Case Comments

A New Framework for the Analysis of Multi-Party Claims

Giovanni Alemanni and Others v The Argentine Republic, ICSID Case No. ARB/07/8, Decision on Jurisdiction and Admissibility, 17 November 2014 (Sir Franklin Berman, Karl-Heinz Böckstiegel, J. Christopher Thomas)

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On 17 November 2014, the Tribunal in an ICSID case brought by Giovanni Alemanni and others against Argentina issued its much-anticipated Decision on Jurisdiction and Admissibility (the Decision).1 This is the third case in a series of multi-party arbitrations arising out of Argentina’s 2001 sovereign debt crisis. The facts of the case, and the arguments raised by the parties, were

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1 Abaclat and others v The Argentine Republic, ICSID Case No ARB/07/5, Decision on Jurisdiction and Admissibility (4 August 2011) (Abaclat); Ambiente Ufficio SPA and others v The Argentine Republic, ICSID Case No ARB/08/9, Decision on Jurisdiction and Admissibility (8 February 2013) (Ambiente).
similar to those put forward in the two previous cases. However, whilst the Decision drew on the reasoning of its ‘sister’ tribunals, it gave its own distinctive interpretation on the question of mass and multi-party claims in investment treaty arbitration. In doing so, it outlined a two-stage test which could provide a framework for the future analysis of such disputes. Whilst the Tribunal also considered a number of other substantive objections to jurisdiction, including whether the claimants’ assets could be considered ‘investments’ under the relevant treaty and whether the claimants could be considered ‘investors,’ this case comment focuses on the Tribunal’s analysis of the scope of Argentina’s consent to arbitrate, both under the ICSID Convention and the Argentina-Italy bilateral investment treaty (BIT).

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This case arose out of the same factual background as Abaclat and Ambiente. As part of its efforts to restructure its sovereign debt following its 2001 financial crisis, Argentina offered to exchange existing Argentine debt instruments (including bonds) for new debt instruments valued at around 35% of the value of the original debt instruments. The 74 Claimants in this case are Italian bondholders who refused to accept that offer. The claim was commenced under the ICSID Convention pursuant to the BIT. The claimants are represented by a third-party, the North Atlantic Société d’Administration (paras. 276–279).

Argentina raised a number of objections both to the Tribunal’s jurisdiction and to the admissibility of the claim. In addition, Argentina objected to the ‘mass’ nature of the proceedings, which it submitted fell outside the scope of the ICSID Convention. The Tribunal characterised this as an objection of a more ‘fundamental character’ (para. 261). The subsequent sections will consider first the scope of the ICSID Convention, followed by Argentina’s jurisdictional and admissibility objections.

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2 The Tribunal adopted the description of the factual background given in Abaclat paras 8–97; and the account of the arguments of the Parties given in Ambiente paras 68–110, 173–203, 279–296, 355–414.

3 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, 18 March 1965, 575 UNTS 159.

4 Agreement Between the Argentine Republic and the Republic of Italy on the Promotion and Protection of Investments, signed 22 May 1990.

5 The Ambiente claimants are also represented by the same third-party. See Ambiente (n 2) paras 273–278.