Chapter 4

ADMISSIBILITY

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I INTRODUCTION

Tribunals seized to resolve disputes pursuant to bilateral investment treaties (BITs) under either the ICSID Convention or the UNCITRAL Arbitration Rules draw distinctions between the concepts of 'jurisdiction' and 'admissibility'. The term 'admissibility' is not addressed in the ICSID Convention, the UNCITRAL Arbitration Rules or BITs. It has been observed that the concept of admissibility 'partakes of its generic meaning in the general theory of law'.[2] This chapter explores the genesis of the concept of admissibility and the various contexts in which the concept has been applied by ICSID tribunals.

Even though the concept of admissibility is discussed and has served as a basis for dismissal of BIT claims, at least one tribunal has questioned its power to dismiss the claim based on admissibility. In *Methanex v. United States*, the tribunal found that it had no power to dismiss a claim based on admissibility, noting the following:

> *There is here no express power to dismiss a claim on the grounds of "inadmissibility", as invoked by the USA; and where the UNCITRAL Arbitration Rules are silent, it would be still more inappropriate to imply any such power from Chapter 11 . . . It is unnecessary to develop these materials further.*[3]

The *Methanex* tribunal specifically referred to Article 79(1) of the Rules of Court of the International Court of Justice (ICJ) concerning preliminary objections and referring to 'admissibility of the application' before the court,[4] and concluded that it had 'no express or implied power to reject claims based on inadmissibility'.[5] In *Methanex*, the respondent argued that the claims were inadmissible on two grounds. First, because under customary international law creditors' claims are inadmissible if they stem solely from a measure's effect on the debtor, there must be an action that directly affects the creditor's right.[6] Second, the

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2 *Abaclat v. Argentine Rep*, ICSID Case No. ARB/07/5, Dissenting Opinion to Decision on Jurisdiction and Admissibility, paragraph 17 (4 August 2011) ('As with jurisdiction, the concept of admissibility in international law partakes of its generic meaning in the general theory of law, but is further particularized in function of the specificities of international adjudication, including its consensual basis').

3 *Methanex Corp v. US*, First Partial Award, paragraphs 124 and 126 (7 August 2002).

4 id. at paragraph 125.

5 id. at paragraph 126.

6 *Methanex Corp v. US*, Respondent's Memorial on Jurisdiction and Admissibility, page 26 (13 November 2000). The respondent relied on international customary law authorities for the proposition

respondent argued that the claimants failed to identify an international legal obligation owed to it that was violated. In this regard, the respondent relied on *Barcelona Traction, Light and Power (Belgium v. Spain)* holding that:

> *[i]n order to bring a claim in respect of the breach of such an obligation, a State must first establish its right to do so, for the rules on the subject rest on two suppositions: The first is that the defendant State has broken an obligation towards the national State in respect of its nationals. The second is that only the party to whom an international obligation is due can bring a claim in respect of its breach.*[7]

Nonetheless, the concept of admissibility has been applied by a number of tribunals in the context of procedural irregularities, which have been held to prevent the hearing of the case or to be a basis for dismissing claims because of conduct on the part of the claimant. Indeed, it has been observed that the concept of admissibility has become so important that many awards focus more on admissibility than on jurisdiction.[8]

II THE TERM 'ADMISSIBILITY' IN THE PRACTICE OF NON-INVESTMENT TRIBUNALS

The term 'admissibility' appears in the rules or procedures of several courts of international law. For example, the Rules of Court of the ICJ[9] Article 79 defines admissibility as follows:

> *Any objection by the respondent to the jurisdiction of the Court or to the admissibility of the application, or other objection the decision upon which is requested before any further proceedings on the merits, shall be made in writing as soon as possible, and not later than three months after the delivery of the Memorial. Any such objection made by a party other than the respondent shall be filed within the time limit fixed for the delivery of that party's first pleading.*

Before deciding the case, the court must determine as a preliminary matter both the issue of jurisdiction and admissibility. Jurisdictional issues in the ICJ practice 'are those which ultimately derive from whether the Court has the right and power to consider the case brought by a state', while issues of admissibility determine whether the case itself is one proper for determination when brought before the court.[10] In ICJ practice, the respondent's

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that a creditor must have suffered 'direct and immediate loss' from the government measure. id. (citing Gillian M White, 'Wealth Deprivation: Creditor and Contract Claims', in *International Law of State Responsibility for Injuries to Aliens* 171, 175 (1983)).

7 id. (quoting 1970 ICJ 3, 33 paragraph 35 (5 February 1970) (Judgment)).

8 Gerold Zeiler, 'Jurisdiction, Competence and Admissibility of Claims in ICSID Arbitration Proceedings', in *International Investment Law for the 21st Century: Essays in Honour of Christoph Schreuer* (2009) page 2.

9 Under the United Nations system, the ICJ is the 'principal judicial organ' charged with two main functions: to assist in the resolution of disputes between states, and to provide advisory opinions to specified international organisations. See UN Charter Articles 92–96.

10 S Gozie Ogbodo, 'An Overview of the Challenges Facing the International Court of Justice in the 21st Century', 18 *Ann Surv Int'l & Comp L* 93, 98 (2012), citing to Richard K Gardiner, International Law 488 (2003).

objections to admissibility may be grounded in one or more of the following: (1) lack of *locus standi* by the applicant, (2) the necessity to join a third party, (3) the mootness of the dispute or (4) the existence of local remedies that have not been exhausted.[11]

The Articles on Responsibility of States for Internationally Wrongful Acts similarly provide that a claim is inadmissible if (1) the claim is not brought in accordance with any applicable rule relating to the nationality of claims; or (2) the claim is one to which the rule of exhaustion of local remedies applies and any available and effective local remedy has not been exhausted.[12] Another example of definition of the concept of admissibility is contained in Article 35 of the European Convention on Human Rights. Under that provision, the court can reject applications as inadmissible if (1) domestic remedies have not been exhausted; (2) application is anonymous or substantially the same as a matter already examined by the court; (3) the application is incompatible with the provisions of the Convention, manifestly ill-founded or constitutes an abuse of right; or (4) the applicant has not suffered significant disadvantage.[13] The obligation to exhaust domestic remedies is based on customary international law and is intended to allow national courts to remedy the violation. The concept of 'abuse of right' is understood according to general legal theory, namely the harmful exercise of a right for purposes other than those for which it is designed.[14] The European Court of Human Rights has issued a detailed *Practical Guide on Admissibility Criteria* with explanations and examples of each ground for rejection of an application based on admissibility.[15]

III ADMISSIBILITY AND JURISDICTION IN THE PRACTICE OF ICSID TRIBUNALS

Admissibility has been distinguished from jurisdiction by investment tribunals. It has been accepted by a number of tribunals that, although jurisdictional objections are aimed at the tribunal authority to decide the case, challenges of admissibility are rooted in a defect of the claim.

11 S Gozie Ogbodo, 'An Overview of the Challenges F acing the International Court of Justice in the 21st Century', 18 *Ann Surv Int'l & Comp L* 93, 98 (2012). Standing (*locus standi*) is defined as 'the requirement that a State seeking to enforce the law establishes a sufficient link between itself and the legal rule that forms the subject matter of the enforcement action'. That sufficient link is the existence of an interest in the matter. See Sebastián A Green Martínez, 'Locus Standi Before the International Court of Justice for Violations of the World Heritage Convention', *Transnat'l Disp Mgmt* 5 (2013).

12 G A Res 56/83, Responsibility of States for Internationally Wrongful Acts (12 December 2001) Article 44.

13 European Convention on Human Rights and Fundamental Freedoms Article 35, 4 November 1950, 213 UNTS 221.

14 Cases in which the Court has found an abuse of the right include: provision of misleading information; use of offensive language; violation of the obligation to keep friendly settlement proceedings confidential; application manifestly vexatious or devoid of any real purpose. European Court of Human Rights, *Practical Guide on Admissibility Criteria* 37–39 (2014), available at www.echr.coe.int/Documents/Admissibility_guide_ENG.pdf.

15 id.

In *Waste Management Inc v. United Mexican States*, the dissent summarised the practice as follows:

> *International decisions are replete with fine distinctions between jurisdiction and admissibility. For the purpose of the present proceedings it will suffice to observe that lack of jurisdiction refers to the jurisdiction of the Tribunal and inadmissibility refers to the admissibility of the case. Jurisdiction is the power of the tribunal to hear the case; admissibility is whether the case itself is defective – whether it is appropriate for the tribunal to hear it. If there is no title of jurisdiction, then the tribunal cannot act.*[16]

This definition is reminiscent of Professor Brownlie's distinction between the two concepts. Professor Brownlie observes that '[a]n objection to the admissibility of a claim invites the tribunal to dismiss (or perhaps postpone) the claim on ground which, while it does not exclude its authority in principle, affects the possibility or propriety of its deciding the particular case at the particular time.'[17] Under this approach, the tribunal should first determine whether it has jurisdiction over the dispute and, once that jurisdiction has been confirmed, address the admissibility of the claims. But some tribunals have been less willing to draw a clear distinction between jurisdiction and admissibility. In *Consorzio Groupement LESI-DIPENTA v. Algeria*, the tribunal acknowledged at the outset that objections of jurisdiction and admissibility 'must be dealt with separately and successively, because they deal with different questions'.[18] Nonetheless, because the claimant was not the holder of the rights under the contract, the tribunal found both that its claims were inadmissible and that the tribunal did not have jurisdiction over the claims.[19] In *Pan American Energy LLC and BP Argentina Exploration Company v. Argentine Republic* the tribunal held: 'there is no need to go into the possible – and somewhat controversial – distinction between jurisdiction and admissibility. Whatever the labeling, the parties have presented their case on the basis of the six objections raised by the Respondent.'[20]

The recent decision in *Abaclat v. Argentina* demonstrates the challenges associated with determining the nature of the objection. In *Abaclat v. Argentina*, the first investment dispute dealing with mass claims, the tribunal decided that it had jurisdiction to hear the claims of over 60,000 Italian investors against Argentina under the ICSID Convention and the Argentina–Italy BIT.

16 ICSID Case No. ARB(AF)/98/2, Dissenting Opinion to Award, paragraphs 57–58 (8 May 2000), 15 ICSID Rev 241, 265 (2000). The distinction was emphasised by Professor Abi-Saab as follows: 'Generically, the admissibility conditions relate to the claim, and whether it is ripe and capable of being examined judicially, as well as to the claimant, and whether he or she is legally empowered to bring the claim to court.' *Abaclat v. Argentine Rep*, ICSID Case No. ARB/07/5, Dissenting Opinion to Decision on Jurisdiction and Admissibility, paragraph 18 (4 August 2011).

17 James Crawford, *Brownlie's Principles of Public International Law 693* (8th edition 2012).

18 ICSID Case No. ARB/03/08, Award, paragraph 2 (10 January 2005).

19 id. at paragraph 40 ('In the end, because the Claimant was not the holder of the rights and obligations of the Contract under which the investment was made, it follows that its Request for Arbitration is inadmissible and that it cannot claim to be an investor within the meaning of Article 25(1) of the Convention. For this reason, not only is the Request for Arbitration inadmissible but, applying the provisions of the Convention, the Arbitral Tribunal has no jurisdiction, since it can consider the matter only at the request of an investor within the meaning of the Convention.')

20 ICSID Case No. ARB/03/13, Decision on Preliminary Objections, paragraph 54 (7 July 2006).

Noting that the differences between jurisdiction and admissibility are 'not always clear', the majority (Professor Tercier and Professor van den Berg) applied the following criteria in distinguishing the two kinds of objections:

> *If there was only one Claimant, what would be the requirements for ICSID's jurisdiction over its claim? . . . If the issue raised relates to another aspect of the proceedings, which would not apply if there was just one Claimant, then it must be considered a matter of admissibility and not of jurisdiction.*[21]

In a dissent, Professor Abi-Saab disagreed with the majority conclusion that the number of the claimants was an issue of admissibility and not of jurisdiction. Professor Abi-Saab criticised the majority for adopting an 'extremely narrow, in fact partial, concept of jurisdiction'.[22] Professor Abi-Saab viewed the number of claimants as bearing on the 'consent to arbitrate' thus being an issue of jurisdiction. The dissent quoted from the US Supreme Court decision in *Stolt-Nielsen SA v. Animal Feeds International Corp* holding that 'class action arbitration changes the nature of arbitration to such degree that it cannot be presumed the parties consented to it by simply agreeing to submit their disputes to an arbitrator' and that 'changes brought about by the shift from bilateral arbitration to class action arbitration [are] fundamental'.[23]

Whether the objection is based on jurisdiction or admissibility has significant practical implications. In bifurcated cases where issues of jurisdiction are separate from issues of liability, tribunals will deal with admissibility issues in the merits rather than the jurisdictional phase. In some cases, issues of jurisdiction are decided at the same time as issues of admissibility as tribunals have broad discretion when to decide on admissibility.[24]

IV DISMISSAL ON THE BASIS THAT THE CLAIMS ARE 'PREMATURE'

In *SGS Société Générale de Surveillance SA v. Philippines* the dispute arose out of a service contract stipulating that disputes should be referred for resolution to the courts of the Philippines. Nonetheless, when the investor sought protection under the BIT between Switzerland and the Philippines, the Philippines objected on the basis that the investor's claim was for breach of contract and as such should be brought before a Philippines court. The tribunal determined that it had jurisdiction over the dispute because the treaty extended to contractual claims and the investor had expressly asserted breaches of the treaty.

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21 *Abaclat v. Argentine Rep*, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility, paragraph 249 (4 August 2011). The tribunal found that the issue was one of admissibility: 'Assuming the Tribunal has jurisdiction over claims of several individual claimants, it is difficult to conceive why and how the Tribunal could lose jurisdiction where the number of claimants outgrows a certain threshold . . . what is the relevant threshold? . . . and can the Tribunal really "lose" jurisdiction it has when looking at Claimants individually?' id. at paragraphs 484–490.

22 *Abaclat v. Argentine Rep*, ICSID Case No. ARB/07/5, Dissenting Opinion to Decision on Jurisdiction and Admissibility, paragraph 126 (4 August 2011).

23 id. at paragraphs 150–51 (quoting 130 S Ct 1758, 1774 (2010)).

24 In *Abaclat*, the tribunal issued a decision on jurisdiction and admissibility. *Abaclat v. Argentine Rep*, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility (4 August 2011).

The tribunal, nevertheless, found that it was impeded from hearing the dispute, and the claims were inadmissible:

> *The question is whether a party should be allowed to rely on a contract as the basis of its claim when the contract itself refers that claim exclusively to another forum. In the Tribunal's view the answer is that it should not be allowed to do so, unless there are good reasons, such as force majeure, preventing the claimant from complying with its contract. This impediment, based as it is on the principle that a party to a contract cannot claim on that contract without itself complying with it, is more naturally considered as a matter of admissibility than jurisdiction.*[25]

The tribunal thus found that until the question of the scope of the respondent's obligation was clarified by agreement between the parties or by Philippine courts, a decision by an ICSID tribunal would be 'premature'.[26] Citing to Brownlie, the tribunal also observed that 'the analogous rule of exhaustion of local remedies is normally a matter concerning admissibility rather than jurisdiction in the strict sense.'[27]

V DISMISSAL ON ADMISSIBILITY BASED ON ALLEGED WRONGDOING BY THE INVESTOR

Perhaps uniquely in the investment treaty context, tribunals have applied the concept of admissibility to dismiss claims on the basis of the alleged wrongdoing by the investor. For example, in *Plama v. Bulgaria*[28] the tribunal found that the effect of the claimant's fraud and illegal conduct was to 'preclude the application of the protections of the ECT'.[29] The respondent had argued that the claimant had obtained the investment through unlawful means rendering the claim inadmissible.[30] The tribunal bifurcated the proceeding in jurisdiction and merits phase. In the decision on jurisdiction, the tribunal concluded that the respondent's allegations on misrepresentation did not deprive it of jurisdiction in this case and decided to examine these allegations during the merits phase.[31] The analysis section of the *Plama* award on the merits did not use the term 'admissibility'. But in substance, the tribunal adopted the respondent's arguments finding that 'the substantive protections of the ECT cannot apply to investments that are made contrary to law'.[32] In its reasons, the tribunal stated that granting the protection of the Energy Charter Treaty (ECT) would be contrary to the principle of *nemo auditur propriam turpitudinem allegans* – no one is heard when alleging one's own wrong.[33] The tribunal referred to the decisions in *Inceysa v. El Salvador* and *World*

25 ICSID Case No. ARB/02/6, Decision of the Tribunal on Objections to Jurisdiction, paragraph 154 (29 January 2004).

26 id. at paragraph 155.

27 id. at paragraph 154 (citing Brownlie, *Principles of Public International Law 681* (6th edition 2003)).

28 *Plama Consortium Ltd v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Award (27 August 2008). The tribunal composed of Carl F Salans (president), Albert Jan van den Berg (appointed by claimant) and V V Veeder (appointed by Bulgaria).

29 id. at paragraph 135.

30 id. at paragraph 96.

31 id. at paragraph 97.

32 id. at paragraph 139.

33 id. at paragraph 141.

Duty Free v. Kenya invoking the principle of good faith, respect for the law and international public policy. The tribunal thus dismissed the claims because of the conduct on the part of the investor, not because of lack of jurisdiction.

Brownlie lists five grounds for inadmissibility of interstate claims: (1) the existence of legal interest on part of the claimant; (2) necessary third parties; (3) mootness of the dispute as a result of events arising after the complaint was filed; (4) extinctive prescription (i.e., unreasonable lapse of time in presentation of international claim; and (5) waiver.[34] Under separate 'other grounds', Brownlie observes that '[t]here may be a residue of instances in which questions of inadmissibility and "substantive" issues are difficult to distinguish. This is the case of the so-called "clean hands" doctrine, according to which a claimant's involvement in activity unlawful either under municipal law or international law may bar the claim.'[35] Interestingly, Brownlie observed that the ICJ has never applied the doctrine even in cases where it could have done so.[36] Crawford's *Second Report on State Responsibility*[37] includes chapter V, entitled 'Circumstances precluding wrongfulness'. A section of chapter V entitled 'Possible justifications or excuses not included in chapter V' contains a subsection entitled 'The so-called "clean hands" doctrine'.[38] The report notes that the doctrine of unclean hands has hardly been referred to in the International Law Commission's previous work on state responsibility.[39] Citing Salmon, the report notes that the doctrine has been applied in a series of decisions of the United States–Great Britain Mixed Commission set up under a Convention of 8 February 1853 for the settlement of shipowners' compensation claims. These cases were 'all characterized by the fact that the breach of international law by the victim was the sole cause of the damage claimed, [and] that the cause-and-effect relationship between the damage and the victim's conduct was pure, involving no wrongful act by the respondent State'.[40] Considering that chapter V was not concerned with procedural issues or admissibility of claims, the report explained the Special Rapporteur's view that there was thus no basis to include the clean hands doctrine as a 'new circumstance precluding wrongfulness'.[41] The Special Rapporteur concluded that 'it is not possible to consider the "clean hands" theory as an institution of general customary law'.[42]

The doctrine of *nemo auditur propriam turpitudinem allegans* has been discussed not only by investment tribunals, but also by national courts. By way of comparison, in French tort law, for example, illegality has for a long time played a major role in discarding the protection of interests held to be illegitimate. The discussion turned mainly around the admissibility of claims brought by concubines who suffered material and non-material damage as a result of their partner's death in fatal accidents. The interest of such secondary

34 James Crawford, *Brownlie's Principles of Public International Law 697–701* (8th edition 2012).

35 id. at 701.

36 id. at 701 n. 66.

37 *Second Rep on State Responsibility*, UN Doc A/CN.4/498 and Add 1-4 (1999) (James Crawford, Special Rapporteur). The scope of the report is to 'continue the task, begun in 1998, of systematically considering the draft articles in the light of the comments of Governments and developments in State practice, judicial decisions and in the literature'. id. at 9.

38 id. at paragraph 332.

39 id. at paragraph 333.

40 id. at paragraph 334 (citing Jean Salmon, 'Des "mains propres" comme condition de recevabilité des réclamations internationales', 10 *Annuaire français de droit international*, 259 (1964)).

41 id. at paragraph 336.

42 id.

victims was long regarded as being illegitimate. Since the 1970s, however, there has been strong support for the opinion that the maxim *nemo auditur propriam turpitudinem allegans* could not be invoked to dismiss an action in tort, and that the participation of the victim in the wrongful act was to be treated as an instance of contributory negligence that could lead to partial, or even total, exoneration of the defendant.[43] Whether the doctrine of clean hands should be considered as a basis of erasing the wrongfulness of the state's conduct, or to what extent the wrongfulness of the investor conduct has contributed to the injury suffered by it, are not issues that have so far received attention in the decisions of investment tribunals.

VI ADMISSIBILITY OF EVIDENCE

In the US federal legal system, the term 'admissibility' is used in the context of evidence. For evidence to be presented in legal proceedings, in addition to being relevant to factual proposition in the case, it also must be admissible. The concept of admissibility allows the court to exclude evidence that may otherwise be relevant or material. Two prominent examples of such rules of admissibility or rules of exclusion are the rule against hearsay evidence and the rule against character evidence. In the United States, Federal Rule of Evidence 404(a)(1) bars the use of evidence of a person's character 'to prove that on a particular occasion the person acted in accordance with the character' and Federal Rule of Evidence 404(b)(1) provides that evidence of a crime or wrong is not admissible 'to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character'.[44]

In the context of ICSID proceedings, parties also have objected to the use of documents in evidentiary hearings on the basis of their admissibility; although it is not always clear whether the parties refer to inadmissible documents as documents that are otherwise relevant or have used the term 'admissibility' as synonymous with 'relevancy'. In *Methanex Corporation v. United States*, the tribunal held certain documents illegally obtained by Methanex to be inadmissible. The documents were found to be obtained by Methanex 'by deliberately trespassing onto private property and rummaging through dumpsters inside the office-building for other persons' documentation'.[45]

In *Abaclat v. Argentina*, the tribunal was seized to decide on the admissibility of documents for witness and expert examination at the hearing. The claimants had objected to the respondent's proposed use of documents during the hearing, because the documents were not 'within the scope of admissible examination, i.e. to documents relevant to the direct testimony by Claimants' experts and witnesses'. The claimants had also objected on the asserted basis that the documents violated the tribunal's confidentiality order and the respondent acted in bad faith in not disclosing those documents earlier.[46] The tribunal issued a detailed procedural order addressing whether certain categories of documents were admissible or not, but the order did not set forth a standard or definition of admissible evidence. The

43 See Walter van Gerven, Pierre Larouche and Jeremy Lever, *Cases, Materials and Text on National, Supranational and International Tort Law* section 7.3.1 (2000), available at www.casebooks.eu/documents/tortLaw/heading7.3.1.pdf.

44 Fed R Evid 404(a)–(b).

45 *Methanex Corporation v. United States of America*, UNCITRAL, Final Award of the Tribunal on Jurisdiction and Merits (3 August 2005) Pt II, chapter I, paragraph 55.

46 *Abaclat v. Argentine Rep*, ICSID Case No. ARB/07/5, Procedural Order No. 4, paragraphs 37–39 (19 March 2000).

tribunal ruled that 'the use of these documents may not serve to unduly extend the scope of admissible examination for the jurisdictional hearing'.[47] Claimants had also objected to the use of a DVD and its transcript of an Italian TV show broadcast discussing Italian court decisions concerning proceedings initiated by the claimants, and intended to be used for cross-examination by the respondent of the claimants' expert because of (1) the fact that the statements made in this TV show are not witness testimony, (2) the alleged unreliability of the source and (3) the late filing of this material.[48] After expressing concern about the time the respondent intended to use with the particular witness, the tribunal allowed the use of the material requested by the respondent subject to 'the Tribunal reserv[ing] the right to interrupt the examination of [the claimants' expert] in case it deems that Respondent's examination is beyond the scope of what is necessary and appropriate'.[49] Thus, in this case, even though the claimants' objections were on the basis of admissibility and what the claimant was alluding to were concerns about the quality of the evidence, the tribunal generally found the material to be admissible (even though it did not formulate what it viewed as admissible evidence) but reserved for itself the right to exclude it on the basis of judicial economy.

In the recent decision of the *ad hoc* committee in *Ioan Micula, Viorel Micula, SC European Food SA, SC Starmill SRL and SC Multipack SRL v. Romania*,[50] the respondent sought to introduce into the record eight factual exhibits concerning various enforcement proceedings. Following the claimants' objection on admissibility grounds, the committee denied the request on the basis that 'the new evidence was not directly relevant to the grounds for annulment.'[51]

VII CONCLUSION

The concept of admissibility has played and will continue to play an important role in investment treaty arbitration. With the increase in investment treaty disputes, it can be expected that respondent states will continue to rely on admissibility as a basis for dismissal of investor claims. Future investment tribunals will have the opportunity to develop the concept in a way that fits the unique nature of the claims they are called on to adjudicate.

47 id. at paragraph 50.

48 *Abaclat v. Argentine Rep*, ICSID Case No. ARB/07/5, Procedural Order No. 5, paragraph 18 (2 April 2010).

49 id. at paragraph 20(ii).

50 ICSID Case No. ARB/05/20, Decision on Annulment (26 February 2016).

51 id. at paragraph 79.

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