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Foreign Direct Investment and International Political and Legal Environment

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Abstract:
In addition to understanding policy and law, both of the country of origin and the host country, the manager in charge of international business must also consider the political and legal environment as a whole. This is important because policies and events that occur between countries can have a profound impact on companies doing business internationally.
The global international political environment has both positive and negative effects on international affairs. For this reason, the competent manager will tend to keep informed on the global political trends and seek to anticipate changes in the international political environment so that the firm should not be taken by surprise. Some international agreements are in place to ease the burden of the rights of intellectual property in those countries where the company wants to conduct business or to be protected.
In many countries, a major political risk is represented by conflict and violent political changes. A manager will seek to think twice before running investment in a country where the probability of such a change is high. If a conflict breaks out, violence directed towards the property of firm and towards the employees is very likely.
To succeed in a business trade or investment, the manager in charge of international business needs more than sheer knowledge in business management. S/he has also to do with the maze of national policy and laws. Although rarely can the political system of another country be fully understood, a competent manager will be aware of its importance and will work with people to understand how to handle the system.

Keywords: *foreign direct investment, international political environment, international law, political and legal environment.*

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The international political environment and international law

The effect of politics on international business is determined both by bilateral political relations between the country of origin and the host country, as well as multilateral agreements governing relations between groups of countries. Intergovernmental relations have a profound influence in numerous situations, especially if they become hostile. Among the many examples in the last decades of the twentieth century the relations between international politics and international affairs, perhaps the most notable is the relationship between the US and Iran after the Iranian revolution of 1979. Although internal changes on the political and legal levels subsequent to the revolution would certainly affect anyone doing international business with Iran, the deterioration of political relations between the US and Iran after the revolution had a significant impact on American companies. After the revolution, US companies have been harmed not only by the physical damage caused by violence, but also by the anti-American feelings of the Iranian people and the government. The resulting clash between the two governments subsequently destroyed business relationships, regardless of the feelings about corporations or agreements of each party.

International political relations have not always harmful effects. If bilateral political relations between countries improve, business stands to win. An example is the improvement of relations between the United States and Central and Eastern Europe, which followed after the official end of the Cold War. The political "heating" politically opened up potentially profitable commercial markets for the American businesses in the former Eastern bloc. For example, IBM Corporation can now operate on the Eastern Europe computer market, especially PCs.

Another positive example is the following: “Iran is one of the largest economies in the Middle East. Business opportunities in oil, gas, retail, manufacturing, industrial, medical, shipping and many other sectors are vast. One of the sectors with a spectacular evolution is that of production. Over the years, the effort of Iranian companies has been focused on the growth and development of Iranian industry. The bilateral economic and commercial relationship between Iran and Romania has always been positive. In 2021, the total trade volume between the two countries reached 483 million US dollars, five times more than in 2021. There are still many potential areas that could contribute to increased economic cooperation between the two nations, and we are hopeful that by increasing the mobility of the private sector in both Iran and Romania, we will see stronger bilateral trade relations in 2022, the year the two countries are celebrating 120 years of diplomatic relations”. (Camera de Comerț și Industrie Brașov, 2022)

The global international political environment has both positive and negative effects on international affairs. For this reason, the competent manager will tend to keep informed on the global political trends and seek to anticipate changes in the international political environment so that the firm should not be taken by surprise.

In terms of international law, it plays an important role in managing the investment process. Although there is no way to compel via international laws, *certain treaties and agreements are abiden by a number of countries and and have a profound influence on international business operations*. For example, the General Agreement on Tariffs and Trade (GATT) and the WTO define international business practices acceptable to Member States. Although not dealing directly with companies, they affect them indirectly by providing a certain predictability in the international environment.

International law also plays an important role in protecting intellectual property rights. These involve rights to inventions, patents, trademarks and industrial design and copyright literature, as well as royalties for music, artistic, photographic and cinematographic work: "Copyright ensures that authors, composers, artists, filmmakers and others receive payment and protection for their works. Digital technologies have profoundly changed the way creative content is produced, distributed and accessed. EU copyright legislation is a set of eleven directives and two regulations which harmonise the essential rights of authors and of performers, producers and broadcasters. By setting some EU standards, national discrepancies are reduced, a level of protection required to foster creativity and investment in creativity is ensured, cultural diversity is promoted and access for consumers and business to digital content and services across the single market is facilitated". (European Parliament, 2009)

Some international agreements are in place to ease the burden of the rights of intellectual property in those countries where the company wants to conduct business or to be protected. The Paris Convention for the Protection of Industrial Property, to which Romania and other 95 other countries are parties, establishes minimum standards of protection and provide national treatment and the right to property. This means that members will not discriminate against foreigners and that companies have a year (6 months for design or trade mark) available in which to submit an application.

According Bărbuceanu "two environments that people perform in - the educational and social environment, display problems that are qualitatively antithetical: the educational environment confronts us with problem solving situations as a matter of priority, well defined difficulties, problems for which, as a rule, there is only one accurate response". (Bărbuceanu, 2022:183)

The Patent Cooperation Treaty (PCT) provides procedures for submitting an international application in countries where the patent is on demand, having the same effect as the submission of an application in each of these countries. Similarly, the European Patent Office examines national patent applications and issue national patents in any member state. Other regional offices: African Industrial Property Office (ARIPO), the French-speaking African Intellectual Property Organization (ORPI) and one in Saudi Arabia covering six countries in the Gulf.

Much more must be done to protect intellectual property. Because there are so many disparate regulations worldwide, intellectual property issues were an important part of the Uruguay and Doha negotiations. Knowledge is often the most valuable and competitive advantage of a company, and violation of their rights may have significant financial repercussions.

Intellectual property is a right as strong as any other physical property. "Copyright is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture and films, to computer programs, databased, advertisements, maps and technical drawings". (World Intellectual Property Organization, 2022)

In addition to multilateral agreements, companies are also affected by bilateral treaties and agreements between countries doing business. For example, the United States signed Bilateral Cooperation, Commerce and Navigation (FCN) agreements with many countries. These agreements generally define the rights of American companies to do business in the host country. They normally ensure that US firms in the host country will be treated in the same way domestic firms are treated. While these treaties maintain some kind of stability, they can also be revoked, as demonstrated by the US withdrawal of the NGF understanding with Nicaragua.

The international legal environment also affects the manager to the extent to which firms should be concerned with legal disputes. Because there is no single body of international law, usually both companies are limited by the laws of the host country and the country of origin. If a conflict arises between the Contracting Parties in two different countries, which country's laws should be used and where the court will be located become an issue: "Considering what was previously presented regarding the structure of the EU and its legal order, the place that Union law occupies in the entire legal order is not easy to establish, and the borders between it and other legal systems are difficult to delimit. Two possible approaches to classification must be rejected from the outset: Union law should not be conceived as a simple collection of international agreements and should not be seen as part of or an annex to national legal systems". (European Union, 2022)

More often than not, the contract provides a clause that legally resolves the matter without further complications. If the contract does not provide such a clause, however, the conflicting parties have several solutions. They may settle the dispute in accordance with the laws of the country where agreement was made or having regard to the laws of the country where the contract will be performed. What laws should be used where the dispute will be settled are two different matters. As a result, a dispute between an American exporter and a French importer could be settled in Paris, but based on the law of the State of New York. The importance of such clauses was brought to the fore by the time-consuming legal dispute related to the incident of Bhopal in India.

In case of disagreement, the parties may choose either arbitration or appeal. The appeal is usually avoided for several reasons. It often involves delays and it is very expensive. Furthermore, companies are afraid of discrimination in foreign countries. Therefore, companies tend to prefer conciliation and arbitration, as these processes end more quickly. Arbitration procedures are often stipulated in the original contract and normally providean intermediary deemed to be impartial by both parties. As a rule, intermediaries will be representatives of chambers of commerce, trade associations or institutions in a third country.

The political and legal environment of thehost country

Politics and the host country laws affect foreign direct investment in a myriad of ways. A good manager will understand the country in which the company operates so that s/he or the company will operate normally and s/he will anticipate and plan for the changes that may occur.

Political action and risk

Usually, companies prefer to run and to conduct business in a country that has a stable and friendly government, but such governments are not always easy to find. Managers therefore need to continuously monitor the government, its policies and its stability to determine the potential political changes which could adversely affect direct investment.

Since ancient times, there were statesmen who monitored the happenings in certain states to know whether it was worth investing there or not. Şendrescu says that one of those people was Lucian Blaga: "Lucian Blaga's professional duty was to identify articles and other press information concerning Romania and to report on them. Considering that, during the longest period of the press adviser's activity, the position of Minister was fulfilled by Titulescu, most of the stories were related to his actions in international politics". (Șendrescu, 2022:216)

In host countries benefitting from FDIs, there is a political risk but the degree of risk varies widely from country to country. In general, the political risk is lower in countries with a history of stability and consistency. Political risk tends to be highest in countries without such a history. In a number of countries, the consistency and stability are evident on the surface are quickly removed due to major unrest caused by the frustrations of the population.

We may encounter three major types of political risk: the risk of tenure, related to property and life, *the risk of action* which refers to the interference in a firm's current operations and the risk of transfer, mainly encountered when attempts are made to transfer funds between countries.

According Kennedy, political risk can be defined "as the risk of a strategic, financial, or personnel loss for a firm because of such nonmarket factors as macroeconomic and social policies (fiscal, monetary, trade, investment, industrial, income, labour, and developmental), or events related to political instability (terrorism, riots, coups, civil war, and insurrection)". (Kennedy, 1988:27)

In many countries, a major political risk is represented by conflict and violent political changes. A manager will seek to think twice before running investment in a country where the probability of such a change is high. If a conflict breaks out, violence directed towards the property of firm and towards the employees is very likely. Guerrilla war, civil unrest and terrorism often become an anti-investment trend, making companies and employees potential targets. American corporations and other developed countries are often subject to major threats, even in countries that take pride in great political stability. For example, in the spring of 1991, Detlev Rohwedder, Chairman of the German Treuhand (the management authority for the privatization of state companies in the former East Germany) was murdered by the Red Army faction because he was a representative of capitalism.

According Lăpădat "From a linguistic point of view, the extremely innovative use of the term instrument to refer to peace or the potential for war, while sounding the alarm that the current trajectory of humanity serves as a dire warning to the planet that a new conflagration could be the end of us as a species if swift and decisive measures are not implemented". (Lăpădat&Lăpădat, 2022:13)

International terrorists frequently targeted plants, organizations and personnel abroad in order to enter the fight against industrialized countries led by the United States and capitalism. US firms are leading symbols of the US presence abroad and, by their nature, may have developed security and limited access of diplomatic and military bases. The methods used by terrorists against facilities include bombing, fire, aircraft hijacking and sabotage. To obtain funds, terrorists resort to kidnappings of directors, armed robbery and use of force.

In many countries, especially in developing ones, coups can lead to dramatic changes of government. The new government will often attack foreign firms as being reminiscent of the colonial past dominated by Western countries, as happened in Cuba, Nicaragua, Iran and many other countries. Even if such a change is not an immediate physical threat, they can lead to political changes that can impact heavily. In the last four decades of the last century there were coups in Ghana, Ethiopia, Iraq, Kuwait, Argentina, Chile and Bolivia, for example, that delayed serious business in foreign investment.

According Stoian "Education should focus on creating global citizens who can work with and develop technology". (Stoian, 2019:129)

Less dramatic but still disturbing changes in government policies are not caused by the change of government itself. This occurs when, for one reason or another, a government feels under pressure to change their policy towards international investment or other ongoing business. The pressure may be the result of nationalist or religious factions spreading out anti-Western feelings. In any case, an informed manager will act and try to anticipate such changes to meet them.

A wide range of changes in trade policy is possible as a result of political concerns. All changes may affect the company's international operations; but not all have the same weight. Except extreme cases, companies usually do not have to fear violence against employees, although violence against property is very common. Also common are policy changes resulting from a new government or a new position that is nationalistic and opposed to foreign investment. The most dramatic steps such public resulting from policy changes oftentimes lead to expropriation and confiscation.

According Ionescu "But, at the national level, each new conflict generates both victims and significant material damage. Every terrorist attack does not provokeonly panic and significant destruction in the very short and short term, but changes the entire economic dynamics of a state. Each terrorist attack generates a decrease in labor productivity, an exacerbated increase in national security costs, and a decrease in foreign investor confidence". (Ionescu, 2017:27a)

Expropriation is the transfer of property by the host government to an internal entity. According to the World Bank between the 60s - 70s, a total of 1,535 companies from 22 different countries were expropriated through 511 separate actions. Expropriation is a thrilling action for many countries because it demonstrated the role of nationalism and immediately transferred a certain amount of wealth and resources from foreign companies to the host country. It also cost the host country, however, in that it made the other firms more reluctant to invest in the country in which the phenomenon had taken place. Expropriation does not relieve the host government to provide compensation to former owners. However, these compensation negotiations are often deferred and are an unsatisfactory result for the owners. For example, governments can provide compensation in the form of untransferable local currency or make compensation to the value of the company's registration. Even if companies that are expropriated may deeply regret the low payment levels, they frequently accept them in the absence of better alternatives.

The use of expropriation as a political instrument has decreased over time. In the mid-70s, more than 83 seizures occurred in one year. By the 80s, the annual average dropped to less than 3. Clearly, governments have begun to recognize that the damage resulting from expropriation outweighs the benefits.

Confiscation is similar to expropriation by the fact that it results in a transfer of ownership of the company in the host country. It differs in that the firm does not receive compensation. Some direct investment is more vulnerable than other to confiscation and expropriation due to their importance for the economy of the host country and the lack of speed in transfer activities. For this reason, sectors such as mining, energy, utilities and banks were frequent targets of such government action.

Confiscation and expropriation represent a major political risk for foreign investors. Other government actions are detrimental to foreign firms. Many countries have turned confiscation and expropriation in more subtle forms of control, such as internalization. The purpose of internalization is the same - to gain control over foreign investment - but the method is different. By internalizing the government requires transfer of ownership and management responsibility. It may impose local content regulations to ensure that a large part of the products are made locally and requires a great deal of profit to be retained in the country. Changes in labour laws protecting patents and tax regulations are also used for the purpose of internalization.

According Ionescu "The sectors most affected by terrorism in developing countries are exports, tourism and investment. The incidence of terrorist attacks in a state can result in a drop of up to 4-5% of GDP over the next year and can significantly increase insurance costs". (Ionescu, 2017:29b)

Internalization can have profound effects on direct investment and on international business for several reasons. If a company is forced to hire national as managers, it may result in poor communication and cooperation. If internalization is required in a short time, corporate actions abroad will be led by local managers lacking experience and training. Domestic content requirements can force a company to buy local stocks. This may result in increased costs, inefficiency and low quality products. Export requirements imposed on companies can cause disasters in worldwide distribution plans and force them to change or even cease activities with third countries. If government actions consist of weakening or non-coercion of the protection of "intellectual property rights", companies risk losing their competitive nature. Such steps may temporarily allow domestic firms to become imitators fast.

However, in the long run, not only the transfer of technology and science by multinationals will be discouraged, but also the stimulation of local firms to invest in innovation and progress. Finally, internalization will usually keep a country industry away from foreign competition. As a result of inefficiency, they will not be allowed to flourish due to lack of discipline on the market. This will affect international competitiveness and become a major problem when, years later, internalization will be put an end to by the government.

Foreign investment takes place abroad and is facing a large number of other risks that are less dangerous, but probably more common than the above ones. The political situation of local governments, goals can lead to impose regulations or laws to limit or control the international activities of firms.

Countries facing a crisis of foreign currency will sometimes require control concerning the transfer of capital into and out of the country. Such control may hinder the actions of a companies wanting to transfer their profits or investment in the receiving country. In some cases, trade controls are also imposed selectively to certain products or companies in an effort to reduce the imports of goods which are considered to be a luxury or sufficiently available through domestic production. Such regulations are often difficult for the manager operating in the country receiving the investment because they can affect the import of parts or stocks that are vital production activities in the country. Frequently, limitations of such imports can force a company to alter the production plan or, worse, even close down the entire plant.

Prolonged negotiations with government officials may be required to reach a compromise on what constitutes 'justified' expenditure of foreign currency resources. Because the goals of government officials and managers are often completely different, such compromises, even when they are reached, may result in damage to the company's international activities in the receiving country.

"The EU manages trade relations with countries abroad in the form of trade agreements and arrangements. The agreements and arrangements based on mutual commitments by the EU and its trading partners and are designed to create better trading opportunities and overcome related barriers. Trading under an agreement comes with tangible benefits for businesses such as lower tariffs, improved market access, and less red tape.” (European Commission, 2022)

Governments of some countries can also raise the tax on foreign investors in an effort to control the multinational corporations and their capital. Such tax increases could raise more than enough the income of the receiving country, but they can be detrimental to the activities of foreign investors. This loss, however, will often result in decreasing the long-term revenue of the host country. Increasing the tax rate should be differentiated according to the tax imposed to foreign investors. Many governments believe that multinational companies may be tempted to move their tax burden to countries with lower tax using artificial price schemes between subsidiaries. In such cases, it is likely that governments take steps to obtain the correct contribution of multinational operations. In the United States, for example, greater focus on taxing multinational companies required by former President Clinton, at the time, led to various tax payments by foreign firms and the development of pricing policies hand in hand with the Internal Revenue Service.

Managers of investing international companies should also fear price control. In many countries, internal political pressures may force governments to control prices of imported products or services, especially in areas considered highly sensitive from the political perspective, such as food or health care. A foreign firm involved in these areas is vulnerable to price controls because the government can play with nationalistic tendencies of citizens to force controls. Especially in countries where there is high inflation, frequent devaluation, increasing costs, the international business manager may be forced to choose between close work or continue production to compensate for loss of profits in the hope that the government will issue or remove price restrictions.

Price control can also be administered so that prices should not be too low. It is widely acknowledged that governments have anti-dumpinglaws that prevent foreign competitors from having an incorrectly low price of their imports in order to remove internal market competitors. Since the allegations of dumping heavily depend on the definition of "incorrect" price, a firm can sometimes be the target of such accusations unexpectedly. The proof that there was no dumping can become quite onerous in terms of time, money and information disclosure.

Managers face the risk of confiscation, expropriation, nationalization or other mixtures of risks whenever running a business abroad, but there are ways to minimize this risk. Obviously, if a new government comes to power and decides to remove all foreign influences, the company cannot do much. In less extreme cases, however, managers can take actions that will reduce risk, provided they understand the causes of the host country policies.

The hostile government actions are usually the result of nationalism, the desire for independence or opposition due to colonial remnants. If a host country citizens feel exploited by foreign investors, government officials are more likely to take anti-foreign action. To reduce the risk of government intervention, an international company must demonstrate that it is concerned with the host society and it considers itself as an integral part of the host country, rather than a simply exploiting foreign corporation. The ways in which this is done include intensive local employment, training, better pay, charitable contributions and useful investment including environmental ones. In addition, the company can form alliances with local partners to demonstrate that it wants to share its profit with citizens. Although these actions will not guarantee the absence of political risk, they will certainly reduce exposure to this risk.

According Scorțan "positive and activating emotions promote the use of cognitive strategies that are more beneficial for learning. They promote both intrinsic and extrinsic motivation. They promote self-regulation of learning. They are linked to a greater effort provided as well as greater attentional resources allocated to the task". (Scorțan, 2022:148)

Another action that may be taken by corporations to protect themselves against political risk is closely monitoring political developments. Increasingly, more companies acting in the private sector provide such assistance for monitoring, allowing the corporation to discover the potential inconvenience as soon as possible and respond quickly to prevent major losses.

Equally, companies can take insurance premium to cover losses due to political risk. In the US, for example, Private Investment Corporation, Overseas (OPIC) provides such insurance premiums. The cost of hedging varies by country and type of activity.

Typically, insurance policies do not cover commercial risks in the event of a claim, they only cover actual losses - not lost profits. Although the establishment of a claim can be quite cumbersome and resource-intensive, the risk premium may be critical for the survival of the company.

Despite political risks, managers of international companies should not feel overwhelmed. Many research teams and publications - such as Economist Intelligence Unit and Global Risk Assessments Inc. US, for example - make great efforts to assess country risk.

There is always a risk in international business companies. Rather than react negatively, the manager must be aware of the existence of international risk and keep informed.

All of the above point out that the ongoing discussion has focused mainly on the political environment. Laws were considered and referred only because they are the direct result of political changes. However, the laws of host countries must be considered, to some extent, as the basic legislative framework for running international business companies.

Countries differ not only with respect to their laws but to the way they enforce them. For example, over the last decade, the United States became an increasingly litigious country, in which institutions and individuals refer to court in no time. The court battles are often delayed and costly and even the threat of a trial can reduce business opportunities. Interestingly, Japan has only about 12,500 licensed lawyers, compared to 650,000 in the United States.

Actually, the Japanese do not care if the number of lawyers is a cause or an effect. In Japan dispute means that the parties have not reached a compromise, which is contrary to the Japanese tradition and results in loss of prestige. So there is a cultural predisposition to settle disputes outside the justice system.

Throughout millennia of civilization different laws and legal systems emerged. King Hammurabi of Babylon encoded a series of court decisions in a body of laws.

According Patrick J. Kiger "but how much practical importance Hammurabi's code had in its time is unclear. As historians point out, it's not a comprehensive collection of laws. While the code contains detailed regulations on matters ranging from doctors' fees for setting broken bones to the cost of renting an ox for threshing grain, there also are conspicuous gaps, such as the absence of a basic law against murder.

Hammurabi's collection of laws also may have been as much about appearance as actual governance. He promulgated them near the end of his 43-year reign, at a time when he may have been thinking a lot about how he would be remembered by future generations".(Kiger, 2022)

The Hebrew law was the result of divine commandments. Legal issues in many African tribes were settled by tribal chiefs' verdicts.

While these legal systems are important to society, from the perspective of international business companies, the two major legal systems can be divided into common law and the code-based law. Common law is based on tradition, on customs rather than on written regulations and codes. Common law, native of England, is the legal system in the United States. The law based on codes, on the other hand, underpins a comprehensive set of written regulations. It is based on the Roman law and is encountered in most countries around the globe.

The influence of politics and laws

To succeed in a business trade or investment, the manager in charge of international business needs more than sheer knowledge in business management. S/he has also to do with the maze of national policy and laws. Although rarely can the political system of another country be fully understood, a competent manager will be aware of its importance and will work with people to understand how to handle the system.

Many aspects of policies and laws are not immutable. Views can be altered or even reversed and new laws can replace old ones. Therefore, the existing political and legal barriers need to be always accepted.

The manager in charge of international business has different options. One is simply to ignore the prevailing rules and expect to get rid of them. Following this option is a very risky strategy because there is a possibility of objection and accusation. The second traditional option is to start negotiations on trade and direct investment and to expect problems to be solved through multilateral negotiations. The shortcomings of this option are, of course, the processes that are time consuming and need for control of the company.

The third option involves developing alliances with clients who can motivate legislators and politicians to consider and, ultimately, to implement changes. This option can be achieved in different ways. The first one, the direct relations, costs and benefits can be explained to legislators and politicians. For example, a manager can explain the effects of certain laws on economy and employment, and can demonstrate the benefits of change. The spectrum can be expanded to include indirect relations. For example, suppliers, customers and dealers may be asked to assist in explaining the benefits of change to the decision makers. Next to this, the public can be involved through public statements and advertisements.The development of such alliances is not an easy task. Companies often seek assistance for effectively influencing the decision-making process by the government. Such assistance is useful especially when involving narrow economic objectives or campaigns with a single dispute. Typically, those lobbyists provide assistance. Typically, there are influential persons or companies that can provide access to politicians and legislators in order to communicate new and relevant data.

Conclusions

Foreign investments play an essential role in the development of a country both economically and socially. After the fall of communism, Romania experienced a process of development of investments, as well as relations with several countries in the world. There are many risks in terms of investment, and serious involvement in relations between countries is necessary, but no nation can live in isolation without connections to other states. The policies must be granted to each other, the agreements between countries must be respected, the laws of each country must be respected.

Authors' Contributions

The authors contributed equally to this work.

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