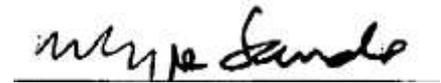


DECLARATION

1. I concur fully with the finding of the Tribunal that it does not have jurisdiction *ratione personae* over the claim because the Claimant is not “an Investor of another Contracting Party” within the meaning of Article 26 of the ECT. Specifically, he was not – at the time of making the investment or at the time when the alleged interference was said to have occurred or commenced – a “natural person having the citizenship or nationality of or who is permanently residing in” another Contracting Party. On the basis of the evidence before the Tribunal, it is not possible to conclude otherwise, since at those relevant times he was rather obviously a national of Turkey who was permanently residing in Turkey.
2. The Tribunal concludes unanimously at paragraphs 157-172 that the Claimant was not “permanently residing in” the United Kingdom during 2002 and 2003 at the time of the alleged expropriation, including on June 11, 2003. That conclusion is, in my view, dispositive of the jurisdictional issue before the Tribunal: a subsequent change of permanent residence could not of itself bring the Claimant within the jurisdiction of the Tribunal, not least since there is no evidence before the Tribunal that at any time thereafter he made any additional investment in Turkey that was interfered with. The Tribunal’s conclusion at paragraph 148 – “the mere fact of the Claimant’s subsequent change of residence, as well as the reasons and the circumstances thereof, cannot as such operate to transform the legal characteristic of the person into an Investor, within the meaning of Article 26(1)” – flows from the nature of the ECT: it is an investment protection treaty that is intended to encourage (and protect) “the international flow of investments” (para. 152), from one Contracting Party to another. It is not a treaty that is intended to protect the international flow of national investors of a Contracting Party who have already made an investment and thereafter, by reason of their circumstances, decide to (or are forced to) relocate to another Contracting Party. The ECT is not akin to a human rights treaty of the kind that does provide certain protections in such circumstances.
3. For this reason, in my view it was not necessary to decide whether the Claimant was “permanently residing in” France after September 3, 2009, including at the time he filed

the claim. Whether the Claimant was or was not “permanently residing in” France is a question the answer to which could change nothing for the purposes of these proceedings. For this reason I do not join in the conclusions of the Tribunal as set out at paragraphs 173-187, and express no view on the competing submissions of the two parties.

A handwritten signature in black ink, reading "Philippe Sands", is positioned above a horizontal line.

Professor Philippe Sands QC

31 March 2016