

International Centre for
Settlement of Investment Disputes
(ICSID)

In the Matter of the Arbitration between

COMPAÑÍA DEL DESARROLLO DE SANTA ELENA, S.A.

and

THE REPUBLIC OF COSTA RICA

Case No. ARB/96/1

RECTIFICATION OF AWARD

Date of dispatch to the parties: June 8, 2000

President: Mr. L. Yves FORTIER, C.C., Q.C.

Members of the Tribunal: Professor Sir Elihu LAUTERPACHT, C.B.E., Q.C.
Professor Prosper WEIL

Secretary of the Tribunal: Ms. Margrete Stevens

In Case No. ARB/96/1.

Between: **Compañía del Desarrollo de Santa Elena, S.A.**

Represented by:

Messrs. Alexander E. Bennett, Kenneth I. Juster, Michael
A. Lee and David B. Bergman
of the law firm *Arnold & Porter*, as counsel

CLAIMANT

And

The Republic of Costa Rica

Represented by:

Mr. Charles N. Brower, Ms. Abby Cohen Smutny, Ms. Anne
D. Smith Mr. Frank Panopoulos and Mr. Jamie M. Crowe
of the law firm *White & Case*, as counsel;

RESPONDENT

THE TRIBUNAL

Composed as above,

After deliberation,

Makes the following DECISION:

1. On 17 February 2000, the Tribunal's Award (hereinafter, the "Award") in the present arbitration was rendered, and certified copies dispatched to the parties, Compañía del Desarrollo de Santa Elena, S.A. (hereinafter, "Claimant") and the Republic of Costa Rica (hereinafter, "Respondent"), by the Secretary-General of the International Centre for Settlement of Investment Disputes (hereinafter, "ICSID"), in accordance with Rule 48 of the ICSID Rules of Procedure for Arbitration Proceedings in effect from 26 September 1984 (hereinafter, the "Arbitration Rules").
2. On 30 March 2000, Claimant submitted to the Secretary-General of ICSID a Request for Rectification of the Award (hereinafter, the "Request"), accompanied by the prescribed lodging fee, in accordance with Arbitration Rule 49(1).
3. The Request, having been duly registered and copied to the parties along with notice of its registration, was transmitted to the Tribunal on 7 April 2000, in accordance with Arbitration Rule 49(2).
4. On 25 April 2000, pursuant to Arbitration Rule 49(3), the President of the Tribunal informed the parties of the Tribunal's decision that it would not be necessary for the Tribunal to meet in order to consider the Request, and fixed the time limits for the filing of Respondent's written observations on the Request and of Claimant's reply.
5. For the purpose of Arbitration Rule 49(4), reference is hereby made to the terms of the Award relating to the matters set out in sub-paragraphs (a) to (g) of Arbitration Rule 47(1).
6. Having considered Claimant's Request as well as the parties' further submissions, contained in Respondent's observations dated 3 May 2000 and Claimant's reply of 11 May 2000, the Tribunal has unanimously reached the present Decision in respect of the three matters raised in the Request.

Paragraph 27 of the Award

7. As requested by Claimant, and given the lack of objection by Respondent, a clerical error in paragraph 27 of the Award is corrected by deletion of the words “not” and “any” in the second sentence of that paragraph.¹

Paragraph 45 of the Award

8. As requested by Claimant, and in view of the absence of any objection in this regard by Respondent, the name of “Mr. Landauer” in the fifth line of the last subparagraph of paragraph 45 of the Award is changed to “Mr. Beauchamp”, so as to identify correctly the witness in question.

Paragraph 61(iii) of the Award

9. At page 2 of its 30 March 2000 Request, Claimant states that paragraph 61(iii) of the Award “...misstates CDSE’s position on the relationship of Costa Rican law to international law,” and requests that that paragraph “... be changed to reflect CDSE’s actual position on this issue.”
10. In its 3 May 2000 observations, Respondent denies that the paragraph in question requires rectification, and submits that the Tribunal’s reasoning, as expressed therein, may not in any event be revised in the context of a rectification request under Article 49 of the ICSID Convention.
11. In its 11 May 2000 reply, Claimant reiterated the submissions made in its Request.
12. In the view of the Tribunal, no rectification of paragraph 61(iii) of the Award is required, and this element of Claimant’s Request is therefore denied, for the reasons explained below.
13. Claimant fails to distinguish—as the Award explicitly does—two separate though related issues: the question of whether Costa Rican or international law applies to the dispute, which is dealt with in Section I of the Award (“*Applicable Law*”); and the specific

¹ The sentence, as corrected, reads: “The Memorial was accompanied by supporting documentation. [footnote omitted]”

rules and principles of the applicable law that determine the compensation owed Claimant, which are analysed in Sections J, K and L of the Award (“*Standard of Compensation*”, “*Valuation*” and “*Interest*”).

14. Paragraph 61 of the Award summarises Claimant’s position concerning whether Costa Rican or international law applies (as does paragraph 62 with respect to Respondent’s position). It says nothing about particular rules of law, such as the date as at which fair market value of the expropriated property is to be calculated, or about Claimant’s position in that regard. As mentioned above, the determination of particular rules and principles of law is addressed separately, and explicitly, in subsequent sections of the Award, at paragraphs 68 and following. Specifically, paragraph 75 of the Award reads, in part, as follows:

“Claimant states that the fair market value of the Santa Elena Property, based on its highest and best use in the market place, is equivalent to its present day value, undiminished by any expropriatory actions of the Government and, in particular, by any environmental statutes or regulations enacted after 1978. [footnote omitted]”

15. In sum, Claimant’s position is described in the Award as follows: Costa Rican law is applicable to the dispute, and is not inconsistent with international law (paragraph 61(iii)); the relevant rules of law require that compensation for expropriation be measured at the time of payment, without any diminution in value that may be due to the expropriatory acts (paragraph 75). As Claimant’s submissions in the arbitration (including the references cited in footnote 28 at paragraph 61(iii) of the Award²) and the assertions made in the context of its Request make clear, this is an accurate summary of Claimant’s stated position. As a result, there is no need to rectify paragraph 61(iii) of the Award.

² In its 11 May 2000 reply to Respondent’s observations dated 3 May, Claimant states that the quotation attributed to it at paragraph 61(iii) of the Award cannot be found in the references cited in footnote 28. In fact, the quotation comprises the entirety of the second sentence of the first paragraph at page 75 of Claimant’s Reply Memorial dated 21 August 1998.

16. For all of the foregoing reasons, the Tribunal unanimously **DECIDES:**

1. Paragraph 27 of the Award is rectified by the deletion of the words “not” and “any” in the second sentence.
2. Paragraph 45 of the Award is rectified by the substitution of the words “Mr. Beauchamp” for the words “Mr. Landauer” in the fifth line of the last sub-paragraph.
3. No rectification is required in respect of paragraph 61(iii) of the Award.
4. Each party shall bear the expenses incurred by it in connection with the present Decision. The costs, including the fees of the members of the Tribunal, shall be borne by the parties in equal shares.

L. Yves Fortier, C.C., Q.C.
President

Sir Elihu Lauterpacht, C.B.E., Q.C.
Arbitrator

Professor Prosper Weil
Arbitrator