

# NEWS FROM ICSID



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INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

## ROBERTO DAÑINO LEAVES ICSID

At the end of January 2006, Roberto Dañino resigned from the post of Senior Vice President and General Counsel, World Bank, and Secretary-General, ICSID. Mr. Dañino, a Peruvian national, was unanimously elected as Secretary-General by the Administrative Council of ICSID in 2003. Prior to joining ICSID and the World Bank, Mr. Dañino served as Prime Minister of Peru and its Ambassador to the United States, following a career as a corporate lawyer both in the United States and in Peru.

During his tenure at ICSID, Mr. Dañino embarked on several initiatives to improve the Centre's services and to address current challenges. These initiatives included the Centre's first ever client survey as well as a review of the framework for ICSID arbitration, which subsequently led to the issuance of amendments to the arbitration rules of the Centre. Besides engaging in a broad dialogue with government and non-governmental audiences on how to improve the rules for ICSID arbitration and proposing new areas for future development of the institution, Mr. Dañino placed emphasis on promoting conciliation and mediation as an alternative means for investor-State dispute settlement in suitable cases. Mr. Dañino made it a point to diversify the pool of ICSID arbitrators to include a greater number of women and developing country nationals.

During Mr. Dañino's time as ICSID Secretary-General, the Centre's caseload increased significantly. At the conclusion of Mr. Dañino's tenure at ICSID, there were a record number of over one hundred cases pending, more than half of all cases ever registered with ICSID since its establishment in 1966.

As of February 1, 2006, Scott B. White, a U.S. national, who has served as the Bank's Deputy General Counsel since 2003, was appointed as Acting Vice President and General Counsel, World Bank, and Acting Secretary-General, ICSID. Margrete Stevens, a Danish national who has worked at the Centre since 1989, will serve as Acting Lead Counsel for ICSID. ■

## OECD/ICSID/UNCTAD SYMPOSIUM—MAKING THE MOST OF INTERNATIONAL INVESTMENT AGREEMENTS: A COMMON AGENDA

Government officials, legal experts and civil society advocates shared their perspectives on emerging issues in international investment arbitration during a symposium, jointly organized by ICSID, the Organisation of Economic Development and Co-operation (OECD) and the United Nations Conference on Trade and Development (UNCTAD).

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## DISPUTES BEFORE THE CENTRE

Since July 1, 2005, the Centre has registered fifteen new cases. Two of these were Additional Facility rules proceedings which were brought to ICSID under the Investment Chapter of the North American Free Trade Agreement (NAFTA). Another case involved an investment contract between the parties concerned. The remaining twelve proceedings were initiated under the investor-State dispute settlement provisions of bilateral investment treaties. These new registrations bring to 199 the total number of cases registered by the Centre by the end of December 31, 2005. Also during the same period, the Centre registered two applications by parties seeking post-award remedies.

Six proceedings were concluded in this period. These include four arbitration proceedings, one interpretation proceeding and one annulment proceeding. The arbitral tribunal in one proceeding rendered its award. Two of the arbitration proceedings were discontinued at the request of a party. A further arbitration proceeding and an annulment case were discontinued at the joint request of the parties. Also during this period, the tribunal in an interpretation proceeding issued a decision on the claimant's application for interpretation of the arbitral award.

In addition, ICSID tribunals issued decisions on jurisdiction in four cases during the period under review.

ICSID administered 107 proceedings in the second half of 2005. Additionally, the Centre administered four proceedings conducted under the rules of the United Nations Commission on Trade Law (UNCITRAL), and five proceedings conducted under the NAFTA and the UNCITRAL rules.

Developments in the disputes pending before ICSID during the period July 1 – December 31, 2005 are set out below. Current developments are posted on the ICSID website at <http://www.worldbank.org/icsid>.

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

*July 12, 2005*

The Claimants file their rejoinder on jurisdiction.

*August 16 – 17, 2005*

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

*August 31, 2005*

The Claimants file their memorial on costs.

*September 12, 2005*

The Respondent files its observations on the Claimants' memorial on costs.

*November 14, 2005*

The Tribunal issues its decision on jurisdiction.

*November 29, 2005*

The Respondent files its counter-memorial on the merits.

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

*August 24, 2005*

The Respondent files a proposal for the disqualification of the three members of the Tribunal.

*August 26, 2005*

Galo Leoro Franco (Ecuadorian) resigns from the Tribunal.

### ■ **Wena Hotels Limited v. Arab Republic of Egypt (Case No. ARB/98/4) – Interpretation Proceeding**

*July 11, 2005*

The Tribunal declares the proceeding closed in accordance with ICSID Arbitration Rule 38(1).

*October 31, 2005*

The Tribunal issues its decision on the Claimant's application for interpretation of the arbitral award dated December 8, 2000.

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

*September 21, 2005*

The proceeding is stayed in accordance with ICSID Administrative and Financial Regulation 14(3)(d) and (e).

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

There have been no new developments to report in this case since the last issue of *News from ICSID*.
  
- **World Duty Free Company Limited v. Republic of Kenya (Case No. ARB/00/7)**

*August 19, 2005*  
The Claimant informs the Tribunal that it will not file a reply.

*August 26, 2005*  
The Claimant files a request for postponement of the hearing on preliminary issues, scheduled to commence on September 12, 2005.

*September 5, 2005*  
The Tribunal informs the parties that, further to the Claimant's request of August 26, 2005, the hearing on preliminary issues is postponed until January 18 – 19, 2006.
  
- **Antoine Goetz & others v. Republic of Burundi (Case No. ARB/01/2)**

There have been no new developments to report in this case since the last issue of *News from ICSID*.
  
- **Enron Corporation and Ponderosa Assets, L.P. v. Argentine Republic (Case No. ARB/01/3)**

*July 6, 2005*  
The Respondent files its rejoinder on the merits concerning the ancillary claim.

*November 28 – December 8, 2005*  
The Tribunal holds a hearing on the merits of the ancillary claim in Washington, D.C.
  
- **MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Republic of Chile (Case No. ARB/01/7) – Annulment Proceeding**

*July 25, 2005*  
The Respondent files its memorial.

*December 7, 2005*  
The Claimant files its counter-memorial.
  
- **CMS Gas Transmission Company v. Argentine Republic (Case No. ARB/01/8) – Annulment Proceeding**

*September 27, 2005*  
The Secretary-General registers an application for institution of annulment proceedings.
  
- **Repsol YPF Ecuador S.A. v. Empresa Estatal Petroleos del Ecuador (Petroecuador) (Case No. ARB/01/10) – Annulment Proceeding**

*October 20, 2005*  
The Secretary-General notifies the parties of his intention to move that the *ad hoc* Committee discontinue the proceeding in accordance with ICSID Administrative and Financial Regulation 14(3)(d) and (e).

*November 1, 2005*  
The *ad hoc* Committee grants the Respondent an extension until November 14, 2005 to make the outstanding payment.

*November 28, 2005*  
The proceeding is resumed following payment of the required advances.

*December 22, 2005*  
The *ad hoc* Committee issues a procedural order concerning the stay of enforcement of the award.
  
- **Noble Ventures, Inc. v. Romania (Case No. ARB/01/11)**

**(a) Original Arbitration Proceeding**

*October 12, 2005*  
The Tribunal renders its award.

**(b) Rectification Proceeding**

*October 26, 2005*  
The Secretary-General registers a request for rectification of the award.
  
- **Azurix Corp. v. Argentine Republic (Case No. ARB/01/12)**

There have been no new developments to report in this case since the last issue of *News from ICSID*.
  
- **F-W Oil Interests, Inc. v. Republic of Trinidad & Tobago (Case No. ARB/01/14)**

There have been no new developments to report in this case since the last issue of *News from ICSID*.
  
- **Fireman's Fund Insurance Company v. United Mexican States (Case No. ARB(AF)/02/1)**

*August 4, 2005*  
The Respondent files its rejoinder on the merits.

*September 2, 2005*  
Canada files its NAFTA Article 1128 submission.

*September 21, 2005*  
The parties file their pre-hearing briefs.

*September 27 – October 1, 2005*  
The Tribunal holds a hearing on the merits in Washington, D.C.

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

There have been no new developments to report in this case since the last issue of *News from ICSID*.
- **Aguas del Tunari S.A. v. Republic of Bolivia (Case No. ARB/02/3)**

*October 21, 2005*  
The Tribunal issues its decision on Respondent's objections to 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)**

*September 19, 2005*  
The Respondent files its counter-memorial on the merits.

*December 12, 2005*  
The Claimants file their reply on the merits.
- **SGS Société Générale de Surveillance S.A. v. Republic of the Philippines (Case No. ARB/02/6)**

There have been no new developments to report in this case since the last issue of *News from ICSID*.
- **Hussein Nuaman Soufraki v. United Arab Emirates (Case No. ARB/02/7) – Annulment Proceeding**

*August 31, 2005*  
The Claimant files his memorial on the application for annulment.
- **Siemens A.G. v. Argentine Republic (Case No. ARB/02/8)**

*October 10 – 18, 2005*  
The Tribunal holds a hearing on the merits in Washington, D.C.

*November 23, 2005*  
The parties file their post-hearing briefs
- **Champion Trading Company and Ameritrade International, Inc. v. Arab Republic of Egypt (Case No. ARB/02/9)**

*September 30, 2005*  
The Respondent files its counter-memorial on the merits.

*November 1, 2005*  
The Claimants file their reply on the merits.

*November 30, 2005*  
The Respondent files its rejoinder on the merits.
- **Salini Costruttori S.p.A. and Italstrade S.p.A. v. Hashemite Kingdom of Jordan (Case No. ARB/02/13)**

*August 1, 2005*  
The Respondent files its rejoinder on the merits.

*September 20, 2005*  
The Tribunal holds a hearing on the merits in Paris.
- **Ahmonseto, Inc. and others v. Arab Republic of Egypt (Case No. ARB/02/15)**

*September 2, 2005*  
The Tribunal issues a procedural order concerning the organization of the hearing on witnesses scheduled to be held in Cairo and Geneva on September 18, 2005 and September 20 – 21, 2005, respectively.

*September 8, 2005*  
The President of the Tribunal holds a telephone conference with the parties on the organization of the hearing on witnesses.

*September 18, 2005*  
The Tribunal holds a hearing on witnesses in Cairo.

*September 20 – 21, 2005*  
The hearing on witnesses continues in Geneva.
- **Sempra Energy International v. Argentine Republic (Case No. ARB/02/16)**

*August 1, 2005*  
The Respondent files its counter-memorial on the merits.

*September 28, 2005*  
The Claimant files its reply on the merits.

*December 5, 2005*  
The Respondent files its rejoinder on the merits.
- **AES Corporation v. Argentine Republic (Case No. ARB/02/17)**

*September 8, 2005*  
The Respondent files its counter-memorial on the merits.
- **Tokios Tokeles v. Ukraine (Case No. ARB/02/18)**

*July 29, 2005*  
The Respondent files its counter-memorial on the merits.

*September 9, 2005*  
The Claimant files its reply on the merits.

*September 22, 2005*  
The Tribunal holds a procedural hearing via video-conference.

*October 10, 2005*  
The Respondent files its rejoinder on the merits.

November 4, 2005

The Tribunal issues successive procedural orders concerning the Respondent's additional objections to jurisdiction and request for discontinuance of the proceeding, and the forthcoming hearing on the merits.

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

August 2, 2005

The Respondent files its counter-memorial on the merits.

September 28, 2005

The Claimant files its reply on the merits.

December 5, 2005

The Respondent files its rejoinder on the merits.

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

September 26, 2005

The Tribunal issues an order taking note of the discontinuance of the proceeding pursuant to ICSID Arbitration Rule 44.

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

July 1, 2005

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

November 17, 2005

The *ad hoc* Committee is constituted. Its members are: Hans Danelius (Swedish), President; Franklin Berman (British); and Andrea Giardina (Italian).

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

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

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

July 22, 2005

The Claimants file their reply on the merits.

August 31, 2005

The Respondent files its rejoinder on the merits.

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

August 24, 2005

The Respondent files its counter-memorial on the merits.

October 7, 2005

The Tribunal issues a procedural order concerning procedural matters.

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

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

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

November 11, 2005

The Tribunal suspends the proceeding following a request by the parties.

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

December 16, 2005

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

■ **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*.

■ **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)**

July 28, 2005

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

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

July 25, 2005

The Claimants file their reply.

December 12, 2005

The Claimants file their rejoinder on jurisdiction.

December 19, 2005

The Tribunal holds an organizational meeting in London.

- **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)**

There have been no new developments to report in this case since the last issue of *News from ICSID*.
- **Aguas Cordobesas, S.A., Suez, and Sociedad General de Aguas de Barcelona, S.A. v. Argentine Republic (Case No. ARB/03/18)**

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

There have been no new developments to report in this case since the last issue of *News from ICSID*.
- **Telefónica S.A. v. Argentine Republic (Case No. ARB/03/20)**

There have been no new developments to report in this case since the last issue of *News from ICSID*.
- **Enersis, S.A. and others v. Argentine Republic (Case No. ARB/03/21)**

There have been no new developments to report in this case since the last issue of *News from ICSID*.
- **Electricidad Argentina S.A. and EDF International S.A. v. Argentine Republic (Case No. ARB/03/22)**

*July 1, 2005*  
The Claimants file their counter-memorial on jurisdiction.

*October 3, 2005*  
The Claimants file their rejoinder on jurisdiction.

*November 17, 2005*  
The proceeding is suspended following the agreement of the parties.
- **EDF International S.A., SAUR International S.A. and León Participaciones Argentinas S.A. v. Argentine Republic (Case No. ARB/03/23)**

*July 1, 2005*  
The Respondent files its memorial on jurisdiction.

*October 3, 2005*  
The Claimants file their counter-memorial on jurisdiction.

*November 17, 2005*  
The Respondent files its reply on jurisdiction.
- **Plama Consortium Limited v. Republic of Bulgaria (Case No. ARB/03/24)**

*July 29, 2005*  
The Claimant files a request for urgent provisional measures.

*September 6, 2005*  
The Tribunal issues an order concerning the Claimant's request of July 29, 2005.

*October 28, 2005*  
The Claimant files its memorial on the merits.
- **Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines (Case No. ARB/03/25)**

*July 8, 2005*  
The Tribunal issues a procedural order concerning the Respondent's request for production of documents.

*July 13, 2005*  
The Respondent files its rejoinder on jurisdiction and liability.

*July 19 – August 3, 2005*  
The Tribunal issues successive procedural orders concerning the Respondent's request for postponement of the hearing on jurisdiction and liability scheduled to commence on August 29, 2005.

*August 29 – 30, 2005*  
The Tribunal holds a procedural hearing in Washington, D.C.

*August 30 – October 20, 2005*  
The Tribunal issues successive procedural orders concerning procedural matters.

*October 24, 2005*  
The Respondent files its supplemental submission.

*November 8, 2005*  
The Tribunal issues a procedural order concerning the production of documents.

*November 23, 2005*  
The Claimant files its rejoinder memorial.

*December 9, 2005*  
The Tribunal issues a procedural order concerning various requests made by the parties.

*December 15, 2005*  
The Tribunal holds a pre-hearing conference in Washington, D.C.

*December 20 – 29, 2005*  
The Tribunal issues successive procedural orders concerning various requests made by the parties.
- **Inceysa Vallisoletana S.L. v. Republic of El Salvador (Case No. ARB/03/26)**

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

■ **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)**

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

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

*July 25 – 26, 2005*

The Tribunal holds a hearing on jurisdiction in Paris.

*November 14, 2005*

The Tribunal issues its decision on jurisdiction.

■ **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*.

■ **Corn Products International, Inc. v. United Mexican States (Case No. ARB(AF)/04/1)**

*July 7, 2005*

The Respondent files a request for production of documents.

*August 1, 2005*

The Claimant files its observations on the Respondent's request of July 7, 2005.

*August 20, 2005*

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

*September 20, 2005*

The Respondent files its counter-memorial on the merits.

*October 26, 2005*

The Claimant files its reply on the merits.

*December 12, 2005*

The Respondent files its rejoinder on the merits.

■ **Total S.A. v. Argentine Republic (Case No. ARB/04/1)**

*August 1, 2005*

The Claimant files its counter-memorial on jurisdiction.

*September 15, 2005*

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

■ **Western NIS Enterprise Fund v. Ukraine (Case No. ARB/04/2)**

*July 15, 2005*

The Claimant files its counter-memorial on jurisdiction.

*August 16, 2005*

The Respondent files its reply on jurisdiction.

*November 26, 2005*

The Tribunal holds a hearing on jurisdiction in Paris.

*December 30, 2005*

The Claimant files its post-hearing brief.

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

*July 28 – 29, 2005*

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

*November 28, 2005*

The parties file their post-hearing submissions.

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

*November 10, 2005*

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

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

*July 11, 2005*

The Respondent files its reply on objections to jurisdiction.

*August 10, 2005*

The Claimant files its rejoinder on objections to jurisdiction.

*September 15, 2005*

The Tribunal holds a hearing on jurisdiction in Paris.

*December 19, 2005*

The Tribunal issues its decision on jurisdiction.

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

*October 16 – 21, 2005*

The Tribunal holds a hearing on the merits in Paris.

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

*July 14, 2005*

The Tribunal fixes a schedule for the filing of pleadings on jurisdiction.

September 26, 2005

The Respondent files its memorial on jurisdiction.

December 23, 2005

The Claimant files its counter-memorial on jurisdiction.

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

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

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

October 13, 2005

The Claimant files its memorial on the merits.

December 28, 2005

The Respondent files its objections to jurisdiction.

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

August 24, 2005

The Respondent files its objections to jurisdiction and admissibility.

October 5, 2005

The Claimant files its counter-memorial on jurisdiction.

November 2, 2005

The Respondent files its reply on jurisdiction and admissibility.

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

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

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

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

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

September 20, 2005

The Claimant files its counter-memorial on jurisdiction.

October 31, 2005

The Respondent files its reply on jurisdiction.

December 15, 2005

The Claimant files its rejoinder on jurisdiction.

December 22, 2005

The Tribunal holds a pre-hearing conference via telephone.

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

September 7, 2005

The Tribunal is constituted. Its members are: Fali S. Nariman (Indian), President; Santiago Torres Bernárdez (Spanish); and Piero Bernardini (Italian).

November 22, 2005

The Tribunal holds a first session in Paris.

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

August 9, 2005

The Claimant files its memorial on the merits.

October 11, 2005

The Respondent files its objections to jurisdiction.

November 9, 2005

The Claimant files its answer to the Respondent's objections to jurisdiction.

December 9, 2005

The Respondent files its reply on objections to jurisdiction.

December 23, 2005

The Tribunal informs the parties that it will hold a hearing on jurisdiction.

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

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

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

July 18, 2005

The Tribunal issues an order taking note of the discontinuance of the proceeding pursuant to ICSID Arbitration Rule 44.

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

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



- **Gemplus, S.A., SLP, S.A. and Gemplus Industrial, S.A. de C.V. v. United Mexican States (Case No. ARB(AF)/04/3)**

*October 14, 2005*  
The Claimants file their memorial on the merits.
  
- **Talsud, S.A. v. United Mexican States (Case No. ARB(AF)/04/4)**

*October 14, 2005*  
The Claimant files its memorial on the merits.
  
- **Archer Daniels Midlands Company and Tate & Lyle Ingredients Americas, Inc. v. United Mexican States (Case No. ARB(AF)/04/5)**

*August 11, 2005*  
The Tribunal is constituted. Its members are: Bernardo M. Cremades (Spanish), President; Arthur W. Rovine (U.S.); and Eduardo Siqueiros (Mexican).

*October 7, 2005*  
The Tribunal holds a first session in Washington, D.C.

*December 21, 2005*  
The Claimants file their memorial on the merits.
  
- **Duke Energy Electroquil Partners and Electroquil S.A. v. Republic of Ecuador (Case No. ARB/04/19)**

*September 3, 2005*  
The Claimants file their memorial on the merits.

*November 21, 2005*  
The Respondent files its counter-memorial on the merits and its memorial on jurisdiction.
  
- **Vannessa Ventures Ltd. v. Bolivarian Republic of Venezuela (Case No. ARB(AF)/04/6)**

*August 15, 2005*  
The Claimant files a request for production of documents.

*September 12, 2005*  
The Respondent files its objections to the Claimant's request of August 15, 2005.

*September 23, 2005*  
The Claimant files an amended request for production of documents.

*October 7, 2005*  
The Respondent makes a partial production of documents.
  
- **RGA Reinsurance Company v. Argentine Republic (Case No. ARB/04/20)**

*July 18, 2005*  
The Tribunal is constituted. Its members are: Fali S. Nariman (Indian), President; Piero Bernardini (Italian); and Georges Abi-Saab (Egyptian).

*November 22, 2005*  
The Tribunal holds a first session in Paris.
  
- **Motorola Credit Corporation, Inc. v. Republic of Turkey (Case No. ARB/04/21)**

*November 21, 2005*  
The Tribunal issues an order taking note of the discontinuance of the proceeding pursuant to ICSID Arbitration Rule 43(1).
  
- **DaimlerChrysler Services AG v. Argentine Republic (Case No. ARB/05/1)**

There have been no new developments to report in this case since the last issue of *News from ICSID*.
  
- **Compañía General de Electricidad S.A. and CGE Argentina S.A. v. Argentine Republic (Case No. ARB/05/2)**

There have been no new developments to report in this case since the last issue of *News from ICSID*.
  
- **LESI, S.p.A. and Astaldi, S.p.A. v. People's Democratic Republic of Algeria (Case No. ARB/05/3)**

*October 31, 2005*  
The Claimants file their memorial.
  
- **I&I Beheer B.V. v. Bolivarian Republic of Venezuela (Case No. ARB/05/4)**

*September 30, 2005*  
The Tribunal is constituted. Its members are: Karl-Heinz Böckstiegel (German), President; Charles N. Brower (U.S.); and Pierre-Marie Dupuy (France).
  
- **TSA Spectrum de Argentina, S.A. v. Argentine Republic (Case No. ARB/05/5)**

There have been no new developments to report in this case since the last issue of *News from ICSID*.
  
- **Bernardus Henricus Funnekotter and others v. Republic of Zimbabwe (Case No. ARB/05/6)**

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

- **Saipem S.p.A. v. The People's Republic of Bangladesh (Case No. ARB/05/7)**

*July 26, 2005*  
The Respondent files a proposal for disqualification of an arbitrator.

*August 22, 2005*  
The Tribunal is constituted. Its members are: Gabrielle Kaufmann-Kohler (Swiss), President; Christoph H. Schreuer (Austrian); and Sir Philip Otton (British). The proceeding is suspended, in accordance with ICSID Arbitration Rule 9(6), following the proposal for disqualification of an arbitrator.

*October 11, 2005*  
The proposal for disqualification of an arbitrator is declined and the proceeding is resumed.

*December 1, 2005*  
The Tribunal holds a first session in London.
  
- **Parkerings-Compagniet AS v. Republic of Lithuania (Case No. ARB/05/8)**

*October 12, 2005*  
The Tribunal is constituted. Its members are: Laurent Lévy (Swiss), President; Marc Lalonde (Canadian); and Julian D.M. Lew (British).

*November 25, 2005*  
The Tribunal holds a first session in London.
  
- **Togo Electricité v. Republic of Togo (Case No. CONC/05/1)**

*September 21, 2005*  
The Commission is constituted. Its members are: António Maria Ribeiro de Sampaio Caramelo (Portuguese), President; Bernard Hanotiau (Belgian); and Pierre B. Meunier (Canadian).

*October 24, 2005*  
The Commission holds a first session in Paris and the Respondent files its observations on the request for conciliation.

*November 25, 2005*  
The Claimant files a written instrument of its position.

*December 26, 2005*  
The Respondent files a written instrument of its position.
  
- **Empresa Eléctrica del Ecuador, Inc. (EMELEC) v. Republic of Ecuador (Case No. ARB/05/9)**

There have been no new developments to report in this case since the last issue of *News from ICSID*.
  
- **Malaysian Historical Salvors, SDN, BHD v. Malaysia (Case No. ARB/05/10)**

*November 1, 2005*  
The Tribunal is constituted. The Sole Arbitrator is Michael Hwang (Singaporean).

*December 29, 2005*  
The Sole Arbitrator holds a first session at The Hague.
  
- **Asset Recovery Trust S.A. v. Argentine Republic (Case No. ARB/05/11)**

*June 23, 2005*  
The Secretary-General registers a request for institution of arbitration proceedings.
  
- **Bayview Irrigation District and others v. United Mexican States (Case No. ARB(AF)/05/1)**

*July 1, 2005*  
The Secretary-General registers a request for institution of arbitration proceedings.

*December 15, 2005*  
The Tribunal is constituted. Its members are: Vaughan Lowe (British), President; Edwin Meese III (U.S.); and Ignacio Gómez Palacio (Mexican).
  
- **Noble Energy Inc. and Machala Power Cia. Ltd. v. Republic of Ecuador and Consejo Nacional de Electricidad (Case No. ARB/05/12)**

*July 29, 2005*  
The Secretary-General registers a request for institution of arbitration proceedings.
  
- **EDF (Services) Limited v. Romania (Case No. ARB/05/13)**

*July 29, 2005*  
The Secretary-General registers a request for institution of arbitration proceedings.
  
- **RSM Production Corporation v. Grenada (Case No. ARB/05/14)**

*August 5, 2005*  
The Secretary-General registers a request for institution of arbitration proceedings.

*December 7, 2005*  
The Tribunal is constituted. Its members are: V.V. Veeder (British), President; Bernard Audit (French); and David Berry (U.S./Canadian).

- **Waguih Elie George Siag and Clorinda Vecci v. Arab Republic of Egypt (Case No. ARB/05/15)**

*August 5, 2005*  
The Secretary-General registers a request for institution of arbitration proceedings.
  
- **Cargill, Incorporated v. United Mexican States (Case No. ARB(AF)/05/2)**

*August 30, 2005*  
The Secretary-General registers a request for institution of arbitration proceedings.
  
- **Rumeli Telekom A.S. & Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan (Case No. ARB/05/16)**

*August 30, 2005*  
The Secretary-General registers a request for institution of arbitration proceedings.

*December 9, 2005*  
The Tribunal is constituted. Its members are: Bernard Hanotiau (Belgian), President; Stewart Boyd (British); and Marc Lalonde (Canadian).
  
- **Desert Line Projects LLC v. Republic of Yemen (Case No. ARB/05/17)**

*September 30, 2005*  
The Secretary-General registers a request for institution of arbitration proceedings.
  
- **Ioannis Kardossopoulos v. Georgia (Case No. ARB/05/18)**

*October 3, 2005*  
The Secretary-General registers a request for institution of arbitration proceedings.
  
- **Helnan International Hotels A/S v. Arab Republic of Egypt (Case No. ARB/05/19)**

*October 5, 2005*  
The Secretary-General registers a request for institution of arbitration proceedings.
  
- **Ioan Micula, Viorel Micula and others v. Romania (Case No. ARB/05/20)**

*October 13, 2005*  
The Secretary-General registers a request for institution of arbitration proceedings.
  
- **African Holding Company of America, Inc. and Société Africaine de Construction au Congo S.A.R.L. v. Democratic Republic of the Congo (Case No. ARB/05/21)**

*October 27, 2005*  
The Secretary-General registers a request for institution of arbitration proceedings.
  
- **Biwater Gauff (Tanzania) Limited v. United Republic of Tanzania (Case No. ARB/05/22)**

*November 2, 2005*  
The Secretary-General registers a request for institution of arbitration proceedings.
  
- **Ares International S.r.l. and MetalGeo S.r.l. v. Georgia (Case No. ARB/05/23)**

*November 9, 2005*  
The Secretary-General registers a request for institution of arbitration proceedings.
  
- **Hrvatska Elektroprivreda d.d. v. Republic of Slovenia (Case No. ARB/05/24)**

*December 28, 2005*  
The Secretary-General registers a request for institution of arbitration proceedings.

# THE ROLE OF ADR IN INVESTOR-STATE DISPUTE SETTLEMENT: THE ICSID EXPERIENCE

By Ucheora Onwuamaegbu, Senior Counsel, ICSID

*A paper presented at the 22nd AAA/ICSID/ICC Joint Colloquium on International Arbitration held in New York on November 18, 2005*

## INTRODUCTION

Without getting into the debate as to whether the concept of alternative dispute resolution (ADR) includes “arbitration,” the purpose here is to look at the mechanisms, aside from arbitration, available to governments and foreign investors at the International Centre for Settlement of Investment Disputes (ICSID or the Centre) and to consider whether there is a potential role for another such mechanism.

Access to the ICSID system of dispute settlement is by consent of the parties to the dispute. Increasingly, such consent can be found in treaties that promote and protect investments. The relevant treaty provisions for the settlement of disputes between governments and foreign investors tend to include a “cooling-off period,” within which parties are to attempt to settle their disputes amicably. Such provisions can be found in investment contracts between the investor and the government; in local laws of investment importing countries; and, more commonly these days, in treaties for the promotion and protection of investment to which the host State of the investment and/or the investor’s home State is a party.

Although rarely specified as such in those instruments, the reference to amicable settlement could be interpreted to cover resolution by any of the different ADR mechanisms that are available.

## MECHANISMS AVAILABLE AT ICSID

ICSID is recognized as an institution for the resolution, by arbitration, of investment disputes between governments and nationals of other countries. Fact-finding and conciliation, the other mechanisms available at ICSID, are often unnoticed.

The ICSID Rules of Procedure for Conciliation Proceedings (Conciliation Rules) were adopted in 1967, at the same time as the ICSID Arbitration Rules, for the resolution by

conciliation of investment disputes between an investor from an ICSID member State and another such member State. The ICSID Additional Facility Conciliation Rules were adopted in 1978 for the conciliation of disputes where either the State party to the dispute or the home State of the investor is not a member of ICSID or where the dispute does not directly arise from an investment. Also adopted in 1978 were the ICSID Additional Facility Fact-Finding Rules.

Therefore, aside from arbitration, there are three other mechanisms available at ICSID for use of governments and foreign investors.

Of the 104 cases pending at ICSID as at November 18, 2005, 103 are arbitration cases, whereas only one is a conciliation case. Indeed, only 5 out of the 198 cases registered to date at ICSID have been conciliation cases registered under the Convention. None of them has been registered under the Additional Facility Rules. Moreover, no cases have been brought to the Centre under the Fact-Finding Rules, after nearly thirty years of their being in existence.

### a) ICSID’s Fact-Finding (Additional Facility) Rules

According to the Introductory Notes published with the first edition of ICSID’s Additional Facility Rules, fact-finding, under those Rules, is a process for preventing, rather than settling disputes. Aaron Broches, who was ICSID Secretary-General when the Rules were introduced in 1978, noted that the process would provide parties with an impartial assessment of facts which, if accepted by them, would prevent differences of views relating to specific factual issues in the course of a long-term relationship from escalating to legal disputes.

Article 1 of the Fact-Finding Rules provides that the process is available to any State or national of a State wishing to institute an inquiry, to examine and report on facts. There is, therefore, no requirement that either party is a member of ICSID or a national of such a member State, but there is a requirement of consent of the parties to the procedure.

Among the other sixteen articles of the Fact-Finding Rules are provisions for the factfinding proceedings to be conducted by a committee comprising of a sole commissioner, or any uneven number of commissioners, who shall be independent of the parties, as well as provisions for the conduct of the proceeding. The Rules envisage that there could be oral and written submissions by the parties and their witnesses; and that the cost of the proceeding would be borne equally by the parties. Finally, the parties may adapt the Rules as they see fit.

In answering the question as to why the Fact-Finding Rules have not been used, it may be insightful to look at why they were introduced in the first place. Again, we turn to the Introductory Notes which state that “[t]he reason for including fact-finding in the Additional Facility was the need perceived in both private and public circles for fact-finding proceedings in the ‘pre-dispute’ stage.” After nearly thirty years of non-use, could it be that the perception of need considered to exist at the time the Rules were adopted was wrong or that the need simply disappeared?

It is more likely, however, that the need still exists but that the process has not received adequate attention. Indeed, since no proceedings have been brought to ICSID so far under the fact-finding mechanism, the fact of its existence tends to be overlooked.

Another reason for the non-use of ICSID fact-finding procedures could be related to the fact that parties generally do not favor processes that involve time and money with no binding result. Article 15(4) of the Fact-Finding Rules provides that “[t]he Report shall not contain any recommendations to the parties and shall not have the character of an award”; and Article 16 provides that “[t]he Parties shall be entirely free as to the effect to be given to the Report” of the Fact-Finding Committee, making it clear that the findings of the Committee shall not be binding on the parties. This is similar to the effect of ICSID Conciliation Reports, which are equally non-binding.

#### b) Conciliation at ICSID

The Executive Directors of the World Bank, in their 1965 Report on the ICSID Convention, refer to the basic distinction between “the process of conciliation which seeks to bring parties to agreement and that of arbitration which aims at a binding determination of the dispute by the Tribunal.”

Indeed, ICSID Conciliation Rule 30 only requires the Report of the Conciliation Commission, at the end of the process, to note the issues in dispute and record that the

parties have reached agreement, where applicable. If on the other hand it appears to the Commission, at any time during the process, that there is no likelihood of agreement between the parties, the Commission’s Report is simply required to note the submission of the dispute to conciliation and to record the failure of the parties to reach an agreement.

Although the aim of conciliation is agreement, the non-binding nature of the Report upon conclusion of proceedings has often been cited as one of the reasons why parties have tended to shy away from ICSID conciliation, especially, since the process could involve as much time and, possibly, comparable expense as an arbitral proceeding which would conclude with a binding award.

However, a look at the limited number of conciliation cases so far filed at the Centre reveals a trend that suggests that the procedure is well suited to certain types of cases for which arbitration would be too adversarial, but which require a process that is clearly defined and documented. These are typically cases in which the parties are engaged in an ongoing long term project, involving significant amounts in sunk costs, where it is necessary to resolve disputes while the project is continuing. Disputes in oil and gas exploration projects, particularly, come to mind — as do mining and long-term infrastructure projects.

Another reason that has been cited for the limited use made of ICSID conciliation is that potential users are not aware of its existence. Consequently, the Centre has recently begun to remind parties of the existence of the mechanism.

#### c) Possibility of Mediation at ICSID

Recognizing the potential value to parties, ICSID has been looking into the establishment of a further mechanism, to be called “mediation,” either alone or in conjunction with the other organizations of the World Bank Group. But, with such little use being made of the other ICSID mechanisms, aside from arbitration, is there a role for yet another mechanism? To answer this we first need to look at what we mean by “mediation” for purposes of ICSID proceedings.

The terms “mediation” and “conciliation” tend to be used interchangeably to mean a system of dispute settlement, in which a neutral third party assists the parties in reaching a solution of their own accord, as opposed to one that is imposed on them by a third party. An example can be found in the UNCITRAL Model Law on International Commercial Conciliation (2002).

In their book, *The Law and Practice of International Commercial Arbitration*, Redfern and Hunter note that although the terms may be used interchangeably, a distinction could be drawn in the international law field, where:

[A] mediator is usually taken to be a person... whose role is to help [parties] reach an agreed settlement... He will try to bring the parties together in order that they may themselves achieve a compromise solution. On the other hand, a conciliator will himself draw up and propose terms of an agreement designed to represent what is, in his view, a fair compromise of a dispute after having discussed the case with the parties.

Black's Law Dictionary (seventh edition), further, presents possible distinctions between "conciliation" as "nonbinding arbitration" and "mediation" as "assisted negotiation." The process of conciliation as presently offered by ICSID is akin to *nonbinding arbitration*, whereas what we seek to introduce is more similar to a system of *assisted negotiation*.

Such mediation would be an informal, voluntary process allowing parties to discuss their differences confidentially with the help of an independent third party, who may or may not have subject-matter expertise, with a view to arriving at an amicable resolution of the dispute. The process would be devoid of the rigidity of systems such as arbitration or national court litigation, or even the form of conciliation presently offered by ICSID. In effect, the Centre would simply be facilitating communication between the parties with a reduced risk of either party losing face.

The process could, of course, be without prejudice to the rights of the parties to resort to other forms of dispute resolution. It could, indeed, be conducted alongside arbitration proceedings, the main advantage of which would be that the resulting settlement agreement could ultimately be incorporated into an award of the arbitral tribunal, pursuant to ICSID Arbitration Rule 43(2).

In one ICSID case, the President of the Tribunal at the request of the parties acted as mediator for a few months to assist the parties in negotiations. The

parties eventually agreed on some issues and asked the Tribunal to decide on the other issues. This unique experience could suggest that there may be benefits to parties of such assisted negotiations, particularly, in terms of cost and time savings.

Another indication of a possible need in this regard is the increasing percentage of ICSID cases that are discontinued following settlement. As at November 2005, seven out of the previous 10 arbitration cases concluded at the Centre were concluded in settlement without the need for a tribunal to impose a binding solution on the parties. This trend should also be considered.

Our experience with the Conciliation and Fact-Finding Rules has shown that the existence of need and potential benefits is not sufficient to ensure that the facility will be used. Two factors immediately come to mind as possible limitations on the use of the mechanism, and they are as follows: First is the fact that some governments would be disinclined to be involved in mechanisms that are not totally transparent, especially since such discussions and negotiations would usually take place in private, and the general trend in the resolution of disputes involving governments is now towards increased openness. Second is the problem of identifying the right persons who would be able to negotiate effectively on behalf of a government, and be able to commit the government to a settlement.

While the solutions to these issues would vary from case to case, it would appear that the parties would rely more on the use of the good offices of the Centre if they wished to convene or conduct the relevant discussions.

## CONCLUSION

In conclusion, it may be suggested that despite the fact that little or no use has so far been made of the conciliation and factfinding mechanisms at ICSID, there could well be a role for such mechanisms in the types of cases brought to the Centre, as there may well be a potential role for mediation or assisted negotiation in such cases. ■

# OECD/ICSID/UNCTAD SYMPOSIUM— MAKING THE MOST OF INTERNATIONAL INVESTMENT AGREEMENTS: A COMMON AGENDA

(Continued from page 1)

The symposium, held at the OECD headquarters in Paris on December 12, 2005, explored specific issues of jurisdictional and substantive nature which parties face in investor-State dispute settlement proceedings. The symposium also discussed possible avenues to improve the system of international investment arbitration and examined ways of possible co-operation among international organizations and institutions active in this field.

Richard Hecklinger, Deputy Secretary-General of OECD, Roberto Dañino, then Secretary-General of ICSID and James Zhan, Chief of the International Arrangements Section, Division on Investment, Technology and Enterprise Development of UNCTAD reflected in the opening session on investment agreements and the growing number of investment related disputes.

Following the opening addresses, the first session concentrated on the topic "Investor-State dispute settlement — balancing investors' rights and public interests." At the outset, Professor Christoph Schreuer of the University of Vienna provided an assessment of a decade of increasing awareness of investment arbitration and considerable activity. The second session, chaired by Manfred Schekulin, Chair of the OECD Investment Committee, dealt with main jurisdictional challenges arising from investment disputes. Barton Legum, Counsel at Debevoise & Plimpton in Paris, discussed the definitions of the terms *investment* and *investor*. Subsequently, Professor Emmanuel Gaillard, Head of the International Arbitration Group of Shearman & Sterling in Paris, addressed the issue of contractual claims and claims under investment treaties and the notion of the *umbrella clause*. The presentation of Professor Giorgio Sacerdoti of Bocconi University in Milan dealt with parallel and multiple proceedings, whilst examining how a potential risk of inconsistent decisions could be measured.

The following panel focused on substantive issues arising from investment disputes. Daniel Price, Head of the International Arbitration Group at Sidley Austin L.L.P. in Washington, D.C., Jan Paulsson, Head of the International Arbitration Group of Freshfields Bruckhaus Deringer in Paris, Horacio Grigera Naón, Director of the International Arbitration Programme at American University, Washington College of Law in Washington, D.C., Professor Rudolf Dolzer of the University of Bonn, and Dan Magraw, President

and Chief Executive Officer of the Center for International Environmental Law (CIEL), discussed issues related to fair and equitable treatment, indirect expropriation, most-favored-nation treatment and national treatment.

Chaired by Margrete Stevens, Acting Lead Counsel of ICSID, the first afternoon session explored possible improvements to investor-State dispute settlement. Meg Kinnear, General Counsel and Director General of the Trade Law Bureau (JLT), a joint unit of the Canadian Departments of Justice and International Trade, emphasized the need for additional transparency and third party participation in investor-State disputes, whereas Louis Alberto Gonzalez García, Director of the Office of the Legal Counsel for International Trade Negotiations at the Ministry of Economy of Mexico, considered the consolidation of multiple claims.

The enforcement of arbitral awards was subsequently discussed by Makhdoom Ali Khan, Attorney General of Pakistan, by Professor Chen An, Chairman of the Chinese Society of International Economic Law and by Jernej Secolec, Secretary of the United Nations Commission on International Trade Law (UNCITRAL).

The final session of this one-day symposium was devoted to future perspectives of investor-State arbitration. James Zhan of UNCTAD moderated the discussion which focused on technical assistance and capacity building, lessons learned from experience, while also discussing possible ways for international organizations concerned to contribute to capacity building in the field of international investment arbitration. The panel was composed of Rohan Perera, Legal Counsel at the Ministry of Foreign Affairs of Sri Lanka, Anne-Marie Whitesell, Secretary General of the International Court of Arbitration at the International Chamber of Commerce (ICC), Anna Joubin-Bret, Senior Legal Advisor and Technical Assistance Coordinator, Division on Investment, Technology and Enterprise Development of UNCTAD and Wesley Scholz, Vice-Chair of the OECD Investment Committee.

ICSID will participate as observer in the forthcoming OECD Investment Committee meeting which will take place in April 2006. At this meeting, the Committee will discuss further proposals for improvement of the system of investor-State dispute settlement. ■

## UPDATE ON THE AMENDMENTS TO THE ICSID RULES AND REGULATIONS

In December 2005, the ICSID Secretariat submitted to the members of the ICSID Administrative Council for vote amendments to the ICSID Rules and Regulations. The outcome of the voting process, once concluded, will be reported on in the following issues of *News from ICSID*.

The proposed amendments are the result of extensive consultations by the Secretariat with governments, arbitration experts and business and civil society

groups. The amendments reflect, in particular, comments received in response to the Secretariat's Working Paper of May 12, 2005, on suggested changes to the ICSID Rules and Regulations; and the Secretariat's Discussion Paper of October 22, 2004, on possible improvements of the framework for ICSID arbitration (both documents are available on the Centre's website at [www.worldbank.org/icsid](http://www.worldbank.org/icsid)). ■

## ICSID PUBLICATIONS

The Spring 2005 issue of the *ICSID Review — Foreign Investment Law Journal* (Volume 20, No. 1) was published recently. The issue features an article by Andrew Newcombe on the boundaries of regulatory expropriation in international law. The second article, written by Dana H. Freyer and David Herlihy, discusses how most-favored-nation clauses interact with dispute resolution provisions in bilateral investment treaties, with an emphasis on relevant ICSID jurisprudence. The issue also reproduces the text of the International Institute for Sustainable Development (IISD) Model International Agreement on Investment for Sustainable Development by Howard Mann, Konrad von Moltke, Luke Eric Peterson and Aaron Cosbey, which is accompanied by an Introductory Note by Howard Mann.

Three jurisdictional decisions issued in ICSID proceedings are also reprinted in this issue. These decisions comprise the decision on jurisdiction in *Salini Costruttori S.p.A. and Italstrade S.p.A. v. The Hashemite Kingdom of Jordan* (ICSID Case No. ARB/02/13), the decision on jurisdiction and dissenting opinion issued in *Tokios Tokelés v. Ukraine* (ICSID Case No. ARB/02/18), and the decision on jurisdiction issued in *Plama Consortium v. Republic of Bulgaria* (ICSID Case No. ARB/03/24).

The *ICSID Review — Foreign Investment Law Journal*, which appears twice annually, 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.;

Tel.: 410-516-6987; Fax: 410-516-6968. Annual subscription rates are US\$78 for subscribers with a mailing address in a member country of the Organisation for Economic Co-operation and Development and US\$39 for others.

In the Fall of 2005, the Centre also published new releases for its two loose-leaf services. The *Investment Laws of the World* collection was expanded by a recent release containing new or revised investment legislation passed by Cambodia, Croatia, Djibouti, Kyrgyz Republic, Mali, Senegal and Syria. This ten-volume set now features investment legislation of 132 countries, while also providing contact details of the main governmental agencies in charge of the promotion and protection of foreign investment in the featured countries. The Centre also compiled a new release for its nine volume loose-leaf collection of *Investment Treaties*. This release contains the texts of twenty bilateral investment treaties concluded by some twenty-four countries in the period of 1993-2005.

*Investment Laws of the World* (ten volumes) and *Investment Treaties* (nine volumes) are available from Oceana Publications, Inc., a division of the Oxford University Press, 75 Main Street, Dobbs Ferry, N.Y. 10522, U.S.A.; Tel.: 914-693-8100; Fax: 914-693-0402 at US\$1,690 for both sets, US\$995 for the ten *Investment Laws of the World* volumes only and US\$695 for the nine *Investment Treaties* volumes only. ■



# NEW DESIGNATIONS TO THE ICSID PANELS OF CONCILIATORS AND OF ARBITRATORS DURING THE PERIOD OF JULY 1 – DECEMBER 31, 2005

In accordance with the ICSID Convention, the Centre maintains a Panel of Conciliators and a Panel of Arbitrators. Each ICSID Contracting State may designate to each Panel up to four persons who will serve for a renewable period of six years. The Panels furnish to parties to proceedings under the ICSID Convention a convenient and reliable source from which they may choose to select conciliators or arbitrators when constituting a conciliation commission or an arbitral tribunal. In addition, when the Chairman of the ICSID Administrative Council is called upon to appoint conciliators, arbitrators or *ad hoc* committee members under Articles 30, 38 or 52 of the Convention, his appointees must be drawn from the Panels. ICSID continuously reminds numerous Contracting States to make or renew designations to the ICSID Panels.

During the period July – December 2005, the governments of Azerbaijan, Chile, Guyana, Lebanon, Norway, Slovak Republic and Switzerland made designations to the ICSID Panels. The names of the recently designated appointees are provided below. A complete list of members of the Panels is available on the ICSID website.

## **Azerbaijan**

### Panel of Arbitrators

Designation effective September 30, 2005:  
Ahmed Mohammed Jehani

## **Chile**

### Panel of Conciliators

Designations effective September 1, 2005:  
Gonzalo Biggs (re-appointment) and Jorge Carey

Designation effective September 1, 2005:  
Carlos Eugenio Jorquiera Malschafsky (re-appointment)

### Panel of Arbitrators

Designations effective September 1, 2005:  
Enrique Barros Bourie, Ximena Fuentes Torrijos, Jaime Irarrázabal Covarrubias (re-appointment) and Andrés Jana Linetzky

## **Guyana**

### Panel of Arbitrators

Designations effective November 18, 2005:  
Janis H. Brennan, Paul S. Reichler and Philippe Sands

## **Lebanon**

### Panel of Arbitrators

Designations effective July 5, 2005:  
Nayla Comeir-Obeid

## **Norway**

### Panel of Conciliators

Designations effective October 18, 2005:  
Rolf Einar Fife, Ola Mestad, Rakel Surlien and Siri Teigum

### Panel of Arbitrators

Designations effective October 18, 2005:  
Gunnar Aasland, Trond Dolva, Per Tresselt and Bjørn Ven

## **Slovak Republic**

### Panel of Arbitrators

Designations effective August 31, 2005:  
Peter Tomka and Ján Varšo

## **Switzerland**

### Panel of Arbitrators

Designation effective July 28, 2005:  
Robert Briner (serving out the remainder of Dietrich Schindler's term, *i.e.* through September 6, 2006)

## TWENTY-SECOND ICSID/AAA/ICC JOINT COLLOQUIUM ON INTERNATIONAL ARBITRATION

Since 1983, the American Arbitration Association (AAA), the International Court of Arbitration of the International Chamber of Commerce (ICC) and ICSID have co-sponsored a series of colloquia to discuss various topics pertinent to international arbitration. The 22nd in this series of colloquia was hosted by the American Arbitration Association and held in New York on November 18, 2005.

Some 180 legal practitioners, academics and representatives of arbitration institutions participated in the event, which was opened by Richard Naimark, Senior Vice President of the AAA's International Centre for Dispute Resolution (ICDR). Robert Briner, Chairman of the ICC International Court of Arbitration, Roberto Dañino, Secretary-General of ICSID, and William K. Slate II, President and Chief Executive Officer of ICDR and AAA, then provided an overview on recent institutional developments and activities of the three institutions. Subsequently, Ucheora Onwuamaegbu of ICSID, John M. Townsend of Hughes Hubbard & Reed L.L.P. and Peter M. Wolrich of Curtis, Mallett-Prevost, Colt & Mosle L.L.P., focused on current trends in the use, growth and promotion of alternate mechanisms in international dispute resolution. In particular, the panel, which was moderated by John J. Kerr of Simpson, Thacher & Bartlett L.L.P. discussed the use of dispute resolution boards, similar mediation practices and the potential role for mediation in ICSID proceedings.

Impartiality and independence in arbitration was the topic of the following session moderated by C. Mark Baker of Fullbrights & Jaworski L.L.P. This panel, composed of Donald Francis Donovan of Debevoise & Plimpton L.L.P., Nicolás Gamboa-Morales of Gamboa, Chalela, Gamboa & Useche and Anne-Marie Whitesell, Secretary General of the ICC International Court of Arbitration,

dealt with institutional practices regarding impartiality and independence of arbitrators, taking into account the International Bar Association's Guidelines on Conflicts of Interest in International Arbitration, the AAA/ABA Code of Ethics and contemporary trends and practices in disclosure, challenge and the selection of arbitrators.

During the interactive luncheon session, David W. Rivkin of Debevoise and Plimpton L.L.P., Lucy Reed of Freshfields Bruckhaus Deringer and Gerald Aksen, retired partner of Thelen Reid & Priest L.L.P., answered questions from the audience on emerging and key issues in the field of international arbitration. The discussion was lead by William K. Slate II.

The afternoon panel, chaired by Brian J. Casey of Baker & McKenzie and consisting of Louis B. Kimmelman of O'Melveny & Myers L.L.P., Constantine Partasides of Freshfields Bruckhaus Deringer and Philippe Sands of University College London as discussants, focused on public policy issues in international arbitration cases and on proceedings involving bilateral investment treaties. The session also considered questions related to the review of arbitral awards by domestic courts and its implications for the future of arbitration. It was followed by concluding remarks of Richard Naimark.

The 23rd Joint ICSID/AAA/ICC Colloquium on International Arbitration will be hosted by ICSID in Washington, D.C. on November 17, 2006. A one-day symposium, organized by the London Court of International Arbitration (LCIA) in co-operation with ICSID, will take place on the day after the Joint Colloquium, that is on November 18, 2006. Further details on the Colloquium and the Symposium will appear in the next issue of *News from ICSID* and will be available on the Centre's website in due course. ■

## ICSID STAFF PROVIDES TRAINING TO GOVERNMENT OFFICIALS

During a seminar on *Managing Investment Disputes*, ICSID staff provided training on the ICSID dispute settlement system for government officials from Central and Latin America and the Caribbean. The seminar, which was jointly organized by the General Secretariat of the Organization of American States (OAS) and the Secretariat of the United Nations Conference on Trade and Development (UNCTAD) in co-operation with American University's Washington College of Law while also supported by the Canadian International Development Agency, took place in Washington, D.C. from November 3-11, 2005. Over two and a half days of the training, three ICSID staff explained to the participants the procedure for initiating ICSID arbitration and conciliation proceedings, clarified the role of the ICSID Secretariat in the course of a proceeding and illustrated jurisdictional requirements under the ICSID Convention on the basis of case studies. ■

## ICSID AND THE GERMAN INSTITUTION OF ARBITRATION (DIS) SIGN MEMORANDUM OF GENERAL ARRANGEMENTS

In December 2005, Roberto Dañino, then Secretary-General of ICSID, and Karl-Heinz Böckstiegel, Chairman of the German Institution of Arbitration (DIS), signed a memorandum on general agreements between the two institutions.

As foreseen in Article 63(a) of the Washington Convention, ICSID conciliation and arbitration proceedings may, if the parties so agree, be held at the seat of any appropriate institution, whether private or public, with which ICSID may make arrangements for this purpose. The Additional Facility rules of ICSID also allow for the possibility that proceedings under those rules may be hosted by other institutions.

In 1968, ICSID concluded the first arrangement of this kind by signing a memorandum of general arrangements with the Permanent Court of Arbitration at The Hague. Over the years, ICSID has entered into similar co-operation arrangements with other arbitral institutions, including the Regional Centre for Commercial Arbitration in Kuala Lumpur, the Cairo Regional Centre for International Commercial Arbitration, the Australian Centre for International Commercial Arbitration at Melbourne, the Australian Commercial Disputes Centre at Sydney, the Singapore International Arbitration Centre, the Gulf Cooperation Council (GCC) Commercial Arbitration Centre located in Manama, Bahrain, and the Lagos Regional Centre for International Commercial Arbitration.

The agreement of general arrangements between ICSID and the German Institution of Arbitration provides that, if so requested by the parties to ICSID proceedings, all or any part of an ICSID conciliation or arbitration proceeding may be held at the Frankfurt International Arbitration Center, which was recently established by DIS and the Frankfurt Chamber of Industry and Commerce. ■

# 17TH ANNUAL ITA WORKSHOP: INVESTMENT TREATY ARBITRATION IN THE 21ST CENTURY, DALLAS, TEXAS, JUNE 15, 2006

The Institute of Transnational Arbitration (ITA), founded in 1986 as a division of The Center for American and International Law (formerly the Southwestern Legal Foundation), will be hosting its Seventeenth Annual International Commercial Arbitration Workshop on June 15, 2006, at the Westin Galleria Hotel in Dallas, Texas, U.S.A. Co-chaired by Jack J. Coe, Jr. (Pepperdine University, Malibu, California), Barton Legum (Debevoise & Plimpton, Paris) and Margrete Stevens (ICSID,

Washington, D.C.), the workshop will address contemporary issues of investment treaty arbitration under the auspices of ICSID.

For further information regarding the workshop, please contact: The Institute for Transnational Arbitration, 5201 Democracy Drive, Plano, Texas 75024-3561; Tel.: 972-244-3414; Fax: 972-244-3401; Email: ita@cailaw.org ■

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