

CASES

Consortium R.F.C.C. v. Kingdom of Morocco (ICSID Case No. ARB/00/6)

Introductory Note

On June 28, 2000, the Centre registered a request submitted by Consortium R.F.C.C., a consortium organized under the laws of the Republic of Italy (the Claimant), for institution of an ICSID Convention arbitration proceeding against the Kingdom of Morocco (the Respondent). The dispute concerned a concession contract (*marché public*) of June 7, 1995 for the construction of a specific section of a Highway in Morocco (the Contract). The Contract was granted by public bid and signed by the *Société Nationale des Autoroutes du Maroc* (ADM), a State-owned company, and the Claimant. On April 14, 1998, the Highway was officially opened to the public. However, several events occurred before, during and after the performance of the Contract which gave rise to a dispute. To resolve these issues, the Claimant invoked an ICSID arbitration clause contained in the July 18, 1990, Agreement between Italy and Morocco for the Promotion and Protection of Investments (the BIT).

In accordance with the agreement of the parties, the Tribunal consisted of three arbitrators, one appointed by each party, and the third, presiding arbitrator, appointed by agreement of the two party-appointed arbitrators. The Tribunal was constituted on September 25, 2000, and consisted of Bernardo M. Cremades, a Spanish national; Ibrahim Fadlallah, a French and Lebanese national; and Robert Briner, a Swiss national, who served as the President of the Tribunal.

During the First Session of the Tribunal with the Parties on October 27, 2000, the Respondent confirmed its intention to file objections to jurisdiction. A calendar for the filing of pleadings on jurisdiction was decided during the meeting. The Tribunal held a hearing on jurisdiction with the parties on May 4, 2001.

The Respondent raised the following objections: i) that the request for arbitration was premature and inadmissible; ii) that the Tribunal had no jurisdiction *ratione materiae* and *ratione personae* and, iii) that the Consortium had agreed that an administrative court had jurisdiction over the matter.

On July 16, 2001, the Tribunal issued a decision upholding jurisdiction over the Consortium's claims, except to the extent that such claims related to contractual claims and did not, at the same time, amount to a breach of the BIT. The text of the decision on jurisdiction is available in our website at www.worldbank.org/icsid.

The Tribunal therefore on the merits examined whether Morocco breached its obligations under the BIT. The Tribunal first analyzed whether a breach of a contract could be assimilated to a breach of the BIT and concluded that no principle of assimilation existed. Then the Tribunal specifically considered the claims regarding fair and equitable treatment, national treatment, non-discrimination, expropriation and the most favorable nation clause and dismissed all the claims.

The award in this case was rendered in French. The text of the award is reproduced below with the parties' consent and is posted in PDF format on the ICSID website.

The Claimant subsequently submitted an application for annulment pursuant to Article 52(d) and (e) of the Convention. The *ad hoc* Committee constituted to decide on the application for annulment was composed of Arghyrios Fatouros, a Greek national, Franklin Berman, a British national, and Bernard Hanotiau, a Belgian national, who served as the President of the Committee. The *ad hoc* Committee rendered its Decision on the Application for Annulment on January 18, 2006.

Gabriela Alvarez Avila
Senior Counsel, ICSID