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This report summarizes significant developments in 2009 concerning international courts and tribunals, particularly the International Court of Justice, international tribunals operating under the auspices of the Permanent Court of Arbitration, the Iran-United States Claims Tribunal, and arbitral tribunals constituted under the International Convention on the Settlement of Investment Disputes Between States and Nationals of Other States.

I. International Court of Justice

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations.[1] Its function is two-fold: first, to deliver judgments in contentious cases submitted to it by sovereign states; and second, to issue non-binding advisory opinions at the request of certain U.N. organs and agencies.[2] The list of cases pending before the ICJ can be found on the ICJ's website.[3] This section reports briefly on the contentious cases decided by the Court and the composition of the Court.

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1. International Court of Justice, http://www.icj-cij.org (last visited Feb. 2, 2010). ICJ decisions, pleadings, and other related materials are available within the website.

2. U.N. Charter arts. 92, 96; Statute of the Int'l Ct. of Justice (ICJ), art. 36, *available at* http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0#CHAPTER_II.

3. ICJ, Cases, http://www.icj-cij.org (last visited Feb. 2, 1010).

A. Contentious Cases

During the period under review, the ICJ delivered three substantive judgments and one order ruling on a request for the indication of provisional measures.

1. *Avena and Other Mexican Nationals (Mexico v. United States of America)*

On January 19, 2009, the ICJ rendered a judgment in the matter concerning the *Request for Interpretation of the Judgment of 31 March 2004 in the Case Concerning Avena and Other Mexican Nat'ls (Mexico v. United States of America)* (Judgment on Interpretation).[4]

Relying on Article 60 of the ICJ Statute,[5] Mexico asked the ICJ to interpret paragraph 153(9) of its 2004 Judgment in *Avena and Other Mexican Nat'ls (Mexico v. United States of America)*.[6] It asked the Court to adjudge and declare that the obligation incumbent upon the United States under that paragraph constitutes an obligation of result, and that, accordingly, the ICJ must issue specific orders to the United States reflecting this interpretation.[7]

Mexico also sought the indication of provisional measures to preserve the rights of Mexico and its nationals pending the ICJ's judgment, which the Court granted by order of July 16, 2008.[8] Despite the order, the United States executed a Mexican national, José Ernesto Medellín Rojas, on August 5, 2008.[9] After his execution, Mexico filed additional claims, arguing that the United States (1) had breached the order, (2) had breached the *Avena* Judgment itself, and (3) had to provide guarantees of non-repetition.[10]

The Court concluded that Mexico's request for interpretation "concerns the general question of the effects of a judgment of the Court in the domestic legal order of the States parties to the case in which the judgment was delivered, not the 'meaning or scope' of the *Avena* Judgment, as Article 60 of the Court's Statute requires."[11] Thus, the issue presented by Mexico for interpretation was not a dispute as to the meaning or scope of the judgment according to Article 60 of the ICJ Statute; consequently, the ICJ dismissed Mexico's request for interpretation.[12]

With regard to Mexico's additional claims, the ICJ agreed with Mexico that the United States had breached its obligations under the order indicating provisional measures to prevent the execution of Mr. Medellín.[13] The ICJ found that it lacked jurisdiction under Article 60 to consider possible violations of the judgment that it was called upon to inter-

4. *See* Request for Interpretation of Judgment of 31 Mar. 2004 in Case Concerning Avena and Other Mex. Nat'ls (Mex. V. U.S.) 2009 I.C.J. No. 139 (Judgment of Jan. 19), *available at* http://www.icj-cij.org/docket/files/139/14939.pdf [hereinafter Judgment on Interpretation].

5. Statute of the I.C.J., art. 60, *available at* http://www.icj-cij.org/documents/index.php?p1=4&p2=2 ("The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.").

6. *See* Judgment on Interpretation ¶¶ 1, 9.

7. *See id.* ¶ 9.

8. *See id.* ¶ 3. For a summary of the judgment, *see also* Yulia Andreeva et al., *International Courts*, 43 Int'l Law. 429, 429-30 (2009).

9. *See* Judgment on Interpretation ¶ 6.

10. *See id.* ¶ 10.

11. *Id.* ¶ 45.

12. *See id.* ¶¶ 45-46.

13. *See id.* ¶¶ 50-53.

pret.[14] Finally, noting that the *Avena* judgment remains binding on the United States, the Court denied Mexico's request that the United States provide guarantees of non-repetition for the remaining Mexican nationals in U.S. custody.[15]

2. *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*

On February 3, 2009, the ICJ delivered its unanimous judgment in this case, which Romania initiated against Ukraine on September 16, 2004 regarding the establishment of a single maritime boundary delimiting the continental shelf and the exclusive economic zones between the two States in the Black Sea.[16]

Romania sought to base the Court's jurisdiction on Article 36(1) of the Statute of the Court as well as on the compromisory clause in paragraph 4(h) of the Additional Agreement concluded under Article 2 of the Treaty on Good Neighbourliness and Co-operation of 2 June 1997 between Romania and Ukraine, where two conditions are set out: first, that no negotiated maritime delimitation had concluded within a reasonable time; and second, that the Treaty on the Régime on the State Border had entered into force.[17] The ICJ noted that both conditions had been fulfilled.[18] Concerning the applicable law, the ICJ found that the applicable principles of maritime delimitation were determined by paragraph 1 of Articles 74 and 83 of the 1982 U.N. Convention on the Law of the Sea (UNCLOS).[19]

The next issue was where to start the delimitation, given the existence of an agreed maritime boundary around Serpents' Island under a 1949 bilateral border treaty. The Court found that this treaty related only to the delimitation of the territorial sea around the island but had no bearing on the exclusive economic zone and the continental shelf.[20] Having determined the relevant coasts[21] and the relevant maritime area,[22] the Court first proceeded to establish, in accordance with the UNCLOS methodology and ICJ jurisprudence, the equidistant line between the adjacent coasts of Romania and Ukraine, then continued it as the median line between their opposite coasts.[23] Second, the Court considered factors that might call for adjusting the provisional line in order for the result to be equitable.[24] Third, the Court found that the results of the delimitation had no disproportionate effect with regard to lengths of the respective coasts and the apportionment of areas that follows from the delimitation.[25]

The line thus established follows the territorial sea boundary around Serpents' Island until it intersects with the equidistant line from the adjacent coasts and then, when it

14. *See id.* ¶¶ 56-57.
15. *See id.* ¶¶ 58-60.
16. *See* Maritime Delimitation in the Black Sea (Rom. v. Ukr.), 2009 I.C.J. No. 132 (Judgment of Feb. 3), ¶¶ 17-19, *available at* http://www.icj-cij.org/docket/files/132/14987.pdf.
17. *See id.* ¶ 20-22.
18. *See id.* ¶¶ 28-30.
19. *See id.* ¶¶ 40-42.
20. *See id.* ¶ 16.
21. *See id.* ¶¶ 77-105.
22. *See id.* ¶¶ 106-14.
23. *See id.* ¶¶ 123-54.
24. *See id.* ¶¶ 155-204.
25. *See id.* ¶¶ 210-16.

becomes affected by base points on the opposite coasts, runs along the line equidistant from the opposite coasts.[26]

3. *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*[27]

On May 28, 2009, by thirteen votes to one, the ICJ issued an order denying a request for the indication of provisional measures submitted by Belgium in the case concerning *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*.

The dispute arose from Senegal's alleged failure to comply with its obligation to prosecute Mr. Hissène Habré, former President of the Republic of Chad, or to extradite him for purposes of criminal proceedings for violations of customary international law and the U.N. Convention Against Torture.[28] Belgium instituted proceedings against Senegal in February 2009. Relying on Article 41 of the ICJ Statute, Belgium also requested the ICJ to indicate provisional measures, requiring Senegal to take all the steps within its power to keep Mr. H. Habré under the control and surveillance of the judicial authorities of Senegal.[29]

Senegal opposed the request, arguing, *inter alia*, that it was willing to try Habré in its own courts and that the provisional measures would prejudice the merits and deprive it of the rights it held under international rules, in particular the Convention Against Torture.[30]

The ICJ found that it had prima facie jurisdiction over the dispute[31] and that the rights asserted by Belgium, being grounded in a possible interpretation of the Convention Against Torture, appeared plausible.[32] With regard to the merits of Belgium's request, the ICJ agreed that press releases and statements by the Senegalese Head of State, implying that Senegal would set Habré free unless more funding for his detention were made available, could give rise to some concern on the part of Belgium.[33] Taking note of the assurances provided by Senegal, the ICJ found that the risk of irreparable prejudice to the rights claimed by Belgium was not apparent, concluding that there was no urgency to justify the indication of provisional measures.[34] For these reasons, it dismissed Belgium's request.[35]

4. *Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*

On July 13, 2009, the ICJ delivered its judgment in this case, which Costa Rica initiated on September 29, 2005, regarding navigational and other rights in respect of the San Juan River (River) from a point three English miles below Castillo Viejo to the mouth of the

26. *See id.* ¶¶ 205-09, 217-18.
27. *See* Obligation to Prosecute or Extradite (Belg. v. Sen.) 2009 I.C.J. No. 144 (Order of May 28), *available at* http://www.icj-cij.org/docket/files/144/15149.pdf.
28. *See* Obligation to Prosecute or Extradite ¶¶ 3-10.
29. *See id.* ¶¶ 11-15.
30. *See id.* ¶¶ 25-27.
31. *See id.* ¶ 53.
32. *See id.* ¶¶ 56-61.
33. *See id.* ¶ 70.
34. *See id.* ¶¶ 71-73.
35. *See id.* ¶ 76.

River in the Caribbean Sea.[36] The ICJ noted that this part of the River belonged to Nicaragua because the border was situated on the Costa Rican bank, with Costa Rica enjoying navigational rights.[37]

Regarding the legal basis of those rights, the ICJ found that the 1858 Treaty of Limits (Treaty) between the parties was the controlling normative framework for the section of the River under dispute.[38] Under Article VI of the Treaty, Costa Rica was to enjoy in perpetuity the right of free navigation "con objetos de comercio," a phrase that the parties interpreted differently.[39] The ICJ concluded that the navigational right should be interpreted as meaning "for purposes of commerce."[40]

The ICJ held that this right to free navigation for purposes of commerce concerned both the transport of goods and the commercial transport of persons.[41] The ICJ found that persons transported on board Costa Rican vessels were not required to obtain Nicaraguan visas and did not have to purchase Nicaraguan tourist cards. By requiring persons to obtain visas and purchase tourist cards, Nicaragua had breached its international obligations under the Treaty.[42]

The ICJ found that other provisions of the Treaty entitled inhabitants of the Costa Rican bank of the River to navigate "for the purpose of meeting the essential needs of everyday life which [sic] require expeditious transportation, such as transport to and from school or for medical care."[43] The ICJ also found that official Costa Rican vessels were covered by the navigational rights when providing the population living on the River bank with what it needed in order to meet the necessities of daily life.[44]

The ICJ further noted that Nicaragua had the right to regulate activities on the section of the River, but such rights were subject to certain conditions.[45] The ICJ found that Nicaragua was entitled to require the presentation of passports or identity documents, the issuance of departure clearance certificates (but without requesting payment of a fee for such issuance), the imposition of timetables for navigation, and that Costa Rican vessels display the Nicaraguan flag.[46] The Court also concluded that the Costa Rican inhabitants of the River bank enjoyed a customary right to engage in subsistence fishing.[47]

B. Composition of the Court

As of November 30, 2009, the ICJ was composed of the following judges: Hisashi Owada (Japan), President; Peter Tomka (Slovakia), Vice-President; Shi Jiuyong (China);

36. *See* Navigational and Related Rights (Costa Rica v. Nicar.), 2009 I.C.J. No. 133 (July 13, 2009), *available at* http://www.icj-cij.org/docket/files/133/15321.pdf [hereinafter Navigational and Related Rights].
37. *See id.* ¶ 16.
38. *See* Treaty of Territorial Limits, Costa Rica-Nicar., Apr. 15, 1858, 118 Consol. T.S. 440; *see also* Navigational and Related Rights, 2009 I.C.J. No. 133, ¶¶ 30, 36.
39. *See* Navigational and Related Rights, 2009 I.C.J. No. 133, ¶ 37.
40. *See id.* ¶¶ 45, 52-56.
41. *See id.* ¶¶ 71-73.
42. *Id.* ¶¶ 117, 119.
43. *Id.* ¶ 78.
44. *See id.* ¶¶ 83-84.
45. *See id.* ¶¶ 87, 97.
46. *See id.* ¶¶ 107, 110, 124, 129, 132, 133.
47. *See id.* ¶ 144.

Abdul G. Koroma (Sierra Leone); Awn Shawkat Al-Khasawneh (Jordan); Thomas Buergenthal (United States of America); Bruno Simma (Germany); Ronny Abraham (France); Kenneth Keith (New Zealand); Bernardo Sepúlveda-Amor (Mexico); Mohamed Bennouna (Morocco); Leonid Skotnikov (Russian Federation); Antônio A. Cançado Trindade (Brazil); Abdulqawi Ahmed Yusuf (Somalia); and Christopher Greenwood (United Kingdom of Great Britain and Northern Ireland).

II. Permanent Court of Arbitration

The Permanent Court of Arbitration (PCA) was established by the 1899 Convention for the Pacific Settlement of International Disputes,[48] subsequently revised in 1907,[49] as a permanent administrative institution readily available to facilitate access to arbitration and other forms of dispute resolution. To date, 110 states have acceded to one or both of the PCA's founding conventions.[50]

The PCA provides full registry and general administrative support to tribunals and commissions at any location worldwide. The PCA was originally created to facilitate arbitration and other forms of dispute resolution between states. Since the 1930s, the PCA has expanded its offer of dispute resolution services to include various combinations of states, state entities, international organizations, and private parties. The PCA administers arbitration, conciliation, and fact-finding proceedings conducted under its own rules of procedure (which are based on the UNCITRAL Arbitration Rules), or any other procedural rules agreed upon by the parties.

A. Cases

One new arbitration was added to the list of active cases in 2009: *HICEE B.V. v. Slovak Republic*. Three arbitrations that have been reported in this section in previous years remain active: *Eurotunnel, Vito G. Gallo v. Gov't of Canada*, and *Chemtura Corp. (formerly Crompton Corporation) v. Gov't of Canada*.[51] At the time of this writing, thirty-three further cases were pending.[52] Finally, two bodies working under the auspices of the PCA, the Eritrea-Ethiopia Claims Commission and the arbitral tribunal, created to decide the dispute between the Government of Sudan and the Sudan People's Liberation Movement/Army (the so-called Abyei Arbitration), concluded their work.[53]

48. *See* Convention for the Pacific Settlement of International Disputes, July 29, 1899, 32 Stat. 1779, T.S. 392, *available at* http://www.pca-cpa.org/showfile.asp?fil_id=192.

49. *See* Convention for the Pacific Settlement of International Disputes, Oct. 17, 1907, 36 Stat. 2199, T.S. 536, *available at* http://www.pca-cpa.org/showfile.asp?fil_id=193.

50. Permanent Court of Arbitration, Member States, http://www.pca-cpa.org/showpage.asp?pag_id=1038 (last visited Jan. 29, 2010).

51. *See* Yulia Andreeva, et al., *International Courts*, 42 Int'l Law. 345, 353-55 (2008); *see also* Andreeva, *supra* note 8, at 437-38.

52. Permanent Court of Arbitration, Cases, http://www.pca-cpa.org/showpage.asp?pag_id=1029 (last visited Jan. 29, 2010).

53. *See* Permanent Court of Arbitration, Eritrea-Ethiopia Claims Commission, http://www.pca-cpa.org/showpage.asp?pag_id=1151 (last visited Jan. 29, 2010); *see also* Permanent Court of Arbitration, Abyei Arbitration, http://www.pca-cpa.org/showpage.asp?pag_id=1306 (last visited Jan. 29, 2010).

1. *New Cases*

a. HICEE B.V. v. Slovak Republic

This arbitration "is being conducted under the UNCITRAL Arbitration Rules pursuant to the Agreement on Encouragement and Reciprocal Protection of Investments between the Kingdom of The Netherlands and the Czech and Slovak Federal Republic."[54]

The dispute stems from a revision to the health-insurance act that Slovakia's parliament passed on October 25, 2007, reversing a series of World Bank-sponsored health care reforms initiated by a previous administration. Under the new laws, private health insurers are banned from paying dividends to their shareholders and are required to return any profits to the healthcare system. Health Insurance Companies of Eastern Europe (HICEE) B.V., a Dutch company, seeks SKK15 billion (€497.91 million) from the Slovak Republic.[55] The arbitrators are Franklin Berman (Presiding Arbitrator), Charles N. Brower, and Peter Tomka.[56]

2. *Concluded Proceedings*

a. *Gov't of Sudan v. Sudan People's Liberation Movement/Army* (Abyei Arbitration)

On July 22, 2009, the five-member arbitral tribunal established to decide the dispute between the Government of Sudan and Sudan People's Liberation Movement/Army (SPLM/A) over the Abyei region rendered its final award.[57] The arbitrators were Pierre-Marie Dupuy (President), Awn Al-Khasawneh, Gerhard Hafner, Michael Reisman, and Stephen Schwebel. The arbitration took place under the PCA's Optional rules for Arbitrating Disputes Between Two Parties of Which Only One Is a State.[58] The Tribunal was given the mandate to resolve the dispute using applicable provisions of the Comprehensive Peace Agreement[59] and the Interim National Constitution of the Republic of Sudan (2005), as well as any general principles of law and practice the Tribunal deemed appropriate.[60]

The core of the legal analysis contained in the Tribunal's 270-page Award[61] (Final Award) concerns the extent that it could review the delimitation done in 2005 by the

54. *See* Permanent Court of Arbitration, *HICEE B.V. v. The Slovak Republic*, http://www.pca-cpa.org/showpage.asp?pag_id=1334 (last visited Jan. 29. 2010).

55. *See id.*

56. *Id.*

57. Past Cases of the Permanent Court of Arbitration, *Sudan v. Sudan People's Liberation Movement/Army*, http://www.pca-cpa.org/showpage.asp?pag_id=1306 (last visited Jan. 27, 2010).

58. *See* Arbitration Agreement on Delimiting Abyei Area (Sudan v. Sudan People's Liberation Movement/Army), art. 1, ¶ 1 (July 11, 2008), *available at* http://www.pca-cpa.org/upload/files/Abyei%20Final%20Award.pdf. [hereinafter Arbitration Agreement].

59. Comprehensive Peace Agreement (Sudan v. Sudan People's Liberation Movement/Army) (Jan. 9, 2005), *available at* http://unmis.unmissions.org/Portals/UNMIS/Documents/General/cpa-en.pdf [hereinafter CPA].

60. *See* Arbitration Agreement, *supra* note 58, art. 3, ¶ 1.

61. *See* Delimiting Abyei Area (Sudan v. Sudan People's Liberation Movement/Army), ¶ 3 (Final Award of July 22, 2009), *available at* http://www.pca-cpa.org/upload/files/Abyei%20Final%20Award.pdf. [hereinafter Final Award].

Abyei Boundary Commission.[62] The Tribunal began by considering whether the Commission had exceeded its mandate. Relying on arbitral practice, the Tribunal held that the task of an institution charged with reviewing an arbitral or other decision-making process is not to assure the correctness of the outcome, but rather to confirm the integrity of the underlying process.[63]

Based on the wording of the relevant agreement, its object and purpose, and the underlying historical circumstances, the Tribunal concluded that while the Commission's interpretation of the mandate was reasonable and not excessive,[64] its implementation was not. Applying a reasonableness standard, the Tribunal found that the Commission could have exceeded its mandate if it failed to state sufficient reasons to allow readers to understand how decisions were reached.[65]

Although the Tribunal upheld parts of the boundary traced by the Commission because a comprehensible and complete explanation had been provided,[66] it redrew others because the Commission had failed adequately to explain the reasons.[67] The result of the Tribunal's determinations is a region populated primarily by the Ngok Dinka, a politically powerful tribe sympathetic to the South, and that includes at least one working oil field, but leaves a large Chinese-run oil field at Heglig and other fields in control of the Government of Khartoum.[68]

Judge Awn Al-Khasawneh appended a vigorous sixty-nine page dissenting opinion finding his colleagues' conclusions "singularly unpersuasive[,]. . .self-contradicting, result-oriented[,]. . .cavalier[,]. . .insufficiently critical[,]. . .unsupported by evidence, and. . . flying in the face of overwhelming contrary evidence."[69] Both the Government in Khartoum and the SPLM/A quickly announced that they would accept the ruling, and the European Union and the United States urged its immediate and peaceful implementation.[70] Whether this will help settle the overarching dispute between the central Government of Sudan and separatist movements in the South remains to be seen.[71] The Abyei region is to conduct a referendum in 2011 to determine whether to join South Sudan, which, at about the same time, is supposed to hold a referendum on independence.

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62. *See* Arbitration Agreement, *supra* note 58, preamble; INTERGOVERNMENTAL AUTHORITY ON DEVELOPMENT (IGAD), ABYEI BOUNDARY COMMISSION REPORT (2005), *available at* http://www.sudanarchive.net/cgi-bin/sudan?a=d&d=Dl1d18.

63. *See* Final Award, *supra* note 61, ¶¶ 400-11, 504-10.

64. See id. ¶¶ 537-672.

65. See id. ¶¶ 519-35.

66. See id. ¶ 696.

67. See id. ¶¶ 674, 683, 702-08.

68. *See id.* app. 1.

69. *Id.* app. 3, at 1 (Al-Khasawneh, J., dissenting).

70. *See* Sharon Otterman, *Ruling Redraws Disputed Zone in Sudan in Effort to Keep North and South at Peace*, N.Y. TIMES, July 23, 2009, at A6; Stephanie McCrummen, *Ruling Signals Compromise in Border Dispute in Sudan*, WASH. POST, July 23, 2009, at A12. *See also Court Rules on Sudan Abyei Dispute*, AL JAZEERA, July 22, 2009, http://english.aljazeera.net/news/africa/2009/07/20097229239873474.html.

71. *See* Steve Paterno, *Abyei Arbitration Award: A Cause for War*, SUDAN TRIB., July 23, 2009, http://www.sudantribune.com/spip.php?article31897.

b. Eritrea-Ethiopia Claims Commission

On August 17, 2009, the Eritrea-Ethiopia Claims Commission rendered its Final Awards on Damages in each Party's Claims.[72] It awarded compensation in respect of claims by both Eritrea and Ethiopia for violations of international law previously found by the Commission in its fifteen Partial and Final Awards on Liability, rendered between July 1, 2003 and December 19, 2005.[73]

The final award in favor of Ethiopia totals about US$174 million, while Eritrea was awarded about US$161 million, plus an additional US$2 million for individual Eritrean claimants.[74] The Eritrean Government stated that it accepted the award "without any equivocation," but remained upset that Ethiopia had resisted the Commission's drawing of boundary lines between the two states, a point reiterated in its public declaration of acceptance of the award.[75] For its part, the Ethiopian Government complained that the award was "a very small amount given the gravity of the crime of aggression committed by Eritrea as determined by the commission itself."[76]

At this point, it is not clear what the practical results of the Commission's final awards will be. Unlike some other recent international claims processes (such as the Iran-United States Claims Tribunal and the U.N. Compensation Commission), there is no dedicated source of funding that will automatically pay awards, and satisfaction will depend on the willingness and ability of governments with very limited resources to comply with the Commission's decision. It remains to be seen whether the work of the Claims Commission will withstand the test of time and the constantly tense relations between the two states. Having said that, the final awards are likely to be an important source of jurisprudence and practical guidance for future international claims processes, although not all of the specific amounts awarded were explained in detail.

III. Iran-United States Claims Tribunal

The Iran-United States Claims Tribunal was established in 1981 through the Algiers Declarations as part of the resolution of the Iran Hostage Crisis.[77] The Tribunal hears two categories of claims: private claims, which are claims brought by a national of one country against the other country; and inter-governmental claims, which are claims brought by one country against the other, alleging either a violation of the Algiers Decla-

72. Ethiopia's Damage Claims (Eth. v. Eri.) (Final Award of Aug. 17, 2009), *available at* http://www.pca-cpa.org/upload/files/ET%20Final%20Damages%20Award%20complete.pdf.

73. Andreeva, *supra* note 51, at 355-56; Andreeva, *supra* note 8, at 438.

74. *See Commission Awards Ethiopia-Eritrea War Claims*, AGENCE FRANCE-PRESSE, Aug. 18, 2009, *available at* http://www.zimbio.com/AFP+News/articles/f2CUn39Trm1/Commission+awards+Ethiopia+Eritrea+war+claims.

75. *Id.*

76. *Id.*

77. The term "Algiers Declarations" refers to the Declaration of the Government of the Democratic and Popular Republic of Algeria. Declaration of the Government of the Democratic and Popular Republic of Algeria, Jan. 19, 1981, 20 I.L.M. 224, *reprinted in* 1 Iran-U.S. Cl. Trib. Rep. 3 [hereinafter General Declaration]; The Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, Jan. 19, 1981, 20 I.L.M. 223, *reprinted in* 1 Iran-U.S. Cl .Trib. Rep. 9 [hereinafter Claims Settlement Declaration].

rations (denominated A cases) or breach of contract (B cases).[78] After twenty-eight years of operation, the Tribunal has decided all of the private claims, dispensing with nearly 4,000 cases and awarding more than US $2.5 billion to the United States and U.S. nationals and approximately US$1 billion to Iran and Iranian nationals.[79] Its docket now consists only of inter-governmental claims.

The focus of Tribunal activity in 2009 was the continuation, and culmination, of deliberations in a large government-to-government case–Case No. B61. At issue was the question of the extent and nature of the U.S. undertaking in the Algiers Declarations to permit the transfer to Iran of Iranian military property, and, specifically, how that obligation should be interpreted in light of the "subject to the provisions of U.S. law applicable prior to November 14, 1979" clause of Paragraph 9 of the General Declaration.[80] The sixty-day hearing concluded on March 2, 2007, with closing arguments by both sides.

On July 17, 2009, the Tribunal issued a partial award in the case (Partial Award No. 601), in which it made three core determinations.[81] First, the Tribunal held that its determination in a prior award in another case, Case No. A15(II:A and II:B),[82] has res judicata effect in Case No. B61. Under General Principle A and Paragraph 9 of the General Declaration, the United States has an implicit obligation to compensate Iran for any losses it incurred as a result of the lawful refusal by the United States to permit exports of Iranian properties subject to U. S. export-control laws applicable prior to November 14, 1979.[83] Second, the Tribunal determined that, notwithstanding this implied obligation to compensate, Iran failed to prove that it had suffered a compensable loss as a result of the United States' March 26, 1981 refusal to allow the export to Iran of its export-controlled properties.[84] The Tribunal accordingly dismissed on the merits Iran's claim based on the implicit obligation. It also dismissed Iran's claim for specific performance (i.e., return of the military properties).[85] Third, the Tribunal stated that its separate holding in Case No. A15(II:A and II:B) that certain Treasury Regulations issued by the United States in 1981 were inconsistent in some respects with the United States' obligations under the General Declaration, applied to the export-controlled properties at issue in Case No. B61.[86] The Tribunal, however, stated that it did not have sufficient information to rule on "issues concerning those unlawful Regulations in this Case, including whether damages were caused by those Regulations, and what was the nature and extent of any such damages."[87]

78. Iran-United States Claims Tribunal, Background Information, http://www.iusct.org/background-english.html (last visited Feb. 2, 2010).

79. *Id.*

80. Paragraph 9 of the General Declaration provides in relevant part that "the United States will arrange, subject to the provisions of U.S. law applicable prior to November 14, 1979, for the transfer to Iran of all Iranian properties which are located in the United States and abroad and which are not within the scope of [Paragraphs 2-8]." General Declaration, para. 9.

81. *See* Iran v. United States, Award No. 601-A3/A8/A9/A14/B61 (July 17, 2009), *available at* http://meetings.abanet.org/webupload/commupload/IC930000/relatedresources/Iran-US_Claims_Tribunal_Award_No_601.pdf.

82. *See* Iran v. United States, 28 Iran-U.S. Cl. Trib. Rep. 112 (1992).

83. *See* Award No. 601 ¶¶ 125, 183(a).

84. *See id.* ¶¶ 153-72, 183(g).

85. *See id.* ¶¶ 173, 183(h).

86. *See id.* ¶¶ 174-76, 183(i).

87. *Id.* ¶ 177.

It therefore called for additional briefing by Iran and the United States on those issues.[88] Judges Skubiszewski (the Tribunal President), Aldrich, Arangio-Ruiz, Brower, and McDonald formed the majority; Judges Aghahosseini, Ameli, and Oloumi Yazdi dissented. Judge Broms signed the Award with the notation "concurring in part, dissenting in part" without further elaboration.[89]

On August 5, 2009, Iran filed a challenge to Judges Skubiszewski and Arangio-Ruiz with the Appointing Authority. As of the date of this summary, the challenge has not been resolved.

IV. International Centre for Settlement of Investment Disputes

The International Centre for Settlement of Investment Disputes (ICSID) was established under the 1966 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the Convention).[90] The following sections set forth the main developments concerning ICSID and cases before it from January 1 to November 30, 2009.

A. Institutional Developments

On February 17, 2009, the ICSID Administrative Council elected Ms. Meg Kinnear, a Canadian national, as the new Secretary-General of ICSID.[91]

With the signature by the Republic of Kosovo on June 29, 2009,[92] the number of States signatories to the Convention increased from 155 to 156.[93] With the ratifications by the Republic of Kosovo on June 29, 2009,[94] and by Haiti on October 27, 2009,[95] the number of States having ratified the Convention increased from 143 to 145. Pursuant to its Article 68(2), the Convention entered into force on July 29, 2009, for the Republic of Kosovo and on November 26, 2009, for Haiti.

88. *See id.* ¶¶ 177, 179.

89. *Id.* at 90.

90. Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, Oct. 14, 1966, 17 U.S.T. 1270, 575 U.N.T.S. 159. Unless otherwise indicated, all decisions and materials referred to in this section can be found at http://icsid.worldbank.org/ICSID/Index.jsp or at http://ita.law.uvic.ca.

91. Press Release, International Centre for Settlement of Investment Dispute, Meg Kinnear Elected ICSID Secretary General (Feb.23, 2009), *available at* http://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=OpenPage&PageType=AnnouncementsFrame&FromPage=Announcements&pageName=Announcement15.

92. Press Release, International Centre for Settlement of Investment Dispute, Republic of Kosovo Joins ICSID (June 29, 2009), *available at* http://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=OpenPage&PageType=AnnouncementsFrame&FromPage=Announcements&pageName=Announcement19.

93. *See* ICSID, List of Contracting States and Other Signatories of the Convention (Jan. 7, 2010), http://icsid.worldbank.org/ICSID/FrontServlet?requestType=ICSIDDocRH&actionVal=ShowDocument&language=English.

94. *See* Republic of Kosovo Joins ICSID, *supra* note 92.

95. *See* Press Release, ICSID, Haiti Ratifies the ICSID Convention (Oct. 27, 2009), *available at* http://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=OpenPage&PageType=AnnouncementsFrame&FromPage=Announcements&pageName=Announcement23.

On July 6, 2009, the Republic of Ecuador submitted to ICSID a written notice of denunciation of the Convention.[96] In accordance with Article 71 of the Convention, the denunciation will take effect on January 7, 2010.

B. Developments concerning Cases before the Centre

1. *Original Arbitration Proceedings*

At the time of this writing, 119 cases were pending before the Centre, and, since January 1, 2009, twenty final awards had been rendered by ICSID tribunals, and nineteen new cases had been registered.[97]

In *Euro Telecom Int'l v. Bolivia*,[98] at the request of Bolivia, the claimant agreed to discontinue ICSID proceedings it had initiated against Bolivia.[99] The proceedings will now proceed pursuant to ad hoc rules of arbitration before the same panel of arbitrators.[100] The case had been registered by ICSID on October 31, 2007–three days before Bolivia's denunciation of the Convention became effective[101]–causing strong objections by Bolivia and civil society organizations.[102]

2. *Annulment Proceedings*

During the period under study, five applications for annulment were registered by the Centre. Two of those applications were filed by investors,[103] and three were filed by States.[104]

Three decisions on applications for stay of enforcement in annulment proceedings were rendered by ICSID ad hoc committees. In *Rumeli v. Kazakhstan*, an ad hoc committee ordered continuance of the stay of enforcement, subject to the condition that Kazakhstan provide written assurances that full payment of the final arbitral award would be made promptly, should the application for annulment be rejected. Absent such written assurances, Kazakhstan would have to place half of the award amount in escrow to ensure

96. *See* Press Release, ICSID, Ecuador Submits a Notice Under Article 71 of the ICSID Convention (July 9, 2009), *available at* http://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=OpenPage&PageType=AnnouncementsFrame&FromPage=NewsReleases&pageName=Announcement20.

97. *See* ICSID, List of Concluded Cases (Feb. 15, 2010), http://icsid.worldbank.org/ICSID/FrontServlet?requestType=GenCaseDtlsRH&actionVal=ListConcluded.

98. E.T.I. Euro Telecom Int'l N.V. v. Bolivia, ICSID Case No. ARB. 07/28 (Oct. 21, 2009).

99. *See* Luke Peterson, *Telecom Italia Subsidiary Agrees to Withdraw ICSID Claim Against Bolivia, but Case to Proceed Under Other Auspices*, 2 INVESTMENT ARB. REP. 17, Oct. 30, 2009, http://www.iareporter.com.

100. *Id.*

101. *See Bolivia Hit with ICSID Claim*, GLOBAL ARBITRATION REV., Nov. 2, 2007, http://www.globalarbitrationreview.com/news/article/14149/bolivia-hit-icsid-claim.

102. *See* Luke Peterson, *NGOs Call on World Bank President to Review Role of ICSID, and Its Handling of Bolivia Arbitration*, 1 INVESTMENT ARB. REP. 12, Oct. 9, 2008, http://www.iareporter.com.

103. Cont'l Cas. Co. v. Argentina, ARB/03/9 (ICSID 2009); RSM Prod. Corp. v. Grenada, ICSID Case No. ARB/05/14 (July 10, 2009).

104. Cont'l Cas. Co, ARB/03/9; Waguih Elie George Siag v. Egypt, ICSID Case No. ARB/05/15 (July 10, 2009); Víctor Pey Casado v. Chile, ICSID Case No. ARB/98/2 (July 6, 2009).

continuance of the stay.[105] In *Continental v. Argentine Republic*, after having denied Continental's objection to the timeliness of Argentina's application for annulment,[106] an ad hoc committee continued the stay of enforcement without any conditions.[107] In *Sempra v. Argentine Republic*, an ad hoc committee lifted the stay of enforcement after Argentina failed to place US$75 million in escrow, thereby failing to satisfy a condition for the continuance of the stay of enforcement.[108]

Three decisions on applications for annulment were rendered by ICSID ad hoc committees. In *M.C.I. v. Ecuador*[109] and *Azurix v. Argentine Republic*,[110] MCI's and Argentina's respective applications were denied. In *Malaysian Historical v. Malaysia*, the investor's application was granted and the award was annulled in its entirety.[111]

105. Rumeli Telekom A.S. v. Kazakhstan, ICSID Case No. ARB/05/16, Decision of the *Ad Hoc* Committee on Stay of Enforcement (Mar. 19, 2009) (not public), *reported in* Luke Peterson, *ICSID Committee Asks Kazakhstan to Guarantee Prompt Payment if Annulment Fails–or Face Requirement to Post 50% of Award Value in Escrow*, 2 INVESTMENT ARB. REP. 6, Apr. 2, 2009, www.iareporter.com/Archive/IAR-04-02-09.pdf.

106. Cont'l Cas. Co, ARB/03/9, Decision on the Claimant's Preliminary Objection to Argentina's Application for Annulment (Oct. 23, 2009).

107. *Id.*, Decision on Argentina's Application for a Stay of Enforcement of the Award (Oct. 23, 2009).

108. Sempra Energy Int'l v. Argentina, ICSID Case No. ARB/02/16, Decision on Sempra Energy International's Request for the Termination of the Stay of Enforcement of the Award (Aug. 7, 2009); Decision on the Argentine Republic's Request for a Continued Stay of Enforcement of the Award (Mar. 5, 2009).

109. M.C.I. Power Group, L.C. v. Ecuador, ICSID Case No. ARB/03/6, Decision on the Application for Annulment (Oct. 19, 2009).

110. Azurix Corp. v. Argentina, ICSID Case No. ARB/01/12, Decision on the Application for Annulment of the Argentine Republic (Sept. 1, 2009).

111. Malaysian Historical Salvors, SDN, BHD v. Malaysia, ICSID Case No. ARB/05/10, Decision on the Application for Annulment (Apr. 16, 2009).