



INTERNATIONAL LEGAL MATERIALS

FEATURING:

569

**International Centre for Settlement of Investment Disputes (ICSID):
Salini Construttori S.p.A. and Italstrade S.p.A. v. the Hashemite Kingdom of Jordan,
Decision on Jurisdiction, Introductory Note by David J.A. Cairns**

The tribunal found that the common intent of the parties to exclude contractual disputes from ICSID jurisdiction in the Italy-Jordan Bilateral Investment Treaty was clear. It also found that there was no intention to make the Most Favored Nation clause in that Italy-Jordan BIT apply to dispute settlement.

601

**Permanent Court of Arbitration (PCA), Eritrea-Ethiopia Claims Commission: Partial
Award, Civilian Claims- Eritrea's Claims 15, 16, 23 & 27-32; Ethiopia's Claim 5**

The Eritrea-Ethiopia Claims Commission found Ethiopia liable for several violations of international law involving acts or omissions by its civilian officials, military personnel and others, including the wrongful deprivation of Ethiopian nationality, the unlawful detention of Eritrean civilians and abuse of detainees. The Commission also found Eritrea liable for several violations of international law, including the failure to ensure that Ethiopians were able to obtain medical treatment to the same extent as Eritrean nationals in accordance with Article 38 of Geneva Convention IV, unlawful detention, concealment of some detainees from the ICRC and abuse of Ethiopian detainees.

717

**International Centre for the Settlement of Investment Disputes (ICSID):
Plama Consortium Limited v. The Republic of Bulgaria, Decision on Jurisdiction
(February 8, 2005),**

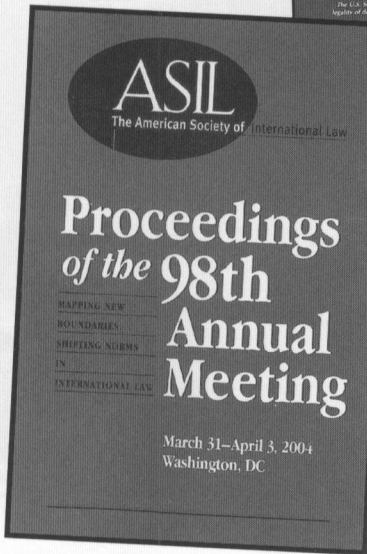
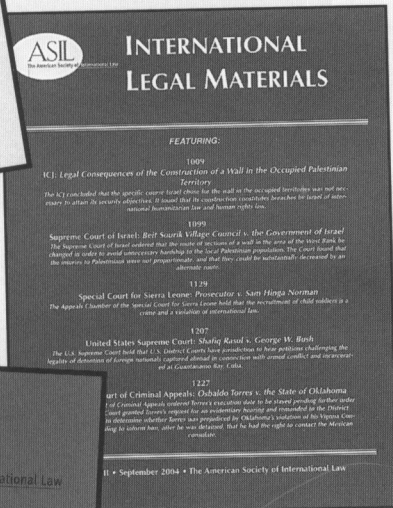
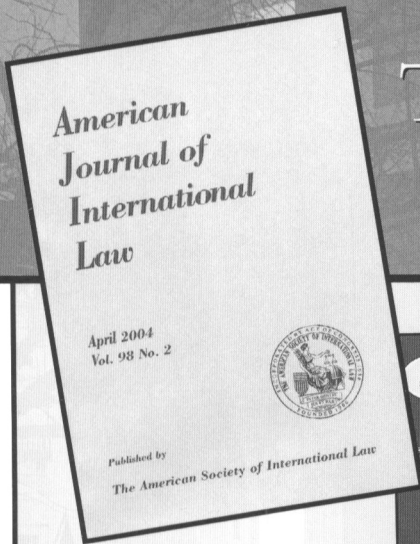
Introductory Note by August Reinisch

The tribunal held that the denial of benefits clause in the Energy Charter Treaty cannot have "retrospective effect." It also found that the Most Favored Nation clause in the Bilateral Investment treaty did not encompass dispute settlement, noting that "Contracting States cannot be presumed to have agreed that [dispute settlement] provisions can be enlarged by incorporating dispute resolution provisions from other treaties negotiated in an entirely different context."



Your Resource For The Latest And Best In International Law

THE AMERICAN SOCIETY OF INTERNATIONAL LAW



SINCE 1906, THE ASIL HAS KEPT INDIVIDUALS AND INSTITUTIONS AROUND THE WORLD UP-TO-DATE WITH THE BEST INFORMATION ON INTERNATIONAL LAW. THROUGH ITS MEMBERSHIP PROGRAM, FLAGSHIP PUBLICATIONS, ELECTRONIC INFORMATION BULLETINS, AND RENOWNED MEETINGS AND NETWORKING OPPORTUNITIES, THE ASIL LEADS THE FIELD.

TO LEARN MORE, VISIT
www.asil.org.

INTERNATIONAL LEGAL MATERIALS®

Statement of Editorial Policy

International Legal Materials is a core publication of The American Society of International Law that reproduces texts of documents reflecting the broad scope and evolution of international law. The range of covered subjects has expanded from traditional topics such as international organizations, jurisdiction, maritime law and trade to include developments in fields such as electronic commerce, environmental law, human rights and war crimes jurisprudence.

International Legal Materials serves as both a bi-monthly information service and a widely recognized archive of international law documents for a diverse, global community of legal scholars, government officials, private practitioners and institutions sharing a common interest in international law. To meet the varied demands of such a readership, documents are selected from world-wide sources on the basis of their present and future legal significance. For this reason, purely political or issue-advocacy documents are usually excluded from consideration, as are draft laws not in final form or lacking a unique, lasting character.

International Legal Materials is prepared for publication in Washington, D.C. by a staff of editors acting with both the advice of the Editorial Advisory Committee and the assistance of Corresponding Editors around the world. In order to reproduce the texts of selected documents under tight production schedules, the best available source is used, whether electronic or printed. To best ensure the quality of electronic texts, the ILM Office staff works in conjunction with official sources to correct any apparent errors.

Readers are invited to send comments to:

Ruth Teitelbaum
Managing Editor, *International Legal Materials*
The American Society of International Law
2223 Massachusetts Avenue, NW
Washington, DC 20008-2864

Subscription Information

International Legal Materials (ISSN 0020-7829) is published bi-monthly (in January, March, May, July, September and November) by The American Society of International Law, 2223 Massachusetts Avenue, NW, Washington, DC 20008-2864.

For 2005 subscriptions, the rate for Society members in the U.S. is \$135; outside the U.S., \$195 (airmail delivery). The rate for non-members of the Society is \$235; outside the U.S., \$295 (airmail delivery). Subscriptions are on an anniversary basis of twelve months starting from start of subscription.

Back Issues and Indices

ILM Volumes 1-42 (1962-2003) are available from William S. Hein & Co., 1285 Main Street, Buffalo, NY 14209-1987, toll-free (800) 828-7571 (U.S.) or (716) 882-2600 (outside U.S.), <http://www.wshein.com>. Hein's prices for back issues vary according to the ILM volume.

Both an annual table of contents and an annual index are carried in the November issue of each volume. Decennial Indices for *International Legal Materials* are available from Hein for the following periods: 1962-1969, 1970-1979, and 1980-1989.

ILM is also indexed by ABC POL SCI, IBZ-International Bibliography of Periodical Literature, Marine Affairs Bibliography, and Public Affairs Information Service.

Online Access and Microfiche

International Legal Materials is available online through:

HeinOnline — <http://www.wshein.com>

LEXIS/NEXIS — <http://www.lexisnexis.com>

Westlaw — <http://www.westlaw.com>

Complete and odd volumes of *International Legal Materials* are available on microfiche from William S. Hein & Company, 1285 Main Street, Buffalo, NY 14209-1987, toll-free (800) 828-7571 (U.S.) or (716) 882-2600 (outside U.S.), <http://www.wshein.com>

ILM Tables of Contents — Online

Recent ILM Tables of Contents are stored at The American Society of International Law website, <http://www.asil.org>. The Society's search engine can also be used to find the ILM citation of recently reproduced documents.

Periodicals postage paid at Washington, DC and additional mailing offices. POSTMASTER: Send address changes and returns to ILM, 2223 Massachusetts Avenue, NW, Washington, DC 20008-2864. Return postage guaranteed.

© The American Society of International Law 2005

Change of Address, Claims and Correspondence

Please inform the ASIL Service Center of a change of address in writing at least 60 days prior to moving in order to assure uninterrupted receipt of ILM. Your post office will not automatically forward your subscription. Claims for undelivered issues must be made in writing within three months of the publication date, which is available online at <http://www.asil.org/resources/claims.html>.

All correspondence regarding subscriptions and claims should be addressed to:

ASIL Service Center
401 Edgewater Place
Suite 600
Wakefield, MA 01880

Telephone (781) 876-8844

FAX (781) 224-1239

<http://www.asil.org>, or e-mail: services@asil.org

Advertising

For information on advertising rates and specifications, please visit <http://www.asil.org/resources/advertise.html> or contact the Marketing Manager at:

The American Society of International Law
2223 Massachusetts Avenue, NW
Washington, DC 20008-2864

Telephone: (202) 939-6000

FAX: (202) 797-7133

Authorization to Photocopy

Authorization to photocopy items for internal or personal use (beyond that permitted by Sections 107 and 108 of the U.S. Copyright Law), or for the internal or personal use of specific clients, is granted by The American Society of International Law for users registered with the Copyright Clearance Center (CCC) Transactional Reporting Service, provided that the base fee of \$10 per copy, plus 25¢ per page, is paid directly to CCC, 222 Rosewood Drive, Danvers, MA 01923-4510, <http://www.copyright.com>

For those organizations that have been granted a photocopy license by CCC, a separate system of payment has been arranged. The fee code for users of the Transactional Reporting Service is: 0020-7829/98 \$10.00 + .25.

For academic course reprints, please contact the ILM Office at 2223 Mass. Ave., NW, Washington, DC 20008-2864.

Guidelines for Submission of Documents

The ILM Office welcomes any effort to bring suitable documents to the Office's attention. Electronic files or web links are required for publication, although printed texts can be used for initial deliberations regarding republication.

The authenticity (*i.e.* official version status) of submitted documents must be easily verifiable. This is facilitated by submitting files or print versions which are clearly attributable to the original source, or by providing links to documents on the original source's official website.

If the official version of a document is not available in English, an unofficial translation is acceptable. The original text must accompany such a translation.

Introductory Notes

Introductory Notes are brief articles from one to three pages in length which are intended to provide background information for a document reproduced in ILM.

For example, an Introductory Note for a treaty might include a short history of the negotiations, the dates of signature and entry into force. An Introductory Note for legislation would give its history and international significance, while one for judicial proceedings would provide the background of the case.

Acceptance of Materials and Corrections

Print submissions cannot be returned. Translators and others submitting material will be notified of the acceptance of their document for publication.

Once a translation or Introductory Note has been accepted for reproduction, The American Society of International Law will send a publication agreement to the author.

Translators and Introductory Note Authors shall be acknowledged in *International Legal Materials*.

In some cases minor editorial or typographical alterations may be made without contacting the author or translator. Major corrections will be sent to the author or translator for approval. Corrected Introductory Notes or translations must be returned within the time specified.

Contributions and Correspondence

Please address all correspondence to:

Ruth Teitelbaum
Managing Editor, *International Legal Materials*
2223 Massachusetts Avenue, NW
Washington, DC 20008-2864

Telephone: (202) 939-6000
FAX: (202) 797-7133
e-mail: rteitelbaum@asil.org

International Law In Brief

The Attorney-Editors of *International Legal Materials* also publish the e-mail newsletter *International Law In Brief*, which contains objective abstracts of recently released documents pertinent to international law.

Documents abstracted in *International Law In Brief* are later considered for reproduction in *International Legal Materials*.

A complete *International Law In Brief* archive is located at The American Society of International Law website (<http://www.asil.org>). A search engine provides an easy way to find abstracts of specific documents.

The *International Law In Brief* publication is free, but has an independent subscription.

To subscribe, send an e-mail to:

ILIB-request@listserve.asil.org

Leave the subject blank, and in the message space write:

subscribe

or, go to the registration website at:

[http://web3.ags.com:81/guest/RemoteList
Summary/ILIB](http://web3.ags.com:81/guest/RemoteListSummary/ILIB)

For further information, please contact:

Ruth Teitelbaum at rteitelbaum@asil.org

Managing Editor

Ruth Teitelbaum

Assistant Editor

Elena Papangelopoulou

Editorial Advisory Committee

Charlotte Ku, *Chair*

Luis Angel Benavides Hernández

Evan T. Bloom

Christina M. Cerna

Alejandro A. Escobar

Aaron X. Fellmeth

Cecil Hunt

Mark R. Joelson

Susan L. Karamanian

Jeffrey D. Kovar

Nancy L. Perkins

Jeffrey Walker

Maurice Wolf

Bruce Zagaris

Nassib G. Ziadé

Members Emeriti

John Lawrence Hargrove

ILM Corresponding Editors

Evelina Teubal Alhadeff (Mercosur, Argentina)

David J. Attard (Malta)

Jean-François Bellis (European Communities)

Kristi Bergemann (International Trade, IP Law)

Gian Luca Burci (International Health Law)

William E. Butler (CIS)

David JA Cairns (Investment Arbitration)

James H. Carter (U.S. Second Circuit)

Sudhir Chopra (India)

Carl Q. Christol (Communications, Outer Space)

Niovi Christopoulou (European Union)

John P. Cogan, Jr. (U.S. Fifth Circuit)

Melaku Geboye Desta (AU, Agriculture, WTO)

Janelle Diller (International Labor Law)

John R. Dugard (Southern Africa)

Mete Erdem (International Environmental Law, Turkey)

Richard I. Fine (U.S. Ninth Circuit)

Hannah R. Garry (International Human Rights)

Dencho G. Georgiev (Bulgaria)

Moritaka Hayashi (LOS, International Fisheries Law)

Jean-Marie Henckaerts (International Humanitarian Law)

Larry D. Johnson (International Atomic Energy Agency)

Sami Kallel (Maghreb)

Kenneth Klein (International Taxation)

Karin Landgren (Children)

Arnold H. Leibowitz (Immigration)

Frankie F.L. Leung (Hong Kong)

John Linarelli (International Public Procurement)

Daryl A. Mundis (ICC, ICTR, ICTY)

Boldizsár Nagy (Hungary)

Michael O'Boyle (European Court of Human Rights)

John R. Pate (Andean Community of Nations)

T. Michael Peay (Public International Law)

Charles H. Poncet (Switzerland)

Amelia B. Porges (WTO)

Maurizio Ragazzi (World Bank)

August Reinisch (European Law)

Ewa Sakiewicz-Munnerlyn (Poland)

Gerald S. Schatz (Bio-Medical Ethics/Health)

Richard F. Scott (International Energy Agency)

Henri Smets (International Environmental Law, OECD)

Stefaan Smis (Belgium)

Brigitte Stern (France)

Sompong Sucharitkul (Southeast Asia and the Pacific)

Jiri Toman (Law of War)

Antônio Augusto Cançado Trindade (Brazil, IACHR)

Kim Van der Borgh (Belgium)

Jorge A. Vargas (Mexico)

Manuel E. Ventura-Robles (IACHR)

Thomas W. Wälde (Energy Law, International Investment)

Rebecca M.M. Wallace (United Kingdom)

Gerhard H.O. Wegen (Germany)

Yozo Yokota (Japan)

Nassib G. Ziadé (Middle East)

INTERNATIONAL LEGAL MATERIALS

Volume 44 — May 2005

— Contents —

JUDICIAL AND SIMILAR PROCEEDINGS

NAFTA Chapter Eleven Tribunal: <i>GAMI Investments, Inc. v. The Government of the United Mexican States</i> Text of Decision	545
International Centre for Settlement of Investment Disputes (ICSID) (Award): <i>Salini Costruttori S.p.A. and Italstrade S.p.A. v. the Hashemite Kingdom of Jordan, ICSID Case No. ARB 02/13, Decision on Jurisdiction</i> Introductory Note by David J.A. Cairns..... Text of Decision	569 573
Permanent Court of Arbitration (PCA), Eritrea-Ethiopia Claims Commission: <i>Partial Award, Civilian Claims—Eritrea's Claims 15, 16, 23 & 27-32</i> Text of Decision	601
Permanent Court of Arbitration (PCA), Eritrea-Ethiopia Claims Commission: <i>Partial Award, Civilian Claims—Ethiopia's Claim 5</i> Text of Decision	630
United Kingdom House of Lords: <i>Opinions of the Lords of Appeal for Judgment in the Cause of A (FC) and others (FC) (Appellants) v. Secretary of State for the Home Department (Respondent); X (FC) and another (FC) (Appellants) v. Secretary of State for the Home Department (Respondent) UKHL 56</i> Text of Decision	654
International Centre for Settlement of Investment Disputes (ICSID): <i>Plama Consortium Limited v. The Republic of Bulgaria, Decision on Jurisdiction</i> Introductory Note by August Reinisch..... Text of Decision	717 721
European Court of Human Rights (ECHR): <i>Case of Mamatkulov and Askarov v. Turkey</i> Text of Decision	759

DECLARATIONS, RESOLUTIONS AND OTHER DOCUMENTS

NAFTA Free Trade Commission: Statement of the Free Trade Commission on Non-Disputing Party Participation Text of Statement	796
United Nations Security Council Resolution 1559 (The Situation in the Middle East) Text of Resolution	798

OTHER DOCUMENTS RECEIVED	799
---------------------------------------	-----

VOLUME 44 — NUMBER 3 — May 2005