



**Asia-Pacific  
Economic Cooperation**

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Day 3, Session 1

## **Recent Developments in Investment Treaty Jurisprudence – Table of Contents**

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**APEC PERU**  
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**Capacity Building on Existing International  
Investment Agreements in the APEC Region,  
Relevance, Emerging Trends, Challenges and  
Policy Options to Address Coherence in Treaty  
Making**

**Lima, Peru  
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**APEC Workshop 2016**  
**Session I: Recent Developments in Investment Treaty Jurisprudence**

**Resources**

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- I. Tribunal Decisions** (alphabetical order by claimant; includes suggested pincites)
- A. *ADC Affiliate Ltd., et al. v. Hungary*, ICSID Case No. ARB/03/16, Award, ¶¶ 358-59 (2 October 2006).
  - B. *Aguas del Tunari S.A. v. Bolivia*, ICSID Case No. ARB/02/3, Decision on Respondent’s Objections to Jurisdiction, ¶¶ 330, 332 (21 October 2005).
  - C. *BIVAC B.V. v. Paraguay*, ICSID Case No. ARB/07/9, Further Decision on Objections to Jurisdiction, ¶ 94 (9 October 2012).
  - D. *Burimi SRL and Eagle Games S.H.A v Albania*, ICSID Case No. ARB/11/18, ¶ 120-21 (Award, 29 May 2013).
  - E. *Cementownia “Nowa Huta” S.A. v. Turkey*, ICSID Case No. ARB(AF)/06/2, Award, ¶ 117 (17 September 2009).
  - F. *Conocophillips Petrozuata B.V., et al. v. Venezuela*, ICSID Case No. ARB/07/30, Decision on Jurisdiction and the Merits, ¶¶ 274, 279-80 (3 September 2013).
  - G. *Guaracachi America, Inc. and Rurelec plc v. Bolivia*, UNCITRAL, Award, ¶¶ 372, 380 (31 January 2014).
  - H. *LLC AMTO v. Ukraine*, SCC Arb. No. 080/2005, Final Award, at 17 (26 March 2008).
  - I. *Millicom International Operations B.V. and Sentel GSM S.A. v. Senegal*, ICSID Case No. ARB/08/20, Decision on Jurisdiction of the Arbitral Tribunal, ¶ 84 (16 July 2010).
  - J. *National Gas Company S.A.E. v. Egypt*, ICSID Case No. ARB/11/7, ¶¶ 130-49 (Award, 3 April 2014).
  - K. *Pacific Rim Cayman LLC v. El Salvador*, ICSID Case No. ARB/09/12, Decision on Respondent’s Jurisdictional Objections, ¶ 4.83 (1 June 2012).
  - L. *Plama Consortium Limited v. Bulgaria*, ICSID Case No. ARB/03/24, Decision on Jurisdiction, ¶ 157 (8 February 2005).

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- M. *Phoenix Action, Ltd. v. Czech Republic*, ICSID Case No. ARB/06/5, Award, ¶¶ 136, 138-44 (15 April 2009).
- N. *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Kazakhstan*, ICSID Case No. ARB/05/16, Award, ¶¶ 328-29 (29 July 2008).
- O. *Salini Construction v. Morocco*, ICSID Case No. ARB/00/4, Decision on Jurisdiction, ¶ 52 (23 July 2001).
- P. *Saluka Investments B.V. v. Czech Republic*, UNCITRAL Partial Award, ¶¶ 240-41 (17 March 2006).
- Q. *Société Générale v. Dominican Republic*, UNCITRAL, LCIA Case No. UN7927, Preliminary Objections to Jurisdiction, ¶ 110 (19 September 2008).
- R. *Tokios Tokeles v Ukraine*, ICSID Case No. ARB/02/18, Decision on Jurisdiction, 29 April 2004 {refusing to pierce the corporate veil} {back-end treaty shopping no good}
- S. *Venezuela Holdings B.V. and others (case formerly known as Mobil Corporation and others) v. Venezuela*, ICSID Case No. ARB/07/27, Decision on Jurisdiction, ¶¶ 198, 205 (10 June 2010).
- T. *Wena Hotels Ltd. v. Egypt* (ICSID Case No. ARB/98/4, Proceeding on the Jurisdiction, 25 May 1999 {refusing to pierce the corporate veil}
- U. *Yukos Universal Ltd. v. Russian Federation*, Interim Award on Jurisdiction and Admissibility, ¶¶ 411-15, 456 (30 November 2009).

**II. Blogs and News Articles (most recent first)**

- A. Todd Tucker, *The TPP has a provision many will love to hate: ISDS. What is it, and why does it matter?*, Washington Post (Oct. 6, 2015), <https://www.washingtonpost.com/blogs/monkey-cage/wp/2015/10/06/the-tpp-has-a-provision-many-will-love-to-hate-isds-what-is-it-and-why-does-it-matter/>.
- B. Mark Feldman, *The Emerging Harmonization of the International Investment Law Regime*, Kluwer Arbitration Blog (Jul. 20, 2015), <http://kluwerarbitrationblog.com/2015/07/20/the-emerging-harmonization-of-the-international-investment-law-regime/>.
- C. Carmen Núñez-Lagos, *The invocation of “denial of Benefits clauses”: when and how?*, Kluwer Arbitration Blog (Feb. 17, 2014), <http://kluwerarbitrationblog.com/2014/02/17/the-invocation-of-denial-of-benefits-clauses-when-and-how-2/>.

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- D. Inna Uchkunova, *Drawing a Line: Corporate Restructuring and Treaty Shopping in ICSID Arbitration*, Kluwer Arbitration Blog (Mar. 6, 2013), <http://kluwerarbitrationblog.com/2013/03/06/drawing-a-line-corporate-restructuring-and-treaty-shopping-in-icsid-arbitration/>.
- E. Dmitri Evseev (Partner, Arnold & Porter), *Investment Treaty Disputes and Restructuring an Investment: What You Should and Should Not Do*, Kiev Arbitrations Days Conference (Nov. 17-18, 2011), available at [http://uba.ua/documents/text/Dmitri\\_Evseev.pdf](http://uba.ua/documents/text/Dmitri_Evseev.pdf).

**III. Academic Articles**

- A. Eunjung Lee, *Treaty Shopping in International Investment Arbitration: How often has it occurred and how has it been perceived by Tribunals?*, London School of Economics and Political Science Department of International Development Working Paper Series, No. 15-167 (Feb. 2015).
- B. John Lee, *Resolving Concerns of Treaty Shopping in International Investment Arbitration*, *Journal of International Dispute Settlement*, Vol. 6, 355 (5 May 2015).

**IV. Excerpts from Various International Investment Agreements**

- A. ICSID Convention, Article 25
- B. Multi-National
  - 1. Association of Southeast Asian Nations Comprehensive Investment Agreement (2012), *Excerpts (Definitions (Article 4); Denial of Benefits (Article 19))*
  - 2. Energy Charter Treaty (1998), *Excerpts (Definitions (Article 1); Non-Application of Part III in Certain Circumstances (Article 17))*
  - 3. North American Free Trade Agreement (1994), *Excerpts (Chapter 11 - Investment)*
  - 4. Draft Trans-Pacific Partnership, Chapter 9 - Investment, *Excerpts (Definitions (Article 9.1); Denial of Benefits (Article 9.14))*
- C. Bilateral
  - 1. Netherlands-Hungary Bilateral Investment Treaty (1988), *Excerpts (Definitions (Article 1))*
  - 2. United States Model Bilateral Investment Treaty (2012), *Excerpts (Definitions; Denial of Benefits (Article 17))*