State's Responsibility in ICSID Arbitration Practice

by

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To those who supported me, against all, notwithstanding all.

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INTRODUCTION

The present research studies the theme of the Responsibility of the State in ICSID Arbitration practice.

The International Center for Dispute Settlement between States and national of the other States was created by the the Washington Convention of 1965 and is now the leadinginstitution in investment disputes resolution between private investors and host States.

The facility had the function to foster private capital flows from capitalistic countries to emerging economies at the aim of fostering economic growth and welfare, in a market orientated manner, besides other public policy initiatives in favor of low-income States.

The utility of international arbitration for investments, was not *per se*, something unedited: cases of international arbitration, coming out from concession or investment contracts, already existed, and mostly, formed part of the international *acquis* on investment law.Nevertheless, the special feature of the Convention, its link with the IBRD (later the World Bank), its reference to the diplomatic protection, and the possibility it granted for awards to circulate and be executed in any member State, without any public policy refrain, meant to be elements that distinguished ICSID from other general arbitration *fora.*

Remained almost unused for thirty years, ICSID Arbitration widespread at the beginning of 2000, collecting approximately forty new cases per year. Nevertheless, contrary to the intentions of the drafters, the greatest part of claims had not been brought against developing States, but rather against middle or advanced economy Countries from investors seeking relief for damages suffered for breaches of contracts, bilateral investment treaties, or treaties with investment provisions. As per 2021 survey, from the foundations to the closing year 2020, the 48% of cases were brought against South America, and Easter Europe Countries, whilst Sub-Saharan States, represented only the 15%.

This widespread involved even European Countries. The EU policy following the fall of the Berlin Wall, used bilateral investment treaties in order to integrate eastern economies to the EU internal market. A great number of such treaties were signed thereafter, and capitals flowed, consequently from EU members to Eastern Europe. Meanwhile, the membership of the EU and its members to such instruments as the Energy Charter Treaty, made it possible to bring arbitration proceedings against EU States for breaches of treaty provisions protecting

investments, since the same ECT provided for international arbitration settlement through different *fora,* one of them being the ICSID.

The difference in respondents, brings itself the difference of pleas: whilst at the beginning, ordinary claims against developing States, were focused on claim for unlawful expropriation, the modern claims against developed countries seek relief for damages for the exercise of regulatory powers: powers that normally fall outside domestic administrative jurisdiction, and that can be questioned at international arbitration stage only.

The grounds for such claims are nowadays represented from the fair and equitable treatment clause (FET) which, from a provision of mere reference to international customary law, changed, in Tribunal's most recent jurisprudence in a common and all-encompassing standard of treatment which represents itself a further relevant new tool in international economic integration.

An integration it must be stressed, partial and imperfect: the direct investment law lacks politic institution that may address recommendations or binding guidelines to member States, but nevertheless a sort of integration, which goes besides, but does not substitute other, more stringent institutionalized experience embodied in international organizations, as the OMC, Mercosur or the European Union.

Since arbitration proceedings before ICSID involves many EU countries, and case submissions increases year after year, interest arises in studying the arbitrations rendered through the Center, and their impact in international law framework.

Despite other, more institutionalized contexts, in fact, the ICSID Arbitration Tribunals operate under the base of international law as the primary source of law, integrated, in second instance, by such domestic legislation the parties had referred to and the national law of the host State.

In making their assessment, they have elaborated, from the sources of international law, a proper construction of the responsibility of the State, whose assessment, ultimately, constitutes the core element of the disputes.

To study the ICSID Arbitration and the notion of State's responsibility built thereto is not only useful in the current context of international relations but even a fascinating example of the evolution of international law, whose classic principles of good faith, equity and parity of arms, represent the pillars of international investment law, and will drive its evolution in the following years.

Integration through investments, shall not only be possible in the future, but is meant to be one of the principal forms of international cooperation, where political reasons shall not suggest an excess to integration despite sovereignty.

Finding an equilibrium between sovereignty and international obligations in fact has always been the major concern of ICSID Tribunals: its theory and findings, elaborated during more than 50 years of activity shall provide guidance for both: not only dispute settlement, but also new international agreements and standards of treatment for investments aimed at creating, besides integrated markets, long durance projects, quality jobs and greater welfare in developing economies.

The objective of this study is to present the current status of the ICSID findings in the theory of international responsibility of the State for investments offences, and to find, where possible, those guidelines that, in perspective view, may lead to a comprehensive approach of investments as a further means for integration.

MATHERIALS AND METHODOLOGY

Present research has been conducted through vast documental analysis. Since its objective was to summarize and investigate the jurisprudence of the ICSID, the main object of investigation has been the case law of the Center. Such material had been collected through two different means: from the very first case of 1972 to the year 2006, approximately, the cases, materials, and notes, had been collected from the ICSID Reports, the official publication of the Center, in current 18 volumes. From those 18, the researcher could resort tothe first 16 only, which he had the opportunity to access through the Institute of International Law at the University la Sapienza in Rome, one of the few centers in Europe do dispose to such complete collection.

From 2006 until the present, the material had been collected from the online database of the ICSID, which is constantly updating.

Other material as bilateral or multilateral investment treaties, national jurisprudence on arbitration cases, national legislation on investment and contracts, had been resorted from the databases of the United Nation Commission on International Trade Law, and Italaw, the database on investment cases law and materials of the University of Victoria – Canada.

The resort to literature had been limited by the same scope of the investigation.

Reference had been made to textbook and book chapters in order to address the specificity of the responsibility of the State in international law. Except from one contribution article of the thesis director in one of the most debated cases of international arbitration, the dominant part of the material is made by the awards and procedural decisions on the ICSID Tribunals who were the main sources of the research.

RESULTS

The results shall be shown more extensively at the conclusion/discussion Chapter. Nevertheless, the most impacting results, may be summarized as follows.

Firstly, the international general law, is still a leading force in major integration context. Even if the recent years have been suggesting a stream towards progressive cession of sovereignty in favor of supranational institutions, the international investment law shows, on the other hand, that the scope of integration and welfare growth, may be achieved even by a relatively low level of political implication. The international investment protection standards as per their broad meaning, are able to adapt to the evolution of time, do not intervene in the domestic affairs, and constitute a common ground of international shared values and principles who adapt themselves to the evolution of investments regulation and practices.

Secondly, the role of domestic legislation and local institutions, shall not be disregarded as implying deviation from the uniform standards. Much different than that, the domestic legislation and institutions are the necessary means to achieve the scope of investment protection. If it is true that claims challenge as a rule acts and norms which are purely domestic, it is true as well that investment treaties, as international customary low, provide forgeneral criteria on protection, but do not themselves make any investment possible. Investment, as an opportunity, is granted only through national provisions and pieces of legislation: tax benefits, freezing clauses, exploit licenses, are all acts of the national authority, whose assessment even when it comes for retire or annulment, shall not be disregarded as expression of sovereign pride.

Thirdly, from the text of most investment treaties, and jurisprudence of ICSID Tribunals, a similarity of approach is found between assessment of unlawful State acts, in international law, and assessment of unlawful national provisions under EU law in the internal market. As internal market provisions in TFEU, most BITs and TIPs, provide for prohibition of discrimination direct and indirect, tolerate restrictions or limitations to the right of investors if motivated by a public scope, conditioned that such restrictions were suitable to that scope,and proportional. The principle of proportionality itself seems to have acquired a special status of general principle of international investment law, as it has in the EU law. Other BITsor TIPs provisions as the most favorite nation treatment or the prohibition of expropriation,are more properly addressed to investments only; nevertheless the principle of protection of private property and the due compensation for expropriation is also referred in the Nice

Charter of Fundamental Rights, and the most favorite nation treatment is absorbed by the internal market constituency.

All these grounds claim for a construction of a common theory of international economic law, that might lead to a global assessment in international economic law, similar for scope and outcome, thus limiting any discrepancy or divergency in the case law of each forum.

Fourthly, in case such discrepancy had to arise, ICSID case law, had provided for two instruments, one preventive and one subsequent. Under the first, if a case engaging element suitable to assessment from the Tribunal and from national courts, was brought before the both, one of such bodies shall refrain from jurisdiction. In the case law of the Tribunal, the body in question is the domestic one, by virtue of the principle of precedence of international law and proceedings over national courts' and express meaning of Convention art. 26. But such principle may extend to any other concurrent forum. Under the second, arbitral awards enjoy same enforceability such as national courts final decision, but not superior: if a case lawexists (or legislation) preventing execution in certain cases and such regulation was applicableto domestic judgement as well, it applies also to the same award. Such resulted in a last resort weapon of the national legal order to escape execution, and is a fine way to cope with multilevel legal orders, under condition that national treatment principles (i.e. the refrain fromexecution under same condition as applicable to domestic courts ruling) applies as well.

Fifthly, the FET clause as a common unique criterion of assessment. It will be shown that the evolution of the FET clause, started from considering it as a mere repetition of the general standard of protection under international law and ended an all-self-complete clause able to encompass any breach of other standards of protection, at the time of offering as well a remedy if a vacuum in international investment law had to occur. The assessment under FET are the same seen at the third point, with the difference of the object: under modern FET elaboration, all infringement of whatsoever investment standard may be reduced at the infringement of a FET clause. In this context, the role of the principle of legitimate expectations is that of measuring the FET standard, under objectivistic criterion of what investor had to expect as a treatment, legitimately, that's to say after a fair and responsibledue diligence of the legal order and all circumstances surrounding the investment. Thisground of relief may transform eventually the FET into the main or eventually unique standard of protection in international investment law.

CHAPTER 1. JURISDICTION

1.1 Foreword.

The Washington Convention on the Settlement of Investment Disputes Between States and National of other States of 18 March 1965[1] (hereinafter: "Convention" or "ICSID Convention") was intended as a mean to foster investments worldwide.

Delivered through the auspices of the International Bank for Reconstruction and Development (IBRD), the Convention situated in the realm of the New International Economic Order granting – besides initiative at official level – the further flow of private capitals essential to the growth of developing countries, rich of raw materials but lacking appropriate technology.[2]

By means of investments contributing substantially to the economic environment of host countries, Convention would positively encourage the process of decolonization and integration of the new independent State entities into modern capitalism. In general, the exchange of capitals, goods and services inherent to the notion of investment embraced by thedrafters of the Convention, shall have brought to a more important policy objective: the association of developing countries to States already members of the IBRD, and their politicaland institutional attraction to the Western Block. After in-depth analysis and consultations involving State officials, technocrats and experts worldwide, the Text of the Convention was finally approved on March 1965, deposited at IBRD Secretary and opened to Governments for accession. It entered into force on 14 October 1966 thirty days after the deposit of the twentieth instrument of ratification following Convention art. 68[3].

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[1] The Convention is published at 575 United Nation Treaty Series 150 ss. It is also accessible at the ICSID web site: https://icsid.worldbank.org/resources/rules-and-regulations/convention/overview

[2] See at a first glance, art. 1 of the IBRD's Articles of Agreement of 1944, where a focus was made to fostering *"investment of capital for productive purpose […] encouraging international investment for the development of the productive resources of members, thereby assisting in raising productivity, the standard of living and conditions of labor in their territories"*. For a synthetic summary of the reasons grounding the Convention, see the *Report of the Executive Directors on the Convention on the Settlement of Investment Disputes between States and National of Other States*, attached to the text of the Convention, available at *ICSID Convention, Regulations and Rules, pp. 40 – 49.* Available at: https://icsid.worldbank.org/sites/default/files/documents/ICSID%20Convention%20English.pdf#search=icsid%20convention

[3] Studies began in 1962, through mandate from the Boards of Governors of the IBRD by Resolution n. 174 of 18 September 1962 at the 17th Meeting Annual Meeting in Washington D.C., providing for official mission to the Executive Director to investigate the convenience of creating an international facility devoted to settle investment disputes. They concluded in 1964, by the approval of the Board of Governors through Resolution n. 214 of 10 September 1964, of the final *Report on Settlement of Investment Disputes* issued by the Executive

ICSID Convention is *investing neutral,* meaning that it does not take any part into the establishment and evolution of international investment law. The Convention, itself, does not contain any clause relating to investment protection or standard thereto. Neither it imposes, through the mere fact of accession from a member State, its consent to submit itself to arbitral jurisdiction. All these aspects, that shall be referred as material aspects, are to be addressed through *ad hoc* investment treaties, in the form of bilateral investment treaties (BITs) or other treaties, bilateral or multilateral (normally of economic nature) containing investment provisions (TIPs).

ICSID is designed only as an institution providing a framework for arbitration and conciliation in case of dispute. The Center is not itself the body which conciliates or adjudicates investment disputes. Such duty concerning the Conciliation Commissions or the Arbitration Tribunals[4] whose members are elected in most part by the parties at dispute in a way that expressly (through preparatory works) recalls the features of the Permanent Court of International Arbitration.[5]

Its provisions, save those of pure institutional scope, refer to procedural aspects only, the most relevant being those relating to the constitution of tribunals or conciliation committees, submission of claims, awards enforcement and challenge procedures.

Nevertheless, the Convention does not apply to any dispute involving investments and investors. On the contrary, the Jurisdiction of the Center, and bodies of Conciliators and Arbitrators, is circumscribed to certain types of investment disputes and certain type of investors. The case law of ICSID Tribunals has further elaborated on the basic characters envisaged at Convention provisions since the very first procedures filed in the early seventies and eighties.

Present chapter will investigate the jurisdiction of the Center, grounding on those provisions and case law.

At first stage, the jurisdiction of the Center shall be studied, stressing out objective and subjective criteria and the pre-requisites for submission.

Directors of the IBRD. Six months later, on 18 March 1965, Executive Directors issued the final text of the ICSID Convention. For extensive readings on the process of approval of the Convention, its reasons and debates reported in official documents, see the *History of ICSID Convention, 4 volumes,* edited by the Secretariat of ICSID. Available at:
https://icsid.worldbank.org/resources/publications/the-history-of-the-icsid-convention

[4] The references to Arbitration Tribunals shall be made further on this text also as "Tribunals" or "Tribunal".

[5] For analogy between prospected ICSID Convention and the Hague Conventions for the Pacific Settlement of International Disputes of 1899 and 1907, see *History of ICSID Convention, cit.* Vol. II p. I, p. 255.

At later stage, Additional Facility shall be studied, as a remedy to allow Tribunals or Conciliation Commissions constituted under the framework of the Center to operate and deliver agreements and awards, even in those disputes where, the lack of any element relevant to jurisdiction under Convention, would have prevented the Center to examine the legal issue before it.

Difference is of vital importance, since Awards rendered under ICSID proper jurisdiction only enjoy the special status of firmness provided for in articles 53 – 54 of the Convention, preventing any possibility of challenging outside institutional framework and venues provide for within ICSID procedural system, and mandatory recognition and enforcement from any member State *"as if it were a final judgement of a Court in that State".*[6]

Special attention shall be driven to the extensive case law ICSID Tribunals have established at almost any case before them, as a question of preliminary challenge from any respondent State involved in ISDS[7] litigation.

1.2 Membership of the parties and consent to arbitration.

The core provision of ICSID Convention on jurisdiction is art. 25:

> *(1) The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.*

Setting aside, for the moment the questions of nationality of the investors, which will be analyzed in following paragraph, attention must be drawn, firstly, at the issue of the membership of both host State and investors State (these last referred as natural or legal persons).

[6] Such is the principal reason of the centrality of ICSID in the domain of international investment arbitration institutions. A quality of special importance when the opponent is a Sovereign who shall be unwilling to abide to awards on voluntary basis and that, outside its territory, enjoys the immunities from jurisdiction and execution of assets granted from customary international law and, lastly, by the *United Nations Convention on Jurisdictional Immunities of States and Their Property of 2004*. Such elements join with the difficulties in enforcing awards rendered outside ICSID strict jurisdiction, shall be further addressed, at Chapter III.

[7] Investor – State Dispute Settlement.

In principle, the Center is not opened to nonmember States.[8] As an addition, ICSID Convention was drafted in order to give access to its facilities to members of the IBRD, as natural members, habilitating them to join in by a self-decision of accession. Only thoseStates that were part of the IBRD shall, if such was their willing, join the ICSID Convention. And only member States of ICSID Convention and their nationals shall be able to take part in the dispute settlement provided thereof.

It has been argued, even at official stage of consultations,[9] that the reasons of this limitation resided in the matter of diplomatic protection. Convention art. 27, in fact, prohibits investors State to give diplomatic protection to its nationals precisely in exchange of the consent of the host State to submit the dispute to arbitration. The enhancing policy of ISDS fostering worldwide, in place of ordinary means of self-protection, required the self – restraint of States from diplomatic protection. And such restraint shall be mandatory to ICSID Convention members, only by virtue of art. 27. Nonmember States, not bound from such provision, shall continue through diplomatic protection or other actions thereto in addition to arbitration proceedings submitted by investors. Such duplicity of protection was unacceptable.

The reasoning is unconvincing. Firstly, because nothing had prevented States entered to the Convention to shape art. 27 or any other provision in order to permit the accession of nonmember States under the condition to be submitted under same obligations of self- restraint as member States. Something which had been even more suitable at the stage of drafting – not amending – the Convention, where cited consultation took place. Secondly, because additional assurance of renouncing of self- protection measures, could have been asked at any time to nonmember States even through provisions other than a treaty provisions: it sufficed an administrative regulation imposing the State an unilateral declaration on that sense: the principle of estoppel would refrain any intervention on diplomatic protection and alike. The true reason is probably another one, which better refers to the organic system of IBRD and its general policy: member states and IBRD itself always intended the investment protection facility as a mean, among others, devoted to the integration purpose through economic means. Conditioning entrance to IBRD membership was equal to expand the attractive of IBRD through the mean of accession to ICSID Conventions and capital flows promised under the umbrella of the treaty arbitral guarantee presented to the investors.

[8] ICSID Convention art. 27.
[9] See History of ICSID Convention, cit. Vol. II p. I, p. 65 - 66.

In case of nonmembers of IBRD, their access shall be granted only upon invitation, issued by an overwhelming majority of two-thirds of the members of the Administrative Council of the Center.[10]

As such, the words *"Contracting State"* and *"national of another Contracting State"* make reference to host States and States of nationality of investors, who are actual members of the ICSID Convention at the time where dispute arises. Elementary reasons of legal certainty and prohibition of fraud of law, suggest that the Center shall have jurisdiction even if the investors State or the host State were not actual parties to the Convention but did were at the time when submission dispute was performed.[11]

By the wording *"consent to arbitration"* Convention makes reference to its presented *neutrality* in terms of material implication of international investment law. In other worlds,the mere membership of a State to the Convention is not sufficient to force it into an ICSID arbitration even if dispute was within the ICSID jurisdiction.

In order to be eligible of an ISDS under the Convention, the State shall have given its previous consent. Give consent, has no other meaning than establishing, previous to the dispute, the acceptance from the State of ICSID jurisdiction. The consent shall be given by both, the host investment State and the foreign investors, but, for the latter, the mere submission of its claim to the Center shall be considered sufficient for that purpose.

As a further formal requiring, in order to provide legal certainty on the matter, the consent shall be given in writing. Consent given in wording, conference press or by *facta concludenda*is invalid.

The form of writing distinguishes an appearance but does not define the instrument into such consent is manifested. Convention drafters did not want to be too strict in the concrete determination of the instrument of consent expression, and rightly considered such deepening outside the scope of Convention and legal certainty purpose itself. So, the practice of State consent has registered the most different shapes. Consent is currently admitted if present in

[10] ICSID Convention art. 67.

[11] See for an example the *Micula* cases [I] and [II] listed at the case law webography, where ICSID Tribunals and *ad hoc* Annullment Committee in case [I] found that termination of the BIT Sweden – Romania of 2002, did not prevent claimants to bring actions against Romania as far as BIT was in force at the time were proceeding were brought, citing vast precedents of ICSID Tribunals on the same issues.

BITs, TIPs, national legislation of any type, State unilateral proclaims, *ad hoc* submission agreement, or contract with investors.[12]

1.3 Parties and nationality.

Parties shall be the State where investment was made (host State) and a national of another State (home State). Both States shall be member States of ICSID, either at the time where consent to arbitration was made either at the time where the claim was submitted.

Investor nationality shall be in place at both moments continuously.

Investor's nationality must be assessed through internal laws of the member State of its nationality. In case of double nationality of natural persons, where one of them had the nationality of the host State, either at the time when inversion was made or the claim was submitted to arbitration, such claim is intended to be outside ICSID jurisdiction.

Previous requirements of nationality (exception for what prescribed for double nationality) is applicable to legal persons. Such entities must, thus, have the nationality of a member State other than the host State but national requirement are less stringent: nationality at stake is sufficient to be held at the moment where consent to arbitration was given, but may change at later stage, even before filing the claim.

On the other hand, a legal person incorporated through national law of the host State shall be considered not entitled to pursue a claim directly arising from an investment, since the affair shall be considered as a pure internal issue. Such provision admits exception, nevertheless. It is permitted that host State may agree to consent arbitration to national entities incorporated under its own laws that, for foreign control, are to be considered materially, as foreign entities. In such case, control shall be exercised by persons and entities nationals of other ICSID member States. Such prescription was drafted in order to allow the practice of foreign investors incorporating legal persons under the laws of the host State, for the purpose of easing operations at national level.

The dispute treated by ICSID Tribunals are ISDS disputes, where one of the parties is a State and another one is a private investor. Since the aim of the ICSID facility is to put investors at

[12] Material cited in legislation part of this research have been all grounds of State consent under reported case law.

the same place as States when a claim is filed, flattening the usual impair between particular and sovereigns, the normality of ICSID claims is to have a private investor as claimant, and a host State as respondent. Nevertheless, nothing prevents the contrary. Such event is not prohibited under ICSID relevant provisions and its concrete application shall depend, exclusively, on the material instrument grounding the consent to arbitration. BITs and TIPs normally, confer vested rights upon investors only, constructing the investment proceedings in a one-way procedure. Contracts, on the contrary, may enclose clauses of neutral meaning, legitimating both parties to file claims under ICSID Arbitration, such may be expression encompassed in ICSID Model Clause n. 1, which reads:

"*The [Government]/[name of constituent subdivision or agency] of name of Contracting State (hereinafter the "Host State") and name of investor (hereinafter the "Investor") hereby consent to submit to the International Centre for Settlement of Investment Disputes (hereinafter the "Centre") any dispute arising out of or relating to this agreement for settlement"*

For practical reasons it is unlikely for a State to sue an investor before an international Tribunal: the exercise of sovereign powers can provide host State with remedies more immediate and efficient than the complex and costly procedure of an international arbitration. Nonetheless, counterclaims of sovereigns are an empirical application of the right of host States to sue privates, under provision of Convention art. 46 as soon as an investor claim is registered at the center. A fair example of such practice was in *Amco* case[13] where respondent State reacted to an ISDS claim counterclaiming investors for fraud in tax regulations. Counterclaim was dismissed for being outside the domain of foreign investment law dispute portraited by the Convention, but it was declared admissible on procedural grounds.

1.4 Legal dispute arising directly out of an investment.

Convention asks for a dispute to arise directly out of an investment.

The legal nature of the dispute is a predominant character of ICSID Jurisdiction. By the wording of art. 25.1 and plain explanation offered at the Report on Settlement of Investment

[13] Amco Asia Corp., Pan American Development Ltd & PT, Amco Indonesia v. Republic of Indonesia, Case n. ARB/81/1, Decision on Jurisdiction of 25.09.1983, 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 377 ss.

Disputes[14] drafters wanted to be clear that disputes to be solved by the Tribunals, shall be disputes of law only, and assessment to be done by arbitrators shall be legal assessments. Under ICSID Arbitration shall be no room for disputes of economic, social or political meaning. Such stand even if the dispute was to be adjudicated not on pure legal criteria but, under consent of the parties manifested through art. 42.3 of the Convention, under *aequo et bono* judgement.

There must always be a legal qualification of parties' pretention, pointing out a right in law infringed, for the which reparation was sought, and an obligation of positive or negative content that responded (allegedly) failed to comply.

Such elements shall be present, even if at rude and at embryonic level, since the very first request addressed for submission to arbitration to the Center pursuant to art. 36 of the Convention, and arts. 1 – 3 of Institution Rules.[15]

Since the domain of law is extensive to all human activities it has been not difficult to reduce all claim in the matter of investments, to claims of legal nature. Changes in the political environment of host States, unlawful expropriations, unjust raising of tax or leaves and, in general, any misuse of the sovereign powers justified through any doctrine whatsoever, are quite easily referable to breach of investment law obligation, under treaty, contract or investment law.

More difficult has resulted the definition of investment, and dispute arising directly out of an investment.

The Convention does not itself provide for a definition of investment. Such lack was motivated through the general scope of ICSID which was to provide a facility for ISDS but not to determine the material content of the protection accorded to investment. Such position was at the drafting stage, extended also to the same definition of investment:[16] parties involved in an investment relationship shall have decided upon their autonomy the notion of investment to be taken into account for arbitration purpose, as they were free to exclude

[14] See *the Report on Settlement of Investment Disputes issued by the Executive Directors of the IBRD cit., para. 26.*

[15] See *Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings (Institution Rules).* Available at: https://icsid.worldbank.org/resources/rules-and-regulations/convention/institution-rules

[16] See, *History of ICSID Convention, cit.* Vol. I, p. 116. On the same spirit *Report of the Executive Directors cit.* para 27.

certain types of investments from the consent to jurisdiction of the Center, or include certain types of investments only.[17]

Such setting was soon to be found unsatisfying by the practice of investment Tribunals. By one side the self-restraint of the Convention, harshly combined with the declaration stated as principle of ICSID that the facility was to facilitate international private investments as a mean to foster growth and wealth over its member States. Such contention, itself described a certain type of investment which was consistent with the general scope pursued by the IBRD. From another point of view, granting general protection to all kind of investment, had to be considered unequal, bearing in mind that even pure speculator transactions, mere buying and selling of financial assets or investment in flagrant disrespect of human rights and public policy goals might be considered, eventually, investments under the broad definition ofConvention art. 25.

The Tribunals were, then, to establish a more portraited notion of investment, consistent with the nature and scope of the Convention, which had shaped substantially the sentiment about scope and role played by ICSID worldwide.

Investment suitable to arbitration under ICSID Arbitration facility were only those investments which were to contribute substantially to the growth of the economies of host States and to that scope, capital flows shall not be momentary or instantaneous but shall give rise to a perduring establishment. The need for stability, inherent to that aim of establishment, was the core issue of protection of foreign direct investment. The legitimate expectations on revenues arising out of that stability, were to be considered, both, as the goal of investment law (parallel to the contribution of development) and the mean to achieve the economic growth and integration claimed at first stance.

The case law of Arbitration Tribunals, which will be scrutinized below, presents a series of elements which, eventually, have been considered as relevant in defining an international transaction, as *investment* in the meaning of ICSID Convention.

So far, investment shall be considered existent if they embody:[18]

[17] See Convention, art. 25.4.

[18] The first approach to such definition of investment was offered at Salini Costruttori Spa and Italstrade Spa v. Kingdom of Morocco, Case n. ARB/00/4, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 398ss. Nevertheless, as the Tribunal in *Enron* stood, such definition is encompassed in its goals but shall not considered as comprehensive of all the means to achieve that goal (corporation locally incorporated, participation in shares, licenses, permission, consultancy, etc.): the task of defining such means shall be upon the States at their BIT negotiations as a guidance to Tribunals at contention stage. See, Enron Corporation and

1. a project of a certain duration or infinite duration;
2. that project bringing a regularity in terms of profits and returns, preceded usually, of a step of expenses, which grounded the initial commitment of investors;
3. there shall have been an element of risk inherent to the investment; Tribunals have frequently found that risk shall be associated to the loss of the expenses made under stage 2, thus investment without that element of risk, shall not be considered under ICSID Convention; on the other hand the sole unjust deterioration of investors risk (besides more explicit wealth expropriation initiatives) had been considered as infringement of international law obligations by the host State;
4. investors commitment shall have been substantial, in the sense of a material commitment in the economic and social environment of the host State;
5. investment shall have contributed to the economic growth of the host State.

Arbitral Tribunals have also consented, at some extent that parties had a proper discretion in order to define investments. Art. 2.3 of ICSID submission Model Clauses embodying a statement of discretionary definition of investment.[19] The reference to what parties agreed as transaction, literally sets on the parties the power to decide what was an investment. But such broad discretion shall not be regarded as waiving the sole discretion of Tribunal, in the exercise of exclusive jurisdiction attributed by Convention[20] art. 41. The Tribunal, and only the Tribunal is the master of its jurisdiction, in its sovereign ability to interpret and apply relevant provisions of law. Any statement offered by the parties thereto shall be intended to beindicating the intention of same to qualify the transaction they were involved but shall not have binding effects upon the Tribunal. In fact, the jurisdiction of the Center is a matter of strict public law, exempt from the parties will and faculties of disposal.[21]

The wording *"arising directly out of an investment"* set in Convention art. 25 highlights the delicate matter of law of the causal link between investment and dispute.

Ponderosa Assets LP v. Argentine Republic, Case n. ARB/01/3, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 268 ss. For a later application of criteria set thereof, see, Joy Mining Machinery Limited v. Arab Republic of Egypt, Case n. ARB/03/11, 13 ICSID REPORTS, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 121 ss.

[19] Art. 3 ICSID Model Clauses reads*: "It is hereby stated that the transaction to which this agreement relates is an investment".* ICSID Model Clauses at available at ICSID website: https://icsid.worldbank.org/resources/content/model-clauses

[20] "Convention" for the purposes of this work, means the Washington Convention of 1965 establishing the ICISD.

[21] See the *Report on Settlement of Investment Disputes issued by the Executive Directors of the IBRD cit*., para 25.

The Tribunal at *Tokio Tokelés* case, clarified that when ICSID Convention refers to disputes *arising directly out* does not require that illegal actions brought by respondents were against investor properties and rights: it is quite broader in scope and covers even indirect detrimental effects that an investor who made investments fitting within the meaning of the Convention or appropriate investment treaty or contract, had suffered as a consequence of such misconduct, as far as a link between misconduct and prejudice might be reasonably found subsistent.[22]

It covers, in general terms, two operations.

The first, and most common, is the dispute arising from an investment already made. It is the normality in ICSID claims where an investor, after having spent capital and working energies into the settlement of the prospected investment, is defrauded of revenues by virtue of illegal conducts performed by the host State, usually through sovereign power and administrative acts. In those disputes the sole element to ascertain is the said causal link between dispute and investment. Investor would be intended to claim for damages for the breach of contract, expropriation or unfair treatment: in this terms dispute of damages shall be intended to be under the jurisdiction of the Center. In change, dispute relating to questioning the political choice of Governments, or seeking symbolic reparation (as formal excuses, for instance) shall be considered as not coming directly out of an investment.

The second case is that of perspective investments. It is common that, before an investment is made (i.e. a concession adjudicated, a contract concluded, a company established and starting its activity, etc.) investors starts making consistent investments in view of establishing the conditions necessary to the investment. Such expenditures may relate to market research, preliminary studies, meetings with governmental agents, in whose absence any investment shall never come to light. Eventually, Governments encouraged such preliminary expenditures, through letters of comfort giving rise to expectations of final agreements that eventually were never reached.[23] In such cases the attention of the Tribunal shall be drawn at the actual existence of an investment or, at least, at existence of legitimate expectation to the investor that the final investment shall be concluded. As argued in *Mihaly*[24], the actualexistence of a concession contract, can engender retrospective effects at previous moments of

[22] Tokio Tokelés v. Ukraine, Case n. ARB/02/18, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 305 ss. See also LG&E Energy Corporation and Others v. Argentine Republic, Case n. ARB/02/1, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 411 ss.

[23] See Mihaly International Corporation v. Democratic Socialist Republic of Sri Lanka, Case n. ARB/00/2, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 308 ss.

[24] Mihaly International Corporation v. Democratic Socialist Republic of Sri Lanka, Case n. ARB/00/2, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 308 ss.

negotiation. Expenditures made at that stage, for instance, are part of the overall investment performed, since investors expect to cover those preliminary losses by perspective revenues through future years. But in the absence of final adjudication, there is no such investment, and the request for compensation of expenses incurred in view of such operation, unless covered through legitimate expectation created by the Government, are not included in the notion of *dispute arising directly out of an investment.*

1.5 Choice of law, incidental and ancillary claims.

Choice of law, ancillary claims, incidental and preliminary issues are all aspects related to the core investment, that Tribunal has to deal with *ex officio,* in case of law applicable and incidental or preliminary issues, or through parties' request, in ancillary claims. The jurisdiction of the Tribunal extends, normally, to the resolution of all such questions as inherent to the claim because of voluntary expansion of the original claim, or because are logically inherent to the adjudication procedure and assessments in law and fact that Tribunal shall make to cope with its functions. Even if such elements are addressed as a unique category, vis – a – vis the principal claim, theire nature is quite different form one another andtheir presence in ICSID Convention, responds to very diverse purposes.

The law applicable is a question of mandatory preliminary assessment. In its assessment process, Tribunal the has to adjudicate through law.[25] Whilst procedure is governed by Convention, Institution Rules and the Rules of Arbitration, the material assessment over State's liability or investors frustrated rights and expectations, shall be performed under substantial law. That substantial law, in international investment is the international customary law and investment treaty provisions, but those only do not suffice for the scope of plain adjudications. The commitment of investment to the host State implies that national legislation is crucial element of assessment in order to ascertain the lawful or unlawful treatment. That is not only true for the matter of close investment protection provisions as the prohibition of unlawful expropriation or creepy and indirect expropriation; it is even more relevant as far as assessment is conducted through open and undetermined rules as the fairand equitable treatment of the full protection and security[26]. Such provisions imply both a due

[25] *Bono et aequo* criterion under art. 42.3 is quite marginal in ICSID Arbitration practice.

[26] See the extense considerations over applicable law in Ioan Micula, Viorel Micula, S.C. European Food S.A, S.C. Starmill S.R.L. and S.C. Multipack S.R.L. v. Romania [I], ICSID Case No. ARB/05/20. Decision on Jurisdiction and

standard of diligence from the host State and a standard of self-protection from the investor that needs to be assessed by the way of national applicable law.

The Convention under art. 42 gives preference to the parties will to designate the law they assume more adequate to their needs. But in case of lack of such will, the natural law applicable shall be that one of the host State, as both binding investor and the State itself. The determination and application of the appropriate law is a delicate task whose errors may lead to an annulation of the award for excess of power through art. 52. In particular such dispute is even more actual as soon as domestic law provisions may clash with general principle of international law. In such case, Tribunal shall address relevant issues of precedence between national and international law customary or treaty based, and relation between *lex specialis* and *lex generalis* all and more complex in case of multilevel domestic judicial systems or compound systems embracing national and supranational authorities.[27]

Art. 46 of ICSID Convention deals with counterclaims, ancillary claims, and incidental questions relating to the core dispute. The purpose of the provision, since it very first drafting was to assure that related claims being within the jurisdiction of the Center may be dealt at one sole proceeding, avoiding the multiplication of claims and inefficiencies that were neither auspicial, nor the Center itself was able to handle with.[28]

The notion of counterclaim is of plain meaning as a claim arising from the respondent as contrary to the one filed by the claimant.[29] The notions of incidental and ancillary claims have

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Admissibility (September 24, 2008). Final Award (December 11, 2013). Decision on Annulment (February 26, 2016). Available at:
https://www.italaw.com/cases/697
See also the case law in *Electrabel:*
Electrabel S.A. v. Hungary, ECT (ICSID Case No. ARB/07/19). Decision on the Claimant's Proposal to Disqualify a Member of the Tribunal. Decision on Jurisdiction, Applicable Law and Liability. Award of the Tribunal (25.11.2015). Available at:
https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/07/19

[27] See, for a case of annulment on such grounds the Decision on Annullment at *Klockner* case, Klockner Industrie-Anlagen GmbH, Klockner Belge SA & Klockner Handelmaatschappij BV v. Republic of Cameroon & Societé Cameraunaise des Engrais SA [Klockner I], Case n. ARB/81/2, Decision on Annulment of 03.05.1985, 2 ICSID REPORTS, Cambridge UP, 1994, ISBN: 0-521-46340-8, pp. 95 ss. The ad hoc Committee in *Amco* furtherly distinguished between lack of applying proper law and express error on the law applicable, contending that only the latter implied annulment. A distinction eventually difficult to rely on. See, Amco Asia Corp., Pan American Development Ltd & PT, Amco Indonesia v. Republic of Indonesia, Case n. ARB/81/1, Decision on Annulment of 16.05.1986, 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 509 ss.

[28] See History of ICSID Convention, cit. Vol. II p. I, p. 255.

[29] For examples of counterclaims, see, Amco Asia Corp., Pan American Development Ltd & PT, Amco Indonesia v. Republic of Indonesia, Case n. ARB/81/1, Award on the Merits of 20.11.1984, 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 413 ss. Amco Asia Corp., Pan American Development Ltd & PT, Amco Indonesia v. Republic of Indonesia, Case n. ARB/81/1, Decision on Annulment of

not been sufficiently defined in ICSID Tribunals case law. Nevertheless, a conceptual distinction shall be made between incidental claims, as issues preliminary in logic or in law to the resolution of a main claims, and ancillary claims as claims connected but autonomousfrom a fundamental one.

Examples of incidental claims shall be: the claim for ascertainment of the nationality of an investor[30], claims of inadmissibility of documents and requests for delay on time[31], claims to the denial of the *locus standi* of an investor.[32] The most common additional claim are, among others, those of interests on pecuniary obligations, charge of legal fees and procedural costs, additional costs coverage[33] (the first two, to be an inherent element of every ICSID claim).

The wording *"if requested by a party"* had been interpreted by Arbitral Tribunals, and especially by *ad hoc* Committees sought for annulment of awards as grounding the power of the Tribunal to make sentence. It was considered that adjudication on non-filed requests had to be considered an *ultra petita* pronunciation, to be annulled by way of Convention art. 52.1.b)[34] as excess of adjudication powers.[35]

Finally, three last requirements shall be met: the additional claim or counterclaim[36] must be within the jurisdiction of the Center, covered by the consent of the State in relation to the additional dispute arising thereof and strictly connected to the main claim. As per the first, Tribunal at *Amco* dismissed the counterclaim of respondent State of recovery of certain amount of taxes Indonesia contended had been defrauded. Tribunal contested that tax

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16.05.1986, 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 509 ss. For a very delicate question of admissibility of counterclaim filed see, Klockner Industrie-Anlagen GmbH, Klockner Belge SA & Klockner Handelmaatschappij BV v. Republic of Cameroon & Societé Cameraunaise des Engrais SA [Klockner I], Case n. ARB/81/2, Award of 21.10.1983, 2 ICSID REPORTS, Cambridge UP, 1994, ISBN: 0-521-46340-8, pp. 3 ss.

[30] Soufraki v. United Arab Emirates, Case n. ARB/02/7, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 156 ss.

[31] Amco Asia Corp., Pan American Development Ltd & PT, Amco Indonesia v. Republic of Indonesia, Case n. ARB/81/1, Decision on Annulment of 16.05.1986, 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 509 ss.

[32] Adriano Gardella Spa v. Government of Cote d'Ivoire, Case n. ARB/74/1, Award of 29.08.1977, 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 283 ss.

[33] For the request of additional costs to be covered by the respondent State, due to fees payable to third persons as a consequence of contractual liability of investor, and derived to States default on its obligations, see Societé Ouest Africaine des Bétons Industriels [SOABI] v. State of Senegal, Case n. ARB/82/1, Award of 25.02.1988, 2 ICSID REPORTS, Cambridge UP, 1994, ISBN: 0-521-46340-8, pp. 190 ss.

[34] Amco Asia Corp., Pan American Development Ltd & PT, Amco Indonesia v. Republic of Indonesia, Case n. ARB/81/1, Decision on Annulment of 16.05.1986, cit. pp. 519 ss.

[35] The principle described shall be limited to *ex parte* petitions only. If the proposed distinction between incidental claims and additional claims were to be upheld, statements of annulment shall be predictable to additional claims only.

[36] It is still maintained that incidental claims in the sense described shall not be regarded as an *ex parte request,* but as elements to be assessed *ex officio,* thus limitation requirements set out at art. 46 shall not apply.

recovery was outside the jurisdiction of the Center whose competence limits to disputes regarding investments only.[37] As per second and third requirements it was found that the overall consent of the State to investment jurisdiction was able to cover even such additional claims intimately related, as far as the connection was not superficially or too weak and uncertain.[38]

1.6 Jurisdiction not meeting ICSID Convention: the Additional Facility Rules of Arbitration.

In 1978 the Administrative Board of ICSID approved the rules of a facility rendered under the cap of ICSID at the aim of providing room for conciliation and arbitration to such ISDS disputes that were outside the jurisdiction of the Center under Convention art. 25.

The creation of such facility, which was given the name of Additional Facility, obeyed to the request of many States wishing to expand the role of ICSID dispute settlement system outside the restricted membership of sole States parts to the Convention.[39]

Jurisdiction of the Additional Facility (AF) is broader but also limited to certain type of litigation relating to the concrete instrument of the AF involved.

For Arbitration and Conciliation, art. 2 of AF Rules[40] establishes that proceedings shall be brought for legal disputes which are uncovered from ICSID jurisdiction either because one of the parties is not a State party or a national of a State party to the Convention, either because the legal dispute is not raising directly out of an investment, provided, in both cases, that pure commercial disputes are disregarded.

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[37] Amco Asia Corporation and Others v. Republic of Indonesia, Case n. ARB/81/1, 9 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-86123-6, pp. 17 ss.

[38] See, among the others, reasoning in *SOABI* and *Benvenuti*, where the claim for interest was found a clear example of additional claim connected to the principal claim, and a counterclaim from the State of Congo against investors, related to alleged damages for mismanaging of a concession, was considered as both related to the principal issue, and to a dispute on investments. See, respectively, Societé Ouest Africaine des Bétons Industriels [SOABI] v. State of Senegal, Case n. ARB/82/1, Award of 25.02.1988, 2 ICSID REPORTS, Cambridge UP, 1994, ISBN: 0-521-46340-8, pp. 190 ss. Benvenuti & Bonfant v. Government of the People's Republic of the Congo, Case n. ARB/77/2, Award of 08.08.1980, 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 330 ss.

[39] See SCHREUER, C. H., The ICSID Convention: A Commentary, Cambridge UP, 2. Ed., 2009, ISBN: 978-05-115-9689-6, pp. 92 – 93.

[40] ICSID Additional Facility (AF) Rules (current version: 2006). Available at: https://icsid.worldbank.org/resources/rules-and-regulations/additional-facility-rules/overview

Access to Additional Facility Conciliation and Arbitration is submitted to ICSID Secretary General prior approval.[41]

Since Convention is not applicable to AF, proceedings and awards rendered by AF Tribunals shall have a different more detriment treatment. Awards rendered under AF share much with private law arbitration awards, and are treated as such, with detrimental effects as to the effectiveness of protection sought by the investor. Firstly, such arbitration proceedings shall not benefit from the exclusivity of jurisdiction regulated at Convention art. 26. It means that host State is free to enact domestic procedures in order to prevent the effects of a claim loss at international level, seeking domestic courts to decide stating the rightfulness of State actions and even a condemnation for damages to the investor. If domestic laws recognize the effectiveness of *res judicata* principle, a definitive judgement rendered under domestic law before AF proceedings were concluded, shall be deemed to be the sole binding decision applicable to the case. On the other hand, only ICSID awards enjoy the "passport" to execution granted from Convention art. 54, which allows enforcement of pecuniary obligation within territories of all member States where an asset of the condemned State is placed. AF awards, on the contrary shall rely, for execution, to previous recognition of domestic courts, which are able to set the award aside for whatever reason stated in national procedure rules, especially on the grounds of public policy.[42]

Among years, the AF for Conciliation procedures has resulted almost inoperative, whilst AF for Arbitration, despite the minor degree of protection offered to investors, had been object of an extensive use, both under UNCITRAL rules for arbitration and proper AF rules of arbitration, especially within NAFTA claims.

AF rules provide for a third kind of facility which is the Fact-finding facility (FF). FF is not properly a room for dispute settlement. Its scope is to provide an independent inquiry on the facts in order to investigate doubtful happenings, in view of facilitating, by a setting of a shared version of happenings, an amicable settlement between parties. As its scope is prevention of conflicts, FF is not restricted in scope and nationality. Any State and claimant shall seek an investigation under FF, if both agree to submit to FF facility. The FF facility rules do not limit the purpose and scope of investigation: all the relevant aspects as object of

[41] AF Rules art. 4.

[42] Same exception form recognition and execution are provided from the *UN New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, of 1958, art. V. The text of the NY Convention is available at:
https://www.newyorkconvention.org/english

inquiry, appointment of commissioners, period of investigation etc., are let to the parties agreement. Due to the openness of FF nothing prevents pure commercial disputes to be brought before it.[43]

1.7 Case law.

Despite the fact the ICSID was functioning since middle sixties, only few disputes arose, at a number of 1 to 4 registered disputes per year until late nineties, where the number of claims increased to 8 – 10 per year. The boom of ICSID proceedings started at first decade of new century, when dispute increased consistently, at an average of approximately 40 registered new claims per year.

From a total of concluded cases as per 28 of May 2021 of 553, almost all dispute had to deal with objections to jurisdiction as a preliminary matter, and at 15% of cases, such ground was upheld.[44]

Importance of ICSID jurisdiction rules arises from the basic principle grounded in art. 41 of the Convention, under which any ICSID Tribunal is the judge of its own jurisdiction.[45] Analogous power is given to the Secretary General of the Center if, at preliminary stage of filing, by the information rendered from the claimant himself it had to find the dispute manifestly outside the jurisdiction of the Center.[46]

Since the decision on jurisdiction is a preliminary question on the decision of the merits, which may be dealt separately or as part of the final award – but in any case, before any adjudication on the merits[47] - its contention by respondent had become a rutinary argument in

[43] See ICSID Additional Facility (AF) Rules (current version: 2006), Schedule A: Fact-Finding Rules. Available at: https://icsid.worldbank.org/resources/rules-and-regulations/additional-facility-rules/overview
[44] See the ultimate report of *ICSID Caseload Statistics*, Issue 2020-2. Available at: https://icsid.worldbank.org/sites/default/files/publications/The%20ICSID%20Caseload%20Statistics%20%282020-2%20Edition%29%20ENG.pdf
[45] See the *Report on Settlement of Investment Disputes issued by the Executive Directors of the IBRD cit*., para. 38, where drafters recalled the power of the Tribunal to determine its own jurisdiction, as a general principle of international law.
[46] See *Institution Rules,* art. 6.
[47] See art. 41.2 of the Convention. As a rule, respondent is obligated to move its objections to jurisdiction at its first defense and in any case as soon as possible. Nevertheless, since jurisdiction is a question that Tribunal have to deal *ex officio,* contestations risen out of term shall not be disregarded. See Tribunal's argument on objection to jurisdiction at AIG Capital Partners Inc. and CJSC Tema Real Estate Company v. Republic of Kazakhstan, Case n. ARB/01/6, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 3 ss.

defense pleas, which had given rise to a substantial case law, embracing all field and areas of Tribunal's intervention among the years.

Verification of requirements to jurisdiction is made at the state of proceeding, on the basis of what is alleged from the claimant for the jurisdiction *ratione materiae* – pleads of investment and dispute arising out from the investment – and what results from allegiance and official documentation for the jurisdiction *ratione personae* - matters of nationality, consent to investment and *locus standi*.

Decision on jurisdiction is never definitive and shall be reverted if, after scrutiny of the claim at the subsequent stages of procedure, it results to be outside ICSID competence.

The cases that follow represent the most interesting decisions in the matter of jurisdiction rendered by Arbitration Tribunals following ICSID Arbitration rules.

Even if the jurisdiction of the Center is grounded at a unique norm (Convention art. 25)[48] pleads submitted by respondents have brought sophisticated and sometimes intellectually challenging arguments contending the lack of consent to arbitration, the non-membership of States at the time of consent, the non-investment nature or non-legal nature of the dispute, the lack of locus standi and so further.

In *Holiday Inns*[49] the very first claim registered under ICSID Arbitration, in 1972, the Tribunal had to address the main arguments, which will give rise to following disputes of jurisdiction over the years.

Investors contended the creeping expropriation and seizing of their assets by the Government of Morocco. Consent to arbitration was included into a contract between Holiday Inns and OPC, and its affiliate corporations, by one side, and Morocco on the other side.

In point of jurisdiction, Morocco pleaded on two main grounds.

Firstly, it pointed out that some of the claimants were legal persons (companies) incorporated under Moroccan law. In the lack of any agreement pursuing Convention art 25 to treat national legal persons as foreign investors because of foreign control, it was argued thedispute being outside ICSID jurisdiction. Investor's defense was that Moroccan companies

[48] In various cases ICSID Tribunal allowed Convention art. 25 to be integrated by treaty provisions in BITs and TIPs, eventually clarifying that a concrete operation was intended as arbitrable investment under ICSID Convention; see as an example the decision on jurisdiction in Camuzzi International SA v. Argentine Republic, Case ARB/03/2, 16 ICSID Reports, Cambridge UP, 2012, ISBN: 978-0-521-192-61-3, pp. 3 ss.

[49] Holiday Inns v. Morocco – Some legal Problems, report on The First "World Bank" Arbitration, LALIVE, P., 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 645 ss.

were mere instruments to simplify operations on the ground, and that investment was in pureness conducted from foreign corporations, whose identity respondent was fully aware.

Secondly, in respect of the principal claimant, Holiday Inns, Glarus, a company incorporated from its USA mother under swiss law, it contended that there was lack of the nationality requirement for arbitration, since Switzerland became a part of the Convention late after the contract embodying the consent to arbitration was signed.[50] Grounding on the precise wording of Convention art. 25.2.b) reads:

"*any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration"*

it was contended that, in order to submit a dispute to ICSID Arbitration, the investors' home State, shall be part of the Convention before or at least, at the time consent was given. Membership acquired at later moment from that day, shall be regarded as irrelevant for consents given at prior date, thus depriving the Tribunal from jurisdiction.

The Arbitral Tribunal after careful assessment upheld the first plead and rejected the second.

As per nationality requirement it was affirmed than, in principle, the nationality of a legal persons was the one of the State where it was constituted. As per Moroccan companies, then, they had to be regarded as nationals of the responding State and therefore prevented from suing their own country. Such being an almost pacific finding, the Tribunal had to address thefurther delicate issue of the nature of the agreement to treat the national corporation as a foreign one due to foreign control. Dispute arose about the formal requirements of thatconsent: if a formal consent in writing was needed (as per consent to arbitration following Convention art. 25.1) or it would suffice an implicit consent, arising from host State acts and behavior, capable of engendering legitimate expectation to the investors about its existence, whoes actual repudiation shall be prohibited under the principle of *estoppel.*

The Tribunal did not take the position of asking a formal consent in writing, even if it was found that the normality in such domain shall be, at any time, a written statement, making explicit the will of the State to treat a national as if were an alien. It was thus admitted implicitconsent, but the facts grounding it shall be as concluding and of such relevance as to prevent

[50] Contract was concluded on 28.09.1966, Morocco became contracting State to the Convention on 10.06.1967, Switzerland became part on 14.06.1968, and swiss subsidiary was incorporated in 1967.

any reasonable doubt about its very existence. Such was not considered to be the case, and claimant's argument was rejected.

Rather interesting was the position assumed at consent to arbitration. Being aware that espousing Morocco thesis shall have jeopardized the Convention of much of its effectiveness, the Tribunal argued that the actual meaning of art. 25.2.b) was that consent to arbitration, in case of non-membership of host State or home State, shall be intended as a consent conditioned to such membership. Thus, as ineffective for establishing jurisdiction at the very moment of deliverance, it shall gain plain effect at the moment where both State joined the Convention and shall be regarded to have retrospective effects at the early moment where investment was made.

The Tribunal findings, in both cases are reasonable, and lead to conclusions consistent withthe meaning of the Convention and its scope. Nevertheless, the theory of conditioned consent may sound some artificial. In fact it confuses two different plans: the one referring to the States accession to the Convention, and the one of investors nationality: consent to arbitration an consent to be part of the ICSID Convention are both preliminary questions dealing with jurisdiction but are autonomous and separate in goals and time.

The either membership of home and host State is a pre-requisite for having access to Arbitration only and, as such, shall be present at least, at the moment of submission of the claim.

Consent to arbitration – independently if provided by unilateral statement, domestic law, contract, or treaty – is the self-submission of a State to ICSID jurisdiction, relating to a certain type of investment claim or all future investment claims. Such consent must, obviously exist at the moment of submission to arbitration, but is itself independent from the membership of the State to ICSID Convention and shall be given prior or after accession.

Fully aware of that, art. 25.2.b) in its wording, does not require that investor had the nationality of a member State at the exact moment of the consent to arbitration, which is a concrete day and hour, but at the moment where such consent was still in force.

That shall be so, because the nationality is a requisite inherent to the existence of a legal person. If otherwise, consent made in general terms for undefined number of disputes, under TIPs and BITs, shall apply only to incorporated companies up to the moment of consent deliverance. Companies of later incorporation shall be deprived of any right of protectionsince they did not exist and were not nationals of a member State at the moment where

consent was released, and one should renew consent to arbitration, in view of giving opportunity to new incorporated investors, from time to time indefinitely.

The theory of conditioned consent embraced from the Tribunal aimed at avoiding that unlikely result but, as said, sounds some artificial: a conditionality of a statement made by a living subject of law, may exist only if there was an explicit clause in that sense, and is not forthe judge or arbitrator to force the willing of parties as expressed in their statements in orderto fit in a personal – even meaningful – theory.

And it was neither necessary.

The matter at issue was not related to a hypothetical conditional will of parties to submit to arbitration – will which was actual and unconditioned – but to the effectiveness of such consent, impeded as it was, by a provision of (international) law. The question at stake is of pure law interpretation, and, as argued, it suffices to interpret the wording of Convention art. 25.2.b) as referred not to the moment of consent but to the moment that consent was in force, and same goal shall be reached in a conceptually consistent representation grounding, precisely, on the actual validity and effectiveness of a consent already given and binding.

Such being the most important pleads, Tribunal had to deal with further questions that in following years were to be more than usual in investment disputes, and to the which it addressed a first jurisprudence constituting a significand precedent.

Questions analyzed were: the effects of cession of the investment contract and good faith dealing with the definition of the notion of parties to the dispute, primary and non-primary elements of investment subject to international or domestic jurisdiction, the principle of primacy of international proceedings and the State responsibility for disrespect to principles of self-restraint.

As per the first aspect, Government contended the locus standi of USA mother companies, which were not parties to the investment contract. Tribunal preferred a more pragmatic approach. Even if formally true, it found that Morocco had repeatedly exchanged correspondence with all the companies involved in the investment and appeared to consider the mother companies as the real investors and considered undertakings incorporated under domestic law as lacking real autonomy. Assessment on the personality of the investor then shall be made on material and pragmatic ground, and consent to arbitration given at a contractwith an instrumental undertaking, shall be considered as given in benefit also to the mother company: the subsidiary shall be treated, therefore, as a mere tool and not a proper subject

party. On the same spirit was the assertion that cession of contract or part of contract, if permitted under the fundamental agreement, was intended also as cession of the right to arbitrate. A cessionary investor, entrusted with the task of performing certain part of the contract, if it met the nationality requirements under ICSID Convention, was find able to sue directly the host State. Consent to arbitration given by the latter shall extend then, to any future investor involved in the project, and State was not allowed to withdraw it unilaterally, pursuant to Convention art. 26.

The last aspect addressed was the rather slippery definition of the profiles of the foreign investment to be dealt at international arbitration level and those to be regarded as pure internal affair, attributable to domestic jurisdiction.

The problem to solve was of outstanding relevance. It shall be contended, in fact, that all investment and operations made in execution of the project, and dispute thereof, come within the coverage of the Convention as arising directly out of that investment. In such view even ancillary claims as mere conflicts on local tributes, fines of small entity or complains for delay in public services, shall be regarded as pleads to be dealt at ICSID level. It is unnecessary to stress out the consequences that such theory was able to bring, from the collapse of Tribunals, up to its transformation in permanent bodies of jurisdiction, sitting in place at least as long as the investment went on for years and decades.

On the other and there was Moroccan contention who consisted in an overwhelming expansion of its domestic jurisdiction even at the very core of the dispute.

Tribunal seemed to find a middle way of contention but did not press in establishing a satisfactory criterion. It refrained to separate the notion of primary aspect of investment, that shall be dealt at international level and to the which consent to jurisdiction (and following principles of no withdrawal and exclusivity apply), and secondary or ancillary aspects, that should be dealt at domestic level. It lastly affirmed the principle of primacy of international proceedings over domestic ones, and as consequence, stated that domestic court shall refrain from giving any judgement which was not aimed at recognizing and enforcing international adjudications within the jurisdiction of the Center. A court adjudicating on same dispute as settled or in way of settlement at the Center, shall bring international responsibility for the State. More remarkably also a failure or unwillingness to execute decisions rendered from the Tribunal was seen as able to carry out same class of responsibility.

In *Gardella*[51] further attempt was made to distinguish *locus standi* from jurisdiction. The Government of Ivory Coast contended that the amounts claimed from Gardella shall be owed by SIVAK, a joint venture company 50% owned by Government and Gardella, and incorporated in Ivory Coast, and not by Government itself, thus the lack of jurisdiction of the Center. Tribunal replied that jurisdiction is governed by rules, whose assessment precedes the adjudication on merits. In order to have proper jurisdiction only assessment to be made was, pursue on Convention art. 25, the character of investment and the legal disputes arising from, the nationality of the parties, and the consent for arbitration. Had such elements been met, the Center was deemed to have jurisdiction. In such view, in the opinion of the Tribunal, the issue of locus standi was a matter of merits to be dealt by the final award and deserved not a proper consideration in the plead of jurisdiction.[52]

In the middle of seventies, a sole arbitrator Tribunal had to deal with three cases brought from aluminum and bauxite producers against Jamaica. They were the cases *Kaiser,*[53]*Alcoa* and *Reynolds*.[54] Jamaica failed to respond in any of them and proceedings went on in absence. In all three cases the Tribunal had do examine same matters of law, relating to ownership and running of mines. Through two different contracts of 1969 and 1962 the Government of Jamaica consented to ICSID Arbitration for investments drawn at those contracts.Nevertheless, after having accessed to the Convention at 1968, and just few months before investors brought proceedings against it, the Government sent a letter to the Center Secretariat, following Convention art. 25, at the scope of withdrawing certain types of investments from the jurisdiction of the Center. Among those there was also the sector of mining. Investor claims, in fact arose from the infraction form the State of a freezing clause embodied into those investment contracts, which exempted investments from all future taxes and leaves different from those agreed and explicitly mentioned therein.

[51] Adriano Gardella Spa v. Government of Cote d'Ivoire, Case n. ARB/74/1, Award of 29.08.1977, 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 283 ss.

[52] The position of the Tribunal is not exempted for criticism since *locus standi* is generally a question of merits, unless it was clear, from pleads as presented at claim that right of obligations sought were not with the claimant or with the respondent. In such case, claim shall be rejected immediately in rite. Nevertheless, the very way Convention is drafted, as an ISDS mechanism, implicates that the nature of the respondent assumes the form of an issue of jurisdiction, since art. 25 consents jurisdiction relating to claims between States and national of other States only. If the State was not a proper respondent, the Tribunal lacks jurisdiction.

[53] Kaiser Bauxite Company v. Government of Jamaica, Case n. ARB/73/3, Decision on Jurisdiction and Competence of 06.07.1975, 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 296 ss.

[54] Cases Alcoa (Alcoa Minerals of Jamaica Inc. v. Jamaica, ARB/74/2) and Reynolds (Reynolds Jamaica Mines Ltd and Others v. Jamaica, ARB/74/4) have not been published so far.

Tribunal found to have jurisdiction since personal and objective criteria were both met. As per the *ratione temporis* meaning of the provision set at Convention art. 25.4, that at any time a State may notify its unwillingness to submit of arbitration certain types of investments, the Tribunal found thar such clause shall be deemed to be valid only for investments posterior to the date of notification and that, consistently, previous investments were under the coverage of consent to arbitration given at the time investment was made.[55] The opposite, other than contrary to good faith, shall be also in flagrant contrast of Convention art. 25 as prohibiting the unilateral revocation of consent done.

In *Amco*[56], the Arbitral Tribunal involved in a dispute of high complexity, makes extensive reference to previous case law, especially applying findings in law at Holiday Inns case.

The dispute – that, as Holiday Inns, as well related to hotel facilities – arose from an expropriation from Indonesia to the business set up by Amco and other USA national corporations through an undertaking incorporated under Indonesian law. The necessity to incorporate a local company, furthermore, was a legal requirement under national legislation on foreign investments of 1967. Indonesia challenged the jurisdiction of the Tribunal arguing that the only company which shall be affected negatively and thus legitimate to seek arbitration was the Indonesian vehicle – undertaking. Nevertheless, it was prevented to do so because it was a national of the respondent State and Indonesia never consented it to be treated as a foreign investor under principles set out at Convention art. 25.

Grounding to *Holiday Inns,* Tribunal was first to affirm the legitimacy of the *lcus standi* of the American corporations. Their *locus standi* and due qualification as investor, in lieu of the Indonesian corporation (fully owned by them) was nothing more than an application of the principle established at *Holiday Inns* of the material qualification of investors. Had the Indonesian corporation considered nothing more than a mere vehicle in order to ease and even make investment possible under local legislation on foreign investments, in benefit of American corporations, the Tribunal found no autonomy in the former, qualifying as investorsthe latter. On the other hand, it found that even in respect to national undertaking, the Govern

[55] A positive application of art. 25.4 was at *Gruslin* case, where investor claimed for loss of profits due to investment in Malaysia stock exchange. The main ground for dismissal of the claim was contention in the investment agreement between Malaysia and investor's State, which provided coverage from the BIT and thus consent to arbitration, only for investment which previously enjoyed approval from Malaysian Government. Such approval lacked in the case at issue. See, Philippe Gruslin v. Malaysia, Case n. ARB/99/3, Award of 27.11.2000, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 483 ss.

[56] Amco Asia Corp., Pan American Development Ltd & PT, Amco Indonesia v. Republic of Indonesia, Case n. ARB/81/1, Decision on Jurisdiction of 25.09.1983, 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 377 ss.

shall be considered as having consented to treat it as a foreigner. Those grounds emerged from the foreign investors act which gave certain benefit in order to attract foreign investors, under the condition that operation authorized shall be performed through an Indonesian corporation owned by them and creating to that specific purpose.[57] The Tribunal found such a rule to be interpreted as a recognition of the foreign investment nature of a local corporation, granting thus right to access to Arbitration.

Another claim arising out from a contract was in *SOABI*,[58] a Senegalese corporation controlled by a Panamanian society, whose objective was the building of a certain number of houses for low income people. SOABI sought arbitration proceeding taking advantage from a clause in one of the contracts it entered with the Government which allowed it to submit disputes of investment nature to ICSID Arbitration.

Grounding on the notion of effectiveness and nationality, Senegal contested jurisdiction under two grounds. Firstly, the nationality: SOABI was a Senegalese corporation, and as such, a national of Senegal, which shall be prevented to sue its State without State's consent.

That argument was itself unlikely to be successful since, as seen in other previous cases, the mere fact of reference of ICSID Arbitration in a contract with a national corporation, was interpreted by Tribunals as explicit consent to treat the company as a foreigner, in respect of the interpretation principle of effectiveness of clause in a contract. It was evident, since, that if Senegal position was to be upheld, such clause lacked any meaning and shall be viewed as inexistent. But in prevision of such criticism, Senegal objected that in any case, SOABI was prevented from access to arbitration due to the principle of effectiveness and foreign control. In other words, as it was that in previous case law, where determination of the nationality of a claimant was conducted by a pragmatic approach on its control, and not refraining at the formal stage of its seat of incorporation, Senegal underlined that SOABI was fully controlled by a Panamanian society, Flexa, and Panama, at that time (1982) was not part to the ICSID

[57] Same reasoning was later to be applied in Klockner Industrie-Anlagen GmbH, Klockner Belge SA & Klockner Handelmaatschappij BV v. Republic of Cameroon & Societé Cameraunaise des Engrais SA [Klockner I], Case n. ARB/81/2, Award of 21.10.1983, 2 ICSID REPORTS, Cambridge UP, 1994, ISBN: 0-521-46340-8, pp. 3 ss, in order to uphold the participation of the joint venture company constituted under Cameroon law and half participated by claimant and respondent State. That time the Tribunal stressed much the notion of consent from a Government to allow a national entity to be treated as foreign investors, by virtue of its incorporation under a national law of foreign investment promotion. It was built, for the first time in clear terms, the reasoning of implicit consent to treat national corporations as aliens, as inherent to the promotion of investment through investment law, when the creation of joint ventures or national corporation was a mandatory requirement to take advantage from the benefits promised.

[58] Societé Ouest Africaine des Bétons Industriels [SOABI] v. State of Senegal, Case n. ARB/82/1, Decision on Jurisdiction of 01.08.1984, 2 ICSID REPORTS, Cambridge UP, 1994, ISBN: 0-521-46340-8, pp. 164 ss.

Convention. It shall be evident then that if SOABI was permitted *locus standi* as foreign investors, Convention art. 25 shall be jeopardized to the extent that it shall be possible for non-member State companies, to profit from ICSID Arbitration, without any need to have their home State part to the Convention.

Tribunal nevertheless endorsed that view, not unconditionally, but further underlining that Flexa itself, was a society controlled from Belgian nationals, and Belgium was, at that time a member State of ICSID Convention. The principle of law stemming out from that was an *in-favor* investment assertion: consistently with the non-formalistic approach, Tribunal reached the result of considering the effective nationality of investor not only because of direct control but also for indirect control. It then expanded the jurisdiction of the Tribunal consistently with previous jurisprudence.

The likelihood for investors to sue under ICSID facilities instead then other forums, ifallowed to choice, emerged clearly in *Southern Pacific*.[59] An investor who had previously sought arbitration under ICC following a clause allowance in a contract, found itself bound to uncertainty when, having obtained a partial favorable decision at ICC, that decision was appealed and eventually annulled by French courts. It decided than to open ICSID proceedings in order to achieve a final award which shall be definitive and not submitted to internal courts review on any ground.[60] The contention of the respondent Government that investors were not entitled to "forum shopping" upon chose of different jurisdiction at the same time, was rejected through the argument that the principles of legal certainty and res judicata, as general principle of law recognized also in international law, prevented duplicity of judgements but not duplicity of proceedings. Under such dimension investors were free to seek for relief in each forum they shall be entitled. Nevertheless, Tribunal sought it shall stop himself from deliberating if other previous decision came at stake on the same matter as arbitration. Such self-restraint nonetheless, applied only to settled disputes. Disputes wherethe alternative forum lacked from jurisdiction, shall not be regarded as decision in the sense indicated and, in observance of the general principle that each tribunal shall be the judge of its

[59] Southern Pacific Properties (Middle East) Ltd [SPP(ME)] v. Arab Republic of Egypt, Case n. ARB/84/3, First Decision on Jurisdiction of 27.11.1985, 3 ICSID REPORTS, Cambridge UP, 1995, ISBN: 0-521-47512-0, pp. 101 ss.
[60] In purity, after a first partial decision on jurisdiction on 27.11.1985, Tribunal decided to stay proceedings up to the moment where French Supreme Court had dealt with the domestic claim on ICC award, in order to avoid duplicity of judgements. Proceedings reopened when the Suprme Court decided to annul the ICC award for lack of jurisdiction from the ICC itself. See on the point, the decision and the resume of facts at Southern Pacific Properties (Middle East) Ltd [SPP(ME)] v. Arab Republic of Egypt, Case n. ARB/84/3, Second Decision on Jurisdiction of 14.04.1988, 3 ICSID REPORTS, Cambridge UP, 1995, ISBN: 0-521-47512-0, pp. 131 ss.

own competence, the lack of jurisdiction of a forum shall not imply the lack of jurisdiction in another one.

In the same argument, Arbitral Tribunal in *Mine*[61] case prohibited Mine to pursue enforcement proceedings against Guinea through an arbitral award rendered under American Arbitration Association framework when, afterwards, a second judgement at ICSID Arbitration was sought. The reasoning grounded on art. 26 of the Convention (principle of exclusivity of ICSID jurisdiction) and interim relief was granted to respondent State indicating claimants that from the moment of submitting their case to ICSID, they hadrenounced to any kind of other remedies past or future in relation to the litigation at stake. Interim relief was then attributed to responding government and, as a consequence, investors ceased proceedings they had at the moment before national courts and started new arbitration.

After twenty years of consent to arbitration given on the basis of investment contracts and (few) internal laws, in *Asian Agricultural*[62] case, the first arbitration claim was brought under investment clause, standard of treatment and protection disposition resorting from a BIT.

A Hong Kong company sued Sri Lanka seeking compensation for damages suffered from the destruction of the factory it created jointly with a local company. Destruction happened as a consequence of war operations between the Government and Tamil insurrectional group. Investors contended that Government exceeded its powers, since there was no need of such destruction, nor the area surrounding was occupied by rebels. By destruction of its assets Sri Lanka had failed to comply with the standard of protection assured from the BIT UK – Sri Lanka, whose articles provided for *"full protection and security"* to be granted at any time. Tribunal, even quoting that the modern standard of investors protection were higher than in the past, was not in the view that disposition invoked by the claimants shall had the meaning they attributed to. By a comparison with other BITs and recent case law, Tribunal shed perplexity in considering the standard at stake as strong and strict, as to bind the Government to provide at any time a complete guarantee of untouchability for foreigners and their assets. On the contrary war and civil disturbance were among the typical features of dismissing the responsibility of State under general principles of international law.

[61] Maritime International Nominees Establishment v. Republic of Guinea, Case n. ARB/84/4, Award of 06.01.1988, 4 ICSID REPORTS, Cambridge UP, 1997, ISBN: 0-521-58136-2, pp. 54 ss.
[62] Asian Agricultural Products Ltd v. Democratic Socialist Republic of Sri Lanka, Case n. ARB/87/3, Award of 27.06.1990, 4 ICSID REPORTS, Cambridge UP, 1997, ISBN: 0-521-58136-2, pp. 245 ss.

In *Vacuum*,[63] Tribunal had to deal newly with the requirement of foreign control under Convention art. 25.2.b).

Vacuum was a company incorporated under laws of Ghana, initially owned by a Greek national. In 1988 it entered into a leasing agreement with the Government to exploit salt deposits in the country, agreement that was afterwards revoked unilaterally by the Government by virtue of national legislation.

The contract contained a provision of referral to ICSID Arbitration for any dispute arising out from the interpretation and execution of its terms. Nevertheless, prior to entering the agreement, Vacuum shares were object to complex operations that, at the very ending, provided the majority of shares to State owned banks, thus to the Government of Ghana itself.The Tribunal had to determine if, pursuant to art. 25.2.b) Vacuum shall be considered as foreign national to meet personal criteria on jurisdiction.

Tribunal dismissed its jurisdiction noting that art. 25.2.b) enclosed two concurring criteria to be met for domestic incorporated companies.

The first was the consent of the host State to treat such undertaking as a foreign investment. Even if it was preferable that such consent might be explicit,[64] the precedents at ICSID had found that also an implied consent would suffice. Such consent may thus be deemed to be existent by the contract clause referring dispute to ICSID Arbitration: since Convention only applies to ISDS proceedings between States and national of other States, its existence was to be found as the consent of the State to consider Vacuum as a foreigner for the purpose of the investment.

Second criterion was the notion of foreign control. Since all the criteria of jurisdiction were criteria of public policy, parties were prevented to derogate from them, and such intention shall be irrelevant before Tribunal's exclusive power to determine its own jurisdiction.[65] Following, Tribunal had to consider the point relating to foreign control. In particular, it hadto determine if share ownership was the definitive criterion to follow in order to ascertain such foreign control. The analysis of the Tribunal starts from the point that, in corporate law,

[63] Vacuum Salt Products Ltd v. Government of the Republic of Ghana, Case n. ARB/92/1, Award of 16.02.1994, 4 ICSID REPORTS, Cambridge UP, 1997, ISBN: 0-521-58136-2, pp. 329 ss.

[64] A case of explicit consent – even if at subsequent arbitral proceedings the respondent State eventually contested it – was given from Venezuela to the local corporation awarded of a highway concession and controlled by a US corporation within a Mexican investment group. Consent was established through contract. See, Autopista Concesionada de Venezuela CA v. Bolivarian Republic of Venezuela, Case n. ARB/00/5, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 417 ss.

[65] Disputes not meeting the criteria set out in art. 25 were eventually to be submitted to AF Arbitration.

the notion of control is undefined, and not specifically related to the possession of a certain quantity of shares. Control is in fact the ability to have material influence at board's decision making, which may be granted by different means as provided by the practice and applicable corporate law. Minority package suffice at sometimes, to have control if shareholders are pulverized. And at times, control is secured under special statutory provisions as golden shares or special powers attributed to holders or third parties. The majority of shares, nevertheless, was a presumption of control, which may be waived if claimants, who bear the full burden of proof, rebut it by further arguments. Such further arguments were not met inthe case and it had to be concluded that Vacuum was a national domestic corporation, thus dispute being outside ICSID jurisdiction *ratione personae.*[66]

In *AMT*,[67] the ICSID Tribunal had to reestablish its doctrine of full locus standi from the mother company for losses incurred on investment pursued through a subsidiary incorporated under local law and fully controlled. Arguments of the respondent State that jurisdictionfailed because the foreign mother company made investments through a subsidiary, then dispute was not to be considered as arising directly out from an investment was dismissed.[68] The Tribunal established also the doctrine of precedence of international investment law over any provision of national law. Even if, as it was at stake, applicable legislation to the dispute was the BIT USA – Zaire of 1984, besides national legislation of the latter State, it defended the primacy of international law and the independent burden of States responsibility and submission to international proceedings as separate and prevalent to all domestic provisions.A contrary view would jeopardize the purpose and sense of international investment law.

[66] A problem of corporate law but under different terms appeared at case Scimitar Exploration Ltd v. Republic of Bangladesh and Bangladesh Oil, Gas and Mineral Corporation, Case n. ARB/92/2, Award of 05.04.1994, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 3 ss. In such case it was questioned that Claimant was acting through due authorization from board of directors or majority of shareholders. Substantially, it was contended that the persons acting as claimants were not, indeed, the claimant itself. Claimants failed to present documents endorsing their authorization before the Tribunal, and their counsel, as more, affirmed to have received instruction not to oppose to Government's pleads. The Tribunal considered the fail of opposition as equivalent to admittance and the lack of authorization as a prerequisite for *locus standi.* Further on, it was found that parties had agreed that law applicable to their investment pursuing Convention art 42 were the laws of British Virgin Island, which considered claims unendorsed by due authorization as null and void. Jurisdiction was consequently found to be absent.

[67] American Manufacturing & Trading Inc. v. Republic of Zaire, Case n. ARB/93/1, Award of 21.02.1997, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 11 ss.

[68] In a pure speculative approach, the argument of the respondent, was smart at some stage. It argued that the investment of AMT was not the performance of the project "on the ground" which was a matter of the locally incorporated entity. The investment of the mother was to be intended as the sole profits coming out from dividends of the subsidiary it was owe due to the participation in shares. In that sense the dispute was indirectly arising from the investment since the real investment in terms of substantial contribution to the local economy was that of the subsidiary, and the lack of revenues of the latter was not *per se* an argument against the Government. See Award *cit*.

In *Tradex*[69], Tribunal had to address a wholly relevant question relating to the time of consent to arbitration, which found to be a precedent for future adjudications.

A Greek investor sued the Republic of Albania for failing to assure full protection of its investment performed through a joint venture with a domestic State-run company. In particular, by failing to intervene in order to repeal occupation and robbery from villagers, respondent was seen as to have put in place measures tantamount to expropriation, causing investor a big loss in revenues. Independently from the argument of merits, jurisdiction contention focused on the time of investment and consent of the State to arbitration. Investment started in 1991 and in 1992, villagers expropriated the facilities of the investor. Atthat time Albania had not made any consent to arbitration under ICSID. But it did so in 1993 passing a legislation on investment law protection and further on in 1995, entering into a BIT with Greece. Claim for arbitration was submitted in 1994.

As a principle of law, Tribunal stated that the BIT with Greece and its standard of protection were inapplicable *ratione temporis* to the dispute: it stated that as a general principle of law consent to arbitration shall precede not follow the submission of a legal action, therefore, at the time of filing Albania had not consented to arbitration under the terms of BIT. But it found that before claim was filed, Albania did consent under national legislation. It consequently affirmed the principle that consent to arbitration shall have retrospective effects to the moment where investment was performed even if at that time investor had not actually relied upon the possibility to resort to international arbitration, and such incentive was not taken into account in the decision to make investment.

Nevertheless, the decision left unresolved the question to the length of time investor was admitted waiting until deciding to file procedures. Affirming the retrospective effects of consent to arbitration if illimited in time brings to the consequence hardly acceptable that investors or they successors may bring proceedings for investment performed long time ago, since international investment law lacks a prevision like the statute of limitations in domestic law.[70] In fact, even if it shall be considered the existence of that principle at general level as

[69] Tradex Hellas SA v. Republic of Albania, Case n. ARB/94/2, Decision on Jurisdiction of 24.12.1996, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 43 ss.

[70] A good example of material way to resolve the dispute shall be the case of Empresas Lucchetti SA and Lucchetti Perú SA v. Republic of Perú, Case n. ARB/03/4, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 218 ss. In such case, Tribunal had to apply the Chile – Peru BIT of 2000, to a dispute arising before the entry into force of the agreement, that perdured thereafter. The solution was set at BIT's art. 2. Such provision, dealing with the on-time effect of the BIT itself, established clearly that the treaty shall be applicable even at investment started before its entry into force. As per disputes, instead, it shall apply to new

principle common to nations, and its opposition as estoppel to claimants pretentions, itconcrete features and durability were not yet shaped – since it was neither a relevant question to the dispute – being matter for future dispute resolutions.[71]

In *Cable Television*[72] case, Tribunal had the possibility to deal for the first time, with the interpretation of the concept of: *"any subdivision or agency",* enclosed in art. 25.1 of ICSID Convention. The provision reads extensively that claims under ICSID Convention can be brought against any member State or one of its subdivision or agencies that that State had designated to the Center. The meaning of the provision was to recognize a difference in law subjectivity between the State as a subject of national and international law (Convention only allows States to be its members), and an internal agency or subdivision of that State, which is a legal entity and enjoys legal personality within that State but not internationally. Tribunal was precisely in the position to consider if an investment agreement subscribed by investors and the State of Nevis, a member State of the Federation of St. Kitts and Nevis, that containeda dispute settlement provision referring to ICSID, was able to imply the jurisdiction of the Tribunal over the Federation itself, encompassing, at the meantime, its consent to arbitration.

The Tribunal found not to be so. Under Convention art. 25 only States had the capacity to be sued before ICSID. Any agreement entered directly with a subdivision or agency, not acting as the representative of the State itself, and which was not designated as able to be sought by the State, was unable to ground jurisdiction of the Center, neither for the State nor for the subdivision. Any such legal clauses referring disputes to ICSID arbitration shall be deemed as inconsistent and null and void in law.

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disputes only. The Tribunal did nothing more than plainly applying such norm and found thus lack of jurisdiction over the claim.

[71] An ICSID Tribunal had to address the question of the binding effect of statutory limitations established by national law, applicable to the dispute, in arbitral proceedings. Even if respondent contention on statutory limitations was found ungrounded in merits, since no such delay never occurred, the most relevant part of the decision relates to the assertion that statutory limitations norms under national law applicable to the case, shall not have any binding effect over the arbitration proceedings, whose source of primary law are international law, practice and investment treaties providing for certain treatment of foreign investors. Once more, a precise delimitation of statutory limitation under international law for actions brought to investment arbitration was neither addressed nor solved. See Wena Hotels Ltd v. Arab Republic of Egypt, Case n. ARB/98/4, Decision on Jurisdiction of 29.06.1999, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 74 ss. See also the award on the merits scrutinizing objections under statute of limitations, Wena Hotels Ltd v. Arab Republic of Egypt, Case n. ARB/98/4, Award of 08.12.2000, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 89 ss.

[72] Cable Television of Nevis Ltd and Cable Television of Navis Holdings Ltd v. Federation of St. Kitts and Navis, Case n. ARB/95/2, Award of 31.01.1997, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 106 ss.

But the turning point of ICSID jurisdiction was represented, undoubtedly by the *Fedax*[73] case. The peculiarity of this case is that, in essence it was a pure financial claim raising out of an endorsement of promissory notes, without any implication of Fedax, a Dutch company, in any economic transaction in Venezuela.

Fedax indeed acquired by endorsement certain promissory notes that the Government of Venezuela issued in favor of a venezolano corporation, and since such notes were not paid, sought proceedings against Venezuela supporting through the BIT between Netherland and Venezuela of 1991.

Venezuela opposed to jurisdiction, correctly invoking the doctrine of foreign investment established so far from Tribunals, which required for an investment to be within ICSID jurisdiction, that it committed in some way with the economy of the host State, that investment project had some durability and that it was intended to support economic growthof that country. Nothing of that could seem to be applicable to a simple right for credit by acquisition of promissory notes from a third party. By buying such instruments Fedax did not in any way committed with the economy of Venezuela but simply made a – legitimate – speculative transaction with the venezolano owner of such notes, making profit of the difference between the price of cession of the notes and their effective amount.

In a more systematic view, it can be argued that the concept of investment prompted by ICSID convention is of bilateral nature, similar of a synallagmatic contract: investors and hostState are united in a reciprocal bilateral relationship, into the which investors expenditures meet the Government desire for development embodied in concession of certain benefits(even if the sole consent to arbitration for disputes).

In that scheme revenues are seen as the right compensation of efforts made by such investors to the development of local economy and the development of the local economy is seen as the compensation of the Government for its cession of sovereignty in jurisdiction. Such scheme was unpredictable in Fedax operation, that, vis-à-vis the Government, was of pure unilateral character: object of the claim was a mere obligation to pay under financial instruments issued to a pure domestic company, and furtherly negotiated on secondary markets.

Nonetheless, Tribunal espoused a quite broad meaning of investment. Analyzing the BIT it found that parties on that treaty agreed on a very large meaning of investment, comprising

[73] Fedax NV v. Republic of Venezuela, Case n. ARB/96/3, Decision on Objections to Jurisdiction of 11.07.1997, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 183 ss.

even financial instruments and bonds. The release and buy of a promissory note – such was the reading of the Tribunal – shall be considered as investment in the meaning of art 25 of ICSID Convention since that was the willing of the both investor State and host State when entering their bilateral investment agreement.[74]

CGE[75] is the very first case where an attempt was made to find a systematic separation of contentions and hierarchy between BIT, contracts of investment, national legislation, and implications between domestic jurisdiction and international one.

The CGE group brought proceedings against Argentina grounding on a BIT between investor's home State, France, and the host State. The complaint arose from a contract which CGE had entered with a local province. Claimants contended that after a while, their investment was jeopardized by local authorities who prevented CGE from making profit from the plant, reproaching its eager for profits, when the main disease that caused province to entrust the service to a foreigner was precisely the lack of infrastructure and a consolidated negligence in pursuing payments at a normal market value.

Agreement itself enclosed a clause that deferred any dispute relating to its interpretation and application to Argentinian administrative Courts. Nevertheless, the BIT provided for a right to arbitration under ICSID, non-conditioned to previous attempt at national courts.

Considering that the conduct of local authorities was attributable to the State itself as per general principles of State's responsibility, and that such conduct undermined the investment, CGE considered suing Argentina itself passing from any previous attempt to seek reliefbefore such national courts.

CGE grounded on Convention art. 26 where Argentina consent to arbitration under the BIT was no way conditionate to previous exhaustion of internal remedies. The contract provision which referred contract disputes to local administrative courts had to be seen, then, as not binding: local administrative courts were found to be a concurrent forum with ICSID, but on

[74] Tribunal did not otherwise consider previous jurisprudence on jurisdiction set out in consolidated case law, which affirmed the public policy nature of provisions relating to jurisdiction which shall be not at any time be intended as possible to be derogated or commutated by States will, having regard to the very nature and essence of the Center and dispute it had been constituted to deal with. A BIT shall contain any notion of investment contracting States consider appropriate, and such definition may be binding for other tribunals, but not for the ISDS mechanism under ICSID Convention which, in terms of jurisdiction, brings its own assessment of investment.

[75] Compañía de Aguas del Aconquija SA & Comagnie Générale del Eaux v. Argentine Republic, Case n. ARB/97/3, Award of 21.11.2000, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 296 ss.

different grounds, since local courts had to administer the contract claim, whilst ICSIDTribunal had to deal with the BIT and its eventually breach.

The Tribunal found immediately that both claims shall have had the same object (the breach of contract as source of State responsibility) and did not spouse that argument to the meritsbut did on jurisdiction. It was upheld then that ICSID jurisdiction was met since all criteria forit (consent to jurisdiction, nationality requirements, nature of the dispute, absence of requirement to previous exhaustion of internal remedies) were in place.

Nevertheless, on the merits – and that is the most important passage – investor lacked to prove that Argentina treated it in breach of standard of protection set out in the BIT.

It was found to be so, because the very presence of a clause for submission of contract claim to a domestic court shifted the responsibility of State from the administrative to the judiciary. Nobody contested the principle under the which a State shall not contend that it was irresponsible for the unlawful acts committed by an internal body. But because of the presence of a remittance clause, such body was not anymore the administrative local authority but, eventually, the administrative courts that, being requested for relief eventually failed on impartiality and did not adjudicate under the due process of law.

In other worlds the presence of the clause, had materially the effect of granting the State a second chance to revision, in order not to be found internationally responsible. The correct order of interpretation of norms of jurisdiction where a BIT reference clause and a contract reference clause both stood, was then to give precedence to the contractual clause; only if judgement was found to be illegal or in breach of international standard of protection under BIT, there shall be room for arbitration.[76]

Notwithstanding the express wording[77] the broad meaning of investment set out in Fedax was not endorsed by the following financial proceedings under *CSOB*[78] case.

In particular Tribunal found that that the lack from Slovak Republic to cover certain financial obligations it had previously undertaken in favor to the claimant, was in breach of the contract

[76] Such assumption does not preclude the possibility for the claimant to defend, in parallel to arbitral proceedings, before domestic courts in order to seek relief from administrative acts, seizure or execution proceedings. Such possibility is expression of parties right to defense under national law which may be potentiated through interim relief of arbitral tribunals, but never debilitated if such measures are not sought or sought but not expedited. See, Middle East Cement Shipping and Handling Co. SA v. Arab Republic of Egypt, Case n. ARB/99/6, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 173 ss.

[77] See p. 334 at bibliography signaled at following note.

[78] CSOB v. Slovak Republic, Case n. ARB/97/4, 13 ICSID REPORTS, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 178 ss.

it entered with investors and the BIT Czech Republic – Slovak Republic entered into force in 1993, because the financial investment performed by CSOB had the scope to contribute to the economy of the respondent and was, thus, an investment under Convention criteria. In terms of objective criteria on jurisdiction the loan CSOB granted to financial corporation created in Slovak Republic within the framework of transition from State run financial entities to free market credit banks, and that respondent guaranteed, had the scope to allow CSOB to access the Slovak market and to contribute substantially to the growth of respondent's economy. It was then an investment in pure meaning of Convention art. 25. Under jurisdiction *ratione personae,* Slovak argument that CSOB shall be treated as a public body – then prevented from access to arbitration – due to Czech Government majority in shares was rejected. The Tribunal maintained that State control of a private entity shall not deprive such entity of private law personality and does not transform it into a public body as far as such entity deals with commercial purposes only and does not exercise public powers as a proper public agencyof that State.[79] [80]

Only apparent analogy linked CGE to the *LANCO*[81] case which was dealt on jurisdiction almost simultaneously.

In CGE because of unicity of claim object under national and international proceedings, the ICSID Tribunal interpreted systematically the clauses at the contract with BIT provisions, founding that parties had agreed to submit previously contractual claims to domestic court (as *lex specialis)* whilst all the other claims relating to investment shall be governed by the BIT and ICSID jurisdiction as the general context of foreign investment protection.

In LANCO, in change, the investor was not the party signatory to the contract, but a foreign corporation who held minority shares[82] to a local company. And which assumed that, through

[79] In reversed terms, the Tribunal in *Maffezini* case found that SODIGA, a Spanish State owned entity devoted to promote investment in a region of the country, was a public body or agency in the sense of Convention art. 25 whose acts were able to determine the responsibility of the State. Arguments convincing Tribunal on the public nature of SODIGA were its public utility scope, its way of creation (through Government Decree and not by private statutory contract) and its politized management, appointed from the Government itself. See, Emilio Agustín Maffezini v. Kingdom of Spain, Case n. ARB/97/7, Decision on Objections to Jurisdiction of 25.01.2000, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 396 ss.

[80] A later Tribunal had to apply the same doctrine – that time affirming the *locus standi* of the State since the public body involved in operation had to be considered an agency af that State – in *Genin* case. Public body at issue was Estonia's Central Bank, which had the task of supervision of credit market and bank corporation. See Genin and Others v. Republic of Estonia, Case n. ARB/99/2, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 236 ss.

[81] LANCO International Inc. v. Argentine Republic, Case n. ARB/97/6, Preliminary Decision on Jurisdiction of 08.12.1998, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 367 ss.

respondent State's breach of a contract it entered with the local entity, the company it was running was suffering detrimental losses and, afterwards, such losses did reflect on its investment by the way of lack of prospected revenues and necessity to cover the losses incurred by that company. Even in that case the contract did contain a clause referring any dispute to domestic court, and such was immediately outlined by respondent defense. Correctly the Tribunal dismissed the argument by noting that such referral to domestic courts covered action brought from the Govern to the company and *vice – versa.* Claimants did not act actually in the representation of the company but in their own right and law, and the objectof their claim (losses suffered in terms of lack of prospective revenues as shareholders) was substantially different from a claim brought by the local company against the Government for breach of contract. Such contention was furtherly upheld in notorious *CMS*[83] case and becomea stonewall in investment disputes involving corporate aspects.[84]

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[82] The problem of allowances to minor shareholders to bring arbitration shall rise at some stage in *Enron,* where the responding State opposed jurisdiction on the basis that claimants were minority shareholders. It furtherly contended that had no rules on minority shareholders legitimacy been passed or jurisprudence affirmed, even remote shareholders shall be entitled for arbitration, even if possessing reduced quotas through indefinite chain of ownership through corporate entities. Tribunal shall solve the question sharply by stating that it is for States at BIT negotiation to shape the details of what had to be considered investment; in absence of such prevention general rules do not prohibit *locus standi* for indirect investors. See, Enron Corporation and Ponderosa Assets LP v. Argentine Republic, Case n. ARB/01/3, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 268 ss.

[83] CMS Gas Transmission Company v. Republic of Argentina, Case n. ARB/01/8, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 492 ss.

[84] See the express Tribunal's contention that, under the applicable BIT, also indirect investment by way of indirect control of a local incorporate company (through a local controlled subsidiary), was to be held admissible and nothing in Convention art. 25 disqualified such result. Indirect controller was investor itself and shall be entitled to claim on its own right for misconducts from the host State on contract obligations it entered to with its indirectly controlled local corporation, as jeopardizing its investment in broad sense. See, Azurix Corp. v. Argentine Republic, Case n. ARB/01/12, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 412 ss. In further AIG Claim, Tribunal shall speak of *"chain of control"* in order to affirm the *locus standi* of the foreign controller and its jurisdiction over the claim. See, AIG Capital Partners Inc. and CJSC Tema Real Estate Company v. Republic of Kazakhstan, Case n. ARB/01/6, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 3 ss. Similar contention, with express reference to Tribunal's previous case law in "*Argentinians claims"* through Argentina US BIT of 1991, in LG&E Energy Corporation and Others v. Argentine Republic, Case n. ARB/02/1, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 411 ss. The argument will be pushed eventually further in *Aguas del Tunari* case, where the Tribunal consented a *forum shopping* in shares transfers, allowing a claim brought by nationals of Luxembourg, entitled under the BIT, to bring proceedings against Bolivia. The Luxembourg investor had not made any investment in Bolivia save the acquisition of shares of the investment company. Such entity since being a corporation of a State not having any agreement on investments with Bolivia, was not entitled to sue the latter before ICSID Tribunals. In somehow it was true that the investment of the Luxembourg company was, solely, the right to sue Bolivian Republic. See, Aguas del Tunari SA v. Republic of Bolivia, Case ARB/02/3, 16 ICSID Reports, Cambridge UP, 2012, ISBN: 978-0-521-192-61-3, pp. 297 ss.

An important deviation from the well-established jurisprudence from the International Court of Justice in *Nottebohm*[85] case, was to be set at *Olguin.*[86] Claimant was a Peruvian national who brought proceedings against the State of Paraguay by virtue of Paraguay – Peru BIT of 1994. The claimant had double nationality being a US citizen also, with effective domicile in the United States, and there was no investment treaty between Paraguay and the US. Respondent argued then that in conformity to general doctrine of international law, theeffective nationality of the investor shall be regarded as the one of the US. Thus, the Center lacked jurisdiction since there was no consent established under any treaty, contract or other sources for Paraguay to consent arbitrations for US investors.

The Tribunal dismissed the plead contending that, for investment law purposes, it would suffice that the nationality of home State to be valid and not also to be the effective one of the investors. In case of double or multiple nationality such meant that, as far as consent was given to one of the States of nationality, investor had right to arbitration independently from the existence and effectiveness of the others.

A further decision furtherly portraited the differences between natural persons of dual nationality (one of them being that of host State, even if ineffective) and foreign corporate nationality owned by such duals. In *Champion Trading*[87] three individuals and two corporate investors brought proceedings against the State of Egypt.

Those had invested as shareholders into a company incorporated under the laws of Egypt in order to take advantage of some national legislation providing incentives in the cotton industry. The local company was not itself a party of the proceedings. Ground for jurisdiction and merits was the US – Egypt BIT of 1982. Responded State replied that Tribunal had not jurisdiction for the claims of the three individual investors because of their double nationality US – and Egyptian, under Convention art. 25. Investors contended that Egyptian was not tobe taken as their effective nationality, since they were born in the US and had their effective and also legal residence in that country only.

Tribunal stated that – once again confronting Nottebohm – that respondent State nationality, even if not the principle one, sufficed to exclude the jurisdiction of the Center based on

[85] Nottebohm case (Lichtenstein v. Guatemala), ICJ, Judgement of 06.04.1955. Available at: https://www.icj-cij.org/public/files/case-related/18/018-19550406-JUD-01-00-EN.pdf

[86] Olguín v. Republic of Paraguay, Case n. ARB/98/5, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7pp. 154 ss.

[87] Champion Trading Company, Ameritrade International Inc., J.T.J.B. and T.T. Wahba v. Egypt, Case n. ARB/02/9, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 398 ss.

Convention art. 25. The laws to assess the possession of nationality were those of each State and Egypt successfully proved that under Egyptian laws, the naissance from an Egyptian parent (investor's father had Egyptian passport) was enough to enjoy automatically the national citizenship.[88] Nevertheless, it maintained the jurisdiction over same claims as filed by corporate investors. The fact that, such corporate US investors were owned, as unique shareholders, from the individual investors, was not a reason to exclude them from the right to file submissions under the BIT and ICSID Convention, as autonomous legal persons with separate legal personality.

In *Mihaly*[89], the Tribunal had to deal with a ground question relating to investment: whether or not expenditures burdened in view of investment, were themselves to be considered as investment in order that ICSID jurisdiction applied.

The Tribunal found it no to be so under sole application of the notion of investment by Convention art. 25, but that notion might be expanded by States involved through investment treaties aiming at covering also preliminary or ancillary aspects to the investment.[90] Notion of investment as stated in ICSID Convention always imply, per se, a bargain dimension where both parties (State and investor) enter the investment relationship in a way similar to that of law of contracts in civil law. Such contention sets aside the jurisdiction of the Center to extracontractual claims or recovery claims for unilateral acts, if those were not justified by an agreement of whatever sort or statement by the respondent that such expenditures were authorized and entitled for recovery.[91]

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[88] A case where Tribunal found to lack jurisdiction because of the lost of the home State nationality, was Soufraki v. United Arab Emirates, Case n. ARB/02/7, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 156 ss. The Tribunal contended to be enabled by Convention art. 41 to apply autonomously the relevant provisions of citizenship under applicable domestic law.

[89] Mihaly International Corporation v. Democratic Socialist Republic of Sri Lanka, Case n. ARB/00/2, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 308 ss.

[90] Nonetheless the elements of project, investor's commitment, risk and development contribution, shall be always regarded as fundamental elements. The enlargement of investment as stated in *Mihaly*, shall be extended also to ancillary or preliminary issues but the main investment shall possess the qualities stated before, even if that investment for whatever reasons does not become real. Parties shall be not allowed to introduce, aiming at submitting them to ICSID arbitration, categories of investments not fitting within that core criteria.

[91] The Tribunal in *ZDL*, was to uphold that doctrine and denied jurisdiction over recovery claim of investments made in view of a concession that never happened. It must be noticed that plaintiffs claim was not completely ungrounded since in previous communication Government committed by assuring all its likeness to meet with investments requirements thus operation at stake was of high priority. Nevertheless, the terms of consent to arbitration and investment standards thereof were contained in national investment legislation. Probably a BIT with a fair and equitable treatment clause shall have led to a different orientation from the Tribunal. See, Zhinvali Development Limited v. Republic of Georgia, Case n. ARB/00/1, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 3 ss. See also, Autopista Concesionada de Venezuela CA ("AUCOVEN")

The claim at issue was, in substance a claim for pre-contractual responsibility and recovery of expenses preliminary to the investment, incurred by a company in order to successfully terminate negotiation with the respondent Government for the definitive adjudication of a contract which it had successfully bid for. In any previous communication Government had explicitly stated that until final agreement had signed, investor had no right whatsoever.

In the absence of any provision regarding refoulment of preliminary expenditures under declarations between parties nor applicable BIT, Tribunal found it had no jurisdiction over the claim.[92]

An important departure from CGE doctrine, appeared in *Salini [I]*[93].

In a case quite similar, where breach of contract coincided – eventually – with breach of international BIT between Italy and Morocco of 1992, the Tribunal preferred not to deny its jurisdiction but contended that its jurisdiction had as reference the breaches of BIT only, whilst breaches of contract fell outside.

The most distinguished point of the decision was alignment of breach of treaty and breach of contract, and the priority application of BIT provision over any contract clause. Also, consideration of a State owned company (ADM) as a public entity in order to attribute its conducts to the State was significant in order attract jurisdiction about the claim at an international level with priority over the contractual clause which submitted any dispute arising from the contract to national courts.

The elegant doctrine established in CGE through the which, a clause of exclusive jurisdiction had the goal of giving State a second chance before facing to international liability, was quickly passed over by the rude consideration that before of public control and Government approval of the investment project, ADM shall be considered a public entity, and that suffices to establish jurisdiction of ICSID through Convention art. 25 and BIT provisions.[94]

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v. Bolivarian Republic of Venezuela, Case n. ARB/00/5, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 309 ss., where the concession agreement of 1996, expressly provided for a right of compensation for any cost incurred, even out-of-pocket expenditures in view of the investment.

[92] Uncertainty about the qualification of pre-contractual obligations led the Tribunal in F-W Oil Interest Inc. v. Republic of Trinidad and Tobago, Case n. ARB/01/14, 16 ICSID Reports, Cambridge UP, 2012, ISBN: 978-0-521-192-61-3, pp. 394 ss., to deal with the dismissal of the claim at the post hearing stage. Tribunal did not specify if it stated dismissal for lack of jurisdiction or for reasons of merit.

[93] Salini Costruttori Spa and Italstrade Spa v. Kingdom of Morocco, Case n. ARB/00/4, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 398 ss.

[94] The departure from the *litis pendens* doctrine of CGE, will be later confirmed by following awards, starting from the case of Societé Générale de Surveillance SA v. Islamic Republic of Pakistan, Case n. ARB/01/13,

TANESCO[95] was the first case in ICSID Arbitration to be dealt between two companies, without presence of a State as respondent.

TANESCO (Tanzania Electric Supply Company Limited) was indeed a private company run from Tanzania Government which decided to bring proceedings under ICSID towards IPTL, a joint international venture company it had entered negotiation for the building and managing of an electricity plant.

Even if there was no contention on jurisdiction, the case presented great peculiarity on parties, which distinguished it from other ordinary ICSID cases.

Firstly, the same nature parties to the dispute: both were private companies, and there was not any respondent State. The part of the State was indeed played by TANESCO, which enjoyed the consent to arbitration as an agency of the Tanzanian State, under same agreement it concluded with IPTL and *facta concludentia*.

Secondly, the role of parties being the State representative the claimant and not the respondent.

Thirdly the constituency of ITPL, which was a Tanzanian corporation run by international investors. The Tribunal, incidentally dealing with matters of jurisdiction, made application of all its precedent jurisprudence as per consent to arbitration of agencies under Convention art. 25 and foreign control of a domestic entity, just reverting it from the ordinary private investor as claimant point view to the respondent and found no impediment to uphold its jurisdiction.

A serious departure from CGE shall be evident at *SGS (I)*,[96] the first of a series of awards in which ICSID Tribunals affirmed explicitly their jurisdiction over any concurrent forum as soon as a BIT article seems to aloud so.[97]

Decision on Objections to Jurisdiction of 06.08.2003, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 406 ss, see further on this paragraph.

[95] Tanzania Electric Supply Company Limited v. Independent Power Tanzania Limited, Case n. ARB/98/8, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 220 ss.

[96] Societé Générale de Surveillance SA v. Islamic Republic of Pakistan, Case n. ARB/01/13, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 383 ss. As per the decision on jurisdiction see reference at previous note n. 68.

[97] Nevertheless, the assumption shall not remain untouchable. In other subsequent cases Tribunal shall resume the Doctrine at CGE. Such contention shall give raise to a swing case law among restrictive and permissive courts of jurisdiction which shall remain, substantially, unresolved. See, for a fair example the case *SGS v. Philippines*, below.

The case was quite similar to other previous where, a contract was stipulated between investors and host State and, at some point, State infringed any obligation or, eventually, terminated unilaterally the contract.

The claimant pleads had to be presented before national fora since a domestic jurisdiction clause or – as it were here – a national arbitration submission clause was incorporated into thecontract. Meanwhile a BIT between investor home State and host State entered into force[98] which contained an arbitration clause for breach of treaty to ICSID Tribunals.

The BIT encompassed such a broad definition of investment and violation of investors protection standards, as to include any breach of whatever nature to the right of investors or their expectation of profits and due treatment by responding State and Authorities.

Affirming the Jurisdiction of the Center despite the domestic settlement clause would have brought intensive protection to investors and disqualify any practice of host States to include such clauses to investment contracts. Nevertheless, it shall imply materially the effect of nullification of contract clauses which capacity the Tribunal had not under international law.

Moreover, upholding the CGE doctrine shall only defer, not deny, the jurisdiction of ICSID Tribunal to the whom claimants shall conserve the right to seek relief at a later stage.

The Tribunal embraced the first thesis even if the second was more consistent in law.

The reasoning behind was that BIT claims and contractual claims were separated. If both a contract provision for domestic settlement of contract claims, and a BIT provision for international arbitration over BIT breaches coexisted, domestic forum shall deal with breachof contracts whilst ICSID Tribunal shall deal with BIT infringements. The Tribunal did confess that the broad drafting of investment articles and protection standards in BIT determines overlapping of both type of claims. Nevertheless it contended that such crushes were normal in international law and that, at any stage, the well-known principle of precedence of international law and proceedings over domestic, shall be the one governing thedisputes, granting at any stage primacy of ICSID Tribunals and awards thereof.

SGS revirement in SGS v. Pakinstan, shall be recovered immediately at *SGS v. Philippines (SGS II)*[99]. In its decision to jurisdiction, Tribunal made large reference to previous jurisprudence and explicitly diverted from the conclusion at SGS I.

[98] At the dispute, it was the Switzerland – Pakistan BIT of 1995.

[99] Societé Générale de Surveillance SA v. Republic of the Philippines, Case n. ARB/02/6, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 515 ss.

It found – under same factual and legal conditions[100] – that commercial litigation, as those regarding the unfulfillment of contractual obligations by the government, shall rest within domestic courts, as per effectiveness of clause in contract between the parties.

Even a clause as the umbrella clause at the BIT, which provided for the obligation of the State to fulfill any commitment it had entered to with an investor (thus even contractual obligations) was not considered as transforming automatically any contractual violations into BIT violations.[101] [102]

On further *Siemens* case[103] Tribunal was to set once again the difference between contractual breach and treaty breach.

The argument of primacy of treaty breaches, was this time, convincedly grounded in Convention art. 26, through the which, the consent to arbitration, unless otherwise agreed by the parties, shall be deemed to be exclusive over any other jurisdiction. Parties in the sense of art. 26 were not the host State and the investor, but States parties to the Washington Convention, either through the BIT or the TIP they agreed between them, either through unilateral statements or legislation they enacted to attract capitals from abroad. An interesting application of the most favored nation treatment (MFN) clause was also made in respect of jurisdiction. The BIT applicable to the dispute[104] subordinated access to ICSID Arbitration toa previous attempt of conciliation and later submission of the claim to domestic courts, provided that within a certain period of time domestic courts had not pronounced a favorable judgement to the investor. Tribunal found that MFN applied not only to material standards of

[100] See the resume of facts at Societé Générale de Surveillance SA v. Republic of the Philippines, Case n. ARB/02/6, Decision on Objections to Jurisdiction of 29.01.2004, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 518 ss. SGS run in Philippines same activity as in Pakistan. Also here a contract of service to the Government was signed, with a clause of reference to domestic jurisdiction for any claim arising from the contract; and a BIT Switzerland – Pakistan came into force, with an arbitration clause to ICSID Tribunals.

[101] A more detailed examination of the differences between BIT breaches and national law breaches (in terms of unlawful administrative acts, or contractual unfulfillments) was to be made at, Generation Ukraine Inc. v. Ukraine, Case n. ARB/00/9, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 236 ss. On that case, Tribunal reiterates its doctrine that only real investment are worth of compensation claim, not mere hypothetical expectation of profits frustrated by Government. On the same issue of hypothetical revenues see also, Autopista Concesionada de Venezuela CA ("AUCOVEN") v. Bolivarian Republic of Venezuela, Case n. ARB/00/5, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 309 ss.

[102] In *Enron,* the Tribunal would either find that distinction between treaty claims and contractual claims were to be outmost impossible to achieve at the jurisdictional step of arbitration, since its necessary *prima facie* assessment, had to be conducted without in depth scrutiny of the facts. See, Enron Corporation and Ponderosa Assets LP v. Argentine Republic, Case n. ARB/01/3, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 268 ss. Such contention shall be furtherly endorsed in Tokio Tokelés v. Ukraine, Case n. ARB/02/18, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 305 ss.

[103] Siemens AG v. Argentine Republic, Case n. ARB/02/8, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 171 ss.

[104] The Germany – Argentina BIT of 1991.

investment protection, about also to procedural aspects. By virtue of comparison to other BITs where consent to arbitration was given from Argentina without need of previous relief from domestic courts, it found that such provisions had place even in the case at stake, thus granting jurisdiction of claimants in conformity of more favorable conditions set thereof.

Nevertheless, the ultimate criterion distinguishing between treaty breaches and contract breaches, won't be set up until *Impregilo*[105] case, where the Tribunal finally considered as covered by treaty provisions only those actions where the State, even through private companies owned by it, exercised sovereign powers which substantially differentiated it from an ordinary private party.[106]

The exercise of contract power, i.e. faculties conferred by the contract it entered to with claimant, where in principle to be treated as contractual claims and shall not rise disputes under the BIT that should eventually been forwarded at a later time, challenging the denial of justice of internal bodies and domestic courts.[107] Even clear in entrance, the distinction provedto be of difficult interpretation and application in concrete disputes. Tribunals so relied on a case to case approach, mostly preferring to admit jurisdiction in entrance, and then decide with full proof elements on proper jurisdiction or adjudication on merits with the finalaward.[108]

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[105] Impregilo Spa v. Islamic Republic of Pakistan, Case n. ARB/03/3, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 242 ss.

[106] For a complex case in which public power were seemed to prevail over private powers, both aimedat unlawfully expropriating an investor, see ADC Affiliate Ltd and ADC & ADMC Management Ltd v. Republic of Hungary, Case ARB/03/16, 15 ICSID REPORTS, Cambridge UP, 2010, ISBN: 978-0-521-89989-5, pp. 534 ss.

[107] A further relevant matter of jurisdiction was made about the *locus standi* for entities not incorporated. Tribunal denied the possibility to bring proceedings from a joint venture company (GBC) which was not incorporated and lacked legal personality. It contended that the notion of juridical person set out in Convention art. 25, made reference to incorporated entities only given such, also, as a criterion in order to determinate the proper nationality of the claimant. Such criterion such be construed as different from that of joint ventures or consortiums, which do have legal personality, but lacked locus standi because not signatory of the investment agreement stipulated by their constituent companies. See, Consortium Groupement LESI-DIPENTA v. People's Democratic Republic of Algeria, Case n. ARB/03/8, 15 ICSID REPORTS, Cambridge UP, 2010, ISBN: 978-0-521-89989-5, pp. 3 ss.

[108] See, among others, IBM World Trade Corporation v. Republic of Ecuador, Case n. ARB/02/10, 13 ICSID REPORTS, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 102 ss, Plama Consortium Limited v. Republic of Bulgaria, (ECT) Case n. ARB/03/24, 13 ICSID REPORTS, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 268 ss., Salini Costruttori Spa and Italstrade Spa (Salini [II]) v. Hashemite Kingdom of Jordan, Case n. ARB/02/13, 14 ICSID REPORTS, Cambridge UP, 2009, ISBN: 978-0-521-89988-8, pp. 303 ss. Duke Energy International Peru Investments N. 1 Ltd v, Republic of Perú, Case n. ARB/03/28, 15 ICSID REPORTS, Cambridge UP, 2010, ISBN: 978-0-521-89989-5, pp. 100 ss. See also, Jan De Nul NV and Dredging International NV v. Arab Republic of Egypt, Case n. ARB/04/13, 15 ICSID REPORTS, Cambridge UP, 2010, ISBN: 978-0-521-89989-5, pp. 400 ss. where Tribunal applied *Lucchetti* test in order to find a substantial difference between domestic ongoing proceedings and arbitral proceedings, correctly finding that State's alleged breach of BIT consistent in the judgement rendered by its internal courts.

CHAPTER 2. PROCEEDINGS

2.1 Foreword.

Present chapter studies the main features of the proceedings before ICSID Tribunals[109]. The provisions regulating the procedural law of arbitration at ICSID are collected in three basic instruments: the Convention itself, the (general) Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings (Institution Rules) and the Rules of Procedure for Arbitration Proceedings (Arbitration Rules).[110]

Some aspects of the procedure (investors, States, consent to arbitration, *locus standi*) have been addressed in previous chapter of jurisdiction. The present will focus on the institutional and some main procedural features of Tribunals and awards. Special attention will be drawn at the moment of the execution of arbitral awards within domestic legal orders and duty of States to treat the monetary obligations enshrined thereto as if those were a final and binding decision by national highest courts.

2.2. Institutions.

The ICSID Arbitration Center is a complex body made up of institutions with administrative and legal expertise. The court is, of course, the main body for the settlement of disputes. Both the Administrative Committee and the Secretariat play a role at some point in the entire arbitration process, but their primary role is to provide administrative support. The secretariat is made up of the general secretary and one or more deputy ministers, all of whom are elected by a two-thirds majority of the members of the council, prior appointment of the president, the election period may not exceed six years and may be reelected. 113 The Secretary General is the head of the center and also the head of the center. The board is a representative body of the contracting states. It has representatives from each country and is chaired by the non-executive president of the World Bank.

The Convention clearly states that the Secretary General and the Assistant Secretary General may not engage in any other job or profession without the prior approval of the Board in order to depoliticize dispute resolution as much as possible. 114 In addition to other functions, the Secretary General is responsible for the strict supervision of the composition of the judicial

bodies, arbitral tribunals and ad hoc committees, which are subject to the detailed provisions of the Convention itself. The composition of the ICSID Tribunal has two basic principles. One of the typical characteristics of arbitration as a dispute resolution method is, first of all, the freedom of choice of the parties. Through the work of arbitrators with specific skills relevant to the issues under consideration and the trust of the disputing parties, the goal is to restore balance between the parties. The non-deception of the parties is the second principle that guarantees the effective functioning of the dispute settlement mechanism and balances the previous principle. In fact, the Convention adopts a limited number of mandatory provisions intended to ensure the smooth running of the procedure and the timely satisfaction of the claims of the parties.

When the composition of the arbitral tribunal is sent to them, the parties have the opportunity to choose the number of arbitrators that will make up the arbitral panel, their identity and the method of appointment. This offer can be quite special. A contract or document by which the parties agree to arbitrate. The Convention stipulates that the arbitral tribunal must be established within 90 days of the registration of the Center's request. However, the parties can agree to an extension of this period, which happens in most cases115. The acceptance of the appointment of the arbitrators will be considered as the conclusion of this constitutional procedure. Article 37(2)(a) requires that the arbitration panel be composed of one arbitrator. Although this regulation, on the one hand, limits the freedom of the parties, its purpose is to avoid legal impasse. Most ICSID tribunals have three arbitrators, two of whom are appointed by the parties to the dispute. A different method is used to select the third referee. One option is for the parties to agree to a third arbitrator; another common practice is for a third party to appoint an arbitrator, usually the Secretary General, who will select an arbitrator from the ICSID Registry; a common third choice is two. The arbitrators select a third arbitrator to serve as the presiding arbitrator.

If, in any case, the Saeima does not agree with the amount and the form of the liquidation, the liquidation is defined in article 37. The third party is the president of the court, who will be chosen by consensus of the parties.

Article 38 authorizes the president of the Board of Directors to appoint the missing arbitrator at the request of one of the parties involved in the dispute, if the arbitral tribunal has not been constituted within the term provided in the Agreement or with the consent of the parties. While such requests are addressed to the President, they must be made through the Secretary General, who is responsible for the entire composition of the Court. The implementation of this rule is actually an expression of the frustration principle. Implementation of a procedure that may be related to the negligence or lack of cooperation of one of the parties116. In selecting each

arbitrator, the President of the Council consults with the parties and acts on the recommendation of the Secretary General.

The prohibition on appointing arbitrators whose citizenship is shared by the parties involved in the dispute is a limitation on the powers of the President. 117

The appointee must accept the appointment of the arbitrator and their consent is not required unless they have previously agreed to accept the appointment. It is understood that if the designee does not respond within 15 days, he has declined the appointment. The Secretary General will be notified of the selection and acceptance of the arbitrators. With the exception of the substitution and objection procedures provided for in articles 56, 57 and 58 of the Agreement, the composition of the arbitral tribunal may not be modified after its conclusion. Each arbitrator must disclose any agreement or professional relationship between you and any party, its affiliates or class members, or any other unilateral interest in which you may be involved.

This duty applies to any other situation that may arise in the performance of their duties, even after their appointment and the initiation of the arbitration process. ICSI Convention D also determines the composition of the arbitral tribunal, that is, the list of persons who meet the criteria to participate in ICSID arbitration. Specifically, each participating country will be able to select four people to be included in the list. The chairperson of the board may also appoint 10 more arbitrators. 118 Parties may also appoint unlisted arbitrators if their qualifications are comparable to those of panel members. 119.

The appointed arbitrator cannot be removed from among the members of the panel, if the president of the board so decides in accordance with Article 38.120. article, but this limitation is evident when considering the power of the chair to appoint arbitrators to the panel. Control Panel. If the President does not make use of the ten appointments made to him, he may add one more arbitrator to the panel at the time of appointment and appoint that arbitrator to the current arbitration panel for the disputed division submitted to the Center.

According to article 3 of the Convention, the appointed members of the commission are not limited in time. On the other hand, the president must ensure that, in addition to selecting people with a wide range of nationalities and high technical skills121, they represent the main world systems and understand the main forms of economic activity122. The purpose of the list is not only to make it easier for the parties to select jurors, but also to help establish a form of continuity.

Those on the list remain on the list for six years, but if they are appointed to the position at the end of their term, they will continue in their roles. Otherwise, they remain on the list until a replacement is chosen at the end of the six-year term.

The Secretary General of the Center will maintain a list of arbitrators, which will be distributed periodically to the Contracting States and, upon request, to any State or natural person. This list should include the appointing authority and qualifications of each person, as well as individual arbitrator records. 123 Article 39 of the Convention places additional restrictions on the parties' ability to choose arbitrators: the majority of arbitrators must not be citizens or fellow citizens of the parties. The ICSID Convention does not exclude the presence of national arbitrators of the parties, although in principle it should be avoided, but it is allowed if they form only a small part of the panel. 125 The purpose of this mandatory provision is not only to avoid suspicions that a lack of objectivity may damage the image and competence of the court, but also that if the relevant arbitrator does not respect its independence, the designated third arbitrator finds itself in special circumstances. . . Of the prize. .124

In a court composed of three arbitrators, the arbitrator may be of the nationality of one of the parties or of his own, if the other party consents and is aware that he waives the possibility of designating his nationality or nationality. adjudicate. However, this limitation shall not apply if the arbitration has only one arbitrator or if the parties agree to appoint each arbitrator. In this regard, problems arise in relation to the determination of the nationality of the investor, in particular where the parties have reached an agreement under Article 25(2)(b). On the other hand, if the arbitrators are appointed in accordance with the procedure described in Article 37(2)(b), the restrictions of Article 39 become more stringent. 126 The ICSID Convention establishes another type of body with jurisdiction: special committees. It does not lead to the development of judgments at the second level. It is not the responsibility of the Ad Hoc Committee to assess the validity of arbitration awards, as the ICSID Convention relies heavily on its independence and jurisdiction. Decisions of the ICSID tribunal are final and are not subject to appeal. In such a system, ad hoc committees assume the role of arbitrators rather than lower court judges, tasked with reviewing past decisions based on very specific and hard-to-find criteria, the highest of which is to use the power to overturn, but not. assign substitutes.

The party seeking a new order must file a second action for the same case, usually the plaintiff whose favorable order was vacated. The ad hoc committee will be composed of three arbitrators

selected from the list referred to in paragraph 13 and appointed by the president of the board. The members of these committees must not only be members of the court whose legality they review to issue the award, but they cannot have the same nationality as the arbitrators or the parties to the dispute, nor can they be members of the 127 countries. , who are parties to the composition of the committees, have only an indirect and rather limited influence that depends entirely on their appointment to the Article 3 Commission. However, due to the importance of annulment under Article 52 of the Convention in ICSID proceedings and the necessary consequences of annulment. Thus, the president does not have absolute discretion when it comes to the actual selection of members, but tries to have at least one of them from one of the above committees. 128

However, this possibility is limited by the exceptions of article 52, paragraph 3. Therefore, the parties involved in the conflict must not interfere in the procedure of constitution of the temporary commission, which is the sole responsibility of the president. On the other hand, it is not specified in detail how the individual chairpersons of the committees are appointed. In practice, he is chosen by the same three arbitrators who participated in the annulment proceedings.

Qualities that arbitrators must meet to be included in a special list or to guarantee their independence and impartiality. Article 14 of the ICSID Convention clearly establishes three requirements that must be met: good reputation, capacity and independence. Equity requirements are also generally considered necessary, even if they are not explicitly stated. Although the ICSID Convention also requires that arbitrators have recognized experience in various fields, such as law, business, industry or finance, this requirement is universal. In fact, the jurisdictional requirements set out in the ICSID Convention are not that strict, which may be due to the different constitutions of the different courts and the different roles of the parties to the dispute at this stage. In the ICSID system, arbitrators are primarily chosen by the parties, who can directly or indirectly appoint arbitrators in the ICSID system.

The arbitrators enjoy clear discretion and functional immunity to carry out their functions. According to some authors, the repeated appointment of the same arbitrator by the same party in different disputes may affect the perception of the independence of the first party, since it may create a certain dependence on the second. They also provide the right to comment on or accept the final decision of the ICSID Convention. 129 However, this does not mean that the requirements of objectivity and independence are no longer respected. 130 A mandatory condition for a request for disqualification, as established in article 57, is the manifest failure to comply with

the requirements established in the provisions of article 14 and the requirements established for the appointment of a particular arbitral tribunal with respect to nationality of the arbitrators.

Therefore, the object of the review is not so much the appointment of persons by nationality for the panel of arbitrators referred to in article 3, since this is a potentially contentious issue. The other members of the same arbitration panel to which the arbitrator belongs are directly responsible for deciding the claims presented. 131 If a decision cannot be made, the president's intervention can be requested. Experience shows that a challenged arbitrator very rarely excuses himself, because after it has been reasonably established that the arbitrator is not neutral in the case at hand, not only must a clear suspicion be created, but the arbitrator must appear. Participation in the law firm with only one party or a current or past acquaintance of the lawyer has been assessed by other judges as insufficient. Therefore, very strong evidence will be presented to limit the arbitrator's ability to evaluate. 132

While these requirements appear clear and unequivocal, ICSID tribunals themselves cannot be said to have applied them in practice. Inquiries made so far.

2.3. Arbitral awards

The ICSID Convention clearly defines the characteristics of the decisions made under the procedure to which it applies and separate chapters are dedicated to the various aspects related to it: Article 48 in terms of form and content and Articles 53 and 54(1) que Nature and character of ICSID decisions. Affects Assignments made pursuant to the Additional Premises Rules are not subject to the above provisions discussed in this section. An arbitral award is the result of an ICSID proceeding, but the term "award" is not defined in the Convention. Instead, FA has a separate legal status governed primarily by the 1958 United Nations New York Convention contained in Article 1.133. in the chapter "Rules of Arbitration Procedure", which fills this gap. The requirements for the form and content of an ICSID award, as set out in Article 48(2) and (3), are detailed in Arbitration Rules 47. Decisions of the Court and decisions of the ICSID Tribunal determining the lack of jurisdiction, as well as statements of additions, corrections, interpretations or changes, made in accordance with clauses 49.2, 50 and 51 of these regulations, the decisions of the arbitral tribunal comply with these regulations.

Regarding the final options, the obligations referred to in articles 53 and 54 are related to the changes in the character of the honor as a consequence of the previous procedures. On the other

hand, a preliminary decision of an ICSID tribunal establishing jurisdiction for injunctions or procedural orders is not included in the definition of "award". Responsiveness and proper motivation are the two main requirements. 134

The absence of both is reflected in the provision of two excuses for inefficiency -excessive power and lack of rationality in decision-making- that are not so much their total absence as their quality, consistency and persuasiveness. 135 The decision will reject or confirm the jurisdiction of the court. If approved, an order will be issued based on whether the claim is approved or denied. The purpose of the decision is to guarantee comprehensive reparation for the damage caused in cases in which a violation of international law is established. Indeed, the compensation is considered agreed, not only to compensate the victims for damages, but also to prevent the offender's architect from benefiting from similar cases with shameful loans, which may also be related to being under the law. Ion is the least disruptive means of restoring state sovereignty: like conventional arbitrations, ICSID tribunals generally prefer to seek monetary damages rather than order states to act in a particular way, even if they are not forbidden. Over the years, this argument has proven to be of interest to both investors and states: while the former must continue to claim sovereignty, the latter get the substance of their claim. This is because investment stage returns would be deemed impossible due to actual expropriation due to seriously deteriorating relations with the host government. The idea of the correction is that it removes all negative effects. Abuse and restore things as they were when the breach did not occur. Extensive reference was made early in the decision to the previous international investment jurisprudence of the relevant ICSID tribunal. 136

In international law, the obligation to compensate expresses two principles: according to the first principle, the violation of a global norm implies an obligation towards the corresponding body; according to the second, compensation must be made in such a way as to restore the state in which it existed before the violation 137. In an investment dispute, the question arises as to what should be the best remedy. In fact, the ICSID Convention does not specify the content of an arbitral award and, therefore, does not prohibit the granting of obligations or monetary awards. Obligations of a non-monetary nature. The concept of “reparation” is understood as economic compensation for the damage caused, which the draft articles of the International Law Commission and general international jurisprudence consider as an obligation subordinate to the obligation of “restitution”138.

Article 54 of the Convention imposes a single obligation regarding the content of the sentence: the execution phase. If the condemned state were to impose real obligations within the framework of the judgment of the case, it would be almost impossible without the will of the state. in Enron v. In the case of Argentina, the ICSID tribunal clearly raised the possibility of declaratory obligations and decided that although they did not imply sanctions in case of non-compliance, they would not be excluded. 139 The same historical analysis that led to the Convention showed that ICSID tribunals had the power not only to award monetary compensation, but also to order a party to take certain measures. However, the fact that ICSID tribunals award monetary obligations in most, if not all, cases refers to specific claims that are made in the interest of claimants.

In the first award, the ICSID arbitral tribunal ordered that the arbitral award, which had been set aside due to the application of Jordanian law, be returned to the claimant investor, in violation of the obligations of the Jordan-Turkey BIT. 141 See ATA Construction140 and Franck Charles Arif for examples of ICSID tribunal awards that include the obligation to pay damages as a primary remedy. The ICSID arbitral tribunal in the second instance award gave the defendant the opportunity to repay the investor's investment within a certain period. The defendant country will then reimburse the investment or pay the monetary compensation already provided. Before making this final decision, the Court considered the possibility of establishing restorative remedies as an alternative to damages. It concluded that repatriation is more in line with the objectives of the BIT because, if possible and satisfactory, it protects the investor's investment and the relationship that exists between the investor and the host country. Article 53 of the Convention clearly describes the effect of granting the treaty on the parties, while Article 54 describes its value for all other contracting states that are not parties to the dispute.

Pursuant to Article 53, ICSID arbitral awards have the following three characteristics: finality, prohibition of external review, and binding on the parties. In general, a common feature of arbitration is that the arbitral award is final, which prevents the parties from submitting the same case to another arbitral tribunal after the ICSID arbitral tribunal's decision. Therefore, absoluteness is related to the second characteristic above, but also has an additional aspect: . In the case of MINE142, the ad hoc committee provided a definition of study characteristics, the meaning of which is based on two elements:

The Convention prohibits any challenge to the decision of national courts. This means that the price is final. It is also final because it cannot be dealt with on its merits, not even within the

framework of the Convention. It seems that it can be interrupted, corrected, interpreted, "revised" or canceled.

The independence of the ICSID arbitration procedure is manifested in the inherent lack of transparency of the decisions, which is also a characteristic of international commercial arbitration. In addition, the judgment cannot be challenged before national courts. The mechanisms that help to ensure the execution of the award and its validity create a system in which the possibility of challenging the arbitral award is excluded. Absolutely limited and focused. The annulment regime balances two conflicting requirements: the exclusion of other remedies means that a party dissatisfied with an ICSID arbitral award cannot go to another party to accept its claim. The necessary freedom of action, on the one hand, should ensure the efficiency of the system in terms of speed and economy, on the other hand, the correctness of the decision is often assessed as subordinate to the desire to see disputes. It was resolved quickly.

Article 53 makes it clear that ICSID awards are binding on the parties to a proceeding based on an arbitration agreement and on stay of that arbitration proceeding, in full compliance with the principle of pacta sunt servanda. Once an arbitral award has been issued, the Convention's remedies have been exhausted or the term for appeal has expired, it becomes final. protocol. Article 53 of the ICSID Convention establishes the obligations of the parties involved in the dispute to comply with the provisions of the award, confirming that the award is binding on them. Enforcement actions do not affect the driver's obligations. The ICSID Convention effectively separates the obligation to enforce the award and the enforcement procedure for enforcement of the award, which is governed by Article 54 below and which can be challenged depending on how national law is applied. Ask for recognition.

In fact, the recognition and enforcement procedure under article 54 imposes an obligation to recognize the award as binding on all contracting states, similar to the recognition of a final award. The problem is that it has a double duty: article 53 ensures compliance with the terms of the sentence, and article 54 recognizes and executes the sentence. Violations of articles 53 to 54 may entitle investors to diplomatic protection from their home country due to national responsibility for violations of their international obligations. Article 27 characteristic. Article 54 of the ICSID Convention allows for recognition and enforcement, but argues that domestic courts must strictly follow ICSID law. This procedure is intended to limit, if not completely abolish, the discretion of national courts in the field of recognition and enforcement.

The only condition for both is that the claimant submit a certified copy of the judgment signed by the Secretary General to ensure its authenticity. Once the order enters into force, its execution will be governed by national law. The binding force of an ICSID arbitral award has two meanings: first, according to Article 53, the award is binding on both parties to the dispute: the private investor and the state are obliged to ratify and confirm the arbitral award, resolving thus the dispute in any way as promised in the contract. Mediation or arbitration agreement. The second meaning refers to the execution of the sentence of the foreign party in its own territory: according to article 1(1). According to article 54, paragraph 1, the State member of the Convention is obliged to fulfill the financial obligations imposed by the judgment in its territory "as if the judgment of the courts of that State were final".

The provision appears to distinguish between physical and financial sanctions. Since the decision to do or not to do something rests solely with the respective country, the judgment of the cases is personal. It is clear that only the defendant State can execute the order to return the license or return the expropriated object. Monetary obligations, on the other hand, are general performance obligations that can be successfully enforced as long as the defendant country owns the assets. The Convention obliges all its member states to intervene in cases where their national courts impose pecuniary sanctions. This equivalence is just that: an equivalence. States cannot treat ICSID awards worse than final state awards, nor better. If supranational rules or decisions are considered more binding than national awards, even EU awards, a final comment will be made on the stability of trends in ICSID awards144. However, caution must be exercised when using the previous doctrine in a complex legal system, since Article 53 establishes that ICSID cannot present other remedies than those provided for in the Convention itself, and there is little room for its cancellation145. The arbitral award has a relatively high stability. Even revocation cases are extremely rare, and revocation judgments are almost as rare as cases. 146

2.4. Annulment procedure

The part of the Washington Convention dealing with possible appeals for the ICSID award under Article 53 ends with Article 52. The finality of this decision was determined, and its binding force was confirmed in the first part of the article. The only mean to challenge an award is through the annulment procedure designed by the treaty. As it will be shown the annulment procedure is not a heavy – oriented challenge against the decision of the Tribunal, but a much leavier mean of control designed for outmost formal or procedural grounds in order to offer to the appellant a way

to react against some grave misconducts of the Tribunal or some of its members with determining influence upon the decision.

At least formally, it cannot be denied that the decision cannot be reviewed in substance through annulment. The latter, the determination of the possibility, in reality only deals with the correctness of the decision method, and not with its substantial change, as can be seen from the exhaustive nature of the list of grounds for liquidation contained in Article 52 of Washington Convention.

However, the ad hoc committee has often been careful to clearly articulate its role, emphasizing its different nature compared to the Court of Appeal147 and asserting, among other things, that errors of fact or law committed by the court are not reason for revocation. 148 "Section 1 of Article 52 very clearly indicates that revocation is a limited means of legal protection. This view is also confirmed by the fact that Article 53 does not allow the value of the premium to be assessed. The right against an incorrect decision is not a waiver. Thus, under the pretext of invoking article 52, the Ad Hoc Committee could not effectively annul the resolution on the merits. And, the scope of Article 52 is limited and related to the provisions of Article 53. Unless an appeal is filed against ICSID decisions, annulment is intended to be an emergency remedy.

Nevertheless, the question of the ground for annulment and extension of scrutiny thereto, as a matter devoted to the interpretation of the *ad hoc* Committees, is an issue far from being seized once for all, and instead, Committees, have shown different doctrinal position over the limits of their competence, and plead admissibility. In the absence of a formal proclamation of the principle of stare decisis[150] Committees have nevertheless attempted to form an own jurisprudence that, for reasons of legal certainty, was able to orient the action of future Committees, and, most surely, serve as a guide for practitioners and substantive parties.

However, the desire to create uniformity in the application of the individual cases of annulment has not always been successful. And maybe for that the approach adopted by the Committees, read in relation to their functional competence, had made some impacts in considering the Committees, not simply as a specialized body within the ICSID Convention "equal in grade" to the Tribunal, but as a superior one, with major authority in the interpretation and application of the Convention itself and the material provisions of international investment law.

An empirical analysis of the Committees case law, altogether the study of the materials preceding the adoption of ICSID Convention demonstrate, even with some jurisprudential uncertainty – especially present in most remote approaches – that the aim of the Convention was not the settlement of a superior body of justice, intended to resolve a proliferation of appeals, but only

to ensure an extreme remedy to extreme cases of illegality, that could undermine the confidence of State and investors to the quality of the ICSID system. And in conformity with such route the attempt to standardize the jurisprudence shall be seen: a proper mean to prevent both Tribunals from gross violations of the law, and parties, from an abuse of appeals, reaffirming at same time the centrality of the Tribunals within the Convention.

A recall of the most prominent case law, shall be useful to mark the passage for an initial more intrusive role attributed to themselves by the Committees and the more self-retained approach adopted furtherly.

[150] Amco Asia Corp., Pan American Development Ltd & PT, Amco Indonesia v. Republic of Indonesia, Case n. ARB/81/1, Decision on Annulment of 16.05.1986, 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 528 ss.

That swing might be examined comparing the two decisions rendered in *Klockner* I and *MINE* cases.

Klockner I was the first appeal lodged in the history of ICSID Convention. Maybe for that, and for the need to seek support from the existent case law, the Committee was to say:

"in view of this case's importance, the fact that this is the first Application for Annulment ever lodged against an ICSID award and, finally, because it may be of interest to the parties and to the new Tribunal that may be constituted under Article 52(6) of the Washington Convention to have additional indications"[151]

By thus extending its jurisdiction over the nature of strict legality of the annulment procedure, into indications on the merit of the dispute, inevitably ad expressively addressed to the future Tribunal to be constituted and aimed to condition it.

A whole different position assumed by the Committee in the *MINE*:

"Article 52(1) should be interpreted in accordance with its object and purpose, which excludes on the one hand, as already stated, extending its application to the review of an award on the merits and, on the other, an unwarranted refusal to give full effect to it within the limited but important area for which it was intended".[152]

Position recalled also by the Soufraki Committee[153]

Given the imperative nature of the grounds for appeal, designed in art. 52.1 of the Convention, a further question arose on the existence of a discretionary power of the committee to annul.

The consequences were evident. In case of not existing such power, any breach of the grounds, shall lead to an annulment, with consequent obligation for the claimant to reconstitute the Tribunal, and subsequent bearing of costs and length of the procedure. Two stages of arbitration would have led to nothing, and another third Tribunal had to be created, hopefully not incurring in the same formal breaches. On the other hand, a more material approach suggested that such discretion existed and that Committees had to use their annulment power only if the breach denunciated was not only existent, but also determining on the outcome of the decision in a sense that had to be favorable to the appealing party.

[151] *Klockner* I decision on Annulment cit. para. 82
[152] *MINE,* Decision on Annulment, para 4.05.
[153] *Soufraki*, Decision on Annulment, para. 23.

From a preclusive disposition in *Klockner I*[154] the case law, almost immediately, turns to the more materialistic approach in *MINE* case. Such eventually considering that the first approach, at the end, charged on a non-guilty party, the errors incurred by a Tribunal, errors that it might not contribute to create nor had the possibility to emend, whilst the outcome of a second Tribunal was to be materially equal to the prior.[155]

From this pronouncement onward, the Committees verified the presence of a concrete influence of the breach to the decision in its entirety, keeping in mind that an annulment on pure formalistic grounds had to penalize the efficiency and effectiveness of the entire ICSID dispute resolution system. The annulment pronouncement in the *Vivendi I* case is emblematic in summarizing this position:

"it appears to be established that an ad hoc Committee has a certain measure of discretion as to whether to annul an award, even if annullable errors were found [...] Among other things, it is necessary for an ad hoc Committee to consider the significance of the error relative to the legal rights of the parties."[156]

The elaboration of the *ad hoc* Committees had so lend to an approach of appeals, similar to that elaborated by domestic courts under the ground of the interest to act.

Such doctrine, which postulates that the intervention of the courts shall be deemed necessary only if the remedy sought is materially useful to the interest of the claimant, rejecting merely hypothetical claims or pronunciations on questions of principle, once translated in procedures of appeal, is used to reject grounds that had no influence on the outcome of the decision, a principle common also in administrative law.

It might be sought as expression of a general principle of law, common to all civilized States, rendered in the public interest of a more efficient use of the justice, whose use in ICSID shall be deemed legitimate, pursuant to art. 38.1 c) of the Statute of the International court of Justice, sharing the nature of customary international law.

Annulment procedures were not common, until twenty years ago, same as the recourse to the mechanism of resolutions under ICSID Convention. With the increasing application of dispute resolution system, also the appeals incremented in number.

[154] *Klöckner I*, Decision on Annulment, para. 179.
[155] *MINE*, Decision on Annulment, para. 4.09-4.10.
[156] Compañía de Aguas del Aconquija SA and Vivendi Universal v. Argentine Republic, Decision on Annulement of 03.07.2002, Case n. ARB/97/3, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 340 ss.

The grounds for annulment of an award are enumerated from art. 52 of the ICSID Conention. Such are:

(a) that the Tribunal was not properly constituted;

(b) that the Tribunal has manifestly exceeded its powers;

(c) that there was corruption on the part of a member of the Tribunal;

(d) that there has been a serious departure from a fundamental rule of procedure; or

(e) that the award has failed to state the reasons on which it is based.

The practice has shown that improper constitution of the tribunal and corruption had been rarely invoked. The other grounds, on the contrary are often invoked jointly in the same appeal.

The improper constitution of the Tribunal was invoked in five cases[157] with scarce efficacy.

In Azurix, the first case on the matter, the Committee self-restrained on the sole examination of art. 57, 58 and 14, rejecting the ground of appeal, upon consideration that a manifest lack of the requirements pursued to art. 14, was equal to a grave personal unfulfillment of professional standards and moral qualities, and that a breach of arts. 57 and 58 was an improper ground of appeal under art. 52 (a), since the *ad hoc* Committee was not intended to be a ground of re-examination of the decision of disqualification adopted by the other two members of the Tribunal, since the Treaty attributes to them, through art. 58, a sole and exclusive jurisdiction.[158]

Nevertheless that position was rejected by the Committee in *Vivendi II* where it had to ascertain and affirm the existence of a conflict of interests by one of the members of the Tribunal that, timely denounced by one of the parties, that was rejected by the other two members, thus rendering a judgement forged on a different appreciation of the relevant facts.[159]

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[157] Azurix Corp. v. Argentine Republic, Case n. ARB/01/12, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 412 ss. Compañía de Aguas del Aconquija SA and Vivendi Universal v. Argentine Republic, Decision on Annulement of 03.07.2002, Case n. ARB/97/3, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 340 ss. EDF International S.A., SAUR International S.A. and Leon Partecipationes Argenitas S.A. v. Argentine Republic (EDF), ICSID case n. ARB/03/23, Decision on Annulment, 5 February 2016; Compagnie
d'Exploitation du Chemin de Fer Transgabonais v. Gabonese Republic (Transgabonais), ICSID case n. ARB/04/5, Decision on Annulment, 11 May 2010. Sempra Energy International v. Argentine Republic (ICSID Case No. ARB/02/16). Decision on Annulment (June 29, 2010). Available at:
https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/02/16

[158] See *Azurix*, decision on annulment cit.

[159] *Vivendi II* decision on annulment cit.

The manifest excess of power, the *"serious departure from a fundamental rule ofprocedure"*, and the *"failure to state reasons",* are, as stated above, the most invoked grounds of appeal*,* given also the broad wording adopted by the Convention.

The relative scarcity of appeals, confronted with the number of claims brought before Tribunals, had gravely undermined the elaboration of a consistent doctrine related to those grounds, in order to consistently determine the content and limits of each figure. Is not rare, thereof, that symptomatic grounds of appeal are differently qualified from case to case, and pleads contend the same facts under, simultaneously, different grounds in law.

The manifest excess of powers, can be regarded as lack of jurisdiction or failure to apply the law. In both cases, the adverb "manifest" is significant in limiting the appeals to the sole gross violation, whilst minor departures from the law shall be beard by the parties.

In *Klockner I* the Committee had to deal with this ground in order to verify the proper jurisdiction of the Tribunal under art. 25 of the Convention; further elements as the lack to render justice over one of the requests submitted by the parties or the misuse of the prerogatives of the Tribunal in admitting the proofs or disposing measures of inquiry also were encompassed under this figure.[160] The case law of the Committees has also brought into this specific ground the cases in which Tribunals had decided trespassing the boundaries set from the parties to them, in such cases where the consent to arbitration was expressed in such a way as to limit the responsibility of a State on material grounds, or to reduce the amplitude of the measures of inquiry admittable in order to proof a certain conduct, behavior or failure to act.[161]

The failure to apply the law, as a ground of appeal, shall be regarded as different in respect the error in the application of law. The first consist in an error of law regarding the correct international instrument to apply: a treaty, an internal law, or a law of the State. The error in the application of the law refers to the interpretation of the instrument applied and by itself, is not a ground of appeal.[162]

Given the variety of situations brought before the Tribunals and the possibility of encompassing one material accomplishment into different instruments, it is often hard do determine if a dismissal of a claim under a false interpretation of an instrument – not suitable to appeal – may

[160] *See Klockner I*, decision on jurisdiction cit.; *Vivendi I,* decision on jurisdiction cit.
[161] See decisions on jurisdiction in *Klockner I* and *Soufraki* cases.
[162] See decisions on jurisdiction in *Amco I* case, *Amco II, Soufraki* cit.

lead to a lack of application where that same behavior was likely to undermine a different instrument, whose breach was not recognized by the Tribunal. Also the possibility to consider the very heavy errors in interpretation as failure to apply the law is questioned.[163] Some attempt has been made to bring such conceptions to unity, by the current evolution of the jurisprudence is far from reaching uniformity, despite the case by case approach.[164] The corruption of an arbitrator covered by Article 52.1(c) has never been invoked.

The violation of the rules of procedure is considered as a manifestation of the general principle of the right to a due process of law. Nevertheless, the strict scope of the appeal under ICSID Convention reduces such claim to the very essence of such fundamental right. Therefore, the ground is subject to such a hard burden as the nature of the procedural norm, which must be a fundamental rule of procedure, and the nature of the violation, qualified as a serious departure.

The seriousness of the departure shall be considered relating to the final scope of the norm. Consequently what causes the annulment of the award is only the violation of the norm that had attempted to the rationale and scope of the provision and, more, had caused a pathology into the reasoning of the Tribunal, which depending on that error reached a conclusion that if it had made proper application of the law, would have lead to a different ruling.[165] On the other hand, the nature of a procedural provision to be intended as fundamental, is a non-defined juridical principle. Linking such concept to the evolution of law inside the ICSID system or to the common international law *sub specie* general principles of law considered by the civilized nations, attempts had been made to encompass a listing of fundamental procedural provisions on some parameters caught primary from the ICSID bodies case law,[166] whilst others, considering such prerogatives insufficient and mainly non self-reliant due to the referral in such case law to common principles deducted by domestic codes of procedure, had preferred to refer to the general international law instead.[167] In some decisions reference had been made to the norms of natural justice also.[168] In general terms, that hds to be declined in all concrete case law, therules of procedure that Committes had considered as fundamental, are the right to a fair trial, impartiality of the courts and arbitrators, the right to be heard, the right for a fair treatment, and the principle of parity of arms.

[163] For examples of the second approach see, Vivendi I decision on annulment cit. para 86.
[164] See Soufraki decision on annulment cit.
[165] MINE, decision on Annulment cit.
[166] Klockner I, decision on annulment cit.
[167] Wena Hotels Ltd v. Arab Republic of Egypt, Case n. ARB/98/4, Decision on Annulment of 05.02.2002, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 129 ss.
[168] CDC Group plc v. Republic of the Seychelles, Case n. ARB/02/14, Decision on Annulment of 29.06.2005, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 237 ss.

The lack of motivation is the last ground of appeal under ICSID Convention and, often, the last line of resort for an appellant party.

The wording of art. 53 (e): "*The award has failed to state the reasons on which it is based"* shall be read in accordance with art. 48.3: "*The award shall deal with every question submitted to the Tribunal, and shall state the reasons upon which it is based".* It is clear that since the Committees are not a second instance of appeals, the second provision shall not be considered as the natural complement of the former: not all vices in argument are ground for an appeal, but only such lacks that preclude to intend the reasoning of the Tribunal, independently from the outcome nor the correctness of the conclusion adopted.

The practice before the Committees had often presented grounds of appeal consisting of these concurrent grounds: poorness of reasoning, contradictions, failure to respond to all questions raised by the parties.

Whilst failure to respond to all questions had been declined as a proper reasons if, and only, if, such position ad to be necessary reflected in the reasoning because of its importance for the outcome of the judgement, poorness in reasoning and contradictions had been considered more favorably, as signals of lack in reasoning able to lead to the annulment of the award.

Once more the referral case law is the *MINE* case, where the Committee made a difference between adequacy and lack of motivation. While adequacy relates to the quality of the award in terms of highest standards of legal reasoning, the lack of motivation makes reference to the breach of a minimum standard of motivation. Poor reasoning, in such view, is seen as the incapacity to link the conclusions to the premises, and contradictions, often, are seen as the effect of a non-comprehension of the facts of the case or the legal discipline governing the matter or, worse, the clue of a predetermined decision in the mind of the Tribunal, not following the state of facts or law applicable, leading to a lack of neutrality.[169] Such position had been taken by further Committees and is consistent with the current case law.[170]

Pursuing art. 52 of the Convention, the appeal shall be filed within 120 days since the award is rendered, with a request addressed to the Secretary General. Only in case of bribery, such term is naturally postponed to the moment when corruption is discovered. In no case the award can be challenged after three years since the day of deliverance.

[169] See, *MINE*, decision on annulment cit.: l para. 5.09: *"the requirement to state reasons is satisfied as long as the award enables one to follow how the Tribunal proceeded from Point A to Point B and eventually to its conclusion, even if it made an error of fact or of law. This minimum requirement is in particular not satisfied by either contradictory or frivolous reasons."*

[170] Quoted in *Wena, Vivendi* I and *Vivendi II* decision to jurisdictions cit.

The outcome of an *ad hoc* Committee decision might be of three species: it can repel all the grounds of appeal thus confirming the Tribunal's award in its entirety; it may find grounds for annulment of only part of the award and, in such cases, deliver a partial annulment of the award; thirdly, it may consider that the vices denounced affect the award in its entirety and deliver a judgement of total annulment.

In no cases the Committee will render a second judgement.

The partial or total annulment of the award puts the parties in the conditions to have their claims unresolved and, therefore, to ask for a new Tribunal to be constituted in order to resolve the pending issues. The request for the constitution of a new Tribunal is not automatic, but subject to a request to be filed by the party interested to have the question settled, which outmost coincide with the claiming investor.[171]

The new Tribunal, once constituted is free to reexamine all the issues rendered from the parties in previous judgement and to orient itself with the maximum extent and liberty. The new judgement is to be considered as a completely new examination of all the matters of law and facts presented by the parties and no preclusion operates, since the appeals mechanism is only designed as a negative decision process but not a positive one.

The only limitation into which the party occur is the prohibition to render a different claim from what was filed at entrance, a prohibition especially important in case of partial annulment. Consistently, in same case as the latter, the new Tribunal shall not ignore the matter of law and facts rendered by the previous Tribunal in the non-annulled part of the award if relevant to the decision of the remaining part.

2.5. Execution of Arbitral awards.

The procedure for the execution of ICSID arbitration awards is regulated by the Convention in its article 54, one of the most important and interesting provisions and, as ita has been said, the very pillar of ICSID Convention.[172]

[171] Convention art. 52.6.

[172] SCHREUER, The ICSID Convention: a Commentary, p. 1117- 1118.

Under art. 54 of the ICSID Convention:

"Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State" providing the sole formal requirement that: *"A party seeking recognition or enforcement in the territories of a Contracting State shall furnish to a competent court or other authority which such State shall have designated for this purpose a copy of the award certified by the Secretary-General. Each Contracting State shall notify the Secretary-General of the designation of the competent court or other authority for this purpose and of any subsequent change in such designation. The execution of the award shall be governed by the laws concerning the execution of judgments in force in the State in whose territories such execution is sought."*

By the few prescriptions indicated, the Convention exhausts all the matters related to the effectiveness of the execution of the arbitral awards, basically relying in the competitive of the national law.

The award is declared equivalent to a final judgement of a domestic court, it must be executed following the domestic rules of procedure, and the only formal passage consists in the recognition of its authenticity by the authority designated by each member State.

The provision, designed basically to ensure the victorious State against the claimant – being hardly conceivable by the drafters that a State could fail to comply with its obligation in case of condemnation – had been manifesting all its potential in cases where the State did fail to comply and seizure of their assets were attempted outside national borders.

The few provisions referred represent as well as an *unicum* in the international invested law, since normally treaties and multilateral convention do not make reference to the authority of the decisions rendered under arbitration, nor to the way of enforcement: both aspects being normally delegated to national law or *ad hoc* treaties.

In the system of ICSID not only the Convention itself governs both matters, but extend the authority event to the non disputing parties and, furthermore by way of art. 27 allows the claimant to pursue diplomatic protection from his home State.

Any Contracting State may facilitate the recognition and enforcement of ICSID arbitral awards. It is as a result of this decision that the party wishing to enforce the award has the option of choosing the most favorable forum among the parties to the convention. This election begins by considering whether the debtor's property exists and can be attacked. When it comes to

interference with the state, the problem arises mainly when certain categories of state property enjoy immunity from the death penalty. Article 55 of the ICSID Convention specifically addresses and regulates this possibility. Regardless of whether or not a State was a party to the original dispute, failure to comply with the requirements of Article 54 constitutes a breach of that State's obligations under its obligations under the international programme.

Therefore, acts of diplomatic protection apply even to countries that do not execute arbitral awards (unless the provisions on immunity from execution so provide). The development of Article 54 takes priority when analyzing the appropriate procedure for the execution of ICSID awards. Different sections of the article use different terminology: the first and second sections use the word "application" and the third section uses the word "application." The use of these two terms has caused disagreements and confusion in the interpretation of the Convention. Different meanings are sometimes given to each as a starting point: the process of enforcing an arbitral award against the property of the losing party is called enforcement, while enforcement refers to the process that directly entitles enforcement of the award. 176

However, the Spanish and French versions of Article 54 of the ICSID Convention use the word implementation consistently and do not have the same distinction as the English version. It must be concluded that the terms "execution" and "enforcement" in the English version of the Convention have the same meaning, since it is not possible to interpret differently the different equivalent true versions of the Convention. 177 However, this conclusion has not always been accepted, particularly by national courts, and the terms "enforcement" and "recognition" are sometimes used interchangeably, giving them different meanings. For the reasons explained in the previous chapter, it is useful to reiterate that the procedure set forth in Article 54 of the ICSID Convention applies only to monetary obligations, limiting our analysis to the enforcement of awards.

The Convention obliges each State to comply with these obligations as if they were final internal decisions of national courts. For purposes of enforcement, the equating of an ICSID award with a domestic award that has become final is considered sufficient to satisfy the immunity provisions from enforcement; however, the clarification of article 55 removes any doubt in this regard. A State Party is the sole party to the obligations contained in this section. during execution. Indeed, Article 54 refers to the law of the country whose enforcement is requested, but the obligation to comply with the order is not affected by any difficulty arising from that law. The obligation of Article 54(1) is established in Title II, referring to the States of the Federal Constitution, to equate an ICSID decision with a final decision of a federal land court. The party requesting the enforcement of an arbitral award must submit a certified copy

of the Secretary General's decision to the competent national court, which is the only procedural aspect expressly provided for in the ICSID Convention during the negotiation phase. 178

Each member state must select a national authority that is empowered to do so. It is clear that only those sentences whose execution has not been suspended can be transferred to the execution stage by the corresponding court. In fact, the execution of the order can be suspended. After the application is recognized and executed. In this case, the enforcement proceedings under Article 54 should also be suspended. Pursuant to Article 54(2), only the parties to the original dispute have the right to initiate enforcement proceedings. Consequently, no potentially interested third party can participate in any law enforcement process. It is the duty of each Member State to inform the Secretary General of the competent national court or institution of pending cases.

Facilitate access to the competent authorities for recognition and enforcement. Among other things, it excludes actions taken by the state on behalf of its "subunits or agencies" that are valid parties to the dispute under § 25.179. Article. The winning party can access the Center's list of such notices for further processing of applications for recognition and enforcement. pcs. Article 54(2) deals only with enforcement. It does not say anything about how the procedure will be followed or how each court or state authority will act after a certified copy of the order is issued. Instead, it simply refers to the formal requirements just mentioned.

During the drafting of the Convention, decisions were made that resulted in the following decision: Article 54(3) was formulated without requirements regarding the approach that States follow, referring to specific procedures for the enforcement of ICSID awards in their customary law territories180. legal methods used by civil law states and countries and their different legal systems. 180 Such a choice is based on pragmatic considerations: the process of enforcing an arbitral award or judicial proceeding is a very complex issue that can include several aspects (limitation periods, application of the law in the country of the award)181, it requires an extensive regulation that cannot be standardized at the ICSID level.

The legislation of the Member States is another aspect of the discipline of Article 54. The commitment to implement ICSID awards is limited to strategies and methods adapted to the relevant public norms for implementation decisions. Therefore, States do not need to develop new procedures to specifically regulate the implementation of ICSID awards. Therefore, States have some discretion at this stage, but not enough discretion to withdraw recognition themselves under the provisions of Articles 53 and 54(1). As mentioned above, it seems that a

distinction can be made between enforceability and enforceability: the provisions reviewed clearly equate ICSID awards with final domestic awards for first instance enforcement; The possibility of action depends on the possibility that the final internal sentence can be executed in the country where the execution is requested.

Any restriction on the enforcement of the award will not affect the State's obligation to comply in any way with the ICSID decision. This difference was underlined by the decision of the same ad hoc committee, which determined that the dispute settlement mechanism of the ICSID Convention was understood as an international system. The rules and mechanisms to enforce orders under national law would be contrary to this intention. mechanisms for the enforcement of final judicial decisions in accordance with national law", which would inherently undermine confidence in the ICSID system.182 In the ICSID Convention, this Article 54 prohibits the application of Article 54 in a manner inconsistent with the laws of each respective Contracting State with respect to immunity from domestic or foreign execution.

Therefore, it can be concluded that the refusal of national courts to enforce ICSID awards on the basis of national immunity does not contradict Article 54 of the Convention and is even in accordance with international law, while obligations under of Article 153 still depend on national compliance. . 185 It is still possible to use two other tools provided for in the Convention: diplomatic protection186 and access to the International Court of Justice187, as a result of which the true applicability of investors' claims is determined by their chosen citizenship.

An agreement to arbitrate by a state or other entity is generally presumed to constitute a waiver of immunity from jurisdiction, that is, immunity from jurisdiction cannot be invoked to prevent recognition and enforcement of an arbitral award. wrong. The provisions of the arbitration agreement do not waive immunity from execution; therefore, ICSID awards are not necessarily enforceable against state assets used in sovereign activities.

The need to ensure that states have access to their share of private investors who do not voluntarily comply with ICSID awards was the authors' original motivation for including the discipline of enforcement mechanisms in ICSID awards. As mentioned above, it is considered highly unlikely that a State will breach its obligations under Article 53 of the Convention, so the provisions of Article 54 are intended to balance the situation in favor of the receiving State. to invest

Because of the authors' overly optimistic view of state justice, the Convention's operating manual interpreted it as a false prediction, and private investors used it primarily to initiate legal

proceedings against states that had not done so. Complete the sentence.

There are many countries that adopt the principle of full immunity from execution, thus excluding classified personnel from receiving the death penalty entirely. But even in states that support a stronger immunity doctrine, executors are not very popular because they must prove that assets under attack do not qualify for immunity from execution. In this sense, the very use of the property for economic or commercial activity, regardless of whether it is private or public, is a fundamental difference in the possibility of claiming against public property. The assets must be previously seized to enforce a judgment, but not when the assets are used for a public purpose strictly related to national sovereignty.

As we all know, the distinction we have just made is quite a blurry line, making it difficult to determine whether public funds are being used for sovereign activities. Article 55 of the ICSID Convention does not create a reservation, but is limited to the recognition of a principle of international law that is applicable only if a state waives that principle or derogates from it through its national legislation.

The issue is easily understood in relation to current accounts, as holdings of national bank flows have been widely discussed, including through the national central bank, which has included the possibility of protecting them with immunity from execution. States Parties generally fulfill their obligations under article 53 of the Convention on a voluntary basis. It is not related solely or primarily to a sense of justice or fairness, nor is it related to the threat of diplomatic protection, which is an option only in limited cases involving non-economic interests at the highest level. Nor is this a typical ICSID dispute.

The reason lies in the reputation of the country: the country that passes into the jurisdiction of the center through national legislation or investment agreements is the country that needs foreign capital for its development and that guarantees fair treatment to investors even in legal proceedings against investment institutions. The most prestigious dispute resolution in the world. In addition to criminal prosecution or seizure of assets abroad, non-compliant countries will be seen as unreliable investment partners and will be punished in the simplest and most effective way for investor losses. The state's reluctance is evident, as is the inability of the reinvestment protection regime to guarantee due compliance with arbitration awards. 190

Arbitration as a means of resolving disputes between private entities from opposing countries and vice versa has been questioned precisely because of these difficulties associated with the effective enforcement of awards not only by ICSID awards but also by promulgated arbitral

awards. against For the country as a whole.

If, at the end of the entire arbitral proceeding, the investor has no remedy to obtain the rights from him according to the outcome of the proceeding, the mere existence of the immunity enforcement provisions renders the award meaningless. To this must be added the significant costs incurred by investors due to the ICSID regime, as well as the fees of lawyers and experts. Also, in general, the value of the lost investment in the prize was not initially recovered. This position of the individual in the whole process creates an imbalance in favor of the state, and although the state accepts arbitration as a means of resolving disputes and therefore agrees with the outcome of the process, it is not actually required to do so. What. On the other hand, the State always has weapons in its favor, which allow it to move away from the execution of the sentence, or at least convince the investors, the rightful claimants, to sign. According to art. According to the convention, the State is exempt from international responsibility also in the latter case. Fifty-three. The Ad Hoc Committee in MINE v. Guinea:

The proposition that "state immunity may provide legal protection against execution but cannot be an argument or justification for non-compliance"191 seems to encourage states to fulfill their obligations voluntarily. A statement with the appropriate legal meaning in the case at hand. For this reason, the Convention may choose, in its final provisions, to restore to the country of origin its role as natural defendant of the investors.

In fact, the extension of the prohibition on the use of diplomatic protection in case of arbitration agreement and initiation of Article 27 proceedings is a tangible step towards the depoliticization of the investment arena. Foreign Direct Investment: This is precisely the motivation behind the rise of ICSID. However, a country that openly refuses to honor the concluded agreement is not only politically correct, but also legally illegal. The next option is diplomatic protection and, with specific limitations, the International Court of Justice, which essentially turns a legal dispute into a diplomatic one that involves the country of origin politically. Disputes still subject to international law, although of different scope and scope: Compliance with and refusal to comply with arbitration awards is itself a wrongful act under international law.

At the very least, recognition of the principle of self-preservation would ultimately weaken international law, including international investment law.

CHAPTER 3. STATE'S RESPONSIBILITY IN ICSID ARBITRATION PRACTICE

3.1 Foreword.

The present chapter will analyze the core element of the responsibility of the State in the arbitration practice of ICSID Tribunals.

State's responsibility is a question of merits, in whose assessment a Tribunal shall determine the presence of an international wrongful act and the attributability of such misconduct to the State. Once assessment has resulted positive in either element, the question of reparation is an automatic consequence and Tribunals, almost always, order a monetary compensation to make good for damage, eventually accompanied with an order to remove, if possible and convenient, the act whose negative effects had produced the damage to the claimant.

In their practice, ICSID Tribunals had referred extensively to the general doctrine of State responsibility in international law. And as many other Tribunals, had caught as guidance the UN Articles for the Responsibility of States for Internationally Wrongful Acts of 2006, whether adapting largely the objective and subjective requirements set thereon to the sector of investments.

Following paragraphs will deal with the basic elements of attributability and breach of an international obligation, with due attention to the central issue of the breach of contract/breach of treaty claims, and the relevance of the principle of proportionality.

Further on, the standard of protection will be addressed, with due examination of the principal investment protection clauses included in BITs and TIPs.

The closing paragraph will study the umbrella clause as the final clause present at almost all investment treaties, and its functioning as a closing-the-circle provision. Particular attention will be devoted to its application by ICSID Tribunals: an application that swings between contract and treaty arguments, shifting or holding jurisdiction, depending, ultimately, on a high degree of discretion.

3.2 The elements of the responsibility of the State: the subjective element and attributability.

The attribution, a concept born and developed primarily in field of general international law on responsibility of the States, was subsequently borrowed from international investment law, with the aim of determining exactly the existence of the aforementioned link between wrongful act and State.[192]

From the point of view of the respondent, it must be made clear that the attribution of a conduct to the State, is a matter that deals with the legal personality of the latter as both, a subject of national and international law.

From a classic viewpoint, at the time when ICSID Convention was drafted, the attributability was consequence of behavior of entities that traditionally had been considered as direct manifestation of the State: ministries, governments, high representatives entrusted to business and infrastructure affairs.[193]

In establishing the investment relationship, the legal international personality of the State, was therefore undisputed, and coincided with the domestic legal personality of the same State as the entity investors entered in material relations with. The concrete means through the which relationship was vested were irrelevant (license, concession, contract, etc.).

Nevertheless, the modern legal order saw a fragmentation of the legal personality of the State, within the domestic domain. The State does not actually operate through public entities whose activity may be referred to the Government only. Yet the number and capacity of entities that may be called upon as public bodies is quite differentiated, encompassing organizations that

[192] See, BORN, Gary B., International Arbitration: Law and Practice, Wolters Kluwer, Netherlands, 2012, ISBN: 978-90-411-4562-8. DOLZER, R., SCHREUER, C., Principles of International Investment Law, Oxford UP, 2. Ed., 2012, ISBN: 978-01-996-5180-1

[193] That is demonstrated by the ICSID cases since the early beginnings of the Center until the first nineties where all the cases brought because of claims originating from investment contracts entered by the host State through the Government or high officials. See, among the others, Holiday Inns v. Morocco – Some legal Problems, report on The First "World Bank" Arbitration, LALIVE, P., 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 645 ss. Adriano Gardella Spa v. Government of Cote d'Ivoire, Case n. ARB/74/1, Award of 29.08.1977, 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 283 ss. Kaiser Bauxite Company v. Government of Jamaica, Case n. ARB/73/3, Decision on Jurisdiction and Competence of 06.07.1975, 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 296 ss. AGIP Spa v. Government of the People's Republic of the Congo, Case n. ARB/77/1, Award of 30.11.1979, 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 306 ss. Benvenuti & Bonfant v. Government of the People's Republic of the Congo, Case n. ARB/77/2, Award of 08.08.1980, 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 330 ss.

formally and substantially enjoy the highest independence from political influences.[194] Butthe action of the State may stream from even public or private owned companies controlled at different levels of intensity. At the outmost, a misalignment shall be stressed between the legal personality of the State in international law, that is unique, and such personality in administrative and civil domestic law, which is subject to delicate questioning and variations to be as numerous as the fantasy of jurists in each legal system might be.

The point is then, to establish, as a preliminary matter, which of such national body's acts might entail the international responsibility of the State and to what extent. Or, in contrast, if the claim shall be resolved by national courts because outside the international responsibility framework.

The dilemma, presents, both, elements of jurisdiction and elements of merit. In fact, as for the latter the lack of attributability entails the lack of *locus standi* for the respondent, and its consequent victory on the merit as innocent of any breach of international law. At the same time, the non-attributability of a conduct to a State, for the very way Convention had been drafted, is even a question of jurisdiction: ICSID Tribunals only have jurisdiction overdisputes which involve a breach of an international law rule, and among those rules there is also the regulation over attributability. The absence of attributability, shall itself lead to an interlocutory pronunciation of the Tribunal dismissing jurisdiction. And as jurisdiction is *per se* a preliminary matter for the Tribunal to solve, it shall be decided immediately, or as soonas the Tribunal had the elements to make such an assessment, independently on previous decision on bifurcation.[195] The decision over jurisdiction absorbs the question of respondents *locus standi* and if not annulled, entails the *res judicata* over the claim.

The all matter of the responsibility of the State, including the rules of attributability, are set in international customary law and, ultimately at the UN – ILC Articles of State's Responsibility of 2001.[196]

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[194] Reference is made to central banks and independent administrative authorities in general.

[195] See, Tribunals findings in *Emmis,* where it found as an exclusive prerogative pursuant to art. 41 of the Convention to decide on not to*: ""bifurcate the proceeding and to deal with preliminary objections in the first phase and then, at a later stage of the proceeding, with the other issues related to the merit".* Emmis International Holding, B.V., Emmis Radio Operating, B.V., and MEM Magyar Electronic Media Kereskedelmi és Szolgáltató Kft. v. Hungary (ICSID Case No. ARB/12/2). Decision on Respondent's Application for Bifurcation (June 13, 2013). Available at: https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/12/2

[196] *UN Draft Articles on the Responsibility of States for Internationally Wrongful Acts,* Yearbook of the International Law Commission, 2001, vol. II (Part Two), corrected by document A/56/49(Vol. I)/Corr.4. Available at:

The ILC Articles have never assumed the status of an international treaty, still resulting - as regards the legal container - as a set of articles that regulate the international responsibility of the State, having the mere force of legislation of soft law. However, as to their content, they have been largely considered reproductive of the customary international law in force, therefore binding and obligatory.

ICSID Tribunals have strongly and repeatedly maintained such contention in disputes arising after the publication of the Articles, since the very next in time case *Noble Ventures Inc. v. Romania*.[197] Some objection of respondent States contending that Articles should apply only to claims between States, and not ISDS, had been firmly dismissed by the Tribunals opposing the plain application of Articles art. 33 to disputes arising through BITs, TIPs or private contracts, as specifically covered by a consent to such jurisdiction by the respondent.[198]

The reference articles on which such analysis will be focused are the n. 4, 5 and 8. The trilogy of articles in question constitutes the regulatory set on which the whole architecture of the attribution institute is based, describing the parameters necessary for determining the link that connects the acts put in place by an entity not immediately attributable to the State of belonging, and the State itself.

Art. 4[199] refers to the so-called State organs, organs of the State for which the problem of the traceability of their work to the institution they belong to substantiates in a *"structural assessment",* covering *"all the individual or collective entities which make up the organization of the State and act on its behalf "*.[200]

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https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf

[197] Noble Ventures Inc. v. Romania, Case ARB/01/11, Award of 12.10.2005, 16 ICSID Reports, Cambridge UP, 2012, ISBN: 978-0-521-192-61-3, pp. 216 ss.

[198] See, among the others, Noble Ventures Ins. V. Romania cit., Emilio Agustín Maffezini v. Kingdom of Spain, Case n. ARB/97/7, Decision on Objections to Jurisdiction of 25.01.2000, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 396 ss. Eureko BV v. Republic of Poland, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 331 ss.

[199] UN Articles on the State Responsibility for Internationally Wrongful Acts. *Article 4. Conduct of organs of a State. 1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State. 2. An organ includes any person or entity which has that status in accordance with the internal law of the State.*

[200] BORN, Gary B., International Arbitration: Law and Practice, Wolters Kluwer, Netherlands, 2012, ISBN: 978-90-411-4562-8, quoting the Commentary to the Draft Articles, 2001, 2 Y.B., International Law Commission, pp. 357 ss.

Art. 5, entitled *"Conducts of persons or entities exercising elements of governmental authority "*,[201] is based on a functional assessment and includes all those hypotheses in which an entity, which cannot be defined as a body of the State, had also been authorized by that State to exercise the prerogatives of the activity of government. Pursuant to theCommentary,[202] they are included in this category:

"Public corporations, semi-public entities, public agencies and [...] private companies, [...] empowered by the law of the State to exercise functions of a public characternormally exercised by State organs ".[203]

Art. 8, titled *"Conduct directed or controlled by a State"*[204]*,* is based on concept of instruction, direction and control, focusing on the factual relationship between the person or entity engaging in the conduct and the State.[205]

The parameters therein provided are evaluated and applied by the ICSID Tribunal with a degree of rigor not too severe. For example, in the case of *EDF*,[206] it was not necessary for EDF to demonstrate that the entire design of the transactions carried out, or that individual and specific operations were attributable to the State. On the contrary, it was enough in Tribunals findings that EDF was able to demonstrate how the duty-free contract was terminated by TAROM which, because of its liaison with the Government, was in some way considered an emanation of the State and thus a public body for attribution purposes.

Another prominent application of the parameters envisaged by the Un - ILC Articles about attribution can be found in *Maffezini*[207] case. Emilio Augustín Maffezini, an Argentine

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[201] UN Articles on the State Responsibility for Internationally Wrongful Acts. *Article 5. Conducts of persons or entities exercising elements of governmental authority. The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance.*

[202] Commentary on UN Draft Articles on the Responsibility of States for Internationally Wrongful Acts, Yearbook of the International Law Commission, 2001, vol. II (Part Two), corrected by document A/56/49(Vol. I)/Corr.4. Available at:
https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf

[203] Commentary cit. para. 43. The *ratio* was to avoid delinquent behaviors of States creating private owned entities exercising public functions in order to escape from international responsibility.

[204] ILC Articles on the State Responsibility for Internationally Wrongful Acts. *Article 8. Conduct directed or controlled by a State. The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.*

[205] Commentary cit., para 48.

[206] EDF (Services) Limited v. Romania (ICSID Case No. ARB/05/13). Award (October 8, 2009). Available at:
https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/05/13

[207] Emilio Agustín Maffezini v. Kingdom of Spain, Case n. ARB/97/7, Decision on Objections to Jurisdiction of 25.01.2000, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 396 ss. Emilio Agustín Maffezini v.

national, set up a company named EAMSA in Spain, in partnership with SODIGA (Sociedad para el Desarollo Industrial de Galicia), a public local company, for the production of chemicals in the Spanish region of Galicia.

After bankruptcy of the investment, Maffezini sued Spain stating that the responsibility for the lack of success depended on the work of SODIGA, that as public entity by way of abuses and misconducts shall bring the State responsibility under the applicable Argentine – Spain BIT of 1991.

The Spanish State, on the other hand, rejected this assumption, stating that, on the basis of the structural assessment of its State apparatus, SODIGA should be considered exclusively as a private entity, as it was not envisaged nor attributable to any public organization of the State.

The Tribunal, after having previously clarified that nothing prevented a company to be considered as public body if it was exercising public powers, stated that - pursuant to structural test – SODIGA:

"could not be held to fall entirely outside the overall scheme of public administration"[208]

Although the structural test was not conclusive, the Tribunal stressed how the public structure shall not limit on public functions but had to take into account additional elements, relevant for the purposes, such as the control of the company by the public entity, and the statutory scope for which this entity was created.

The Tribunal continued his legal reasoning stating that it was also necessary to refer to the functional test to determine whether SODIGA's conduct could be regarded as commercial rather than "governmental", therefore attributable or not to the Spanish State.

After applying the functional test to the acts put in place by SODIGA, it concluded that the contested conduct was partially governmental and partially commercial in nature, thus having to categorize further which acts fell on the State and which ones should be excluded.[209]

As for the first claim presented by Maffezini, the circumstance that the business consultancy provided by SODIGA - which took shape in drafting of a business plan describing the costs of carrying out the project, greatly underestimated - was significantly wrong, it wasn't

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Kingdom of Spain, Case n. ARB/97/7, Award of 13.11.2000, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 419 ss.

[208] *Maffezini* cit. Award, para. 48 – 50.

[209] *Maffezini* cit. Award, para. 57.

considered by the Tribunal as engaging to any public functions, son the link with sovereign powers and attributability to the State was inconsistent. Neither it found proved the second Maffezini claim, that he had been subject to *political pressures* to anticipate the realization of some works although the project had not yet been approved.

The third claim was more successful. The Tribunal found that a certain amount of funds was transferred beyond the consent of Maffezini by a representative of SODIGA and considered such act as expression of unilateral public superior powers, that did engage the public company responsibility and that of the State itself.

Even if such latter conclusion may rise some doubts – if a misuse of powers was sure to have happened, what was unsure was the attributability to such misuse to the State by way of considering a misuse of public instead of private corporate powers by the acting representative – the interest of Maffezini case, is that for the first time an ICSID Tribunal sets a distinguishing on attributability criteria of State owned entities, with different legal personality from the State's one.

The difference between acts entailing the responsibility of the State, as exercise of predominant powers, and acts of pure commercial nature that fall outside the jurisdiction of the Tribunal and remitted to domestic courts or commercial arbitration, shall become acornerstone in the practice over the responsibility of the State in investment arbitration. Consistently, even the case to case approach, to any presumed international wrongful act, asan act entailing public or private powers, and the often subtle distinguishing between one and another shall be found as the reasonable criteria to follow, under the guidance of UN – ILC Articles and that of the international jurisprudence of the Center.

3.3 Preliminary issues on the objective element: breach of contract/breach of treaty.

As previously stated, the objective element of the State responsibility is the violation from that State of an obligation, positive or negative, coming out from a norm of international law.

The practice of ICSID Tribunal has often dealt with borderline issues, where the obligation of the State, were encompassed in a contract with the investor. And often those contracts – if anywhere needed – included a provision of deferral of any arising dispute to national courts.

A typical misconduct from a State, for instance, the non-payment of furniture, or the expropriation of a facility, may well be intended as an infringement of contractual obligations, where the investment contract contained a clause precluding expropriation during a certain period of time or providing for mandatory payment terms, or, as well, a breach of a prohibition to expropriate or fair and equitable treatment article under an investment treaty.

Question then arises to determine when and if, a conduct constituting at the same time breach of contract may be qualified as breach of international law, to allow or not Tribunal's jurisdiction. In fact, the international instrument, mainly a BIT, often contains provisions of such broad meaning as to encompass any breach or unfair compliance of a contract. Both instruments, furthermore, include a rule of settlement deferring disputes resolutions to domestic jurisdiction, as far as the contract is concerned, and to the ICSID for any treaty claims.[210]

ICSID Tribunals have then found themselves in a position to set a board of criteria to define its own jurisdiction, distinguishing between contract claims and treaty claims. Notwithstanding the efforts, it must be highlighted that the questions is far from having reached a sound and self-sufficient definition.

The rule is that the responsibility of the State arises when a breach of contract is of such magnitude as to entail the breach of treaty. The criterion is very general, and assessment need a delicate case to case approach. But even in such case when distinction was successfully set, the consequences are not necessarily the same. In fact, whilst it is clear that pure contractual disputes remain at the national level, breaches of both contract and international treaty rule, in presence of a dispute deferral claim contract clause to the domestic jurisdiction, have been eventually considered arbitrable through ICSID notwithstanding such contract clause; in other cases Tribunals had found to be more appropriate to follow domestic jurisdiction first, and only if such jurisdiction did not provide a lawful and fair judgement, resort to ICSID jurisdiction should have taken place.

In the case of *SGS v. Pakistan*,[211] for instance, the Tribunal applying the *prima facie* test for the purpose of jurisdiction, noted that it had to rely:

[210] The exclusiveness of ICSID jurisdiction is also regulated at Convention art. 26.
[211] Societé Générale de Surveillance SA v. Islamic Republic of Pakistan, Case n. ARB/01/13, Decision on Objections to Jurisdiction of 06.08.2003, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 406 ss.

"on the characterization of the case by the investor as long as the facts asserted by the Claimant are capable of being regarded as alleged breaches of the BIT "

In this first phase of the procedure the arbitrators may exercise a margin of appreciation very limited on the issue under consideration, having to reserve its own deep investigation to the phase of the assessment of merit. However, it can be seen that the organ does not uncritically accept the assumption made by the claimant for which the alleged violation of the contract was able to constitute at the same time also a violation of the treaty. The claimant had to makean effort to indicate why the conduct of the State, beyond the contract, was also a breach of international law. The burden of proof was with him entirely.

Similarly, in the case of *SGS v. Philippines*,[212] the Arbitral Tribunal noted:

"provided the facts as alleged by the Claimant and as appearing from the initial pleadings fairly raise questions of breach of one or more provisions of the BIT, the Tribunal has jurisdiction to determine the claim ".

In this sense, the articles 4, 5 and 8 of the UN - ILC Articles, shall be integrated by the BITs or TIPs provisions to construct properly the notion of treaty rule infringed by the State.

The contract itself is not an enough ground: only the violation of a treaty provision is able to allow the jurisdiction of the ICSID Tribunals over a dispute.[213]

Pursuant to art. 12 of the Un - ILC Articles[214] there shall be a violation of an international obligation by a State when an act of its own, whatever its source or nature, does not comply with what is required by the international legislation of reference.

What emerges from reading the article in question is that the only legislation of reference to determine the violation of international obligation is international law. Therefore, the State cannot invoke the compliance of its domestic law to justify its failure to comply such international obligations.

Based on the nature of the obligation violated, both kind of responsibilities may arise at the same time: on the one hand, that deriving from the infringement of the contract of investment; on the other hand, that related to the violation of an obligation of international law.

[212] Societé Générale de Surveillance SA v. Republic of the Philippines, Case n. ARB/02/6, Decision on Objections to Jurisdiction of 29.01.2004, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 518 ss.
[213] See, Noble Ventures Inc. v. Romania, Case ARB/01/11, Award of 12.10.2005, 16 ICSID Reports, Cambridge UP, 2012, ISBN: 978-0-521-192-61-3, pp. 216 ss., para 68 ss.
[214] *Article 12. Existence of a breach of an international obligation. There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character.*

The first case where Tribunal had to deal with such a contention was the *LANCO* case[215]. Argentina, the respondent State, argued that only in principle LANCO was entitled to chose from the multiple resolution mechanisms of the dispute proposed in the BIT stipulated between the United States and Argentina in 1991. But was precluded to do so in the present case. In fact, since the investment resorted from a concession agreement, and such agreement contained a clause deferring disputes to Argentina's courts, the choice from the claimant was made already, and it was for the tribunals of Argentina to deal with concession claim exclusively.

The Arbitration Tribunal, questioning its own jurisdiction pursuant to the BIT, stated that, although there was a clause in the contract which remitted some disputes arising from certain contracts to the jurisdiction of the national courts, such a choice of court clause could not *ipso facto* exclude the competence of ICSID. The reasoning was elaborated and made relation to the same applicable law of Argentina, in order to make null and void, or at least irrelevant andas not even stipulated, the contract clause. The Tribunal in fact, found:

"The Parties could not have selected the jurisdiction of the Federal Contentious-Administrative Tribunals of the City of Buenos Aires because it would hardly possible to select the jurisdiction of courts whose own jurisdiction are, by law, not subject to agreement or waiver, whether territorial, objectively or functionally. As the contentious-administrative tribunals cannot be selected or waived, submission to the contentious-administrative tribunals cannot be understood as a previously agreed dispute-settlement procedure."[216]

In Tribunal's view the possibility of choosing the court contained in the BIT, together with Lanco's request for arbitration at the Center, meet the requirement of prior written consent pursuant to of art. 25 of the Washington Convention.[217]

The Tribunal also notes that, pursuant to the BIT in question, the clause under which the host State and Lanco can make use of Argentine administrative courts were not exclusive. Therefore, nothing forbade the investor to refer to the ICSID Tribunal, thanks to the clause contained in the BIT which expressly contemplates this possibility nor, if preferred, to resort to Argentina's courts.

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[215] LANCO International Inc. v. Argentine Republic, Case n. ARB/97/6, Preliminary Decision on Jurisdiction of 08.12.1998, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 367 ss.

[216] *LANCO* cit. para. 40.

[217] *"The offer made by the Argentine Republic to cover investors under the Argentina - U.S. Treaty cannot be dismissed by the submission to Argentina's domestic courts, to which the Concession Agreement remits",* Lanco v. Argentina, cit. para. 40.

The Tribunal, although not expressly affirming the precedence of BIT articles over contract clauses, impliedly quotes this possibility: only such prevalence – absent other criteria – shall justify the irrelevance of the contractual clause, that shall have been considered as *lex specialis* prevailing to the general consent given through BIT. But the intention of empowering one's own jurisdiction from ICSID Tribunals is evident and not different in logicfrom that of other courts at national and international level.

The approach illustrated above was subsequently confirmed and articulated in *Vivendi.*[218] Following the arbitration ruling of November 2000, the losing party appealed to the Committee for annulment of Tribunal's Award. The applicant, a French company (CGE) withan Argentine subsidiary (CAA), complained for the violation of articles 3 and 5 of the bilateral treaty between France and Argentina on 3 July 1991: the obligation of fair and equitable treatment suffered as a result of non-compliance of the underlying contract signed between the parties.

Pursuant to the BIT in question, the investor had the right to make a choice in this regard to the body to be used for the resolution of any disputes that had arisen with the host State, being able to apply either to the Argentine national judicial system, or to an international arbitration tribunal, inclusive ICSID Tribunals. Once choice was made, it should not be possible to resort to another body (so called *fork in the road* provision).

Argentina objected the lack of jurisdiction of the arbitration panel, since the parties in entering the concession contract had inserted in art. 16, para. 4 a submission clause for all dispute arising thereto to national courts only. According to Argentina, therefore, among the various options provided by the treaty as a means of resolving disputes, the choice carried out in the text of this contract had to be intended as the definitive choice already made pursuing the BIT. Parties entitled to resort to different fora stated to choose Argentina courts. The road fork had already been passed, and the claimant was not entitled to bring a claim before ICSID.[219]

The arbitration panel, in the decision of 2000, recognized on the one hand the existence of the requirements to establish the jurisdiction of the Center; however, on the other side, did not pronounce on the merits of the question submitted to it. According to the panel, the appellant

[218] Compañía de Aguas del Aconquija SA and Vivendi Universal v. Argentine Republic, Case n. ARB/97/3, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 327 ss. Compañía de Aguas del Aconquija SA and Vivendi Universal v. Argentine Republic, Decision on Annulement of 03.07.2002, Case n. ARB/97/3, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 340 ss.

[219] See the resume of arguments of the respondent state in *Vivendi* Award and Decision on Annulment cit.

should first have referred the question to the forum established in the contract and then, in case of denial of justice, resort to arbitration under ICSID required grounding on the BIT".[220]

The ad hoc Committee, in the 2002 cancellation decision, firstly distinguished among breach of contract and breach of BIT claims, every each to be dealt through its applicable law: the contract and Argentinians laws, for the first, the international law for the latter.[221]

Continuing its reasoning, the Committee, after having agreed with the 2000 ruling on the existence of the necessary requisites for jurisdiction, annuls the Award for manifest excess of powers. The Committee renders its decision on the basis of a defect of reasoning. In fact, the Award dismissed the claim because of the mandatory reference to the domestic courts through the contract clause, but affirmed meanwhile its jurisdiction over the dispute. Logically, if the Tribunal was to dismiss the claim for prevalent competence of internal courts it shall have had to dismiss its jurisdiction: if there were jurisdiction, a decision had to be taken on the merits.

It would suffice on the ground of annulment. But the Committee decides to go a step further. It therefore contends that:

"Moreover, the Committee does not understand how, if there had been a breach of the BIT in the present case (a question of international law), the existence of Article 16(4) of the Concession Contract could have prevented its characterisation as such. A state cannot rely on an exclusive jurisdiction clause in a contract to avoid the characterisation of its conduct as internationally unlawful under a treaty"[222]

In other worlds, it is affirmed the distinction between contract claims and treaty claims, and the untouchability under any internal law or contract, of the jurisdiction of the Center established under a BIT: such consent given by a State is firm, and shall not be jeopardized through any further mean, unilateral or bilateral, public or private. According to the Committee, the ascertainment of the alleged violation of the BIT

"is neither in principle determined, nor precluded by any issue of municipal law, including any municipal law agreement of the parties. "[223]

[220] Compañía de Aguas del Aconquija SA and Vivendi Universal v. Argentine Republic, Case n. ARB/97/3, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 345 ss.
[221] Compañía de Aguas del Aconquija SA and Vivendi Universal v. Argentine Republic, Decision on Annulement of 03.07.2002, Case n. ARB/97/3, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 355 ss.
[222] Compañía de Aguas del Aconquija SA and Vivendi Universal v. Argentine Republic, Decision on Annulment of 03.07.2002, Case n. ARB/97/3, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 367 ss.
[223] Decision on Annulment cit., para 102.

Such a position can be considered as a modality through which is declined the broad principle of international law under which no State shall invoke the conformity of its act with domestic law to justify an international offence.[224] But the Committee goes on to state as:

"under Article 8 of the BIT the Tribunal had jurisdiction to base its decision upon the Concession Contract, at least so far as necessary in order to determine whether there had been a breach of the substantive standards of the BIT.

[...]

Claimants should not have been deprived of a decision [...] merely on the strength of the observation that the local courts could conceivably have provided them with a remedy, in whole or in part. Under the BIT they had a choice of remedy".[225]

In fact, if the approach adopted by the Tribunal had been confirmed, it would resort to a general acceptance of the requirement of the prior exhaustion of internal appeals, a requirement generally unrelated to disputes between the State and investors, and inappropriateto the scope pursued by international investment law: attract foreign investor under thepromise of a rapid, impartial and high specialized facility for dispute resolutions, unrelated with the internal legal order of the host State.

Moreover, the decision of the Committee asserts a rule of law which is also a rule of contract interpretation, and a rule on jurisdiction between national and international adjudicationbodies: as far as interpretation and application of contract clauses concerns the assessment ofa treaty breach or a breach of any other rule of international law, ICSID Tribunals have competence to enter into the matter, a competence which is exclusive, originally conferred by the BIT and independent from any other criteria under national law or contract provisions.[226] The dichotomy contract claim – treaty claim, shall then be considered as the ordinary differentiating criterion, but when a clash is likely to happen, the substantive standard set out in the investment treaty, and the jurisdiction of the Center shall prevail.[227]

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[224] UN – ILC Articles, art. 32.

[225] Compañía de Aguas del Aconquija SA and Vivendi Universal v. Argentine Republic, Decision on Annulment of 03.07.2002, Case n. ARB/97/3, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, para 103 – 104.

[226] See also the *Lanco* case: LANCO International Inc. v. Argentine Republic, Case n. ARB/97/6, Preliminary Decision on Jurisdiction of 08.12.1998, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 367 ss.

[227] The ruling in Vivendi case was then confirmed in other rulings as well assumed by the ICSID Tribunals, such as Impregilo S.p.A. v. Pakistan, in which the Tribunal noted that *"a clear distinction exists between the responsibility of a State for the conduct of an entity that violates international law (e.g. a breach of Treaty), and the responsibility of a State for the conduct of an entity that breaches a municipality law contract (i. e. Impregilo's Contract Claim). As noted by the ad hoc Committee in its decision on annulment in*

In the case of *SGS* v. Pakistan[228] the request for arbitration submitted by the appellant was based on the bilateral treaty between Pakistan and Switzerland signed in 1995, where there was an arbitration clause that allowed the parties to remit the settlement of disputes arising from the treaty to the ICSID Tribunals.

However, the concession contract, whose breach was the subject of the claim, was stipulated prior to the conclusion of the BIT. Also, the contract contained a separate dispute settlement clause, devolving all arising disputes to the Pakistani courts.

The Tribunal reaffirmed the doctrine of the dualism contract claim/treaty claim stating that dispute settlement through Pakistani courts only applied to contract breaches, whilst the adjudication under ICSID had as object the treaty breaches. Continuing his reasoning, the Tribunal underlined how:

"the benefits of the dispute settlement agreement provisions of a contract with a State also party to a BIT would fly only to the investor. For that, investor could always defeat the State's invocation of the contractually specified forum, and render any mutually agreed procedure of dispute settlement [...] a dead-letter at investor's choice [...] The Tribunal considers that article 11 of the BIT should be read in such a way as to enhance and balance of benefits in the inter-relation of different agreements located in differing legal orders."[229]

The position expressed was abandoned in the *SGS v. Philippine*,[230] in favor of a position much more State orientated. SGS sought payment under a contract signed in 1991, which, among the others, contained a provision devolving dispute resolution to some local courts. However, the investor decided to submit the case to the ICSID pursuant to art. VIII of the bilateral treaty signed between Switzerland and the Philippines in 1997. The arbitration panel,declares its lack of jurisdiction, claiming as the clause on dispute settlement in previous contract shall prevail over the provisions set out in the subsequent BIT for the reason that the breach claimed was not a BIT breach but a contract breach. More in detail, the BIT contained

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Compañía de Aguas del Aconquija S.A. and Vivendi Universal v. Argentine Republic, the international law rules on State responsibility and attribution apply to the former, but not to the latter ", Impregilo Spa v. Islamic Republic of Pakistan, Case n. ARB/03/3, Decision on Jurisdiction of 22.04.2005, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 245 ss. at para. 210 ss.

[228] Societé Générale de Surveillance SA v. Islamic Republic of Pakistan, Case n. ARB/01/13, Decision on Objections to Jurisdiction of 06.08.2003, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 406 ss.

[229] Societé Générale de Surveillance SA v. Islamic Republic of Pakistan, Case n. ARB/01/13, Decision on Objections to Jurisdiction of 06.08.2003, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 406 ss., para. 168.

[230] Societé Générale de Surveillance SA v. Republic of the Philippines, Case n. ARB/02/6, Decision on Objections to Jurisdiction of 29.01.2004, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 518 ss.

an umbrella clause, under the witch the respondent State promised to not default in any binding commitment with investors. The reasoning may be summarized as follows:

"Article X [of the BIT] makes it a breach of the BIT for the host State to fail to observe binding commitments, including contractual commitments, which it has assumed withregard to specific investment. But it does not convert the issue of the extent or content of such obligation into an issue of international law. That issue (in the present case, the issue of how much is payable for the services provided under the CISS Agreement) is still governed by the investment agreement"[231]

Then, overruling the precedent *SGS case v. Pakistan,* the Tribunal states that:

"The basic principle in each case is that a binding exclusive jurisdiction clause in a contract should be respected, unless overridden by another valid provision ".[232]

Accordingly, the discipline contained in the bilateral treaty cannot prevail over the contract, in compliance with the *lex specialis derogat generali* principle.

The Tribunal, therefore, remits the definition of the *an* and the *quantum* due to SGS to the Philippine Regional Arbitration Courts, as required by the investment contract. Only then can the arbitral tribunal decide whether such non-payment also constitutes a violation of art. X of the BIT or if the regional body had failed to give the fair judgement it was expected, in some way quite similar to *Vivendi* jurisprudence.

3.4 The objective element: standards of protection under international law. The international customary law.

The objective element of State's responsibility is the breach of a standard obligation of protection to foreigners, coming from an international law provision either customary or treaty based.[233]

Whilst treaty based standards will be discussed in following paragraphs, it must be pointed out that many investment treaties, also encompass a "reminder" of international law

[231] See SGS v. Philippines cit., para 134.
[232] SGS v. Philippines cit., para 138.
[233] DOLZER, R., SCHREUER, C., Principles of International Investment Law, Oxford UP, 2. Ed., 2012, ISBN: 978-01-996-5180-1 pp. 5 ss. BORN, Gary B., International Arbitration: Law and Practice, Wolters Kluwer, Netherlands, 2012, ISBN: 978-90-411-4562-8 pp. 427 ss.

protection under customary law, in form of a provision sounding that in any case States shall recognize to investors at least the standard established under international customary law.

That provision, which is seen as residual, was thought to grant a further measure to fill any gap that treaty drafters might had involuntarily left open.

Nevertheless, question arise in defining what this minimum international customary standard shall be. In fact, customary international law provisions, whilst difficult to portrait are even in continuous transformation, following State's practice through laws, treaties andjurisprudence. And one should say that the more treaties, the less room for international customary law, in such a way that treaty provisions about it, shall be considered as superfluous and absorbed by such broad contention as umbrella clauses and fair and equitable treatment requirements.

Instead the very role to play by international customary law, shall arise precisely in case of those investment made in absence of a treaty applicable: the elevation of standards of protection under international investment law practice in last 20 years, eventually had transformed deeply the doctrine of classic investment protection, providing highest standards of protection and fairness for the host States that shall be applicated by domestic courts even in the absence of any specific treaty or law based provision.

Awards dealing with international customary law, are rare, and scarcely incisive, for the basic reason, set above, that when an arbitration arises a BIT exists, and such BIT offers standard of protection for the investor quite more defined in content and scope than the customary law.

Nevertheless, the *Pope Talbot*[234] case, offers a good example of the reasoning of a modern tribunal about the claim for application, among the others, of the customary principles of international investment law. It was a NAFTA claim, ruled through UNCITRAL rules within the ICSID facility. In such case the investor asked for protection of its rights under such provisions of international customary law to be considered as applicable, besides treaty based clauses, grounding its pretension upon a norm of the NAFTA Chapter XI, providing, at all time, for entitlement to ask protection under such broad standard. The Government of Canada did not contend the applicability of customary law, but its threshold. It cited the *Neer* case of 1926 which it considered a well example of customary international law. And noted that, under such standards, the investor had nothing to pretend, since the *Neer* standards were so

[234] Pope and Talbot Inc. v. Government of Canada, (NAFTA) UNCITRAL rules, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 43 ss.

low as the Government had clearly abided at any time. In fact, it contended that under *Neer* the default of the State to international obligations for investments only arises in cases that:

"should amount to an outrage to bad faith, to wilfulneglect of duty, or to an insufficenty of government action so far short of International standards that every reasonable and impartial man would readily recognize its insufficiency".

The Tribunal did not retain itself so much in assessing the actual state of internationalcustomary law, since the dispute could be resolved applying more plain and consistent treaty provisions. Nevertheless it had opportunity to state that the standard of manifest wrongfulnessin *Neer* could be considered as a portrait of the international customary law in force at thetime were decision was rendered, but that in contemporary international investment law, that standard had consistently incremented, by virtue of the great increase of BITs and TIPs that encompass standards of highest protection that, even not directly applicable outside theparties, cooperate in shaping the international custom in a domain far more open to the investors than what it was in the past.

3.4.1 Direct and indirect expropriation. Creepy expropriation.

Expropriation itself is not a wrongful international act under customary or treaty based international law.[235] As far it is expressed and followed by adequate compensation, expropriation is considered a measure acceptable within the sovereign powers of a State to dedicate assets of privates to a public purpose.[236] Nor it can be seen as discriminatory in nature due to the universal application towards nationals and non-nationals.

But rarely questioning of legitimate expropriation arrived at arbitration courts. The arbitration over expropriation measures were brought against indirect or creepy expropriation. In such cases the State does not directly expropriate but prefers, through legislation, to deprive the investment or asset of its value, or reduce the due revenues of that investment, or deprive

[235] DOLZER, R., SCHREUER, C., Principles of International Investment Law, Oxford UP, 2. Ed., 2012, ISBN: 978-01-996-5180-1 pp. 27 ss. BORN, Gary B., International Arbitration: Law and Practice, Wolters Kluwer, Netherlands, 2012, ISBN: 978-90-411-4562-8 pp. 229 ss.

[236] Lena Goldfields (Ad hoc Arbitration Tribunal under Lena Goldfields Ltd – Soviet Union Government Concession Agreement). Lena Goldfields v. Soviet Union, Award of 02.09.1930, in paper from NUSSBAUM, A., Arbitration between the Lena Goldfields Ltd and the Soviet Government, Cornell Law Review, 36 vol., 1, Fall 2950, 1950. Available at: https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1582&context=clr

investors of its powers of manage and control.[237] In point of fact such conducts are equal to expropriation since deprive the owner of its ownership rights. Creepy expropriation, instead of an autonomous expropriation measures, is a way – quite common – in which indirect expropriation is performed: the State grabs, little by little, rights, benefits and utilities from the asset or investment, in such way that single measure might even considered to be lawful, but as a whole, placed in the context of the other measures taken, determine the deprivation of ownership rights of an ordinary indirect expropriation.

The lack of a commonly accepted definition of indirect expropriation, and the threshold not to be passed between a lawful limiting regulation and a regulation tantamount to indirect expropriation, had led among the years at a vast case law, to the which the jurisprudence of ICSID and other fora, has not always given uniform responses. Between the differentiated criteria that tribunals have resorted to, the only relatively reliable criterion is the so called "sole effect". Under such doctrine the existence of an indirect expropriation shall be scrutinized upon the sole effect that such measures had to property rights independently from the public scope alleged: whilst a limitation is tolerated – as part of the general power of the State to regulate – a takeover of fundamental ownership rights is seen as expropriation.[238] Proportionality is also used as a delimitation criterion, since the measures are deemed to be lawful in scope if the sacrifice imposed to the investor for reaching the public purpose goesnot beyond what shall be deemed necessary for the attainment.

The differentiation between lawful and unlawful expropriation, grounded on the legitimate public purpose, is worth, ultimately, to the sole amount of compensation. In fact, ICSID Tribunals, unlike a national administrative court, are deprived from the power to order the State to amend legislation or take positive measures, as restitution, in case an expropriation had occurred without a public purpose. Positive orders of restitution shall be regarded as mere recommendation, eventually to be followed, in order to avoid a higher compensation in case of default. Since only pecuniary obligations are enforceable under the ICSID system, the expropriation (direct or indirect) lawful in purpose, bring as consequence a mere indemnity, a compensation for the economic loss suffered by the investor necessitated for a public policy goal; unlawful expropriation, entails in lieu of restitution, a full compensation for the economic value of the asset and prospected revenues, under the principle of full making good for damage.

[237] See. DOLZER, R., SCHREUER, C. cit. pp. 45 ss. An example of indirect expropriation can be seen at Lena Goldfields case cit.

[238] For an analysis of such jurisprudence see, See. DOLZER, R., SCHREUER, C. cit. pp. 104 ss

States have tried to address the issue on the BITs agreed between them. Nevertheless, such attempts have not ended in true satisfactory results. The main reason is that the same BIT refuses normally to detail what shall be intended as indirect expropriation in the same way as they do with the notion of expropriation itself.[239] And even in those rare cases, where a definition is attempted, its terms results to be such broad in scope (legitimate expropriationfor public interest scope, among whom: public health, national security, environment protection), that necessarily the assessment shall be conducted on a case by case basis.[240]

The case law of ICSID Tribunals is quite rich on that respect.

In *Tecmed*[241] the Tribunal had to determine if certain measures taken by Mexico did indeed deprive investors of their utility in a wrongful manner, as indirect expropriation.

In order to establish whether a measure qualifies as an indirect expropriation, the Arbitral Tribunal believed to carry out a multi-stage analysis.

The first required determining whether the investor had been radically deprived of the use and economic enjoyment of the its investment, i.e. if the assets involved had lost their value or their possible economic use for the owner, as well as the extent of the loss. Also, under customary international law, it turned out an indirect expropriation if the economic value of the use, enjoyment or disposal of the assets or rights affected by the measure is neutralized or destroyed.[242] It involved, thus, consideration of the effects produced on the investor by the measure adopted by the State, regardless of the Government's intentions.

Secondly, the ICSID Tribunal considered it appropriate to verify whether the measure adopted fell within the domain of sovereign powers by the State, within the framework of "police power". Although the ascertainment of the legitimacy of the exercise of this power must be determined only in accordance with national law and before internal courts, the Tribunal asserted that the function attributed to it involved examining the compliance of the measure with the international treaty invoked.

[239] A good example of that are the most BITs cited in the Bibliography of this work.
[240] See the US model BIT, for instance, the BIT USA – Panama, 1982 or the BIT USA – Zaire, 1984.
[241] Técnicas Medioambientales Tecmed SA v. United Mexican States, Case n. ARB(AF)/00/2, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 130 ss.
[242] Further Jurisprudence has set that this requirement is integrated if there is a "substantial deprivation" of the value, use or enjoyment of the investment; decisive for this purpose is the intensity and duration of the deprivation economic suffered by the investor as a result of the measure. See, for instance, *CMS v. Argentina* cit., para 264 and EL Paso v. Argentina cit. para. 284.

According to the ruling, in order to qualify state conduct as expropriation, the third phase of the analysis required the assessment of the proportionality of the disputed measures with the public interest presumably protected by them and with the protection duly offered to investments, considering that the significance of this impact plays a key role in the determination of proportionality. Although even in this ruling the autonomy of the States is emphasized in the balanced assessment between public policies and investment interests, all relevant elements shall be considered. By one side the public purpose, relevance and suitability of the sacrifice imposed over the investor, on the other the rights of the investor to benefit from the investment and risk undertaken, their legitimate expectation on prospected revenues and their right to not be hindered in a way excessive from what was necessary to reach the public purpose. In such assessment the Tribunal expressly referred to the doctrine ofthe European Court of Human Rights relating to the proportionality in expropriation trials.[243]

The findings of *Tecmed* were later to be reaffirmed in *Telenor,*[244] where the Tribunal found it as well established the principle under the which limitation in trade or duties levied were not themselves to be considered as measures of expropriation.

Same considerations were used in the *Azurix* case[245] under reference, once more, to the case law of the ECHR. The need for a reasonable proportional relationship between the means used by the State and the purpose for which they were directed constitutes an element that must be ascertained, together with the legitimacy of the objective, in order to determine the nature of the contested measure. Such proportionality ratio ceases if the investor involved *"bears an individual and excessive burden ".* In such sense, the Tribunal in *Continental Casualties*[246] argued that property limitation of general scope, were to be deemed as tolerable measures not leading to any compensation as far as *"they do not affect property in an intolerable, discriminatory, or disproportionate manner."*

The use of proportionality assessment as a solid parameter for balancing sovereign rights and investor expectations followed, shortly later, in the *LG&E*[247] where the Tribunal found that

[243] Reference of the ICSID Tribunal in Tecmed is to the ECHR, in the case of James and Others v. The United Kingdom, Judgment of 21 February 1986, n. 50, para. 46-47;
[244] Telenor Mobile Communications AS v. Republic of Hungary (ICSID Case No. ARB/04/15). Award (September 13, 2006). Available at:
https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/04/15
[245] Azurix Corp. v. Argentine Republic, Case n. ARB/01/12, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 412 ss.
[246] Continental Casualties cit., para 274.
[247] LG&E Energy Corporation and Others v. Argentine Republic, Case n. ARB/02/1, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 411 ss.

only a proportionality assessment could shed light over the balancing between State rights and investor's right, and that public purpose measures or measures aimed insofar at increasing the general welfare, had to be considered lawful in general, unless disproportioned in detriment of the investor, who shall be entitled, then, of adequate and prompt compensation.

General measures, in the view of the Tribunal[248] shall not normally entail indirect expropriation. They are by nature, emanation of the sovereign attributions of the State. Such contention is even more evident where general worth scopes are pursued.[249] Nevertheless alsogeneral measures may sometimes be equal to indirect expropriation when they are discriminatory in point of fact, or disproportionate imposing unjustified sacrifices.

In *Philip Morris v. Uruguay*, especially, the panel found that in recent trade and investment treaties the possibility of adopting measures aimed at maintenance of public order or the protection of health or morality, in the exercise of powers sovereigns by the State was commonly viewed as not only lawful but even necessitated. In such framework, measures taken by Uruguay in protection of public health were found well grounded, legitimate in purpose and proportionated in measure, dismissing the allegation of the claimant for indirect expropriation through regulatory powers.

3.4.2 The national treatment.

The principle of national treatment has been since the very remote beginning of the international law of foreign investments, a cornerstone of the system, as a clear example ofthe fairness required in business international relationship.[250] Conceived at the very beginning, as a rule protecting the host State against pretentions of aliens to benefit from privileges granted whatsoever, it subsequently arose as a natural complementation of the MFN treatment. The latter provides for non-discrimination compared to other aliens; the

[248] See El Paso cit. and Philip Morris Brand Sàrl (Switzerland), Philip Morris Products S.A. (Switzerland) and Abal Hermanos S.A. (Uruguay) v. Oriental Republic of Uruguay (ICSID Case No. ARB/10/7). Award of the Tribunal (July 8, 2016). Available at: https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/10/7

[249] In such sense, the indications contained in many BITs as the safeguard of security, environment, public health, are not to be intended as limitative and object to strict interpretation, as exceptions of a general rule prohibitive rule. On the contrary indications must be taken as an example of all the others domains that a legislation may regulate limiting or tightening the rights of investors.

[250] BORN, Gary B., International Arbitration: Law and Practice, Wolters Kluwer, Netherlands, 2012, ISBN: 978-90-411-4562-8, p. 29 ss.

former provides for non-discrimination compared to nationals.[251] In fact, the wording of national treatment clauses and that of MFN, almost coincide in many BITs: it is established for instance, that States convene to give foreign investors a treatment not detrimental than that offered to nationals in same circumstances, whilst in MFN the comparison is with the treatment of the most favored nation. Incidentally, one could see that MFN clause equalizes competition conditions with regard foreigners; national treatment equals competition condition in respect to nationals.

In the *Champion* case[252] the Tribunal gave a clear definition of nature and scope of the national treatment clause:

"to promote foreign investment and to guarantee the foreign investor that his investment will not because of his foreign nationality be accorded a treatment less favorable than that accorded to others in like situations".

The national treatment clause may be drafted in general terms, addressing any kind of investment and national measures, or, on the contrary, may indicate specific economic sector to the which only the referred rule applies.

In any case the assessment to make by the tribunal in order to ascertain if a breach had occurred is twofold: first, it must establish if the activity performed by the investor is an investment, in the sense of the ICSID Convention and the applicable BIT; after solvedpositively the first issue, it must be ascertained if foreign investor and an hypothetical internalinvestor were or not in a comparable situation; if further positive response was given the last comparison shall be made about the treatment in broad sense, including legislation, administrative orders, and material acts of Government, State entities or bodies incarnating the attributability of their conducts to the State: if even such further assessment is positive, State's responsibility arises with subsequent rise of the right for the investor to seek termination and removal of unlawful measures and/or compensation for damages suffered.[253]

The test of comparability is the most complex in such framework.

[251] See BORN, Gary B., International Arbitration: Law and practice, cit., p. 42 ss.
[252] Champion Trading Company, Ameritrade International Inc., J.T.J.B. and T.T. Wahba v. Egypt, Decision on Jurisdiction of 21.10.2003, Case n. ARB/02/09, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 400 ss.
[253] *Champions*, cit. para. 127 – 135.

In the *Champion* case, great attention was devoted to the competition sector, with a relevant market analysis related to the operation of claimant undertaking and nationals. The Tribunal said:

"although both kinds of companies operate in the same industry and are subject to same kind of rules, there is significant difference between a company which opts to buy cottonfrom the Collection Centers at fixed prices and a company which opts to trade on the free market, whether or not the company is privately-owned or State-owned or whether the company is national or foreign".[254]

Nevertheless, a broader approach had been suggested in order to not restrict the comparability test to the domain of competition law.[255]

According to the ICSID Tribunal, in the *Siemens v. Argentina* case, through the provision on national treatment of the BIT, each contracting party assumes the obligation to treat citizens of the other contracting party in a manner no less favorable to the treatment accorded to its investors. For the purposes of determining discrimination, it identifies as a primary element the relevance the impact of the measure adopted by the State on the investment.[256]

Indeed, the focus of the analysis is the concrete outcome of the incriminated treatment, and assessment shall be done to concrete and material impairment, prejudice, and economic losses suffered by the claimant: pure theorical or abstract reasonings not leading to any negative outcome, are inadmissible.

Such contention resulted even more clear in *Al Tamimi*[257] where the Arbitral Tribunal had to find if there was a violation of the national treatment envisaged in the US – Oman BIT formulated with the expression *"treatment no less favorable."* It stated that the investor:

"must show that the treatment he and his investment received differed materially and substantially from that received by other domestic Omani investors or their investments ".

[254] *Champion,* cit., para.154. A similar competition – guided test is conducted by the Tribunal in S.D. S.D. Myers Inc. v. Government of Canada, (NAFTA) UNCITRAL rules, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 3 ss.
[255] See, United Parcels Service of America Inc. v. Canada, NAFTA, (ICSID Case No. UNCT/02/1). Award on Jurisdiction (November 22, 2002). Award on the Merits (May 24, 2007). Available at: https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=UNCT/02/1
[256] *Siemens v. Argentina,* cit., para. 320 – 323.
[257] Adel A Hamadi Al Tamimi v. Sultanate of Oman (ICSID Case No. ARB/11/33). Award (November 3, 2015). Available at: https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/11/33

The need for material or substantial proof of the discrimination and, consequently, of the damage suffered by the foreign investor is a transversal element of ICSID rulings.[258]

An ever more cautious assessment shall be made in case of indirect discrimination: when a treatment apparently objective and of general application, determines impairment in practice since the provision at stake requires conditions that are normally possessed by nationals, and that aliens shall access only after high and costly sacrifice or are prevented to access at all.

A fair example was the *Corn Products* case,[259] where the fact that a duty on syrups had to be burdened, in practice, by foreigners only, sufficed for the Tribunal to declare such a measure as breach of national treatment clause under the applicable NAFTA provisions.

The ultimate question arising is that of admissibility of justification in discriminatory measures, either direct or indirect. The BITs or TIPs who addressed the question inserted some exceptions in order to legitimate discriminatory conducts by the State where a public worth goal was at stake, namely: social welfare, health and national security, under condition that such measures were suitable and proportionate. The more complicate case is when the applicable treaty nothing states about. Therefore, two position may be taken: the first more restrictive on investments, considers the attainment to a public goal (if measures taken were suitable and proportionate) is an implicit condition of national treatment clause, in such way that there shall not be any discrimination if impairment is justified by such need;[260] the other one, more open in scope, contends that the absence of justification clauses in treaties, shall be read as encompassing the intention of States to not allow discrimination never, for whatever reasons, similarly to the approach of the EU Treaties. In such theory's view, modern international investment law is looking for a far more extended integration than in the past, thus measures aimed at public purpose, may justify restrictions, but such restrictions shall apply equally, in presence of a national treatment clause, to national or non-national, being otherwise prohibited under international investment law.

[258] See, Franck Charles Arif v. Republic of Moldova (ICSID Case No. ARB/11/23). Award of the Tribunal (April 8, 2013). Available at: https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/11/23

[259] Corn Products International, Inc. v. United Mexican States, NAFTA, (ICSID Case No. ARB(AF)/04/1). Decision on Responsibility (redacted version) (January 15, 2008). Available at: https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB(AF)/04/1

[260] The justification theory, seems to have been built directly from the UN – ILC Draft Articles on State Responsibility, in relation to conditions excluding unlawfulness of State conducts.

Even if a consistent jurisprudence is still lacking in the matter, such last view has been taken by the Tribunal Corn Products, where in Decision on Responsibility, para. 142, the Tribunal stated:

"discrimination does not cease to be discrimination, nor to attract the international liability stemming therefrom, because it is undertaken to achieve a laudable goal or because the achievement of that goal can be described as necessary."

3.4.3 Most Favored Nation treatment.

The Most Favored Nation Treatment (MFN) is a clause included in an investment treaty through the which States compel themselves to attribute to investors from the other party, the treatment they might have conceded or will concede for the future to other States, if more favorable. It is additional to guaranties and treatment already provided to the investor by the legislation in force or those settled through the treaty agreed with the home country.

The MFN operates as a permanent adequation facility in order to provide the beneficiary of the same treatment, if most favorable, that the State shall give to any other foreign investor at any time. Inasmuch it is a further guaranty for incentive capital flows, while guaranties identical playfield for all investors, precluding distortion to competition among foreigners.

The MFN operates implying the identity of circumstances, requiring thus identity of investment and investors conditions. On that regard, the role of the Tribunal is crucial in affirming similarities and distinctions.

ICSID Tribunals have elaborated a relevant case law on the subject. Two main fields may be traced: MFN clauses with effect on substantive rules and MFN clauses with effects on procedural rules.

One of the most important cases when a MFN clause was at stake was the *CMS* controversy.[261] The plaintiff invoked the MFN clause contained in the BIT between United States and Argentina in order to obtain the extension of the application of the integral standards of protection provided for in other BITs negotiated by Argentina, as more favorable than those established in applicable US - Argentina BIT. However, the Court did not dwell on

[261] CMS v. Argentina, cit.

the question of the possibility of extending these standards because of concrete irrelevance in the case.[262]

In *MTD v. Chile*,[263] instead, the MFN played a fairly fundamental role. The private investor based some of its pleads on provisions contained in other Bilateral Investment Treaties by virtue of the MFN clause contained in the BIT Chile - Malaysia. The Tribunal, considered extensible, through the application of the MFN, the fair and equitable treatment clause enshrined in Article 3.1 of the BIT between Denmark and Chile and in Article 3.3 and 3.4 of the BIT between Croatia and Chile.[264]

In the more recent *Ickale v. Turkmenistan*[265] the investor invoked the application of standards such as fair and equitable treatment, full protection and security, non-discrimination, as well as umbrella clauses, through recourse to the MFN clause provided in Article II of the BIT between Turkey and Turkmenistan. The Court in interpreting the clause as formulated in the applicable BIT, referred to Article 31 of the Vienna Convention of '69, considering that the ordinary meaning of the terms, in light of the object and purpose of the treaty, suggested that each State party agreed to treat the investments made within its territory in a way that was no less favorable than the treatment granted in *situations similar* to investments by investors from third countries. One such obligation, accordingly, does not exist in the event that an investment was not in a situation similar to that of the investment made by the third country investor.

The ICSID Arbitrators, in the referred case, rejected the investor's argument, precisely on the ground of similarity. It found that:

"When including the terms "similar situations" [...] the State parties must be considered to have agreed to restrict the scope of the MFN clause so as to cover discriminatory treatment between investments of investors of one of the State parties and those of third State, insofar as such investments may be said to be in a factually similar situation ".[266]

[262] CMS v. Argentina, cit. para. 377.
[263] MTD Equity Sdn Bhd and MTD Chile SA v. Republic of Chile, Case n. ARB/01/7, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 3 ss.
[264] MTD v. Chile, cit. para. 104.
[265] İçkale İnşaat Limited Şirketi v. Turkmenistan (ICSID Case No. ARB/10/24). Award (March 8, 2016). Available at:
https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/10/24
[266] Ickale v. Turkmenistan, cit. Award, para. 332.

In order to similarity – then MFN treatment – applies, investment shall at first be eligible to enter the host State through the applicable BIT (or different instrument of protection). Since, only investments which are covered by the protection of the BIT to the which MFN clause is part, and is addressed, may enjoy such further beneficial treatment.

In *Rizvi v. Indonesia*[267] after detailed examination of the investment, Tribunal sought that it was not eligible to take advantage by the more favorable standard of treatment established in investment treaties, through the MFN clause established in the investor's BIT, since that latter shall not apply to the concrete operation established by the claimant.

The decision, dismissing the Tribunal's jurisdiction, correctly did not enter to question the amplitude and meaning of the MFN clause, since the lack of conformity between the investment and the applicable BIT, was a prerequisite of its application: the MFN clause, in fact, was nothing more than a part of the BIT, and applied only and to the extent that the BIT itself applied.

As per the procedural implications of the MFN clause, the first decision to be analyzed is the *Maffezini*[268] case. In *Maffezini*, the claimant sought to overcome the Spain – Argentine BIT [269] provision, which conditioned the resort to international arbitration to the previous submission of the dispute to national courts and the expiry of a time lapse in national proceedings of eighteen months. The claimant relied on the MFN clause present in that BIT, to apply the procedural rule set in the BIT between Spain and Chile[270], allowing direct resort to ICSID Tribunals. The respondent State contested that MFN treatment was meant to apply only to treatment standards of substantive nature, whilst procedural issues were deemed to be outside its purpose and scope. The question to solve then was to establish if a MFN clause shall be applicable to procedural issues, as a principle, and to the specific issue, in practice.

The Tribunal followed a two-step assessment. On the first it was to establish the coverage of the BIT where the MFN clause was inserted, quoting previous *Ickale* case law. Once the coverage was ascertained, it entered to the core issue of applicability to MFN clause to procedural controversies. After recalling the meaning of international arbitration as a more

[267] Rafat Ali Rizvi v. Republic of Indonesia (ICSID Case No. ARB/11/13). Award on Jurisdiction (July 16, 2013). Available at: https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/11/13

[268] Emilio Agustín Maffezini v. Kingdom of Spain, Case n. ARB/97/7, Decision on Objections to Jurisdiction of 25.01.2000, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 396 ss.

[269] Spain – Argentine BIT, 1991.

[270] Chile – Spain BIT, 1991.

protected forum for investors, and its role as a cornerstone in modern investment law,[271] the Tribunal found that, unless the wording of BITs articles prevented so, there was no reason to consider that, by nature, MFN clauses covered substantive aspects only. And once the applicability of MFN to procedural aspects was affirmed, it remained to declare if such result, valid in general, was applicable to the present case. The matter to solve was in purity an antinomy issue. The BIT contained a procedural regulation, whilst the application of the MFN clause led to another one, more advantageous to the investor. The Tribunal opted for upholding the BIT position: the fact that an MFN clause might led to a procedure more favorable, shall not overrule the express procedure accorded in the main BIT. That one shall be regarded as *lex specialis* agreed by the parties making exception to any more general rule. Such finding was not only consistent within ordinary treaty-interpretation criteria, but even under ICSID Convention art. 26, whose express wording consents States to subordinate resort for arbitration to previous exhaustion of internal remedies. Such kind of provisions, then, if legitimate when complete exhaustion was sought, shall be considered even more lawful, if no exhaustion was pretended, but a mere eighteen time-lapse dispute settlement attempt atdomestic courts.

The *Maffezini* Assessment will be later confirmed in such cases as *Tecmed*[272] and *Siemens v. Argentina*[273]. The latter furtherly deeps into an examination of what kind of provisions are attracted to an investor treatment in force of an MFN clause, concluding that not all more beneficial conditions set in the referenced BIT are suitable to claim, but only those who are not in front contrast with the specific standards – substantial and procedural – accorded through the main BIT, as part of the State consent to arbitration.[274]

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[271] *Maffezzini,* Decision on objections to jurisdiction cit. para. 55: *"Traders and investors, like their State of nationality, have traditionally felt that their rights and interests are better protected by recourse to international arbitration than by submission of disputes to domestic courts, while the host governments have traditionally felt that the protection of domestic courts is to be preferred".*

[272] Técnicas Medioambientales Tecmed SA v. United Mexican States, Case n. ARB(AF)/00/2, Award of 29.05.2003, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 134 ss.

[273] Siemens AG v. Argentine Republic, Case n. ARB/02/8, Decision on Jurisdiction of 03.08.2004, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 174 ss.

[274] The considerations of the Tribunal seem to suggest that, if not so, it would suffice that a BIT brought one only article, that of the MFN treatment. Consequently, that the further articles of treatment, shall be meaningless if overtaken, at any time, but other more advantageous included in other treaties. In the same sense, see the considerations of the Tribunals in, Salini Costruttori Spa and Italstrade Spa v. Kingdom of Morocco, Case n. ARB/00/4, Decision on Jurisdiction of 23.07.2001, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 400 ss., Plama Consortium Limited v. Republic of Bulgaria, (ECT) Case n. ARB/03/24, Decision on Jurisdiction of 08.02.2005, 13 ICSID REPORTS, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 272 ss. In this latter, furthermore, the Tribunal argues that a procedural mechanism to defer arbitration to an ICSID Tribunal is not able to be resorted through a MFN, since the ICSID Convention, expressly requires a

In Menzies[275] a further attempt would be made, from the investor, to resort to ICSID Arbitration through a MFN clause set into the GATS. Without necessity to enter into an articulate argumentation of the different scope of GATS and BITs, and separate jurisdiction between the OMC Dispute Settlement Body and the ICSID Facility, the Tribunal finds it enough to see that consent to arbitration in the meaning of Convention art. 25 must be written and explicit, and it was unlikely that States involved into GATS had intended to submit such disputes to a different settlement than the DSB. More questions, as the direct applicability to the norms of GATS in disputes arising between States and particular were neither addressed.

3.4.4 Full protection and security.

The standard of full protection and security is often worded as an obligation for the State to assure at any time full protection and security to investments and/or investors.

Its wording is quite broad, but its meaning had been reduced to an obligation of means and not of goals: the State accomplishes with its duty by providing for reasonable means to grant the security standard under the treaty. Once those means had been put in place even if such objective is not attained in practice, the Government is free from any responsibility.

Tribunals have pointed out that, moreover, the protection and security envisaged by the provision is the physical security of the investor and integrity of its assets.[276]

Obligations of ideal consistency, as the duty to guarantee a stable and fair playfield in the host State, the duty to cooperate with the investor or not to impair its investment through political maneuvers or consumers' manipulation, despite some isolated statements,[277] shall be brought within the domain of the fair and equitable treatment standard, the residual clause of protection that, at the same time, had arisen as the main ground for international investments claims.

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written consent in order to remove all uncertainty on the matter: a consent resorting through MFN reference to another BIT is *per se* uncertain and even inexistent, failing the element of writing.

[275] Menzies Middle East and Africa S.A. and Aviation Handling Services International Ltd. v. Republic of Senegal, GATS (ICSID Case No. ARB/15/21). Award (August 5, 2016). Available at: https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/15/21

[276] Saluka Investments BV v. Czech Republic, 15 ICSID REPORTS, Cambridge UP, 2010, ISBN: 978-0-521-89989-5, pp. 250 ss. Técnicas Medioambientales Tecmed SA v. United Mexican States, Case n. ARB(AF)/00/2, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 130 ss.

[277] Azurix Corp. v. Argentine Republic, Case n. ARB/01/12, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 412 ss.

3.4.5 Fair and equitable treatment.

The fair and equitable treatment standard is, actually the more interesting standard in international investment arbitration. Not only because, at the current moment, most part of the claims are adjudicated (or dismissed) on the ground of such treatment, but because, its very formulation is as large as to encompass any kind of violation under international law, general or treaty based. It is hard, in fact to not find out that the denial of all the other standards of protection (failure to provide protection under customary law, discrimination under national treatment, expropriation without compensation, failure to assure full protection and security) are treatment unfair and unequitable. But the mere presence of such clause in BITs and TIPs as one more clause from the others, leads to question its own meaning, as a broad all-comprehensive standard, or a standard with proper features and specific meaning undercurrent international investment law.[278]

The OECD Draft Convention on the Protection of Foreign Property[279] referred to the fair end equitable treatment (FET) standard as:

"The phrase "fair and equitable treatment", customary in relevant bilateral agreements, indicates the standard set by international law for the treatment due by each State with regard to the property of foreign nationals. The standard requires that – subject to essential security interests – protection afforded under the Convention shall be that generally accorded by the Party concerned to its own nationals, but, being set by international law, the standard may be more exacting where rules of national law or national administrativepractices fall short of the requirements of international law. The standard required conforms in effect to the "minimum standard" which forms part of customary international law".

It embraced the current view at the time it was drafted, in late sixties,[280] that FET did not changed shape since its first appearance in the Havana Charter of 1948[281] as a mere reference

[278] For a well-informed discussion over the main features of the FET clause, its evolution and current application see the OECD (2004), Fair and Equitable Treatment Standard in International Investment Law, OECD Working Papers on International Investment, 2004/03, OECD Publishing. Available at: http://dx.doi.org/10.1787/675702255435

[279] OECD (2004), Fair and Equitable Treatment Standard in International Investment Law, cit. p. 10.

[280] The OECD Draft Convention on the Protection of Foreign Property was approved on 12 October 1967.

[281] Article 11(2) of the Havana Charter was designed to promote the propagation of FET standard through recommendations of the International Trade Organization in the terms of: *"1. make recommendations for and promote bilateral or multilateral agreements on measures Designed […] 2. to assure just and equitable*

to the standard currently in use under international customary law: in such view the FET was a declination of customary law since the latter was itself a treatment fair and equitable, and had to follow its evolution.[282] At the time, indeed, an evolution of the customary international law had happened, changing from the very basics in *Neer*[283] case to a position improving eventhe national treatment standard, since it was found unfair to charge at all time upon foreigners the same burdens of nationals.[284] [285]

It was unsurprising, thus, that international arbitration of the same years, dealt with FET as a standard of uniformity to international customary law or related it to other treaty clauses, that were themselves, consolidated expression of customary law standards.

In the *AMT*[286] case, for instance, the tribunal found that Zaire was internationally responsible for damages suffered by the investor as consequence of roots and lootings occurred in Zaire. In particular, it found that the State did not engage in providing due protection to foreigners under applicable US – Zaire BIT of 1989. Such failure to act, was a breach of set FET clause, but FET clause did not operate alone: the very first criterion of assessment was conducted through the full protection and security clause, yet present in the BIT, and FET was seen as a framework provision recalling all kind of protection under customary law.[287]

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treatment for the enterprise, skills, capital, arts and technology brought from one Member country to another. See the OECD Draft Convention, cit. p. 3.

[282] See also the findings of the NAFTA Free Trade Commission on its binding interpretation of the FET clause embodied in NAFTA art. 1105, stating that it had to be considered nothing more than a close reference to the current state of international customary law at any time. See, DOLZER, R., SCHREUER, C., Principles of International Investment Law, cit. p. 102. The binding nature of such findings will conditionate further case law, where ICSID (AF) Tribunals in NAFTA claims, shall refrain themselves to attribute to the FET clause a sense different from the equivalence to the international customary law. See, Mondev International Ltd v. United States of America, (NAFTA) Case n. ARB(AF)/99/2, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 181 ss. para. 117 – 119. An approach, whilst legitimate, frankly seeming short in circumstances such as that of the case United Parcel Service of America Inc. v. Government of Canada, (NAFTA) UNCITRAL rules, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 285 ss.

[283] See, the *Neer* case, cit.

[284] See, the findings of the Tribunal, with wide reference to scholars and previous case law *in Mondev cit*. p. 223 ss.

[285] See the considerations of the Tribunal over the evolution of customary international law in ADF Group Inc. v. United States of America, (NAFTA) Case n. ARB(AF)/00/1, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 449 ss.

[286] American Manufacturing & Trading Inc. v. Republic of Zaire, Case n. ARB/93/1, Award of 21.02.1997, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 11 ss.

[287] Echoes of the AMT approach had to follow up with the years, since FET equivalence to international customary law was still quoted in Genin and Others v. Republic of Estonia, Case n. ARB/99/2, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 236 ss.

Even if some Tribunals had tried to push an interpretation of FET somewhat separate from international customary law,[288] it was only outside the NAFTA framework that the concept of *"fair and equitable treatment"* had to develop and grow separately as a propulsor of higher standards of treatment in international investment law.

The first attempt to look for a self-definition of the FET clause arose in a claim grounding on the BIT Spain – Mexico of 1995, in the *Tecmed*[289] case. The BIT in question did provide, at art. 4 that:

"Each contracting party shall guarantee in its territory fair and equitable treatment, in accordance with international law, for the investments made by investors of the other Contracting Party".

As in NAFTA, the concept of fair and equitable treatment was linked to international law, but different from NAFTA Tribunal was not bound to the declaration of the FTA Commission, on relevance of sole international customary law, binding on NAFTA art. 1105 interpretation. Furthermore, since it was a BIT case, nor the case law elaborated in NAFTA arbitration could exercise a dramatic influence.

The interpretative argument of the Tribunal deserves attention. The first step was the recognition that even in this BIT, the treaty united the notion of fair and equitable treatment to that of international law. This statutory aspect should not be overruled. Nevertheless, the reference to international law, was not seen as reference to sole customary law. Indeed, sources of international law, were also sought in general principles of international law,among those principles sitting the principle of good faith and *pacta sund servanda.*

From such operation the Tribunal found a link between FET, good faith and the principle of legitimate expectations. The FET was a standard of treatment asking for good faith to the government to refrain to make through regulatory powers such attempts that were able to breach the legitimate expectations in terms of revenues and business development that investors shall reasonably found legitimate to rely when they entered the investment. In such view, slight changes in public policy or taxation, or, in turn, sacrifices imposed to attain to an overwhelming objective, shall not be deemed as illegitimate, since no investor shall reasonably rely on permanent freezing of legislation – unless such perspective was expressly

[288] Pope and Talbot Inc. v. Government of Canada, (NAFTA) UNCITRAL rules, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 43 ss.
[289] Técnicas Medioambientales Tecmed SA v. United Mexican States, Case n. ARB(AF)/00/2, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 130 ss.

offered to him.[290] In this way what gave rise to compensation to the investor was the breach of such legitimate expectations by acts or omission from the State. Breach that amounted (in an *upstream* diagnosis) in a behavior contrary to good faith, and ultimately in a breach of the fair and equitable treatment clause.

By way of good faith, *Tecmed* Tribunal, substantially brought the international liability of the State for breach of FET clause, into the domain of the civil law. Investment was so constructed as a relationship similar of bilateral contract, governed by the principle of good faith. All the acts contrary to good faith in an investment shall therefore lead to the responsibility of the State. And even if the burden of proof is totally on the claimant, once the threshold of bad faith had been met responsibility shall arise, therefore.

The analysis, nevertheless, is not so tough as to preclude State to justify its conducts. As in other investment standards seen before, State can discharge by stating that the unfair treatment was not so according to the concrete case, since measures were justified by a public scope, were suitable to that scope and were proportionate. Furthermore, the reliance of the investor: the expectations, shall be legitimate, so well founded in international and applicable national law, such latter being in the outmost, the law normally applicable to investments.[291] On such grounds the respondent can successfully win the claim, by relying on the lawful use of its powers to regulate, or stressing the investor's negligence on assessing the applicable legislation.[292]

The fair and equitable default shall normally come from Government authorities or local administrative entities. But in case a specific provision exists, which required previous resort for relief or complete exhaustion of national remedies, such misconduct shall only happen if the author is, as a whole, the judiciary system of the respondent State (or at least that limited piece of jurisdiction covered under the relief applicable provision). In the case of *Vivendi*[293] the presence of a contract provision claiming for the settlement of any contract claim through national tribunals, impaired the right to direct resort to international Arbitration though the

[290] See, precisely, the freezing clause in Romania's legislation to attract foreign investors in particular disadvantaged zones, in Micula I Case, Ioan Micula, Viorel Micula, S.C. European Food S.A, S.C. Starmill S.R.L. and S.C. Multipack S.R.L. v. Romania [I], ICSID Case No. ARB/05/20. Final Award (December 11, 2013). Decision on Annulment (February 26, 2016). Available at:
https://www.italaw.com/cases/697

[291] ICSID Convention art. 42.

[292] Electrabel S.A. v. Hungary, ECT (ICSID Case No. ARB/07/19). Decision on Jurisdiction, Applicable Law and Liability. Award of the Tribunal (25.11.2015). Available at:
https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/07/19

[293] Vivendi Compañía de Aguas del Aconquija SA and Vivendi Universal v. Argentine Republic, Case n. ARB/97/3, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 327 ss.

BIT clause. In essence, the presence of such contractual provisions, shifted the assessment of fair and equitable treatment from the State in broad since, to its courts. And only after such courts had defaulted in their FET obligation, lacking on principles such as due process and impartiality, resort to FET obligation could make sense.

Nevertheless, in other cases, the FET was still anchored to other standard, as international customary law,[294] prohibition to expropriation[295] or national treatment.[296] Notwithstanding the tendency to attribute to FET clause an autonomous meaning, the case law of ICSID Tribunal is still not univocal, and the broad amplitude of BITs and TIPs wording allows such ambiguity to keep standing.

3.4.6. The umbrella clause.

The original scope and purpose of umbrella clauses was to set a final rule to entail the responsibility of the State for any breach of treatment or legal commitment the State entered to and failed to comply, which might not itself be included in any of the previous named standard of protection and that, thanks to the umbrella clause, was elevated to the status of international wrongful act by the investment treaty and submitted, consequently, to international arbitration.[297]

As far as the jurisprudence of the ICSID Courts is concerned, up to 2004, there had been not any ruling that addressed the extent and effects of these clauses in investment disputes

[294] The Loewen Group Inc. and Raimond L. Loewen v. United States of Americas, (NAFTA) Case n. ARB(AF)/98/3, Award of 26.06.2003, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 442 ss.
[295] Southern Pacific Properties (Middle East) Ltd [SPP(ME)] v. Arab Republic of Egypt, Case n. ARB/84/3, First Decision on Jurisdiction of 27.11.1985, 3 ICSID REPORTS, Cambridge UP, 1995, ISBN: 0-521-47512-0, pp. 101 ss.
[296] Waste Management Inc. v. United Mexican States, (NAFTA) Case n. ARB(AF)/98/2, Award of 02.06.2000, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 443 ss.
[297] Umbrella clauses have been formulated in international treaties using lexical choices which are often repeated, by their very significance suffers sensitive variations sometimes limiting to a mere auspice that the host State shall give investors appropriate protection, sometimes requiring a strong commitment to not hinder or anyway jeopardize investors position. By way of example, it may be recalled the one adopted by the United Kingdom and India in the signed BIT in 1994, according to which: *"Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party* "; still, that used by Italy and Jordan in the 2000 BIT, according to *which "Each Contracting Party shall create an maintain in its territory a legal framework apt to guarantee to investors the continuity of legal treatment, including the compliance, in good faith of all undertakings assumed with regards to each specific investor* "; in the BIT signed to Austria and Chile in 1997 *"Promotion, Admission and Protection of Investments […] Each Contracting Party shall observe any contractual obligation it may have entered into towards an investor of the other Contracting Party with regard to investments approved by it in its territory* "; finally, in the 1991 BIT between the United States and Argentina *"Each Party shall observe any obligation it may have entered into with regard to investments".*

between investor and host State. The first case in which a court has faced the examination of umbrella clauses has been the *SGS v. Pakistan* case.

Art. 11 of the BIT between Switzerland and Pakistan established:

"Either Contracting Party shall constantly guarantee the observance of the commitments it has entered into with respect to the investments of the investors of the other Contracting Party ".

A questioning then arose as if the alleged breaches of Pakistan to the investment contract, were as well treaty breaches for the scope of ICSID jurisdiction. The Tribunal found to be so since the wording of the umbrella clause was broad enough to encompass both disputes arising from violations of the BIT, and for those arising from mere breach of contract.

Nevertheless, same Tribunal did not quote the view of the claimant to consider automatically any infringement of contract or misconduct as a breach of an international obligation: the wording of the clause was too open and ambiguous to so aloud.[298]

Furthermore, in order to dispel any interpretative doubt, the Tribunal asked the Government of Switzerland to issue a press release, addressed to the ICSID Secretary, which corroborated the interpretation assumed.

In the case of *Joy Mining*,[299] the arbitration panel was called up to the interpretation of the umbrella clause present in the BIT signed between the UK and Egypt in 1976. The claimant alleged the violation of both the agreement by Egypt, and the contract concluded with the General Organization for Industrial and Mining Project of the Arab Republic of Egypt (IMC).

In examining the clause contained in art. 2 of the treaty, two hypotheses were found applicable in order to bring a contract dispute into the domain of a BIT dispute. The first hypothesis was that the breach of contract corresponded to a clear violation of the rights guaranteed to the investor by the treaty; the second, was the violation of contract rights of such a magnitude as to trigger the Treaty protection.

The resorting jurisprudence appeared to be particularly cautious and poorly incisive. In fact, if there was a default of contractual obligations of such magnitude as to violate the protection

[298] SGS v. Pakistan, cit. at para. 171: "*We believe, for the foregoing considerations, that Article 11 of the BIT would have to be considerably more specifically worded before it can reasonably be read in the extraordinarily expensive manner submitted by the Claimant".*

[299] Joy Mining Machinery Limited v. Arab Republic of Egypt, Case n. ARB/03/11, 13 ICSID REPORTS, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 121 ss.

standards contemplated in the BIT, it would autonomously produce a violation of the international agreement, without the need to resort to the clause referred to in art. 2.

Similarly, even the second hypothesis would not need any regulatory reference in an umbrella clause, since one more, such default constitutes itself a breach of the other provisions in the BIT (i.e. fair and equitable treatment clause).

In such way, the umbrella clause shall become meaningless.

In the case of *Salini v. Jordan*[300] the Arbitrators were called to make interpretation of art. 2 of the investment treaty between Italy and Jordan of 2000, which contained the umbrella clause under which the host State had the obligation:

"to guarantee to investors the continuity of legal treatment, including the compliance, in good faith, of all undertakings assumed with regard to each specific investor "

The object of the rule in question – which might even not met the proper requirements of an umbrella clause – was limited to the creation and to the maintenance of adequate legislation to guarantee the commitments undertaken to every single investor. Therefore, the violation of the clause would be determined solely from the failure to prepare the necessary legal conditions to allow investor to carry out the business adequately, especially through surprising legislation hindering the overall conditions or perspective revenues of the investment. The drafting of the umbrella clause shall lead the Tribunal to dismiss its jurisdiction on the case.

The *El Paso*[301] case arose from the economic and financial crisis which hit Argentina in the three-year period 2000-2002. The measures taken by the Government for address the crisis, particularly by affecting exchange rates between the local currency and the US dollar, to which it was pegged in relation to unilateral pegging, resulted in very heavy losses for the investor American El Paso. The applicant complained of numerous violations, including thosearising from the failure of the State to comply with privatization contracts in the energy field, in clear contrast to the umbrella clause referred to in art. II, para. 2, lett. c) of the 1991 BIT between Argentina and the United States. The wording of that provision was very concise:

[300] Salini Costruttori Spa and Italstrade Spa v. Kingdom of Morocco, Case n. ARB/00/4, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 398 ss.
[301] El Paso Energy Company v. The Argentine Republic, Decision on Jurisdiction of 27th April 2006, ICSID Case No. ARB/03/15. Available at:
https://www.italaw.com/cases/382

"each Party shall observe any obligation it may have entered into with regard to investments ".

The Tribunal went to ascertain, as a matter of law interpretation, whether this provision was able to transform the claims arising from the contracts in treaty claims. The finding was that:

"in conclusion, in this Tribunal view, […] an umbrella clause cannot transform any contract claim into a treaty claim, as this would necessary imply that any commitments of the State in respect to investments, even the most minor ones, would be transformed into treaty claims.

[…]

This far-reaching consequences of a broad interpretation of the so called umbrella clause, quite destructive of the distinction between national legal orders and the international legal order, have been well understood and clearly explained by the first Tribunal, which dealt with the issue of the so called "umbrella clause" in the SGS v. Pakistan case and which insisted on the theoretical problem faced".[302]

But once more the Arbitral Tribunal failed to establish a well-defined criterion of separation between treaty claims and contract claims, and the precise scope and amplitude of the umbrella clause and its meaning.

Not a more satisfactory solution was brought by the later Continental Casualty Company case, another case related to Argentina and its action during the financial crisis.[303]

As in the previous case, the provision in question is contained in art. II, para. 2, lett. c) of the BIT between the United States and Argentina. However, in this case the arbitration panel examined the clause from a more concrete point of view, not focused on the delicate distinction existing between contracts concluded by the State as a commercial operator or as sovereign entity, but on the legal nature of the obligation assumed.

The Tribunal acknowledged the fact that the parties, by inserting this clause, intended to provide a higher and additional guarantee than that provided for by international standards of treatment generally understood. The rationale for that, therefore, lied in the desire to offer

[302] *El Paso Energy cit*., para. 82.
[303] Continental Casualty Company v. The Argentine Republic, Award 5th September 2008, ICSID Case No. ARB/03/09 [Continental v. Argentina], reperibile online presso: https://www.italaw.com/cases/329

further protection to the investor, burdening the host State of further obligations towards investors.

Therefore, the clause in question shall be invocable in case of violation of either contractual obligations either unilateral commitments deriving from regulatory provisions which regulate certain economic sectors.

Applying this interpretation to the case, the arbitration panel rejected entirely the requests presented by the claimant, arguing that:

"the provisions on the Convertibility Law and those of the Intangibility Law cannot be a source of obligations that Argentina has assumed specifically with regard to the Claimant's investment company and which are protected under the BIT's umbrella clause.

Moreover, the provisions of the legislative regime that were changed were addressed either to the generality of Argentina's public or to a wide range of depositors and subscribers of a number of financial instruments ".[304]

An expression, the latter, which consistently relates the unfulfillment of obligations – and its relevance under the umbrella clause – to the standard of national treatment, linking, as many other standards already seen, the specific infringement of the relevant provision, to an infringement of the duty to behave in good faith, fairly and equitably.

[304] Continental Casualty Company cit., para. 82

CONCLUSION AND DISCUSSION

As the case law reported reveals, the construction of the responsibility of State's in ICSID arbitration practice is not different from the general features of such responsibility in international general public law. ICSID Tribunals, in fact, had taken extensively from the general international public law doctrine and the UN – ILC Articles on State responsibility to frame the position of the respondent State in international investment arbitration.

The breach of law in which State incurs is the default to comply with treaty provision relating to investment protection. Such standards vary from treaty to treaty, but the practice had framed a number of clauses to be considered as normal in international arbitration. Although some of them have a consolidated meaning (i.e. nondiscrimination, national treatment, prohibition to expropriation), others necessitated further elaboration through case law.

The umbrella clause, for instance, was conceived as a permanent tool for transformation of any kind of investment breach, to a treaty breach, expanding the jurisdiction of international arbitration to any kind of disputes, even merely commercial disputes or contract claims. Some Tribunal had espoused such contention. But in the great majority of cases, Tribunal refused to extend the umbrella to any dispute investment related, finding that, if the wide meaning had been taken, even the smallest and less significant contract breaches shall find a room for contention in international arbitration. The theory elaborated thereon was the bifurcation contract claim/treaty claim, intending that umbrella could not transform the former to the latter by its mere existence. The concrete meaning of such clause, as having a material meaning, or being superfluous, is still a matter of uncertainty.

Another clause with disputed scope is the fair and equitable treatment, eventually the most innovative standard of protection under international investment law, whose implications will be discussed further.

Claims for breach of contract, almost the unique that were brought to ICSID until late eighties, are thus now flanked by treaty claims, to the extent that the breach of contract is also found as a breach of treaty. Nevertheless, general international law, which was the main reference in such remote contract claims, still continues to play a role.

By one side, in fact, it should be reminded that pure contract claims are impossible to fill, since the standard of unfulfillment or the extent of the reparation to be sought, are not matters of self-compliance through the contract itself. As in domestic law, the mere breach of a

contract shall not itself give rise to any responsibility. Responsibility only arises as consequence of a breach of law. In the same spirit the UN – ILC Draft Articles on State Responsibility keep maintaining that only the breach of an international law provision gives rise to the responsibility of the State.

Breach of contract claims, thus, if no investment treaty applies, are to be set under the framework of State's obligation under international general principle *pacta sunt servanda* and make good for damage. This demonstrates the vitality and centrality of international customary law and general principles of international law. Such body of norms shall neither be seen as frozen in time but, on the contrary, influenced by the practice of jurisprudence, national courts, and States' practice, evolved in present time from the very basics, in *Neer* case, to current protection under fair and equitable principles.

The recognition of centrality of the international law has not however a proper meaning only in cases where no treaty applies. The particular shaping of NAFTA art. 1105 and the binding interpretation offered thereto, equalizes in NAFTA the breach of FET to a breach of international general law. In other terms, in order to intend the FET clause broken, the interpreter in NAFTA claims, has to resort to the general international investment law applicable at the time, something that, by one side, is a difficult task, due to the same unwritten character of the international general law; but, on the other hand, allows theadaptation of customary law to the evolution of fair and equitable treatment through the jurisprudence of other Tribunals, adjudicating outside NAFTA, and whose findings might be taken from NAFTA Arbitrators and found likely to express the current state of such general law provisions. In practice, in the concrete shaping of FET breaches in NAFTA a positive mixture is evident between findings of breaches of FET clause in BIT and findings under NAFTA. Such mixture leads to a substantially uniform application of approaches under the expedient, in NAFTA, of finding the current shape of FET as equal to the evolution of customary international law.

And the meaning and evolution of the FET clause indeed sheds light to the very nature of modern international investment law.

It must be held, as a premise, that the multiple and different provision on investmentprotection (prohibition to expropriation, national treatment, MFN, full protection and security,umbrella and the same FET) share this aspect in common: the protection of the foreign investor, is due, but it is not unconditioned: the duty to protect and make safe the foreign

investment encounters its limits on certain grounds that may be resumed under the criterion of reasonability.

The approach of such criterion may be seen as the most important finding in modern foreign investment law. In fact, once identity of clauses had been matched through the different treaties, the approaches followed by ICSID Tribunals take substantial inspiration from the current jurisprudence of the Court of Justice of the European Union in order to make assessment of lawful State measures in the domain of the internal market.

Notwithstanding the difference in scope (CJEU dealing with internal market, to the scope of repealing domestic provisions in contrast with TFEU; ICSID Tribunals dealing with investments, assessing the unlawfulness of State conducts able to provide for compensation on the claimant) the approach to measures under assessment is almost similar. A first assessment refers to discrimination, always prohibited, direct or indirect. Once the discrimination test is passed, further analysis is made on the worthiness of measures, if legitimated by a public goal and suitable in achieving that goal. If also that stage was passed assessments shifts on proportionality to the measure, comparing the necessity for attaining the legitimate scope and the quantity of sacrifice to be burdened by the affected person.

In recent cases, almost all claims had been resolved pursuant to the FET clause. Such standard indeed, as undetermined, is such broad in scope and meaning as to be considered able to encompass all the other standards, except the MFN treatment and, eventually, the national treatment. Respect to the principle of non-discrimination, it shall be still possible to encompass it in the FET by arguing that, in modern investment law, the duty to not discriminate shall be intended inherent to the system of international arbitration in investments. On that aspect the national treatment present some differences that might preventits coverage under the FET, since a different and more protective treatment of nationals shall be considered normal and not discriminatory, under the commonly accepted view that nationals and non-nationals do not find always in comparable situations.

The study of all investment law under the light of the FET clause has undoubtedly the advantage to take one common approach to kind of submission presented to the Tribunal.

But its significance is even bigger as a clearance of the very nature of the foreign investment: a relationship of contractual nature between State and investor where the latter commits itself in a long, durable and worth project, and the former promises to not hinder nor jeopardize the operation at stake.

In fact, in order to assess the lawfulness of State measures, reference is always made to legitimate expectations of the investor. In other words, the responsibility of the State for breach of the FET clause, only arises if the conduct of the State breaches the legitimate expectations of profits that investor was entitled to pretend.

The term legitimate expectations is per se an element of guarantee and self-reliance: those expectations whose breach gives rise to compensation are only such that were legitimate, in the sense that, after a duly due diligence of the host State economy and legislation and promises made by State officials, the investor had fairly relied on.

Legitimate expectations, in particular, shall not arise if the investor assessment in legislation and financ, were short of accuracy. In this case legitimate expectations equal the duty of diligence.

But they can duly arise if through meanings of legislation, host State promised to freeze a legislative or financial condition during a certain period of time, even if, under domestic law, withdrawal of such measures shall always be possible notwithstanding previous commitment. And in this case legitimate expectations make reference to the principle of good faith.

In any case, the element to bear in mind during the assessment of legitimate expectations is the balance of the investment risk: such risk shall always be bore by the investor and is inherent to the investment as qualified by ICSID Tribunals. Nevertheless, such risk shall not be artificially or unjustly raised by the Government action: in those cases, a breach of the FETclause would be likely to be found.

Under such theorical framework, the act of the State giving rise to compensation, shall be seen as the breach of the equilibrium of the ongoing contractual relationship of the investment, then as an autonomous unlawful act.

The contention of the Government, in fact, only is suitable to have sense if framed into the holistic frame of the investment, the risk undertaken by the investor and its impairment by virtue of an act contrary to good faith.

Such aspect distinguishes radically the legitimate expectations as described to the doctrine of legitimate expectations in administrative law. In the former case, the legitimate expectations are nothing more than an expression of fairness, and the natural equilibrium of the investment relationship when commitment was made. Its breach, in civil claims, gave rise to damages and resolution of the contract. In international investment law, mainly to compensation.

The notion of legitimate expectations in administrative law, is of different origin and purpose: it is used as an estoppel to refrain the administration from annulling previous illegitimate act or to refrain it from passing regulations that it is entitled to pass. In both cases, precedence is given to the concrete factual situation despite the strict legality: the administration had the power to annul an act of favor to the claimant released unlawfully (i.e. an authorization or a license) but shall refrain to do so in view of the reliance such particular delivered over the administration act and statements. On the same way, the administration is entitled to pass a legislation (i.e. an expropriation order) but shall get an estoppel to do so, if had previously passed regulation guaranteeing the commitment to not expropriate for a certain period of time and, relying to that statement, particulars had made investments that shall take advantage of the promised freeze of legislation.

But the fortune that international arbitration had met in recent years is also due to the inherent balance of the remedies Tribunal shall render in view of compensation.

In fact, even if *in rem* obligation are possible to be issued (i.e. positive or negative obligations to act or refrain to act, enact or amend legislation), Tribunal had always found themselves unlikely to order such commitments, not feeling very comfortable with the role of an administrative court. When they did so, they did in such general terms, as to enter the less possible in the discretionary domain of the condemned State.

On the contrary, the normality of judgements is through an order for compensation to be made that shall equal the loss of the investors in terms of financial direct losses and perspective revenues defrauded expectations. Such is the only obligation enforceable and, at the time that satisfies investors pretentions, gives to the State liberty to legislate internally at his will.

The final aspects of the ICSID Arbitration is the execution of arbitral awards. And it is the cornerstone of the Convention.

In fact, the tendential parity of arms that is assured at any time in the proceedings between investor and States, disappears as soon as, from the golden hearing halls of the ICSIDfacilities, at World Bank, parties come back to their current lives.

Once award is rendered, the Tribunal ceases its functions and the very next issue is the willingness of the loosing State to pay its obligations. It is needless to say that, forcing a neglect party to pay, is not an easy job, even at national level. Practitioners of law had to face daily with occurrences as the insolvency of the debtor, previous cession of assets to a

fiduciary, or liquidation and fund transfers to unknown destinations. A trial that had been going on years, might for such a conduct, turn itself in a non-sense time losing application.

Such ordinary problems are increased when the counterparty is a sovereign. In all jurisdictions States enjoy some kind of immunity, a status recognized and legitimated at international level as well. Such privilege is not itself meaningless: States are subject entrusted of basic functions both internationally and at national level. In order to carry on its activity, the State needs funds and, it cannot be acceptable the idea that those funds or assets, dedicated to a public purpose, in the benefit of a general collectivity, shall be redressed to the benefit of one single claimant.

On the other hand, the system needs that awards shall be executed. Award useless shall impair the resort to international arbitration, in the same way that, prior to their institution, investor lacked confidence in internal courts of host States. Which ultimately turns in disadvantage of the host State itself, who is deprived of foreign investment.

In such framework the feature of a disposition which binds the State to abide with pecuniary obligations, forces all the member States of the Convention to recognize the award on the sole basis of the certification provided by the Secretary General, and allows its enforcement under any jurisdiction where condemned State maintains assets at the same condition of a final judgement of the State of execution is, of course, a relevant guarantee for the claimant and a good monitor for the State, which shall not commit itself into operation he might be not willing to perform by its side.

But the very interest of this mechanism, is its ability to relate the international and domestic law.

Convention art. 54 is the ring between the ICSID system and the domestic legal order. An interpretation only operative of the provision does not gets its advanced point: the equivalence between award and final judgement of a national court.

The election of the criterion of equivalence, shall not be taken for granted. It is, indeed, a far more complex issue, rich of practical implications.

In a world where sovereignty is fragmentated and international and supranational courts abound, it should not sound extravagant if such provision was drafted in a way as to attribute awards a superior force than domestic judgements. It should neither sound extravagant at the time where Convention was approved: the primacy of international adjudications and proceedings over national ones, was a fair principle even at that time, and the overwhelming

authority attributed to the obligations arising from some treaties, as the UN Charter, or the Statute of the ICJ, went in that precise direction.

But the choice of the Convention was more prudent. By way of equivalence, art. 54 gives room to any such reservation in enforcement that shall happen even within an enforcement sought for a local decision. Here, the Convention makes an act of reliance to the soundness and maturity of national legal orders: only severe reasons shall impair therefore the ordinary enforcement of a final judgement, and if a State so decided for its national tribunals, it shouldbe either possible to consider such reasons justified even with respect to the final award.

And reasons might be many, since enforcement is not a plain and sound procedure. An award shall impair the balance of the State; it may had been pronounced completely outside ICSID jurisdiction, and ad hoc Committee, shall have unlawfully endorsed it. It might be manifestly unjust, or might have condemned, personally, high officials as if they were directly responsible towards claimants.

They are school examples, of course, but provisions shall be thought to cover all possible cases: if execution was intended to be precluded to national judgements in identical situation, same treatment is justified under Convention art. 54.

A last comment to shed on art. 54 is its systematic role. As said before, art. 54 is the ring uniting national law to the ICSID Convention. But it is also the ring that unites ICSID system to any other international system of economic cooperation.

If member States of ICSID Convention were to decide, at some stage, to build a stronger economic integration among them, giving primacy to the norms of primary or secondary legislation they were to adopt thereof, nothing in the ICSID Convention shall prevent them to do so. And norms, decision and judgements, enjoying such primacy over national legislation, shall join the same primacy over ICSID awards.

This flexibility and adaptability of the Convention, united with its recognized function as a leading specialized institution in international investment disputes, will keep maintaining ICSID as a valid alternative to dispute settlement at national level, and among other arbitration institutions worldwide. At the same time, its concentration under a stable institution, will grant consistency and predictability of its jurisprudence in the benefit of investors and States.

Such being the main features of international arbitration, a theme for debate shall be the future of ISDS dispute settlement body in the context of future evolution of international investment law, in particular, and the international economic integration, in broader terms.

The leading position of ICSID among the other arbitration institutions is a matter of fact, which cannot be denied. But a whole different question is if the economic integration through investments (and arbitration) is or not an effective mean or it should be better to pursue integration goals through more politicized bodies provided with normative powers as the EU.

A response limited in alleging the great difference between one and the other model and refusing to address an answer in view of non-comparability of circumstances had to fall short.

The question in fact, is not compare two concrete institutions but two abstract models: a model of supranationalism promoting integration through relevant cession of sovereigntyfrom the member States to common institutions and a lighter model, where integration is left completely on the hands of the parties involved in an investment relationship.

The response, as always, shall not be unique. Integration through political institutions is obviously more effective, but it implies sacrifice in terms of cession to sovereignty and even democracy representation, which can be bore only if supported by a strong political will, and support from the citizens of the member States. A will which always swing from participation, in seasons of economic wealth, to an open refusal, in times of economic crisis. Such swings, in supranational systems have to be managed through political maneuvers: but the same bifurcation between national democracy and as supranational interest, engender difficulties in coordination and coherent position between national Governments and union policy.

Such difficulties are less evident in international investment law, where the aforementioned swings are respondent automatically by a shortening of foreign investments, and eventually unlawful attacks to the property of foreigners, are compensated through arbitration.

As is evident, the model is not one for all. Integration shall not be considered as a *per se* worthy objective. The reason of the naissance and development of the national State, has indeed its reasons to the multiple and daily compromises that particulars and institutions have to make daily, renouncing to some of their pretentions to the common benefit. It requires clearly a strong conscience of unity, that may not be deemed to be the same in all time and circumstances.

It shall than be possible to frame the level of international cooperation, shaping it accordingly to the more suitable needs that it is called to face, and the concrete political and social situation of the subjects involved.

Nothing prevents States to introduce further and further processes of integration if such was their will. Such process may even lead to the formation of sovereign federations. But in those cases where such a result shall be deemed as impossible or unlikely to happen, integration through investment arbitration, shall be considered as a practical and different means to attain the scope of progressive growth in economics and foreign relations.

The integration through trade pursued by the WTO is another example of such progressive integration.

In this frame, international arbitration shall not be demonized, as the definitive surrender of democracy to capitalism, nor glorified as the ultimate mean of international cooperation. It must be taken for what it is and justified following the aims it was established for: a means, among others, of international integration through investments directed to the increase of welfare through flows of capitals and expertise locally based projects.

BIBLIOGRAPHY

AGO, R., *Scritti sulla responsabilità internazionale degli Stati*, I vol., Jovene, Napoli, 1979.

AGO, R., *Scritti sulla responsabilità internazionale degli Stati*, II vol., p. 1, Jovene, Napoli, 1986.

AGO, R., *Scritti sulla responsabilità internazionale degli Stati*, II vol., p. 2, Jovene, Napoli, 1986.

ALDRICH, G. H., *The Jurisprudence of the Iran – United States Claims Tribunal,* Oxford UP, 1996, ISBN: 0-19-825805-4.

BORN, Gary B., *International Arbitration: Law and Practice,* Wolters Kluwer, Netherlands, 2012, ISBN: 978-90-411-4562-8.

CONFORTI, B., *Diritto Internazionale,* ESI, Napoli, 12. Ed., 2021, ISBN: 978-88-939-1999-9.

CRAWFORD, J., *Los artículos de la Comisión de Derecho Internacional sobre la Responsabilidad Internacional del Estado. Introducción, texto y comentarios,* Dykinson, Madrid, 2004.

DIEZ DE VELASCO, M., *Instituciones de Derecho Internacional Público,* Tecnos, Madrid, 17. Ed., 2009, ISBN: 978-84-309-4950-2.

DOLZER, R., SCHREUER, C., *Principles of International Investment Law,* Oxford UP, 2. Ed., 2012, ISBN: 978-01-996-5180-1

MONACO, R., CURTI GIALDINO, C., *Manuale di Diritto Internazionale Pubblico,* UTET, Torino, 3. Ed., 2009, ISBN: 978-88-598-0372-0.

MOREIRO, C. J., *The Convergence of Recent International Investment Awards and Case Law on the Principle of Legitimate Expectations: Towards Common Criteria Regarding Fair and Equitable Treatment?* European law review, ISSN 0307-5400, n. 3, 2017, págs. 402-419.

OECD (2004), *Fair and Equitable Treatment Standard in International Investment Law,* OECD Working Papers on International Investment, 2004/03, OECD Publishing. Available at: http://dx.doi.org/10.1787/675702255435

RAHMATULLAH, K., *The Iran United States Claims Tribunal. Controversies, Cases and Contribution*, Nijhoff, Dordrecht, 1990, ISBN: 0-7923-0633-3.

SCHREUER, C. H., *The ICSID Convention: A Commentary*, Cambridge UP, 2. Ed., 2009, ISBN: 978-05-115-9689-6.

WEILER, J. H. H., *The EU, the WTO, and the NAFTA. Towards a Common Law of International Trade?* Oxford UP, 2000, ISBN: 0-19-829874-9.

MATERIALS

A. LEGISLATION

1. INTERNATIONAL TREATIES.[305]

A. Treaties with Investment Provisions (TIPs).

A.1 Bilateral TIPs

- FTA Chile – Colombia, 2006.
- FTA Oman – United States, 2006.
- FTA Peru – United States, 2006.
- FTA United States – Colombia, 2006.
- US Panama Trade Promotion Agreement (TPA), 2007.
- FTA Canada – Colombia, 2008.
- FTA Canada – Peru, 2009.

A.2 Multilateral TIPs

- Agreement on Promotion and Protection and Guarantee of Investments among Member States of the Organization of the Islamic Conference, 1981.
- North America Free Trade Agreement, 1992 [no longer in force].
- Energy Charter Treaty (ECT), 1994.
- FTA CARICOM - Dominican Republic, 1998.
- FTA Central America – Panama, 2002.
- FTA CAFTA - Dominican Republic-Central America Free Trade Agreement, 2004.
- GATS, 1995.

[305] Treaties are cited in chronological order. The official text of any investment treaty cited hereinafter (BITs and TIPs) is available at the website of the United Nation Conference on Trade and Development (UNCTAD), Investment Policy Hub, International Investment Agreements Navigator (last access: 28.05.2021): https://investmentpolicy.unctad.org/international-investment-agreements

B. Bilateral Investment Treaties (BITs).

- BIT UK – Egypt, 1975.
- BIT Indonesia – UK, 1976.
- BIT Senegal – Netherlands, 1979.
- BIT Cameroon – Belgium/Luxembourg, 1980.
- BIT UK – Senegal, 1980.
- BIT Malaysia – UK, 1981.
- BIT USA – Panama, 1982.
- BIT China – Belgium/Luxembourg, 1984 [no longer in force].
- BIT Zaire – USA, 1984.
- BIT Netherlands – Turkey, 1986.
- BIT USA – Granada, 1986.
- BIT Cyprus – Bulgaria, 1987.
- BIT Netherlands – Hungary, 1987.
- BIT UK – Hungary, 1987.
- BIT Hungary – Switzerland, 1988.
- BIT Belgium/Luxembourg – Burundi, 1989.
- BIT Argentina – Italy, 1990.
- BIT Morocco – Italy, 1990.
- BIT Albania – Italy, 1991.
- BIT Algeria – Italy, 1991.
- BIT Belgium/Luxembourg – Algeria, 1991.
- BIT Chile – Spain, 1991.

- BIT Germany – Argentina, 1991.
- Greece – Czech Republic, 1991.
- BIT Hungary – Norway, 1991.
- BIT Netherlands – Venezuela, 1991.
- BIT Spain – Argentina, 1991.
- BIT USA – Slovak Republic, 1991.
- BIT Australia – Indonesia, 1992.
- BIT Cyprus – Greece, 1992
- BIT Lithuania – Norway, 1992.
- BIT Switzerland – Paraguay, 1992
- BIT Turkey – Kazakhstan, 1992.
- BIT Turkey – Turkmenistan, 1992.
- BIT Turkey – Uzbekistan, 1992.
- BIT USA – Kazakhstan, 1992.
- BIT Ecuador – USA, 1993.
- BIT France – Peru, 1993.
- BIT Greece – Albania, 1993.
- BIT Italy – Mongolia, 1993.
- BIT Turkey – Jordan, 1993.
- BIT Ukraine – Germany, 1993.
- BIT Paraguay – Peru, 1994.
- BIT Greece – Georgia, 1994.
- BIT Spain – Peru, 1994.
- BIT UK – India, 1994.

- BIT UK – Tanzania, 1994.
- BIT Ukraine – USA, 1994.
- BIT Venezuela – Barbados, 1994.
- BIT Venezuela – Portugal, 1994.
- BIT Georgia – Israel, 1995.
- BIT UK – Romania, 1995.
- BIT UK – Turkmenistan, 1995.
- BIT Mexico – Argentina, 1996.
- BIT North Macedonia – Serbia, 1996.
- BIT Switzerland – North Macedonia, 1996.
- BIT UK – Romania, 1996.
- BIT Ukraine – Austria, 1996.
- BIT Austria – Bulgaria, 1997.
- BIT Finland – Bulgaria, 1997.
- BIT France – Moldova, 1997.
- BIT Germany – Philippines, 1997.
- BIT Greece – Romania, 1997.
- BIT Israel – Czech Republic, 1997.
- BIT Jordan – USA, 1997.
- BIT Lebanon – Italy, 1997.
- BIT Belgium/Luxembourg – South Africa, 1998.
- BIT Belgium/Luxembourg – Venezuela, 1998.
- BIT Mexico – France, 1998.
- BIT Oman – Yemen, 1998.
- BIT Uruguay – Switzerland, 1988.

- BIT Denmark – Egypt, 1999.
- BIT North Macedonia – Austria, 2001.
- BIT Sweden – Romania, 2002.
- BIT Netherlands – Kazakhstan, 2002.
- BIT Spain – Guatemala, 2002.
- BIT Equatorial Guinea – Spain, 2003.
- BIT China – Belgium/Luxembourg 2005.
- BIT Montenegro – Cyprus, 2005.
- BIT Colombia – Switzerland, 2006.
- BIT China – South Korea, 2007.
- BIT Colombia – India, 2009.
- BIT Canada – Slovak Republic, 2010.
- BIT Canada – Romania, 2011.
- BIT Japan – Iraq, 2012.

C. Other Treaties.[306]

- IBRD Articles of Agreement, Bretton Woods, 1944.
- UN New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, of 1958.

[306] All links were las accessed 28.05.2021.
The text of the ICSID convention is available at ICSID website, joint with several official publications and data: https://icsid.worldbank.org/resources/rules-and-regulations/convention/overview
The text of the UN Convention on Jurisdictional Immunities of States and their property, is available at: https://treaties.un.org/doc/source/RecentTexts/English_3_13.pdf
The Text of IBRD Articles of Agreement, is available at the World Bank website: https://www.worldbank.org/en/about/articles-of-agreement/ibrd-articles-of-agreement
The text of UN New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is available at dedicated website: https://www.newyorkconvention.org/english

- Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (ICSID), Washington, 1965.

- United Nations Convention on Jurisdictional Immunities of States and Their Property, 2004 [not in force].

2. NATIONAL LEGISLATION ON INVESTMENT PROMOTION.[307]

- Guinea Investments Law, 1987.

- Papua Investment Promotion Act, 1992.

- Kazakhstan Foreign Investment Law of 1994.

- Nigerian Investment Law (Decree No 16 of 1995), 1995.

- Tanzania Investment Law, 1997.

- Uzbekistan Law 611-I "On Guarantees and Measures for the Protection of Rights of Foreign Investors, 1998.

- El Salvador Investment Law, 1999.

- Venezuela Investment Law, 1999.

- Senegal Investment Code, "Loi No. 2004-06", 2004.

- Albanian Law 7764 "On Foreign Investment" as amended by Law 10316, 1990 - 2016.

MATERIALS – WEBOGRAPHY

(Last access: 28.05.2021)

- History of the ICSID Convention (voll. 1 – 4)

  https://icsid.worldbank.org/resources/publications/the-history-of-the-icsid-convention

[307] National legislation on investment protection is presented in chronological order. It is cited in "short", as it appears at the UNCTAD website, Investment Policy Hub, Investment Laws Navigator, and has been accessed through the English translation available therein. The text of the national legislation cited in English is available at (last access: 28.05.2021:
https://investmentpolicy.unctad.org/investment-laws

- ICSID Caseload Statistics, Issue 2020-2

  https://icsid.worldbank.org/sites/default/files/publications/The%20ICSID%20Caseload%20Statistics%20%282020-2%20Edition%29%20ENG.pdf

- ICSID Convention, Regulation and Rules (current version: 2006)

  https://icsid.worldbank.org/sites/default/files/documents/ICSID%20Convention%20English.pdf#search=icsid%20convention

- ICSID Convention Institution Rules (current version: 2003)

  https://icsid.worldbank.org/resources/rules-and-regulations/convention/institution-rules

- ICSID Administrative and Financial Regulations (current version: 2006)

  https://icsid.worldbank.org/resources/rules-and-regulations/convention/administrative-and-financial-regulations

- ICSID Arbitration Rules (current version: 2006)

  https://icsid.worldbank.org/resources/rules-and-regulations/convention/arbitration-rules

- ICSID Conciliation Rules (current version: 2006)

  https://icsid.worldbank.org/resources/rules-and-regulations/convention/conciliation-rules

- ICSID Additional Facility (AF) Rules (current version: 2006)

  https://icsid.worldbank.org/resources/rules-and-regulations/additional-facility-rules/overview

  Schedule A: ICSID (AF) Fact-Finding Rules;

  Schedule B: ICSID (AF) Conciliation Rules;

  Schedule C: ICSID (AF) Arbitration Rules;

- ICSID Model Clauses

  https://icsid.worldbank.org/resources/content/model-clauses

- UNCITRAL Arbitration Rules (current version: 2013)

https://uncitral.un.org/en/texts/arbitration/contractualtexts/arbitration

- UN Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with Commentary, Yearbook of the International Law Commission, 2001, vol. II (Part Two), corrected by document A/56/49(Vol. I)/Corr.4.

  https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf

B. JURISPRUDENCE

I. INTERNATIONAL COURTS AND TRIBUNALS

I.1 ICSID CASES (ICSID REPORTS).[308]

*Holiday Inns v. Morocco – Some legal Problems***,** report on *The First "World Bank" Arbitration,* LALIVE, P., 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 645 ss.

Adriano Gardella Spa v. Government of Cote d'Ivoire, Case n. ARB/74/1, Award of 29.08.1977, 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 283 ss.

Kaiser Bauxite Company v. Government of Jamaica, Case n. ARB/73/3, Decision on Jurisdiction and Competence of 06.07.1975, 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 296 ss.

AGIP Spa v. Government of the People's Republic of the Congo, Case n. ARB/77/1, Award of 30.11.1979, 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 306 ss.

Benvenuti & Bonfant v. Government of the People's Republic of the Congo, Case n. ARB/77/2, Award of 08.08.1980, 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 330 ss.

[308] All the cases referenced in ICSID REPORTS, regardless of their origin as ICSID Arbitration, or ad hoc Arbitrations under Additional Facility Rules or UNCITRAL rules, are presented following the official order of appearance at each volume of ICSID REPORTS. At the end of the research it has been possible to access to only first 16 volumes edited. The rest of the cases – including cases not published in ICSID REPORTS – have been processed through web access at the case law database of ICSID website, and are cited on chronological order of the claim registration at the Center.

Amco Asia Corp., Pan American Development Ltd & PT, Amco Indonesia v. Republic of Indonesia, Case n. ARB/81/1, Decision on Jurisdiction of 25.09.1983, 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 377 ss.

Amco Asia Corp., Pan American Development, Ltd & PT, Amco Indonesia v. Republic of Indonesia, Case n. ARB/81/1, Decision on Provisional Measures of 09.12.1983, 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 410 ss.

Amco Asia Corp., Pan American Development Ltd & PT, Amco Indonesia v. Republic of Indonesia, Case n. ARB/81/1, Award on the Merits of 20.11.1984, 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 413 ss.

Amco Asia Corp., Pan American Development Ltd & PT, Amco Indonesia v. Republic of Indonesia, Case n. ARB/81/1, Decision on Annulment of 16.05.1986, 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 509 ss.

Amco Asia Corp., Pan American Development Ltd & PT, Amco Indonesia v. Republic of Indonesia, Case n. ARB/81/1, (R.C.),[309] Decision on Jurisdiction of 10.05.1988, 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 377 ss.

Amco Asia Corp., Pan American Development Ltd & PT, Amco Indonesia v. Republic of Indonesia, Case n. ARB/81/1, (R.C.), Award of 05.06.1990, 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 569 ss.

Amco Asia Corp., Pan American Development Ltd & PT, Amco Indonesia v. Republic of Indonesia, Case n. ARB/81/1, (R.C.), Decision on Supplemental Decision and Rectification of 10.10.1990, 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 638 ss.

Klockner Industrie-Anlagen GmbH, Klockner Belge SA & Klockner Handelmaatschappij BV v. Republic of Cameroon & Societé Cameraunaise des Engrais SA [Klockner I], Case n. ARB/81/2, Award of 21.10.1983, 2 ICSID REPORTS, Cambridge UP, 1994, ISBN: 0-521-46340-8, pp. 3 ss.

Klockner Industrie-Anlagen GmbH, Klockner Belge SA & Klockner Handelmaatschappij BV v. Republic of Cameroon & Societé Cameraunaise des Engrais SA [Klockner I], Case n. ARB/81/2, Dissenting Opinion on the Award of 21.10.1983, 2 ICSID REPORTS, Cambridge UP, 1994, ISBN: 0-521-46340-8, pp. 77 ss.

Klockner Industrie-Anlagen GmbH, Klockner Belge SA & Klockner Handelmaatschappij BV v. Republic of Cameroon & Societé Cameraunaise des Engrais SA [Klockner I], Case n. ARB/81/2, Decision on Annulment of 03.05.1985, 2 ICSID REPORTS, Cambridge UP, 1994, ISBN: 0-521-46340-8, pp. 95 ss.

Societé Ouest Africaine des Bétons Industriels [SOABI] v. State of Senegal, Case n. ARB/82/1, Decision on Jurisdiction of 01.08.1984, 2 ICSID REPORTS, Cambridge UP, 1994, ISBN: 0-521-46340-8, pp. 164 ss.

[309] (R.C.): *Resubmitted case*.

Societé Ouest Africaine des Bétons Industriels [SOABI] v. State of Senegal, Case n. ARB/82/1, Award of 25.02.1988, 2 ICSID REPORTS, Cambridge UP, 1994, ISBN: 0-521-46340-8, pp. 190 ss.

Societé Ouest Africaine des Bétons Industriels [SOABI] v. State of Senegal, Case n. ARB/82/1, Dissenting Opinion on the Award of 25.02.1988, 2 ICSID REPORTS, Cambridge UP, 1994, ISBN: 0-521-46340-8, pp. 277 ss.

Societé Ouest Africaine des Bétons Industriels [SOABI] v. State of Senegal, Case n. ARB/82/1, Declaration of the President of the Tribunal of 25.02.1988, 2 ICSID REPORTS, Cambridge UP, 1994, ISBN: 0-521-46340-8, pp. 333 ss.

Tesoro Petroleum Corporation v. Trinidad and Tobago, report on *The First ICSID Conciliation,* NURICK, L., SCHNABLY, S. J., Case n. CONC/83/1, 2 ICSID REPORTS, Cambridge UP, 1994, ISBN: 0-521-46340-8, pp. 399 ss.

Liberian Eastern Timber Corporation [LETCO] v. Government of the Republic of Liberia, Case n. ARB/83/2, Award of 31.03.1986, 2 ICSID REPORTS, Cambridge UP, 1994, ISBN: 0-521-46340-8, pp. 343 ss.

Liberian Eastern Timber Corporation [LETCO] v. Government of the Republic of Liberia, Case n. ARB/83/2, Decision on Rectification of 14.05.1986, 2 ICSID REPORTS, Cambridge UP, 1994, ISBN: 0-521-46340-8, pp. 380 ss.

Atlantic Triton Company Ltd v. People's Revolutionary Republic of Guinea, Case n. ARB/84/1, Award of 21.04.1986, 3 ICSID REPORTS, Cambridge UP, 1995, ISBN: 0-521-47512-0, pp. 13 ss.

Southern Pacific Properties (Middle East) Ltd [SPP(ME)] v. Arab Republic of Egypt, Case n. ARB/84/3, First Decision on Jurisdiction of 27.11.1985, 3 ICSID REPORTS, Cambridge UP, 1995, ISBN: 0-521-47512-0, pp. 101 ss.

Southern Pacific Properties (Middle East) Ltd [SPP(ME)] v. Arab Republic of Egypt, Case n. ARB/84/3, Second Decision on Jurisdiction of 14.04.1988, 3 ICSID REPORTS, Cambridge UP, 1995, ISBN: 0-521-47512-0, pp. 131 ss.

Southern Pacific Properties (Middle East) Ltd [SPP(ME)] v. Arab Republic of Egypt, Case n. ARB/84/3, Dissenting Opinion on Second Decision on Jurisdiction of 14.04.1988, 3 ICSID REPORTS, Cambridge UP, 1995, ISBN: 0-521-47512-0, pp. 163 ss.

Southern Pacific Properties (Middle East) Ltd [SPP(ME)] v. Arab Republic of Egypt, Case n. ARB/84/3, Award of 20.05.1992, 3 ICSID REPORTS, Cambridge UP, 1995, ISBN: 0-521-47512-0, pp. 189 ss.

Southern Pacific Properties (Middle East) Ltd [SPP(ME)] v. Arab Republic of Egypt, Case n. ARB/84/3, Dissenting Opinion on the Award of 20.05.1992, 3 ICSID REPORTS, Cambridge UP, 1995, ISBN: 0-521-47512-0, pp. 249 ss.

Maritime International Nominees Establishment v. Republic of Guinea, Case n. ARB/84/4, Award of 06.01.1988, 4 ICSID REPORTS, Cambridge UP, 1997, ISBN: 0-521-58136-2, pp. 54 ss.

Maritime International Nominees Establishment v. Republic of Guinea, Case n. ARB/84/4, Procedural Order No. 1: Request for Annulment of 17.05.1988, 4 ICSID REPORTS, Cambridge UP, 1997, ISBN: 0-521-58136-2, pp. 110 ss.

Maritime International Nominees Establishment v. Republic of Guinea, Case n. ARB/84/4, Interim Order No. 1: Application for Stay of the Enforcement of the Award of 12.08.1988, 4 ICSID REPORTS, Cambridge UP, 1997, ISBN: 0-521-58136-2, pp. 111 ss.

Maritime International Nominees Establishment v. Republic of Guinea, Case n. ARB/84/4, Decision on Annulment of 22.12.1989, 4 ICSID REPORTS, Cambridge UP, 1997, ISBN: 0-521-58136-2, pp. 79 ss.

Mobil Oil Corporation, Mobil Petroleum Company Inc., Mobil Oil New Zealand v. Her Majesty the Queen in Right of New Zealand, Case n. ARB/87/2, Findings on Liability,Interpretation and Allied Issues of 04.05.1989, 4 ICSID REPORTS, Cambridge UP, 1997, ISBN: 0-521-58136-2, pp. 140 ss.

Asian Agricultural Products Ltd v. Democratic Socialist Republic of Sri Lanka, Case n. ARB/87/3, Award of 27.06.1990, 4 ICSID REPORTS, Cambridge UP, 1997, ISBN: 0-521-58136-2, pp. 245 ss.

Asian Agricultural Products Ltd v. Democratic Socialist Republic of Sri Lanka, Case n. ARB/87/3, Dissenting Opinion on the Award of 27.06.1990, 4 ICSID REPORTS, Cambridge UP, 1997, ISBN: 0-521-58136-2, pp. 296 ss.

Vacuum Salt Products Ltd v. Government of the Republic of Ghana, Case n. ARB/92/1, Provisional Measures of 14.06.1993, 4 ICSID REPORTS, Cambridge UP, 1997, ISBN: 0-521-58136-2, pp. 320 ss.

Vacuum Salt Products Ltd v. Government of the Republic of Ghana, Case n. ARB/92/1, Award of 16.02.1994, 4 ICSID REPORTS, Cambridge UP, 1997, ISBN: 0-521-58136-2, pp. 329 ss.

Scimitar Exploration Ltd v. Republic of Bangladesh and Bangladesh Oil, Gas and Mineral Corporation, Case n. ARB/92/2, Award of 05.04.1994, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 3 ss.

American Manufacturing & Trading Inc. v. Republic of Zaire, Case n. ARB/93/1, Award of 21.02.1997, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 11 ss.

American Manufacturing & Trading Inc. v. Republic of Zaire, Case n. ARB/93/1, Individual Opinions of 21.02.1997, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 11 ss.

Tradex Hellas SA v. Republic of Albania, Case n. ARB/94/2, Decision on Jurisdiction of 24.12.1996, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 43 ss.

Tradex Hellas SA v. Republic of Albania, Case n. ARB/94/2, Award of 29.04.1999, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 70 ss.

Cable Television of Nevis Ltd and Cable Television of Navis Holdings Ltd v. Federation of St. Kitts and Navis, Case n. ARB/95/2, Award of 31.01.1997, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 106 ss.

Compañía de Desarrollo de Santa Elena SA v. Republic of Costa Rica, Case n. ARB/96/1, Award of 17.02.2000, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 153 ss.

Compañía de Desarrollo de Santa Elena SA v. Republic of Costa Rica, Case n. ARB/96/1, Rectification of Award of 08.06.2000, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 180 ss.

Fedax NV v. Republic of Venezuela, Case n. ARB/96/3, Decision on Objections to Jurisdiction of 11.07.1997, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 183 ss.

Fedax NV v. Republic of Venezuela, Case n. ARB/96/3, Award of 09.03.1998, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 200 ss.

Metalclad Corporation v. United Mexican States, (NAFTA) Case n. ARB(AF)/97/1, Award of 30.08.2000, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 209 ss.

Azinian, Davitian & Baca v. United Mexican States, (NAFTA) Case n. ARB (AF)/97/2, Award of 01.11.1998, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 269 ss.

Compañía de Aguas del Aconquija SA & Comagnie Générale del Eaux v. Argentine Republic, Case n. ARB/97/3, Award of 21.11.2000, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 296 ss.

Ceskoslovenska Obchodni Banka AS v. Slovak Republic, Case n. ARB/97/4, Decision on Objections to Jurisdiction of 24.05.1999, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 330 ss.

Ceskoslovenska Obchodni Banka AS v. Slovak Republic, Case n. ARB/97/0, Decision on Further and Partial Objections to Jurisdiction of 01.12.2000, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 358 ss.

LANCO International Inc. v. Argentine Republic, Case n. ARB/97/6, Preliminary Decision on Jurisdiction of 08.12.1998, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 367 ss.

Emilio Agustín Maffezini v. Kingdom of Spain, Case n. ARB/97/7, Decision on Request for Provisional Measures, Procedural Order No. 2 of 28.10.1999, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 387 ss.

Emilio Agustín Maffezini v. Kingdom of Spain, Case n. ARB/97/7, Decision on Objections to Jurisdiction of 25.01.2000, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 396 ss.

Emilio Agustín Maffezini v. Kingdom of Spain, Case n. ARB/97/7, Award of 13.11.2000, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 419 ss.

Emilio Agustín Maffezini v. Kingdom of Spain, Case n. ARB/97/7, Rectification of the Award of 31.01.2001, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 440 ss.

Waste Management Inc. v. United Mexican States, (NAFTA) Case n. ARB(AF)/98/2, Award of 02.06.2000, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 443 ss.

Waste Management Inc. v. United Mexican States, (NAFTA) Case n. ARB(AF)/98/2, Dissenting Opinion on the Award of 02.06.2000, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 462 ss.

Philippe Gruslin v. Malaysia, Case n. ARB/99/3, Award of 27.11.2000, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 483 ss.

Goetz and Others v. Republic of Burundi, Case n. ARB/95/3, Award of 10.02.1999, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 3 ss.

Lemire v. Ukraine, Case n. ARB(AF)/98/1, Award of 18.09.2000, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 59 ss.

Wena Hotels Ltd v. Arab Republic of Egypt, Case n. ARB/98/4, Decision on Jurisdiction of 29.06.1999, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 74 ss.

Wena Hotels Ltd v. Arab Republic of Egypt, Case n. ARB/98/4, Award of 08.12.2000, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 89 ss.

Wena Hotels Ltd v. Arab Republic of Egypt, Case n. ARB/98/4, Decision on Annulment of 05.02.2002, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 129 ss.

Olguín v. Republic of Paraguay, Case n. ARB/98/5, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7pp. 154 ss.

Olguín v. Republic of Paraguay, Case n. ARB/98/5, Decision on Jurisdiction of 08.08.2000, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 156 ss.

Olguín v. Republic of Paraguay, Case n. ARB/98/5, Award of 26.07.2001, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 164 ss.

Mondev International Ltd v. United States of America, (NAFTA) Case n. ARB(AF)/99/2, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 181 ss.

Mondev International Ltd v. United States of America, (NAFTA) Case n. ARB(AF)/99/2, Miscellaneous Procedural Orders, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 186 ss.

Mondev International Ltd v. United States of America, (NAFTA) Case n. ARB(AF)/99/2, Award of 11.10.2002, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 192 ss.

Genin and Others v. Republic of Estonia, Case n. ARB/99/2, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 236 ss.

Genin and Others v. Republic of Estonia, Case n. ARB/99/2, Award of 25.06.2001, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 241 ss.

Genin and Others v. Republic of Estonia, Case n. ARB/99/2, Decision on Claimants' Requests for Supplementary Decisions and Rectification of 04.04.2002, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 241 ss.

Mihaly International Corporation v. Democratic Socialist Republic of Sri Lanka, Case n. ARB/00/2, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 308 ss.

Mihaly International Corporation v. Democratic Socialist Republic of Sri Lanka, Case n. ARB/00/2, Award of 15.03.2002, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 310 ss.

Mihaly International Corporation v. Democratic Socialist Republic of Sri Lanka, Case n. ARB/00/2, Individual Concurring Opinion of 15.03.2002, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 323 ss.

Compañía de Aguas del Aconquija SA and Vivendi Universal v. Argentine Republic, Case n. ARB/97/3, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 327 ss.

Compañía de Aguas del Aconquija SA and Vivendi Universal v. Argentine Republic, Decision on the Challenge of the President of the Committee of 03.10.2001, Case n. ARB/97/3, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 330 ss.

Compañía de Aguas del Aconquija SA and Vivendi Universal v. Argentine Republic, Decision on Annulement of 03.07.2002, Case n. ARB/97/3, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 340 ss.

Casado and President Allende Foundation v. Republic of Chile, Case n. ARB/98/2, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 373 ss.

Casado and President Allende Foundation v. Republic of Chile, Case n. ARB/98/2, Decision on Provisional Measures of 25.09.2001, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 375 ss.

Salini Costruttori Spa and Italstrade Spa v. Kingdom of Morocco, Case n. ARB/00/4, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 398 ss.

Salini Costruttori Spa and Italstrade Spa v. Kingdom of Morocco, Case n. ARB/00/4, Decision on Jurisdiction of 23.07.2001, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 400 ss.

Autopista Concesionada de Venezuela CA v. Bolivarian Republic of Venezuela, Case n. ARB/00/5, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 417 ss.

Autopista Concesionada de Venezuela CA v. Bolivarian Republic of Venezuela, Case n. ARB/00/5, Decision on Jurisdiction of 27.09.2001, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 419 ss.

ADF Group Inc. v. United States of America, (NAFTA) Case n. ARB(AF)/00/1, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 449 ss.

ADF Group Inc. v. United States of America, (NAFTA) Case n. ARB(AF)/00/1, Procedural Order No. 2, Concerning the Place of Arbitration of 11.07.2001, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 453 ss.

ADF Group Inc. v. United States of America, (NAFTA) Case n. ARB(AF)/00/1, Procedural Order No. 3, Concerning the Production of Documents of 04.10.2001, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 461 ss.

ADF Group Inc. v. United States of America, (NAFTA) Case n. ARB(AF)/00/1, Award of 09.01.2003, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 470 ss.

Waste Management Inc. v. United Mexican States (No. 2), (NAFTA) Case n. ARB(AF)/00/3, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 538 ss.

Waste Management Inc. v. United Mexican States (No. 2), (NAFTA) Case n. ARB(AF)/00/3, Decision on Venue of the Arbitration of 26.09.2001, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 541 ss.

Waste Management Inc. v. United Mexican States (No. 2), (NAFTA) Case n. ARB(AF)/00/3, Decision on Preliminary Objection of 26.06.2002, 6 ICSID REPORTS, Cambridge UP, 2004, ISBN: 0-521-82988-7, pp. 549 ss.

Ethyl Corporation. v. Government of Canada, (NAFTA) UNCITRAL rules, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 3 ss.

Ethyl Corporation. v. Government of Canada, (NATFA) UNCITRAL rules, Decision on the Place of Arbitration of 28.11.1997, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 5 ss.

Ethyl Corporation. v. Government of Canada, (NAFTA) UNCITRAL rules, Award on Jurisdiction of 24.06.1998, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 12 ss.

Pope and Talbot Inc. v. Government of Canada, (NAFTA) UNCITRAL rules, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 43 ss.

Pope and Talbot Inc. v. Government of Canada, (NAFTA) UNCITRAL rules, Ruling on Interim Measures of 07.01.2000, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, p. 54

Pope and Talbot Inc. v. Government of Canada, (NAFTA) UNCITRAL rules, Award on Preliminary Motion to Dismiss the Claim of 26.01.2000, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 55 ss.

Pope and Talbot Inc. v. Government of Canada, (NAFTA) UNCITRAL rules, Award on the "Harmac Motion" of 24.02.2000, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 64 ss.

Pope and Talbot Inc. v. Government of Canada, (NAFTA) UNCITRAL rules, Interim Award of 26.06.2000, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 69 ss.

Pope and Talbot Inc. v. Government of Canada, (NAFTA) UNCITRAL rules, Award on Canada's Motion regarding the "Super Fee" of 07.08.2000, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 92 ss.

Pope and Talbot Inc. v. Government of Canada, (NAFTA) UNCITRAL rules, Ruling on Claim of Crown Privilege of 06.09.2000, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 99 ss.

Pope and Talbot Inc. v. Government of Canada, (NAFTA) UNCITRAL rules, Award on the Merits of Phase 2 of 10.04.2001, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 102 ss.

Pope and Talbot Inc. v. Government of Canada, (NAFTA) UNCITRAL rules, Award on Damages of 31.05.2002, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 148 ss.

Pope and Talbot Inc. v. Government of Canada, (NAFTA) UNCITRAL rules, Final Award on Costs of 26.11.2002, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 170 ss.

Middle East Cement Shipping and Handling Co. SA v. Arab Republic of Egypt, Case n. ARB/99/6, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 173 ss.

Middle East Cement Shipping and Handling Co. SA v. Arab Republic of Egypt, Case n. ARB/99/6, Award of 12.04.2002, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 178 ss.

United Parcel Service of America Inc. v. Government of Canada, (NAFTA) UNCITRAL rules, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 285 ss.

United Parcel Service of America Inc. v. Government of Canada, (NAFTA) UNCITRAL rules, Award on Jurisdiction of 22.11.2002, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN:0-521-84133-X, pp. 285 ss.

Feldman v. United Mexican States, (NAFTA) Case n. ARB(AF)/99/1, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 318 ss.

Feldman v. United Mexican States, (NAFTA) Case n. ARB(AF)/99/1, Interim Decision on Preliminary Jurisdictional Issues of 06.12.2000, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 327 ss.

Feldman v. United Mexican States, (NAFTA) Case n. ARB(AF)/99/1, Award of 16.12.2002, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 341 ss.

Feldman v. United Mexican States, (NAFTA) Case n. ARB(AF)/99/1, Dissenting Opinion on the Award of 16.12.2002, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 407 ss.

Feldman v. United Mexican States, (NAFTA) Case n. ARB(AF)/99/1, Decision on the Correction and Interpretation of the Award of 13.06.2003, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 418 ss.

The Loewen Group Inc. and Raimond L. Loewen v. United States of Americas, (NAFTA) Case n. ARB(AF)/98/3, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 421 ss.

The Loewen Group Inc. and Raimond L. Loewen v. United States of Americas, (NAFTA) Case n. ARB(AF)/98/3, Decision on Objection to Competence and Jurisdiction of 09.01.2001,7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 425 ss.

The Loewen Group Inc. and Raimond L. Loewen v. United States of Americas, (NAFTA) Case n. ARB(AF)/98/3, Award of 26.06.2003, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 442 ss.

CMS Gas Transmission Company v. Republic of Argentina, Case n. ARB/01/8, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 492 ss.

CMS Gas Transmission Company v. Republic of Argentina, Case n. ARB/01/8, Decision on Objections to Jurisdiction of 17.07.2003, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 494 ss.

S.D. Myers Inc. v. Government of Canada, (NAFTA) UNCITRAL rules, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 3 ss.

S.D. Myers Inc. v. Government of Canada, (NAFTA) UNCITRAL rules, Procedural Orders n. 10 - 18, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 13 ss.

S.D. Myers Inc. v. Government of Canada, (NAFTA) UNCITRAL rules, First Partial Award on Liability of 13.11.2000, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 18 ss.

S.D. Myers Inc. v. Government of Canada, (NAFTA) UNCITRAL rules, Separate Concurring Opinion, on First Partial Award on Liability, of 13.11.2000, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 66 ss.

S.D. Myers Inc. v. Government of Canada, (NAFTA) UNCITRAL rules, Second Partial Award on Damages of 21.10.2002, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521- 85127-0, pp. 124 ss.

S.D. Myers Inc. v. Government of Canada, (NAFTA) UNCITRAL rules, Final Award on Costs of 30.12.2002, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 172 ss.

S.D. Myers Inc. v. Government of Canada, (NAFTA) UNCITRAL rules, Dissenting Opinion on Costs of 30.12.2002, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 183 ss.

Tanzania Electric Supply Company Limited v. Independent Power Tanzania Limited, Case n. ARB/98/8, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 220 ss.

Tanzania Electric Supply Company Limited v. Independent Power Tanzania Limited, Case n. ARB/98/8, Decision on Provisional Measures of 20.12.1999, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 239 ss.

Tanzania Electric Supply Company Limited v. Independent Power Tanzania Limited, Case n. ARB/98/8, Decision on Preliminary Issues of 22.05.2000, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 243 ss.

Tanzania Electric Supply Company Limited v. Independent Power Tanzania Limited, Case n. ARB/98/8, Decision on Tariff and Other Remaining Issues of 09.02.2001, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 272 ss.

Tanzania Electric Supply Company Limited v. Independent Power Tanzania Limited, Case n. ARB/98/8, Decision on All Further Remaining Issues of 24.05.2001, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 309 ss.

Tanzania Electric Supply Company Limited v. Independent Power Tanzania Limited, Case n. ARB/98/8, Award of 12.07.2001, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 236 ss.

Tanzania Electric Supply Company Limited v. Independent Power Tanzania Limited, Case n. ARB/98/8, Appendix to Final Award: Stipulation Regarding Future Disputes Concerning the Construction Contingency Account and Annex, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 317 ss.

Societé Générale de Surveillance SA v. Islamic Republic of Pakistan, Case n. ARB/01/13, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 383 ss.

Societé Générale de Surveillance SA v. Islamic Republic of Pakistan, Case n. ARB/01/13, Procedural Order n. 2 of 16.10.2002, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 388 ss.

Societé Générale de Surveillance SA v. Islamic Republic of Pakistan, Case n. ARB/01/13, Decision on Disqualification of Arbitrator of 19.12.2002, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 398 ss.

Societé Générale de Surveillance SA v. Islamic Republic of Pakistan, Case n. ARB/01/13, Decision on Objections to Jurisdiction of 06.08.2003, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 406 ss.

Societé Générale de Surveillance SA v. Islamic Republic of Pakistan, Case n. ARB/01/13, Note on Settlement, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 451.

Yaung Chi Oo Trading Pte Ltd v. Government of the Union of Myanmar, (ASEAN) Case n. ARB/01/1, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 452 ss.

Yaung Chi Oo Trading Pte Ltd v. Government of the Union of Myanmar, (ASEAN) Case n. ARB/01/1, Procedural Order N. 2 of 27.02.2002, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 456 ss.

Yaung Chi Oo Trading Pte Ltd v. Government of the Union of Myanmar, (ASEAN) Case n. ARB/01/1, Award of 31.03.2003, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 463 ss.

Compañía de Aguas del Aconquija SA and Vivendi Universal v. Argentine Republic, Case n. ARB/97/3), Decision on Supplementation and Rectification of Annulment decision of 28.05.2003, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 489 ss.

Societé Générale de Surveillance SA v. Republic of the Philippines, Case n. ARB/02/6, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 515 ss.

Societé Générale de Surveillance SA v. Republic of the Philippines, Case n. ARB/02/6,Decision on Objections to Jurisdiction of 29.01.2004, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 518 ss.

Societé Générale de Surveillance SA v. Republic of the Philippines, Case n. ARB/02/6, Declaration of 29.01.2004, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 568 ss.

Amco Asia Corporation and Others v. Republic of Indonesia, Case n. ARB/81/1, 9 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-86123-6, pp. 3 ss.

Amco Asia Corporation and Others v. Republic of Indonesia, Case n. ARB/81/1, Interim Order n. 1 of 02.03.1991, 9 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-86123-6, pp. 59 ss.

Amco Asia Corporation and Others v. Republic of Indonesia, Case n. ARB/81/1, Decision on Annulment and Partial Annulment of Arbitral Award of 05.06.1990 and on Annulment of Supplemental Award of 17.10.1990, of 03.12.1992, 9 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-86123-6, pp. 9 ss.

Lauder v. Czech Republic, 9 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-86123-6, pp. 62 ss.

Lauder v. Czech Republic, Final Award of 03.09.2001, 9 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-86123-6, pp. 66 ss.

CME Czech Republic BV (The Netherlands) v. Czech Republic, UNCITRAL rules, 9 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-86123-6, pp. 113 ss.

CME Czech Republic BV (The Netherlands) v. Czech Republic, UNCITRAL rules, Partial Award on the Merits of 13.09.2001, 9 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13- 978-0-521-86123-6, pp. 121 ss.

CME Czech Republic BV (The Netherlands) v. Czech Republic, UNCITRAL rules, Dissenting Opinion on Partial Award on the Merits of 13.09.2001, 9 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-86123-6, pp. 243 ss.

CME Czech Republic BV (The Netherlands) v. Czech Republic, UNCITRAL rules, Final Award on Damages of 14.03.2003, 9 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-86123-6, pp. 264 ss.

CME Czech Republic BV (The Netherlands) v. Czech Republic, UNCITRAL rules, Separate Opinion on Final Award on Damages of 14.03.2003, 9 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-86123-6, pp. 412 ss.

Zhinvali Development Limited v. Republic of Georgia, Case n. ARB/00/1, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 3 ss.

Zhinvali Development Limited v. Republic of Georgia, Case n. ARB/00/1, Award of 24.01.2003, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 6 ss.

Zhinvali Development Limited v. Republic of Georgia, Case n. ARB/00/1, Separate Opinion on the Award, of 24.01.2003, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 106 ss.

Société d'Exploitation des Mines d'Or de Sadiola SA("SEMOS") v. Republic of Mali, Case n. ARB/01/5, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 114 ss.

Société d'Exploitation des Mines d'Or de Sadiola SA("SEMOS") v. Republic of Mali, Case n. ARB/01/5, Award of 25.02.2003, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 116 ss.

Técnicas Medioambientales Tecmed SA v. United Mexican States, Case n. ARB(AF)/00/2, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 130 ss.

Técnicas Medioambientales Tecmed SA v. United Mexican States, Case n. ARB(AF)/00/2, Award of 29.05.2003, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 134 ss.

Fireman's Fund Insurance Company v. United Mexican States, (NAFTA) Case n. ARB(AF)/02/1, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 213 ss.

Fireman's Fund Insurance Company v. United Mexican States, (NAFTA) Case n. ARB(AF)/02/1, Decision on Preliminary Question of 17.07.2003, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 214 ss.

Generation Ukraine Inc. v. Ukraine, Case n. ARB/00/9, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 236 ss.

Generation Ukraine Inc. v. Ukraine, Case n. ARB/00/9, Award of 16.09.2003, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 240 ss.

Autopista Concesionada de Venezuela CA ("AUCOVEN") v. Bolivarian Republic of Venezuela, Case n. ARB/00/5, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 309 ss.

Autopista Concesionada de Venezuela CA ("AUCOVEN") v. Bolivarian Republic of Venezuela, Case n. ARB/00/5, Award of 23.09.2003, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 314 ss.

Champion Trading Company, Ameritrade International Inc., J.T.J.B. and T.T. Wahba v.Egypt, Case n. ARB/02/9, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521- 87169-3, pp. 398 ss.

Champion Trading Company, Ameritrade International Inc., J.T.J.B. and T.T. Wahba v.Egypt, Decision on Jurisdiction of 21.10.2003, Case n. ARB/02/09, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 400 ss.

Azurix Corp. v. Argentine Republic, Case n. ARB/01/12, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 412 ss.

Azurix Corp. v. Argentine Republic, Case n. ARB/01/12, Decision on Jurisdiction of 08.12.2003, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 416 ss.

The Loewen Group Inc. and Raymond L. Loewen v. United States of America, (NAFTA) Case n. ARB(AF)/98/3, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 443 ss.

The Loewen Group Inc. and Raymond L. Loewen v. United States of America, (NAFTA) Case n. ARB(AF)/98/3,
Decision on Respondent's Request for a Supplementary Decision of 13.09.2004, 10 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-87169-3, pp. 444 ss.

AIG Capital Partners Inc. and CJSC Tema Real Estate Company v. Republic of Kazakhstan, Case n. ARB/01/6, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 3 ss.

AIG Capital Partners Inc. and CJSC Tema Real Estate Company v. Republic of Kazakhstan, Case n. ARB/01/6, Award of 07.10.2003, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 7 ss.

Nykomb Synergetics Technology Holding AB v. Republic of Latvia, (ECT), 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 153 ss.

Nykomb Synergetics Technology Holding AB v. Republic of Latvia, (ECT), Award of 16.12.2003, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 158 ss.

CDC Group plc v. Republic of the Seychelles, Case n. ARB/02/14, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 206 ss.

CDC Group plc v. Republic of the Seychelles, Case n. ARB/02/14, Award of 17.12.2003, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 211 ss.

CDC Group plc v. Republic of the Seychelles, Case n. ARB/02/14, Decision on Continuation of Stay of 14.07.2004, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 225 ss.

CDC Group plc v. Republic of the Seychelles, Case n. ARB/02/14, Decision on Annulment of 29.06.2005, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 237 ss.

Enron Corporation and Ponderosa Assets LP v. Argentine Republic, Case n. ARB/01/3, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 268 ss.

Enron Corporation and Ponderosa Assets LP v. Argentine Republic, Case n. ARB/01/3, Decision on Jurisdiction of 14.01.2004, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 273 ss.

Enron Corporation and Ponderosa Assets LP v. Argentine Republic, Case n. ARB/01/3, Decision on Jurisdiction (Ancillary Claim) of 02.08.2004, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 295 ss.

Tokio Tokelés v. Ukraine, Case n. ARB/02/18, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 305 ss.

Tokio Tokelés v. Ukraine, Case n. ARB/02/18, Procedural Order n. 1: Claimants Request for Provisional Measures, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 310 ss.

Tokio Tokelés v. Ukraine, Case n. ARB/02/18, Decision on Jurisdiction of 29.04.2004, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 313 ss.

Tokio Tokelés v. Ukraine, Case n. ARB/02/18, Dissenting Opinion on Decision on Jurisdiction of 29.04.2004, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 341 ss.

Tokio Tokelés v. Ukraine, Case n. ARB/02/18, Procedural Order n. 3 of 18.01.2005, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 352 ss.

Waste Management Inc. v. United Mexican States (N. 2), (NAFTA) Case n. ARB(AF)/00/3, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 361 ss.

Waste Management Inc. v. United Mexican States (N. 2), (NAFTA) Case n. ARB(AF)/00/3, Award of 30.04.2004, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 362 ss.

LG&E Energy Corporation and Others v. Argentine Republic, Case n. ARB/02/1, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 411 ss.

LG&E Energy Corporation and Others v. Argentine Republic, Case n. ARB/02/1, Decisions on Objections to Jurisdiction of 30.04.2004, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 414 ss.

PSEG Global Inc. and Others v. Republic of Turkey, Case n. ARB/02/5, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 431 ss.

PSEG Global Inc. and Others v. Republic of Turkey, Case n. ARB/02/5, Decision on Jurisdiction of 04.06.2004, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 434 ss.

MTD Equity Sdn Bhd and MTD Chile SA v. Republic of Chile, Case n. ARB/01/7, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 3 ss.

MTD Equity Sdn Bhd and MTD Chile SA v. Republic of Chile, Case n. ARB/01/7, Award of 25.05.2004, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 6 ss.

Soufraki v. United Arab Emirates, Case n. ARB/02/7, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 156 ss.

Soufraki v. United Arab Emirates, Case n. ARB/02/7, Award on Jurisdiction of 07.07.2004, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 158 ss.

Siemens AG v. Argentine Republic, Case n. ARB/02/8, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 171 ss.

Siemens AG v. Argentine Republic, Case n. ARB/02/8, Decision on Jurisdiction of 03.08.2004, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 174 ss.

Empresas Lucchetti SA and Lucchetti Perú SA v. Republic of Perú, Case n. ARB/03/4, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 218 ss.

Empresas Lucchetti SA and Lucchetti Perú SA v. Republic of Perú, Case n. ARB/03/4, Award on Jurisdiction of 07.02.2005, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 219 ss.

Impregilo Spa v. Islamic Republic of Pakistan, Case n. ARB/03/3, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 242 ss.

Impregilo Spa v. Islamic Republic of Pakistan, Case n. ARB/03/3, Decision on Jurisdiction of 22.04.2005, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 245 ss.

AES Corporation v. Argentine Republic, Case n. ARB/02/17, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 308 ss.

AES Corporation v. Argentine Republic, Case n. ARB/02/17, Decision on Jurisdiction of 26.04.2005, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 312 ss.

IBM World Trade Corporation v. Republic of Ecuador, Case n. ARB/02/10, 13 ICSID REPORTS, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 102 ss.

IBM World Trade Corporation v. Republic of Ecuador, Case n. ARB/02/10, Decision on Jurisdiction and Competence of 22.12.2003, 13 ICSID REPORTS, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 105 ss.

IBM World Trade Corporation v. Republic of Ecuador, Case n. ARB/02/10, DissentingOpinion on Decision on Jurisdiction and Competence of 22.12.2003, 13 ICSID REPORTS, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 118 ss.

Joy Mining Machinery Limited v. Arab Republic of Egypt, Case n. ARB/03/11, 13 ICSID REPORTS, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 121 ss.

Joy Mining Machinery Limited v. Arab Republic of Egypt, Case n. ARB/03/11, Award on Jurisdiction of 06.08.2004, 13 ICSID REPORTS, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 123 ss.

CSOB v. Slovak Republic, Case n. ARB/97/4, 13 ICSID REPORTS, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 178 ss.

Plama Consortium Limited v. Republic of Bulgaria, (ECT) Case n. ARB/03/24, 13 ICSID REPORTS, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 268 ss.

Plama Consortium Limited v. Republic of Bulgaria, (ECT) Case n. ARB/03/24, Decision on Jurisdiction of 08.02.2005, 13 ICSID REPORTS, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 272 ss.

Plama Consortium Limited v. Republic of Bulgaria, (ECT) Case n. ARB/03/24, Order on Provisional Measures of 06.09.2005, 13 ICSID REPORTS, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 324 ss.

MTD Equity SDN BHD and MTD Chile v. Republic of Chile, Case n. ARB/01/7, 13 ICSID REPORTS, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 488 ss.

MTD Equity SDN BHD and MTD Chile v. Republic of Chile, Case n. ARB/01/7, Decision on Respondent's Request for a Continued Stay of Execution of 01.06.2005, 13 ICSID REPORTS, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 493 ss.

MTD Equity SDN BHD and MTD Chile v. Republic of Chile, Case n. ARB/01/7, Decision on Annulment of 21.03.2007, 13 ICSID REPORTS, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 500 ss.

Klockner Industrie – Anlagen GmbH, Klockner Belge SA and Klockner Handelsmaatschappij BV v. Republic of Cameroon and La Société Camerounaise des Engrais SA [Klockner II], Case n. ARB/81/2, 14 ICSID REPORTS, Cambridge UP, 2009, ISBN: 978-0-521-89988-8, pp. 3 ss.

Klockner Industrie – Anlagen GmbH, Klockner Belge SA and Klockner Handelsmaatschappij BV v. Republic of Cameroon and La Société Camerounaise des Engrais SA [Klockner II], Case n. ARB/81/2, Award of 26.01.1988, 14 ICSID REPORTS, Cambridge UP, 2009, ISBN: 978-0-521-89988-8, pp. 8 ss.

Klockner Industrie – Anlagen GmbH, Klockner Belge SA and Klockner Handelsmaatschappij BV v. Republic of Cameroon and La Société Camerounaise des Engrais SA [Klockner II], Case n. ARB/81/0, Dissenting Opinion on Award of 26.01.1988, 14 ICSID REPORTS,Cambridge UP, 2009, ISBN: 978-0-521-89988-8, pp. 80 ss.

Klockner Industrie – Anlagen GmbH, Klockner Belge SA and Klockner Handelsmaatschappij BV v. Republic of Cameroon and La Société Camerounaise des Engrais SA [Klockner II], Case n. ARB/81/2, Decision on Annulment of 17.05.1990, 14 ICSID REPORTS, Cambridge UP, 2009, ISBN: 978-0-521-89988-8, pp. 101 ss.

CMS Gas Transmission Company v. Argentine Republic, Case n. ARB/01/8, 14 ICSID REPORTS, Cambridge UP, 2009, ISBN: 978-0-521-89988-8, pp. 152 ss.

CMS Gas Transmission Company v. Argentine Republic, Case n. ARB/01/8, Award of 12.05.2005, 14 ICSID REPORTS, Cambridge UP, 2009, ISBN: 978-0-521-89988-8, pp. 158 ss.

CMS Gas Transmission Company v. Argentine Republic, Case n. ARB/01/8, Decision on Request for Continued Stay of Enforcement of Award, of 01.09.2006, 14 ICSID REPORTS, Cambridge UP, 2009, ISBN: 978-0-521-89988-8, pp. 240 ss.

CMS Gas Transmission Company v. Argentine Republic, Case n. ARB/01/8, Decision on Annulment, of 25.09.2007, 14 ICSID REPORTS, Cambridge UP, 2009, ISBN: 978-0-521-89988-8, pp. 251 ss.

Gas Natural SDG SA v. Argentine Republic, Case n. ARB/03/10, 14 ICSID REPORTS, Cambridge UP, 2009, ISBN: 978-0-521-89988-8, pp. 282 ss.

Gas Natural SDG SA v. Argentine Republic, Case n. ARB/03/10, Decision on Preliminary Questions on Jurisdiction of 17.06.2005, 14 ICSID REPORTS, Cambridge UP, 2009, ISBN: 978-0-521-89988-8, pp. 284 ss.

Salini Costruttori Spa and Italstrade Spa v. Hashemite Kingdom of Jordan, Case n. ARB/02/13, 14 ICSID REPORTS, Cambridge UP, 2009, ISBN: 978-0-521-89988-8, pp. 303 ss.

Salini Costruttori Spa and Italstrade Spa v. Hashemite Kingdom of Jordan, Case n. ARB/02/13, Decision on Jurisdiction of 29.11.2004, 14 ICSID REPORTS, Cambridge UP, 2009, ISBN: 978-0-521-89988-8, pp. 306 ss.

Salini Costruttori Spa and Italstrade Spa v. Hashemite Kingdom of Jordan, Case n. ARB/02/13, Award of 31.01.2006, 14 ICSID REPORTS, Cambridge UP, 2009, ISBN: 978-0-521-89988-8, pp. 343 ss.

Salini Costruttori Spa and Italstrade Spa v. Hashemite Kingdom of Jordan, Case n. ARB/02/13, Declaration on the Award of 31.01.2006, 14 ICSID REPORTS, Cambridge UP, 2009, ISBN: 978-0-521-89988-8, pp. 365 ss.

Auzurix Corp. v. Argentine Republic, Case n. ARB/01/12, 14 ICSID REPORTS, Cambridge UP, 2009, ISBN: 978-0-521-89988-8, pp. 367 ss.

Auzurix Corp. v. Argentine Republic, Case n. ARB/01/12, Award of 14.07.2006, 14 ICSID REPORTS, Cambridge UP, 2009, ISBN: 978-0-521-89988-8, pp. 374 ss.

Champion Trading Company and Ameritrade International Inc. v. Arab Republic of Egypt, Case n. ARB/02/9, 14 ICSID REPORTS, Cambridge UP, 2009, ISBN: 978-0-521-89988-8, pp. 483 ss.

Champion Trading Company and Ameritrade International Inc. v. Arab Republic of Egypt, Case n. ARB/02/9, Award of 27.10.2006, 14 ICSID REPORTS, Cambridge UP, 2009, ISBN: 978-0-521-89988-8, pp. 485 ss.

Siemens AG v. Argentine Republic, Case n. ARB/02/8, 14 ICSID REPORTS, Cambridge UP, 2009, ISBN: 978-0-521-89988-8, pp. 513 ss.

Siemens AG v. Argentine Republic, Case n. ARB/02/8, Award of 06.02.2007, 14 ICSID REPORTS, Cambridge UP, 2009, ISBN: 978-0-521-89988-8, pp. 518 ss.

Siemens AG v. Argentine Republic, Case n. ARB/02/8, Separate Opinion on the Award, of 30.01.2007, 14 ICSID REPORTS, Cambridge UP, 2009, ISBN: 978-0-521-89988-8, pp. 603 ss.

Consortium Groupement LESI-DIPENTA v. People's Democratic Republic of Algeria, Case n. ARB/03/8, 15 ICSID REPORTS, Cambridge UP, 2010, ISBN: 978-0-521-89989-5, pp. 3 ss.

Consortium Groupement LESI-DIPENTA v. People's Democratic Republic of Algeria, Case n. ARB/03/8, Award of 10.01.2005, 15 ICSID REPORTS, Cambridge UP, 2010, ISBN: 978-0-521-89989-5, pp. 7 ss.

Wena Hotels Ltd v. Arab Republic of Egypt, Case n. ARB/98/4, 15 ICSID REPORTS, Cambridge UP, 2010, ISBN: 978-0-521-89989-5, pp. 68 ss.

Wena Hotels Ltd v. Arab Republic of Egypt, Case n. ARB/98/4, Decision on the Interpretation of the Award, of 31.10.2005, 15 ICSID REPORTS, Cambridge UP, 2010, ISBN: 978-0-521-89989-5, pp. 71 ss.

Duke Energy International Peru Investments N. 1 Ltd v, Republic of Perú, Case n. ARB/03/28, 15 ICSID REPORTS, Cambridge UP, 2010, ISBN: 978-0-521-89989-5, pp. 100 ss.

Duke Energy International Peru Investments N. 1 Ltd v, Republic of Perú, Case n. ARB/03/28, Decision on Jurisdiction of 01.02.2006, 15 ICSID REPORTS, Cambridge UP, 2010, ISBN: 978-0-521-89989-5, pp. 108 ss.

Duke Energy International Peru Investments N. 1 Ltd v, Republic of Perú, Case n. ARB/03/28, Award of 18.08.2008, 15 ICSID REPORTS, Cambridge UP, 2010, ISBN: 978-0-521-89989-5, pp. 146 ss.

Duke Energy International Peru Investments N. 1 Ltd v, Republic of Perú, Case n. ARB/03/28, Partial Dissenting Opinion on the Award, of 22.07.2008, 15 ICSID REPORTS, Cambridge UP, 2010, ISBN: 978-0-521-89989-5, pp. 244 ss.

Duke Energy International Peru Investments N. 1 Ltd v, Republic of Perú, Case n. ARB/03/28, Partial Dissenting Opinion on the Award, of 25.07.2008, 15 ICSID REPORTS, Cambridge UP, 2010, ISBN: 978-0-521-89989-5, pp. 239 ss.

Jan De Nul NV and Dredging International NV v. Arab Republic of Egypt, Case n. ARB/04/13, 15 ICSID REPORTS, Cambridge UP, 2010, ISBN: 978-0-521-89989-5, pp. 400 ss.

Jan De Nul NV and Dredging International NV v. Arab Republic of Egypt, Case n. ARB/04/13, Decision on Jurisdiction of 16.06.2006, 15 ICSID REPORTS, Cambridge UP, 2010, ISBN: 978-0-521-89989-5, pp. 406 ss.

Jan De Nul NV and Dredging International NV v. Arab Republic of Egypt, Case n. ARB/04/13, Award of 06.11.2008, 15 ICSID REPORTS, Cambridge UP, 2010, ISBN: 978-0-521-89989-5, pp. 437 ss.

ADC Affiliate Ltd and ADC & ADMC Management Ltd v. Republic of Hungary, Case ARB/03/16, 15 ICSID REPORTS, Cambridge UP, 2010, ISBN: 978-0-521-89989-5, pp. 534 ss.

ADC Affiliate Ltd and ADC & ADMC Management Ltd v. Republic of Hungary, Case ARB/03/16, Award of 02.10.2006, 15 ICSID REPORTS, Cambridge UP, 2010, ISBN: 978-0-521-89989-5, pp. 539 ss.

Camuzzi International SA v. Argentine Republic, Case ARB/03/2, 16 ICSID Reports, Cambridge UP, 2012, ISBN: 978-0-521-192-61-3, pp. 3 ss.

Camuzzi International SA v. Argentine Republic, Case ARB/03/2, Decision on Objections to Jurisdiction of 11.05.2005, 16 ICSID Reports, Cambridge UP, 2012, ISBN: 978-0-521-192-61-3, pp. 6 ss.

Noble Ventures Inc. v. Romania, Case ARB/01/11, 16 ICSID Reports, Cambridge UP, 2012, ISBN: 978-0-521-192-61-3, pp. 210 ss.

Noble Ventures Inc. v. Romania, Case ARB/01/11, Award of 12.10.2005, 16 ICSID Reports, Cambridge UP, 2012, ISBN: 978-0-521-192-61-3, pp. 216 ss.

Noble Ventures Inc. v. Romania, Case ARB/01/11, Rectification of Award, of 19.05.2006, 16 ICSID Reports, Cambridge UP, 2012, ISBN: 978-0-521-192-61-3, pp. 216 ss.

Aguas del Tunari SA v. Republic of Bolivia, Case ARB/02/3, 16 ICSID Reports, Cambridge UP, 2012, ISBN: 978-0-521-192-61-3, pp. 297 ss.

Aguas del Tunari SA v. Republic of Bolivia, Case ARB/02/3, Decision on Objections to Jurisdiction of 21.10.2005, 16 ICSID Reports, Cambridge UP, 2012, ISBN: 978-0-521-192-61-3, pp. 303 ss.

Aguas del Tunari SA v. Republic of Bolivia, Case ARB/02/3, Declaration on Tribunal's Decision on Objections to Jurisdiction of 21.10.2005, 16 ICSID Reports, Cambridge UP, 2012, ISBN: 978-0-521-192-61-3, pp. 379 ss.

F-W Oil Interest Inc. v. Republic of Trinidad and Tobago, Case n. ARB/01/14, 16 ICSID Reports, Cambridge UP, 2012, ISBN: 978-0-521-192-61-3, pp. 394 ss.

F-W Oil Interest Inc. v. Republic of Trinidad and Tobago, Case n. ARB/01/14, Award of 03.03.2006, 16 ICSID Reports, Cambridge UP, 2012, ISBN: 978-0-521-192-61-3, pp. 398 ss.

Fireman's Fund Insurance Company v. United Mexican States, (NAFTA) Case n. ARB(AF)/02/1, 16 ICSID Reports, Cambridge UP, 2012, ISBN: 978-0-521-192-61-3, pp. 520 ss.

Fireman's Fund Insurance Company v. United Mexican States, (NAFTA) Case n. ARB(AF)/02/1, Award of 17.07.2006, 16 ICSID Reports, Cambridge UP, 2012, ISBN: 978-0-521-192-61-3, pp. 523 ss.

I.2 ICSID CASES (WEBOGRAPHY, LAST ACCESS: 28.05.2021).

- **Banro American Resources, Inc. and Société Aurifère du Kivu et du Maniema S.A.R.L. v. Democratic Republic of the Congo (ICSID Case No. ARB/98/7).**

Award of the Tribunal (September 1, 2000).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/98/7

- **Consortium R.F.C.C. v. Kingdom of Morocco (ICSID Case No. ARB/00/6).**

Decision on Jurisdiction (July 16, 2001).
Award (December 22, 2003).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/00/6

- **Sempra Energy International v. Argentine Republic (ICSID Case No. ARB/02/16).**

Decision on Objections to Jurisdiction (May 11, 2005).
Award of the Tribunal (September 28, 2007).
Partial Dissenting Opinion (Attached to the Award) (September 28, 2007).
Decision on the Argentine Republic's Request for a Continued Stay of Enforcement of the Award (March 5, 2009).
Decision on Sempra Energy International's Request for the Termination of the Stay of Enforcement of the Award (August 7, 2009).
Decision on Annulment (June 29, 2010).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/02/16

- **Plama Consortium Limited v. Republic of Bulgaria, ECT (ICSID Case No. ARB/03/24).**

Award (27.08.2008).

https://www.italaw.com/cases/857

- **Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines (ICSID Case No. ARB/03/25).**

Award of the Tribunal including Dissenting Opinion (August 16, 2007).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/03/25

- **Sociedad Anónima Eduardo Vieira v. Republic of Chile (ICSID Case No. ARB/04/7).**

Award (August 21, 2007).
Dissenting Opinion (August 21, 2007).
Decision on Annulment (December 10, 2020).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/04/7

- **Wintershall Aktiengesellschaft v. Argentine Republic (ICSID Case No. ARB/04/14).**

Award (December 8, 2008).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/04/14

- **Telenor Mobile Communications AS v. Republic of Hungary (ICSID Case No. ARB/04/15).**

Award (September 13, 2006).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/04/15

- **LESI, S.p.A. and Astaldi, S.p.A. v. People's Democratic Republic of Algeria (ICSID Case No. ARB/05/3).**

Decision on Jurisdiction (July 12, 2006).
Award (November 12, 2008).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/05/3

- **Parkerings-Compagniet AS v. Republic of Lithuania (ICSID Case No. ARB/05/8).**

Award (September 11, 2007).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/05/8

- **Empresa Eléctrica del Ecuador, Inc. (EMELEC) v. Republic of Ecuador (ICSID Case No. ARB/05/9).**

Award (June 2, 2009).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/05/9

- **Malaysian Historical Salvors, SDN, BHD v. Malaysia (ICSID Case No. ARB/05/10).**

Award (May 17, 2007).
Decision on the Application for Annulment (April 16, 2009).
Dissenting Opinion (April 16, 2009).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/05/10

- **EDF (Services) Limited v. Romania (ICSID Case No. ARB/05/13).**

Award (October 8, 2009).
Dissenting Opinion (October 8, 2009).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/05/13

- **Desert Line Projects LLC v. Republic of Yemen (ICSID Case No. ARB/05/17).**

Award (February 6, 2008).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/05/17

- **Ioannis Kardassopoulos v. Georgia, ECT (ICSID Case No. ARB/05/18).**

Decision on Jurisdiction (July 6, 2007).
Award (March 3, 2010).
Decision on Applicant's Request for a Continued Stay of Enforcement of the Award (November 12, 2010).
Decision of the ad hoc Committee to terminate the Stay of Enforcement of the Award (January 19, 2011).
Decision of the ad hoc Committee to suspend the Annulment Proceeding (March 21, 2011).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/05/18

- **Helnan International Hotels A/S v. Arab Republic of Egypt (ICSID Case No. ARB/05/19).**

Decision of the Tribunal on Objections to Jurisdiction (October 17, 2006).
Award (July 3, 2008).
Decision of the ad hoc Committee (June 14, 2010).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/05/19

- **Ioan Micula, Viorel Micula, S.C. European Food S.A, S.C. Starmill S.R.L. and S.C. Multipack S.R.L. v. Romania [I], ICSID Case No. ARB/05/20.**

Decision on Jurisdiction and Admissibility (September 24, 2008).
Final Award (December 11, 2013).
Decision on Annulment (February 26, 2016).

https://www.italaw.com/cases/697

- **African Holding Company of America, Inc. and Société Africaine de Construction au Congo S.A.R.L. v. Democratic Republic of the Congo (ICSID Case No. ARB/05/21).**

Award (July 29, 2008)
Dissenting Opinion (July 29, 2008).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/05/21

- **Biwater Gauff (Tanzania) Limited v. United Republic of Tanzania (ICSID Case No. ARB/05/22).**

Award (July 24, 2008).
Concurring and Dissenting Opinion (July 24, 2008).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/05/22

- **Hrvatska Elektroprivreda d.d. v. Republic of Slovenia, ECT (ICSID Case No. ARB/05/24).**

Order Concerning the Participation of a Counsel (May 6, 2008).
Decision on the Treaty Interpretation Issue (June 12, 2009).
Individual Opinion (Attached to the Decision) (June 12, 2009).
Award of the Tribunal (December 17, 2015).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/05/24

- **Spyridon Roussalis v. Romania (ICSID Case No. ARB/06/1).**

Award (December 7, 2011).
Separate Opinion (December 7, 2011).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/06/1

- **Phoenix Action Ltd v. Czech Republic (ICSID Case No. ARB/06/5).**

Award (April 15, 2009).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/06/5

- **Togo Electricité and GDF-Suez Energie Services v. Republic of Togo (ICSID Case No. ARB/06/7).**

Award (August 10, 2010).
Decision on Annulment (September 6, 2011).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/06/7

- **Libananco Holdings Co. Limited v. Republic of Turkey, ECT (ICSID Case No. ARB/06/8).**

Decision on Preliminary Issues (June 23, 2008).
Award (02.09.2011).
Decision on Applicant's Request for Provisional Measures (May 7, 2012).
Decision on Applicant's Request for a Continued Stay of Enforcement of the Award (May 7, 2012).
Excerpts of Decision on Annulment (May 22, 2013).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/06/8

- **Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Republic of Ecuador (ICSID Case No. ARB/06/11).**

Decision on Provisional Measures (August 17, 2007).
Decision on Jurisdiction (September 9, 2008).
Award (October 5, 2012).
Dissenting Opinion (October 5, 2012).
Decision on the Stay of Enforcement of the Award (September 30, 2013).

Decision on the Request to Modify the Decision on the Stay of Enforcement of the Award (September 23, 2014).
Decision on Annulment (November 2, 2015).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/06/11

- **Aguaytia Energy, LLC v. Republic of Peru (ICSID Case No. ARB/06/13).**

Award (December 11, 2008).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/06/13

- **Government of the Province of East Kalimantan v. PT Kaltim Prima Coal and others (ICSID Case No. ARB/07/3).**

Award on Jurisdiction (December 28, 2009).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/07/3

- **Abaclat and others v. Argentine Republic (ICSID Case No. ARB/07/5).**

Consent Award (December 29, 2016).
Annex A Settlement Agreement (December 29, 2016).
Declaration appended to the Award by Arbitrator Santiago Torres Bernardez (December 29, 2016).
Additional Declaration by President Pierre Tercier and Arbitrator Albert Jan van den Berg (December 29, 2016).
Additional Declaration by Arbitrator Santiago Torres Bernardez (December 29, 2016).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/07/5

- **Toto Costruzioni Generali S.p.A. v. Lebanese Republic (ICSID Case No. ARB/07/12).**

Decision on Jurisdiction (September 11, 2009).
Award (June 7, 2012).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/07/12

- **Liman Caspian Oil BV and NCL Dutch Investment BV v. Republic of Kazakhstan, ECT (ICSID Case No. ARB/07/14).**

Excerpts of Award (22.06.2010).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/07/14

- **Ron Fuchs v. Georgia (ICSID Case No. ARB/07/15).**

Decision on Jurisdiction (July 6, 2007).
Award (March 3, 2010).

Decision on Applicant's Request for a Continued Stay of Enforcement of the Award (November 12, 2010).
Decision of the ad hoc Committee to terminate the Stay of Enforcement of the Award (January 19, 2011).
Decision of the ad hoc Committee to suspend the Annulment Proceeding (March 21, 2011).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/07/15

- **Alpha Projektholding GmbH v. Ukraine (ICSID Case No. ARB/07/16).**

Award (November 8, 2010).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/07/16

- **Impregilo S.p.A. v. Argentine Republic (ICSID Case No. ARB/07/17).**

Award (June 21, 2011).
Concurring and Dissenting Opinion of Professor Brigitte Stern (June 21, 2011).
Concurring and Dissenting Opinion of Judge Charles N. Brower (June 21, 2011).
Decision on Annulment (January 24, 2014).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/07/17

- **Electrabel S.A. v. Hungary, ECT (ICSID Case No. ARB/07/19).**

Decision on the Claimant's Proposal to Disqualify a Member of the Tribunal.
Decision on Jurisdiction, Applicable Law and Liability.
Award of the Tribunal (25.11.2015).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/07/19

- **Pantechniki S.A. Contractors & Engineers v. Republic of Albania (ICSID Case No. ARB/07/21).**

Award (July 30, 2009).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/07/21

- **AES Summit Generation Limited and AES-Tisza Erömü Kft. v. Hungary, ECT (ICSID Case No. ARB/07/22).**

Award (23.11.2010).
Decision on Annulment (June 29, 2012).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/07/22

- **Railroad Development Corporation v. Republic of Guatemala (ICSID Case No. ARB/07/23).**

Decision on Provisional Measures (October 15, 2008).

Decision on Objection to Jurisdiction (November 17, 2008).
Second Decision on Objections to Jurisdiction (May 18, 2010).
Decision on Clarification Request of the Decision on Jurisdiction (January 13, 2009).
Award (June 29, 2012).
Decision on the Request for a Supplementary Decision and Rectification and Partial Dissenting Opinion by Stuart E. Eizenstat (January 18, 2013).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/07/23

- **Trans-Global Petroleum, Inc. v. Hashemite Kingdom of Jordan (ICSID Case No. ARB/07/25).**

Decision on the Respondent's Objection under Rule 41(5) of the ICSID Arbitration Rules (May 12, 2008).
Award of the Tribunal Embodying the Parties' Settlement Agreement (April 8, 2009).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/07/25

- **Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v. Argentine Republic (ICSID Case No. ARB/07/26).**

Award (December 8, 2016).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/07/26

- **Venezuela Holdings B.V. and others v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/07/27).**

Decision on Jurisdiction (June 10, 2010).
Award of the Tribunal (October 9, 2014).
Decision on the Application for Revision (June 12, 2015).
Decision on Annulment (March 9, 2017).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/07/27

- **SGS Société Générale de Surveillance S.A. v. Republic of Paraguay (ICSID Case No. ARB/07/29).**

Decision on Jurisdiction (February 12, 2010).
Award of the Tribunal (February 10, 2012).
Decision on the termination of the stay of enforcement of the award (March 22, 2013).
Decision on Annulment (May 19, 2014).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/07/29

- **ATA Construction, Industrial and Trading Company v. Hashemite Kingdom of Jordan (ICSID Case No. ARB/08/2).**

Award (May 18, 2010).
Decision on Interpretation and on the Request for Provisional Measures (March 7, 2011).

Order Taking Note of the Discontinuance of the Proceeding (July 11, 2011).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/08/2

- **Murphy Exploration and Production Company International v. Republic of Ecuador (ICSID Case No. ARB/08/4).**

Award (December 15, 2010).
Dissenting Opinion (December 15, 2010).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/08/4

- **Bosh International, Inc. and B&P, LTD Foreign Investments Enterprise v. Ukraine (ICSID Case No. ARB/08/11).**

Award (October 25, 2012).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/08/11

- **Alapli Elektrik B.V. v. Republic of Turkey, ECT (ICSID Case No. ARB/08/13).**

Excerpts of Award (12.07.2012).
Decision on the Application for Annulment (10.07.2014).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/08/13

- **GEA Group Aktiengesellschaft v. Ukraine (ICSID Case No. ARB/08/16).**

Award (March 31, 2011).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/08/16

- **Malicorp Limited v. Arab Republic of Egypt (ICSID Case No. ARB/08/18).**

Award (February 7, 2011).
Decision on Annulment (July 3, 2013).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/08/18

- **Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. Argentine Republic (ICSID Case No. ARB/09/1).**

Decision on Jurisdiction (December 21, 2012).
Separate Opinion on Decision on Jurisdiction (December 21, 2012).
Decision on Provisional Measures (April 8, 2016).
Dissenting Opinion on Decision on Provisional Measures of Dr. Kamal Hossain (April 8, 2016).
Award of the Tribunal (July 21, 2017).
Decision on Annulment (May 29, 2019).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/09/1

- **Elsamex, S.A. v. Republic of Honduras (ICSID Case No. ARB/09/4).**

Award (November 16, 2012).
Decision on Elsamex S.A.'s Preliminary Objections (January 7, 2014).
Decision on the Continuation of the Stay of Enforcement of the Award (January 7, 2014).
Decision on the Termination of the Stay of Enforcement of the Award (March 11, 2014).
Order Taking Note of the Discontinuance of the Proceeding (April 21, 2015).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/09/4

- **Iberdrola Energía, S.A. v. Republic of Guatemala (ICSID Case No. ARB/09/5).**

Award (August 17, 2012).
Decision on Annulment (January 13, 2015).
Dissenting Opinion on the Decision on Annulment of José Luis Shaw (January 13, 2015).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/09/5

- **KT Asia Investment Group B.V. v. Republic of Kazakhstan (ICSID Case No. ARB/09/8).**

Award of the Tribunal (October 17, 2013).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/09/8

- **EVN AG v. Macedonia, former Yugoslav Republic of, ECT (ICSID Case No. ARB/09/10).**

Award (02.09.2011).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/09/10

- **Global Trading Resource Corp. and Globex International, Inc. v. Ukraine (ICSID Case No. ARB/09/11).**

Award (December 1, 2010).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/09/11

- **Pac Rim Cayman LLC v. Republic of El Salvador (ICSID Case No. ARB/09/12).**

Decision on Jurisdiction (June 1, 2012).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/09/12

- **Swisslion DOO Skopje v. Macedonia, former Yugoslav Republic of (ICSID Case No. ARB/09/16).**

Award (July 6, 2012).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/09/16

- **Commerce Group Corp. and San Sebastian Gold Mines, Inc. v. Republic of El Salvador (ICSID Case No. ARB/09/17).**

Award (March 14, 2011).
Decision on El Salvador's Application for Security for Costs (September 20, 2012).
Order of the Committee Discontinuing the Proceeding and Decision on Costs (August 28, 2013).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/09/17

- **Tidewater Investment SRL and Tidewater Caribe, C.A. v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/10/5).**

Decision on Jurisdiction (February 8, 2013).
Award (March 13, 2015).
Decision on Application for Revision (July 7, 2015).
Decision on Stay (February 29, 2016).
Decision on Annulment (December 27, 2016).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/10/5

- **RSM Production Corporation and others v. Grenada (ICSID Case No. ARB/10/6).**

Decision on Respondent's Application for Security for Costs (October 14, 2010).
Award (December 10, 2010).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/10/6

- **Philip Morris Brand Sàrl (Switzerland), Philip Morris Products S.A. (Switzerland) and Abal Hermanos S.A. (Uruguay) v. Oriental Republic of Uruguay (ICSID Case No. ARB/10/7).**

Decision on Jurisdiction (July 2, 2013).
Non-disputing party submission by WHO and WHO FCTC (January 28, 2015).
Procedural Order No. 3 (February 17, 2015).
Procedural Order No. 4 (March 24, 2015).
Award of the Tribunal (July 8, 2016).
Decision on the Rectification of the Award (September 26, 2016).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/10/7

- **Opic Karimum Corporation v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/10/14).**

Award of the Tribunal (May 28, 2013).

Dissenting Opinion of Professor Dr. Guido Santiago Tawil (May 28, 2013).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/10/14

- **AES Corporation and Tau Power B.V. v. Republic of Kazakhstan, ECT (ICSID Case No. ARB/10/16).**

Award (01.11.2013).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/10/16

- **Renée Rose Levy de Levi v. Republic of Peru (ICSID Case No. ARB/10/17).**

Award of the Tribunal (February 26, 2014).
Dissenting Opinion by Arbitrator Joaquín Morales Godoy (February 26, 2014).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/10/17

- **Standard Chartered Bank (Hong Kong) Limited v. Tanzania Electric Supply Company Limited (ICSID Case No. ARB/10/20).**

Award of the Tribunal (September 12, 2016).
Decision on Applicant's Request for a Continued Stay on Enforcement of the Award (April 12, 2017.
Decision on Annulment (August 22, 2018).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/10/20

- **TECO Guatemala Holdings, LLC v. Republic of Guatemala (ICSID Case No. ARB/10/23).**

Award of the Tribunal (December 19, 2013).
Decision on Annulment (April 5, 2016).
Resubmission proceeding - Award of the Tribunal (May 13, 2020).
Supplementary Decision (October 16, 2020).
Decision on Stay of Enforcement (May 17, 2021).
Procedural Order No. 1 (May 17, 2021).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/10/23

- **İçkale İnşaat Limited Şirketi v. Turkmenistan (ICSID Case No. ARB/10/24).**

Award (March 8, 2016).
Decision on Claimant's Request for Supplementary Decision and Rectification of the Award (October 4, 2016).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/10/24

- **Caravelí Cotaruse Transmisora de Energía S.A.C. v. Republic of Peru (ICSID Case No. ARB/11/9).**

Award of the Tribunal (April 15, 2013).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/11/9

- **Rafat Ali Rizvi v. Republic of Indonesia (ICSID Case No. ARB/11/13).**

Award on Jurisdiction (July 16, 2013).
Separate Concurring Opinion by Arbitrator Muthucumaraswamy Sornarajah (July 16, 2013).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/11/13

- **Renée Rose Levy and Gremcitel S.A. v. Republic of Peru (ICSID Case No. ARB/11/17).**

Award of the Tribunal (January 9, 2015).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/11/17

- **Burimi SRL and Eagle Games SH.A v. Republic of Albania (ICSID Case No. ARB/11/18).**

Procedural Order No. 1 and Decision on Bifurcation (April 18, 2012).
Procedural Order No. 2 (May 3, 2012).
Procedural Order No. 3 (January 9, 2013).
Award of the Tribunal (May 29, 2013).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/11/18

- **Garanti Koza LLP v. Turkmenistan (ICSID Case No. ARB/11/20).**

Decision on the Objection to Jurisdiction for Lack of Consent (July 3, 2013).
Dissenting Opinion (July 3, 2013).
Award (December 19, 2016).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/11/20

- **Franck Charles Arif v. Republic of Moldova (ICSID Case No. ARB/11/23).**

Award of the Tribunal (April 8, 2013).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/11/23

- **OI European Group B.V. v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/11/25).**

Award of the Tribunal (March 10, 2015).
Decision on Stay of Enforcement of the Award (April 4, 2016).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/11/25

- **Tenaris S.A. and Talta - Trading e Marketing Sociedade Unipessoal Lda. v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/11/26).**

Award of the Tribunal (January 29, 2016).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/11/26

- **Getma International and others v. Republic of Guinea (ICSID Case No. ARB/11/29).**

Decision on Jurisdiction (December 29, 2012).
Award of the Tribunal (August 16, 2016).
Decision on Claimants' Request for Supplementary Decision of the Award (December 13, 2016).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/11/29

- **Adel A Hamadi Al Tamimi v. Sultanate of Oman (ICSID Case No. ARB/11/33).**

Award (November 3, 2015).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/11/33

- **Emmis International Holding, B.V., Emmis Radio Operating, B.V., and MEM Magyar Electronic Media Kereskedelmi és Szolgáltató Kft. v. Hungary (ICSID Case No. ARB/12/2).**

Decision on Respondent's Application for Bifurcation (June 13, 2013).
Award of the Tribunal (April 16, 2014).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/12/2

- **Isolux Corsán Concesiones S.A. v. Republic of Peru (ICSID Case No. ARB/12/5).**

Award of the Tribunal (March 25, 2014).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/12/5

- **Société Industrielle des Boissons de Guinée v. Republic of Guinea (ICSID Case No. ARB/12/8).**

Award (May 21, 2014).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/12/8

- **Vattenfall AB and others v. Federal Republic of Germany, ECT (ICSID Case No. ARB/12/12).**

Recommendation on the Proposal to Disqualify the Tribunal (March 4, 2019).

Decision of the Acting Chairman of the Administrative Council (March 6, 2019).
Recommendation on the Second Proposal to Disqualify the Tribunal (July 6, 2020).
Decision of the Chairman of the Administrative Council (July 8, 2020).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/12/12

- **Churchill Mining Plc and Planet Mining Pty Ltd, formerly ARB/12/14 v. Republic of Indonesia (ICSID Case No. ARB/12/14 and 12/40).**

Decision on Jurisdiction (February 24, 2014).
Award (December 6, 2016).
Decision on the Request for Continued Stay of the Enforcement of the Award (June 27, 2017).
Decision on the Application to Terminate the Stay (March 18, 2019).
Decision on Annulment (March 18, 2019).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/12/14%20and%2012/40

- **Fábrica de Vidrios Los Andes, C.A. and Owens-Illinois de Venezuela, C.A. v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/12/21).**

Award of the Tribunal (November 13, 2017).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/12/21

- **Venoklim Holding B.V. v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/12/22).**

Award of the Tribunal (April 3, 2015).
Concurring and Dissenting Opinion by Arbitrator Enrique Gomez Pinzón (April 3, 2015).
Decision on the Respondent's Preliminary Objection under ICSID Arbitration Rule 41(5) (March 8, 2016).
Decision on Annulment (February 2, 2018).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/12/22

- **Tenaris S.A. and Talta - Trading e Marketing Sociedade Unipessoal Lda. v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/12/23).**

Award (December 12, 2016).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/12/23

- **Ping An Life Insurance Company of China, Limited and Ping An Insurance (Group) Company of China, Limited v. Kingdom of Belgium (ICSID Case No. ARB/12/29).**

Award of the Tribunal (April 30, 2015).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/12/29

- **Lundin Tunisia B. V. v. Republic of Tunisia (ICSID Case No. ARB/12/30).**

Excerpts of Award (December 22, 2015).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/12/30

- **Orascom TMT Investments S.à r.l. v. People's Democratic Republic of Algeria (ICSID Case No. ARB/12/35).**

Award of the Tribunal (May 31, 2017).
Decision on Annulment (September 17, 2020).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/12/35

- **Société Civile Immobilière de Gaëta v. Republic of Guinea (ICSID Case No. ARB/12/36).**

Award of the Tribunal (December 21, 2015).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/12/36

- **Joseph Houben v. Republic of Burundi (ICSID Case No. ARB/13/7).**

Award of the Tribunal (January 12, 2016).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/13/7

- **Poštová banka, a.s. and ISTROKAPITAL SE v. Hellenic Republic (ICSID Case No. ARB/13/8).**

Award of the Tribunal (April 9, 2015).
Decision on Annulment (September 29, 2016).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/13/8

- **Caratube International Oil Company LLP and Devincci Salah Hourani v. Republic of Kazakhstan (ICSID Case No. ARB/13/13).**

Award of the Tribunal (September 27, 2017).
Decision on Stay of Enforcement (December 12, 2019).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/13/13

- **Interocean Oil Development Company and Interocean Oil Exploration Company v. Federal Republic of Nigeria (ICSID Case No. ARB/13/20).**

Decision on Preliminary Objections (October 29, 2014).

Decision on the Proposal to Disqualify all Members of the Arbitral Tribunal (October 3, 2017).
Award of the Tribunal (October 6, 2020).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/13/20

- **Transglobal Green Energy, LLC and Transglobal Green Panama, S.A. v. Republic of Panama (ICSID Case No. ARB/13/28).**

Award of the Tribunal (June 2, 2016).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/13/28

- **RREEF Infrastructure (G.P.) Limited and RREEF Pan-European Infrastructure Two Lux S.à r.l. v. Kingdom of Spain (ICSID Case No. ARB/13/30).**

Decision on Responsibility and on the Principles of Quantum (November 30, 2018).
Dissenting Opinion of Robert Volterra (November 30, 2018).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/13/30

- **MOL Hungarian Oil and Gas Company Plc v. Republic of Croatia (ICSID Case No. ARB/13/32).**

Decision of the Tribunal on Preliminary Objections (December 2, 2014).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/13/32

- **PNG Sustainable Development Program Ltd. v. Independent State of Papua New Guinea (ICSID Case No. ARB/13/33).**

Decision on the Respondent's Preliminary Objections (October 28, 2014).
Decision on the Claimant's Request for Provisional Measures (January 21, 2015).
Award of the Tribunal (May 5, 2015).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/13/33

- **Eiser Infrastructure Limited and Energía Solar Luxembourg S.à r.l. v. Kingdom of Spain (ICSID Case No. ARB/13/36).**

Decision on annulment (June 11, 2020).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/13/36

- **Blusun S.A., Jean-Pierre Lecorcier and Michael Stein v. Italian Republic, ECT (ICSID Case No. ARB/14/3).**

Award (December 27, 2016).
Decision on Annulment (April 13, 2020).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/14/3

- **CEAC Holdings Limited v. Montenegro (ICSID Case No. ARB/14/8).**

Award of the Tribunal (July 26, 2016).
Decision on Annulment (May 1, 2018).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/14/8

- **EuroGas Inc. and Belmont Resources Inc. v. Slovak Republic (ICSID Case No. ARB/14/14).**

Award of the Tribunal (August 18, 2017).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/14/14

- **Bear Creek Mining Corporation v. Republic of Peru (ICSID Case No. ARB/14/21).**

Award (November 30, 2017).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/14/21

- **Ansung Housing Co., Ltd. v. People's Republic of China (ICSID Case No. ARB/14/25).**

Award (March 9, 2017).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/14/25

- **RWE Innogy GmbH and RWE Innogy Aersa S.A.U. v. Kingdom of Spain (ICSID Case No. ARB/14/34).**

Decision on Jurisdiction, Liability and Certain Issues of Quantum (December 30, 2019).
Award of the Tribunal (December 18, 2020).

https://www.italaw.com/cases/7743

- **Mobil Investments Canada Inc. v. Canada, NAFTA (ICSID Case No. ARB/15/06).**

Decision on Jurisdiction and Admissibility (July 13, 2018).
Award of the Tribunal (February 4, 2020).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/15/6

- **Álvarez y Marín Corporación S.A. and others v. Republic of Panama (ICSID Case No. ARB/15/14).**

Reasoning of the Decision on Respondent's Preliminary Objections pursuant to ICSID Arbitration Rule 41.5 (April 4, 2016).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/15/14

- **BayWa r.e. renewable energy GmbH and BayWa r.e. Asset Holding GmbH v. Kingdom of Spain (ICSID Case No. ARB/15/16).**

Award of the Tribunal (January 25, 2021).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/15/16

- **Capital Financial Holdings Luxembourg S.A. v. Republic of Cameroon (ICSID Case No. ARB/15/18).**

Award of the Tribunal (June 22, 2017).
Dissenting Opinion on the Award by Arbitrator Alexis Mourre (June 22, 2017).
Decision on Annulment (October 25, 2019).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/15/18

- **Menzies Middle East and Africa S.A. and Aviation Handling Services International Ltd. v. Republic of Senegal, GATS (ICSID Case No. ARB/15/21).**

Award (August 5, 2016).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/15/21

- **Gabriel Resources Ltd. and Gabriel Resources (Jersey) v. Romania (ICSID Case No. ARB/15/31).**

Reasoned Decision on Claimants Request for Emergency Temporary Provisional Measures (October 21, 2016).
Decision on Claimants' Second Request for Provisional Measures of November (November 22, 2016).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/15/31

- **OperaFund Eco-Invest SICAV PLC and Schwab Holding AG v. Kingdom of Spain (ICSID Case No. ARB/15/36).**

Award of the Tribunal (September 6, 2019).
Dissenting Opinion on Liability and Quantum (August 13, 2019).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/15/36

- **Silver Ridge Power BV v. Italian Republic (ICSID Case No. ARB/15/37).**

Award (February 26, 2021).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/15/37

- **SolEs Badajoz GmbH v. Kingdom of Spain (ICSID Case No. ARB/15/38).**

Award (July 31, 2019).
Decision on the Continuation of the Stay of Enforcement of the Award (August 26, 2020).

https://www.italaw.com/cases/7593

- **Belenergia S.A. v. Italian Republic (ICSID Case No. ARB/15/40).**

Award of the Tribunal (August 6, 2019).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/15/40

- **Landesbank Baden-Württemberg and others v. Kingdom of Spain (ICSID Case No. ARB/15/45).**

Decision on the Respondent's Second Proposal to Disqualify all the members of the Tribunal (December 15, 2020).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/15/45

- **Eskosol S.p.A. in liquidazione v. Italian Republic (ICSID Case No. ARB/15/50).**

Decision on Respondent's Application Under Rule 41(5) (March 20, 2017).
Procedural Order No. 3 (April 12, 2017).
Decision on Termination Request and Intra-EU Objection.
Award of the Tribunal (September 4, 2020).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/15/50

- **Eurus Energy Holdings Corporation v. Kingdom of Spain (ICSID Case No. ARB/16/4).**

Decision on Jurisdiction and Liability (March 17, 2021).
Partial Dissent by Oscar M. Garibaldi (March 17, 2021).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/16/4

- **Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc. v. Republic of Panama (ICSID Case No. ARB/16/34).**

Decision on Expedited Objections (December 13, 2017).
Award of the Tribunal (August 14, 2020).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/16/34

- **Omega Engineering LLC and Oscar Rivera v. Republic of Panama (ICSID Case No. ARB/16/42).**

Procedural Order No. 1 (June 21, 2017).
Procedural Order No. 2 (December 18, 2019).
United States of America Third Non-Disputing Party Submission (February 3, 2020).
Procedural Order No. 3 (February 6, 2020).
Procedural Order No. 4 (October 6, 2020).
Procedural Order No. 5 (October 8, 2020).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/16/42

- **Anglo-Adriatic Group Limited v. Republic of Albania (ICSID Case No. ARB/17/6).**

Award (07.02.2019).

https://www.italaw.com/cases/documents/7193

- **Itisaluna Iraq LLC and others v. Republic of Iraq (ICSID Case No. ARB/17/10).**

Award (03.04.2020).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/17/10

- **Carlos Rios and Francisco Javier Rios v. Republic of Chile (ICSID Case No. ARB/17/16).**

Award (January 11, 2021).
Partial Dissenting Opinion of Oscar M. Garibaldi (December 29, 2020).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/17/16

- **Lotus Holding Anonim Şirketi v. Turkmenistan (ICSID Case No. ARB/17/30).**

Award of the Tribunal (April 6, 2020).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/17/30

- **The Lopez-Goyne Family Trust and others v. Republic of Nicaragua (ICSID Case No. ARB/17/44).**

Procedural Order No. 1 (Amended) (February 18, 2021).
Procedural Order No. 2 (November 13, 2020).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/17/44

- **Red Eagle Exploration Limited v. Republic of Colombia (ICSID Case No. ARB/18/12).**

Decision on Bifurcation (August 3, 2020).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/18/12

- **Gran Colombia Gold Corp. v. Republic of Colombia (ICSID Case No. ARB/18/23).**

Decision on the Bifurcated Jurisdictional Issue (November 23, 2020).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/18/23

- **Daniel W. Kappes and Kappes, Cassiday & Associates v. Republic of Guatemala (ICSID Case No. ARB/18/43).**

Decision on the Respondent's Preliminary Objections (March 13, 2020).
Decision on the Respondent's Preliminary Objections - Partial Dissent Opinion of Zachary Douglas (March 13, 2020).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/18/43

- **IBT Group, LLC and IBT, LLC v. Republic of Panama (ICSID Case No. ARB/20/31).**

Decision on Interim Relief (December 22, 2020).
Decision on Provisional Measures (February 5, 2021)
Procedural Order No. 1 (February 17, 2021)

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/20/31

I.3 PCIJ (PERMANENT COURT OF INTERNATIONAL JUSTICE – WEBOGRAPHY, (LAST ACCESS: 28.05.2021).

- Chorzow Factory (Germany v. Poland).

Judgement of 26.07.1927.

https://www.icj-cij.org/public/files/permanent-court-of-international-justice/serie_A/A_09/28_Usine_de_Chorzow_Competence_Arret.pdf

I. 4 ICJ: INTERNATIONAL COURT OF JUSTICE – WEBOGRAPHY (LAST ACCESS: 28.05.2021).

- **Nottebohm (Lichtenstein v. Guatemala).**

Final Judgement of 06.04.1955

https://www.icj-cij.org/public/files/case-related/18/018-19550406-JUD-01-00-EN.pdf

- **Barcelona Traction (Belgium v. Spain).**

Preliminary Objections Judgement of 24.07.1962
Final Judgement of 05.02.1970

https://www.icj-cij.org/en/case/50/judgments

I.5 ICC: INTERNATIONAL CHAMBER OF COMMERCE (ICSID REPORTS).

- **South Pacific Properties (ref. ICSID Case n. ARB/84/3)**

SPP (Middle East) Limited and Southern Pacific Properties Limited v. Arab Republic of Egypt and Egyptian General Company for Tourism and Hotels, ICC Arbitration n. YD/AS n. 3439, Award of 11.03.1983, 3 ICSID Reports, Cambridge UP, 1995, ISBN: 0-521-47512-0

I.6 LCIA: LONDON COURT OF INTERNATIONAL ARBITRATION (ICSID REPORTS).

- **Occidental Exploration.**

Occidental Exploration and Production Company v. Republic of Ecuador, LCIA Arbitrationn. UN 3467, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 54 ss.

Occidental Exploration and Production Company v. Republic of Ecuador, LCIA Arbitration n. UN 3467, Final Award of 01.07.2004, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 59 ss.

I.7 SCC: STOCKHOLM CHAMBER OF COMMERCE (ICSID REPORTS).

- **Nagel.**

Nagel v. Czech Republic, SCC Case n. 49/2002, 13 ICSID REPORTS, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 30 ss.

Nagel v. Czech Republic, SCC Case n. 49/2002, Final Award of 09.09.2003, 13 ICSID REPORTS, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 33 ss.

- **Petrobart [II]**

Petrobart Limited v. Kyrgyz Republic, SCC Case n. 126/2003, 13 ICSID REPORTS, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 381 ss.

Petrobart Limited v. Kyrgyz Republic, SCC Case n. 126/2003, Award of 29.03.2005, 13 ICSID REPORTS, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 387 ss.

- **Bogdanov.**

Bogdanov, Agurdino – Invest Ltd and Agurdino – Chimia JSC v. Republic of Moldova, 15 ICSID REPORTS, Cambridge UP, 2010, ISBN: 978-0-521-89989-5, pp. 45 ss.

Bogdanov, Agurdino – Invest Ltd and Agurdino – Chimia JSC v. Republic of Moldova, Award of 22.09.2005, 15 ICSID REPORTS, Cambridge UP, 2010, ISBN: 978-0-521-89989-5, pp. 49 ss.

- **Berschader.**

Vladimir Berschader and Moise Berschader v. Russian Federation, 16 ICSID REPORTS, Cambridge UP, 2012, ISBN: 978-0-521-19261-3, pp. 462 ss.

Vladimir Berschader and Moise Berschader v. Russian Federation, Award of 21.04.2006, 16 ICSID REPORTS, Cambridge UP, 2012, ISBN: 978-0-521-19261-3, pp. 467 ss.

Vladimir Berschader and Moise Berschader v. Russian Federation, Separate Opinion on the Award, of 07.04.2006, 16 ICSID REPORTS, Cambridge UP, 2012, ISBN: 978-0-521-19261-3, pp. 512 ss.

Vladimir Berschader and Moise Berschader v. Russian Federation, Correction of the Award, of 09.06.2006, 16 ICSID REPORTS, Cambridge UP, 2012, ISBN: 978-0-521-19261-3, pp. 518 ss.

I.8 AD HOC ARBITRATION TRIBUNALS (ICSID REPORTS).

- **Methanex (NAFTA).**

Methanex Corporation v. United States of America, (NAFTA) UNCITRAL rules, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 208 ss.

Methanex Corporation v. United States of America, (NAFTA) UNCITRAL rules, Decision on the Place of Arbitration of 31.12.2000, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 213 ss.

Methanex Corporation v. United States of America, (NAFTA) UNCITRAL rules, Decision on Petition of Third Persons to intervene as "Amici curiae" of 15.01.2001, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 224 ss.

Methanex Corporation v. United States of America, (NAFTA) UNCITRAL rules, First Partial Award (Decision on Jurisdiction and Admissibility) of 07.08.2002, 7 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-84133-X, pp. 239 ss.

Methanex Corporation v. United States of America, (NAFTA) UNCITRAL rules, 16 ICSID REPORTS, Cambridge UP, 2012, ISBN: 978-0-521-19261-3, pp. 32 ss.

Methanex Corporation v. United States of America, (NAFTA) UNCITRAL rules, Final Award on Jurisdiction and Merits of 03.08.2005, 16 ICSID REPORTS, Cambridge UP, 2012, ISBN: 978-0-521-19261-3, pp. 40 ss.

- **Eureko BV (Ad hoc Arbitration Tribunal under Netherlands - Poland BIT of 07.12.1992)**

Eureko BV v. Republic of Poland, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 331 ss.

Eureko BV v. Republic of Poland, Partial Award of 19.08.2005, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 335 ss.

Eureko BV v. Republic of Poland, Dissenting Opinion on Partial Award of 19.08.2005, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 389 ss.

- **EnCana Corporation (Ad hoc Arbitration Tribunal under Canada – Ecuador BIT of 29.04.1996, UNCITRAL rules)**

EnCana Corporation v. Republic of Ecuador, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 400 ss.

EnCana Corporation v. Republic of Ecuador, Interim Award on Request for Interim Measures of Protection of 31.01.2004, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 408 ss.

EnCana Corporation v. Republic of Ecuador, Partial Award on Jurisdiction of 27.02.2004, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 413 ss.

EnCana Corporation v. Republic of Ecuador, Award of 03.02.2006, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 427 ss.

EnCana Corporation v. Republic of Ecuador, Partial Dissenting Opinion on the Award of 03.02.2006, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 489 ss.

- **Link-Trading (Ad hoc Arbitration Tribunal under USA – Moldova BIT of 21.04.1993, UNCITRAL rules)**

Link-Trading Joint Stock Company v. Department for Customs Control of the Republic of Moldova, 13 ICSID REPORTS, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 3 ss.

Link-Trading Joint Stock Company v. Department for Customs Control of the Republic of Moldova, Award on Jurisdiction of 16.02.2001, 13 ICSID REPORTS, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 6 ss.

Link-Trading Joint Stock Company v. Department for Customs Control of the Republic of Moldova, Final Award of 18.04.2002, 13 ICSID REPORTS, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 14 ss.

- **Gami Investment (Ad hoc Arbitration Tribunal under NAFTA, UNCITRAL rules).**

Gami Investment Inc. v. Government of the United Mexican States, 13 ICSID Reports, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 144 ss.

Gami Investment Inc. v. Government of the United Mexican States, Final Award of 15.11.2004, 13 ICSID Reports, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 147 ss.

- **Petrobart [I] (Ad hoc Arbitration Tribunal under Kyrgyz Foreign Investment Law, UNCITRAL rules).**

Petrobart Limited v. Kyrgyz Republic [I], 13 ICSID Reports, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 335 ss.

Petrobart Limited v. Kyrgyz Republic [I], Award of 13.02.2003, 13 ICSID Reports, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 337 ss.

- **Saluka Investments (Ad hoc Arbitration Tribunal under Netherlands – Czech and Slovak Federal Republic BIT of 29.04.1991, UNCITRAL rules).**

Saluka Investments BV v. Czech Republic, 15 ICSID REPORTS, Cambridge UP, 2010, ISBN: 978-0-521-89989-5, pp. 250 ss.

Saluka Investments BV v. Czech Republic, Decision on Jurisdiction of 07.05.2004, 15 ICSID REPORTS, Cambridge UP, 2010, ISBN: 978-0-521-89989-5, pp. 256 ss.

Saluka Investments BV v. Czech Republic, Award of 17.03.2006, 15 ICSID REPORTS, Cambridge UP, 2010, ISBN: 978-0-521-89989-5, pp. 274 ss.

- **Grand River (Ad hoc Arbitration Tribunal under NAFTA, UNCITRAL rules).**

Grand River Enterprises Six Nations Ltd and Others v. United States of America, 15 ICSID REPORTS, Cambridge UP, 2010, ISBN: 978-0-521-89989-5, pp. 503 ss.

Grand River Enterprises Six Nations Ltd and Others v. United States of America, Decisions on Objections to Jurisdiction of 20.07.2006, 15 ICSID REPORTS, Cambridge UP, 2010, ISBN: 978-0-521-89989-5, pp. 505 ss.

- **Mytilineos (Ad hoc Arbitration Tribunal under Greece – Yugoslavia BIT of 25.06.1997).**

Mytilineos Holdings SA v. State Union of Serbia and Montenegro and Republic of Serbia, 16 ICSID REPORTS, Cambridge UP, 2012, ISBN: 978-0-521-19261-3, pp. 567 ss.

Mytilineos Holdings SA v. State Union of Serbia and Montenegro and Republic of Serbia, Partial Award on Jurisdiction of 08.09.2006, 16 ICSID REPORTS, Cambridge UP, 2012, ISBN: 978-0-521-19261-3, pp. 572 ss.

Mytilineos Holdings SA v. State Union of Serbia and Montenegro and Republic of Serbia, Dissenting Opinion on Partial Award on Jurisdiction, of 06.09.2006, 16 ICSID REPORTS, Cambridge UP, 2012, ISBN: 978-0-521-19261-3, pp. 612 ss.

I.9 AD HOC ARBITRATION TRIBUNALS (WEBOGRAPHY, LAST ACCESS: 28.05.2021)

- **Lena Goldfields (Ad hoc Arbitration Tribunal under Lena Goldfields Ltd – Soviet Union Government Concession Agreement).**

Lena Goldfields v. Soviet Union, Award of 02.09.1930, in paper from NUSSBAUM, A., *Arbitration between the Lena Goldfields Ltd and the Soviet Government,* Cornell Law Review, 36 vol., 1, Fall 2950, 1950.

https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1582&context=clr

- **United Parcels Service of America Inc. v. Canada, NAFTA, (ICSID Case No. UNCT/02/1).**

Award on Jurisdiction (November 22, 2002).
Tribunal Decision Relating to Canada's Claim of Cabinet Privilege (October 8, 2004).
Award on the Merits (May 24, 2007).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=UNCT/02/1

- **Corn Products International, Inc. v. United Mexican States, NAFTA, (ICSID Case No. ARB(AF)/04/1).**

Decision on Responsibility (redacted version) (January 15, 2008).
Separate Opinion (Attached to the Decision on Responsibility) (January 15, 2008).
Order of the Consolidation Tribunal (May 20, 2005).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB(AF)/04/1

- **Gemplus, S.A., SLP, S.A. and Gemplus Industrial, S.A. de C.V. v. United Mexican States, BIT Mexico – France of 1998 (ICSID Case No. ARB(AF)/04/3).**

Award (June 16, 2010).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB(AF)/04/3

- **Talsud, S.A. v. United Mexican States, BIT Mexico – Argentina of 1996 (ICSID Case No. ARB(AF)/04/4).**

Award (June 16, 2010).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB(AF)/04/4

- **Archer Daniels Midland Company and Tate & Lyle Ingredients Americas, Inc. v. United Mexican States, NAFTA, (ICSID Case No. ARB(AF)/04/5).**

Award (redacted version) (November 21, 2007).
Concurring Opinion (Attached to the Award) (November 21, 2007).
Order of the Consolidation Tribunal (May 20, 2005)-

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB(AF)/04/5

- **Vannessa Ventures Ltd. v. Bolivarian Republic of Venezuela, BIT Canada – Venezuela of 1996 (ICSID Case No. ARB(AF)/04/6).**

Decision on Jurisdiction (August 22, 2008).
Award (January 16, 2013).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB(AF)/04/6

- **Mobil Investments Canada Inc. and Murphy Oil Corporation v. Canada, NAFTA (ICSID Case No. ARB(AF)/07/4).**

Decision on Liability and on Principles of Quantum (May 22, 2012).
Dissenting Opinion (May 22, 2012).
Award of the Tribunal (February 20, 2015).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB(AF)/07/4

- **Bayview Irrigation District and others v. United Mexican States, NAFTA (ICSID Case No. ARB(AF)/05/1).**

Award (June 19, 2007).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB(AF)/05/1

- **Cargill, Incorporated v. United Mexican States, NAFTA (ICSID Case No. ARB(AF)/05/2).**

Award (September 18, 2009).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB(AF)/05/2

- **Piero Foresti, Laura de Carli and others v. Republic of South Africa (ICSID Case No. ARB(AF)/07/1).**

Award of the Tribunal (August 4, 2010).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB(AF)/07/1

- **Merrill & Ring Forestry L.P. v. Canada, NAFTA (ICSID Case No. UNCT/07/1).**

Decision on Cabinet Privilege (September 3, 2008).
Award of the Tribunal (March 31, 2010).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=UNCT/07/1

- **Apotex Inc. v. United States of America, NAFTA (ICSID Case No. UNCT/10/2).**

Award - English (Original) (June 14, 2013)

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=UNCT/10/2

- **Grupo Francisco Hernando Contreras v. Republic of Equatorial Guinea (ICSID Case No. ARB(AF)/12/2).**

Award (December 4, 2015).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB(AF)/12/2

- **Apotex Holdings Inc. and Apotex Inc. v. United States of America, NAFTA (ICSID Case No. ARB(AF)/12/1).**

Award of the Tribunal (August 25, 2014).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB(AF)/12/1

- **Mercer International, Inc. v. Canada, NAFTA (ICSID Case No. ARB(AF)/12/3).**

Award of the Tribunal (March 6, 2018).
Tribunal's Decision on Claimant's Request for Supplementary Decision (December 10, 2018).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB(AF)/12/3

- **The Renco Group, Inc. v. Republic of Peru (ICSID Case No. UNCT/13/1).**

Partial Award on Jurisdiction (July 15, 2016).
Final Award (November 9, 2016).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=UNCT/13/1

- **Aaron C.Berkowitz, Brett E. Berkowitz and Trevor B. Berkowitz v. Republic of Costa Rica (ICSID Case No. UNCT/13/2).**

Interim Award of the Tribunal (May 30, 2017)
Procedural Order on Correction and Termination (May 30, 2017)

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=UNCT/13/2

- **Eli Lilly and Company v. Canada, NAFTA (ICSID Case No. UNCT/14/2).**

Final Award (March 16, 2017).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=UNCT/14/2

- **Corona Materials, LLC v. Dominican Republic (ICSID Case No. ARB(AF)/14/3).**

Procedural Order No. 1 (December 16, 2015).
Procedural Order No. 2 (March 30, 2016).
Procedural Order No. 3 (April 19, 2016).
Award of the Tribunal (May 31, 2016).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB(AF)/14/3

- **Lion Mexico Consolidated L.P. v. United Mexican States, NAFTA (ICSID Case No. ARB(AF)/15/2).**

Decision on the Respondent's Preliminary Objection under Article 45(6) of the ICSID Arbitration (Additional Facility) Rules (December 12, 2016).
Decision on Bifurcation (May 29, 2017).
Decision on Jurisdiction (July 30, 2018).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB(AF)/15/2

- **David Aven et al. v. Republic of Costa Rica (ICSID Case No. UNCT/15/3).**

Award of the Tribunal (September 18, 2018).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=UNCT/15/3

- **B-Mex, LLC and others v. United Mexican States, NAFTA (ICSID Case No. ARB(AF)/16/3).**

Partial Award (July 19, 2019).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB(AF)/16/3

- **Joshua Dean Nelson v. United Mexican States, NAFTA (ICSID Case No. UNCT/17/1).**

Award of the Tribunal - Corrected (June 5, 2020).

Decision on Correction Request (July 31, 2020).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=UNCT/17/1

- **Vento Motorcycles, Inc. v. United Mexican States, NAFTA (ICSID Case No. ARB(AF)/17/3).**

Award of the Tribunal (July 6, 2020).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB(AF)/17/3

- **Michael Anthony Lee-Chin v. Dominican Republic (ICSID Case No. UNCT/18/3).**

Partial Award on Jurisdiction (July 15, 2020).

https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=UNCT/18/3

II. NATIONAL COURTS AND TRIBUNALS[310]

II.1 NATIONAL COURTS CASE LAW (ICSID REPORTS)

BELGIUM.

1. Maritime International (ref. ICSID Case n. ARB/84/4).

Rechtbank van eerste aanlag (Court of First Instance), Antwerp, Republic of Guinea v.*Maritime International Nominees Establishment,* Judgement of 27.11.1985, 4 ICSID REPORTS, Cambridge UP, 1997, ISBN: 0-521-58136-2, pp. 32 ss.

CANADA.

1. Metalclad (ref. ICSID Case n. ARB(AF)/97/1.

Supreme Court of British Columbia, *United Mexican States v. Metalclad Corporation,* Judicial Review Judgement n. (2001 BCSC 664) of 02.05.2001, 5 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-81383-2, pp. 236 ss.

[310] National Courts case law is presented per Countries. A short reference to original Arbitration case is made.

Supreme Court of British Columbia, *United Mexican States v. Metalclad Corporation,* Judicial Review, Supplementary Reasons for Judgement n. (2001 BCSC 664) of 31.10.2001,6 ICSID REPORTS, Cambridge UP, 2002, ISBN: 0-521-82988-7, pp. 52 ss.

2. Myers (ref. ICSID Case n. ARB(AF)/97/1.

Federal Court, *Attorney General v. S.D. Myers Inc. (United Mexican States – Intervener),* Judicial Review of 13.01.2004, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 194 ss.

3. Feldman (ref. ICSID Case n. ARB(AF)/99/1.

Ontario Superior Court of Justice, *United Mexican States v. Feldman Karpa,* Judicial Review Decision of 03.12.2003, 8 ICSID REPORTS, Cambridge UP, 2005, ISBN: 0-521-85127-0, pp. 500 ss.

Ontario Court of Appeal, *United Mexican States v. Feldman Karpa*, Judicial Review Judgement of 11.01.2005, 9 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-86123-6, pp. 508 ss.

FRANCE.

1. Benvenuti & Bonfant (ref. ICSID Case n. ARB/77/2).

Tribunale de Grande Instance, Paris, *Benvenuti Benvenuti & Bonfant v. Government of the People's Republic of the Congo*, Décision de 13.01.1981, 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 368 ss.

Cour d'Appel, Paris, *Benvenuti Benvenuti & Bonfant v. Government of the People's Republic of the Congo*, Décision de 26.06.1981, 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 369 ss.

Cour de Cassation, *Benvenuti Benvenuti & Bonfant v. Government of the People's Republic of the Congo*, Décision de 21.07.1987, 1 ICSID REPORTS, Grotius Publications Ltd, Cambridge, 1993, ISBN: 1-85701-009-4, pp. 373 ss.

2. Societé Ouest Africaine del Bétons Industriels (ref. ICSID Case n. ARB/82/1).

Cour d'Appel, Paris, *Societé Ouest Africaine des Bétons Industriels [SOABI] v. State of Senegal*, Décision de 05.12.1989, 2 ICSID REPORTS, Cambridge UP, 1994, ISBN: 0-521-46340-8, pp. 337 ss.

Cour de Cassation, *Societé Ouest Africaine des Bétons Industriels [SOABI] v. State of Senegal*, Décision de 11.06.1991, 2 ICSID REPORTS, Cambridge UP, 1994, ISBN: 0-521-46340-8, pp. 341 ss.

3. Atlantic Triton Company Limited (ref. ICSID Case n. ARB/84/1).

Cour d'Appel, Rennes, *People's Revolutionary Republic of Guinea v. Atlantic Triton Company Ltd*, Judgement of 26.10.1984, 3 ICSID REPORTS, Cambridge UP, 1995, ISBN: 0-521-47512-0, pp. 3 ss.

Cour de Cassation, *People's Revolutionary Republic of Guinea v. Atlantic Triton Company Ltd*, Judgement of 18.11.1986, 3 ICSID REPORTS, Cambridge UP, 1995, ISBN: 0-521-47512-0, pp. 10 ss.

4. Southern Pacific Properties (ref. ICSID Case n. ARB/84/3).

Cour d'Appel, Paris, *Arab Republic of Egypt v. Southern Pacific Properties Limited and Southern Pacific Properties (Middle East) Limited*, Judgement of 12.07.1984, 3 ICSID Reports, Cambridge UP, 1995, ISBN: 0-521-47512-0, pp. 79 ss.

Cour de Cassation, *Arab Republic of Egypt v. Southern Pacific Properties Limited andSouthern Pacific Properties (Middle East) Limited*, Judgement of 06.01.1987, 3 ICSID Reports, Cambridge UP, 1995, ISBN: 0-521-47512-0, pp. 96 ss.

NETHERLANDS.

1. Southern Pacific Properties (ref. ICSID Case n. ARB/84/3).

District Court of Amsterdam, *Southern Pacific Properties (Middle East) Limited v. Arab Republic of Egypt*, Judgement of 12.07.1984, 3 ICSID Reports, Cambridge UP, 1995, ISBN: 0-521-47512-0, pp. 92 ss.

NEW ZEALAND.

1. Mobil Oil (ref. ICSID Case n. ARB/87/2).

High Court, *Attorney General v. Mobil Oil New Zealand Ltd*, Judgement of 01.07.1987, 4 ICSID REPORTS, Cambridge UP, 1997, ISBN: 0-521-58136-2, pp. 117 ss.

SUISS.

1. Maritime International (ref. ICSID Case n. ARB/84/4).

Tribunal Fédéral*, Republic of Guinea v. Maritime International Nominees Establishment,* Judgement of 04.12.1985, 4 ICSID REPORTS, Cambridge UP, 1997, ISBN: 0-521-58136-2, pp. 35 ss.

Tribunal de Première Instance, Geneva, *Republic of Guinea v. Maritime International Nominees Establishment,* Judgement of 13.03.1986, 4 ICSID REPORTS, Cambridge UP, 1997, ISBN: 0-521-58136-2, pp. 41 ss.

Autorité de surveillance des offices de poursuite pour dettes et de faillite, *Republic of Guinea v. Maritime International Nominees Establishment,* Judgement of 07.10.1986, 4 ICSID REPORTS, Cambridge UP, 1997, ISBN: 0-521-58136-2, pp. 45 ss.

2. Saluka Investments (ref. Ad hoc Arbitration Tribunal under Netherlands – Czech and Slovak Federal Republic BIT of 29.04.1991, UNCITRAL rules).

Tribunal Fédéral, *Czech Republic v. Saluka Investments BV*, Case n. 4P.114/2006/bie, Judicial Review Judgement of 07.09.2006, 15 ICSID REPORTS, Cambridge UP, 2010, ISBN: 978-0-521-89989-5, pp. 377 ss.

SWEDEN.

1. CME Czech Republic BV.

Svea Court of Appeal, *Czech Republic v. CME Czech Republic BV*, Case n. T 8735-01, Judicial Review Judgement of 15.05.2003, 9 ICSID REPORTS, Cambridge UP, 2006, ISBN: 13-978-0-521-86123-6, pp. 439 ss.

2. Nagel.

Svea Court of Appeal, *Nagel v. Czech Republic,* Case n. T 9059-03, Judicial Review Decision of 26.08.2005, 13 ICSID REPORTS, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 96 ss.

3. Petrobart [I].

Svea Court of Appeal, *Petrobart Limited v. Kyrgyz Republic [I],* Case n. T 3739-03, Judicial Review Decision of 13.04.2006, 13 ICSID Reports, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 369 ss.

4. Petrobart [II].

Svea Court of Appeal*, Petrobart Limited v. Kyrgyz Republic,* Case n. T 5208-05, Judicial Review Judgement of 19.01.2007, 13 ICSID REPORTS, Cambridge UP, 2008, ISBN: 978-0-521-89987-1, pp. 480 ss.

UNITED KINGDOM.

1. AIG Capital Partners (ref. ICSID Case n. ARB/01/6).

High Court, Queen's Bench Division, *AIG Capital Partners Inc. and Another v. Republic of Kazakhstan*, Application for Enforcement of Arbitral Award n. ([2005] EWHC 2239 (Comm)) of 20.10.2005, 11 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87170-9, pp. 118 ss.

2. Occidental Exploration (ref. LCIA Case n. UN 3467).

Republic of Ecuador v. Occidental Exploration and Production Company, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 101 ss.

High Court, Queen's Bench Division, *Republic of Ecuador v. Occidental Exploration and Production Company,* Case n. ([2005] EWHC 774 (COMM)), Judicial Review Judgement of 29.04.2005, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 104 ss.

Court of Appeal, Civil Division, *Republic of Ecuador v. Occidental Exploration and Production Company,* Case n. ([2005] EWCA Civ 1116), Judicial Review Judgement of 09.09.2005, 12 ICSID REPORTS, Cambridge UP, 2007, ISBN: 978-0-521-87804-3, pp. 129 ss.

UNITED STATES OF AMERICA.

1. Liberian Eastern Timber Corporation [LETCO] (ref. ICSID Case n. ARB/83/2).

United States District Court, Southern District, New York, *Liberian Eastern Timber Corporation [LETCO] v. Government of the Republic of Liberia*, Decision of 05.09.1986, 2 ICSID REPORTS, Cambridge UP, 1994, ISBN: 0-521-46340-8, pp. 383 ss.

United States District Court, Southern District, New York, *Liberian Eastern Timber Corporation [LETCO] v. Government of the Republic of Liberia*, Judgement of 12.12.1986, 2 ICSID REPORTS, Cambridge UP, 1994, ISBN: 0-521-46340-8, pp. 385 ss.

United States District Court, District of Columbia, *Liberian Eastern Timber Corporation [LETCO] v. Government of the Republic of Liberia*, Judgement of 12.12.1986, 2 ICSID REPORTS, Cambridge UP, 1994, ISBN: 0-521-46340-8, pp. 390 ss.

2. Maritime International (ref. ICSID Case n. ARB/84/4).

United States District Court, District of Columbia, *Maritime International Nominees Establishment v. Republic of Guinea*, Judgement of 12.01.1981, 4 ICSID REPORTS, Cambridge UP, 1997, ISBN: 0-521-58136-2, pp. 3 ss.

United States Court of Appeals, District of Columbia Circuit, *Maritime International Nominees Establishment v. Republic of Guinea*, Judgement of 12.11.1982, 4 ICSID REPORTS, Cambridge UP, 1997, ISBN: 0-521-58136-2, pp. 8 ss.

3. Loewen Group (ref. ICSID Case n. ARB/98/3).

United States District Court, District of Columbia, *Raymond L. Loewen v. United States of America,* Judicial Review Decision of 31.10.2005, 10 ICSID REPORTS, ISBN: 13-978-0- 521-87169-3, pp. 448 ss.

II.2 NATIONAL COURT CASE LAW (WEBOGRAPHY, LAST ACCESS: 28.05.2021)

BELGIUM.

1. Micula [I] (ref. ICSID Case n. ARB/05/20).

Cour d'Appel de Bruxelles, *Viorel macula and Otthers v. Romania and Others,* Decision on the execution order implementing Arbitral Award ICSID ARB/05/20, Case n. R.G. 2016/AR/393, of 12.03.2019. Available at:

https://www.italaw.com/sites/default/files/case-documents/italaw10446.pdf

UNITED STATES OF AMERICA.

1. Micula [I] (ref. ICSID Case n. ARB/05/20).

United States District Court, District of Columbia, *Viorel Micula v. The Government of the Republic of Romania,* Decision on the Recognition and Enforcement of Arbitral AwardICSID ARB/05/20, of 18.05.2015. Available at:

https://www.italaw.com/sites/default/files/case-documents/italaw8946.pdf

United States District Court, Southern District of New York, *Ioan Micula and Others v. The Government of Romania,* Decision on vacate Judgement of 21.04.2015 as amended by Judgement of 28.04.2015, of 05.08.2015. Available at:

https://www.italaw.com/sites/default/files/case-documents/italaw10227.pdf

United States District Court, Southern District of New York, *Ioan Micula and Others v. The Government of Romania,* Decision on reconsideration of Judgement of 21.04.2015, of 03.09.2015. Available at:

https://www.italaw.com/sites/default/files/case-documents/italaw10228.pdf

United States Court of Appeals for the Second Circuit, *Ioan Micula and Others v. The Government of Romania,* Decision on reversal and vacation of Southern New York District Court Judgements of 05.08.2015 and 03.09.2015, of 24.10.2017. Available at:

https://www.italaw.com/sites/default/files/case-documents/italaw94011.pdf

United States District Court, District of Columbia, *Ioan Micula and Others v. The Government of Romania,* Case n. 17-cv-02332 (APM), Decision of confirmation of Arbitral Award ICSID ARB/05/20, of 11.09.2019. Available at:

https://www.italaw.com/sites/default/files/case-documents/italaw10816.pdf

United States Court of Appeals, District of Columbia Circuit, Case n. 19-7127, Judgement on confirmation of Decision delivered by US District Court of Columbia n. 17-cv-02332 of 11.09.2019, of September 2019. Available at:

https://www.italaw.com/sites/default/files/case-documents/italaw11504.pdf

UNITED KINGDOM.

1. Micula [I] (ref. ICSID Case n. ARB/05/20).

High Court, Queen's Bench Division, *Ioan Micula and Others v. The Government of Romania and EU Commission,* Case n. [2017] EWHC 31 (Comm), Judgement to set aside theOrder of Registration of the ICSID Tribunal in case ARB/05/20, of 20.01.2017. Available at:

https://www.italaw.com/sites/default/files/case-documents/italaw8133_6.pdf

High Court, Queen's Bench Division, *Ioan Micula and Others v. The Government of Romania and EU Commission,* Case n. [2017] EWHC 1430 (COMM), Judgement to precautionary measures and permission for appeal previous Judgement of 20.01.2017, of 15.06.2017. Available at:

https://www.italaw.com/sites/default/files/case-documents/italaw9038.pdf

Court of Appeal (Civil Division), *Ioan Micula and Others v. The Government of Romania and EU Commission,* Case n. [2018] EWCA Civ 1801, Judgement to uphold previous High Court judgements of 20.01.2017 and 15.06.2017, of 27.07.2018. Available at:

https://www.italaw.com/sites/default/files/case-documents/italaw9884.PDF

Supreme Court, *Ioan Micula and Others v. The Government of Romania,* Judgement on appeal of cases n. [2018] EWCA Civ 1801 and [2019] EWHC 2401 (Comm), of 19.02.2020. Available at:

https://www.italaw.com/sites/default/files/case-documents/italaw11213.pdf