I. INTRODUCTION

The primary task in this chapter is to appraise whether the reasoning requirement was met by the award in *Petrobart Limited v. Kyrgyz Republic* arbitration,\(^1\) which was conducted under the Arbitration Institute of the Stockholm Chamber of Commerce (the SCC Institute). The dispute was brought and decided on the basis of the Energy Charter Treaty\(^2\) (the ECT or Treaty). Although there is no rule in the text of the ECT similar to that of Article 48 of the International Center for the Settlement of Investment Disputes (ICSID) Convention\(^3\) or Article 32 of the U.N. Commission on International Trade Law (UNCITRAL) Arbitration Rules,\(^4\) both of which set the basic principle of stating the reasons upon which the award is based, the principle as such is not foreign to the ECT. Thus, Annex D to the Treaty, which deals with interim provisions for trade dispute settlement, reads: “The final report shall deal with *every substantial* issue raised before the panel and *necessary* to the resolution of the

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\(^1\) Petrobart Ltd v. the Kyrgyz Republic, Arbitral Award, Arbitration No. 126/2003 (Mar. 29, 2005), rendered by the SCC Arbitration Institute, available at http://www.investmentclaims.com and 2005(3) STOCKHOLM INT’L ARB. REV. 45–100 [hereinafter Award].


dispute and shall state the reasons for the panel’s conclusions.\textsuperscript{5} Even if this provision, which strongly resembles the language of Article 48(3) of the ICSID Convention, is designed for the purposes of dealing with interim measures within the realm of trade disputes, there is no reason to suggest that lower standards would be applicable to awards in investment cases under the ECT.

More important and pertinent in the present context are the 1999 Rules of the SCC Arbitration Institute, the arbitration forum in the Petrobart case. The rules impose an obligation on appointed arbitration tribunals to provide reasons for their award: “The Award . . . shall state the date on which it was rendered, contain an order or a declaration, as well as the reasons for it” (Article 32(1), emphasis added).\textsuperscript{6} Although this clause is not as specific as the relevant provisions of the ICSID Convention or the UNCITRAL Arbitration Rules, it imposes an unconditional obligation on established arbitral tribunals to state to the parties the reasons for their final determinations. It is in light of this provision (Article 32(1) of the SCC Arbitration Institute Rules) that the following discussion will proceed.

Two important considerations regarding the Petrobart case are of major significance in the context of this study. First, so far, there have been only a few cases where the ECT was at stake. Only in two (out of around 12) cases was an award actually delivered where investors relied on the ECT in protection of their rights,\textsuperscript{7} namely, Nykomb v. Latvia\textsuperscript{8} and the Petrobart v. Kyrgyzstan case analyzed herein. In Plama v. Bulgaria\textsuperscript{9} the decision on jurisdiction came in 2005, with no award on the merits being pronounced so far.\textsuperscript{10} From this

\textsuperscript{5} Energy Charter Treaty, supra note 2, Point 4(a), ¶ 3 (emphasis added).

\textsuperscript{6} New SCC Arbitration Rules, which entered into force on January 1, 2007, provide, at Article 36(1), that the “Arbitral Tribunal . . . unless otherwise agreed by the parties, shall state the reasons upon which the award is based.” This new version more closely reflects the language of the ICSID Convention and of the UNCITRAL Arbitration Rules.

\textsuperscript{7} According to data provided by the Energy Charter Secretariat, see http://www.encharter.org/fileadmin/user_upload/document/Disputes_ECT_table_01.pdf.

\textsuperscript{8} Nykomb Synergetics Technology Holding AB v. Republic of Latvia, Arbitral Award, Arbitration No. 118/2001 (Dec. 16, 2003), rendered by the SCC Arbitration Institute [hereinafter Nykomb].

\textsuperscript{9} Plama Consortium Ltd. v. Republic of Bulgaria, ICSID Case No. ARB/03/24, Decision on Jurisdiction (Feb. 8, 2005) [hereinafter Plama].

\textsuperscript{10} The dispute in AES Summit Generation v. Republic of Hungary, ICSID Case No. ARB/01/04 was settled amicably between the parties. In Alstom Power Italia SpA