Arbitration Institute of the Stockholm Chamber of Commerce
Case No. V (064/2008)

IN THE MATTER OF THE ARBITRATION

MOHAMMAD AMMAR AL-BAHLOUL

V.

THE REPUBLIC OF TAJIKISTAN

FINAL AWARD

Place of Arbitration:

Stockholm, Sweden
June 8, 2010

A. Introduction

I. The Parties

1. Claimant: Mohammad Ammar Al-Bahloul, an Austrian citizen residing at 104 Mariahilferstrasse, Vienna, Austria A-1070, (hereinafter "Claimant").

Claimant initially had been represented in this arbitration by his attorneys, Professor Adnan Amkhan, with offices at Mariahilfer Str. 104, A-1070 Vienna, Austria and Dr. Friedrich Schwank, with offices at the Stock Exchange Building, Wipplingerstrasse 34, A-1010 Vienna, Austria, pursuant to a power of attorney signed by Claimant on June 5, 2008.

By letter of 28 September 2009, both attorneys informed the Tribunal that they had withdrawn as counsel as from 26 September 2009. Thereafter, Claimant informed the Tribunal that he was now represented by a new attorney, James F. English, JD, of the law firm Martin, Lubitz & Hyman LLC, with offices at 370 17th Street, Suite 4400, Denver, CO. 80202, USA.

2. Respondent: The Republic of Tajikistan (hereinafter "Respondent").

Respondent has been served in this arbitration by registered airmail and by electronic mail to the attention of the President of the Republic of Tajikistan and the Minister of the Ministry of Energy and Industry at the following addresses:

The President of the Republic of Tajikistan
Office of the President, Prospekt Rodaki 42, 734025 Dushanbe, Tajikistan, and

The Minister of the Ministry of Energy and Industry of the Republic of Tajikistan
10 Bohtar Street, 734025 Dushanbe, Tajikistan

Respondent did not appear before the Tribunal either directly or through a representative, although duly served with all notices, pleadings, orders and other communications.

3. Claimant and Respondent are collectively referred to herein as the "Parties."

II. The Arbitral Tribunal

4. In his Request for Arbitration dated May 30, 2008 (the "Request"), Claimant appointed Dr. Richard Happ, a national of Germany, as his party-appointed arbitrator. Dr. Happ's mailing address is Luther Rechtsanwaltsgesellschaft mbH, Gansemarkt 45, 20354 Hamburg, Germany.

5. The Arbitration Institute of the Stockholm Chamber of Commerce (the "SCC Institute"), on June 3, 2008, forwarded the Request to Respondent to the attention of the President of the Republic and the Minister of the Ministry of Energy and Industry and requested an Answer by June 17, 2008. This period was subsequently extended to June 29, then to July 14 and finally to July 25, 2008.

6. Upon Respondent's failure to submit an Answer or otherwise appear and failure to appoint an arbitrator in accordance with the Arbitration Rules of the SCC Institute (the "Rules"), the SCC Institute notified the Parties by letter of August 13, 2008 of the appointment by the Board of the SCC Institute of Professor Ivan S. Zykin, as co-arbitrator on behalf of Respondent, and Mr. Jeffrey M. Hertzfeld, as Chairman of the Tribunal.

7. Professor Zykin is a national of the Russian Federation. His mailing address is Andrey Gorodissky & Partners, ul. Znamenka 13, Bldg. 3, 3rd floor, 119019 Moscow, RF.

8. Mr. Hertzfeld is a national of the USA. His mailing address is 5, Boulevard Malesherbes, 75008 Paris, France.

9. Each of the arbitrators signed a declaration confirming his impartiality and independence of the Parties.

III. Partial Award on Jurisdiction and Liability

10. On 2 September 2009, the Tribunal rendered a Partial Award on Jurisdiction and Liability (the "Partial Award"). It confirmed its jurisdiction and found Respondent liable for breach of its obligation under Article 10 (1) ECT as a result of its failure to ensure the issuance of licenses pursuant to four hydrocarbon exploration agreements signed on December 20, 2000 by and between Claimant and the Respondent's State Committee for Oil & Gas (referred to in the documents themselves as "Treaties", but hereafter referred to as the "Agreements"). It denied all other claims brought by Claimant. The dispositive provisions of the Partial Award were as follows:

> "A. The Tribunal has jurisdiction over Claimant's claims that Respondent has breached its obligations owing to Claimant under Articles 10(1), 10(7) and 13 of Part III of the Energy Charter Treaty;
>
> B. Respondent has breached its obligations owing to Claimant under Article 10(1) of the Energy Charter Treaty, by failing to perform its contractual undertaking to ensure the License to carry out solely and exclusively geological exploration, and natural resource exploitation works and activities pursuant to the following four Agreements signed on December 25, 2000 by and between Claimant and the State Committee on Oil & Gas of the Republic of Tajikistan:
>
> i. Treaty on geological exploration and operation works on the project of East Soupetau area in the Republic of Tajikistan, perspective for Hydrocarbon raw material (oil, gas);
> ii. Treaty on geological exploration and operation works on the project of Rengan area in the Republic of Tajikistan, perspective for Hydrocarbon raw material (oil, gas);
> iii. Treaty on geological exploration and operation works on the project of Surgazon area in the Republic of Tajikistan, perspective for Hydrocarbon raw material (oil, gas); and a
> iv. Treaty on geological exploration and operation works on the project of Yalgyzkak area in the Republic of Tajikistan, perspective for Hydrocarbon raw material (oil, gas).

C. All other claims brought by Claimant in this arbitration are denied.

D. The Tribunal retains jurisdiction for the purpose of determining the relief to be granted with respect to the breach referred to in para. B above.

E. Until a final award on requests for relief or until the arbitration is otherwise terminated, the determination and allocation of the costs of the arbitration is deferred."

11. The Partial Award is an integral part of this Final Award and incorporated into it by reference.

IV. Procedural History

12. The procedural history of this arbitration up to the rendering of the Partial Award has been accounted for in the Partial Award (at paras. 10-57) and need not be reiterated here. A brief account of the factual background of the arbitration was also provided in the Partial Award (at paras. 58-91) and likewise need not be repeated here. Following the Partial Award and after consultation with the Parties, the Tribunal on 18 September 2009 by **Procedural Order No. 12** set out the further procedural timetable for the arbitration. Claimant had commented on the timetable by letter of 15 September 2009. Respondent did not react.

13. On 7 September 2009, the Tribunal sent a draft of the procedural timetable to the SCC and requested an extension of time until 30 April 2010 for the rendering of the final award. After consultation with the Parties, the SCC by letter of 16 September 2009 granted the requested extension.

14. On 3 October 2009, Claimant submitted a Request for Modification and Interpretation of the Partial Award. By **Procedural Order No. 13** of 6 October 2009, the Tribunal invited Respondent to comment on Claimant's request by 15 October 2009. No comments were received. By decision of 16 October 2009, the Tribunal denied the Claimant's request.

15. Claimant filed his Request for Relief on 30 October 2010 in accordance with the procedural timetable. Together with his Request for Relief, he submitted

(1) A signed valuation report prepared by Mr. John B. Gustavson of Mineral Appraiser, LLC, Boulder, Colorado, USA, and

(2) A signed Expert Witness Statement of Mr. John B. Gustavson.

16. By letter of 18 November 2009, Claimant requested to be allowed to file a supplemental submission concerning damages, compensation and remedies in international investment law. The Tribunal granted this request by **Procedural Order No. 14** of the same day, setting a time limit until 15 December 2009. The supplemental submission was filed by Claimant on 15 December 2009. Respondent did not comment on it. Simultaneously, the Claimant requested clarification whether the oral hearing in the arbitration could take place in Paris, rather than Stockholm, for reasons of convenience. The Respondent did not object to this request.

17. Respondent did not file a Counter-Memorial on Claimant's Request for Relief, although given an opportunity to do so.

18. By **Procedural Order No. 15** of 5 January 2010, the Tribunal determined that the oral hearing would take place in Paris from 15-17 February 2010, subject to the Claimant paying in full the further advance deposit requested by the SCC.

19. By letter of 18 January 2010, the Arbitration Institute of the SCC confirmed that the Claimant had paid the advance deposit in full. Therefore, by **Procedural Order No. 16** of 19 January 2010, the Tribunal confirmed the time and place for the hearing. It pointed out that Respondent up to that date had not participated, and that its non-appearance at the hearings without good cause would not prevent the Tribunal from holding the hearing and making a Final Award. The Tribunal invited Respondent to confirm by 25 January 2010 if if intended to participate in the hearing. No comments were received from Respondent.

20. By e-mail of 5 February 2010, the Tribunal informed the Parties that some of the materials on which Claimant's Expert based its 30 October 2009 appraisal seemed

not to have been submitted. The Tribunal requested Claimant to provide any missing materials by e-mail in pdf format by 11 February 2010 at the latest. The Claimant submitted by two e-mails of 10 and 11 February 2010 in total 15 exhibits as the material relied upon by its expert witness. Hard copies of these exhibits were submitted at the hearing.

21. The oral hearing took place in Paris on February 15-16, 2010. Claimant appeared in person and was represented by his attorney, Mr. English. Respondent failed to appear and gave no explanation for its non-appearance. The Tribunal took expert witness testimony from Claimant's expert witness, Mr. John B. Gustavson. At the end of the hearing, the Tribunal declared the evidence closed.

22. The hearing was transcribed by a court reporter. The transcript (hereinafter "Transcript") was sent to the parties for amendments and/or corrections and was then finalized by the court reporter.

23. By **Procedural Order No. 17** of 17 February 2010, the Tribunal indicated the further procedural timetable setting out the deadlines for cost submissions and comments on cost submissions.

24. On 12 March 2010, within the set schedule, Claimant submitted his Memorial on Costs setting out the costs of the quantum phase of arbitration. By e-mail to the Parties of 15 March 2010, the Tribunal confirmed receipt of the Claimant's Memorial on Costs and requested a more detailed substantiation of its cost and expense summary within 10 days. On 22 March 2010, the Tribunal received a more detailed substantiation of costs.

25. The Respondent did not submit a cost submission of its own nor did it comment on the cost submissions of Claimant.

26. The Tribunal has now deliberated and renders the present Award. As agreed with counsel at the close of the February hearings, on February 17, 2010, the Tribunal requested the SCC Institute to grant an extension of time for rendering of this Award until June 15, 2010, which was duly granted by the SCC Institute on the same date.

B. The Parties' Submissions

I. Summary of the Claimant's Submissions

27. The Claimant's submissions are reflected in his 30 October 2009 Request for Relief (the "Request for Relief"), his 15 December 2009 Supplementary Brief on Remedies (the "Supplementary Brief") and his counsel's submissions during the oral hearing. Those submissions are in writing and the submissions of his counsel have been transcribed by the Court Reporter.

28. Essentially, the Claimant submits that in 2001 he had the ability to build up third-party capital necessary for the exploration for hydrocarbons for the four areas (Rengan, Sargazon, Yalgyzkak and East Soupetau) for which he should have been granted licenses by the Respondent. Such capital would have been built up from different sources, such as government grants, loan facilities by oilrig operators and private equity funding (cf. *Transcript, Day 2, p. 26-31*). The exploration would have been successful and allowed him to procure further capital for the production, transportation and sale of the hydrocarbons.

29. During the oral hearing, Claimant's expert, Mr. Gustavson, testified, *inter alia*, on the probabilities of finding oil and gas in the four areas, the cost of exploration and production and the value of the Claimant's contractual rights. His witness testimony was based on a written witness statement and a written appraisal report (see above para. 15).

30. Claimant acknowledged that, in the post-2001 period, certain hydrocarbon licenses for the subject areas had apparently been issued by Respondent to other companies. Licenses for the areas of Rengan and Sargazon had been issued to Gazprom (*Transcript, Day 2, p.5*) and for Yalgyzkak to the company Tethys Petroleum Ltd. (*id, line 24*). Contradictory statements were made regarding the situation in the East Soupetau area, as is discussed hereinbelow at paragraphs 57-61.

31. The Claimant submitted that under international law he was entitled to an order compelling Respondent to issue to him exclusive licenses for the four license areas.

He further argued that he was entitled to compensation for the damages caused by delay in issuing the licenses. The compensation was to be calculated as the difference in the value the licenses would have had without the breach (i.e. if the licenses had been issued in 2001) and the value they had in 2009, assuming the licenses were issued by Respondent.

32. For the evaluation of the licenses, Claimant relied on the expert opinion by Mr. Gustavson. Mr. Gustavson based his calculation on an estimation of the Expected Value (EV) of the licenses to be granted. The EV was explained as the Net Present Value (NPV) at its Probability of Success (POS) of a venture less the NPV of its probability of failure (being 1,00 – POS). Mr. Gustavson analysed all four areas covered by the four Agreements and calculated the difference of the Expected Values between the two scenarios.

33. Claimant explicitly considered other methods for the calculation of his damage, such as the cost method (*Transcript, Day 2, p. 24*) or the market value (*Transcript, Day 2, p. 24-25*), to be inappropriate in the present case. Claimant's counsel explicitly confirmed that market value was different from the Expected-Value calculation (*Transcript, Day 2, page 26*). No alternative calculation was submitted.

II. The Respondent's Submissions

34. Respondent did not participate in this phase of the arbitration and did not make any submissions.

III. Relief Claimed

35. In his Request for Relief, Claimant asked the Tribunal to issue an award:

> "*22.1 Ordering the Respondent to issue necessary exclusive licenses "to carry out solely and exclusively geological exploration, and natural resources exploitation works and activities" for the exploration areas agreed upon in the four agreements, namely:*

"i. Treaty on geological exploration and operation works on the project of East Soupetau area in the Republic of Tajikistan, perspective for Hydrocarbon raw material (oil, gas);

ii. Treaty on geological exploration and operation works on the project of Rengan area in the Republic of Tajikistan, perspective for Hydrocarbon raw material (oil, gas);

iii. Treaty on geological exploration and operation works on the project of Sargazon area in the Republic of Tajikistan, perspective for Hydrocarbon raw material (oil, gas);

iv. Treaty on geological exploration and operation works on the project of Yalgyzkak area in the Republic of Tajikistan, perspective for Hydrocarbon raw material (oil, gas)." This must be completed within six months as of the date of the coming into force of this Award.

22.2 *Awarding the Claimant compensatory damages in the East Soupetau area according to the expert's opinion in the amount of $ 27,780,000 for losses (lost profits, etc.) caused by the breach of the contract manifest in the decision of the partial award. Specifically for the wrongful delay of the issuance of the necessary exclusive license in the period from July 2, 2001 to October 30, 2009.*

22.3 *Awarding the claimant compensatory damages in the Rengan area according to the expert's opinion in the amount of $ 55,160,000 for losses (lost profits, etc.) caused by the breach of contract manifest in the decision of the partial award. Specifically for the wrongful delay of the issuance of the necessary exclusive license in the period from July 2, 2001 to October 30, 2009.*

22.4 *Awarding the claimant compensatory damages in the Sargazon area according to the expert's opinion in the amount of $87,220,000 for losses (lost profits, etc.) caused by the breach of contract manifest in the decision of the partial award. Specifically for the wrongful delay of the issuance of the necessary exclusive license in the period from July 2, 2001 to October 30, 2009.*

22.5 *Awarding the claimant compensatory damages in Yalgyzkak area according to the expert's opinion in the amount of $58,300,000 for losses (lost profits, etc.) caused by the breach of contract manifest in the decision of the partial award. Specifically for the wrongful delay of the issuance of the necessary exclusive license in the period from July 2, 2001 to October 30, 2009.*

22.6 *Ordering that in the event that the four licenses are not issued within 6 months as of the date of the coming into force of this Award, the Tribunal shall decide that the Respondent is obliged to compensate the Claimant for damages suffered for any future lost profits to be calculated by the experts at a future date.*

22.7 *Stating that Respondent is to be held responsible for future damages that result from Respondents actions or omission of actions and cannot be calculated yet.*

22.8 *Awarding to the Claimant the costs of the arbitration in their entirety, including the Claimant's own legal fees and expenses, the fees of the expert, the fees and expenses for the Arbitral Tribunal and the fees of the Arbitration Institute of the Stockholm Chamber of Commerce.*

22.9 *Awarding to the Claimant compound interest in the amount of $ 240,010,000 for the period of July 2, 2001 (or the date of breach) until October 30, 2009 (Date of the Expert Report), calculated by the experts as marginal rate plus reference rate."*

36. Neither in the subsequent written submissions nor in his Counsel's oral submissions has Claimant explicitly deviated from these prayers for relief.

C. The Tribunal's Analysis

I. Introduction

1. Burden of Proof

37. As in the first phase of this arbitration, the principal difficulty encountered by the Tribunal has related to the factual evidence submitted in support of Claimant's legal positions. The Tribunal has repeated on a number of occasions during this arbitration that Respondent's non-appearance in this arbitration does not relieve Claimant from the burden of proving his factual allegations.

38. Under Section 25 of the Swedish Arbitration Act, the Parties are to supply the evidence to support their case. Article 26(1) of the SCC Rules provides that the

weight to be given to the evidence shall be for the arbitral tribunal to determine. While Swedish law does not contain any specific statutory provisions dealing with the allocation of the burden of proof (although it might, exceptionally and not of relevance here, stipulate a reversal of the burden of proof), or any rules concerning the standard of proof required, it is generally considered that a party who raises a claim needs to prove the circumstances which form its legal and factual basis.

39. The Tribunal recognizes that, in investment treaty cases, the behaviour of the respondent State sometimes may make it difficult for the Claimant to establish the precise amount of damages suffered. This being said, we consider that the following standard should nonetheless apply. While, on the one hand, total certainty should not be required in order to assess damages if the existence of damages has been established, on the other hand, the assessment of damages cannot be based on conjecture or speculation. A persuasive factual basis for the assessment must be shown.

2. Applicable Legal Principles

40. In the Tribunal's view, it is appropriate to start by recalling the legal principles which govern its analysis. This dispute has been brought by Claimant on the basis of Article 26 of the Energy Charter Treaty ("ECT"). Article 26 (6) ECT prescribes that an arbitration tribunal shall

> *"decide the issues in dispute in accordance with this Treaty and applicable rules and principles of international law."*

41. The ECT gives little guidance on the issue of damages and other forms of relief. It does not explicitly prescribe the consequences of a breach of its provisions. Article 26 (8) ECT, however, indicates that monetary damages and other forms of remedies can be granted by a tribunal. It provides as follows:

> *"...An award of arbitration concerning a measure of a sub-national government or authority of the disputing Contracting Party shall provide that the Contracting Party may pay monetary damages in lieu of any other remedy granted...."*

42. The Tribunal considers that the applicable rules and principles of international law concerning damages are well reflected in the Draft Articles on the "Responsibility of States for Internationally Wrongful Acts," prepared in 2001 by the International Law Commission of the United Nations. (the "**ILC Articles**"). Although without binding legal force, the ILC Articles are widely viewed as the most authoritative statement of the law in this area that exists today.

43. The ILC Articles pertinent in this case are Articles 29, 31, 34, 35 and 36. They read as follows:

Article 29
Continued Duty of Performance

The legal consequences of an international wrongful act under this part do not affect the continued duty of the responsible State to perform the obligation breached.

Article 31
Reparation

1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.

2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.

Article 34
Forms of reparation

Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of this chapter.

Article 35
Restitution

A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:

(a) Is not materially impossible;
(b) Does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.

Article 36
Compensation

1. The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.

2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.

44. The Tribunal will analyze Claimant's requests for relief on the basis of these principles. Insofar as Claimant in his submissions has relied on awards and decisions of other tribunals, or insofar as pertinent awards and decisions are in the public realm, the Tribunal has taken them into consideration for its analysis. While the Tribunal does not consider such awards or decisions as binding precedent, they may nonetheless offer helpful guidance.

II. Claim for Specific Performance (22.1)

45. In his Request for Relief, the Claimant asks the Tribunal to order specific performance:

> *"to issue necessary exclusive licenses "to carry out solely and exclusively geological exploration, and natural resources exploitation works and activities" for the exploration areas agreed upon in the four agreements…."*

46. It is Claimant's position that "*this order should apply retroactively to July 2, 2001, and should void any of the licenses given contrary to Claimant's rights.*" (Request for Relief, p. 9).

47. The Tribunal considers that specific performance is a permissible remedy in international law. An international tribunal has the power to grant specific performance.

48. The Energy Charter Treaty does not preclude this power. The obligation of Contracting Parties under the umbrella clause of Article 10 (1) ECT to "*observe any obligations entered into*" implies the possibility for a tribunal in case of breach to order

that Contracting Party to comply with its obligations. Moreover, it is a generally recognized international law principle that, where the breach is of a continuing character, a Contracting Party has a continuing duty to perform the obligation breached. See Article 29 of the ILC Articles, paragraph 43, *supra*.

49. Article 26(8) ECT, by stipulating that an arbitral award shall provide that a Contracting Party may pay monetary damages "*in lieu of any other remedy granted,*" implicitly recognizes the power of a tribunal to grant non-monetary relief. This being said, it is also noteworthy that the ECT provision does not purport to *compel* the Contracting Party to implement such non-monetary relief, since it requires the award to provide in such case for the option of damages in lieu thereof. This presupposes that Claimant has proved the amount of such an alternative damage payment.

50. Possible problems of enforcement do not in and of itself make specific performance an impermissible remedy. As the ICSID tribunal in the case of *Micula v. Romania* pointed out, the two concepts of remedies and enforcement are distinct.[1] Claimant therefore has a right to formulate his request for relief in whichever manner he chooses.

51. However, it remains for the Tribunal to consider whether the remedy sought, even if permissible in principle, is in fact materially possible under the particular circumstances before it.

52. The ILC Articles contemplate restitution as the principal remedy for internationally wrongful conduct. See Article 35 of the ILC Articles, paragraph 43, *supra*. Where damage is not made good by way of restitution, then the ILC Articles envisage monetary compensation for the damage shown to be caused by the misconduct. See Article 36 of the ILC Articles, paragraph 43, *supra*. The goal of restitution is to restore the investor to his position before the wrongful conduct. In the present case, the wrongful contact occurred on or before July 2, 2001 and restitution would entail obliging the State to perform the contractual obligation which it should have performed at that time, i.e. to issue retroactively to that date exclusive licenses in the four

[1] Para. 166, *Micula and others v. Romania*, ICSID Case No. ARB/05/20, Decision on Jurisdiction and Admissibility of 24.September 2008 (Alexandrov, Ehlermann, Levy).

geographic areas covered by the four Agreements referred to in paragraph 35, *supra*. This remedy, however, should not be granted where its implementation is materially impossible. See Article 35(a) and (b) of the ILC Articles. If such case, the ILC Articles would envisage a claim for damages as the available alternative.

53. Counsel has argued in the present case that specific performance in the form of compulsory issuance of exclusive licenses for the four areas should be granted. The Tribunal has considered the following relevant factors.

54. Nine years have elapsed since Claimant has left Tajikistan. During that period Claimant has had no activities in the country, nor has it been shown that Claimant engaged in exploration and development activities in the oil and gas sector elsewhere. Claimant has had no working relationship with Tajikistan and indeed has had difficulty even obtaining visas to visit the country.

55. A very similar situation was present in the 1986 LETCO v. Liberia ICSID arbitration. In that case, the State had withdrawn certain concessions which had been granted to LETCO. The tribunal decided that, taking into account the fact that LETCO's activities in Liberia were terminated more than two years previously and that Liberia's failure to participate in the arbitration made it doubtful that the government would cooperate in recommencing the concession, "*only reparation in the form of money damages will be adequate.*"[2]

56. During the past nine year period, according to Claimant's own evidence, third parties have become active in the four geographic areas where Claimant had been promised exclusive licenses. There is no evidence that their rights were obtained through bad faith conduct on their part. Claimant's expert, Mr. Gustavson, testified that the Rengan, Sargazon and East Soupetau areas were occupied by Gazprom, and that the Yalgyzkak area was occupied by Tethys Petroleum.

57. The Claimant presented somewhat contradictory positions as regards the East Soupetau area. On the first day of the hearings, Claimant's counsel stated that

[2] Para. 44, Liberian Eastern Timber Corporation [LETCO] v. Government of Republic of Liberia, ICSID Case No. ARB/83/2, Final Award 31 March 1986.

"operators outside of Mr. Al-Bahloul's control now in fact occupy every treaty area involved in this award." (*Transcript, Day 1, p.5*)

58. Counsel further stated in response to a question from the Tribunal as to whether there were operators already working in the four areas: *"We submitted exhibits that were constituent parts of what our expert analyzed, and our expert will testify to the fact that when he was looking at the operating situation of the region, he identified that these different companies, Gazprom, Tehys, Manas and Energy Partners Austria, had [stated] in both their public reporting and media documents that they were operating in these specific areas."*
(*Transcript Day 1, pp. 27-28*)

59. When asked by Claimant's counsel whether over the past 8-9 year period other companies were "*occupying the specific areas that...the four licenses were involved with,*" Mr. Gustavson, Claimant's expert, replied: "*Yes, as an example, Gazprom specifically went in during the time period you mentioned, I believe starting in 2003 and 2004, and actually secured licenses and agreements with the government for investments, in one Gazprom press release, so that they had pledged $500 million of investment, the two fields being the Rengan and the Soupetau.*" (*Transcript Day 1, pp. 98-99*)

60. On the second day of the hearings, Counsel somewhat qualified his position from the prior day, stating that "*East Soupetau, as we heard after the expert testimony, is likely not occupied by a particular company. I think the East Soupetau area is probably the least likely of the areas that, if we re-enter the country, we will face least the problem of a company being there already that we have to deal with.*" (*Transcript Day 2, p. 6*)

61. However, faced with the Claimant's somewhat contradictory positions, the Tribunal is compelled to find that the evidence does not sufficiently establish the availability of East Soupetau to justify ordering the issuance of an exclusive license to Claimant.

62. Claimant's counsel himself recognized that enforcement of specific performance was likely to encounter conflicting claims where third parties were occupying the areas. He stated at the hearing that "*even in the event that we are awarded injunctive relief in the form of demand to issue licenses, it is very likely that when we go to try to enforce*

those licenses, there will be people occupying those licenses and they will be extremely difficult to get." (*Transcript Day 1, p. 21*).

63. For all of the reasons stated above, it is the Tribunal's opinion that the circumstances here present render it materially impossible to implement a remedy of specific performance. Claimant's request for this relief is therefore denied.

III. Claim for Compensatory Damages (22.2-22.5)

64. Claimant has formulated a claim for compensatory damages on the basis of the delay in the issuance of the licenses. He argues that the licenses, if issued today, would have a considerably lower value than had they been issued in 2001.

1. Standard for Assessing Compensation

65. Article 36 (1) of the ILC Articles confirms that compensation is due insofar as damage caused by the wrongful act of the State has not been made good by way of restitution. Such compensation covers any financially assessable damages and lost profits, if established.

66. The Claimant requests compensation not for the value of the licenses which should have been issued, but for the difference in value between two hypothetical scenarios: the value in 2001, had there been no breach, i.e. Respondent had issued the licenses in 2001, and the value in 2009 as per the date of valuation by his expert witness Mr. Gustavson. This damage could not have been made good by restitution, even if the Tribunal had granted the claim for specific performance.

67. The Energy Charter Treaty does not provide the Tribunal with any guidance as to the standard of compensation to be applied (except in cases of expropriation, which the Tribunal in the Partial Award has established not to exist in the present case).

68. The Tribunal considers, however, that it need not decide which of the various standards and methodologies applied in other cases by other tribunals might be suitable in this case. The Claimant has chosen its own methodology. The Claimant has submitted a valuation based on the difference in the value of the licenses in the

two hypothetical scenarios stated above. The Tribunal notes that a value-based approach has been applied by a considerable number of investment tribunals for treaty breaches other than expropriation. The Claimant's expert witness, Mr. Gustavson, explicitly excluded an assessment of damages of the basis of the amounts invested (asset-based approach) as inappropriate on the facts of the present case (*Transcript, Day 1, page 96*).

2. Methodology for Calculating Compensation

69. The value of an asset can be assessed with different methodologies. Claimant's expert witness used the Discounted Cash Flow – Method ("DCF-method") to assess the "Expected Value" of the licenses in the two hypothetical scenarios. The DCF-method is a forward-looking projection calculating the present value of future cash flows to be generated from a project. As the World Bank explains, DCF-value

> *"means the cash receipts realistically expected from the enterprise in each future year of its economic life as reasonably projected minus that year's expected cash expenditure, after discounting this net cash flow for each year by a factor which reflects the time value of money, expected inflation, and the risk associated with such cash flow under realistic circumstances."*[3]

70. Provided certain requirements are met, it is an accepted method of assessing the value of an asset. It needs to be pointed out that the DCF-method does not calculate lost future profits. Lost Profits is conceptually different from the value of future cash-flows.

71. As a general rule assets need to qualify as *a going concern* and have a proven track record of profitability in order to be valued in accordance with the DCF-method. The World Bank defines a "going concern" as follows:

> *"- a "going concern" means an enterprise consisting of income-producing assets which has been in operation for a sufficient period of time to generate the data required for the calculation of future income and which could have been expected with reasonable certainty, if the taking had not oc-*

[3] World Bank Guidelines on the Treatment of Foreign Direct Investment, 1992, Sec. IV 6, available at: http://ita.law.uvic.ca/otherinvestmentinstruments.htm.

curred, to continue producing legitimate income over the course of its economic life in the general circumstances following the taking by the State."[4]

72. The Tribunal notes that, in other cases, investment treaty tribunals have rejected the application of the DCF-method where the project had not even started but was in a mere planning stage[5] or had operated for less than two years.[6]

73. The four Agreements with respect to which Claimant was entitled to receive licenses do not meet the standard for a going concern. The Respondent had denied to the Claimant the licenses necessary for starting exploration and Claimant had started neither exploration nor production. No oil or gas has been produced or even found by Claimant, and no income has been derived from any of the four areas. In fact, insofar as the Tribunal is aware, since the conclusion of the Agreements Claimant has not pursued any activities in the four project areas. The calculation of damages is thus an entirely forward-looking analysis without any past record of profitability.

74. However, the Tribunal considers that under exceptional circumstances a DCF-analysis might be appropriate where the investment project at issue had not started operation. The Tribunal recalls the considerations of the tribunal in the *Vivendi* (resubmitted) case:

> *"8.3.4. In the Tribunal's view, the likelihood of lost profits must be sufficiently established by Claimants in order to be the basis of compensable damages. The Tribunal also recognises that in an appropriate case, a claimant might be able to establish the likelihood of lost profits with sufficient certainty even in the absence of a genuine going concern. For example, a claimant might be able to establish clearly that an investment, such as a concession, would have been profitable by presenting sufficient evidence of its expertise and proven record of profitability of concessions it (or indeed others) had operated in similar circumstances."*

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[4] World Bank Guidelines on the Treatment of Foreign Direct Investment, Sec. IV 6.

[5] *PSEG and others v. Turkey*, ICSID Case No. ARB/02/5, Award of 19 January 2007(Vicuna, Fortier, Kaufmann-Kohler).

[6] See, e.g. Tecnicas Medioambientales Tecmed S.A. v. United Mexican States, ICSID Case No. ARB(AF)/00/2, Award of 29. May 2003 (Naon, Rozas, Verea).

> *[...]*
> *"8.3.10. A claimant which cannot rely on a record of demonstrated profitability requires to present a thoroughly prepared record of its (or others) successes, based on first hand experience (its own or that of qualified experts) or corporate records which establish on the balance of the probabilities it would have produced profits from the concession in question in the face of the particular risks involved, other than those of Treaty violation."* [7]

75. The Tribunal considers that the application might be justified, *inter alia*, where the exploration of hydrocarbons is at issue. The determination of the future cash flow from the exploitation of hydrocarbon reserves need not depend on a past record of profitability. There are numerous hydrocarbon reserves around the world, and sufficient data allowing for future cash flow projections should be available to allow a DCF-calculation.

76. However, no hydrocarbons have yet been found in the four areas. The four Agreements (Exhibits CL 4-7) provide that the exploration work was to be financed by the Claimant on "*Risk Conditions*" (Article 2 of each of the Agreements). If the exploration was successful, the Claimant would have had to perform *"the obtaining of industrial influx and determination of construction of the Operating Enterprise and Pipelines till the consumption or loading place"* (Article 3 of the Agreements). After complete pay-off of the costs made by the Claimant, a Joint Venture was to be created with an 80% (Claimant) / 20% (Respondent) profit sharing.

77. The Tribunal thus considers that there are four steps to pass before cash flow can be expected: financing of the exploration, finding hydrocarbons, financing the extraction and the sale. To determine whether the DCF-method can be applied to assess the value of the licenses, the following questions need to be analysed:

(1) Was Claimant able to finance the exploration for hydrocarbons?
(2) Would the exploration have been successful, i.e. Claimant found oil & gas reserves which could be exploited?

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[7] *Compania de Aguas de Aconquija S.A. and Vivendi Universal S.A. v. the Argentine Republic*, ICSID Case No. ARB/97/3, Schiedsspruch vom 20. August 2007 (Rowley, Kaufmann-Kohler, Bernal Verea).

(3) Would Claimant have been able to finance and perform the exploitation of any hydrocarbon reserves found?

(4) Would it have been possible to sell any hydrocarbons produced?

78. In analyzing these questions, the Tribunal needs to have regard that, at each step, it must be more likely than not that Claimant could have proceeded to the next step. A DCF-calculation cannot be based on mere speculation.

(1) Was the Claimant able to finance the exploration for oil & gas?

79. The Claimant never contended that he had his own financial means to finance the exploration in the four areas. His counsel submitted that Claimant had been in contact with financing institutions and would have been able to acquire grants and/or loan facilities for the exploration (see *Transcript, Day 2, p. 26-29*).

80. The evidence submitted is scarce, though. Essentially it consists of certain letters and e-mails submitted by Claimant shortly before the oral hearing as part of the materials on which the Claimant's expert would rely. The Tribunal has considered in particular the following documents on which emphasis was laid during oral hearing:

- A letter of recommendation for the Claimant, issued by the Vienna branch of Credit Lyonnais, dated 23 March 1998;

- An undated excerpt of an e-mail written by Ms. Cosic, Investment Officer in the oil, gas & chemical department of the International Finance Corporation (IFC), to the Claimant. Ms. Cosic refers to a "briefing" about the Claimant's plans in Tajikistan. She states that the Claimant's development plan seemed to be in a planning stage, and describes how the IFC undertakes a due diligence of projects to decide about a possible financing. She asked the Claimant to submit an "independent assessment of the fields' proved reserves";

- A letter of recommendation for Claimant's company, Vivalo, from the ambassador of Malaysia to Petronas, the Malaysian petroleum company,

dated, 15 March 2002. He recommends giving the Claimant's request positive consideration;

- A letter of recommendation fpr Claimant's company, Vivalo, from the ambassador of Respondent in Austria, dated 26 March 2000;

- A copy of an e-mail dated 30 August 2002 from a Mr. Grozier to Claimant, submitting an outline proposal by drillling consultants (which was not submitted to the Tribunal) and mentioning that he had some investors (not specified) "who could be interested based on this plan we are still in the initial negotiations stage";

- An e-mail from a Mr. Peter Darley from Halliburton, a well-known US company, to Claimant dated 10 December 1999. Mr. Darley thanks Claimant for sending some information on oil and gas prospects in Tajikistan, states that he forwarded the information to colleagues concerned with the region and asks for an explanation of the Claimant's role in developing those opportunities and whether third party studies about exploitable reserves had been undertaken; and

- A fax message from the company Crosco, dated 27 February 2001, to the ambassador of Respondent in Austria, inviting him to meetings in Zagreb to discuss future projects in Tajikistan. Representatives of INA, Crosco and Claimant's company Vivalo would be present.

81. The Tribunal carefully analysed these documents. It is clear that Claimant managed to interest a number of third parties regarding hydrocarbon projects in Tajikistan. It is also clear that third parties like the IFC and/or Crosco would have the means to finance the exploration for hydrocarbons.

82. However, these documents do not go beyond a mere expression of interest. There is no document on the record evidencing that any of these third parties was willing to finance the exploration in one of the four areas at hand subject to the granting of the licence by Respondent. Claimant has not explained what came out of these discussions and has not called any of the persons as a witness.

83. In short, the Tribunal has no factual evidence to conclude that Claimant would have acquired sufficient third-party financing for the exploration of the four areas, if he had been granted the licenses.

84. The Tribunal nevertheless would not exclude that Claimant would have been able to acquire third-party financing if Claimant had submitted evidence of his experience in similar ventures. Claimant's counsel so argued (*Transcript, Day 2, p. 29*), but submitted no evidence to sufficiently substantiate his assertions in this regard.

85. The Tribunal thus considers that Claimant has failed to discharge his burden of proof that he would have been able to acquire third-party financing for the exploration.

(2) Would the exploration have been successful, i.e. would Claimant have found hydrocarbon reserves which could be exploited?

86. The Claimant's expert, Mr. Gustavson, testified about the geological Probability of Success (POS) of finding exploitable hydrocarbon reserves in the four project areas. According to his testimony, the POS were as follows

Rengan	**13%**
Sargazon	**19%**
Yalgyzkak	**16%**
East Soupetau	**51%**

87. The Tribunal is prepared to accept Mr. Gustavson's testimony, although the source material on which he based his conclusions was not made available to it.

88. However, Mr. Gustavson's testimony means that in three of the four areas, it is far from likely that any hydrocarbon reserves would have been found. The Tribunal notes that, according to the witness testimony of Mr. Gustavson, there is no evidence that hydrocarbons have been found so far by the companies currently active in Rengan, Sargazon or Yalgyzkak (*Transcript, Day 1, p. 60*). For purposes of a forward-looking DCF-calculation, only East Soupetau offered a real likelihood of containing

hydrocarbons and, then, only with a serious doubt as to whether the hydrocarbons there could be economically exploited. (See *infra*, paragraph 92)

89. The Tribunal took note of the circumstantial evidence that, in Rengan and Sargazon, Gazprom was in the process of investing approx. US$ 500 million into exploration. It does not find this to be sufficient evidence that the areas contain proven reserves. As the Claimant's expert witness explained during the oral hearing, the decision to explore an oil field is not based on the Probability of Success, but is also dependent on the reserves hoped for: "*...even if the probability of success is very low, then if you have the chance to finding a giant oilfield, then you might still go ahead*" (*Transcript, Day 1, p. 138*). Thus, the alleged investments undertaken by Gazprom are not evidence, nor even an indication, that hydrocarbon reserves indeed exist in those fields.

90. The Tribunal thus concludes that a discovery of reserves with reasonable likelihood (for purposes of applying the DCF-method) only existed in the East Soupetau area. In Rengan, Yalgyzkak and Sargazon, finding hydrocarbons was far from likely. However, because of the internal rate of return hurdle referred to by Mr. Gustavson (see *infra*, para. 92), those hydrocarbons were unlikely to be economically exploitable.

(3) Would the Claimant have been able to finance and perform the exploitation of any hydrocarbon reserves found?

91. Assuming that commercially exploitable hydrocarbon reserves would have been found, the Tribunal considers it theoretically possible that Claimant could have obtained third-party financing for the exploitation of oil. The conditions for such third-party financing, however, are unclear.

92. Moreover, the evidence on the record is insufficient to conclude that third-party financing could have been acquired for East Soupetau. While the Probability of Success is the biggest of the four areas, Mr. Gustavson testified that the internal rate of return hurdle commonly required by oil companies was particularly low for this area according to his calculations and that this might render that area economically unattractive (*Transcript, Day 1, pp. 139-140*).

93. Consequently, any conclusion regarding a financing of the exploration would amount to speculation. The Tribunal is not prepared to do this.

(4) Would it have been possible to operate any joint ventures to be concluded and obtain a constant cash flow?

94. Claimant did not have any positive experience with the selling of hydrocarbons. His two joint ventures with the Respondent for the exploitation of oil fields failed for a variety of reasons. There is nothing on the record showing that Claimant ever successfully operated an oil or gas field in Tajikistan – or elsewhere - and derived any profits from it. Consequently, the future profitable operation and exploitation of any gas and oil reserves found may be possible, but cannot be projected with any reasonable degree of certainty.

3. Conclusion regarding Compensation

95. In summary, Claimant asks the Tribunal to accept the assumption that he would have been able to acquire financing for the exploration (but he had no definite offer of financing, just expressions of interest), that upon exploration he would have found hydrocarbons (although the probabilities were low and there is no evidence that any other company seems to have found hydrocarbons so far) and that he would have been able to exploit and sell the oil (although he had no proven experience in this field).

96. In the Tribunal's view, this entails simply too many unsubstantiated assumptions to justify the application of the DCF-method. The application of the DCF-Method fails from the outset by virtue of the failure to prove that financing was in fact available for the necessary exploration, even if Respondent had issued the licenses in 2001. The Tribunal notes that this not only affects the application of the DCF-method, but also destroys the causality between the breach committed by the State and the loss of the alleged future cash flows (or "lost profits", as it is characterized by Claimant).

97. Claimant has not submitted an alternative valuation of damages. Assuming that he also asked for lost profits as an alternative to DCF-value (his submissions were unclear), the Tribunal rejects this claim as being overly speculative for the reasons set

out above. The Tribunal considers that Claimant might have been able to sell the Agreements – and thus the right to the licenses – to a third party. However, this is of no avail to Claimant. His expert testified that the Expected Value calculated by him was different from a possible market value (*Transcript, Day 1, p. 96*). This was also the position taken by his counsel (*Transcript, Day 2, p. 25*). It was furthermore submitted that a valuation on the basis of comparable sales was not possible due to a lack of comparable transactions (Appraisal Report, p. 16; *Transcript, Day 1, p. 8*). Claimant's expert further testified that he had not calculated the amount invested and lost by Claimant (*Transcript, Day 1, p.97*), and Claimant's counsel explicitly relied on this in his closing statement (*Transcript, Day 2, p. 23-24*).

98. The Tribunal thus has to conclude that it has no substantiated basis upon which to make an assessment of damages, despite the Respondent's established liability and on-going breach of the BIT.

99. Since Claimant has not proved that he has suffered damages on account of Respondent's breach of the BIT, his claims for compensation are necessarily denied.

IV. Claim for Compensatory Damages if Licenses are not issued (22.6)

100. Claimant further requests that the Tribunal order that, if the licenses are not issued within six months as of the date of the coming into force of this Award, that Respondent be obliged to compensate Claimant for further damages suffered for any future lost profits to be calculated by the experts at a future date.

101. Claimant's request here is premised on the Tribunal having ruled in its favor as regards an order compelling Respondent to issue the requested licenses. Since the Tribunal has denied that request, the present claim likewise fails.

V. Claim for Future Damages (22.7)

102. The Claimant further requests that the "Respondent is to be held responsible for future damages that result from Respondent's actions or omissions of actions and cannot be calculated yet."

103. This request is inadmissible as presented, since it falls outside the scope of the Tribunal's mandate in this arbitration. In this quantum phase of the arbitration, the Claimant was provided the opportunity to present its evidence of damages resulting from the Respondent's breach of the ECT as determined in the Tribunal's Partial Award on Jurisdiction and Liability. To the extent that Claimant is now suggesting that Respondent should be held liable for other actions or omissions, or for damages which have not yet occurred, or may not yet be calculated, but which may occur in the future as a result of future circumstances, such matters are not properly before this Tribunal.

104. We form no opinion as to whether or not the Claimant may bring a further arbitration in the future for such damages based on future circumstances.

VI. Interest

105. The Tribunal has denied Claimant's request for compensatory damages. Consequently no interest can be awarded. The Tribunal thus need not decide whether the Claimant might have been entitled to compound interest at the requested rate.

D. Costs

106. The Tribunal is now faced with the task of deciding about the costs of the arbitration. The SCC Arbitration Rules differentiate between Costs of Arbitration, which are regulated in Article 43 and relate to the costs of the SCC Institute and the Tribunal, and costs incurred by a party which are regulated in Article 44 of the Rules.

107. Article 43 reads in pertinent part as follows:

> ***Article 43 Costs of the Arbitration***
>
> *(1) The Costs of the Arbitration consist of:*
>
> *i) the Fees of the Arbitral Tribunal;*
>
> *ii) the Administrative Fee of the SCC Institute; and*
>
> *iii) the expenses of the Arbitral Tribunal and the*

SCC Institute.

...

(5) Unless otherwise agreed by the parties, the Arbitral Tribunal shall, at the request of a party, apportion the Costs of the Arbitration between the parties, having regard to the outcome of the case and other relevant circumstances.

108. Article 44 reads in pertinent part as follows:

Article 44 Costs incurred by a party

Unless otherwise agreed by the parties, the Arbitral Tribunal may in the final award...upon the request of a party, order one party to pay any reasonable costs incurred by another party, including costs for legal representation, having regard to the outcome of the case and other relevant circumstances.

109. There is no evidence of any agreement between the Parties on the manner of sharing costs. Therefore, the above rules shall guide the Tribunal.

110. Claimant has advanced to the SCC Institute the full requested deposit towards the Costs of Arbitration in the amount of EUR 582,000, covering both phases of the arbitration. Claimant requests that the full Costs of Arbitration, as may be finally fixed by the SCC Institute, be reimbursed by Respondent.

111. Claimant has made cost submissions for its incurred costs in both phases of the arbitration. The Tribunal, in its Partial Award on Jurisdiction and Liability, had deferred a determination of costs until the Final Award.

112. Claimant's costs in connection with the first phase, which as mentioned above was limited to the issues of jurisdiction and liability, amounted to EUR 1,106,000, including Claimant's legal fees and other incurred costs.

113. Claimant's costs in connection with the second phase, leading to the Final Award in respect of Claimant's requests for relief and proof of quantum, amounted to EUR

36,500 in disbursements, US$21,299.81 in legal representation and US$35,084.04 in expert costs.

114. Respondent did not comment on Claimant's incurred costs with respect to either phase of the arbitration. Having reviewed Claimant's submissions in this regard, the Tribunal has found them to be rather succinct. However, the amount of the costs allegedly incurred is not disproportionate for a case of this size and complexity and we are therefore inclined to uphold them as reasonable.

115. The SCC Arbitration Rules give the Tribunal a certain discretion to award and allocate both the Costs of the Arbitration and the reasonable incurred costs of the Parties, taking into account the outcome of the case and other relevant circumstances.

116. The proceedings in this arbitration have been bifurcated. In the first phase, Claimant prevailed on the question of jurisdiction and on one of its claims of liability. On the other hand, it lost on all of its other claims of liability, including its primary claims related to the Baldjuvon and Petroleum SUGD joint venture companies. Claimant has not prevailed in the second phase of this arbitration relating to its requests for relief and damages.

117. At the same time, it is relevant to note that the proceedings in this arbitration have been rendered more complicated and more costly than they would otherwise have been due in part to Respondent's failure to participate, even after the jurisdiction of the Tribunal was established. The Tribunal went to great efforts throughout these proceedings to assure that Respondent was given a full opportunity to participate at every stage and, yet, Respondent persisted in disregarding its obligation to do so under the ECT.

118. Taking the above circumstances into account, we consider it fair and equitable to award to Claimant at least a portion of the Costs of the Arbitration and its incurred costs, notwithstanding that Claimant has not prevailed on most of its claims.

119. The Tribunal therefore, in its discretion, awards Claimant EUR 300,000 towards its incurred costs.

120. As Claimant has not requested interest on costs, in accordance with Section 42 of the Swedish Arbitration Act, no interest shall be awarded.

121. We find further that Respondent should reimburse to Claimant fifty percent (50%) of the Costs of the Arbitration (which are set out below in Section 122 below).

122. The Costs of the Arbitration have been determined by the SCC Arbitration Institute to be EUR 524,977 and SEK 8,125, comprised of the following:

SCC Arbitration Institute:	
Administrative Fee	EUR 49,083
Expenses	EUR 14,312
Expenses	SEK 8,125
Tribunal's Fees and Expenses:	
Jeffrey Hertzfeld	
Fees	EUR 200,000
Expenses	EUR 3,479
Per Diem Allowance	EUR 600
Dr. Richard Happ	
Fees	EUR 120,000
Expenses	EUR 5,970
Per Diem Allowance	EUR 1,050
Prof. Ivan Zykin	
Fees	EUR 120,000
Expenses	EUR 8,983
Per Diem Allowance	EUR 1,500

123. In accordance with Article 43(6) of the SCC Arbitration Rules, the Parties are jointly and severally liable to the arbitrators and the SCC Institute for the Costs of the Arbitration. As between the Parties, Respondent shall reimburse Claimant EUR 262,488 plus SEK 4,063 in accordance with para. 121 *supra*.

E. The Decision

For the reasons set out above, the Tribunal now **decides** as follows:

I. The Republic of Tajikistan is ordered to pay to Mohammad Ammar Al-Bahloul **EUR 300,000**, in reimbursement of a portion of Claimant's incurred costs in connection with the arbitration under Article 44 of the SCC Arbitration Rules.

II. The Parties are jointly and severally liable for payment of the Costs of the Arbitration under Article 43 of the SCC Arbitration Rules. The Costs of the Arbitration are determined to be EUR 524,977 and SEK 8,125, comprised of the following:

SCC Arbitration Institute:

Administrative Fee	EUR 49,083
Expenses	EUR 14,312
Expenses	SEK 8,125

Tribunal's Fees and Expenses:

Jeffrey Hertzfeld

Fees	EUR 200,000
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Per Diem Allowance	EUR 1,050

Prof. Ivan Zykin

Fees	EUR 120,000
Expenses	EUR 8,983
Per Diem Allowance	EUR 1,500

The Costs of the Arbitration will be drawn from the advances paid to the SCC Institute.

As between the Parties, the Republic of Tajikistan is ordered to reimburse Mohammad Ammar Al-Bahloul the amount of **EUR 262,488 plus SEK 4,083** as a portion of the Costs of the Arbitration under Article 43 of the SCC Arbitration Rules.

III. All other claims and requests for relief of either Party are denied.

Pursuant to Section 41 of the Swedish Arbitration Act (SFS 1999:116), the Parties are informed that any action against this Award regarding the payment of compensation to the arbitrators shall be brought before the Stockholm District Court within three (3) months from the date upon which a Party received the Award.

Place of Arbitration: Stockholm, Sweden
Date of Award: June 8, 2010

Dr. Richard Happ
Co-Arbitrator

Professor Ivan Zykin
Co-Arbitrator

Jeffrey M. Hertzfeld
Chairman