Date of dispatch to the parties: October 31, 2005

International Centre for
Settlement of Investment Disputes

WENA HOTELS LTD.

v.

ARAB REPUBLIC OF EGYPT

CASE No. ARB/98/4

DECISION

on the Application by Wena Hotels Ltd. for
Interpretation of the Arbitral Award dated December 8, 2000
in the above matter

President	: Dr. Klaus SACHS
Members of the Tribunal	: Prof. Ibrahim FADLALLAH Mr. Carl F. SALANS
Secretaries of the Tribunal	: Ms. Martina POLASEK Ms. Eloïse OBADIA

In Case No. ARB/98/4,
between Wena Hotels Limited,
represented by
Mr. Emmanuel Gaillard, Ms. Yas Banifatemi and Mr. Merwan Lomri of the Law Firm of Shearman and Sterling
and
the Arab Republic of Egypt,
represented by
Mr. Eric Schwartz of the Law Firm of Freshfields Bruckhaus Deringer and Counsellor Hossam Abdel Azim from the Egyptian State Lawsuits Authority

THE TRIBUNAL,
Composed as above,
Makes the following Decision:

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I. THE PROCEEDINGS

A. Introduction

1. The present interpretation proceedings were initiated on June 29, 2004, when Wena Hotels Limited ("**Wena**")[1] filed with the Secretary-General of the International Centre for Settlement of Investment Disputes ("**ICSID**") an application for interpretation (the "**Application**") under Article 50 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "**Convention**" or the "**ICSID Convention**") of an arbitral award[2] rendered on December 8, 2000 (the "**Award**") in the arbitration proceedings between Wena and the Arab Republic of Egypt ("**Egypt**"), ICSID Case No. ARB/98/4.

2. The Award was the result of an ICSID arbitration proceeding initiated by Wena on July 10, 1998 against Egypt (the "**Original Arbitration**"). The dispute related to the seizure by Egyptian officials of the Nile Hotel in Cairo and the Luxor Hotel (collectively, the "**Hotels**") in Luxor on April 1, 1991. The Hotels were operated by Wena under two lease and development agreements that it had entered into in 1989 and 1990, respectively, with the Hotels' owner, the Egyptian Hotels Company ("**EHC**"). EHC was a "public" sector company wholly owned by the Egyptian government. [3]

3. In said proceedings, Wena sought damages for Egypt's alleged violation of the Agreement for the Promotion and Protection of Investments between the United Kingdom and Egypt dated June 11, 1975 (the "**IPPA**").

4. On December 8, 2000, the Secretary-General dispatched to the parties certified copies of the Award by the original Tribunal composed of Prof. Ibrahim Fadlallah and Prof. Don Wallace as Arbitrators and Mr. Monroe Leigh as President of the Tribunal (the "**Original Tribunal**"). The operative section of the Award reads as follows:

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1 Wena Hotels Limited is a British company incorporated in 1982 under the laws of England and Wales. Note, in referencing the documentary annexes submitted by the parties, the notation "W" indicates a document submitted by Claimant, Wena Hotels Limited. The notation "E" indicates a document submitted by Respondent, the Arab Republic of Egypt.

2 Application, Annex 1.

3 Award, Section 65.

"The TRIBUNAL, unanimously,

134. FINDS that Egypt breached its obligations to Wena by failing to accord Wena's investments in Egypt fair and equitable treatment and full protection and security in violation of Article 2(2) of the IPPA;

135. FINDS that Egypt's actions amounted to an expropriation without prompt, adequate and effective compensation in violation of Article 5 of the IPPA;

and

136. AWARDS to Wena US$20,600,986.43 in damages, interest, attorneys fees and expenses. This award will be payable by Egypt within 30 days from the date of this Award. Thereafter, it will accumulate additional interest at 9% compounded quarterly until paid."

5. On January 19, 2001, Egypt filed an Application for Annulment of the Award (the "**Application for Annulment"**) under Article 52 of the ICSID Convention. The *ad hoc* committee ("**Committee**") appointed by the Chairman of the ICSID Administrative Council to consider Egypt's Application for Annulment rejected this Application for Annulment "*in its entirety*" in its Decision of February 5, 2002 (the "**Annulment Decision**").[4]

B. The Application for Interpretation

6. The Application was filed by Wena against Egypt, stating that a dispute has arisen between Wena and Egypt concerning the meaning of the Award. Wena asserts that despite the Award's conclusion that Egypt expropriated Wena from the Nile and Luxor Hotel lease and development agreements (the "**Nile Lease**" and the "**Luxor Lease**", respectively; collectively, the "**Hotel Leases"**) in 1991, recent legal actions of Egypt and its constituent entities against Wena raise important questions about the Award's finding that Egypt expropriated Wena's interests in the Luxor Lease (*see* in detail Section 18 *et seq*. below).

7. Wena thus seeks an interpretation of the meaning of this ruling.[5] The Acting Secretary-General registered the Application on July 15, 2004.

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4 *See* copy of the Decision of the *ad hoc* committee dated February 5, 2002, attached to the Application as Annex 2.

5 For the relief sought, *see* Section 33 below.

C. The Constitution of the Arbitral Tribunal

8. As the Arbitral Tribunal could not be reconstituted in accordance with Article 51(2) of the ICSID Rules of Procedure for Arbitration Proceedings (the "**ICSID Arbitration Rules**"), the Secretary-General, in accordance with Article 51(3) of the ICSID Arbitration Rules, notified the parties thereof and invited them to proceed, as soon as possible, to constitute a new Tribunal (the "**Tribunal**"), including the same number of arbitrators, and appointed by the same method, as the original one. Thus, in accordance with Article 37(2)(a) of the ICSID Convention, Wena appointed Prof. Ibrahim Fadlallah, a national of Lebanon, as an Arbitrator. Egypt then appointed Mr. Carl F. Salans, a United States national, as an Arbitrator. After consultation with the parties, the two party-appointed arbitrators appointed Dr. Klaus Sachs, a national of Germany, to be the President of the Tribunal.

9. Having received from each arbitrator the acceptance of his appointment, the ICSID informed the parties that the Tribunal was deemed to be constituted and the proceedings were deemed to have begun on November 11, 2004. The parties subsequently agreed that the Tribunal has been properly constituted under the provisions of the ICSID Convention.

D. The Proceedings before the Tribunal

10. The Tribunal held its first session, at the offices of the World Bank in Paris, on January 12, 2005. During this first session, the parties and the Tribunal agreed, *inter alia*, on the filing dates of the respective submissions, as set out below, and on the hearing date for oral arguments of the case to be held on June 14, 2005.

11. On February 28, 2005, Egypt submitted its Response to Wena's Application for Interpretation and requested that the Tribunal reject the Application.[6]

12. On March 31, 2005, Wena submitted its Reply.

13. On April 29, 2005, Egypt submitted its Rejoinder.

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[6] The reasons for Egypt's request to reject the Application will be explained in Section 35 *et seq.* below.

14. The Tribunal heard the parties' oral arguments at the hearing of June 14, 2005, at the offices of the World Bank in Paris. Upon question by the Tribunal, the parties declared that they did not wish to file post-hearing briefs.[7]

15. As instructed by the Tribunal, on June 30, 2005, the parties submitted their respective statements of legal costs. In its brief, counsel for Wena stated that the costs incurred by Wena in connection with these proceedings amount to a total of US$ 335,180.70 (US$ 57,000.00 for fees and expenses of the arbitrators and ICSID; US$ 253,761.70 for outside legal advisory costs and US$ 24,419.00 for internal expenses of Wena). According to counsel for Egypt, the costs incurred by Egypt in these proceedings amount to a total of US$ 97,916.42 plus EGP 47,314 (US$ 50,000.00 for fees and expenses of the arbitrators and ICSID; US$ 40,916.42 for legal and other costs and US$ 7,000.00 plus EGP 47,314 for out-of-pocket expenses).

16. On July 11, 2005, the Secretary of the Tribunal issued a letter, advising the parties of the closure of the proceedings as of July 1, 2005, pursuant to Article 38(1) of the ICSID Arbitration Rules.

II. THE PARTIES' POSITIONS

A. Wena's Position as Set Out in the Application

1. Introduction

17. In the Application Wena asserts that a dispute has arisen between Wena and Egypt concerning the meaning of the Award. Wena alleges that despite the Award's findings that Egypt expropriated Wena's interests in the Hotel Leases in 1991 – and notwithstanding Egypt's failed attempt to annul the Award – Egypt and its constituent entities have commenced and continued a variety of actions, including legal actions, against Wena that are based on the notion that Wena maintained an interest in the Luxor Lease after its interests in that Lease were expropriated by Egypt.

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[7] *See* Transcript, p. 108, lines 20 *et seq*.

2. Egypt's Actions against Wena

18. Wena maintains that Egypt, after the rejection of its Application for Annulment, embarked upon a campaign to further discredit Wena in the marketplace.

19. Wena alleges that, as a part of this campaign, various official websites of the Egyptian Government appear to be promoting the Luxor Hotel under the brand name "Luxor Wena Hotel" that was used prior to its expropriation by Egypt. According to Wena, these sites seem to indicate that Egypt considers that Wena's rights in the Luxor Lease have not been expropriated. Furthermore, Wena contends that one of the sites misleadingly states that "Wena Hotel Ltd." remains the Luxor Hotel's operator.[8]

20. Wena also states that shortly after the Annulment Decision, the Egyptian General Company for Tourism and Hotels ("**EGOTH**", which is the successor to the EHC), a company wholly owned and controlled by the Egyptian State, filed suit against Wena in the Cairo Southern Court for Urgent Matters to collect over US$ 7.1 million from Wena. EGOTH alleged in these proceedings that Wena owed the sum of US$ 7.1 million as rent under the Luxor Lease for the period from November 15, 1990, through March 31, 2003. Wena states that after this suit was dismissed on March 28, 2002, EGOTH, on April 7, 2002, filed a second identical action with the same court, which was dismissed on procedural grounds on April 24, 2003.[9] Wena asserts that in seeking rent from November 1990 through March 2003, EGOTH overlooked the Original Tribunal's determination that Egypt had expropriated Wena's interests in the Luxor Hotel on April 1, 1991.

21. Furthermore, according to Wena, on September 17, 2002, EGOTH served Wena with a request for arbitration under Article XVIII of the Luxor Lease (the "**Request for Arbitration**"), in which EGOTH claims the sum of US$ 3,532,791.67 for rent allegedly due by Wena under the Luxor Lease for the period from November 15, 1990 through August 14, 1997,[10] as well as the amount of EGP 1,057,789.10 for costs allegedly due to EGOTH as a result of a domestic arbitration between EHC and Wena conducted in 1990 under the Luxor Lease.

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8 *See* Application, Annex 3.

9 *See* copy of the second decision and its translation attached to the Application as Annex 5.

10 *See* copy of the Request for Arbitration and its translation attached to the Application as Annex 8.

22. Wena maintains that in substance, the Request for Arbitration only differs from the lawsuits referred to above (*see* Section 21 above) in that it seeks to recover rent for a shorter period of time (through August 1997, rather than through March 2003). Wena takes the view that since the Award determined that Wena's rights in the Luxor Hotel were unlawfully expropriated by Egypt on April 1, 1991, EGOTH is once again primarily seeking rent for a period of time after the date on which, according to the Original Tribunal, Egypt expropriated the Luxor Hotel.

23. Wena states that its counsel addressed letters, dated September 27, 2002, to EGOTH and the Egyptian State Lawsuits Authority, stating that EGOTH cannot claim rent allegedly due for a hotel that had been expropriated by the Egyptian State.[11] In a fax dated September 30, 2002,[12] Counsellor Osama A. Mahmoud, Vice President of the Egyptian State Lawsuits Authority, stated that EGOTH's arbitration was based on the Luxor Lease and the 1990 domestic arbitral award. According to Wena, Counsellor Osama A. Mahmoud did not provide any response to the argument that Wena cannot owe rent for property that was expropriated.

24. Wena states that after it had filed an Answer to the Request for Arbitration and appointed an arbitrator, no further actions were taken in these arbitration proceedings. It contends that the proceedings are intentionally being left to languish by EGOTH, since this state of affairs allegedly enables Egyptian officials to characterize Wena as a company with ongoing legal problems in Egypt.

25. Wena furthermore relies on the ongoing sequestration of the Luxor Hotel, which, at the request of EHC, was taken over on August 14, 1997, by a court-appointed sequestrator. According to Wena, the sequestration has been kept in place until now, notwithstanding the Award's subsequent determination that Egypt had expropriated Wena's rights in the Luxor Lease in 1991 and an Egyptian appellate court order that the sequestration be stayed.[13] Wena maintains that the only purpose of this ongoing sequestration is to provide Egypt with an additional basis to assert that Wena is a company with "*unresolved legal issues*." According to Wena, it has no remaining liabilities with respect to the Luxor Lease, because its property rights in the Lease were expropriated in 1991, while Egypt's continuation of the sequestration suggests that Wena retains some outstanding, overdue debt on the Luxor

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11 *See* copies of the letters dated September 27, 2002, attached to the Application as Annexes 9 and 10.
12 *See* copy of this letter attached to the Application as Annex 11.
13 *See* Application, Section 33 and its footnote 7.

Lease, for which a sequestrator is needed to collect rent on behalf of the property owner. In addition to stating that the sequestration suggests that Wena is a lessee or debtor that cannot be trusted, Wena alleges that the manner in which the sequestrator, Ms. Galila Amin Mohamed Al Shorbagi, is carrying out her mission has made it impossible for Wena to properly defend itself in the court and arbitration proceedings instigated by EGOTH.[14]

3. The Impact of Egypt's Actions on Wena

26. Wena submits that Egypt's actions through its constituent entities have enabled Egypt to portray Wena as a company with "*ongoing legal problems*" in Egypt, and that this has a very real and serious impact upon Wena. Wena maintains that over the past two years, it has had a number of prospective projects in other countries fail once investors realised that Wena has "*outstanding legal disputes*" with Egypt.[15] Wena contends that in a number of these cases, the investors did not merely come upon such information of their own accord, but rather that Egyptian officials directly informed them of Wena's "*ongoing legal problems*" in Egypt. As an example of "*Egypt's sinister conduct*", Wena refers to an article published on November 4, 2002, a few weeks before EGOTH's second law suit was dismissed, in the state-run *Al-Ahram* newspaper under the headline *"Egyptian General Hotels Sues 'English Wena' for 72 Million Dollars."*

4. Wena's Legal Position

27. Wena claims that under Article 50(1) of the ICSID Convention, it is entitled to seek an interpretation of the Award's ruling that Egypt expropriated Wena's interests in the Hotel Leases. According to Wena, the "precise points in dispute" between the parties, within the meaning of Article 50(1)(c)(i) of the ICSID Arbitration Rules, with respect to the Award, are the following:

28. Wena states that, in its Award of December 8, 2000, the Original Tribunal found that officials of EHC had seized the Nile and Luxor Hotels by force on the evening of April 1, 1991.[16] Wena further submits that the Original Tribunal also found that EHC, today succeeded by EGOTH, was wholly owned and controlled by the Egyptian government, in particular, its Ministry of Tourism, and that Egypt was aware of EHC's intention to seize the

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14 *Id.*, Section 35 and its footnote 8.
15 *Id.*, Sections 37 to 39 and the attached Annexes 15 to 18.
16 *Id.*, Section 42.

Hotels, yet took no action to prevent the seizures. Furthermore, the Original Tribunal found that Egypt failed to immediately return the Hotels to Wena or to punish EHC for its actions.[17] Wena states that the Original Tribunal further noted that the Luxor Hotel was eventually returned to Wena over a year later, on April 28, 1992, but it had been vandalized and was not returned to Wena in the same operating condition as it had been in before the seizure. Wena points out that the Original Tribunal also found that the Ministry of Tourism subsequently denied Wena a permanent operating license for the Luxor Hotel, and that Wena was permanently evicted from the Luxor Hotel on August 14, 1997, when the Luxor Hotel was turned over to the court-appointed receiver requested by EHC.[18]

29. Wena points out that, as a result, the Original Tribunal found Egypt liable for violating both Article 2 and Article 5 of the IPPA and that the Original Tribunal ruled as follows in this regard:

> *"96. The Tribunal also agrees with Wena that Egypt's actions constitute an expropriation and one without "prompt, adequate and effective compensation", in violation of Article 5 of the IPPA…*
>
> *99. Here, the Tribunal has no difficulty finding that the actions previously described constitute such an expropriation. Whether or not it authorized or participated in the actual seizures of the Hotels, Egypt deprived Wena of its 'fundamental rights of ownership' by allowing EHC forcibly to seize the Hotels, to possess them illegally for nearly a year, and to return the Hotels stripped of much of their furniture and fixtures..."* [19]

30. Wena takes the view that in initiating subsequent actions against Wena on the basis of the monies allegedly owed to Egypt under the Luxor Lease, Egypt overlooks that Wena has been expropriated and deprived of its "*fundamental rights of ownership*" in that Lease. Wena points out that the law suits and the domestic arbitration proceeding brought by EGOTH seek to collect rent from Wena under the Luxor Lease for periods of time that almost entirely fall after April 1, 1991, the date the expropriation occurred, and that it is by disregarding the fact that Wena has been expropriated that Egypt can maintain a sequestration whereby Wena is presented as the lessee or the operator of the Luxor Hotel.

31. Wena's position is that it cannot have any liabilities with respect to property that was expropriated. It further states that the Original Tribunal's determination that Egypt

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17 *Id.*, Section 43.
18 *Id.*, Section 44.
19 *Id.*, Section 45.

"*expropriated*" Wena's rights and deprived it of its "*fundamental rights of ownership*" entails the necessary consequence that Wena was totally and permanently deprived of its interests in the Luxor Lease as of the time the expropriation occurred.

32. Wena points out that the Award does not expressly state that a party expropriated from a given right cannot incur liability associated with that right. It simply decides that Wena's interests under the Luxor Lease were expropriated and determines the compensation due to Wena on that basis.[20] As a result, Wena claims there is a dispute between the parties as regards the necessary consequences of the Original Tribunal's determination that Egypt expropriated Wena's rights in the Luxor Lease.[21]

5. The Relief Sought by Wena

33. In conclusion, Wena:

> *"(a) respectfully requests an interpretation of the Tribunal's determination that Egypt expropriated Wena's rights in the Luxor Lease and deprived Wena of its "fundamental rights of ownership". In particular, Wena requests that the interpretation address whether the expropriation constituted a total, permanent deprivation of Wena's rights in the Luxor Lease, such as to preclude subsequent legal actions by Egypt that presume the contrary.*
>
> *(b) seeks reimbursement of all costs incurred in these proceedings, including but not limited to the fees and expenses of the arbitrators, ICSID, legal counsel and experts.*
>
> *(c) reserves its right to amend this Request for interpretation."* [22]

34. At the oral hearing, counsel for Wena referred to Section 47 of the Application and stated that Wena also requested the Tribunal to confirm that the expropriation, as determined by the Original Tribunal, occurred as of April 1, 1991.[23]

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20 *Id.*, Section 48.
21 *Id.*, Section 49.
22 *Id.*, Sections 50 to 52.
23 *See* Transcript, p. 95, lines 19 to 24.

B. Egypt's Position as Set Out in its Response to the Application

1. Introduction

35. Egypt states that it believed until July 2004, when served with Wena's Application, that it had put its differences with Wena behind it, since it had fully complied with the Award, and that it was surprised that, according to Wena, "*a dispute has arisen between Wena and the Arab Republic of Egypt…concerning the meaning of the Award*" requiring its interpretation under Article 50(1) of the ICSID Convention.

36. Egypt contends that following the Annulment Decision of the Committee upholding the Award, Wena drew down on the unconditional standby letter of credit, equivalent to the amount of the Award, which had been posted by Egypt in accordance with the Committee's procedural directions. Egypt further points out that in June 2002, it paid Wena the additional interest that had accrued on the Award during the annulment proceedings, so that the total sum paid by Egypt amounted to US$ 22,970,955.88.[24]

37. Egypt submits that – contrary to Wena's assertion – it is not aware of any such dispute and cannot conceive how a dispute may legitimately be said to exist in respect of an Award that was fully performed by Egypt three years ago. According to Egypt, it is moreover obvious from the Application that the purported disputes with which it is concerned (i) all arose after the issuance of the Award, (ii) concern Wena's relationship with persons and entities who were not parties to the ICSID arbitration between Wena and Egypt and (iii) relate to matters the Original Tribunal in that case was not asked to decide upon.[25]

2. The Factual Background of the Application

38. Egypt takes the view that the Application is devoid of any merit.

39. It agrees that disputes arose between Wena and EHC concerning their respective obligations under the Hotel Leases soon after these leases were entered into and states that after Wena had stopped paying rent to EHC for both Hotels in the fall of 1990, EHC evicted Wena from the two properties in April 1991. According to Egypt, this set in motion a chain of events that ultimately led to the Original Arbitration. Egypt states that according to the findings of the Award, between April 1991 and the initiation of the Original

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[24] *See* Response, Section 2.
[25] *Id.*, Sections 4 and 5.

Arbitration in July 1998, Wena was reinstated in the Hotels and commercial arbitration proceedings were initiated by Wena against EHC to obtain damages relating to the evictions. In the commercial arbitration relating to the Luxor Hotel, as the hotel to which Wena's Application primarily relates, Wena, according to Egypt, was awarded compensation, but said award was set aside by the Cairo Court of Appeal.[26]

40. According to Egypt, in the Original Arbitration, Wena was careful to distinguish between the disputes arising between it and EHC under the Hotel Leases and the separate disputes arising between it and Egypt in relation to Egypt's purported breach of obligations under the IPPA. Egypt reports that, indeed, the difference between the two categories of disputes was, in part, the subject of the jurisdictional phase of the Original Arbitration, during which Wena made clear that it did not wish the Original Tribunal to decide any disputes between it and EHC. Therefore, the Original Tribunal noted in its Decision on Jurisdiction, dated June 29, 1999:

> *"Wena's counsel argued that Claimant actually has two separate disputes. One dispute, Wena acknowledges, is with EHC for violating its agreements with Wena…. However, Wena also contends that it has a separate dispute with Respondent for 'expropriating Wena's investments without providing prompt, adequate and effective compensation, and by failing to accord Wena's investments in Egypt fair and equitable treatment and full protection and security'."* [27]

41. Egypt submits that, accordingly, only the dispute between Wena and Egypt under the IPPA was the subject of the Award, whereas the separate disputes between EHC and Wena in respect of the Hotel Leases were "*left to another day and another forum.*"

42. According to Egypt, this position was also acknowledged and endorsed by the Committee formed to review Egypt's Application for Annulment, which in its Annulment Decision stated the following: [28]

> *"This Committee cannot ignore of course that there is a connection between the leases and the IPPA since the former were designed to operate under the protection of the IPPA as the materialization of the investment. But this is simply a condition precedent to the operation of the IPPA. It does not involve an amalgamation of different legal instruments and dispute*

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26 *Id.*, Section 8.

27 *Id.*, Section 9, and copy of *Wena Hotels Limited v. Arab Republic of Egypt*, Decision on Jurisdiction, dated June 29, 1999, 41 ILM 881 (2002), p. 890, attached to the Response as Exhibit E1.

28 *Id.*, Section 12, and the copy of the Annulment Decision, paragraphs 35 and 36, attached to the Application as Annex 2.

> *settlement arrangements. Just as EHC does not represent the State nor can its acts be attributed to it because of its commercial and private function, the acts or failures to act of the State cannot be considered as a question connected to the performance of the parties under the leases. The private and public function of these various instruments are thus kept separate and distinct.*
>
> *This Committee accordingly concludes that the subject matter of the lease agreements submitted to Egyptian law was different from the subject matter brought before ICSID arbitration under the IPPA."*

43. Egypt submits that it is not responsible for and exercises no control whatsoever over EGOTH or the judicial receiver in respect of the actions alleged by Wena.[29] Egypt rather contends that EGOTH has acted in an entirely autonomous capacity, which allegedly is evident from Annex 5 to the Application, showing that EGOTH brought a legal action before the South Cairo Court of First Instance against the Egyptian Prime Minister and Minister of Finance with regard to this matter, which according to Egypt apparently was dismissed by the court.[30]

44. According to Egypt, Wena's allegations that EGOTH's assertion of its commercial rights against Wena is part of "*Egypt's campaign of harassment*" are unsupported by fact and law and contradict the findings of the Original Tribunal and the Committee.

3. Egypt's Legal Position

45. Egypt therefore contends that Wena is seeking to subvert the interpretation process envisaged in Article 50(1) of the ICSID Convention in order to resolve the commercial dispute between it and EGOTH under the Luxor Lease that was excluded from the Original Arbitration.

46. Egypt maintains that Wena's Application has no basis under Article 50(1) of the ICSID Convention, since there is no dispute between the parties concerning the meaning or scope of the Award within the purview of this provision.

47. According to Egypt, the Application falls outside the domain of what is permissible in "interpreting" an arbitration award. It takes the view that interpretation is permitted solely for the purpose of clarifying ambiguous phrasing in the operative section of

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[29] *Id.*, Section 15 and its footnote 7.
[30] *Id.*, Sections 14 and 15.

an award and "*does not entail a review of the merits of the award*." [31] In Egypt's view, adding to and revising an ICSID award are the subjects of Articles 49 and 51 of the ICSID Convention, under both of which Wena has not and could not have brought its Application since the time limits for an additional award or a petition to revise have already expired.[32]

48. Egypt states that interpretation is generally only permitted in the case of ambiguity in the operative part of the award and that, moreover, a valid request for interpretation may not seek to expand or alter an award's operative section. It must therefore be limited to the facts and issues as they were presented during the original proceedings with the consequence that consideration of facts that arose after the award was issued is not permitted under Article 50 of the ICSID Convention.[33]

49. According to Egypt, Wena seeks an "interpretation" that would add legal consequences to the Original Tribunal's operative holding, namely, that Wena cannot incur any liability to any party in connection with a right that has been expropriated, and that the Application therefore falls outside of the scope of the Award. Egypt maintains that in the Original Arbitration, Wena never sought determination of this issue and was satisfied to request a declaration that its leasehold rights had been expropriated and that Wena was awarded compensation for such expropriation.[34]

50. Furthermore, Egypt asserts that Wena's Application is entirely based on circumstances that arose after the Award was issued. Egypt states that Wena itself admits in its Application that the actions which Egypt allegedly took with regard to the Luxor Lease took place "*over the past two years.*" [35]

51. Finally, Egypt alleges that the Application is invalid because there is no dispute between Egypt and Wena about the operative section of the Award. According to Egypt, there can be no such dispute because the Award contains no ambiguity preventing its execution, a fact which is shown by Egypt's full compliance with the Award three years ago.

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31 *Id.*, Section 19.
32 *Id.*, Sections 19 to 21.
33 *Id.*, Sections 22 *et seq.* with examples of decisions of the Permanent Court of Arbitration and the International Court of Justice.
34 *Id.*, Section 28.
35 *Id.*, Section 31.

4. The Relief Sought by Egypt

52. Therefore, Egypt requests the Tribunal to

> *"(i) reject the Application in its entirety; and*
>
> *(ii) order Wena to reimburse all costs Egypt has incurred in these proceedings."* [36]

C. Wena's Further Arguments as Set Out in its Reply Memorial

53. In its Reply, Wena states that the actions referred to in the Application allegedly brought about by Egypt, either directly or through its instrumentalities, disregard the Award's ruling that Egypt expropriated Wena's rights in the Luxor Lease. In Wena's view, these actions also attest to existing opposite views between Wena and Egypt in that respect.

1. Existence of a Dispute between Wena and Egypt as to the Meaning of the Award

54. Wena disagrees with Egypt's allegation that Wena's dispute is not a dispute with Egypt with respect to the interpretation of the Award, but a "*commercial dispute*" against EGOTH under the Luxor Lease. In support of its contention that there is a dispute with Egypt regarding the meaning of "expropriation", Wena points out that the Award determined that Egypt's actions "*amounted to an expropriation*" of Wena's rights under the Hotel Leases. On this basis, Wena maintains that it was decided by the Original Tribunal that as a result of Egypt's expropriation no contractual rights and obligations binding Wena under the Luxor Lease exist. In Wena's view, the consequence of this finding is that there can be no dispute between Wena and EHC (or EGOTH) *"in relation to their respective obligations under the [Luxor] Lease,"* because there can be no dispute today in relation to a contractual right that was expropriated.[37]

55. Furthermore, Wena submits that Egypt's liability was decided by the Original Tribunal under the IPPA, regardless of the relationship between Wena and EHC under the Hotel Leases. Thus, what the Original Tribunal found relevant to Egypt's liability under the IPPA were Egypt's own acts and omissions with respect to its obligations to protect

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36 *Id.*, Section 35.

37 *See* Reply Memorial, Section 13.

Wena's investments, rather than the status of EHC under Egyptian law.[38] Wena contends that, for the same reasons, the status of EGOTH as successor of EHC or issues of attribution of EGOTH's actions to Egypt are irrelevant to the interpretation dispute before the Tribunal. Wena maintains that it therefore is of little bearing, for the purposes of the interpretation of the word "expropriation" by the Tribunal, that Egypt claims that it is not responsible for and exercises no control whatsoever over EGOTH or the judicial receiver in respect of any such actions.[39]

56. Furthermore, Wena states that Egypt could hardly be surprised by Wena's Application given that Wena addressed a letter to Egypt through the Egyptian State Lawsuits Authority on September 27, 2002, with respect to the precise point in dispute. Nor can Egypt maintain that it is not aware of the actions taken by EGOTH, which is a "state-owned company", or the Ministry of Tourism. In this context, Wena points out that various official websites of the Egyptian government continue to promote the hotel under the brand name "Luxor Wena Hotel". [40]

57. As to Egypt's argument that the purported disputes all arose after the issuance of the Award, Wena first submits that any dispute concerning the interpretation of an award arises, by definition, after the award is rendered. Wena further states that, when giving an interpretation of the Award in order to establish the meaning of the word "expropriation", this Tribunal should not, and is not requested by Wena to refer to the factual background provided by Wena. Rather, this Tribunal should only provide an interpretation of the word "expropriation", in light of the facts that were decided by the Original Tribunal in the Award.[41]

58. As to Egypt's further argument that an application for interpretation made under Article 50 of the ICSID Convention must only concern the enforcement of the award, Wena finds this argument baseless. Egypt had cited Legal Committee Chairman Aaron Broches' explanation, during the negotiation of the Convention, that "no time limit was imposed upon interpretation applications because 'there would be cases where the award might require a course of conduct which could extend over a long period of time, and in that case a party should not be precluded from seeking an interpretation on the *execution* of the

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38 *Id.*, Section 18.
39 *Id.*, Section 21.
40 *Id.*, Section 22.
41 *Id.*, Sections 24 *et seq.*

award' (emphasis added)." [42] Wena submits that Egypt's quotation from the drafting history of the provision only concerns the issue of whether time limits should be required for an application for interpretation to the extent that the enforcement of an award may extend over a period of time. But nowhere in the quote is there – according to Wena – any indication as to a requirement that a dispute as to the meaning or scope of the award be restricted to issues of enforcement.

59. Wena agrees with Egypt that an application for interpretation must relate to a dispute as to the meaning or scope of "*what the court has decided with binding force.*" However, Wena maintains that it does not follow from this notion that the grounds for a judgment are irrelevant to the interpretation of that judgment. Specifically, Wena relies on the *Delimitation of the Continental Shelf Case,* [43] in support of its view that the Tribunal may very well refer to the grounds of the Award when deciding – in the light of the facts as decided in the Award – the meaning of the word "expropriation." [44]

60. Wena further submits that the operative section of the Award expressly determined and used the term "expropriation" and that therefore the request for interpretation relates to an issue actually decided by the Original Tribunal. Furthermore, Wena submits that the Application cannot be considered to be held inadmissible on the ground that it had not sought an explicit determination of the meaning of the term "expropriation" since it could hardly anticipate that it could face rent demands for the property from which it was expropriated.[45]

2. The Interpretation Sought by Wena is Within the Scope of the Award

61. In support of its view that the interpretation sought is within the scope of the Award, Wena submits that the meaning of expropriation was touched upon by the Award, although it does not expressly state that a party expropriated from a right, including a contractual right, cannot incur any liability associated with that right. In support of its position, Wena relies on the holdings of the Original Tribunal in the Award (Sections 97 through 99, 131, 135) and on the Original Tribunal's findings regarding the award of interest. According to Wena, these findings demonstrate that the meaning upheld by the Original

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42 *See* Response, Annex 3, p. 845 and Response, Section 20.

43 *Delimitation of the Continental Shelf (U.K. v. France): Interpretation of the Decision of June 30, 1977*, Decision, dated March 14, 1978, 54 ILR 139 (1978).

44 *See* Reply Memorial, Section 37.

45 *Id.*, Section 42.

Tribunal with respect to Wena's "expropriation" was that Wena had been totally and permanently deprived of its rights in the Luxor Lease.

62. According to Wena, the fact that there is a dispute between Wena and Egypt on the question of the meaning of "expropriation" is illustrated by Egypt's response, which, as Wena submits, confirms the divergence of views between the parties as to the consequences of an "expropriation." Wena concludes that an interpretation as to the meaning of the Award on this point is needed.[46]

D. Egypt's Further Arguments as Set Out in its Rejoinder

63. Egypt submits that Wena is unable to provide any coherent basis for its Application and that it is obvious from Wena's Reply that the supposed dispute with which the Application is concerned is entirely different from the dispute that was the subject of the Original Arbitration and the ensuing Award. In Egypt's view, Wena is improperly seeking, under the guise of an application for interpretation, to obtain a new decision concerning the legal consequences of the Award for third parties who were not parties to the original arbitration. Such entirely new ruling, concerning Wena's possible liabilities towards a third party (EGOTH), falls far outside the scope of the Award, as Egypt submits.

64. Egypt denies Wena's allegation that the Original Tribunal found that there are no contractual rights and obligations binding Wena under the Luxor Lease as a result of Egypt's expropriation, and Wena's conclusion that there can therefore be no dispute between Wena and EGOTH. Egypt maintains that the Original Tribunal, to the contrary, expressly refrained from making any determinations concerning Wena's rights and obligations under the Luxor Lease. The dispute that was the subject of the original Arbitration was whether Egypt had violated its obligation towards Wena under the IPPA and not whether Wena had any further liability under the Luxor Lease. According to Egypt, the Original Tribunal did not find that Wena was permanently deprived of all of its rights in respect of the Luxor Lease after the Luxor Hotel was returned to it in 1992, nor did it seek to determine the consequences of the Luxor Hotel's continuing occupation and operation by Wena from April 1992 until August 1997 for the parties to the Luxor Lease.[47] Egypt maintains that it is far from evident

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46 *Id.*, Sections 49 *et seq.*

47 *See* Rejoinder, Sections 11 and 14.

that the Tribunal's findings of expropriation must necessarily, as argued by Wena, lead to the conclusion that Wena has no outstanding liability to EHC or EGOTH under the Luxor Lease.

65. Egypt maintains that Wena's Application not only falls outside the scope of the Award, but also outside the scope of the Original Tribunal's jurisdiction, since the Original Tribunal had no authority to make any decisions concerning Wena's rights and obligations under the Luxor Lease binding on the Egyptian party (EGOTH or its predecessor in interest, EHC) to that lease.[48]

66. As to Wena's view that interpretation proceedings are not as restricted as set out in Egypt's Response, Egypt maintains that Wena is unable to cite any authorities in support of its contention. While agreeing that the wording of Article 50(1) of the ICSID Convention does not expressly limit applications for interpretation to those instances where the parties are in disagreement as to the enforcement of the award, Egypt maintains that Wena nevertheless mischaracterizes the Convention's negotiating history. According to Egypt, it was the drafters' intention, when not providing for a time limit for a request for interpretation, not to preclude a party "*from seeking an interpretation on the execution of the award*". But they did not intend, through Article 50(1) of the ICSID Convention, to encourage post-award proceedings for the purpose of obtaining abstract declarations that are unnecessary in order to permit, and have no bearing on, the award's implementation.[49]

67. Furthermore, Egypt submits that Wena in its Reply neither disputed nor satisfied the conditions for an admissible request for interpretation as identified by the International Court of Justice (**"ICJ"**) in its judgment in the *Asylum Case*.[50]

68. As to Wena's argument that its application is admissible since it could hardly anticipate that it could face rent demands for the property that was expropriated and therefore initially saw no need to seek explicit determination that it cannot incur any liability with regard to that property, Egypt submits that this argument is without merit. It points out that while, at the time of the Original Arbitration, there had been no finding of expropriation, Wena's failure to pay rent for the Luxor Hotel since 1990 was noted by Egypt in the arbitration as an explanation for EHC's decision to evict Wena from the Luxor Hotel in 1991

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48 *Id.*, Section 7.

49 *Id.*, Sections 18 *et seq.*

50 *Request for Interpretation of the Judgment of November 20, 1950 in the Asylum Case (Colombia v. Peru)*, Judgment of November 27, 1950, 1950 ICJ Rep. 395.

as well as Wena's subsequent eviction in September 1997. Furthermore, Egypt states that it at no time assumed ownership of the Luxor Hotel, which at all relevant times was the property of EHC and EGOTH. Therefore, Egypt maintains that Wena's contention that its possible liability under the Luxor Lease could only be to Egypt, since Egypt expropriated Wena for its own benefit, is erroneous.[51]

69. Finally, Egypt submits that since its full compliance with the Award, it has taken no actions against Wena, apart from the apparent reference to the "Luxor Wena Hotel" in official tourism websites. But this reference, Egypt claims, evidences nothing more than the negligence of Egyptian tourism authorities to update their websites. Egypt further submits that even Wena's own website continues to refer to the Luxor Hotel as the "Luxor Wena Hotel", including a description of the facilities offered by the hotel together with the relevant contact details for making reservations.[52]

III. DISCUSSION

A. Introduction

70. Wena requests an interpretation of the Original Tribunal's determination that Egypt expropriated Wena's rights under the Luxor Lease and deprived Wena of its "*fundamental rights of ownership.*" In particular, Wena requests that the interpretation address whether the expropriation constituted a total and permanent deprivation of Wena's rights under the Luxor Lease, such as to preclude subsequent legal actions by Egypt that presume the contrary. Wena further requests a confirmation that such expropriation took place on April 1, 1991. Egypt requests that the Tribunal reject the Application in its entirety.

71. The Tribunal has carefully considered the positions of the parties. For the reasons explained in detail below, the Tribunal by unanimous decision partly approves, and partly rejects, the Application for Interpretation of the Arbitral Award rendered on December 8, 2000.

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51 Rejoinder, Section 22.

52 *Id.*, Sections 24 *et seq.* and Exhibit E15.

72. Wena's Application for Interpretation is the first request of its kind ever received by ICSID.[53] Accordingly, no previous decisions by ICSID arbitral tribunals exist that deal with the purpose, scope and limits of the interpretation procedure. However, in making its decision, the Tribunal was able to rely not only on the relevant provisions of the ICSID Convention and the ICSID Arbitration Rules and their interpretation by well-known scholars, but also on decisions by other tribunals, in particular, the Permanent Court of International Justice ("**PCIJ**") and its successor, the ICJ.

B. The Relevant Provisions regarding the Requested Interpretation of the Award

73. The Application for Interpretation now before the Tribunal is based on Article 50(1) of the ICSID Convention, which reads as follows:

> *"(1) If any dispute shall arise between the parties as to the meaning or scope of an award, either party may request interpretation of the award by an application in writing addressed to the Secretary-General."*

74. The requirements for an admissible application for interpretation are set forth in Article 50(1) of the ICSID Arbitration Rules as follows:

> *"(1) An application for the interpretation, revision or annulment of an award shall be addressed in writing to the Secretary-General and shall:*
>
> *(a) identify the award to which it relates;*
>
> *(b) indicate the date of the application;*
>
> *(c) state in detail:*
>
> *(i) in an application for interpretation, the precise points in dispute;*
>
> *(ii) in an application for revision, …*
>
> *(iii) in an application for annulment, …*
>
> *(d) be accompanied by the payment of a fee for lodging the application."*

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[53] Indeed, there was an application for interpretation in the case *Marvin Roy Feldman Karpa v. United Mexican States*, ICSID Case No. ARB(AF)/99/1), Decision on Correction and Interpretation of the Award, dated June 13, 2003, 18 ICSID Rev. – F.I.L.J. 595 (2003). Said application was governed by the Additional Facility Rules and was mainly a request for corrections. Therefore, it is different from the case at hand which is governed by the ICSID Convention and Arbitration Rules.

75. Further, Article 53 of the ICSID Arbitration Rules provides:

> *"The provisions of these Rules shall apply mutatis mutandis to any procedure relating to the interpretation, revision or annulment of an award and to the decision of the Tribunal or Committee."*

76. Taken together, the relevant provisions of the ICSID Convention and the ICSID Arbitration Rules thus establish two main conditions for the admissibility of an application for interpretation: first, there has to be a dispute between the original parties as to the meaning or scope of the award; second, the purpose of the application must be to obtain an interpretation of the award.

77. These conditions concur with the requirements for the admissibility of interpretation proceedings established by the PCIJ in the *Chorzów Factory Case*.[54] In this decision, the PCIJ relied on Article 60 of its Statute, which reads as follows:

> *"The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any Party."* [55]

78. In its judgment, the PCIJ stated:

> *"From the article* [60] *it appears that these conditions are the following:*
>
> *(1) there must be a dispute as to the meaning and scope of a judgment of the Court;*
>
> *(2) the request should have for its object an interpretation of the judgment."* [56]

79. These requirements were also confirmed by the ICJ in the *Asylum Case*[57] and in the *Continental Shelf Case (Tunisia v. Libyan Arab Jamahiriya)*[58] with regard to Article 60 of the Statute of the ICJ. In the *Asylum Case*, the ICJ established the following:

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54 *Interpretation of Judgments Nos. 7 and 8 (the Chorzów Factory)*, Judgment of December 16, 1927, PCIJ Series A, No. 13.

55 *Id.*, p. 10.

56 *Id.*

57 *See Colombia v. Peru, supra* footnote 50.

58 *Application for Revision and Interpretation of the Judgment of February 24, 1982 in the Case Concerning the Continental Shelf (Tunisia v. Libya)*, Judgment of December 10, 1985, 1985 ICJ Rep.192, p. 223.

> *"Thus it* [Article 60] *lays down two conditions for the admissibility of such a request:*
>
> *(1) The real purpose of the request must be to obtain an interpretation of the judgment. […]*
>
> *(2) In addition, it is necessary, that there should exist a dispute as to the meaning or scope of the judgment."* [59]

C. The Existence of a Dispute as to the Meaning or Scope of the Award

1. The Legal Principles Regarding the Notion of a Dispute as to the Meaning or Scope of the Award

80. As stated above, the first condition for the admissibility of an application for interpretation is the existence of a dispute between the parties as to the meaning or scope of the award.

81. The existence of a dispute as to the meaning or scope of an award requires that the dispute is sufficiently concrete to be susceptible of a specific request for interpretation.[60] Whereas it is not necessary to show the existence of a dispute in a specific manner, such as in formal communications between the parties, it is sufficient if – but also mandatory that – the two parties have actually exposed their divergence of views on definite points in relation to the award's meaning or scope.[61] In contrast, general complaints about the award's lack of clarity do not suffice.[62]

82. Furthermore, the dispute must relate to the meaning or scope of what has been decided with binding force, thus in principle to the award's operative section, a condition well adhered to by international practice and confirmed by opinions of scholars, as will be shown below. Thus, in the *Chorzów Factory Case*, the PCIJ stated that the request must relate to the operative part:

> "*In order that a difference of opinion should become the subject of a request for interpretation under Article 60 of the Statute, there must therefore exist a*

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59 *Colombia v. Peru*, *supra* footnote 50, p. 402.
60 Schreuer, *The ICSID Convention: A Commentary* (2001), p. 857.
61 *Chrozów Factory*, *supra* footnote 54, pp. 10 *et seq.*
62 Schreuer, *supra* footnote 60, p. 858.

> *difference of opinion between the Parties as to those points in the judgment in question which have been decided with binding force."* [63]

The Court further explained:

> *"A difference of opinion as to whether a particular point has or has not been decided with binding force also constitutes a case which comes within the terms of the provision in question, […]."* [64]

83. These principles were confirmed by the ICJ in the *Continental Shelf Case (Tunisia v. Libyan Arab Jamahiriya):*[65]

> *"The question is therefore limited to whether the difference of views between the Parties which has manifested itself before the Court is 'a difference of opinion between the Parties as to those points in the judgment in question which have been decided with binding force'. Including 'A difference of opinion as to whether a particular point has or has not been decided with binding force'."*

84. However, in the *Delimitation of the Continental Shelf Case*, the Court of Arbitration in that dispute clarified that although the application for interpretation must be directed towards clarifying an ambiguity in the operative section, a tribunal is not constrained from referring to the grounds of the award, stating the following:

> *"The Court of Arbitration considers it to be well settled that in international proceedings the authority of res judicata, that is the binding force of the decision, attaches in principle only to the provisions of its dispositif and not to its reasoning. In the opinion of the Court it is equally clear that, having regard to the close links that exist between the reasoning of a decision and the provisions of its dispositif, recourse may in principle be had to the reasoning in order to elucidate the meaning and scope of the dispositif. From this it follows that under certain conditions and within certain limits, the reasoning in a decision may properly be invoked as a ground for requesting an interpretation of provisions of its dispositif […]. But the subject of a request of interpretation must genuinely be directed to the question of what it is that has been settled with binding force in the decision, that is in the dispositif; the reasoning cannot therefore be invoked for the purpose of obtaining a ruling on a point not so settled in the dispositif […]."* [66]

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63 *Chrozów Factory, supra* footnote 54, p. 11.
64 *Id.*, p. 12.
65 *Tunisia v. Libya, supra* footnote 58, p. 218.
66 *U.K. v. France, supra* footnote 43, p. 170. As to the exigency of an ambiguity in the *operative* section, *see* also *Panacaviar S.A v. Iran, see* Exhibit E 7.

85. Commentators on international arbitration also share this approach to determine the existence of a dispute as to the meaning or scope of an award.[67] It is stated:

> *"The interpretation of an arbitral award is only really helpful where the ruling, which is generally presented in the form of an order, is so ambiguous that the parties could legitimately disagree as to its meaning. By contrast, any obscurity or ambiguity in the grounds for the decision does not warrant a request for interpretation of the award."* [68]

86. Furthermore, some scholars take the view that a request for interpretation is only admissible on condition that the enforcement of the award is concerned. For instance, prior to the adoption of the 1998 Arbitration Rules of the International Chamber of Commerce ("**ICC Rules**") - and therefore the possibility of an application for interpretation as set forth in Article 29(2) of the ICC Rules - the Court of Arbitration of the International Chamber of Commerce (the "**ICC Court**") allowed interpretation only as to assure that its awards were enforceable at law.[69] Under the ICC Rules, a request for interpretation is only deemed admissible "*when the terms of an award are so vague or confusing that a party has a genuine doubt about how the award should be executed*." [70]

87. It is true that interpretation proceedings are particularly relevant if a dispute about the exact meaning of the award is likely to prevent its execution. However, neither Article 50(1) of the ICSID Convention nor the ICSID Arbitration Rules establish such a requirement for the admissibility of an application for interpretation, and it seems possible that there are situations where a party may have a valid interest to obtain an interpretation of an award, even though its enforcement is not (directly) concerned. However, the Tribunal agrees with the view taken by a commentator to the ICSID Convention that the dispute must at least have some practical relevance to the award's implementation; mere theoretical discussions about the award's meaning or scope are not sufficient.[71]

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67 Craig, Park and Paulsson, *International Chamber of Commerce Arbitration* (3rd ed. 2002) [hereinafter cited as "Craig, Park"], p. 408; Fouchard, Gaillard and Goldmann, *On International Commercial Arbitration* (1999), p. 776 [hereinafter cited as "Fouchard"]; Poudret and Besson, *Droit comparé de l'arbitrage international* (2002), margin note no. 760.

68 Fouchard, *supra*, p. 776.

69 Daly, "Correction and Interpretation of Arbitral Awards under the ICC Rules of Arbitration" (2002) 13:1 ICC Bulletin 61, p. 62; Craig, Park and Paulsson, *Annoted Guide to the 1998 ICC Arbitration Rules* (1998), p. 160.

70 *Daly*, *supra*, (63 *et seq.*); *see also* on this issue Craig, Park, *supra* footnote 67, p. 408.

71 Schreuer, *supra* footnote 60, p. 858; in this sense also Fouchard, *supra* footnote 67, p. 776.

88. In the oral hearing it became clear that the parties largely agree on the aforementioned legal authorities.[72] In particular, counsel for Wena declared as undisputed between the parties that a dispute within the meaning of Article 50 of the ICSID Convention must have some practical relevance to the award's implementation,[73] and that the subject matter for a request for interpretation must be directed to the operative part of the award in question.[74] In this regard, counsel for Wena pointed out that there is a slight nuance in the parties' understanding. He stated that from Wena's point of view the Tribunal may obviously look at the reasons to interpret the operative part of an award.[75] He further added that the requirement that a request for interpretation must be directed to the operative part of the award is already satisfied if the object of interpretation is the operative part of a decision and not the reasons.[76]

89. In the Tribunal's view, even this nuance is not disputed between the parties, since Egypt in its Rejoinder declared:

> *"[…] the parties agree that although the application for interpretation must be directed towards clarifying an ambiguity in the dispositive section, a tribunal is not constrained from referring to the grounds for the award."* [77]

In the oral hearing, counsel for Egypt again confirmed that it agrees with Wena that the Tribunal may invoke the award's reasoning to elucidate the meaning of the award in question.[78]

90. Furthermore, as to the existence of a dispute, counsel for Wena indicated that they disagree with the conclusion drawn by Egypt from the *Chorzów Factory Case* that all facts subsequent to that judgment are irrelevant.[79] Wena in this regard points out that the precise quote is the following:[80]

> *"Moreover, the Court, **when giving an interpretation**, refrains from any examination of facts other than those which it has considered in the*

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72 For Wena *see* Transcript, p. 5 line 23 and for Egypt *see* Transcript, p. 47, lines 19 *et seq.*
73 *See* Transcript, p. 6, lines 13 to 15.
74 *Id.*, p. 8, lines 4 *et seq*.
75 *Id.*, p. 9, lines 1 *et seq*. and lines 6 *et seq*.
76 *Id.*, p. 9 lines 4 *et seq*.
77 Rejoinder, p. 7, footnote 14.
78 *See* Transcript, p. 75, lines 4 to 7.
79 *See* Response, Section 26.
80 *See* Transcript, p. 11, lines 15 *et seq*.

> *judgment under interpretation, and consequently all facts subsequent to that judgment."* [81] *[Emphasis added by the Tribunal]*

91. Therefore, Wena insists that for the purpose of establishing the existence of a dispute one must have a look at what happened after the judgment since the award's implementation is necessarily afterwards.[82] But Wena agrees that for the purpose of giving an interpretation one must only look at the award and at its reasons, without dealing with anything outside the scope of the award.[83]

92. The Tribunal therefore notes that the parties largely agree on the legal principles and authorities which the Tribunal will have to apply to the case at hand and that their disagreement relates to the application of those principles.

2. The Application of the Aforementioned Legal Principles to the Case at Hand

a. The Existence of a Dispute

93. On the basis of the principles established above, the Tribunal shall first assess whether there is a dispute between the parties within the meaning of Article 50(1) of the ICSID Convention, *i.e*., a dispute as to the meaning or scope of the operative part of the Award.

94. In doing so, the Tribunal shall first analyze the precise scope of Wena's requested relief, which – as stated above (*see* Section 33) – reads as follows:

> *"Wena respectfully requests an interpretation of the Tribunal's determination that Egypt expropriated Wena's rights in the Luxor Lease and deprived Wena of its "fundamental rights of ownership". In particular, Wena requests that the interpretation address whether the expropriation constituted a total, permanent deprivation of Wena's rights in the Luxor Lease, such as to preclude subsequent legal actions by Egypt that presume the contrary."* [84]

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81 *Chorzów Factory*, *supra* footnote 54, p. 21.
82 *See* Transcript, p. 11, lines 21 *et seq*. and p. 12, lines 8 *et seq*.
83 *Id.*, p. 11 line 23 to p. 12, line 3 and p. 12, lines 19 to 24.
84 *See* Application, Section 50.

95. In the oral hearing, counsel for Wena clarified that Wena also requests an interpretation that the expropriation took place as of April 1, 1991.[85]

96. Further, in the course of the interpretation proceedings, Claimant made clear that its interpretation request regarding the consequences of the expropriation indeed has two branches: On the one hand, Wena is seeking a clarification that the result of the expropriation is "such as to preclude subsequent legal actions by Egypt that presume the contrary;" on the other hand, Wena also requests the Tribunal to address the consequences of the expropriation regarding Wena's legal relationships with third parties, such as EHC, respectively, EGOTH and, more specifically, whether or not Wena, as the party expropriated from a given right, can incur any liability associated with that right.[86] Even though this second branch of Wena's relief has not been formally presented, it has clearly evolved in the interpretation proceedings, and has been addressed by both parties.[87] The Tribunal, therefore, feels obliged to also address this second branch of Claimant's relief, and it will do so separately below (see Sections 127 *et seq.*).

97. Having thus analyzed the precise scope of Wena's request for interpretation, the Tribunal has to examine whether the different points covered by the interpretation request are in dispute between the parties. According to Wena, all parts of the relief indeed are in dispute because Egypt allegedly disregards the Original Tribunal's findings that the transfer of control to EHC amounted to an expropriation. Egypt, in contrast, takes the view that there can be no dispute whatsoever between Wena and Egypt since, by paying compensation to Wena, it fully complied with the Award three years ago.

98. One could indeed take the view that since Egypt paid the full amount it had been ordered to pay to Wena, there is no room for any further dispute between the parties that could have some practical relevance as to the Award's implementation. However, Wena correctly points out that the Award, in its operative section, not only ordered Egypt to pay compensation, including damages and interest (*see* Section 136 of the Award), but also found that Egypt's actions, as determined by the Original Tribunal, amounted to an expropriation

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85 *See* Transcript, p. 13, line 21 to p. 14, line 1; p. 14, lines 11 to 14; p. 17, lines 15 to 17; p. 18, line 23 to p. 19, line 1. Upon further question of the Tribunal, counsel for Wena clarified that its Relief sought should be read as per Section 50 of Wena's Application in combination with Section 47 of its Application, which would technically mean that the Tribunal has to add the words "as of April 1, 1991" to Section 50 of the Application; *see* Transcript, p. 95, lines 19 to 24.

86 In its Application (Section 48) and its Reply Memorial (Section 42), Wena has described the resulting effects of the expropriation more generally as meaning that "*a party expropriated from a given right cannot incur any liability associated with that right*".

87 Application, Sections 47 and 48; Reply Memorial, Sections 2, 5, 13, 42 and 46; Rejoinder, Sections 4, 5 and 9.

(*see* Section 135 of the Award). Wena submits that the meaning of the term "expropriation" used in Section 135 was touched upon in the reasoning of the Award, although the Original Tribunal did not expressly state what Wena alleges to be the necessary consequences of Section 135 of the Award, *i.e.*, that the expropriation was total and permanent; it took place as of April 1, 1991; and as a consequence, subsequent legal actions by Egypt that presume the contrary are precluded; and Wena as the expropriated party cannot incur any liability associated with the expropriated rights.

99. Through its submissions and oral argument, it became clear that Egypt disputes that the expropriation as decided by the Original Tribunal had any of these consequences. Specifically, Egypt denies that the expropriation had a total and permanent effect.[88] Further, Egypt denies that the Original Tribunal made any ruling regarding the contractual rights and obligations of Wena under the Luxor Lease.[89] In addition, upon question by the Tribunal, Egypt did not unequivocally declare the date of April 1, 1991, as undisputed.[90]

100. Considering the foregoing, the Tribunal is of the opinion that there does actually exist a dispute between Wena and Egypt, within the meaning of Article 50(1) of the ICSID Convention, regarding the meaning of the term "expropriation" as used in the operative section of the Award.

101. The Tribunal also is of the opinion that this dispute is indeed a dispute between the parties to the Original Arbitration, *i.e.*, Wena and Egypt. It is true that most of the actions by which Wena claims to be adversely affected concern relations which Wena has with EGOTH, as the purported successor of EHC under the Luxor Lease. On the other hand, the Original Tribunal ascertained Egypt's liability under the IPPA based on Egypt's own actions and omissions, rather than investigating EHC's actions and EHC's status under Egyptian law. Hence, for the purposes of these interpretation proceedings, the Tribunal likewise finds it irrelevant whether EGOTH is the successor of EHC and whether Egypt is responsible for EGOTH's alleged actions.[91] Rather, it is decisive that the dispute as to the meaning of the term "expropriation" is a genuine dispute between the parties of the original and the present proceedings, *i.e.*, Wena and Egypt.

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88 *See* Rejoinder, Section 14.
89 *Id.*, p. 53, lines 19 *et seq.*; p. 57, lines 1 *et seq.*; p. 58, lines 2 *et seq.*
90 *See* Transcript, p. 94, line 24 to p. 95, line 6.
91 *See* Reply Memorial, Section 21.

102. Consequently, the Tribunal considers that the first condition of the admissibility of the Application provided for in Article 50(1) of the ICSID Convention is met, *i.e.*, the existence of a dispute between the parties relating to the meaning of the Award.

b. The Purpose of Interpretation

103. As already mentioned in Section 76 above, the second condition for the admissibility of a request for interpretation is that the purpose of the request must be to obtain an "interpretation" of the award. The Tribunal is mindful that the admissibility of an application for interpretation has to be balanced against the principle that an ICSID award is final and binding on the parties to the dispute. This, again, is in line with the findings of the ICJ in the *Asylum Case*,[92] where the Court stated the following in connection with the purpose of an interpretation:

> *"The real purpose of the request must be to obtain an interpretation of the judgment. This signifies that its object must be solely to obtain clarification of the meaning and the scope of what the Court has decided with binding force, and not to obtain an answer to questions not so decided. Any other construction of Article 60 of the Statute would nullify the provision of the article that the judgment is final and without appeal."*

104. Accordingly, the purpose of an interpretation is to obtain a clarification of the meaning or scope of an award. It cannot be invoked for the purpose of obtaining an answer or ruling regarding points which were not settled with binding force in the underlying decision. In this connection, the Court of Arbitration, in the *Delimitation of the Continental Shelf Case*, held:

> *"At the same time, account has to be taken of the nature and limits of the right to request from a Court an interpretation of its decision. 'Interpretation' is a process that is merely auxiliary, and may serve to explain but may not change what the Court has already settled with binding force as res judicata. It poses the question, what was it that the Court has already settled with binding force in its decision, not the question what ought the Court now decide in the light of fresh facts or fresh arguments. A request for interpretation must, therefore, genuinely relate to the determination of the meaning and scope of the decision, and cannot be used as a means for its 'revision' or 'annulment' processes of a different kind to which different considerations apply."* [93]

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92 *Colombia v. Peru*, *supra* footnote 50, p. 402.

93 *U.K. v. France*, *supra* footnote 43, pp. 170 *et seq*.

105. In the *Chorzów Factory Case*, the PCIJ stated that interpretation must be understood as meaning to give a precise definition of the meaning or scope which the Court intended to give to the judgment in question. It added:

> *"The interpretation adds nothing to the decision, which has acquired the force of res judicata and can only have binding force within the limits of what was decided in the judgment construed."* [94]

106. Thus, the purpose of interpretation is to enable the Tribunal to clarify points which had been settled with binding force in the award, without deciding new points which go beyond the limits of the award.[95]

107. Also in this regard, it became clear during the oral hearing that the parties agree on these legal principles.[96]

3. The Interpretation Issues

a. Introduction

108. Wena's Application for Interpretation concerns the Original Tribunal's finding in the operative section of the Award that:

> *"…Egypt breached its obligations to Wena by failing to accord Wena's investments in Egypt fair and equitable treatment and full protection and security in violation of Article 2(2) of the IPPA,*
>
> *…Egypt's actions amounted to an expropriation without prompt, adequate and effective compensation in violation of Article 5 of the IPPA."* [97]

109. As pointed out above, Wena – in the first branch of its Application – requests an interpretation of the Tribunal's determination that Egypt expropriated Wena's rights in the Luxor Lease and deprived Wena of its "fundamental rights of ownership" addressing, in particular, whether the expropriation constituted a total, permanent deprivation of Wena's rights in the Luxor Lease as well as a confirmation that the expropriation took place as of

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94 *Chorzów Factory*, *supra* footnote 54, p. 21.
95 Schreuer, *supra* footnote 60, p. 858.
96 Except for the differences mentioned above in Sections 88 *et seq.*, the parties declared that there is agreement as to the legal principles and authorities, *see* footnote 72 above.
97 *See* Award, Sections 134 and 135.

April 1, 1991, and that the result of the expropriation is such as to preclude subsequent legal actions by Egypt that presume the contrary.

110. The Tribunal is of the opinion that the issues addressed in the first part of Wena's Application are within the purpose of interpretation.

b. The First Branch of Wena's Request for Interpretation: The Total and Permanent Character of the Expropriation of Wena's Rights; the Date of such Expropriation; and the Consequences of the Expropriation for Egypt's Actions

111. The first branch of Wena's request for an interpretation of the Tribunal's determination that Egypt expropriated Wena's rights in the Luxor Lease and deprived Wena of its "fundamental rights of ownership" contains three points: (i) whether the expropriation constituted a total and permanent deprivation of Wena's rights in the Luxor Lease; (ii) whether the expropriation took place as of April 1, 1991; and (iii) clarification that the result of the expropriation is such as to preclude subsequent legal actions by Egypt that presume the contrary.

112. Turning to the first point, the Tribunal observes that the Award nowhere states that Egypt expropriated Wena's "rights in the Luxor Lease." Rather, the Award consistently refers to Wena's "investments" and states that Egypt's actions amounted to the expropriation of Wena's "investments." [98]

113. The Award makes clear that Wena's investments in question are the capital investments made by Wena in the development and renovation of the Hotels in order to operate the Hotels and to enjoy the benefits thereof in accordance with the Hotel Leases entered into with EHC.

114. Thus, the provisions of the Luxor Lease are summarized at Section 17 of the Award as follows:

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[98] *See*, for example, Section 77 of the Award; here the Tribunal considered the IPPA to be the primary source of applicable law for the arbitration (Section 78 of the Award). Under Article 2(1) of the IPPA, Egypt and the United Kingdom promised to "encourage and create favourable conditions for nationals or companies of the other Contracting Party to invest capital in its territory (Section 16 of the Award). Indeed, the Tribunal established jurisdiction over Wena on the fact that Claimant has made an investment, that money was spent in the development and renovation of the Hotels and that money was paid by the Claimant, rather than any other party (Section 5 of the Award).

> *"Pursuant to the agreement, Wena was to 'operate and manage the 'Hotel' exclusively for [its] account through the original or extended period of the 'Lease,' to develop and raise the operating efficiency and standard of the 'Hotel' to an upgraded four star hotel according to the specifications of the Egyptian Ministry of Tourism or upgratly [sic] it to a five star hotel if [Wena] so elects…'. The agreement provided that EHC would not interfere 'in the management and/or operation of the 'Hotel' or interfere with the enjoyment of the lease' by Wena […]."* [99]

115. In the Original Arbitration, Wena had claimed that "*Egypt violated the IPPA, Egyptian law and international law by expropriating Wena's investment without compensation."* [100]

116. Egypt had responded that Wena "*cannot […] claim compensation for the alleged loss of leasehold interests […]."* [101]

117. The Original Tribunal disagreed. It reviewed the legal theory of expropriation, as follows:

> *"It is also well established that an expropriation is not limited to tangible property rights. As the panel in SPP v. Egypt explained, 'there is considerable authority for the proposition that contract rights are entitled to the protection of international law and that the taking of such rights involves an obligation to make compensation therefore.' Similarly, Chamber Two of the Iran-U.S. Claims Tribunal observed in the Tippets case that '[a] deprivation or taking of property may occur under international law through interference by a state in the use of that property or with the enjoyment of its benefits, even where legal title to the property is not affected.' The chamber continued by noting: 'while assumption of control over property by a government does not automatically and immediately justify a conclusion that the property has been taken by the government, thus requiring compensation under international law, such a conclusion is warranted whenever events demonstrate that the owner has been deprived of fundamental rights of ownership and it appears that this deprivation is not merely ephemeral."* [102]

118. In its reasoning, the Original Tribunal therefore concluded that:

> *"[it] had no difficulty in finding that the actions … described constitute such an expropriation. Whether or not it authorized or participated in the actual seizures of the Hotels, Egypt deprived Wena of its 'fundamental rights of*

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99 In Section 18 of the Award, the Tribunal noted that the Nile Lease was almost identical to the Luxor Lease.
100 *See* Award, Section 75.
101 *Id.*, Section 76.
102 *Id.*, Section 98.

> *ownership' by allowing EHC forcibly to seize the Hotels, to possess them illegally for nearly a year, and to return the Hotels stripped of much of their furniture and fixtures. Egypt has suggested that this deprivation was merely 'ephemeral' and therefore did not constitute an expropriation. The Tribunal disagrees. Putting aside various other improper action, allowing an entity (over which Egypt could exert effective control) to seize and illegally possess the Hotels for nearly a year is more than an ephemeral interference 'in the use of that property or with the enjoyment of its benefits'."* [103]

119. Thus, taking into account (i) the fact that Egypt allowed EHC to forcibly seize the Hotels on April 1, 1991 (which were not restored to Wena until nearly a year later), (ii) the vandalization of the Hotels and the removal and auction of much of the Nile Hotel's fixtures and furniture and (iii) the denial of a permanent operating license for the Luxor Hotel and withdrawal of the operating license for the Nile Hotel by the Ministry of Tourism,[104] the Original Tribunal concluded that Egypt had deprived Wena of its "fundamental rights of ownership",[105] *i.e.*, in the given case where, as the Tribunal has stated, no tangible property rights but rather leasehold rights are at stake, Wena's rights to make use of its investments made under the Hotel Leases and to enjoy the benefits thereof in accordance with the Leases.

120. It is true that the Original Tribunal did not explicitly state that such expropriation totally and permanently deprived Wena of its fundamental rights of ownership. However, in assessing the weight of the actions described above, there was no doubt in the Tribunal's mind that the deprivation of Wena's fundamental rights of ownership was so profound that the expropriation was indeed a total and permanent one.

121. In making its decision, the Original Tribunal knew that on April 28, 1992, Wena had re-entered the Luxor Hotel (*see* section 57 of the Original Award) and operated it from that date until its final eviction on August 14, 1997 (*see* section 62 of the Original Award). [106]

122. However, this fact had no bearing on the decision since the Tribunal found, as set forth above, that the condition in which the Luxor Hotel was returned to Wena was so poor and the conditions under which it could be operated during these years were so unsatisfactory, as compared to the situation prior to the seizure, that the temporary re-entry

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103 *Id.*, Section 99.
104 *Id.*, Sections 53, 56, 57 and 92.
105 *Id.*, Section 99.
106 By contrast Wena's management never operated the Nile Hotel again (*see* Award, Section 56).

and continued operation of the Luxor Hotel by Wena from 1992 to 1997 did not counter the finding that Egypt's actions amounted to an expropriation.

123. That the expropriation was meant to constitute a total and permanent deprivation of Wena's investments is also reflected by the method the Tribunal used to calculate the compensation awarded. The Tribunal based its compensation award on Wena's actual investments in the two Hotels, in essence returning to Wena its total investment, and adding interest at the rate of 9 % compounded quarterly from the date of expropriation to the date of the award. This interest rate was deemed appropriate by reference to long-term investments, *i.e.*, government bonds, in Egypt. In granting this compensation, the Tribunal disregarded Wena's re-entry and temporary operation of the Hotels subsequent to April 1, 1991. It considered the expropriation of Wena's rights to be total and permanent.

124. Regarding the second point, even though the Original Tribunal did not state so expressly in the Award, it is also clear that such expropriation occurred as of April 1, 1991. The Original Tribunal calculated the compensation pursuant to Article 5 of the IPPA, *i.e.*, by awarding compensation amounting to the market value of the investments expropriated immediately before the expropriation.[107] The "*dies a quo*" on which the Original Tribunal based its calculation was indeed April 1, 1991.[108] Hence, the date Wena's investments were expropriated is April 1, 1991.

125. Finally, as to the consequences of the expropriation on Egypt's alleged actions towards Wena following the Award, even though this had not been expressed in the Award, it is clear that Egypt, as a party to the original proceedings and the present interpretation proceedings, is indeed precluded from legal actions that would presume the contrary of the Tribunal's determinations in the Award.

126. To conclude, the first branch of Wena's Application for Interpretation shall be granted.

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107 *See* Award, Sections 118 and 125.

108 Also the Committee held that April 1, 1991 appeared implicitly as the "*dies a quo*" from the Tribunal's statement with respect to the day when the expropriation of Wena's rights occurred; *see* Section 98 of the copy of the Decision of the *ad hoc* committee dated February 5, 2002, attached to the Application as Annex 2.

c. The Second Branch of Wena's Request for Interpretation: No Further Liabilities as a Consequence of the Expropriation

127. As to the second branch of Wena's request for interpretation as it has evolved during the interpretation proceedings, *i.e.*, that a party expropriated from a given right cannot incur any liability associated with that right,[109] the Tribunal finds that this Application is outside the scope of the Original Award. Indeed, this issue was not raised at any time during the proceedings between Wena and Egypt leading up to the Award. In those proceedings, the Original Tribunal was only asked to make findings on Wena's claims that "*Egypt violated Article 2(2) of the IPPA, and other international norms, by failing to accord Wena's investments "fair and equitable treatment" and "full protection and security"* and "*Egypt's actions constitute an unlawful expropriation without 'prompt, adequate and effective' compensation in violation of Article 5 of the IPPA, as well as Egyptian law and other international law.*"[110] In order to decide these claims, the Original Tribunal investigated Egypt's conduct towards Wena relating to the seizures of the Hotels and found Egypt liable under Articles 2(2) and 5 of the IPPA. Therefore, it ordered Egypt to pay compensation to Wena.

128. But besides stating that Egypt's actions amounted to an expropriation under the IPPA and fixing the compensation to be paid, the Original Tribunal did not decide on any further consequences of the expropriation. In particular, the Original Tribunal did not decide on the consequences of the expropriation on the legal relationships between Wena and third parties.

129. As to Wena's argument that it could not "*anticipate that it could face rent demands for the very property that it was expropriated from,*" [111] the Tribunal again refers to the purpose of interpretation, namely, to give a clarification of what has been decided with binding force without adding new facts and arguments. It is for the parties in the initial proceedings to present their case and to establish the limits of the Award.

130. This point of view is in line with international jurisprudence. The Court of Arbitration stated in the *Delimitation of the Continental Shelf Case* that interpretation:

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109 Application, Section 48.
110 *See* Award, Section 75.
111 *See* Reply Memorial, Section 42.

> *"…poses the question, what was it that the Court decided with binding force in its decision, not the question what ought the Court now to decide in the light of fresh facts or fresh arguments…"* [112]

and the ICJ stated in the *Asylum Case:*

> "*…this question was completely left outside the submissions of the Parties. The Judgment in no way decided it, nor could it do so. It was for the Parties to present their respective claims on this point. […] Interpretation can in no way go beyond the limits of the Judgment, fixed in advance by the Parties themselves in their submissions.*" [113]

131. In the light of the foregoing, the Tribunal finds that the second branch of Wena's Application for Interpretation falls outside the scope of the interpretation proceedings under Article 50(1) of the ICSID Convention.

IV. CONCLUSION

132. The Tribunal concludes that Wena's Application for Interpretation is justified regarding the questions whether the expropriation was total and permanent; whether it took effect on April 1, 1991; and whether Egypt is precluded from taking legal actions that presume the contrary. By way of interpretation, the Tribunal finds that the expropriation was a total and permanent deprivation of Wena's fundamental rights of ownership, *i.e.*, its rights to make use of its investments made under the Luxor Lease and to enjoy the benefits of such investments in accordance with such Lease. The Tribunal finds further that such expropriation was effective as of April 1, 1991 and was such that Egypt, as a party to the proceedings, is precluded from taking legal actions that presume the contrary.

133. With regard to the consequences of such expropriation for Wena's legal relationships with third parties and more generally on the requested interpretation that Wena cannot incur liability to any party in connection with the expropriated rights, the Tribunal finds that this part of the Application is outside the scope of an interpretation proceeding since Wena is seeking to obtain a new ruling on issues not decided with binding force in the Award. Therefore, this branch of Wena's Application is dismissed.

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112 *U.K. v. France*, *supra* footnote 43, p. 171.
113 *Colombia v. Peru*, *supra* footnote 50, p. 403.

V. COSTS AND FEES

134. Under Article 61 (2) of the ICSID Convention, in the absence of agreement by the parties, it is the responsibility of the Tribunal to apportion the charges. As the Tribunal was satisfied that the Application for Interpretation related to certain precise points of dispute between the parties and was filed for interpretation purposes, the Tribunal considers it to be reasonable and fair that Wena bears 50 % and Egypt bears 50 % of the expenses and charges of the ICSID, including the arbitrators' fees and expenses. As to the parties' legal costs and fees, the Tribunal deems it to be appropriate that each party takes in charge its own fees and expenses.

VI. THE OPERATIVE PART

135. For these reasons,

THE ARBITRAL TRIBUNAL, unanimously,

136. DECLARES the Application for Interpretation of the Award by Wena to be admissible as far as it relates to the question whether the expropriation constituted a total and permanent deprivation of Wena's fundamental rights of ownership as of April 1, 1991, and whether Egypt is precluded from taking legal actions that presume the contrary;

137. DECLARES, by way of interpretation of the Award, that (i) the term "expropriation" used in Section 135 of the Award in connection with the awarding of damages and interest to Wena in Section 136 of the Award is to be understood to mean that the expropriation constituted a total and permanent deprivation of Wena's fundamental rights of ownership, *i.e.*, its rights to make use of its investments made under the Luxor Lease and to enjoy the benefits of such investments in accordance with such Lease; (ii) said expropriation occurred as of April 1, 1991; and (iii) subsequent legal actions by Egypt, as a party to the arbitration, that presume the contrary are precluded.

138. DECLARES the Application for Interpretation of the Award by Wena to be inadmissible as far as it relates to the consequences of the expropriation on Wena's legal relationships with third parties.

139. DECLARES that Wena and Egypt shall each bear 50 % of the arbitration costs; and that each party shall take in charge its own legal fees and expenses.

Prof. Ibrahim Fadlallah

Co-Arbitrator

Date: 19 october 2005

Mr. Carl F. Salans

Co-Arbitrator

Date: 20 October 2005

Dr. Klaus Sachs

Chairman

Date: 18 Octobre 2005