

*ICSID Reports**Volume 6*

The *ICSID Reports* provide the only comprehensive collection of the decisions of arbitral tribunals and *ad hoc* committees established under the auspices of the World Bank's International Centre for the Settlement of Investment Disputes. These decisions make an important contribution to the highly specialized jurisprudence on international investment. The series also includes arbitration under the Additional Facility to the ICSID Convention which has increased in recent years, most notably in relation to the North American Free Trade Agreement (NAFTA). The *ICSID Reports* are thus an invaluable tool for practitioners and scholars alike working in the field of international commercial arbitration. Volume 6 of the *ICSID Reports* brings the series substantially up to date and includes the annulment decisions of 5 February 2002 in *Wena Hotels Ltd v. Arab Republic of Egypt* and of 3 July 2002 in *Compañía de Aguas del Aconquija SA and Vivendi Universal v. Argentine Republic*; it also includes the award of 11 October 2002 in *Mondev International Ltd v. USA* as well as the award of 9 January 2003 in *ADF Group Inc. v. USA*.

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6

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Frontmatter

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Investment Disputes between States and Nationals of Other States, 1965

Volume

6

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CONTENTS

	Page
<i>Introduction</i>	xi
<i>Editorial Note</i>	xiii
<i>Acknowledgements</i>	xv
<i>Table of Cases Reported in Volume 6</i>	xvi
<i>Table of Cases Reported in Volumes 1–6</i>	xviii
<i>Digest of Cases Reported in Volume 6</i>	xxiv

CASES

<i>Goetz and Others v. Republic of Burundi</i> (Case No. ARB/95/3)	3
Award, 10 February 1999	5
Part 1. Decision on Liability, 2 September 1998	5
Part 2. The Parties' Agreement, 23 December 1998	46
<i>United Mexican States v. Metalclad Corporation</i>	52
Judicial Review, Supplementary Reasons for Judgment, Supreme Court of British Columbia, 31 October 2001	53
<i>Lemire v. Ukraine</i> (Case No. ARB(AF)/98/1)	59
Award embodying the Parties' Settlement Agreement, 18 September 2000	60
<i>Wena Hotels Ltd v. Arab Republic of Egypt</i> (Case No. ARB /98/4)	67
Decision on Jurisdiction, 29 June 1999	74
Award, 8 December 2000	89
Decision on Annulment, 5 February 2002	129
<i>Olguín v. Republic of Paraguay</i> (Case No. ARB/98/5)	154
Decision on Jurisdiction, 8 August 2000	156

viii	CONTENTS	
Award, 26 July 2001		164
<i>Mondev International Ltd v. United States of America</i> (Case No. ARB(AF)/99/2)		181
Miscellaneous Procedural Orders		186
Award, 11 October 2002		192
<i>Genin and Others v. Republic of Estonia</i> (Case No. ARB/99/2)		236
Award, 25 June 2001		241
Decision on Claimants' Request for Supplementary Decisions and Rectification, 4 April 2002		304
<i>Mihaly International Corporation v. Democratic Socialist Republic of Sri Lanka</i> (Case No. ARB/00/2)		308
Award, 15 March 2002		310
Individual concurring opinion		323
<i>Compañía de Aguas del Aconquija SA and Vivendi Universal v. Argentine Republic</i> (Case No. ARB/97/3)		327
Decision on the Challenge to the President of the Committee, 3 October 2001		330
Decision on Annulment, 3 July 2002		340
<i>Casado and President Allende Foundation v. Republic of Chile</i> (Case No. ARB/98/2)		373
Decision on Provisional Measures, 25 September 2001		375
<i>Salini Costruttori SpA and Italstrade SpA v. Kingdom of Morocco</i> (Case No. ARB/00/4)		398
Decision on Jurisdiction, 23 July 2001		400
<i>Autopista Concesionada de Venezuela CA v. Bolivarian Republic of Venezuela</i> (Case No. ARB/00/5)		417
Decision on Jurisdiction, 27 September 2001		419
<i>ADF Group Inc. v. United States of America</i> (Case No. ARB(AF)/00/1)		449

CONTENTS

ix

Procedural Order No. 2 Concerning the Place of Arbitration, 11 July 2001	453
Procedural Order No. 3 Concerning the Production of Documents, 4 October 2001	461
Award, 9 January 2003	470
<i>Waste Management Inc. v. United Mexican States</i> (No. 2) (Case No. ARB(AF)/00/3)	538
Decision on Venue of the Arbitration, 26 September 2001	541
Decision on Preliminary Objection, 26 June 2002	549

ANNEX AND INDEX

NAFTA, Free Trade Commission, Chapter 11 Interpretation, 31 July 2001	567
Cumulative Index, Volumes 1–6	569

INTRODUCTION

Arbitral tribunals and *ad hoc* committees set up under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States administered by the International Centre for Settlement of Investment Disputes have produced a large number of awards and decisions. In recent years, through the Additional Facility mechanism, their number has increased substantially, and their contribution to both the substance of international investment law and the procedure of international arbitration grows in importance. Chapter 11 arbitration under NAFTA will increasingly contribute its share. Moreover many of these cases raise vital issues of investment protection and relate to fundamental questions of the relations between national and international law.

Article 48(5) of the ICSID Convention provides that the Centre shall not publish an award without the consent of the parties thereto. In the absence of an official series of reports of these texts, a number have appeared unofficially, from time to time, in a variety of publications in different parts of the world. For those who wish to refer to these awards and decisions in a systematic manner, this diffusion has been a source of difficulty which has only been partially remedied by the provision of selected decisions on the ICSID website. There remains considerable value in collecting and presenting this material in a single publication accompanied by summaries, tables of cases and a detailed cumulative index. Some of the texts have previously been available only in French or Spanish, and it has been thought desirable to make these available in English.

The novelty and importance of the concepts introduced and applied within ICSID fully warrant the ever-growing literature dedicated to them. It is our hope that the present series will encourage even greater use of this developing system.

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Lauterpacht Research Centre for International Law
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September 2003

EDITORIAL NOTE

The *ICSID Reports* contain decisions rendered by arbitral tribunals and *ad hoc* committees set up within the framework of the Centre established pursuant to the ICSID Convention (including those rendered by ICSID tribunals established pursuant to bilateral investment treaties) and other decisions, whether judicial or arbitral, relating to such proceedings. These are accompanied by a full scholarly apparatus and index.

Volume 1 contains, in addition to the Basic Texts of the ICSID system, decisions in cases commenced during the period 1972 to 1981. Volume 2 contains material relating to proceedings commenced between 1981 and 1983, and Volume 3 contains the first three proceedings commenced in 1984. Volume 4 contains the texts of decisions and awards relating to ICSID cases commenced between 1984 and 1992. Volume 5 contains available texts of decisions and awards commenced between 1992 and 2000, and Volume 6 contains those commenced between 1995 and 2001. These are printed in chronological order based on the date when the particular case was first started. However, all the proceedings relating to any given ICSID case are, so far as possible, assembled together in their own chronological order.

The awards and decisions in these *Reports* are reproduced, to the greatest extent possible, in the form in which they were handed down. Editorial intervention is limited to the introduction of a summary and of a bold-letter rubric at the head of each case. These are followed by the full text of the original decision, if available, or its translation. No attempt has been made to tamper with the texts by purporting to correct errors or clarify occasional obscurities of expression.

Attempts have been made to obtain the full text of all ICSID awards and decisions. Where only excerpts are available these have been reproduced. Any omission of material is indicated either by a series of dots or by the insertion of a sentence in square brackets stating the nature of the passage which has been omitted. Should the full text of a previously excerpted or omitted decision or award subsequently become available it will be published in a later volume in the series.

Bold-letter headings preceding each case indicate the main points of law involved in the decision. These entries are also collected in a digest at the beginning of the volume.

Where appropriate, notes relating to the progress of proceedings still pending are included at the end of the case. Awards given in cases still pending will be published in the series as they become available.

The source of the material in this volume is indicated at the end of each case. Where the material has been published in more than one language, one publication in each language is listed. The language of the original decision is also mentioned.

Various tables are printed at the beginning of each volume: an alphabetical table of cases reported in the volume, a consolidated alphabetical table of all the cases so far reported and a digest of the cases reported in the volume.

An index (consolidated in each succeeding volume) is published at the end of each volume.

Occasionally, material relating to ICSID proceedings, such as select bibliographies or an article summarizing an ICSID decision not yet in the public domain, will be published as an Annex at the end of a volume.

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Mr Brian Conroy, Mr Jonathan Goldberg, Dr Joanna Gomula and Dr Kishan Manocha contributed summaries for this volume. The translations of the decisions in *Casado*, *Goetz* and *Salini* were prepared by Mr Brian Conroy and the decisions in *Olguín* by Mr Jonathan Goldberg. Ms Margaret Young provided general assistance.

The Index was prepared by Miss Maureen MacGlashan, CMG and the Tables were prepared by the Editors.

Thanks are due to the Secretary-General and staff of ICSID for their assistance in many ways, including the provision of texts of decisions where this could be done consistent with ICSID rules. Responsibility for the summaries and other contents of this volume remains, however, solely with the Editors.

TABLE OF CASES REPORTED IN VOLUME 6

[ALPHABETICAL]

	Page
<i>ADF Group Inc. v. United States of America</i> (Case No. ARB(AF)/00/1)	449
Procedural Order No. 2 Concerning the Place of Arbitration, 11 July 2001	453
Procedural Order No. 3 Concerning the Production of Documents, 4 October 2001	461
Award, 9 January 2003	470
 <i>Autopista Concesionada de Venezuela CA v. Bolivarian Republic of Venezuela</i> (Case No. ARB/00/5)	 417
Decision on Jurisdiction, 27 September 2001	419
 <i>Casado and President Allende Foundation v. Republic of Chile</i> (Case No. ARB/98/2)	 373
Decision on Provisional Measures, 25 September 2001	375
 <i>Compañía de Aguas del Aconquija SA and Vivendi Universal v. Argentine Republic</i> (Case No. ARB/97/3)	 327
Decision on the Challenge to the President of the Committee, 3 October 2001	330
Decision on Annulment, 3 July 2002	340
 <i>Genin and Others v. Republic of Estonia</i> (Case No. ARB/99/2)	 236
Award, 25 June 2001	241
Decision on Claimants' Request for Supplementary Decisions and Rectification, 4 April 2002	304
 <i>Goetz and Others v. Republic of Burundi</i> (Case No. ARB/95/3)	 3
Award, 10 February 1999	5
Part 1. Decision on Liability, 2 September 1998	5
Part 2. The Parties' Agreement, 23 December 1998	46
 <i>Lemire v. Ukraine</i> (Case No. ARB(AF)/98/1)	 59
Award embodying the Parties' Settlement Agreement, 18 September 2000	60
 <i>Mihaly International Corporation v. Democratic Socialist Republic of Sri Lanka</i> (Case No. ARB/00/2)	 308

TABLE OF CASES REPORTED IN VOLUME 6	xvii
Award, 15 March 2002	310
Individual concurring opinion	323
<i>Mondev International Ltd v. United States of America</i>	
(Case No. ARB(AF)/99/2)	181
Miscellaneous Procedural Orders	186
Award, 11 October 2002	192
<i>Olguín v. Republic of Paraguay</i> (Case No. ARB/98/5)	154
Decision on Jurisdiction, 8 August 2000	156
Award, 26 July 2001	164
<i>Salini Costruttori SpA and Italstrade SpA v. Kingdom of Morocco</i>	
(Case No. ARB/00/4)	398
Decision on Jurisdiction, 23 July 2001	400
<i>United Mexican States v. Metalclad Corporation</i>	52
Judicial Review, Supplementary Reasons for Judgment, Supreme Court of British Columbia, 31 October 2001	53
<i>Waste Management Inc. v. United Mexican States</i> (No. 2)	
(Case No. ARB(AF)/00/3)	538
Decision on Venue of the Arbitration, 26 September 2001	541
Decision on Preliminary Objection, 26 June 2002	549
<i>Wena Hotels Ltd v. Arab Republic of Egypt</i> (Case No. ARB/98/4)	67
Decision on Jurisdiction, 29 June 1999	74
Award, 8 December 2000	89
Decision on Annulment, 5 February 2002	129

TABLE OF CASES REPORTED IN VOLUMES 1–6¹

[ALPHABETICAL]

	Vol., Page
<i>ADF Group Inc. v. United States of America</i> (Case No. ARB(AF)/00/1)	6, 449
Procedural Order No. 2 Concerning Place of Arbitration, 11 July 2001	6, 453
Procedural Order No. 3 Concerning Production of Documents, 4 October 2001	6, 461
Award, 9 January 2003	6, 470
 <i>Adriano Gardella SpA v. Government of Côte d'Ivoire</i>	 1, 283
Award, 29 August 1977 (excerpts)	1, 287
 <i>AGIP SpA v. Government of the People's Republic of the Congo</i>	 1, 306
Award, 30 November 1979	1, 309
 <i>Amco Asia Corp., Pan American Development Ltd and PT Amco Indonesia v. Republic of Indonesia</i>	 1, 376
Jurisdiction, 25 September 1983	1, 389
Provisional Measures, 9 December 1982	1, 410
Award, 20 November 1984	1, 413
Annulment, 16 May 1986	1, 509
Resubmitted Case: Jurisdiction, 10 May 1988	1, 543
Resubmitted Case: Award, 5 June 1990	1, 569
Resubmitted Case: Rectification, 10 October 1990	1, 638
 <i>American Manufacturing and Trading Inc. v. Republic of Zaire</i> (Case No. ARB/93/1)	 5, 11
Award, 21 February 1997	5, 14
Individual Opinions, 21 February 1997	5, 37
 <i>Asian Agricultural Products Ltd [AAP] v. Democratic Socialist Republic of Sri Lanka</i>	 4, 245
Award, 27 June 1990	4, 250
Dissenting Opinion, 27 June 1990	4, 296
 <i>Atlantic Triton Company Limited v. People's Revolutionary Republic of Guinea</i>	 3, 3

¹ The figures in bold type refer to the volume number.

TABLE OF CASES REPORTED IN VOLUMES 1–6

xix

France, <i>Cour d' appel</i> , Rennes, 26 October 1984	3, 4
France, <i>Cour de cassation</i> , Rennes, 18 November 1986	3, 10
Award, 21 April 1986	3, 13
<i>Autopista Concesionada de Venezuela CA v. Bolivarian Republic of Venezuela</i> (Case No. ARB/00/5)	
Decision on Jurisdiction, 27 September 2001	6, 419
<i>Azinian, Davitian and Baca v. United Mexican States</i> (Case No. ARB(AF)/97/2)	5, 269
Award, 1 November 1998	5, 272
<i>Benvenuti and Bonfant srl v. Government of the People's Republic of the Congo</i>	1, 330
Award, 8 August 1980	1, 335
France, <i>Tribunal de grande instance</i> , Paris, 13 January 1981	1, 368
France, <i>Cour d' appel</i> , Paris, 26 June 1981	1, 369
France, <i>Cour de cassation</i> , Paris, 21 July 1987	1, 373
<i>Cable Television of Nevis Ltd and Cable Television of Nevis Holdings Ltd v. Federation of St Kitts and Nevis</i> (Case No. ARB/95/2)	5, 106
Award, 13 January 1997	5, 108
<i>Casado and President Allende Foundation v. Republic of Chile</i> (Case No. ARB/98/2)	6, 373
Decision on Provisional Measures, 25 September 2001	6, 375
<i>Ceskoslovenska Obchodni Banka AS v. Slovak Republic</i> (Case No. ARB/97/4)	5, 330
Decision on Objections to Jurisdiction, 24 May 1999	5, 335
Decision on Further and Partial Objections to Jurisdiction, 1 December 2000	5, 358
<i>Compañía de Aguas del Aconquija SA and Compagnie Générale des Eaux/Vivendi Universal v. Argentine Republic</i> (Case No. ARB/97/3)	5, 296
Award, 21 November 2000	5, 299
Decision on the Challenge to the President of the Committee, 3 October 2001	6, 330
Decision on Annulment, 3 July 2002	6, 340
<i>Compañía del Desarrollo de Santa Elena SA v. Republic of Costa Rica</i> (Case No. ARB/96/1)	5, 153
Award, 17 February 2000	5, 157
Rectification of Award, 8 June 2000	5, 180
<i>Fedax NV v. Republic of Venezuela</i> (Case No. ARB/96/3)	5, 183

Decision on Objections to Jurisdiction, 11 July 1997	5, 186
Award, 9 March 1998	5, 200
<i>Genin and Others v. Republic of Estonia</i> (Case No. ARB/99/2)	6, 236
Award, 25 June 2001	6, 241
Decision on Claimants' Request for Supplementary Decisions and Rectification, 4 April 2002	6, 304
<i>Goetz and Others v. Republic of Burundi</i> (Case No. ARB/95/3)	6, 3
Award, 10 February 1999	6, 5
Part 1. Decision on Liability, 2 September 1998	6, 5
Part 2. The Parties' Agreement, 23 December 1998	6, 46
<i>Gruslin v. Malaysia</i> (Case No. ARB/99/3)	5, 483
Award, 27 November 2000	5, 484
<i>Kaiser Bauxite Company v. Government of Jamaica</i>	1, 296
Jurisdiction and Competence, 6 July 1975	1, 298
<i>Klößner Industrie-Anlagen GmbH, Klößner Belge SA and Klößner Handelsmaatschappij BV v. Republic of Cameroon and Société Camerounaise des Engrais SA</i>	2, 3
Award, 21 October 1983 (excerpts)	2, 9
Dissenting Opinion, 21 October 1983 (excerpts)	2, 77
Annulment, 3 May 1985	2, 95
<i>LANCO International Inc. v. Argentine Republic</i> (Case No. ARB/97/6)	5, 367
Preliminary Decision on Jurisdiction, 8 December 1998	5, 369
<i>Lemire v. Ukraine</i> (Case No. ARB(AF)/98/1)	6, 59
Award embodying the Parties' Settlement Agreement, 18 September 2000	6, 60
<i>Liberian Eastern Timber Corporation [LETCO] v. Government of the Republic of Liberia</i>	2, 343
Award, 31 March 1986	2, 346
Rectification, 10 June 1986	2, 380
United States, District Court, Southern District of New York, 5 September 1986	2, 383
United States, District Court, Southern District of New York, 12 December 1986	2, 385
United States District Court, District of Columbia, 16 April 1987	2, 390
<i>Maffezini v. Kingdom of Spain</i> (Case No. ARB/97/7)	5, 387
Decision on Request for Provisional Measures (Procedural Order No. 2), 28 October 1999	5, 393

TABLE OF CASES REPORTED IN VOLUMES 1–6

xxi

Decision on Objections to Jurisdiction, 25 January 2000	5, 396
Award, 13 November 2000	5, 419
Rectification of Award, 31 January 2001	5, 440
<i>Maritime International Nominees Establishment [MINE] v. Republic of Guinea</i>	
United States, District Court, District of Columbia, 12 January 1981	4, 4
United States, Court of Appeals, District of Columbia, 12 November 1982	4, 8
Belgium, <i>Rechtbank van eerste aanleg</i> , Antwerp, 27 September 1985	4, 32
Switzerland, <i>Tribunal fédéral</i> , 4 December 1985	4, 35
Switzerland, <i>Tribunal de première instance</i> , Geneva, 13 March 1986	4, 41
Switzerland, <i>Autorité de surveillance des offices de poursuite pour dettes et de faillite</i> , Geneva, 7 October 1986	4, 45
Award, 6 January 1988	4, 54
Annulment, 22 December 1989	4, 79
Request for Annulment, Procedural Order No. 1, 17 May 1988	4, 110
Application for Stay of Enforcement of Award, Interim Order No. 1, 12 August 1988	4, 111
<i>Metalclad Corporation v. United Mexican States</i>	
(Case No. ARB(AF)/97/1)	5, 209
Award, 30 August 2000	5, 212
Canada, Supreme Court of British Columbia, <i>United Mexican States v. Metalclad</i> Judicial Review, 2 May 2001 (2001 BCSC 664)	5, 236
Supplementary Reasons for Judgment (2001 BCSC 1529)	6, 52
<i>Mihaly International Corporation v. Democratic Socialist Republic of Sri Lanka</i> (Case No. ARB/00/2)	
Award, 15 March 2002	6, 310
Individual concurring opinion, 15 March 2002	6, 323
<i>Mobil Oil Corporation, Mobil Petroleum Company Inc., Mobil Oil New Zealand v. Her Majesty the Queen in Right of New Zealand</i>	
New Zealand, High Court, 1 July 1987	4, 117
Findings on Liability, Interpretation and Allied Issues, 4 May 1989	4, 119
<i>Mondev International Ltd v. United States of America</i>	
(Case No. ARB(AF)/99/2)	6, 181
Miscellaneous Procedural Orders	6, 186
Award, 11 October 2002	6, 192
<i>Olgúin v. Republic of Paraguay</i> (Case No. ARB/98/5)	
Decision on Jurisdiction, 8 August 2000	6, 154
Award, 26 July 2001	6, 156
	6, 164

xxii	TABLE OF CASES REPORTED IN VOLUMES 1–6	
	<i>Salini Costruttori SpA and Italstrade SpA v. Kingdom of Morocco</i>	
	(Case No. ARB/00/4)	6, 398
	Decision on Jurisdiction, 23 July 2001	6, 400
	<i>Scimitar Exploration Limited v. Republic of Bangladesh and Bangladesh Oil, Gas and Mineral Corporation</i>	
	(Case No. ARB/92/2)	5, 3
	Award, 5 April 1994	5, 4
	<i>Société Ouest Africaine des Bétons Industriels [SOABI] v. State of Senegal</i>	2, 164
	Jurisdiction, 1 August 1984	2, 175
	Award, 25 February 1988	2, 190
	Dissenting Opinion, 25 February 1988	2, 277
	Declaration of the President of the Tribunal, 25 February 1988	2, 333
	France, <i>Cour d'appel</i> , Paris, 5 December 1989	2, 337
	France, <i>Cour de cassation</i> , 11 June 1991	2, 341
	<i>Southern Pacific Properties (Middle East) Limited [SPP(ME)] v. Arab Republic of Egypt</i>	3, 45
	ICC Award No. YD/AS No. 3493, 11 March 1983	3, 49
	France, <i>Cour d'appel</i> , Paris, 12 July 1984	3, 79
	Netherlands, District Court, Amsterdam, 12 July 1984	3, 92
	France, <i>Cour de cassation</i> , Paris, 6 January 1987	3, 96
	Jurisdiction (No. 1), 27 November 1985	3, 101
	Jurisdiction (No. 2), 14 April 1988	3, 131
	Dissenting Opinion, 14 April 1988	3, 163
	Award, 20 May 1992	3, 189
	Dissenting Opinion, 20 May 1992	3, 249
	<i>Tradex Hellas SA v. Republic of Albania</i> (Case No. ARB/94/2)	5, 43
	Decision on Jurisdiction, 24 December 1996	5, 47
	Award, 29 April 1999	5, 70
	<i>Vacuum Salt Products Limited v. Government of Republic of Ghana</i>	4, 320
	Provisional Measures, 14 June 1992	4, 323
	Award, 16 February 1994	4, 329
	<i>Waste Management Inc. v. United Mexican States</i>	
	(Case No. ARB(AF)/98/2)	5, 443
	Award, 2 June 2000	5, 445
	Dissenting Opinion, 2 June 2000	5, 462
	(Case No. ARB(AF)/00/3)	6, 538
	Decision on Venue of the Arbitration, 26 September 2001	6, 541
	Decision on Preliminary Objection, 26 June 2002	6, 549

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Frontmatter

[More information](#)

TABLE OF CASES REPORTED IN VOLUMES 1–6

xxiii

<i>Wena Hotels Ltd v. Arab Republic of Egypt</i> (Case No. ARB/98/4)	6, 67
Decision on Jurisdiction, 29 June 1999	6, 74
Award, 8 December 2000	6, 89
Decision on Annulment, 5 February 2002	6, 129

DIGEST OF CASES IN VOLUME 6

Admissibility

BIT requiring notification to host State requesting amicable settlement – Notification to Minister also holding office as President of local contracting company – Whether sufficient notification

Salini Costruttori SpA and Italstrade SpA v. Kingdom of Morocco (Case No. ARB/00/4), 398

Claim brought more than three years after incidents causing damage – Three-year time-limit – Application – NAFTA, Article 1116(2)

Mondev International Ltd v. United States of America (Case No. ARB(AF)/99/2), 181

Claimant’s standing to bring proceedings – Majority shareholders having foreign nationality suing in relation to conduct affecting locally incorporated company – Standing upheld

Goetz and Others v. Republic of Burundi (Case No. ARB/95/3), 3

Annulment

Annulment proceedings – Claimant seeking partial annulment of decision on merits – Respondent seeking in the alternative annulment of whole award – Admissibility of Respondent’s claim – Whether a “counterclaim” – Power of *ad hoc* Committee to determine extent of annulment – Respondent’s arguments admissible

Compañía de Aguas del Aconquija SA and Vivendi Universal v. Argentine Republic (Case No. ARB/97/3), 327

Annulment proceedings – State responsibility – Tribunal finding that it could not determine whether there was a treaty breach prior to municipal court proceedings on the contract claim – Bilateral investment treaty excluding requirement of exhaustion of local remedies – Manifest excess of jurisdiction – Failure to give reasons – Relation of treaty claim to contract claim – ICSID Convention,

Articles 26, 53 – ILC Articles on Responsibility of States for Internationally Wrongful Acts, 2001, Article 3

Compañía de Aguas del Aconquija SA and Vivendi Universal v. Argentine Republic (Case No. ARB/97/3), 327

Annulment proceedings – Tribunal finding that federal authorities did not fail to assist in resolution of provincial claim – No basis for annulment – ICSID Convention, Article 53

Compañía de Aguas del Aconquija SA and Vivendi Universal v. Argentine Republic (Case No. ARB/97/3), 327

Grounds for – Manifest excess of power by arbitral tribunal – Sufficiency of evidence – Relationship between domestic arbitration and arbitration under the ICSID Convention – Compensation under domestic arbitration to be taken into account when awarding damages under the ICSID Convention – Criteria for compensation under UK–Egypt Bilateral Investment Treaty, Article 5

Wena Hotels Ltd v. Arab Republic of Egypt (Case No. ARB/98/4), 67

Grounds for – Manifest failure to apply applicable law – ICSID Convention, Article 42(1) – Subject matter of commercial agreements as opposed to subject matter brought before ICSID arbitration – Role of international law in the context of Article 42(1) – Relationship between international law and domestic law

Wena Hotels Ltd v. Arab Republic of Egypt (Case No. ARB/98/4), 67

Time limit for request for annulment – ICSID Convention, Article 52 – Raising new arguments related to a ground of annulment invoked within the time limit fixed in the ICSID Convention

Wena Hotels Ltd v. Arab Republic of Egypt (Case No. ARB/98/4), 67

Arbitration

Abuse of process – Successive arbitrations of same claim – Whether Tribunal has inherent power to stay proceedings – No evidence of lack of *bona fides* – Second arbitration allowed

Waste Management Inc. v. United Mexican States (No. 2) (Case No. ARB(AF)/00/3), 538

Arbitral procedure – Place of arbitration – ICSID Additional Facility arbitration pursuant to Chapter 11 of NAFTA – Canada or United States – Standard of review of international arbitration in both countries similar – Convenience of parties and Tribunal – Arbitration conducted at ICSID headquarters – Neutrality as between parties

ADF Group Inc. v. United States of America (Case No. ARB(AF)/00/1), 449

Award – Partial annulment – Judicial review – Supplementary Reasons for Judgment – Whether appropriate case to correct Order flowing from Reasons of Judgment – Section 34(4) of International Commercial Arbitration Act – Adjourning of judicial review proceedings – Whether appropriate – Arbitral proceedings – Whether Tribunal to be given opportunity to consider breaches of Articles 1105 and 1110 of NAFTA based on concepts within the scope of submission to arbitration – Damages – Whether Metalclad entitled to interest prior to 20 September 1997

United Mexican States v. Metalclad Corporation, 52

Bilateral investment treaty – Alleged violations of BIT by Respondent through its State enterprise

Wena Hotels Ltd v. Arab Republic of Egypt (Case No. ARB/98/4), 67

Bilateral investment treaty – Investment dispute – Alleged violations of BIT by Respondent through its State enterprise – Misrepresentations in connection with purchase of local branch of Estonian social bank – Failure to adhere to write-off agreement to amortize losses arising from purchase – Alleged breach of settlement agreement to assign claims – Unjustified revocation of banking licence – Harassment of claimants – Damages

Genin and Others v. Republic of Estonia (Case No. ARB/99/2), 236

Documents – Disclosure – Documents available to the public on reasonable inquiry – Whether requiring to be specifically disclosed – Test of necessity – Arbitration (Additional Facility) Rules, Article 41(2)

ADF Group Inc. v. United States of America (Case No. ARB(AF)/00/1), 449

International Centre for Settlement of Investment Disputes – Jurisdiction – Conditional consent to ICSID jurisdiction – Control over locally registered

company passing with Venezuela's consent to a national of an ICSID State party – ICSID Convention, Article 25(2)(b)

Autopista Concesionada de Venezuela CA v. Bolivarian Republic of Venezuela
(Case No. ARB/00/5), 417

Procedure – Failure by Respondent State to appear – Obligation on tribunal to consider jurisdiction and merits of claim despite non-appearance – ICSID Convention, Article 45 – Arbitration Rules, Rule 42

Goetz and Others v. Republic of Burundi (Case No. ARB/95/3), 3

Request by Claimant – US–Sri Lanka Bilateral Investment Treaty – Jurisdiction of ICSID and Arbitral Tribunal – Both jurisdiction *ratione personae* and *materiae* must be satisfied – Respondent's objections to jurisdiction

Mihaly International Corporation v. Democratic Socialist Republic of Sri Lanka (Case No. ARB/00/2), 308

Res judicata – Decision denying jurisdiction of first Tribunal – Whether precluding new arbitration on same claim – Interpretation of first Tribunal's decision – NAFTA Article 1136 – ICSID (Additional Facility) Rules, Article 53(4)

Waste Management Inc. v. United Mexican States (No. 2) (Case No. ARB(AF)/00/3), 538

Arbitrators

Composition of tribunal – Challenge to President of *ad hoc* Committee – Connection between President's law firm and related company of Claimant – No personal involvement of President – No general retainer – Partner's legal advice on matters unrelated to dispute before the Committee – Work substantially complete before commencement of proceedings – *De minimis* rule – Challenge rejected

Compañía de Aguas del Aconquija SA and Vivendi Universal v. Argentine Republic (Case No. ARB/97/3), 327

Composition of tribunal – Challenge to President of *ad hoc* Committee – Procedure for challenging members of *ad hoc* Committee – ICSID Convention, Article 53(4) – Validity of Arbitration Rule 53

Compañía de Aguas del Aconquija SA and Vivendi Universal v. Argentine Republic (Case No. ARB/97/3), 327

Award

Award on agreed terms – Agreement for settlement of dispute – Nature of agreement – No additional rights, benefits or privileges conferred – Principles governing interpretation and implementation – Agreement binding on legal successors to parties – Article 55 of ICSID Arbitration Rules

Lemire v. Ukraine (Case No. ARB(AF)/98/1), 59

Request for supplementary decisions and rectification – Alleged failure by tribunal to discuss specific violations of BIT contended by Claimants – Request denied – No omission on part of Tribunal – Costs of request awarded against Claimants

Genin and Others v. Republic of Estonia (Case No. ARB/99/2), 236

Compensation

Interest – How calculated – Compound interest – Exercise of discretion

Wena Hotels Ltd v. Arab Republic of Egypt (Case No. ARB/98/4), 67

Costs

Costs against defeated Claimant – Nature and complexity of proceedings – Costs shared equally between parties

ADF Group Inc. v. United States of America (Case No. ARB(AF)/00/1), 449

Costs and expenses – Unsuccessful jurisdictional objection – Whether Respondent should be required to pay costs and expenses in any event – Extent of Tribunal's discretion

Waste Management Inc. v. United Mexican States (No. 2) (Case No. ARB(AF)/00/3), 538

Discretion – Respondent failing on jurisdiction but succeeding on merits – Conduct of Respondent officials “non-exemplary” – No order against Claimant for Respondent's costs

Olguín v. Republic of Paraguay (Case No. ARB/98/5), 154

Provisional measure for security for costs – Alleged probability of unsuccessful claim – Claimant alleged to be without means – Whether provisional measure

required to protect Respondent's interests – Failure of Convention and Rules to provide for security for costs

Casado and President Allende Foundation v. Republic of Chile (Case No. ARB/98/2), 373

Counterclaim

Dismissal of claim and counterclaim – No breach of BIT – No misrepresentations associated with purchase – No breach of settlement agreement – No breach of write-off agreement – Revocation of bank licence not contrary to BIT or Estonian law – No proof of harassment of Claimants – Respondent's counterclaim dismissed

Genin and Others v. Republic of Estonia (Case No. ARB/99/2), 236

Damages

Determination of damages – Prompt, adequate and effective compensation – Compensation amounting to the market value of an investment – UK–Egypt Bilateral Investment Treaty, Article 5

Wena Hotels Ltd v. Arab Republic of Egypt (Case No. ARB/98/4), 67

Diplomatic Protection

Diplomatic representations made by State not an ICSID party – Not amounting to espousal – Whether inconsistent with standing of holding company not a national of that State – Distinction between ICSID arbitration and diplomatic protection – ICSID Convention, Article 27

Autopista Concesionada de Venezuela CA v. Bolivarian Republic of Venezuela (Case No. ARB/00/5), 417

Discrimination

Local manufacture requirement – Applicable equally to local as to foreign suppliers – No showing of discrimination in law or fact – NAFTA, Article 1102

ADF Group Inc. v. United States of America (Case No. ARB(AF)/00/1), 449

Expropriation

Articles 1105 and 1110 of NAFTA – Annulment of part of Award relating to breaches involving decisions beyond scope of submission to arbitration – Whether

Tribunal to be given opportunity to consider breaches of Articles 1105 and 1110 of NAFTA based on concepts within the scope of submission to arbitration

United Mexican States v. Metalclad Corporation, 52

Failure to provide prompt, adequate and effective compensation – UK–Egypt Bilateral Investment Treaty, Article 5

Wena Hotels Ltd v. Arab Republic of Egypt (Case No. ARB/98/4), 67

Measures equivalent to – Grant of free-zone status for mining company – Substantial investment in reliance on free-zone status – Subsequent change in government policy leading to revocation of status – Whether measure equivalent to taking – Whether compensation required – Belgium–Burundi Bilateral Investment Treaty, Article 4

Goetz and Others v. Republic of Burundi (Case No. ARB/95/3), 3

Provisional measures to preserve property claim – Claim “generic” and unrelated to specific assets – Whether provisional measures necessary

Casado and President Allende Foundation v. Republic of Chile (Case No. ARB/98/2), 373

Whether lawful under international law – Non-discriminatory – Valid public policy – Due process under national law – Only compensation lacking – No offer made at the time of taking – Respondent given four months to pay compensation or to restore permit, otherwise taking would be held internationally unlawful – Belgium–Burundi Bilateral Investment Treaty, Article 4

Goetz and Others v. Republic of Burundi (Case No. ARB/95/3), 3

Foreign Investment

Failure to provide “fair and equitable treatment” and “full protection and security” to an investment – UK–Egypt Bilateral Investment Treaty, Article 2(2) – Failure to prevent seizure of an investment – Failure to impose substantial sanctions for seizure

Wena Hotels Ltd v. Arab Republic of Egypt (Case No. ARB/98/4), 67

Investment protection – Bankruptcy – Law on bankruptcy leading to loss of investment – Whether conduct tantamount to expropriation – 1994 Convention

between Peru and Paraguay on reciprocal promotion and protection of investments

Olguín v. Republic of Paraguay (Case No. ARB/98/5), 154

Investment protection – Central Bank encouragement of investment – Official representations as to safety of investment – Bank certification of investment bonds – Whether amounting to guarantee of investment – Bankruptcy of local company amid general financial crisis – 1994 Convention between Peru and Paraguay on reciprocal promotion and protection of investments – Whether breached

Olguín v. Republic of Paraguay (Case No. ARB/98/5), 154

Investment protection – “Full protection and security” – NAFTA FTC Interpretation of 31 July 2001 – Whether binding on Chapter 11 Tribunals – Meaning of Interpretation – Requirement on Claimant to show that treatment violated a specific rule of customary international law relating to foreign investment – NAFTA, Articles 1105(1), 1132

ADF Group Inc. v. United States of America (Case No. ARB(AF)/00/1), 449

ICSID (Additional Facility)

Rules – Venue of arbitration – Relevant factors – Neutrality of forum – Applicability of New York or Panama Conventions – Differences between two Conventions – Positions taken by Government of Canada in earlier proceedings – Whether relevant – Convenience of parties and counsel – NAFTA Articles 1122, 1130 – Arbitration (Additional Facility) Rules, Articles 20, 21

Waste Management Inc. v. United Mexican States (No. 2) (Case No. ARB(AF)/00/3), 538

Interest

Exclusion of interest in the Award – Whether breach of Articles 1105 or 1110 of NAFTA based on concepts within the scope of submission to arbitration – Whether Metalclad entitled to interest from 5 December 1995 to 20 September 1997

United Mexican States v. Metalclad Corporation, 52

Jurisdiction

Alleged breach of NAFTA Article 1103 asserted in course of pleadings – Article 1103 not mentioned in Notice of Intention to arbitrate – Whether

Tribunal deprived of jurisdiction over Article 1103 claim – NAFTA, Article 1119

ADF Group Inc. v. United States of America (Case No. ARB(AF)/00/1), 449

Based on bilateral investment treaty – No contractual relations between claimant investors and Respondent State – Consent to jurisdiction manifested by commencement of proceedings in accordance with treaty – No right of Respondent unilaterally to withdraw consent

Goetz and Others v. Republic of Burundi (Case No. ARB/95/3), 3

Consent – Contractual submission to local jurisdiction – Whether ousting jurisdiction under bilateral investment treaty – Local jurisdiction not susceptible to prorogation whether consent given – ICSID Convention, Article 25(1)

Salini Costruttori SpA and Italstrade SpA v. Kingdom of Morocco (Case No. ARB/00/4), 398

Consent to ICSID arbitration – Whether given by 1994 Convention between Peru and Paraguay on reciprocal promotion and protection of investments – Arbitration without privity – ICSID Convention, Article 25(1)

Olguín v. Republic of Paraguay (Case No. ARB/98/5), 154

Jurisdiction *ratione materiae* – Claim of breach of BIT – Not excluded because also based on contract – Onus of proof on Claimant to establish breach of BIT attributable to the State – Relation of responsibility under treaty to contractual liability

Salini Costruttori SpA and Italstrade SpA v. Kingdom of Morocco (Case No. ARB/00/4), 398

Jurisdiction *ratione materiae* – “Investment” – Particular relevance of State law in determining existence of an investment – Dual requirements of BIT and ICSID Convention, Article 25(1) – Whether satisfied

Salini Costruttori SpA and Italstrade SpA v. Kingdom of Morocco (Case No. ARB/00/4), 398

Jurisdiction *ratione personae* – National motorway company with majority State ownership – Whether “agency” of State – ICSID Convention, Article 25(1)

Salini Costruttori SpA and Italstrade SpA v. Kingdom of Morocco (Case No. ARB/00/4), 398

Objection *ratione materiae* – Existence of an “investment” – Requirements of Article 25(1) of the ICSID Convention not satisfied – Existence of investment within meaning of Convention and BIT – Preparatory and development expenses incurred pursuant to letter of intent from Respondent – Recovery of development costs following failure of negotiations – Definition of “investment” a question of law – No investment within meaning of ICSID Convention

Mihaly International Corporation v. Democratic Socialist Republic of Sri Lanka (Case No. ARB/00/2), 308

Objection to jurisdiction *ratione personae* – Nationality requirement of ICSID Convention – Theories of partnership or assignment – Claimant permitted to file its own claim in its own name – Capacity to bring claim not modified by existence of international partnership – *Pacta tertiis* principle – No invocation of ICSID Convention by non-State party, non-State party national or company – No improvement of rights of non-State party company by assignment of rights to party with standing before Tribunal

Mihaly International Corporation v. Democratic Socialist Republic of Sri Lanka (Case No. ARB/00/2), 308

Objections by Respondent – No arbitrable investment dispute – Alleged violations of investment treaty denied – Damages – Counterclaim – Whether dispute concerning an investment

Genin and Others v. Republic of Estonia (Case No. ARB/99/2), 236

Objections to jurisdiction – Bilateral investment treaty – Exceptions to the nationality requirement – ICSID Convention, Article 25(2)(b) – Whether company incorporated in one State Party and owned by nationals of another State Party is a “national” of the former – Existence of *prima facie* “legal dispute” for the purpose of determining jurisdiction

Wena Hotels Ltd v. Arab Republic of Egypt (Case No. ARB/98/4), 67

Over “incidental or additional claims” – How related to primary claim – Requirement of close relationship or connection – Claimant failing to present evidence