that: ‘The bureaucratic interpretation of foreign policy is misleading, dangerous, and compelling: misleading because it obscures the power of the President; dangerous because it undermines the assumptions of democratic politics by relieving high officials of responsibility; and compelling because it offers leaders an excuse for their failures and scholars an opportunity for innumerable reinterpretations and publications.’³¹ Seemingly Krasner’s notions had an iconic legal influence on the Iraq war and the theoretical exemptions provided to undermine the Westphalian sovereignty which will be extensively explored in chapter 4, thus his influence over the US foreign policy and the contradiction in the subject of the Rule of Law against the executive order is eminent. It can be argued that, one of the modern advocates on the superiority of the sovereign over the Rule of Law (in this case an established bureaucratic polity), is Krasner. While the abovementioned exceptions on the Rule of Law has been identified to have constitutional roots, nonetheless it should be borne in mind that, the manner and intention of the interpretations is a diversified field of scholarly. Interpretation of the Rule of Law is genuinely divided between formal (thin) and substantive (thick) conception of the subject³²; ‘The former considers the Rule of Law as autonomous from theories of justice or political morality, drawn from virtues inherent in the concept of "law" itself. Rules are assessed through "content-independent" evaluative criteria, (clarity, generality, accessibility, proceptivity, certainty). Thus, jurisprudential bias towards the idea of "law" itself determines how the term is deployed as a plumb-line of good government. A 'substantive" or dynamic conception engages substantive justice theories, which precipitates controversy. In speaking qualitatively to a state's economic system, political ideology or human rights practice, this broader conception may encompass a wide range of political virtues, blurring the law/politics dichotomy.’³³ Thio then concludes that: ‘The mere legalism engendered by the formal, order-based version is considered deficient as it could mean that authoritarian regimes

³¹ Stephen D. Krasner, ‘Are Bureaucracies Important?’ (1972) Foreign Policy No. 7 159

³² Thio (n 19)

³³ Ibid

promulgating unjust laws through correct legal procedures could be considered to act consistently with the Rule of Law. The law's content could not be evaluated by any higher order norms or natural law principle committed to an ethical or "rights-based" conception of law. The dilemma is captured thus: while the Rule of Law is more than the rule of the law, it must be less than the rule of good law.³⁴

The question remains that, to what extent such privileges against the Rule of Law, can bring about justice and wellbeing for the public and if not to what extent it should be tolerated by the public. It also valid to ask that to what extent such exceptional privileges for the sovereign of one state may encroach the other state's sovereignty and the well-being of its subjects? The ultimate question with regard to this dilemma, when it is examined in the broader context of international relations is that, to what extent the international legal order can bring about a just equilibrium between the attained rights of the sovereign of one state (which deems it legal to either wage war or use economic sanctions) against another state and its sovereignty. Although all the above-mentioned principles being Self-determinism (territorial integrity) and the Rule of Law (accountability, separation of powers...) are 'first and foremost political principles an ideal or aspirations that may or may not be guaranteed by law'³⁵, in practice the implementation or the lack of existence of these pillar theories of modern socio-political systems can and have in fact shaped some critical historic occurrences domestically and internationally. With regard to Iran and this Thesis, the abovementioned principles will be examined when necessary, with the aspiration to find an answer to the questions raised in this brief introduction. It will be concluded that the foreign induced sanctions and political pressure with the threat of a potential war (as it has been the case in the region of West Asia) pushes the domestic norms of a country being Iran drifted apart from the idealised notions of the Rule of Law, as the foreign threat will increase the necessity of cohesion in its most drastic form. Such detachment from the idealised interpretation of the principles (precisely the Rule of Law), as has been identified in this part, is nothing new to the global legal and political spectrum.

Having briefly defined and discerned the concepts of sovereignty against of Rule of Law and Self-determinism the following part of the introduction presents the introductory arguments of chapter 3 and 4. Chapter 3 will follow the development of the foreign clout and its impacts over

³⁴ Ibid

³⁵ Jeffrey Goldsworthy, Legislative Sovereignty and the Rule of Law in *Sceptical Essays on Human Rights* (Oxford University Press 2001)

the sovereignty of Iran from the early 1800s and the Qajar dynasty. This part of the chapter will set forth the various occasions, where the sovereignty of Iran has been encroached by foreign forces, financial or political. The chapter will delineate significant treaties, concessions and truces which have undermined the sovereignty of the state as well as the ramifications that the country suffered as a result of these treaties and concessions, despite the fact that they will be identified as an early form of FDI in Iran. The FDI in question varies from small scale FDI, such as foreign offices of trades, which should be categorised under services sectors, to larger fields of investment, such as railroads, banking and oil exploration contracts, which cover the three major fields of investment. It will be argued that the lack of authority, control and domestic sovereignty, as a result of the rights bestowed to the foreign signatories, Iranian people suffered harsh conditions. For one the famine of 1917 will highlight the correlation between the lack of domestic sovereignty over the ports of the country as a result of the economic-political treaty, and the ramifications which was brought upon Iranian public. Also, the disregard of the FDI exporters being the Anglo-Iranian oil company to the then king of Iran, as the official sovereign of the country, by concurrently entering into another oil contracts with a tribal family of the south-western province would justify the argument of the jeopardised national sovereignty as a result of the FDI contracts. The cornerstone of the final part of this chapter will be the Ajax Coup of 1953. The reason is that, the incident which will be elaborated in full details, contains direct relevant information which is needed to mould the main argument. It will be posited that, the FDI exporter state being Britain to secure the interest of the non-state party and of course the exporting state, refuted the nationalisation of oil in Iran, and ignored the international law and subsequently sought a military coup in order to depose the Iranian prime minister who had nationalised the oil industry. It will be argued that, the international law has been occasionally disregarded by the powerful state against the weaker state.

As the aim of this Thesis is to establish the correlation between national sovereignty and FDI, the case of Iran's oil nationalisation is the perfect example. By nationalising the natural resources of Iran, the then Prime Minister of Iran, Dr. Mosadegh, hindered the interest of the Anglo-Iranian Oil company, which had been exploiting the oil resources of Iran. Such nationalisation, which was concurrent to what was happening in Latin America, was not received well by the FDI exporting states. Britain, with the assistance of the US administration, orchestrated a brutal coup, which overthrew the Iranian Prime Minister, who was perceived as the embodiment

of nationalisation which uphold the national sovereignty right. Following the coup, the young king of Iran Mohammad Reza Shah was reinforced on the throne, was provided with new contractual terms over the Iranian national resources by Britain and US. In this chapter, it will be argued that, despite the fervid economic advancements of 1960s in Iran, the King of Iran lacked a legitimate sovereignty as it was neither procured nor maintained by himself. Although this sounds a bold proclamation, the 1979 revolution and its anti-imperialist background, as well as the mid-1970s economic shortcomings and socio-political unrest support the abovementioned claim. There is comparison made between China and Iran. The reason lies in the fact that both states are considered to be classic countries or what has been referred to as nations-civilisations.³⁶ The key point with regard to such hypothesis and comparison is that, while Iran's neighbouring countries derive their status as nation-states as a result of their ethnicities, Iran and China, which are home to different ethnicities, are prone to encroachment of territorial integrity. Hence, it has been supported by historic analysis³⁷ that, not only Iran has lost territories as a result of truces, but also it is a very important issue for Iran to protect its territorial integrity, this is why increasing its military capability is of outmost necessity for Iran. Nonetheless, Iran's defensive capacity has been a major reason behind the economic embargos against Iran.

Chapter 4 will then concentrate on the evolution of the legal and economic framework of Iran in light of the premise of this Thesis, which has been the correlation of national sovereignty and economic prosperity. The chapter will start with a brief, yet succinct, elaboration of the concept of sovereignty. While in the previous chapter, the discourse covers economic and political sovereignty, this chapter includes the development of the concept of sovereignty through the past few centuries. The main reason that such explanation is given in chapter four rather than in an earlier chapter lies in the proclamation that in chapter 4 it will be argued that, the current political establishment of Iran has maintained its national sovereignty over almost all aspects of the state. Also, it will be posited that the current political establishment seems to be the most independent establishment not only in the past 200 years of Iran, but also in comparison to its neighbouring countries. It will be questioned that, whether an underlying reason of the current economic embargos on Iran is the very independence and the national sovereignty of Iran over a vast land which contains a massive proportion of the world's energy reserves? This chapter builds on the

³⁶ Martin Jacques, *When China rule the world*, (2nd edition, Penguin Books 2012)

³⁷ Homa Katouzian, *The Persians, Ancient, Medieval and Modern Iran*, (Yale University Press 2010)

works of Jean Bodin and Thomas Hobbes on the concept of sovereignty. The key reason for having these two prominent legal figures analysed in this chapter is the resemblance of their times with the current struggles which have besieged Iran. It will be argued that sovereignty is of vital importance for the prosperity of a state and its subjects. It is remarkable to point out that, even in chapter 2 when presenting the free markets' advocates and their notions of economics and the state, it has been comprehended based on the notions of Adam Smith and Hayek that the first and foremost duty of the sovereign is to defend its subjects and borders against the foreign adversaries.

Due to the Anti-American core of the current establishment of Iran, the country has been under economic sanctions for almost four decades, which in turn are inhibiting the FDI flow to Iran. The analysis of sovereignty in this chapter will be concluded by discussing the Westphalian Sovereignty based on which no state should interfere in the domestic affairs of other states,³⁸ however it will be posited that no state can sustain absolute sovereignty in the globalised world of today. The crucial question is the cost of such trade-off. Hence, the remaining part of this chapter examines the evolution of FDI-related legislation and economic approaches since 1979 in Iran. This will be supported by economic data of the World Bank on Iran and FDI trends and the impact of different legal instruments, for instance the Foreign Investment Promotion and Protection Act (FIPPA), Multilateral Investment Guarantee Agency (MIGA), the direct correlation of Financial Action Task Force (FATF) and FDI. This correlation has been an ongoing argument in the Iranian Parliament contesting the possibility of FDI to jeopardise the national sovereignty.

The chapter will also shed light on the Joint Comprehensive Plan of Action (JCPOA) commonly known as Iran-Deal. JCPOA will be taken as the microcosmic example of the entire Thesis. Whilst under the JCPOA Iran agreed to yield its uranium enrichment plans and forgo part of its sovereignty over its scientific programs, the US agreed to lift the nuclear-related sanctions over Iran. While Iran had been adhering to its obligation and has been certified as being in full compliance with the International Atomic Energy Agency (IAEA), the US President Donald Trump unilaterally withdrew from the JCPOA. This confirms once again the validity of this Thesis's main argument, that there is indeed a direct correlation between economic prosperity and jeopardised sovereignty. Whilst Iran had forgone its sovereignty over its nuclear programs with the objective of attracting FDI inflow, the US administration abjured the consensus based on no legal ground. US president Donald Trump has made it clear that, this will result in the reinstating

³⁸ Stephen D. Krasner, *Sovereignty Organized Hypocrisy* (Princeton University Press 1999)

US sanctions and new sets of economic sanctions not only on FDI exporter states and entities but also on the oil sector of Iran which remains the backbone of the Iranian economy.³⁹ Furthermore, international law and its application and reliability is at stake, due to the fact that not only a legal agreement has been ignored based on unfounded pretexts, but also the imposition of new sanctions on non-Iranian and non-US subjects (extraterritorial sanctions) will be an alerting example of encroached sovereignty on a continental-global level.

It will also be provided that, there is a positive correlation between the imposition of sanctions and increased corruption in the target country. Hence, not only the sanctions will impede the inward FDI into Iran, but also the business climate of Iran will undergo economic disarray. Although this chapter will propose that the Keynesian economics may be inevitable for Iran, in the absence of FDI, domestic corruption is perceived to be as harmful as the foreign clout and imposed sanctions.⁴⁰ While the legitimacy of the sanctions will be questioned and it will be argued that there is in fact a certain line of double standards against Iran and its neighbouring countries, it will be posited that for Iran to bypass the sanctions, not only there should be a prompt attempt to détente the political relationships with the western powers, as well as a sheer willingness to combat domestic corruption, but also it is of vital importance to maintain its defensive capability. It will be proposed that, while it is being suggested by the US administration in particular Mike Pompeo US Secretary of State that, the decrease in Iran's defensive capability may open up opportunities for economic prosperity through FDI,⁴¹ based on the experience of JCPOA no legal mechanism can provide absolute guarantee for such empty promises. It will be concluded that there is in fact a correlation between FDI and jeopardised sovereignty of the recipient states which based on the case of Iran, the International Law has not been fully effective to prevent the percussions.

³⁹ U.S. Department of the Treasury statement 'Iran Centre' (2018): <https://www.treasury.gov/resource-center/sanctions/Programs/pages/iran.aspx>

⁴⁰ Gholamreza Jandaghi, Tahereh Kamali and Maryam Mashayekh, 'The Impact of Economic Sanctions on Corruption in Target Countries: A Cross Country Study' (2016) 45 World Scientific News 276

⁴¹ US department of State, Mike Pompeo speech 'After the Deal: A New Iran Strategy' (21 May 2018) <https://www.state.gov/secretary/remarks/2018/05/282301.htm>

Chapter One

Global Determinants vs Regional Deterrents of Foreign Direct Investment (FDI)

Introduction

The transition of power from the Western blocs to the rising Eastern powers has been unfolding over the past few years partly due to the shortcomings of unfettered capitalism, which has prevailed in the global economic-political spectrum. The unfolding tendencies toward populism in the USA and the UK, as the two forerunner states of Neoliberalism, indicates the flaws within the system, which, has been the dominant economic and political power hitherto. This shift of power has gradually resulted in the rearrangement of global FDI trends *inter alia* other substantial global changes.

The augmentation of protectionism in previously liberal economies has brought about the concerned query, even at the Organisation for Economic Co-operation and Development (OECD) level, whether investment protectionism is on the rise.⁴² The OECD's report, as will be discussed later in this chapter, despite addressing these concerns, does not find compelling evidence to prove otherwise.⁴³ Furthermore, the World Investment Report by the United Nations Conference on Trade and Development (UNCTAD), as it will be explored later in this chapter, promulgates a very promising recovery for the global trend in FDI.⁴⁴ While both Reports convey pertinent data, which are of statistical accuracy⁴⁵, nevertheless they both neglect to acknowledge substantial roots of the economic shifts. The relevance of this issue to the topic under examination is the fact that the shift of global power from West to East would play a significant part for Iran, as a recipient of FDI, to form its legal and political approach for the next decades. Hence, while the focal point

⁴² Stephen Thomsen and Fernando Mistura, 'Is investment protectionism on the rise?' OECD Global Forum on International Investment (2017) see: <http://www.oecd.org/investment/globalforum/2017-GFII-Background-Note-Is-investment-protectionism-on-the-rise.pdf>

⁴³ Ibid

⁴⁴ World investment report 2017; Investment and Digital Economy, (United Nations Publication 2017)

⁴⁵ It is valid to raise a question on the reliability of reports from the western dominated organisations. Although statistical accuracy is highly valued and enlightening, nonetheless, the accuracy or prestigious nature of an entity (even UN), may not necessarily make one neutral or unbiased.

would remain the issue of the determinants of FDI, in this chapter nevertheless, the rhetoric of the swing of power will form an integral part of this discourse.

There are few underlying reasons of allocating one separate chapter, to be precise the first chapter for the identification of the determinants of FDI. To start with this identification will shed light on the subject to familiarise the reader with the arguments to be made in the next chapters. This chapter should assist the further arguments on identifying the past, present and potential future trends of FDI. To elaborate such identification, instances have been studied and compared based on different variants. To enhance the claimed elaboration, comparisons have been made between different regions and different countries. Although diverse parameters have been of consideration in choosing the FDI receiving countries, the attempt has been made to keep the examples and the arguments on each sub-section consistent and cohesive. The outcome of such cross examination will be crucial as a basis for the further questions and arguments in the next chapters; while it is genuinely accepted that FDI could increase the GDP share in any given hosting country, it is a valid question that whether every recipient country should meet the FDI perquisites equally? In other words, to what extent the FDI determinants are globally applicable and desired? while countries like Iran have been mostly attractive for their natural resources, other countries namely in Europe has been receiving their remarkable share of FDI in service industry. This cross examination will provide a solid understanding of the complex yet coordinated allocation of FDI globally.

One key contribution of this chapter is that, the FDI sectors have also been identified and separately analysed; it is a contribution due to the fact that, it discerns the differences of not only the recipient countries but also the types of investors interested to export FDI. This clarification will bolster the characteristic of each recipient countries with their unique traits. Hence, once discussing FDI and Iran in the next chapters, it has already been established that although economic growth and FDI trend are intertwined with globalisation, nonetheless each country has to be studied based on its own merit. This will rationalise the complex yet coordinated trend which is pointed above. A directly relevant determinant which can assist this argument will be the political climate which has been and identified in this very chapter and will be elaborated in details not only in this chapter but also in the following chapters.

Another underlying purpose of this chapter is to set an introductive milestone for chapter 2. In chapter 2, two different economic models (within a free-market economy) have been examined.

The determinants that have been identified in this chapter are mostly of economic and financial nature. As it has been pointed out earlier, the elaboration and identification of the determinants is vital for the following arguments. The economic arguments which are made in chapter 2 will also mould the key argument of the Thesis which is the equilibrium of national sovereignty and economic prosperity. Hence the identification and examination of the determinants are directly influential for the second chapter. As it was mentioned above consistency of the arguments has been a major attempt of this Thesis. By establishing the determinants of FDI in the very first chapter it is aimed to set an appropriated cornerstone for the arguments to come in the following chapters.

Another underlying reason of this detailed chapter is to identify the various economic contributions that FDI could pass on to the recipient states. Although in the next chapters the discontents of FDI will be bolstered based on historic and economic instances, in the very first chapter the positive inputs of FDI have been presented. The key aspect of identifying the positive nexus between FDI and economic growth in this chapter is that, it prevents this Thesis of becoming a one-sided biased research lashing out at the discontents of FDI. While the legal, economic and political repercussions of FDI will be the focal point of chapter 3 and 4, identifying the global trend of FDI and its positive connection with GDP growth is an attempt to bring about a balanced argument for and against FDI. Thus, initially the reader is introduced to the global trend of FDI and the positive perception on FDI has been analytically satisfied before moving on to other chapters, in which different layers of FDI impacts on the recipient nations will be scrutinised.

Primarily, this chapter strives to explore the main destinations of foreign direct investment in the past few decades. Subsequently, by identifying the main destinations and the spread of these investments, a variety of possible determinants would be set forth. In doing so, empirical studies will be used, as the yardstick of the elucidation, in order to prevent this chapter from becoming a mere descriptive study different point of views from scholars with different approaches would be presented on every single determinant. By scrutinising the possible FDI determinants and applying them regionally, a cohesive yet accurate understanding of the context will be postulated. Furthermore, this chapter will posit the regional hindrances of FDI in Iran, which are chiefly a result of geopolitical chasms.

1. The concept of Foreign Direct Investment

Foreign Direct Investment, as it is implied axiomatically from the term, is an investment being executed in a hosting country, other than the country of the investor, by foreign corporations or individuals with foreign capital and know-how. To elaborate this term in more detail, each three components of the phrase should be fathomed separately.

The term 'Foreign' plays a crucial role in this topic. A foreign investment is 'the transfer of tangible or intangible assets from one country to another for the purpose of their use in that country to generate wealth under the total or partial control of the owner of the assets'.⁴⁶ Legally speaking, the nationality of the investor being individual (natural character) or corporation (juridical character), has a vital effect on the admissibility and applicability of a case when a legal issue arises. The relevance of the nationality of the investor has two key motives: 'the substantive standards guaranteed in a treaty will only apply to the respective nationals. In addition, the jurisdiction of an international tribunal is determined'.⁴⁷ On satisfying the test of foreignness, there are different cases to explore with diverse outcomes, due to the lack of harmony of law in international investment. For instance, while in the case of dual citizenship, the case No A/18 Iran-Us CTR 252⁴⁸ concludes that the effective nationality takes precedence, the court, depending on the treaty enforced, can simply deny and reject the claimants' argument, on the basis of being a citizen of the host country.⁴⁹ Furthermore, when determining the nationality of a corporation, the most applicable test is the incorporation or the main seat of the business known as *siege social*.⁵⁰⁵¹ Nonetheless, as this chapter's focus is on the economic interpretation of the term, it suffices that the term *Foreign* is in tantamount to the capital and/or know-how that originates and has been exported from the exporting country, either via natural or legal characters as investor.

Pertinent to the term *Direct*, and how it differs from indirect investment, the main distinguishing line is that, while under the direct investment regime, foreign investors would seek the control of the management over their activity and their assets, indirect investment is a portfolio foreign investment type, which mainly deals with purchasing the bonds of a country or shares in

⁴⁶ Muthucumaraswamy Sornarajah, *The international Law on Foreign Investment* (CUP, 2012)

⁴⁷ Rodolf Dolzer and Christopher Schreuer, *Principles of International Investment Law* (OUP, 2012)

⁴⁸ Iran-United States Claim Tribunal 1984

⁴⁹ Ibid

⁵⁰ Ibid

⁵¹ It has to be reminded that, it highly depends on the jurisdiction. Common law jurisdictions would usually refer to the place of incorporation.

the stock market of a country. The purchase of shares in a company could potentially be categorised as portfolio, insofar as it does not elevate the share beyond 10%.⁵² It has to borne in mind that, while in a direct investment the investor may also purchase shares in the hosting market, the main difference would remain to be the issue of ownership, control and management at a deciding level of the purchased assets.

What constitutes an investment can vary from the movement of capital, being a substantial lump sum, the transfer of know-how, knowledge, and/or transfer of technology. Depending on the nature of the investors, being individuals or corporations, the appropriate destination would then be allocated. Regarding the nature of the investor, Agiomirgianakis has described FDI as the capital flow, which is the result of the behaviour of multinational corporations.⁵³ The appropriate destination, which eventually becomes the hosting country or the recipient state of the investment, in the eyes of the investors should meet the needs and intention of the investors.

Zachary Douglas discerns the legal and economic aspect of the commencement of FDI. On the legal aspect he opines as: ‘The legal materialisation of an investments the acquisition of a bundle of rights in property that has the characteristics of one or more of the categories of an investment defined by the applicable investment treaty where such property is situated in the territory of the host state or is recognised by the rules of the host state’s private international law to be situated in the host state or is created by municipal law of the host state.’⁵⁴ In his analysis of the legal materialisation he puts emphasis on the territorial nexus as well as the issue of tangible and intangible properties. The most relevant of his studies in light of this part of chapter and FDI though, is his interpretation and understanding of the economic aspect of what should be constitute an investment: ‘the economic materialisation of an investment requires that commitment of resources to the economy of the host state by the claimant entailing the assumption of risk in expectation of a commercial return.’⁵⁵ He argues that: ‘If the fundamental objective of an investment treaty is to attract foreign capital, then the concept of an investment cannot be one in search of meaning in the pleadings submitted to an investment treaty tribunal that is established years perhaps decades, after the decision to commit capital to the host state was made. It is for this

⁵² David Collins, *An Introduction to International Investment Law* (CUP, 2017)

⁵³ G. Agiomirgianakis, D. Asteriou and K. Papathoma, ‘The Determinants of Foreign Direct Investment: A Panel Data Study for the OECD Countries’ (2004) City University-London

⁵⁴ Zachary Douglas, *The international law of Investment Claim* (Cambridge University Press, 2012) 170

⁵⁵ Ibid 189

reason that the approach taken advocated in *Salini v Morocco*, which combines inchoate ‘typical’ investment characteristics with a wide margin of appreciation in the tribunal, cannot be endorsed without significant refinement.’⁵⁶ His objection to the validity of the *Salini* criteria refers to a well-known verdict in the International Centre for Settlement of Investment Dispute (ICSID) known as the *Salini* test.⁵⁷ It has to be reminded that ICSID does not have responsibility for what ICSID tribunals decide. Hence as it will be demonstrated here, even within the ICSID system of arbitration there are various cases which have rejected the *Salini* requirement on different grounds. What *Salini* criteria refers to in light of the definition of investment is that ‘the activity in question must: [1] involve the transfer of funds or the contribution of money or assets; [2] be of a certain duration; [3] have participation of the individual transferring the funds in the management and risks associated with the project; and finally [4] bring economic contribution to the host state.’⁵⁸ Douglas is of the belief that the *Salini* hallmark create too much subjectivity.⁵⁹ It can be argued based on his analysis that such conceptual broadness may decrease the legal certainty required in identification of the existence of an investment. The controversial element of the *Salini* test which Douglas amongst other legal scholars have contested against is the forth prong; the issue of economic contribution to the host state. The contribution to the economy of the recipient state will be one of the underlying questions of this Thesis. Nonetheless, the controversy over the application of such requirement to examine whether or not an investment exists in the very first place is a matter of interest at this point. To elaborate the objections against the forth prong of *Salini* test following cases can be of help to present the concern of the legal scholars who oppose the *Salini* test. In *Mitchell vs. Congo*⁶⁰ it is submitted that the existence of a contribution to the economic development of the host state ‘is an unworkable criterion for the existence of an investment because of its subjective nature.’⁶¹ In *Casado vs. Chile* the tribunal although approving the first three elements of *Salini*, they rejected the forth requirement of *Salini* declaring that the economic contribution to the host state may be an optimal outcome of an investment but it is not a quality to

⁵⁶ Ibid 190

⁵⁷ *Salini vs. Morocco*, ICSID Case No. ARB/00/4 (23 July 2001)

⁵⁸ David Collins, *An Introduction to International Investment Law* (CUP, 2017) 5

⁵⁹ Douglas (n 54) 198

⁶⁰ *Patrick Mitchell v. Democratic Republic of the Congo*, ICSID Case No. ARB/99/7

⁶¹ Douglas (n 54) 202

recognise and approve the existence of an investment.⁶² Furthermore, in *Lesi S.p.A vs. Algeria*⁶³ the tribunal decided to reject the case based on what Grabowski identifies as procedural reasons.⁶⁴ The tribunal believed that ‘the forth prong is difficult to establish and implicitly covered by the other three elements.’⁶⁵ In *Philip Morris Brands SÀRL v. Oriental Republic of Uruguay* it was held that the *Salini* criteria is not constituted as jurisdictional requirement rather typical feature of an investment under ICSID⁶⁶; ‘As such, they may assist in identifying or excluding in extreme cases the presence of an investment, but they “cannot defeat the broad and flexible concept of investment under the ICSID Convention to the extent it is not limited by the relevant treaty.”⁶⁷ Moreover in light of article 25 of ICSID in the *Deutsche Bank AG v Sri Lanka*⁶⁸ the tribunal distanced itself from *Salini* test : ‘[the *Salini* criteria] are not fixed or mandatory as a matter of law. They do not appear in the ICSID Convention.’⁶⁹ By limiting the *Salini* criteria they came to the conclusion on the issue that: ‘the development of case law suggests only three criteria [...] namely contribution, risk and duration.’⁷⁰ It should be brought into consideration that, it can be fathomed that ICSID and precisely Article 25 of the ICSID convention has eluded to provide a solid definition of what should be constituted as investment. Hence, the case law approach of the *Deutsch Bank* seems to be a valid practice.

While Iran is not a member of ICSID the abovementioned elaboration indicates the opposing views on the nature of an investment, based on *Salini* criteria, the contribution of the investment to the host state’s economy should be an inherent characteristic of an investment, it has been found out that even within ICSID tribunal there are solid arguments rebutting the forth prong of *Salini*. Although Iran is not a member state to ICSID, it was crucial to identify the complex tendency of legal scholarship to the issue of investment’s contribution to the economy of the hosting state. The pertinent point, beside the introductory relevance is that, the public of the recipient states supposedly expect to benefit from the foreign investment being made either

⁶² Victor Pey Casado and President Allende Foundation v. The Republic of Chile (ICSID Case No. ARB/98/ 2)

⁶³ L.E.S.I. S.p.A. and ASTALDI S.p.A. v. République Algérienne Démocratique et Populaire, ICSID Case No. ARB/05/3

⁶⁴ Alex Grabowski, ‘The Definition of Investment under the ICSID Convention: A Defence of Salini’ Volume 15 Number 1 Chicago Journal of International Law (2014)

⁶⁵ *Lesi* (n 63)

⁶⁶ *Philip Morris Brands SÀRL, Philip Morris Products S.A. and Abal Hermanos S.A. v. Oriental Republic of Uruguay* ICSID Case No. ARB/10/7

⁶⁷ Grabowski (n 64)

⁶⁸ *Deutsche Bank AG v Sri Lanka* ICSID Case No ARB/09/02

⁶⁹ *Ibid* (award paragraph 294)

⁷⁰ *Ibid* (award paragraph 295)

through employment or rise of GDP or increase in the living standards. Nonetheless it has been experienced that often this has not been the case. At this point the public benefit comes to the legal realm of the foreign direct investment. It will be elaborated in chapter 4 that, a hosting state may expropriate FDI if it satisfies the public good requirement. It can be concluded on the Salini test that, although the forth prong is not acknowledged as a necessary requirement to identify the existence of an FDI within ICSID tribunals, its remaining fame denotes a concern and public expectation that FDI shall contribute to the hosting state, and such concern, despite the question of its legal validity, seems to be justified by the public of the recipient state within or outside ICSID jurisprudence. As mentioned above to elaborate what may damage the public good against the economic contributions of FDI there are other legal grounds based on which a hosting government may act against the FDI. Hence, the economic contribution can be argued is too vague in order to establish the existence of FDI as illustrated above.

In addition to the above definition of FDI, a technical test should be applied, in order to identify FDI. Dolzer et al. claim that five major elements are necessary to establish a direct investment: ‘a. the transfer of funds, b. a long-term project, c. the purpose of regular income, d. the participation of the person transferring the funds, at least to some extent, the management of the project, and e. a business risk.’⁷¹ This would not only provide a necessary mutual understanding to the FDI exporter and the host state, but also would be vitally cognitive whence legal proceedings is in place. In most tribunals, for a case to proceed, all these elements should be met and satisfied in order to establish the existence of an FDI project. The basic aim of investors is to make profit, regardless of them being a businessman, a trader or a merchant. Nonetheless, there are some essential elements that differentiate a trade from an investment, hence the motives and characteristics of an investor and a merchant. Applying Dolzer’s five elements would help to better distinguish FDI from other trade activities. Nonetheless, as will be expounded in chapter three, applying historic examples, most long-term trades would convey FDI components accordingly.

Explanation of the existential differences between ordinary trades and FDI would avail the elaboration of the two, which even if not contradictory, are of different nature; pertinent to international trade, the buyer invests his or others’ capital in specific products and goods, in order to obtain the ownership of the goods from the previous owner regardless of whether this owner is an individual, corporation or a foreign state. Genuinely the goal of the buyer is to make a profit in

⁷¹ Dolzer and Schreuer (n 47)

the short term, and such profit can be gained in any given country, where the newly purchased product is sold. From a legal point of view, it is the genuinely international trade law that would govern such transactions. In case of a country not being a signatory member of United Nations Convention on Contracts for the International Sale of Goods (CISG), the applicable law could be a singular or a combination of local laws instead.

In light of the above, an investor deals initially and mainly with the State and the establishment in the host country. Hence, the first and foremost discerning line between trade and investment is the nature of the participating parties. Furthermore, one vital influential disparity is that, unlike a trader who has the minimum interest in the characteristic of the country that he has purchased his goods from, the investor cannot ignore the host country's socio-political and business climate. After all, the host country is in fact hosting the investment of the investor. Moreover, the investor has a mid to long-term strategy to make his profit. Therefore, the investment is contrived with multi-layer strategic nature, for a substantially longer time in comparison to the trade strategy. The period of time from when an investment is made until when it starts generating profit, is referred to as the *Lead-Time*. Bearing in mind that the investment would be a multi-layer strategic plan, the scope of the investors' concerns would outpace the economic latitude. As it will be discussed in depth in the next chapters, during the time of the investment the law governing the matter could be complex, as there is no set of codified rules, such as International Investment Law. It is rather the combination of the domestic law of the host state, international treaties, including international trade law, Bilateral Investment Treaties (BIT) and International Investment Agreements (IIA) which have been incorporated between the investor and the recipient state.

Moving on from the explanation of what constitutes FDI, a brief demonstration of the FDI movements in the past few decades is necessary, in order to familiarise the reader with the earlier postulated notion in the introduction chapter. As noted by Demirhan and Masca, 'factors to affect the behaviour of Multinational corporations may also affect the magnitude and direction of FDI'.⁷² The underlying question with regard to FDI varies, from the impact of FDI on growth, the effect of FDI to tackle poverty, the contribution of FDI to employment and the potential advantages of FDI in comparison to the other types of foreign financial engagement and partnerships.

⁷² Erdal Demirhan and Mahmut Masca, 'Determinants of Foreign Direct Investment Flows to Developing Countries: A Cross-Sectional Analysis' (2008) Prague Economic Papers 356

Conversely, the concerns are not restrained to the potential economic impact of FDI. As this Thesis posits, FDI may contain perils, which not only may destabilise the economic spectrum of a country, but also may ensue colossal risk over the sovereignty, independence and the national interests of the recipient country. The latter concerns would be duly reasserted in the following chapters, including the extensive concerns expressed by various scholars and governments regarding the adverse impact of FDI on national sovereignty.

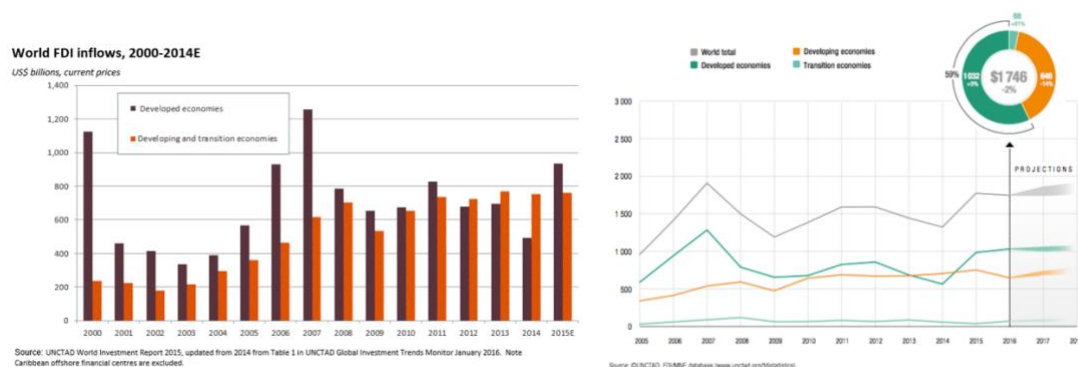
Genuinely, the global FDI trend has been having traction towards developed countries with liberalised markets and robust infrastructures, as identified by UNCTAD in 2007.⁷³ Albeit, a sturdy trend has been instigated in the recent years towards emerging markets of all sorts, varying from Latin American countries to African, Western Asian and Eastern Asian emerging markets, and the new economic blocs, such as BRICS (the acronym of Brazil, Russia, India, China and South Africa), and the MINT bloc (which constitutes of Mexico, Indonesia, Nigeria and Turkey). The variety of the destinations as well as the variety of the multinational/transnational investment corporations is an indication of the fact that there are different needs in the market, hence different approaches and attitudes as to what could possibly be considered as FDI determinant. The different approaches toward FDI are intertwined with the existence of variable types of investors. This, of course, does not necessarily mean that there are always strict distinguishing lines between the types of investments and investors.

While it is the investors who have the capital and the know-how and technology, the host countries may not necessarily share identical needs and desires with the investors. For instance, while the natural resources of a developing country may be an attraction for a multinational corporation, the host country may be seeking investment inflow in its service sectors and wishes to keep the resource sector as a highly nationalised-centralised industry. It has to be reminded that nationalisation is not inevitably a hurdle to FDI in the resource sector, and as will be explained later in the context of the discussion on Iran, several types of contracts have been developed in order to facilitate the full co-operation of foreign corporations, while simultaneously keeping the resource sector entirely nationalised. Furthermore, the general FDI determinants, which have been identified by most authors and scholars, will be examined separately in detail. Through this cross-

⁷³ United Nations Conference on Trade and Development. World Investment Report 2007; 'Transnational Corporations, Extractive Industries and Development.' (UNITED NATIONS PUBLICATION 2007)

sectional analysis, the chapter strives to prioritise each determinant and their impact in order to attract FDI.

2. Statistical Analysis of Global FDI Trends



As the charts above indicate, FDI inflow has been trending and spreading in different parts of the world, with highs and lows. This can be interpreted in the way that there are components and factors, which motivate or demotivate investors to carry out the investment in a foreign country, hence the flow or shift of investments accrues. It is in fact, these essential components that operate as decisive forces on the investors' will, when planning their investment.

Initially in this part, in order to elaborate these elements (hereinafter referred to as the 'Determinants'), the figures and the raw data on the spread of FDI inflow in the world shall be displayed to decipher the accurate statistic-based outlook of the global FDI. The data have been derived from the UNCTAD, the World Bank and the European Union. In order to elucidate and demonstrate the share of the FDI in the developed and the developing world, only two forms of data have been collected and will be explained at this stage; firstly, the percentage of FDI in the developing and the developed world and its ratio to their gross domestic product (GDP) and also the share of the developed against the developing countries of the total global FDI.

The rationale behind presenting such data is the fact that by starting the analysis with economic figures, the reader would be acquainted with the ripple of the FDI. The share of the FDI in developed and developing countries would indicate the reason behind the spread and flow of FDI, which will eventually allow this Thesis to categorise the abovementioned details as FDI determinants. Furthermore, the significance of mentioning the FDI ratio to the GDP in the developing and developed countries lays in the fact that this would highlight the necessity of FDI

in a country and would eventually lead this Thesis to shore up the main questions striving to be answered. Moreover, presenting the share of FDI in developing against developed countries would assist the current study and the reader to better fathom the importance of the further regional analysis.

To begin with, the economic figures of the developing countries will be examined with this regard. According to UNCTAD, FDI in developing countries has contributed to 87.66% of their GDP in 1999, while by 2013 the figure is almost double reaching to 164.16%.⁷⁴ However, there is an idiosyncratic element that needs to be considered; for instance, among the developing countries the FDI share of Oceania rose from 13.84% to 60.10%.⁷⁵ Essentially, what this illustrates is that one third of the FDI in GDP of the developing countries is derived from Oceania's share of FDI. Nevertheless, such figures need to be used and read more carefully; for instance, it is true that 60.10% of Oceania's GDP is contributed by FDI, however, the inward share of FDI in Oceania is drastically lower than the accumulated FDI in any other developing region. While the total share of FDI inflow in developing countries rose from 22.25% in 1999 to 33.28% in 2013, Oceania only captured 0.02% and 0.09% respectively.⁷⁶ The abovementioned figures indicate that, while the developing countries highly benefit from FDI, something that is reflected in their GDP, the increased share of their universal FDI inflow has taken a steady and gradual pace of growth (from 22.25% to 33.28% in over a decade).⁷⁷ This is not only in contrast to the notion of shift of power, mentioned earlier, but also evidence of the internal increasing concern of the recipient countries. As will be demonstrated in the next chapter, there is a difference in the approaches toward market liberalisation and globalisation. While the FDI exporters and transnational corporations have indicated their acute interest in abrupt market liberalisation, the developing nations seem to have grown inclinations toward the gradualist approach. This will be studied extensively in Chapter Two. It is also important to note that, through studying the economic effect and possible determinants of FDI, regions should be studied separately and compared on a cross-sectional scale in order to maximise the accuracy of the findings.

As the 2014 UNCTAD data shows, in developed countries the FDI share contributed to a GDP rise from 86.78% to 126.06%, while the total percentage of FDI inflow dropped from 77.04% to

⁷⁴ United Nations, *World Investment Report 2014: Investing in the SGDs - An Action Plan* (United Nations 2014)

⁷⁵ Ibid

⁷⁶ Ibid

⁷⁷ Ibid

62.96% in the same period of time. What these figures expound is the fact that, while there has been a drop in the global FDI share in developed countries, the contribution of this FDI in GDP has increased. In other words, the reliance of GDP on FDI has increased. The issue of dependency is another intricate salient feature of FDI; whilst the positive contribution of FDI to GDP cannot be repudiated, notwithstanding the increased dependency to FDI, it would still make a host country more vulnerable towards the global economic crisis, as has been the case with Japan and Dubai (as the key FDI hub of UAE) during the 2008 financial crisis, which was emanated from the US credit crunch and EU banking crisis. This domino effect will be discussed later in the following chapter to identify the proffered negative impact of total reliance to FDI. Çeviř and Çamurdan have identified a number of justifications for the gradual, yet remarkable, shift of FDI trend from the developed countries to the developing world. These justifications include, among others, the labour wage, efficiency, the wave of democratization, inventions, uprising of high tech and so forth.⁷⁸

Hence, based on the aforementioned data, this transmission period will be studied through a number of cases from different continents and countries, both developed and developing, including major Latin American Countries (LAC), the EU, MINT and BRISC, in addition to other major FDI recipients. Additionally, the role and motives of China will be discussed, under some potential determinants, as a country that has upgraded its status from being one of the largest recipients of FDI to a major FDI exporter.

3. Empirical studies

In order to elaborate the abovementioned discrepancies, initially they should be partitioned. Dunning has identified four types of FDI investors: market-seeking investors, resource-seeking investors, efficiency-seeking investors and investors seeking acquisition of strategic assets.⁷⁹ The last type (acquisition of strategic assets) has mostly been neglected in most articles. Although with the emergence of protectionism mainly in the US, not only the politicians but also scholars would presumably dedicate more effort towards identifying the potentials in strategic assets to either be protected or invested in. This would be of a major concern in chapter 4 of this Thesis. In addition to this categorization, IMF working paper 2010 has prioritized these sectors as following; 1.

⁷⁸ Dsmaıl Çeviř and Burak Çamurdan, 'The Economic Determinants of Foreign Direct Investment in Developing Countries and Transition Economies' (2007) 46 *The Pakistan Development Review* 285

⁷⁹ John H. Dunning, *'Globalization, Trade and Foreign Direct Investment'* (Pergamon, 1993)

Primary sector (resource), 2. Secondary sector (manufacturing), and 3. Tertiary sector (services). As for the resource sector, some scholars including Rajan (2004) take into account that human resource should also be included under the Resource sector alongside the natural resources.⁸⁰

Genuinely, as it was posited earlier, the ultimate aim of an investor is to gain profit in the lead-time, irrespective of the profit being made inside or outside the host country. Often investors seek geopolitical gains by their investment, hence three types of targeted market can be acknowledged within the aforementioned sectors. These targets are: horizontal FDI, which refers mainly to the domestic market and population of the host country, platform FDI, which seeks a third country as the export destination (export oriented investments) and vertical FDI, which investment is rather a supplier or distributor in the capacity of FDI.⁸¹

The aim of the first type of the investors (market seekers) is the local market and thus they adopt a horizontal strategy. As Dermihan et al have pointed out, ‘it involves replication of production facilities in the host country. Tariff-jumping or export-substituting FDI is a variant of this type of FDI. Because the reason for horizontal FDI is to better serve a local market by local production, market size and market growth of the host economy play important roles’.⁸² The second type of investors are the resource seekers. Countries with natural resources, including oil, gas etc, are attractive hubs to investors, who either do not have access or easy access to these resources at home, or it would be a more beneficial economic engagement. As for this type of investment, platform and vertical FDI strategies apply. Very often the obtained commodity (mainly being oil and gas) from natural resources production is deemed to be exported abroad and this can also apply to the manufacturing industry as well, with a broader radius. The manufacturing products can be categorised under horizontal, vertical and platform FDI, depending on the targeted market. If the final product is aimed for an outer market, the process is referred to as export-oriented investment. This type of investment could be desirable for countries like Iran, as it could increase the attainment of foreign exchange, added to the oil revenue.

The legal characteristic of FDI corporations are diverse, as it will be explained in the following part of the present Thesis. However, there are two potential distinctive types of FDI

⁸⁰ Ramkishan S. Rajan, ‘Measures to Attract FDI Investment Promotion, Incentives and Policy Intervention’ (2004) 39 Economic and Political Weekly 12

⁸¹ Howard Shatz and Anthony Venables, ‘The Geography of International Investment’ (2000) Policy Research Working Paper 298

⁸² Demirhan and Masca (n 72)

institution; Greenfield and Brownfield. While Greenfield refers to the type of investment corporation or activity, which sets up a brand-new entity in the host state from the onset, the Brownfield investment, on the other hand, is an assimilation of a foreign investor, with an already existing domestic corporation to form a Joint Venture. Brownfield investment can also obtain the entire business, as the sole owner or manager, albeit the investment would not be considered a new set of line, as the FDI have obtained the already existing line of production.

There is a considerable number of variables that make a country attractive to investors and FDI in particular. Although the key determinants have been identified by UNCTAD, it must be noted that these determinants can be sub-categorised into political, economic and business-oriented, it will be as demonstrated below.⁸³

Table 2: UNCTAD's Classification of FDI determinants

Determining Variables	Examples
Policy variables	Tax policy, trade policy, privatization policy, macroeconomic policy
Business variables	Investment incentives
Market-related economic determinants	Market size, market growth, market structure
Resource-related economic determinants	Raw materials, labor cost, technology
Efficiency-related economic determinants	Transport and communication costs, labor productivity

Source: UNCTAD (2002)

In addition to the prevalent determinants, there are further subordinate components, which have been embodied within the major determinants. These major determinants are market size (i.e. GDP growth), wage (labour cost), measures of openness (trade rate), macroeconomic policies (tax, real interest rate), inflation rate (risk & Macroeconomic policies) and the business climate (domestic investment). Other factors, which can either be considered as having minor effect or as underlying factors in relation to the above major determinants are the following: distance and geographical situation, level of literacy, school enrolment, advancement of information and

⁸³ Torbjörn Fredriksson, 'Forty years of UNCTAD research on FDI' (2003) 12 Transnational Corporations 34

communication technology, intellectual property, telephone line per unit, democratisation and so forth.

While there seems an existing consensus amongst the investors and scholars, which have been referred to in this chapter, for the applicability of these factors as FDI determinants, there are opposing and different points of view in relation to the best way to prioritise them. In fact, not only prioritising these elements, but also finding negative or positive nexus between these elements and FDI. While some authors take it for granted that GDP growth, openness and inflation rate have positive nexus to FDI inflow, other authors' findings contradict this. While Dutta and Roy find a positive linkage between democratisation and FDI⁸⁴, authors which will be referred to later in this part, who have concentrated on primary investments, and on specific FDI exporters, such as China, have found out the association to be negative.

Hence, in order to examine the abovementioned determinants, the next part of this chapter will examine these determinants separately and in each one of them the different types of investment will be applied. Furthermore, the regional study that has been mentioned earlier will also be conducted so that a solid understanding of the applicability of the known FDI determinants is ensured at both cross-sectional and regional level.

4. The determinants

A. Growth rate (market size)

It is commonly argued that the appropriate market size has a strengthening impact as a determinant for the investors.⁸⁵ While the number of discourses challenging the reliability of growth rate and GDP measurement as an accurate reflection of socio-economic health is on the rise, the GDP measure is still of high sensitivity for investors. As it will be presented in detail in this part of the Thesis, it is not clear whether there is a positive nexus between growth rate and FDI. These findings should be divided into two categories; firstly, those findings which genuinely establish a negative linkage between GDP and FDI, and secondly, those which only find a negative nexus between GDP and the primary sector of investment.

⁸⁴ Nabamita Dutta and Sanjukta Roy, 'What Attracts Foreign Direct Investment: A Closer Look' (2009) 29 Economic Affairs 81

⁸⁵ Ewe-Ghee Lim, 'Determinants of, and the Relation Between, Foreign Direct Investment and Growth: a Summary of the Recent Literature' (2001) IMF working paper

To elaborate further, in order to prevent the misinterpretation of a seemingly complicated argument, the mathematical explanation of calculating the GDP should initially be questioned. As Dermihan et al. suggest, the absolute GDP only reflects the population size of the host country, and hence it can be implied that scholars, who genuinely find no nexus between the market sizes and growth rate may have been concentrated on the absolute GDP rate.⁸⁶ As they explain, it is in fact the growth of per capita real GDP, which should be analysed: ‘When we use absolute GDP for market size, we see that they do not affect FDI’.⁸⁷ Having said this, while scholars, including Abdul Mottaleb and Kalirajan, believe that investors are attracted to countries with large and high GDP⁸⁸, Demirhan et al. are of the belief that investors prefer growing economies in comparison to large economies.⁸⁹

The discourse of GDP has been a long-lasting argument between economists who believed in the free market, and those who have been inclined towards the governments’ patronising role as it will be discussed in the next chapter. While classical economists are of the belief that the GDP should be increased in accordance to the real business cycle meaning that it is with the least government intervention that the market should flourish, the forerunner of market interventionist economics, John M. Keynes, has proposed that the GDP can and must in fact be aggregated by the increase in government’s expending through expansionary monetary and fiscal policies.⁹⁰ These controverting arguments will be the cornerstone of the next chapter, in which the role of governments in the economy will be scrutinised.

In order to scrutinise the importance of the market size, what should be principally determined is which of the abovementioned sectors would be more affected by this particular element. As the IMF in its 2010 working paper indicates, there are no direct connections between the market size and the investors in the primary (i.e. resources).⁹¹ The simple explanation for this outcome is that the resource sector is known to be of vertical natured FDI; meaning that the investor is indifferent towards the size, or even the nature of the domestic market (as the horizontal market) and aspiring to reach other markets (vertical/export oriented) than the hosting country. Furthermore, as the

⁸⁶ Demirhan and Masca (n. 72)

⁸⁷ Ibid

⁸⁸ Khondoker Abdul and Mottaleb. Kaliappa Kalirajan, ‘Determinants of Foreign Direct Investment in Developing Countries: A Comparative Analysis’ (2010) 4 Margin: The Journal of Applied Economic Research 369

⁸⁹ Dermihan et al. (n 72)

⁹⁰ John Maynard Keynes, *The General Theory of Employment, Interest and Money* (Wordsworth, 2017)

⁹¹ James Walsh and Jiangyan Yu, ‘Determinants of Foreign Direct Investment: A Sectoral and Institutional Approach’ IMF Working Paper No. 10/187 (2010)

report highlights, the policymakers of the host country are well aware of the fact that the investments in the resource sector may not necessarily improve the employment rates, so the policymakers often share the belief that the domestic enhancement should be focusing towards other sectors, such as manufacturing and services.⁹² Having said that, it is remarkable that, as the UNCTAD 2017 report acknowledges, there is a positive impact on the employment rates in this sector in long term investment.⁹³ This has been a topic of controversy in Iran, since the early days of oil exploration, which will be referred to in chapter three. Nonetheless, it is fair and reasonable to declare that the overall revenue of the resource industry will eventually add up to the GDP, which could bolster the growth in the industrial and manufacturing sectors indirectly, especially in countries that enjoy a nationalised natural resource sector. Thus, despite the fact that the market size is not of importance for the investors in the resource sector, their investment will enhance the growth of the market size of the host country. It is crucial to mention that, countries with lavish natural resources are suffering from the so-called Dutch Disease, by which the total dependency of one commodity puts the GDP in a vulnerable state.⁹⁴ This has been the case in some Latin American countries in the past few decades and the same can happen to countries like Iran, Saudi Arabia and Venezuela. The latter has been suffering since 2012, as a result of absolute reliance on the oil revenue.

As for the secondary and tertiary sectors, namely manufacturing and services, investors for these sectors give primacy to the horizontal market (being the domestic market of the hosting country), hence the market size plays a major role in attracting investors. It can be understood that, human capital and human resources are a vital driving force for any emerging economy. In accordance to the potential reasons for the shift of FDI from developed to developing countries, the element of population should be identified as an essential factor. While countries like Japan are facing a gradual reduction in their population and their working population, countries like India and Malaysia have experienced rapid growth in their population.

Wong Hock Tsen suggested that the manufacturing sector is the driving force for the Malaysian economy, and it has been highly invested by multinational corporations from several

⁹² Ibid

⁹³ World investment report 2017 (n 74)

⁹⁴ Kareem Ismail, 'The Structural Manifestation of the 'Dutch Disease: The Case of Oil Exporting Countries' (April 2010). IMF Working Papers 1

countries including UK, Japan, Germany and USA.⁹⁵ He pointed out the fact that the growing GDP of Malaysia as well as its population have performed as one of the most vital components in attracting FDI in Malaysia.⁹⁶ Furthermore, empirical studies that have focused on major Latin American Countries (Brazil, Mexico, Argentina, Bermuda and Chile) suggest that the market related factors, most importantly the market size, have been found to have significant determining effect on FDI.⁹⁷ Based upon previous studies it was found that the major FDI inflow into these 5 countries from USA was attracted and driven by the large and growing market size.⁹⁸

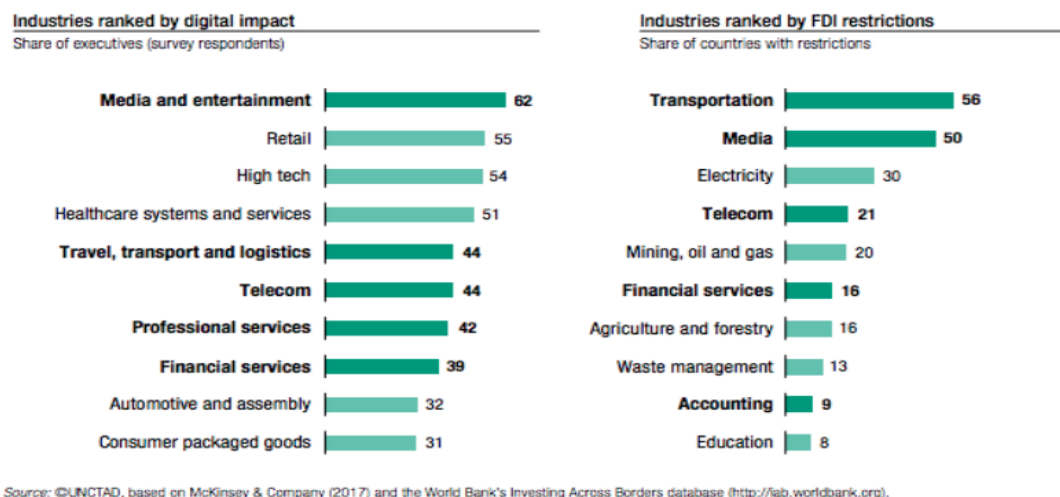
As for the service seeking investors, a country with a large population can be considered as an absolutely attractive destination. Large number of people, living in a dynamic economic atmosphere, need a wide range of services, for instance telecommunications and internet providing industries, food industries, medical services, transportation, tourism and so forth. There is a strong nexus between the market size and the service seeking investors. Nonetheless, some of these services remain to be highly sensitive for many countries both developing and developed. These concerns would form part of the discourse of this Thesis as to what extent states are willing to open up their market and their economy to foreign capital and foreign management. These concerns vary from state to state, depending on the political momentum and their fundamental capacity. While India allows 100% share of FDI in a highly sensitive industry such as defence other developed countries indicate abrupt reluctance towards FDI in the media sector. As the UNCTAD 2017 chart below indicates, media has been recognised more restricted than the oil industry.

⁹⁵ Wong Hock Tsen, 'The Determinants of Foreign Direct Investment in the Manufacturing Industry of Malaysia' (2005) 26 *Journal of Economic Cooperation* 91

⁹⁶ Ibid

⁹⁷ Kevin P. Gallagher and Melissa B.L. Birch, 'Do Investment Agreements Attract Investment? Evidence from Latin America' (2006) 7 *J. World Inv. & Trade* 961

⁹⁸ Ibid



On the matter of positive nexus between service-based FDI and market size, apart from the Latin American countries, it also applies to other regions that have been mentioned earlier. Jadhav, by examining the BRICS's FDI from 2000 to 2009, found that the market size is the most dominant determinant among other probable determinants.⁹⁹ Furthermore, Akpan et al. suggest that market size has been the driving force of FDI determinant in the MINT bloc.¹⁰⁰

The European Union considers market size as a gravity factor.¹⁰¹ Artige et al. reviewed three Member States of the EU to fully capture the effectiveness of each determinant and they came to the conclusion that market size, regardless of the sector of investment, is the robust determinant in Cataluña, the most prosperous state of Spain, Baden-Württemberg (with approximately 470Billion Euro in GDP as of 2016, and less than 4% of unemployment rate) and Lombardy. For Lombardy, in particular, productivity performance was an additional reason.¹⁰²

To conclude this part, it has been shown that, while the primary sector is indifferent towards the market size as a plausible FDI destination, population and market size are a vital driving force for any emerging economy in order to attract secondary and tertiary investors. As for the primary

⁹⁹ Pravin Jadhav, 'Determinants of Foreign Direct Investment in BRICS Economies: Analysis of Economic, Institutional and Political Factor' (2012) 37 *Procedia - Social and Behavioural Sciences* 5

¹⁰⁰ Uduak S. Akpan and Salisu R. Isihak and Simplice A. Asongu, 'Determinants of Foreign Direct Investment in Fast-Growing Economies: A Study of BRICS and MINT' (2014) *African Governance and Development Institute WP/14/002*

¹⁰¹ European Commission Report, 'Single Market Scoreboard Integration and Market Openness Foreign Direct Investment' (Reporting period: 2014 - 2015)

¹⁰² Lionel Artige and Rosella Nicolini, 'Evidence on the Determinants of Foreign Direct Investment: The Case of Three European Regions' (2005)

sector while the market size and GDP has found to be irrelevant to the investors, it has been postulated that, such investment specifically in long term not only would contribute to the employment but also to the overall GDP of the country which could help boost the overall economy in different sectors. As for the secondary and tertiary sectors being manufacturing and services GDP plays a critical role in attracting FDI specially if the investor is interested in the domestic market for the final product of his FDI.

B. Wage /Labour

To elaborate the effect of labour and wage, it has to be initially mentioned that they can either be studied separately or combined, due to the natural intertwined relationship between the two. Hence, in order to clarify the distinction, an explanation of each will be given to demonstrate how they may affect an investment. Furthermore, through a theoretical analysis, the subject will be analysed in the context of sectoral affinity. Eventually, the impact of wage/labour will be examined within the regions of Latin American countries, MINT, BRISC and the EU. The reason to study these blocs lies in the fact that, they have been enjoying remarkable growth and advancement despite the every now and then fluctuations. Also, the variety of the locations would provide a suitable platform to compare identical determinants in different geopolitical climate.

Depending on various reasons, the minimum wage in every country fluctuates. While the official minimum wage in a developed economy like the UK is circa £7.83 per hour which is approximately 10.40 in USD,¹⁰³ in countries like Iran it is approximately \$244.7 per month.¹⁰⁴ This can even drop to circa \$5 per month in India for a skilled worker,¹⁰⁵ which happens to be the lowest wage in BRICS.¹⁰⁶ The wage could convey the potential comparative advantage that they may have to offer while competing to magnify FDI flow. Meaning that, low labour wage could be of desired if manufacturing is the target sector. Nonetheless that also depends on the type of industry and the overall financial feasibility of the project. The minimum wage, growth rate, GDP rate and inflation rates are all genuine indicators to identify where each country stands in terms of

¹⁰³ Government of United Kingdom 'Official National Minimum Wage and National Living Wage of UK' (2018) see: <https://www.gov.uk/national-minimum-wage-rates>

¹⁰⁴ Financial Tribune 'Iran worker minimum wage' 2018 ' : <https://financialtribune.com/articles/economy-business-and-markets/61564/workers-minimum-wage-to-rise-by-145>

¹⁰⁵ Official minimum wage of India (2018) see: <https://paycheck.in/main/salary/minimumwages/delhi>

¹⁰⁶ Quinton Bronkhorst 'minimum wages around the world' (2013) see: <https://businesstech.co.za/news/general/31803/minimum-wages-around-the-world/>

economic power. This, of course, can be integrated in the socio-political setting of each country. While one could assume that improvements in the living standards and the social welfare system of the EU, in addition to the labour regulations, have led to an increased rate of labour wage and subsequently surge in production expenses in EU, the dominant political system of China has kept wages as low as possible through less labour regulation. Nonetheless, this has not kept China at the level of an underdeveloped country, but it has assisted China achieve its position as an economic superpower. Although it is valid to argue that such low wages have led to increased inequalities, nonetheless it can be proposed that such intentional sacrifice had contributed for a greater good if the society is to be seen as a singular body; In other words, in lieu of bolstering the GDP per capita, China has given primacy to increase its overall net GDP. It will be argued in chapter two and three that for countries during their economic take off, a holistic approach towards the economy may be an imperative paradigm. It should be borne in mind that whilst the emergence of the middle class in China could be taken as a token of success for having passed the threshold of the economic ascendancy in comparison to decades ago, nonetheless the wealth distribution and the socio-economic inequalities has not ameliorated.¹⁰⁷

The question on this matter would be to what extent a developed middle class-oriented country like China can still be a desirable destination for FDI. The answer to this question lays in the fact that the low wage, minimum production costs, and hard-labour oriented society have been key determinants in attracting FDI inflow to China.¹⁰⁸ If we then take the USA as an example, we will see that having the strongest middle class in the world did not deprive US of being the number one FDI destination. As of 2016, the USA is simultaneously the main FDI exporter.¹⁰⁹ Nonetheless, the outward FDI of the USA can be taken as an example of the root of the rise of the populist movement in the country. The high-tech investment in the USA has been preponderant over not only other states, but also over other sectors, including susceptible low tech. This can be an example of what was mentioned as unfettered capitalism earlier in the Thesis. Pertinent to the concept of capitalism, while the US has been the forerunner of capitalism for the past 100 years, the Neoliberal US interpretation of capitalism has not been the pervasive paradigm for other

¹⁰⁷ Dominic Barton, McKinsey analysis, 'Mapping China's Middle Class' (2013) <https://www.mckinsey.com/industries/retail/our-insights/mapping-chinas-middle-class>

¹⁰⁸ Martin Jacques, *When China Rules the World: The End of the Western World and the Birth of a New Global Order* (Penguin, 2012)

¹⁰⁹ World Bank 'Foreign Direct Investment Net Outflow' (2017) <https://data.worldbank.org/indicator/BM.KLT.DINV.CD.WD>

capitalist systems. The best example to confront the US capitalism could be the Nordic economies, where the conducting kernel of the free market has not relentlessly neglected investment in human resources and the health care of citizens. It is remarkable to point out that Norway enjoys the strongest National Wealth Fund globally. The importance of the National Wealth Funds will be explored in detail in chapter four in relation to Iran.

Having said this, the pivotal point is that the minimum wage can reflect the type of sectors in which an investment would be profitable for transnational companies, or foreign individuals. It also has to be mentioned that it can be observed that the industrial countries have gradually gone beyond the threshold of catastrophically low wages, and have reached a high level of welfare system, hence the ensued shift of sectors for FDI. It is after reaching this stage that the policymakers of a country would be interested in the issue of comparative advantage. At this point, the FDI exporters and investors would start seeking new destinations for achieving higher economic efficiency, not only for expanding the production lines, but also the maximisation of their profit.

Although wage is a notable determinant, it cannot be considered as the only motive for investors and their investment. If this was the case, Uganda would have been a FDI hub as it has the lowest wage globally.¹¹⁰ Thus, comes the conduciveness of labour; a class of labour workers with relative skills, who have grown accustomed to the work ethics that has already been developed in countries with preparedness befitting FDI. Countries, such as China, India and Iran, with low minimum wage have traditionally relied on trade and valued local traditional industries, including traditional farming on a massive scale and carpet industries for instance. These activities have definitely improved the working culture of these countries, and the mentality of the skilled workers as a perquisite for FDI.

It should be borne in mind the fact that FDI is not restricted to capital, but it extends to the hardware, machineries and the know-how. The know-how can be transferred into the FDI destinations via the help of foreign or domestic educated experts. The education factors will be mentioned separately later.

To conclude, it can be said that, while low wages can attract FDI in various sectors (precisely export oriented manufacturing), other factors play a more significant role in attracting investors. To elaborate the posit, a demonstration of cross sectional-regional analysis would be of help. To

¹¹⁰ Minimum wage (2018) <https://www.minimum-wage.org/international>

begin with, China is an interesting example, as its position has shifted from one of the main recipients of FDI to one of the major exporters of FDI worldwide. Amighini et al. have highlighted the fact that, while China still has one of the lowest global minimum wages, yet the Chinese investors seek new destinations for their investments.¹¹¹ This has not been merely restricted to the primary sector, but rather to secondary and tertiary sectors, which include services and manufacturing. They found the labour wage to be insignificant for Chinese investors, due to the fact that investing in the service sectors would only serve the local market as a horizontal investment.¹¹² This is also applicable for the manufacturing sectors in which the products are intended to be sold in the domestic market. Hence, in both scenarios the total cost will be covered by the value price of the finished service and product, in accordance to the domestic economic norms. In support of the previous arguments, on the issue of skilled workers and working culture, Demirhan et al. found no significance of relevance, in any of the sectors and they suggested that, while the labour cost is moderately at a minimum level in different countries, what mainly attracts investors is the skill of the labour force.¹¹³

In relation to rules and regulations, the interesting point concerning labour as a determinant is the fact that, contrary to FDI investors who prefer minimum regulation on labour and fiscal matters, axiomatically this does not favour labour whatsoever.¹¹⁴ Palokangas disagreed, suggesting that the authority of the FDI exporters may be hindered by the lack of persuasive labour regulations. The lack of labour regulations and the related legal institutions, the reliability and the binding effect of the labour related contract (wage, work duration, leaves, insurance, health, misconduct, and etc.) may turn out to be obtusely against foreign investors or the labour unions.¹¹⁵ The synergic conduct of the labour unions has been occasionally forestalled by the governments that aimed to increase the private investment including FDI. As it will be discussed extensively in the next chapter, the battle between governments and labour unions has been a long-lasting one spreading from Chile and Argentina to the UK in the 1980s. As for Iran, there are hints indicating

¹¹¹ Alessia Amighini, Roberta Rabellotti and Marco Sanfilippo, 'China's Outward FDI: An Industry-Level Analysis of Host Country Determinants' (2013) 8 *Frontiers of Economics in China* 309

¹¹² *Ibid*

¹¹³ Demirhan and Masca (n 72)

¹¹⁴ Nabamita Dutta and Sanjukta Roy, 'What Attracts Foreign Direct Investment: A Closer Look' (2009) 29 *Economic Affairs* 81

¹¹⁵ Tapio Palokangas, 'Foreign Direct Investment, Labour Market Regulation and Self-Interested Governments' (2003) IZA Discussion Paper No. 793

towards the potential trodden path of globalised standards to boost FDI. These hints will be explored in chapter four, while following the evolution of the Iranian legal regime.

The regulatory framework should balance the needs and desires of both sides, without favouring one over another, but in fact optimise the prosperity of the country maintaining a reasonable balance. The optimisation of the prosperity of a country is a crucial part of this Thesis, nevertheless the improved GDP as a result of FDI might emanate at the cost of jeopardised legitimacy, if the well-being of the population would be debilitated. That might occur if the public of the host state are not the main beneficiary of the FDI related contribution. Either as a result of non-employment of the locals or the issue of the wealth distribution. In a bone ideal equation, the economic prosperity and the national interest should be pursued inextricably. In achieving so, countries apply mixed economic models based on their needs. However, these mixed economic models may not benefit the transnational corporations. For instance, whilst Malaysia was enduring an economic crisis in 1990s, during which unemployment was aggravating the domestic ethnical crisis, the government introduced a new employment agenda, based on ethnical priorities, with a view to bring about a balanced employment rate among its multi-ethnic citizens.¹¹⁶ This was not welcomed by foreign investors and the advocating authorities, including the IMF. This example will be further analysed in the next chapter, when investigating the globalisation and its discontents.¹¹⁷

Hence, it can be fathomed that wage is not of high significance in either sectors of investment, while adeptness and skilled labour in addition to sound regulation determine significantly the investors' destination. Regarding the Latin American Countries, Palokangas found the correlation between labour costs and FDI flow to be negative.¹¹⁸ Moreover, Çevis et al. also found the nexus to be negative in developing countries.¹¹⁹ Regarding Latin America, Gallagher et al. have not mentioned labour cost as a determinant at all.¹²⁰ As for the BRICS and MINT, Akpan et al. did not identify labour costs as a determinant for these groupings.¹²¹ In spite of all negative nexus with labour costs in the abovementioned blocs, the findings for EU are interestingly different;

¹¹⁶ Joseph Stiglitz, *Globalization and Its Discontents* (Penguin, 2002) 145

¹¹⁷ 'Globalisation and its discontent' is the title of a book by Nobel prize winner Joseph Stiglitz, which has been used as a main secondary source of the second chapter of this Thesis.

¹¹⁸ Palokangas (n 115)

¹¹⁹ Çevis and Çamurdan (n 78)

¹²⁰ Gallagher and Birch (n 97)

¹²¹ Akpan and Isihak and Asongu (n 100)

Demertzis et al. suggested that, in order to favour the investment in the trade sector, wage indeed plays a crucial role as an FDI determinant: ‘wage moderation and higher education are two crucial factors in the decision to invest, as they determine the relative attractiveness of the destination country in terms of the cost-to-productivity ratio’.¹²² Hence, they concluded that the wages in Europe should be lowered to stimulate inward FDI. Nevertheless, following the recent political movements, this seems a farfetched vision to achieve. Unless, in a not distant future, some governments in Europe, including UK after Brexit, find themselves in a position in which interventionist policies are once again to be applied, as it was the case in the late 1970s, in order to mitigate the losses in revenue and investment.

To conclude this part, it has been argued and presented that, while labour costs/wage is not the main concern for investors, labour regulation is taken into consideration ahead of their investment decision and this requires the domestic policymakers to subsequently refine the regulatory framework in order to attract more FDI.

C. Openness-trade rate

The concept of an open economy can be broad, if not dispersed. In addition to the economic data which should be relied upon, in order to realise whether or not a country has been operating as an open economy, the political ties of a country should be analysed further to identify the depth of the market openness. Market openness and the geopolitical standings do in fact have a direct correlation. As will be expounded in Chapter Four, some Iranian lawmakers in the early 1980s attempted to nationalise the foreign trade, which in reality and legality was to no avail. Apart from Iran, the issue of trade always has a direct effect on political alliances. It can be very well perceived through analysis of the contemporary accelerating trade war between old political alliances: the impact of Brexit on the EU, the US administration’s approach towards North American Free Trade Agreement (NAFTA), and the long-lasting trade and currency war between the East and West. The proposed argument would be analysed not only in this chapter, but also in the following chapters, as the political impact on trade, and in direct case FDI, is crucially irrefutable.

¹²² Maria Demertzis and Peter Pontuch, ‘The role of FDI in preventing imbalances in the Euro area’ Volume 12 Issue 2 - Quarterly report on the Euro area. (June 2013) see: http://ec.europa.eu/economy_finance/publications/qr_euro_area/2013/pdf/qrea2_en.pdf

The truth is that even the most protectionist countries, with the tightest centralised-Communist political approaches and socialist regulations, cannot absolutely isolate themselves. Even in the most liberalised countries, the establishments, corporations and individuals cannot participate in every business matter merely because they live in a free trade country. The hurdle is partly due to the efficiency issue and mostly because of anti-monopoly laws and regulations which are often neglected and ignored.

To corroborate the earlier posited notion, examples of allegedly unassailable countries in terms of the extent of their openness could be of help. North Korea, one of the most politically and economically isolated countries in the world, is in fact a signatory to 24 Bilateral Investment Treaties. This indicates that it has been trading and involved in investment activities, if not with every country, but at least with 24 states. Although having signed 24 BIT does not guarantee the facilitation and existence of usual trade, it does however point out to the concept of recognition. As it will be discussed in the first part of chapter four, international legal sovereignty (as a major identified types of sovereignty) provides the international recognition under which, even the most isolated states would enjoy the usual benefits of being internationally recognised. Another instance, which would be scrutinised as the major subject of this Thesis, is Iran; a country which, in spite of the unilateral and multilateral sanctions, for the past 30 plus years or more, has had a remarkable number of trade relationships with countries in all 5 continents in different sectors, from the oil and petroleum industry to agricultural commodities and machineries. Last but not least is China, a country that had kept its doors closed to foreigners for decades, but eventually opened up its market to a new vantage point that has altered the entire balance of political-economic momentum in the world. Even prior to that, China was not bereft of international trade, and did in fact have commercial activities with most countries. Nevertheless, the interesting point with regard to China is the fact that, while still being considered a Communist state in the political spectrum, in terms of economy China is as distanced as possible from the economic teachings of Marx or Mao.

The point that can be extracted from this introduction, is that, economically speaking, every single country in the world can be considered to have incorporated a market openness test. Nonetheless, what is of significance is the extent of the openness. It can be postulated that not all economically open countries enjoy a domestic liberal political system. Hence the economic liberalisation and political liberalisation, although being advocated by liberal-democracy

proponents, do not necessarily take place concurrently. In fact, various elements have potential impacts on moulding a society and its economics. Hence as one the major contributions of this Thesis, it would be posited that, synergic cohesion accompanied by accountability could as well contribute to economic prosperity. This will be expounded in the last part of Chapter Three and the entire Chapter Four by elaborating different types of sovereignty and the experience of Iran as a transmitting state from a monarchy (absolute to conditional and to dictatorship) into a democracy enshrined in religious rules.

One of the key issues, which can be considered, and taken as a distinguishing line between an open economy and a closed economy, is the availability of international financial institutions in the country i.e. international banks. Moreover, the existence and membership of countries in legal-economic blocs under international treaties may play a decisive role in attracting FDI. For instance, the membership in the WTO, Shanghai Cooperation organisation or EU, if not for all investors, but for some of them, is an indication of a country's openness.¹²³

In order to elaborate to what extent, trade balance and openness is an effective FDI determinant, an empirical review of different sectors of investment will be applied here. It has to be mentioned that the trade balance in this context refers to the pre FDI investment, as FDI itself presumably could lead to an increase in the trade flow. Dutta et al. suggest that bigger trade sectors and smaller trade barriers, including tariffs and quotas, would attract more Foreign Direct Investment.¹²⁴ Demirhan et al. also reached the same conclusion¹²⁵ and this is also in accordance with the findings of Çevis et al.¹²⁶ Nonetheless, while most scholars believe that trade openness has a positive correlation with FDI, it should be noticed that in some cases, the availability of international treaties and legally binding norms, such as the Most Favoured Nation clause, may hinder large investors' interests, if they seek access to the local market, in other words, the horizontal market. This is due to the fact that the increase in the competition may not necessarily be desirable, and in favour of the FDI exporter.

Openness is commonly considered as a determinant in all sectors. Gallagher et al. found openness to be a determinant in Latin America, but yet again market size, as the main determinant,

¹²³ Hubert P. Janicki and Phanindra V. Wunnava (2006) 'Determinants of foreign direct investment: empirical evidence from EU accession candidates', 36 *Applied Economics* 505

¹²⁴ Nabamita Dutta and Sanjukta Roy, 'What Attracts Foreign Direct Investment: A Closer Look' (2009) 29 *Economic Affairs* 81

¹²⁵ Demirhan and Masca (n 72)

¹²⁶ Çevis and Çamurdan (n 78)

took precedent over market openness.¹²⁷ Pertinent to BRICS and MINT, Jadhav, contrary to the others' findings, noticed the nexus to be negative in relation to BRICS.¹²⁸ Akpan et al. found that the nexus between trade openness and MINT is significant, although their findings with regard to BRICS are at first glance contradictory.¹²⁹ However, applying a model, which they referred to as the pooled method, the positive and significant nexus between BRICS and trade openness is once again confirmed.¹³⁰ With regard to three specific regions in Europe, Artige et al. concluded that Cataluña, Lombardy and Baden-Württemberg offered open economies, which undoubtedly facilitated high credible FDI inflow.¹³¹ Nonetheless, it seems that openness has been taken granted and it is neither suggested nor considered, by Demertzis and Pontuch as determinant to maintain the inward FDI flow.¹³² Due to this uncertainty raised by Demertzis and Pntuch, the issue of openness needs to be scrutinised in more detail, as it is one of the most crucial components for the desired equilibrium. Although it has been taken granted by the *laissez faire* ideology, Neoliberalism and Chicago School of Economics¹³³ that the open market would benefit all parts of trade/investment, nonetheless there have been substantial counter-arguments which need to be considered in order to reach a solid conclusion. The accuracy of the proposed notion over the equal contribution of openness will be extensively explained in the following chapter. Contrary to the 2017 OECD report on the potential rise of investment protectionism, there are tangible indicators of disparity between openness and protectionism. For instance, the recent Brexit vote in the UK could most probably result in the withdrawal from the Single Market, which has been available as a tariff free zone for the members of the EU/EFTA. On other occasions, the US President has threatened to withdraw from NAFTA, which is yet again another free trade agreement, and this is a valid indication of the rise of protectionism in the hitherto forerunner of free world.

This can be interpreted in two dimensions: one is to acknowledge these moves as an inevitable epochal occurrence (a maladjustment during stalemate), as a result of transition of global power and the economic momentum gained by the Eastern bloc. Second is that the rise of protectionism in the abovementioned countries is, in fact, rational economic responses to protect

¹²⁷ Gallagher and Birch (n 97)

¹²⁸ Jadhav (n 99)

¹²⁹ Akpan and Isihak and Asongu (n 100)

¹³⁰ Ibid

¹³¹ Artige and Nicolini (n 102)

¹³² Demertzis and Pontuch (n 122)

¹³³ *Laissez Faire*, Neoliberalism and the Chicago School of Economics are considered as the exacerbated pedestals of the dominant capitalism which have beset the globalization. Each will be defined and tested in detail in chapter 2.

their economies from an influx by foreign economic dominance. This nonetheless contradicts the core notion of free trade; while the western emphasis has been on the global virtues of free trade for the past few decades, the rising momentum of new economic blocs, including China, is empowering protectionist discourses in the west following their economic downfalls. To put it simply, *trade is good but importing is bad*. It would not be incorrect to argue that both scenarios carry a sense of opportunistic double standard. As it will be explained in chapter two, while in the 1950s and 60s in the US and UK, the Keynesian economic model was being advocated, these countries deployed economists to advocate in favour of the free market. While the economic spectrum of the UK and USA were filled with public expenditure, which kept politicians and public satisfied, the market liberalisation and governments' non-interference was being advocated by advocates of the Chicago School of Economics in Latin America. This will be discussed in chapter two. It will be expounded that, how the drastic force of market advocates brought about severe ramifications to the countries under the examination of market liberalisation. The pertinent point at this instance is that, open market may continue to be requested and advocated by the western block from the eastern bloc while simultaneously, the western bloc seeks protectionist measure. Such double standard is identified in the following parts, for instance with regard to the currency war and how China is blamed for keeping its currency low, whilst concurrently US federal reserve have gone through a drastic quantitative easing programme.

To conclude this part, it has been observed that openness is not a vital determinant of FDI but has been a determinant in the eyes of investors in most regions.

D. Macroeconomics

As was discussed earlier, diverse sets of positive and negative nexuses can be evinced with regard to the effect of Macroeconomic determinant of FDI inflow. In order to elaborate this, initially a theoretical explanation of what constitutes macroeconomics shall be presented. In addition, a cross-sectional analysis and finally empirical evidence on regional findings will be presented.

Macroeconomic policies are exerted by the central government in order to lead various economic contingents to the desired outcome. Genuinely, the economic tools, which have been vested in the governments' hands are fiscal and monetary policies. Fiscal policies aim to adjust the tax rate and its revenue to regulate governments spending's accordingly. Monetary policies, as a

parallel means, strive to regulate the supply and circulation of money through interest rates. Macroeconomic policies in general are deemed to bring about economic stability via the control of inflation rates, interest rates, taxes and real exchange rates. It will be extensively discussed in Chapter Two that, while the laissez-faire economists and classical theorists, including Hayek,¹³⁴ were not fond of government intervention, Keynesian economics, with Keynes himself as the forerunner of macroeconomics, were staunchly of the belief that the fatal passivity of government, not only created the Great Depression of the 1930s, but also protracted the recovery.¹³⁵

While the existence of ascending inflation rates in a country would succour maintaining and bolstering the growth rate, surge of inflation rates would distort the domestic market. The unbridled consequences may ensue pernicious effects, not limited to the economic spectrum. It will potentially get exacerbated in Chapter Four, if the inflation is combined with stagnation, that will subsequently lead to stagflation.¹³⁶ Under such circumstances, not only the purchasing power of people is reduced to the minimum level, but also in some cases it may even put the political stability of the country in jeopardy. Hence, the inflation rates can be controlled by variety of methods, ranging from quantitative easing to increase of interest rates and changes in tariff duties.

Furthermore, in addition to inflation rates, the real exchange rate plays a vital role in driving the economy of a country. In an economically liberalised country, usually this is the market that in fact values or devalues a currency, under what is known as floating currency system. It is of interest that the market is primarily influenced the official interest rates, unemployment rates and inflation rates. Nonetheless, even in the most liberalised countries, there have been times that central banks have interfered in the market, either by putting a cap on a specific pair of currencies or by removing it. Central banks can also drastically drop their interest rates overnight, as happened in Japan in 2015,¹³⁷ or can over-print banknotes for a remarkable period of time, as for instance the US Federal Reserve and its quantitative easing program.¹³⁸ These economic stimuli are mainly applied, in order to either boost the domestic production, hence increase exports or to stabilise the

¹³⁴ Hayek (n 3)

¹³⁵ Keynes (n 90)

¹³⁶ This was the case in Iran between 2010-2014. The growth rate reached approximately -5%, while the official inflation rate was somewhere around +40%.

¹³⁷ Economist 'Japan Adjusted its quantitative easing programme' (2015) <https://www.economist.com/news/finance-economics/21684516-central-bank-joins-effort-get-japanese-companies-spend-their-cash>

¹³⁸ Forbes 'Quantitative easing in focus' (2015) <https://www.forbes.com/sites/greatspeculations/2015/11/16/quantitative-easing-in-focus-the-u-s-experience/5c639ac9528d>

domestic market, which has been struck by an economic shock. Nonetheless, global political-economic competitiveness can also be identified as the reason of economic stimulations of such kind. This is why high ranked politicians, such as Guido Mantega, the former Brazilian finance Minister in 2010, discussed these phenomena using the term ‘currency wars’, or as commonly known fiscal wars.¹³⁹

In order to elaborate on the macroeconomic substances as determinants in the context of FDI, a cross-sectional analysis will be provided. In general, it is commonly perceived by analysts, who will be referred to following this part, that this determinant has a mixed effect depending on the regions and the sectors. While normally investors in a primary sector seek to extract natural resources, the macroeconomics may not be their main concern if it falls under vertical approach, meaning that the inflation rates and the real exchange rate do not affect them directly. Nonetheless, as the quantity of explored oil would have direct impact on the USD rate and the revenues of the exporting states, the oil sector and the existence of FDI play a vital role for the host state. On the other hand, as for the secondary and tertiary sectors, it may have a dual effect. The question is whether an investor is investing in either of these sectors for the horizontal target or if the final target of the product is a third country; in other words, we talk about an export-oriented investment.

Ruiz believes that, if the target of the investor was the local market, then the appreciation of the currency, which is the strength of the currency, would be a great motive for FDI inflow, considering the increase in the purchasing power of the local consumers.¹⁴⁰ On the other hand, the inward FDI can be increased, having taken the opposite direction, by the devaluation of the currency, due to the fact that the devaluation of the host country’s currency can contribute to the wealth of the FDI exporters in comparison to the currency of the host state.¹⁴¹ Moreover, Bénassy-Quéré et al. have focused on investors with re-exporting intention. The appreciation of the currency, in this case, may decrease the FDI inflow, due to the fact that the local welfare would eventually be increased and so the labour wage.¹⁴² Perceptibly, the increased labour wage and general production cost would eventually lead to an increased final price of the product. This fact

¹³⁹ <https://www.ft.com/content/33ff9624-ca48-11df-a860-00144feab49a>

¹⁴⁰ Isabel Ruiz, ‘Exchange Rate as a Determinant of Foreign Direct Investment: Does It Really Matter? Theoretical Aspects, Literature Review and Applied Proposal’ (Centre for Research in Economics and Finance (CIEF), Working Papers, No. 05-09 (2005).

¹⁴¹ Ibid

¹⁴² Agnès Bénassy-Quéré, Lionel Fontagne and Amina Lahreche-Revil, ‘Exchange Rate Strategies in the Competition for Attracting FDI’ (Working Paper No. 1999-16. 1999)

would hinder the competitiveness of the product in the global market when being exported, due to its higher price, in comparison with the other identical products. It can also be postulated that industrial countries with volatile macroeconomic policies i.e. real exchange rate, have experienced a negative appearance of FDI.

In addition to the cross-sectional analysis, regional examples are useful to elaborate this issue. Gallagher et al. initially found out that the resource sector has no place in FDI for the major Latin American countries, meaning that the main investment is towards secondary and tertiary sectors.¹⁴³ However, they found the macroeconomic determinant to be among the top three determinants.¹⁴⁴ Their finding is in line with Nunnenkamp's findings.¹⁴⁵ Furthermore, Ruiz, whose work was mainly focused on the effect of exchange rates in Argentina, Brazil, Chile, Colombia, Mexico, Peru and Venezuela, found that the macroeconomics factors and policies, including the real exchange rate, have great synergising sway as FDI determinants, although she once again gave primacy to market size as the major determinant.¹⁴⁶

With regard to the BRICS bloc, Vijayakumar et al. argued that inflation has no actual effect as a determinant for FDI exporters.¹⁴⁷ Furthermore, Akpan et al. established, similar to the Latin American countries, that the inward FDI to BRICS and MINT are also not resource-oriented but market-oriented.¹⁴⁸ They also stated that the inflation has a negative nexus in the MINT area, but a positive one in BRICS and they further concluded that the countries with higher inflation rates in these two regions are more attractive for investors.¹⁴⁹

Pertinent to Europe, the Volume 12 N. 2 (2013) EU Report suggests that the mere membership of EU 'eliminates currency risk and promotes a stable macroeconomic environment'.¹⁵⁰ This of course can be challenged, based on the debt crisis and financial crisis in the Euro Zone. Nonetheless, this Report rightly points out the fact that, after the first phase of FDI in a country, which is hosting investment for the first time, and passes the thresholds (gravity

¹⁴³ Gallagher and Birch (n 97)

¹⁴⁴ Ibid

¹⁴⁵ Peter Nunnenkamp, 'Foreign direct investment in developing countries: What policymakers should not do and what economists don't know' (2001) Kiel Institute for the World Economy

¹⁴⁶ Isabel Ruiz, 'Exchange Rate as a Determinant of Foreign Direct Investment: Does It Really Matter? Theoretical Aspects, Literature Review and Applied Proposal' (Centre for Research in Economics and Finance (CIEF), Working Papers, No. 05-09. (October 15, 2005)

¹⁴⁷ Narayanamurthy Vijayakumar, Perumal Sridharan and Kode Chandra Sekhara Rao, 'Determinants of FDI in BRICS Countries: A Panel Analysis' (2010) 5 International Journal of Business Science and Applied Management 1

¹⁴⁸ Akpan and Isihak and Asongu (n 100)

¹⁴⁹ Ibid

¹⁵⁰ Demertzis and Pontuch (n 122)

factors, including market size), the macroeconomic concerns become more important for investors.¹⁵¹ While this Report, only mentions the importance of tradable sectors as plausible FDI destinations, it does not consider macroeconomics as the main determinant regarding the growth of the EU. This is perhaps due to the supposed harmonisation attempts, which in reality are not precisely consistent within different Member States. It is interesting to observe that, contrary to the 2013 report, the 2017 UNCTAD Report on FDI acknowledges the prominence and positive contribution of improving macroeconomics to the FDI trend.¹⁵²

On the issue of fiscal policies, Artige et al. suggested that fiscal incentives, including tax exemptions, are of attraction for investors.¹⁵³ While FDI in Europe, and the three regions of their research (Cataluña, Lombardy, Baden-Württemberg) are considered mainly suitable, it is not wrong if they are seen as horizontal investment destinations. They concluded that, yet again, market size plays a much more vital role as a determinant in comparison to macroeconomics, nonetheless they put emphasis on the productivity performance, which can be bolstered by macroeconomic policies.¹⁵⁴ This can be seen in the low interest rates across the EU which are aimed to increase the production, exports and circulation of money within the market.¹⁵⁵

To conclude this part, it can be suggested that the importance of macroeconomic factors depends on the sectors of the investment. In case of manufacturing and production lines, if they are intended for the domestic market, the more stable the macroeconomics, the better for the investors and possibly the rich domestic consumers. The more fragile the macroeconomic policies, the better for the investors and their re-export targets. It can be said that, in either scenario, investors would find their place and adjust their strategies accordingly.

E. Business-political climate

Business climate in any given country is a reflection of the entire economic-political and social standards of a country. Hence, the business climate should be discussed intertwined with other factors and determinants. Nonetheless, to assess the business spectrum of a state, investors

¹⁵¹ Ibid

¹⁵² World investment report 2017 (n 74)

¹⁵³ Artige and Nicolini (n 102)

¹⁵⁴ Ibid

¹⁵⁵ Speech by Yves Mersch, Member of the Executive Board of the ECB, 'Low interest rate environment – An economic, legal and social analysis' University of the Deutsche Bundesbank, Hachenburg, 27 October 2016, <https://www.ecb.europa.eu/press/key/date/2016/html/sp161027.en.html>

and scholars principally employ the World Bank's Ease of Doing Business Index. This Index includes approximately 10 sub-indices, amongst which are construction permits, setting up a company, registering property inter alia enforcing contracts and tax related issues. While the data and indexes can be interpreted on their own as indicators of whether a state is protectionist, socialist or capitalist, the Index has a more descriptive value. The Index only reflects the current data and regulations. For sure, it provides adequate utilities for investors, but in order to study the substantial elements of the economy, the Index is not adequate to comprehend the underlying facts on Iran. In terms of Ease of Doing Business, which is a crucial component to the business climate of the country, Iran stands 124 among 190 countries according to the World Bank analysis.¹⁵⁶ According to the World Bank analysis, obtaining a construction permit in Iran seems to be the most feasible quality, with Iran being ranked 25th in the world, whereas protecting minority investors seems to be the most challenging issue with Iran standing 170th in the ranking. Iran stands 80th among 190 countries in enforcing contracts, which makes it a mid-range country in the world. The point of raising these data, is so that they can be used in the last two chapters to identify and explore the potential legal economic remedies in terms of legislation in order to amend and improve the attractiveness of Iran for FDI, with regard to the business climate determinant.

Regarding the political climate thus far, the abovementioned determinants are mainly derived as a result of economic intricacies. Genuinely the outmost *raison d'être* for most investments is to gain financial profit, nevertheless, geopolitical and political animosities can have an adverse effect to the commencement of an investment. This discussion can be extended with the contribution of the findings of studies from the area of political science and international relations, focusing on the issue of balance of power and the different approaches taken on the issue of national interest of any given state. As for this chapter, the focus is mainly on the economic aspect of any of the determinants. Nonetheless, in the final chapter of the present Thesis it will be postulated that, based on the findings and rhetoric of the previous chapters, Iran, if not to alter, but to protect itself from the perceived global balance of power is most likely to adopt defensive strategies. The proactive foreign policy intertwined with increased defensive capacity will in the medium and long term provide the necessary security of mind for the investors to invest in a country, which is not only safe and able to protect itself and the foreign investments but has also overcome the political

¹⁵⁶ World Bank report 'Doing Business in Iran' (2018) <http://www.doingbusiness.org/data/exploreeconomies/iran>

obstacles that had to face. The main political obstacle against Iran has been the US sanctions, which will be explored in Chapter Four.

It can be postulated that, there is positive direct correlation between enhanced economic ties and political alliance amongst states. Hence, one of the aims of this Thesis is to establish the point that through engagement with legally binding economic arrangements, beyond mere Bilateral Investment Treaties and International Investment Treaties, it is possible to lower political tension and increase the political alliances. Nonetheless, although the later could be considered as a pre-requisite of the earlier, the gradual economic approach could lead to gradual political understanding based on mutual benefits. Nevertheless, it will be expounded in the last two chapters that beyond the economic capacities and political engagement, the geopolitical arrangement and the measure of tangible power of states (in terms of army), play a crucial and definitive role in shaping new alliances. As it was proposed earlier, the sanctions against Iran are intended to use economic capacities of FDI exporters and what they can contribute to the economy of Iran, as leverage for political gains in favour of the US. As it will be suggested in the last three chapters, the sanctions against Iran reflect an innate double standard favouring the traditionally protectorate countries in West Asia over Iran, whose national sovereignty, independence and identity is distinctive in the region.

It will be also examined to what extent increased FDI will assist adversarial states to overcome their differences. Whilst FDI can generate mutual financial interest, the reliance on FDI can also increase the clout of the FDI exporter in the host country. In case of dire political escalation, FDI can be used against the host state by withdrawing either the capital or bidding the assets in a very short period of time. Such drastic action would cause harsh economic ramifications, which can also lead to domestic socio-political instability and turmoil as the examples would give evidence for the proposition in the next chapter. Thus, the positive contribution of FDI as a factor that can mitigate political tensions should not be taken for granted.

There are existing legal, political and economic prerequisites for initiating an investment and this Thesis will eventually analyse and suggest them as the potential solution to the question of the equilibrium of sovereignty versus prosperity. Pertinent to this part's focus, namely political risks, most countries, including Iran, do in fact offer prompt compensation against the nationalisation of foreign assets which are genuinely embodied in either BITs or IIT's as a separate

clause. In addition, the Multilateral Investment Guarantee Agency (MIGA) does provide political risk insurance for FDI exporters. Iran is a ratified member of this organisation.

One important element of the concept of business-political climate is the political concerns. The reason that North Korea, as mentioned earlier, is not having robust substantial economic relations with the western powers is mainly political. The reason that Cuba has been kept isolated for all these years is also political. The reason that Iran, despite having vast natural resources, skilled labour and the potential of being a profound FDI destination, has been economically hindered is its political atmosphere since the 1979 revolution.

At the first glance, it seems resolving political issues should come first in these countries. Nonetheless examining the nature and the background of each precise country in question in this case Iran, will shed light on the understanding of the problem. In doing so it will be comprehended in this Thesis that, to resolve the political tension over Iran, the sovereign of Iran is expected to yield down a remarkable proportion of its sovereign rights to facilitate FDI inflow. In order to explore the issue of political atmosphere, four questions should be answered: 1. Why in the first place such a negative political climate has been shaped? 2. To what extent this political situation has been affecting the economy of a country, specifically its FDI share? 3. What legal actions have been taken by the either side of the political conflict in order to compensate their counterpart? 4. What is the legal capacity of each side and how effective can the international legal regime be to resolve the political problems and facilitate the initiation of economic cooperation? The questions will be discussed and answered in Chapters Three and Four.

A number of examples will be employed to demonstrate how the political climate can affect FDI in different sectors. The most interesting finding is the outward FDI from China. Amighini et al. have established that, while for most investors political stability plays a major role, China, as a major FDI exporter, has no regard for political stability and transparency.¹⁵⁷ In fact, contrary to other FDI exporters, Chinese investors prefer countries with minimum transparency and high political volatility.¹⁵⁸

However, the issue of stability of specific investments should not be limited to China. This is the case in the primary sector and natural resource investment. It would make sense to question the political nexus and affiliations in the deals in the primary sector between Western transnational

¹⁵⁷ Amighini, Rabellotti and Sanfilippo (n 111)

¹⁵⁸ Ibid

corporations and their Arab counterparts, including their financial adherence to the political ententes. In a highly sensitive section, transparency of contracts and deals is not easily detectable by scholars and the public. It is a matter of time that information on investments in such sectors leaks or becomes available.

In order to conclude this part, it is worth mentioning that Gallagher et al. came to the conclusion that, with regard to Latin American countries, political risk has no significant correlation with FDI.¹⁵⁹ In other words, they did not find evidence regarding how political stability could affect the FDI exporters' decisions on investing in LAC. Regarding developing countries, Dermihan et al. also reached a similar conclusion. In fact, multinational corporations may take the risk of investing in a politically unstable country if they see the potential of having high return of their investment in the host country.¹⁶⁰

Concerning the BRICS, Jadhav mentions the Rule of Law as a determinant.¹⁶¹ While Akpan et al. did not put emphasis on the political factors as determinants on MINT and BRICS, in their conclusions they suggested that these countries should ensure political stability in order to reduce the risk associated with FDI.¹⁶² As for the EU, neither the 2013 Euro report nor Artige directly referred to political stability as an economic determinant.

As it is comprehended the political climate plays a less imperative role as FDI determinant for most of the recipient states, whereas it is a different case when the subject is Iran; it is perhaps the most decisive determinants, or in other words deterrent, that has besieged Iran and its economic surroundings let alone the emergence of FDI. A major part of this Thesis will be an examination of the underlying reasons of this proclamation. To evince the negative impact of political climate on Iran's plausibility in this part of Thesis, the very recent abrogation of the USA's president from the Joint Comprehensive Plan of Action, commonly referred to as Iran-deal, can be of use. (as it will be expounded in details in chapter 4, JCPOA is a UN resolution on Iran's limitation on its uranium enrichment in return of the suspension and removal of the UN sanctions.) The unilateral withdrawal of USA from the deal, drastically jeopardised the existing FDI in Iran. It has to be reminded that the recent withdrawal is not the first political instance which have increased economic pressure on Iran. For instance, Christophe de Margerie the chief executive of Total the

¹⁵⁹ Gallagher and Birch (n 97)

¹⁶⁰ Demirhan and Masca (n 72)

¹⁶¹ Jadhav (n 99)

¹⁶² Akpan and Isihak and Asongu (n 100)

French energy firm announced in 2008 that: ‘it will no longer carry out its operation in Iran’s oil fields as the political risk is too high.’¹⁶³ Almost a decade has passed and the political cautiousness has remained still against the economy of Iran.

As an oil rich country, oil revenue has been the main source of Iran’s access to foreign currency and export income, despite the fact that there have been some successful attempts of economic diversification as it will be presented in chapter 4. Nonetheless the lack of efficiency in the oil fields has been having negative impact on Iran’s economy and its currency. Total has been a major FDI participant in Iran’s economy for decades. The new set of political tension between Iran and the USA has already put FDI contributor and their investment in jeopardy. As the re-emergence of this tension is very fresh there has not been much of academic studies on this recent occurrence and its ramification on Iran’s economy. This is while there are scholars who have identified the domestic political climate as a deterrent of FDI in Iran; Gohardani and Tizro have identified the complex political climate and its unstable background as key factor of lack of foreign investment in Iran.¹⁶⁴ Habibi is another scholar who has identified domestic political challenges as a barrier to the FDI emergence; he provides a fresh instance just before the US withdrawal from the Iran-deal. Habibi refers to Iran’s domestic clashes between different political parties in the parliament and the government against the facilitation of oil contracts with international oil companies in 2016.¹⁶⁵ It can be contested that such domestic disagreements signify the existence of a dynamic and multivocal political climate inside Iran. Nonetheless the result of this dynamic political atmosphere has been limiting time to time against the emergence of FDI. Habibi goes further by putting domestic political complexity in the same category as geopolitical risk and foreign sanction as hurdles of FDI.¹⁶⁶ This seems to be the more comprehensive account of political climate on Iran. Although there is a certain line of truth in the findings of the abovementioned scholars, this premise needs to be analysed in more historical aspect. This is partly what this Thesis aspires to accomplish. In order to achieve a legal economic analysis of FDI impact on the sovereignty the historic background should be studied as it has been done and will be presented in chapter 3.

¹⁶³ Interview of Christophe de Margerie, ‘Iran, the politics of foreign investment’ 10 July 2008 Stratfor World Views

¹⁶⁴ Farhad Gohardani and Zahra Tizro, *The Political Economy of Iran: Development, Revolution and Political Violence* (Springer International Publishing, 2019) 79

¹⁶⁵ Nader Habibi, ‘The Iranian economy two years after the nuclear deal’ (2018) Middle East Brief 115 8

¹⁶⁶ Ibid 10

In another interesting study of political risk on Iran, Yildiz et al have studied the JCPOA and its potential contribution and corollaries on Middle East and Iran, precisely on Iran-Turkey economic relationship.¹⁶⁷ While they have correctly identified political climate as a hurdle on FDI in Iran, they falsely and pessimistically predicted the abrogation of the JCPOA by the Iranian side.¹⁶⁸ Conversely in reality it was the US president who abrogated the deal in 2018 without any legal and legitimate ground against Iran.¹⁶⁹ As it will be studied in chapter 4, Iran has been complying with the terms of the deal constantly and have been granted the UN approval continuously. The premature negative assertions of this article is yet another point that will be discussed in this Thesis that, Iran has been accused of breaching international rules based on unfounded allegations and biased academic studies on various occasions. This bold proclamation will be backed by exhibiting different instances that such unfounded negative assumptions on Iran have crippled the materialisation of FDI in Iran.

Hence while there is a fresh instance on political climate as a deterrent on FDI and Iran, most scholars do also identify Iran's domestic political climate as a deterrent. It could be argued that the foreign political climate is a direct outcome of the domestic political atmosphere. Although a valid premise, the foreign political relation of Iran is more complex than it appears. A solid link can always be drawn of the intertwined nature of a country's domestic political climate and its foreign political climate. Nevertheless, as the core of this Thesis is on the quality of the relation of Foreign Direct Investment and Sovereignty of the recipient state, this Thesis will be a stride to find and establish this correlation mostly based on the foreign political climate. The research of the domestic political climate and its consequences on legal and economic characteristic of the country will also be a key component of the Thesis. Nonetheless as mentioned, the major proportion of the study will be on how foreign political climate have moulded Iran's domestic political-legal and economic environment.

To conclude, for most countries and economic blocs, political stability and risk are manageable under Political Insurances provided by MIGA and specific clauses in BIT frameworks, and hence political risk does not have a vital role as an FDI determinant. Nonetheless, this has

¹⁶⁷ Mert Yildiz, Gareth Hollins, Rachel Ziemba, and Jonathan Schanzer, 'Nuclear Deal: Impact on Iran-Turkey Economic Relations' (2016) Foundation for Defence of Democracies 3

¹⁶⁸ Ibid

¹⁶⁹ The legality ground as it will be presented in chapter 4, was meant for the IAEA experts to ratify if Iran has been adhering to the terms of the deal or not. In reality as it will be explained, IAEA has ratified Iran's compliance over 9 times, hence the legal ground to act against the JCPOA is not met.

been of different intricacy for Iran as a politically sensitive country. In the following chapters the roots of this intricacy and Iran's concerns over its national sovereignty will be assessed through a historic examination, which will pave the way towards fully understanding the potential unconstructive correlation between FDI and national sovereignty.

F. Other possible determinants

There are significant empirical studies and findings on what constitutes additional determinants. The findings range from corruption perception, telephone line per people, the standards and the rate of literacy, the availability of tangible infrastructures i.e. motorways and railways, effective judicial system, credit rating and so forth. Nevertheless, one of the main components is the existence and the effectiveness of Bilateral Investment Treaties along with the other relevant treaties including double taxation agreements. The focus of this part will be on BITs, corruption perception and credit worthiness of the host states.

BITs are treaties signed by two states that aim to clarify, codify and interpret the legal framework pertinent to foreign direct investment. As Yackee describes, 'these treaty-based guarantees are said to be especially credible to the extent that they are backed up by a most important procedural guarantee: that investors shall have the enforceable right to unilaterally initiate binding international arbitration against the host state that breaches its substantive promises of favourable treatment'.¹⁷⁰ BITs, in accordance to findings of Yackee's, operate effectively so far and both investors and host states are willing to use them worldwide. Nonetheless, while other authors, such as Neumayer et al., have found a drastic effect of BITs on FDI, especially with regard to countries with weaker legal institutions¹⁷¹, others, such as Siegmann came to a rather contradicting conclusion.¹⁷² In fact, Siegmann concluded that BITs are far more effective in countries with a sound legal system and political stability in comparison to countries lacking these characteristics.¹⁷³ Yackee questioned the previous studies and in opposing their reasoning he raised the following concerns: 1. potential investors seem to have little awareness or appreciation of

¹⁷⁰ Jason W. Yackee, 'Do BITs Really Work? Revisiting the Empirical Link Between Investment Treaties and Foreign Direct Investment' (2007) Univ. of Wisconsin Legal Studies Research Paper No. 1054

¹⁷¹ Eric Neumayer and Laura Spess, 'Do Bilateral Investment Treaties Increase Foreign Direct Investment to Developing Countries?' (2005) 33 World Development 1567

¹⁷² Till Siegmann, 'The Impact of Bilateral Investment Treaties and Double Taxation Treaties on Foreign Direct Investments' (2008) U. of St. Gallen Law & Economics Working Paper No. 2008-22

¹⁷³ Ibid

specific BITs. 2. BITs are not necessarily designed to resolve problems of credible commitment; 3. the “credible commitment” risk premium is objectively low. Scholarly estimates suggest that what might be called the “risk premium” caused by problems of credible commitment is not terribly high,¹⁷⁴ and 4. even if BITs do work, they are likely to decline in effectiveness as treaties proliferate.¹⁷⁵

Yackee believes that in the natural resource sector investors prefer a specific binding contract that provides the needed security and possible compensation, concerning each phase of their investment.¹⁷⁶ Furthermore, the political risk in the manufacturing sector is far lower than in other sectors where BITs would be of high importance, unless expropriation takes place.¹⁷⁷ He concludes that, while BITs can be considered as an FDI determinant, investors may seek separate binding contracts admissible to international courts and/or arbitration tribunals.¹⁷⁸ None of the empirical studies mentioned earlier on this chapter have identified BITs as a main determinant.

Andrew Kerner, whilst acknowledging the positive impact of BITs as an FDI determinant, makes two additional points: his findings do not imply that the BIT based obligation would affect the behaviour of the state *per se*, because BITs rather function as a mere reflection of the status quo offered to foreign investors.¹⁷⁹ Moreover, he raised the issue of domestic opposition against globalisation waves and concluded that ‘the ideal outcome, from point of view of a government that seeks to negotiate and ratify BITs, is not complete acquiescence from civil society. Rather, the ideal outcome is that there be political costs that are visible to all, but that fall short of actually taking a toll on the government at the polls’.¹⁸⁰ He has expounded his proposition by analysing the Multilateral Agreement on Investment and its futile destiny as a result of public protest; between 1995 and 1998 the OECD members were working on a multilateral draft of investment according to which governments would have been deprived from varieties of rights including the right to expropriation.¹⁸¹ Nevertheless the viral controversies over the draft left the MAI as a futile proposition. Thus, it could be argued based on Kerner analysis that public protest towards

¹⁷⁴ Ibid

¹⁷⁵ Yackee (n 170)

¹⁷⁶ Ibid

¹⁷⁷ Ibid

¹⁷⁸ Yackee (n 170)

¹⁷⁹ Andrew Kerner, ‘Why Should I Believe You? The Costs and Consequences of Bilateral Investment Treaties’ (2009) 53 *International Studies Quarterly* 73

¹⁸⁰ Ibid

¹⁸¹ Ibid

globalisation could in fact lead to more refined BITs which would eventually lead to more substantial and feasible BITs benefiting both the investor and the hosting states. The discourse of globalisation and the domestic reactions will be explored in detail in chapter two.

As of other potential determinants, in case of the EU, the 2013 report suggests education as a vital determinant.¹⁸² This can mirror the fact that most of Inward FDI in the EU is either settled in services or high-tech manufacturing.¹⁸³ In their findings, Artige et al. also considered Research and Development (R&D) in human capital as a vital determinant in this region.¹⁸⁴ It was additionally found that the importance of having double taxation agreements is of vital importance, unlike BITs in almost all other regions.¹⁸⁵

As for the corruption perception, the Corruption Perception Index, published by Transparency International in 2016, ranks Iran 133th among 176 countries. The issue of corruption in Iran will be explored in Chapter Four, as an overt indication of economic disarray, which has been impeding the domestic economic growth, let alone FDI. Nonetheless, as it will be explored in the last part of chapter two, while the IMF and Western economic observers criticised domestic corruption during the East Asian economic crisis at the end of 1990s, Joseph Stiglitz found no direct adverse impact of corruption on the notorious 1990s crises.¹⁸⁶

One last potential FDI determinant, a pivotal jolting and decisive element, which has been ignored as a major determinant by most scholars should be discussed, is the Credit Rating or credit worthiness. As it has been explored earlier, FDI can take place either via transfer of know-how and machinery or capital. FDI in any of the three main sectors can be shaped either as a greenfield investment (being a brand-new investment) or brownfield (which is mainly a joint venture upon an already existing corporation and domestic investment.) While the most desirable FDI for a host state is to receive direct capital inflow, this may not be the case for all investors, as not all FDI exporters have the capacity to invest the required capital from their own liquidity. Hence, in order to increase the feasibility of a potential FDI project, the two sides must seek capital ventures, employing different methods of financing. The study of different methods of financing a project is another important topic, which, however, is not going to be discussed at this point.

¹⁸² European Commission 'Quarterly report on EU area' vol. 12 (2013) http://ec.europa.eu/economy_finance/publications/qr_euro_area/2013/pdf/qrea2_en.pdf

¹⁸³ Kerner (n 179)

¹⁸⁴ Artige and Nicolini (n 102)

¹⁸⁵ Ibid

¹⁸⁶ Joseph Stiglitz, *Globalization and Its Discontents* (Penguin, 2002)

The pertinence of FDI and the capital raising falls under the discourse of credit worthiness of a country. This is mainly the case with secondary and tertiary sectors as the financial-economic engagements under these two categories are pervasive. To assess the credit worthiness of a state, there exist private, yet highly affiliated, organisations and international corporations, which provide such credit ratings. As for the case in hand, being Iran, the major credit rating companies, including Moody's Investor Service and Fitch Rating, have not been publishing data to rate Iran since 2006. Nonetheless, there has been a preliminary post-sanction consensus between Iran and Moody's to resume the assessment. Hence it can be argued that one of the main reasons for medium industries not investing in Iran is the lack of reliable credit rating sources.

To conclude this part, it can be suggested that, yet again, the issue of BIT is of basic relevance to the general political-business climate of the host country. The crucial point is the legal enforceability of these contracts and the procedure according to which an investment will be either safely executed or compensated in case of breach of contracts. This also should be studied separately in the case of Iran, in order to elaborate how they have been functioning in practice in relation to Iran and foreign investors.

5. Regional deterrents

While the abovementioned are genuinely recognised as the global determinants of FDI, investors are inclined to invest in the host destination vigilantly. The investors' vigilance derives from the specific characteristics of the potential destination. Whilst the absence of any of the determinants would merely debilitate the will of the investors, the investors would seek to mitigate the peripheral difficulties regardless. While determinants usually are considered holistically, the deterrents would drastically vary state by state. In the case of Iran, while the determinants are globally sought after, these deterrents are derived out of internal and external obstacles. As the title of the Thesis indicates, the national sovereignty and economic prosperity may not necessarily bring about positive nexus. Meaning that, as will be explored in detail specifically in Chapter Four, the economic prosperity driven by foreign capital could hinder the sovereignty as the FDI exporter of the exporting state may have not only economic preferences but also political preferences underneath the investment. As it will be demonstrated in the following chapters, market liberalisation for greater economic prosperity has jeopardised national sovereignty in various

countries, including Iran, and in the remaining part of this chapter the elements, which may seem off-putting for some investors to commence FDI will be projected.

While Iran does have the capacity as a regional power to bolster its economic achievements through diversified investments by foreign capital, it has been considered as the chief adversary of USA for the past 40 years, since the end of the Cold War and the collapse of the USSR.

As it will be presented extensively in the following chapters that, Iran has gone through a revolution, eight years of war, six years of multilateral UN embargo and thirty-six years of unilateral American sanctions. All these have affected the Iranian mentality and have consequently facilitated the internal evolution and maturing of the Iranian legal regime. Since the mid 2000s Iran took prompt strides towards a legal overhaul and rectifications to facilitate and promote FDI mainly by distancing itself from the Dutch Disease of oil dependency. Ever since, genuine domestic legal obstacles have been lifted.

The external obstacles have mainly been the USA's direct and indirect sanctions. While the political risks are insured under MIGA, and the divestments, as a result of nationalisation and confiscation, would be awarded with compensation by any given arbitration tribunal in accordance to the BITs and contracts to which Iran is a party. However, the sanctions have been used to keep investors away from Iran. In accordance to the persisting US sanctions for banking investors, under the Office of Foreign Assets Control (OFAC), there remains a prohibition to participate in Iran, or with Iranian individuals. Furthermore, the international banks had prohibited the use of USD in their transactions with Iran. While through the Joint Comprehensive Plan of Action (JOPAC) most of the nuclear-related US sanctions must have been lifted, in practice there are still restrictions in place. It is difficult to remove the remaining sanctions, as the scope of the sanctions are vague hence the investors remain cautious when dealing with Iran, as punitive measures may await them by the US administration. Iran, by not having a remarkable share of global financial participation (despite its crucial role in oil economy), may not be able to sustain its standing as a lucrative destination for potential investors so long as the US sanctions remain.

While most countries would be concerned on how to become appealing to FDI by enhancing their determinants, for Iran the challenge is not only the legal-economic attribution of the country for FDI, but in fact, Iran's key hurdle towards FDI increase remains to be the US embargos over Iran against the sovereignty of the country. As it will be explored in the next chapters, Iran is one of the few countries in the region, which is more of a country rather than

nation state; more specifically, Iran does not owe its borders to forced treaties, unlike countries like Iraq. Iran has never been a protectorate state, such as Saudi Arabia. Iran has never been colonised unlike India. Iran has never been a buffer state, such as Qatar and Kuwait. Furthermore, Iran is not a created nation state limited to a race or religion, unlike Israel and Pakistan. The history of Iran, at least since the 16th century, has been a story of keeping national sovereignty while trying to bolster economic growth.

Due to Iran's persistence on its national sovereignty ground against the USA hegemony, sheer reliance on global findings on the FDI determinants, may not be adequate and sufficient to allow the emergence of FDI in Iran and, if so, it would most probably jeopardise national sovereignty. Hence to substantiate this notion, Chapter Two will include an economic analysis of the post-WWII global economy and the propagation of Neoliberalism and its negative impact on the sovereignty and independence of the recipient countries. Chapter Three will discuss the notion in detail based on the history of FDI in Iran in the past 200 years positing the existence of a correlation between national sovereignty and economic prosperity. Chapter Four will then elaborate on the legal economic progression of Iran since 1979.

7. Findings

This chapter explored the globally recognised FDI determinants. The explored regions covered developing and developed countries, such as the major Latin American countries, MINT and BRICS bloc, major African countries and EU Member States. The initial findings, based on the raw data and figures taken from World Bank and UNCTAD, suggest that there are up to 7 variables that are globally recognised FDI determinants. These are market size, labour cost, measure of openness, macroeconomics, business/political climate and other possible determinants.

From all these determinants, in almost every region and under any sector of investment market size and macroeconomics played a pivotal role in the eyes of investors. Other determinants were either polarised as valuable or irrelevant depending on the sectors and the regions.

What has been expounded is that, in order to study the determinants of FDI and determine the level of their relevance and importance, the appraisal should be done concurrently, separately and regionally. This has been achieved in this chapter, nonetheless the conclusion reached is that each region and sector have different capabilities and dimensions, and distinctive investors have distinctive needs and desires. In the following chapters, all 7 major determinants will be applied

with regard to Iran and each one of them will be separately assessed within the three investment sectors. It has to be reminded that, whilst the political climate was not relevant to most countries, once again it should be borne in mind that it is probably the key decisive determinant, when it comes to Iran.

Chapter Two

Globalization: Contributions vs Discontents

Following the previous chapter on the global determinants of FDI, this chapter sets forth the underlying issues conveyed in the findings of the previous chapter. This chapter postulates the direct and indirect correlation between foreign direct investment and the potential foreign clout which may be ensued. In doing so, while the previous chapter posited the general positive outcomes of what has driven the investors' attraction into new destinations, this chapter will scrutinise the adverse impact of the globally known prerequisites of FDI on the hosting countries.

The chapter will start with the crucial comparison between Keynesian economics, and what is known as the Hayekian utopia.¹⁸⁷ The rationale behind this appraisal lies in the fact that the underpinning proclivity of global determinants is envisaged to be the reduced role of the hosting government in the economy. This was postulated to achieve implicitly through pervasive elements, for instance by more privatisation and less tariff rates. While the previous chapter righteously indicated the contributions of FDI share in the GDP of any given hosting state, this chapter will reiterate through the Keynesian- Hayekian comparison that, without the active role of the government in steering the FDI in reallocating the scarce sources and revenues, the increased GDP may not be relished by the entire population in a fair manner. This comparison and concern is not just relatively valid, but in fact the recent political global movements presented in public votes and opinion, mainly in USA and Britain, the two forerunners of the free market, highlights that the neglected wealth distribution after few decades of successful paced economy have led to a fragmented and puzzled society, where the populism and ultra-nationalism would overcome rationality. This could well be the case, if not dealt with at the very first instance of FDI growth, as it has also been experienced in the two other attempts toward a free-market-driven Iran in the past 50 years, an issue that will be scrutinised in detail in the following chapters.

While the relevance of the Keynesian-Hayekian study with FDI will be presented in the first part of this chapter, the second part will test the previous attempts of decentralisation in the emerging markets. This part will rely on the findings of the Nobel prize winner and economist Joseph Stiglitz and Naomi Klein. Klein took Stiglitz's criticism toward the pace and

¹⁸⁷ Stephen J. Ball, 'Markets, inequality, and urban schooling' (1990) 22 TUR 85

implementation of globalisation to a higher level of culpability, evincing financial malice aforethought of the financial global apparatus. In her research, she expounds what is assumed as the vigorous push of the emerging markets towards precipitous inordinate market openness, oblivious to the culminating domestic impact by free market advocates.¹⁸⁸ This is embodied in their examination of the failures and, in exceptional cases, the success of the experiments of what is known as the Chicago School of Economics, which could be referred to as the heritage of the Austrian School of Economy. In this chapter, examples will be invoked from different continents on how foreign-pushed market-liberalisation led to, not only more fragile financial spectrum, but also how the financial destabilisation eventually brought about unsolicited socio-political ramifications. This part of the chapter rebuts the notions of the Chicago School market liberalisation, which had been advocated by Bretton Woods apparatus, including the IMF, forewarning that the foreign-led destabilised economic influx in the long term will put national sovereignty and territorial integrity at stake.

Having examined the exacerbating impacts of expeditious fast-paced market liberalisation for FDI, which *inter alia* would lead to the advent of hot money¹⁸⁹ in the country and, hence social instability, the following chapters of this Thesis set forth political tokens of the possibility that this situation may as well be, if not intended but desired, by the international adversaries of Iran. While at first glance it may sound as an exaggerated statement, discussing the desired utopian society of Hayek in which countries should be slashed into nation states, and from nation states into city states, it would be postulated that, the secession of ethnic oriented cities of Iran from the current shape of the country is of high concern for the current establishment of the USA. Thus, this chapter strives to familiarise the reader with the potential applicability of the proposition so in the following chapters the argument would be analysed based on the already presented proposition.

This nevertheless could be confronted by the assertion that a fundamental impeding hurdle of FDI emergence in Iran has been the US sanctions. Although the US may benefit from the secession of Iran, as they did from the collapse of USSR, their enforcing leverage thus far has been

¹⁸⁸ Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (Penguin, 2008)

¹⁸⁹ Hot money has been described as the currency move between financial institution on a fast pace to gain maximum profit in the shortest period of time. Such transition from countries with regularly low interest rate to the ones with high interest rate results in the fragility of the currency of the hosting state and will affect the balance of payment. For further study on the Hot Money issue and its ramifications look at the following article: Lucio Sarno and Mark P. Taylor, 'Hot money, accounting labels and the permanence of capital flows to developing countries: an empirical investigation' (1999) 59 JDE 337

economic embargos rather induced rapid market liberalisation. The issue of market liberalisation, as will be presented in Chapter Four, has been sought by domestic Iranian parties, in order to advance political gains by accelerated financial growth. Hence the perils of accelerated liberalisation to attract FDI (if applied) would be partly abetted by domestic law-makers and politicians, in addition to IMF and global financial apparatus, who seek wider and faster market liberalisation. With regard to the concern over economic and national sovereignty, examples will also be presented on the concerns of countries like France towards UNCITRAL, and African countries with regard to ICSID.

Keynes vs Hayek: How far and how long can a government interfere in the market?

According to the implicit findings of the previous chapter, most foreign investors are keen to explore FDI opportunities, when the role of the hosting government in the financial spectrum is reduced. This part of the chapter sets forth the two main driving forces of this argument which have shaped and changed interactively the world of economics since the late 1920s. The focus of this comparison will be on the thoughts, works and the impact of John Maynard Keynes and Friedrich Hayek. It should be borne in mind that these two figures were prominent believers in a capital market, hence, aloof from the economic teachings of Marxism (although there are similar lines between both of them and Marxism: the city-states concept of Hayek does bear a resemblance to the classless commons of Marx, and the government's spending in its vast sense have marked similarities with socialism).

While Keynes takes unemployment as the main issue to be tackled in an economy,¹⁹⁰ Hayek drew the attention of his followers to the catastrophic ramifications of a protracted inflation.¹⁹¹ While Keynes believed the government's spending would add up to the economic growth, by what he referred to as the Multiplier Effect, Hayek criticised the multiplier effect by reiterating that any governments' borrowing and expenditure would develop propensity towards the production of commodities which are either unwanted or are of no use to the public.¹⁹² In addition, unlike Hayek, who believed that the market would balance its demand and supply equilibrium in the long term, Keynes argued that 'in long term we are all dead'.¹⁹³

¹⁹⁰ John Maynard Keynes, *The General Theory of Employment, Interest and Money* (Wordsworth, 2017)

¹⁹¹ Friedrich Hayek, *The Road to Serfdom* (Routledge, 2001)

¹⁹² Ibid

¹⁹³ John Maynard Keynes, *A tract on Monetary Reform* (Prometheus Books 2000)

This part of the chapter will trace the impact of their schools of thought in the real sphere to explore how national sovereignty, economy and social life of societies have been shaped by these two contradicting paradigms. After this analysis, the discussion will focus on how the Bretton Woods and Washington Consensus and their institutions have put these teachings into practice. By the end of this chapter not only Hayek's state-nationhood would be challenged as how his utopian economy could result in the fragmentation of Iran, if applied, but also the manner, in which the collective approach of Keynes through Bretton Woods institutions has hindered the national sovereignty of various countries, will be challenged.

The Keynesian paradigm

The roots of Keynesian economics can be traced back to the 1930s and the Great Depression in the USA, when, after few decades of successful economic triumph of laissez faire and the absolute free market, known as the roaring 1920s, the US economy faced the most severe economic deadlock. Keynes, having seen the catastrophes of unemployment in his motherland of England after the First World War, thought that increasing the employment rate through government expenditure would be the remedy for the American Great Depression. He introduced the Multiplier Effect, according to which every single dollar spent by the government would supposedly result in the circulation of money in the market and that single dollar would eventually create more dollars. This was called aggregate demand and aggregate supply.¹⁹⁴ In his view, providing that one dollar was the duty of the government either by borrowing from the central banks or by printing more banknotes (Quantitative Easing). Pertinent to FDI and regarding the private investment, Keynes argued that the public investment, which creates new jobs, would eventually be accompanied by new emerging private entities and investment.¹⁹⁵ Hence, it can be suggested that, based on his notion, the joint venture agreements and Mergers and Acquisitions of brownfield industries for FDI are in fact the corollary outcomes of state investment.

Nonetheless, two points have to be drawn here; first is the fact that, right after the end of the First World War, Keynes outspokenly criticised the terms of the Treaty of Versailles. And the second point which will be demonstrated in the next few pages is the fact that, such aid could in fact be coined as the root of the take-off of transnational corporations in modern times. Regarding

¹⁹⁴ Keynes (n 90)

¹⁹⁵ John Maynard Keynes, *Essays in Persuasion* (Createspace Independent Publishing Platform, 2009)

the first point the explicit part, which Keynes stood against, was the Reparations Clauses by which Germany as the defeated country/nation was taken responsible for the war expenses of all sides. Keynes argued that not only Germany would not be able to fulfil the imposed financial duties, but also this would lead to a lasting hatred and potentially the rise of ultra-nationalism and fascism.¹⁹⁶ History proved him right; it is widely believed that the major cause of the Second World War was the economic hardship that has been imposed on the German nation by the allied powers, which legitimised and glorified the Nazi party in the eyes of the Germans. This could be expanded to the economic notion of Beggar thy Neighbour. The term refers to the situation in which a country deems to solve its domestic economic problems by putting pressure on its neighbours.¹⁹⁷ While for a short while this may reduce the economic struggles at home, in the long run, as the problem has been passed to neighbouring country and/or trade partners, the decreased purchasing power of the neighbour and former partner would result in economic disarray. This notion could, however, have the inverse effect in favour of the country imposing the hardship. It can be argued that China, in the current era, by keeping its currency rate as low as possible through financial stimulates, has increased its exports gains. Nonetheless, it has to be reminded that China is not the only country, which takes advantage of stimulus packages for the benefit of their economy. The European Union, by keeping the interest rates circa 0%, and the Federal Reserve of America through Quantitative Easing have tried to protect and rescue their economy irrespective of the potential shift and spread of the financial crisis toward other nations.¹⁹⁸ This will also be argued as a discontent of globalisation in the later part. Furthermore, having in mind the threat of Beggar thy Neighbour concept introduced by Smith, it is crucially vital to mention a long neglected notion of Adam Smith which is expounded by him as the issue of defence against foreign threat and intrusion to be the first duty of the sovereign.¹⁹⁹ While Smith is considered a forerunner of free market, it is remarkable to identify his notion of security and defence is in line with the thoughts of Thomas Hobbes which will be scrutinised in the first part of chapter four. The moral of this brief yet crucial reference and its pertinence to Iran is the fact that, as it will be elaborated in the

¹⁹⁶ John Maynard Keynes, 'Reparation' in *The General Theory of Employment, Interest and Money* (Wordsworth, 2017)

¹⁹⁷ Adam Smith, *The Wealth of Nations: The Economics Classic* (Capstone, 2010) 255

¹⁹⁸ Mario Draghi, 'Addressing the causes of low interest rates' (2 May 2016) <https://www.ecb.europa.eu/press/key/date/2016/html/sp160502.en.html>

¹⁹⁹ Adam Smith, 'Of the expense of the sovereign or commonwealth' in *The Wealth of Nations: The Economics Classic* (Capstone, 2010)

next chapters the military capabilities of Iran has been one of the reasons for the US sanctions. Thus, a dilemma has been forced upon Iran to choose between either security or prosperity, as the title of this Thesis stands as well. The weight given to the predominance of the security in this Thesis hence is derived from the teachings of free market advocates who have dedicated their lives to explore and identify remedies to better livelihood of the subjects of the sovereign. Hence it can be claimed that, giving precedence to the matter of security is, against public opinion, well rooted in the findings of free market proponents such as Hayek and Smith. This proposition would be elaborated in Chapter Four and Five. The pertinence of the abovementioned notion and Iran and the topic of this Thesis lies in the fact that, the economic sanctions on Iran which have been accompanied by the approval of Iran's neighbours do in fact resemble not only the Bagger thy Neighbour situation but also the economic hardship on Germany post WWI; while Iran is being deprived from the potential FDI opportunities as a result of US sanctions there has always been a sharp and positive correlation between the rise of economic sanctions and the rise of conservative parties and mentalities in the domestic spectrum of Iran. It will be argued following this chapter that, the economic crisis of 2008 has in fact gave momentum to the populist and ultranationalist parties in the west. On the issue of Iran, it will be discussed in Chapter Three and Four that, if the intent of the US sanctions against Iran is to put pressure on the Iranian decision makers to align their strategies with the west, the embargos has in fact had opposite outcome thus far. It can be argued that economic engagement with Iran through FDI may alleviate the political differences. Nonetheless, in Chapter Four it is argued that, political amelioration does not seem to be the outmost intention of the US foreign policy concerning Iran.

As for the Currency War, the pertinence with Keynes notion lies in the fact that it was Keynes who first introduced the Macroeconomic Tools to correct and save the market. It should be borne in mind that Macroeconomics was recognised as one of the two major FDI determinants in the previous chapter. As mentioned heretofore, during the Great Depression Keynes' remedy to rescue the economy was the government spending. He believed that the concept of natural rate of interest, which is 'real interest rate consistent with output equalling its natural rate and stable inflation',²⁰⁰ is flawed and the full employment equilibrium would only be achieved, where prices remained

²⁰⁰ Thomas Laubach and John C. Williams, 'Measuring the Natural Rate of Interest' (2006) 85 Review of Economics and Statistics 1063

stable and the savings and investment were on equal level.²⁰¹ As he was a major critic of pegging the GBP too high in England in 1920s, he sought the US politicians to lower the interest rates and the value of USD. One of the aims of such proposition in light of the Beggar thy Neighbour was to prevent transferring the domestic economic struggle to another state and eschew legitimising the hardliner approach in other states.

The underlying point of the nexus between interest rate and FDI lies in the fact that the higher the value of the currency, as a result of the high interest rate, the more lucrative the domestic market becomes for the FDI. At the same time, lower currency rate, as a result of interest rate, could be equal to higher return for the FDI, only if the goods are aimed at vertical level which has the export-oriented products in heart.

For Keynes, in order to shun aside the threat of fascism, unemployment must have been tackled first and foremost, and by his prescription, to achieve this ambition, government expenditure was the remedy. The relevance between Keynes' concern, over the correlation of unemployment and the rise of ultra-nationalism on the one hand, and Iran on the other hand, could be elaborated by taking note of the issue of ethnic populations of Iran, who should be one of the key recipients of FDI in order to bolster the national synergy. More specifically, it will be proposed that to protect the interests of Iran from its dynamic multi-ethnic characteristic, the ethnic minority's employment via FDI should be sought after. Malaysia will be presented as an example, as it took similar course of action when dealing with ethnical unemployment.

By government expenditure, Keynes purported that people would have money to spend; the more money spent, he presumed, the more production lines would be in operation. To maintain the motivation behind this spending strong, abrupt tax cuts is the fastest route to keep the money in the pockets of the people. Hence, his economic solution for the Great Depression encompassed combined monetary and fiscal policies; in other words, an expansionary economic policy. He opposed the classical notions on saving and investment by rejecting the well accepted Say's Law, which stipulates that the supply would create its demand. Keynes argued that ones' saving, in contrast to classical teachings, would not lead to a parallel act of investment.²⁰² This, under Keynes hypothesis can be attributed to the issue of FDI as well as the domestic investment.

²⁰¹ John Maynard Keynes, *A Treatise on Money: The Pure Theory of Money and The Applied Theory of Money* (Martino Fine Books, 2011)

²⁰² Keynes (n 90)

His economic solution, having been an inspirational and charismatic figure, influenced Roosevelt, the then US President, to introduce the New Deal in 1933; a Bill through which the government was allowed to increase public expenditure, which eventually turned US to the largest debtor in the next coming decades. This of course should not be taken as the only outcome of the New Deal and potentially demeaning the Bill. The increase in the public debt after all, contributed to the boost in employment and rescuing the economy as it will be presented following this part.

With regard to Keynes' interventionist policies, two crucial yet mostly neglected elements should be stated: first is that he sought the remedy to the economic crisis in the government intervention, insofar as when the unemployment rate is at the highest level,²⁰³ he encouraged the government to spend and invest only in the fields that the private sector is either uninterested or does not have the competence and capacity to accomplish the project. This has been reflected in the works of economists, including the New Keynesian Paul Krugman, who indicated that Keynes propositions should neither be expanded to private law nor to private property as he did not intent to expand the interventionist policies.²⁰⁴ Hence, there has always been a discerning line in the Keynesian thoughts to limit the government from adopting a fully socialist economic agenda, according to which not only everything is centrally planned but also is fully conducted by the government. Nevertheless, the success of Keynesian thoughts, which brought about the economic prosperity in the post-war era and their popularity among politicians, expanded and wended its way through in the following decades.

If in the early 1930s, the New Deal was applied to remedy the Great Depression, (Keynes had argued that the lack of government intervention prolonged the economic crisis in the very first place), by the end of the Second World War in 1945 his economic policies were wholeheartedly received, adopted and applied by almost every western country, even after he passed away in 1946. In the US, the Employment Act of 1946²⁰⁵ was passed, and in Britain the usher of the post-war Labour Government was ready to proceed with extensive nationalisation in almost all industries. The issue of nationalisation plays a critical role in Iran's history of FDI. As it will be expounded in chapter 3, the oil nationalisation of Iran was followed by a brutal coup in favour of the foreign

²⁰³ Ibid

²⁰⁴ Paul Krugman, 'Policy Perversity' in *The Return of Depression Economics and the Crisis of 2008* (W. W. Norton & Company 2008)

²⁰⁵ The Employment Act of 1946
https://archive.org/stream/employmentactof111univ/employmentactof111univ_djvu.txt

investors overthrowing the government which fought for the nationalisation of the natural resources. Hence, while in Britain nationalisation programmes ushered, the oil nationalisation in Iran on the other hand was not received well by the foreign investors of British origin. This will be extensively studied in the next chapter nevertheless, the pertinence of the nationalisation and government intervention at this point provided the right pertinence to mention the nationalisation and FDI in Iran. USA and UK, which initially were the forerunners of the laissez-faire approach until late 1920s, in less than two decades deviated from the economic teachings of the Scottish Enlightenment and the Austrian Economic School, which once were epitomised in their economic and legal orders. Since the end of the Second World War, Britain introduced a welfare system, according to which free health care system, government enhanced social services, social security, education improvement and employment were comprised through government expenditure as the obligation of the government to its residents. The underlying point in light of the topic of the Thesis, can be identified in the contradictory approach of western countries, such as the UK, towards their domestic economy and the role of their government versus their approach and attitudes towards foreign market in this case Iran; UK by ignoring the vital role of the Iranian government over its natural resources in Iran, applied military forces to secure the abjured FDI over Iranian oil fields via military coup known as the 1953 Ajax Coup. As mentioned earlier, this will be a cornerstone of the next chapter. Before moving on to the Europe and US post war, it has to be argued that such public expenditures in the west was being assisted and being feasible partially as a result of cheap access to the natural resources of countries like Iran under vigorously forced FDI projects. Whilst this Thesis does not attempt to demonise the FDI trends, nonetheless what this chapter and the following chapter present is the ramifications of rushed and forced FDI in the developing countries including Iran which were resulted in the hosting countries.

Unlike the end of the First World War, the winning side did not impose punitive measures, forcing the other side into economic misery. This time in 1948, the U.S sought a rather gracious manner by giving over 13 billion Dollars to the western bloc including Japan under the European Recovery Program commonly known as Marshall Plan.²⁰⁶ This took the Keynesian idea of Aggregate Demand and Aggregate Supply into a transnational and global level. While the factories were being rebuilt in Western Europe, people started having more money to spend on American products.

²⁰⁶ Marshall Plan- European Recovery Program, ERP (1943) <http://legisworks.org/congress/80/publaw-472.pdf>

The two crucial outcomes of the Marshall Plan, which had set forth the international post war arrangements, were the following: as it was proven in the First World War, leaving the defeated countries on their own and putting economic pressure had paved the rise of ultra-nationalism and Fascism in Europe. Furthermore, the aid which was given on the basis of the Marshall Plan also alludes that, contrary to Hayek and free market advocates, a troubled economy in this case as a result of war, would require help to get healed and restore its health and start *de novo*.²⁰⁷ Hence the point is that the classical economists including Hayek, who deny the role of the government, are oblivious of the modern roots of western economic prosperity which was paid by the US Government expenditure in a global scale.

The second point, in relation to the aid provided and the prosperity that followed, is the fact that it has set the basis of what is known today as the globalisation of transnational corporations. It has to be reminded that the Marshall Plan was achieved mainly due to the Bretton Woods Agreement, which created the World Bank and the International Monetary Fund in 1944. The main criticism against these global institutions will be explored later in this chapter, nonetheless at this point, the brief criticism regarding the impact of the Marshall Plan is that, although the lowered tariff rates provided a more harmonised economic arena for the benefit of ordinary people, the fundamentals of their economies and subsequently their politics started to give more room to the American business and investors.²⁰⁸

The US economic intervention by means of financial aid to the Western bloc was accompanied, as mentioned, with series of nationalisations inside these Western countries. These interventionist policies *inter alia* other factors have been identified by some scholars including Algan as the reason of the staggering growth rate of the 60s and the sharp reduction of unemployment through public jobs.²⁰⁹ The state investments in factories, services, and even in human resources, through providing free schools and free health care system, played a crucial part in the abovementioned growth. Hence it can be comprehended that the structural foundation of the current free market has been built by the solid foundation of Governments expending and investment, which seems in contradiction to what Hayek and many market liberalist economist

²⁰⁷ This notion can be traced in the concept of Spontaneous Order initially coined by Adam Smith: Adam Smith, *The Wealth of Nations: The Economics Classic* (Capstone, 2010)

²⁰⁸ Noam Chomsky and Robert W. McChesney, *Profit over People: Neoliberalism and Global Order* (Seven Stories Press, 2011)

²⁰⁹ Yann Algan, 'Public Employment and Labour Market Performance' (2002) 17 *Economic Policy* 7

have been proposing. Furthermore, Chang dissected the historic root of the success of the free market and found out that the aggressive protectionism in the US and Britain, which was in place for centuries up until late 1800s, resulted in the triumph of free market hence the roaring 1920s.²¹⁰ Although the historic evolution of market fundamentalism and free market from the protectionism which has been in place till late 1800s is a fascinating period to examine in economic history, nonetheless such analysis would be beyond the scope of this Thesis which is focused on the correlation between FDI and sovereignty, as scrutinising the history of economy is not the aim of this study.

As mentioned heretofore, Keynes drew lines between when the government should borrow and on what it should be spent. Nonetheless, the booming success of nationalised economy found its place in the mentality of not only the public and the workers, but also among politicians. It can be argued that such tendency toward an active role of the government through nationalisation and regulations had hindered the opportunities for the private investment and FDI. It could also be argued based on the observation of the 50s and 60s that, such state driven economics would not bring about the necessity for the private investors and FDI as the holistic approach of the politicians and tax payers is to rely on the governments expenditure. Nonetheless, no society can rely on public expenditure as no government can sustain its position for decades after decades. This can be observed in the 1970s; The sprawling deviation from the original Keynesian expenditure paradigm should be considered to be one of the main reasons that culminated the financial crisis of the 1970s.²¹¹ In the 1950s Eisenhower was faced with 3 sets of concessive recessions, he was left with not much of a choice but to promptly implement the rules on government spending in order to mitigate the recession, whereas in the early 1970s Nixon's veering economic policies worsen the situation. While in his first year he criticised high employment rates through public spending/borrowing and urged his government to balance the federal budget²¹², he made a U-turn in 1971, when unemployment soared from below 4% to above 6%, as a result of his cuts in expenditure. For a while, he decided that vacillation would resuscitate the situation contrary to suggestions of George P. Shultz, the then secretary of US Treasury; from an interview Shultz gave

²¹⁰ Ha-Joon Chang, *Kicking away the ladder* (Anthem Press, 2002)

²¹¹ James Crotty, 'Structural causes of the global financial crisis: a critical assessment of the new financial architecture' (2009) 33 Cambridge Journal of Economics 563

²¹² Richard Nixon, 'Annual Message to the Congress on the State of the Union' (January 1970) <http://www.presidency.ucsb.edu/ws/?pid=2921>

in 2015 it can be fathomed that he advised Nixon to apply contractionary measures, including spending cuts and austerity, but Nixon chose the accustomed expansionary measures.²¹³

The remarkable point pertinent to the Keynes and Nixon is the informal collapse of Bretton Woods. While Keynes is known as one of the main architects of the Bretton Woods system, the US President Nixon, who previously has been admiring the effectiveness of Keynesian economics, withdrew the USD from being pegged to the gold standard. This led the USD to become a fiat and floating currency,²¹⁴ which, as a result, brought about the collapse of Keynes organised heritage being the Bretton Wood system. Another critical occurrence during the presidency of Nixon was the energy crisis of 1973; as a result of the Arab-Israeli war and the oil embargo by Arab states and the push of the oil price by the Shah of Iran, the world and in particular the western countries undergone a sever energy crisis. It can be argued that a substantial cause of the collapse of Keynesian economics was in fact the surge of the oil price. It can be argued that, the energy crisis was an economic alert against the prolonged indolence which had surrounded the western Keynesian paradigm. It will be discussed in the next chapter how the energy crisis affected the sovereignty of the last Shah of Iran thenceforth. It is yet another crucial point that, as it will be provided later as well, the dependency and reliance on the oil and petrochemical should not be asserted solely on the oil exporting states. While the Dutch disease is a common phenomenon amongst oil exporting state, due to their sole reliance on the oil revenue as the main sources of export income, it is vitally valid to point out that the reliance on the oil on the other side of the spectrum is as crucial as it is amongst the exporting nations. Thus, it is valid to propose that, oil has been the backbone of the global economy and not merely the exporting states. It will be scrutinised in the next chapter that, how the oil has vastly challenged or endorsed sovereignties through the legal, economic and military means.

While thus far this part of the chapter has been analysing Keynes contributions to economic trends and his influence on policy makers in favour of state driven economics in comparison to free market and its potential private investment and FDI attraction, it is of interest to note Hayek's perspective on the Bretton Wood System at this point. Further analysis of Hayek would be demonstrated in the following part. While Hayek was an advocate of free market, he pointed out

²¹³ Paul Burnett, *Problems and Principles: George P. Shultz and the Uses of Economic Thinking* (University of California 2015) https://bfi.uchicago.edu/sites/default/files/file_uploads/shultz_george_2016-transcript-BFI.pdf

²¹⁴ International Monetary Fund, 'The end of Bretton woods system' (1981) <https://www.imf.org/external/about/histend.htm>

that ‘the problem raised by a conscious direction of economic affairs on a national scale inevitably assume even greater dimensions when the same is attempt internationally’.²¹⁵ Hence, it is reasonable to question Hayek’s utopian beliefs on globalisation, which have thus far been based on government non-intervention according to Hayek. His notion can be dissected in two matters; initially the fact that, if his dislike of such systematic globalised economic system is to be taken, it can be applied to the current fundamental issue of the EU. While in the EU the interest rate is allocated by the European Central Bank for all EU member states, the tax rate and the fiscal policy remains a matter of domestic preference for the EU members. Some scholars including Thomas Piketty have identified this fiscal variation as the key issue within the EU.²¹⁶ Thus, it can be argued that the remedy of the current problem of the EU has been found (by scholars like Piketty) in more centrally integration of EU member state (with fiscal policies) contrary to Hayek’s proposition against any centralisation of economic policies. The second matter can be found in the discourse of sovereignty. As it will be discussed in Chapter Four, in the current globalised world, no state can sustain absolute sovereignty on all aspects of their country. Hence, every country needs to conform into a trade-off of sovereignty versus gains by which it may hinder one for the benefit of the other one. To explain this proposition more elusive examples can be identified from the domino effect of one economic crisis in US and its ramification to countries like Japan, which are intertwined for economic benefits. Such ramifications as will be dissected in the following parts of this chapter are in fact as a result of easing sovereignty for economic prosperity. Thus, Hayek was right that economic problems would be magnified if applied internationally.

In Britain, the financial crisis of 1976 demoted the country from being once an imperial power of the world into having massive debt and eventually to the IMF conditionality under James Callaghan Labour government.²¹⁷ Evidently the public expenditure programmes which has been traditionally promoted and enhanced by the Labours could not be sustained no longer. Before proceeding further, it is valid to point out the findings of Chang that the imperial power of Britain and the American slavery had provided remarkable fundamental rudiments for the economic superiority.²¹⁸ The protectionism supported by free lands, free labour force and free of charge access to national resources, including oil and gas, and of course gold, which a century later legally

²¹⁵ Friedrich Hayek, *The Road to Serfdom* (Routledge, 2001)

²¹⁶ Thomas Piketty, ‘a Global Tax on Capital’ in *Capital in the Twenty-First Century* (Harvard University Press, 2014)

²¹⁷ Kathleen Burk, ‘1976 IMF Crisis’ (1989) 3 *Contemporary British History* 39

²¹⁸ Chang (n 210) 87

became the yardstick and determinant of the economic wealth. The application of having access to free lands (through colonisation) lies in the historic fact that more land would perceptibly provide more opportunities, be it agrarian or industrial. Hence, the importance of national sovereignty and territorial integrity is not merely reflections of ideological rhetoric.

The Dawn of the Hayekian Paradigm

Since the blossom of the Keynesian paradigm in the 50s, Hayek has been futilely warning politicians and law makers of the potential perils latent in public expenditure. Being an Austrian School economist, he was also of the belief that the market would find the equilibrium between employment and growth, and the only duty of the government was to maintain the balance of payment. As mentioned earlier, Keynes, negating the natural alignment of market, inferred that in the long term we are all dead; in other words, by the time the market would supposedly balance itself, generations have gone by. By this proposition Keynes indicated that investment and spending by government should take precedent over saving by the government. It could also be fathomed that due to the unpredictability of future he asserted such proposition. Hence, the public expenditure was increase to rebuild the country's infrastructure and enhance its public sectors. As demonstrated in the previous part Keynes proposition was the enhancement of the government's role in the economy. While he did not mean to replace the privet investment and FDI with the public investment, inevitably his hypothesis favoured more intervention by the government. While as noted in the previous part Keynes was of the belief that the government should invest in fields that private investors (being domestic or foreign) are neither attracted nor have the capacity, such role of government was expanded through all fields of investment and utility throughout 50s and 60s and it was by the late 70s that the states were faced with the harsh reality of their overspendings.

As mentioned before, Keynes, having seen the disastrous effect of unemployment in the Britain in the late 1920s, became obsessed to find a way to tackle the problem of unemployment. On the other side of this equitation, Hayek having been raised in Austria and witnessing how damaging unfettered inflation can be on people's lives, identified inflation as the worst disease of the economy. It has to be reminded that, unlike the market fundamentalist and the laissez faire prominent thinkers, Hayek developed the idea that the ideal style of any given state/government is

to provide public housing and national health system.²¹⁹ The pertinence of this proposition and the topic of FDI and Iran, lies in the fact that as it will be illustrated in chapter 4 the national scale public housing project in late 2010 was consider a key reason to the stagflation that was ensued in Iran. While housing is a key hub of investment by domestic developers or FDI exporters, the notion of social moral and state duty to its most vulnerable citizen remains a key issue when interfering in such costly yet vital component of individuals life. This is what distinguishes Hayek from the other classical economists and makes him more of an idealistic figure rather an absolute economist. While the ultimate goal of FDI would be to make profit, states and governments may seek other reasons for their investment. Hence the good of the society may in fact take precedent over economic feasibility.

By the mid-70s, after almost four decades of economic prosperity and remarkable employment emanated from Keynesian economic model, the worst happened: Stagflation. The unemployment rate surged, while simultaneously inflation started soaring. This was the economic phenomenon that Keynes had not predicted in his supposed adamant economic paradigm. Most prominent scholars would have examined every possibility before reaching a prompt conclusion, nevertheless scholars are not immune to flawed arguments and conclusions, but also the public hype and desperate politicians would seek the most euphonious remedy. According to Keynes' standard, when unemployment rate is close to zero, inflation would be under control.²²⁰ Under his multiplier effect, people would supposedly have money to spend, nonetheless at some point in reality people tend to spend no more. What started spreading in the society and the economic sphere was their righteous apprehension of public spending as borrowing from the government. This sentiment was that the continuous borrowing cannot be sustained for long, specially years after economic recovery has been achieved.²²¹ This was more evident in the case of Britain with the vehement increase in tax rates. As mentioned hitherto, Keynes' remedy was excessively applied for the sake of ballot boxes and the satisfaction of political candidates. This has also been the case in Iran, as will be discussed later in chapter 4, where over-expenditure had turned into a habit of political participants to gain the attention of voters. It can be posited that in the absence of

²¹⁹ Friedrich Hayek, 'Security and Freedom' in *The Road to Serfdom* (Routledge, 2001)

²²⁰ John Maynard Keynes, 'The Employment Function' in *The General Theory of Employment, Interest and Money* (Wordsworth, 2017)

²²¹ Paul Beaudry and Dana Galizia and Franck Portier, 'Reconciling Hayek's and Keynes' Views of Recessions' (2018) 85 *The Review of Economic Studies* 119

private sector and FDI, the government remains the sole participatory player in the economic spectrum of the country. This evidently leads to the growing size of the government which not only become problematic in terms of sustaining the size of the government but also it reduces the efficiency of the government. In terms of investment, whereas private sector and FDI exporters base their due diligence on investment related factors (mainly economic as identified in chapter 1), the government on the other hand would contemplate non-economic components when investing. This of course could lead to job creation and increased sovereignty in all aspect of the country, nonetheless the always-fresh question remains to be when the government should stop interfering.

Hayek, having forewarned about the unprecedented ramifications of public borrowing and the exaggerated focus on unemployment, started to gain attention in the late 70s and early 80s. His paradigm was welcomed by Thatcher in Britain and Reagan in US. From this point onward, the flaws of Keynesian economics led to their abandonment, despite the fact that it once saved millions during the time of the Great Depression and the aftermath of WWII. Hayek's contractionary economic policies seemed to be the remedy for the massive stagflation of the late 70s and early 80s. As a prominent figure of privatisation, he criticized Keynesian economy, noting that searching for the long-lasting cure for unemployment would be treading to no avail.²²² As Hayek and other free market advocates argued, there is no exact normal rate of unemployment, as in any given era different elements would change the direction and scale of unemployment. For Hayek, inflation was the major concern and by the early 80s his concern seemed to be shared with the dominant politicians, who were seeking a way out of the stagflation. While previously the practice of Keynesian paradigm was accompanied by tax cuts, by the time of the stagflation tax rates were higher than ever. Reagan, the then president of US decided to cut taxes, privatise national assets and deregulate the domestic market and its legal apparatus. His efforts and accomplishments brought about the term 'Reaganomics'.²²³

Despite the fame of Hayek at the time and the seeming process of gaining economic health by reduced inflation through fiscal and monetary policies according to Hayek's paradigm, Hayek himself seemed unmoved by the pace and the impact of the new changes. While for Hayek the government should abandon almost all aspects of the market and focus on the legal substance and

²²² Friedrich Hayek, '*Full Employment Planning and Inflation*', (1950) 4 the Institute of Public Affairs Review 174

²²³ Daniel Stedman Jones, *Masters of the Universe: Hayek, Friedman, and the Birth of Neoliberal Politics* (Princeton University Press 2012) 265

the military capability, he also believed that issuing money should also be rescinded from government's authority. This meant absolute independence for central banks, which at the time seemed farfetched, however gradually central banks were given more autonomy. The US Federal Bank, for instance, is considered to be independent from the government, as the members and the Chief of staff are appointed directly by the President. Furthermore, in Britain, it was not until 1998 that the Bank of England obtained an independent status from the government, in order to be in full control of interest rates and issuing money. The main rationale behind an independent central bank is to prevent the government from issuing money or manipulating interest rates and using monetary policies for political gains. In practice, it could be argued that, despite the potential prestigious nature of having authority over monetary policy, a government would not last long if its economic plans fail with or without having either direct or indirect influence over or cooperation with the Central Bank. Such independent status for the central banks evinced the sheer willingness of the governments to boost private investment and embrace FDI into their country. As the governments had surrendered their interference in monetary policies can be a key token of market liberalisation which has found to be a major determinant of FDI previously.

Following Reagan's approach in the US, Thatcher in Britain also began adopting the Hayekian economic model through which she started to sell off national assets; among which Telecom, Postal Service, house utilities, ports, National Rail, British Petroleum, and airports. Furthermore, she closed down the mines and the industries affiliated with previously costly, yet highly hiring, sectors.²²⁴ She practically abandoned the nationalised industrialised English economic structure, and transformed it to a new archetype, turning London into the core and the hub of international commerce and finance. As identified in Chapter One, services sector is amongst the 3-major field of investment that FDI exporters are attracted to. Since Thatcher, Finance and banking has become a major FDI service hub in the UK. Her efforts in the area of exchange rates were directed towards dropping the control, which was in place since the end of WW2. Her plans were in line with the European Economic Community (EEC) at the time with other European countries to sign the Single European Act, commonly known as the Single Market by which signatory members were benefited from a total tariff free market.²²⁵

²²⁴ Ibid 254

²²⁵ Nauro Campos and Fabrizio Coricelli, 'How EEC membership drove Margaret Thatcher's reforms' (10 March 2017) <https://voxeu.org/article/how-eeec-membership-drove-margaret-thatcher-s-reforms>

Thatcher's economic effort and policies led to a new UK economic approach, which was not lived off the domestic industrialisation, rather attained such finance and service status to reach an opulence at least for the next three decades starting from the early 1980s up until 2008. This economic trajectory seemed a success, by having lowered the inflation and achieving a surging growth rate. Nonetheless, the issue of unemployment was another problem. While in the 1950s and 60s the Keynesian practise contributed to an average 4% unemployment in the UK from 1950s to 1974 (before it spikes to 8% in 1975), the newfound Hayekian-based economic paradigm with emphasis on tackling inflation, to some extent neglected unemployment, which at some point in 1980-85 reached 10%.²²⁶ Nevertheless, keeping pensions and the National Health System intact, the government kept the majority satisfied as the new economic approach provided new types of jobs and new technologies, conveyed higher efficiency, which resulted in higher growth rate, more international integration, and less volatility. This of course benefited the employed population, while the unemployed could survive with the existing pension scheme, the NHS and in worst cases food banks.

While all her efforts of decentralisation, deregulation, and cutting in previously lavish public expenditure made her one of the least popular political figures amongst British, Hayek, the brain behind this newly adaptation of Classical Economics did not seem satisfied by the pace and depth of the reforms; It can be implied by Thatcher's response to unmoved Hayek that, she explains, being restrained by the democratic rules of the UK legal and political system, she was not capable of taking more drastic measures toward privatisation and liberalisation unlike the Chilean reform which she admired.²²⁷ In practice, the unsatisfied labour unions in the UK had to be dealt with through forceful means. Political cohesion, can be comprehended, as yet another prerequisite of free market, as it was the case, not only in the Keynesian era, but also during Thatcherism and her firm stand against labour unions and traditionalists. Another relevant and accurate example is Chile and Hayek's admiration of Pinochet which will be discussed in the next part of this chapter.

With regard to investment, under the Hayekian paradigm as applied to some extent by Reagan and Thatcher, the government was no longer in charge of money supply. Hence under

²²⁶ Office for National Statistic, 'Unemployment' (2018) <https://www.ons.gov.uk/employmentandlabourmarket/peoplenotinwork/unemployment-timeseries>

²²⁷ Margaret Thatcher letter to Friedrich von Hayek (1982) <http://fc95d419f4478b3b6e5f-3f71d0fe2b653c4f00f32175760e96e7.r87.cf1.rackcdn.com/3D5798D9C38443C6BD10B1AB166D3CBF.pdf>

Hayek's paradigm, interest rates underwent an increase. That meant the end of the era of cheap money. The government's chief goal seemed to be yet again the balance of payment, armed forces and the enhancement of the legal system. As one of the main aspirations of Hayek, the prices were no longer fabricated by the aggregate demand and supply;²²⁸ the price of a commodity, which as Hayek believed indicates the actual market value of the cost and the demand, was for the first time in decades determined by the means of free market. Under Hayek's value of price, investment, and indeed FDI, would eventually find the most convenient, desired, and profitable destination through the price orientation. This was called 'Rational Expectation', and has been expanded by the New Classical economists, such as Robert Lucas.²²⁹

Consequently, the scarce resources, being capital, technology or human resources, would be invested in the most efficient platforms either by domestic investors or FDI exporters. This can be observed, as one of the key components of the growth experienced from 1990s onward. Nevertheless, yet again, putting emphasis on the economic teachings, idealising the utopias of economists and politicians, giving primacy on emulating them in the real world, regardless of the apparent shortcomings and maladjustments, embroiled the global economy into, yet another economic collapse in the mid-2000s. If the over-implementation of Keynesian economics, in order to maintain the unemployment as low as possible, resulted in the massive stagflation of the mid 70s, the precipitous unfettered admiration of free markets resulted in the bursting of gigantic economic bubbles.

While Keynes was of the belief that providing more money would amount to more spending, the reality eventually proved the opposite. What Keynes neglected to grasp, along with the probability of stagflation, was that gaining more money or receiving extra money from income or tax reliefs does not inevitably mean more increase in purchasing power. What he did not accurately clarified was the difference between household income and household wealth. The more income by the late 60s early 70s, did not result in more asset accumulation by families.²³⁰ Not having the adequate trust, in the Government's debt, as mentioned heretofore, resulted in more

²²⁸ Friedrich Hayek, *Prices and Production and Other Works on Money, the Business cycle, and the Gold Standard* (CreateSpace Independent Publishing Platform, 2008)

²²⁹ R. Lucas Jr. and J. Thomas, *Sargent Rational Expectations and Econometric Practice* (University of Minnesota Press, 1981)

²³⁰ Sonia Carrera and Jen Beaumont, 'Income and Wealth' (2010) office for national statistics <https://www.ons.gov.uk/ons/rel/social-trends-rd/social-trends/social-trends-41/social-trends-41---income-and-wealth.pdf>

savings, rather than more spending, and the rising hyperinflation resulted in the mitigated purchasing power, let alone private investment.²³¹

The post-1990s economic condition seemed promising for private investment, as it was believed that the market is sophisticatedly allocating the investment destinations and people had more options to invest their capital, as opposed to the dire situation of 70s with no reliable and profitable investment hub. Nonetheless, once again the overconfidence in the sophistication of the market on its own without any government intervention resulted in the accumulation of capital in the most deregulated markets. In UK, banking deregulation resulted in the prosperity of risky banks and business, which was followed by the decadence of two prominent banks, i.e. Lloyds and Royal Bank of Scotland. A remarkable share of the GDP growth and prosperity turned out to be an economic bubble.²³²

In the US, having faced different economic bubbles, including the dotcom bubble, the biggest bubble burst in a crucial market; the housing mortgages with the bankruptcy of Lehman Brothers.²³³ This bubble, resulted in the biggest economic meltdown since the Great Depression of the late 20s. The history was repeating itself. The free market could not sustain its prosperity based on a self-regulatory mechanism. Once again, free market desperately needed the aid of the government; the Bank of England introduced the Special Liquidity Scheme through which circa £500 billion was used to fund in the financial system²³⁴, and in the USA the Emergency Economic Stabilization Act of 2008 was introduced to bail out not only Lehman Brothers,²³⁵ but also to provide more than \$70 billion to deal with the effect of the crisis. The crucial point, beside the use of public money, lies in the fact that through these bail outs risky banks and unfettered risk driven attitudes were in practice awarded and forgiven.²³⁶

While politicians and scholars believed that through deregulation and decentralisation, market would be driven on its own, the reality took an unpleasant course for the states. In the UK the risky banks and bankers, who took people's deposit as an investment in riskier business must

²³¹ Edward Nelson, 'The Great Inflation of the Seventies: What Really Happened?' (2004) Federal Reserve Bank of St. Louis <https://files.stlouisfed.org/files/htdocs/wp/2004/2004-001.pdf>

²³² Robert Brenner, 'The onset of the bubble' in *The boom and the bubble the US in the world economy* (Verso 2002)

²³³ Chitru S. Fernando and Anthony D. May and William L. Megginson, 'The Value of Investment Banking Relationships: Evidence from the Collapse of Lehman Brothers' (2012) 67 *The Journal of Finance* 235

²³⁴ Lucia Quaglia, 'The 'British Plan' as a Pace-Setter: The Europeanization of Banking Rescue Plans in the EU?' (2009) 47 *Journal of Common Market Studies* 1063

²³⁵ Naohiko Baba and Frank Packer, 'From turmoil to crisis: Dislocations in the FX swap market before and after the failure of Lehman Brothers' (2009) 28 *Journal of International money and finance* 1350

²³⁶ Leonardo Gambacorta, 'How do banks set interest rates?' (2008) 52 *European Economic Review* 792

have been aware of the futile and vain investment. Their risky decisions, despite their knowledge of the failure at the cost of others, is commonly referred to as Moral Hazard.²³⁷ In the US, the credit crunch could have been predicted, simply by carefully looking at the social roots of the recipients, their background and capabilities, by performing credible due diligence and credit checks, and most importantly by focusing on the market value and the business cycle. While everyone seemed too confident on the self-correcting and self-driven powers of the market, the market was in fact driven by greedy bankers, reckless venture capitalists, and transnational corporations which sought their profit in diverse countries as a result of globalisation. The issue of highly risk driven banks and financial institution, regardless to the extent of their investment can well be observed as an impediment of the Iranian economy. As it will be scrutinised in details in Chapter Four, one major cause of not only economic hardship in Iran but also an emerging cause of the socio-political unrests in Iran are in fact the insolvent banks and the financial institutions with numerous non-performing loans, which are accumulated as a result of unfettered risky approaches by the banks.

While Hayek and other classical economists believed that one of the main roles of the government should be to operate on the basis of the rule of law, the shortcomings of the legal system, as a result of massive deregulation, and the limited liability of corporations allowed key players to take reckless actions to the detriment of the lives of millions of households. Hence, it can be argued that free market economics in its harshest sense not only had an adverse effect on wealth distribution, but it also had empowered the major players of the free market to take excessive risk without being held accountable.²³⁸ The pertinent point of the moral hazard and the core of this Thesis on FDI reflected in the approach of the investors towards the emerging markets; While for an investor the main objective is profitability, the adverse impact of the investment, under the above hypothesis would be irrelevant to FDI exporter. This will be elaborated in more detail in the next part of this chapter.

Having reached the globalisation to its peak in millenniums, the 2008 financial crisis was spread rapidly all around the world. While the Great Depression had an adverse effect mainly on

²³⁷ Kevin Dowd, 'Moral Hazard and the Financial Crisis' (2008) Centre for Risk & Insurance Studies <https://www.nottingham.ac.uk/business/businesscentres/crbfs/documents/cris-reports/cris-paper-2008-6.pdf>

²³⁸ Ibid

the American public (albeit regional business partners, including Bolivia, suffered from this crisis), the 2008 crisis had much more drastic consequences to various countries in different continents.²³⁹

In light of the self-interest concept of Adam Smith, those who can manage the market would seek to extract more benefit out of the market.²⁴⁰ It could be argued that in the accelerated momentum of free market as a result of unfettered deregulations, there would be a surge in unemployment, potential economic bubbles disguised as investment, or most severely the rise of ultra-nationalism and political tension among nations as a result of economic hardship. Thus, it would not be a farfetched presumption to argue that, the current global shifts, in light of rising trade wars and new political alignments derives from the economic hardship of 2008 onward inter alia other economic and geopolitical determinants.

Once again, the world sought to find a solution in the Keynesian teachings and the Neo-Keynesian public expenditure.²⁴¹ Once again following a massive economic crisis, the US administration decided to take more active role in the market by adopting more expansionary measures, cutting taxes, increasing public expenditure, and issuing more money under the Quantitative Easing programme. The expansionary measures were once again adopted in the UK and France as a result of the economic crisis, resulting in increased banking regulation.

As this part explored the impact of Keynes's focus on the employment and Hayek's emphasis on inflation, the role of the government and its policies directly and indirectly influencing and directing the investment destinations have been elaborated. Indicating that excessive confidence in market has resulted in economic disaster with corollary socio-political effects and comprehending that although the market and investors should allocate the investment nonetheless, once in economic crisis it is in the interest of the economy that the government take prompt action. Furthermore, it has been suggested that public investments by the government has been undermined as a key pillar to the rise of free market as a remarkable number of brownfield investments take over the previously public owned and public invested fields. The following part subsequently will elaborate the rise, success, failure and the potential hiatus of globalisation.

²³⁹ Stijn Claessens and Giovanni Dell'Ariccia and Deniz Igan and Luc Laeven, 'Cross-country experiences and policy implications from the global financial crisis' (2010) 25 *Economic Policy* 267

²⁴⁰ Patricia H. Werhane, 'The Role of Self-Interest in Adam Smith's *Wealth of Nations*' (1989) 86 *The Journal of Philosophy* 669

²⁴¹ Timothy A. Canova, 'Financial Market Failure as a Crisis in the Rule of Law: From Market Fundamentalism to a New Keynesian Regulatory Model' (2009) 3 *Harvard Law & Policy Review* 369

Globalised market vs Regional discontent

While the previous part discussed the impact of Keynesian economics, in comparison to what Hayek and classical economists had prescribed in light of the general spectrum of investment and the potential FDI direction under each school of economics, this part will examine the application of the findings in the global economy and will explore what Joseph Stiglitz describes as the discontents of globalisation.²⁴²

While Hayek's economic agenda highlighted the intelligence of the market, as a self-regulating mechanism, Keynes put emphasis on the role of the government in restoring economic health and directing resources, in an attempt to establish a just wealth distributed society in which unemployment is vanished.

This chapter illustrates how the heritage of Keynes has in practice led to the diminution of the role of government and jeopardised the national sovereignty. As the main core of this chapter is the impact of globalisation on the national sovereignty, this part, by setting forth examples of recipient states of FDI, would posit that, while synergy and integration are inevitable for economic growth in this case via FDI any given government specifically of a political sensitive country being Iran should be vigilant toward the economic globalisation and FDI. The vigilance, as will be posited in the following chapters, will be reflected and directed by law and selective regulation enacted by the sovereign through government's bill and parliament ratification.

While the IMF and the World Bank are widely known as two major loan lenders to countries in financial crisis, their directive role in the world of economics has gone beyond as mere loan lending institution. Since 1945, IMF's initial agenda was to provide and promote macro-stability, global growth and genuine stability by assisting developing countries during their transition into becoming developed countries. Despite the initial goal of bringing prosperity through governmental exchanges, as Joseph Stiglitz suggests, IMF has vastly shifted from Keynes' collective approach ideal to absolute market fundamentalism: 'Keynes explained...by putting pressure on countries to maintain their economy at full employment, and by providing liquidity for those countries facing downturns that could not afford an expansionary increase in government expenditure, global aggregate demand could be sustained. Today, however, market fundamentalists dominate the IMF'.²⁴³ It has to be borne in mind that, the first edition of Stiglitz

²⁴² Joseph Stiglitz, *Globalization and Its Discontents* (Penguin, 2002) 196

²⁴³ Ibid

book which has been used in this Thesis was published in 2002. Nonetheless, the argument which is relied at this point is pertinent to the time of publishing as it indicates the trajectory of IMF through the past few decades. Hence, despite the time gap between the book and the argument proposed here, the argument remains valid.

While Stiglitz, whose fame derives from his disinclination and apathy towards the dominant pattern of the economic globalisation, his long-lasting caveat has now become an emerging perception shared not only by western public but also the IMF. In an analysis published by the IMF in 2016, questions were whether or not neoliberalism is oversold.²⁴⁴ Such questions raised by the IMF would indicate a shift of approach within the IMF, which seemingly is distanced from the market fundamentalism identified by Stiglitz almost a decade earlier. In the report, it was acknowledged that the market fundamentalism has in fact brought about increased inequality. Following this part, the IMF's impact and growth as a result of FDI on developing countries against their economic and national sovereignty will be dissected with the analysis of economic crisis in those countries.

To explore the adverse impact of globalisation via western institutions such as IMF, the East Asian crisis in the late 1990s should be examined in accordance to the findings of Stiglitz. From the Asian Tigers and the members of the Association of Southeast Asian Nations (ASEAN), this part will mainly focus on South Korea, Japan Thailand, Malaysia and Indonesia.

In order to provide a comprehensive and detailed account of the subject, in this Thesis various countries have been examined. In chapter 1 countries including Mexico, India, South Africa, Turkey and China have been examined along with some member states of the EU. In this chapter also, different countries have been used as the comparative benchmark. Two countries have been the main focus of the final part of this chapter; Japan and Chile. While the number of countries that have been examined in this chapter varies from USA, United Kingdom, South Korea, Malaysia and Indonesia, three countries have been used as the direct comparative benchmark with Iran specially in the following part of this chapter. These countries are Japan, China and Chile. China has been the main country of comparison in chapter 3. The reason of such comparison has mainly been their characteristic as country of multi-ethnic nature, which have been identified in

²⁴⁴ Jonathan D. Ostry, Prakash Loungani, and Davide Furceri, 'Neoliberalism: Oversold?' (2016) 53 Finance and Development 38

chapter 3 as civilisation-states. Nonetheless as for this chapter and the relevance of Japan and Chile a brief explanation will be of help to familiarise the reader.

Japan has been used as a comparative benchmark on two occasions and for two key reasons; the first instance has been referred to in chapter 2 to inspect the East Asian crisis of 90s, and the second instance is referred to in chapter 3. As for chapter 2 the key point to emphasise Japan, along with some other countries of the region, is to scrutinise the impacts on regional and global financial crisis on countries who have immensely embraced the globalised economic order. This examination has assisted the underlying comparison between countries economically dissociated from the globalised world and the participant states of the global network of finance and economic integration. Iran as a country who has not fully embraced the global economic order (for various reasons which will be scrutinised in chapter 3 and 4) has remained comparatively immune not only to the global financial and economic shocks, but also to the potential exogenous influence on its sovereignty including its political and social orders. It has to be reminded that, the mentioned ramifications are intended to have been caused by economic engagements. It should be clarified once again that, one of the key aspirations of this Thesis is to establish the correlation between economic engagement (FDI) and encroached National Sovereignty. Hence the socio-political instability of Japan during the 90s as mentioned has been identified to be as a result of the foreign pressure over FDI and economic related issues. There are numerous incidents that Japanese, Chinese and Iranian sovereignty (as well as almost every other country) has been intruded by foreign forces in wars and battles, thus the comparison with Japan and Chinese history has been provided in chapter 3. The recent history of Japan and China have been partially referred to in chapter 3 against the recent history of Iran. The cross examination of these three countries provides interesting findings; It will be argued that Japan in the mid 19th century have realised that to enhance its economy it needs to embrace the western technology and its subsequent cooperation, despite the potential risk conveyed in such openness. It should be pointed out that the Russo Japanese war and the mighty position of Japan after its battles with Chinese and Russians may have provided the adequate confidence to aspire new ambitions. On the other hand, Iran and China rejected to modernise and embrace western technology in that period of time. This comparison has been studied extensively in chapter 3. Hence the comparative benchmark of Japan has mainly been to provide a counter instance against Iran's trajectory towards industrialisation and modernisation despite their mutual great sense of national pride.

The other country which has been used as a key comparative benchmark is Chile. Unlike the example of Japan which has been provided as a counter argument against Iran, the case of Chile contains substantive similarities with Iran which supports the legitimacy of the Iranian side and the argument for the precedent of sovereignty over economic prosperity. While the coup of Chile has been explained in this chapter as an introduction to foreign meddling in domestic affairs of one country for economic gains, the instance on Iran and its relevance to Chile has been illustrated in chapter 3. It will be argued in these two occurrences that, there have been drastic examples of foreign forces taking actions against the political order and sovereignty of one country to secure their own economic interest. The examples given in this Thesis have been the 1973 Chilean coup and the Ajax coup of 1953. In both instances the government of the USA decided to take military action against the legal and legitimate governments of Chile and Iran as it will be evinced based on official documents later. Although the military interferences in both scenarios resulted in the satisfaction of the targeted mission by the USA, it has left pernicious repercussions for both targeted countries. It will be posited that, while Salvador Allende's economic and his social agendas have tended toward nationalisation and social welfare, the US administration did not find such programmes in line with its own economic interest. On the other side of the world in Iran, there existed a similar scenario 20 years earlier. In 1953 the Iranian prime minister nationalised the oil industry of Iran against the direct FDI interest of Britain. Such nationalisation albeit legal, was contested initially by Britain and consequently shattered by the US and British orchestrated coup. The Ajax coup of 1953 resulted in the abdication of Dr. Mosadegh which was the legal, legitimate and popular prime minister of Iran. The coup and its ramification directly shackled the Iranian sovereignty and its political establishment. It will be argued in chapter 4 that, one of the underlying reasons of the 1979 Islamic Revolution of Iran was in fact the Ajax coup. As a result of the coup the then king of Iran, it will be posited that, had lost not only its domestic legitimacy in the eyes of a remarkable population of Iran but also had lost its authority and control over domestic affairs to the foreign forces and their delegates. Hence the relativity of Chili and Iran lies in the fact that, both countries' sovereignty and political establishment have been violated by foreign forces to maintain and recapture the economic interest of the alien forces. It will be concluded that, on this occasion based on these two examples, the key concern of this Thesis which is the correlation of national sovereignty versus economic prosperity is a valid concern. It will be concluded that in both instances of Iran and Chile, a country's national sovereignty had to be

brutally challenged by foreign forces to secure the economic interest of the FDI exporting party. The above-mentioned brief clarifies the reason behind choosing countries like Japan and Chile as the comparative benchmark in chapter 2 and 3.

As for the key argument of this part the findings of Joseph Stiglitz is the most appropriate to commence the argument. Stiglitz believes that the reason behind over three decades of successful growth in the abovementioned countries, which was accompanied by fair wealth distribution, was a result of disregarding the IMF and the World Bank in the first place.²⁴⁵ It is valid to apply the argument of the proactive role of the government during the period of the economic take-off of these countries. As it has been mentioned heretofore, according to the findings of Chang, even US and Britain had forceful and active protectionist governments during their economic take-off.²⁴⁶ Hence, it can be posited that for a country to liberalise its market, a solid basis must have been crafted, as it has been the case with US and Britain up until late 1800. Although it is valid to raise the argument of companies like East Indian Company and Dutch East Indian company in light of their FDI in Asia, nonetheless the inward FDI does not seem to be the root of domestic economic take-off. Furthermore, with regard to the East Asia, Stiglitz identifies the root of the success in the government intervention, through heavy savings and investment. He goes further by indicating that the initial growth was not much due to international investment and FDI.²⁴⁷ This would also nullify the arguments for the contribution of FDI growth by the East Indian Company and the Dutch East Indian Company to the colonised countries historically. There is a resemblance between his notion on Eastern Asia and the economic agenda of Iran in the 1960s, which will be explained in the following chapter.

While under the Washington Consensus 1989, governments had been urged for rapid privatisation, East Asian countries chose the gradual approach. East Asian countries seemed motivated to expand their industrial policies. Through their wealth distribution and macro-stability (which seemed to be the sole shared value between Washington and E.A), East Asian governments enhanced their social cohesion, according to Stiglitz.²⁴⁸ The issue of national-social cohesion is of paramount importance for Iran as a multi-ethnic country. Hence, by confirming the universal validity of the socio-political cohesion and its correlation with economic growth, the later part of

²⁴⁵ Stiglitz (n. 190) 91

²⁴⁶ Ha-Joon Chang, *Kicking away the ladder* (Anthem Press, 2002) 84

²⁴⁷ Stiglitz (n 116) 102

²⁴⁸ Ibid 92

the Thesis will justify the argument on how the foreign induced economic agenda either through FDI exporters or IMF has jeopardised social-political cohesion.

The East Asian crisis occurred as a result of Thailand and South Korea's economic turmoil. The former came as a result of the collapse of the currency,²⁴⁹ and the latter due to the loans and banking crisis. What is remarkable with South Korea's crisis, as Stiglitz identifies, is the role of international pessimistic propaganda.²⁵⁰ While having heavily borrowed from foreign creditors, South Korea's financial statistics and economic situation seemed persuasively solid until rumours had spread regarding the incapability of South Korea to rollover its short-term loans. This widespread rumour, according to Stiglitz, disparaged South Korea's credibility, thus the rumour of a financial crisis brought about crisis in reality.²⁵¹ Furthermore, it has to be reminded that Stiglitz is not the sole critique of such phenomenon (being false hypes), as Radelet and Sachs also identified the financial panic as a key component which lead to the Asian crisis.²⁵² Such widespread rumour which later turned into economic reality affected not only the domestic participant but also the FDI already in existence. Nonetheless, as it will be discussed domestic participant in the market had far more catastrophic destiny in comparison to the foreign investors.

As a result of the financial crisis in the East Asia region, the countries had to approach the IMF to restore their economic health. With IMF loans always come the controversial conditionality clauses. IMF's conditions have always been a source of criticism towards globalisation by developing countries. Not only it can be perceived as a jeopardising factor to economic sovereignty, as it was the case with Eastern Asian countries, but in a wider scope it can be regarded as an intrusive instrument against the national sovereignty of a given country/state. A vivid instance of the argument of sovereignty versus prosperity can be recognised in the East Asian crisis. While IMF and its conditionality in general can be identified as a microcosm of the correlation of sovereignty and prosperity at this point the focus would only be limited to the East Asian crisis.

The IMF urged the countries in trouble to increase their interest rates, while the key remedy for such economic crisis, according to Keynes, was the expansionary policy through monetary

²⁴⁹ Andrew Sheng, 'Thailand: The Karma of globalization' in *From Asian to Global Financial Crisis: An Asian Regulator's View of Unfettered Finance in the 1990s and 2000s* (Cambridge University Press 2009)

²⁵⁰ Stiglitz (n 116) 94

²⁵¹ Ibid

²⁵² Steven Radelet and Jeffrey Sachs, 'The Onset of the East Asian Financial Crisis' (1998) 1 *Brookings Papers on Economic Activity* 1

policy, i.e. lowering interest rates. Furthermore, the IMF urged the recipient countries to lift the barriers on capital flow and this caused the acute and sudden capital flow in and out of the countries, who applied the IMF conditions. The only country, which eschewed the IMF's fierce conditions was Malaysia that did not experience what the other countries did. The capital outflow, in addition to high interest rates, not only increased unemployment as a result of the bankruptcy of small businesses, but also, as Stiglitz identifies,²⁵³ led to the erosion of the middle class. The issue of the empowering middle class while derives from socio-economic and indeed political movements, nonetheless pertinent to this study, can be argued that may be empowered through enhancing the secondary and tertiary sectors of FDI. While Iran's main source of revenue is oil which is under the primary sector of FDI, it is valid to postulate that manufactory and services have direct impact on the employment of the middle class and enhancement of the private sector. Bearing in mind that natural resources is a nationalised field. However, relevant to the argument of this page, such reliance on FDI in those field have perished lives of middle class in the East Asian crisis once the economy underwent rushed capital outflow. Thus, to sustain the livelihood of not only middle class but also the economic health, government intervention is of vital necessity even if the foreign investors find it protectionist or unpleasant. Another valid point is that the FDI which targets long term investment and cooperation in the hosting country is inevitably tied to the holistic economic wellbeing of the country. Thus, those FDI with substantial investment, mainly targeting the horizontal market would not be bothered with the temporary interference of the government in the economy. This, if implemented correctly, could eventually empower the middle class and have positive contribution on the wellbeing of citizens and employment simultaneously. It should also be posited that, the natural resource sector and the massive size investment could prospectively remain under the government's control, potentially under various models of FDI partnerships from joint ventures (JV) to Build-Operate-Transfer (BOT), Design-Build-Finance-Operate (DBFO) and other globally available methods of contractual partnerships.

The severe economic downturn of the East Asian countries had global repercussions in relation to FDI inflow towards the abovementioned countries. The IMF, a major driving force of western globalization not only did not contribute to FDI growth at the time, but also through erroneous decisions on capital liberalisation, ruined the confidence of foreign investors over these

²⁵³ Stiglitz (n 116)

emerging markets.²⁵⁴ As previously mentioned, East Asian governments were open to industrial investment, but, under IMF conditionality Thailand was forced into allocating billions of dollars into the real estate sector, whereas the manufacturing sector of Thailand had been providing jobs and enhancing growth.²⁵⁵

Although South Korea's economic growth was mainly the result of government saving-spending and aggressive marketing, as Stiglitz identifies, the impact of transnational corporations and their activities is undeniable in Singapore and Indonesia.²⁵⁶ The role of these corporations is not merely limited to their outward FDI and the recipient countries, but Wall Street and the US administrations played a pivotal role in paving the way for their economic presence. While Korea's market liberalisation was in fact a case of success with a gradual pace, the pace was not in line with the US interests.²⁵⁷ This supports the point made earlier that western globalization, via FDI, may in reality jeopardise the national interests of developing countries. South Korea has been considered as an active ally of the US foreign policy, yet this political allegiance did not provide any protection when the economic interests of transnational corporations and subsequently US governments were not in line with Korea's internal agenda. Iran is considered as a de facto adversary of US and will most certainly not be enjoying any special immunity in case of an emerging financial crisis if the abovementioned example is to be relied on. In the case of Japan, yet another ally, when the region was hit by the regional economic crisis, the proposed remedy to restore the economic health of the region should have been the expansionary policies at the time. Nonetheless, the generous aid of \$30 billion known as New Miyazawa Initiative, offered by Japan to the countries in crisis²⁵⁸ was faced by USA intervention that the money should be used to bail out the US and foreign corporations and banks affected by crisis.²⁵⁹ Hence, once again the substantial question of who should benefit from the FDI driven growth was answered by the US administration and it was effectively not in favour of the well-being and benefit of the affected hosting public. Furthermore, pertinent to the core of the Thesis, on the correlation of the sovereignty and FDI the above-mentioned examples highlight the political influence and clout of

²⁵⁴ Keynes (n 90)

²⁵⁵ Stiglitz (n 116) 101

²⁵⁶ Ibid 102

²⁵⁷ Ibid

²⁵⁸ Glenn D. Hook and Others, 'Japan and the East Asian Financial Crisis: Patterns, Motivations and Instrumentalisation Of Japanese Regional Economic Diplomacy' *European Journal of East Asian Studies* 1 (2002) 177

²⁵⁹ Stiglitz (n 116) 113

US business enterprise supported by US administration over the economic sovereignty of a sovereign country being the FDI recipient.

The crucial question of the beneficiaries of the FDI driven growth, as a complex conundrum, should be answered based on the needs of each recipient country. The factors that need to be evaluated first are the degree of necessity of the FDI in any given sector, the inflation and the unemployment equilibrium, and of course the socio-political cohesion and national sovereignty. Having established a well-crafted set of regulations and guidelines, the generated wealth and employment opportunities of FDI can be relished not only by the investors and the hosting state, but also by the hosting public as well.

Back to the issue of the social costs and national interests, the case of Indonesia and Malaysia during the East Asian crisis is a good example. The IMF's remedy, which resulted in the bankruptcy of small businesses according to Stiglitz, was accompanied by the cut of subsidies on food and fuels.²⁶⁰ The economic shortcomings suddenly escalated the long-existing ethical tension, as evidenced by riots. As a result of the riots, the Indonesian government had no choice but to restore the subsidies.²⁶¹ Iran also lifted its subsidised programs on fuel and food in 2009, which resulted in a short-term turmoil. Having witnessed the social turmoil of Indonesia, the Malaysian government once again decided to eschew the IMF policies, in order to maintain the social and ethical order. As a result, not only Malaysia remained immune from the social disorder, but also its special economic program to promote employment for ethnic Malays remained intact.²⁶² Having special economic programs for ethnic minorities might be discussed in the context of the economic federalisation of Iran. Nonetheless, the economic federalisation of Iran could be a fatal stride toward ethnic instigation and total separation of ethnic minorities in the long-run which is again pertinent to the discourse of sovereignty and economic prosperity as to increase the latter the former might be jeopardised but at the cost of the collapse of the territorial integrity. While Indonesia and Malaysia are small sized archipelago countries, Iran is surrounded by nation-states (mostly under direct and indirect influence of US administration), which due to their ethnicity and their identity-seeking nature could have potential claim over Iranian territory based on ethnical grounds. This has been taking place in recent years over Iraq Kurdistan, which after decades of

²⁶⁰ James Levinsohn and Others, 'Impacts of the Indonesian Economic Crisis. Price Changes and the Poor' National Bureau of Economic Research, (University of Chicago Press 2001) 393-428

²⁶¹ Stiglitz (n 116) 120

²⁶² Ibid 120

autonomy is now seeking total secession. It should be borne in mind that Iran also has a province named Kordestan. Hence Iraqi Kurdistan should serve as an edification for Iran to refrain from economic federalisation. In lieu of economic federalisation Iran provides specific programs for less fortunate and most vulnerable ethnicities; this has already been incorporated in a number of legislations under the Free Economic Zones programmes which function as tax free not only for FDI exporters but also domestic investors in addition to financial and legal incentives. Nonetheless in practice, these programmes have not contributed to the growth of the least deprived regions of Iran. The issue of Free Economic Zones and their relevance to FDI will be explained in more details in Chapter Four.

Malaysia chose to distant itself from the IMF programmes and took other measures towards capital flow.²⁶³ Whilst Indonesia and South Korea have suffered by the inward and outward flow of Hot Money, Malaysia's approach seemed more convincing for foreign investors. By putting an exit tax on capital flow, FDI remained in place, as short-term regulation did not seem hostile towards long-term FDI.²⁶⁴

The Korean government benefitted more on other matters, on which they opposed IMF. IMF urged Korea to proceed with physical restructuring, including the closing down of the chip industry. By keeping this industry active, employment remained intact, and shortly after, when the global demand was restored, not only the chip industry witnessed a surge, but it also contributed to the recovery of the Korean economy.²⁶⁵

As mentioned, while the previous economic growth in Korea and Malaysia was the result of underpinning domestic management and investment, *inter alia* other factors, the IMF also urged them not only to sell off the national assets to private firms, but also specifically to foreign corporations.²⁶⁶ The point here lies with the previously mentioned distinction between greenfield and brownfield investments. While foreign investors under FDI regime are keen on setting up new corporations or having branches and subsidiaries in the host countries to onset their FDI project, Joint Ventures (JVs) happen to be one of the most efficient and popular methods of FDI.²⁶⁷ That

²⁶³ Ethan Kaplan and Dani Rodrik 'Did the Malaysian Capital Controls Work?' Preventing Currency Crises in Emerging Markets (January 2001) 393-440

²⁶⁴ Stiglitz (n 116)123

²⁶⁵ Ibid 127

²⁶⁶ Ibid 129

²⁶⁷ Weilei (Stone) Shi and others, 'Domestic alliance network to attract foreign partners: Evidence from international joint ventures in China' Journal of International Business Studies 45 (2014) 338

is when foreign investors enter into a partnership with an already registered domestic corporation.²⁶⁸

The privatisation in emerging markets and countries in the transition period has always been a topic of dispute. Although the common belief under capitalism, being Keynesian or Hayekian, is that the government should not take part in what the private sector could and have the will to do efficiently, the manner of selling-off public assets to private sectors has always been controversial. The Iranian privatisation took place at least in three instances over the past 60 years, benefiting mainly powerful domestic elites, unlike in Korea which privatisation was towards foreign corporations via FDI engagement. This will be analysed in details in chapter 3 and 4.

Stiglitz points out that those countries that did not follow IMF's programme, in this case Malaysia and Korea, recovered earlier and stronger in comparison to Indonesia which applied and implemented IMF's guidelines.²⁶⁹ As for the recovery from the East Asian crisis, Stiglitz suggests to put emphasis on full employment, expansionary fiscal and monetary policy and financial restructuring along with empowering legal institutions.²⁷⁰ These measures will be examined in the following chapters in relation to Iran, and their potential impact on FDI.

With regard to the rapid privatisation, the best illustration is Russia. While the new emerging Russia, after the collapse of USSR, was in dire need of financial aid, this was refused, as even the Marshall Plan was intended to defy the USSR bloc.²⁷¹ Now that the key competitor, being USSR the Communist USSR collapsed, there was no reason to provide financial aids. In turn, IMF and the global institutions encouraged President Yeltsin to proceed with rapid privatisations. The problem of the failure in Russia was not only the pace of the procedure but also the lack of legal infrastructure.²⁷² The lack of antitrust and competition rules resulted in the creation of Russian cartels and trusts which ironically today, are being referred to by the US administration, as evidence of corruption in Russia.²⁷³ What is being neglected is that these cartels and trusts in Russia can be traced back to the privatisation that the IMF effectively orchestrated. Thus, in light of the discourse of sovereignty and economic prosperity, the forced *modus operandi* to liberalise

²⁶⁸ Aimin Yan and Yadong Luo, 'Conceptualisation and formative motives' in *International Joint Ventures: Theory and Practice: Theory and Practice* (Routledge 2015)

²⁶⁹ Ibid

²⁷⁰ Ibid 130-131

²⁷¹ Klein (n 188)

²⁷² Stiglitz (n 116) 155

²⁷³ Michael D. Intriligator, 'Privatisation in Russia Has Led to Criminalisation' *Australian Economic Review* 27(1994)

and privatise the domestic market of a sovereign state by IMF, could be posited that shaped the economic and political spectrum which today's Russia is recognised with. Not only the privatisation which was encouraged by IMF was being conducted in a rushed manner favouring elites, such economic pressure by IMF jeopardised the structure of the political spectrum of Russia.

The World Bank Review indicates that in the absence of institutional infrastructure, the economic system is prone to corruption.²⁷⁴ Stiglitz criticised the IMF's impact on Russia's social capital, following the privatisation and market liberalisation, in which cheap privatisation and what he coins as the mafia capitalism breaks the social contract between the public and the government.²⁷⁵ This reaffirms the adverse impact of privatisation for economic gains on social cohesion.

Shock Therapy

In the case of Russia, once again the dispute between Keynesian and Hayek can be observed; in other words, inflation vs unemployment. While for IMF and Wall Street-based transnational corporations and investors the former was of priority, for the public the latter was of greater importance. Stiglitz points out that the broader special economic interests of the US, conflicted with the broader national interest of the host state to the point that there was seemingly a well-established hypocrisy in place.²⁷⁶ Although Stiglitz identifies this hypocrisy and the broader political-financial interests of the US and its economic institutions, which have been shaping globalisation, Naomi Klein explores the impact of globalisation through Shock Therapy. While Stiglitz applauds George Soros' endeavours toward global democratisation,²⁷⁷ Klein expands on the personal financial interest of Soros and his effort of democratisation of the Eastern Bloc, including Russia, through purchasing shares in Russia's privatised phone service as FDI.²⁷⁸ This can be observed in several other contexts in the past few decades in Argentina, Chile, Bolivia Brazil and Uruguay.

While Milton Friedman has been known as a pioneering economist inclined to free market, Klein criticises the adverse impact of his ideas on prosperity and stability of the countries in

²⁷⁴ Stiglitz (n 116)

²⁷⁵ Ibid 161

²⁷⁶ Ibid 179

²⁷⁷ Ibid 192

²⁷⁸ Klein (n 188)

question.²⁷⁹ It has to be reminded that one of the major agenda of Bretton Woods was not only the macro-stability but also political and social stability. Inspired by both Keynes and Hayek, Milton Friedman set up what today is known as the Chicago School of Economics.²⁸⁰ They criticised the developmentalist economies, which at the time maintained the total control of their countries. Promoting individual freedoms and democratic values was a priority for the ‘Chicago boys’²⁸¹, who advocated for what is genuinely known as Neoliberalism; the total market liberalisation under democratic norms and legal protection against cartels and trusts. Nonetheless, the reality of their impact was far from what has been advocated by them in the promise of democratisation. The reactionary polemic of the Chicago economics advocates against the Keynesian economic model and what has been in place at the time in the developing countries was the concept of mixed economy.²⁸² For the Chicago School the market itself was a self-regulating mechanism, which should not be interrupted by the government. Hence, in light of FDI no government under their set of propositions could channel the direction of FDI. In other word absolute FDI driven economy could become a norm under Chicago School. The lack of such authority by the government hypothetically should lead to jeopardised economic sovereignty. Nevertheless, the case of Chile as will be discussed later was accompanied by absolute and brutal authority of the government of Chile. The distinctive concern between classical economists and the Chicago boys can be identified in the reverse intervention of the government toward market liberalisation. Under the Shock Therapy doctrine, promoted by the Chicago school, the government should privatise, deregulate and liberalise its market all at once, and this cannot be achieved without the active role of the government, using its forcible role, if necessary. Hence, to them the authoritative role of the government should be to facilitate the fierce liberalisation. The model should be applied by any given country, irrespective of the economic, and socio-political rudiments of the country, which evidently varies from country to country. Klein describes Latin America as ‘the most advanced laboratory of developmentalism’ in the 1950s and 60s.²⁸³ For the Chicago advocates, the South American protectionism was a barrier and a substantive hurdle for the American goods; while the

²⁷⁹ Ibid

²⁸⁰ Juan Gabriel Valdes, *Pinochet's Economists: The Chicago School of Economics in Chile* (Cambridge University Press 1995)

²⁸¹ Patricio Silva, ‘Technocrats and Politics in Chile: from the Chicago Boys to the CIEPLAN Monks’ (1991) 23 *Journal of Latin American Studies* 385

²⁸² Klein (n 188) 53

²⁸³ Ibid 55

American goods had found a market in the post-war Europe, the high tariff rates of South America resisted to offer its market to foreign products. The issue of South American high tariff rates can be traced back to the 1920s and 1930s.²⁸⁴ This was bolstered by the Oil Nationalisation all around Latin America. For the South American countries, with the gift of natural resources, including oil, the threat of getting infected by the Dutch Disease (which was defined in the previous chapter as the sole reliance on one single commodity which awash the country with foreign currency while the rest of economic sectors remain unmoved) seemed eminent. The absolute reliance of the country's revenue on one commodity, which is vulnerable to the global market fluctuations. Hence, to avoid the adverse ramifications of these fluctuations, countries with natural resources in the 50s and 60s took prompt steps towards nationalisation. Such nationalisation, by increasing the authority and share of the sovereign hosting state would evidently reduce the FDI participation in the primary sector; although it is valid to point out that the technological advancement of the western countries is a vital component in the process of extraction, nonetheless, the nationalisation had remarkably reduced the profit of FDI exporter in that vital section. A key economic reason of such nationalisations has been to obtain the controls over the nationalised resources which ultimately the increased profit be invested in infrastructures and industrialisation of the country, with view to expand and diversify the domestic production in the long term. This was also the case in Iran in the early 1950s, which illustrates how the oil nationalisation of Iran effectively changed the course of history in the entire West Asia area. The FDI in primary sector and nationalisation of natural resources will be a major part of the next chapter, which illustrates how valuable such FDI has been to the exporting state for which, the political structure of the hosting state and subsequently its sovereignty had to be shaken through military coup. Klein indicated that the remarkable success of the South American countries in the 1950s and 60s, was as a result of the protectionism and nationalisation. For example, Argentina had the largest middle class, Uruguay enjoyed a literacy rate of 95% and most countries were able to provide free healthcare and education to their citizens.²⁸⁵ Along with the nationalisation and the high tariff rates, South American countries applied the artificial price mechanism, which had been advocated by Keynesian economics, against which Hayek stood firmly. The difference is the fact that, while the fixed artificial prices of commodities was advocated in US and Britain under Keynesian

²⁸⁴ John H. Coatsworth and Jeffrey G. Williamson, 'Always Protectionist? Latin American Tariffs from Independence to Great Depression' *Journal of Latin American Studies* 36 (2004) 205

²⁸⁵ Klein (n 188) 55

governments in the 1950s and 60s, the Chicago School and the US Foreign Policy did not seem to be bothered with its implementation abroad. Their uneasiness was only revealed, when it was applied in other countries, especially South American countries. The moral here is that, as it was postulated in the previous part, the fixed artificial prices could be of help for an economy only during a specific time, during which the country is going through a healing process or is in an economic take-off trajectory. This is because prices should be restored to the market value once the targets are met. Nonetheless, while this was the case in the US and Britain, the Chicago School did not have the patience to wait for the natural course of market forces to restore the prices to their actual value in South America. It can be argued that the core of this difference was the probable Chicago Schools advocates self-interest or their fiduciary role on behalf of the foreign corporations (in form of FDI exporters) in the accelerated profit raised in South America. The ties with FDI exporters genuinely as multinational corporations and politicians which in this case have arguably been between Eisenhower's staff and J.P Morgan.²⁸⁶ Eisenhower, when faced with three successive recessions during his Presidency, tackled the economic hardship by using the Keynesian approach, nonetheless he did not seem so keen on the use of Keynesian remedies for other countries, in this case the South American countries. He initiated and orchestrated a series of coup d'état all around the world, starting with Iran to protect the financial interest of either public US companies or private US corporation, or the long term geopolitical interest of the US in the targeted countries. As it will be discussed in the next chapter, the nationalisation of the oil industry and the developmentalist economic agenda of Iran, which was empowered at the time of Dr. Mossadegh's government, were not in line with the economic interests of US-based multinationals, and consequently with the US interests. The coups took place in the next 20 years everywhere from Guatemala to Chile, Brazil, Indonesia and Argentina. These coups, were infused with the Shock Therapy of the Chicago School and Friedman's ideas. The Chile project was probably the most notorious, and ironically the most successful one. Nonetheless, the staggering growth rate of Chile came as a result of decades of brutal hardships. While the advocates of Friedman glorify Chile as the poster child of shock therapy, the neglected fact is that Chile was just one project amongst a dozen other experiments. To explain the success of the Shock Therapy, not only the time and the social cost must be borne in mind, but also the negative ratio of unsuccessful experiments should also be demonstrated. The following part will explore the shock

²⁸⁶ Ibid 58

therapy in the abovementioned countries in order to expound the ramification of such economic shock in the society.

The Chilean project was initiated in 1956 through offering scholarships not only to US citizens, but also Chileans students to study in the University of Chicago.²⁸⁷ Klein highlights the share of FDI in Chile in the late 60s: by 1968, 20% of the total US foreign investment was in Latin America, and US firms had 5,436 subsidiaries in the region. The profits that these investments were able to produce were staggering; Mining companies had invested \$1 billion over the previous 50 years in Chile's copper mining industry- the largest in the world-, but they had sent \$7.2 billion back home.²⁸⁸ This data indicates a vigorous existence of FDI in the primary sector of investment in Chile with little contribution to the hosting state. The lack of such expected contribution would eventually result in the issue of wealth distribution and the question that to what extent this was desired by the ruling sovereign. As it will be dissected in Chapter Four, control and authority over not only regulations but also flow of goods and commodity are considered as types of sovereignty. Hence, if the ruling government/sovereign forgo the necessity of the FDI contribution for the good of its subject, it can be argued that either the national sovereignty has been hindered or the sovereign does not intend to provide for its subject. If the latter is to be taken the issue of corruption has a determining effect under such sovereignty.

The 1970 election, with the victory of Salvador Allende, was a turning point with regard to FDI in Chile, as he promised to nationalise the mining industry as well as the largest economic sectors of the country. This was not embraced by neither the Chicago School nor President Nixon.²⁸⁹ He notoriously asked the then CIA Director to 'make the economy scream'.²⁹⁰ As a result, an *ad hoc* committee on Chile was appointed to tackle the issue of Allende primarily via economic means. It started with plans to block US loans and private loans to Chile. As a result of the prompt and extreme measures that Allende took as part of his socialist-nationalist program, the country faced a negative GDP growth rate followed by the collapse of the currency and scarcity of basic commodities. Not surprisingly, Allende lost his popularity in 1973, giving the desirable momentum to militarist movements backed by the CIA. In September 1973, the Presidential Palace

²⁸⁷ Ibid 60

²⁸⁸ Ibid 64

²⁸⁹ Jonathan Haslam, 'president elect but not in power' in *The Nixon Administration and the Death of Allende's Chile: A Case of assisted suicide* (Verso 2005)

²⁹⁰ Klein (n 188) 64

was besieged and attacked by tanks under the command of General Augusto Pinochet. This is a sound example of the core of this Thesis; when the sovereignty of another state, in this case its political sovereignty, is interfered and intruded by a more powerful state for the sake of economic advancement by the superior state in this case the FDI in the primary source of the hosting state.

This was the cornerstone of the Chicago School activities in Southern America.²⁹¹ At first, the economic pressure towards the nationalist/socialist government pushed the Chilean government on the verge of collapse, and on the second phase, domestic militia, backed by the CIA, successfully overthrew the government, replacing it with the US affiliated dictator, Pinochet. As this case demonstrates, national sovereignty of Chile was not tolerated by the US policy makers, as it was in contradiction with the national interest of the US. The Example of Chile as briefly introduced earlier at the beginning of the second part of this chapter, has been a direct comparative benchmark with Iran. As pointed out earlier the comparability of Iran and Chile lies in their similar experience of having been politically encroached by foreign orchestrated coups. Such brutal interference against the national and political sovereignty of both countries have found out to have taken place to secure financial interests by the alien countries through an appointed dictator who is keen to provide more generous terms to the foreign forces and their investors.

From 1973 to 1982, the economy of Chile did not experience any remarkable change towards improvement.²⁹² In fact, the mining industry remained closely under the control of the government that was now politically affiliated with the US authorities. The Shock Therapy in Chile was accompanied by a hospitable environment to FDI and foreign corporations. While the coup took place in 1973, it was not until 1983, when the country's economy reached a growing point. Nonetheless, the worst happened in 1982. The first phase of shock therapy in Chile caused unemployment to grow by 1979, the Pinochet government decided to deviate from the Chicago School teachings and floating exchange rate was dropped.²⁹³ The implications of the fixed currency exchange rate, in addition to high interest rate, damaged the export-oriented industries, including agriculture. This marked the worst economic crisis of Chile up to that point. The third phase of the Chilean project started in the early 1980s as a response to this crisis.

²⁹¹ Juan Gabriel Valdes, 'The Chile Project and the birth of the Chicago boy' in *Pinochet's Economists: The Chicago School of Economics in Chile* (Cambridge University Press 1995)

²⁹² Ibid 162

²⁹³ Klein (n 188) 66

Two remarkable points should be made here pertinent to the posited equilibrium of this Thesis: while the nationalist government of Allende was in power less than three years, his persistence over national sovereignty was not tolerated by the US authorities and the domestic militia who bolstered the economic shortcoming. In contrast, Pinochet's regime enjoyed seven years of power until 1980. However, the result during that 7 years was not impressively high, in comparison to the 3 years of the nationalist Allende. Hence, it can be suggested that, even the shock therapy which was deemed to be the shortest path towards market-oriented success was not in fact successful for a period of 7 years followed by a brutal coup and a dictatorship. The second moral lies in the Hayekian utopia, in which personal liberty and democratic values are glorified; in his trip to Chile in the early 80s, Hayek, in contradiction to his notion of a utopian liberal society, was not only overwhelmed by the remarkable work of Pinochet, but also went on recommending Pinochet's economic achievements, under the Chicago School, to Margaret Thatcher as presented earlier in this chapter. Before moving further, it has to be reminded that, although the 1980s and 90s coincided with the economic take-off of Chile, it has to be reminded that the staggering growth rate of Chile was followed by the worst inequality rate amongst South American countries.²⁹⁴

²⁹⁴ Florencia Torche, 'Privatization Reform and Inequality of Educational Opportunity: The Case of Chile' (2005) 78 *Sociology of Education*, 316

Chapter Three

The roots of foreign clout through economic engagement in Iran since 1800

While the previous two chapters set forth the global determinants of FDI and then dissected public investment versus private investment as well as postulating the discontents of globalisation by analysing the FDI trends in Latin America and East Asia, this chapter will elaborate the discourse through the historic lens of pecuniary engagements, specifically FDI in Iran. In doing so, this chapter will make two key propositions: firstly, how FDI have had adverse impact on the national and economic sovereignty of Iran over the past 200 years. Furthermore, the centralised economic establishment will be put in test as to whether the centralised political establishment is in line with the centralised economic agenda or not. The key sources to base the arguments and evidences of this chapter on, are the primary sources including mainly the treaties signed by Iran and other countries pertinent to FDI and trade rights, and from the secondary sources the works of Homa Katouzian, Mohammad Gholi Majd who have done extensive research on Iranian history, Ervand Abrahamian, Nikkie R. Keddie, Martin Jacques, an expert on China, David Collins, and Sir Denis Arthur Hepworth Wright, the former UK ambassador to Iran after 1953.

This chapter strives to identify and present the intermittent occasions by which the Iranian establishment, its sovereignty, its economy and its subjects have been victimised. This will be posited based on historic evidences, mainly through studying economic impacts of treaties and concessions. Nonetheless, to elaborate the geopolitical importance of Iran for the foreign forces in the past 200 years, political treaties and truces will also be analysed as well. In doing so, an evident correlation will be identified between the geopolitics and economic ties. This chapter and its historic facts will assist this Thesis and its aim which is to indicate that, there has been a direct nexus between FDI and the foreign political clout which has genuinely ignored and infringed the national sovereignty of Iran. While in the first chapter the determinant and contributions of FDI was acknowledge and put at test, this chapter specifically shed a light on the historic occasions in which Iranian national sovereignty has been encroached as a result of the economic treaties and concession of FDI. Hence, this study will concentrate on Iran since 1800s which the very early forms of FDI can be seen moulding. The FDI related consequences on Iran's sovereignty and its subject varies from Russia to French and British influence. Ergo, the geopolitical importance of

Iran, which remains intact to this day, will be given a historic accuracy. The importance which has consistently turned Iran into a sphere of rivalry between global powers. The rivalry which if started merely for the geopolitical vitality of Iran between India and the West, the discovery of oil and gas in Iran has attributed to the direct economic importance of Iran for the global powers. It will be examined that, to what extent the rulers of Iran were in fact in charge of the domestic affairs of the country; the best example which will be expounded by the very end of this chapter is the Ajax Coup of 1953 by which, British-American coup against the prime minister of Iran who had nationalised the oil industry against FDI interest of Britain, the last king of Iran was reinforced and brought back to the throne. This instance will assist the argument that, not only FDI can jeopardise the sovereignty of a country but it can use the sovereign for the interest of the FDI exporting states.

The historic outlook of global FDI

Collins identified the earliest FDI activity in the Phoenician civilisation around 1500 BC when the well-established trade route between Phoenicians and Greeks eventually led to the creation of not only outposts but also long-lasting physical establishment and infrastructure in the hosting country to facilitate long-term trade.²⁹⁵ He also identified the Silk Road²⁹⁶ as another example of long-lasting commercial presence in a foreign state which eventually resulted in FDI. Although the historic existence of the then Persian city of Samarkand outdates the Silk Road, Samarkand was in fact a trade settlement in the Silk Road which eventually turned into a classic FDI hub at the time.²⁹⁷ The onset of FDI in the most recent times can be traced back to the colonisation era since 1500 AD. The emergence of British merchants in Asia was first felt with the establishment of the Muscovy Company in Russia in 1555. It was at this instance that the Iranian Safavid empire and the British first engaged in direct commercial negotiations through the Muscovy Company around 1560.²⁹⁸

As Collins states, the Dutch East Indian Company in Indonesia, which was the financial instrument of the Dutch Empire in the 1600s should be considered as the first multinational

²⁹⁵ David Collins, *An Introduction to International Investment Law*, (Cambridge University Press, 2017) 6

²⁹⁶ Silk Road was an ancient network of routes for commerce and trade which connected the east from China to the West. It is remarkable to point out that there is a new silk road under construction to facilitate trade between East and West. For further study look at: Christopher Beckwit, *Empire of the Silk Road*, (Princeton University Press 2009)

²⁹⁷ Collins (n 295) 6

²⁹⁸ Hooshang Amirahmadi, *The Political Economy of Iran under the Qajars*, (I.B. Tauris 2012) 139

corporation.²⁹⁹ The financial expansion of Empires at the time grew bigger by the rise of the British East Indian Company. As the East Indian Company expanded its economic military and political ties from India to China and Japan the following part of this chapter will focus on its economic and political impact on Iran (Persia) at the time. As it will be expounded the British enjoyed the most lucrative royal grant over Iranian commodities and resources. As Collins describes: ‘perhaps more than any other power, British empire exemplified the colonialism that contained the seed of modern international investment. Multinational enterprises, often enjoying government granted monopolies, played a significant role in its expansion and dominance.’³⁰⁰ It is ironic to once again point out that Iran unlike India has never been a colonised of the British empire or any other empire, yet the adverse impact of the hegemons did cast its shadow over Iranian affairs.

With regard to the applicable law on foreign investors and merchants at the time domestic law was not applicable to the foreign subject and the sovereign state had to relinquish its jurisdiction over them.³⁰¹ Friendship, Commerce and Navigation Treaties for instance came into force between US its counterparts.³⁰² In the case of Iran reference should be made to the Capitulation right which was a primitive form of extraterritoriality under which the foreign subjects regardless of their profession were exempted from Iranian jurisdiction. As it will be explored in the last part of this chapter the controversy over the Capitulation right was amongst the cornerstone of the criticisms in the 1960s which led to the Islamic Revolution of 1979.

With the decrease of the colonial powers their treaties were challenged by the former colonies and the nascent sovereignties; ‘the international minimum standard of protection of aliens did not sit well with these new nation states eager to assert their own autonomy.’³⁰³ It has to be reminded that the international minimum standard is not a treaty based standard. The Gunboat Policy was the response of the fading colonial powers; ‘Gunboat diplomacy, effectively negotiation backed by conspicuous threat of force, was in many respects the antecedent of what we now understand as diplomatic protection’.³⁰⁴ Once again although the gunboat diplomacy was rarely used, nonetheless the existence of such threat over other states remained present. A good illustration is

²⁹⁹ Collins (n 295) 6

³⁰⁰ Collins (n 295) 8

³⁰¹ Ibid 11

³⁰² Gerald D. Silver, ‘Friendship, Commerce and Navigation Treaties and United States Discrimination Law: The Right of Branches of Foreign Companies to Hire Executives of Their Choice’ (1989) 57 Fordham law Review 765

³⁰³ Collins (n 295) 10

³⁰⁴ Ibid

the Suez war of 1957, during which Egypt was invaded by Israel the UK and France following the nationalisation of the canal. Collins identified that war as the ‘last incident where the protection of private property belonging to an alien was used as a justification for an armed attack by a government.’³⁰⁵ In relation to Iran the Ajax coup of 1953 was also the result of the nationalisation of Iran’s oil industry against the mighty Anglo-Iranian oil company. This will be explained and established following this chapter in a separate subsection. It was not until 1962 that the Declaration of Permanent Sovereignty over Natural Resources of 1962 was ratified by the UN under which the sovereign states were granted the right over the control of their natural resources. It is valid to discern the political nature of this document against the potential legal applicability and validity of it. Nonetheless, the Declaration ‘should be viewed as the backbone of international investment law because it embodies the default principle of a state’s right to regulate.’³⁰⁶

This brief study of the early traces of FDI and the policies that were created will be discussed in the following section with reference to Iran.

History of FDI in Iran

As it was mentioned earlier well-established trade practices could be seen as equivalent to what we now regard as investment. While international trade has a long-recorded history since the iconic Silk Road, emphasis will be given to the foreign trade-investment in Iran exclusively since the early 1800s. This period of time has been chosen for two crucial reasons; firstly, there is a wealth of recorded documents which the accuracy and credibility of which cannot be contested. The second reason is the fact that the onset of political aversion of Iran towards the West was mounted during this period. Even before the Islamic revolution of 1979 during the Pahlavi dynasty the aversion towards West was bolstered by the Communist affiliated Iranian party of Toudeh.

This chapter will cover two political establishments the Qajar dynasty (1789-1925) and the imperial state of Pahlavi (1925-1979). The first part of the chapter will follow the onset of the Qajar dynasty and their indelible impact on Iran’s history. In doing so the concessions and contract which were given and signed with the foreign investors will be discussed. In the second part of the chapter, which explores the Pahlavi dynasty the key issue is the issue of legitimacy of the sovereign. While the economic modernisation of Iran took place during the Kingdom of Pahlavi it

³⁰⁵ Ibid 11

³⁰⁶ Ibid 12

will be postulated that the lack of domestic legitimacy basically undermined the modernisation efforts. On the issue of legitimacy, it will be presented with accurate evidence that both Reza Shah and his son Mohammad-Reza Shah obtained their thrown following two British coups.

The relevant facts will be presented in chronological order. However, to place the socio-economic components in a wider context reference will be made to other countries. China has been chosen as a comparable country to Iran based on different variables including the population (urban and rural), vastness, the long historical background, the existence of well-established and rooted civilisations with a large body of norms jeopardised by western powers in terms of economic treaties as well as battles having lost massive lands as a result of battles with western powers, the fear of foreign influence, self-isolation, valuing unity over prosperity, the operation of centralised state etc. Some of these variables may not be directly applicable to the Qajar dynasty, but they bear resemblance to the Iranian civilisation, the Pahlavi dynasty and the Islamic Republic. Using China will be of help as the two countries have much in common: 'they are both very old civilizations with rich histories of achievements and a strong sense of superiority towards other states in their respective regions. They have also both suffered at the hands of the west which they deeply resent.'³⁰⁷

As it was postulated in the previous chapter, Iran is a classic country with multi-ethnical population and society, same as China, while both countries have managed to maintain unity. Nonetheless, in the past few centuries the only times they have lost lands were not due to separatist movements, but as a result of impotent kings and truces imposed on them by foreign victorious adversaries. While Confucius has been identified as the spiritual cornerstone of unity in China, together with the priority of the state over every other bodies and institutions as well as the profound role of the family in the society, in Iran the faith of Shi'a has been the core of Iranian unity since the Safavid dynasty in 1500s.³⁰⁸ The Safavid dynasty established the Iranian empire, overcoming tribal revolts, with a well-established administration system based on the Shi'a faith. When the borders were secured, there was stability and trade was established with westerners. While the Qajars shared the same set of religious beliefs and values, they did not share the same centralized administration system.³⁰⁹ The relevance of this paragraph and the next part lies in the fact that, while the Safavid united the country of Iran which was tattered since the dawn of Islam,

³⁰⁷ Martin Jacques, *When China rule the world*, (2nd edition, Penguin Books 2012) 434

³⁰⁸ Ibid

³⁰⁹ Homa Katouzian, *The Persians, Ancient, Medieval and Modern Iran*, (Yale University Press 2010) 6

the Qajar's lost a remarkable part of Iran's territory. The territorial integrity should be classified as a key element of national sovereignty.

The importance of the school of Shi'a can still be seen in the current establishment of Iran and its geopolitical strategy with foreign states being neighbouring rivals, such as Saudi Arabia or geographically and politically distanced superpowers, such as the USA. The successful rulers of Iran, who were able to maintain order in the country, had stern and arbitrary characteristics.³¹⁰ Henceforth, Katouzian finds out that historically, Iranians seem to appreciate arbitrary rulers as long as they bring and maintain stability in the country.³¹¹ Such appreciation may not be visible during the reign of the arbitrary rulers, but soon after their death people start developing a feel for stability in the form of nostalgic appreciation for the previous ruler.³¹² Hence the admiration for stability has been proved to take precedent over the rapid economic growth, which has never last long in Iran. The pertinence of this premise and this chapter lies in the fact that, while most Iranian kings turned into arbitrary rulers their economic contribution to their subject and the society can be questioned. Hence, although the nostalgic feelings toward the previous ruler prevails as Katouzian identifies, the study of this chapter questions the economic contribution as well as the rulers de facto power in the country. As it will be postulated, most Iranian rulers lacked the domestic sovereignty and from time to time lacked the legitimacy as a result of foreign clout. Such lack of legitimacy will be established to be the ramification of the exogenous clout.

1785-1925: The Qajar's Disarray

After the collapse of the Safavid empire in 1736 and for almost 50 years, the country witnessed two dynasties; the one-man kingdom of Nader Shah Afshar, which lasted until 1747, and the ruling of the Zand Dynasty until the viscous victory of the Qajar's khan, Agha Muhammad Khan.³¹³ While Safavid had founded a well-established centralised empire, the Zand Kingdom was more of a decentralised tribal feudalism, in which every region of Iran was a fief of the regional dominant tribe and their chief.³¹⁴ The lack of centralised power created constant tribal rivalries in the country. As Dabashi identifies, despite the differences between Zand and Saffavid in terms of

³¹⁰ Ibid

³¹¹ Homa Katouzian, 'Modern Arbitrary Rule' in *The Persians, Ancient, Medieval and Modern Iran*, (Yale University Press 2010)

³¹² Ibid

³¹³ Hamid Dabashi, *Iran without borders*, (Verso 2016) 31

³¹⁴ Ibid 32

the establishment, the Zand dynasty also tried to sustain the commercial engagement with the British East Indian Company; ‘ at this time, the British, the Dutch, and the French were actively competing in the Persian Gulf in a process that was integrating in the Iranian national economy, polity and society into their regional and global context.’³¹⁵ Hence, although this chapter analysed the 1800s onward impact of foreign influence over Iran via pecuniary engagement, it has been established that such clout had started to mould since mid 1700s. Ultimately, it was the most powerful tribe and its vicious leader, Agha Muhammad Khan Qajar, who defeated, not only the clashing tribes, but also the last remaining king of the Zand dynasty.³¹⁶

Aqa-Mohammad-Khan’s authority was established in every village and every tribe in Iran that no local tribe, no matter how ambitious they were, dared to directly challenge his successors and the name of Qajar dynasty. The key foreign adversary at this point seemed to be the Russian Tsar and his modern troops as it will be illustrated next. Nonetheless, as it will be postulated, the British empire, through the East Indian Company and their navy in the Persian Gulf, gradually gained momentum as a full-scale adversary, despite not being a neighbour state.³¹⁷ It will be posited and established that, the escalating indirect rivalry between Russia and Britain besieging Iran, brought upon catastrophic ramifications over Iran, its sovereignty and its subject.³¹⁸ This was combined by series of political treaties and contractual concession which eventually were accompanied by the use of foreign armed forces. Thus, as it will be established, the ascending presence of armed forces in the vicinity of Iran, not only had increased the bargaining power of the FDI exporter states, but also had been used to encroach the territorial integrity and the national sovereignty of Iran.

1800-1840: The Rise of Political Treaties

In order to comprehend the roots of FDI in Iran, the crucial political treaties, which had been ratified in the first four decades of the long reign of Qajars, shall be illustrated. It was at this critical time in the history of Iran that the Persians started encountering the impact of a series of treaties imposed by the British, the French and the Russian for the next 200 years. The core of these treaties

³¹⁵Ibid 44

³¹⁶ Ibid

³¹⁷ Malcom Yapp, *Strategies of British India: Britain, Iran and Afghanistan*, 1798-1850, (Oxford University Press 1980)

³¹⁸ Firouz Kazemzadeh, *Russia and Britain in Persia: Imperial Ambitions in Qajar Iran*, (I.B Tauris 2013)

as will be expounded following, were either of geopolitical manoeuvring by either signatory party, or were aimed to modernise the Persian army or have been forced upon Iran as war truce.³¹⁹ The pertinent contextual line with current Iran lies in the fact that, such historic treaties have moulded the mentality of Iranian public and the current Iranian establishment. As it will be illustrated in detail in Chapter Four, concurrent legal political and economic treaties with western powers are genuinely compared with the treaties which have been signed in Qajar and Pahlavi era. Thus, if the validity of such comparison is to be granted it can be argued that, despite the fundamental change of Iran's establishment in 1979, the geopolitical importance of Iran remains of the same calibre for the very same western powers. Accordingly, it will be questioned in the next chapter that, whether the national sovereignty of Iran and its territorial integrity are desirable for the western powers or not? To answer this crucial question this chapter examines the legal political and economic treaties in Qajar and Pahlavi era.

According to the Anglo-Persian Treaty with Britain in 1801, Persians were expecting military support by the British against Russian encroachments, nevertheless the British, eschewing direct confrontation in the battlefield with Russians, did not comply with the treaty.³²⁰ Although, according to the explicit terms of the Treaty, Britain should have provided military support to Persians, only if invaded by the French forces.³²¹ Nonetheless, the Persians understanding of the Treaty was based on the pervasive spirit of the deal. This obviously turned the Persians against the British for a short while. Having felt betrayed by the British, Persians sought Napoleon's cooperation, signing a Treaty which mirrored the previous ill-fated one, the Treaty of Finckenstein in 1807.³²² Through this Treaty the Persians agreed to expel the British, in return to military assistance by the French against the threat of the neighbouring Russia.³²³ It has to be reminded that, at that time, the Caspian Sea was only shared between Iran and Russia, hence Russia was in fact a direct neighbour. Similar to the Anglo-Persian Treaty, the Treaty of Finckenstein was also doomed to fail, mainly a result of Napoleon's victory at Friedland against Russians which subsequently resulted in the treaties of alliance with the Russians known as the Treaties of Tilsit.³²⁴

³¹⁹ Stephanie Cronin, 'Importing Modernity: European Military Missions to Qajar Iran' *Comparative Studies in Society and History* 50 (2008) 197

³²⁰ Amirahmadi (n 298) 144

³²¹ *Ibid*

³²² *Ibid*

³²³ Cronin (n 319) 200

³²⁴ *Ibid*

Soon after the French withdrawal, once again the British approached Persians to sign a new Treaty.³²⁵ Rose finds the reason of Britain's approach towards Persia to be to maintain its imperial influence mainly over India.³²⁶ In 1809, a Preliminary Treaty was agreed, which was later finalised and ratified as the Definitive Treaty in 1812. 'The British Government undertook, *inter alia*, to provide an annual subsidy of 200,000 Tomans (£150,000) if the government of India were unable to send troops in response to an appeal for help against any European nation invading Persia.'³²⁷ Wright explicitly and implicitly refers to the avid competition between East Indian Company and the British Government over Persia.³²⁸ Initially, the British government underestimated the role of Persia not only in West Asia's spectrum but also as a vital conduit to India, thus the British government later outmanoeuvred the East Indian Company from Iran.

The frustrating Russo-Persian confrontation resulted in the defeat of Persians in two consecutive battles, initially in 1813 and a few years later in 1828.³²⁹ While the reason of the British not adhering to the Anglo-Iranian Treaty of 1801, was in accordance to the explicit expressed terms of the Treaty, in 1813 however, while obliged to provide military assistance to Iran under the Definitive Treaty,³³⁰ once again they shun aside to confront Russia, with whom at the time were in a mutual battle against France.³³¹ In 1813, Iran, after being defeated by the Russian forces, was forced to accept the terms of a notorious peace treaty, the Treaty of Gulestan.³³² By the terms of this Treaty the Caucasian part of Iran, including Georgia and part of today's Republic of Azerbaijan, was surrendered to Russia.³³³ While having breached their agreement with Iran, the British mediated so that a truce was reached. Hence, Persians, not only blamed the British for their non-compliance with the Treaty, but the British were also '... blamed by the Persians for this humiliation and accused of placing British above Persian interests in his anxiety to stop the fight'.³³⁴ The pertinence of such mentality and the present Iranian spectrum lies in the fact that, it should be argued the sole existence of a legally binding political treaty does not guarantee the

³²⁵ Rose L. Greaves, 'Themes in British policy towards Persia in its relation to Indian frontier defence, 1798-1914' Asian Affairs 22 (1991) 35

³²⁶ Ibid

³²⁷ Denis Wright, *The English amongst the Persians*, (Heinmann 1977) 14

³²⁸ Ibid

³²⁹ Amirahmadi (n 298) 146

³³⁰ Ibid 147

³³¹ Kazemzadeh (n 318) 157

³³² Cronin (n 319) 210

³³³ Amirahmadi (n 298) 147

³³⁴ Wright (n 327) 15

adherence of the parties to the deal. If the geopolitical and economic benefits of one party precedes the terms of the signed contract, the history of treaties between Iran and the West, has proven that, the western part would prefer to undermine and in worst case breach the treaty/contract in existence to secure further or more substantial interest. This has been also identified in the work of Cronin identifying that, contrary to the expectations of the Persian Kings the westerns were willing to ignore the signed treaty if it was against their interest.³³⁵ Hence, the vigilance of the current establishment of Iran against the unreliability of the west is well rooted in the past 200 years history of Iran. This will be evinced in Chapter Four by illustrating the crucial Joint Comprehensive Plan of Action JCPOA, which was signed in 2015 and is on the verge of collapse in 2018.

Despite the shame of Gulestan treaty, Abbas Mirza, the King in line, who also happened to be the local lord of Azerbaijan, made an attempt to regain the lost territory, but, for a number of reasons, including military shortcomings, lack of support from the ramshackle decentralised establishment in the capital, and the royal family, he was unsuccessful. This defeat brought yet another notorious peace agreement for the Persians, the Treaty of Turkmenchay of 1828.³³⁶ According to terms of this Treaty, the Persians were asked to officially apologise for breaching the previous Treaty.³³⁷ As a result of this new treaty, Iran lost more territories, including today's Armenia and the remaining parts of what is now the Republic of Azerbaijan, not to mention that Iran had to pay financial compensation as war indemnity.³³⁸ Article 6 of the Treaty of Turkmenchay provided that Persia promised to pay Russia 10 korur in gold, or 20 million silver rubbles.³³⁹ Furthermore, the Persians were obliged not to exceed the customs duty of Russian exports above 5% on all their goods and cargos.³⁴⁰ The significance of the privileged custom duties will be analysed later in the chapter, when discussing the worst famine that struck Iran, partly as a result of the hindered control of Persian authorities over ports and custom duties.

Article 8 of the same Treaty provided that Persians had to recognize a capitulation right for all Russian subjects in Iran.³⁴¹ Hence, as explained earlier, the capitulation right in Iran was introduced, not through financial agreements, but through a post-war Treaty. To further enhance

³³⁵ Cronin (n 319) 53

³³⁶ Amirahmadi (n 298) 147

³³⁷ Ibid

³³⁸ Ibid

³³⁹ Amirahmadi (n 298) 149

³⁴⁰ Wright (n 327) 95

³⁴¹ Amirahmadi (n 298) 150

the notion of capitulation, additional examples can be exerted. The idea seems to have been taken from similar treaties signed between the Ottomans and European countries at the time. Nevertheless, the crucial point, which remains a controversial part of Iranian history until the Islamic Revolution of 1979, is that this was not an exclusive right offered to politicians as political immunity, rather, as mentioned earlier, it was granted to Russian individuals regardless of their profession.³⁴² There was an attempt made in 1925 by the then government to amend this right, but, contrary to the initial intention, the amendment in effect expanded this immunity to US and British citizens, as it will be mentioned later. While the concept of extraterritoriality, which could be seen as being in tantamount to capitulation, is morally and legally accepted nowadays, nevertheless, in practice traditionally a capitulation right provided biased protection for criminals based on their foreign nationality, and not the nature of their wrongdoing.

Ever since the Turkmenchay Treaty, there was a growing discontent towards the EIC, as a result of what had been considered as their untrustworthiness.³⁴³ This discontent was widespread across the Iranian population and had also found its way to the Royal Court. Hence as Wright reveals, ‘the East India Company nominated colonel John Macdonald as their envoy in March 1824 but the Shah regarded it as derogatory to his dignity to recognise an envoy from a body of merchants.’³⁴⁴ Eventually John Campbell was appointed as the Consul General and plenipotentiary on behalf of the British.³⁴⁵ It is remarkable to point out that his father was in fact the Chairman of the East India Company’s board of directors. Hence, it can be comprehended that EIC through its lobbying attempts managed to maintain and enhance its omnipresent over Iran’s political and financial affairs. The principle objective of Campbell was to preserve the interest of the East India Company.³⁴⁶ Wright identified Campbell’s role with the following words: ‘he has been given credit by historians for the effective part he played at a critical moment- by advancing £20,000 to pay the Persian forces- in securing the throne for Muhammad Mirza, on the death of his grandfather Fath Ali Shah in 1834.’³⁴⁷ His arrangement was a success, as Muhammad Mirza was crowned later in October 1834. It has been found that during Qajars’ reign exchanging gift and bribery was a

³⁴² Tomasz Knothe, ‘The Strategy OF the Informal Empire and "new" Imperialism in Tsarist Russia’s Policy Towards the Far East and Persia From The 1890s to 1914’ *Hemispheres: Studies on Cultures & Societies* 2 (1986) 129

³⁴³ Yapp (n 317) 179

³⁴⁴ Wright (n 327) 18

³⁴⁵ Ibid

³⁴⁶ Ibid 19

³⁴⁷ Ibid

customary norm among domestic rulers and foreign politician and investors in Persia to attain higher possessions and secure profitable concessions.³⁴⁸ While it has been analysed in the earlier part that the founder of Qajar dynasty overpowered the tribal battles and hence conquered the throne based on his own potency, Campbell's tactic in choosing the new King can be described as a watershed in the Iranian history. In 1836, through a royal decree 'the British merchants were granted the same footing as Russian merchants in respect of custom duty. However, it was not until the signature of the 1842 Anglo-Persian Commercial Treaty that the British acquired full Most Favoured Nation (MFN) treatment'.³⁴⁹ As Cole

describes 'an MFN clause in an investment treaty is fundamentally a promise between the two states party to the treaty that neither state will give to investors from any third state more favourable treatment than that given to investors from the other state party to the treaty'.³⁵⁰

Two points can be made here; firstly, Campbell's preference towards Mohammad Mirza, and his subsequent rise to the throne, began to bring financial gains to the British and, secondly, 'although MFN clauses have particular prominence in the economic sphere'³⁵¹, it has to be reminded that the prejudice rights granted to Russia were the result of a post-war treaty. As Cole identifies, MFN clauses have genuinely been used tactically by states at that time.³⁵² He posits that: 'they were incorporated into agreements when doing so would provide political benefits, and excluded when it would not'.³⁵³ Nonetheless, although the political rationale behind MFN clauses has been acknowledged it is also recognised that, the presence of the MFN clauses would increase the foreign investment plausibility'.³⁵⁴

The MFN treatment provided to the British had in effect a negative impact on the people of Iran as a sense of duress can be fathomed in bestowing concessions to both foreign powers. Amirahmadi has noted this period of rivalry between Russia and Britain as the accelerating epoch of imperialism in Persia.³⁵⁵ This has also been identified by Knothe³⁵⁶ Cronin³⁵⁷ and

³⁴⁸ Assef Ashraf, 'The Politics of Gift Exchange in Early Qajar Iran, 1785–1834' *Comparative Studies in Society & History* 58 (2016) 550

³⁴⁹ Wright (n 327) 95

³⁵⁰ Tony Cole, 'The Boundaries of Most Favored Nation Treatment in International Investment Law' (2012) 33 *Michigan Journal of International Law* 537 539

³⁵¹ *Ibid* 544

³⁵² *Ibid* 547

³⁵³ *Ibid*

³⁵⁴ *Ibid* 553

³⁵⁵ Amirahmadi (n 298) 157

³⁵⁶ Knothe (n 342) 143

³⁵⁷ Cronin (n 319) 129

Kazemzadeh³⁵⁸. Yahaya also in her research specifically points out that for a remarkable period of time the rivalry between Russia and Britain over Persia was in fact directed at the textile market in Persia.³⁵⁹ Such rivalry as she asserts was ‘a battle for market dominance.’³⁶⁰ Hence, it can be fathomed that the interest of the Russians and British over Persia, which traditionally was as a result of its geopolitical importance, at this point was taking a shift towards economic significance of Persia.

Mohammad Shah, having been effectively supported by probably the most authoritative financial company in Asia, had not much of autonomy as the ruling King. This issue will be examined in more details, when the discussion will turn to the Pahlavi kingdom later in this chapter.

The reign of the Qajar dynasty cannot be fully grasped without extensive and specific study of Nasser al-din Shah, the fourth King of Qajar, who ruled over five decades. As Katouzian describes, his reign can be divided in three phases, during which efforts have been made by him and one his Prime Ministers to modernise and bring fundamental reforms to Iran.³⁶¹ When he was crowned, the King and the Royal Family had no direct institutional sovereignty over tribes and powerful families in Iran, despite the fact that they all acknowledged the Qajar as the official powerhouse of the country. This can be clearly attributed to the devious appointment of the former King by Britain and the East India Company through their delegates in Iran.

1848-58: The Futile Endeavour of Modernisation

The first phase starts in 1848 and lasted for a decade until 1858.³⁶² Shah and Amir Kabir the Prime Minister were both in favour of modernisation. It is worth mentioning that Amir Kabir is now a much beloved national hero in Iran for his endeavours which expanded from setting up the first modern university known as Dar ul-Funun to the modern structure of the army and robust tax system. With regard to his reforms Katouzian identifies a tendency toward centralisation both horizontally and vertically. More specifically, it was centralisation across the country by taming

³⁵⁸ Kazemzadeh (n 318) 93

³⁵⁹ Nurfadzilah Yahaya, ‘Textile Imports into Qajar Iran: Russia versus Great Britain, The Battle for Market Domination’ *International Journal of Middle East Studies* 42 (2010) 701

³⁶⁰ *Ibid*

³⁶¹ Katouzian (n 309) 153

³⁶² *Ibid* 154

the insurgent tribes and centralisation at the heart of the Royal Family by reducing the number of royalties and their exclusive rights.³⁶³

Amir Kabir's reforms, as it can become easily understood were not welcomed or embraced by the Royal Families. In the end in 1852, following the Queen mother's conspiracy he was murdered while he was in exile in Kashan.³⁶⁴ Despite his achievements especially in enhancing the national unity, Amir Kabir's efforts to mitigate the seemingly impervious foreign clout over Iran's political and economic affairs remained futile. After Amir Kabir's murder, foreign interference in Iran's internal affairs continued.

When the foreign influence over political affair of a country is at question, it can be suggested that Iran is not the only country whose sovereignty had been derogated by the influence of the Western powers. China and Japan experienced similar interventions in their economy and politics. Japan, initially under the Tokugawa dynasty closed their doors for fear of further influence by Westerners, even using religion and Christian missionaries as a Trojan horse.³⁶⁵ It was not before late 1800s that Japan eventually changed its approach and stopped its self-isolation.³⁶⁶

The same applied to China in 1790s, when the emperor of China rejected the offer of the British delegate to strengthen trade relations with Britain through access to the Chinese ports and reduced tariff rates.³⁶⁷ As Jacques reveals, the response of the Emperor was firmly against any trade with the West, as he believed there is nothing that he would desire from any country: 'we have never valued ingenious articles, nor do we have the slightest need of your country's manufactures.'³⁶⁸ In 1829 when the influence of Britain was growing out of control again through the East India Company and the thriving opium trade, the Chinese government officially banned the trade.³⁶⁹ Another crucial reason behind this protectionist ban over opium trade was related to concerns over health security, as the well-being of the entire population was endangered as a result of the massive boom in the opium trade and the legal-political establishment had to take precautionary measures to protect its citizens. While such policies may be seen as protectionist,

³⁶³ Ibid

³⁶⁴ Ibid 157

³⁶⁵ Jacques (n 307) 88

³⁶⁶ Jacques (n 307) 104

³⁶⁷ Ibid 97

³⁶⁸ Jacques (n 307) 83

³⁶⁹ Ibid

which may entail a shred of truth, the concern over the health and the security of the population was a valid concern.³⁷⁰

The ban brought about the first opium war, during which the British bombarded the Southern part of China. As a result, the Treaty of Nanking was forced upon the Chinese in 1842, which among others included the annexing of Hong Kong.³⁷¹ This type of treaties gradually provoked popular outcry among Chinese and Iranians against foreign forces. Unlike Japan, which deserted its anti-west approach for technological rewards, China and Iran did not forfeit their aversion, despite their constant relationship with the West. As explored in the previous chapter, Iran and China are countries with multi-ethical population and a civilisation which dates back to millenniums. The size of the two countries and their pride over their history can *inter alia* be assumed as the basis of their attitude.

While emphasising on the political clout of foreign forces in Iran either directly through political or economic delegations or indirectly through notorious treaties, the roots of unofficial FDI in Iran can be traced back to late 1840s, during the first phase of Naser al-din Shah. While the former King, Mohammad Shah, had paved the way for European merchants and traders, it was during the 50 years of the Naser's reign that the establishment and settlement of foreign merchants in Iran started to mould.

While one of the earliest trade establishment was in 1836 in Tabriz by Charles Burgess from Manchester, the settlement of foreign merchants in Iran started in 1848; 'London firm, Mills and Co., considered opening branch in Shiraz and Isfahan for the purpose of introducing English manufacturers to compete with Russian who monopolise the whole import trade through north.'.³⁷² Nonetheless, their initial effort was not successful due to the absence of consular protection and administrative support in the chosen cities by the merchants. This indicates that the financial and political presence of Britain were based on the strategic needs of the government and the East India Company, and not necessarily to facilitate the private individuals and corporations' affairs. While at the time Britain offered consular protection in Tehran, Tabriz and Bushehr, the central plate of Iran had been almost completely neglected.³⁷³

³⁷⁰ Collins (n 295) 280

³⁷¹ Jacques (n 307) 138

³⁷² Wright (n 327) 94

³⁷³ Ibid

While this period can be used as evidence of foreign influence in the internal affairs of Iran, the constant rivalry between the Russians and British prevented Iran from becoming a colony of any superpower in the midst of colonisation.^{374 375} By the end of this phase, once again another territory was lost under the Qajar dynasty; Herat was having a geopolitical strategic value for both East India Company and Russia, so the British succeeded in forcing Persians to relinquish their sovereignty over Herat under the Treaty of Paris in 1857.³⁷⁶

The 1858-1873 Early Settlement of FDI

The second phase started in 1858 and lasted until 1873. The failure of Amir Kabir's modernisation attempts resulted in a remarkable technological distance between Iran and the West.³⁷⁷ When Mirza Malkam Khan, a profound intellectual figure, returned from Europe, he presented comparative studies with the modernised West, avowedly targeting to initiate a discussion over the most suitable form of monarchy between either the absolute type, as it was found in Russian and Austria or a more moderate type, as in England and France.³⁷⁸ He then focused on two sub-categories of the absolute monarchy, the organised and the disorganised one. Katouzian argues that the rationale behind his views, was to seed the idea of constitutional monarchy not only to the public but also in the King's mind.³⁷⁹

As for the instances of early FDI, the trend of establishment and settlement of foreign traders was bolstered in 1860, when Ziegler and Co., a Swiss corporation and Ralli and Angelasto a Greek company settled and established their industry in Tabriz.³⁸⁰ The two corporations, along with Hotz and Son, originally a Dutch firm established in Bushehr, sought British protection on different grounds, including having been naturalised British.³⁸¹ As pointed out by Wright, 'the knowledge that the British Minister or consul stood behind the claimant was an invaluable help in settling disputes which sometime dragged on for years.'³⁸² The issue of nationality of the investor is still a controversial topic which will be discussed in Chapter Four.

³⁷⁴ Greaves (n 325) 43

³⁷⁵ Cronin (n 319) 179

³⁷⁶ Greaves (n 325) 43

³⁷⁷ Katouzian (n 309) 93

³⁷⁸ Ibid

³⁷⁹ Ibid

³⁸⁰ Wright (n 327) 99

³⁸¹ Ibid

³⁸² Ibid

As Wright points out, the Persian carpet and cotton were the main source of export revenue for Iran prior to the discovery of oil.³⁸³ He also indicates that the investment of foreign firms into the Persian carpet industry standardised and modernised the domestic production and market of carpet in Iran.³⁸⁴ The official herald of the FDI though can be traced back to this phase of Nasser's reign with the Reuter Concession in 1872.³⁸⁵ While earlier Malkam Khan was referred to as a prevailing thinker, he has also been excessively inclined towards the financial affairs as the middle man of the concession signed between Nasser al-din Shah and Baron Julius de Reuter a British Jewish businessman which secured him a 70-year exclusive contract. In addition, the railway gave him exclusive rights for seventy years for tramways, mining, irrigation, water work and exploitation of the state forests throughout Persia. He was also given a twenty-year monopoly over the Persian customs and the first option on any further concessions for public utilities, roads, postal services, manufacturing plants and banks. In return, 20% of the railway's profits and 15% of the profits of other activities undertaken by Reuter were to go to Shah. Reuter, as evidence of his good faith, agreed to include a term according to which £40,000 would be forfeited if he had not begun work on the railway within fifteen months.³⁸⁶

Lord Curzon, one of the key British figures in India and Iran at the time, described the concession as: 'the most complete and extraordinary surrender of the entire industrial resources of a kingdom into foreign hands that has probably ever been dreamed of, much less accomplished in history.'³⁸⁷ As for the role of Lord Curzon in Persia, Wright has done a separate research in which he came to the conclusion that, Curzon's ultimate effort was to preserve the Persia's independence.³⁸⁸ It can be gauged that, such admiration of Persia's independence was mostly to serve East Indian Company's interest in India against the encroaching influence of Russia over Persia. These monopoly agreements angered not only the Iranian public and clergies, who deemed the concession debacle, but also the Russian and British governments and the well-established merchants, because these contracts were in contradiction with their own financial-political interests.³⁸⁹ In November 1873, Shah, as a result of domestic and foreign pressure, decided to

³⁸³ Ibid 100

³⁸⁴ Ibid

³⁸⁵ Ali M. Ansari, 'The myth of Perfidious Albion: Anglo-Iranian relations in historical perspective' *Asian Affairs* 44 (2013) 378

³⁸⁶ Wright (n 327) 102-103

³⁸⁷ Ibid

³⁸⁸ Denis Wright, 'Curzon and Persia' *The Geographical Journal* 153 (1987) 343

³⁸⁹ Roger Howard, 'Britain, Persia and Petroleum' *History Today* 58 (2008) 44

terminate the concession.³⁹⁰ Nonetheless, the negotiations for the compensation owed for this termination resulted in Baron Reuter getting the right over 60 years of mining coupled with him establishing, owning and managing the Imperial Bank of Persia (Bank Shahi in Persian).³⁹¹ The Bank was granted not only an exemption from all taxes and import duties, but also the monopoly over issuing banknotes of the Iranian currency until 1927, when the Central Bank of Iran and Bank Melli came into existence.³⁹² Once again, the Russo-British rivalry in Iran resulted in Russian persistence, which ultimately granted them with the right to establish their own bank in Iran, known as the Discount Bank of Russia.³⁹³ It has to be reminded that the abovementioned rights were of exceptional nature in favour of foreign forces, as opposed to Iranian merchants, who set up their own banks and they ended up being imprisoned and having their assets confiscated.

Wright believes that the underpinning reason behind such rights granted to a British merchant was in fact to indirectly enhance the British interests in Persia to such a degree that, if Persia was once again confronted or threatened by the Russians, Britain would protect Iran.³⁹⁴ This approach towards FDI and international allegiance is still prevalent. Although it would not be unfounded to claim that none of the Treaties discussed earlier was of latent investment nature, it could be posited that the economic ties may enhance the political ties in the long-run as it is genuinely accepted under the concept of Economic Integration. It is rather ironic that, in relation to the 2015 Joint Comprehensive Plan of Action known as Iran-Deal, both discourses are valid for and against the correlation of the economic engagement and political ties. While the Iranian conservatives negated the long-term strategic benefits of the JCPOA, the liberal fragment of Iran's political spectrum have been trying to bolster the benefits of the deal. This will be discussed in the next chapter, though it seems that the conservatives rightly persist that the financial benefits of the JCPOA are not substantial enough to change the fundamental strategies of the Western foreign policy.

Studying Katouzian's work it can be comprehended that the Reuter concession could have bring about a substantial increase in the employment of the Iranian population, which at the time were mainly peasants, and could have awash the country with foreign currency along with the potential to introduce and leave modern technologies and machineries behind when the project

³⁹⁰ Katouzian (n 309) 203

³⁹¹ Ibid

³⁹² Katouzian (n 309) 104

³⁹³ Ibid

³⁹⁴ Wright (n 327) 68

was completed. It can also be grasped that Reuter may have instigated an economic take off and it could have changed the process of industrialisation in Iran. Pertinence to employment, as it was one of the key discussions of Chapter Two, with regards to Keynes and Hayek economic agenda, the concession with the private foreign investor could have bolstered employment without any government spending and investment. Nevertheless, the concern over national security remains a valid ground. The national security should not be limited to the physical borders of the country rather as Collins recognises utilities should also be considered as national security-related investment.³⁹⁵

At the time granting concessions and lucrative deals and permits of exclusive nature were not publicised in advance and there was not a specific body, such as the Parliament, to carry out due diligence and either ratify or object to the bestowed rights; as a result, transparency and efficiency could be in conflict. Considering the potential overhaul of Persia's infrastructure, which Reuter may have accomplished, the confidential nature of the rights can be legitimised as to increase the efficiency of the project. Although it may sound an unfounded reasoning for such a project in the past, nowadays there are confidentiality clauses included in some investment contracts for various reasons, such as to prevent a leak to competitor states or investors. While the Reuter concession did not survive the domestic and international dissentient, also in the absence of a separate authoritative body to assess the benefits and the risks, it was at this time that the Japanese took the first steps towards the industrialisation, which later marked them as the first Asian country to be industrialised.³⁹⁶

1873-1896: The Usher of Financial Treaties

The third phase of Nasser's long reign lasted from 1873 until his assassination in 1896. While in the previous decades, most treaties were in fact post-war truces, by which Persians were forced to either surrender land or to bestow financial rights as war indemnity, the last phase of Nasser's reign witnessed an increase of foreign financial treaties and concessions, mainly with the Russians and British. Starting with the Imperial Bank (Bank Shahi), which not only obtained the monopoly over issuing banknotes, but also successfully secured the exclusive rights over mineral exploitation.³⁹⁷

³⁹⁵ Collins (n 295) 284

³⁹⁶ Jacques (n 307) 276

³⁹⁷ Amirahmadi (n 298) 176

Furthermore, Shah reluctantly opened up the geopolitical vital and sensitive southwestern river of Karun to foreign shipping in 1888, which empowered the British naval not only in relation to their forces but also commercial activities, which simultaneously contributed to the international commerce between Iran and the West and paved the way for a more increased influence of Britain in West Asia.³⁹⁸ This was evidently contested by the Russian *inter alia* their expressed discontent to the concessions given to the British.^{399 400} As presented earlier Russo-British rivalry which was given a legal surface via MFN clauses, expanded the number of bestowed rights to both foreign states.

The onset of resents of Persian is well reflected in the clergies' opposition against foreign financial contracts which can be traced back in 1889. The famous Mirza Malkam Khan, who had previously set forth the distinction between organised and disorganised absolute monarchy, was at the time based in London. Having had proclivity to financial arrangements and economic deals, this time he sold the exclusive right of Lottery in Iran to a British company.⁴⁰¹ The rivals of Malkam Khan informed the clergies about the contract, which equals to gambling permit, and hence illegal and illegitimate under Sharia law (Haraam). Subsequently the termination of the contract was inevitable.⁴⁰² The termination of the Lottery contract turned Malkam Khan from a latent critic of the system to a de facto precipitous adversary of the system; since then he established a newspaper which routinely and openly criticised the arbitrary establishment.⁴⁰³ At this time forward, the main source of income went beyond merely land tax, into custom duties, foreign loans, and selling exclusive contracts and rights to foreigners. Imports exceeded exports, due to the very minimal tariff rate of 5% for European goods and cargos,⁴⁰⁴ the market was also shocked by the fall in the international value of the silver. The momentum for Iranian products was not ideal to compete in the international market and the lowering of tariff rates led the domestic market to get flooded with foreign products and, due to the lack of domestic productivity and unemployment, the purchasing power was at its lowest. Hence the low tariff rates and the market

³⁹⁸ Katouzian (n 309) 163

³⁹⁹ Amirahmadi (n 298) 199

⁴⁰⁰ Kazemzadeh (n 318) 211

⁴⁰¹ Katouzian (n 309) 162

⁴⁰² Ibid 160

⁴⁰³ Katouzian (n 309) 165

⁴⁰⁴ Amirahmadi (n 298) 155

openness in this case worsened the life of the vast majority of Iranians. All these created a regular deficit for Iran and stagnation which will be explored in the following part.

1890: Talbot vs a Dynamic Society

The rivalry of the British and the Russians was climaxing at this time for what is legally known as the Most Favoured Nation clause. More specifically, if a country has been granted an exclusive right, the others expected the same exclusivity in a different field, regardless of whether this would be illegitimate in nature. Meanwhile, domestic merchants, clergies, peasants and the public in general were developing a sense of aversion towards foreign influence, which not only was reflected in the Court's affairs, but it was also vividly clear in their daily life. This hatred turned into a public outcry in 1890 with the Tobacco movement.⁴⁰⁵

In his third and last visit to Europe Nasser al-din Shah, delighted with his regular visit to Europe, realised that the country is almost bereft of money, hence in order to keep financing his trips to Europe, he sought new sources of income; another exclusive right to a foreigner would do it, he thought. Eventually he granted the exclusive right over tobacco in Iran to the British Major G. F. Talbot.⁴⁰⁶ According to the terms of this contract, Talbot enjoyed the monopolised production, importation, distribution and sale of tobacco in Iran for a period of 15 years, in return for an annual rent of £15,000.⁴⁰⁷ In addition, there was a down payment of £25,000 and £15,000 in cash to Shah and his Prime Minister, which can effectively be taken as bribery.⁴⁰⁸ Hence, the Imperial Tobacco Corporation of Persia was established in Tehran in 1891. While up until then, most of the contracts and concessions were in the fields of primary resources and infrastructural development, this new contract directly endangered domestic merchants by having targeted the horizontal market. Angered by the terms of this contract, the public and domestic merchants marched in protest against the Talbot contract. Mirza Hassan Shirazi, a high ranked Marj'a⁴⁰⁹, reinforced the protest by issuing a religious verdict (Fatwa), according to which 'as from today, consumption of tobacco and smoking the water pipe is forbidden (haram) and tantamount to

⁴⁰⁵ Ibid

⁴⁰⁶ Amirahmadi (n 298) 157

⁴⁰⁷ Wright (n 327) 107

⁴⁰⁸ Ibid

⁴⁰⁹ A high ranked, dominant clerical figure, whose words are ultimate for his followers and his verdict takes precedent over any law.

waging war against the Imam of time'⁴¹⁰. This resulted in the national boycott of tobacco, until the Shah had to revoke the contract with £500,000 compensation. The compensation was financed by the Imperial Bank, which has been providing credit to Shah hitherto. This led to the accumulation of foreign debts in the coming years, marking the Talbot compensation as the first catastrophic debt to a foreign bank. Edward Brown wrote that: 'there was a limit to what they (Persians) would endure, that they were not the spiritless creatures which they had been supposed to be, and that henceforth they would have to be reckoned with.'⁴¹¹ Additionally, Wright argued that the cancelation of the Talbot contract in 1891 caused 'a great loss of face to the British and a corresponding rise in Russian prestige. For the Persians it was, in a sense, the beginning of national awakening.'⁴¹²

The socio-political outcome of this movement is the fact that, for the first time the Iranian public revolted peacefully and purposefully against the arbitrary ruler who had meddled against the well-being of the society and succeeded in their demands.⁴¹³ While it could be argued that, the public unrest against the Talbot is an indication of the existence of dynamic society which take participation in the economic affairs of the country two point should be reminded; first and foremost the fact that, as mentioned above, the protest against Talbot was in fact a protest against the emergence of a competitor in the field that the Iranian merchants and salesmen were already engaged in. Whilst the oil concessions and the banking treaties bestowed to the foreigner can be argued that were as a result of the dire need of foreign technology and foreign credit, in terms of the service sector it was a shocking phenomenon to bestow a monopoly of an already existing and practicing business by the domestic market force. It can be argued that, the monopoly of tobacco in fact distorted the natural course of economy in that particular field. The second point which supports the unrest against the deed of the sovereign is the issue of consent; as it will be elaborated in details in chapter 4 based on the Hobbesian philosophy, one of the key components of the legitimacy of the sovereign lies in the public consent. As the distortion of the market by the Iranian sovereign through an unjustified reasoning had deprived domestic merchants from their legal business and provoked their discontentedness, it could be argued that the legitimacy of the sovereign could have been challenged if the unjustified biased concession against the domestic

⁴¹⁰ Katouzian (n 309) 164

⁴¹¹ Wright (n 327) 107

⁴¹² Ibid

⁴¹³ Katouzian (n 309) 165

merchants had been continued. Hence, the dynamism of the Iranian society in relation to the sovereign and economy is a valid proposition.

In 1896 Nasser al-din Shah was assassinated, leaving a decentralised establishment, a country massively in debt and series of failed attempt towards legal reforms. The remaining two decades of the Qajar dynasty saw three Kings, a revolution, a handful of international treaties and a coup. The following part will briefly yet succinctly explore 4 major issues; the D'Arcy concession, the constitutional revolution, the Anglo Russian entente and the catastrophic famine of Iran.

The 1901 D'Arcy Concession

According to this concession, William Knox D'Arcy, a British businessman, was granted the exclusive right over possible fields of oil in Iran.⁴¹⁴ Following the eventual discovery of oil in 1908, the concession was renewed.⁴¹⁵ On the basis of the contract, D'Arcy paid £20,000 in cash plus he was obliged to contribute 20,000 shares at £1 each, in addition to 16% annual net profit.⁴¹⁶ D'Arcy decided to directly reach to the local tribes of the oil refinery sites based on which eventually he came to an agreement with the Sheikh of Mohammareh as well as the mighty Khan of the tribe of Bakhtiari.⁴¹⁷ Two points can be made here; initially, it could be observed that the central government has been shunt aside by the foreign investor. This is why the government refused to recognise the legality and the legitimacy of the deals with the local khans.⁴¹⁸ Nonetheless, there can be an interpretation for D'Arcy's approach and deed as an FDI exporter, to bypass the central government. The interpretation could be that he did in fact need the local logistic support to increase efficiency and needed their consent through local employment and a solid contract with the Khan of the tribe to prevent any malice action by the locals against the FDI project. Nevertheless, such reasoning seemed more of a pretext to the Shah, who felt undercut by the foreign investor by the means of a parallel contract in addition to the original concession given by the Shah. It can be argued that, despite the fact that the political modus operandi of the country leaned towards a tutelage system, such tutelage norm did not prevent the Shah in the capital to

⁴¹⁴ Hesamedin Navabi, 'D'Arcy's Oil Concession of 1901: Oil Independence, Foreign Influence and Characters Involved' *Journal of South Asian & Middle Eastern Studies* 33 (2010) 18

⁴¹⁵ Ibid

⁴¹⁶ Wright (n 327) 108

⁴¹⁷ Ibid

⁴¹⁸ Ibid 110

forgo its central role and ruling. His identity as the sole sovereign of country who has entered into a contract with an FDI exporter seemed to have been encroached by the foreign investor.

Before moving on to the outcome of this contract, the issue of identity should be examined against the concept of sovereignty. The concept of identity is in fact a fluid perception which may contain elements including language and customs. The point here is that, identity neither should be taken tantamount to sovereignty nor as a separate type of sovereignty. While the classified types of sovereignty will be discussed in chapter 4, here the reasons based on which the two concepts should be discerned are presented. It can be argued that, identity is a crucial component of a legitimate sovereignty. It is where the roots of the sovereign are derived from. Identity should be considered as an element which moulds the characteristic of the sovereign. In terms of the history of Iran, it was Shah Ismail the first king of the Safavid empire who applied such proclamation. By conquering Iran, he declared the faith of Shia as the official faith of the country.⁴¹⁹ Such act was to emerge an essential cultural element of Iran to distinguish the newly found Iranian empire against the neighbouring countries. By applying the religious faith of the country as an element of identity in a sense he characterised his sovereignty against the neighbouring Sunni Muslims to the end of attaining a unique independent sovereignty in the region. Such characteristic stands still after few centuries. However, the pertinent question may be that why identity should not be taken as type of sovereignty or even tantamount to the sovereignty regarding the two as one intertwined concept?

There are few examples to answer negative to such question. While Iran has been a Muslim country for centuries and since the Safavid Empire has chosen Shia as its official faith, during the kingdom of Pahlavi 1925-1979, Iran was in fact a secular state. This instance indicates that, a state can conduct its due course and be considered as a sovereign state even though it does not officially present the iconic identity of the country.⁴²⁰ It also justifies the notion that the imperative identities of a country hardly change; sovereigns and various rulers may rise to power with distinctive traits and ideological leanings and collapse whilst the imperative values and identities of the public remains intact. As it was the case during the pre and post Pahlavi era. Another counter example to the above question is India. The official language of the supreme court and the high court of India

⁴¹⁹ Abbas Amanat, *Iran a Modern History* (Yale University Press 2017) 33

⁴²⁰ It has to be reminded while the polity of the establishment was secular, the King had been conducting religious deeds, including pilgrimage to Mecca as a Muslim. Hence although the state under his ruling was not an Islamic state, the king himself considered himself a Muslim in line with the identity of the country and the public.

is English. Although English language as a persisting influence of the colonial era may be used in official affairs of the High Court, the English language is not considered to be an authentic Indian language/identity. Yet the validity, legality and the legitimacy of the Indian High Court is not derived from the proposed element of identity which is the language. The high court is part of the legal sovereignty of the independent and sovereign state of India regardless of the fact that it does not convey the Indian-Hindu language in its conduct. As mentioned earlier the subject of identity is a fluid one. Hence, language should not be taken as the only component of the matter of identity; whereas there are circa 300 million of Arab speaking individuals, the unity of the language has not led to a united Arab speaking sovereign state. The 300 million population have been spread across numerous countries with claims of separate identity and statehoods.⁴²¹ The similarities in identity amongst nation-states though, have given rise to the multilateral public organisation. On the other side of the globe the European Union has been created to enhance and cherish the mutual benefits and similarities amongst European Nations to eschew military confrontation. Nonetheless, the issue of identity and sovereignty also seems problematic amongst scholars and politicians on this instance. Article 4(2) of Treaty on European Union precisely has been the core of ambiguity in the EU countries. Article 4(2) requires EU to respect: ‘national identities [of the Member States], inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government.’⁴²² The constitutional identity perhaps is the crucial element giving rise to the controversy within the EU member states. In *Gauweiler v Deutsche Bundestag* Advocate General Cruz Villalón of the Court of Justice of the European Union opined that: ‘[It] seems to me an all but impossible task to preserve this Union, as we know it today, if it is to be made subject to an absolute reservation, ill-defined and virtually at the discretion of each of the Member States, which takes the form of a category described as “constitutional identity”⁴²³. Cloots in her research has examined the two side of the spectrum, and came to the conclusion of giving primacy to the one of that AG Cruz Villalón: ‘first, that a reading of Article 4(2) TEU through the lens of constitutional identity does not rest on a sound theory of legal interpretation. Second, it has been demonstrated that a requirement of respect for constitutional identity, at least as envisioned by

⁴²¹ It has to be reminded under the Muslim Caliphate system it was the religion of Islam which expanded the borders of the Islamic Caliphate and not the Arabic language. As countries including Iran and today's Turkey although were under the authority of the Islamic Caliphate were not Arab speaking countries.

⁴²² Treaty on European Union 2007 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2007.306.01.0001.01.ENG

⁴²³ Case C-62/14, *Gauweiler*, Opinion of AG Cruz Villalón, EU:C:2015:7, paras 59-60.

several domestic constitutional courts, is premised on a different normative proposition than the Treaties' requirement of respect for national identity. Whereas the constitutional identity doctrine articulated by certain national courts is based on a claim to sovereignty on behalf of the Member States, the national identity clause laid down in Article 4(2) TEU implements fundamental principles of political morality, which call on a multinational polity to pay heed to the identity of its constituent national communities.⁴²⁴ Based on her reasoning it can be construed that, even at a multilateral public organisation level, the issue of identity is not equivalent to sovereignty despite the pivotal value and appreciation of the concept of identity.

In addition, there are instances in which although the state had been recognised as a sovereign state with usual political and business affair with the world, the lack of consideration for the identity of its subject has resulted in its collapse; the Apartheid regime of South Africa 1948-1991 is the perfect example of the proposition. By running a system of racial segregation for decades the majority of black people of South Africa had been held under a racist state. Such system was not only oblivious to the authentic identity of the majority of the state, but in fact it was established to undermine and deprive the majority of the country from their right. Despite the existence of such racist sets of law, and despite accelerating controversies the state of South Africa conducted its affairs for few decades as the legal sovereign of South Africa. It was not until late 1980s which the boycott of the sovereign state of South Africa appeared as a global solution to fight the apartheid regime. It can be argued that although the Apartheid regime of South Africa did not obtain its sovereign statehood by the identity of the majority of its subject, nonetheless it ruled the state for decades as a recognised sovereign. However, such disregard to the identity of the subject of the ruled territory resulted in the collapse of the apartheid regime. Hence, while the concept of identity is not an equivalent of sovereignty the lack of recognition of the domestic identity by the sovereign can result in its abrogation. Thus, based on the abovementioned illustration with regard to the concept of identity against sovereignty it is comprehended that, the two should not be taken equivalent of one another and identity should not be considered as a separate type of sovereignty despite its crucial role of moulding and preserving the legitimacy of the sovereign.

⁴²⁴ Elke Cloots, 'National Identity, Constitutional Identity, and Sovereignty in the EU' *Netherlands Journal of Legal Philosophy* 2, (2016):82-98

As for the D'Arcy concession, as suggested in the Second Chapter, with regard to the employment of ethnicities in Malaysia in 1990s, this deal with the local tribes could have facilitated ethnic employment. Nonetheless, if ethnic employment was any of D'Arcy's concerns, he could have sought the central government's approval. In spite of the general rise in unemployment in Iran, it can be seen that the Anglo-Persian Oil Company only used Iranians for unskilled jobs, with no intention of training them for sophisticated jobs.⁴²⁵ It can also be suggested that at some point Indian labours were brought to the oil field of Iran, causing grief amongst the local Iranian workers.⁴²⁶ Not only then, but also in the present time, there are connotative arguments for and against FDI in the oil fields. The mixed arguments of the two side of the spectrum stand still as of today. Those, who supported the concession, were highlighting the incapability and lack of domestic technology and funds to explore oil fields, while those, who opposed it, were of the view that it is another corrupt financial arrangement by the royals over the national resources. The Anglo-Persian oil conflicts lasted for decades and two dynasties as it will be demonstrated in the next part of the chapter.

The Constitutional Revolution of 1905-11

In 1905-7, the Iranian constitutional revolution against the totalitarian arbitrary monarch led to the reluctant consent of Mozafaredin Shah, the son of Nasser, the then dying King of Qajar Dynasty to sign the constitution, which empowered the public with the right to have a written and codified constitution, having a Parliament and hence the onset of modern separation of powers in Persia.⁴²⁷ The new constitution was a combination of the Sharia law and civil law on the basis of Belgium's constitutional law. This revolution, was in effect an attempt to limit the power of sovereign. As a key discourse of this Thesis, is on the discourse of sovereign and sovereignty, the Constitutional revolution of 1906 can be identified as a cornerstone to the discourse in the history of Iran. While the sovereign should have acknowledged the rights of its subject under a written and codified constitution, in practice the next rulers of Iran were either against the constitution and the parliament, or had great discomfort against it. It has to be reminded that, the months after the death of Mozafaredin shah, the country witnessed brutal and bloody junctures in which domestic constitutionalist alliance challenged the autonomy of the Mohamad Ali Shah the new king, and

⁴²⁵ Katouzian (n 309) 177

⁴²⁶ Wright (n 327) 110-111

⁴²⁷ Katouzian (n 309) 172

were confronted by the iron fist of Shah and the Russian troops in Iran. Amanat has found out that, the radical apparatus of the constitutional revolutionaries in Tabriz had provoked the new Shah, by calling Majles and constitutionalist to abdicate the Shah.⁴²⁸ Moreover, the iconic and controversial prince of the Qajar tribe, Prince Zell Al-soltan has been financially endorsing the revolutionaries with the ambition of replacing the king.⁴²⁹ With the encouragement of the Russian commander of Cossack Brigade, Colonel Vladimir Liakhov, the Shah was convinced the best option to confront the constitutionalist revolutionaries was to take the most fierce action available.⁴³⁰ Amini opines that the advice of Liakhov must have been in line with the long term interest of the Russia and Tsar Nicholas II in Persia, as they were anxious that the ongoing rise of the revolutionaries in Persia would provide momentum for the revolutionaries in Baku, as well as their fear of the probable rise of the pro-British Zell al-Soltan as the new king.⁴³¹ On Jun 23 of 1908 the Cossack forces bombarded the newly established Parliament (Majles) and by the evening the royalist around the country seized the opportunity and attacked the hubs of constitutionalists and revolutionaries with the arrest of their members, fighters and supporters. Amini describes the brutality of the event as that: ‘to intimidate the general public, the troops, embarked on a bloody campaign of rape, pillage and killing in the neighbourhoods adjacent to the Majles. The Qajar cities were not foreign to government troops’ harassment and ransacking neighbourhoods, yet the show of force by the Russian Cossack was novel, the first to bear the ominous signs of a modern military coup.’⁴³² This can be denoted as the first instance of a coup in Iran which a foreign country, in this case Russia, orchestrated and conducted the matter, prioritising its own interest in another country being Iran. The second example will be the Ajax coup of 1953 which will be presented following this chapter. As a result of the 1908 coup, a civil war embarked in the country between the royalist supported by the Russian delegates in Iran and the constitutionalist well-spread across the country armed through the tribal hierarchies. It was on July 13 1909 that eventually the Nationalist forces which in fact were the constitutionalists, headed by an iconic constitutionalist leader Sardar As’ad from the influential Bakhtiary tribe entered and conquered Tehran defeating the royal forces.⁴³³ Two days later the resorted Majles abdicated Mohammad Ali Shah and replaced

⁴²⁸ Amanat (n 419) 348

⁴²⁹ Ibid

⁴³⁰ Ibid

⁴³¹ Amanat (n 419) 349

⁴³² Ibid

⁴³³ Amanat (n 419) 359

him with his son Prince Ahmad. Amanat concludes that, the conquest of Tehran was a defining moment in the modern history of Iran as it was a 'rare triumph in the age of high imperialism.'⁴³⁴ It can once again be approved that, the foreign country in order to secure its own interest in Persia took the most drastic actions which in a sense encroached the legitimacy, the rule of law and the sovereignty of the country. The interests varied from geopolitical concerns to the financial and investment related concessions.

The pertinent point to the sovereign and the foreign treaty and this Thesis lies in the fact that, as a result of the newly established parliament the foreign treaties had to be ratified in the Parliament known as Majles. Hence, as it will be pointed out, there have been occasions in the very last years of Qajar's dynasty in which Majles has nullified a foreign contract which was deemed against the national interest of the country. Thus, in light of the discourse of national sovereignty and national interest, thenceforth the constitutional revolution there is a new authoritative branch of power which came into existence.

The 1907 Anglo Russian Entente

The rivalry between the two then superpowers reached its apogee, whence the delegates of the two countries in a meeting in St. Petersburg decided to simply split their sphere of influence in Iran.⁴³⁵ Russians procured control over the north of Iran, and the British over the south leaving the central part neutral.⁴³⁶ This alliance which came during the accelerated rivalry of the two superpowers over Iran, Greaves has found to be as a result of a common enemy at the time which was Germany.⁴³⁷ Thus, by the start of the WWI, despite the official neutrality of Persia, the country was already occupied by the two allied powers.⁴³⁸ The correlation of the WWI, the D'Arcy concession and the subsequent British clout in Iran lies in the fact that by 1914, in the midst of the great war, Churchill persuaded the British government to invest circa £2 million in the Anglo-Persian Oil Company, raising the British stake to 51% of the ownership.⁴³⁹ This turned out to be

⁴³⁴ Amanat (n 419) 360

⁴³⁵ W. Morgan Shuster, *The Strangling of Persia*, (Mage 2006) xxiv

⁴³⁶ Rose L. Greaves, 'Some Aspects of the Anglo-Russian Convention and Its Working in Persia, 1907-14' Bulletin of the School of Oriental & African Studies 31(1968) 290

⁴³⁷ Ibid

⁴³⁸ Kazemzadeh (n 318) 204

⁴³⁹ Howard (n 389) 48

the largest overseas asset of the British government.⁴⁴⁰ Once again, the long-term strategic profit of FDI tended to benefit the investor more than the hosting state.

During the occupation, the Russian indulged themselves with various new concessions, in accordance to their military presence, meanwhile in the south the British expanded their influence over the oil fields.⁴⁴¹ Nevertheless, following the Bolshevik revolution in 1917, the Russian forces abandoned the north of Iran, and gradually most of the rights and concessions, which had been obtained under the Tsar of Russia, were either revoked or forgone by the revolutionary Russia.⁴⁴² This was seen as a *deus ex machina* by the Iranians. Later in 1919, the British offered a new treaty to the Iranians,⁴⁴³ offer of military aid to Iran, yet persisting on their demands in accordance to the 1907 treaty.⁴⁴⁴⁴⁴⁵ Nonetheless at this time the Parliament (Majles), which came into existence as a result of the constitutional revolution, did not ratify the treaty.⁴⁴⁶ For the first time, the Parliament, a legislative body, played a decisive role in relation to Iran's financial and political affairs. This is the point which was postulated earlier in relation to the mitigated right of sovereign, which was no longer considered to be as the sole authoritative component of the establishment.

The Famine of 1917-19

Probably the most concealed aspect of the recent Iranian history is the great famine of 1917-1919. Not only it has been neglected by western scholars, but also amongst the Iranian public the memory of the tragedy has faded out. The abandonment of the remembrance of the notorious famine could well be intentional for both the British and the Iranian side. While Britain and the western countries have been massively blamed by Iranian scholars and western observers for the intentional concealment of the famine, the extend of the calamity may have been beyond Iranian's capability to withhold, so the subconscious of Iranians sought the remedy in oblivion.

Mohammad Gholi Majd has presented official documents, which evidence that the famine of Iran occurred, despite the knowledge of the occupying British force in Iran.⁴⁴⁷ He suggested that the

⁴⁴⁰ Wright (n 327) 110

⁴⁴¹ Amirahmadi (n 298) 173

⁴⁴² Katouzian (n 309) 193

⁴⁴³ Cronin (n 319) 187

⁴⁴⁴ Katouzian (n 309) 196

⁴⁴⁵ Donald Ewalt, 'The Fight for Oil: Britain in Persia, 1919' *History Today* 31 (1981) 11

⁴⁴⁶ Katouzian (n 309) 198

⁴⁴⁷ Mohammad Gholi Majd, *The great famine & genocide in Iran 1917-199*, (2nd edition, University Press of America 2013) 171-192

key reason of the famine was the significant grain purchases of the British forces in Iran, in order to feed the British army across the West Asia in the midst of the war. These purchases, consequently, resulted in the shortage of grain for domestic usage, making it a scarce commodity. Furthermore, the British at some point in the midst of the raging famine, destroyed the remaining grains in the border cities, to preventing potential access of the Turkish troops to the grains.⁴⁴⁸

Most notoriously, in addition to the protection of this monopoly over the grains, the British, being in charge of the ports as a result of the previous treaties, prohibited the imports of this critically needed commodity in Iran.⁴⁴⁹ This prohibition extended to imports from India and Mesopotamia; in May 1918, US dispatched a cargo of grains to Iran, as a relief for the catastrophic famine, nonetheless, the British, having control over the customs, declined to accept the cargo and refuted what could have ameliorated the extent of the calamity.⁴⁵⁰ Initially following the mass purchase of the grains the Iranian currency experienced a sudden surge. The sudden appreciation of Iranian currency resulted in hyper-inflation and undermined the purchasing power, which only stretched the lines of victims from ordinary peasants to middle-class across the country.⁴⁵¹ Having previously raised its share in the Anglo-Persian Oil Company, the British government declined to promptly pay the annual share of Iran based on the pretext of the force majeure of war time.⁴⁵² Deprived of its revenues and perplexed from the constant abjures, Iran witnessed what Majd refers to as the worst famine of the century and the worst casualties of a neutral state amidst the war; approximately 8-10 million Iranians out of the population of 20 million, perished as a result of the 2 years of famine.⁴⁵³ Majd identifies this loss of population as one of the key roots of the underdevelopment in Iran.⁴⁵⁴

The pertinent point in relation to this human catastrophe is that this famine should be remembered not only as a pernicious outcome of the occupation, but also as a result of surrendering the domestic market, and the custom duties to foreigners in peace times. Although such financial and economic rights granted in time of peace might accelerate the foreign investment flow and facilitate the foreign trade, nonetheless yielding such rights in long term have had proven to be

⁴⁴⁸ Ibid 10

⁴⁴⁹ Ibid 112

⁴⁵⁰ Ibid 3

⁴⁵¹ Ibid 125

⁴⁵² Ibid

⁴⁵³ Ibid 6

⁴⁵⁴ Ibid

ensued by catastrophic ramifications. Hence, as it will be discussed in Chapter Four, there remains vital sectors and location which the sovereign is ought to sustain control and authority based on its sovereign rights against foreign entities being investors or military bases.

The Collapse of the Qajar Dynasty

As it was postulated earlier, a potent ruler has always proved pivotal for the stability of a traditional society such as Iran, but at that time, the newly centralised, hasty modernised state of Iran with a young naive King was rather fragile to the domestic uproar and foreign pressures. As the Irish famine of 1845 bolstered the Irish hatred against the English forces and resulted in the rise of the socio-political movement against England, the famine of Iran also instigated the national outcry against not only the Qajar's, but also the encroaching foreign forces.

Orchestrating a coup d'état in February 1921, British General Ironside used the domestic armed forces of Cossacks against the young King and the Bolshevik forces in the north, in order to attain order and overcome the turmoil with the use of military dictatorship.⁴⁵⁵⁴⁵⁶ The coup was successful, and, after a few months of interior contests, Reza Khan, the leader of the Cossack forces, announced himself as the new King of Iran, establishing the Pahlavi dynasty.⁴⁵⁷ Although Katouzian and Cronin both agree on the direct influence of Britain in orchestrating the coup, nonetheless Cronin is of the belief that, after the coup Reza Khan turned against Britain and announced him as the king.⁴⁵⁸⁴⁵⁹ Katouzian is not the only Iranian scholar who believes of the occasion to be a foreign led coup. Majd in another research of his, also came to this conclusion.⁴⁶⁰ He also ironically make a correlation between the annulment of Anglo-Persian convention by Seyed Zia Tabatabaei in 1921, who happened to be the Prime Minister of Qajar and also played a pivotal role in the coup, and his resignation which ultimately empowered Reza Khan.⁴⁶¹ Thus in contrast to Cronin findings, Majd is of the belief that, Reza Shah was assisted by the British to become the new king of the country. The crucial point, which is the kernel of this Thesis, is the

⁴⁵⁵ Katouzian (n 309) 198

⁴⁵⁶ Cronin (n 319) 201

⁴⁵⁷ Ibid

⁴⁵⁸ Ibid

⁴⁵⁹ it has to be reminded that, Reza khan initially strived to announce the new establishment as Republic which was rejected by the Majles. Also, it should be noted here that, Reza Shah changed the international name of the country from Persia to Iran. Hence, as ever since the change the country has been known as Iran, the following part of the Thesis start referring to the country with its official name being Iran.

⁴⁶⁰ Mohammad Gholi Majd, *From Qajar to Pahlavi*, (University Press of America 2008) 100

⁴⁶¹ Ibid 107

fact that for the second time a foreign power interfered in the Iranian domestic affairs, not only by appointing a new King, but drastically changing the entire political establishment. Despite the modernisation, and centralising the state and a number of remarkable achievements which took place at the time of Reza Pahlavi, due to what can be argued as the lack of national sovereignty, his reign was the most vulnerable in centuries as will be presented in the next part.

Pahlavi; Legitimacy, Independence and Industrialisation

a) The First Pahlavi (1925-42); Dilemma of the Benevolent Dictator

Reza Shah took over a country massively in debt, tattered between superpowers during WWI, and people who had suffered from the worst famine. Reza Shah's reign contains a series of reforms or at least efforts for modernisation of the country. From 1921-27, using German and Belgium advisors, Reza Shah started the first set of modernisation focusing on the fiscal and monetary policy with the establishment of Bank Melli as the Central Bank.⁴⁶² This bank put an end to the monopoly of the Imperial Bank over banknotes. Furthermore, they organised the government revenue into oil, land tax, custom tax and indirect tax to tea and sugar, which were an essential part of people daily consumption and gradually the trade balance was in surplus, solely thanks to oil revenue.⁴⁶³

The 1930s is now associated with vast reforms over the legal system and national infrastructure projects. Reza Shah initially had cautious economic plans in light of the international economic crisis and the drop of the currency in 1929, due to the crash of silver.⁴⁶⁴ He introduced the Trade Monopoly Act of 1930 but it artificially increased the value of the Iranian currency, which simultaneously weakened the domestic agricultural production and its exports.⁴⁶⁵ Also, in order to raise money for his investment plans, he started to sell massive pieces of lands to elites including powerful merchants, already immense landowners and even army generals. It has to be noted that, most of the lands were in fact the confiscated lands from the Qajars' extended families. In this process, the peasants and the farmers lost more than anyone else.

⁴⁶² Ervand Abrahamian, *A history of modern Iran*, (Cambridge University Press 2012) 77

⁴⁶³ Katouzian (n 309) 214

⁴⁶⁴ Abrahamian (n 455) 83

⁴⁶⁵ Katouzian (n 309) 215

Through state investments during the 20s and 40s, Iran saw a boost in domestic manufacturing, including sugar, textile, matches, cement, and soap.⁴⁶⁶ The crucial point is that the domestic capital owners, not familiar with the modern technology, and reluctant to take the risk of investment, left the space for the state to function as the sole investor. While it was postulated in chapter two, Keynes considered government investment, when the private sector is either unwilling or incapable of taking action. This not only also appeared under the reign of Reza Shah's son amidst his industrialisation attempts, but also occurred in China; at some point during the Chinese industrialisation era, 'with the price of labour falling, profit margins declining and static markets, there was no incentive to invest in labour saving machinery... in such situation there was little reason to engage in the kind of technological leap into the factory system that marked Britain's Industrial Revolution'.⁴⁶⁷

It is important to mention that at the time about 85% of the population of Iran were farmers and landless peasants.⁴⁶⁸ Despite this fact, Reza Shah preferred to direct the state's investment into factories rather than in agriculture, as he believed that modernisation comes through the gate of factories. His plan seemed successful for a short while, as between 1934 and 1938 the country witnessed the highest growth rate and employment rate. The reason behind this can be traced in the 13,500 miles of newly built and constructed roads all around the country, which helped in the reduction of the production costs. Another great infrastructural construction was the Trans-Iranian railway, linking the north with the south, from the Caspian Sea to the Persian Gulf. The construction by the collaboration of numerous foreign companies varying from USA to British and Germans which was funded not by foreign loans, but by domestic tax on sugar and tea.⁴⁶⁹ As he feared the historic correlation between foreign loans and foreign influence, Reza Shah decided to keep a distance from foreign investors. While some scholars believe that this money could have been spent on more financially profitable medium-scale projects, it can be argued that such investments have long-lasting results, which benefit the country for centuries and generations.⁴⁷⁰ Furthermore, in this way it was intended to keep the country distanced from foreign creditors and their proven notorious influence. While, in the recent years, BOT-type of FDI and financing of

⁴⁶⁶ Abrahamian (n 455) 64

⁴⁶⁷ Jacques (n 307) 94

⁴⁶⁸ Katouzian (n 309) 222

⁴⁶⁹ Abrahamian (n 455) 77

⁴⁷⁰ Katouzian (n 309) 222

national projects have been very frequent, the concerns over national security and sovereignty remains a source of anxiety.

With regard to legal reforms, Ali-Akbar Davar, the Minister of judicial affairs, was appointed to be in charge of adopting a new constitution.⁴⁷¹ He started with restructuring the judicial system with the assistance of French legal experts, fully modernising the entire legal establishment and judicial system. His legislative reforms extended from tax law to property law and from commercial law to family law. Some legislations he introduced are still in force, even after the changes in the political establishment in 1979. His contribution was not limited to legal matters, as he also served as the Minister of commerce for a while. He signed new contracts with Germans for the export of Iranian commodities, including nuts, wood, gold, caviar, in return for German machinery and support in the development of the industrial infrastructures of Iran. Davar was one of the forerunners of the transition of Iran's economy from a traditional trade and farming based economy to a modern manufacturing-based economy. Nonetheless, his plans were too ambitious for the population, which was 85% farmers, and hard to be orchestrated and achieved by a king who started as a potent dictator and eroded in a traditional arbitrary ruler. In December 1936, Davar proposed an agreement with the emerging US companies which had hindered British and Russian benefits in the proposed potential deal. In less than two months on 10 Feb 1937, his corpse was found. The alleged cause of death was suicide.⁴⁷² The legacy of Davar is still alive amongst Iranian and the current political establishment, and ironically the avenue leading to the Courthouse of Tehran is named after him.

Another figure of legal and economic reform in Iran was Abdolhosein Teymourtash.⁴⁷³ As the court minister he directed and pursued a series of negotiations with British delegates in Tehran.⁴⁷⁴ The focal point of the negotiations was over the terms of the oil concession as well as Iran's sovereign right and territorial rights over Persian Gulf Islands.⁴⁷⁵ As for Iran's objections to the Anglo-Persian oil concession, Iran disputed the neglected payment of the royalties and the

⁴⁷¹ Abrahamian (n 455) 75

⁴⁷² There seems an ambiguity in the cause of his death as Abrahamian refers to the cause of death as 'heart attack' in prison, while Katouzian identifies suicide under pressure as the cause of his death. In any case his death occurred amidst the imprisonment and murder of other technocrat elites.

⁴⁷³ Miron Rezun, 'Reza Shah's Court Minister: Teymourtash' 12 (1980) 119

⁴⁷⁴ Chelsi Mueller, 'Anglo-Iranian Treaty Negotiations: Reza Shah, Teymurtash and the British Government, 1927–32' *Iranian Studies* 49 (2016) 577

⁴⁷⁵ *Ibid*

exploitation itself.⁴⁷⁶ Iran to indicate its sheer determination, cancelled the concession for the hope of a better deal.⁴⁷⁷ Eventually the Permanent Court of the League of Nations reduced the British rights in the concession but in turn extended its life span to 1993.⁴⁷⁸ Thus, in reality the position of Iran was not much ameliorated in terms of the oil concession.⁴⁷⁹ Nonetheless, it can be taken as a token of a fundamental change of mentality in the new establishment of Iran. While the Qajars were notoriously naïve towards the foreign forces, the new establishment indicated an organised and proactive approach for its sovereign rights in the international realm of law and economy. With the cancelation of the parallel Anglo-Bakhtiari oil contract, which had been a reason of Qajar's displeasure as it was extensively discussed earlier in line of the concept of identity, it was also indicated by the new establishment of Iran that the centrality of the government and its polity is a sovereign matter which should be respected and uphold from then on.

As for Teymourtash, in the midst of the oil negotiations, and just before the new consensus, he was dismissed and arrested on the ground of bribery in 1933. As there are no official reliable documents to relate his dismissal and imprisonment to his staunch stands against the D'Arcy concession, it is unfounded to related his loss of influence to the British interests. Nonetheless, it has to be reminded that, it was after his dismissal that the new contract was agreed upon. His fate is an everlasting iconic ending to the life of a competent technocrat who was in charge of a remarkable portion of the industrialisation projects at the time. In confinement, he was murdered by the lethal injection of the prison's physician Dr. Ahmadi on October 3, 1933. As mentioned above Davar also mysteriously died few years later. It can be argued that, the so-called Benevolent Dictator, was turning into an absolute and arbitrary monarch. The commencement of Industrial projects took place under his leadership and by the management and planning of technocrats like Teymourtash and Davar. Nevertheless, with the rising sense of totalitarian as the monarch, the first line of victims were the very same people who had assisted him in his industrialisation ambitions. The moral can be argued to be that, although a capable leader in this case a typical Benevolent Dictator may be useful to envisage and initiate massive public reformations in terms of the structure of law and economy, nonetheless, such efforts although vital would not last long if they will not be ensued by institutional enhancement. A missing component to the industrialisation of

⁴⁷⁶Peter J. Beck, 'The Anglo-Persian Oil Dispute 1932-33' (1974) *Journal of Contemporary History* 9 123

⁴⁷⁷ Ibid

⁴⁷⁸ Ibid

⁴⁷⁹ Mueller (n 467) 580

Iran can be argued to be the conflict of the ambitions of the Sovereign and the knowledge of the technocrats. Conflicts of such have resulted in the failure of a synchronised growth between the legal and economic institutions and the tangible capabilities of the country. In the lack of authentic separation of powers and institutional cooperation, the benevolent dictator would not last long as the history of Iran evinces, let alone his aspiration which would have rightly benefited the country if carried out rationally.

In terms of Territorial Integrity, the efforts of Reza Shah towards establishing a centralized state was not limited to the legal and economic agendas. In reality, he had to confront some separatist's movements all across the country. It has to be reminded that the legacy of the Safavid dynasty which was to centralise the Iranian establishment through unifying all Iranian ethnicities and tribes have remained intact up until now. Nonetheless, there has been times which the centralised establishment have been challenged. At the time of Reza Shah, Sheikh Khazal revolt in Khuzestan, and Jungle Movement in the north of Iran can be identified as the two crucial revolts to challenge the central power aspiring the separation of the mentioned regions. It is remarkable to point out that, there have been not only sympathies between the separatist figures and British and Russian forces but also, there has been direct link between the domestic rebels and the foreign forces. To maintain the centralised power Reza Shah used forceful tools in order to keep the territorial integrity intact. Hence, while as has been postulated earlier that, Reza Shah lacked national sovereignty, it should not be taken in tantamount to his incapability of honouring the territorial integrity, rather the core of the discourse is on his vulnerable sovereignty not only when it was challenged by the Anglo-Russian forces but also his initial rise to power which was hugely as a result of the foreign aids.

During the second World War, Iran was once again slashed between Russian and British forces commonly known as the 1941 Anglo-Soviet invasion.⁴⁸⁰ As a result, Reza Shah, the King of Iran, was forced to step down and was sent to exile by the British delegates in Iran, in favour of his 22 years old son.⁴⁸¹ Once again, the correlation of foreign clout and economic achievements can be verified; as proposed earlier, Reza Shah's reign was associated with the first wave of industrialisation in Iran and, despite some mistakes, his era brought about an infrastructural and technological take off. Nonetheless, as he owed his kingdom to a British coup, his authority was

⁴⁸⁰ Abrahamian (n 455) 97

⁴⁸¹ Shaul Bakhash, 'Britain and the abdication of Reza Shah' 52 (2016) 318

easily challenged by the foreign forces when geopolitical complexity came to its worst form for him. Hence, due to his economic and political engagement with Germans,⁴⁸² despite his neutrality in the war, the British and Russians seized the post war opportunity to abdicate him.

b) The Second Pahlavi (1941-79): Oil, Land and Legitimacy

Having overthrown his father, the Allied powers found no better option for Iran's throne than the 22 years old Mohammad-Reza Pahlavi. The new Shah was yet again a young dictator, who was duly respected by the Parliament and the clergies. Mohammad Reza Shah introduced a seven-year plan of economic development in 1949, according to which Iran would borrow money from the World Bank, in order to fund its modernisation project.⁴⁸³ This plan was in fact as a result of US president Truman scheme known as the Point Four Program⁴⁸⁴ in which US acknowledge the necessity to promote technical assistance to the developing world. This plan was questioned by the Parliament mainly because the security placed for the borrowed money was the country's oil revenue. As Katouzian describe: 'it was due to be finance mainly by oil revenues ,... therefore it became largely inoperative as a result of the 1951-3 oil crisis, which lead to the boycott of Iranian oil'.⁴⁸⁵ It has to be reminded once again that the majority of the country's population at the time were landless peasants which Keddie suggests have enjoyed from the programmes in the very first years.⁴⁸⁶ There remains the public opinion of Iranians toward the good relationship of Iran and West pre 1979 revolution. It can be fathomed as a result of the 7 years plan and the World bank loans and the US technical assistance that, even during the benevolence era of Iran-US relationship, no favour was provided to Iran free of charge.

The Nationalisation of Oil

The nationalisation of the oil industry and the political reaction, questioned Mohammad Reza Shah's ability to be an independent ruler. In March 1951, the nationalist Prime Minister Dr. Mosadegh, a Qajar prince, with a doctorate in law from Switzerland, lead the Parliament to nationalise the oil industry.⁴⁸⁷ This was not taken kindly by British investors of the Anglo-Iranian

⁴⁸² Eduard M. Mark, 'Allied Relations in Iran, 1941-1947: The Origins of a Cold War Crisis' 59 (1979) 51

⁴⁸³ Katouzian (n 309) 242

⁴⁸⁴ Nikki R. Keddie, *Modern Iran roots and result of Revolution*, (Yale University Press 2006) 117

⁴⁸⁵ Katouzian (n 309) 242

⁴⁸⁶ Keddie (n 477) 117

⁴⁸⁷ Abrahamian (n 455) 114

Oil Company.⁴⁸⁸ As Marsh points out, the influence of non-state players in this case an oil company over the foreign policy of a state and subsequently the international law can be seen.⁴⁸⁹ Although it has to be once again reminded that, the Anglo-Iranian oil company was highly affiliated with the British government ever since the WWI. Hence, as explained earlier, a series of economic sanctions including a boycott over Iranian oil by western countries came into force in August 1952.⁴⁹⁰ While Iran in 1951 used its legitimate right under international law to nationalise its natural resources, the western community seemed not so keen to accept this right of Iran.⁴⁹¹ The oil nationalisation has innate similarities to the current Nuclear dilemma over Iran which will be illustrated in the next chapter.

The British opposition to the nationalisation was not restricted to economic sanctions, as they took the case in the International Court of Justice and they obtained an injunction against the Iranian oil nationalisation.⁴⁹² Mosadegh and his government rejected the injunction, based on the legal ground that the 1933 agreement, which was signed at the time of Reza Shah, in order to update the terms of the former D'Arcy concession, was in fact a contract between the state of Iran and a private company, hence the only legal entity with jurisdiction over this matter must have been an Iranian court. At this point 'Mosadegh broke off diplomatic relations with Britain on the grounds that it was interfering in the internal affairs of Iran.'⁴⁹³ Disappointed by Iran's plea, the British took the matter to the UN Security Council, nonetheless the Security Council upheld the Iranian government's point of view. As identified earlier by Cole's research on MFN, there appeared an interesting case of MFN reliance in the Anglo-Iranian oil conflict at International Court of Justice (ICJ) in which the ICJ did not acknowledged its jurisdiction over the case.⁴⁹⁴ Britain attempted to seek the ICJ's jurisdiction through what has been described as the Compulsory Jurisdiction.⁴⁹⁵ It has been defined as: 'under this approach, states are permitted to lodge a declaration with the Secretary General of the United Nations regarding the types of disputes they are willing to have brought before the ICJ. Once this consent is lodged no further consent need be

⁴⁸⁸ Steve Marsh, 'Anglo-American Crude Diplomacy: Multinational Oil and the Iranian Oil Crisis, 1951–53' 21(2007) 25

⁴⁸⁹ Ibid

⁴⁹⁰ Katouzian (n 309) 250

⁴⁹¹ Marsh (n 488) 53

⁴⁹² *Anglo-Iranian Oil co (UK v Iran)* 1952 ICJ Rep 10

⁴⁹³ Katouzian (n 309) 250

⁴⁹⁴ Cole (n 350) 560

⁴⁹⁵ Ibid 561

given to ICJ to have jurisdiction in any specific case.⁴⁹⁶ Iran have had provided such consent to ICJ. Nonetheless, it was under the condition that, the consent should be applied only to treaties signed and ratified after 1930. Britain argued that, in light of the existence of MFN clauses by which Iran had granted other states the access and consent to ICJ, Britain should also be entitled to such recognition by ICJ. Nevertheless, Britain claim was rejected by the ICJ on the ground that, Britain had based its claim on treaties which were signed in 1857 and 1903; ‘since the operation of the MFN clauses in the Basic Treaties was restricted to the basic treaties themselves, they could not remove the restriction on Iran’s consent to the ICJ’ compulsory jurisdiction.⁴⁹⁷

At this point Mosadegh had to encounter the World Bank as well. As the World Bank set forth the use of British personnel at the newly nationalised oil sights in return of the Bank’s assistance.⁴⁹⁸ Mosadegh initially refused the offer and later when he approached the Bank’s representatives refused to accept Mosadegh’s delegate.⁴⁹⁹ During the short period of the boycott, Mosadegh introduced tax reforms and new economic policies, aspiring on a non-oil reliant economy. His reforms were also extended to the area of land law, obliging landlords to allocate 10% of their income to their farmers and peasants. In the summer of 1953, a British-American orchestrated coup d’état, known as Operation Ajax, deposed Mosadegh out of power and sent him to exile whilst Mohammad-Reza Shah had already fled the country to Italy.⁵⁰⁰ Having the ultimate power back in his hand, the Shah returned to Iran, and started renegotiating the terms of the contract with the British company, now rebranded as British Petroleum. With the support of the US officials, Shah convinced BP to accept the membership of an oil consortium in a holding company, now to be known as the Iranian Oil Participants.⁵⁰¹ The pertinent point is that, the new economic arrangement which indeed was an improvement for Iran in economic terms did reach eventually nonetheless, the key argument is that such economic improvement came as a result of direct encroachment of the Iranian sovereignty by foreign forces. Although the new arrangement may have been far off from what Dr. Mosadegh had once aspired, it was an improvenemnt for the Iranian King after all. Another point to be made is that, the attack on the legal and democratic

⁴⁹⁶ Ibid

⁴⁹⁷ Ibid 562

⁴⁹⁸ Reza Ghasimi, ‘Iran’s Oil Nationalization and Mossadegh’s Involvement with the World Bank’ *Middle East Journal* 65 (2011) 442

⁴⁹⁹ Ibid

⁵⁰⁰ CIA eventually confirmed the plot of the Ajax coup in 2013 by officially publishing the relative documents and deeds. The National Security Archive <https://nsarchive2.gwu.edu/NSAEBB/NSAEBB435/>

⁵⁰¹ Marsh (n 488) 206

apparatus of the sovereignty of Iran provided absolute momentum for the Shah in the next decades to turn in an absolute monarch with a series of contradictory social-political and economic failures as will be presented following this part. Hence, the key premise of this Thesis, on the equilibrium of national sovereignty and economic prosperity can be evinced based on the ground of the presented case of 1953 coup. The arrangement remained valid until the 1979 revolution occurred, when the new establishment promptly and unilaterally nationalised the national resources, including oil. Marsh identifies a key source of aversion of the revolutionary Iranians in 1979 to be the Ajax Coup of 1953.⁵⁰² It can be fathomed that, by undermining Iran's right of sovereignty over its national resources, and ignoring the fact that the Iranian PM at the time was endorsing its legal domestic sovereign right to control the state of Iran, USA and Britain in order to secure the financial interest of the Anglo-Iranian oil company and in fact the extended interest of the respective countries in Iran, used the brutal force of a military coup. As it has been presented, while the British attempts through international legal mechanism was to no avail for their interest they sought the remedy in the use of military force. It can be argued that, a fundamental and innate trait of the international legal system is the inability of sustaining and applying its rules and orders. Despite the fact that, legally Iran was the righteous state over its sovereignty claim, the FDI exporter state defeated in the International legal courts, managed to secure its interest through armed forces. Thus, based on this particular case, it will not be wrong to assert that the international law is not adequate to serve justice when the balance of power is drastically uneven. This will be elaborated in Chapter 4.

The White Revolution and The Oil War

After the coup, Shah saw no rivalry in Majles and carried on exercising his power, which lead to an economic boost in mid 1950s until early 1960s. By this time, the US influence, which had recently replaced the British one in Iran, started translating into the provision of financial aid to Shah; during this period, 'the foreign aid was responsible for 37.5 percent of the total financial capital available in the foreign exchange'.⁵⁰³ Interestingly, Shah, even against the advice of his financial advisors, including Ebtehaj, spent most of the boosting oil revenue on modernising the Iranian troops, instead of investing on economic development. Abrahamian reveals that 'arms

⁵⁰² Ibid 276

⁵⁰³ Katouzian (n 309) 256

dealers joked that the Shah devoured their manuals in much the same way as other men read Playboy'.⁵⁰⁴ His military budget grew twelvefold between 1954 and 1977.⁵⁰⁵ It is worth mentioning though that almost 30 years later in the 1980s his expenditure on military turned out to be absolutely vital, when Saddam Hussein invaded Iran.

Hence, the moral could be that his expenditure on military may not be the most reasonable choice in the short-term, but it ended up safeguarding the security and the prosperity of the future generations. As it has been suggested in the previous chapter even Adam Smith and Hayek the forerunners of free-markets, give the precedent role of the government to defend the country against foreign adversaries to keep the sovereignty intact. It will be argued in chapter 4 that the defensive concerns of the current establishment of Iran is well rooted in the pre-1979 tensions and the Iran-Iraq war. It will be argued that it is a reasonable stride by the current establishment to improve its defensive capability. More specifically the plans of spending the lump sum of the oil revenue on infrastructure and defence as well as saving in the Sovereign Wealth Fund as the reserve currency for an unprecedented time is a rational plan, though questionable in practice. The correlation of defensive capability and centralised political cohesion with the emergence of FDI would be one of the final contributions of this Thesis. Another crucial point to make is that in the past two World Wars, Iran had officially announced its neutrality, nonetheless on both occasions Iran's stand was unnoticed by the mighty states at war. Furthermore, as it has been argued in the first chapter, and will be discussed again in the final chapter, FDI would not settle in a geopolitically sensitive and instable state. Hence, by increasing its defensive capability, Iran would ultimately secure FDI from a long-term perspective, while keeping its national sovereignty intact.

Mohammad Reza Shah did not maintain this strategy in the subsequent year of his reign. Manuchehr Eqbal, one of his Prime Ministers from 1957-60, initiated a rapid liberalisation in imports and high domestic consumption of foreign goods. This coupled with the oil revenue led to a rapid urban development, which only covered a marginal percent of the total population. The rapid urban development also provoked a shock to the domestic housing market and an inflation boost.⁵⁰⁶ Since the coup against Mossadegh in 1953 and until 1977, Shah appointed and sacked 9 Prime Ministers and only one of them lasted for a remarkable 13-year period in his office, while the rest did not last more than two years.

⁵⁰⁴ Abrahamian (n 455) 124

⁵⁰⁵ Ibid

⁵⁰⁶ Keddie (n 477) 143

The uncertainty in his development plans, his desire to pass “the threshold of modern civilisation” and his fear of having a popular rival in the country, lead Mohammad-Reza Shah to make unrealistic economic and political moves. In 1961, he appointed Ali Amini as the Prime Minister, who, unlike Eqbal and former politicians and economic advisors, believed in the economic development from bottom to the top, having in mind that the vast majority of the population is rural. Henceforth, Amini introduced the Land Reform Law in January 1962, which directly affected 520,000 peasant households.⁵⁰⁷ He believed that in this way he would strengthen small scale ownership by landlords and will hence result in the gradual development of agriculture. While Amini’s target was to promote and provide a platform for a sort of Autonomous Cooperation⁵⁰⁸, where small families, mainly farmers, used to contribute to the agrarian growth, however a fairly similar pattern can be seen with regard to the rural industrialisation. As Jacques identifies, ‘in Britain the domestic system is based on small-scale family units of production and this proved to be the precursor of the factory system. In China, where such rural industrialisation was as developed as it was in Britain, it did not. While Britain served as a causal link between the domestic and the factory systems, this was not true in the case of China, where widespread rural industrialisation did not lead to a Chinese industrial revolution.’⁵⁰⁹

There are numerous different parameters for an industrialisation to be successful, nonetheless, in the case of Iran, it was not properly planned and executed. For instance, a country with a farming culture well rooted in its history and proven efficiency (for instance, the Qanat system which was a primitive, yet as of today an advanced, watering system in hot regions), the promotion and enhancement of agriculture, in the way that Amini was seeking, could have facilitated the steady and gradual growth of agriculture and hence used for the funding of urban industrialisation as it was the case in Japan.

Nonetheless, yet again Shah seeing a potential rival, started to disagree with Amini over the expenditure on military, rather than the domestic reform and Amini was forced to resign. A year later, Shah, who had turned into a classic Iranian ruler with total dominance, introduced his own set of reforms, known as the White Revolution.⁵¹⁰ At the core of this 6-point reform program was the land reform, the decentralisation of selected state industries and women suffrage. The latter

⁵⁰⁷ Katouzian (n 309) 282

⁵⁰⁸ Ibid

⁵⁰⁹ Jacques (n 307) 100

⁵¹⁰ Fred Halliday, *Iran Dictatorship and Development*, (Penguin Books 1979) 107

was the first issue to bring dispute among clergies, but it was the land reforms that eventually broke the back of his economic plan. While the economic plan seemed to be working perfectly for almost a decade, enjoying a high growth rate in services and industry, this growth rate cannot be described as an element of domestic development; In fact, his economic plan seemed to be working, not merely because of its efficiency, but also due to the prompt and steady growth of the oil revenue, which facilitated a remarkable growth rate. While the oil revenue exceeded \$300 million in 1963, by 1977 it reached the outstanding amount of \$24billion. This amounted to 77% of the total revenue. The more Iran earned from the oil revenue, the more money was injected in the industrialisation and urbanisation programme of Iran. It is crucial to remind that the security of the oil revenue reduced the need for foreign aid and this in turn created additional confidence with regard to Iran's sovereignty.

While land reform has been a trending tool in developmentalist countries from South America to East Asia, the experience of Iran was full of complications. The land reform under Shah's reign was divided into five available options for the landlord: 'tenancy, sale to peasants, division of the land between the landowner and the peasant, the formation of an agricultural unit by the landowner and peasant to run the property and the purchase of the peasants' rights by the landowners.⁵¹¹ There was only an exemption for the mechanised farms.

The underpinning fundamental problem with the land reforms was the fact that the new agri-business turned out to be not so efficient.⁵¹² Furthermore, the landlords were not motivated to invest in agriculture anymore, due to the rapid urbanisation and fast growth rate in urban development. Also, a new socio-economic phenomenon was emerging: the vast immigration of villagers, who had lost their property and their jobs, to big cities. Most of these farmers had to resell the lands to the previous owners but the money could only buy them a decent place at the outskirts of major cities like Tehran. While a centralised establishment had proved to be a key element for financial growth and national unity, conversely centralised economic plans had rarely proved to have a positive effect, especially if conducted with a fast pace, due to the fact that there was no adjustment period in the cities.⁵¹³ It can be argued that the socio-economic ambitions of Shah outpaced the socio-economic capacity of the country. It will be a conclusion in this chapter that the lack of harmony between the de facto capacities of the country with the oil-boostered

⁵¹¹ Katouzian (n 309) 281

⁵¹² Ibid 282

⁵¹³ Keddie (n 477) 162

ambitions of the Shah, combined with his accelerating dictatorship were amongst the major cause of the collapse of his socio-economic plans and his entire reign.

The analysis of Shah's reign would be a fragmentary endeavour without the study of the pivotal role of the Oil War and nuclear negotiations which were undergone during the cold war. For this reason, in addition to the domestic economic plan of Shah and his White Revolution the regional and global spectrum which surrounded Iran at the time shall be illustrated. Whilst the backbone of the Iranian economy has turned out to be the oil revenue ever since the 1953 coup, the fluctuation of the oil price has dramatically affected the socio-economic plans of Shah. It has to be reminded that, although the key source of Iran's access to foreign currency and export income is derived from the oil and petrochemical revenues, it is a biased assertion to coin the term 'economic backbone' merely to Iran's reliance on the oil revenue. Still the driving force of world's economics and production of commodities depends heavily directly and indirectly on the oil and petrochemical sources. Thus, although it is countries like Iran who suffer directly from the Dutch disease, the dependency on the world's economy on oil is a proven fact for which geopolitical arrangement, law and wars has been shaped in order to utilise the access to the oil rich countries. Back to the economics of Shah and its oil dependency, the fluctuations of oil price were concurrent to the accelerating era of the Cold War which had besieged Iran; it has to be reminded once again that Iran had one of the common and longest borders with USSR whilst the political and economic alliance of Iran with USA was an evident fact. The other issue which surrounded Iran's political spectrum was the nuclear programme of Shah. These two pillar components of foreign affairs of the Shah's era impacted the geopolitical regional arrangements which its trace can be seen and felt in the current geopolitical tension in the West Asia. Thus, the nuclear negotiations between Iran and USA and the Oil War will be scrutinised simultaneously in this part to mould a comprehensive account of Shah's domestic ambitions and international challenges in his last decade of reign.

Roham Alvandi has done an extensive research on the relationship of Shah of Iran and Nixon the president of USA 1969-1974. Alvandi by focusing on the nuclear negotiations and the arm sales to the Shah has gathered interesting facts and findings. He has found out that the Nixon Doctrine on enhancing US relationship with the Shah of Iran was aimed to maximise and utilise not only US interest in the region by solidifying a reliable partner but also to ameliorate his own stands in the US.⁵¹⁴ It is interesting to find out that, Nixon and Kissinger at the time put their effort

⁵¹⁴ Roham Alvandi, *Nixon, Kissinger and the Shah* (Oxford University Press 2016) 63

to increase the Shah's status from a client state to a partner state. In doing so almost every legal restriction on the sales of conventional arms to Iran was lifted in 1972.⁵¹⁵ There are few occasions in the 1970s which reshaped the relationship of the US and Iran. Probably the most important one in terms of economics is the Arab-Israeli war of October 1973. As a result of the Arab oil boycott in addition to the decision of the Organization of the Petroleum Exporting Countries (OPEC) in Tehran in December 1973 to raise the oil price the first energy crisis in the 1970s ensued.⁵¹⁶ It can be comprehended that the sudden surge of the oil revenue led to the boost of Shah's confidence and an increased perception of independence, the trait which has been missing almost from the very beginning of his reign. The quadrupled increase of the oil revenue from 4.4\$ billion in 1973 to 17.8\$ billion in 1974, also the total amount of the public and private sector investment in Iran's Fifth Development Plan (1973-1977) rose from 36\$ billion to circa 70\$ billion increased the enthusiasm of Shah to accelerate his desired economic advancement.⁵¹⁷ Such increase as denoted above had positive impact on the Shah's attitude towards further economic growth. As Alvandi identifies: 'the rationale behind the massive increase in expenditure in the Fifth Plan was that, with one Big Push to industrialize Iran's economy, financed by the oil windfall, Iran could break out the viscous circles of underdevelopment and join the ranks of the world's leading industrialised economy.'⁵¹⁸

Nonetheless, the positivity turned into an illusion in the later years of the decade as will be illustrated later. In March 1974 in his Norooz⁵¹⁹ annual message the Shah announced that: 'we shall, as fast as we can, entre the gate of using the atom and other sources of energy in order to save oil for production of chemical and petrochemical products. We shall not use oil, this noble substance as common fuel.'⁵²⁰ It is evident by this speech that the significant surge of the oil revenue, had given Shah an enormous sense of autonomy, independence and sovereignty, which as mentioned above, were the missing traits of his reign. Though the spirit of the newly precepted traits will be questioned later. As a key point of quarrel between Iran and USA is still the nuclear programme of Iran, a concise elucidation of the circumstances at the time of Shah will shed a light on the subject which will also assist argument of the next chapter. In 1964 an agreement was signed

⁵¹⁵ Ibid 128

⁵¹⁶ Ibid 131

⁵¹⁷ Ibid 132

⁵¹⁸ Ibid

⁵¹⁹ Iranian new year

⁵²⁰ Alvandi (n 514) 132

between Iran, United States and the International Atomic Energy Agency (IAEA) which placed Iran's facilities under IAEA safeguards.⁵²¹ As mentioned above the massive purchase of the conventional weapons by Shah convinced the US authorities at the time that, Iran will not feel the need to develop an atomic bomb. Nonetheless, it can be comprehended that India's atomic test and the rumours of Israel's capacity to develop the bomb may have threatened the US authorities to take new measures once dealing with the Shah's nuclear programme. The oil-boosted autonomy of the Shah also was an indication of his willingness to expand the nuclear programme although he has repeatedly vouched for his civilian and peaceful nuclear ambitions. Since the 1974 the new president of the USA, Ford, although complying with the previously agreed arms deal with Iran, was not keen on the nuclear ambitions of Shah. Alvandi has found out that: 'the main obstacle to a nuclear accord was the unwillingness of the United States to allow Iran to reprocess spent nuclear fuel, a sensitive nuclear technology that would allow Iran to stockpile plutonium for a nuclear weapons program. Driven largely by domestic political considerations, the Ford administration tried to impose stringent nuclear safeguards on Iran, which went beyond Iran's commitments as a party to 1968 Nuclear Non-Proliferation Treaty (NPT).' ⁵²² In the further stages of negotiations, the US set forth a veto provision which would have enabled the US to veto Iran's activity even with the collaboration of the US firms at any time which the US administration deem necessary.⁵²³ Ironically the Shah rejected the proposed terms as he believed such measures are an encroachment on the Sovereignty of Iran.⁵²⁴ As the core of this Thesis has been on the correlation of Sovereignty and FDI (in this case investment in atomic facilities), it once again can be observed that such concern did also exist even during the most benevolent time of Iran-US relationship. The sense of Sovereignty which Shah had felt against foreign states, precisely the state which empowered him twice in his reign, can be proclaimed to have been as a result of the sudden abundance of the oil revenue. Nonetheless, the sense of national sovereignty or even the vision of its necessity did exist amongst Iranian public even before the oil boost. Alvandi opines that: 'the US administration gave no weight in their deliberations to the political sensitivity in Iran of foreign control over national resources, particularly in the context of Mosaddegh's nationalisation of Iranian oil in 1951 and the subsequent Anglo-American-sponsored coup that toppled the popular Prime Minister in 1953. The

⁵²¹ Ibid 131

⁵²² Ibid 130

⁵²³ Alvandi (n 514) 145

⁵²⁴ Ibid

American showed no understanding of the damage that would be done to the Shah's already precarious legitimacy if he were seen to acquiesce to American nuclear apartheid despite Iran's adherence to the NPT and the billions of dollars that Iran would be paying to American firms for this technology.⁵²⁵ To Shah there was an evident line of double standard against Iran. He seems to have realised that there was no similar demand forced upon any other signatory state to the NPT. The Shah promulgated his assertions in public that: 'the American demands were incompatible with our sovereignty.'⁵²⁶ It is worth identifying that, there are drastic resemblances between the issues which were the topic of disagreement between Iran and US over the nuclear programme of Iran and the current quarrel which has besieged Iran's economic prosperity. As it will be evinced in the next chapter it can be proposed that, the nature of the political establishment of Iran, being Secular Kingdom or Islamic Republic is a peripheral substance in the US approach towards Iran. It can be posited that, from the phase that Shah considered an independent status of his own, trying to discard the existing US influence in his sovereignty, the US administration challenged him forgoing the political nexus and the geopolitical aid which Shah had provided for the interest of the US through his reign.

It seems beside Kissinger who was not as influential in the oval office under Ford's presidency as he was during Nixon's time, the only senior US official who fathomed the situation was the US ambassador to Iran, Richard Helmes, who still believed in the Nixon's Doctrine on Iran to treat Shah as a partner in the region. He warned that the US veto provision would be seen by Iranians as: 'an affront to the Shah's integrity, an encroachment on national sovereignty and a lack of good faith which could bring into question the whole range of our close and mutual advantageous ties with Iran.'⁵²⁷ It can be suggested that Ford has reduced Shah's value to the former status of a client rather than the partner which Nixon desired. For that reason, amid other reasons including the negative image of the Shah for the energy crisis in the west and his negative human right record in the public minds of westerners, the nuclear negotiation was futile. In return Shah came into nuclear FDI agreement with France and Germany. However, the oil war was still to play a decisive role in the very last years of Shah's reign.

If the 1973 energy crisis was as a result of Arab oil embargo and Iran's persistence to increase the OPEC pricing, in the later years of the decade the political alliances has undergone a

⁵²⁵ Ibid 155

⁵²⁶ Ibid 154

⁵²⁷ Ibid 145

swift shift which resulted in another unprecedented oil shock in 1979 as a result of the Revolution in Iran. While Nixon and most fervidly Kissinger favoured the Shah and Iran as a reliable partner against Saudi royal family⁵²⁸, from Ford's administration onward there seems an apparent shift has occurred in US approach towards West Asia. With the acceleration of Shah's persistence on his autonomy and sovereignty which he lacked for few decades, it seems the US administration no longer considered him as a reliable actor in the West Asia. This is in addition to the domestic uprising against Shah's legitimacy and dictatorship and the long-awaited economic demands by the rural population whom their living standards have not improved as the urban population did. Furthermore, amongst the public in west the Shah of Iran was being taken culpable for the 1973 energy crisis and notoriously branded as the 'emperor of oil.'⁵²⁹ Andrew Scott Cooper has researched the last oil war of the 1970s by which he concludes that, in 1977 US administration backed a covert effort of Saudi Arabia to manipulate the oil market.⁵³⁰ The critical oil squabble between Iran and Saudi started in 1977 when Shah proposition for a 15 percent increase in price was resisted by King Khalid of Saudi Arabia.⁵³¹ Cooper identifies that: 'Riyadh announced it would take drastic steps to ensure that Iran's new price regime never took effect. It would do this by exceeding its production quota, pumping surplus oil into the market, and undercutting the higher price offered by its competitors.'⁵³² As a result of the price manipulation 'Iran lost billions of dollars in anticipated oil revenue. The Shah's government reeling from the blow, was forced to take out a bridge loan from foreign banks. It made deep cuts to domestic spending in an attempt to balance the books and implemented an austerity plan that threw tens of thousands of young Iranian men out of work into the street. The economic chaos that ensued helped turn Iranian public opinion.'⁵³³ Three point should be dissected from this outcome. First is the fact that the positivity of the Shah with regard to his industrialisation advancement which he envisaged turned out to be an oil-boasted illusion after all. Iranian economy has been suffering from the Dutch disease which the sudden hike of oil revenue only worsened and deepened the dependency. The other point is the role of a regional adversaries which did exist during the Shah era. The findings indicate that Saudi

⁵²⁸ Alvandi (n 514)129

⁵²⁹ Ibid 148

⁵³⁰ Andrew Scott Cooper, *The Oil Kings how the US, Iran & Saudi Arabia changed the balance of power in Middle East* (Oneworld 2018) 6

⁵³¹ Ibid 4

⁵³² Ibid

⁵³³ Ibid 5

Arabia since the 1970s had played pivotal role to attack Iran's position. The oil manipulation occurred also during the presidency of Ahmadinejad under Islamic Republic of Iran as will be illustrated in the next chapter. Furthermore, the current sanctions on Iran and the role of Saudi Arabia to replace Iran's oil in the market bears stark resemblance to the 1977 oil manipulation by Saudi against the secular Kingdom of Pahlavi of Iran. Hence, once again it can be comprehended that the regional-global animosity and competition goes beyond the type of political establishments and what they are being officially referred to. The third point is the impacts of the oil manipulation on the Iranian revolution. Although the vulnerability of the Shah's economy to oil fluctuation had direct ramifications on the well-being of Iranian people in years towards the revolution, it would be a bold and misguided proclamation to simplify the 1979 revolution as result of the 1977 oil manipulation. As Cooper opines: 'the US-Saudi oil coup directed against the Shah's leadership of OPEC and was not a conspiracy intended to topple him from Iran's Peacock Throne.'⁵³⁴ To support this notion, the current example of Iran can be succinctly provided, as it will be discussed extensively in the next chapter. While ever since 1979 Islamic Revolution of Iran, the country of Iran had undergone an 8-year war, and circa 40 years of unilateral and multilateral sanctions which at some point had pernicious crippling impacts on the well-being of the public, the political establishment of Iran has remained in position. While it can be argued that under 50 years of Pahlavi reign the country endeavoured few years of oil embargo only during the oil nationalisation at the time PM Dr. Mosadegh, the rest of the Pahlavi Kingdom did not suffer from the foreign induced sanction as the Islamic Republic of Iran has suffered over 40 years. It was only in 1977 that with the first touch of economic pressure by a rival neighbouring state, the entire economic paradigm and programme of Shah was shattered. His economic, geopolitical and industrial ambitions proved to have been utterly prone to a slight fluctuation in his export revenue. In comparison to the current political establishment of Iran, it can be argued that, Shah's ambitions outpaced the actual capabilities of the country. Although under current political establishment of Iran there has been an evident wave of domestic discontent, nonetheless it will be argued that a key reason of the sustained position of the Islamic Republic is its domestic legitimacy and the national sovereignty which was obtained as a result of the 1979 revolution. Having said that, based on the Hobbesian philosophy which was demonstrated earlier and will be discussed in the next chapter, the most vital pillar of any sovereignty is the consent of the subjects.

⁵³⁴ Cooper (n 530) 7

Since the White Revolution Shah had turned into an absolute monarch of the traditional form, with lack of tolerance toward his critics, and after 1963 the public protests gradually turned into revolts and the uprising of people in the next 10 years. Once the failure of his contradictory economic plans became apparent, a revolution seemed more inevitable than ever. Once again, just like at the time of the coup against Mosadegh in 1953, which he had no control over his sovereignty and left the matters in the hand of the foreigners by fleeing the country, this time in 1979 the last King of Iran never returned and had no choice but to surrender the sovereignty this time to the revolutionary public.

Futile Trajectory of Industrialisation

This chapter was an attempt to excavate, identify, present and expound the historic root of foreign influence over the political and economic sphere of Persia/Iran. In doing so political treaties as well as economic concessions, rights and contracts have been elaborated to establish the existence of exogenous clout in Iran. It was identified that, the reliance of Persia during Qajar's on the political-military treaties of alliance had been to no avail, and the Persian kings and their subjects had been victim to intermittent breach of treaties by the global powers being Russian, French or British. It was established that such betrayal resulted in the veering foreign policy of Persia from one foreign power to another.

In the following part, it was presented that the accelerating rivalry of the western powers initially for the geopolitical importance of Persia was resulted in the various concessions and rights bestowed to foreign investors and states. Thus, although there has been number of primitive manufacturing and service sector FDI in Persia, it was recognised that, the majority of the FDI was as result of political tactics of one foreign state to increase its gains against the other rival foreign state in the realm of Persia. Although such practice may sound normal at this time, nonetheless the brutal modus operandi as a result of foreign rivalry, did not compensate the ramification which was brought upon the public and the foreign debt which was accumulated against the sovereign. It was also posited that the sovereignty of Persia/Iran has been encroached by foreign states either through political manoeuvring or economic engagements. This was evinced in different occasions. Such jeopardised sovereignty, eventually resulted not only to the decreasing legitimacy amongst public, but also it surged the public resentment against foreign clout. The public which were

referred to, varied from Islamic clergies to communist affiliated parties to merchants and to intellectuals since the constitutional revolution.

The finding on the Pahlavi era directly tackled the ambitions of modernization and industrialisation as well as the most dramatic foreign coup against economic interest of Iran. It has to be reminded that Shah for presumable prestigious reasons opted to artificially increase the value of the Iranian currency at its highest level. This of course not only put further pressure on the agricultural sector, but also constrained the industrial productivity, as production was not only aimed at domestic consumption, but also for exports. While the driving force of the economic plan was the boost of the oil price, the sole determinant of the economic volatility had to be the fluctuation of the oil market. With the drop of the oil price, once again he realised that his plan was more of a bubble with such reliance on the oil revenue. It should be brought to attention one more time that, by the boost of oil revenue in the 70s, the Shah discarded previously long-term planned of the 50s and 60s Development Programmes which were aimed to eliminate the Dutch disease being sole reliance on the oil revenue. As mentioned after the 1953 coup he was the de-facto sole power of the state. In addition to his sole authority over the country the boosting oil revenue gave him the confidence or the illusion that he can take control of every aspect of the economy. It was during his last decade in the 70s that the economic plans of Iran tended towards the Keynesian methods of economics. With the failure of Keynesian economic paradigm in the late 70s countries which have been implementing those methods faced severe consequences. For the Shah the consequence was the worst of all. The 1979 revolution which overthrew him put an end to his dynasty. The augmentation of political dictatorship of his which was bolstered by founding the one-party system under Rastakhiz Party, did not provide any room for any sort of change and reform within his political establishment.

While the economic plans stimulated a rather superficial rapid growth, the health care system and literacy programs should be mentioned as moderate positive programmes. He aimed at making Iran, the Japan of the West Asia. As it was mentioned in the previous chapter, the comparison between Iran and Japan may provide significant outcome to find out that, how Iran's industrialisation turned to be a failure under Mohammad Reza Shah. Hence, it is noteworthy to take a look at Japan's economic plan and modernisation programme that Shah admired so much. Japan was the first Asian country that reached the industrialised status, but it was mainly due to the absolute surrender of Japan after World War II and the total adaptation of the western economy.

Hence, the question is why the westernization of Japan worked out well but Shah's effort to modernise, industrialise and westernise Iran did not? Japan, just like Iran and China, had suffered from foreign invasion and influence and in 1858 they were forced to sign a series of unfair contracts and treaties, to open up their market to foreign merchants. Yet again, just like Iran was forced to accept extraterritorial clauses, they also had to deal with the same situation, as Japanese law did not apply to western citizens. All these caused a xenophobic sentiment among Japanese people, which eventually led to the wave of anti-westerners and the overthrowing of the Tokugawa regime. The subsequent years brought a self-isolation policy coupled with the fear of western influence, but later on, it became clear that the western influence is inevitable. As Jacques describes, 'the threat from the west persuaded the new ruling elite that it had to learn from the west as quickly as possible if it was to preserve the country's independence and forestall the fate that had befallen China after the Opium wars, with its progressive loss of sovereignty'.⁵³⁵ The 1870s can be describe as the usher of Japanese domestic industrialisation, while at the very same time in Iran, the then King and the elite of the Qajar dynasty were seeking a new source of income to finance their trips to the Europe. Henceforth at the time of Mohammad Reza Shah, Japan was already 60-70 years ahead of Iran in terms of industrialization. The economic take off of Japan can be witnessed after the Second World War, when the annual per capita growth rate reached 8.4% by 1970, making it the second most powerful economy of the time.⁵³⁶

Seeing this economic growth, Shah announced that he was aiming to make Iran the fifth most advanced economy in the world, but ignoring the fact that, there were proportionate differences in terms of their capacity between the two countries to achieve the similar outcome; While the core of the Japanese industrialisation took place in the late 1800s, it took them a few decades to move from an agrarian-based economy to an entirely industrialised one; in fact, while Shah decided to use the oil revenue to fund his economic plans, the fund required for Japanese industrialisation was generated via its agrarian sector. Hence the urbanisation and immigration from rural to urban societies happened through a reasonable time period and a rational procedure. Furthermore, size and population wise, they were no comparison. It has to be remembered that, while the Japanese approach towards westernisation at least in economic terms was embraced in the society, in Iran

⁵³⁵ Jacques (n 307) 63

⁵³⁶ Ibid

westernisation was still deemed by the public an act of betrayal as a result of centuries of foreign encroachment.

The other country which has been used as a point of comparison is China. Mohamad Reza ruled Iran from 1941 to 1979, which means that his reign coincided with Mao in China, who ruled from 1945 to 1976. Mao also chose the shortcut to industrialise his country by introducing the Great Leap Forward. Although the failure of this plan was catastrophic, it only lasted for 4 years between 1958-1961. The rest of Mao's time is considered as one the most closed door and protectionist economic period in the world, as ideology took over functionality. It could be argued though that without the closed-door economy China may not have had the confidence to open up his market in later years. The Chinese market openness in fact took place in a steady gradual manner within three decades.

If hypothetically, as Shah desired, the White Revolution was the embodiment of the Iranian economic take-off, it is worth to compare it with the period of economic take-off of the already industrialised nations. To begin with, Japan which Shah had idealised did not go through democratic norms and values for decades until the economic prosperity was well secured. While Shah's reign was not democratic either, he introduced the women suffrage at the same time with his economic take-off. This, as briefly mentioned earlier, was not taken lightly by the clergies. In fact, it can be argued that no country in their midst of their economic take-off followed or adopted any democratic values, as the coherence, protectionism and centralisation were valued above individual liberties. It has to be brought into attention that, although democratic norms as it is optimised today were not in practice, nonetheless the industrial revolution did in fact led to enhancement of legal orders which reduced the feudalism nature of the western countries. One of the aims of the Iranian White Revolution it has to be reminded was to decrease the power of the Iranian Feudalism, Landlord clergies and influential Tribal provinces. In the West the gradual pace of democratisation was shaped through almost two centuries. In Britain, almost 100 years after the usher of industrialization, voting was introduced, but only for a limited class of people, and it took place in a gradual pace over a period of 3 decades. Whereas in the USA, it took them almost two centuries from the early days of industrialisation to recognise the voting right of black citizens. In Japan, the male suffrage was acknowledged in 1925 almost 50 years after its first industrialisation stage. This argument will be revisited not only in the conclusion of this chapter but in the fourth chapter that almost all the industrialised and economically advanced countries started their take-

off with slavery, colonisation and protectionist policies. This of course does not intend to glorify the trodden path of the mentioned states. It is merely a clear exploration of the normative approach of different countries in the years of their economic take-off. Whereas Iran in its recent history has never been an imperialist state as evinced in this chapter, nor has used slavery as a means of cheap production, nor had access to free fertile lands of any colonised states, its approach towards industrialisation and its pace have differed from the industrialist states which have used all abovementioned to the benefit of the industrialisation process. In terms of woman's suffrage although unwelcomed by the clergies it seems an inevitable wave of modernisation which surrounded the entire world at the time. Although the abovementioned argument is of historic accuracy that liberties of such kind came after the economic take-off of the industrialised states, it is also valid to point out to the positive role of women in the very same countries. Such proactive role of women has led to massive contributions on almost every field which they have participated. Thus, increasing women's right even as a symbolic gesture resulted in the engagement of the unseen proportion of Iran whom at the time of Qajar dynasty their role was minimal to none as it was the case in Europe in the same period of time.

While Shah intended to westernise the country, and follow the US presidents' advices on reforms, in the last decade of his reign in the 70s, he was not only afraid of the western influence but also resented them as evidenced in his interviews. While the Japanese government, especially in the post-World War II era, was in line with the US policies under any circumstance, the first Asian industrialised nation has suffered more from the global economic crisis that originated from the US in the later years, because its high reliance to the US policies made them more exposed to the effect of the US crisis. The question which one may ask is that, if non-democratic political norms has been a pillar to economic take-off of western countries in the 18th and 19th century, why the same method did not contribute in Iran's economic take off under Pahlavi's reign. Various angles of historic occurrences should be combined to adequately response to the question. Nonetheless the most important and pertinent reasoning could be the lack of essential component of a ruler being independence, legitimacy and national sovereignty in the time of Mohamad Reza Shah; in almost every step of his economic agenda the footprint of US administration and their needs can be seen. The domestic affairs of the country were either proscribed by the US delegates or were lashed out at for reasons such as human right violation. The cornerstone of the political and economic spectrum of Iran at the time also can be argued to have been oil. As it was presented

the oil revenue and its fluctuation had played a pivotal part in the domestic, regional and global affairs of Iran under Pahlavi kingdom. Hence although a remarkable source of income for the industrial ambitions of Shah, nonetheless like a double edge sword the oil revenue distracted the economic plans of the country which previously desired to distance the itself from the Dutch disease. Hence, the industrialisation of Iran, it can be argued that did not go through a normal state of progression. The domestic market and industrial capacity have been distorted constantly by oil subsidies whilst simultaneity the domestic market was being filled with imported product and commodities. When speaking of normal state of progression, it has to be reminded that, although colonial gains did contribute to the industrialisation of the western countries, and although it may not be appropriate to refer to such gains as normal methods of economic improvement, the domestic legal and economic order of the industrialist countries were of the right pace to the gains of colonial achievement. This was another element lacking in Iran during Pahlavi; the legal and economic institutions were not prepared or even established to make the best of the oil revenue, and even if they were, the dictator's ambitions outpaced the domestic capabilities.

It is also pertinent to once again refer to the identified fact of foreign military intervention in Iran's economic agenda; the exporting state of FDI, have in fact executed military coup in order to secure its vital economic interest in Iran, being the Iranian oil fields. If it was not for the foreign brutal meddling in the Iranian sovereignty, it can be argued that, the democratically elected PM through the check and balances in Majles could have paved the way towards industrialisation in an attainable and reasonable manner. Such instances and occasions which have been demonstrated in this chapter, have moulded the ideological root of the current establishment of Iran being Islamic Republic. As it was noted and will be mentioned in the next chapter a crucial reason of the 1979 revolution was derived from the anti-imperialist movement in Iran initially ignited by the Left-Communist movement of Iran and later was passed on to the Islamic left wing of the new establishment. Such feeling was established in this chapter that, is well rooted in the past 200 years of Iranian history of legal-political and economic confrontation with the west. Thus, the next chapter in which the legal and economic evolution of post 1979 Iran will be dissected is based on the background presented in this chapter. As it will be presented that, the geopolitical importance of Iran has remained intact, and the current sovereignty of Iran, despite being known as an ideological establishment, has been facing with tangible intimidations over its sovereignty. Hence,

it will be argued that, the main hindrance towards the FDI inflow in Iran since 1979 has been Iran's persistence on its hardly attained independence and national sovereignty.

Chapter Four

Iran's Endeavour and Struggle for FDI since 1979

This chapter will set forth an analysis of the evolution of the current political establishment in Iran since 1979. The first part of the chapter will emphasise the posited argument that the current political establishment of Iran, being the Islamic Republic, has sustained the national sovereignty more intact than the previous two political establishments since early 1800s. While the previous chapter has identified the crucial historic occurrences by which the (economic or political) sovereignty of Iran has been infringed through foreign clouts, the first part of this chapter will illustrate the evolution of the concept of sovereignty in the past centuries. In doing so, the focus of the research is based on the ideas and philosophy of Jean Bodin and Thomas Hobbes with view to introduce the post-medieval concept of sovereignty, followed by the doctrine of Westphalian Sovereignty. While the leading discourse in the past few decades has been favouring globalisation by which the post-sovereign era has been endorsed, the recent changes in the political and economic affairs of the world once again indicate that the discourse of sovereignty is gaining momentum. Although numerous considerations have been drawn thus far to highlight the importance of the discourse of sovereignty and its direct correlation with foreign capital through FDI, the definition of sovereignty has not been offered up to this point. The reason to present the description and the delineation of sovereignty in this chapter lies in the fact that, as it is postulated in this Thesis, the current political establishment has been the only political establishment for the past 200 years in the Iranian history, which has successfully sustained the national sovereignty almost over every matter whilst deriving its legitimacy from public vote. It will be further discussed in this chapter that, while Iran has been taking adequate and necessary steps towards market openness and economic-political integration, the reason behind the futility of these attempts is the persistence of Iran's establishment to keep its sovereignty immune from any exogenous influence. While the previous chapter has identified the notorious side effects of foreign clout and its ramifications over the Iranian domestic affairs, this chapter postulates that the reason behind Iran's vigilance (if not aversion) towards foreign clout is well rooted in its recent history. In the second part of this chapter, the legal evolution of Iran towards FDI will be presented in a chronological order from the early months of the Islamic Revolution to the genesis of the Joint Comprehensive Plan of Action (JCPOA). As this chapter postulates, the key issue of the

unsuccessful attempts of Iran to increase inward FDI remains to be its persistence on sovereignty and independence. It will be illustrated that, although there are internal economic and political obstacles, the key hurdle remains to be of political nature. Thus, the very last part of this chapter provides an analysis on the recent US withdrawal from JCPOA to justify the abovementioned proposition.

4.1 Sovereignty: a Recurring Necessity

As it has been proposed in the previous chapter, FDI may, in addition to its contributions, convey ramifications which would hinder the sovereignty of the recipient country. While the previous chapters have been discussing the exogenous clout over the economic and political sovereignty of different countries, this part of this chapter will expound the underlying theme of sovereignty. This part will provide a comprehensive account of what constitutes sovereignty, what are the different types of sovereignty and to what extent sovereignty can be prone to foreign distortions. This elaboration will assist in establishing the core premise of this Thesis that in oscillating times and political turmoil sovereignty should be upheld as an indispensable component of the state. The rationale behind such a statement derives from historic facts, not limited in Iran; in the absence of the sovereign, unprecedented domestic turmoil, battles and chaos will surge which could be ensued by economic shortcomings. Therefore, maintaining sovereignty could be argued takes precedent over economic prosperity, if, and only if, the economic prosperity jeopardises the sovereignty and the public wellbeing; while the economic prosperity supposedly should benefit the public's living standards, nonetheless it has been set forth in the past three chapters that, the economic prosperity not only may not last long but also the beneficiaries of the prosperity were not necessarily the public of the recipient country.

This part of chapter bases its argument on the works of different legal scholars; Jean Bodin, Thomas Hobbes and Stephen Krasner in particular. The reason of relying on Bodin and Hobbes as it is explained in details, lies in the fact that the roots of the concept of sovereignty as understood today is based on the works of them. This does not compromise the progress which has been made in past few hundred years in light of the discourse of sovereignty. Rather it sets the foundation of the discourse at question. To enhance the argument, later in this part, sovereignty has been explained in accordance to the research of Krasner.

Probably the most pertinent scholar to initiate this discourse would be Jean Bodin. In mid-1500, he witnessed the vacuum of power in France due to domestic turmoil and what is known as the French Wars of Religion, which tattered the country for almost 4 decades from 1562 till 1598. In 1576, he wrote the Six Books of Commonwealth, which Přibáň suggests ‘was a response to the political struggle for the independence of the French King from the Pope and the Holy Roman Emperor’.⁵³⁷ The book has ever since been an inspirational work on law and political science influencing thinkers, such as Hobbes and Locke. Bodin initiates his argument by postulating that a state should first secure the lives of its subject before considering how their lives should be prospered.⁵³⁸ Thus, it can be argued that for Bodin the importance of survival takes precedent over the quality of the well-being of the subjects. Although he discerns a legitimate sovereign versus a tyrannical despotic one based on the adherence and obedience of the earlier to the laws of God⁵³⁹, he nevertheless asserts that the existence of a tyrant sovereign is better than anarchy.⁵⁴⁰

Bodin proclaims that for a state to exist sovereignty must be absolute regardless of its type. He is talking about Monarchy, Aristocracy and Democracy and he refutes the possibility of a mixed constitution.⁵⁴¹ He argues that, as the imperative feature of the sovereign is the power to command,⁵⁴² such power cannot and should not be shared as it would once again result in anarchy. Nevertheless, he acknowledges the separation of sovereign and the government, the sole nature of which should be to serve as advisors to the sovereign.⁵⁴³ In light of Bodin’s hypothesis, the identity of the state is dependent on the identity of its sovereign.⁵⁴⁴ It can be fathomed that for Bodin the sheer spirit of the sovereign is the authority to make law under his absolute rule. It has to be reminded that, despite his emphasis on the absoluteness of the sovereignty, he does adhere to the

⁵³⁷ Jiří Přibáň, *Sovereignty in Post-Sovereign Society* (Ashgate 2015) 52

⁵³⁸ Jean Bodin, ‘The final end of the well-ordered Commonwealth’ in Jean Bodin, *Bodin on Sovereignty: Six books of the Commonwealth* (Seven Treasures Publications 2009) 44

⁵³⁹ Jean Bodin, ‘Concerning Despotic Monarchy’ in Jean Bodin, *Bodin on Sovereignty: Six books of the Commonwealth* (Seven Treasures Publications 2009) 96

⁵⁴⁰ Ibid

⁵⁴¹ Jean Bodin, ‘Of the Different Kinds of Commonwealth’ in Jean Bodin, *Bodin on Sovereignty: Six books of the Commonwealth* (Seven Treasures Publications 2009) 94

⁵⁴² Jean Bodin, ‘A Comparison Of the three Legitimate Types of Commonwealth’ in Jean Bodin, *Bodin on Sovereignty: Six books of the Commonwealth* (Seven Treasures Publications 2009) 227

⁵⁴³ Jean Bodin, ‘The Council’ in Jean Bodin, *Bodin on Sovereignty: Six books of the Commonwealth* (Seven Treasures Publications 2009) 119

⁵⁴⁴ Jean Bodin, ‘The Rise and Fall of Commonwealth’ in Jean Bodin, *Bodin on Sovereignty: Six books of the Commonwealth* (Seven Treasures Publications 2009) 152

covenants that the sovereign should honour.⁵⁴⁵ This can be explained on the basis of his belief to the existence of natural moral values and the common amity between individuals.⁵⁴⁶ As illustrated earlier, for him the distinction between an arbitrary ruler and a legitimate sovereign (which could be an absolute monarchy) is their adherence to the law of God. This could be the yardstick to distinguish Thomas Hobbes and Bodin, although both were avid proponents of absolute sovereign. Bodin admired natural law and trusted the good spirit of men, but Hobbes was of the belief that the law of nature is brutish and nasty.⁵⁴⁷ Hobbes went further to disparage the natural law by hypothesising that ‘Covenants, without the Sword, are but Words, and of no strength to secure a man at all.’⁵⁴⁸ In other words, he expounded the unreliability of human nature without a supreme tangible force.

As it will be explained in this chapter, the key hurdle toward FDI growth in Iran remains the US embargo and the economic sanctions. This Thesis will conclude that the key motive behind the US sanctions is the independence of Iran and its national sovereignty. It will be postulated that, based on the geopolitical arrangement in the region of the West Asia, a threat of war by US or armed confrontation by its apparatus has been a real and valid ground for the establishment of Iran to perceive and relate different matters to the issue of national security. Instituting such tie, have given weight to the centrality of the political core of the Iranian establishment. This centrality could be reflected in the increase of the authority of the sovereign over not only the foreign affairs of the country, but also in the domestic affairs. Thus, the reason of the analysis on Bodin is due to the fact that, Bodin in the time of writing of the Six Books witnessed that France was under absolute chaos and prone to collapse. The remedy he sought was an absolute sovereign, who could end the disarray and bring stability. Although the absoluteness of the sovereign’s right may not seem in line with the democratic norm of the current establishment of Iran, but the argument for the centrality of political sovereign would become an inevitability in order to secure the country against secession and turmoil. The pertinence of such argument with the Thesis lies in the fact that, the increased power of the sovereign in the political spectrum, could lead to further enhancement of the sovereign’s right in the economy. As it has been presented in the past two chapters, the

⁵⁴⁵ Jean Bodin, ‘Concerning Sovereignty’ in Jean Bodin, *Bodin on Sovereignty: Six books of the Commonwealth* (Seven Treasures Publications 2009) 66

⁵⁴⁶ Jean Bodin, ‘Concerning Corporate Associations, Guild Estates and Communities’ in Jean Bodin, *Bodin on Sovereignty: Six books of the Commonwealth* (Seven Treasures Publications 2009) 137

⁵⁴⁷ Thomas Hobbes, ‘Of Man’ in Thomas Hobbes, *Leviathan* (Oxford University Press 2008) 10

⁵⁴⁸ Thomas Hobbes, *Leviathan* (Oxford University Press 2008) 111

extended role of the sovereign/government could have dual impact on the economy. Nonetheless, as identified in Chapter One privatisation and market access have found to be FDI determinants. Thus, the key argument for the extended role of the sovereign is the sovereign's right and duty to protect its subjects against foreign forces. This Thesis has been studying and discussing the influences of the foreign forces via economic engagement. Hence, although the issues of potential surge in corruption and decrease of efficiency are valid to be raised, the key focus at this point shall remain on the sovereign's role against foreign force. In the next part of this chapter though, the argument on the efficiency and corruption is demonstrated.

To elaborate on Hobbes' notion on sovereignty, apart from the abovementioned disparity over natural law and what was then coined as positive law or legal positivism, Přibáň argues that for Bodin the subjects' consent to sovereign law was irrelevant, while to Hobbes it was the agreement between the sovereign and the subjects that validated the sovereign's legitimacy.⁵⁴⁹ The agreement is known as the social contract. As mentioned earlier, Hobbes did not share the same opinion over the virtue of men and natural law. Thus, he introduced the concept of fear as the core reason for subjects to confine themselves to the authority of the sovereign. He distinguishes between two types of commonwealth, one by acquisition and one by institution.⁵⁵⁰ In both types, he identifies the fear as the main reason of surrender to the sovereign. Nonetheless, this fear, which convinces the subjects of the realm to surrender to the sovereign, is characterised by their consent to acknowledge the sovereign thus be protected from different perils being one another, the sovereign himself or a foreign foe.⁵⁵¹ He describes the sovereign, the subject and the commonwealth as follows: 'For by art is created that great leviathan called Commonwealth, or State, which is but an artificial man; though of greater stature and strength than the natural, for whose protection and defence it was intended; and in which the sovereignty is an artificial soul, as grieving life and motion to the whole body.'⁵⁵² Furthermore, to elaborate his notion of sovereign rule, he expounds the differences between natural and positive law asserting that *auctoritas non veritas facit legem*, which is translated as: authority, not truth, makes the law.⁵⁵³ According to Hobbes, there is no law to be bound by until the sovereign enacts and enforces one. This could be

⁵⁴⁹ Jiří Přibáň, *Sovereignty in Post-Sovereign Society* (Ashgate 2015) 56

⁵⁵⁰ Thomas Hobbes, 'Of Dominion Paternal, and Despotical' in Thomas Hobbes, *Leviathan* (Oxford University Press 2008) 132

⁵⁵¹ Hobbes (n. 547), 135

⁵⁵² Ibid 7

⁵⁵³ Thomas Hobbes, 'of Civil Laws' in Thomas Hobbes, *Leviathan* (Oxford University Press 2008), 189

seen in religious countries, such as Iran, which has partially adopted their constitution based on Shari'a law, or other Muslim countries having autocratic rules fully in accordance to religious law. This will be explained in more detail in the next part of this chapter.

Once again, the root of Hobbes' insight should be traced back in the civil war that had stricken Europe back in 1642. Přibáň describes Hobbes' philosophy as 'the political duality of security/obedience and the origin of political unity guaranteed by the Rule of Law-these hallmarks of political modernity- both originated in Hobbes concept of political sovereignty.'⁵⁵⁴ It can be comprehended that the notion of social contract, which a century later was developed and codified by Jean-Jacques Rousseau, at the time provided a remedy for the security and unification for the tattered Europe through legal positivism. Nonetheless there are modern legal philosophers and scholars, who argue that the social contract is artificial, insufficient and suffers from instability for the current internationalize affair.⁵⁵⁵ Such notions and critics have been emerging partly to support the legal philosophies that are compatible to the emerging issues of modern times; at the same time, either intentionally or unintendedly these views are supporting methods, which may at first sound reasonable, but in reality have hindered sovereignty of independent states in favour of the transnational corporations or political superpowers. This will be illustrated not only in this part of the chapter but also in the following parts with specific emphasis on Iran.

The emergence of globalisation has been fully expounded in Chapter Two by the examination of the ramifications of globalisation as a result of FDI in developing countries. In this part of the chapter, the Westphalian Sovereignty will be used as a specific type of sovereignty, which has been ignored by the powerful states against weaker states. As the rest of this part is mainly dedicated to the Krasner scholarship on this topic, it is valid to ask why his studies has been selected as the focal point of this argument at this point. One simple answer would be that of his credibility and the amount of references made to his work by different researchers and scholars interested in the legal aspects of the concept of sovereignty. Nonetheless, there are more substantive reasons to dissect the scholarship of Krasner. While Hobbes and Bodin can be identified as the key legal philosophers in this field who have introduced and put emphasis on the importance of this subject, Krasner's work contains more practicality whilst still is of philosophical nature; practicality is meant for the use of his thoughts as a lawyer by some politicians who

⁵⁵⁴ Přibáň (n. 537), 53

⁵⁵⁵ Emile Durkheim, *Professional Ethics and Civic Morals* (Routledge 1957) 50

controversially forgo the very basics of the concept of sovereignty precisely the Westphalian Sovereignty. The examples of this practice and its controversies will be given subsequently. Accordingly, this fresh practice of his opinions is another valid justification for the lengthy use of his work. The other reason that Krasner scholarship is the key parameter to base the chapter is the fact that, he has narrowly and accurately categorised the types of sovereignties in the contemporary era. While the works and notions of Hobbes and Bodin are of historic values to refer to in order to illustrate the historic roots of the concept, which indeed have moulded the subject of sovereignty, it is Krasner whom his studies are of recent consideration adjustable to the current course of history. It has to be reminded that, the works of Hobbes and Bodin have led to the status quo which make it possible for scholars like Krasner to enhance the subject. Thus, the reference to Hobbes and Bodin was also a crucial necessity in this Thesis. Krasner's taxonomy of the subject of sovereignty has provided a suitable platform to examine different aspects of the topic. The applicability of his classification to the instances provided on Iran, is another reason which offers a vibrant understanding of his definitions. This is precisely what makes Krasner scholarship directly relevant to this Thesis. As it will be observed different occasions and historic facts on Iran which have been presented in the previous chapter, are once again tested in this Thesis based on the parameters and definitions provided by Krasner. Therefore, while the previous chapter provided historic events to support the argument of the existence of the correlation between FDI and the encroached national sovereignty, this chapter draws direct line of correlation of the above proposition to the legal spectrum of what has been proposed. Thus, Krasner's scholarship provides a solid legal substance to support the historic facts of the previous chapter. Although in different regards some of his thoughts, to be precise the types of exemptions he introduces and provides which justifies the undermining of the value of Westphalian Sovereignty will be contested against, his vivid clarification of the subject is of much assistance to shed a light on distinctive vantage point concerning the subject of sovereignty.

The discourse of eroding sovereignties in a globalised world, as mentioned earlier, has been the dominant rhetoric in the developed countries for decades. Nonetheless, the recent political shifts in the world, varying from the latest US presidential elections to the rise of right wing parties in Europe and the upcoming Brexit, evidently reflect the increasing value of sovereignty for western citizens. It is perceived that globalisation has weakened the states' ability to exert effective

control over their territory and subjects.⁵⁵⁶ Krasner identifies 4 types of sovereignty: International legal sovereignty, Westphalian sovereignty, Domestic sovereignty and Interdependence sovereignty.⁵⁵⁷ It is the Westphalian sovereignty that this part would concentrate most. Ginsburg describes the Westphalian sovereignty as follows: 'Drawing its name from the 1648 treaties ending the Thirty Years' War and the Eighty Years' War, Westphalia stands for principles of mutual non-interference, an emphasis on sovereignty, and formal equality of states.'⁵⁵⁸

While deriving its title from the 17th century, the doctrine of Westphalian Sovereignty has been upheld, or at least strived to be uphold, for centuries. Nonetheless, as it is the key proposition of this Thesis, such sovereignty has been and could potentially be jeopardised by powerful states. Before moving on to expound the Westphalia sovereignty, Krasner's account of different types of sovereignty should be elaborated. This will provide a more comprehensive understanding of the concept and the earlier statement that the previous Iranian political establishment had either lacked sovereignty or had suffered constant encroachments on their sovereignty.

The International Legal Sovereignty is based on two elements: authority and legitimacy.⁵⁵⁹ A State's international recognition over its territory and subjects is the key component of having attained the International Legal Sovereignty status. Non-recognition, nonetheless, 'is not a bar to the conduct of commercial and even diplomatic discourse. But it introduces uncertainty'⁵⁶⁰ to the multinational firms. As in the case of Iran, while US and Iran have been enemies since the 1979 revolution in Iran, both countries do recognise each other as sovereign states. It is remarkable to point out that the two states are still bound by an Amity Treaty since 1955. This will be elaborated in the next part of this chapter.

The crucial point with regard to the International Legal Sovereignty, as pronounced by Krasner, is the issue of legitimacy. This proposition could of course be valid in the international spectrum, but the issue of legitimacy should not be limited to the international realm of law. While the subject of legitimacy has marginalised to be only applicable to International Legal Sovereignty, it could be argued that the lack of domestic legitimacy of the subjects should also be taken as a valid ground to nullify the sovereign right. This could also be expanded to the method by which

⁵⁵⁶ Stephen D. Krasner, *Sovereignty Organized Hypocrisy* (Princeton University Press 1999) 3

⁵⁵⁷ Ibid

⁵⁵⁸ Tom Ginsburg, 'Eastphalia as the Perfection of Westphalia' (2010) 17 *Indiana Journal of Global Legal Studies* 27.

⁵⁵⁹ Krasner (n. 556) 13

⁵⁶⁰ Ibid 16

the sovereign has seized the power. As demonstrated earlier, Hobbes identifies two ways of acquisition of power: by conquest⁵⁶¹ or by institution.⁵⁶² The legitimacy under the Hobbesian hypothesis derives from the fear and eventual consent. Nonetheless, the legitimacy could be hindered in the eyes of the public if the sovereign fails to sustain security and prosperity.⁵⁶³ This could be applied to the Ajax coup of 1953, which was discussed in the previous chapter, and the departing of Mohammad-Reza Shah to a safe haven until the coup took control over the country. Such departure could be taken to mean surrendered legitimacy. Speaking of control over the country, Domestic Sovereignty is identified as the type of sovereignty rooted in the control and authority over the state: ‘the formal organization of political authority within the state and the ability of public authorities to exercise effective control within the borders of their own polity’.⁵⁶⁴ Once again, an example of such situation can be identified in the history of Iran; Not only the Pahlavi’s domestic sovereignty can be questioned, but also the Qajar reign could be the cornerstone of such debate. As presented in the previous chapter, the Qajar royal family and the establishment have been identified as being notoriously under the influence of either Russians or British. This influence had cast a shadow over the domestic affairs of the country as it resulted either in notorious concessions or public revolts. With regard to Domestic Sovereignty, Krasner identifies not only control but also authority as the key component.⁵⁶⁵ As identified in the previous chapter in relation to the oil contract signed between the Anglo Persian Oil Company and the Bakhtiary tribe, the fact that they concurrently had signed the oil treaty with the Qajar king, it was posited that signing into a subcontract was taken as an infringement of the sovereign by the king.⁵⁶⁶ It can be argued that neither the Qajar nor Pahlavi had absolute control and authority over the domestic affairs of the country.

The Interdependence Sovereignty is yet another type of sovereignty brought up by Krasner. While identifying the sole issue of control as the key element of the Interdependence Sovereignty, the inability of the sovereign and its delegates, being the public authority, to regulate the flow of

⁵⁶¹ Hobbes (n. 547) 133

⁵⁶² Ibid 135

⁵⁶³ Hobbes (n.547) 132

⁵⁶⁴ Krasner (n.556) 4

⁵⁶⁵ Ibid

⁵⁶⁶ It could be argued that the Qajar did not enjoy a fully centralised state as the Saffavid or Pahlavi or the Islamic Republic did. Nonetheless, it is irrefutable that the Qajar were the *de facto* and *de jure* sovereign rulers of Iran at the time, despite their incompetence.

information, people and goods is inconsistent with the discourse of the sovereignty.⁵⁶⁷ The relevance of this particular type of sovereignty and Iran can be traced back to the famine of 1917-19, when the State of Iran was not in charge and control of its ports. Such lack of control was followed by lack of authority over the goods being transferred in and out of the country by the British forces. As Krasner argued, 'in practice, a loss of interdependence sovereignty might lead rulers to compromise their Westphalian sovereignty.'⁵⁶⁸

The fourth and probably the most pertinent type of sovereignty is the Westphalian Sovereignty. This part will concentrate on the question of plausibility and adherence of global powers to such doctrine and the reasons why the Westphalia Sovereignty has been ignored in the past few decades. It is believed that weaker states have been the fervid proponents of the rule of non-interference under the Westphalian Sovereignty.⁵⁶⁹ To elaborate the emergence of the Westphalia Sovereignty, it has to be reminded that since the Treaty of Westphalia states have been bound to adhere and honour each other's sovereignty. Emer de Vattel in 1758 pointed out the value of equality of all states regardless of their power and size and the importance of non-interference in the domestic affairs of one another.⁵⁷⁰ The relevance of Vattel's view on foreign sovereignty and Krasner is the exclusion of external actor: 'an institutional arrangement for organising political life that is based on two principles: territoriality and the exclusion of external actors from domestic authority structure'.⁵⁷¹

It can be argued that the 1975 Helsinki Agreement and the UN Charter are the embodiments of the Westphalian Sovereignty. Nevertheless, the question is that how such influential and supposedly admired international law doctrine have been ignored constantly through decades? If the Westphalian is to be taken as the cornerstone of sovereignty and international understanding of this concept, to what extent the global legal order is sustainable having witnessed several instances of breaches of this law?

Krasner has expressed the view that 'Westphalian is violated when external actors influence or determine domestic authority structure, either through intervention or invitation.'⁵⁷²

⁵⁶⁷ Krasner (n 556) 13

⁵⁶⁸ Ibid 13

⁵⁶⁹ Ibid 21

⁵⁷⁰ Emer de Vattel, 'Of Nations or Sovereign State' in Emerich de Vatte, *The Law of Nations*, see: <http://oll.libertyfund.org/titles/vattel-the-law-of-nations-lf-ed>

⁵⁷¹ Krasner (n. 21) 20

⁵⁷² Ibid

While interventions carry an innate coercion, the invitation to sign conventions and contracts on the other hand is usually voluntary if not under duress. Although the coercion at first sight may rightly convey a political weight, there is a legal aspect to the phrase and conduct. As it will be explained coercion can take place either through economic sanctions or direct war. For the application of the any of the two, regardless of their legitimacy, there are formal legal procedure which a country should follow. Either to parliamentary approval in democratic states or through Monarch's verdict in Monarchies, in addition to the UN requirements in case of war. Hence, although coercion has more of a political core, nonetheless the execution of its forms should either follow legal procedures, or would have legal consequence on either the enforcing state or on the targeted state.

While both intervention and invitation violate the Westphalian Sovereignty, it could be proposed that invitations might lead the weaker state to an improved situation while the interventions, which can take place either through direct-indirect military confrontation or imposition of sanctions⁵⁷³ will defiantly bring upon the worst possible outcome for the target state. Krasner is not the only scholar who has identified human rights, minority rights, international stability or fiscal responsibility as general reasons for ignoring the Westphalian Sovereignty.⁵⁷⁴ There has been numerous scholars and politicians, mainly from western countries, who have not only justified the previous instances of breaching the Westphalian Sovereignty, but also have deemed their respected states to take adequate measures to expand their authority. Dietsch proposed that the Westphalian Sovereignty is antiquated and should be ignored to bring about fiscal stability as he considered that 'neither state sovereignty nor self-determination is an end in itself, but a means to promoting individual well-being.'⁵⁷⁵ ⁵⁷⁶ It has to be reminded that, while the concept of economic sovereignty has been referred to in this Thesis in accordance to David Collins, there was no separate category recognised by Krasner as economic sovereignty.

Another example of reasons to undermine the Westphalian Sovereignty has been human rights. Dembour and Kelly, by discussing refugee rights in the UK, found that the European Court

⁵⁷³ Ibid 40

⁵⁷⁴ Ibid 4

⁵⁷⁵ Peter Dietsch, 'Rethinking Sovereignty in International Fiscal Policy' (2011) *Review of International Studies*, Vol 37, Iss 5, 2107, 2108

⁵⁷⁶ While this is in contradiction with the propositions of Bodin and Hobbes explored earlier, it is worthy to mention that scholars and economists, such as Thomas Piketty, did share the belief that the remedy for the EU crisis and the surrounding inequality is more integration (less sovereignty) and a global fiscal system. See: Thomas Piketty, *Capital in the Twenty First Century*, (Harvard University Press 2014) 493 Nonetheless

of Human Rights has overlooked the Westphalian Sovereignty and has taken action to uphold not the human virtues but the sovereign right.⁵⁷⁷ Nonetheless, it could be argued that, the use of human right as a reason to undermine the Westphalian Sovereignty has become a trending norm against Iran. The validity of such allegations against Iran has been mostly rejected by the Iranian officials.⁵⁷⁸

4.2 Iran's Challenges since 1979

The underpinning political and legal characteristic of the current political establishment of Iran can be argued to be a well rooted public response to the past 200 years of its entanglement with the direct and indirect influence of the foreign forces in almost every domestic affair of the country as it was excavated and evinced in the previous chapter. Hence, it is not unusual to come across anti-imperialist notions embodied in the constitutional law of Iran, as explored earlier with regard to Iran's stand on the issue of Territorial Integrity and Sovereignty. Whilst Articles, including but not limited to, 78, 152 precisely dedicated their concern over the abovementioned issues, there are articles including 43 and 44 which urge the governments to enhance the economic independence and uphold the values of public driven economy and welfare system. It can be comprehended that such Articles stipulate Keynesian economic paradigm as explored in chapter 2. It should be reminded that, the private ownership and property law of the new establishment remains faithful to the free market values. Hence, the rise of the Islamist during the revolution and their success against the Communist revolutionaries in a sense, prevented a drastic economic change from the capitalist norms as existed. Nonetheless, as provided above there remains serious concerns over the foreign influence over the economic matters. This concern has even been declared in Article 81 with specific and clear terminology against the foreign Concession over commercial industrial, agrarian, mining and service industries. Nevertheless, as it will be explored in the following parts of this chapter, in reality there has been laws introduces by government and ratified in Majles to facilitate and protect foreign investment in Iran. In defence of Article 81 it can be argued that, the concern of the law-maker has been over the issue of Concession which has had

⁵⁷⁷ Marie-Benedicte Dembour and Tobias Kelly, *Are Human Rights for Migrants? Critical Reflections on the Status of Irregular Migrants in Europe and the United States* (Routledge 2011) 22

⁵⁷⁸ observing the attitude against Iran by the USA and in some case by UN in comparison to their approach towards Saudi Arabia, which is known to be Iran's key rival in the region, can indicate the existence of a systematic double standard against Iran.

notorious existence in the history of Iran. Furthermore, Article 153 has forbidden any sort of contract which can lead to the *Domination* (as the Article specifically reads) of a foreign entity or state over the natural resources, economic, military and cultural matter. Although the term Domination can be vague, the natural resources has been kept highly nationalised despite recent legal changes which has ameliorated the foreign cooperation. On the issue of sovereignty as explained in the earlier chapters, under chapter 5 of the Islamic Republic Constitution, sovereignty is considered to be a divine matter, nevertheless ironically the power is embedded in the public's right to vote under chapter 1.⁵⁷⁹ Also, the principle of separation of powers is asserted in chapter 5. As mentioned earlier, the first Constitution of Iran was influenced by the French and Belgium law in 1906. It has to be clarified that the post-1979 Constitution remains a civil law instrument with increased weight given to Shari'a law. Although a comparative study of Iran's current Constitution against other civil law countries would be an interesting subject, it is outside the scope of this particular study. Hence, the remaining part of this chapter will be dedicated to identify the efforts and the struggles of Iran in order to sustain the balance between sovereignty and prosperity.

Having presented the constitutional stands of Islamic Republic of Iran, the following parts of this chapter, demonstrate the legal and economic challenges of the sovereign state of Iran over the past four decades. In the demonstration it will be argued that, despite the constitutional concerns over the independence and national sovereignty of the country, the legal procedure of almost every government has been inclined towards embracing FDI by ratifying new laws and regulations which provide legal protection for the foreign investors whilst maintaining the necessary level of immunity in terms of protection of the sovereignty. It will be argued that, the lack of FDI emergence in Iran, is not of legal and economic nature, rather it is heavily as a result of regional, global and geopolitical tensions. It will be argued that, the economic sanctions over Iran have mainly been of political nature. Hence the economic deprivation has been used as a leverage for geopolitical gains.

Iran-US Claims Tribunal

Following the Islamic revolution of 1979, an FDI absconding wave began in Iran. New nationalisation laws and regulations along with the political turmoil were indicative of the new

⁵⁷⁹ Constitution of Islamic Republic of Iran (1979) see: <https://divan-edalat.ir/show.php?page=base>

protectionist measures (in economic and security dimensions) to be applied.⁵⁸⁰ The unrest was accelerated by the occupation of the US Embassy in Tehran by Islamist students on 4th of November 1979. Iran demanded from the US the restitution of the Shah over to Iran. It is also remarkable to point out that the ideological reason behind the occupation was the long-lasting aversion of the revolutionaries toward the US influence over the country. As Krasner mentions, ‘the seizure of American diplomats...was highly visible and contentious but justified by arguing that the Americans were, in fact, spies and not diplomats.’⁵⁸¹ Diplomatic negotiations failed to bring a mutual understanding to the two newly animus states. In 1979 the Security Council of UN asked Iran to release the American hostages and advised both states to resolve their issues through amicable means.⁵⁸² US sought the UN to put further pressure on Iran under Chapter VII of UN. Rejecting the US’s request, the UN once again asked Iran to release the hostages.⁵⁸³ Eventually the US put forward the possibility of imposing multilateral sanctions against Iran, but this was vetoed by the USSR on the ground that the issue of the dispute between Iran and US would not put world peace in danger. In a retaliating approach, the then US president Jimmy Carter issued an executive order,⁵⁸⁴ based on the International Emergency Economic Powers Act 1977, which had come in to force few weeks earlier, to freeze, block and confiscate all Iranian assets in US soil. To resolve the issue, on 2nd of November 1981 the Parliament in Iran introduced and passed a bill of conditionality. According to this bill, Iran set forth four conditions based on which an agreement could be sealed and the subsequent release of the hostages would take place in return. More specifically, the US should stop and avoid any further direct and/or indirect interference in the political affairs of Iran; the executive order against Iranian assets to be lifted immediately; the nullification of all financial decisions against Iran and the payment of any relevant compensation by the US; the return of the assets belonging to Shah and his family and acknowledgment of the right of the Iranian government to confiscate these assets in Iran.⁵⁸⁵ It was eventually with the intervention of Algeria that Iran and USA established a legal platform through which they could resolve their disputes. The Algiers Accords, by which the two countries agreed to settle their disputes in an *ad hoc* arbitration tribunal is known as the Iran-United States Claims Tribunal

⁵⁸⁰ Nikki R. Keddie, *Modern Iran roots and results of revolution*, (Yale University Press 2003) 240

⁵⁸¹ Krasner (n 556) 71

⁵⁸² UN Security Council Resolution of 457

⁵⁸³ UNSC Res 461

⁵⁸⁴ Executive order 12170

⁵⁸⁵ Keddie (n 580) 252

(IUSCT) seating in The Hague in Netherlands. It is vital to remind that, since the coup against Dr. Mosadegh in the early 1950s, Iran and the US had signed a treaty of friendship, known as the 1955 The Treaty of Amity, Economic Relations and Consular Rights, which was set as the cornerstone of the Iran-US tribunal. This crucial Treaty was valid until OCT 2018 in spite of all political acrimony and economic sanctions that have been enforced against Iran for almost four decades. The abrogation of the Treaty and its impact will be presented by the end of this subsection.

With regard to the mechanism of the Iran-US tribunal it has to be noted that it is binding without an appellate body within or outside the framework, and the domestic courts of Iran and USA are obliged to enforce and uphold the decisions. It is in line with the New York Convention of 1958 to which both parties to the Tribunal are members.⁵⁸⁶ On the matter of the applicable law, the parties agreed to adopt and apply the UNCITRAL⁵⁸⁷ in line with ICJ⁵⁸⁸ and the previously signed BITs between the parties.

The Algiers Accords of 1981 includes three major agreements through which it was agreed amongst others the release of the American hostages by Iran, the removal of the asset freeze by the US and the promise of non-interference by the US in Iranian affairs.⁵⁸⁹ Following the Accords, Iran released the 52 US hostages on 20th January 1981, a day after the Accord was signed. Nonetheless, the US have not fully honoured their commitments; their interference in other states has been acknowledged by the UN⁵⁹⁰, while the sanctions against Iran have been identified as an intrusion to the Westphalian sovereignty of the country through economic coercion. Although the initial sanctions and the asset freeze were removed at the time, a few years later from 1983 onwards new sets of unilateral sanctions against Iran were introduced.⁵⁹¹ The Operation Staunch 1983 was one of these sanctions against Iran preventing the sale of weaponry to Iran, which was followed a decade later by the Iran and Libya Sanctions Act of 1996 (ILSA) forbidding import-export trade deals for goods and services in addition to the sanctions on FDI of oil and gas in Iran.⁵⁹² In an attempt to legally confront these unilateral sanctions, Iran submitted and filed a claim before the

⁵⁸⁶ Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958

⁵⁸⁷ United Nations Commission on International Trade Law, Resolution 2205 of the UN General Assembly

⁵⁸⁸ Statute of the International Court of Justice ICJ Art 38

⁵⁸⁹ Iran-United States Claims Tribunal (1981) see: http://www.parstimes.com/history/algiers_accords.pdf

⁵⁹⁰ UN General Assembly Resolution 2625 of 1970

⁵⁹¹ Keddie (n 580) 252

⁵⁹² Suzanne Maloney, *Iran's Political Economy since The Revolution*, (Cambridge University Press 2015) 245

ad hoc Iran-US tribunal for the breach of the US promises under the Algiers Accord.⁵⁹³ Nevertheless the ISA sanctions are still in place and the senate has extended its validity for another 10 years in 2016.⁵⁹⁴ The pertinent question on some of the requirements of the Accord which were not delivered by the US, is that to what extent Iran needs to refine its FDI related legal-economic framework, in order to confront the unreliability of one of the main FDI exporter in the world?

Having introduced the core and background of the IUSCT, it is relevant to explore the remarkable contributions of IUSCT to the field of investment arbitration. The IUSCT has been identified by various legal scholars as ‘the most significant arbitral body in history and its awards a gold mine of information for perceptive lawyer.’⁵⁹⁵ While there are numerous scholars who have dedicated their research on the IUSCT perhaps the most significant contribution of the ad hoc tribunal is on the issue of expropriation and in particular the cases regarding indirect expropriation. It has to be reminded that, the scope of the implication of IUSCT tribunal is not limited to the expropriation; for instance, attorney and legal scholar David D. Caron has identified the Interim Measures of Protection as a key contribution of the IUSCT; Interim Measures as he opines are: when ‘a party institutes an action seeking the return of a valuable piece of property which is stored under conditions that will have rendered the item worthless by the conclusion of the proceedings.’⁵⁹⁶ The significance of the IUSCT on this matter is the fact that while ‘the Interim measures proceedings are not common in international arbitration, the practice of the Iran-United States Claims Tribunal in the area of interim measures is very extensive.’⁵⁹⁷ It has to be reminded that, his identification of the Interim Measure as a key contribution of the IUSCT although valid, was not written long after the commencement of the tribunal. His studies (on interim measures) is dated back to 1986. Hence despite the validity of his finding and the justified contribution of the tribunal on this subject, there are other key contributions of the tribunal which have attracted

⁵⁹³ Iran-US C.T.R claim number A/30 (12/ Agust/ 1996) see: <https://www.state.gov/documents/organization/65779.pdf>

⁵⁹⁴ Patricia Zengerle, ‘Extension of Iran Sanctions Act passes U.S. Congress’ (2016) see: <https://www.reuters.com/article/us-iran-nuclear-usa-sanctions/extension-of-iran-sanctions-act-passes-u-s-congress-idUSKBN13Q5JW>

⁵⁹⁵ David D. Caron, ‘The Nature of the Iran-United States Claims Tribunal And the evolving structure of International Dispute Resolution’ 84 Am. J. Int’l L (1990) 104

⁵⁹⁶ David D. Caron, ‘Interim Measures of Protection: Theory and Practice in Light of the Iran-United States Claims Tribunal’ ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT Vol. 46 (1986)

⁵⁹⁷ Ibid

numerous attentions and has been used as a milestone in the field of investment arbitration. The most significant one as postulated earlier is the issue of expropriation.

Before expounding the IUSCT contribution on this matter a brief yet succinate description should be given. As Dolzer et al identifies ‘consistent with the notion of territorial sovereignty, the classical rules of international law have accepted the host state’s right to expropriate alien property in principle.’⁵⁹⁸ Moreover, they suggest that: ‘treaty law typically addresses only the conditions and consequences of an expropriation, leaving the right to expropriate as such unaffected.’⁵⁹⁹ Thus, the right to expropriation has been acknowledged by international law to uphold the sovereign rights in the host states. Nonetheless, what discerns the legal against illegal expropriation is the four requirements that Dolzer et al identify as follow: the taking ‘must serve a public purpose, must not be arbitrary, must follow due process and must be accompanied by prompt, adequate and effective compensation.’⁶⁰⁰ To distinguish the direct and indirect expropriation they also suggest that, if the legal title of the FDI owner is affected a direct expropriation has taken place, and if the title has remained unaffected but the owner has been deprived from utilizing the investment the indirect expropriation has occurred.⁶⁰¹

In respect of the indirect expropriation there are two competing standards as Heiskanen suggests based on his account on the contribution of the IUSCT.⁶⁰² One is the sole effect and the other is the police power. Under sole effect doctrine ‘if a governmental measure effectively deprives the owner of control over his property or substantially effect its commercial value, compensation is required even if the state may purport to have adopted the measures in exercise of its police power’.⁶⁰³ On the other hand, ‘under the classical police powers doctrine if the regulatory measure is taken for a legitimate public purpose and is not discriminatory, the measure is lawful under international law and does not give rise to right to compensate’.⁶⁰⁴ As Mostafa opines: ‘Under customary international law, States have a clear right to regulate commercial and business activities within their territory. The power to take these actions stems from principles of

⁵⁹⁸ Dolzer and Schreuer (n 47) 98

⁵⁹⁹ Ibid

⁶⁰⁰ Dolzer and Schreuer (n 47) 100

⁶⁰¹ Dolzer and Schreuer (n 47) 101

⁶⁰² Veijo Heiskanen, ‘The Contribution of the Iran-United States Claims Tribunal to the Development of the Doctrine of Indirect Expropriation, *International Law FORUM du droit international* (2003) Vol 5 Issue 3 179

⁶⁰³ Ibid 177

⁶⁰⁴ Ibid

sovereignty and the territoriality principle'.⁶⁰⁵ Thus it can be posited that, the police power doctrine has a substantive correlation with the national sovereignty and the right of sovereign, hence its implication benefits the host states when compared with the sole effect doctrine. While the sole effect doctrine has been identified as the contribution of the tribunal on the subject of indirect expropriation⁶⁰⁶ it is interesting to find out that there have been cases in the very same tribunal which were decided based on the police power doctrine. For instance, in the Sedco case the tribunal states that: 'it is an accepted principle of international law that a State is not liable for economic injury which is a consequence of bona fide "regulation" within the accepted police power of states.'⁶⁰⁷ Although such case and such interpretation exist in the tribunal, the weight of cases which were concluded based on the sole effect doctrine outnumbers the police power doctrine.⁶⁰⁸ Dolzer explicitly believes that, 'the authority of the sole effect doctrine comes from the practice of the Iran US Claims Tribunal.'⁶⁰⁹ For most scholars and researches on this subject including Dolzer and Mostafa in their separate studies the case of *Starrett Housing vs Iran*⁶¹⁰ is the decisive case to base the argument for the sole effect doctrine. It is concluded in this case that: 'it is recognized in international law that measures taken by a state can interfere with property rights to such an extent that these rights are rendered so useless that they must be deemed to have been expropriated, even though the state does not purport to have expropriated them and the legal title to the property formally remains with the original owner.'⁶¹¹ Another crucial case in the IUSCT in favour of the sole effect doctrine is the *Tippetts* case.⁶¹² Based on this case an expropriation takes place 'whenever events demonstrate that the owner was deprived of fundamental rights of ownership and it appears that this deprivation is not merely ephemeral.'⁶¹³ Furthermore, the case finds the intention of the state irrelevant: 'the intent of the government is less important than the effects of the measures on the owner, and the form of the measures of control or interferences is less important than the reality of their impact.'⁶¹⁴

⁶⁰⁵ Ben Mostafa, 'The Sole Effects Doctrine, Police Powers and Indirect Expropriation under International Law' (2008) 15 Australian International Law Journal 267

⁶⁰⁶ Dolzer and Schreuer (n 47) 114

⁶⁰⁷ *Sedco Inc v National Iranian Oil Co* (1985) 9 Iran-US CTR 248 at 275

⁶⁰⁸ Mostafa (n 605) 280

⁶⁰⁹ Dolzer and Schreuer (n 47) 115

⁶¹⁰ *Starrett Housing* (1983) 4 Iran-US CTR 122

⁶¹¹ *Ibid* 154

⁶¹² *Tippetts* (1984) 6 Iran-US CTR 219

⁶¹³ *Ibid* 225

⁶¹⁴ *Ibid* 226

There are other types of cases in the IUSCT that Mostafa argues their position is ambiguous in terms of the sole effect doctrine. He argues that based on such cases that indirect expropriation occurs where there is 'unreasonable interference' with property rights.⁶¹⁵ The unreasonable interference is the ambiguous component which makes it unclear to decide between the regulatory right of the state as the sovereign versus the sheer intention of the sole effect doctrine which evidently upholds the right of the investors. He basis his finding based on the following cases: Hazra Engineering⁶¹⁶, Ataollah Golpira⁶¹⁷ and International Technical Products⁶¹⁸. It could be argued that, in order to find the right balance in the exercise of the regulatory power and the police power of the state other elements of an investment treaty should be considered. Whether or not the merit of the regulatory force of state is in breach of the National Treatment, or if the exercise of the police power is not precisely for the public good. Such questions should be taken into consideration when a balanced approach is desired by any tribunal and/or by the parties being investor and the hosting state. If the answer to such questions are positive then it could be argued that, treaty breaches other than expropriation have occurred. Hence, in determining the indirect expropriation it should be considered the fact that, the impact of the state's action must have severe consequences which fits the four requirement that Dolzer has identified and mentioned earlier.

While the indirect expropriation is a fascinating subject in investment arbitration, the further analysis of the subject is beyond the scope of this Thesis. As far as it is relevant to this Thesis, it is hoped to clarify that, a key contribution of the Iran-US Claims Tribunal has been identified to be the sole effect doctrine by a genuine consensus amongst legal scholars. While its impact on the academic field remains to be an ongoing discourse, domestically it can be observed that, Iran has amended some of its law and regulations to facilitate the investment in hope of preventing the indirect expropriation become a common practice whilst simultaneously preserve its right to regulate and enforce its police power for the public good when necessary. Some of the relevant laws and regulation will be analysed later once the Foreign Investment Protection Act is presented. Before moving on to the next sub-section it has to be brought under consideration that, while the IUSCT is an ongoing tribunal which has been founded based on the Treaty of Amity, Economic Relations, and Consular Rights 1955, in a recent occurrence on 3rd of October 2018 USA

⁶¹⁵ Mostafa (n 605) 282

⁶¹⁶ Hazra Engineering Co v Islamic Republic of Iran (1982) 1 Iran-US CTR 499 at 504

⁶¹⁷ Ataollah Golpira v Iran (1983) 2 Iran-US CTR 171 at 176–77

⁶¹⁸ International Technical Products Corp v Iran (1985) 9 Iran-US CTR 206 at 238

withdrew⁶¹⁹ from the long-lasting Treaty which have been in practice even in the worst time of animosity between the two states. In fact, it was the very same treaty which provided the substantial legal platform of the IUSCT in which the two states and their respective investors were able to bring forward their claims and receive compensation if given by the tribunal's verdict. The reason of the US withdrawal of the Treaty of Amity was the fact that, after the unprecedented US abrogation of the Joint Comprehensive Plan of Action, Iran has pursued a case in front of International Court of Justice based on the Treaty of Amity. The ICJ has acknowledged Iran's claim against the US withdrawal and recognised the breach of the JCPOA by US which resulted in the subsequent fresh sets of sanctions against Iran.⁶²⁰ While as mentioned the Treaty of Amity has survived over the most problematic occasions in the history of the two country, the recent US withdrawal of this treaty is an indication of the lack of legal and diplomatic will and approach towards Iran. The JCPOA will be discussed extensively following this chapter. As it has been suggested throughout this Thesis and will be concluded in this Thesis, Iran's persistence to uphold its sovereign rights does in fact have valid ground once the attitude of the US administration is perceived against a handful of legal treaties specifically the JCPOA and the Treaty of Amity based on which one of the most fascinating source of investment arbitration tribunal was once created.

The Iran-Iraq War

Saddam Hussein invaded Iran as a result of territorial claims over Arvand Rud (known by Iraq as Shatt al-Arab). Once a country is faced with *force majeure* situations, such as war or famine or economic hardships, a country is virtually left alone or at least this occurred for Iran. For instance, in the case of The Association of Southeast Asian Nations (ASEAN) 1990s crisis the US priority was to rescue American firms, while the local businesses and population were left with the well-known catastrophic consequences. In the case of Iran during the WW1 the priority of the British forces, which had *de facto* authority over Iran, was to rescue the British forces and effectively caused the famine of 1917. Hence, although economic cooperation could be beneficial for the exporters and recipients of FDI, it is in the midst of crisis that having sovereignty proves to be extremely important. This time in the history of Iran having control and authority over the country by its sovereign, prevented Iran from a widespread famine, which struck Iran in 1917.

⁶¹⁹ Official Remarks to the Media by US Secretary of State Michael R. Pompeo October 3, 2018
<http://www.state.gov/secretary/remarks/2018/10/286417.htm>

⁶²⁰ International Court of Justice 2018 3 October General List No. 175

Following the prolonged war, which ultimately lasted 8 years, and its costs, financial prosperity was more of a futuristic aspiration as the country had to survive at the very first place. It is crucial to discern prosperity from opulence. As the country was putting effort to survive the war, the socio-political atmosphere of the country highly resembled a socialist state. Despite the capitalist nature of the Islamic Republic of Iran, it was at the time dominated by the left wing political apparatus of the establishment.⁶²¹ This was partially due to the nature of war-stricken country and partially as a result of the Islamic socialism of the 1980s.

As for the nationalisation, the natural resources sector was all nationalised promptly under the Single Article Act 1980, as it was the dream of Dr Mossadegh 30 years earlier. This was a historic stance against foreign participation in the economy for the next few years. A careful look at the Parliamentary discussions of the time leads to the finding of a proposal by the Islamic socialist Majles to nationalise the foreign trade.⁶²² Looking back at the time of war, foreign trade was limited to few individuals and entities which the intended nationalisation proposal might have brought under more scrutiny circumventing the war profiteering. On the other hand, such a proposal could have resulted in the state having the absolute monopoly over trade and might have provided a systematic and centralised war profiteering. The proposal nonetheless was rejected by the Parliament. According to an assessment made by the World Bank, the trade balance of Iran was -15.01% of the GDP in 1980 and in the last years of the war in 1988 it was eased down to -7.01%.⁶²³ Along with trade, the major revenue of Iran was the oil export. While oil was priced at circa \$14 per barrel in 1978, with the outbreak of the war between two main producers of OPEC the price soared to circa \$35 in 1980.⁶²⁴ The World Bank data indicates that, while one of the worst economic year of the Shah's era was 1976, when there was a massive drop in FDI of -0.15% of the GDP, in 1987 the FDI contribution to GDP was -0.23%.⁶²⁵

It can be argued that the economy of war and its salient features during the eight years of war was directed towards the Keynesian economics as it was elaborated in the second chapter. Vital commodities, including milk, meat and rice had to be included in a public rationing

⁶²¹ Suzanne Maloney, *Iran's Political Economy since The Revolution*, (Cambridge University Press 2015) 146

⁶²² Keddle (n 580) 256

⁶²³ Global Economy 'Iran's trade balance' (2016) see: https://www.theglobaleconomy.com/Iran/Trade_balance/

⁶²⁴ Statista 'OPEC oil price annually 1960-2018' (2018) see: <https://www.statista.com/statistics/262858/change-in-opec-crude-oil-prices-since-1960/>

⁶²⁵ World Bank 'Iran's Foreign Direct Investment 1970-2016' 2017 see: <https://data.worldbank.org/indicator/BX.KLT.DINV.WD.GD.ZS?locations=IR>

programme and most utilities underwent an impressive subsidisation programme. The public entities were expected to increase employment. And of course, above all the expansionary monetary policies had to be applied.⁶²⁶ Therefore, any other measures towards a tighter monetary policy and non-intervention of the government via price control of commodities could have been faced with vast catastrophic mishaps, such as famine, but through price control and rationing the public were fed to survive. Financing such interventionist policy nevertheless, could not be sustained for a very long time. The World Bank stipulated that, while in the first year of the war the inflation rate was at 24% in 1981, it dropped to 4.38% in 1985 and by the end of the war in 1988 the inflation rate was exacerbated to 28.67%.⁶²⁷

The high expenditure of the country and the war expenses along with other reasons convinced Iran to accept the ceasefire on the terms of the UN resolution 598 in 1988. It is remarkable to point out that, unlike Saddam Hussein, Iran ended the war with no foreign debt.⁶²⁸ As Axworthy suggests, the cost of war for Iran amounted to 200 billion dollars⁶²⁹, but, as it was acknowledged by Iranian officials, the war expenses was more than \$55 billion, whereas other estimations on the general cost of war, including the damage to the economy and infrastructure, have been up to \$592 billion.⁶³⁰ Despite the fact that the cost of war could have made Iran a much powerful state, if it had been spent on infrastructure, the underlying problems of Iran's economy were a hurdle for economic prosperity in the time of peace. These issues will be discussed following this chapter.

On the issue of military capacity, as it was mentioned in the previous chapter, while the heavy Shah expenditure on military was criticised by not only the domestic political oppositions but also it was being mocked by the American sellers, it saved Iran from being destroyed in the first years of the war. It is interesting to identify that an attractive determinant for foreign investors is security, safety and stability of the host state, as the lack of these elements, can be considered as a geopolitical risk, as it was identified in Chapter One. For instance, a country like India has the confidence to allow and welcome 100% of FDI in their defence sectors, which is ostensibly a

⁶²⁶ Maloney (n 592) 146

⁶²⁷ World Bank 'Iran's Inflation 1961-2017' 2017 see: <https://data.worldbank.org/indicator/NY.GDP.DEFL.KD.ZG?locations=IR&view=chart>

⁶²⁸ Michael Axworthy, *Revolutionary Iran*, (Penguin Books 2014) 296

⁶²⁹ Ibid

⁶³⁰ Maloney (n 592) 189

sensitive sector, whereas a crucial hurdle towards FDI emergence in Iran remains its missile programme.

The tension and public aversion towards USA increased by the end of the war in 1989, when an Iranian civilian flight was shot down by the USA navy in the Persian Gulf and 290 people lost their lives.⁶³¹ Although the US claimed this to be due to misreading the radar of the flight, the captain of the USS Vincennes, responsible for the fatal catastrophe, was awarded the Legion of Merit.⁶³² Although \$130 million was paid by the US in compensation, the tragedy remains a source of public and state aversion towards the US. The relevance of this catastrophe with this Thesis lies in the fact that, not only it increased the aversion of the Iranian establishment and public towards the US but also, it pushed Iran in the next decades for more rigorous presence in the Persian Gulf and enhancing its military capabilities. Once again, a key hurdle towards FDI flow in Iran, has been Iran's military dimension.

Rafsanjani: The Post War Construction

The establishment after the war needed prompt economic programs and staunch individuals to overhaul the country. Eschewing to manoeuvre on the previously popular slogans of equality, Rafsanjani, Iran's President from 1989 till 1997, put emphasis on the economic development, in addition to appointing economically-oriented ministers and technocrats as advisors, indicating his sheer will for implementing a new economic programme. His Presidency coincided with the ardent take-off of China's market liberalisation as well as the Japanese and ASEAN economic boost, which was admired by the new government in Iran.⁶³³ Nonetheless, the unpalatable fact is that the rapid growth of Japan and ASEAN only lasted less than a decade as mentioned in the previous chapters.

Keddie argued that Rafsanjani, in order to 'repair war damage, improve infrastructure, and increase production and growth via private and foreign investment',⁶³⁴ revived the Tehran Exchange and initiated privatisation. As part of the reforms, the Rafsanjani government introduced a liberalisation package that proposed reducing government subsidies and multiple exchange rates,

⁶³¹ Encyclopedia Britannica, 'Iran Air flight 655 Aviation Disaster, Over the Strait of Hormuz, Persian Gulf [1988]' (2018) see: <https://www.britannica.com/event/Iran-Air-flight-655>

⁶³² Ibid

⁶³³ Maloney (n 592) 214

⁶³⁴ Keddie (n 580) 264

devaluing the currency, promoting exports, and privatising nationalised industries. In agriculture, it called for removing import subsidies, reducing the public sector's role, and putting more emphasis on profitability, the private sector, research and development.⁶³⁵ Nonetheless, Iran's adoption of the IMF programmes were in fact voluntary without asking for loans by the IMF.⁶³⁶ This seems to be the best approach that was adopted in ASEAN, while the IMF conditionality is having a direct impact on the economic sovereignty and domestic sovereignty of states, as it has been repeatedly mentioned in this Thesis.

At the time efforts were made to reform the laws of ownership by foreign investors. Although such proposition was rejected by the parliament at the time, it indicated the willingness of the new government to improve its FDI-related law. Furthermore, propositions were made to increase the majority shares in Joint Ventures for the foreign investors. Again, such propositions were distanced from the 80s quasi socialist protectionism. Furthermore, it has to be mentioned that the government made marginal efforts to decrease the rigid protections given to the labours under labour law.⁶³⁷ In addition, Rafsanjani, in order to adopt free market economic policies, started to sell-off public lands, mines, corporations, and factories, which were mainly confiscated at the time of the revolution. Nevertheless, it has to be reminded that the new so-called private entities and companies acquiring the public assets were in fact quasi-public/quasi-private companies (informally known in Iran as 'Khosoolati'). As identified by Keddie, the privatisations were suspended in 1994, as a result of a widespread corruption scandal⁶³⁸ but the process of privatising public assets remained to be a common practice favouring the elite of the society akin to the political establishment, regardless of their capability and credibility. While the final conclusion of this Thesis would give precedent to sovereignty over prosperity, it will be identified that a key hurdle towards economic prosperity, apart from foreign sanctions, is the domestic corruption. Corruption, which has always been part of the economic reality of Iran regardless of the type of the political establishment. Hence at domestic level effort must be made to tackle corruption first and foremost if sovereignty is to be sustained against foreign adversaries.

As briefly mentioned earlier, one of the first USA sanctions came into force during Rafsanjani's Presidency known as ISLA. It is interesting to point out that in 1995, Iran brokered a

⁶³⁵ Ibid

⁶³⁶ Maloney (n 592) 205

⁶³⁷ Ibid 206

⁶³⁸ Keddie (n 580) 265

deal with Conoco, an American oil company. While in nature Conoco was an American company, the branch with which Iran entered into an oil contract was Netherlands-based, it was hence considered a Dutch company.⁶³⁹ Nonetheless after pressures from the US Congress, President Clinton nulled the billion dollars' worth deal and Conoco had to repudiate the contract.⁶⁴⁰ It is ironic that both Maloney and Keddie recognise the Israeli lobby as a force behind this annulment.⁶⁴¹ The pertinence of this finding and the Thesis lies in the fact that, it can be argued that, intervention of other states in the foreign affairs of the US has made a crucial difference in the US policies against Iran. It can be fathomed that, the financial gains for Iran through FDI, has been perceived as a threat by Iran's adversaries in the region of West Asia.

The crucial discussion which begs an analysis is the subject of extraterritoriality of US over European companies. While Conoco signed a deal as a registered Dutch company with Iran, the US President easily disapproved the validity of the contract by threatening with pecuniary sanctions the company dealing with Iran.⁶⁴² This notion was refuted by the European Union by imposing Blocking Regulations against such sanctions.⁶⁴³ While reliance on the EU blocking regulations once again can be an alternative to the existing and potential sanctions, the financial engagement of most European countries with the US supersedes their interest in investment in Iran. This would be a critical conclusion that if the EU wants to sustain the Iran-Deal, which will be elaborated in the later part of this chapter, it has to dedicate a separate public entity (including one or more public banks, public insurance company and etc.) to facilitate trade and investment with Iran. This has actually been indicated recently by EU to allow the European Investment Bank EIB to carry out doing business with Iran, overcoming the US sanction. This indeed intends to hold the Iran-Deal valid and working. The notion of public interference under this proposition would be taken as a vital instrument to keep an international treaty which happens to be a UN resolution intact. Hence, the EU resistance towards US sanctions against Iran can be observed to have taken place in order not only to facilitate international trade and investment with Iran, but also as a result of the EU sovereignty against the will of US. The discourse of sovereignty and prosperity can be exerted into a continental level. With the departure of the American-European

⁶³⁹ Maloney (n 592) 246

⁶⁴⁰ Keddie (n 580) 265

⁶⁴¹ Ibid. See also Maloney (n. 592) 246

⁶⁴² Maloney (n 592) 246

⁶⁴³ Keddie (n 580) 265

investor the field was left open for European companies, such as Total in the oil fields⁶⁴⁴ and Asian firms from China and Japan in infrastructure projects.⁶⁴⁵

While Rafsanjani's efforts unlocked new opportunities for FDI in Iran, with very minimum yet visible increase, from -0.23% in 1990, to 0.33% contribution to GDP in 1993, the financing of his economic project was based on either credit borrowing from domestic banks or foreign loans.⁶⁴⁶ These methods of financing, in addition to the rapid privatisation and liberalisation, led the country to an economic crisis by 1993. The currency crisis of the 1993 was accompanied by heavy borrowing, which resulted in riots across the country.⁶⁴⁷

One of the key reasons behind this crisis, as Axworthy identifies, was the fact that the government had planned the annual budget based on the expectation of \$30 per barrel of oil, while the war on Kuwait decreased the oil price to half of what has been estimated, namely to \$14.⁶⁴⁸ In 1993 the external debt of the country exceeded to the bizarre rate of 36.71% of GNI. Compared to the time of war, when the rate circulated around 4%, and the recent years when it varied from 6% to 11% to 1% in 2001, 2004 and 2015 respectively, the burden of the foreign debts in 1993 was in fact heavily felt in the next decade. Although he started the post-war reconstruction with an outstanding growth rate of almost 14% in 1990-91, in the last two years of his Presidency in 1995-6 the inflation rate soared to almost 50%.⁶⁴⁹

Rafsanjani's amplified desire for rapid liberalisation was neither favoured by the Islamic lefts and socialists of Iran nor the USA unilateral sanctions, which drastically hampered his plan to host foreign capital and technology.⁶⁵⁰ It could be postulated that his strides towards market liberalisation and technological modernisation were necessary but hindered by the pace and the international political climate.

Khatami: The Rise of Technocratic Reforms

Winning the presidential election with 70% majority in 1997 was a promising onset for the reformist President Khatami, who served as the Minister of Culture in Rafsanjani's government.

⁶⁴⁴ Maloney (n 592) 247

⁶⁴⁵ Ibid 215

⁶⁴⁶ World Bank (n. 513)

⁶⁴⁷ Michael Axworthy, *Revolutionary Iran*, (Penguin Books 2014) 315

⁶⁴⁸ Ibid 314

⁶⁴⁹ Ibid

⁶⁵⁰ Ibid

As Keddie rightly identifies, Khatami discarded himself and his economic policies from the fervid neoliberalist aspirations of Rafsanjani having seen the social side effects of the rushed trodden trajectory toward market liberalisation.⁶⁵¹ Nevertheless, he carried out the reforms leading towards a market-based economy, an attempt that started since the early 1990s.

He started his term at office with the sudden drop in the oil price to \$10 per barrel in 1998, while his first budget was based on the price being \$17.⁶⁵² Furthermore, he had to deal with a foreign debt of around \$6 billion since the time of Rafsanjani.⁶⁵³ In order to resurrect the economy he implemented new reforms, from fiscal and monetary to bureaucratic reforms, with view to boost productivity and employment.⁶⁵⁴ Privatisation was again on the agenda of the government, this time with the revised emphasis on the recently updated Article 44 of the Constitutional law concerning privatisation.⁶⁵⁵ Another major stride towards economic reforms was the set-up of a National Sovereign Fund, known as Sandogh Zakhire Arzi, which was later renamed National Development Fund or Sandogh Tose'e Melli.

In lieu of reliance on domestic finance and investment, Khatami approached foreign investors in order to boost the economy by foreign capital. While FDI had already been initiated during the Rafsanjani era, Khatami should be seen as the most successful President of Iran post-1979 in economic terms as it will be presented following this part based on economic data. Supporting the Tehran Stock Exchange, rewriting and enforcing laws against stock fraud and transparency, such as the Anti-Dumping Act⁶⁵⁶, replacing non-tariff barriers with rationalised tariff rates, export facilitation and import licencing were the most important strides of his reforms.⁶⁵⁷

One important step for enhancing the legal protections for foreign investors was the ratification of the Foreign Investment Promotion and Protections Act (FIPPA) 2002, which is still in operation.⁶⁵⁸ It can well be suggested that FIPPA is more favourable and applicable to large scale contracts, multinational corporations and any potential field of investment, while it is arguably restrictive and complicated for small investments.

⁶⁵¹ Keddie (n 580) 274

⁶⁵² Maloney (n 592) 272

⁶⁵³ Ibid

⁶⁵⁴ Ibid

⁶⁵⁵ Maloney (n 592) 290

⁶⁵⁶ Anti-Dumping Act 2004

⁶⁵⁷ Ibid 301

⁶⁵⁸ Ministry of Energy 'Foreign Investment Promotion and Protection Act (FIPPA)' see: <http://www.satba.gov.ir/en/privatesectorrequirements/budgetsecuringpayment/fippa>

Another crucial issue to be discussed is the Free Trade Zones (FTZ), which had been derailed at the time of Rafsanjani mainly due to legal constraints combined with political risk.⁶⁵⁹ The comparative advantage of the FTZ for Iran is their tax-free nature, which are designed to function as tax haven hubs of the country. Although there are dozens of FTZ in Iran spread all over the country from cities by the Caspian Sea to ports by the Gulf of Oman and Islands in the Persian Gulf, there has never been much of FDI emergence there. As Maloney identifies: ‘between 1996 and 2004, the three original FTZs (Kish, Qeshm, and Chabahar) drew only \$2.099 billion in FDI, compared to \$30.576 billion from domestic sources.’⁶⁶⁰ Apart from the abovementioned reforms at domestic level, Khatami approached different international actors in order to increase the country’s FDI attractiveness, such as the Multilateral Investment Guarantee Agency (MIGA), to which Iran became a signatory member in 2001. It is disappointing though that MIGA has not offered more than a few insurance plans to investors interested in Iran.

His foreign policy, aiming to ameliorate the political tensions with the Western countries, mainly European ones, was inherently intertwined with market openness for FDI-based growth. And in fact, it was working: Iran’s car industry boomed as a result of new FDI in the field.⁶⁶¹ The oil revenue had become a reliable source of income for the country thanks to the FDI in the oil field. Nevertheless, ironically the new changes in Iran, which seemingly were for the better, were not well received by the USA and Israelis. Their argument was that what Iran was after was not limited to economic engagement but rather to gain international legitimacy.⁶⁶² It can be once again fathomed that there is in fact a very close and pertinent correlation between sovereignty and economic prosperity in Iran. While internally there have always been concerns over this issue, it can be identified that since late 1990s such nexus is also of concern for Iran’s rivals. Israel and the recent resentment from Saudi Arabia towards Iran’s political-financial engagement directly targets the sovereignty of Iran. While the issue is over international legitimacy, or, as it has been argued in the first part of this chapter, International Legal Sovereignty, the lobbying of Saudi Arabia and Israel against the Iran-Deal can be taken as indirect interference with the domestic affairs of an independent sovereignty. This will be expounded in the last part of this chapter concerning the Iran-Deal.

⁶⁵⁹ Maloney (n 592) 232

⁶⁶⁰ Ibid 303

⁶⁶¹ Ibid 302

⁶⁶² Ibid 301

Another initiative of Khatami toward FDI augmentation was the BITs signed between Iran and more than 30 countries at his 8 years of presidency. While Iran has signed around 60 BIT in the past 40 years, more than half of them were signed during Khatami's time. The content of the Iranian model BIT is of universal standards, acknowledging normative clauses, including MFN, National Treatment, Umbrella clauses etc. His economic reforms resulted in the most successful economic time of Iran since the Islamic Republic, and his monetary policies led to gradual reduction of inflation from 18% in 1998 to 11% and 12% in 2001 and 2004. In addition, the growth rate of the country increased from 2% in 1997, to 8% in 2001 and 4% in 2004. Finally, the largest FDI share in its GDP of 2.74% with a sum of \$3.52 billion was attained during his time.

Despite the gradual improvement in the economy of Iran, there remained a long-accustomed phenomenon in Iran's economy; corruption. Although his presidency was marked as one of the least corrupted periods in the history of Iran, there remains a notorious oil-related case, for which opposition criticised Khatami. The Statoil corruption case, which was based on the findings of a US court, involved Statoil, a Belgian oil company, which participated in an act of bribery to an Iranian consultancy firm, in order to secure a FDI project on the South Pars gas field of Iran. The Belgian company was fined millions of dollars in compensation in the US.⁶⁶³ Nonetheless, it is worth mentioning that the consultancy firm was owned by the son of the former President of Iran being Rafsanjani, although he claimed that he has done nothing beyond the scope of consultancy.

To conclude on Khatami's era, there are three key incidents which, took place in a short period of time. The first was the opening of the Imam Khomeini Airport, the new International Airport of Tehran (IKA) in 2004. On the opening day, the Islamic Revolutionary Guard Corps (IRGC) intervened in the ceremony and closed down the airport.⁶⁶⁴ While the initial reason for such drastic intervention was announced to be of financial nature, the underlying issue was security. As Collins categorises, Essential Security, Economic Stability and the Defence Necessity are measures which should be secured from the potential threat arising from FDI.⁶⁶⁵ He refers to a case in USA, identical to the IKA case, which attracted the attention of the American public and legal scholars. While DP World, an Emirati firm, had secured a deal of port management of 6

⁶⁶³Statoil 'Horton case settlement' (2006) see: <https://www.statoil.com/en/news/archive/2006/10/13/HortonCaseSettlement.html>

⁶⁶⁴ Maloney (n 592) 313

⁶⁶⁵ Collins (n 295) 284

major ports in US soil, using national security as pretence the Congress intervened and managed to void the contract with the Emirati firm to be reimbursed.⁶⁶⁶

It is also worth mentioning that the FDI contract with Iran over IKA was with a Turkish service company. The irony lies in the fact that Turkey happens to be the most important member of NATO in Iran's vicinity. Thus, it can be comprehended that such intervention was in fact a necessity of security for the national interest of Iran. This is related to the topic of the present Thesis that having authority and control over not only the legislation and affairs of a country, but also over the flow of goods and transports of a country is a matter directly related to sovereign.

The second incident was over Iran's nuclear programme. As a member of the International Atomic Energy Agency (IAEA) and a signatory member of the Non-Proliferation Treaty (NPT), Iran was accused mainly by Israel of having programmes to develop nuclear weapons. To assure the European countries and the rest of the world about the peaceful nature of its nuclear programme, the government, including Hassan Rouhani, brought about the Sa'dAbad Declaration, by which Iran voluntarily suspended any Uranium enrichment activities. Nevertheless, while Khatami's amicable foreign policy was directed towards détente with world, the conservative parties in Iran warned him of the potential upcoming compunction from trusting Westerners. This concern was also seen in the past, when Rafsanjani was warned by Majles about the potential reoccurrence of the foreign clout.⁶⁶⁷

The third, and probably a highly neglected, incident was Iran being coined as the 'Axis of Evil'. Iran was a key partner of the US forces against Afghan militia and the Taliban by providing informational, military and logistic assistance to the US army.⁶⁶⁸ Believing that Taliban was an existential threat to the region by Iran and US, it may have been perceived that a mutual enemy could have become a new milestone in the Iran-US relation. Nevertheless, as the mission turned to be a success, Iranians were expecting a formal or informal gesture of appreciation by the US officials, but Iran's expectations were shattered, when George Bush named Iran as the 'Axis of Evil' in 2002.⁶⁶⁹

Ahmadinejad: Domestic Economic Disarray

⁶⁶⁶ Ibid 286

⁶⁶⁷ Axworthy (n 628) 74

⁶⁶⁸ Maloney (n 592) 308

⁶⁶⁹ Ibid 309

Khatami left office in 2004 with FDI contributing 1.65% to the GDP, growth rate at a desirable rate of 4% and the inflation rate around 12%. While the unemployment rate had varied from 11% to 13%, by 2004 it settled at 10% for the first time in decades.⁶⁷⁰ The economic data denoted a promising kick off for the next President to be. However, these positive predictions were not fulfilled in the subsequent years as the economic agenda changed.

It could be proposed that Ahmadinejad came to power for two main reasons; initially his electoral campaign concentrated on the very low-income families and rural population⁶⁷¹, and secondly the fact that the core of Iranian establishment presumably had sought to support a young conservative candidate as a countermeasure to the rising hostility of the West towards Iran. It will also be one of the final conclusions of this Thesis that, there is a direct positive correlation between the rise of western adversary over Iran and the rise of a conservative individual or group or attitude in the political spectrum of Iran. Hence in light of the recent changes in the Iran-US relationship, it can be predicted that the next President of Iran may have a conservative background.

Since the beginning of Ahmadinejad's presidency in 2005, the international political spectrum drastically turned against Iran. While Iran has shown the willingness to cooperate in Afghanistan and has voluntarily suspended its uranium enrichment under the Sa'adAbad Deceleration, crippling sanctions started to be imposed on Iran. The UN Security Council's resolutions based on the non-compliance report of the Council of Governors of the IAEA against Iran start getting enforced since 2006. These resolutions were based on the Possible Military Dimensions (PMD) of Iran's enrichment plans. It was then followed by sets of multilateral sanctions, under Chapter VII of the Security Council in 2006, 2007, 2008, 2010, 2011, and 2012.⁶⁷² The sanctions varied from boycotting oil from Iran, to asset freezing, embargo on maritime shipping and insurance, including Iranian cargos, transfers of funds, and SWIFT being a global network of international transactions. The sanction on SWIFT effectively disconnected Iran's banking with the world. Nonetheless, the most crippling set of sanctions is related to Iran's Central Bank, as this particular sanction in reality undermined the Iranian currency in the subsequent

⁶⁷⁰World Bank 'Iran's Unemployment rate 1991-2017' (2017) <https://data.worldbank.org/indicator/SL.UEM.TOTL.ZS?locations=IR&view=chart>

⁶⁷¹ Maloney (n 592) 316

⁶⁷² United Nations Security Council Resolutions 1696, 1737, 1747, 1803, 1835, 1929, 1984 and 2049.

years.⁶⁷³ The pernicious effect of the sanction on the central bank was the devaluation of Iran's currency Rial.

The sanctions were then accompanied by a Financial Action of Task Force's (FATF) public statement about Iran.⁶⁷⁴ Followed by further annual statements by FATF, which adopted a harsher tone against Iran; FATF categorised Iran as a high-risk investment country in 2012.⁶⁷⁵ The key reason of this assertion by the FATF was the lack of the required law by FATF in Iran. FATF had previously recommended Iran to ratify laws on Anti Money Laundry (AML) and Combating the Financing of Terrorism (CFT). Nonetheless, ratification of such law under FATF may effectively lead Iran to become a member state to the FATF, would legally provide access for the foreign entity to run the due diligence and investigations in Iranian bank accounts. While FATF is considered to be of Soft Law nature,⁶⁷⁶ in order to shun aside the defamatory statement and status given by FATF, Iran has to ratify domestic law in accordance to the required regulations of FATF. Speaking of Soft Law, the key feature to discern such law from Hard Law, is the non-obligatory and non-binding nature of the former. Hence it is an ongoing debate amongst legal scholars whether or not Soft Law should be considered as law or not? The importance of Soft Law, lies in the fact that although Soft Law does not have binding impact *per se*, not adhering to its recommendations and guidelines, will most probably be ensued by legally binding sanctions or punishments which would considered to be Hard Law meaning obligatory and binding.⁶⁷⁷ The pertinence of FATF and the Thesis lies in the fact that, by not following the FATF recommendation Iran will remain under the black list of risky countries to invest and thus drop in the FDI inflow to Iran will take place. On the other side, acknowledging FATF recommendations will hinder Iran's sovereignty over not only its economic sector but also it could be expanded to its foreign policy.

Although sanctions had in fact an exacerbating impact on the Iranian economy, observing and analysing the economic programmes and in general Ahmadinejad's *modus operandi*, it can be comprehended that a severe internal economic disarray has been coexisted and moulded alongside the foreign induced sanctions. An instance of Ahmadinejad's drastic decisions, which later worsen

⁶⁷³ Maloney (n 592) 355

⁶⁷⁴ The Financial Action Task Force 'FATF public statement' (22 October 2010) <http://www.fatf-gafi.org/countries/d-i/iran/documents/fatfpublicstatement-22october2010.html>

⁶⁷⁵ The Financial Action Task Force 'FATF public statement' (19 October 2012) <http://www.fatf-gafi.org/countries/s-t/turkey/documents/fatfpublicstatement-19october2012.html>

⁶⁷⁶ John J. Kirton and Michael J. Trebilcock, 'The G7/8 Summit' in *Hard Choices, Soft Law Voluntary Standards in Global Trade, Environment and Social Governance* (Routledge 2004)

⁶⁷⁷ Ibid

the economic atmosphere can be evidenced in his direct interference in the Management and Planning Organisation. In his first term in 2004, he ‘ordered the seconding of MPO provincial offices to the local governors, who in turn reported to the interior ministry’.⁶⁷⁸ Acquiring authority over the previously independent Management and Planning Organisation of Iran was in tantamount to having total authority over the budget of the country. The MPO was the authority of observing the spending of the budget to increase the opacity.⁶⁷⁹

Another crucial issue to be mentioned is his public housing programme known as Maskan Mehr. The explanation on this project indicates the over spending of the government in the absence of FDI exporter in housing market. The overspending which heavily indebted the government and bereft the National Wealth Fund. Affordable housing has always been an issue in Iran for various reasons including high interest rates, low income and inhabitable lands. Since the rise of slums from the Shah’s land reform till the forced mass immigration during the Iran-Iraq war, the number of families with no house had increased. To tackle this long-lasting problem, Ahmadinejad’s solution was to provide cheap land to public subcontractors for mass housing.⁶⁸⁰ Almost 4.5 million houses were under construction all around the country at that time. The required funds for this massive public housing were provided from either the National Sovereignty Fund, which was awash with dollars from the era of Khatami, or from the Central Bank through bonds, credit or cash, for which the country had to undergo a damaging and massive quantitative easing.

As per the discussion in Chapter Two of this Thesis, both Hayek and Keynes, despite their differences, had acknowledged the role that governments can play in relation to public housing. Nonetheless, the massive deficit and debt crisis, which was followed as a result of this massive national scale programme, proved once again that economic models should be studied, examined and applied, based on the fiscal, monetary, socio-political- geographic and other relevant parameters.

Another remarkable fact in relation to this project was the issue of employment. The unemployment rate was 13.5% in 2010 and by 2013 in the midst of the public housing project it dropped to 10.4%.⁶⁸¹ Thus, on the positive side it can be said that such public projects in fact have a positive impact on national employment. Nevertheless, the question of sustainability of such

⁶⁷⁸ Maloney (n 592) 338

⁶⁷⁹ Ibid

⁶⁸⁰ Ibid 329

⁶⁸¹ World Bank (n 158)

employment is always relevant as well as whether the cost of such project could have contributed to a longer-term benefit for the country's economy, if money was spent more wisely. In light of FDI, as it was mentioned earlier, in the absence of FDI in housing market, the government took prompt action to increase the supply. Nonetheless the key point remains the fact that, although the FDI was absent in Iran, the domestic private investors were heavily investing in housing field.

Another critical economic decision in his time came after the controversial 2009 election, in which he secured the second term at office. Ahmadinejad took the opportunity of the political turmoil to lift the subsidies on utilities and petrol. In order to prevent the catastrophic ramification of precipitous price liberation, Ahmadinejad introduced what reminded of the coupon culture of the 80s, known as Saham Edalat or Justice Share⁶⁸², initiating monthly cash payments to every individual in the country. The crucial problem was the source of the monthly cash payment program; while the backbone of the Iranian economy has always been the oil revenue, when the sanctions on oil were introduced in 2011, Iran was unable to neither sell its main source of revenue nor to receive the wherewithal directly to its domestic accounts in dollars. At this point barter became a common practice due to the restrictions on transactions and this in turn increased corruption practices used to circumvent the sanctions. Not surprisingly corruption expanded to all economic aspects of Iran's affairs and there was a direct correlation between the increase of the sanctions and the rise in corruption.⁶⁸³

Concurrent to the increasing pressure of the sanctions, the Supreme Leader of Iran, Ayatollah Khamenei, publicly announced his concerns over the economic situation of the country and the ramifications of what he called unjust and brutal sanctions. In 2010, he proposed the Resilient (resistive) Economy agenda. It was not until 2012 that the idea was actually moulded into specific guidelines. More specifically, the guidelines include ways to enhance domestic employment and economic power to confront the economic sanctions and defuse the economic pressure of the foreign enemies of the state, enhancement of entrepreneurship, knowledge-based economy, increasing efficiency, competitive spreading of domestic production of vital commodities and goods, reform of the monetary system, and encouragement of exports.

While in the global determinant of FDI in this Thesis vertical FDI has been identified as a major field of FDI in Iran, the Resilient Economic Plan also put emphasis on the export-oriented FDI.

⁶⁸² Maloney (n 592) 335

⁶⁸³ Transparency International 'Corruption perception 2015' 2016 see: <https://www.transparency.org/cpi2015-results-table>

The ramifications of sanctions have been very serious, causing the departure of FDI in almost every field of investment, including French investors of oil company of Total and the French car producer Peugeot which at some point contributed to the dazzling growth rate of Khatami. While the price of oil was \$20 at its highest formerly, Ahmadinejad's administration enjoyed a price of \$130 per barrel for a few consecutive years. Nevertheless, during the final years of his presidency there was stagflation, an economic situation in which stagnation is combined with inflation. Statistically the economic convulsions were worse than the situation during the eight years of war. While the inflation rate was 28% in 1988, Iran had a second hike in inflation in 1995 with 40%, but the growth rate in 1995 was around 6%. In the last two years of Ahmadinejad's presidency the official inflation rate was around 40% combined with the lowest growth in decade of -6%.⁶⁸⁴ The FDI contribution to GDP was 1.65% in 2004, and in 4 years during his first presidency it sharply dropped to 0.5% in 2008. Even in 2012 when Iran was hosting \$4.62B in FDI, which exceeded any amount of FDI in the country's annual revenue, the contribution to the GDP was as low as less than 1%.⁶⁸⁵ The regional political tension yet again awash the Iranian treasury with the oil revenue of circa \$700-800 billions.⁶⁸⁶

Although it is absolutely valid that the UN economic sanctions had in fact pernicious impact, it can be postulated that Iran could have survived the socio-economic throes caused by the sanctions, if economic disarray, lack of transparency, budgetary weltering and other domestic issues has been prevented and/or effectively tackled. It can be perceived that while the sovereignty of Iran was under direct threat through the sanctions, the side effect could have been marginalised due to the high oil revenue. Hence it can be argued that, although countries like Iran, Saudi Arabia and Venezuela are prone to the Dutch Disease, with rational economic agenda, transparent functioning and of course adherence to the rule of law, such countries can survive the ramifications of sanctions and economic embargos.

4.3 JCPOA: a Definitive Microcosm

Hassan Rouhani, who had previously served as the chief negotiator of the nuclear talks at the time of President Khatami, won the election in 2013 with a mild yet securing 52% majority.

⁶⁸⁴ World Bank (n 515)

⁶⁸⁵ World Bank (n 513)

⁶⁸⁶ Maloney (n 592) 329

The onset of his administration coincided with the sharp drop of the oil price from almost \$100 to approximately \$30 per barrel.

While Khatami's task was to maintain a good political relationship with the West, Rouhani had to take prompt action to tackle the issue of the UN sanctions. While the sanctions at the time of Khatami were mainly of unilateral basis from the US, the UN sanctions were universal and multilaterally ratified. After almost a decade of unsuccessful negotiations the UN Security Council Members plus Germany (the 5+1) reached an agreement with Iran known as the Joint Comprehensive Plan of Action (JCPOA) on July 2015.⁶⁸⁷ Under the commonly known Iran-Deal, Iran was to be exempted and removed from Chapter VII, and the nuclear sanctions to be terminated in return of Iran suspending its enrichment and reducing it below 5% centrifuges, while providing the IAEA experts with 24/7 open access to every nuclear site in Iran. The embargos on SWIFT and oil were lifted, which provided the government with the revenue and the opportunity needed to alleviate the economic shortcomings. Nonetheless, although international banks, according to the JCPOA, were under no restrictions anymore to deal with Iran, most western banks retained their reserved attitude towards Iran by not directly dealing with it.

While Iran had vested trust in the deal hoping for the emergence of circa \$20 billion investment as a result of the JCPOA, the government and the Parliament of Iran went on with new sets of reforms concerning FDI, amongst which were laws enabling the existence of foreign banks with 100% ownership in Free Economic Zones according to FIPPA, in addition to foreign ownership of land. Another vivid legal stride towards facilitation of FDI in Iran has been the ratification of Iran Petroleum Contract (IPC). The previous platform contract for oil industry known as Buy-Back contracts were faced with dissatisfaction of the foreign investors. Fixed capital cost without the possibility to reimburse the cost, the genuine inflexibility, time consuming procedure for the required approvals and the short length of given contracts were amongst the problems which has been raised against the Buy-Back contracts. Thus, the introduction of the new model IPC has been aimed at optimising the incentives and increasing the production, in other words improving the contracts for the mutual benefits of the FDI exporter and the state of Iran which still owns the nationalised oil industry. The improvements to be briefly mentioned are increased length of exploration, exploration facilitation of the common fields with the neighbouring states and availability of the cost recovery after 5-7 years of production.

⁶⁸⁷ US Department of States 'Joint Comprehensive Plan of Action' see: <https://www.state.gov/e/eb/tfs/spi/iran/jcpoa/>

Iran-Deal brought about remarkable economic alleviation in its first two years; the economic data indicates a gradual and healthy increase in trade balance from 1.63% to 5.27% from 2012 to 2014, the external debt decreased from 3.94% in 2008 to 1.26% in 2015. Also, the growth rate increased from -6% in 2012 to 8% in 2016 with the inflation rate reduced from the staggering 40% in 2013 to 8% in 2016.

The IMF in its comprehensive 2017 report on Iran made predictions and suggestions on Iran's economy⁶⁸⁸. The report's recommendations included fiscal measures to reduce debt and unify the exchange rate which has been a challenge for decades. In achieving this, the overhaul should be towards credit institutions, non-performing loans and unlicensed financial institutions which have been causing not only financial destabilising but also partly caused the late 2017 public protests. Furthermore, monetary reform should be towards less intervention by the Central Bank with regard to the interest and the exchange rates, giving primacy to the market-driven economic factors. On this matter, it has to be borne in mind once again that the fiscal and monetary tools not only have direct implications for the economics of the country, but also, they can be adjusted based on the socio-political situation of the country. In addition to the fiscal and monetary suggestions of the IMF, the report also urged Iran to proceed faster with the enforcement of anti-money laundering laws and combatting the financing of terrorism, in order to comply with the FATF standards.

Iran has taken adequate measures so far, to the point that in January 2018 the FATF report suspended Iran's risk assessment.⁶⁸⁹ However, there is still ongoing debates in the parliament to whether or not ratify the two FATF related bills. This as mentioned earlier has brought up the crucial question of sovereignty once again in the political realm of Iran. In addition, the recent IMF report does not convey any harsh adjustment measures or any drastic reform prerequisites.⁶⁹⁰ An additional assuagement of Iran's plausibility as a result of JCPOA was the OECD upgrade of

⁶⁸⁸ International Monetary Fund 'IMF Staff Completes 2017 Article IV Mission to Islamic Republic of Iran' (2017) <http://www.imf.org/en/News/Articles/2017/12/15/pr17499-imf-staff-completes-2017-article-iv-mission-to-islamic-republic-of-iran>

⁶⁸⁹ The Financial Action Task Force 'Outcomes FATF Plenary' (February 2018) <http://www.fatf-gafi.org/publications/fatfgeneral/documents/outcomes-plenary-february-2018.html>

⁶⁹⁰ International Monetary Fund 'IMF Staff Completes 2017 Article IV Mission to Islamic Republic of Iran' (2017) <http://www.imf.org/en/News/Articles/2017/12/15/pr17499-imf-staff-completes-2017-article-iv-mission-to-islamic-republic-of-iran>

Iran's risk assessment. While in the midst of the sanctions Iran was given a notorious grade 7-8, after the JCPOA the level was upgraded to 5.⁶⁹¹

While economy and international relations appeared to be improving, the new US President, Donald Trump, triumphed in the US presidential elections. In May 2018, not only he refused to re-certify the suspension of US sanctions but also unequivocally withdrew from JCPOA. The IAEA has repeatedly certified Iran's compliance with its obligation.⁶⁹² Although one of the key concerns of the new US administration has been Iran's missile programme, it is stipulated in JCPOA that the signatory member only 'calls upon' Iran not to develop missiles 'with the capability of carrying nuclear warheads'.⁶⁹³ Hence neither non-compliance nor Iran's missile programme are admissible reasons for US abrogation. Once again, the FDI inflow in Iran has been hindered as a result of political interests. While there is not an effective remedy foreseen in the JCPOA against the US withdrawal⁶⁹⁴, the Iranian government has filed a complaint before the ICJ over the re-imposition of the sanctions. As described earlier, whilst the ICJ order an uplift of the recent US sanction against Iran, the US administration withdrew from the Treaty of Amity ignoring the ICJ's ruling.

The JCPOA can be studied as a microcosm of the discourse between sovereignty and economic prosperity. It does reflect the nature of Iran-US animosity ever since the 1953 coup over the oil nationalisation. While Iran has been consistently denigrated over the past few decades by the US authority as the 'Axis of Evil', a 'rogue state' or even a 'terrorist nation', Iran has complied with every legally binding treaty, ad hoc decision and international rules. Iran's assistance in providing aid to the US in Afghanistan and its confrontation with ISIS in West Asia have been ignored by the US in the most condoning ways. While Iran was victimised and suffered as a result of Saddam Hossein's use of chemical weapons against civilians, Iran has been repeatedly labelled with imputable allegations. Although Iran has indicated its willingness to cooperate with the West whilst maintaining its sovereignty, its efforts have remained futile up until now. The pertinent

⁶⁹¹ The Organisation for Economic Co-operation and Development 'Country Risk Classifications of the Participants to the Arrangement on Officially Supported Export Credits' (2018) see: <http://www.oecd.org/trade/xcred/cre-crc-current-english.pdf>

⁶⁹² International Atomic Energy Agency 'IAEA and Iran' (2018) see: <https://www.iaea.org/newscenter/focus/iran/iaea-and-iran-iaea-reports>

⁶⁹³ US department of state (n. 118 JCPOA) <https://www.state.gov/documents/organization/245324.pdf>

⁶⁹⁴ while there has been criticism by the conservative MPs against the government of Iran, for not providing an ad hoc arbitration in the JCPOA, it is worth mentioning that under Article 139 of Iran's constitutional law when facing a case or an investment with potential threat over the public interest, the parliament should interfere and examine the case in order to permit an arbitration clause.

point between the substantial geopolitical facts and FDI in Iran lies in the fact that, the core reason of lack of FDI emergence in Iran can be identified to be the economic sanctions which are highly politically driven. And once again it could be argued that the economic castigations against Iran is in fact not only against the current political establishment of Iran, but is targeting the sovereignty of Iran over one of the biggest oil and gas fields in the world.

Conclusion

This Thesis has been an endeavour to identify and establish a causality between FDI and jeopardised national sovereignty. This has been done through a legal-economic analysis of historic evidences from Latin America to East Asia, with emphasis placed on Iran as the key subject of this study. While the recent waves of nationalism, trade wars and protectionist tariffs could lead to further international turmoil, this Thesis followed the historic roots of globalisation up until the rise of sovereignty-straightening movements.

The Thesis started with the initial explanation of what constitutes Foreign Direct Investment (FDI). Such introduction to the subject was necessary in order to familiarise the reader for the next chapters and the argument which were ensued. FDI has been distinguished from other types of foreign investment, such as portfolio investment. A historic evolution of the rise of FDI was also presented. In the first chapter the key questions were about the determinants of FDI, the states and countries that are more attractive for FDI exporters, to what extent these determinants vary from state to state or from one investor to another and also what are the main fields of investment. Chapter one set forth seven key determinants of FDI, namely market size, wage/labour, market openness, macroeconomics, business climate (ease of doing business), inflation and political climate.⁶⁹⁵ Among these determinants, market size and macroeconomics have been found to be the most important components of FDI determinants.

As for the market size, it has been argued that such factor would be of interest for investors who seek investment in secondary and tertiary fields. As it has also been identified there are three major fields of investment: primary (natural resources), secondary (manufacturing) and tertiary (services).⁶⁹⁶ Considering that for an investor, who aims for the secondary and tertiary sectors, is mostly interested in the domestic market, the market size plays a pivotal role in the decision-making process. It was also elaborated that there are two destinations for the final investment. The first one is the horizontal market, which is in fact the domestic market of the hosting country and the second is the vertical market, which is outside the territory of the hosting state. The second type of investment is also referred to as export-oriented investment. It has been argued that export-oriented FDI could increase the foreign exchange of Iran. While Iran is considered to be suffering from the Dutch Disease, which implies sole reliance on one commodity to accrue foreign

⁶⁹⁵ UNCTAD

⁶⁹⁶ Rajan (n 80)

exchange, the vertical FDI could be a remedy to this problem. It was also identified that the depreciation of the hosting states' currency could have a diverse impact on different types of FDI. While for the vertical FDI devalued currency would increase the gains, for the horizontal-seeking FDI it could hamper the purchasing power of the domestic consumers.

The second most important element was identified to be macroeconomics. The importance of macroeconomics has been discussed in details in chapter 2, along with the analysis of Keynesian economics. However, it was found that fiscal and monetary policies, which stimulate taxation and interest-rates-related policies, affect the market depending on the government/state's economic agenda. It was identified that countries, which suffer from volatile macroeconomics, have experienced negative FDI inflow. As for the impact of market size on different sectors of investment, different fiscal and monetary policies have proven to have different impact on different sectors. Nonetheless, the crucial point remains to be the stability and rationality of these policies. The more fragile and veering macroeconomics are, the more indecisiveness and instability there is in the market and the FDI exporters. Although the political climate was not considered as a vital determinant amongst the countries and economic blocs which has been examined, in the case of Iran the outcome was considerably different from the other regions. It has been argued that the key reason which has been hindering the FDI inflow in Iran is the political animosity that has been ongoing for the past 4 decades. Due to its negative political relations, Iran has been the target of various unilateral and multilateral economic sanctions. These sanctions, which at some point were issued through UN Security Council's resolutions, have identified to be a major obstacle for FDI in Iran. Thus, it was evinced and established that the political climate is a key determinant over FDI spectrum of Iran.

Chapter Two elaborated the world's economic trends since late 1930s. The initial aim of this chapter was to understand the role of the government in shaping the economy. This was achieved by comparing the economic models of Keynes with Hayek's. By examining the economic turmoil, which Keynes had experienced and had to find solution for, it was established that in times of economic crisis the passivity of the government could lead to further economic meltdown as it happened during the Great Depression of the 1930s. Keynes strongly suggested that the reason that the economic crisis was prolonged was the lack of government's intervention to correct the market.⁶⁹⁷ Although His remedy was contested against decades later by the market fundamentalist

⁶⁹⁷ Keynes (n 90)

and laissez-faire approaches which were of the belief that the market not only should regulate itself but also will correct itself, his economic paradigm at the time seemed the most useful and rational remedy for the catastrophic circumstances caused by the Great Depression. By advocating in favour of a government's active role in the economy, Keynes provided a suitable platform for state nationalisations, increased public expenditure and public investment. According to the Keynesian economic model, sovereign rights were increased and exerted into the most economic aspects of countries.⁶⁹⁸ The countries, which were studied in details, were mainly the USA and the UK. The reason lies in fact that the two countries which have been known as the two major forerunners of the free market at that point in time adopted interventionist approaches within the capitalist market. The Keynesian model's apprehension has always been directed at the unemployment rate. For Keynes, the fiscal policies were aimed to bring about the desired unemployment rate.⁶⁹⁹ Thus, while in the first chapter macroeconomics was identified as a key determinant, in this chapter macroeconomics was used to identify the impact of these policies in real economic terms. Initially, for Keynes himself lowering taxes was a primitive and basic way to keep the money in the hands of the public. He also introduced the Multiplier Effect,⁷⁰⁰ namely the monetary theorem, according to which the state was asked to increase public expenditure. The goal was to stimulate the aggregated demand as a result of aggregated supply. The initial outcome of such intervention was the fabricated prices. While in a market-driven economy, prices supposedly convey the actual value of the goods, under the Keynesian multiplier effect the prices did not reflect the actual cost and value of the good. Thus, one lesson to be learnt from the multiplier effect was that the increased role of the government in the economy in a sense distorted the reality of the market. By scrutinising the Keynesian economic paradigm, the increased role of the sovereign in relation to economic prosperity was examined. Although such intervention may reduce FDI trend and private investment during the recovering procedure, nationalisation and public investment has been found not only to rescue the economy from the recession, but also, once private investment and FDI resurrect, they become a popular case of brownfield investment.

Brownfield investment was identified to be an investment which forms as either Joint Ventures and/or Merger and Acquisition between an already existing investment and new investors. This has to be distinguished from greenfield investment where the entire investment is

⁶⁹⁸ Laubach and Williams (n 200)

⁶⁹⁹ Keynes (n 90)

⁷⁰⁰ Ibid

constructed as a fresh project without merging with an already established one. The moral behind this comparison lies in the fact that public investment in infrastructure may become outdated and inefficient at some point, but it has the capacity to be revitalised as a result of private investors' acquisition of the project. It was then identified that, despite the fervid growth in the 1950s and 1960s, the state could no longer sustain its interventions in the market. While under Keynesian economics tax rates should have been kept low, by early 1970s in the UK and the USA the governments had to increase taxes in order to achieve a budgetary balance. This was concurrent to the energy crisis caused by the 1973 Arab oil embargo and the 1979 oil shock as a result of Iran's revolution. The failure of state-driven economics was coincided with the rise of free market advocates. The most prominent figure of that time was Hayek, who assisted the US and UK governments and policy-makers to correct the market. This was achieved by massive deregulations and public assets sell-off. This economic agenda, which was adopted by Thatcher in the UK and Reagan in the USA, contributed to economic growth and indeed the pivotal role of private investments and transnational corporations in the onset of modern global FDI.

The deregulation and economic assimilation, which was carried all around the world moulded the new globalised economy. From 1980s till 2008 economic statistics were at their peak. Nonetheless, the economic crisis, which struck the world in 2008 following the collapse of Lehman Brothers and the burst of the mortgage bubble in the US revealed the problems that were in plain sight, but nobody dealt with them. While under the Keynesian economic paradigm, state-driven economies suffered from the unprecedented stagflation, this time as a result of unbridled deregulation economic bubbles had been created. In this part of the Chapter Two, the evolution of two unlike economic paradigm was analysed to examine the role of the government in the economy and the potential failure of the market as mentioned above. As the key question of the Thesis is the nexus between sovereignty and economic prosperity, this part of the chapter provided a detailed historic-economic evaluation to argue that the extreme use of either paradigms could lead the country into economic crisis. By allowing the sovereign's will in economic affairs, even within a capitalist market the society has suffered from stagflation, but on the other hand the increased role of private investors in an economy without sufficient regulations, government control and authority has led to economic recession.⁷⁰¹ It was also argued that the presence of private investors in the economy raises the issue of moral hazard. The moral hazard was identified to be the situation in which a

⁷⁰¹ Krugman (n 152)

private economic participant, either private domestic banks or foreign investors, persist on carrying out their risky investments, despite the fact that they are aware of the potentially negative ramifications of these investments.⁷⁰²

While the first part of this chapter provided the historic-economic analysis on the role of the government in the economy, and how the FDI determinants had fluctuated accordingly, the second part of the chapter directly tackled the issue of FDI and its consequences on the hosting countries. This was achieved through the examination of the impact of FDI on the sovereignty of the recipient countries. The examples used were selected from different parts of the world to evince the global applicability of the premise. The late 1990s East Asian crisis was analysed in light of the impact of foreign clout and FDI over the economic sovereignty of the hosting states. The crisis started as a result of the collapse of Thailand's currency as well as Korea's banking crisis. Korea having borrowed heavily from foreign banks and creditors was perceived as unable to repay the debts. The rumour turned from an unfounded allegation into a devastating reality. The repercussions of this crisis mainly affected domestic corporations, as foreign investors were the first to leave. It was also established that the recommendations of the IMF to the countries in crisis further deteriorated the situation.⁷⁰³ It was discussed that the IMF, as an international entity following Keynes legacy, was in fact in contradiction to the teachings of Keynes. It was argued that IMF and its conditionality were not in line with the reality of the recipient countries. For example, Thailand's manufacturing had proven to contribute more than any other field of investment, but, as a result of the IMF recommendations billions of dollars were directed into real estate by foreign investors. While domestic businesses and domestic investors were suffering as well as the foreign investors, Japan proposed a \$30billion aid to the countries in crisis.⁷⁰⁴ Nonetheless, Japan's offer was contested by the US administration which demanded that this aid should be used first and foremost to rescue foreign investors.⁷⁰⁵ Hence, it was argued that in times of crisis and turmoil the FDI exporting countries will put effort to save their own investors rather than embracing the virtues of globalisations. Nevertheless, if assured of the crisis to be resolved in short or medium term, there has identified to be instances of cooperation between FDI exporters and the recipient states. Thus, maintaining control and authority over their economic sovereignty

⁷⁰² Dowd (n. 185)

⁷⁰³ Stiglitz (n 116)

⁷⁰⁴ Hook (n. 206)

⁷⁰⁵ Stiglitz (n 116)

will prove to be pivotal for countries in times of crisis. It was also identified that amongst the countries in crisis Malaysia that took prompt control over its economic sovereignty discarding IMF recommendations, which came at the cost of a temporary ban on capital flow and restrictions on all investors, overcame the crisis earlier than other neighbouring countries, including Singapore. Also, Korea, who persisted on directing FDI into specific industries that the state believed were more efficient and productive, managed to achieve remarkable growth rates out of these investments. This also was in contradiction to the IMF recommendations. Another lesson learnt from the above experience was that during the East Asian crisis the countries were more knowledgeable about their own affairs, capacities and flaws than the international institutions and forces, such as the IMF and FDI exporters.

The most illustrative example of the hosting state's sovereignty being targeted by foreign economic forces and FDI was identified to be Chile. As the Chicago School of Economic advocated, no state should be allowed to intervene in the market. They also postulated that for market liberalisation there is a singular economic standard which should be acknowledged and applied by a state regardless of the conditions in that state.⁷⁰⁶ The US orchestrated the coup against President Allende that paved the way for Pinochet, a dictator to come to power.⁷⁰⁷ Allende's protectionism was identified to be as a barrier to the American goods. Ironically the US economy was being run by Keynesian paradigm at the time. It was argued that, in order to gain market access in Chile the US officials enforced their will through a brutal coup. Thus, while it has been suggested that FDI can hamper sovereignty, it was argued that, in order to gain access to FDI opportunities in fields which are protected by the recipient country, exporting states have not hesitated to undermine and rigorously attack the sovereignty of the hosting country. Hence, it was asserted at this instance that, FDI exporter would in reality attack the sovereignty of the hosting state to accelerate the export of FDI. Studying the instance of Chile, remarkable similarities has been identified with the Ajax coup of 1953 in Iran. It was posited that, there has been a trend of brutal attack towards sovereign states in order to maximise the FDI gain by the FDI exporting states. Hence, the coup in Chile and the Ajax coup in Iran was the pure example to justify the proposition.

⁷⁰⁶ Klein (n 188)

⁷⁰⁷ Valdes (n. 228)

By setting forth the FDI determinants and making the argument that the FDI can jeopardise the sovereignty of the hosting state, Chapter Three examined the historic background of such proclamation in Iran. By following the roots of FDI in Iran, the key question of the Thesis was tested in order to identify the relation between FDI and national sovereignty. In doing so the chapter focused on the history of Iran from the early 1800s till 1979. This examination covered two Iranian dynasties, the Qajar and Pahlavi. Starting with Qajar, who ruled over Iran from 1785 to 1925, the political, legal and economic evolution of FDI-related issues were illustrated. Initially the Treaties of Alliance, which Iran had ratified with other states, were introduced to gauge the geopolitical standing of Iran. Iran was referred to as Persia while examining the Qajar's era as the name Iran was later, during the first Pahlavi, was coined as the official international name of the country.

The Anglo-Persian Treaty of 1801 was taken as the first major political treaty which shaped the Iranian mentality towards the West for the next 200 years.⁷⁰⁸ According to the terms of the treaty, Britain was committed to provide military assistance against foreign invasion, in particular French encroachment towards Persia. Nonetheless, once attacked by the Russians in 1804, Britain eschewed a direct confrontation with Russia. This was taken by the Persians as a breach of the spirit of the treaty. Although this was not a commercial contract or directly related to any sort of FDI, two crucial points should be considered as the cornerstone of the foreign policy of Persia. The first one is the fact that states, such as Persia, without adequate military capability at the time had to seek the support of a stronger state. However, for the strong states to support a weak state, geopolitical gains have always taken priority over the ratified treaties. Thus, the mere reliance on such treaties would not guarantee the support of a stronger states. The second issue is related with the fact that, not being supported by the British the Persian King at the time was forced to seek the assistance of France by signing the Treaty of Finckenstien in 1807. This not only indicates the fragile sovereignty of the Persian King, who desperately looked for a powerful state, but also that such political decisions were the result of financial and economic concessions. Hence, it was argued that such veering alliance-seeking strategies, though initially aimed to enhance and maintain Iran's position, resulted in various economic and financial rights given to foreigners as it was evinced based on the affairs related to the Preliminary Treaty of 1809 and the Definitive Treaty

⁷⁰⁸ Katouzian (n 309)

of 1812, the Treaty of Gulestan in 1813 and the Treaty of Turkmanchay in 1828.⁷⁰⁹ A crucial point in relation to the issue of sovereignty is that in all these instances Iran ended up playing the role imposed by a clout of different powerful states and hardly ever gained the protection or support initially anticipated.

In 1872 Persia entered into an agreement with Reuter a British merchant for a contract of infrastructural nature under which Baron Reuter was granted with a 70-year exclusivity right over railways, mining, irrigation, water work, exploitation of state forests as well as a 20- year monopoly on Persia's customs. Not only these exclusive rights for FDI angered the Persian public and clergies as being excessive, but also high ranking British delegates, such as Lord Curzon in India condemned such contract.⁷¹⁰ Under the pressure of Persian clergies as well as Russian and British politicians the King had to abrogate the deal. Such contract could in fact jeopardise all aspects of sovereignty, including control and authority. Having said this, despite the extreme terms of the contract and the vast rights which were bestowed to the FDI exporter, such projects may have initiated the economic take-off of the country. It was argued that, with the refinement and renegotiation of the terms of the concession, a consensus could have been reached to benefit both parties being the FDI exporter and the country of Iran which was in dire need of industrial take-off. Nevertheless, the prevailing notion which resulted in the abrogation of the contract was to protect the sovereignty. As a result of the termination of the deal in 1873, Reuter sought compensation. He managed to obtain the right to the first bank of Persia known as the Imperial Bank of Persia (Bank Shahi).⁷¹¹ Later Russia also requested such right from Persia which was successfully granted. The Discount Bank of Russia was the second foreign bank established in Persia. Hence, it was established that FDI in services and the banking sector were introduced to the Persian economy earlier than the FDI in the natural resources sector.

The proactive role of the Persian clergies was observed in the case of the lottery right of Persia in 1889. While Mirza Malkam Khan had already brokered the exclusive lottery right to a British firm, the clergies of Persia found lottery to amount to gambling and hence be illegitimate (Haraam) under Islamic law.⁷¹² Thus, it was found that that Islamic norms and clergies have played an important role in the field of FDI. The other instance of the influence of the clergies in

⁷⁰⁹ Amirahmadi (n 298)

⁷¹⁰ Wright (n 327)

⁷¹¹ Greaves (n 325)

⁷¹² Wright (n 327)

determining the FDI existence in Iran was the Talbot concession of 1890.⁷¹³ The monopoly of production, importation and distribution of tobacco in Persia was granted to the Imperial Tobacco Corporation of Persia. This not only angered the clergies but also the Persian merchants and businessmen. As in the case of FDI in the banking sector, FDI over tobacco was categorised under service sector. Nonetheless, unlike banking this field of investment had already been practiced by domestic merchants and businessmen. The point is that, such monopoly right would have deprived the domestic participant of that business field. Hence, Talbot was not contested because of the potential rise of a foreign competitors, but rather, the deprivation of the domestic merchants against the benefit of the foreign FDI exporter was the key reason of the revolt against the concession. This concession angered the domestic merchants and clergies, whom ironically have been having mutual interests for most of the recent history of Iran. A high-profile clergy Mirza Hasan Shirazi announced that the usage of tobacco was Haraam, thus illegitimate. A widespread boycott of tobacco resulted in the abrogation of the concession by the King. This was the second instance in which the clergies used their power against FDI and the King. Thus, it has been established that the sovereign's deed has been ignored and revoked by the clergies for the benefit of the domestic merchants, as evidenced in the case of Talbot. In the absence of a Parliament at the time, it was the clergies who challenged the authority and the deeds of the sovereign. The relevant outcome of this incident and the Thesis is the fact that, the sovereign of the country has always been under the influence of the domestic clergies. This was illustrated in the Qajar's and can be seen in the current establishment of Iran which finds its constitutional roots and origins in the Islamic law. Accordingly, if the Qajar's can be argued to have been under the influence of the clergies, it is valid to point out that the current sovereign and political establishment of Iran is officially being run by the clergies. Therefore, the current influence of the clergies over the political legal and economic matters of Iran gains its legitimacy from the constitutional rights.

In 1901 the first oil exploration contract was signed between Persia and D'Arcy⁷¹⁴, a British merchant. It was found in the research that concurrent to the contract with the Persian King based in Tehran, D'Arcy entered into contracts with local tribes, mainly Bakhtiary.⁷¹⁵ Such separation between the regional power hubs and the *de facto* sovereign of the country was found to be due to two reasons; One was the possibility of the political arrangement between local tribes and the FDI

⁷¹³ Katouzian (n 309)

⁷¹⁴ Howard (n 389)

⁷¹⁵ Wright (n 327)

exporter against the sovereign, which has not been founded on reliable evidence. The second reason is related to the issues of feasibility and efficiency. It was identified that the local tribes were not happy with foreign interference in the region and applied subversive methods to fight it. Thus, D'Arcy engaged the local tribes in his FDI activities by allocating separate shares to them. Although the parallel oil contract with the tribe of Bakhtiary seemed to have gained the support of the locals, the king in the capital was not content to such circumvention of his authority. It was discussed that, despite the fact that the realm of Iran was more of a tutelage system of polity, nonetheless, the king in the capital remained the sovereign of the country. Whilst the initial D'Arcy contract was ratified by the king, a parallel contract was taken as an infringement to the identity of the king as the sole sovereign of the country. It was argued that, although identity is a crucial component of the characteristic of sovereign and sovereignty as a moulding component, nonetheless identity should not be taken as or in tantamount to the concept of sovereignty.

Probably the worst example of foreign intrusion in the domestic affairs of Persia took place in 1907, when without the knowledge and the consent of Persia, Britain and Russia split and subsequently occupied Persia when the Russian took the North and Britain occupied the South sphere of Iran's territory. Whilst the ports were under the control of the Russian and British forces, the Persian King and merchants had no control over their land.⁷¹⁶ Hence, unable to import what was vitally needed for the country, most importantly grain without the approval of the foreign delegates. Years later having bought the Persian-grown grains for the forces, the British blocked the Persian ports and forbade the entrance of the US-sent food which was to aid the starving Persian. This resulted in the great famine of 1917-1919 during which circa 8 million Iranian, which totalled half of the country's population at the time, died of hunger.⁷¹⁷ The outcome of this instance in light of this Thesis is the fact that, by not having control and authority over the borders and the ports the sovereign cannot possibly provide for its subject in times of war and turmoil. Hence, once the control and the authority of the sovereign is jeopardised by foreign forces the public of the country inevitably will be confronted with the catastrophes of such. It has to be reminded that, the key reason of the loss of control and authority over the borders and the ports was the rights and concessions which were given in the earlier years to foreigners to facilitate their trade and investment in Iran. Thus, it was argued that although the control and the authority of the sovereign

⁷¹⁶ Greaves (n 325)

⁷¹⁷ Majd (n 440)

may be tolerated to be minimised in the peace time for the good of foreign trade and investment, and the potential economic prosperity as a result of foreign investment, but in times of war and turmoil, it was proved, the exertion of sovereign's rights is a necessity which should be uphold. In case of Persia at the time, not only the control and the authority of the sovereign were drastically marginalised but also, once the war struck the sovereign of the country had no *de facto* power to exert any of its rights and wills.

As it was discussed, the reign of Qajar coincided with the first waves of FDI and relevant treaties through which Persian Kings seemingly agreed to bestow various rights to different countries with view to engage powerful states in Iran's economic activities. The rational was that having economic interests in Persia would increase the political ties of the powerful states with the country and thus shield it from the threat of wars and political encroachments. Nonetheless, it was illustrated that these expectations were never fulfilled during the reign of Qajars.

In the midst of the WWI the British government gained over 51% of D'Arcy's shares, thus, making the Anglo-Persian Oil Company a state to state FDI.⁷¹⁸ It was not until 1953, under the new Kingdom of Iran being Pahlavi when the terms of the contract came under fervid attack by the Nationalist Front. Subsequently, the then Prime Minister of Iran Dr. Mosadegh promptly nationalised the natural resources of Iran, including the oil.⁷¹⁹ This initiated a series of legal battles in international courts and the UN. Having lost the vital oil contract of Iran, Britain at first boycotted Iranian oil. The moral of this is that, although the economic sanctions on Iran have been a reality for Iran since the 1979 Islamic revolution, it was identified that the first set of oil embargos against the country was in fact introduced under the secular Imperial Kingdom of Pahlavi. Hence, a key and fundamental conclusion of this Thesis is the fact that the current sanctions on Iran are of the same nature as in the past. It is concluded that such sanctions directly target the sovereignty of Iran over its resources, in this case oil. The oil embargo against Iran was the followed by a British-American orchestrated coup d'état which overthrew the Iranian Prime Minister in 1953.⁷²⁰ Having fled to Italy during the turmoil, the Shah of Iran returned to the country with the assistance of the foreign forces. Two points should be made in light of this instance; one is that the FDI exporter did not tolerate the nationalisation of Iran's oil despite the approval of international law. To regain the lost FDI contract, the FDI exporting state sought a brutal coup against the legal and

⁷¹⁸ Ewalt (n. 380)

⁷¹⁹ Katouzian (n 309)

⁷²⁰ Marsh (n 488)

legitimate Prime Minister of Iran. This can highlight the earlier argument on Chile and the foreign intrusion to secure economic benefits. The second point on the Ajax Coup is that, the very same FDI exporter state who orchestrated the coup, reinforced Iran's King in power. Hence, it is concluded that the last King of Iran owed his throne highly to the foreign forces on two occasions; first after the abdication of his father by the Allied forces in 1941⁷²¹, and the second time through Ajax Coup. Thus, it is valid to argue that the legitimacy of the sovereign of Iran, in this case the second Pahlavi, was indebted to foreign powers as a result of a very controversial FDI case. It was concluded that, despite the surge of oil revenue in the mid 1970s the projections of industrialisation and modernisation was a failure in Iran. It was identified that, the key reasons of the failure were predominantly lack of independence and legitimacy in the sovereignty of Iran as well as the contradictions between Shah's oil driven ambitions and the actual capacity of Iran. Furthermore, the veering economic programmes and high reliance of oil in the Keynesian economy of Iran, inter alia the accelerating sense of dictatorship of the Shah, were amongst the key reasons which not only caused the miscarriage of his economic agenda but also gave momentum to the upcoming revolution.

Chapter Four examined the FDI-related issues since the 1979 revolution. In doing so, the chapter introduced an examination of the concept of sovereignty through the past few centuries. The reason to have such explanation in Chapter Four rather than earlier was the fact that this chapter by studying the current political establishment of Iran concludes that, in comparison to the past 200 years and two other political establishments ruling Iran, the Islamic Republic has maintained its sovereignty and independence intact. This was the case in spite of the findings that there is a remarkably high rate of financial corruption within this establishment. Nonetheless, the arguments on the evolution of the sovereignty were based on the propositions of two legal philosophers, Jean Bodin and Thomas Hobbes. These two prominent figures believed that for a sovereign to have *de facto* power he should be absolute.⁷²² Both came to the conclusion that a state must first survive and then prosper.⁷²³ Hence, primacy was given to the sovereignty by Bodin and Hobbes. The analysis was furthered by examining the Westphalia Treaty of 1648.⁷²⁴ The Treaty, which has become one of the cornerstones of international law, proposes that all states are equal

⁷²¹ Bakhash (n. 416)

⁷²² Bodin (n 538) also Hobbes (n 547)

⁷²³ Bodin (n 538)

⁷²⁴ Krasner (n 556)

in rights and no state should interfere in the domestic affairs of other sovereign states. This has become known as the doctrine of Westphalia Sovereignty.

Chapter four then introduced different types of sovereignty. This was based on the works of Krasner a contemporary well-known legal scholar. His work helped this thesis to taxonomy the types of sovereignties, enhancing the subject and find out and argue the exemptions provided by him against the established notion of Westphalia Sovereignty. While in the first two chapters economic sovereignty was under the spotlight, in this chapter, in addition to the Westphalian sovereignty three other types of sovereignty were presented. Firstly, domestic sovereignty which was proposed that contains authority and control at its heart.⁷²⁵ Secondly, interdependence sovereignty which only reflects the control issue,⁷²⁶ and thirdly the international legal sovereignty by which states are officially recognised by other states.⁷²⁷ The abovementioned types of sovereignty, in addition to economic sovereignty, were then tested over the history of Iran as presented in chapter three. Once again, based on this categorisation the previous proclamation was approved. It was also concluded that, despite the fact that the Westphalian Sovereignty has been ignored during the past few decades by most powerful state, it was argued that there have not been valid reasons for such infringement; although reasons such as Human Right have been used as a justification to undermined the Westphalian Sovereignty, it was disputed in chapter four that, such reasons have been highly subjective in recent years and have been found to be based on unfounded allegation. In the earlier part of this Thesis, once discussing the Rule of Law against principle of sovereignty, references were made in relation to the above-mentioned argument.

This was then followed by the evolution of FDI-related legal and economic environment of Iran. In doing so, the past 4 decades were analysed decade by decade. The first part examined the first decade of the Islamic Republic, when the country was struggling not only by the post-revolution turmoil but also as a result of the Iraq invasion. In this part, it was established that a Keynesian economy was inevitable. As a result of the war, the country had to take more prompt action in the economy which included increased public expenditure, public investment and food rationing to protect the country against a probable famine. It was concluded that, despite the difficulties the government managed to bring about economic order under the war circumstances. Having control and authority over the economy, ports and natural resources of the country and in

⁷²⁵ Ibid

⁷²⁶ Krasner (n 556)

⁷²⁷ Ibid

general enforcing national sovereignty, the country managed to survive 8 years of war. Another important part of this chapter covered the period from 1998 to 2004. In this period, which has been commonly referred to as the reform era, it was identified that, despite the previously introduced unilateral US sanctions, known as ISA⁷²⁸, Iran managed to restore the post-revolution troubled relationships with the western countries. As a result of such proactive diplomacy, the previously introduced Blocking Regulation by the EU over the US sanctions on Cuba was expanded to the sanctions over Iran to protect European investors interested in Iran against secondary and extraterritorial sanctions of the US. It was during this time that Iran introduced the Foreign Protection and Promotion Act (FIPPA). Furthermore, it was at this point in 2003 that Iran joined the Multilateral Investment Guarantee Agency (MIGA). Nevertheless, the ineffectiveness of MIGA was challenged in the chapter as there is not much evidence to prove that MIGA succeeded in providing a remarkable number of insurances to FDI exporters in Iran. As it was presented based on the economic data taken from World Bank, Iran started to witness a remarkable FDI growth in this period of time.⁷²⁹ Although the major share of FDI was still on the natural resources sector, other sectors, including manufacturing and car industry, experienced a surge of FDI mainly from France. With regard to oil resources, it was explained in this chapter that the natural resources were all nationalised under the Single Act in the early months of the revolution in accordance to the constitutional law of Iran. Nevertheless, due to the lack of domestic technology Iran had to seek the assistance of foreign corporations. It was discussed that, despite the constitutional limits on foreign engagement in the economy of the country, the introduction of new bills and regulations which were ratified by Majles, did provide protection and facilitate the surge of FDI.

One controversial example of FDI versus sovereignty took place in this period in 2004. While the newly built Imam Airport's service sector was given to a Turkish corporation under a bid, the Islamic Revolutionary Guard Corps (IRGC) took over the airport. This not only breached the contract with the Turkish company, but also initiated the economic presence of IRGC thenceforth. Nevertheless, it was argued in this chapter that there are sensitive fields and sectors which should be protected by the sovereign, as it was also the case in a sealed contract over 6 ports in the US with an Emirati-Saudi contractor which came under the scrutiny of the American Congress. Ultimately, that contract was cancelled and compensation was paid. Thus, it was

⁷²⁸ Maloney (n 592)

⁷²⁹ Keddie (n 580)

established that for certain sectors the state can exercise its sovereign right to preserve what is deemed as vitally sensitive for the country. Although it is valid to argue that the IRGC is not part of the government, but it has been playing a crucial role as one of the key pillars of Iranian establishment which finds its legal existence in the constitutional law of Iran. Hence it should be taken as a major actor under the authority of the Iranian sovereignty.

The chapter then focused on President Ahmadinejad and the period during which the country was faced with the UN Security Council sanctions against the nuclear programme of Iran. Considering such programme as an international right recognised by the International Atomic Energy Agency (IAEA) to which Iran is a signatory member, Iran argued that it is basically exercising its sovereign right in accordance to the IAEA for peaceful purposes. The multilateral sanctions were enforced regardless of Iran's point of view. The sanctions severely impacted the Iranian economy as they included a boycott on the oil of Iran and the Central Bank of Iran. As a result of the sanctions, the OECD Risk Assessment of Iran went from level 4 during President Khatami to level 8 at the time of Ahmadinejad's presidency.⁷³⁰ Whereas in the previous decades the main foreign hurdle towards FDI in Iran was the unilateral sanctions of the US, since 2006 the multilateral UN sanction became the key hurdle of FDI in Iran. It was argued that although the UN sanctions in Ahmadinejad's presidency had pernicious impact not only on the FDI trend in Iran but also genuinely on Iran's economy, having had an organised transparent and law adhering government Iran could have eased the impacts of the sanction. Domestic economic disarray and corruption were identified in this chapter to have as much negative effect as foreign clout and foreign sanctions over the economy of the country. Thus, it can be argued that, as it was indicated by the corruption perception index⁷³¹, there has been a direct correlation between foreign forced sanctions and the rise in the domestic corruption. In the presence of the economic sanctions Iran have been seeking an inward-looking approach, meaning to magnify domestic potentials to counter the sanctions. Nonetheless, the centrality of economy which is forced as a result of economic sanction should be discerned from the Keynesian economics which was not moulded to confront any foreign sanctions. It can be argued that, not only the sanctions have direct negative effect on the FDI inflow, but in long term it could have pernicious impact on the sovereignty of the targeted

⁷³⁰ Ibid

⁷³¹ Transparency International

country. As the country may need to adjust its policies to either defy the sanctions or yield down its rights and policies to satisfy the demands of the sanctions.

The chapter concluded by examining the Joint Comprehensive Plan of Action, which came into force in 2015. Having suffered from the abovementioned economic sanctions, the Iranian establishment agreed that an agreement is eminent. Rouhani, the pro-negotiation candidate sealed a victory in the Presidential elections and after 12 years of ongoing negotiations which had started by the previous government, Iran, Germany and the 5 permanent members of the UN Security Council reached an international agreement recognised as a UN Resolution. According to this agreement, the UN and the US were to lift the nuclear-related sanctions in return of Iran's decrease in uranium enrichment. While Iran has been adhering to the terms of the JCPOA, as consistently certified by the IAEA, in 2018 the US President univocally withdrew from the deal. While in the post-JCPOA era, FDI emerged in Iran, the sudden abrogation of the deal has brought uncertainty as to the future of the Iran-Deal and has hampered the FDI resurrection. Although Iran in response to US withdrawal submitted a claim in the International Court of Justice against the new US sanctions, it leaves the future of the JCPOA and the FDI flow in Iran obscure. Ironically, after the adherence of the admission of the case by the ICJ, the US authority abrogated the Treaty of Amity which was signed between the two country after the successful coup of 1953 and which was in existence even in the post-revolutionary escalated relationship of the two states. The Treaty of Amity was the last direct legal means to ease the issues between the two adversary states through legal mechanism. It was based on the Treaty of Amity which the well-known Iran-US Claims Tribunal was established. It can be also concluded on this matter that, the recent abrogation of legal treaties by the US authorities are based on unfounded allegations and deemed at not resolving any issue through justified legal mechanism. In both cases of abrogation, the outcome of the treaties was not in line with the unjustified expectations of the US administration, thus the remedy the US administration sought was to withdraw from both legal treaties.

The JCPOA can be taken as an illustration of all the treaties that have been signed by Iran with the aspiration of economic prosperity. Under the JCPOA Iran had agreed to suspend its nuclear enrichment, which was a right of the country to exercise its national sovereignty. Not only Iran's cooperation was not recognised by the US officials, but also there are seemingly new requests to Iran to further surrender its rights, targeting Iran's defensive capability.

As it was discussed in this Thesis, there is in fact a correlation between national sovereignty and FDI according to which the sovereignty of the hosting state can be jeopardised for economic prosperity. As in the case of Iran, it was established that such threat existed throughout the country's history. The current establishment of Iran is faced with a dilemma at this point: to vest further trust in the US administration in the hopes of FDI emergence and instead faced the exemptions of the Westphalian Sovereignty or choose self-sufficiency and persistence on its sovereign rights and probably suffer the economic implications. In order for the former to benefit Iran, a multilateral effort is required, which has been hampered as a result of the recent US withdrawal from the Iran-Deal and the extraterritorial sanctions. For the latter solution, the sovereign of Iran has to fight domestic corruption by safeguarding the rule of law.

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