updates identifying any individuals against whom lethal force has been approved. In addition, the appropriate committees of Congress will be notified whenever a counterterrorism operation covered by these standards and procedures has been conducted.[3]

[1] Non-combatants are individuals who may not be made the object of attack under applicable international law. The term "non-combatant" does not include an individual who is part of a belligerent party to an armed conflict, an individual who is taking a direct part in hostilities, or an individual who is targetable in the exercise of national self-defense. Males of military age may be non-combatants; it is *not* the case that all military-aged males in the vicinity of a target are deemed to be combatants.

SETTLEMENT OF DISPUTES

U.S. Supreme Court to Review D.C. Circuit Decision Vacating Bilateral Investment Treaty Award Against Argentina

In June 2013, the U.S. Supreme Court decided to review the D.C. Circuit's decision in *BG Group PLC v. Republic of Argentina*.[1] The case involves an investment arbitration against Argentina brought by BG Group PLC (BG) under the bilateral investment treaty (BIT) between Argentina and the United Kingdom. The arbitrators rendered a substantial award in BG's favor. The arbitration was conducted under the UNCITRAL arbitration rules and was seated in Washington, D.C. Accordingly, the U.S. District Court for the District of Columbia had jurisdiction under the U.S. Federal Arbitration Act[2] to consider the parties' competing motions: BG's requests to confirm and enforce the arbitrators' award, and Argentina's motion to vacate it.

The district court ruled in BG's favor, enforcing the award.[3] Argentina appealed. On appeal, the court of appeals in January 2012 reversed, vacating the award. The court concluded that the arbitrators had ignored the intent of Argentina and the United Kingdom, the parties to the BIT, by not requiring BG first to pursue its claims in Argentine courts as contemplated by Article 8(2) of the BIT. In the D.C. Circuit's view,

> Although the scope of judicial review of the substance of arbitral awards is exceedingly narrow, it is well settled that an arbitrator cannot ignore the intent of the contracting parties. Where, as here, the result of the arbitral award was to ignore the terms of the Treaty and shift the risk that the Argentine courts might not resolve BG Group's claim within eighteen months pursuant to Article 8(2) of the Treaty, the arbitral panel rendered a decision wholly

[3] White House Press Release, Fact Sheet: U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities (May 23, 2013), *at* http://www.whitehouse.gov/the-press-office/2013/05/23/fact-sheet-us-policy-standards-and-procedures-use-force-counterterrorism.

[1] BG Group PLC v. Republic of Argentina, 665 F.3d 1363 (D.C. Cir. 2012), *cert. granted*, 81 U.S.L.W. 3070 (U.S. June 10, 2013); *see* John R. Crook, Contemporary Practice of the United States, 106 AJIL 360, 393 (2012); Lawrence Hurley, *Supreme Court Takes Up BG Group Arbitration Case*, REUTERS, June 10, 2013, *at* http://www.reuters.com/article/2013/06/10/us-usa-court-argentina-idUSBRE9590YH20130610.

[2] Federal Arbitration Act, 9 U.S.C. §§1–14 (2012).

[3] Republic of Argentina v. BG Group PLC, 715 F.Supp.2d 108 (D.D.C. 2010) (denying Argentina's motion to vacate arbitral award); Republic of Argentina v. BG Group PLC, 764 F.Supp.2d 21 (D.D.C. 2011) (confirming arbitral award).

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> based on outside legal sources and without regard to the contracting parties' agreement establishing a precondition to arbitration.[4]

The court's ruling evoked concern in the U.S. international arbitration community, and several scholars and practitioners filed amicus curiae briefs supporting certiorari, contending, inter alia, that the D.C. Circuit misapplied U.S. law regarding the proper scope of judicial review of arbitrators' decisions on jurisdiction.[5] The solicitor general filed an amicus brief opposing certiorari, contending, inter alia, that the D.C. Circuit's opinion was unlikely to have implications beyond the unusual circumstances of the case.[6] The Supreme Court disagreed, granting certiorari to consider whether, "[i]n disputes involving a multi-staged dispute resolution process, a court or the arbitrator determine whether a precondition to arbitration has been satisfied."[7] Oral argument is scheduled for December 2, 2013.

BRIEF NOTES

China Agrees to Resume Expanded Bilateral Investment Treaty Negotiations with United States

At the conclusion of the U.S.-China Strategic and Economic Dialogue in Washington, D.C., in July 2013, officials announced that China and the United States have agreed to restart negotiations on a bilateral investment treaty (BIT). China reportedly dropped an earlier demand that a BIT exclude services sectors of China's economy. While BIT talks have formally been underway since 2008, little progress has been made.[1] U.S. Trade Representative Michael Froman welcomed the resumption of negotiations.

> China has for the first time agreed to negotiate a Bilateral Investment Treaty on the basis of principles that will be critical to achieving access to China's market and leveling the playing field for American firms. As the Office of the U.S. Trade Representative prepares to lead these negotiations along with the State Department, we look forward to building on the important commitments China made today to bring home the economic benefits of more exports and more American jobs.[2]

U.S. Treasury Secretary Jacob Lew echoed Froman's view.

[4] *BG Group*, 665 F.3d at 1365–66.

[5] The amicus briefs supporting and opposing certiorari are available online at http://www.scotusblog.com/case-files/cases/bg-group-plc-v-republic-of-argentina.

[6] *See* Brief for the United States as Amicus Curiae at 17, BG Group PLC v. Republic of Argentina, No. 12-138 (U.S. May 2013), *available at* http://sblog.s3.amazonaws.com/wp-content/uploads/2013/05/12-138-BG-Group.pdf ("In light of its case-specific nature, the decision below will likely have few implications for the construction of international investment treaties.").

[7] *See* http://www.supremecourt.gov/qp/12-00138qp.pdf.

[1] Annie Lowrey, *U.S. and China to Discuss Investment Treaty, but Cybersecurity Is a Concern*, N.Y. TIMES, July 12, 2013, at A5; Howard Schneider, *China Agrees to Broad Investment Talks with U.S.*, WASH. POST, July 12, 2013, at A9; *U.S., China Move Forward on Bilateral Investment Treaty*, VOICE OF AMERICA, July 11, 2013, *at* http://www.voanews.com/content/us-china-to-focus-on-economy-on-final-day-of-talks/1699526.html.

[2] Office of the U.S. Trade Representative Press Release, USTR Michael Froman Welcomes Progress at U.S.-China Strategic and Economic Dialogue (July 12, 2013), *at* http://www.ustr.gov/about-us/press-office/press-releases/2013/july/amb-froman-welcomes-progress-SandED.

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