

NEWS FROM ICSID

International Centre for Settlement of Investment Disputes

Vol. 10, No. 2

Summer 1993

Colombia and Venezuela Sign the ICSID Convention

Colombia and Venezuela became signatories of the ICSID Convention on May 18, 1993 and August 18, 1993 respectively. The Convention was signed on behalf of Colombia by its Ambassador to the United States, His Excellency Jaime Garcia-Parra. The Venezuelan Ambassador to the United States, His Excellency Simon Alberto Consalvi, signed on behalf of his country.



Colombia's Ambassador Jaime Garcia-Parra signing the ICSID Convention watched by Timothy T. Thahane, Vice President and Secretary, World Bank, Ibrahim F.I. Shihata, Vice President and General Counsel, World Bank and Secretary-General, ICSID (left) and Pedro Malan, Executive Director, World Bank (right).

Costa Rica and Peru Ratify the Convention

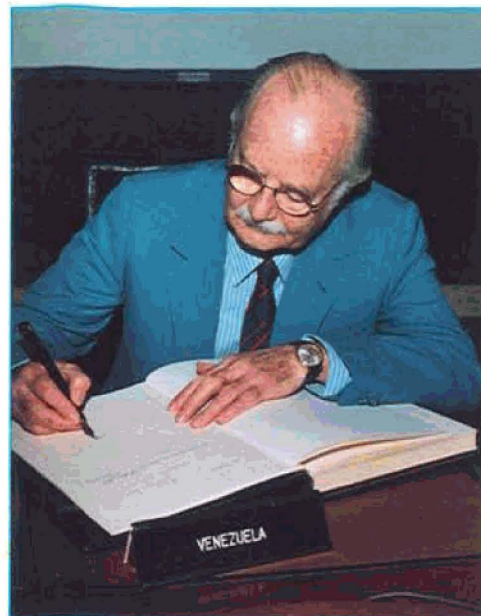
Costa Rica ratified the ICSID Convention on April 27, 1993. This was followed by Peru's ratification of the Convention on August 9, 1993.

Including Costa Rica and Peru, there are now seven Latin American Contracting States, the other five being Chile, Ecuador, El Salvador, Honduras and Paraguay. Latin American countries that have signed but not yet ratified the Convention include, in addition to Colombia and Venezuela, Argentina, Bolivia and Uruguay.

In recent months, the ICSID Convention has also been signed and ratified by the Czech Republic and by Micronesia. The new signatures and ratifications have brought to 124 the number of signatories of the Convention and increased the number of Contracting States to 110.

Inside:

- Tenth ICSID/AAA/ICC Court Colloquium
- Disputes before the Centre
- References to ICSID in the Draft European Energy Charter Treaty



Ambassador Simon Alberto Consalvi signing the ICSID Convention on behalf of Venezuela.

Disputes Before the Centre

- **Manufacturers Hanover Trust Company v. Arab Republic of Egypt and the General Authority for Investment and Free Zones (Case ARB/89/1)**

June 24, 1993

The Order of the Tribunal taking note of the discontinuance of the arbitration proceeding is notified to the parties.

- **Vacuum Salt Products Ltd. v. Government of the Republic of Ghana (Case ARB/92/1)**

June 7–10, 1993

The Tribunal holds hearings at The Hague.

June 14, 1993

The Tribunal issues a further decision regarding provisional measures.

- **Scimitar Exploration Limited v. People's Republic of Bangladesh and Bangladesh Oil, Gas and Mineral Corporation (Case ARB/92/2)**

March 29, 1993

The Respondents submit objections to jurisdiction.

April 2, 1993

The Claimant files observations on jurisdiction.

April 6, 1993

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

April 27, 1993

The Tribunal issues a procedural order.

June 14–August 18, 1993

The parties file observations on jurisdiction and on the request for a stay of the proceeding.

- **American Manufacturing & Trading, Inc. v. Republic of Zaire (Case ARB/93/1)**

August 4, 1993

The Tribunal is constituted. Its members are: Professor Sompong Sucharitkul (Thai), President, Judge Keba Mbaye (Senegalese), both appointed by the Acting Chairman of the Administrative Council, and Dr. Heribert Golsong (German), appointed by the Claimant.

Tenth Joint ICSID/AAA/ICC International Court of Arbitration Colloquium on International Arbitration Coral Gables, Florida October 25, 1993

ICSID, the American Arbitration Association (AAA) and the International Chamber of Commerce (ICC) International Court of Arbitration will this year be co-sponsoring the tenth in their series of colloquia on international arbitration. Hosted by the AAA, the colloquium will take place on October 25, 1993 in Coral Gables, Florida.

The morning session of the colloquium will examine issues of arbitrability and of the enforcement of arbitration clauses. The afternoon session will be devoted to commercial arbitration as it is used in Latin America. Following a general overview of its application in Latin America, the remainder of the day will be devoted to specific applications of arbitration in various parts of the region. The colloquium program is as follows:

9:00 a.m.	Welcoming Remarks Robert Coulson, President, AAA Alain Plantey, Chairman, ICC International Court of Arbitration Ibrahim F.I. Shihata, Secretary-General, ICSID
9:30 a.m.	The Domain of Arbitration and Issues of Arbitrability Eric A. Schwartz, Secretary-General, ICC International Court of Arbitration Antonio R. Parra, Legal Adviser, ICSID Michael F. Hoellering, General Counsel, AAA
10:30 a.m.	Coffee Break
10:45 a.m.	Current Issues on Enforcing Arbitration Clauses Martin Hunter, Freshfields Carolyn B. Lamm, White & Case Geoffrey D.C. Best, LeBoeuf, Lamb, Leiby & MacRae
12:15 p.m.	Lunch Speaker: Talbot D'Alemberte, Steel, Hector & Davis

- 1:30 p.m. Arbitration in Latin America
 Horacio Grigera Naon, Senior Counsel, International Finance Corporation
 Roberto MacLean, Cole Corette & Abrutyn
 Charles A. Norberg, Director General, Inter-American Commercial Arbitration Commission
- 3:00 p.m. Coffee Break
- 3:15 p.m. Arbitration in Latin America, Discussion with Focus on Specific Regional Applications
 Richard W. Page, Page, Polin, Busch & Boatwright
 Jose Luis Siqueiros, Barrera, Siqueiros y Torres
 Hugh Turner, Kelley Drye & Warren
- 5:15 p.m. Adjournment

On the day after the colloquium, the AAA will be holding a workshop on training international commercial arbitrators. Following a brief discussion of procedural issues and the responsibilities of arbitrators, participants will be given the opportunity through the use of case studies to identify and determine how to address a series of complex issues that may arise in an international commercial arbitration.

For further information on the colloquium and the workshop, contact: American Arbitration Association, Department of Education and Training, 140 W. 51st Street, New York, NY 10020. Tel: (212) 484-3233, Fax: (212) 765-4874

Investment Treaties

Over seventy new bilateral investment treaties (BITs) were published in Releases 93-2 (July 1993) and 93-3 (September 1993) of ICSID's collection of *Investment Treaties*. Due to the substantial number of new treaties, the issuance of a fifth volume for the treaties collection took place in conjunction with Release 93-2.

Forty new BITs (the most ever published in a single release) concluded between the years 1990-92 were published in Release 93-2. Included in this release are the first BITs concluded by Chile, Cyprus, Hong Kong, Latvia and Peru. Release 93-3 included, amongst others, thirty BITs concluded during 1989. The publication of these releases has increased the number of treaties included in the five-volume looseleaf collection to some 425.

Investment Treaties (5 volumes) may be purchased from Oceana Publications, Inc., 75 Main Street, Dobbs Ferry, New York 10522, U.S.A. Tel: (914) 693-8100, Fax: (914) 693-0402.

References to ICSID in the Draft European Energy Charter Treaty

On December 17, 1991, the European Energy Charter, which aims to "promote a new model for energy cooperation in the long term in Europe and globally within the framework of a market economy," was signed in the Hague by 40 States and the European Communities. Subsequently, a further 9 States have become signatories to the Charter. Signatories now include all members of the E.C., as well as the Communities itself, all the other countries of Western Europe, virtually all the countries of Eastern Europe and the former Soviet Union region, and Australia, Canada, Japan and the United States. In the Charter the signatories have stated their desire to safeguard energy supplies, to maximize production, and to enhance safety and minimize environmental problems. The Charter recognizes "State sovereignty and sovereignty over energy resources" while noting that within this framework the signatories undertake to promote the development of an efficient energy market on the basis of the principle of non-discrimination.

The areas in which the signatories have decided to act jointly or coordinate their policies cover the development of energy resources and market access; liberalization of trade in energy as well as the promotion and protection of investments; and research and technological development including the efficient use of energy and environmental protection. To implement these objectives the Charter signatories undertook to negotiate a so-called "Basic Agreement," an instrument which has now taken form in the draft European Energy Charter Treaty, still under negotiation among the 50 signatories to the Charter. Part III of the draft Treaty contains the principal provisions on investment promotion and protection in the energy sector, dealing with such matters as admission, treatment, expropriation and currency transfer. Provisions regulating the settlement of disputes between an investor and a Contracting Party are contained in part V which deals generally with the settlement of disputes. Under the draft, these disputes may relate to different forms of investment in the areas of exploration, extraction, production, storage, transport, transmission, distribution, trade, marketing, or sales of energy materials and products.

Under the provisions of the draft Treaty, each Party agrees that an "Investor of Another Contracting Party" may submit to arbitration disputes which relate to such investments and "which concern an alleged breach" of certain of the host State's obligations. At the investor's option, settlement of this type of dispute may be pursued by arbitration under the ICSID Convention or the ICSID Additional Facility Rules or the Arbitration Rules of the U.N. Commission on International Trade Law (UNCITRAL) or the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce. In affording the investor general access to ICSID

arbitration, the draft treaty has followed the approach of many modern bilateral investment treaties, as well as the North American Free Trade Agreement.

Of the potential States Parties to the draft Treaty, about two-thirds have so far joined ICSID. Several of the other States, the majority of which are in Central and Eastern Europe and in the former Soviet Union, have taken the first step in this direction by signing the ICSID Convention. For investment disputes involving States that do not yet belong to ICSID, arbitration under the ICSID Additional Facility would be available if the home State of the investor is an ICSID member. Where neither the home State nor the host State of the investor has joined ICSID, only UNCITRAL arbitration or arbitration under the Stockholm Rules would be available.

Margrete Stevens
Counsel, ICSID

ICSID Review—Foreign Investment Law Journal

The Centre has recently completed the Spring 1993 issue of its *ICSID Review—Foreign Investment Law Journal*. The issue includes the following articles: "Applicable Law, Expropriatory Takings and Compensation in Cases of Expropriation; ICSID and Iran-United States Claims Tribunal Case Law Compared," by John A. Westberg; "Enforcement of State Contract Awards: Jurisdictional Pitfalls and Remedies," by Georges R. Delaume; and "Government Intervention and Regulation in Emerging Stock Markets: A Case Study of the Korean Stock Exchange," by Soo J. Yim.

The issue also features the following comments: "On the Finality of Awards: A Reply to Michael Reisman," by Aron Broches; "ICSID Arbitration and Developing Countries," by Ahmed Sadek El-Kosheri; "ICC Arbitration and Developing Countries," by Horacio A. Grigera Naon; and "Some Recent Amendments to Laws Affecting Foreign Investment in Nigeria," by Chudi Ubezouu.

The *ICSID Review—Foreign Investment Law Journal*, which appears twice yearly, is available on a subscription basis from the Johns Hopkins University Press, Journals Publishing Division, 701 W. 40th Street, Suite 275, Baltimore, Maryland 21211-2190, U.S.A. Annual subscription rates (excluding postal charges) are \$50 for persons with a mailing address in a member country of the Organisation for Economic Co-operation and Development and \$25 for others.

Recent Publications on ICSID

Augenblick, Mark & Ridgway, Delissa A.

Dispute Resolution in World Financial Institutions, 10 *Journal of International Arbitration*, No. 1, at 73, 78–80 (Mar. 1993).

Broches, Aron

On the Finality of Awards: A Reply to Michael Reisman, 8 *ICSID Review—Foreign Investment Law Journal* 92 (1993).

Collins, Lawrence

Provisional and Protective Measures in International Litigation, 234 *Recueil des Cours* 9, 98–105 (1992).

Delaume, Georges R.

Enforcement of State Contract Awards: Jurisdictional Pitfalls and Remedies, 8 *ICSID Review—Foreign Investment Law Journal* 29 (1993).

Dolzer, Rudolf

Dispute Settlement Mechanisms in the IMF, the World Bank and MIGA, 7 *Adjudication of International Trade Disputes in International and National Economic Law* 139, 143–52 (E.U. Petersmann & G. Jaenicke eds. 1992).

El-Kosheri, Ahmed Sadek

ICSID Arbitration and Developing Countries, 8 *ICSID Review—Foreign Investment Law Journal* 104 (1993).

Hirsch, Moshe

The Arbitration Mechanism of the International Centre for the Settlement of Investment Disputes (1993).

Horlick, Gary N. & DeBusk, F. Amanda

Dispute Resolution under NAFTA: Building on the U.S.–Canada FTA, GATT and ICSID, 10 *Journal of International Arbitration*, No. 1, at 51 (1993).

Jacob, Kenneth S.

Reinvigorating ICSID with a New Mission and with Renewed Respect for Party Autonomy, 33 *Virginia Journal of International Law* 123 (1992).

Parra, Antonio R.

The Powers of the Arbitrator and the Experience of the Arbitral Institutions: The Practices and Experience of ICSID, in *Conservatory and Provisional Measures in International Arbitration* 37 (1993) (ICC Publication No. 519).

Westberg, John A.

Applicable Law, Expropriatory Takings and Compensation in Cases of Expropriation; ICSID and Iran-United States Claims Tribunal Case Law Compared, 8 *ICSID Review—Foreign Investment Law Journal* 1 (1993).

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