

# The *Metalclad v. Mexico* Case

*Pia Acconci*

University of Teramo

# Two Introductory Remarks on *Metalclad*

- *Metalclad* best illustrates why international investment law has been continually debated
- *Metalclad* is a good example of conflicts that may arise in the relation between a foreign investor and a host State

# The *Metalclad v. Mexico* case

- Metalclad, an American company, purchased COTERIN with «a state land use permit to construct [a] landfill», but the municipal authority denied its permission
- So Metalclad requested arbitration
- In 2000 the ICSID Tribunal found in Metalclad's favour because of the violation of the NAFTA Agreement, in particular the Tribunal concluded that
  - investment was not accorded fair and equitable treatment in conformity with international law [violation of NAFTA Art. 1105(1)]
  - «an indirect expropriation had taken place because the totality of the circumstances had the effect of causing the irreparable cessation of work on the project» (violation of NAFTA Art. 1110)

# The position of *Metalclad*

- Purchase of COTERIN was for the sole purpose of acquiring the hazardous waste landfill
- Federal and local government's permits were issued
- Municipal permit had not been issued
- Investment continued
- Metalclad believed the project had support since no specific construction requirements had been imposed

# The position of the Municipal Authorities

- Absence of a municipal construction permit
- Request for an environmental audit of the site
- A public campaign against the project when the landfill should have been officially inaugurated
- Rejection of reconsideration of the permit by Metalclad

The issues that the Tribunal considered in the *Metalclad* case are those typical of other ICSID cases

- Treaty-based arbitral jurisdiction
- Standards of treatment
- Expropriation
- Compensation and remedies

# The *Metalclad* case demonstrates ...

- the main features of modern international investment law, as a highly debated subject
- and the importance of direct arbitration (between a State and a foreign investor) as a means to settle investment disputes, as well as a valid alternative to diplomatic protection

# Advantages of the *Metalclad* Case

- *Metalclad* gained compensation
- The municipal authorities lost the case, but succeeded in stopping the landfill
- The settlement by the arbitral tribunal was a better solution than diplomatic protection for both parties: a security for the investor and a depoliticization for the host State



THANK YOU!