

NEWS FROM ICSID

International Centre for Settlement of Investment Disputes

Vol. 18, No. 2

Fall 2001

Arbitration in a New International Alternative Dispute Resolution System

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A paper delivered in the session on "Arbitration and ADR: Partners or Adversaries?" at the Eighteenth ICC International Court of Arbitration / American Arbitration Association / ICSID Joint Colloquium on International Arbitration, held in Paris on November 16, 2001.

New Answers for New Needs

As trade, investment and private business expand throughout the world at an increasing speed, dispute resolution systems face growing challenges. In fact, just as domestic courts have been overwhelmed by the demand on their services arising from expanding economies and social life, so too international dispute resolution is facing the need to develop the appropriate responses.

An international alternative dispute resolution system (ADR), combining renewed traditional mechanisms with new approaches, is already in place and will no doubt be much perfected in the years ahead. This paper will explore

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St. Vincent and the Grenadines Signs the ICSID Convention

On August 7, 2001, His Excellency Mr. Ellsworth John, Ambassador of St. Vincent and the Grenadines to the United States and its Permanent Representative to the Organization of American States, signed the ICSID Convention on behalf of his country. St. Vincent and the Grenadines is the 149th signatory to the ICSID Convention. As of December 2001, 134 of the ICSID Convention signatories have also ratified the Convention to become Contracting States. The ICSID Contracting States from the Caribbean region include The Bahamas, Barbados, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, and Trinidad and Tobago. The ICSID Convention has also been signed by the Dominican Republic and Haiti, but is yet to be ratified by these States.

An up-to-date list of the ICSID Contracting States and Other Signatories of the Convention (Document ICSID/3) is available on the ICSID website (www.worldbank.org/icsid) and from the Centre on request.

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Disputes Before the Centre

Forty-one cases, more than at any other time in the history of the Centre, are currently pending or have been concluded since the publication of the last issue of *News from ICSID*. Nine ICSID proceedings have been instituted in the period. Eight of these are new ICSID Convention arbitration proceedings and one is a proceeding for a Supplementary Decision and Rectification of an award. Following the well-established trend in the recent caseload of ICSID, seven out of the eight new arbitration cases have been instituted by foreign investors relying for the host State's consent to ICSID arbitration contained in provisions of bilateral investment treaties. In addition, ICSID has also registered a new case based on an arbitration clause of a contract for an oil exploration and production project. With the eight new arbitration cases, ICSID has, by the end of December 2001, registered a total of 95 cases, 3 of which are conciliation proceedings, 10 Additional Facility proceedings and 82 ICSID Convention arbitration proceedings.

While the majority of the pending cases are ICSID Convention proceedings, there are also six cases that are being conducted under the ICSID Additional Facility Rules. Like most of the pending ICSID Convention cases, all of the Additional Facility proceedings have been initiated on the basis of consents from the State party to ICSID arbitration expressed in treaty provisions. These include multilateral and bilateral treaties providing for ICSID Additional Facility Rules arbitration as an alternative to ICSID Convention arbitration, when jurisdictional conditions render the latter unavailable for the settlement of a particular dispute. The largest number of such cases so far have been brought under the North American Free Trade Agreement (NAFTA).

Since the publication of the last issue of *News from ICSID*, awards have been rendered in three cases, all of which have been ICSID Convention proceedings. One of these awards dismissed the

claims on their merits, another award ruled in favor of the State party, and the third award embodied the parties' settlement agreement. The award of the Tribunal in one of these cases, *Eudoro A. Olgúin v. Republic of Paraguay*, is posted on the website of the Centre at www.worldbank.org/icsid. Also posted on the website is the Tribunal's Decision on Jurisdiction. Recent developments in the disputes currently pending before the Centre are summarized below.

- **Compañía de Aguas del Aconquija S.A. and Vivendi Universal v. Argentine Republic (Case No. ARB/97/3)—Annulment Proceeding**

August 20, 2001

The applicants file their memorial on annulment.

October 5, 2001

The *ad hoc* Committee issues a decision rejecting a proposal for the disqualification of one of its members.

November 12, 2001

The Respondent files its counter-memorial on annulment.

December 10, 2001

The applicants file their reply on annulment.

- **Ceskoslovenska obchodni banka, a.s. v. Slovak Republic (Case No. ARB/97/4)**

August 31, 2001

The Claimant files its reply on the merits.

October 5, 2001

The proceeding is suspended following the resignation of Thomas Buergenthal.

December 11, 2001

The Tribunal is reconstituted following the resignation of Thomas Buergenthal. Its members are: Hans van Houtte (Belgian), President; Piero Bernardini (Italian); and Andreas Bucher (Swiss).

- **Houston Industries Energy, Inc. and others v. Argentine Republic (Case No. ARB/98/1)**

August 24, 2001

The Tribunal renders its award; attached to the award is an individual opinion by one of the arbitrators.

- **Víctor Pey Casado and President Allende Foundation v. Republic of Chile (Case No. ARB/98/2)**

September 26, 2001

The tribunal issues its decision on provisional measures and Procedural Order No. 4/2001 regarding a hearing on jurisdiction.

October 15, 2001

The Claimants and the Respondent file each a Note regarding the hearing on jurisdiction pursuant to Procedural Order No. 4/2001; and the Claimants file a request for the production of new documents.

October 24, 2001

At the Tribunal's request, the Respondent files its observations to the Claimants' request for production of new documents.

October 29 and 30, 2001

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

- **International Trust Company of Liberia v. Republic of Liberia (Case No. ARB/98/3)**

October 19, 2001

The parties are informed that the Tribunal has decided to stay the proceeding for lack of payments from parties.

- **Wena Hotels Limited v. Arab Republic of Egypt (Case No. ARB/98/4)—Annulment Proceeding**

August 28, 2001

Wena Hotels Limited files its counter-memorial on annulment.

September 10, 2001

The Arab Republic of Egypt files its reply on annulment.

September 26, 2001

Wena Hotels Limited files its rejoinder on annulment.

October 22-23, 2001

The *ad hoc* Committee holds a hearing with the parties in Paris.

- **Eudoro A. Olguín v. Republic of Paraguay (Case No. ARB/98/5)**

July 26, 2001

The Tribunal renders its award.

- **The Loewen Group, Inc. and Raymond L. Loewen v. United States of America (Case No. ARB(AF)/98/3)**

August 27, 2001

The Respondent files its rejoinder on the merits.

September 10, 2001

The proceeding is suspended following the resignation of L. Yves Fortier.

September 20, 2001

The Tribunal is reconstituted following the resignation of L. Yves Fortier. Its members are: Anthony Mason (Australian), President; Abner J. Mikva (U.S.); and Michael Mustill (British).

October 15-19, 2001

The Tribunal holds a hearing on the merits in Washington, D.C.

- **Tanzania Electric Supply Company Limited v. Independent Power Tanzania Limited (Case No. ARB/98/8)**

July 12, 2001

The Tribunal renders its award.

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Disputes Before the Centre

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- **Alex Genin and others v. Republic of Estonia (Case No. ARB/99/2)—Supplementary Decision and Rectification Proceeding**

August 1, 2001

The Secretary-General registers an application submitted by the Claimants for supplementary decision and rectification proceeding.

October 12, 2001

The Respondent files a response to the request for supplementary decisions and rectification, at the direction of the Tribunal.

December 14, 2001

The Respondent files its counter-memorial on supplementary decisions and rectification.

- **Philippe Gruslin v. Malaysia (Case No. ARB/99/3)—Annulment Proceeding**

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

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

July 9-13, 2001

The Tribunal holds a hearing on the merits in Washington D.C.

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

August 1, 2001

The Claimant submits its Reply on Liability and Competence.

October 1, 2001

The Respondent submits its Rejoinder on Liability and Competence.

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

July 17-18, 2001

The Tribunal holds a hearing on the merits with the parties in Paris.

October 1-2, 2001

The Respondent and the Claimant file their post-hearing briefs.

- **Patrick Mitchell v. Democratic Republic of the Congo (Case No. ARB/99/7)**

September 17, 2001

The Respondent files its counter-memorial on the merits and raises an objection to jurisdiction.

October 24, 2001

The Tribunal suspends the proceeding on the merits pursuant to Article 41 of the ICSID Convention, and fixes a deadline for the Claimant to file his counter-memorial on jurisdiction.

- **Zhinvali Development Ltd. v. Republic of Georgia (Case No. ARB/00/1)**

August 6, 2001

The Respondent submits its counter-memorial.

August 31, 2001

The Claimant files its reply.

December 17, 2001

The Claimant files a request for provisional measures.

- **Mihaly International Corporation v. Democratic Socialist Republic of Sri Lanka (Case No. ARB/00/2)**

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

- **GRAD Associates, P.A. v. Bolivarian Republic of Venezuela (Case No. ARB/00/3)**

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

- **Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco (Case No. ARB/00/4)**

July 23, 2001

The Tribunal issues its decision on jurisdiction.

October 18, 2001

The Tribunal holds a session in Paris for the organization of the proceeding on the merits.

- **Autopista Concesionada de Venezuela, C.A. v. Bolivarian Republic of Venezuela (Case No. ARB/00/5)**

September 28, 2001

The Tribunal issues its decision on jurisdiction.

October 26, 2001

The Tribunal issues Procedural Order No. 2 in connection with the merits.

December 21, 2001

The Claimant files its memorial on the merits.

- **Consortium R.F.C.C. v. Kingdom of Morocco (Case No. ARB/00/6)**

July 23, 2001

The Tribunal issues its decision on jurisdiction.

October 18, 2001

The Tribunal holds a session in Paris for the organization of the proceeding on the merits.

- **World Duty Free Company Limited v. Republic of Kenya (Case No. ARB/00/7)**

October 31, 2001

The Respondent files its preliminary objections.

- **Ridgepointe Overseas Developments, Ltd. v. Democratic Republic of the Congo (Case No. ARB/00/8)**

September 7, 2001

The Claimant files its memorial.

- **ADF Group Inc. v. United States of America (Case No. ARB(AF)/00/1)**

August 2, 2001

The Claimant files its memorial on the merits.

October 4, 2001

The Tribunal issues a procedural order concerning the Claimant's request for production of documents.

November 30, 2001

The Respondent files its counter-memorial on competence and liability.

- **Técnicas Medioambientales Tecmed, S.A. v. United Mexican States (Case No. ARB(AF)/00/2)**

September 4, 2001

The Claimant files its memorial on the merits.

November 16, 2001

The proceeding is suspended following the resignation of Guillermo Aguilar Alvarez.

December 17, 2001

The Tribunal is reconstituted following the resignation of Guillermo Aguilar Alvarez. Its

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members are: Horacio A. Grigera Naón (Argentine), President; José Carlos Fernández Rozas (Spanish); and Carlos Bernal Vereá (Mexican).

- **Waste Management, Inc. v. United Mexican States (Case No. ARB(AF)/00/3)**

August 6, 2001

The Tribunal informs the parties of certain issues regarding the question of venue and invites them to make observations on these issues.

August 9, 2001

The Respondent files its memorial on jurisdiction.

August 27, 2001

The Claimant and the Respondent each file their further observations on the question of venue.

September 18, 2001

The Tribunal fixes time limits for submission under Article 1128 of the NAFTA and for comments from the parties on the NAFTA Parties' submissions.

October 3, 2001

The Tribunal issues a Decision on venue of the arbitration, dated September 26, 2001.

October 9, 2001

The Claimant files its counter-memorial on jurisdiction.

November 16, 2001

The proceeding is suspended following the resignation of Guillermo Aguilar Alvarez.

December 14, 2001

The Tribunal is reconstituted following the resignation of Guillermo Aguilar Alvarez. Its members are: James Crawford (Australian), President; Benjamin R. Civiletti (U.S.); and Eduardo Magallón Gómez (Mexican).

- **Generation Ukraine Inc. v. Ukraine (Case No. ARB/00/9)**

September 26, 2001

The Tribunal holds its first session with the parties in London.

- **Impregilo, S.p.A and Rizzani De Eccher S.p.A. v. United Arab Emirates (Case No. ARB/01/1)**

August 7, 2001

The Secretary-General issues an order taking note of the discontinuance of the proceeding pursuant to Arbitration Rule 44.

- **Antoine Goetz & others v. Republic of Burundi (Case No. ARB/01/2)**

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

- **Enron Corporation and Ponderosa Assets, L.P. v. Argentine Republic (Case No. ARB/01/3)**

November 1, 2001

The Tribunal is constituted. Its members are: Francisco Orrego Vicuña (Chilean), President; Héctor Espiell (Uruguayan); and Pierre-Yves Tschanz (Swiss).

December 5, 2001

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

- **AES Summit Generation Limited v. Republic of Hungary (Case No. ARB/01/4)**

September 6, 2001

The Tribunal is constituted. Its members are: Allan Philip (Danish), President; Francisco Orrego Vicuña (Chilean); and Prosper Weil (French).

October 24, 2001

The Tribunal holds its first session with the parties in Paris.

- **Société d'Exploitation des Mines d'Or de Sadiola S.A. (SEMOS) v. Republic of Mali (Case No. ARB/01/5)**

September 21, 2001

The Tribunal is constituted. Its members are: Bernardo Cremades (Spanish), President; Robert S.M. Dossou (Beninese); and Ibrahim Fadlallah (Lebanese).

October 17, 2001

The Tribunal holds its first session with the parties in Paris.

- **AIG Capital Partners, Inc. and CJSC Tema Real Estate Company v. Republic of Kazakhstan (Case No. ARB/01/6)**

October 5, 2001

The Tribunal is constituted. Its members are: Fali S. Nariman (Indian), President; Piero Bernardini (Italian); and Branko Vukmir (Croatian).

November 15, 2001

The Tribunal holds its first session in London.

- **MTD Equity Sdn. Bhd. and MTD Chile S.A v. Chile (Case No. ARB/01/7)**

August 6, 2001

The Secretary-General registers a request for institution of arbitration proceedings.

- **CMS Gas Transmission Company v. Argentine Republic (Case No. ARB/01/8)**

August 24, 2001

The Secretary-General registers a request for institution of arbitration proceedings.

- **Booker plc v. Co-operative Republic of Guyana (Case No. ARB/01/9)**

September 18, 2001

The Secretary-General registers a request for institution of arbitration proceedings.

- **Repsol YPF Ecuador S.A. v. Empresa Estatal Petroleos del Ecuador (Petroecuador) (Case No. ARB/01/10)**

October 5, 2001

The Secretary-General registers a request for institution of arbitration proceedings.

- **Noble Ventures, Inc. v. Republic of Romania (Case No. ARB/01/11)**

October 17, 2001

The Secretary-General registers a request for institution of arbitration proceedings.

- **Azurix Corp. v. Argentine Republic (Case No. ARB/01/12)**

October 23, 2001

The Secretary-General registers a request for institution of arbitration proceedings.

- **SGS Société Générale de Surveillance S.A. v. Islamic Republic of Pakistan (Case No. ARB/01/13)**

November 21, 2001

The Secretary-General registers a request for institution of arbitration proceedings.

- **F-W Oil Interests, Inc. v. Republic of Trinidad & Tobago (Case No. ARB/01/14)**

November 29, 2001

The Secretary-General registers a request for institution of arbitration proceedings.

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some of the features of this new system, with particular reference to the role of arbitration.

Is Arbitration Part of ADR?

A first intriguing question is whether arbitration can be really considered as part of ADR. Historically, arbitration was indeed born as an alternative to the submission of disputes to the ordinary courts of justice, both domestically and under international law.

But what is the situation today, particularly in trade and business matters? Domestically, at any rate in the United States and the United Kingdom, arbitration is generally considered a form of ADR. Internationally, however, the answer is not quite clear. The International Chamber of Commerce Amicable Dispute Resolution system (ICC-ADR), for example, excludes arbitration from ADR. Other institutions in the field, such as the London Court of International Arbitration (LCIA), do not seem to take the same view and both arbitration and ADR appear to be considered as alternatives, albeit each with its own characteristics.

The answer probably lies in the path that arbitration is likely to follow. It has been noted that arbitration has evolved towards more structured forms that make the differences with court adjudication less meaningful. In point of fact, many times the strategies pursued by lawyers in arbitration proceedings are not too different from those used in litigation in ordinary courts of justice. Sometimes arbitrators as well tend to approach the procedure in a similar manner.

Should this be the approach prevailing in the future, then it is probable that ADR will become an alternative not only to the courts but also to arbitration as it is characterized by a greater degree of flexibility and less formalities.

Keeping a reasonable distance from courts

There is still another dimension to the question that needs to be considered. The option of alternative dispute resolution generally entails a degree of dissatisfaction. The goals of ADR have been described as pursuing the relief of "court congestion as well as undue cost and delay; to enhance community involvement in the dispute resolution process; to facilitate access to justice; and to provide more 'effective' dispute resolution." (G. Applebey, *An Overview of Alternative Dispute Resolution*, in *Alternative Dispute Resolution 27* (C. Samson & J. McBride eds., 1993). The delay of courts in resolving cases, the complex and costly nature of adjudication and the lack of specialization to deal with new issues have rendered formal adjudication many times inaccessible or ineffective. ADR itself is not exempt of course from criticism, but it is generally considered a viable approach to cope with such difficulties.

The point to be made is that arbitration also copes with those same problems, and hence it does not fall within the same degree of dissatisfaction as courts do. The increasing demand for arbitration and the active role of the leading institutions in the field is hardly indicative of dissatisfaction with this particular method.

In this light it is then to be expected that if arbitration keeps a reasonable distance from ordinary court proceedings it will be as much part of ADR as other methods, safeguarding of course its basic features of due process and adversarial approaches to dispute settlement.

Expedited and fast-track arbitration

However, there is a particular need to consider the question of expediency. If arbitration is too slow compared with other ADR methods, there could be a growing gap to the disadvantage of the former.

A recent trend that is important to keep in mind in this respect is the establishment of fast-track forms of arbitration in order to achieve results in a short time frame and consequently lower the costs and difficulties associated with

traditional arbitration. Already in 1978, the International Chamber of Commerce established a Standing Committee for the Regulation of Contractual Relations. Its aim was to adopt recommendations that the parties undertake to consider in good faith or to adopt decisions that the parties agree to respect as if they were contractual provisions, although not being equivalent to an award. A Pre-Arbitral Referee Procedure was also enacted by the International Chamber of Commerce in 1990 with a view to remedy the problems caused by slow arbitration procedures.

Although these initiatives were not entirely successful, they rightly pointed to an aspect international arbitration needs to take into account. The ICC International Court of Arbitration is always attentive to the compliance with reasonable time limits, encouraging a six-month period for the completion of proceedings. Fast-track arbitration has been also successfully conducted under the normal rules of arbitration of the International Chamber of Commerce impressed with a sense of urgency or expediency by the appointed tribunal.

A promising mechanism of this kind has been established by the World Intellectual Property Organization (WIPO) in terms of Expedited Arbitration Rules, which simplify the WIPO Arbitration Rules in order to attain a faster result. The key elements of the expedited mechanism are the appointment of a sole arbitrator and the streamlining of deadlines throughout the procedure.

Improving on Traditional Methods

Traditional dispute settlement methods under international law have also been rapidly evolving so as to adapt to new needs and demands. This responds first to the fact that users of international dispute settlement, like those in domestic contexts, have a marked preference for solving their disputes by recourse to negotiations and other non-adversarial methods, while the judicial option is usually kept as an alternative of last resort.

Another element encouraging alternative arrangements is the need of contemporary dispute

settlement to ensure prevention rather than resolution of ongoing disputes, an objective which many times can be only achieved by means of new mechanisms. As a result of a preventive legal environment, that in addition is likely to reduce the legal risks involved, and of the availability of new procedures, a significant increase in the number of disputes submitted to prevention and resolution is to be expected.

As a result of these developments, a number of important improvements in other traditional mechanisms can be noted:

- Increasing reliance on negotiations and consultations, including a requirement of notification, availability of information, monitoring and greater institutionalization;
- Institutional support for inquiry and fact-finding;
- Institutional support for conciliation and recourse to compulsory conciliation;
- Expanding role of technical bodies and expert determination of disputes;
- Development of mediation.

New ADR Approaches

Domestic experiences are also most relevant to these developments. ADR has become a favored approach to dispute settlement in the United States for the past twenty-five years and in Britain and other countries more recently. Besides the classic methods of negotiation, conciliation, mediation and arbitration, ADR includes a variety of other methods developed in the context of those domestic experiences.

These other alternatives include:

- Court-ordered arbitration;
- Non-binding arbitration;
- Private judging;
- Rent-a-judge;
- Med-Arb;
- Mini-trial;
- Summary jury trial;
- Early neutral evaluation;
- Neutral expert fact finding;
- Policy dialogue.

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Besides the interest that the methods themselves entail, there is an important experience in new areas to which they are applied. Some of these new areas may be again of particular relevance for international dispute settlement.

Small claims procedures

The development of small claims procedures facilitating speedy and inexpensive justice for claims involving small amounts, usually in terms of consumer items, is something that could be looked at with interest in international transactions. This option is not generally available and normal procedures are some times far too expensive for the amounts in dispute or the means of the claimant.

The recent experience of the settlement of claims relating to the Swiss dormant bank accounts, involving an expedited and free claims procedure, might provide some guidance on dealing with small claims generally. Relevant experience is also found in the United Nations Compensation Commission (UNCC) and the mechanisms for compensation of slave work. Fast track procedures for small claims are also available under domestic systems (*e.g.*, AAA Judicial Arbitration and Mediation Services (JAMS)).

Ombudsman intervention and self-regulation

The British experience relating to the intervention of an Ombudsman is also of interest for international dispute settlement. This experience includes the Insurance Ombudsman Bureau, providing from informal advice to formal arbitration of disputes in the insurance industry; the Office of the Banking Ombudsman; the Building Societies Ombudsman Scheme; and the role of the Investment Referee.

As these activities become more and more an integral part of the global market, with particular reference to financial services and transactions,

there will be a need for dispute settlement alternatives that might be accessible to the small investors. The very success of the globalization in these areas will require such an alternative.

On occasion, self-regulatory schemes of the industry have provided for an alternative, and these are to be encouraged, but there is always the need to have other dispute resolution means available in case the scheme does not lead to a reasonable settlement. For example, important self-regulatory schemes, such as that relating to take-over and mergers in Britain, involve Panel decisions, particularly with a view to protect minority shareholders, that are not exempt from judicial review on given grounds.

International take-overs and mergers being so common in a global economy, the intervention of alternative dispute settlement to protect small companies or minority shareholders might also be an important feature of the international system.

As globalization advances in the trade and financial markets, new methods for alternative dispute settlement will become increasingly available, supplementing the role of courts or of other more traditional methods of dispute settlement. These developments will most likely find a source of inspiration in the domestic experiences that are available today.

The Internationalization of ADR

It may be readily recognized that some of the methods mentioned are not unknown to international dispute settlement, perhaps in a less structured manner and more as the result of practice than of a formal definition. The question to be kept in mind is whether these methods will be transplanted into international dispute settlement in order to facilitate similar goals as in domestic experiences.

First, it must be noted that negotiation, consultation, good offices, fact-finding and mediation are methods well known to traditional international dispute settlement arrangements. Some of their present features were mentioned above.

Conciliation is another method that has been developed to an extent. ICSID, UNCITRAL, the ICC, the United Nations and the Permanent

Court of Arbitration have all enacted conciliation rules. It must be noted, however, that of late this method has not proven to be very popular among users.

Secondly, some of the most relevant new techniques are gradually emerging in the context of international dispute settlement. A case in point is, of course, the ICC-ADR procedure that provides not only for mediation but also for neutral evaluation, mini-trial, any other settlement technique and a combination of techniques.

Third, expert determination of disputes is also gaining ground internationally. Traditionally this alternative was known in the area of fact-finding and investigation, and on occasion, as under the ICSID Rules, conciliation may be used also for fact-finding and investigation needs. But today it is usually geared to highly specialized areas of expert determination, a case in point being that of the ICC Rules for Documentary Credit Dispute Resolution Expertise and the ICC International Centre for Expertise.

Fourth, mediation is becoming the most favored alternative dispute resolution method. A number of advanced domestic ADR systems provide for mediation, this being the case, for example, of the Center for Policy Resources (CPR), the AAA and the JAMS in the United States. Internationally, mediation is also readily available, as under the LCIA Mediation Procedure or the ICC-ADR. Under the latter rules, mediation is the method to be used in case the parties have not made a choice.

Compulsory mediation and court ordered mediation are also variations of this method. Some governments, most notably that of the United Kingdom, are requiring public services and institutions to resort to mediation before attempting any form of litigation.

Finally, rules for dispute settlement are being regularly adapted for the participation of new parties or to attend to new specialized subjects, such as disputes concerning the environment and natural resources.

Arbitration and ADR: Developing Interconnections

It follows from these developments that both arbitration and other alternative methods will

co-exist hand in hand in international dispute settlement in the years ahead. A number of connections between arbitration and such other methods are gradually emerging, usually to provide additional alternatives to the users. This added flexibility is to be welcomed.

It is to be noted that various hybrid methods are being made available, including:

- Non-binding arbitration;
- Bracketed arbitration;
- Final Offer Arbitration;
- Med-Arb.

This is not the occasion to discuss the characteristics of such hybrids, but just to emphasize that often there is provision for arbitration in case other alternatives fail. When such methods are institutionally managed, this progression is greatly facilitated.

Separating the role of mediators and arbitrators

Mediators can on occasion assist the parties in preparing for arbitration within some basic constraints. The most important of these limits is the role that the mediator itself is to play in arbitration. As a rule, it is not favored that a mediator can serve as an arbitrator in the pursuance of the settlement of a particular dispute (CPR, National Association of Securities Dealers (NASD) Mediation Rules), or conversely that an appointed arbitrator might turn into a mediator (AAA).

The reason for this separation of roles is to facilitate communications with the neutral during the mediation and thus improve the prospects for a settlement, which would not happen if the evidence or views disclosed are later to be judged by the same individual in adversary proceedings. This is particularly troublesome when the information is disclosed in confidence, thus having a potential impact on issues of due process.

In this context, the utilization of Final Offer Arbitration and Med-Arb is somewhat limited. Under the former, also known as Mediation and Last Offer Arbitration (MEDALOA), mediation is followed by the submission by each party of a

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final or last offer to the arbitrator. Med-Arb can involve different neutrals who are usually present or informed of both stages of the settlement procedure.

A supplementary role for expert determination

Expert determination is also in many respects intertwined with arbitration and should be regarded as supplementary. In fact, on occasion expert determination is turned into an award or an enforceable contract. In other instances, experts integrate the arbitration tribunal or provide advice to it. Approaches such as Dispute Review Boards and Dispute Adjudication Boards also involve a high degree of expertise.

A successful experience with expert integration has been undertaken in some UNCC panels. One particularly interesting outcome of this approach has been the development of an alternative valuation methodology when in the circumstances of a claim the normal methodology envisaged has proven to be entirely inappropriate.

Interchanging proceedings

Another connection of importance between arbitration and ADR relates to the conducting of parallel proceedings. In some institutional arrangements there is no obstacle for the continuation of arbitration or judicial proceedings while mediation is underway (LCIA, NASD), while other arrangements do not encourage such a parallelism (CPR). Of course, with the agreement of the parties mediation can always be attempted during arbitration (CPR, AAA), with the limits discussed above as to the role of the same individual in both proceedings.

Preserving Confidentiality

Some of the connections examined bring into light the general role of confidentiality in arbi-

tration and ADR proceedings. It is essential for the success of these mechanisms to ensure confidentiality. The major international arbitration systems insist on this point. The rules and practice on the publication of awards generally require also the agreement of the parties or the need to edit the texts.

In mediation and generally in ADR confidentiality is still stricter as otherwise it would simply lead to complete failure. International and domestic ADR alike are explicit on this matter (LCIA, AAA, CPR, NASD, JAMS), to the point of restricting attendance of hearings and closing access to records or transcripts (LCIA).

Confidentiality in arbitration and other dispute settlement arrangements, however, has been occasionally criticized because it could conflict with transparency and the need to ensure that broader public interests are taken into account. WTO panel proceedings, for example, have been singled out to this effect. Underlying this view there is sometimes an interest in influencing the outcome of the resolution process.

Should this approach prevail, arbitration would be inevitably separated from ADR and would become more closely related to ordinary public court proceedings. It would thus cease to be an "alternative" and would become just one variation of judicial adjudication. I submit this would be fatal for the role of arbitration and would lead to an increased resort to truly alternative ADR techniques.

There is also an issue concerning the need to respect the independence of tribunals and abstain from influencing their work directly or indirectly. Highly respected professional arbitrators will, in any event, be aware of the public interests involved in the cases before them.

A Common Framework for Arbitration and ADR

It can be seen that connections and interrelationships between arbitration and ADR are manifold and point toward a supplementary role, not to antagonism. The question that needs to be asked at this stage is whether these connections will be loose and occasional or whether they might lead to a common framework.

Developing institutional auspices

It is apparent that arbitration and ADR are becoming increasingly integrated in the common institutional framework of major dispute settlement systems. This trend is likely to continue. It may even be thought that it would be of interest for the ICC not to dissociate arbitration from ADR, just like it might be of interest for ICSID to turn the conciliation rules into a broader ADR facility, parallel to the arbitration system.

A new corporate conflict management

Corporations are increasingly resorting to "conflict management," including therein not just arbitration in isolation but a chain of settlement methods that move from negotiation to mediation and on to arbitration, each with its own features and at its own time. One important reason for this development is that ADR techniques offer the prospect to focus on the continuing interests of the parties in safeguarding their mutual relationship and not just in settling a past dispute as may happen in arbitration. Such a continuing relationship is essential for pursuing corporate business in a global environment. Of course, arbitration will always be available as the method of last resort.

A structured international dispute settlement system

It is also apparent that the international community is moving towards a structured international dispute resolution system in which both public courts and private arrangements will interact. All such facilities quite naturally form part of the same overall system. As such, they ought to be interrelated and not left in isolation as many times happens today as a consequence of the fragmentation of the law and dispute settlement procedures.

Not all arrangements need to be integrated into a common structure. Neither should this result in a strict hierarchy of international tribunals or methods because it could curtail the parties' freedom of choice or their flexibility to arrange for a specific dispute settlement in the context of particular activities or problems. It is rather a question of bringing, in an organized

way, to the parties' attention the various choices at their disposal and how they could take advantage of these alternatives.

Domestic experience provides some guidance about the possible interrelation of courts and alternative methods. A typical case is, for example, that of court-directed arbitration or when the courts order the parties to pursue some other alternative. This same possibility exists in arbitration arrangements allowing for a discussion of potential mediation and alternative settlement (AAA, CPR). The International Court of Justice had also on occasion directed parties to explore negotiated settlements.

A word of caution should be introduced here. Various proposals have been recently made to establish an International Arbitral Court of Appeal or an International Court of Arbitral Awards. Proposals have also been made to transform the WTO dispute settlement arrangements into a Court of International Trade.

All such thoughts have of course merit. The caveat is that they could eventually lead to forms of arbitration very similar to judicial adjudication and therefore less "alternative." For the reasons explained above, this outcome should by all means be avoided.

Attaining a Global Role

Arbitration and ADR have a future in common that ought to be preserved. To the extent that these various methods are organized, guided and encouraged, the alternative dispute resolution system that has been gradually emerging will become a truly global undertaking in the years ahead.

Each method in itself has been evolving toward the satisfaction of new needs and realities, and additional methods are at hand. Private and public institutions are providing valuable global facilities in certain respects. The administration of international justice, broadly conceived, is becoming fully integrated with and supplemented by a system of alternative methods. This is in fact the only viable alternative to do justice to the growing demands of the international community.

* * * *

ICSID, Investment Treaties and Arbitration: Current and Emerging Issues

By Eloïse Obadia, Counsel, ICSID

A paper delivered at the Swiss Arbitration Association Conference on Investment Treaties and Arbitration, held in Zurich on January 25, 2002.

Introduction

The International Centre for Settlement of Investment Disputes (ICSID) provides facilities for the conciliation and arbitration of investment disputes between Contracting States and nationals of other Contracting States. The Centre was established some 40 years ago with the entry into force of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention). During the first 30 years of its existence, ICSID was somewhat of a "Sleeping Beauty," with an average of one or two cases being registered each year. It is with the widespread development of bilateral and multilateral investment treaties that the activities of ICSID have awakened.

Over the last decade, there has been an extraordinary proliferation of bilateral investment treaties, or BITs. Today, there are some 2000 bilateral investment treaties, as compared with about 500 BITs only 10 years ago. During this same period, the NAFTA and several other multilateral treaties with investment provisions similar to those found in BITs were concluded.

In the vast majority of these bilateral and multilateral investment treaties, the dispute-settlement provisions contain consents from the State party to one or both of the forms of arbitration administered by ICSID, that is, arbitration under the 1965 ICSID Convention and arbitration under the 1978 ICSID Additional Facility Rules. Under the Additional Facility Rules, the Centre can administer certain types of proceedings that fall outside the jurisdiction of the Convention. These include arbitration proceedings for the settlement of investment disputes where either the host country or the home State of the investor is not an ICSID member.

The explosion in the number of treaties for the promotion and protection of investments is reflected in ICSID's case load. Since 1998, the

Centre has been registering cases at a rate of one new case per month. In 2001, the Centre reached a record high of 14 new cases. Among these 14 cases, only 3 were brought on the basis of arbitration clauses in traditional investment agreements. The other 11 cases were brought by investors on the basis of consents of the host State contained in the dispute-settlement provision of bilateral investment treaties. Altogether, 49 cases have been brought on the basis of consents contained in bilateral and multilateral investment treaties. In 9 of these cases, the underlying treaty is the NAFTA.

In a way, these bilateral and multilateral investment treaties are to ICSID what Prince Charming was to Sleeping Beauty, having stirred the activities of the Centre. However, as you can imagine, the metaphor has its limits, and rather than "charming," the bilateral and multilateral investment treaties may appear problematic or, at the very least, challenging to the parties and to the Centre.

The investment treaties generate various issues. Considering the time that is allocated and with a view to avoiding repetition, I will focus on only a few. I would like, firstly, to speak about some of the current jurisdictional issues and secondly, the emerging procedural issues.

I – Current Jurisdictional Issues

The investment treaties generally include provisions by which each State party to the treaty undertakes to give investors from the other State or States involved fair and equitable treatment; full protection and security; prompt, adequate and effective compensation in the event of expropriation; and freedom from currency transfer restrictions. In addition, most of these treaties contain broad definitions of the investments and of the disputes covered. Investors have used quite extensively, and sometimes creatively, these

broad definitions to bring claims that the States party to the treaty had not necessarily contemplated at the time of the drafting. Not surprisingly, objections to jurisdiction have been raised by the respondent host States in all but 2 cases.

These objections reflect some of the complexity of bringing cases under investment treaties. The jurisdiction of the Centre, as well as of the competence of tribunals, must be established under both the ICSID Convention (or the ICSID Additional Facility Rules), and the bilateral or multilateral treaty concerned. The jurisdiction may be contested by objections to jurisdiction *ratione personae*, objections to jurisdiction *ratione materiae* and objections related to the parties' consent. As an example, I will describe a recent case where the tribunal examined these different questions and rendered a decision upholding jurisdiction.

In that case, a dispute had arisen between foreign companies and the State in regard to the implementation of a contract for the construction of a highway. The first question examined by the tribunal was that of the parties' consent. The issue lay in the existence of a forum-selection clause in the contract entered into between the foreign companies and a State enterprise in charge of the highways, providing for the jurisdiction of the administrative courts. The claimant companies asserted that the contract was covered by the bilateral investment treaty, and that the consent to the dispute-settlement provision of the treaty prevailed over the contractual clause. The State, on the other hand, argued that the companies were bound by the provisions of the contract which had been executed before the entry into force of the treaty.

The tribunal recalled that the only requirement of the ICSID Convention is that the consent be in writing. This consent can have three origins: an investor-State contract, an investment code or law and the dispute-settlement clause of a bilateral or multilateral treaty. The tribunal considered that in the present case, the clause in the BIT constituted a valid offer from the State to submit disputes to the jurisdiction of the Centre and that the claimants had validly consented in writing to that offer in the request for arbitration. The tribunal further indicated that this consent in writing from the claimants had prevailed over the clause contained in the contract. The tribunal explained that since the

jurisdiction of the administrative courts could not be extended, this being determined by law, this clause could not be understood as an agreed dispute-settlement procedure or as a representation of the free will of the parties.

The question of the presence of a forum-selection clause in the investor-State contract at issue was raised in two previous ICSID cases against the Argentine Republic. In the decision on jurisdiction rendered in the *Lanco International Inc. v. Argentine Republic* case, the tribunal adopted similar reasoning and considered that the stipulation contained in the concession agreement, setting forth the jurisdiction of the Federal administrative courts, could not be considered as a previously agreed dispute-settlement procedure such as provided for in the BIT. The tribunal further specified that the parties could not have selected the jurisdictions of these courts which, by law, are not subject to agreement or waiver, whether territorially, objectively, or functionally. Accordingly, the claimant could resort to the option of binding arbitration set forth in the dispute-settlement provision of the BIT. In the other case, *Compañía de Aguas del Aconquija, S.A. & Compagnie Générale des Eaux v. Argentine Republic*, the tribunal did not consider that one clause should prevail over the other. Rather, the concession contract clause and the BIT's dispute-settlement provision had their own independent existence and purpose. The tribunal held that as long as the claims alleged a cause of action under the BIT against the Argentine Republic, they were not subject to the jurisdiction of the administrative courts.

To come back to the case I was originally describing, the tribunal then examined jurisdiction *ratione personae*. The State argued that the real respondent was the enterprise in charge of the highways, which it considered a private entity, and with which the claimants had executed the contract. Under the ICSID Convention, the Centre's jurisdiction extends only to legal disputes arising directly out of an investment between a Contracting State, or a designated subdivision or agency of such State, and a national of another Contracting State. The tribunal rejected the respondent's argument saying that the claims were against the State itself for breaches of its obligations under the BIT. The

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tribunal added that the enterprise managing the highways was indeed a State entity because it was owned and controlled by the State and performed activities of a public nature.

Finally, the respondent raised two objections *ratione materiae* regarding the existence of an investment and the existence of claims based on the treaty. The respondent argued that the contract in the present case was, under domestic law, a sub-contract for performance of services. The respondent considered, therefore, that it was not an investment either under the ICSID Convention or under the BIT. The respondent based its reasoning on the general provision of the definitions clause in the BIT which required investments to be made in accordance with the laws and regulations of the host country. The respondent argued that insofar as this clause referred to the domestic laws and regulations of the host country, such laws should govern the definition of an investment.

The tribunal found that the construction contract gave the claimants a right "to a contractual performance having an economic value," and also that the claimants were the beneficiaries of "an economic right conferred... by [the] contract." These designations were included in the non-exhaustive definition clause of the BIT. The tribunal also stated that the reference in the BIT to investments to be made in accordance with the laws and regulations of the host State referred to the lawfulness of the investment and not to its definition. The tribunal considered that with respect to the dispute under consideration, the relevant laws and regulations had been followed. The tribunal then examined the requirements of the ICSID Convention as regards the notion of investment. Since there is no definition of investment under the Convention, the tribunal referred to criteria employed in some previous cases, that is the existence of an expenditure of money or other contribution, a certain duration of the performance and an element of risk. From the language of the Convention's preamble, the tribunal added the criterion that there be a contribution to the economic development of

the host country. The tribunal noted that since these criteria could be interdependent, they would have to be taken as a whole. The tribunal found that all of the criteria had been met. The foreign companies had made adequate contributions in the form of know-how, equipment, technical personnel and financing. As to the duration, the 36 month period agreed for the performance was thought sufficient. The risk element was also found to have been present, even if the remuneration of the sub-contractors did not depend on the profit of the project. The tribunal also held that there could be no doubt that the project had contributed to the economic development of the host State. The tribunal concluded that the highway construction contract constituted an investment both under the BIT and under the ICSID Convention.

Lastly, the tribunal examined the legal basis of the claims. The respondent argued that all of the claims were based on the contract's breaches, as opposed to the breaches of the BIT's provisions, and therefore the tribunal had no jurisdiction. The claimants argued that the tribunal was competent to examine both the contractual breaches and breaches of the treaty. The tribunal held that it was competent to examine breaches of the contract which also constituted breaches of the bilateral investment treaty. However, the tribunal stated that it had no competence over the claims solely based on the contract's breaches. The tribunal specified that, in as much as the entity in charge of the highways was an emanation of the State, the offer under the BIT to submit disputes to arbitration did not include contractual breaches of that entity. The case is now being heard on the merits.

In other pending cases against a Federal State, involving actions of Provinces or Federal administrative and judicial authorities, similar questions arise with respect to whether the actions and omissions which the claimants complain about are imputable to the State and are covered by the dispute-settlement provision of the bilateral investment treaties concerned.

Previous and pending ICSID cases raise jurisdictional issues other than the ones I have just presented. For instance, regarding the notion of investment, a tribunal has been faced with the question whether pre-contractual expenditures constitute an investment for the purposes of the ICSID Convention and the bilateral investment

treaty concerned. The background of this case is the following: a State solicits bids for the building of a public utility, a foreign company is chosen and granted a period of exclusivity to negotiate and finalize the project proposal. Ultimately, no contract is entered into between the company and the State, and the company spends several million dollars in project development. The question is whether the project-development costs are a sufficient basis for a "dispute arising directly out of an investment," under the ICSID Convention, and for an "investment dispute" under the BIT. Another case recently registered presents similar issues.

I have described so far issues that are of particular relevance to the ICSID Secretariat at the time of registration of a case. Under the ICSID Convention, the Secretary-General examines, on the basis of the information contained in the request, whether or not the dispute is manifestly outside the jurisdiction of the Centre. Under the Additional Facility Rules, the Secretary-General approves the access to the Additional Facility if he is satisfied that the requirements provided by those rules are met. However, bilateral investment treaties and, specifically, multilateral investment treaties also trigger issues during the course of the proceedings. In this respect, some emerging procedural issues are worth noting.

II - Emerging Procedural Issues

The emerging procedural issues that I would like to describe are related to NAFTA investor-to-State proceedings. In these proceedings, the claims are often related to sensitive matters that draw the attention of the public at large. These matters concern environmental measures, regulation of public utilities, and decisions of local courts. In this context, there is a demand for more transparency of the proceedings which might in some ways conflict with the confidential character generally associated with arbitration proceedings.

In the NAFTA proceedings that the Centre administered the parties argued at length on the extent of the duty of confidentiality. For example, parties argued on the application of the United States Freedom of Information Act, under which the United States is bound to comply with requests properly submitted by the public for the

disclosure of certain documents submitted during the course of the arbitration, unless these documents fall within statutory exemptions.

The question of confidentiality has now been clarified with the first interpretation issued by the Free Trade Commission on July 31, 2001. Under the NAFTA, the Free Trade Commission, which is composed of the trade ministers of the three States, is specifically empowered to make interpretations of the treaty. These interpretations are binding on tribunals in all NAFTA investor-to-State arbitration proceedings. The Commission provided *inter alia* that the "NAFTA Parties agree that nothing in the relevant arbitral rules imposes a general duty of confidentiality or precludes the Parties from providing public access to documents submitted to, or issued by, Chapter Eleven tribunals, apart from the limited specific exceptions set forth expressly in those rules." It is likely that we will be facing issues with the application of this interpretation, specifically in the context of pending cases where, for example, the parties had exchanged all of their briefs prior to the issuance of the interpretation.

Another emerging procedural issue relates to the intervention in the proceedings of third parties. Under Article 1128 of the NAFTA, the other States parties to the treaty have the right to make submissions to the tribunal on questions of interpretation of the NAFTA. This right has been used extensively, and tribunals tend to organize such submissions in ways that minimize additional work for the disputing parties. NAFTA tribunals have also been faced with interventions by civil society groups, such as NGOs. Two tribunals have agreed, with some limitations, to receive friends-of-the-court submissions. This trend may well be extended to cases initiated under BITs. NGOs have shown interest in several cases recently brought to ICSID under BITs. We may soon see the same kind of friends-of-the-court interventions in ICSID proceedings.

A final example of an emerging procedural issue with regard to NAFTA cases administered under the Additional Facility Rules relates to the setting aside of awards. As opposed to awards rendered under the ICSID Convention, awards rendered under the Additional Facility Rules are subject to the scrutiny of the courts of the place of arbitration. The application of local law com-

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bined with the Additional Facility Rules may raise certain procedural issues as recently illustrated by the *Metalclad* case. In that case, the Supreme Court of British Columbia partially set aside the award and suggested that the matter be remitted to the arbitral tribunal if the parties were unable to agree on the issue at stake. The applicable statute, however, provides for remission only if the setting aside proceedings are adjourned and if the court determines a time period for the tribunal to complete its task. Having omitted to do so in its initial decision, the court issued a supplementary reasons for judgment to that effect. In the meantime, the dispute was settled.

Conclusion

I would say that with the continuous proliferation of BITs and multilateral treaties with ICSID arbitration clauses, the expansion in the number of cases brought to ICSID is likely to continue, and it is to be expected that we will continue to face new issues.

New Designations to the ICSID Panels of Conciliators and of Arbitrators

In accordance with Articles 3 and 12 to 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 Bulgaria, Georgia, Germany, Panama, Romania and Venezuela.

Bulgaria

Panels of Conciliators and of Arbitrators
Designation effective November 21, 2001: Stanimir A. Alexandrov.

For instance, it may be a problem if the Centre receives several requests for arbitration against the same host State, brought as a result of a measure taken by that State, such as the enactment of a law affecting foreign investors. Unlike Article 1126 of the NAFTA, the ICSID Convention and the Additional Facility Rules do not contain a provision establishing a framework for consolidation of claims. In order to avoid inconsistencies in the findings of different tribunals, one solution would be to suggest that the parties appoint the same arbitrators. This was done in the past, where two or three cases were brought by different investors against the same host State for similar actions taken by that State.

With the proliferation of cases and issues, it is also probable that we will face some dissatisfaction from the host States. Let us just hope that in this context the drafters of investment treaties are not, like Prince Charming's mother, ogresses who want to get rid of Sleeping Beauty! Rather than a pure elimination of "open-ended" or "blank" consent given by host States to ICSID arbitration, we may see some adjustments towards a more defined or limited consent.

* * * *

Georgia

Panel of Arbitrators

Designations effective August 9, 2001: Lado Chanturia and Rolf Knieper.

Germany

Panel of Conciliators

Designation effective August 23, 2001: U.R. Siebel (re-appointment); designations effective December 11, 2001: Ernest G. Broeder (re-appointment), Martin Kramer (re-appointment) and Jürgen Voss.

Panel of Arbitrators

Designations effective August 23, 2001: Rolf Herber (re-appointment), Jens Bredow, Karl-Heinz Böckstiegel (re-appointment) and Günter Jaenicke (re-appointment).

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Panama*Panel of Conciliators*

Designation effective September 13, 2001:
Ramon R. Benedetti.

Panels of Conciliators and of Arbitrators

Designations effective September 13, 2001:
Clara Enilda Diaz de Sotelo, Maria Alejandra
Eisenmann and Juan Cristobal Zuñiga.

Romania*Panels of Conciliators and of Arbitrators*

Designations effective October 3, 2001: Victor

Babiuc, Viorel Mihai Ciobanu, Dinu C. Ianculescu
and Victor Tanasescu.

Venezuela*Panel of Conciliators*

Designations effective December 20, 2001:
Carlos Alberto Peña Díaz, Elizabeth María
Gallardo Thomas and José Antonio Castillo.

Panel of Arbitrators

Designation effective December 20, 2001: José
Rafael Tino-Smith.

New ICSID Publications

The Centre has recently published the Spring 2001 issue of *ICSID Review—Foreign Investment Law Journal*. The issue includes papers presented at the Seventeenth ICSID/AAA/ICC Court Joint Colloquium, which was hosted by ICSID in November 2000 at the headquarters of the World Bank in Washington D.C. The contributions include a discussion by Karl-Heinz Böckstiegel on presenting evidence in international arbitration proceedings; an examination by L. Yves Fortier on new trends in governing law with a particular focus on the *lex mercatoria*; a discussion by Antonio R. Parra of the applicable substantive law in ICSID arbitrations under investment treaties; and discussions by Donald Francis Donovan on arbitrating mass claims in the U.S. life insurance industry, and by Mark F. Rosenberg and Michael A. Cheah on arbitrating environmental disputes.

Other materials in the issue include the text of the OECD's model foreign investment legislation in the NIS, which is published in the issue with an Introductory Note by Jürgen Voss. The issue also contains the text of the arbitral award rendered in *Metalclad Corporation v. United Mexican States* (ICSID Case No. ARB(AF)/97/1); and the texts of a procedural order, the decision on jurisdiction, the award and the rectification of the award rendered in *Emilio Agustín*

Maffezini v. Kingdom of Spain (ICSID Case No. ARB/97/7). In addition, the issue includes a review by Timothy J. Feighery of the new book by Paul D. Friedland, *Arbitration Clauses for International Contracts*; and by Joachim H. Karl, reviewing *Legal Aspects of Foreign Direct Investment* (Daniel D. Bradlow and Alfred Escher eds.).

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\$70 for subscribers with mailing address in a member country of the Organisation for Economic Co-operation and Development and US\$35 for others.

Other recent publications of the Centre include a new release (2000-3) of ICSID's collection of *Investment Treaties*, which was issued in October 2001. The release includes the texts of twenty bilateral investment treaties concluded by some twenty four countries in the period between 1992-2001. A new release for the collection of *Investment Laws of the World* is scheduled for publication in January 2002.

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

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News from ICSID

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