INVESTMENT TREATY ARBITRATION: DUAL NATIONALS ARE NOW WELCOME: A WAY OUT OF ICSID'S DUAL NATIONALITY EXCLUSION

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I. Introduction

Investor claimants holding two nationalities have traditionally been barred from bringing a claim against a country of one of their nationalities when constituting an arbitral tribunal under the auspices of the International Centre for Settlement of Investment Disputes (ICSID).[1] Indeed, ICSID tribunals have consistently struck down claims brought by dual nationals against one of the countries of their nationality relying on the dual nationality exclusion set out by Article 25(2)(a) of the ICSID Convention.[2] In the words of the tribunal in *Champion Trading v. Egypt*: "According to the ordinary meaning of the terms of the Convention (Article 25(2)(a)) dual nationals

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1. Convention on the Settlement of Investment Disputes between States and Nationals of Other States art. 25(2)(a), *opened for signature* Mar. 18, 1966, 575 U.N.T.S. 159 (entered into force Oct. 14, 1966) [hereinafter *ICSID Convention*] ("'National of another Contracting State' means: (a) any natural person who had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration as well as on the date on which the request was registered pursuant to paragraph (3) of Article 28 or paragraph (3) of Article 36, *but does not include any person who on either date also had the nationality of the Contracting State party to the dispute.*" (emphasis added)).

2. Soufraki v. U.A.E., ICSID Case No. ARB/02/07, Award (July 7, 2004), 12 ICSID Rep. 156 (2007); Champion Trading Co. v. Egypt, ICSID Case No. ARB/02/9, Decision on Jurisdiction (Oct. 21 2003), 14 ICSID Rep. 486 (2009).

are excluded from invoking the protection under the Convention against the host country of the investment of which they are also a national."[3] However, the decision *Serafín García Armas v. Bolivarian Republic of Venezuela* (*García Armas*), rendered by an ad hoc arbitral tribunal in December 2014, unsettles the waters.

In order to avoid the dual nationality exclusion set by the ICSID Convention, investors may decide to bring their claim in another forum, if authorized by the relevant provision of a Bilateral Investment Treaty (BIT). In a successful attempt to avoid the dual nationality exclusion set by the ICSID Convention, the investors Serafín García Armas and Karina García Gruber availed themselves of this possibility by choosing a forum other than ICSID.[4] They resorted to UNCITRAL ad hoc arbitration administered by the Permanent Court of Arbitration (PCA) to solve their claim of expropriation against Venezuela, a country of one of their nationalities. In this landmark decision, the Tribunal rejected Venezuela's objection to its jurisdiction that dual nationals did not qualify as investors under the BIT and that Venezuela had therefore not consented to be sued by its own nationals in an international forum.[5] On the contrary, on December 15, 2014, the Tribunal found that an investor holding two nationalities can effectively bring a claim against one of the states of its own nationality.

While other tribunals have previously upheld investment treaty claims by dual nationals against a third state, the *García Armas* tribunal was the first to accept jurisdiction over claims by dual nationals that would not have succeeded under ICSID. Indeed, in a similar case, Victor Pey Casado, an investor with both Chilean and Spanish nationalities, had to renounce his Chilean citizenship before bringing his ICSID claim against Chile in 1998.[6]

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3. *Champion Trading Co.*, ICSID Case No. ARB/02/9, Decision on Jurisdiction, ¶ 3.4.1.

4. Bilateral Investment Treaty, Spain-Venez., Nov. 2, 1995, 1996 U.N.T.S. 4 (entered into force Sept. 10, 1997) [hereinafter BIT].

5. García Armas v. Bolivarian Republic of Venez., PCA Case No. 2013-3, Decision on Jurisdiction, ¶¶ 56, 85 (Dec. 15, 2014), http://www.italaw.com/sites/default/files/case-documents/italaw4151.pdf.

6. Victor Pey Casado and President Allende Foundation v. Republic of Chile, ICSID Case No. ARB/98/2, Award, ¶¶ 319–23 (May 8, 2008), http://www.italaw.com/sites/default/files/case-documents/ita0639.pdf.

The Tribunal's astonishing assertion of jurisdiction in *García Armas* highlights the potential permissiveness of the UNCITRAL rules compared to ICSID, both of which are provided for by the Spain-Venezuela BIT. Moreover, the decision highlights unintended and novel consequences of the fact that Venezuela denounced the ICSID Convention in 2012,[7] and thus initiated a predilection for claims to be brought against it under other rules. While the *García Armas* decision might be the green-light that dual-nationals with ready claims have been waiting for, it also might open important problems of legitimacy and interpretation. Since this decision, in fact, there have been multiple claims brought by dual national investors against a state of their own nationality giving rise to concerns of abuse in investment dispute settlement mechanisms.[8]

Arbitrators confronted with dual national claimants will need to consider whether to follow in the footsteps of the *Garcia Armas* tribunal and adopt a formalistic approach to nationality or whether to return to the doctrine of effective nationality. It is my opinion, however, that these seemingly opposite

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7. Venezuela denounced the ICSID Convention on January 24 2012. Also, Bolivia and Ecuador have withdrawn from the ICSID Convention, respectively in 2007 and 2010. *List of Contracting States and Other Signatories of the Convention*, ICSID (Apr. 12, 2016), https://webapps.worldbank.org/apps/ICSIDWEB/icsiddocs/Documents/List%20of%20Contracting%20States%20and%20Other%20Signatories%20of%20the%20Convention%20-%20Latest.pdf.

8. Rawat v. The Republic of Mauritius, PCA Case No. 2016-20, Notice of Arbitration and Statement of Claim, (Nov. 9, 2015), http://www.italaw.com/sites/default/files/case-documents/italaw4479.pdf (filed by a French Mauritian dual national under the France-Mauritius Bilateral Investment Treaty); CATRIONA PATERSON, INVESTOR-TO-STATE DISPUTE SETTLEMENT IN INFRASTRUCTURE PROJECTS (2006) (discussing Uzan v. Republic of Turkey, filed pursuant to UNCITRAL Arbitration rules and based upon the Energy Charter Treaty); Sergei Viktorovich Pugachev v. The Russian Federation, Notice of Arbitration (Sept. 21, 2005), http://www.italaw.com/sites/default/files/case-documents/italaw4374.pdf. Specific to Venezuela, a second UNCITRAL case is being brought by the García Armas family. García Armas v. Bolivarian Republic of Venez., PCA Case No. 2016-08, https://pcacases.com/web/view/135 (filed in June 2015 and currently pending). Recently, arbitrators were selected in that case: claimants nominated Enrique Gomez-Pinzon and respondents nominated Santiago Torres Bernardez, the chairman is Jose Emilio Nunes Pinto. Moreover, it is interesting to note that on May 5, 2016, Luís García Armas, another García Armas family member, registered his claim against Venezuela under the ICSID Additional Facility rules, stating to be a national only of Spain.

approaches can be reconciled by a common goal: the protection of the investor.

II. The *García Armas* Award—Three Steps for Dual Nationals to Sue One of Their Own Countries

The Tribunal in *García Armas v. Venezuela* provided three steps to overcome the apparent jurisdictional barrier imposed on dual nationals.

First, the Tribunal refused to ground arguments regarding nationality on the effective nationality doctrine.[9] This doctrine provides that an individual is the national of the state that he holds the closest connection to. The International Court of Justice elaborated the doctrine in the *Nottebohm* Case finding that a "genuine connection" between a State and a person exists solely in the presence of certain indicators.[10] "The habitual residence of the individual concerned," the Court wrote, "is an important factor, but there are other factors, such as the center of main interests, his family ties, his participation in public life, attachment shown by him for a particular country and inculcated his children, etc."[11]

Venezuela brought forth the effective nationality doctrine to maintain that the applicable rules of international law barred the admission of claims brought by physical persons with dual nationality.[12] Venezuela also argued that a person with nationality of both state parties to the BIT could not qual-

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9. The effective nationality doctrine has often been disregarded by arbitration tribunals. *See*, Soufraki v. U.A.E., ICSID Case No. ARB/02/07, Award ¶ 42 (July 7, 2004), 12 ICSID Rep. 156 (2007); Soufraki v. U.A.E., ICSID Case No. ARB/02/07, Decision on Application for Annulment, (June 5, 2007), http://www.italaw.com/sites/default/files/case-documents/ita0800.pdf; Champion Trading Co. v. Egypt, ICSID Case No. ARB/02/9, Decision on Jurisdiction (Oct. 21 2003), 14 ICSID Rep. 486 (2009); Siag v. Egypt, ICSID Case No. ARB/05/15, Decision on Jurisdiction, ¶ 150 (Apr. 11, 2007), http://www.italaw.com/sites/default/files/case-documents/ita0785.pdf; Micula v. Romania, ICSID Case No. ARB/05/20), Decision on Jurisdiction and Admissibility, ¶ 79 (Sept. 24, 2008), http://www.italaw.com/sites/default/files/case-documents/ita0530.pdf.

10. Nottebohm (Liech. v. Guat.), Second Phase, 1955 I.C.J. Rep. 4, 22 (Apr. 6).

11. *Id.*

12. García Armas v. Bolivarian Republic of Venez., PCA Case No. 2013-3, Decision on Jurisdiction, ¶¶ 110–15 (Dec. 15, 2014), http://www.italaw.com/sites/default/files/case-documents/italaw4151.pdf.

ify as an investor under the Treaty which did not allow a national to sue its own country in an international forum.[13] In contrast, the claimants highlighted that neither the Treaty nor the applicable rules of international law excluded dual nationals from being protected by the treaty. The claimants further pointed to the explicit exclusion of dual nationals under Article 25 of the ICSID Convention, supporting their conclusion that the ICSID exclusion should not implicitly extend to other arbitral forums available under the BIT.[14]

Responding to these arguments, the Tribunal found that dual nationals could qualify as "investors" through asserting that customary international law rules were inapplicable in the context of a BIT.[15] The Tribunal's reasoning was in line with previous ICSID cases, which had discarded the *Nottebohm* "genuine connection" test.[16] Instead, the Tribunal gave importance to the express language of the relevant investment treaty.[17]

By interpreting the BIT in accordance with the Vienna Convention on the Law of Treaties (VCLT), the Tribunal held that the BIT was lex specialis between the parties and that the Treaty did not impose any jurisdictional limitation on dual nationals. Moreover, the Tribunal departed from a general public international law interpretation by relying on Article 17 of the Draft Articles on Diplomatic protection.[18] This article states that all of the other articles do not apply if they are "inconsistent with the special rules of international law, such as treaty provisions for the protection of investments."[19]

The Tribunal also held that resorting to customary international law would be an available option solely if the letter of the treaty was not sufficiently clear for its interpretation.[20] To

13. *Id.* ¶ 108.
14. *Id.* ¶ 128.
15. *Id.* ¶ 156.
16. *Id.* ¶¶ 197–206. (relying on both Siag v. Egypt, ICSID Case No. ARB/05/15, Decision on Jurisdiction, ¶ 150 (Apr. 11, 2007), http://www.italaw.com/sites/default/files/case-documents/ita0785.pdf; and Micula v. Romania, ICSID Case No. ARB/05/20), Decision on Jurisdiction and Admissibility, ¶ 79 (Sept. 24, 2008), http://www.italaw.com/sites/default/files/case-documents/ita0530.pdf).
17. *Id.* ¶ 206.
18. *Id.*, ¶¶ 159–73 (Dec. 15 2014).
19. Int'l Law Comm'n, Draft Articles on Diplomatic Protection, art. 17, U.N. Doc A/61/10, at 16–21 (2006).
20. *García Armas* PCA Case No. 2013-3, Decision on Jurisdiction, ¶ 157.

better highlight this line of reasoning, the Tribunal cited the *Diallo* ruling of the International Court of Justice (ICJ),[21] where the ICJ noted that:

> [I]n contemporary international law, the protection of the rights of companies and the rights of their shareholders, and the settlement of the associated disputes, are essentially governed by bilateral or multilateral agreements for the protection of foreign investments, such as the treaties for the promotion and protection of foreign investments.[22]

The Tribunal adopted a more formal approach to nationality, in line with previous decisions by investment tribunals. These decisions have concluded that "[t]he rules of customary international law applicable in the context of diplomatic protection do not apply as such to investor-State arbitration."[23] In its analysis, the Tribunal concluded that public international law interpretation was only resorted to when there was no treaty or when treaties were proven inoperative.[24]

Second, the Tribunal decided that, since both Venezuela and Spain had concluded investment treaties with other states expressly excluding dual nationals from their scope,[25] it was clear that the States did not want to exclude dual nationals from protection under the Spain-Venezuela BIT. If they wanted this exclusion, they would have expressly included it. As the Tribunal wrote, "the exclusion from treaty protection must be explicitly provided for in the text of that treaty in order for its application to prevail as part of the reciprocal commitments undertaken by the signatory states of the Spain-Venezuela BIT."[26]

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21. *Id.* ¶ 172.

22. Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v. Dem. Rep. Congo), Preliminary Objections, 2007 I.C.J. Reports 2007 582, ¶ 88.

23. Fakes v. Republic of Turkey, (ICSID Case No. ARB/07/20, Award, ¶ 69 (July 14, 2010), http://www.italaw.com/sites/default/files/case-documents/ita0314.pdf.

24. *García Armas* PCA Case No. 2013-3, Decision on Jurisdiction, ¶ 172.

25. *Id.* ¶¶ 176–181.

26. *Id.* ¶ 181 (unofficial translation, the Spanish original version reads: "la denegación del beneficio del Tratado debe ser consignada expresamente en el texto del mismo para que prevalezca su aplicación como parte de los compromisos recíprocos asumidos por los Estados signatarios del APPRI").

To support their conclusion, the Tribunal cited several cases where dual nationality barred a claim.[27] In particular, it referred to the *Victor Pey Casado* Award where the Tribunal stated that "the fact that the Claimant possesses two nationalities, including that of the Defendant, does not purport an exclusion from the APPI's scope of application."[28] The Tribunal therefore concluded that, when no additional requirements on nationality were foreseen by the relevant treaty, they could not implicitly be added.[29]

Finally, the Tribunal analyzed the issue of timing: what moment in time is relevant for determining the nationality of the investor? Venezuela argued that the investments should not be protected since the claimants were not Spanish nationals at the time when the investment was made.[30] In contrast, the claimants argued that the relevant date for determining nationality was the moment of the expropriation and the filing of the arbitration.

The majority of the Tribunal accepted the claimants' argument[31] and held that:

> [T]o be granted BIT protection, it is decisive that the party invoking protection holds the nationality of the State of the investor on the date when the alleged breach of the treaty occurred [and that] it is essential that the requirements for the application of the BIT be complied with on the date of the commencement of the arbitration.[32]

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27. *Id.* ¶¶ 202–206.

28. Victor Pey Casado and President Allende Foundation v. Republic of Chile, ICSID Case No. ARB/98/2, Award, ¶ 415 (May 8, 2008), http://www.italaw.com/sites/default/files/case-documents/ita0639.pdf (unofficial translation, the Spanish original version reads: "el hecho que la Demandante posea doble nacionalidad, que comprende la nacionalidad de la Demandada, no la excluye del ámbito de aplicación del APPRI").

29. *García Armas*, PCA Case No. 2013-3, Decision on Jurisdiction, ¶ 206.

30. *Id.* ¶ 212.

31. The Tribunal references *Victor Pey Casado*, ICSID Case No. ARB/98/2, Award, ¶ 414 and Ceskoslovenska Obchodni Banka v. The Slovak Republic, ICSID Case No. ARB/97/4, Decision on Jurisdiction, ¶ 31 (May 24, 1999), 5 ICSID Rep. 330.

32. Ceskoslovenska Obchodni Banka v. The Slovak Republic, ICSID Case No. ARB/97/4, ¶¶ 215, 217 (unofficial translation, the Spanish original version reads: "para obtener la protección de un TBI, es decisivo que la parte que la invoca tenga la nacionalidad del Estado del inversor en la fecha en la

In contrast, the dissenting arbitrator, Mr. Oreamuno, found that the nationality test must be satisfied when the investment is made. Relying on the BIT definition of "Investors" as "[p]hysical persons who are nationals of one of the Contracting Parties according to their own legislation and carry out investments in the territory of the other Contracting State,"[33] Mr. Oreamuno stated that "there is no doubt that . . . for the investment to be protected by the APPRI, he [the investor] must be a national of one of the Contracting Parties *when he made the investment* in the territory of the other."[34] Nevertheless, Mr. Oreamuno held that, even if applying this nationality test, the result would not have changed. As he wrote, "it suffices that a part of their investments was made when they were Spanish, for them to enjoy the protection of the BIT and, consequently, for the Tribunal to be competent to hear their claims."[35]

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cual se produjo el alegado incumplimiento del tratado" and "[r]esulta también imprescindible que se cumplan los requisites de aplicación del TBI a la fecha del inicio del arbitraje"). The majority opinion has been followed by several legal scholars in the ICSID context. For example, Dolzer and Schreuer, referring to the relevant dates for determining nationality under the ICSID Convention states that "an individual investor has to be a national of a contracting state at the time the parties consent to submit to the Centre's jurisdiction and also on the date the request for arbitration or conciliation is registered by the Centre." RUDOLF DOLZER & CHRISTOPH SCHREUER, PRINCIPLES OF INTERNATIONAL INVESTMENT LAW (2012), p. 252.

33. BIT, *supra* note 4, art. 1(a) (unofficial translation, the Spanish original version reads: "Personas físicas que tenga la nacionalidad de una de las Partes Contratantes con arreglo a su legislación y realicen inversions en el territorio de la otra Parte Contratante").

34. *García Armas*, PCA Case No. 2013-3, Decision on Jurisdiction, Dissenting Opinion of Rodrigo Oreamuno, at 102, ¶ 9. (emphasis added) (unofficial translation, the Spanish original version reads: " no hay la menor duda de que para que [. . .] su inversión [del inversor] esté protegida por el APPRI, [el inversor] debe de tener la nacionalidad de una de las Partes Contratantes cuando haga su inversión en el territorio de la otra").

35. *Id.* at 103, ¶ 14 (unofficial translation, the Spanish original version reads: "basta con que una parte de sus inversions fueran realizadas por los Demandantes cuando ya eran españoles, para que ellos gocen de la protección del APPRI y, consecuentemente, para que este Tribunal sea competente para conocer de sus reclamos").

III. Practical Implications

The *García Armas* Decision on Jurisdiction raises two important questions: first, can investors engage in "passport shopping" to obtain BIT protection from their new nationality or would this entail an abuse of rights? Second, will the next investment arbitration tribunals follow the *García Armas* approach and thus decide that dual nationals are "investors" under the relevant BITs?

(1) Following the *García Armas* case, it is possible that investors will be tempted to acquire another nationality to gain protection under a more generous treaty or to bring a claim against the state of their own nationality. An investor who does so simply to gain access to the dispute settlement mechanism provided for in the relevant BIT engages in so-called "passport shopping," which may effectively lead to an abuse of the investment arbitration system.

Seemingly, this is both an abuse of right and an abuse of power. An abuse of right occurs when an individual right is exploited wrongly affecting the interest of the relevant community. An abuse of power occurs when an individual or a state, whether restricted or not, wields arbitrary power.[36] Indeed, one of the goals of international investment treaties and agreements is the protection of *foreign* investment. If the foreign element were to be stripped away, there is arguably an abuse on both accounts and hence there should be no protection.

Yet these concerns are overblown. The fact that investors engage in "passport shopping" should not deter tribunals from granting protection to dual nationals. Indeed, such individuals often find themselves in the peculiar situation of holding dual nationality *before* the existence of the dispute. Dual nationals are foreigners in their own land and their investments should be afforded protection without having to renounce one of their nationalities. When asserting jurisdiction, arbitral tribunals should consider this issue. In practice, they should consider the moment when the investor acquired the nationality

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36. Rudolf Dolzer & Christoph Schreuer, Principles of International Investment Law (2012); Robert Wisner & Nick Gallus, *Nationality Requirements in Investor State-Arbitration*, 5 J. World Inv. & Trade 927 (2004); Christoph Schreuer, *Nationality of Investors: Legitimate Restrictions vs. Business Interests*, 24 ICSID Rev. 521 (2009).

that triggers treaty protection. That moment in time is a crucial factor in determining whether there is an intentional abuse of the investor-state dispute resolution mechanism.

(2) In considering whether investment tribunals will follow the *García Armas* Decision on Jurisdiction, it is necessary to underline that one of the greatest weaknesses of the investment treaty arbitration system is the unpredictable nature of the outcome of its decisions.[37] Undeniably, arbitration tribunals are not bound by precedent. Thus, tribunals do not have the obligation to uphold or even consult the previously rendered awards. Although the pending claims brought by dual nationals since *Garcia Armas* have not yet reached a decision on jurisdiction,[38] the tribunals are free to accept arguments by the defendant states and find a lack of jurisdiction for dual nationals.[39]

Despite this ambiguity, arbitrators will need to provide affirmative reasons for determining the standing of a dual national under the relevant BITs and many of these BITs do not explicitly address this issue. Only recently have BITs started to include dual nationality. For example, the U.S. Model BIT of

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37. Anthea Roberts, *Clash of Paradigms: Actors and Analogies Shaping the Investment Treaty System*, 107 AM. J. INT'L L. 45 (2013).

38. Rawat v. The Republic of Mauritius, PCA Case No. 2016-20, Notice of Arbitration and Statement of Claim, (Nov. 9, 2015), http://www.italaw.com/sites/default/files/case-documents/italaw4479.pdf; *Cem Uzan v. Republic of Turkey*, INV. POLICY HUB, http://investmentpolicyhub.unctad.org/ISDS/Details/572 (last visited Feb. 20, 2017) (filed in April 2014 and is currently pending); García Armas v. Bolivarian Republic of Venez., PCA Case No. 2016-08, https://pcacases.com/web/view/135 (filed in June 2015 and currently pending).

39. The claimants in the pending dual nationality cases have either brought forward similar arguments as the claimant in *García Armas* or not mentioned the latter decision at all. In particular, in *Dawood Rawat v. The Republic of Mauritius*, the claimant explicitly referred to the *García Armas* Decision on Jurisdiction in its Notice of Arbitration and Statement of Claim by arguing that: "where a Bilateral Investment Treaty does not require an investor to be the national of only one of the contracting parties, at the explicit exclusion of dual nationals, the parties cannot add a condition that is not provided for in the Treaty" *Rawat*, PCA CaseNo. 2016-20, Notice of Arbitration and Statement of Claim, ¶ 85. On the contrary, in *Sergei Viktorovich Pugachev v. The Russian Federation*, the Notice of Arbitration introduces Mr. Pugachev, the investor, solely as a French national, although it is a known fact that he is also Russian. Sergei Viktorovich Pugachev v. The Russian Federation, Notice of Arbitration ¶¶ 1, 4 (Sept. 21, 2005), http://www.italaw.com/sites/default/files/case-documents/italaw4374.pdf.

2004 explicitly provides that "a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality".[40] This BIT thus explicitly adopts the effective nationality doctrine. One might assume that arbitral tribunals will have to follow either the *García Armas* formalistic approach or return to the doctrine of effective and predominant nationality that the *García Armas* Tribunal considered obsolete. However, I believe that there is a way for both approaches to be reconciled to grant the best protection possible to the investor.

Is the effective or predominant nationality test truly obsolete? Is such test to the disadvantage of the dual national investor? Professor Zachary Douglas contends that that when a BIT fails to regulate the issue of dual nationality, and when there is no rule excluding the application of the effective nationality doctrine, the jurisdiction of an investment tribunal should extend to an investor solely if his dominant nationality is that of the home state.[41] Douglas does not use the effective nationality doctrine to avoid granting protection to dual nationals. On the contrary, he uses it to protect dual nationals which hold a stronger tie to one country rather than another. If the effective nationality doctrine could not be extended in this way, Douglas persuasively argues that "an entire class of potential investors would be denied the opportunity to rely upon the investment protections of the treaty."[42] Investments in developing countries are often made by individuals who have acquired their wealth elsewhere and have returned to their home country to invest. Douglas finds that, in such cases, there is no reason why investors should not be able to rely upon a relevant investment treaty if they invest in their birth country but have a stronger link to acquired nationality.[43]

The effective nationality doctrine approach, exemplified in the U.S. Model BIT, and the formalistic approach adopted by the *García Armas* Tribunal are reconcilable. Such reconciliation is evidenced by the method by which the Arbitrators re-

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40. DEP'T OF STATE, 2004 MODEL BIT, article. 1, https://www.state.gov/documents/organization/117601.pdf.

41. ZACHARY DOUGLAS, THE INTERNATIONAL LAW OF INVESTMENT CLAIMS 321 (2012).

42. *Id.*

43. *Id.* at 321–322.

tained jurisdiction. They concluded that absent any specification in the BIT on the exclusion of dual national investors from the scope of the treaty, such investors should be granted protection. The same should be said for the assessment of nationality: absent an explicit method, arbitrators should be free to adopt the interpretation which grants investors the widest protection possible.