

## CASES

### Introductory Note

On May 28, 1992, Vacuum Salt Products Limited, a company incorporated in Ghana, instituted ICSID arbitration proceedings against the Government of the Republic of Ghana in respect of a dispute related to the development of a salt production and mining facility in Ghana. The request was registered by the Secretary-General of the Centre on June 11, 1992.

The parties agreed that the Arbitral Tribunal would be composed of three arbitrators, one arbitrator to be chosen by each party and the President to be appointed by agreement between the two party-appointed arbitrators. Mr. Charles N. Brower, a U.S. national, was appointed as arbitrator by the claimant and Dr. Kamal Hossain, a Bangladeshi national, by the respondent. Both arbitrators agreed to the appointment of Judge Robert Y. Jennings, a British national, as President of the Tribunal.

Article 25 of the ICSID Convention provides that the Centre's jurisdiction extends to any legal dispute arising directly out of an investment between an ICSID Contracting State (or a designated agency or subdivision of the State) and a national of another Contracting State. The term "national" covers both natural and juridical persons. Under the Convention, the nationality of a juridical person such as a company is generally determined by reference to its place of incorporation. However, under Article 25(2)(b) of the Convention, a locally-incorporated company may be eligible to submit investment disputes with the host State to arbitration under the Convention if, "because of foreign control," the parties have agreed to treat the company as a national of another Contracting State.

The Tribunal, having considered that the company did not fall in this case under the exception provided for by Article 25(2)(b), rendered on February 16, 1994 an award declining jurisdiction over the dispute. This marked the first time that an ICSID case came to a conclusion on the basis of a jurisdictional objection being upheld by a Tribunal. The text of the award is reproduced below with the parties' consent.