***Wena Hotels v Egypt* (UK-Egypt BIT)**

AREAS OF POLICY AFFECTED: tourism (hotels regulation), public contracting (operation of hotels), public order (seizure of facilities).

CASE SUMMARY: The claim arose out of a contract between the claimant, a United Kingdom-based company, and the Egyptian Hotels Company (EHC), an Egyptian state company. The contract assigned to the claimant rights to operate and manage two luxury hotels in Egypt.

A series of disputes over the contract came to a head when the EHC made an administrative decision to evict the claimant from the hotels. The eviction took place with the use of police force that resulted in significant damage to the hotel properties. Neither hotel was returned to the claimant in its pre-seizure condition. Egypt acknowledged the illegality of the eviction but alleged corrupt practices on the part of the claimant. These allegations were dismissed by the tribunal.

The claimant argued that Egypt unlawfully expropriated its property and failed to ensure fair and equitable treatment and full protection and security for the investment in breach of the BIT. The tribunal awarded damages of approximately US $20,000,000 (with costs and interest at 9%, compounded quarterly, which was a higher rate than permitted under Egyptian law).

Egypt requested that the award be annulled on the basis, among other things, that the tribunal manifestly exceeded its powers by failing to apply Egyptian law in the calculation of the applicable interest. The application was rejected by an ICSID annulment panel, which upheld the decision to calculate interest based on international law (authorized, the panel found, by the BIT) rather than domestic law (as provided in the contract underlying the investment).

COMMENT: The case demonstrates how investment arbitration may be used to provide relief to investors whose interests were harmed by state conduct which the state itself acknowledged was wrongful. It demonstrates some of the difficulties of a state seeking to rely on alleged corruption of local officials as a defence or bar to an investor claim. Finally, the case shows how tribunals may rely on general provisions in an investment treaty to displace more specific terms in a contract between an investor and a state entity.

Source: www.iiapp.org (May 2011), based on information in publicly-available awards and materials in known investment arbitrations (for texts of awards, see www.italaw.com). This report was produced by a research team coordinated by professor Gus Van Harten (gvanharten@osgoode.yorku.ca) of Osgoode Hall Law School of York University in Toronto, Canada.