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## Fight for 'Las Cristinas': An Overview of the ICSID Case of Vanessa Ventures Ltd. v. Venezuela

by E.E. Corzo Aceves and V.E. Corzo Aceves

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## FIGHT FOR ‘LAS CRISTINAS’: AN OVERVIEW OF THE ICSID CASE OF VANNESSA VENTURES LTD. V. VENEZUELA

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### I. Introduction

Great attention has been drawn to the new claims brought by the oil companies of Mobil,<sup>3</sup> ENI Dación B.V.<sup>4</sup> and ConocoPhillips<sup>5</sup> against the Republic of Venezuela for its failure to reach an agreement over the amount of compensation they should receive from their contract’s “renegotiation”. Such awareness is to be expected since it involves major international oil players in the transnational arena in an outcome that should not be expected soon. Although it is comprehensive, the nature and amount of such investments are taking away the spot light from a more proximate threat to Venezuela at the International Center for Settlement of Investment Disputes (ICSID): a gold and copper mining project called Las Cristinas.

This article does not purport to offer a comprehensive review of the recent trend in international arbitration in regard to the benefit to the investors or to the Sovereign. The aim of this essay is to provide with a quick brief – for academic purposes – of the ongoing arbitration that is taking place at ICSID as to one of the largest gold deposits in the world in the territory of Venezuela and its exploitation by the mining company of Vanessa Ventures Ltd. The case is just an example of how Venezuela’s public policy in managing its resources according to its national priorities might not be free from problems in a time

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\* The views expressed in this article are those of the authors and do not necessarily represent, and should not be attributed to, Foley Hoag LLP, or the Foreign Affairs Ministry of Mexico.

<sup>3</sup> *Mobil Corporation and others v. Bolivarian Republic of Venezuela*, (ICSID Case No. ARB/07/27).

<sup>4</sup> *Eni Dación B.V. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/07/4).

<sup>5</sup> *ConocoPhillips Company and others v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/07/30).

where all the advantages are practically granted to the plaintiff (the investor). But at the same time, the system itself does not strip away the sovereign power of the States to counteract said preferences. As an exercise of thought and as a matter of illustration the case of Vanessa serves to exemplify how the previous assumption might operate.

In order to pursue that end, this essay is going to be divided in the following: Part II deals with the events, facts and circumstances that surrounds the case of Vanessa Ventures Ltd. and its quest to obtain redress for the allegedly expropriation by the Venezuelan government of Las Cristinas development mining project. Part III aims at placing Vanessa's case in context. It shows that under the current state of affairs the benefit of the bargain is placed upon the investor, but said advantage is subject to certain limitations. Vanessa, in return, might face troubles to get redress under assertions on good faith. This will also be pertinent to show how the concept of abuse of rights contributes to that constraint. Part IV concludes.

## **II. The case of Vanessa Ventures Ltd. v. Venezuela**

Although recently Venezuela has been active on the international arena, the only ongoing case in ICSID against the government of Venezuela is that of Vanessa Ventures Ltd. over its contractual rights in a mine gold and copper 'investment' at Las Cristinas in south-eastern Venezuela.<sup>6</sup> It seems that any interest that arises from the gold exploitation founded in Las Cristinas<sup>7</sup> gets tangled by a series of claims as to its ownership, like an

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<sup>6</sup> The only ICSID tribunal that has been constituted, as of March 2008, is that of *Vanessa Ventures Ltd. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB(AF)/04/6). Regardless of the fact that there are six cases against Venezuela, none of them have passed beyond a mere request to the ICSID Secretariat. In the case of *Vestey Group Ltd v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/06/4), the british food company has reached an agreement with Venezuela for the taking of five of its cattle farms and has requested ICSID to withdraw the case from the list of pending cases. The remaining four cases have been just registered on the ICSID website. Three of them relate to the oil companies of *Mobil Corporation and others v. Bolivarian Republic of Venezuela*, (ICSID Case No. ARB/07/27), *Eni Dación B.V. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/07/4) and *ConocoPhillips Company and others v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/07/30). The last case registered is that of *Brandes Investment Partners, LP v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/08/3) on March 24<sup>th</sup>, 2008 relating to a telecommunications dispute.

<sup>7</sup> Las Cristinas is one of the largest auriferous deposits of South America, located at the Km.88 of the Bolivar State. It is estimated that it contains 323 millions tons of mineral, from which the deposits conductora and Cuatro Muerto contains 286 millions of tons with a law of 1,13g/t of gold and 0,14% of copper, and the deposits of Mesones and Sofia 37,2 million of tons with a law of 1,07 g/t of gold and 0,35% of copper. Information available at: <http://www.minca.com.ve/paginas/cristinas.htm>

omen that runs with the land.<sup>8</sup> It is up until now that ICSID may break the streak of troubles that attaches the exploitation of the zone.

In 2004, Vanessa Ventures Ltd., a Canadian company dedicated to gold exploration and exploitation, which current interests lie in the exploration for gold in northern Brazil and the exploitation of diamonds in Guyana, and of gold in Costa Rica and Venezuela,<sup>9</sup> brought an ICSID claim under its Additional Facility Rules against Venezuela in which it alleges that the government expropriated its rights without compensation, and breached the fair and equitable treatment and full protection and security provisions of the Canada-Venezuela Bilateral Agreement for the Promotion and Protection of Investments.<sup>10</sup> It seeks redress in form of the return of its rights in exploiting the property and \$50 million in damages or, in the alternative, compensation for lost investments and future profits worth \$1 billion dollars.

The present dispute goes back to January 24<sup>th</sup> 1992,<sup>11</sup> date on which a state-owned mining company Corporación Venezolana de Guayana (CVG) entered into a joint venture agreement with a Canadian mining company, Placer Dome Inc., for the systematic exploration and large-scale commercial development of Las Cristinas gold deposits which were estimated to be around 11 million ounces.<sup>12</sup> Las Cristinas did not only represent a valuable investment to the parties but it was also expected to play a crucial role in the social and economic development of the communities in the region by acting as a catalyst in securing jobs and an overall improvement in the area's social infrastructure in a remote area

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<sup>8</sup> Las Cristinas was first given as a concession in 1964 for a period of 25 years to Ms. Culvert-Lemon. She intended to exploit the property but then she was defrauded by one of her legal representatives. This is comprehensible since she did not reside in Venezuela, nor did she speak Spanish making her rely entirely on her lawyer's advice. Presumably under an invalid power of attorney a third party obtained titled to the property and then presumably passed that property to another company called Inversora Mael. Following lawsuits arose until the property went back finally to the state. For a complete story of the events, see '*Las Cristinas: Historias de una Decepcion*' available at <http://www.minca.com.ve/paginas/deception.htm>

<sup>9</sup> Vid. <http://www.vanessaventures.com>

<sup>10</sup> *The Agreement Between the Government of Canada and the Government of the Republic of Venezuela for the Promotion and Protection of Investments* (signed 1 July 1996), available at [http://www.unctad.org/sections/dite/ia/docs/bits/canada\\_venezuela.pdf](http://www.unctad.org/sections/dite/ia/docs/bits/canada_venezuela.pdf). [It is important to highlight that currently Venezuela has 24 bilateral investment agreements signed, that provides –as an option for the dispute settlement- jurisdiction to the ICSID.]

<sup>11</sup> All the relevant dates, facts and events can be viewed in the MINCA – Minera Las Cristinas, C.A. webpage, available at: <http://www.minca.com.ve/paginas/crono.htm>

<sup>12</sup> Access to Las Cristinas imposes substantial problems due to its geographic location near the Imataca National Forest Preserve a remote tropical rainforest in the South Eastern Bolivar State in Venezuela.

like that of the Bolivar state.<sup>13</sup> In order to develop the required mining operations they agreed to establish another entity to materialize the project. Under such partnership, called Minera Las Cristinas C.A. (MINCA), Placer Dome held seventy percent of shares and the government of Venezuela the remaining thirty.<sup>14</sup>

After a couple of years of exploration and preparation for exploitation of Las Cristinas a series of lawsuits paralyzed the project in January 1998. It managed to stay intermittently in operation but the decline in the gold prices in the international market gave the final stroke so that the companies were forced to postpone any construction activities of the mines in July of 1999.<sup>15</sup> A couple of efforts were made in order to restructure such enterprise and to keep it functioning, but no agreement was reached at the end. As a last resource MINCA and CVG on July 15<sup>th</sup> 2000 achieved an understanding to suspend the undertaking for one whole year in an attempt to seek someone else interested in Las Cristinas. For a long time some third parties were considered but nothing concrete was concluded. Placer Dome Inc. in the meantime formally offered CVG its shares of MINCA. CVG never responded. It was then that Placer Dome entered into negotiations with a Canadian junior mining company, Vanessa Ventures Ltd.,<sup>16</sup> to take Placer Dome's place in MINCA. As a consequence, after years of hurdles in legal disputes to put Las Cristinas plan into production, Placer Dome assigned its interests and all of its obligations in the project to Vanessa Ventures for the amount of \$50 dollars.

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<sup>13</sup> *Vid. Full Case Study Report by Business Partners for Development* (Overseas Development Institute), 2001, available at <http://www.odi.org.uk/bpd-naturalresources/media/pdf/las/lascristinas.pdf>. [According to MINCA among the achievements made thanks to MINCA's support between 1993 and 2001, are the following: exploratory technical data, which is the core of the project's technical and economic feasibility; building mining camps with a capacity for 2,000 employees; Construction of Los Rojas Plant for the benefit of the small miners' associations; construction of landing strip; construction and recurring funding for the Humanitarian Health Center at Las Claritas; construction of roads and accesses; generating more than 1,000,000 man/hours of various works; 1,200 drilling made; evaluate 155,000 meters of survey points; processing 10,000 samples of material; contributions for the expansion of schools and building a pre-school; drinking water system for the communities; electric lighting for the communities; road maintenance; and, support Malariology program.] *Vid.* <http://www.minca.com.ve/noticias/2006/comuniqu.htm>

<sup>14</sup> Placer Dome acquired a greater stake from CVG's shares in a latter agreement, leaving 95 per cent in hands of the Canadian company.

<sup>15</sup> It is estimated that the price of gold decreased \$150 from 1996 where the ounce was valued at \$400 to \$250 the ounce in 1998.

<sup>16</sup> The Canadian mining company founded in 1995 has as its majority shareholder and primary financial backer Exploram Enterprises Ltd. ("Exploram") a wholly-owned subsidiary of Coril Holdings Ltd., a company controlled by Ronald Mannix of Calgary, Alberta whose name is a fixture on lists of Canada's wealthiest people.

The assignment of the CVG mining contract pertaining to one of the largest gold mine deposits in the world was immediately rejected by CVG on the grounds that both companies agreed not to transfer their share to any third party without the written authorization of the other.<sup>17</sup> As a result, a presidential decree by Hugo Chavez seizing Las Cristinas and declaring it Venezuela's property followed.<sup>18</sup> CVG was given the power to determine the fate of the property which it later awarded to Crystallex International Corp. in September of 2002.<sup>19</sup> It was then that, after a series of lawsuits before the Tribunal Supremo de Justicia (Venezuela's Supreme Court of Justice) to determine the ownership of the project, Vanessa Ventures decided to bring the claim to the international arena. In order to accomplish arbitration, in July 2004, Vanessa Ventures -in compliance with the requirement established under article XII(3)(b) of the BIT- decided to drop the five appeals that it had before the Venezuelan Supreme Court of Justice. After fulfilling with all the requirements established under the BIT, Vanessa finally, on October 28<sup>th</sup>, 2004, registered with the ICSID Secretary-General the request for arbitration against Venezuela.

When everybody thought that after bringing a claim to ICSID the case would have sailed smoothly, problems as to the composition of the tribunal emerged raising doubts about the possibility of a curse in Las Cristinas.

Subsequent to the Secretariat's registration of the claim brought by Vanessa in 2004, the tribunal was set up in June 2005 serving as arbitrators Jan Paulsson (France), Charles N. Brower (United States of America) and Van Vechter Veeder (United Kingdom) acting as president. Vanessa then followed to present its memorial followed by Venezuela's memorial on jurisdiction. But when the parties were ready to present their pleadings at the first hearing on jurisdiction, which was scheduled in May 2007, two of the three arbitrators stepped down and resigned -for reasons unrelated to the merits of the

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<sup>17</sup> *Vid.* Tribunal Supremo de Justicia, Exp. N° AA10-L-2002-000104, 2003. Available at <http://www.tsj.gov.ve/decisiones/tplen/Junio/AA10-L-2002-000104.htm>. [Regarding criminal charges on behalf of Vanessa Ventures against CVG's president, Francisco Jose Rangel Gomez, for defamation for his statements in considering the deal a "fraud to the nation"]. According to Vanessa Ventures' president and CEO, Manfred Peschke, no commitments existed between Placer Dome and Vanessa that required CVG's approval for such transaction. *Vid. Vanessa Las Cristinas Update. Business Wire.* Sept 27, 2001, available at [http://findarticles.com/p/articles/mi\\_m0EIN/is\\_2001\\_Sept\\_27/ai\\_78682283](http://findarticles.com/p/articles/mi_m0EIN/is_2001_Sept_27/ai_78682283)

<sup>18</sup> *Decreto Presidencial N° 1.757*, Mayo 07, 2002.

<sup>19</sup> Crystallex International Corporation is a Canadian company based in Toronto. Together with its subsidiaries, Crystallex engages in the exploration, development, mining, production, and processing of gold primarily in Venezuela. Crystallex corporate profile is available at <http://www.crystallex.com/Company/CorporateProfile/default.aspx>

dispute-<sup>20</sup> calling for a suspension of the hearing. It was not until approximately six months later that the tribunal was reconstituted with new arbitrators: Brigitte Stern (France) replacing Paulson –the arbitrator designated by Venezuela- and, as president, Robert Briner (Switzerland) that replaced Veeder. Finally the hearing on jurisdiction was held in mid-February 2008 in Paris, France to decide whether Vanessa’s claims should be heard on its merits.

### **III. Contract Sanctity in the light of Vanessa Ventures Case**

It has been long since international law expressly recognized the right of a country to freely dispose over its wealth and resources.<sup>21</sup> In specific, it is stated that the right of peoples freely to use and exploit their natural wealth and resources is inherent in their sovereignty and is in accordance with the United Nations Charter. There is a permanent sovereignty over natural wealth and resources, and it must be exercised in the interest of the national development and of the well being of the nationals of the State.<sup>22</sup> By itself, the regulation of State’s natural resources stems from the very nature of its unique sovereign function. Especially when managing resources of a crucial nature to the welfare of the nation’s people (i.e. mining, petroleum extraction, fishing, hunting, and forestry) that the right becomes more apparent. But such a right is subject to constraints. Successfully, States have devised a framework to reflect those restrictions on host States regulatory capacity and provided security and predictability to investors. One example of this system is the ICSID, an institution created under the auspices of the World Bank, which purpose, as established under article 1(2) of the ‘Convention on the Settlement of Investment Disputes between States and Nationals of other States’, is “to provide facilities for conciliation and arbitration of investment disputes between Contracting States and nationals

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<sup>20</sup> The reason as to the resignation of both arbitrators is unknown. However, it appears that Veeder stood down because of professional connections with Vanessa Ventures. And Paulsson had a conflict of interests as he is advising Eni Dacion and ConoccoPhillips in the oil cases against Venezuela. *Vid. ‘Veeder and Paulsson step down in Venezuela case’*, Global Arbitration Review, Vol.2, Issue 6, p.11, (December, 2007).

<sup>21</sup> *UN General Assembly Resolution 3281 (XXIX)*, 12 December 1974 (Charter of Economic Rights and Duties of States). A/RES/29/3281. [Article 2(1) reads as follows: “Every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities.”]

<sup>22</sup> *G.A. Res. 523 (VI)* January 12, 1952; *G.A. Res. 626 (VII)* December 21, 1952; *G.A. Res. 837 (IX)* December 14 1954; *G.A. Res. 1803 (XVII)* December 14, 1958.

of other Contracting States”.<sup>23</sup> If the rights of the State and of the investor clash, ICSID provides for an effective mechanism to resolve and settle such dispute.<sup>24</sup>

The protection to the investor has been widely supported by the recent trend led by bilateral and multilateral investment treaties which aims to offset assertions under the Calvo doctrine.<sup>25</sup> As to the negotiations of BITs, it is not uncommon the idea that they end up being an imposition of terms, often from developed States’ unequal bargaining power. As a result, the possibilities of injustice as to the benefits are then multiplied on behalf of the foreign direct investor and to the detriment of the host State.<sup>26</sup> Notwithstanding the imbalances of said treaties, they seek to benefit the investor in its relationship with the State by incorporating notions such as the ‘umbrella’, ‘*pacta sunt servanda*’ or ‘sanctity of contract’ clauses to precisely stimulate a larger flow of private investments. As such, it is not surprising that Tribunals flirt with the assertion of a right on behalf of the investor to protect their legitimate expectations as “a self-standing subcategory and independent basis for a claim.”<sup>27</sup>

At the end, investors have been grounded with a set of rules and mechanisms that provides enough security and predictability to tilt the balance in favor to them. This evolution towards a liberal approach in enforcing proprietary rights by a culture to honor commitments does not mean an uncontrolled leeway were any claim by an investor could

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<sup>23</sup> The creation of ICSID was “design to facilitate the settlement of disputes between States and foreign investors”. It states that “adherence to the Convention by a country would... stimulate a larger flow of private international investment into territories, which is the primary purpose of the Convention”. World Bank, *Report of the Executive Directors on the Convention and the Settlement of Investment Disputes between States and Nationals of other States [with the text of the Convention]* (Washington D.C., 1965), para.9, 12.

<sup>24</sup> *Ibid*, para.12.

<sup>25</sup> Wälde, Thomas, *The "Umbrella" (or Sanctity of Contract/Pacta sunt Servanda) Clause in Investment Arbitration: A Comment on Original Intentions and Recent Cases*, 1 *Transnational Dispute Management* 4, p.35, October 2004.

<sup>26</sup> *Vid. e.g.* Kuruk, Paul, *Renegotiating Transnational Investment Agreements: Lessons fro Developing Countries from the Ghana-Valco Experience*, 13 *Mich. J. Int'l. L.* 43, (1991-1992). [Observing that when entering into a Bilateral Investment Treaty the host state, often a developing country, gets benefited in part by the technology and the know-how superior knowledge of the foreign direct investment. But such countries when trying to renegotiate the terms of the contracts that did not meet their expectations usually they face resistance from the investors which in turn prompts nationalization of the investments.]

<sup>27</sup> *Separate Opinion, Thomas W. Walde, International Thunderbird Gaming Corporation v. United Mexican States*, NAFTA Award, Jan 26, 2006, p.37. For a comprehensive argument for the recognition of a general principle of law that the legitimate expectations of investors should be protected, see Snodgrass, Elizabeth, *Protecting Investors' Legitimate Expectations – Recognizing and Delimiting a General Principle*, ICSID Review, 21 *Foreign Investment Law Journal* 1, p.1-58, 2006.

prevail outside the boundaries of good faith.<sup>28</sup> Notions under equity set the limits between investor *vis-à-vis* the State. Accordingly, the notion of good faith, as a principle that controls the exercise of rights, encapsulates others as that of abuse of rights (*abus de droit*) or fraud to the law (*fraudé à la loi*).<sup>29</sup>

For example, in *Patuha and Himpurna v Indonesia* a State electricity company, Persero Perusahaan Listrik Negara (PLN), entered into contract with Patuha and Himpurna to explore and develop geothermal resources in Indonesia and sell the power they produced to PLN. Indonesia was unable to perform according to its contractual obligations due to an unprecedented economic crisis in 1997 and 1998. Himpurna and Patuha commenced arbitration proceedings to recover their investments. In its award, the arbitral tribunal limited the compensation requested by the plaintiffs justifying its holding under the doctrine of *abus de droit*. It might appear that the rationale of the tribunal was that the amount entitled to the plaintiffs by Indonesia was significantly disproportionate to the interest involved. The tribunal stated:

“[I]n the present case it was explicitly understood that the only purchaser for the energy produced would be PLN. In such circumstances, it [is] unacceptable to assess lost profits as though the Claimant had unfettered right to create ever-increasing losses for the State of Indonesia (and its people) by generating energy without any regard to whether or not PLN had any use in it. Even if such a right may be said to derive from explicit contractual terms, *the Arbitral Tribunal cannot fail to be struck by the fact that the Claimant is seeking to turn ESC into an astonishing bargain in circumstances when performance of the Contract would be ruinous to the Respondent...* What troubles the Arbitral Tribunal is less the level of profitability in and of itself than its contrast with the losses facing PLN. To extract the full benefit of the hard terms of the ESC with respect to investments not yet made, *in a situation where that benefit will clearly exacerbate the already great*

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<sup>28</sup> *Inceysa Vallisoletana SL v. El Salvador*, Award, ICSID Case No.ARB/03/26, IIC 134 (2006), p.230-233. (“Good faith is a supreme principle, which governs legal relations in all of their aspects and content... Any legal relationship starts from an indispensable basic premise, namely the confidence each party has in each other. If this confidence did not exist, the parties would have never entered into the legal relation in question, because the breach of the commitments assumed would become a certainty, whose only undetermined aspect would be the question of time.”); *Border and Transborder Armed Actions (Nicaragua/Honduras)*, Jurisdiction and Admissibility, Judgment, International Court of Justice Reports 1998, para.94. (“[t]he principle of good faith is not in itself a source of obligation where non would otherwise exist.”); *Nuclear Tests, (New Zealand/France)*, International Court of Justice Reports 1974, p.268, para.46; p.473, para.49 (“[t]he principle of good faith is one of the basic principles governing the creation and performance of obligations”); *Land and Maritime Boundary Between Cameroon and Nigeria, (Cameroon/Nigeria)*, Preliminary Objections, Judgment, I.C.J. Reports 1998, para.38.

<sup>29</sup> Cheng, Bing, *General Principles of Law as Applied by International Courts and Tribunals*, Cambridge, 2006, p.121.

*losses of the co-contractant, strikes the Arbitral Tribunal as likely to constitute an abuse of right inconsistent with the duty of good faith which is fundamental to the Indonesian law of obligations.*"<sup>30</sup> (emphasis added).

There is no doubt that Vanessa's claim is far from being an easy case to resolve and on which the facts do not help to alleviate its understanding. For Vanessa to succeed it has to endure a long process of jurisdiction and merits. But in case it overcomes both of them there might be one last hurdle that may turn Vanessa's victory into a loss and in which makes this case so exceptional: the amount Vanessa acquired its shares in Minera Las Cristinas. In other words, it is hard to overlook the \$50 dollars that Vanessa paid to Placer Dome in exchange for its 95 per cent of MINCA. This fact is exacerbated if we take into account the damages being sought by the Canadian company: \$1 billion dollars as compensation for lost investments and future profits, or the return of its rights in exploiting the property plus \$50 million in damages.<sup>31</sup> Under Vanessa's reasoning, it could gain at least a million times that which it paid for its shares. Such advantageous outcome could have not been expected even by Adam Smith's invisible hand. But assuming that Vanessa reaches the last stage of arbitration; could it be entitled to get the said damages?

The application of the principle of abuse of rights, recognized widely in international and national law<sup>32</sup> (including in Venezuela), in *Patuha and Himpurna* might

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<sup>30</sup> *Patuha and Himpurna v Indonesia* quoted in Petrona, Irina. 'Stepping on the Shoulder of a Drowning Man' *The Doctrine of Abuse of Rights as a Tool for Reducing Damages for Lost Profits: Troubling Lessons From the Patuha and Himpurna Arbitrations*, 35 *Geo. J. Int'l L.* 461-462, 2003.

<sup>31</sup> *Global Arbitration Review*, Vol.2, Issue 6, 2007, p.11

<sup>32</sup> The doctrine of '*abus de droit*' or abuse of rights has been recognized in some codes from civil law countries. However, in some jurisdiction the doctrine has been a creation of the judiciary. The notion has evolved in different directions depending on the jurisdiction. In some jurisdictions, abuse of right is codified as a general provision applicable across legal disciplines. For example, the doctrine is applied in several jurisdictions like that of France, Switzerland, Russia, Japan, Germany, Italy, Belgium, Austria, Spain, the Netherlands China, Poland, Lebanon, Ethiopia, Turkey, Greece, Portugal, Louisiana and Quebec to name a few. Although the concept is largely applied in civil law, someone can argue about its application to some common law jurisdictions. *Vid. e.g.* Perillo, Joseph, *Abuse of Rights: A Pervasive Legal Concept*, 27 *Pac. L. J.* 37, 1995; Baldwin, Edward, et al., *Limits to Enforcement of ICSID Awards*, 23 *Journal of International Arbitration* 1, 2006; D. J. Devine, *Some Comparative Aspects of the Doctrine of Abuse of Rights*, 1964 *Acta Juridica* 148, 1964; G.D.S. Taylor, *The Content of the rule Against Abuse of Rights in International Law*, 46 *Brit. Y. B. Int'l L.* 323, 1972; Angus, David, *Abuse of Rights in Contractual Matters in the Province of Quebec*, 8 *McGill L. J.* 150, 1961; Crabb, John, *The French Concept of Abuse of Rights*, 6 *Inter-Am L. Rev* 1, 1964; Moreland Redmann, Glenda, *Abuse of Rights: An Overview of the Historical Evolution and the Current Application in Louisiana Contracts*, 32 *Loy. L. Rev.* 946, 1986; Byers, Michael, *Abuse of Rights: An Old Principle, A New Age*, 47 *McGill L. J.* 389, 2001; Reid, Elspeth, *Abuse of rights in Scots Law*, 2 *Edinburg L. Rev.* 129, 1998; B. Edmeades, *Abuse of Rights, Comments*, 24 *McGill L. J.* 136, 1978; H.C. Gutteridge,

as well be an instance for preventing the investor to unjustly enrich at the expenses of the State.<sup>33</sup> Vanessa's claim faces a tough case in light of such decision due to the fact that it is seeking to turn MINCA's contract into an 'astonishing bargain'. A claim of unjust enrichment or abuse of rights as that in Patuha and Himpurna may pose a challenge to Vanessa's quest for redress.

#### IV. Conclusion

Due to the complexity of this case, it is clear that it will not be solved any time soon. But it can be certain that *Vannessa Ventures v. Venezuela* represents a good opportunity for the arbitrators to shed some light as to the battle of contract sanctity against the sovereignty right of a State to dispose of its natural resources. Although most of the arguments that the parties to this case will present or have presented are still not-public, definitively the fair and equitable clause, the notion of investment, the concept of expropriation, and the principles of good faith, *pacta sunt servanda*, and sovereignty will play a major role in this controversy. For the following months it will be necessary to track closely the development of this case, which promises to settle an important precedent for international investor's law.

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Abuse of Rights in Schlesinger, Rudolf, *Comparative Law, Cases-Text-Materials*, The Foundation Press, 1970, p.514.

<sup>33</sup> Kantor, Mark. *Valuation for Arbitration: Uses and Limits on Income-Based Valuation Methods*, 11 *Transnational Dispute Management* 6, p.32, Nov. 2007.