NEWS FROM ICSID

International Centre for Settlement of Investment Disputes

Vol. 16, No. 2 Fall 1999

Thirty-third Annual Meeting of the ICSID Administrative Council

The Administrative Council of the Centre held its thirty-third Annual Meeting in Washington, D.C. on September 28-30, 1999, in conjunction with the Annual Meetings of the Boards of Governors of the other organizations belonging to the World Bank Group and of the International Monetary Fund.

At the Meeting, the Administrative Council approved the *ICSID 1999 Annual Report* (now available from the Centre on request) and the ICSID administrative budget for fiscal year 2000. On the nomination of its Chairman, World Bank President James D. Wolfensohn, the Council also elected Antonio R. Parra, ICSID's Legal Adviser, to the position of Deputy Secretary-General of the Centre. Mr. Parra is the first person to be elected to this position.

Sixteenth Joint Colloquium on International Arbitration

Since 1983, the American Arbitration Association (AAA), the International Court of Arbitration of the International Chamber of Commerce (ICC) and ICSID have co-sponsored a series of colloquia to discuss various topics relating to international arbitration.

The sixteenth in this series of colloquia was hosted by the AAA and held in New York City on October 29, 1999. Participants comprised some 150

(continued on page 7)

Update on the ICSID Convention

The ICSID Convention was signed by Sao Tome and Principe on October 1, 1999. This increased to 147 the number of signatories of the Convention. Of these, 131 have also ratified the Convention to become Contracting States.The signatories and Contracting States are listed in Document ICSID/3, available on the ICSID website (*www.worldbank.org/icsid*) and from the Centre on request.

Disputes Before the Centre

Since the publication of the last issue of *News from ICSID*, the caseload of the Centre continued its rapid growth. Altogether, seven new arbitration requests were registered. These brought to 67 the total number of cases submitted to ICSID. The new cases include the fourth Additional Facility proceeding to be instituted against Mexico under the North American Free Trade Agreement (NAFTA) and the second such proceeding to be instituted against the United

(continued on next page)

Inside ...

Disputes Before the Centre

(continued from previous page)

States under the NAFTA. In one of the first Additional Facility proceedings to be brought against Mexico under the NAFTA, *Robert Azinian and others v. United Mexican States*, the Arbitral Tribunal rendered its award on the merits. This was the first award on the merits to be rendered under the Investment Chapter of the NAFTA and also the first to be issued under the ICSID Additional Facility Rules. The award, which dismissed the claims of the claimants, is posted on the ICSID website and is being published in the Fall 1999 issue of the *ICSID Review—Foreign Investment Law Journal*. Also recently posted on the website and published in the *ICSID Review—Foreign Investment Law Journal* (Spring 1999 issue) is the decision on jurisdiction in the case of *Ceskoslovenska obchodni banka, a.s. v. Slovak Republic*. Recent developments in these and the other disputes before the Centre are summarized below.

- **American Manufacturing & Trading, Inc. v. Democratic Republic of the Congo (Case ARB/93/1) – Revision Proceeding**

March 4, 1999

The Tribunal holds its first session by telephone conference call among its members. It decides, pursuant to Arbitration Rule 54, to maintain the provisional stay of enforcement of the award until the Tribunal makes a final ruling on the request for a stay of enforcement of the award.

June 1, 1999

The Tribunal issues an order on the request for stay of enforcement of the award. The order requires the posting of a bond in the amount of the award as a condition for continuing the stay of enforcement.

- **Compañía del Desarrollo de Santa Elena S.A. v. Republic of Costa Rica (Case ARB/96/1)**

May 10-14, 1999

The Tribunal holds a hearing in Washington, D.C.

July 12, 1999

The parties file their post-hearing memorials.

- **Misima Mines Pty. Ltd. v. Independent State of Papua New Guinea (Case ARB/96/2)**

June 8, 1999

The Sole Arbitrator meets with the parties in Sydney.

September 14, 1999

The Sole Arbitrator meets with the parties in Sydney.

The Arbitral Tribunal in Metalclad Corporation v. United Mexican States (ICSID Case No. ARB(AF)/97/1) held a hearing at World Bank headquarters from August 30 to September 9, 1999. Shown above are the members of the Tribunal (from left to right: Mr. Benjamin R. Civiletti; Professor Sir Elihu Lauterpacht, Q.C., President; and Mr. José Luis Siqueiros) and the Secretary of the Tribunal (Mr. Alejandro A. Escobar).

- **Metalclad Corporation v. United Mexican States (Case ARB(AF)/97/1)**

June 18, 1999
The Claimant and Respondent file their memoranda on the marshalling of evidence.

July 6, 1999
The Tribunal holds a meeting with the parties for the marshalling of evidence in Washington, D.C.

August 30 to September 9, 1999
The Tribunal holds a hearing in Washington, D.C.

November 9, 1999
The parties file their post-hearing submissions. The United States of America files a submission under NAFTA Article 1128.

- **Société d'Investigation de Recherche et d'Exploitation Minière (SIREXM) v. Burkina Faso (Case ARB/97/1)**

April 16-17, 1999
The Tribunal meets in Paris for deliberations.

June 12, 1999
The Tribunal meets in Paris for deliberations.

October 15, 1999
The proceeding is declared closed.

November 22, 1999
The parties submit their statements on costs.

- **Compañía de Aguas del Aconquija S.A. and Compagnie Générale des Eaux v. Argentine Republic (Case ARB/97/3)**

April 5, 1999
The Respondent files its rejoinder.

April 22, 1999
The parties file pre-hearing memoranda.

April 25, 1999
The Tribunal holds a meeting with the parties on the marshalling of evidence in Washington, D.C.

June 23, 1999
The parties file a joint appendix of authorities.

July 29, 1999
Pursuant to the Tribunal's Order of April 27, 1999, the Claimants file an additional witness statement.

August 11-13, 1999
The Tribunal holds a hearing in Washington, D.C.

August 25, 1999
The Tribunal issues a post-hearing order.

September 30, 1999
The parties file their post-hearing memorials.

October 12, 1999
The parties file their post-hearing rejoinders.

- **Robert Azinian and others v. United Mexican States (Case ARB(AF)/97/2)**

May 17, 1999
The Respondent files its rejoinder.

June 21-23, 1999
The Tribunal holds a hearing in Washington, D.C.

July 16, 1999
The parties file their post-hearing submissions.

November 1, 1999
The Tribunal's award is rendered.

- **Ceskoslovenska obchodni banka, a.s. v. Slovak Republic (Case ARB/97/4)**

May 24, 1999
The Tribunal issues its decision on jurisdiction.

November 15, 1999
The Claimant files its memorial on the merits.

- **Lanco International, Inc. v. Argentine Republic (Case ARB/97/6)**

April 2, 1999
The Respondent, pursuant to the Tribunal's instructions, files additional documentation in preparation of a hearing on the merits.

(continued on next page)

Disputes Before the Centre

(continued from previous page)

October 10, 1999
At the parties' request, the Tribunal postpones holding a hearing on the merits.

- **Emilio Agustín Maffezini v. Kingdom of Spain (Case ARB/97/7)**

April 9, 1999
The Respondent files its counter-memorial.

June 4, 1999
The Claimant files additional observations on jurisdiction.

June 18, 1999
The Respondent files additional observations on jurisdiction.

August 9, 1999
The Tribunal holds a hearing on jurisdiction in Washington, D.C.

October 28, 1999
The Tribunal issues an order on the Respon-dent's request for provisional measures.

- **Compagnie Française pour le Développement des Fibres Textiles v. Republic of Côte d'Ivoire (ARB/97/8)**

September 15, 1999
The Respondent files its statement on costs.

October 14, 1999
The Claimant files its reply to the Respondent's statement on costs.

- **Joseph C. Lemire v. Ukraine (Case ARB(AF)/98/1)**

April 12, 1999
The Respondent files its observations on the objections to jurisdiction.

June 7, 1999
The Claimant files his rejoinder on the objections to jurisdiction.

September 24, 1999
The Tribunal issues a decision joining the objections to jurisdiction to the merits.

- **Houston Industries Energy, Inc. and others v. Argentine Republic (Case ARB/98/1)**

November 15, 1999
The Respondent files its counter-memorial on the merits.

July 9, 1999
The Claimants file their memorial on the merits.

- **Victor Pey Casado and President Allende Foundation v. Republic of Chile (Case ARB/98/2)**

September 13, 1999
The Respondent files a request for provisional measures.

October 6, 1999
The Claimants file their counter-memorial on jurisdiction.

- **International Trust Company of Liberia v. Republic of Liberia (Case ARB/98/3)**

April 7, 1999
The Claimant files its memorial in support of its application to disqualify counsel for the Respondent.

April 15, 1999
The Respondent files its memorial in opposition to the Claimant's application to disqualify counsel for the Respondent.

April 20, 1999
The Claimant files a reply memorial in connection with its application to disqualify counsel for the Respondent.

April 21, 1999
The Respondent files its memorial on objections to jurisdiction.

May 5, 1999
The Respondent files its rejoinder in opposition to Claimant's application to disqualify counsel for Respondent.

- **Wena Hotels Limited v. Arab Republic of Egypt (Case ARB/98/4)**

April 8, 1999
The Respondent files its reply on jurisdiction.

April 22, 1999
The Claimant files its rejoinder on jurisdiction.

May 25, 1999
The Tribunal holds a hearing on jurisdiction in Paris.

June 29, 1999
The Tribunal issues its decision on objections to jurisdiction.

July 26, 1999
The Claimant files its memorial on the merits.

September 6, 1999
The Respondent files its counter-memorial on the merits.

September 14, 1999
The Tribunal is reconstituted. Its members are: Mr. Monroe Leigh (U.S.), President; Professor Ibrahim Fadlallah (Lebanese); and Mr. Michael F. Hoellering (U.S.), appointed following the resignation of Professor Hamzeh Haddad.

September 27, 1999
The Claimant files its reply on the merits.

October 18, 1999
The Respondent files its rejoinder on the merits.

- **Eudoro A. Olguín v. Republic of Paraguay (Case ARB/98/5)**

April 16, 1999
The Tribunal holds its first session with the parties in Washington, D.C.

May 27, 1999
The Claimant files its memorial.

August 2, 1999
The Respondent files its objections to jurisdiction.

September 10, 1999
The Claimant files its counter memorial on jurisdiction.

- **Compagnie Minière Internationale Or S.A. v. Republic of Peru (Case ARB/98/6)**

There have been no new developments to report on this case since the publication of the last issue of *News from ICSID*.

- **Banro American Resources, Inc. and Société Aurifère du Kivu et du Maniema S.A.R.L. v. Democratic Republic of the Congo (Case ARB/98/7)**

May 7, 1999
The Tribunal holds its first session in Washington, D.C.

June 3, 1999
The Claimants file a request for provisional measures.

June 8, 1999
The Claimants file an amendment to their request for provisional measures.

June 10, 1999
The Tribunal asks the Respondent to file its observations on the Claimants' request for provisional measures.

July 23, 1999
The Tribunal renders its decision on the Claimants' request for provisional measures.

September 23, 1999
The Claimants file their observations on the objections to jurisdiction.

November 5, 1999
The Claimants file their answers to the Tribunal's questions raised at the first session.

- **Waste Management, Inc. v. United Mexican States (Case ARB(AF)/98/2)**

June 3, 1999
The Tribunal is constituted. Its members are: Mr. Bernardo M. Cremades (Spanish), President; Mr. Keith Highet (U.S.); and Mr. Julio C. Treviño (Mexican).

July 16, 1999
The Tribunal holds its first session with the parties in The Hague.

September 29, 1999
The Claimant files its memorial on the merits and jurisdiction.

November 5, 1999
The Respondent files its counter-memorial on jurisdiction.

November 9, 1999
The Claimant files its observations on the Respondent's counter-memorial on jurisdiction.

(continued on next page)

Disputes Before the Centre

(continued from previous page)

November 16, 1999
The Respondent files its response to the Claimant's observations to its counter-memorial on jurisdiction.

- **The Loewen Group, Inc. and Raymond L. Loewen v. United States of America (Case ARB(AF)/98/3)**

May 18, 1999
The Tribunal holds its first session with the parties in Washington, D.C.

October 18, 1999
The Claimants file their memorials on the merits.

- **Tanzania Electric Supply Company Limited v. Independent Power Tanzania Limited (Case ARB/98/8)**

May 11, 1999
The Claimant files a request for provisional measures.

June 14, 1999
The Tribunal holds its first session with the parties in London.

June 28, 1999
The Respondent files a request for provisional measures.

October 18-19, 1999
The Tribunal holds a hearing on the parties' requests for provisional measures in London.

November 19, 1999
The Tribunal renders its decision on the Respondent's request for provisional measures.

- **Alex Genin and others v. Republic of Estonia (Case ARB/99/2)**

May 12, 1999
The Secretary-General registers a request for the institution of arbitration proceedings.

September 21, 1999
The Tribunal is constituted. Its members are: Mr. L. Yves Fortier (Canadian), President; Professor Meir Heth (Israeli); and Professor Albert Jan van den Berg (Netherlands).

October 12, 1999
The Tribunal holds its first session in Zurich. The Respondent raises objections to jurisdiction.

November 12, 1999
The Respondent files its memorial on objections to jurisdiction.

- **Philippe Gruslin v. Malaysia (Case ARB/99/3)**

May 12, 1999
The Secretary-General registers a request for the institution of arbitration proceedings.

June 9, 1999
Dr. Gavan Griffith (Australian) is appointed Sole Arbitrator by agreement of the parties.

August 9, 1999
The Tribunal holds its first session with the parties in Washington, D.C.

November 17, 1999
The Respondent files its memorial on the objections to jurisdiction.

- **Marvin Roy Feldman Karpa v. United Mexican States (Case No. ARB(AF)/99/1)**

May 27, 1999
The Secretary-General registers a request for the institution of arbitration proceedings.

- **Empresa Nacional de Electricidad S.A. v. Argentine Republic (Case No. ARB/99/4)**

July 12, 1999
The Secretary-General registers a request for the institution of arbitration proceedings.

- **Alimenta S.A. v. Republic of The Gambia (Case No. ARB/99/5)**

July 12, 1999
The Secretary-General registers a request for the institution of arbitration proceedings.

- **Mondev International Ltd. v. United States of America (Case No. ARB(AF)/99/2)**

September 20, 1999
The Secretary-General registers a request for the institution of arbitration proceedings.

- **Middle East Cement Shipping and Handling Co. S.A. v. Arab Republic of Egypt (Case No. ARB/99/6)**

November 19, 1999
The Secretary-General registers a request for the institution of arbitration proceedings.

New Designations to the ICSID Panels of Conciliators and of Arbitrators

In accordance with Articles 3 and 12-16 of the ICSID Convention, the Centre maintains a Panel of Conciliators and a Panel of Arbitrators. Each party to the Convention may designate to each Panel up to four persons who may but need not be its nationals. The following designations to the Panels have recently been made by Chile, Croatia, Sweden and Tanzania. These new designations brought the number of Panel members to 448.

CHILE

Panels of Conciliators and of Arbitrators

Designations effective April 6, 1999: Mr. Gonzalo Biggs, Mr. Juan Banderas Casanova, Mr. Jaime Irarrázabal Covarrubias.

Designation effective October 21, 1999: Mr. Carlos Eugenio Jorquiera Malschafsky.

CROATIA

Panel of Conciliators

Designations effective July 22, 1999: Mr. Pave Devic, Mr. Milivoj Goldstjn, Dr. Ivo Grbin, and Dr. Milijan Sesar.

Panel of Arbitrators

Designations effective July 22, 1999: Dr. Jaksa Barbic, Dr. Kresimir Sajko, Mr. Nemad Sepic and Dr. Branko Vukmir.

SWEDEN

Panel of Conciliators

Designations effective May 13, 1999: Mr. Claes Beyer, Mr. Lars Laurin, Mr. Ulf Magnusson and Professor Jan Ramberg.

Panel of Arbitrators

Designation effective May 13, 1999: Justice Hans Danelius, Mr. Kaj Hober, Mr. Robert Romlöv and Justice Leif Thorsson.

TANZANIA

Panel of Arbitrators

Designations effective August 27, 1999: Mr. Elisifa Kinasha, Mr. M.J.A. Lukwaro, Ms. Verdiana Nkwabi Macha, and Mr. K.M.I.M. Msita.

Sixteenth Joint Colloquium

(continued from page 1)

legal practitioners, academics and representatives of arbitration institutions.

At the colloquium, there were presentations and discussion periods on four topics: How Proactive Arbitrators Really Are in Conducting Arbitral Proceedings; the Setting in Motion of an Arbitration Under the Three Different Systems; the Enforceability of Interim Measures of Protection; and Confidentiality Revisited. The speakers on these topics included four members of the ICSID Secretariat: Alejandro A. Escobar, Eloïse M. Obadia, Antonio R. Parra and Margrete L. Stevens. The presentation of Ms. Obadia, on How Proactive Arbitrators Really Are in Conducting Arbitral Proceedings, is published in this issue at page 8.

The Seventeenth Joint Colloquium on International Arbitration, to be hosted by ICSID, will take place in Washington, D.C. in the autumn of 2000. Further details on this colloquium will appear in the next issue of *News from ICSID*.

New ICSID Publications

The Centre has recently published the Spring 1999 issue of *ICSID Review—Foreign Investment Law Journal*. The issue features articles by L. Michael Hager and Robert Pritchard on "deal mediation" and by Professor Emmanuel Gaillard on the enforcement of arbitral awards set aside in the country of origin. Other contributions in the issue include the sixth installment of a "Commentary on the ICSID Convention" by Christoph Schreuer. The current install-

(continued on page 11)

How Proactive Arbitrators Really Are in Conducting Arbitral Proceedings: An ICSID Perspective

By Eloïse M. Obadia, Counsel, ICSID

A paper delivered in the session on "How Proactive Arbitrators Really Are in Conducting Arbitral Proceedings" at the Sixteenth ICSID/American Arbitration Association/ICC Court Colloquium on International Arbitration, held in New York City on October 29, 1999.

Introduction

Asking the question to what extent arbitrators can be proactive raises different issues. First, what does being proactive mean? Second, do arbitrators have the powers to be proactive, and how far can they go?

In one of his fables, "The Cat, the Weasel, and the Small Rabbit," Jean de la Fontaine gives an example of a very proactive arbitrator. The dispute was between a weasel and a rabbit regarding ownership of a piece of land. The weasel and the rabbit agreed to have their dispute settled by a cat known as "the expert arbitrator in all issues." Without even giving them an opportunity to present their case, the cat ate both of them. This is a very speedy and equitable method of resolving the dispute, but it is not necessarily the most efficient and fair one.

I would like to present the various elements under the ICSID Convention and the ICSID Arbitration Rules, which enable the arbitrators to be proactive, without going as far as eating the parties of course. Firstly, I would like to review the framework within which arbitrators can be proactive.

Framework Within Which Arbitrators Can Be Proactive

As in other arbitral proceedings, ICSID arbitrators are not completely free to act. Different elements come into play which may affect their ability to be proactive.

I will mention three elements.

A – Human Factors

I refer to human factors because arbitration is a constant interaction between the arbitrators and the parties or their counsel. The Convention provides that all arbitrators must be "persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, who may be relied upon to exercise independent judgment." In addition, it seems that a proactive approach will be facilitated if the arbitrators, and especially the President of the Tribunal, are experienced international arbitrators able to make decisions and to go beyond the cultural differences of the parties.

The most favorable context also assumes that there are parties or counsel for the parties willing to cooperate in good faith and who do not impede the pace of the proceeding.

B – Dealing with Party Autonomy

The second element with which the arbitrators have to deal is party autonomy. The arbitrators' powers are derived from the consent of the parties. During the arbitral proceeding, parties are free to agree on various matters of procedure such as the place of proceedings or the language or languages to be used in the proceeding. The Tribunal has a duty to apply any agreement between the parties on such questions. There can be tension between the powers of the arbitrators and those of the parties. But a balance can be found. I have seen arbitrators using their experience in international

arbitration to convince the parties to shape the procedure differently, in a more efficient way. For example, Tribunals have suggested to the parties that they agree on a more convenient and cost-efficient place of the proceedings than the one they had originally selected.

C – Producing an Enforceable Award

The third element is the duty to produce an enforceable award. The Convention provides that either party may request annulment of the award on the grounds that there has been a serious departure from a fundamental rule of procedure. This means that the parties need to have a proper opportunity to present their case and exercise their right to be heard. Therefore, arbitrators are facing tension between their obligation to be efficient and due process. This tension is likely to arise when the Tribunal has to cope with the parties' tactics to impede the efficient progress of the proceeding. On the other hand, parties may get frustrated when the Tribunal is promoting speed and fixing tight schedules. I have seen cases in which both parties agreed on a changed schedule leaving the arbitrators with no choice but to accept the new dates. Therefore, again a balance needs to be found.

Having reviewed these elements, I would now like to present different ways for ICSID arbitrators to be proactive. By being proactive, I mean taking an active role in the shaping of a proceeding that is satisfactory to everyone. I have two approaches in mind.

Shaping an Efficient and Fair Proceeding

The first approach is when the arbitrators take an active role in shaping an efficient and fair proceeding. The Convention and the Arbitration Rules give various means to the arbitrators to retain control of the arbitral proceedings and to set a pace appropriate to the particular case. I will mention five tools.

A – A First Session Devoted to Procedural Matters

A first tool is the first session of the Tribunal with the parties. The purpose of the session is to establish a calendar for the proceedings and to institute a dialogue on procedural points as soon as possible between the parties and the Tribunal. For that purpose, the ICSID Secretariat has developed a standard form of agenda listing procedural matters that the parties may agree upon such as provided in the Arbitration Rules. In most recent cases, arbitrators have used an extended version of this agenda based upon the UNCITRAL Notes on Organizing Arbitral Proceedings. This version is more detailed and addresses matters linked to evidence and hearings. In some cases, the President has asked the parties to provide the Tribunal with their written comments on each item prior to the session, and to agree on as many items as possible. This helped the parties and the Tribunal to focus on issues and to find equitable solutions during the session.

B – Article 44 of the Convention and Procedural Orders

A second tool is given by Article 44 of the Convention which provides that the Tribunal has the power to decide on questions of procedure which are not covered by the Convention, the Arbitration Rules or any rules agreed by the parties. This is a useful means to deal with unexpected procedural issues. The Arbitration Rules provide a third tool, Rule 19, which states that the Tribunal can make orders required for the conduct of the proceeding. Procedural orders constitute a means for the Tribunal to make clear-cut and quick decisions, thereby discouraging frivolous requests from the parties.

C – Marshalling of Evidence and Pre-Hearing Conference

Another method to efficiently shape the proceeding is to organize sessions with a view to encouraging partial agreements of the parties on key issues.

Such issues include the taking of evidence. The Arbitration Rules give some guidelines for the taking of evidence but the details are not determined, so it may be useful to hold a specific session with the parties on the marshalling of evidence. This has often led to a better organization of the oral hearing, curtailing lengthy cross-examinations.

Finally, I will mention the "Pre-Hearing Conference" set forth in paragraph 1 of Rule 21. It was introduced in 1984 to promote the speedy conclusion of proceedings. The Rule provides that the President of the Tribunal may convene the parties to a pre-hearing conference to arrange for an exchange of information and the stipulation of uncontested facts in order to expedite the proceeding. This is meant to serve the purposes of a mini-trial, to get the parties to hear each other's defense thus avoiding a long proceeding. This has not been often used per se. However, in some cases the parties were asked to provide the Tribunal with written observations on certain matters of fact and/or to agree on these facts, which helped to save some time.

Helping to Reach a Settlement Agreement

The second proactive approach I want to describe is the one where the arbitrators take an active role in helping the parties to reach an amicable settlement.

A – The Pre-Hearing Conference, Arbitration Rule 21(2)

In order to do so, they can use paragraph 2 of Arbitration Rule 21. The parties can request the holding of a pre-hearing conference to consider the issues in dispute with a view to reaching an amicable settlement. In a recent case, the Tribunal and the parties successfully implemented the spirit more than the letter of this Rule.

This case is related to the privatization of a company where the investor, a minority shareholder, initiated an arbitration proceeding against the State, the majority shareholder, in order to forestall the privatization process. At the first session, both counsel for the parties made it clear that they were ready to reach an amicable settlement, but they could not agree on its terms. The Tribunal proposed to assist the parties in reaching a settlement. The parties agreed to have the President of the Tribunal acting as mediator for a few months, and to come back before the entire Tribunal to assess the situation. At first, negotiations failed and the Tribunal was asked to render a decision on provisional measures. But the parties eventually agreed on some issues and asked the Tribunal to decide on the other issues. This is an example of a case where arbitration was successfully combined with mediation.

B – Settlement Agreement Embodied in an Award, Arbitration Rule 43(2)

Finally, the Arbitration Rules provide that the parties can ask the Tribunal to embody their amicable settlement in an award. This has been done in three cases. In one case, the Tribunal greatly contributed to the amicable settlement of the parties. The State, which was the respondent, did not appear before the Tribunal. But both parties had informed the Tribunal that they were trying to reach an agreement. Aware of these parallel negotiations, the Tribunal decided not to render an award but instead to render a decision on liability. The Tribunal decided that the State would be declared liable only if it did not provide adequate and fair compensation to the investors. The State was granted four months to comply with this obligation. Following that decision and the suggestions of the members of the Tribunal, the parties reached an amicable settlement and asked the Tribunal to embody their settlement in an award.

Conclusion

To conclude, the ICSID Convention and Arbitration Rules give arbitrators the tools to be proactive. In addition, in each case, the Secretary- General appoints a Secretary of the Tribunal who remains in close contact with the President at every stage of the proceedings and can advise on the existence of these tools. Their successful use depends, then, on the personality of the arbitrators and on the circumstances. If I were asked to give the recipe for a magic potion ensuring a very efficient proceeding, I would say that two of its ingredients are for the arbitrators to be able to adapt and to be decisive.

UNCTAD World Investment Report 1999

The United Nations Conference on Trade and Development (UNCTAD) has recently released the ninth in its annual series *World Investment Report,* a publication devoted to the analysis of issues related to foreign direct investment (FDI) and its role in the world economy.

This year's edition, *World Investment Report 1999—Foreign Direct Investment and the Challenge of Development,* concentrates on the impact of FDI on key aspects of economic development – increasing financial resources, enhancing technological capabilities, boosting export competitiveness, generating employment and building skills and protecting the environment.

Part one of the *World Investment Report 1999* examines recent global and regional trends in FDI, describing the geographical and sectoral patterns of its distribution, depicts the world's largest non-financial transnational corporations in terms of foreign assets and its economic significance, and explores the increasing importance of mergers and acquisitions in fostering FDI flows. Part one concludes with a review of the most recent investment policy developments, examining bilateral and regional agreements, including a brief discussion of the factors that led to the end of the Multilateral Agreement on Investment negotiations.

Part two examines the development impact of FDI in the context of globalization and in the light of changing circumstances of the global economy. It focuses on the importance of FDI in the supply of financial resources for development and on the impact of FDI on total investment in host countries. It also examines the role of FDI in the technology development process and local learning and its effect in building comparative advantages for host States. Part two further describes the employment-generation potential of FDI and the role it may play strenghtening human resources capabilities. Finally, Part two reserves an entire chapter to the relation between FDI and environmental protection.

By way of conclusion, the *World Investment Report 1999* points out the importance of good public policies in enhancing the contribution that FDI can make in core areas of economic development and in minimizing the negative aspects of its impact.

The *World Investment Report 1999*, is available from United Nations Publications, Sales and Marketing Section, Room C-113, Palais des Nations, CH-1211 Geneva 10, Switzerland or from United Nations Publications, Two UN Plaza, Room DC2-853, Dept. PRES, New York, N.Y. 10017, U.S.A., at the price of US$49 (special price of US$19 in developing countries and countries in transition).

New ICSID Publications

(continued from page 7)

ment covers Articles 53, 54 and 55 dealing with the recognition and enforcement of ICSID Convention awards. The issue also contains the texts of the jurisdictional decision and the award rendered in *Tradex Hellas S.A. v. Republic of Albania* (ICSID Case No. ARB/94/2) and the text of the jurisdictional decision rendered in *Ceskoslovenska Obchodni Banka, A.S. v. The Slovak Republic* (ICSID Case No. ARB/97/4).

The *ICSID Review—Foreign Investment Law Journal*, which appears twice yearly, is available on a subscription basis from the Johns Hopkins University Press, Journals Publishing Division, 2715 North Charles Street, Baltimore, Maryland 21218-4363, U.S.A. Annual subscription rates (excluding postal charges) are US$65 for subscribers with mailing address in a member country of the Organisation for Economic Co-operation and Development (OECD) and US$32.50 for others.

Other recent publications of the Centre include a new release (99-2) of ICSID's collection of *Investment Treaties*. This release contains the texts of 20 bilateral investment treaties concluded by 30 countries in the period of 1987-1999. The latest release (99-1) of ICSID's *Investment Laws of the World* was issued in May 1999. It contains the texts of the basic investment legislation of Ethiopia, Guatemala, Tanzania and Turkey.

Investment Laws of the World (ten volumes) and *Investment Treaties* (seven volumes) may be purchased from Oceana Publications, Inc., 75 Main Street, Dobbs Ferry, New York 10522, U.S.A., at US$950 for the *Investment Laws of the World* collection and US$550 for the *Investment Treaties* collection.

Recent Publications on ICSID

Chatterjee, Charles, The Arbitration between American Manufacturing & Trading Inc. and the Republic of Zaire—When Challenges to the Jurisdiction of an ICSID Tribunal Are Not Valid, 16 Journal of International Arbitration, No. 1, 37 (1999).

El-Kosheri, Ahmed S., The Klöckner Case and the Finality of ICSID Arbitral Awards, in Liber Amicorum: Professor Ignaz Seidl-Hohenveldern in Honor of His 80th Birthday 103 (G. Hafner et al. eds., 1998).

Escobar, Alejandro A., Conducting Arbitration Proceedings under the ICSID Convention, in Carswell's Handbook of International Dispute Resolution Rules 206-12 (Babak Barin ed., 1999).

Parra, Antonio R., The Role of ICSID in the Settlement of Investment Disputes, 16 News from ICSID, No. 1, at 5 (1999).

_____, The Limits of Party Autonomy in Arbitration Proceedings under the ICSID Convention, ICC International Court of Arbitration Bulletin Vol. 10, No. 1 (1999).

Paulsson, Jan, International Commercial Arbitrations, in Handbook of Arbitration Practice 535, 544-45 (R. Bernstein et al. eds., 3rd ed., 1998).

Schreuer, Christoph, Commentary on the ICSID Convention, Articles 50, 51 and 52, 13 ICSID Review—Foreign Investment Law Journal 478 (1998).

_____, Commentary on the ICSID Convention, Articles 53, 54 and 55, 14 ICSID Review—Foreign Investment Law Journal 46 (1999).

_____, The Interpretation of ICSID Arbitration Agreements, in International Law: Theory and Practice 719-35 (K. Wellens ed., 1998).

Shihata, Ibrahim F.I., ICSID and Investment Treaties, forthcoming in Shihata, Ibrahim F.I., The World Bank in a Changing World, Vol. III (Kluwer Law International, 2000).

Shihata, Ibrahim F.I. & Parra, Antonio R., The Experience of the International Centre for Settlement of Investment Disputes, forthcoming in The World Bank in a Changing World, Vol. III (Kluwer Law International, 2000); and in 14 ICSID Review—Foreign Investment Law Journal (1999).

Stevens, Margrete L., International Centre for Settlement of Investment Disputes (ICSID), in Manual on International Courts and Tribunals 86-106 (P. Sands et al. eds., 1999).

Vives Chillida, Julio A., El Centro Internacional de Arreglo de Diferencias Relativas a Inversiones (CIADI) (1998).

The full list of publications relating to ICSID is provided in *ICSID Bibliography*, Doc. ICSID/13, which is available on the ICSID website at www.worldbank.org/icsid.

News from ICSID

is published twice yearly by the International Centre for Settlement of Investment Disputes. ICSID would be happy to receive comments from readers of *News from ICSID* about any matters appearing in these pages including the personal contributions of individual writers. Please address all correspondence to: ICSID, 1818 H Street, N.W., Washington, D.C. 20433, U.S.A.