The Mexican Experience with Investment Arbitration

A Comment

Francisco GONZÁLEZ DE COSSIO
The Mexican Experience with Investment Arbitration

A Comment

Francisco GONZÁLEZ DE Cossio*

I. INTRODUCTION

The purpose of this article is to elaborate a summary of the arbitration cases that Mexico has been a party to before the International Centre for Settlement of Investment Disputes (ICSIID) and share some comments on some of the issues that have thus far emerged from the Mexican experience.

II. CASES INVOLVING MEXICO

At the time of preparation of this review, Mexico had been part of seven ICSIID arbitration proceedings1 (through the Additional Facility), of which only three have concluded. A brief summary of the cases resolved thus far shall be made below in order to comment on some of the issues that have emerged.

A. Robert Azinian and Others v. United Mexican States2

The Claimants, Robert Azinian, Kenneth Davjtian and Ellen Baca, initiated a procedure pursuant to Chapter Eleven of the North American Free Trade Agreement (NAFTA) as shareholders of Desechos Sólidos de Naucalpan, S.A. de C.V., which was a concessionaire of an agreement for waste collection in Naucalpan de Juarez (a county outside Mexico City), challenging the City Council’s decision to revoke the concession.

To comment on some of the issues that have thus far emerged from the Mexican experience.

* Barreras, Siqueiros y Torres Landa, C.S., Mexico City. Admitted to practice law in Mexico (1995) and New York (2000). Professor of Law, Universidad Iberoamericana, Mexico City. He may be contacted at: dgc@ubi.com.mx.

1 Robert Azinian and Others v. United Mexican States, ICSIID Case No. ARB(AF)/97/2; Masland Corporation v. United Mexican States, ICSIID Case No. ARB(AF)/97/1; Waste Management, Inc. v. United Mexican States, ICSIID Case No. ARB(AF)/99/2; Marvin Roy Fishman Kupat v. United Mexican States, ICSIID Case No. ARB(AF)/99/3; Técnicas Medioambientales Tiened, S.A. v. United Mexican States, ICSIID Case No. ARB(AF)/00/2; Waste Management, Inc. v. United Mexican States, ICSIID Case No. ARB(AF)/00/3, registered on 27 September 2000; and Adams et al. v. United Mexican States, registered 16 February 2001.

2 ICSIID Case No. ARB(AF)/97/2, Award dated 1 November 1999.
After a court proceeding was followed, it was found that, of the twenty-seven apparent irregularities, only nine had been proved. After having lost in these proceedings, as well as in an “amparo” (constitutional suit) against the revocation of the concession, Claimants proceeded to bring a claim under the NAFTA on 17 March 1997.

The conclusion of the NAFTA/ICSIID Tribunal was that Claimants did not carry the day in the relief sought and that the behaviour of the Mexican authorities, both the City Council and the courts, was considered appropriate, even when assessed against the requirements of the applicable international law.

2. The Arbitration Proceedings

The Arbitration Tribunal\(^4\) held that the described conduct of the Mexican authorities vis-à-vis Metalclad breached the NAFTA in two aspects. Firstly, the Tribunal held that the acts and omissions of Mexican authorities constituted a breach of Mexico's duty to accord investments of investors treatment in accordance with international law, including fair and equitable treatment further to NAFTA Article 1105(1).

The Tribunal’s analysis factored in the concept of transparency found in NAFTA Article 102(1). The Tribunal believed that such concept includes the obligation of making clear and of easy reference all the requirements an investor must fulfill in order to successfully initiate, complete and operate an investment. No doubt should exist and, where existing, they should be clarified by the host State in order to guarantee security to the foreign investor so that it may continue with the investment.

The Tribunal considered that the facts resulted in Mexico’s failure to comply with the duty of securing a transparent and predictable framework of Metalclad’s investment. In the Tribunal’s opinion, the circumstances of the case displayed, on the one hand, the lack of a clear rule with regard to the requirements (or the absence thereof) for obtaining a municipal construction permit and, on the other hand, the lack of an organized process vis-à-vis an investor who may expect to be treated in a fair and equitable manner pursuant to the NAFTA. The county's conduct after the denial of the construction permit, coupled with certain substantive and procedural deficiencies\(^5\) forced the conclusion that the county’s denial of the construction permit was not appropriate, particularly because the competence of the county did not include hazardous residues, such authority being limited to federal authorities.

Secondly, the Tribunal found that Mexico, in this case, had breached NAFTA provisions on expropriation.\(^6\) The NAFTA sets forth that none of the State Parties may, directly or indirectly, expropriate an investment or take similar measures\(^7\) except:

- for public purpose;
- on a non-discriminatory basis;
- in accordance with due process of law and Article 1105(1); and
- upon payment of a fair compensation.

Although not strictly necessary for its conclusion, the Tribunal found that Mexico indirectly expropriated Metalclad’s investment without paying any compensation as a

---

\(^{1}\) The Tribunal found that certain circumstances aggravated the case. One being that Metalclad was never notified of the municipal meeting whereby the decision to deny the construction permit was taken, nor did it have the opportunity to present its case. Also, the manner and term in which the permit was denied—thirteen months after having been requested and when the construction was already finished—was also deemed inappropriate.

\(^{2}\) NAFTA Article 1105.

\(^{3}\) The term “measure” is defined in Article 201(1) and includes any law, regulation, process, requirement or practice.
The outcome of testing the three main legal findings in the Metalclad decision against such rationale was as follows. The first, the Article 1105—fair and equitable treatment—obligation, failed the test to the extent that it relied on the “transparency” obligation. The second (pre-Ecological Decree) finding that Mexico had taken measures tantamount to expropriation in violation of NAFTA Article 1110, also failed the test, since the Tribunal partially relied on the concept of transparency to conclude that there had been an expropriation within the meaning of Article 1110. Finally, the finding that the Ecological Decree amounted to an expropriation passed muster in so far as it stood on its own and was not infected by the “transparency malaise” nor was premised on the finding of breach of Article 1105.

As a final note, on 26 October 2001, a settlement was reached whereby Mexico agreed to discontinue challenging the Award in Canada.

C. Waste Management, Inc. v. United Mexican States

1. The First Claim

This case involved a dispute between Waste Management, Inc., acting on its own behalf and on behalf of Acaverde, S.A. de C.V., and Mexico as a result of an alleged breach of Articles 1105 and 1110 of the NAFTA by Banco Nacional de Obras y Servicios Públicos, S.N.C. (Banobras), the State of Guerrero and the City Council of Acapulco de Juárez.

The facts of this case will not be discussed here since the Tribunal's ruling concerned only a jurisdictional decision. Therefore, the substance of the case that gave rise to this dispute was not dealt with in the Award.

The Tribunal decided that, to the extent Claimants had not withdrawn their domestically initiated claims, the requirement of a waiver of the right to initiate or
continue domestic remedies provided by Article 1121(2)(b) of the NAFTA had not been complied with and, therefore, the Tribunal lacked jurisdiction.16

2. THE SECOND CLAIM

A subsequent claim has been brought before an ICSID Additional Facility Tribunal and is currently being heard.17 No final award has been issued.

III. COMMENTARY

The Mexican experience before the ICSID is fertile soil for comments. This article concentrates on the following issues:

- Mexico's status before the ICSID mechanism;
- the trail left by the cases resolved thus far; and
- the growing body of law in this traditionally controversial field.

A. Mexico's Failure to Adhere to the ICSID Convention

It is unfortunate that Mexico has failed to become a Contracting State of the ICSID Convention. As a result of such failure, all the procedures referred to in this article have been conducted under the auspices of the ICSID Additional Facility. The legal consequence of this situation is that the procedures carried out are not isolated from the law of the place of arbitration. This result, although it has thus far not created any problems, is regrettable, since one of the virtues (and purposes) of these types of procedures is to prevent the use (and abuse) of domestic remedies that delay or obstruct the arbitration procedure.

When questioning authorities as to the reasons explaining Mexico's failure to adhere to the ICSID Convention, one is confronted with the following abstract answer: that doing so is being carefully analyzed.

As may be inferred, the answer provided is meaningless, and therefore one must speculate about the real reasons that have caused the reluctance to be part of such an international institution. There are three:

18 In this context, it is interesting to draw the reader's attention to the dissenting opinion presented by Mr. Keith Highet, who, put simply, considered that domestic remedies were not incompatible with the NAFTA Chapter Eleven procedure, provided they did not refer to the same legal grounds/theory. This summarized description does not do justice to Mr. Highet's sophisticated and interesting legal argument and, whether or not one shares his view, the fact remains that, irrespective of it, it is congruent with the legal theories put forth in the Actiwnas case and Ethyl Corporation v. The Government of Canada (Award on Jurisdiction) (24 June 1998)—also a case involving NAFTA Chapter Eleven—it assists in the construction of a theoretical and practical basis for the cases that must be understood as comprised under the investment protection provisions of the Treaty. This topic is the object of the comment in Section III.C of this article.

17 ICSID Case No. ARB(AF)/00/3, registered on 27 September 2000.

1. Mexico's experience in international arbitration;
2. The desire to not pursue cases that involve Mexico's interests in international fora; and
3. Article 42 of the ICSID Convention.

The above reasons shall now be discussed.

1. MEXICO'S EXPERIENCE IN INTERNATIONAL ARBITRATION

Some argue that Mexico's not-too-positive experience with arbitration as a dispute resolution method explains the reluctance of relying on such method.18 The past, however, does not necessarily equal the future. As may be observed from certain recent cases, Mexico can prevail, but for such purpose it is imperative that Mexican authorities act impeccably. Moreover, it is contradictory to think that, in a globalized worldwide society where international investments have exponentially increased and countries (especially developing countries) compete to attract such international flows, a country with Mexico's status and importance can ignore or fear the world's most important dispute settlement mechanism.19

2. THE DESIRE TO NOT PURSUE CASES THAT INVOLVE MEXICO'S INTERESTS IN INTERNATIONAL FORA

This is not a sufficiently good motive for not acceding to the ICSID Convention. Rather, it seems more like the result of insufficient thought. By including the use of ICSID's Additional Facility in all of the investment treaties Mexico has thus far entered20 and then failing to formally adhere to the ICSID Convention, the following contradictory situation is provoked. On the one hand, there is arbitration for foreign investors but, on the other, it is arbitration whose potential has been diminished through the partial use (and waste) of an instrument that presents the benefits of ICSID.

20 The investment provisions have been included by way of such free trade agreements and bilateral investment treaties as, for instance, NAFTA Chapter Eleven, the Agreement for the Reciprocal Promotion and Protection of Investments between the United Mexican States and the Kingdom of Spain (published in the Daily Official Gazette on 19 March 1997); the Agreement between the United Mexican States and the Confederation of Switzerland for the Reciprocal Promotion and Protection of Investments (published in the Daily Official Gazette on 20 August 1998); the Agreement between the Government of the United Mexican States and the Government of the Republic of Argentina for the Reciprocal Promotion and Protection of Investments (published in the Daily Official Gazette on 28 August 1998); and the Agreement for the Reciprocal Promotion and Protection of Investments between the United Mexican States and the Kingdom of the Netherlands (executed in Mexico City on 13 May 1998 and published in the Daily Official Gazette on 10 July 2000). To date, the free trade agreements to which Mexico has become a party total ten and the investment treaties total fifteen. For a review of the same, see José Luis Siqueiros, An Overview of Arbitration Mechanisms between States and Investors—The Mexican Experience, 2 J.W.I. 2, June 2001, pp. 249–257.
If the reason explaining non-adherence to the ICSID Convention is the desire to not pursue disputes that are sensitive to Mexico's interests in an international forum, then why accept arbitration in other international investment instruments? Indeed, if arbitration is accepted in other investment instruments, then why not also accept the ICSID Convention, since the outcome is legally identical.

As a result of the above, the status quo is that foreign investors do have access to arbitration to settle any problems arising from their investment, but the chosen arbitration procedure has less than all the resources/potential it could otherwise have and which are offered by ICSID. This situation is inexplicably contradictory. What is sauce for the goose is also sauce for the gander. The differentiation is unwarranted and most probably the result of either incomplete consideration or leaving behind unsolved loose ends.

It could be argued that a little arbitration is better than no arbitration. However, either you do, or you don't. Either you choose a method with all its envisaged weaponry, or you stick with what you already have. Anything less is mediocre. Why take an arrow away from the chosen quiver? Why beat about the bush?

Moreover, the international financial and legal community is sophisticated enough to realize that the current situation is not as attractive as it could otherwise possibly be and that which other jurisdictions/markets do offer. Faced with such a scenario, potential investors will factor this situation into the financial analysis carried out when assessing the convenience of investing in Mexico vis-à-vis the opportunity cost or the rate of return offered by other investment opportunities.

3. ARTICLE 42 OF THE ICSID CONVENTION

Another reason that may explain the reluctance to adhere to the ICSID Convention is its Article 42.21 This provision establishes an impressive device: it makes international law corrective of domestic law in matters of foreign investment. One does not have to go too far to imagine the kind of arguments that can be made to defend the non-adherence to a convention grounded on such a proviso (consider the obvious and abused sovereignty argument).

Should this be the case, it would neglect the following: international law governing foreign investment has already filtered into Mexican law and in a way that has the same effect as Article 42 of the ICSID Convention. Article 1105 of the NAFTA provides that the host State (in this case Mexico, Canada or the United States of America) must grant investments of investors of another party "treatment in accordance with international law, including fair and equitable treatment and full protection and security." This is also known as "minimum standard of treatment".

The result of such a precept is that a party in an arbitration procedure under NAFTA Chapter Eleven may legally and persuasively quote international precedents and rules as binding (or at least authoritative) in a case filed against one of the NAFTA Contracting States. Should the same establish a higher protection threshold than the treatment afforded by the State in question to the respective investor or investment, international law shall prevail.22

B. The Trail Left by the Cases Resolved thus Far

Among those ICSID cases in which Mexico has been, it is the Metalclad saga which merits commenting upon since it is the only one which up until now has been challenged and subject to judicial scrutiny as to its merits.

As a whole, even though the challenge before the B.C. Court can be described as a pyrrhic victory for Mexico,23 it is understandable, albeit not plausible, that a losing party challenge an Award. It is understandable because a losing State might need to show its constituents that it is taking all means available to protect its interests, but implausible since, by doing so, a State which seeks to promote investment flows could send a negative message to the international investment community.

The most thought-provoking matter was the B.C. Court’s opinion in regard to the transparency issue. As summarized above, Justice Tysoe believed that the fact that some of the findings were premised on the duty of transparency merited the setting aside of the respective holding to the extent that no transparency obligation existed under NAFTA Chapter Eleven. However, the Metalclad decision did not hold that Mexico breached the transparency obligation found in NAFTA Article 102 but rather that Mexico breached, inter alia, the Article 1105 duty of granting fair and equitable treatment to investors and their investment. The transparency concept only comes into play when the Tribunal intended to give meaning to the ambiguous concept of "fair and equitable", to which end it construed the same by relying on the objectives, rules and principles of the NAFTA as found in its Chapter One.

Stated otherwise, “transparency”, as a goal of the NAFTA, was only used to give meaning to an amorphous concept—"fair and equitable treatment". It was not by itself used to establish an obligation or an independent basis of liability under the NAFTA.

21 Article 42(1) provides: "The Tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the Tribunal shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws) and such rules of international law as may be applicable." (emphasis added).

22 The escape valve to this overarching comment is that international law in matters of foreign investment is diffuse, ambiguous and controversial.

23 The practical outcome of the partial setting aside of the Award was a loss of interest for a short period of time (from 5 December 1995 to 20 September 1997). On the other hand, Metalclad was granted 75 percent of its costs in the setting-aside proceedings.
The B.C. Court's decision seems to confuse a "legal argument" with a "legal issue". Arbitration doctrine has distinguished between legal issues and arguments. If an award deals with an issue outside the submission to arbitration, it will clearly run afoul of the *ultra petita* limitation. However, where legal arguments—whether included or not in a submission to arbitration—are used to challenge, support or otherwise address an issue within the arbitration submission, no such situation is present. They will simply constitute additional ammunition targeted at the same bull's-eye—the issues object of the dispute.

Stated otherwise, had the *Metalclad* Award held that Mexico failed to comply with the duty of transparency under Article 102(1), it would clearly be out of bounds. However, paragraph 101 of the Award is clear when it states that “[t]he Tribunal therefore holds that Metalclad was not treated fairly or equitably under the NAFTA and succeeds on its claim under Article 1105.” The holding could not be clearer, and it is not grounded on transparency.

Furthermore, notwithstanding the B.C. Court’s opinion, the Arbitration Tribunal’s use of the notion of transparency seems congruent with applicable NAFTA provisions, applicable international law, and international jurisprudence.

The NAFTA requires that the objectives of the Agreement be used to interpret its other provisions. Article 102 of the NAFTA, when setting forth the objectives of the Agreement, states:

"1. The objectives of this Agreement, as elaborated more specifically through its principles and rules, including national treatment, most-favored-nation treatment and *transparency*, are the following …" (emphasis added)

The Article continues by stating that:

"2. The Parties shall interpret and apply the provisions of this Agreement in the light of its objectives set out in paragraph 1 and in accordance with applicable rules of international law."

Moreover, Article 1131, in providing for the governing law of the arbitration proceedings, states:

"1. A Tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law."

International law also supports the interpretation methods used by the *Metalclad* Tribunal. Article 31(1) of the Vienna Convention on the Law of Treaties states:

"*A treaty shall be interpreted* in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and *in the light of its object and purpose.*" (emphasis added)

Also, Article 31(2) states that “[t]he context for the purpose of the interpretation of a treaty shall comprise … the text, including its preamble and annexes …”

There are many examples in international jurisprudence of reference to the preamble of a treaty in order to elucidate the meaning of a particular provision. To name a few, the following should suffice. In the *United States Nationals in Morocco* case, the International Court of Justice referred to the Preamble of the Madrid Convention of 1880 to ascertain its object and purpose; in the *Golder* case, the European Court of Human Rights made reference to the Preamble of the European Convention of Human Rights to resolve whether right of access to the courts was permitted; and in the *Beagle Channel* Award, reference was made to the Preamble of the Chile/Argentina Boundary Treaty of 23 July 1881.

As may be observed, international law (through the Vienna Convention on the Law of Treaties and international jurisprudence) takes the position that piecemeal interpretation of an international instrument is not the best method of interpretation. Arriving at the correct legal interpretation is more likely if the text of a treaty is read as a whole. One cannot simply concentrate on a single objective, purpose, rule, principle, paragraph, section, article or chapter when construing international instruments.

The B.C. Court attached pivotal importance to the distinction between the objectives of the NAFTA and the rules and principles of the NAFTA. It stated that “the *Metalclad* Tribunal incorrectly stated that transparency was one of the objectives of NAFTA”. (emphasis added) True, when Article 102(1) speaks of “transparency”, it does so, technically, not as an “objective” but as a “rule and principle”. However, the point the B.C. Court misses is that the referred Article does not nakedly refer to such “rules and principles”, but it refers to them as rules and principles by which NAFTA objectives are spelled out and elaborated. In other words, the NAFTA objectives are embodied in the rules and principles therein contemplated.

Furthermore, and aside from the foregoing discussion, the question whether or not the "NAFTA rules and principles" are different from the "NAFTA objectives" is irrelevant. The fact remains that both may be used to interpret NAFTA provisions and, hence, the Tribunal’s doing so cannot be dismissed as improper.

To summarize, if one considers the following:

- that the concept of fair and equitable treatment is ambiguous:

---

24 Adopted on 22 May 1969; entered into force on 27 January 1980; and to which both Mexico and Canada have adhered.


26 See para 19 of the Award, reprinted in 52 I.L.R., 93 and 17 I.L.M., 1978, 634.


28 Para. 71, B.C. Court Decision, *n‡*, footnote 10.
Concurrent with Schreuer, subject where the lack of consensus about what international law historically surrounded the subject of international foreign investments law (now at its ICSID that C. part of the ultra petita the "cardinal sins" has been committed. To the extent that it was less than clear that the award has a high burden of proof for challenging the same and proving that none of them was present, "finality should have prevailed over correctness" in that portion of the Metalad Award.33

C. A Growing Leg Le Fentine

A brief comment regarding the significance of investment treaties and the impact that NAFTA cases and other decisions have had on the legal and political debate that has historically surrounded the subject of international foreign investments law (now at its climax) and the growing body of law in this field is warranted.

Within the cornucopia of subjects of international regulation it is hard to find any subject where the lack of consensus about what international law is and should be is so

---

30 NAFTA Article 102(2).
31 NAFTA Article 102(1).
32 NAFTA Article 1131.
34 This comment coincides with the view expressed by the U.S. Supreme Court in the case of U.S. v. Sabique (1964), where Justice Harlan noted, "There are few if any issues in international law today on which opinion seems to be divided as the limitations on the State's power to expropriate the alien's property.
36 The experienced division is frequently not obvious. A capital-importing country may at the same time be a capital-importer. A clear example is the United States of America, which is one of the biggest private-capital-exporting economies and at the same time one of the most important receivers of international flows. See Edward M. Gram and Paul C. G. Schram, Foreign Direct Investment in the United States, Institute for International Economics, Washington, D.C., 1985. Having said the foregoing, it is useful to mention that the United States of America, as of 1999, became a net aggregate debtor with regard to the balance between its assets and its liabilities in international capital flows and has remained so since then. In 1999 it had a negative balance higher than US$ 1.9 trillion, more than 20 percent of its gross national product; The Economist, 18 November 2000, at 123. Compare this with the total amount of global foreign capital flows that in 1999 ascended to US$ 865 billion, which means a 27 percent increase over 1998; The Economist, 11 November 2000, at 151.
37 Or "multilateral", depending on the definition preferred.
39 This statement merits a qualification. Even though no multilateral understanding on this subject exists, thousands of bilateral investment treaties (BITs) exist with respect foreign investments. Although BITs do not encompass a complete framework concerning investor-host State relations, they do include obligations upon the State vis à vis the investor with regards to investment, such as the duty to expropriate but for public purpose reasons and upon payment of compensation, treatment standards (national, national and non-favoured-nation), etc.; see, in general, Rudolf Dolzer and Margarite Stevens, Bilateral Investment Treaties, International Centre for Settlement of Investment Disputes, Martinis Nijhoff Publishers, The Hague, 1995. Likewise, several codes of conduct have been elaborated which have certain legal effects, see, for example, Guidelines on the Treatment of Foreign Direct Investment, prepared by the World Bank; 10 ICSID Rev—Fjl 2, 1992, at 295.
40 NAFTA Article 102.2. It is a qualification because the project has a vocation universelle ayant pour objet la protection des investissements internationaux est une impossibilité politique ... (emphasis original) D. Correa, J. Jallade, and T. Fierz, Droit International Economique, 1978, pp. 78—79, cited by Zantors, supra, footnote 37, at 431.
Agreement on Investment promoted in the late 1990s by the Organisation for Economic Co-operation and Development.\textsuperscript{46}

It is against this background that the importance and impact of the ICSID cases discussed above must be assessed. Against this backdrop, these cases give concrete content to the (abstract) general rules of international foreign investment law and, therefore, are a highly significant step in the development and progress of this (prickly) subject.

In other words, the result of these cases is the—slow but progressive—crystallization and ripening of international law in matters of foreign investment that begins to “bind”\textsuperscript{41} investors and recipient States, the content of which has, from the inception of the phenomenon of international investment,\textsuperscript{42} been aggressively disputed.\textsuperscript{43}

\textsuperscript{40} For an interesting discussion of this subject, see Peter T. Muchlinski, The Rise and Fall of the Multilateral Agreement on Investment: Where Now? The Int'l Lawyer, Vol. 34, No. 3, Fall 2000, at 1033.

\textsuperscript{41} This observation must be understood within the premise that, even though such decisions lack legal force for future cases (NAFTA Articles 1136(i)), they are useful as an authoritative/persuasive source that assist in the developing of an understanding of what the law should be; that is, as opinio juris communis.

\textsuperscript{42} The foreign investments phenomenon dates from more than 400 years. During the European colonial expansion in America and then Africa and Asia, there was an expansion of foreign investments by groups or enterprises directed to develop economic activities outside their country of origin. See James Otis Rodner S., La Inversion Internacional en Paises en Desarrollo, Ed. Acte, Caracas, Venezuela, 1993, at 56.

\textsuperscript{43} The "precedent value" of these cases may be observed in, for instance, the Opinion prepared by the dissenting arbitrator in Waste Management, wherein the Ethyl and Azeinum cases were analyzed. Likewise, the 

\textsuperscript{44} Metallgesellschaft Award analyzed another international case whose facts were similar to the one at bar: Bialone et al. v. Ghana Investment Centre et al., 95 I.L.R.- 183, 207-210, 1993. Finally, and significantly to the extent that it was a court and not only an arbitration tribunal, the B.C. Court's setting-aside decision made reference to the following ICSID cases: S.D. Myers, Int. v. Government of Canada, Papas & Talbot, Inc. v. Canada, Kildare v. Cameroon (2 ICSID Reports 95, 3 May 1985); Amcor v. Indonesia (1 ICSID Reports 568, 16 May 1988); and Minco v. Guinea (2 ICSID Reports 79, 22 December 1989).