

NEWS FROM ICSID



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INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ICSID CLIENT SURVEY

The last issue of *News from ICSID* reported that the Secretary-General had launched a client survey to identify areas of possible improvements in the Centre's services and to also assess the importance of the role played by ICSID in supporting the legal framework for investment in member countries.

A questionnaire prepared in the Centre's three official languages (English, French and Spanish) was sent to over 3,000 recipients—member governments, arbitrators/panelists, parties and counsel in ICSID proceedings, and others. The survey recipients were asked a series of questions related to their evaluation of ICSID's role in encouraging foreign investment, the ICSID process and the services provided by the Centre.

The results revealed that 79% of those who responded attributed to ICSID an important role in their country's legal framework for foreign investment, and 61% of the participating governments said that ICSID membership has contributed to an improved investment climate. The results also revealed an overwhelmingly positive assessment of the Centre and its functioning. This was evidenced by the fact that 93% of the respondents indicated that they were likely to recommend ICSID's dispute settlement facilities in future. Some 97% of the respondents rated the overall performance of the Secretariat in case administration as good or excellent and ICSID staff was regarded as knowledgeable and efficient (99% and 98%, respectively).

Conciliation, another means of dispute settlement offered by the Centre, was widely viewed as a useful

mechanism. The majority of the respondents (93%) considered ICSID's conciliation procedures as useful in at least some cases.

Participants in the survey, when asked to provide suggestions for improvement, recommended that ICSID process be made more transparent and that ICSID do more to raise awareness of its activities. Similar suggestions were made in the framework of a communications assessment of the Centre completed earlier this year. The Centre is working to implement these suggestions. As part of a broader undertaking to expand its outreach efforts, ICSID plans in due course to redesign and improve its website in order to make it more user friendly to various audiences.

Detailed information on the client survey and its results is available at <http://www.worldbank.org/icsid>.

RESOLUTION OF OIL AND GAS DISPUTES AT ICSID

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The following paper was delivered at a conference on petroleum dispute resolution, held under the sponsorship of the World Petroleum Congress in London on April 22, 2004.

INTRODUCTION

ICSID arbitration is the better known of the two main dispute resolution options offered by the Centre. ICSID conciliation is less used but, being less confrontational, is better suited for resolving disputes arising in the

For further details see page 12 ▶

IN THIS ISSUE

Disputes before the Centre.....	2
New ICSID Publications.....	11
New Panel Designations.....	15
Recent Books and Articles on ICSID.....	16

DISPUTES BEFORE THE CENTRE

Since the publication of the last issue of *News from ICSID* in January this year to the end of August, twenty new arbitration proceedings had been instituted before the Centre, thereby bringing the total number of cases registered with ICSID to 165. Eighteen of the new cases were ICSID Convention proceedings and two proceedings were brought under the ICSID Additional Facility Rules.

In fourteen of the recently registered arbitration proceedings, the claimants relied for the host States' consent on ICSID arbitration provisions of bilateral investment treaties. One proceeding invoked the investor-State dispute settlement provision contained in the North American Free Trade Agreement, and one case was brought on the basis of an ICSID arbitration provision contained in an investment contract between the disputing parties. In three of the proceedings, ICSID jurisdiction is being asserted alternatively on dispute settlement provisions set forth in investment legislation of the respondent State, concession agreements or bilateral and multilateral treaties.

In addition, during the period January-August 2004, the Centre registered four applications for annulment of awards previously rendered by ICSID arbitral tribunals. In one of the cases, an application for interpretation of the original award was also registered.

Ten cases were concluded in this period. Three proceedings were discontinued on the request of one or both parties following an amicable settlement. Awards were rendered in seven of the cases, including one which involved claims under the NAFTA. Three of these awards upheld the claims in part and one award dismissed all claims on the merits. The tribunals in two of the cases rendered awards declining jurisdiction. In one case, the tribunal issued an award which embodied the parties' settlement agreement. In addition, one of the pending proceedings was suspended for lack of payment of the required advances.

Details on the procedural developments in the cases are provided below.

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

April 14, 2004

The Tribunal is constituted. Its members are: J. William Rowley (Canadian), President; Gabrielle Kaufmann-Kohler (Swiss); and Carlos Bernal Vera (Mexican).

July 7, 2004

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

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

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

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

January 9, 2004

Claimant Raymond L. Loewen files his rejoinder on the request for a supplementary decision.

- **Víctor 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)**

(a) Original Arbitration Proceeding

January 13, 2004

The Tribunal declares the proceeding closed.

February 9, 2004

The Tribunal renders its award.

(b) Annulment Proceeding

July 15, 2004

The Secretary-General registers an application for institution of annulment proceedings.

August 24, 2004

The *ad hoc* Committee is constituted. Its members are Antonias C. Dimolitsa (Greek), President; Robert S.M. Dossou (Beninese); and Andrea Giardina (Italian).

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

April 30, 2004

The Tribunal renders its award.

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

February 4, 2004

The Tribunal issues an order taking note of the discontinuance of the proceeding pursuant to Arbitration Rule 43(1).

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

April 30, 2004

The Secretary-General registers an application for institution of annulment proceedings.

June 8, 2004

The *ad hoc* Committee is constituted. Its members are: Bernard Hanotiau (Belgian), President; Franklin Berman (British); and Arghyrios Fatouros (Greek).

July 22, 2004

The *ad hoc* Committee holds its first session in Paris.

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

April 14, 2004

The Claimant files a List of Issues and Submissions of Law and Fact.

June 30, 2004

The Tribunal holds a hearing at The Hague.

August 18, 2004

The Respondent files its response to the Claimant's memorial.

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

April 27, 2004

The Tribunal suspends the proceeding at the request of the parties.

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

March 12, 2004

The Tribunal suspends the proceeding for non-payment of the required advances pursuant to Administrative and Financial Regulation 14(3)(d).

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

January 14, 2004

The Tribunal renders its decision on jurisdiction concerning the original claim.

January 26, 2004

The Tribunal issues a procedural order concerning the procedural calendar.

April 1–2, 2004

The Tribunal holds a hearing on jurisdiction regarding the ancillary claim in Paris.

May 17, 2004

The Respondent files its counter-memorial on the merits concerning the original claim.

June 10, 2004

The Tribunal issues a procedural order suspending the proceeding regarding the Claimants' original claim.

August 2, 2004

The Tribunal renders its decision concerning the ancillary claim.

August 18, 2004

The Tribunal issues a procedural order concerning the procedural calendar regarding the ancillary claim.

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

February 2–6, 2004

The parties file their post-hearing submissions.

March 26, 2004

The Tribunal declares the proceeding closed.

May 25, 2004

The Tribunal renders its award.

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

March 22, 2004

The Claimant files its reply on the merits.

June 28, 2004

The Respondent files its rejoinder on the merits.

August 9–20, 2004

The Tribunal holds a hearing on the merits in Paris.

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

(a) Original Arbitration Proceeding

February 20, 2004

The Tribunal renders its award.

(b) Annulment Proceeding

July 15, 2004

The Secretary-General registers an application for institution of annulment proceedings.

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

January 23, 2004

The Respondent files its counter-memorial on the merits.

May 12, 2004

The Claimant files its reply on the merits.

August 30, 2004

The Respondent files its rejoinder on the merits.

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

February 9, 2004

The Respondent files its counter-memorial on the merits.

May 7, 2004

The Claimant files its reply on the merits.

May 24–June 29, 2004

The Tribunal issues successive procedural orders concerning the production of documents.

August 3, 2004

ICSID notifies the parties of Elihu Lauterpacht's resignation as an arbitrator.

August 4, 2004

Marc Lalonde (Canadian) is appointed as an arbitrator following the resignation of Elihu Lauterpacht.

August 10, 2004

The Tribunal is reconstituted and the proceeding is resumed.

August 16, 2004

The Tribunal issues a procedural order regarding the production of documents.

August 17, 2004

The Respondent files its rejoinder on the merits.

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

May 23, 2004

Following a settlement agreed by the parties, the Tribunal issues an order taking note of the discontinuance of the proceeding pursuant to Arbitration Rule 43(1).

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

February 2, 2004

The Respondent files its post-hearing brief.

February 9, 2004

The Claimant files its post-hearing brief.

April 2, 2004

The parties file their second round of post-hearing submissions.

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

February 12–May 5, 2004

The Tribunal issues successive procedural orders concerning the production of documents.

June 25, 2004

The Claimant files its memorial on the merits.

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

April 30, 2004

The Tribunal issues its decision on jurisdiction.

May 4, 2004

The Tribunal issues a procedural order concerning the procedural calendar.

June 18, 2004

The Respondent files its counter-memorial on the merits.

July 21, 2004

The Tribunal issues a procedural order concerning procedural matters.

August 6, 2004

The Claimants file their reply on the merits.

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

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

■ **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)**

February 22–25, 2004

The Tribunal holds a hearing on jurisdiction in Washington, DC.

June 4, 2004

The Tribunal issues its decision on jurisdiction.

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

January 29, 2004

The Tribunal issues its decision on jurisdiction.

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

March 12, 2004

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

May 3, 2004

The parties file their post-hearing briefs.

July 7, 2004

The Tribunal renders its award.

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

February 3–4, 2004

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

August 3, 2004

The Tribunal issues its decision on jurisdiction and a procedural order concerning the timetable for the filings on the merits of the dispute.

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

April 30, 2004

The Claimants file a limited memorial on the merits.

June 7, 2004

The Claimants file a motion for permission to conduct limited discovery and for the production of documents.

July 9, 2004

The Respondent files its response to the Claimants' motion for permission to conduct limited discovery and for the production of documents.

August 9, 2004

The Claimants file their reply regarding their motion for permission to conduct limited discovery and for the production of documents.

August 16, 2004

The Tribunal decides on the Claimants' motion for permission to conduct limited discovery.

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

January 22, 2004

The Claimant files its memorial on the merits.

March 3, 2004

The Respondent files its counter-memorial on the merits.

March 22, 2004

The Claimant files its reply on the merits.

April 8, 2004

The Respondent files its rejoinder on the merits.

June 3, 2004

The parties notify the Tribunal of their settlement agreement and request that the agreement be embodied in an award.

July 22, 2004

The Tribunal renders its award.

■ **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)**

January 13, 2004

The Respondent files its rejoinder on jurisdiction.

February 3–4, 2004

The Tribunal holds a hearing on jurisdiction in Paris.

February 26, 2004

The parties file their post-hearing submissions.

May 13, 2004

The proceeding is suspended following a request by the parties.

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

March 11, 2004

The Claimant files its rejoinder on jurisdiction.

April 1–2, 2004

The Tribunal holds a hearing on jurisdiction in Paris.

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

(b) Annulment Proceeding

April 30, 2004

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

May 28, 2004

The *ad hoc* Committee is constituted. Its members are: Charles N. Brower (U.S.), President; Michael Hwang (Singapore); and David R. Williams (New Zealand).

June 14, 2004

The Applicant submits a request for the discontinuance of the stay of enforcement of the award under Arbitration Rule 54(2).

June 21, 2004

The parties file observations on the continuation of the stay of enforcement of the award.

July 8, 2004

The *ad hoc* Committee holds its first session via telephone conference.

July 14, 2004

The *ad hoc* Committee issues its decision on whether or not to continue the stay.

August 6, 2004

The Applicant files its memorial.

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

March 15, 2004

The Tribunal issues an interim decision on a jurisdictional issue.

March 17, 2004

The Respondent files its memorial on jurisdiction and its counter-memorial on the merits.

April 2, 2004

The Claimants file a request for production of documents.

July 5, 2004

The Respondent produces documents.

August 19, 2004

The Claimants file their counter-memorial on jurisdiction and their reply on the merits.

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

March 4, 2004

The Claimant files its counter-memorial on jurisdiction.

April 19, 2004

The Respondent files its reply on jurisdiction.

June 1, 2004

The Claimant files its rejoinder on jurisdiction.

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

February 18, 2004

Following consultation with the parties, the Tribunal fixes a timetable for the proceeding on jurisdiction.

February 20, 2004

The Claimant files its counter-memorial on jurisdiction.

March 26, 2004

The Respondent files its reply on jurisdiction.

April 26, 2004

The Claimant files its rejoinder on jurisdiction.

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

May 4, 2004

The Tribunal issues its decision on jurisdiction. The proceeding is suspended following the resignation of Prosper Weil (French).

August 23, 2004

The Tribunal is reconstituted and the proceeding resumes following the appointment of Michael Mustill (British).

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

March 4, 2004

The Claimant files its counter-memorial on jurisdiction.

April 19, 2004

The Respondent files its reply on jurisdiction.

June 1, 2004

The Claimant files its rejoinder on jurisdiction.

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

February 17, 2004

The Claimant files a limited memorial on the merits.

March 18, 2004

The Respondent files its memorial on jurisdiction.

April 19, 2004

The Claimant files its counter-memorial on jurisdiction.

May 23–24, 2004

The Tribunal holds a hearing on jurisdiction in Paris.

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

March 15, 2004

The Claimants file their counter-memorial on jurisdiction.

May 17, 2004

The Respondent files its reply on jurisdiction.

July 16, 2004

The Claimants file their rejoinder on jurisdiction.

August 24, 2004

The Tribunal issues directions concerning the hearing on jurisdiction.

August 26, 2004

The parties file documents concerning the hearing on jurisdiction.

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

March 29, 2004

The Claimants file their memorial on the merits.

May 17, 2004

The Respondent files its memorial on jurisdiction.

June 15, 2004

Following consultation with the parties, the Tribunal fixes a timetable for the proceeding on jurisdiction.

July 29, 2004

The Claimants file their counter-memorial on jurisdiction.

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

February 20, 2004

The Claimant files its memorial.

June 16, 2004

The Respondent raises objections to jurisdiction.

June 23, 2004

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

July 26, 2004

The Respondent files its memorial on jurisdiction.

August 23, 2004

The Claimant files its counter-memorial on jurisdiction.

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

January 8, 2004

The Claimant files its memorial.

February 6, 2004

The Respondent files its memorial on jurisdiction.

March 1, 2004

The Tribunal issues a procedural order concerning procedural matters.

April 29, 2004

The Claimant files its counter-memorial on jurisdiction.

May 3, 2004

The Tribunal issues a further procedural order concerning procedural matters.

June 22, 2004

The Respondent files its reply on jurisdiction.

August 13, 2004

The Claimant files its rejoinder on jurisdiction.

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

February 2, 2004

The Respondent files its memorial on jurisdiction.

April 7, 2004

The Claimant files its counter-memorial on jurisdiction.

May 6, 2004

The Respondent files its reply on jurisdiction.

June 8, 2004

The Claimant files its rejoinder on jurisdiction.

June 21, 2004

The Tribunal holds a hearing on jurisdiction in Paris.

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

January 29, 2004

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

April 27, 2004

The Claimant files its memorial on the merits.

June 29, 2004

The Respondent files its memorial on jurisdiction.

July 30, 2004

The Claimant files its counter-memorial on jurisdiction.

August 6, 2004

Elihu Lauterpacht (British) submits his resignation as an arbitrator.

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

March 10, 2004

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

April 19, 2004

The Tribunal issues a procedural order concerning preliminary questions on jurisdiction.

June 30, 2004

The Respondent files its response to preliminary questions on jurisdiction.

August 18, 2004

The Claimant files its response on jurisdiction.

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

January 5, 2004

The Claimant files its counter-memorial on jurisdiction.

January 26, 2004

The Respondent files its reply on jurisdiction.

February 17, 2004

The Claimant files its rejoinder on jurisdiction.

March 29–30, 2004

The Tribunal holds a hearing on jurisdiction at The Hague.

August 6, 2004

The Tribunal renders its award.

■ **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)**

February 6, 2004

The Tribunal is constituted. Its members are: Lucius Cafilisch (Swiss), President; Albert Jan van den Berg (Dutch); and Brigitte Stern (French).

April 21, 2004

The Tribunal holds its first session in Geneva.

July 21, 2004

The Claimants file their memorial on the merits.

■ **Miminco 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)**

February 6, 2004
The Tribunal is constituted. Its members are: Lucius Caflisch (Swiss), President; Piero Bernardini (Italian); and Brigitte Stern (French).

April 21, 2004
The Tribunal holds its first session in Geneva.

August 20, 2004
The Claimant files its memorial on the merits.

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

January 26, 2004
The Tribunal is constituted. Its members are: Allan Philip (Danish), President; Albert Jan van den Berg (Dutch); and Charles N. Brower (U.S.).

March 8, 2004
The Tribunal holds its first session at The Hague.

July 30, 2004
The Claimant files its memorial on jurisdiction and the merits.

- **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)**

February 17, 2004
The Tribunal is constituted. Its members are: Jeswald W. Salacuse (U.S.), President; Gabrielle Kaufmann-Kohler (Swiss); and Pedro Nikken (Venezuelan).

June 7, 2004
The Tribunal holds a session in Washington, D.C.

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

February 17, 2004
The Tribunal is constituted. Its members are: Jeswald W. Salacuse (U.S.), President; Gabrielle Kaufmann-Kohler (Swiss); and Pedro Nikken (Venezuelan).

June 7, 2004
The Tribunal holds a session in Washington, D.C.

- **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)**

February 17, 2004
The Tribunal is constituted. Its members are: Jeswald W. Salacuse (U.S.), President; Gabrielle Kaufmann-Kohler (Swiss); and Pedro Nikken (Venezuelan).

- June 7, 2004*
The Tribunal holds a session in Washington, D.C.

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

April 12, 2004
The Tribunal is constituted. Its members are: Giorgio Sacerdoti (Italian), President; Charles N. Brower (U.S.); and Eduardo Siqueiros (Mexican).

July 6, 2004
The Tribunal holds its first session in Washington, D.C. The proceeding is suspended following the parties' agreement.

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

January 21, 2004
The Tribunal is constituted. Its members are: Roberto Maclean (Peruvian), President; Luis Herrera Marcano (Venezuelan); and Robert Volterra (Canadian).

April 3, 2004
The Tribunal holds its first session in Paris.

July 28, 2004
The Claimants file their memorial on the merits.

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

June 2, 2004
The Tribunal is constituted. Its members are: William W. Park (U.S.), President; Gabrielle Kaufmann-Kohler (Swiss); and Fernando de Trazegnief (Peruvian).

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

June 2, 2004
The Tribunal is constituted. Its members are: William W. Park (U.S.), President; Gabrielle Kaufmann-Kohler (Swiss); and Fernando de Trazegnief (Peruvian).

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

February 10, 2004
The Tribunal is constituted. Its members are: Carl F. Salans (U.S.), President; Albert Jan van den Berg (Dutch); and V.V. Veeder (British).

March 25, 2004
The Tribunal holds its first session in Paris.

May 26, 2004
The Respondent files its memorial on jurisdiction.

June 25, 2004
The Claimant files its counter-memorial on jurisdiction.

- July 26, 2004
The Respondent files its reply on jurisdiction.
- August 30, 2004
The Claimant files its rejoinder on jurisdiction.
- **Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines (Case No. ARB/03/25)**
February 11, 2004
The Tribunal is constituted. Its members are: L. Yves Fortier (Canadian), President; Bernardo M. Cremades (Spanish); and W. Michael Reisman (U.S.).
April 20, 2004
The Tribunal holds its first session in Washington, D.C.
August 10, 2004
The Claimant files its memorial on the merits.
 - **Inceysa Vallisoletana S.L. v. Republic of El Salvador (Case No. ARB/03/26)**
March 23, 2004
The Tribunal is constituted. Its members are: Rodrigo Oreamuno Blanco (Costa Rican), President; Burton Landy (U.S.); and Claus von Wobeser (Mexican).
May 21, 2004
The Tribunal holds its first session in Washington, D.C.
June 8, 2004
The Claimant files its memorial on the merits.
 - **Unisys Corporation v. Argentine Republic (Case No. ARB/03/27)**
There have been no new developments to report in this case since the last issue of *News from ICSID*.
 - **Duke Energy International Peru Investments No. 1 Ltd v. Republic of Peru (Case No. ARB/03/28)**
June 3, 2004
The Tribunal is constituted. Its members are: L. Yves Fortier (Canadian), President; Pedro Nikken (Venezuelan); and Guido Tawil (Argentine).
July 28, 2004
The Tribunal holds its first session in Washington, D.C.
 - **Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan (Case No. RB/03/29)**
June 15, 2004
The Tribunal is constituted. Its members are: Gabrielle Kaufmann-Kohler (Swiss), President; Franklin Berman (British); and Karl-Heinz Böckstiegel (German).
 - **Azurix Corp. v. Argentine Republic (Case No. ARB/03/30)**
There have been no new developments to report in this case since the last issue of *News from ICSID*.
 - **TG World Petroleum Limited v. Republic of Niger (Case No. CONC/03/1)**
There have been no new developments to report in this case since the last issue of *News from ICSID*.
 - **Corn Products International, Inc. v. United Mexican States (Case No. ARB(AF)/04/1)**
January 26, 2004
The Secretary-General registers a request for the institution of arbitration proceedings.
April 28, 2004
The Tribunal is constituted. Its members are: Christopher J. Greenwood (British), President; Andreas F. Lowenfeld (U.S.); and Manuel E. Tron (Mexican).
May 3, 2004
Manuel E. Tron (Mexican) resigns from the Tribunal.
May 11, 2004
The Tribunal issues a procedural order consenting to Mr. Tron's resignation and invites the Respondent to appoint a new arbitrator.
July 13, 2004
The Tribunal is reconstituted following the appointment of Jesus Serrano de la Vega (Mexican). The proceeding is deemed to have resumed on this date.
 - **Total S.A. v. Argentine Republic (Case No. ARB/04/1)**
January 22, 2004
The Secretary-General registers a request for the institution of arbitration proceedings.
August 24, 2004
The Tribunal is constituted. Its members are: Giorgio Sacerdoti (Italian), President; Henri C. Alvarez (Italian); and Luis Herrera Marcano (Venezuelan).
 - **Western NIS Enterprise Fund v. Ukraine (Case No. ARB/04/2)**
January 26, 2004
The Secretary-General registers a request for the institution of arbitration proceedings.
July 30, 2004
The Tribunal is constituted. Its members are: Rodrigo Oreamuno Blanco (Costa Rican), President; Jan Paulsson (French); and Michael C. Pryles (Australian).

- **Cemex Asia Holdings Ltd v. Indonesia (Case No. ARB/04/3)**

January 27, 2004
The Acting Secretary-General registers a request for the institution of arbitration proceedings.

May 10, 2004
The Tribunal is constituted. Its members are: L. Yves Fortier (Canadian), President; Robert von Mehren (U.S.); and Brigitte Stern (French).

July 27, 2004
The Tribunal holds its first session in Washington, D.C.

- **SAUR International v. Argentine Republic (Case No. ARB/04/4)**

January 27, 2004
The Acting Secretary-General registers a request for the institution of arbitration proceedings.

- **Compagnie d'Exploitation du Chemin de Fer Transgabonais v. Republic of Gabon (Case No. ARB/04/5)**

February 10, 2004
The Secretary-General registers a request for the institution of arbitration proceedings.

- **OKO Osuuspankki Keskuspankki Oyj and others v. Republic of Estonia (Case No. ARB/04/6)**

February 20, 2004
The Secretary-General registers a request for the institution of arbitration proceedings.

March 8, 2004
The Tribunal is constituted. Its members are: Otto de Witt Wijnen (Dutch), President; L. Yves Fortier (Canadian); and V.V. Veeder (British).

May 10, 2004
The Tribunal holds its first session at The Hague.

July 15, 2004
The Claimants file their memorial on the merits.

- **Sociedad Anónima Eduardo Vieira v. Republic of Chile (Case No. ARB/04/7)**

February 27, 2004
The Acting Secretary-General registers a request for the institution of arbitration proceedings.

- **BP America Production Company and others v. Argentine Republic (Case No. ARB/04/8)**

February 27, 2004
The Acting Secretary-General registers a request for the institution of arbitration proceedings.

March 25, 2004
The Tribunal is constituted. Its members are: Lucius Cafilich (Swiss), President; Albert Jan van den Berg (Dutch); and Brigitte Stern (French).

- April 21, 2004*
The Tribunal holds its first session in Geneva.

July 21, 2004
The Claimants file their memorial on the merits.

- **CIT Group Inc. v. Argentine Republic (Case No. ARB/04/9)**

February 27, 2004
The Acting Secretary-General registers a request for the institution of arbitration proceedings.

- **Alstom Power Italia SpA and Alstom SpA v. Republic of Mongolia (Case No. ARB/04/10)**

March 18, 2004
The Secretary-General registers a request for the institution of arbitration proceedings.

- **Russell Resources International Limited and others v. Democratic Republic of the Congo (Case No. ARB/04/11)**

April 6, 2004
The Secretary-General registers a request for the institution of arbitration proceedings.

- **ABCI Investments N.V. v. Republic of Tunisia (Case No. ARB/04/12)**

April 6, 2004
The Secretary-General registers a request for the institution of arbitration proceedings.

- **Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt (Case No. ARB/04/13)**

May 27, 2004
The Acting Secretary-General registers a request for the institution of arbitration proceedings.

- **Cargill, Incorporated v. Republic of Poland (Case No. ARB(AF)/04/2)**

July 7, 2004
The Acting Secretary-General registers a request for the institution of arbitration proceedings.

- **Wintershall Aktiengesellschaft v. Argentine Republic (Case No. ARB/04/14)**

July 15, 2004
The Secretary-General registers a request for the institution of arbitration proceedings.

- **Telenor Mobile Communications AS v. Republic of Hungary (Case No. ARB/04/15)**

August 2, 2004
The Secretary-General registers a request for the institution of arbitration proceedings.

- **Mobil Exploration and Development Inc. Suc. Argentina and Mobil Argentina S.A. v. Argentine Republic (Case No. ARB/04/16)**

August 5, 2004

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

- **Interbrew Central European Holding B.V. v. Republic of Slovenia (Case No. ARB/04/17)**

August 25, 2004

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

- **France Telecom S.A. v. Argentine Republic (Case No. ARB/04/18)**

August 26, 2004

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

NEW ICSID PUBLICATIONS

Earlier this year, the Centre published Volume 18, Number 2 issue of the *ICSID Review—Foreign Investment Law Journal* (Fall 2003). One of the articles featured in this issue, by Emmanuel Gaillard and Yas Banifatemi, explored the role of international law in the ICSID choice of law process under Article 42(1) of the ICSID Convention. The second article, by Stephen Wallace, was dedicated to observations and analysis on selected aspects of ICSID jurisdiction in the context of international petroleum agreements. In addition, the issue reproduced the full texts of the interim decision on jurisdiction, the award of the arbitral tribunal, the dissenting opinion by one of the arbitrators, as well as the tribunal's decision on correction and interpretation of the award, rendered in *Marvin Roy Feldman Karpa v. United Mexican States* (ICSID Case No. ARB(AF)99/1), a NAFTA Chapter Eleven case, which was conducted under the ICSID Additional Facility Rules. Also reproduced in this issue was the award of the tribunal in *Middle East Cement Shipping and Handling Co. S.A. v. Arab Republic of Egypt* (ICSID Case No. ARB/99/6). Finally, the contributions included a review by Robert C. Sentner of the second edition of Gary Born's book, *International Arbitration: Commentary and Materials*.

In the first half of 2004, the Centre also published two new releases of its collection of *Investment Treaties*, thereby bringing the total number of treaties contained in the collection to 960. In addition, the ICSID Secretariat compiled and published one new release for its ten-volume loose-leaf collection of *Investment Laws of the World*. This release featured new investment legislation of Azerbaijan, Belarus, Kazakhstan, Lebanon, Mozambique, Paraguay and Serbia and Montenegro. The collection now comprises of foreign investment acts of 150 countries from all major regions of the world. The collection also continued to be updated with current contact details of the respective main governmental agencies in charge of the promotion and protection of foreign investment in the featured countries. ■

RESOLUTION OF OIL AND GAS DISPUTES AT ICSID

(Continued from page 1)

execution of long term projects, especially where the interests of both parties are best served by the project continuing to its anticipated completion. Oil and gas projects are good examples of such long term undertakings, as are mining enterprises.

There is significant foreign participation, whether direct or indirect, in the oil and gas industries of the majority of the countries where such resources exist in commercial quantities. Such participation could be on the basis of licenses, permits, leases, production sharing agreements, etc. Typically, as do other countries, the oil producing countries include ICSID dispute settlement provisions in their investment and trade laws and treaties. This is the case even for those of the countries that are yet to ratify the ICSID Convention. It is interesting to note, therefore, that despite the large volume of the foreign investment in the sector on the one hand and the proliferation of ICSID arbitration provisions on the other, very few oil and gas cases have so far been brought to the Centre.

BACKGROUND

The International Centre for Settlement of Investment Disputes (ICSID or the Centre), one of the five international organizations that make up the World Bank Group, was established in 1966 by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, more commonly known as the Washington Convention or the ICSID Convention.

The objective in creating the Centre, as stated in the Report of the World Bank's Executive Directors on the ICSID Convention, and in the preamble to the Convention, was to establish a neutral forum for the settlement of investment disputes between States and nationals of other States, as a way of encouraging cross border investment, which is seen as critical to economic development of countries.

ICSID presently has 140 member countries from all corners of the globe, including about half of the 20 countries in the world with the highest oil and gas reserves. For example, China, Kuwait, Nigeria, Saudi Arabia and the United Arab Emirates are members of ICSID, whereas countries like Iran, Iraq, Libya, Mexico and Russia are yet to join.

JURISDICTION

Primarily, ICSID provides facilities for the conciliation and arbitration of legal disputes, arising directly out of an investment, between its member States and nationals of other member States.

In addition to the cases brought to the Centre under the Convention, ICSID also administers cases under its Additional Facility Rules, which came into effect in 1978. Disputes may be brought for conciliation or arbitration under the ICSID Additional Facility Rules where one of the parties is not a member country or national of a member country, or the dispute does not directly arise out of an investment. Such proceedings are, however, not covered by provisions of the Convention, and could therefore be subject to the influences of national courts. This was the situation in *Metalclad Corporation v. United Mexican States* (ICSID Case No. ARB(AF)/97/1). The Tribunal's Award in that case was partially set aside by the Supreme Court of British Columbia, which was the seat of the arbitration. (See *United Mexican States v. Metalclad Corporation*, 2001 BCSC 664.)

CONSENT

Like other forms of arbitration, ICSID arbitration, whether under the Convention or under the Additional Facility Rules, is consensual in nature. The consent of the parties need not be recorded in the same document and could be given before or after a dispute has arisen.

Traditionally, cases brought to ICSID were mostly commenced on the basis of the ICSID arbitration provisions contained in the parties' investment contract. In fact, until 1984, virtually all requests for arbitration registered by the Centre were based on the written consent of the parties expressed in such direct investment contracts. In the oil and gas industry, such consent would usually be recorded in a production sharing or similar contract.

There then followed a period when ICSID cases were also commenced on the basis of consents of governments expressed in their national investment laws.

In the last decade, however, more cases have been commenced on the authority of ICSID arbitration provisions of various bilateral and multilateral treaties, which provide

the advance consent to such arbitration by the respondent State. Indeed, about 80% of the cases now pending at the Centre were instituted on the basis of such consents contained in bilateral investment treaties (BITs).

Oil and gas cases at the Centre provide a good example of this trend. All but one of the ICSID concluded oil and gas cases were brought under investment contracts. By contrast, all the oil and gas cases currently pending before the Centre, with only one exception, were commenced on the basis of dispute settlement provisions in BITs. The investor-State dispute settlement provision of the Energy Charter Treaty has also been invoked in one case alongside respective provisions in a BIT.

CASES AT THE CENTRE

Out of the 158 cases so far registered by ICSID since 1972, 41 have involved companies and projects in mining as well as oil and gas industries. Of these 41 cases, 23 involve projects in the oil and gas sector and 14 of them are still pending.

Little exists by way of jurisprudence in ICSID oil and gas cases, due to the manner in which such cases have been terminated. Only in two instances, which are about a quarter of a century apart, did the proceeding result in an award of the tribunal on the merits of the case. In one other case, the tribunal rendered an award in which it declined jurisdiction over the dispute. In four other instances, the dispute was settled by the parties and in two further cases, the proceedings were discontinued at the request of the claimants.

In the first of the two cases in which an award on the merits was rendered, the tribunal ordered that the respondent State pay compensation for breach of contract and unlawful expropriation of the claimant's investment (see *AGIP S.p.A. v. People's Republic of the Congo* (Case No. ARB/77/1)). The award in that case was rendered in November 1979. The award in the second case was rendered less than two months ago, and is yet to be published. The dispute in that case concerned payment obligations under an oil exploration contract and was brought to ICSID on the basis of the arbitration clause contained in a contract. The tribunal, by majority, upheld the claim, awarding compensation to the claimant.

It is important to note that out of the 14 oil and gas cases currently pending at ICSID, all but three of those cases involve Argentina as the respondent party. Indeed, the claimants in all of the cases involving Argentina complain of similar measures, which they allege to have breached their rights guaranteed under

the respective BITs on which the claimants rely for Argentina's consent to ICSID arbitration.

The cases involving Argentina raise challenging issues on ICSID's part with regard to administering multiple cases involving the same respondent State and similar legal and factual issues. One approach so far has been, with the cooperation of the parties, to appoint the same arbitrators, whenever possible, to deal with the different claims that raise similar issues. It is expected that this will cut down on the cost of the proceedings, while minimizing the risk of having conflicting decisions in similar cases. A comparable approach was employed in the early ICSID bauxite mining cases involving the Jamaican Government, namely *Alcoa Minerals of Jamaica, Inc. v. Jamaica* (Case No. ARB/74/2), *Kaiser Bauxite Company v. Jamaica* (Case No. ARB/74/3), and *Reynolds Jamaica Mines Limited and Reynolds Metals Company v. Jamaica* (Case No. ARB/74/4).

Although mostly still in their early stages, the pending ICSID oil and gas cases raise issues that are common in other cases commenced on the basis of consents to ICSID arbitration contained in treaties. For example, a number of ICSID tribunals are presently having to deal with the jurisdictional issues raised when a claimant alleges both a breach of contract and a breach of treaty in the same dispute, and with the effect of the so-called "umbrella" clauses of treaties in those situations. The work of the tribunals in those cases will be further complicated by the fact that two recent ICSID tribunal decisions dealing with the effect of such "umbrella" clauses have adopted approaches that may be considered somewhat different (*SGS Société Générale de Surveillance S.A. v. Islamic Republic of Pakistan* (ICSID Case No. ARB/01/13) and *SGS Société Générale de Surveillance S.A. v. Republic of the Philippines* (Case No. ARB/02/6)).

Aside from the cases involving Argentina, the three other pending oil and gas cases involve Bulgaria, Niger and Trinidad and Tobago. The cases involving Bulgaria and Trinidad and Tobago are arbitration proceedings, which concern alleged breaches of investment guarantees provided to investors by treaties of the host States. The case involving Niger is a conciliation case—the only such case currently pending at the Centre.

It is worthy of note that the majority of the ICSID concluded oil and gas cases ended amicably, and that the two instances in which a tribunal considered the merits of the case are about a quarter of a century apart. But

RESOLUTION OF OIL AND GAS DISPUTES AT ICSID

(Continued from page 13)

what does this say about the arbitration of oil and gas disputes at ICSID?

OBSERVATIONS FROM THE CONCLUDED OIL AND GAS CASES AT ICSID

It is not inconceivable that this trend is indicative of the nature of the industry. Oil and gas projects are, by their very nature, long term projects. The system of dispute resolution, therefore, has to be such as to enable the parties continue to maintain a working relationship as disputes arise and are dealt with.

Although not traditionally considered to be as contentious as litigation in national courts, arbitral proceedings may still not always be suitable for the types of projects and relations encountered in the oil and gas sector.

It is, therefore, of little surprise that two out of the four conciliation cases ever registered at ICSID have involved oil and gas disputes, including the recently registered one involving Niger which is currently pending. The earlier such case, *Tesoro Petroleum Corporation v. Trinidad and Tobago* (Case No. CONC/83/1), resulted in an amicable settlement. Indeed, the other two ICSID conciliation cases involved the very same parties and the same project: *SEDITEX Engineering Beratungsgesellschaft für die Textilindustrie m.b.H. v. Democratic Republic of Madagascar* (Case No. CONC/82/1); and *SEDITEX Engineering Beratungsgesellschaft für die Textilindustrie m.b.H. v. Madagascar* (Case No. CONC/94/1).

In recognition of the value of conciliation as a dispute settlement mechanism, ICSID is now taking steps and looking for ways to encourage increased use of its Conciliation Rules, which have been little utilized over the years, even though they are as old as the Centre's Arbitration Rules. To this end, the Centre now routinely advises parties to new arbitration requests of the possibility to resort to the conciliation option, in case they consider it suitable for their needs. Indeed, this is an

option that appears well suited for the peculiarly long-term nature of the oil and gas projects and the need to maintain good relations for the duration of the contract.

Parties to conciliation proceedings at ICSID, of course, benefit from the usual advantages of a proceeding administered by an institution under the respective conciliation rules, as well as from the application of the Administrative and Financial Regulations of the Centre. These include the role of the Centre in appointing conciliators, when necessary, the provision of a secretary to the conciliation commission, administering of the finances of the proceeding, etc.

EMERGING TRENDS

Looking at the future of oil and gas cases at ICSID, it is important to consider recent enactments and treaties, including the new model for bilateral investment treaties of the U.S. Government, as well as declarations of the NAFTA Free Trade Commission, from which certain trends that will affect the ICSID system of dispute settlement can be observed. For instance, there is now a drive towards increased openness in arbitration. Hence, new treaties tend to provide for pleadings and decisions to be made available to the public, for *amicus curiae* to be received by tribunals and for hearings to be open to the public.

Another development which may affect the resolution of oil and gas cases at ICSID, if implemented, is the call for an international appellate system to be established with regard to arbitral awards.

CONCLUSION

As international arbitration continues to develop, users of the ICSID system from the oil and gas sector may find that the conciliation mechanism could provide a more cost effective and expedient alternative to arbitration, while allowing them to retain an environment conducive for the underlying project to survive the dispute at issue. ■

NEW PANEL DESIGNATIONS DURING THE PERIOD JANUARY 1 – JUNE 30, 2004

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 Australia, Bahrain, Belgium, Botswana, China, Iceland, Jamaica, Nicaragua, Spain and the United Kingdom.

Australia

Panel of Conciliators

Designations effective February 12, 2004:
Neil Brown, Ian Hanger, Henry Jolson and Laurence Street (re-appointment)

Panel of Arbitrators

Designations effective February 12, 2004:
Gavan Griffith (re-appointment), Michael Pryles (re-appointment), Andrew Rogers and Jeffrey Waincymer

Bahrain

Panel of Conciliators

Designations effective June 29, 2004:
Yousuf Humood, Aref Saleh Khamis, Waleed Rashdan and Abdul Rahman Saif

Panel of Arbitrators

Designations effective June 29, 2004:
Stuart Gwyn Horler, Yousif Abdul Kareem, Jan Paulsson and Mohammed Ali Taleb

Belgium

Panel of Conciliators

Designations effective February 18, 2004:
Hans van Houtte

Panel of Arbitrators

Designations effective February 18, 2004:
André Faurès, Bernard Hanotiau and Didier Matray

Botswana

Panels of Conciliators and of Arbitrators

Designations effective March 18, 2004:
I.S. Kirby (re-appointment), E.W.M.J. Legwaila (re-appointment), J.Z. Mosojane (re-appointment) and P.T.C. Skelemani (re-appointment)

China

Panel of Conciliators

Designations effective April 4, 2004:
Li Ling, Wang Chaunli, Yu Jinsong and Shen Sibao

Panel of Arbitrators

Designations effective April 4, 2004:
Chen An, Huang Jin, Shao Jingchun and Chen Zhidong

Iceland

Panels of Conciliators and of Arbitrators

Designations effective April 5, 2004:
Guðmundur Eiríksson, Tómas H. Heiðar and Eiríkur Tómasson

Jamaica

Panel of Arbitrators

Designation effective April 19, 2004:
Patrick Robinson

Nicaragua

Panels of Conciliators and of Arbitrators

Designation effective March 15, 2004:
Renaldy J. Gutierrez

Spain

Panel of Conciliators

Designation effective March 22, 2004:
Evelio Verdera y Tuells

United Kingdom

Panel of Conciliators

Designations effective February 17, 2004:
Sydney Lipworth (re-appointment), Arthur L. Marriott, Francis Neate (re-appointment) and Christopher Staughton

Panel of Arbitrators

Designations effective February 17, 2004:
Franklin Berman, David A.O. Edward, Christopher Greenwood and Michael Mustill

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