Investment Arbitration Decisions

	FOREWORD By Noah Rubins	xi
I.	Mr. Franz Sedelmayer v. The Russian Federation	1
	(1) Final Arbitral Award Rendered in 1998 in An Ad Hoc Arbitration in Stockholm, Sweden	
	Observations by Walid Ben Hamida	47
	Observations by Stefan Kröll and Jörn Griebel	67
	(2) Judgment by The Stockholm District Court Rendered on 18 December 2002	
	(3) Decision by The Svea Court of Appeal Rendered on 15 June 2005	
	Observations by Domenico Di Pietro	118
	 SUBJECT- MATTERS: 1) Definition of "investor" 2) Scope of the definition of "investment" 3) The scope of expropriation provisions 4) Application of the principle of lis pendens 5) Propriety of State as respondent 6) Compliance with pre-arbitration procedures 7) Identification and valuation of investments subject to expropriation 	
	(4) Two Decisions by Germany's Supreme Court Rendered on 4 October 2005, VII ZB 08/05 and VII ZB 09/05 SUBJECT- MATTERS:	

iii

German private individual's award against Russia?

1) Can the Russian State's claims against the German State or a

German company be attached to secure payment of a

2) Does an arbitration clause in a bilateral investment treaty constitute a waiver by the State of its immunity from enforcement of the award?

Observations by Hilmar Raeschke-Kessler

162

- (5) Developments from January 2008 to June 2010
 - a. German Federal Court of Justice IX 64/08
 - b. German Federal Court of Justice, VII 37/08
 - c. Cologne Higher Regional Court, 22 U 98/07
 - d. Berlin Higher Regional Court, 1 W 276/09

SUBJECT- MATTER:

Execution of an arbitral award against the Russian Federation based on the 1989 Bilateral Investment Protection Treaty between the Federal Republic of Germany and the Union of Socialist Soviet Republics. Execution Immunity and States operating through State-owned corporations.

Observations by Friederike Stumpe

169

II. Nykomb Synergetics Technology Holding AB, Stockholm v. The Republic of Latvia, Riga

185

(1) SCC Case 118/2001 Final Award Rendered on 16 December 2003

SUBJECT- MATTER:

Whether the Republic of Latvia was in breach of its obligations under the Energy Charter Treaty (ECT) towards the claimant due to the fact that the republic's state-owned company allegedly did not pay the claimant's subsidiary in accordance with the contract between company and subsidiary.

Observations by Richard Happ

257

III. CCL Oil v. Republic of Kazakhstan

(1) SCC Case 122/2001 Jurisdictional Award Rendered in 2003

SUBJECT- MATTERS:

- 1) Applicable law to jurisdictional issues under the arbitration clause.
- 2) Res judicata and collateral estoppel.
- 3) Principle of Separability, Competence-Competence Doctrine.
- 4) Act of State Doctrine.
- 5) Comity among states.
- 6) Sovereign state, Issue of sovereign immunity.
- 7) Definition of "foreign investor" under the Foreign Investment Law of Kazakhstan.
- 8) Applicable law to jurisdictional issues under the Treaty between the USA and the Republic of Kazakhstan Concerning the Encouragement and Reciprocal Protection of Investment (19 May 1992) ("BIT").
- 9) Definition of "National of another Contracting State" under the Treaty between the USA and the Republic of Kazakhstan Concerning the Encouragement and Reciprocal Protection of Investment.
- 10) Burden of proof to establish "National of another Contracting State" under the Treaty between the USA and the Republic of Kazakhstan Concerning the Encouragement and Reciprocal Protection of Investment.

(2) SCC Case 122/2001 Final Award Rendered in 2004

SUBJECT- MATTERS:

- 1) Jurisdiction Validity of the Agreement Apparent authority, Ratification by acceptance.
- 2) Jurisdiction Admission to jurisdiction of the Kazakh courts.
- 3) Party to the arbitration agreement Sovereign state and state organ whether the department designated in the Agreement or the State is the contractual party.

- 4) Effects of prior court decision on termination of the Agreement.
- 5) Whether act of the Prosecutor General, and the national courts, either in its capacity of contractual party to the Agreement or under norms of Kazakh law and customary international law should be considered as acts attributable to Sovereign State.
- 6) Loss of future profit based on contractual right of first refusal the owner's decision to sell and without specification on the purchase price to be paid, may give rise to a claim for damages.
- 7) Concept of expropriation, "creeping" or "covert" expropriation.

(3) SCC Case 122/2001

Supplemental Award and Interpretation Rendered in 2004

SUBJECT- MATTERS:

- Enforcement of the Tribunal's decision on costs whether the Tribunal can issue award or order to enforce its decision on costs.
- 2) Correction of the award based on miscalculation.

Observations by Hans Smit

337

IV. The Attorney General of Canada v. S.D.Myers, Inc.

347

Docket T-225-01, T-81-03

Order of Canada's Federal Court on 13 January 2004

Observations by Rajeev Sharma

390

V. Mr. William Nagel v. The Czech Republic

405

Decision by The Svea Court of Appeal Rendered on 26 August 2005

SUBJECT- MATTERS:

1) Did the Arbitral Tribunal rule on all of the issues that were submitted to it?

TABLE OF CONTENTS

		Was the decision taken by the Arbitral I jurisdictional decision, or a decision on the substaparties' dispute?	ance of the
		ervations by Michael Polkinghorne Matthew Secomb	414
VI. M	r. Iu	rii Bogdanov v. The Republic of Moldova	425
		C Case 93/2004 itral Award Rendered on 22 September 2005	
	1) 2) 3)	Jurisdiction under a Bilateral Investment Treaty. Application of the principle of <i>iura novit curia</i> and Respondent to appear (procedural default). Application of the fair and equitable treatment states Reimbursement of moral damages.	
	Obs	servations by Jeremy Wilson	454
VII.	Petro	obart Limited v. The Kyrgyz Republic	469
(1)	Fir	C Case 126/2003 nal Arbitral Award Rendered on 29 March 2005	5
	<u>SU</u> 1)	BJECT- MATTERS: Is the Energy Charter Treaty (ECT) applicable to registered in Gibraltar?	
	2)	Are the conditions for application of Article 1 ECT present?	
	3)	and the UNCITRAL Arbitration.	tic litigation
	4)	Doctrine of collateral estoppel.	the ECT2
	5)	Whether Petrobart qualifies as an investor under	Republic?
	6) 7)	D 11: - violated its oblig	ations under

Observations by Georgios Petrochilos and Noah Rubins 534

(2) Case No. T 3739-03

Decision of the Svea Court of Appeal, Judgment Rendered on 13 April 2006

SUBJECT- MATTER:

Action for amendment of an arbitral award

(3) Case No. T 5208-05
Decision of the Svea Court of Appeal
Judgment Rendered 19 January 2007

SUBJECT- MATTER:

Challenge to an arbitral award

(4) Case No. T 2113-06
Decision of the Swedish Supreme Court
Judgment Rendered 28 March 2008

SUBJECT- MATTERS:

- 1) Challenge of an arbitral award terminating the arbitration for lack of jurisdiction.
- 2) The scope of application of the so-called "doctrine of assertion" in arbitration.
- (5) The Petrobart Saga

By Erik Karlsson

(6) Comments on the Swedish Supreme Court's Recent Judgment on the So-Called "Doctrine Of Assertion" and the Arbitrators' Jurisdiction in Investment Disputes

By Paulo Fohlin

(7) Comments on the Petrobart Limited v. The Kyrgyz Republic Case

Anonymous

TABLE OF CONTENTS

VIII.	v. The Russian Federation 66	65
	SCC Arbitration V (080/2004) Arbitral Award Rendered in Stockholm on 21 April 2006	
	 SUBJECT- MATTERS: 1) Do the Claimants (two Belgian physical individuals) who own shares in a company incorporated in Belgium, E which owns assets in the territory of the Russian Federation qualify as investors within the meaning of the Luxembour Belgium-Russia BIT (the Treaty)? 2) Have the Claimants carried out an investment within the meaning of the Treaty? 3) To what extent can the Claimants rely on the most favoured nation (MFN) clause contained in the basic Treaty to import a more favourable dispute settlement mechanism contained in a third party treaty concluded by the Russian Federation establish the jurisdiction of the Arbitral Tribunal? 	BI, on rg/ he ed ort ed
	Observations by Domenico Di Pietro 74	46
	Telenor Mobile Communications A.S. v. The Republic of Hungary TCSID Case No. Arb/04/15	63
	Arbitral Award Rendered on 13 September 2006	
	 SUBJECT- MATTERS: 1) Challenge of the Tribunal's jurisdiction grounded on the fathat the relevant BIT limited recourse to internation arbitration for claims of expropriation only. 2) Indirect expropriation. 	
	3) The scope of application of Most Favoured Nation clauses.4) Allocation of costs.	

798

Observations by Domenico Di Pietro

	Patrick Mitchell v. The Democratic	
Repu	iblic of Congo	815
D	CSID Case No. Arb/99/7 Decision of the <i>Ad Hoc</i> Committee on the Appl Cannulment of the Award Rendered on 1 November 20	ication for
1)	 <u>UBJECT- MATTERS:</u> Annulment under Article 52 of the ICSID Convent Jurisdiction and definition of investment under Investment Treaty. Jurisdiction and definition of investment under Convention. 	a Bilateral
0	bservations by Reza Mohtashami	855
	dian Cattlemen for Fair Trade, et al. v. d States of America	867
**	NCITRAL Arbitral Award on Jurisdiction	
	endered in Washington, D.C., U.S. on 28 January 200	08
Ro Su Ju El Te		er Chapter greement).
St Ju El Te in	endered in Washington, D.C., U.S. on 28 January 200 <u>UBJECT- MATTER:</u> prisdiction of Tribunal to hear a claim brought under leven of the NAFTA (North American Free Trade Agerritorial location requirement for protected investor	er Chapter greement).

(1) SCC Case V (024/2007)

Award on Preliminary Objections Rendered on 20 March 2009

SUBJECT- MATTER:

Whether the arbitral tribunal has subject-matter jurisdiction under Articles 10 and 5 of the Spain/Russia BIT, whether it has

TABLE OF CONTENTS

personal jurisdiction over the seven claimants, whether the claimants had made investments and, if so, whether their claims are admissible.

(2) Yukos and Some of Its Progeny

By Lucia Raimanova

A

ARTICLES	
The Guarantee of "Full Protection and Security" in Investment Treaties Regarding Harm Caused by Private Actors By Helge Elisabeth Zeitler	959
US Investors and Expropriation Under the AUSFTA – Is the Protection Afforded to Investors Illusory? By Annie L. Phillips	999
Missing Bits – To Be Substituted by BITs By Max Gutbrod and Steffen Hindelang	1025
Investment Treaty Arbitration: Mapping the Non-ICSID Universe By Luke Eric Peterson	1047
Chinese Investment Treaties and the Dispute Resolution Opportunities Offered by Most Favoured Nation Provisions By John Savage and Elodie Dulac	1059
Bilateral Investment Treaties and EU Law By Thomas Eilmansberger	1107
INDEX	1137