

# NEWS FROM ICSID



Vol. 20, No. 2 Winter 2003

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES



## NEW SECRETARY-GENERAL OF ICSID

The Administrative Council of ICSID has unanimously elected Roberto Dañino as ICSID's new Secretary-General. Mr. Dañino, a Peruvian national, had been appointed Senior Vice President and General Counsel of the World Bank and took up his Bank and ICSID duties in November 2003.

For further details see page 14 ▶

## NEW ICSID INITIATIVES

In his opening remarks at the twentieth joint colloquium on international arbitration (see page 15), Roberto Dañino announced several new initiatives for ICSID.

These notably include an initiative to promote greater use of conciliation under the ICSID Convention and ICSID Additional Facility. Although ICSID has since its inception offered conciliation procedures, only about 2% of the cases registered by the Centre have been conciliation cases. This is so despite the fact that conciliation may be a quicker and less expensive means of solving disputes than arbitration. As part of the new initiative, in all new arbitration cases, ICSID is bringing the conciliation alternative to the attention of the parties.

Other new initiatives that are being launched include improving ICSID's financial self-sufficiency and its knowledge and information dissemination efforts. At the same time, a more general stocktaking is taking place in ICSID. A client survey will shortly be done of users of ICSID to identify other areas of possible improvement in ICSID's services.

Further details on the initiatives will be posted on ICSID's website at [www.worldbank.org/icsid](http://www.worldbank.org/icsid). ■

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## DISPUTES BEFORE THE CENTRE

Sixteen new proceedings were registered by ICSID in the period July–December 2003. Fifteen of them were arbitration proceedings and one a conciliation proceeding. With these new cases, ICSID has registered by the end of 2003 a total of 145 cases.

Seventy-one cases have been either pending before ICSID or were concluded in the second half of 2003. Sixty-two of them have been brought on the basis of investor-State dispute settlement provisions of bilateral or multilateral investment treaties. In nine of the proceedings, investors have sought to establish ICSID jurisdiction on the basis of similar provisions contained in investment legislation or in direct investment contracts with the host State.

Seven arbitration proceedings were concluded in the period. Two of these were discontinued following a settlement reached by the parties. Awards were rendered in five of the concluded cases. In two of the cases, the respective tribunals upheld jurisdiction but dismissed the claims on the merits. Three of the awards upheld the claims in whole or in part.

One new request was registered for conciliation proceedings under the ICSID Convention. Only four of the total of 145 ICSID cases so far have been conciliation proceedings.

During the second half of 2003, ICSID also registered a request for a supplementary decision concerning a NAFTA case under the ICSID Additional Facility Rules and a request for resubmission of the dispute to a new tribunal following the conclusion of an annulment proceeding.

These and other developments in the disputes currently pending before ICSID are set out below.

### ■ **Compañía de Aguas del Aconquija S.A. and Vivendi Universal v. Argentine Republic (Case No. ARB/97/3) – Resubmission**

*October 24, 2003*

The Acting Secretary-General registers a request for resubmission of the dispute to a new Tribunal.

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

*July 18, 2003*

The Claimant files its Reply to the Respondent's Second Post-Hearing Memorial together with its Reply to the Respondent's Proposed Findings of Fact and Conclusions of Law. The Respondent files its Third Post-Hearing Memorial.

### ■ **The Loewen Group, Inc. and Raymond L. Loewen v. United States of America (Case No. ARB(AF)/98/3) – Supplementary Decision Proceeding**

*August 11, 2003*

The Respondent files a request for supplementary decision.

*September 23, 2003*

Claimant Raymond L. Loewen files his reply on the Respondent's request of August 11, 2003.

*December 19, 2003*

The Respondent files its reply in support of its request for a supplementary decision.

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

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

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

*August 14, 2003*

The Respondent files its comments on the Claimant's letter of June 25, 2003.

*September 5, 2003*

The Claimant submits a reply to the Tribunal's additional questions of August 14, 2003.

*September 11, 2003*

The Claimant submits its observations on the Respondent's letter of August 14, 2003.

*September 19, 2003*

The Respondent submits its observations on the Claimant's remarks of September 5, 2003 and September 11, 2003.

*November 3, 2003*

The parties submit their statements on costs.

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

There have been no new developments to report in this case since 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)**

*August 6, 2003*

The Tribunal declares the proceeding closed.

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

*August 1, 2003*

The Tribunal declares the proceeding closed.

*September 23, 2003*

The Tribunal renders its award.

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

*July 9, 2003*

The Respondent files its final memorial on the merits.

*August 6, 2003*

The Tribunal declares the proceeding closed.

*December 22, 2003*

The Tribunal renders its award.

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

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

■ **Ridgepointe Overseas Developments, Ltd. v. Democratic Republic of the Congo and Générale des Carrières et des Mines (Case No. ARB/00/8)**

*December 19, 2003*

The Tribunal issues a procedural order suspending the proceeding for a further three months from December 12, 2003.

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

*July 18, 2003*

The Tribunal declares the proceeding closed.

*September 16, 2003*

The Tribunal renders its award.

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

*July 21, 2003*

The Claimants file additional evidence.

*November 11, 2003*

Following the Claimants' request of October 8, 2003, the Tribunal postpones the hearing on the merits.

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

*August 20, 2003*

The Respondent files its memorial on jurisdiction concerning the ancillary claim.

*September 3-4, 2003*

The Tribunal holds a hearing on jurisdiction in Paris.

*October 17, 2003*

The Claimants file their counter-memorial on jurisdiction concerning the ancillary claim.

*November 19, 2003*

The Respondent files its reply on jurisdiction concerning the ancillary claim.

*December 22, 2003*

The Claimants file their rejoinder on jurisdiction concerning the ancillary claim.

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

*August 19, 2003*

The Tribunal declares the proceeding closed.

*October 7, 2003*

The Tribunal renders its award.

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

*September 15, 2003*

The Claimant files its reply on jurisdiction and the merits.

*November 21, 2003*

The Respondent files its rejoinder on jurisdiction.

*December 9-18, 2003*

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

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

*July 17, 2003*

The Tribunal issues its decision on objections to jurisdiction, and a procedural order concerning the continuation of the proceedings on the merits.

*October 2, 2003*

The Respondent files a request for suspension of the proceeding.

*October 17, 2003*

The Claimant files its observations on the Respondent's request of October 2, 2003.

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

*October 3, 2003*

The Claimant informs the Centre that the parties have reached an agreement on the question of costs and requests that any decision of the Sole Arbitrator on the issue be withheld.

*October 6, 2003*

The Respondent confirms that the parties have reached an agreement on the question of costs and that all claims have been withdrawn by the parties.

*October 11, 2003*

The Sole Arbitrator issues an order taking note of the discontinuance of the proceeding pursuant to Rule 43(1) of the ICSID Arbitration Rules.

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

*July 18, 2003*

The Tribunal issues a procedural order concerning the presentation of some documents.

*August 1, 2003*

The Tribunal issues a procedural order concerning the presentation of certain information.

*December 23, 2003*

The Tribunal declares the proceeding closed.

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

*July 10, 2003*

The Claimant files its memorial on the merits.

*September 8, 2003*

The Respondent requests an extension for the filing of its counter-memorial on the merits.

*September 24, 2003*

After hearing from both parties, the Tribunal grants the Respondent's request for an extension for the filing of its counter-memorial on the merits until December 20, 2003.

*December 3, 2003*

The Respondent requests a further extension for the filing of its counter-memorial on the merits.

*December 9, 2003*

After hearing from both parties, the Tribunal grants the Respondent's request for an extension for the filing of its counter-memorial on the merits until January 23, 2004.

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

*July 15, 2003*

The Claimant files a request for provisional measures.

*July 24, 2003*

The Respondent's files its observations on the Claimant's request for provisional measures.

*August 4, 2003*

The Respondent files its reply on jurisdiction.

*August 6, 2003*

The Tribunal renders its decision on provisional measures.

*August 29, 2003*

The Claimant files its rejoinder on jurisdiction.

*September 9-10, 2003*

The Tribunal holds a hearing on jurisdiction in London.

*December 8, 2003*

The Tribunal renders its decision on jurisdiction.

*December 9, 2003*

The Tribunal issues a procedural order concerning the schedule for the continuation of the pleadings.

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

*August 6, 2003*

The Tribunal issues its decision on jurisdiction.

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

*August 29, 2003*

The Respondent files its counter-memorial.

*September 26, 2003*

The Claimant files its reply memorial.

*October 24, 2003*

The Respondent files its rejoinder.

*December 9-19, 2003*

The Tribunal holds a hearing on jurisdiction and the merits in Tobago.

■ **Fireman's Fund Insurance Company v. United Mexican States (Case No. ARB(AF)/02/1)**

*July 17, 2003*

The Tribunal renders its decision on the preliminary question on jurisdiction.

■ **LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc. v. Argentine Republic (Case No. ARB/02/1)**

*July 21, 2003*

The Respondent files its memorial on jurisdiction.

*August 29, 2003*

The Claimants file their counter-memorial on jurisdiction.

*September 22, 2003*

The Respondent files its reply on jurisdiction.

*October 14, 2003*

The Claimants file their rejoinder on jurisdiction.

*November 20-21, 2003*

The Tribunal holds a hearing on jurisdiction at The Hague.

■ **Aguas del Tunari S.A. v. Republic of Bolivia (Case No. ARB/02/3)**

*August 4, 2003*

The Respondent files its counter-memorial in opposition to jurisdiction and in support of the production of evidence.

*September 8, 2003*

The Claimant files its reply to the Respondent's counter-memorial in opposition to jurisdiction and in support of the production of evidence.

*October 6, 2003*

The Respondent files its rejoinder in opposition to jurisdiction and in support of the production of evidence.

*November 5, 2003*

The Tribunal issues a procedural order concerning the hearing on jurisdiction.

*December 16, 2003*

The Respondent files its response to Paragraph 17 of the procedural order concerning the hearing on jurisdiction.

*December 31, 2003*

The Tribunal issues a second procedural order concerning the hearing on jurisdiction.

■ **PSEG Global Inc., The North American Coal Corporation, and Konya Ilgin Elektrik Üretim ve Ticaret Limited Sirketi v. Republic of Turkey (Case No. ARB/02/5)**

*July 24, 2003*

The Respondent files a request for production of documents.

*August 1, 2003*

The Claimants file their response to the Respondent's request for production of documents.

*August 6, 2003*

The Tribunal issues its decision on the Respondent's request for production of documents.

*August 8, 2003*

The Respondent files a revised request for provisional measures.

*August 14, 2003*

The Claimants file a response to the Respondent's revised request for production of documents.

*August 19, 2003*

The Tribunal issues its decision on the Respondent's revised request for production of documents.

*November 11, 2003*

The Claimants file a request for production of documents.

*November 17, 2003*

The Tribunal issues its decision on the Claimants' request of November 11, 2003.

*November 24, 2003*

The Claimants file their rejoinder on jurisdiction.

*December 19, 2003*

The Respondent files an additional request for production of documents.

■ **SGS Société Générale de Surveillance S.A. v. Republic of the Philippines (Case No. ARB/02/6)**

*September 8, 2003*

The parties file their observations on a jurisdictional decision in an ICSID case.

■ **Hussein Nuaman Soufraki v. United Arab Emirates (Case No. ARB/02/7)**

*September 9, 2003*

The Claimant files his statement on a jurisdictional issue.

■ **Siemens A.G. v. Argentine Republic (Case No. ARB/02/8)**

*August 4, 2003*

The Respondent files its memorial on jurisdiction.

*October 16, 2003*

The Claimant files its counter-memorial on jurisdiction.

*November 17, 2003*

The Respondent files its reply on jurisdiction.

■ **Champion Trading Company and Ameritrade International, Inc. v. Arab Republic of Egypt (Case No. ARB/02/9)**

*July 15, 2003*

The parties file their statements on costs.

*October 21, 2003*

The Tribunal issues its decision on jurisdiction.

*December 12, 2003*

The Tribunal issues a procedural order concerning the procedural calendar.

■ **IBM World Trade Corp. v. Republic of Ecuador (Case No. ARB/02/10)**

*July 7, 2003*

The Respondent files its memorial on jurisdiction.

*July 21, 2003*

The Claimant files its counter-memorial on jurisdiction.

*December 23, 2003*

The Tribunal issues its decision on jurisdiction, dated December 22, 2003.

■ **Enrho St Limited v. Republic of Kazakhstan (Case No. ARB/02/11)**

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

■ **JacobsGibb Limited v. Hashemite Kingdom of Jordan (Case No. ARB/02/12)**

*November 21, 2003*

The Claimant files its reply on jurisdiction.

■ **Salini Costruttori S.p.A. and Italstrade S.p.A. v. the Hashemite Kingdom of Jordan (Case No. ARB/02/13)**

*September 8, 2003*

The Respondent files its memorial on jurisdiction.

*December 10, 2003*

The Claimant files its counter-memorial on jurisdiction.

■ **CDC Group plc v. Republic of the Seychelles (Case No. ARB/02/14)**

*July 22-23, 2003*

The Tribunal holds a preliminary hearing on specific questions of law in London.

*July 31, 2003*

The Claimant files an updated claim and its statement on costs.

*August 6, 2003*

The Claimant submits a Supplementary Bundle of Authorities.

*August 18, 2003*

The Respondent files a request for clarification from the Claimant as to the Claimant's calculation of its claim.

*September 22, 2003*

The Claimant files a guide for the calculation of its claim.

*October 1, 2003*

The Respondent files its observations on the Claimant's filings of July 31, 2003 and September 22, 2003.

*December 17, 2003*

The Tribunal renders its award.

■ **Ahmonseto, Inc. and others v. Arab Republic of Egypt (Case No. ARB/02/15)**

*July 10, 2003*

The parties file their observations on a court decision.

*October 10, 2003*

The Tribunal issues a procedural order on provisional measures.

*October 27, 2003*

The Claimants file their memorial on the merits.

■ **Sempra Energy International v. Argentine Republic (Case No. ARB/02/16)**

*July 3, 2003*

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

*September 4, 2003*

The Claimant files its memorial on the merits.

*December 31, 2003*

The Respondent files its objections to jurisdiction.

■ **AES Corporation v. Argentine Republic (Case No. ARB/02/17)**

*July 8, 2003*

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

*October 7, 2003*

The Claimant files its memorial on the merits.

*December 31, 2003*

The Respondent files its objections to jurisdiction.

■ **Tokios Tokelés v. Ukraine (Case No. ARB/02/18)**

*July 1, 2003*

The Tribunal issues a procedural order concerning provisional measures, and a procedural order concerning a preliminary issue on jurisdiction.

*July 14, 2003*

The Tribunal issues a supplementary decision on the Respondent's request for production of documents.

*July 21, 2003*

The Claimant produces documents in accordance with the Tribunal's decision of July 14, 2003.

*July 29, 2003*

The Respondent files its memorial on jurisdiction.

*August 24, 2003*

The Claimant files its counter-memorial on jurisdiction.

*September 9, 2003*  
The Respondent files its reply on jurisdiction.

*September 24, 2003*  
The Claimant files its rejoinder on jurisdiction.

■ **Ed. Züblin AG v. Kingdom of Saudi Arabia (Case No. ARB/03/1)**

*July 8, 2003*  
The Claimant files a request for the discontinuance of the proceeding.

*July 22, 2003*  
The Acting Secretary-General issues an order taking note of the discontinuance of the proceeding, pursuant to Arbitration Rule 44.

■ **Camuzzi International S.A. v. Argentine Republic (Case No. ARB/03/2)**

*July 3, 2003*  
The Tribunal holds its first session in Washington, D.C.

*September 4, 2003*  
The Claimant files its memorial on the merits.

*December 31, 2003*  
The Respondent files its objections to jurisdiction.

■ **Impregilo S.p.A. v. Islamic Republic of Pakistan (Case No. ARB/03/3)**

*August 15, 2003*  
The Tribunal is constituted. Its members are: Gilbert Guillaume (French), President; Bernardo M. Cremades (Spanish); and Toby Landau (British).

*October 6, 2003*  
The parties agree to an extension of the time limit for the holding of the first session with the Tribunal.

*November 7, 2003*  
The Tribunal holds its first session in Paris.

*December 22, 2003*  
The Tribunal issues a procedural order concerning the procedural calendar.

■ **Lucchetti S.A. and Luchetti Peru, S.A. v. Republic of Peru (Case No. ARB/03/4)**

*August 1, 2003*  
The Tribunal is constituted. Its members are: Thomas Buergenthal (U.S.), President; Jan Paulsson (French); and Bernardo M. Cremades (Spanish).

*August 7, 2003*  
The Respondent files a request for the suspension of the proceeding.

*September 11, 2003*  
The parties file their brief on the Respondent's request of August 7, 2003.

*September 15, 2003*  
The Tribunal holds its first session at The Hague.

*September 16, 2003*  
The Tribunal denies the Respondent's request of August 7, 2003.

*December 15, 2003*  
The Respondent files its memorial on jurisdiction.

■ **Metalpar S.A. and Buen Aire S.A. v. Argentine Republic (Case No. ARB/03/5)**

*September 26, 2003*  
The Tribunal is constituted. Its members are: Rodrigo Oreamuno (Costa Rican), President; Duncan H. Cameron (U.S.); and Jean Paul Chabaneix (Peruvian).

*November 13, 2003*  
The Tribunal holds its first session in Washington, D.C.

■ **M.C.I. Power Group, L.C. and New Turbine, Inc. v. Republic of Ecuador (Case No. ARB/03/6)**

*September 11, 2003*  
The Tribunal is constituted. Its members are: Raúl E. Vinuesa (Argentine), President; Benjamin J. Greenberg (Canadian); and Jaime Irrazábal C. (Chilean).

*November 7, 2003*  
The Tribunal holds its first session in Washington, D.C.



■ **Camuzzi International S.A. v. Argentine Republic (Case No. ARB/03/7)**

*October 7, 2003*

The Tribunal is constituted. Its members are: Enrique Gómez-Pinzón (Colombian), President; Henri C. Alvarez (Canadian); and Héctor Gros Espiell (Uruguayan).

*December 6, 2003*

The Tribunal holds its first session, without the parties, via teleconference.

*December 17, 2003*

The Tribunal issues a procedural order concerning procedural matters.

■ **Consortium Groupement L.E.S.I.-DIPENTA v. Algeria (Case No. ARB/03/8)**

*September 3, 2003*

The Tribunal is constituted. Its members are: Pierre Tercier (Swiss), President; André Faurès (Belgian); and Emmanuel Gaillard (French)

*October 30, 2003*

The Tribunal holds its first session in Paris.

■ **Continental Casualty Company v. Argentine Republic (Case No. ARB/03/9)**

*October 6, 2003*

The Tribunal is constituted. Its members are: Giorgio Sacerdoti (Italian), President; Elihu Lauterpacht (British); and Michell Nader (Mexican).

■ **Gas Natural SDG, S.A. v. Argentine Republic (Case No. ARB/03/10)**

*November 10, 2003*

The Tribunal is constituted. Its members are: Andreas F. Lowenfeld (U.S.), President; Henri C. Alvarez (Canadian); and Pedro Nikken (Venezuelan).

■ **Joy Mining Machinery Limited v. Arab Republic of Egypt (Case No. ARB/03/11)**

*September 4, 2003*

The Tribunal is constituted. Its members are: Francisco Orrego Vicuña (Chilean), President; C.G. Weeramantry (Sri Lankan); and William Laurence Craig (U.S.).

*November 2, 2003*

The Respondent files its objections to jurisdictions.

*November 4, 2003*

The Tribunal holds its first session at The Hague.

■ **Pioneer Natural Resources Company, Pioneer Natural Resources (Argentina) S.A. and Pioneer Natural Resources (Tierra del Fuego) S.A. v. Argentine Republic (Case No. ARB/03/12)**

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

■ **Pan American Energy LLC and BP Argentina Exploration Company v. Argentine Republic (Case No. ARB/03/13)**

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

■ **Mimingo LLC and others v. Democratic Republic of the Congo (Case No. ARB/03/14)**

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

■ **El Paso Energy International Company v. Argentine Republic (Case No. ARB/03/15)**

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

■ **ADC Affiliate Limited and ADC & ADMC Management Limited v. Republic of Hungary (Case No. ARB/03/16)**

*July 17, 2003*

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

■ **Aguas Provinciales de Santa Fe, S.A., Suez, Sociedad General de Aguas de Barcelona, S.A. and Interagua Servicios Integrales de Agua, S.A. v. Argentine Republic (Case No. ARB/03/17)**

*July 17, 2003*

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

- **Aguas Cordobesas, S.A., Suez, and Sociedad General de Aguas de Barcelona, S.A. v. Argentine Republic (Case No. ARB/03/18)**

*July 17, 2003*

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

- **Aguas Argentinas, S.A., Suez, Sociedad General de Aguas de Barcelona, S.A. and Vivendi Universal, S.A. v. Argentine Republic (Case No. ARB/03/19)**

*July 17, 2003*

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

- **Telefónica S.A. v. Argentine Republic (Case No. ARB/03/20)**

*July 21, 2003*

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

- **Enerdis, S.A. and others v. Argentine Republic (Case No. ARB/03/21)**

*July 22, 2003*

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

- **Electricidad Argentina S.A. and EDF International S.A. v. Argentine Republic (Case No. ARB/03/22)**

*August 12, 2003*

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

- **EDF International S.A., SAUR International S.A. and Léon Participaciones Argentinas S.A. v. Argentine Republic (Case No. ARB/03/23)**

*August 12, 2003*

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

- **Plama Consortium Limited v. Republic of Bulgaria (Case No. ARB/03/24)**

*August 19, 2003*

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

- **Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines (Case No. ARB/03/25)**

*October 9, 2003*

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

- **Inceysa Vallisoletana S.L. v. Republic of El Salvador (Case No. ARB/03/26)**

*October 10, 2003*

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

- **Unisys Corporation v. Argentine Republic (Case No. ARB/03/27)**

*October 15, 2003*

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

- **Duke Energy International Peru Investments No. 1 Ltd v. Republic of Peru (Case No. ARB/03/28)**

*October 24, 2003*

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

- **Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan (Case No. ARB/03/29)**

*December 1, 2003*

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

- **Azurix Corp. v. Argentine Republic (Case No. ARB/03/30)**

*December 8, 2003*

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

- **TG World Petroleum Limited v. Republic of Niger (Case No. CONC/03/1)**

*December 9, 2003*

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

## 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 Honduras, Pakistan, Spain, Uzbekistan and Venezuela.

### **Honduras**

*Panels of Conciliators and of Arbitrators*

*Designations effective December 8, 2003:*

Judd L. Kessler and Jorge Omar Casco Zelaya

### **Pakistan**

*Panel of Conciliators and of Arbitrators*

*Designations effective December 8, 2003:*

Tariq Hassan, Irshad Hassan Khan (renewal), Syed Sharifuddin Pirzada (renewal) and Wassim Sajjad (renewal)

### **Spain**

*Panel of Arbitrators*

*Designation effective December 8, 2003:*

Juan Fernández-Armesto

### **Uzbekistan**

*Panel of Arbitrators*

*Designation effective September 8, 2003:*

Carolyn B. Lamm

### **Venezuela**

*Panel of Arbitrators*

*Designation effective August 7, 2003:*

Omar Enrique García-Bolívar

## MEMBERSHIP NEWS

The ICSID Convention was ratified by the Republic of Malta on November 3, 2003. In accordance with the procedure set forth in its Article 68(2), the Convention entered into force for the Republic of Malta 30 days after the deposit of its instrument of ratification, i.e., on December 3, 2003. The Republic of Malta became the 140th member of ICSID.

An up-to-date list of the currently 154 signatory States to the ICSID Convention, of which 140 have become Contracting States following the completion of all formal requirements for membership, is available on the website of the Centre at [www.worldbank.org/icsid](http://www.worldbank.org/icsid) and from the Centre on request. ■

# THE INSTITUTION OF ICSID ARBITRATION PROCEEDINGS

**By Antonio R. Parra, Deputy Secretary-General, ICSID**

Remarks delivered in the session on “Instituting Arbitral Proceedings” at the Twentieth Joint American Arbitration Association/ICC International Court of Arbitration/ ICSID Colloquium on International Arbitration, held in Washington, D.C. on November 14, 2003.

I would like to devote my remarks to the institution of arbitration proceedings under the ICSID Convention. I want particularly to discuss the screening by the ICSID Secretary-General of the requests by which the proceedings are instituted. The topic illustrates how the work of the Centre has been transformed by the many new cases being brought to ICSID under bilateral and multilateral treaties on investment.

The two main relevant articles of the ICSID Convention are Article 25 and Article 36.

Article 25 defines the jurisdiction of the Centre as extending to any legal dispute, arising directly out of an investment, between a Convention Contracting State and a national of another Contracting State, which the disputing parties have consented in writing to submit to the Centre.

Article 36 of the Convention provides that a party wishing to institute arbitration proceedings should address to the ICSID Secretary-General a written request to that effect, providing information on the issues in dispute, the identity of the parties, and their consent to arbitration. Article 36 requires the Secretary-General to register the request “unless he finds, on the basis of the information contained in the request, that the dispute is manifestly outside the jurisdiction of the Centre.”

If the Secretary-General registers a request, he will invite the parties to proceed, as soon as possible, to constitute an arbitral tribunal. The tribunal will retain full authority to rule definitively on jurisdiction. Indeed, ICSID’s Rules of Procedure for Instituting Proceedings

require the Secretary-General on registering a request specifically to remind the parties that registration is without prejudice to the powers and functions of the arbitral tribunal in regard to jurisdiction and competence, as well as the merits.

If, on the other hand, the Secretary-General refuses to register the request, the case will not reach an ICSID arbitral tribunal at all. However, as I just indicated, this power of the Secretary-General to screen requests is limited: the power is to be used only where, on the basis of the information contained in the request, there is a manifest or obvious lack of jurisdiction.

In their report accompanying the ICSID Convention, the drafters of the Convention explained that they had decided to give the Secretary-General this limited screening power to avoid misuse of the Centre’s dispute-settlement machinery as a means to embarrass a party — particularly a State — by the institution of proceedings against it in a dispute that it had not consented to submit to ICSID. More generally, the drafters wished to provide a safeguard against the waste of time and money for all concerned that would result from setting the machinery in motion in cases obviously outside the jurisdiction of ICSID.

The drafters of the Convention had considered giving the Secretary-General a more substantive screening power. They concluded, however, that they should avoid giving the Secretary-General a power that, in the words of one delegate “would take the character of a jurisdictional authority,” and thus encroach on the functions of the arbitral tribunal. The concern was such that, in the negotiation

of the ICSID Convention, the power of the Secretary-General was reduced — one might say inverted — from finding “prima facie that the dispute is within the jurisdiction of the Centre” — the formulation in the first draft of the Convention — to the negative formulation of the final text, calling for registration unless it is found that the dispute is manifestly outside the jurisdiction of ICSID.

The drafters of the Convention foresaw the possibility of States giving, in their investment laws, broad advance consents to submit covered investment disputes to arbitration under the ICSID Convention. Nowadays, the typical request for ICSID arbitration is made in reliance on a similarly broad consent, on the part of the prospective respondent State, in an investment treaty of the State.

The task of the Secretary-General is in these cases immediately complicated by the fact that he must, in effect, ascertain that the dispute is not manifestly outside the scope of two treaties: the ICSID Convention and the investment treaty containing the consent to arbitration. This entails a double review of the criteria for coverage of the parties and the dispute, first from the viewpoint of the ICSID Convention and then from the viewpoint of the investment treaty.

Thus, in this type of case, one party must be an ICSID Convention Contracting State and the other an individual or company that qualifies, under the ICSID Convention, as a national of another Contracting State. The State party to the dispute must, of course, also be a party to the investment treaty involved; and the individual or company must qualify as a covered national of the other party to the treaty.

The dispute must, from the viewpoint of the ICSID Convention, be a legal dispute arising directly out of an investment. The dispute must also concern a transaction defined as a covered investment by the investment treaty. Some investment treaties sharply curtail the scope of covered investments; many others define covered investments in terms that would seem to exceed the scope of the ICSID Convention.

More generally, the consent in the investment treaty must cover the case at hand. In addition to requirements concerning the parties and the subject-matter of the dispute, the case must, given that treaties generally are prospective only, normally concern acts or facts taking place or situations existing after entry into force of the investment treaty.

The treaty typically will also prescribe certain conditions for invoking the consent to arbitration, such as the passing of a specified waiting period; or that there has been no recourse to other remedies; or, as some treaties insist to the contrary, that there has been prior recourse to local remedies.

If the request for arbitration fails manifestly to meet any of these various requirements of the ICSID Convention or of the investment treaty, registration will most likely be refused.

The Secretariat of ICSID, to take a simple example, has had to inform an aggrieved individual, with the nationality of both parties to the bilateral investment treaty concerned, that he would be unable to resort to arbitration under the ICSID Convention in reliance on the consent to arbitration in the investment treaty. Although that treaty might have been understood as benefiting nationals of the host State so long as they also had the nationality of the other State party to the treaty, the ICSID Convention categorically excludes from the jurisdiction of the Centre disputes between a State and individuals with its nationality, irrespective of whatever other nationality they may have.

The cases brought to ICSID under investment treaties obviously afford considerable scope for objections to jurisdiction. And there have been such objections in most of the cases brought to ICSID on the basis of consents to arbitration in investment treaties. Jurisdiction is now also commonly questioned by the prospective respondent before it is decided whether or not to register the request for arbitration.

ICSID’s Rules of Procedure for Instituting Proceedings require the Centre, on receipt of a request for arbitration with the prescribed lodging fee, to send a copy of the request to the other party. As I indicated a moment ago, prospective respondents increasingly file replies to the requests, challenging their registrability. The Secretariat has integrated such replies into the process, asking the requesting party to comment on the reply. Occasionally, there are several such rounds of submissions by the parties before the decision on registration is taken. It of course remains the case that the Secretary-General is bound by Article 36 of the ICSID Convention, requiring him to register a request unless, on the basis of the information provided by the requesting party, the dispute is manifestly outside the jurisdiction of ICSID. ■

## NEW SECRETARY-GENERAL OF ICSID

(Continued from cover)

Before joining the World Bank, Mr. Dañino served as Prime Minister of Peru (2001–2002) and as Ambassador of Peru to the United States (2002–2003). During his tenure as Prime Minister, he was responsible for the negotiation of a National Agreement (“Acuerdo Nacional”), which brought politicians, representatives of civil society and the government together to agree on a set of long-term policies to guide the development of the country. He also launched a program on modernization of the public sector and established a national competitiveness program aimed at increasing non-traditional exports from Peru. As Ambassador of Peru, he launched the bilateral free trade agreement negotiations between the United States and Peru. Mr. Dañino’s prior public service also includes serving as Secretary General of the Ministry of Economy, Finance and Trade; President of the Foreign Investment and Technology Agency; and Chairman of the Foreign Public Debt Commission of Peru.

Before joining the Peruvian government, Mr. Dañino served as a corporate lawyer for more than 25 years, both in the United States and in Peru. In the U.S., he was a partner at the law firm of Wilmer, Cutler & Pickering, where he was in charge of the Latin American Practice Group. In Peru, he was a partner at Barrios, Fuentes & Urquiaga, Abogados. His practice focused on providing legal advice for international corporate transactions, specializing in foreign direct investment, project finance, and capital market transactions. His clients included private, public and multilateral entities.

Mr. Dañino was the founding General Counsel of the Inter-American Investment Corporation in Washington, D.C. He also served as Chairman of the Inter-American Development Bank’s External Review Group for private sector activities. In addition, Mr. Dañino has been a member of various corporate boards in the United States and Latin America.

Mr. Dañino holds law degrees from Harvard Law School and the Catholic University of Peru. He is an alumnus of the Georgetown University International Leadership Program, and he has lectured and published extensively on international economic law matters. ■

## ICSID SIGNS A CO-OPERATION AGREEMENT WITH THE LAGOS REGIONAL CENTRE FOR INTERNATIONAL COMMERCIAL ARBITRATION

Roberto Dañino, Secretary-General of ICSID, and Mrs. Eunice Oddiri, Director of the Lagos Regional Centre for International Commercial Arbitration, signed in November 2003 an agreement on general arrangements between the two institutions.

The ICSID Convention provides in its Article 63(a) for the possibility of holding of ICSID conciliation and arbitration proceedings not only at the seat of ICSID in Washington, D.C., but also at the Permanent Court of Arbitration or at “any other appropriate institution, whether private or public, with which [ICSID] may make arrangements for that purpose.” In accordance with this provision of the Convention, ICSID entered in 1968 into its first arrangement of this kind by signing a “Memorandum of General Arrangements” with the Permanent Court of Arbitration. Since then, ICSID has entered into similar co-operation arrangements with six other arbitration centers. Three of these centers have been established under the auspices of the Asian-African Legal Consultative Organization (AALCO). They include the Regional Centre for Commercial Arbitration in Kuala Lumpur; the Cairo Regional Centre for International Commercial Arbitration; and the Lagos Regional Centre for International Commercial Arbitration, which was inaugurated by AALCO in March 1989.

In the agreement on general arrangements between ICSID and the Lagos Regional Centre for International Commercial Arbitration, each of the institutions agreed, in principle, to host proceedings of the other institution, if so requested by the parties to the proceeding concerned. The agreement further provides for reimbursements of the cost involved and for providing the necessary meeting facilities, office equipment and personnel in support for such proceedings. ■

## TWENTIETH JOINT AAA/ICC/ICSID COLLOQUIUM ON INTERNATIONAL ARBITRATION

The 20th in the series of annual joint colloquia on international arbitration, co-sponsored by the American Arbitration Association (AAA), the International Court of Arbitration at the International Chamber of Commerce (ICC) and ICSID was held on November 14, 2003. It was hosted by ICSID at the headquarters of the World Bank in Washington, D.C.

Roberto Dañino, ICSID's new Secretary-General, gave his welcoming address to over 200 participants before opening the first session on recent developments in the co-sponsoring institutions. Mr. Dañino, Robert Briner, Chairman of the ICC International Court of Arbitration, and William K. Slate II, President and Chief Executive Officer of the AAA, delivered remarks on most recent developments in their respective institutions. The remainder of the morning was devoted to two sessions on instituting arbitral proceedings and the publication of proceedings and awards. The two afternoon sessions addressed procedural issues related to arbitrations involving State parties and current issues on applicable law in arbitration.

Speakers, presenters and moderators at the colloquium included: Nigel Blackaby (Freshfields, Bruckhaus Deringer, Paris); Charles N. Brower (Judge, Iran-U.S. Claims Tribunal); Hugo Perescano Díaz (Dirección General de Consultoría Jurídica de Negociaciones, Mexico); Ulf Franke (Secretary-General, Arbitration Institute of the Stockholm Chamber of Commerce); Louis Kimmelman (O'Melveny & Myers, New York); Meg Kinnear (Department of Foreign Affairs and International Trade, Canada); Carolyn B. Lamm (White & Case, Washington, D.C.); Luis M. Martinez (Vice President, AAA International Center for Dispute Resolution); Anthony Mason (Former Chief Justice, Australia); Joseph Neuhaus (Sullivan & Cromwell, New York); Antonio R. Parra (Deputy Secretary-General, ICSID); Robert H. Smith (Simpson Thacher & Bartlett, New York); Johnny Veeder (Essex Court Chambers, London); and Anne Marie Whitesell (Secretary-General, ICC International Court of Arbitration, Paris).

The colloquium was closed by James D. Wolfensohn, President of the World Bank and Chairman of the ICSID Administrative Council. ■

The working sessions in process



## LCIA SYMPOSIUM IN CO-OPERATION WITH ICSID

Organized by the London Court of International Arbitration (LCIA) in co-operation with ICSID, this one-day symposium was held in Washington, D.C. on November 15, 2003, immediately following the Twentieth AAA/ICC/ICSID Joint Colloquium on International Arbitration.

The symposium provided an opportunity for in-depth analysis and discussions of many key issues arising in international arbitration. All topics for the discussions were proposed by the participants in advance and then debated from the floor at the symposium under the guidance of experts in the field serving as co-chairs of the panels.

The symposium was opened by L. Yves Fortier, Honorary Vice-President of the LCIA Court and its former President. The morning sessions were co-chaired by Margrete Stevens (ICSID), Johnny Veeder (Essex Court Chambers, London), Dushyant Dave (New Delhi) and Gavan Griffith (Owen Dixon Chambers West, Melbourne). Co-chairs of the afternoon sessions included Pierre Karrer (Pestalozzi Lachenal Patry, Zurich), Benjamin Greenberg (Stikeman Elliott LLP, Montreal), L. Yves Fortier (Ogilvy Renault, Montreal) and Georgio Sacerdoti (Piergrossi Villa Richardi Bianchi, Milan). Arthur Harverd offered the closing remarks for the symposium.

The day was concluded by a reception and dinner at the Westin Hotel in Washington, D.C. Speaker at the dinner was Daniel B. Magraw Jr., President of the Center for Environmental Law, Washington, D.C. ■

## NEW ICSID PUBLICATIONS

With a redesigned new cover, Volume 18, Number 1 (Spring 2003) issue of the *ICSID Review—Foreign Investment Law Journal* recently reached its subscribers. The new issue included three articles: by Gary H. Sampliner on the much debated question of whether investor-State arbitrations of expropriation claims under U.S. investment treaties posed a threat to legitimate sovereign prerogatives of the respondent State; by Patrick G. Foy, Q.C., on the effectiveness of NAFTA's Chapter Eleven investor-State arbitration procedures; and by Noah D. Rubins on allocation of costs and attorney's fees in investment arbitration. In addition, the issue reproduced the original Spanish texts of the Decision on Jurisdiction and of the Award rendered in *Eudoro A. Olgún v. Republic of Paraguay* (ICSID Case No. ARB/98/5). An unofficial English translation of the award in that case, which was recently prepared by the ICSID Secretariat, was also reproduced in the issue. Other materials concerning ICSID cases included the full text of the Award rendered in *ADF Group, Inc. v. United States of America* (ICSID Case ARB(AF)/00/1) and the texts of a procedural order on provisional measures and the Tribunal's Decision on Objections to Jurisdiction in *SGS Société Générale the Surveillance S.A. v. Islamic Republic of Pakistan* (ICSID Case No. ARB/01/13).

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. ■