

Middle East Cement Shipping and Handling Co. S.A.
v. Arab Republic of Egypt
(ICSID Case No. ARB/99/6)

Introductory Note

On November 19, 1999, the Secretary-General of ICSID registered a request for arbitration submitted by Middle East Cement Shipping and Handling Co. S.A. (Middle East Cement), a company incorporated in Greece, against the Arab Republic of Egypt. The dispute concerned an alleged expropriation by Egypt of Middle East Cement's interests in a cement distribution enterprise located in Egypt as well as Egypt's alleged failure to ensure the re-exportation of Middle East Cement's assets. Middle East Cement invoked an ICSID arbitration clause contained in an Agreement between Greece and Egypt for the Promotion and Reciprocal Protection of Investments, which entered into force on April 6, 1995 (the BIT).

According to the agreement of the parties, the Arbitral Tribunal in this case was to consist of three arbitrators, one appointed by each party and the third one, who would serve as the President of the Tribunal, appointed by agreement of the two appointed arbitrators. In accordance with this agreement, the Claimant appointed Professor Piero Bernardini, an Italian national. The Respondent appointed Professor Don Wallace, Jr., a U.S. national. Later on, Professors Bernardini and Wallace appointed Professor Karl-Heinz Böckstiegel as the President of the Tribunal.

In 1989 Egypt issued a decree prohibiting import of all types of portland cement, which resulted in a halt of the activities of the Middle East Cement branch (Badr Cement Terminal) in Egypt. Middle East Cement claimed damages due to the liquidation of its Egyptian branch (including lost profits) and to the difficulties in re-exporting the branch's assets such as a floating silo.

Before the proceedings began, Egypt raised certain objections to the jurisdiction of the Centre and the competence of the Tribunal. In accordance with ICSID Arbitration Rule 41(3), during its first session, the Tribunal declared that the proceedings on the merits were suspended and established a written and oral phase for the hearing on Egypt's objections to jurisdiction. In

a November 27, 2000 decision, the Tribunal rejected Egypt's objections to jurisdiction.

Prior to turning to the merits of the case, the Tribunal considered it important to decide on the legal framework of the case, i.e., the applicable law. For the Tribunal, the first sentence of Article 42(1) of the ICSID Convention required the application of rules of law agreed on by the parties. In the Tribunal's view, Article 11 of the BIT provided such an agreement and thus had to be respected.¹ Based on the second sentence of Article 42(1) of the ICSID Convention, the Tribunal also concluded that while the Tribunal "takes into account the law of Egypt where appropriate, consistent with its decision to consider and accept only claims under the BIT, the Tribunal shall apply the substantive provisions of the BIT for all matters regulated by the Treaty and cannot apply any provisions of national Egyptian law limiting claims found to exist under the BIT." Finally, for the Tribunal, the first and second sentence of Article 42(1) of the ICSID Convention also imply "that the Tribunal may have recourse to the rules of general international law to supplement those of the BIT."

In its decision on the merits, the Tribunal decided that Egypt's decree prohibiting the import of cement had an effect tantamount to expropriation. Thus, under the BIT, Middle East Cement was entitled to prompt, adequate and effective compensation. After examining all of the Claimant's requests, the Tribunal granted compensation for the lost profits from cement supply agreements which had to be terminated due to the adoption of the decree as well as for the floating silo, which was seized by the Egyptian authorities. In addition, the Tribunal decided to grant annually compound interest since the time of the taking. All of the other claims were rejected for lack of sufficient substantiation.

Regarding its decision on costs, the Tribunal held that each party being partially successful in their claims and objections, the costs of the arbitration should be shared equally and each party should bear its own expenses. The text of the award is posted, with the parties' consent, on ICSID's website at www.worldbank.org/icsid. The text of the award is also reproduced below with the consent of the parties.

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¹ According to Article 11 of the BIT, in addition to the rules of the BIT, the obligations for a more favorable treatment deriving from the national law of the Contracting Parties or existing under international law between the Contracting Parties shall prevail.