enforcement capacity. These questions may now be addressed by future litigation. In the long run, it may be preferable for the law of flag state obligations to develop in response to concrete cases, rather than to hypothetical situations.

In sum, the Tribunal has effected a remarkable expansion of its powers. The decision to respond to the SRFC request for an advisory opinion represents a victory in the fight against IUU fishing—a problem whose gravity and ubiquity seem beyond dispute—but may also have invited "controversy and confusion about the ability of States Parties to control the interpretation and application of the agreements they negotiate."[24] Moreover, this controversy over the Tribunal's jurisdiction could likely have been avoided. An SRFC member state might have established the flag state's obligation and liability instead by litigating an actual IUU fishing dispute before the Tribunal.

Nonetheless, the advisory opinion highlights the extraordinarily broad scope of the full Tribunal's new-found advisory jurisdiction and raises the prospect of the submission of any number of novel and important questions to ITLOS. In the future, an agreement to request an advisory opinion from ITLOS on a particular legal question could even itself become a bargaining chip in a negotiation. It remains uncertain, however, whether states parties—in light of the concerns raised by Judge Cot and various states—will seek to place some limits on the Tribunal's advisory jurisdiction. Amending the statute to create express authority for a narrower version of the advisory function than the Tribunal has appropriated to itself is improbable. Alternatively, the Tribunal on its own initiative (or at the urging of states parties) could seek to amend Article 138 of the rules—for example, to restrict the full Tribunal's advisory jurisdiction to interpreting the agreement that authorizes such a request. But whether such an amendment would be consistent with the Tribunal's expansive reading of Article 21 is problematical. Moreover, such self-restraint seems unlikely given the new opportunities for engagement that the advisory function may provide and that the Tribunal appears eager to seize.

MICHAEL A. BECKER
University of Cambridge

Investment arbitration—lack of jurisdiction under statute, treaty, and ICSID Convention—denunciation of ICSID Convention—lack of foreign ownership or control

VENOKLIM HOLDING B.V. v. BOLIVARIAN REPUBLIC OF VENEZUELA. ICSID Case No. ARB/12/22. *At* https://icsid.worldbank.org.
International Centre for Settlement of Investment Disputes, April 3, 2015.

On April 3, 2015, the ICSID tribunal in *Venoklim Holding B.V. v. Bolivarian Republic of Venezuela*[1] issued the first public decision to consider the effect of a state's denunciation of the ICSID Convention (Convention).[2] The tribunal decided that Venezuela's denunciation on

[24] Written Statement of the United States, *supra* note 6, para. 38.

[1] Venoklim Holding B.V. v. Bolivarian Republic of Venezuela, ICSID Case No. ARB/12/22 (Apr. 3, 2015), *at* https://icsid.worldbank.org [hereinafter Award].

[2] Convention on the Settlement of Disputes Between States and Nationals of Other States, Mar. 18, 1965, 17 UST 1270, 575 UNTS 159 [hereinafter ICSID Convention].

January 24, 2012, did not preclude jurisdiction over a claim submitted in the period after notification of the denunciation but before its effective date. Yet the tribunal also held that Venezuela's domestic statute was insufficient as an autonomous offer of consent to ICSID arbitration, and that the conjunction of the statute with an investment treaty did not confer such consent where the conditions in the statute were not fulfilled. The award was notable too because of the majority's holding that the tribunal lacked jurisdiction owing to the Venezuelan nationality of the underlying beneficial owners of the Dutch corporation that was the claimant in the ICSID arbitration. The Tribunal held that, because the claimant was effectively owned by Venezuelan nationals, the requirement of foreign ownership or control was not satisfied for the purposes of the applicable Venezuelan investment statute and the ICSID Convention.

In this dispute, the claimant, Venoklim, sought compensation for Venezuela's expropriation by presidential decree of the assets of local motor lubricant companies that Venoklim owned or controlled. The claimant, a Dutch company, was itself wholly owned, through a Swedish intermediary, by a Venezuelan company, Industrias Venoco, C.A., which was owned and controlled by other companies and individuals of Venezuelan nationality.

Venoklim founded its jurisdictional claim on Article 22 of the Venezuelan investment statute,[3] which, in turn, referred to investment treaties Venezuela had concluded with other states, such as the Venezuelan-Dutch investment treaty on which Venoklim also ultimately, but perhaps belatedly, relied.[4] Venezuela denounced the ICSID Convention by written notice on January 24, 2012, and that denunciation became effective pursuant to the terms of the Convention on July 25, 2012. Both the Venezuelan investment statute and the Venezuelan-Dutch investment treaty continued in force at the date of the arbitration (Venezuela terminated the latter in 2008, though it remained in effect by virtue of its sunset clause).

Venezuela raised six objections to the tribunal's jurisdiction. First, because Venoklim had requested and consented to the arbitration only after Venezuela notified its denunciation of the Convention and because ICSID had registered the arbitration only after that denunciation took effect, Venezuela contended that no valid mutual consent to arbitration existed. In response, Venoklim argued that the relevant provisions of the Convention did not support Venezuela's position and that mutual consent to arbitrate had been established when it filed its request for arbitration before the denunciation took effect.

The tribunal rejected Venezuela's objection. It referred to the general principles of termination of treaties set out in Articles 43, 44, and 56 of the Vienna Convention on the Law of Treaties,[5] and then focused on the denunciation provisions in Articles 71 and 72 of the ICSID Convention. After noting that Article 71 allows contracting states to denounce the Convention with six months' notice, the tribunal rejected Venezuela's claim that Article 72 (which contains

[3] Ley de Promoción y Protección de Inversiones [Law on the Promotion and Protection of Investments], Art. 22, Gaceta Oficial No. 5390 extraordinario, 18 de noviembre de 1999 (Venez.), *quoted in* Award, para. 44 (providing that "[d]isputes arising between an international investor whose country of origin has in effect with Venezuela a treaty or agreement on the promotion and protection of investments, or disputes to which the provisions of the Convention establishing the Multilateral Investment Guarantee Agency (OMGI-MIGA) or the Convention on the Settlement of Investment Disputes between States and nationals of other States (ICSID) are applicable, shall be submitted to international arbitration according to the terms of the respective treaty or agreement, if it so provides, without prejudice to the possibility of making use, when appropriate, of the dispute resolution means provided for under the Venezuelan legislation in effect") (unofficial trans.).

[4] Agreement on Encouragement and Reciprocal Protection of Investments, Neth.-Venez., Oct. 22, 1991, *at* http://www.sice.oas.org.

[5] Vienna Convention on the Law of Treaties, Arts. 43, 44, 46, May 23, 1969, 1155 UNTS 331.

https://doi.org/10.5305/amerjintelaw.109.4.0858 Published online by Cambridge University Press

no reference to a six-month period) was a special rule that derogated from Article 71 and that required Venoklim to consent to ICSID arbitration before Venezuela notified its denunciation.[6] To adopt such an interpretation, the tribunal held, would run contrary to the common meaning of these provisions, and give immediate effect to a denunciation that should take effect only after six months. That approach would offend against legal certainty because no investor could know in advance when a state might denounce the Convention. The tribunal also rejected the characterization of Article 71 as a general rule and Article 72 as a special rule, holding that both governed denunciation and that each had different content and scope. Moreover, the "consent" referred to in Article 72 referred only to the respondent state's "unilateral offer of arbitration," which was unaffected and therefore could still be accepted by an investor-claimant during the six months following the notification of denunciation (para. 65).

Second, Venezuela pointed out that Venoklim's request for arbitration was registered on August 15, 2012, some three weeks after its denunciation took effect, when Venezuela was no longer an ICSID contracting state. This timing meant, Venezuela claimed, that proceedings could not be instituted against it. Venoklim countered that the date of registration was irrelevant to establishing jurisdiction. Rather, the relevant date was when Venoklim filed its request for arbitration, and thereby accepted Venezuela's offer of ICSID arbitration, on July 23, 2012—two days before the denunciation took effect.

The tribunal accepted Venoklim's position. It held that registration and consent are two different concepts, and that a state's unilateral consent to arbitration is mutualized by the consent of the investor, not by the registration of an arbitration by ICSID. As Venoklim had filed its request for arbitration and expressed its consent to arbitrate before Venezuela's denunciation took effect, the tribunal refused to decline jurisdiction on the basis of this objection (para. 79).

Third, Venezuela argued that Article 22 of its investment law, the main consent to arbitrate invoked by Venoklim, did not contain an offer of ICSID arbitration. Venezuela advanced arguments familiar from previous case law concerning Article 22, including that its terms and those of other provisions in the statute, and a comparison with the terms of consent to arbitrate in investment treaties and ICSID model clauses, demonstrated that Article 22 was not an offer of ICSID arbitration. In opposing the objection, Venoklim advanced its own view of the terms of Article 22 and the stated purpose of the statute when enacted.

The tribunal held that Article 22 did not in itself constitute an offer of ICSID arbitration; rather, it only "confirmed that [Venezuela] respects the offer of arbitration provided under '*a treaty or agreement concerning the promotion and protection of investments*' " (para. 105). The tribunal cited well-known case law endorsing this view and accepted Venezuela's objection, albeit noting that Article 22 would give its blessing to any consent to arbitrate contained in the Venezuelan-Dutch investment treaty.

Fourth (termed the fifth objection in the award), Venezuela argued that, because Venoklim had invoked the Venezuelan-Dutch investment treaty only in its countermemorial on jurisdiction (having previously cited only Article 22 of the Venezuelan statute), it would violate fundamental rules of procedure if the tribunal accepted that basis of jurisdiction. Venoklim

[6] *See* ICSID Convention, *supra* note 2, Art. 72 (providing in pertinent part that notice of denunciation pursuant to Article 71 "shall not affect the rights or obligations under this Convention of that State or of any of its constituent subdivisions or agencies or of any national of that State arising out of consent to the jurisdiction of the Centre given by one of them before such notice was received by the depository").

responded that it had not asserted a new basis of jurisdiction; it was continuing to rely on the statute, "which permits the application of the treaty" (para. 35(v)).

The tribunal rejected Venezuela's objection, though for different reasons as between the majority (Oreamuno Blanco, Derains) and the dissenting arbitrator (Gómez Pinzón). The majority held that Venoklim was allowed to invoke the treaty as a basis of jurisdiction, but only as a supplement to the statute and not as a new or independent basis of jurisdiction (para. 128). Thus, even if the tribunal had jurisdiction under the treaty, the conditions in Article 22 also had to be satisfied. In contrast, the dissenting arbitrator would have rejected Venezuela's objection on the basis that Venoklim's invocation of the treaty as a self-standing basis of jurisdiction should be regarded as a "good faith *clarification*" of its claim.[7]

Fifth (termed the fourth objection in the award), by applying the criterion of effective control (rather than place of incorporation), Venezuela argued that Venoklim was not an investor under Article 22, the Convention, or the treaty because it was not an "international investor" and, instead, was a shell subsidiary of Venezuelan ultimate beneficial owners. Venoklim replied that the place-of-incorporation test should be applied, meaning that it should be regarded as an investor.

The majority reiterated that Venoklim must satisfy Article 22 of the statute to benefit from the investment treaty, and must also prove it is a national of an ICSID contracting state other than Venezuela for jurisdiction to exist under the Convention. Referring to the definition of "international investor" in the statute, the majority found that ownership and effective control were the criteria for deciding whether an entity was an investor for the purpose of invoking Article 22. Noting again that in this case the investment treaty was not an independent jurisdictional basis, the majority held that Venoklim was not an "international investor" for the purposes of the statute, as it was owned and effectively controlled by Venezuelan companies and nationals. While this conclusion would have sufficed to uphold Venezuela's objection, the majority also addressed whether Venoklim was a national of an ICSID contracting state other than Venezuela. It referred to Article 25(1)–(2) of the Convention (on jurisdiction), the 1965 report of the World Bank's executive directors on the Convention, a leading academic commentary, and Prosper Weil's dissent in *Tokios Tokelés v. Ukraine* to support the general observation that the Convention was designed to resolve disputes between states and foreign (not domestic) investors (paras. 153, 155 n.107).[8] The majority reasoned that treating Venoklim as a foreign investor because of its incorporation in the Netherlands and despite its ultimate ownership and control by Venezuelans "would allow formality to prevail over reality" and subvert the purpose of the Convention (para. 156). The majority therefore accepted this objection to jurisdiction and dismissed Venoklim's claims on this basis.

[7] Enrique Gómez Pinzón, Concurring and Dissenting Opinion, para. 15, Venoklim Holding B.V. v. Bolivarian Republic of Venezuela (Apr. 3, 2015) (unofficial trans.). All ICSID awards, decisions, and opinions cited herein are available at http://www.italaw.com.

[8] Quoting ICSID Convention, *supra* note 2, Art. 25(1)–(2); Report of the Executive Directors on the Settlement of Investment Disputes Between States and Nationals of Other States, para. 9 (Mar. 18, 1965), *in* WORLD BANK, ICSID CONVENTION, REGULATIONS, AND RULES 35 (2006), *available at* https://icsid.worldbank.org; CHRISTOPH H. SCHREUER, THE ICSID CONVENTION: A COMMENTARY 158, 290 (2001); and citing Prosper Weil, Dissenting Opinion, Tokios Tokelés v. Ukraine, ICSID Case No. ARB/02/18, Decision on Jurisdiction (Apr. 29, 2004).

The dissenting arbitrator disagreed. He considered it illogical to require compliance with Article 22 while accepting that the statute did not contain an "autonomous consent" to arbitrate. On analyzing the treaty, the dissenter had "no doubt" that as Venoklim was incorporated under Dutch law, it was a "national" under Article 1(b) of the treaty.[9] He thus applied the place-of-incorporation test rejected by the majority. The dissenter accepted that neither the Convention nor the treaty was designed to allow a national to commence arbitration against its own state, but he held that the Convention left open the possibility for states to define who should be regarded as a foreign investor, which was supplied in this case by the Venezuelan-Dutch investment treaty.

Venezuela advanced a sixth argument relating to why its denunciation of the Convention prevented the investment treaty from providing a valid basis of jurisdiction. The tribunal refrained from deciding on the substance of this issue in light of the majority's earlier finding that it lacked jurisdiction because Venoklim was not an "international investor" under the statute.

* * * *

Two important questions with regard to the award in *Venoklim v. Venezuela* are: Was the tribunal correct that an investor has six months after a state denounces the Convention to bring an ICSID arbitration against that state? Did the majority articulate the correct approach to determining nationality?

The award is the first public interpretation by a tribunal of how Articles 71 and 72 of the Convention regulate the commencement of an arbitration against a state that has denounced the Convention. Despite the lack of prior jurisprudence on the topic, related scholarship has proliferated and is divisible into three broad categories.

The first maintains that, for the ICSID tribunal to have jurisdiction over the dispute, the consent to arbitrate must be mutualized or "perfected" by the claimant investor before the respondent state's notification of denunciation.[10] Under this approach, rights and obligations arising solely from the Convention (such as those connected to participation in ICSID's Administrative Council, the right to nominate individuals to ICSID arbitrator and conciliator panels, the duty to contribute to ICSID's costs, and others) are regulated by Article 71 and thus subsist for six months after the notification of denunciation, whereas rights and obligations arising from the consent to arbitrate (crucially, here, the commencement of and participation in an arbitration) are regulated by Article 72, which contains no such additional period of effectiveness after notification. Accordingly, if the consent to arbitrate is not perfected by an investor before notification, Article 72 excludes the tribunal's jurisdiction.

The second approach endorses a different understanding of Articles 71 and 72.[11] It notes that the state's consent to arbitrate is not located in the Convention, but in a separate instrument, often an investment treaty. The terms of that treaty govern the scope of the

[9] Gómez Pinzón, *supra* note 7, para. 31.

[10] *See, e.g.*, Christoph Schreuer, *Denunciation of the ICSID Convention and Consent to Arbitration, in* THE BACKLASH AGAINST INVESTMENT ARBITRATION 353 (Michael Waibel, Asha Kaushal, Kyo-Hwa Liz Chung, & Claire Balchin eds., 2010).

[11] *See, e.g.*, Emmanuel Gaillard & Yas Banifatemi, *The Denunciation of the ICSID Convention*, N.Y.L.J. (ONLINE) (June 26, 2007).

state's consent, which should not be artificially circumscribed by the terms of the Convention. As a consequence, where the consent in the treaty is unqualified, that consent cannot be affected by the state's denunciation of the Convention. The consent will subsist for as long as the investment treaty in question is applicable. An investor may accept it and initiate ICSID arbitration during the whole period. This result, so the argument goes, comports with the purpose of Article 72, which is to prevent a state from being able unilaterally to frustrate a consent to arbitrate it has given, even if that consent has not yet been accepted by a claimant investor.

The third approach stipulates that investors must express the consent to arbitrate prior to the denunciation's effective date.[12] This interpretation does not adopt a close analysis of the language in Article 72, but takes a broad view of that provision and Article 71 and finds that the six-month period in Article 71 applies to the initiation of new proceedings. This approach produces a *via media*, by which an investor cannot be taken by surprise by an impromptu denunciation, but has (only) six months to express its mutualizing consent and initiate a claim.

The tribunal in *Venoklim v. Venezuela* in essence adopted this third approach in holding that Article 72 permitted a state's unilateral offer of arbitration to be accepted by an investor-claimant at any point during the six months following notification of denunciation. Unfortunately, however, the reasoning in the award is brief. In determining, for instance, that Article 72 does not operate immediately to preclude investors from bringing claims after the date of notification, the core reason offered by the tribunal was that adopting an interpretation that stripped investors of the period of six months to commence arbitrations would be contrary to legal certainty. Legal certainty is a valid goal, and the tribunal was right to reflect on it. But if either of the first two approaches discussed above is doctrinally correct, then any "certainty" that the third approach may offer should be a secondary consideration.

That the tribunal in *Venoklim* may have been tempted to endorse such legal certainty at the cost of deeper textual and contextual analysis is also suggested by the fact that it chose not to focus on material that would be relevant to interpreting Articles 71 and 72 if the methodology of treaty interpretation set out in Articles 31–33 of the Vienna Convention on the Law of Treaties were followed closely. In this regard, the tribunal could have said much more about the text, the context, and the preparatory work of the relevant Convention provisions. It did not analyze the terms "one of them" or "rights and obligations" in Article 72 and considered only briefly the use of "consent" in that article. It did not discuss the context of those provisions found elsewhere in the Convention—such as how mutuality is important to the concept of consent in preambular paragraph 6 and Article 25(1) and (2)(a)–(b), but not to the concept of consent in preambular paragraph 7 and Articles 25(3) and 26 (second sentence). The tribunal also neglected the detailed discussion during the Convention's drafting of the terms of Article 72, including how the concept of consent in that provision should be understood.

Further, in reaching its conclusion on the legal effects of the denunciation, the tribunal referred to other international law materials only in passing. It simply noted Articles 43, 44, and 56 of the Vienna Convention on the Law of Treaties (paras. 56, 58) and did not refer to

[12] *See, e.g.*, Sébastien Manciaux, *Bolivia's Withdrawal from ICSID*, TRANSNAT'L DISP. MGMT. (No. 7, 2007), *at* http://www.transnational-dispute-management.com/article.asp?key=1076 (by subscription).

Article 70(2) of that instrument (concerning the consequences of denunciation of a treaty) or Article 26 (concerning the principle of *pacta sunt servanda*). It also did not mention significant case law that has considered denunciations of treaties, and when and how claims can be initiated against the denouncing state.[13]

Analysis of such material may cause a tribunal to decide that the third approach, though it creates a measure of "certainty," is unjustifiable on the basis of the text, context, and drafting history of Articles 71 and 72 of the Convention, as well as general principles of international law. On the other hand, that material may confirm a tribunal's support for the third approach. Either way, the tribunal's relatively limited investigation of such materials in *Venoklim* effectively defers full analysis of the issue to future tribunals.

The second major question prompted by the award relates to its treatment of the concept of nationality with respect to corporate claimants. The tribunal analyzed nationality chiefly in the special context of Article 22 of the Venezuelan statute, and merely mentioned nationality under the investment treaty. Nonetheless, the majority went further in taking the view that the Convention implicitly precludes a foreign company from initiating arbitration against an ICSID contracting state if it is "ultimately owned" by nationals of that state.

Reaching back to earlier case law on jurisdiction *ratione personae* under the Convention, the obvious touchstone is *Tokios Tokelés v. Ukraine*.[14] In that decision, the majority rejected the notion of an implicit requirement of the kind endorsed by the majority in *Venoklim*. Weil's dissent in *Tokios Tokelés*, which accepted such a notion, has probably become the best-known dissent in an ICSID arbitration. Weil argued that if a corporate claimant were entitled to avail itself of ICSID arbitration despite being owned by nationals of the respondent state, it would privilege form over reality and constitute misuse of the Convention.

Weil believed sufficiently in his dissent, which was predicated chiefly on the broad objectives of the Convention rather than on an exegesis of its terms, to resign as president of that tribunal after the decision on jurisdiction was rendered. But prior to *Venoklim* his dissent had never been expressly endorsed by a tribunal as the correct statement of the limits to an ICSID tribunal's jurisdiction *ratione personae*, and had been rejected by tribunals such as that in *KT Asia Investment Group v. Kazakhstan*,[15] though the tribunal in *TSA Spectrum v. Argentina* noted his criticism of the majority's decision.[16]

The *Venoklim* award is one of several recent cases in which the boundaries of ICSID tribunals' jurisdiction *ratione personae* have been explored. After the important decisions in

[13] *E.g.*, Hilaire, Constantine, & Benjamin v. Trinidad and Tobago, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 94 (June 21, 2002) (joined cases); Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Jurisdiction and Admissibility, 1984 ICJ REP. 392 (Nov. 26); Denmark, Norway, Sweden, Netherlands v. Greece (*Greek Case*), App. Nos. 3321/67, 3322/67, 3323/67, & 3344/67, respectively, 1969 Y.B. Eur. Conv. on H.R. (Eur. Comm'n H.R.) (considering denunciation of American Convention on Human Rights, U.S. withdrawal from optional clause to ICJ statute, and denunciation of the European Convention on Human Rights, respectively).

[14] Tokios Tokelés v. Ukraine, *supra* note 8.

[15] KT Asia Investment Group B.V. v. Republic of Kazakhstan, ICSID Case No. ARB/09/8, paras. 121, 137 (Oct. 17, 2013).

[16] TSA Spectrum de Argentina S.A. v. Argentine Republic, ICSID Case No. ARB/05/5, paras. 118 & n.34, 146 (Dec. 9, 2008).

earlier cases such as *Tokios Tokelés* and *CSOB v. Slovak Republic*,[17] the most trenchant analyses of the limits of ICSID jurisdiction had tended to focus on its material rather than personal scope, as in debates about the criteria identified in *Salini v. Morocco* with regard to the jurisdictional implications of the undefined term "investment" in Article 25 of the Convention.[18] A renewed engagement with *ratione personae* questions is evident not only in *Venoklim,* but also, for instance, in the 2014 decision of the tribunal in *Flughafen Zürich v. Venezuela*. That tribunal analyzed whether a claimant that was partly owned by its home state but was a separate legal person could be a "national of another Contracting State" under the Convention, instead of being a manifestation of that state that would otherwise be unable to raise state-state disputes in ICSID.[19] Although Venezuela's objection in that case was rejected, it was noteworthy as an attempt to revisit the decision in *CSOB v. Slovak Republic*, marking a departure from the prior tendency of states to refrain from challenging jurisdiction *ratione personae* in claims brought by state-owned entities.

In a similar revisiting of previous authority and this time harking back to the dissent in *Tokios Tokelés*, Venezuela took the opportunity to advance Weil's reasoning as an objection to the jurisdiction of the tribunal in *Venoklim*. A majority of the tribunal agreed that Weil's dissent, rather than being an outlier in the jurisprudence, should be regarded as a correct limitation on the tribunal's jurisdiction *ratione personae* under the Convention. It remains to be seen whether the next historical cycle of jurisdictional objections will continue this focus on matters *ratione personae*.

The award in *Venoklim v. Venezuela* is likely to be cited repeatedly in future investment arbitrations. Its findings on consent in the context of a state's denunciation of the ICSID Convention will almost certainly be reviewed by the numerous tribunals currently deciding claims against Venezuela filed after it denounced the Convention. Equally, tribunals considering jurisdictional objections by states that seek to limit ICSID jurisdiction in the way Weil did early in this century will review with interest the findings of this award on nationality for the purpose of the Convention. Whether the award stands the test of repeated reviews, whether its analysis of the issues of consent and denunciation before it will be authoritative, and whether it ushers in a new cycle of jurisdictional objections *ratione personae* are all matters with respect to which time will tell.

LUCAS BASTIN†
Quadrant Chambers, London

AIMEE-JANE LEE
Debevoise & Plimpton LLP, London

[17] Ceskoslovenska Obchodni Banka, A.S. [CSOB] v. Slovak Republic, ICSID Case No. ARB/97/4, Jurisdiction (May 24, 1999).

[18] Salini Costruttori S.p.A. v. Kingdom of Morocco, ICSID Case No. ARB/00/4, Jurisdiction, para. 52 (July 23, 2001), 6 ICSID Rep. 400 (2004), 42 ILM 609 (2003).

[19] Flughafen Zürich A.G. v. Bolivarian Republic of Venezuela, ICSID Case No. ARB/10/19, paras. 279–90 (Nov. 18, 2014) (in Spanish).

† Any views of the authors expressed herein reflect only their personal views and should not be taken to represent those of their chambers, law firm, or any other person.

https://doi.org/10.5305/amerjintelaw.109.4.0858 Published online by Cambridge University Press