
DIGEST OF ICSID
AWARDS AND
DECISIONS
1974–2002

RICHARD HAPP
NOAH RUBINS



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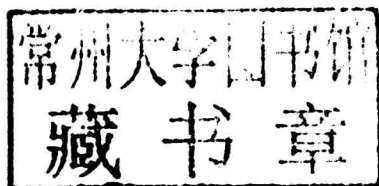
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PREFACE

This book is at once a sequel and a prequel. In 2009, the authors published the *Digest of ICSID Awards and Decisions 2003–2007*. That volume was based on a series of reports published annually in the German Yearbook of International Law beginning in 2003. The introduction of the inaugural edition explained the general approach, which applies equally to this volume: to analyse and identify the legal reasoning as regards the international law issues considered decisive by a Tribunal for each case. Facts and legal positions of the parties will only be reported as far as they are considered necessary for the understanding of the Tribunal's reasoning. Although it is not possible to prevent the summary of 80 pages' worth of text, confined to two or three pages, from being influenced by the the author's view, this report does not purport to evaluate the decisions.

Shortly after the publication of the Digest 2003–2007, we developed the idea to complement it with a digest of ICSID decisions and awards for the preceding period, from the first *Holiday Inns v Morocco* decision of 1974 through 2002. Three circumstances underpinned that conception. First, the early period witnessed a slow transformation of the ICSID caseload from purely contract-based disputes to investment treaty disputes, which now dominate the institution's docket. The understanding of how tribunals reacted to this evolution can be extremely useful in understanding arbitrators' reasoning in later years. Second, certain of the decisions rendered in the first 25 years of ICSID activity are often cited in arbitration briefs and awards today, for example *Amco Asia v Indonesia*, *AAPL v Sri Lanka* and *Azinian v Mexico*. Although these decisions cannot be considered 'precedent' in any formal sense, in practice Tribunals frequently seek guidance in the considerations of similar situations by earlier panels, with the necessary consequence that counsel often invoke them in their submissions. Third, many of the first ICSID decisions have not been widely disseminated. Some have been published in the ICSID Reports and International Legal Materials, but cannot be accessed online. A digest for the 1974–2002 period will thus also improve access to important research sources, hopefully facilitating the work of lawyers and arbitrators.

This book is divided into two parts. In Part I, we present the summaries of all awards and decisions rendered during the 1974–2002 period, except those that remain confidential and unavailable to the authors. We have chosen to include all decisions that are not purely procedural in nature, including those related to rectification and annulment. Unlike the first volume (which now should be considered the

second, chronologically), we have also included orders and decisions dealing with requests for provisional relief. Each summary begins with a header box indicating the index number (which is used in cross-referencing and in the arbitrator index at the end of the book), the full title and ICSID case number, the date of the decision, the jurisdictional basis for the claim (treaty, contract or investment law), and the names of the arbitrators. Unpublished decisions are marked as such in the header box. Defined (and therefore capitalized) terms in the text are defined only for the purposes of each individual summary. Terms such as 'Tribunal', 'Agreement' and the like therefore refer to different things in different summaries. In particular, 'the BIT' is used to refer to the bilateral investment treaty that was applicable in the particular case in question. Most importantly, we have employed a system of abbreviated case names for citation and cross-citation purposes with respect to all decisions summarized in this book, and for those included in the 2003–2007 volume. The index of abbreviated citations at the beginning of the text provides the full citation for each decision and its reference number for easy location in the table of contents. Decisions not summarized in our digests are cited using full case information, for ease of reference. Part II of this book provides a brief analytical guide to the development of ICSID and investment treaty 'jurisprudence' during the 1974–2002 period. It identifies major trends and central points of contention, categorized by subject matter.

Each of the decisions summarized in this book has been given an abbreviated name for cross-citation purposes. Where such a citation appears, it is a signal to the reader that the case can be found summarized in this volume, along with a full case citation and relevant secondary literature.

We would like to express our gratitude to our colleagues Ben Love, Jan Bischoff, Tim Rauschning and Anna Bashkova, who provided indispensable and tireless support in the preparation of this book. Deepest thanks also must go to Gisela and Masha. Without their support and their understanding, it seems unlikely that this book could have been written.

Richard Happ

Noah Rubins

May 2012

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LIST OF ABBREVIATIONS

American Arbitration Association (AAA)

BIT bilateral investment treaty

BOT ‘build own transfer’

CFA Central African franc

CIH Crédit Immobilier et Hotelier

DCF discounted cash flow

FCC Federal Circuit Court

FTC Free Trade Commission

ICJ International Court of Justice

ICSID International Centre for Settlement of Investment Disputes

ICC International Chamber of Commerce

KLSE Kuala Lumpur Stock Exchange

LIBOR London Interbank Offered Rate

MAI multilateral agreement on investment

MFN most favoured nation

MINE Maritime International Nominees Establishment

NAFTA North American Free Trade Agreement

SAT State Administrative Tribunal

TDI trade defence instrument

UNCITRAL United Nations Commission on International Trade Law

UNESCO United Nations Educational, Scientific and Cultural Organization

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