

# NEWS FROM ICSID

International Centre for Settlement of Investment Disputes

Vol. 13, No. 2

Summer 1996

## **Panama Ratifies the ICSID Convention**

On April 8, 1996, Panama ratified the ICSID Convention. In accordance with its Article 68, the Convention entered into force for Panama 30 days later, on May 8, 1996. This brought to 20 the number of Contracting States from the Latin American and Caribbean Region, the other nineteen being Argentina, Bahamas, Barbados, Bolivia, Chile, Costa Rica, Ecuador, El Salvador, Grenada, Guyana, Honduras, Jamaica, Nicaragua, Paraguay, Peru, St. Kitts and Nevis, St. Lucia, Trinidad and Tobago and Venezuela. In total, there are now 139 signatories of the Convention and 126 Contracting States. The current list of Contracting States and other signatories of the ICSID Convention is set out at pages 10-11 of this issue.

## **Thirteenth Joint ICSID/ AAA/ICC International Court of Arbitration Colloquium on Interna- tional Arbitration, New York, November 15, 1996**

ICSID, the American Arbitration Association (AAA) and the International Chamber of Commerce (ICC) International Court of Arbitration will this year be co-sponsoring the thirteenth in their series of joint colloquia on international arbitration.

The thirteenth colloquium, which will address the topic of "the role of party autonomy in international arbitration," will be hosted by the AAA. It will take place on November 15, 1996 at the Hotel Inter-Continental New York, 111 East 48th Street, New York, NY 10017. Further details on the colloquium are provided at page 9.

## **Joint Conference on the Resolution of International Trade and Investment Disputes in Africa, Johannesburg, March 6-7, 1997**

As mentioned in the last issue of *News from ICSID*, ICSID, the Association of Arbitrators (Southern Africa), the International Chamber of Commerce (ICC) International Court of Arbitration and the London Court of International Arbitration will be jointly sponsoring a conference on the resolution of international trade and investment disputes in Africa. The conference will take place on March 6-7, 1997 in the Crowne Plaza Hotel, Conference Centre Sandton in Johannesburg, South Africa. More details on this conference are provided at page 9.

## Disputes Before the Centre

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

*June 20, 1996*  
The Tribunal appoints an expert to prepare a report regarding damages.

*September 5, 1996*  
The expert submits his report.
- **Seditex Engineering Beratungsgesellschaft für die Textilindustrie m.b.H. v. Government of Madagascar (Case CONC/94/1)**

*May 20, 1996*  
The Conciliation Commission meets with the parties in Paris.

*June 20, 1996*  
The Conciliation Commission closes the proceeding.

*July 19, 1996*  
The Conciliation Commission draws up its report.
- **Philippe Gruslin v. Government of Malaysia (Case ARB/94/1)**

*April 24, 1996*  
The Order of the Sole Arbitrator taking note of the discontinuance of the proceeding is notified to the parties.
- **Tradex Hellas S.A. v. Republic of Albania (Case ARB/94/2)**

*April 10, 1996*  
The Tribunal holds its first session with the parties in Frankfurt.

*April 19, 1996*  
The Respondent files its Objections to Jurisdiction.

*June 10, 1996*  
The parties file their Observations on the Objections to Jurisdiction.

*August 1, 1996*  
The Claimant files its further Observations on the Objections to Jurisdiction.

*August 9, 1996*  
The Respondent files its further Observations on the Objections to Jurisdiction.

*September 10, 1996*  
The Tribunal meets with the parties in London.
- **Leaf Tobacco A. Michaelides S.A. and Greek Albanian Leaf Tobacco & Co. S.A. v. Republic of Albania (Case ARB/95/1)**

*June 10, 1996*  
The Claimants inform the Centre that they choose the formula provided for in Article 37(2)(b) of the Convention for the constitution of an Arbitral Tribunal, that is, one arbitrator appointed by each party and a third, presiding, arbitrator appointed by agreement of the parties.
- **Cable Television of Nevis, Ltd. and Cable Television of Nevis Holdings, Ltd. v. Federation of St. Kitts and Nevis (Case ARB/95/2)**

*April 2, 1996*  
The Claimants file their Response to the Objections to Jurisdiction.

*April 23, 1996*  
The Respondent files its Observations on the Claimants' Response to the Objections to Jurisdiction.

*July 1-2, 1996*  
The Tribunal meets with the parties in Barbados.
- **Antoine Goetz and others v. Republic of Burundi (Case ARB/95/3)**

*June 26, 1996*  
The Tribunal is constituted. Its members are: Professor Prosper Weil (French), President, Judge Mohammed Bedjaoui (Algerian) and Professor Jean-Denis Bredin (French).
- **Compañía del Desarrollo de Santa Elena S.A. v. Government of Costa Rica (Case ARB/96/1)**

Since the publication of the last issue of *News from ICSID*, there have been no developments to report in this case.
- **Misima Mines Pty. Ltd. v. Independent State of Papua New Guinea (Case ARB/96/2)**

*April 29, 1996*  
The Secretary-General registers a request for the institution of arbitration proceedings.
- **Fedax N.V. v. Republic of Venezuela (Case ARB/96/3)**

*June 26, 1996*  
The Secretary-General registers a request for the institution of arbitration proceedings.



*The Conciliation Commission in *SEDITEX v. Madagascar* (ICSID Case CONC/94/1). Pictured from right to left are Professor Dominique Carreau, Conciliator; Mr. André Faurès, President of the Conciliation Commission and Judge Raymond Ranjeva, Conciliator. Also pictured to the left is Mr. Nassib G. Ziadé, Secretary of the Commission and Counsel, ICSID.*

## ICSID Conciliation

*by Nassib G. Ziadé, Counsel, ICSID*

### *Introduction*

The International Centre for Settlement of Investment Disputes (ICSID or the Centre) is established under a multilateral treaty, the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention). Under the ICSID Convention and the various rules adopted pursuant to it, the Centre provides facilities for the settlement by arbitration of investment disputes between States parties to the Convention (Contracting States) and investors who qualify as nationals of other Contracting States. It also provides facilities for conciliation proceedings in respect of these disputes. In both cases, for recourse to arbitration or to conciliation, the parties must have consented in writing to submit their disputes to such procedures.

The ICSID Convention does not prevent the parties, if they so desire, from agreeing to resort first to conciliation and, should they fail to reach a settlement, to submit their dispute to arbitration (though the ICSID Convention does not make recourse to conciliation a prerequisite to recourse to arbitration as does the 1974 Convention on the Settlement

of Investment Disputes between Host States of Arab Investments and Nationals of Other Arab States, an Arab multilateral treaty which is otherwise closely modeled on the ICSID Convention). In such a case, however, unless the parties otherwise agree, neither may in the arbitration proceeding “invoke or rely on any views expressed or statements or admissions or offers of settlement made by the other party in the conciliation proceedings, or the report or any recommendations made by the Commission,” as stated in Article 35 of the ICSID Convention. Furthermore, ICSID Arbitration Rule 1(4) prevents any person who has acted as a conciliator in the conciliation proceeding from being appointed as a member of the Arbitral Tribunal. The first provision is designed to ensure parties to conciliation proceedings that their proposals or disclosures to the other side in the course of the conciliation for the sole purpose of reaching an amicable settlement will not be relied upon to their detriment in any subsequent arbitration proceeding. The second provision is intended to ensure that the arbitrator will come to the arbitration proceeding without any pre-conception and that he will not use in arbitration the privileged knowledge of the dispute that he has acquired in the conciliation

proceeding. Both provisions are aimed at fostering an environment of free and uninhibited negotiations in conciliation proceedings under which either party would not be restrained by the fear of prejudicing itself should the conciliation prove to be fruitless.

While much literature has been devoted to arbitration under the ICSID Convention, few writings have addressed the ICSID system of conciliation. As detailed below, this system is, in some respects, similar to arbitration under the ICSID Convention and, in other respects, similar to such other systems of conciliation as the conciliation under the auspices of the International Chamber of Commerce (ICC) and the conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law (UNCITRAL).

#### *Distinctive Features of the ICSID Conciliation System*

The main distinctive feature of consent to ICSID conciliation—and one that it shares with ICSID arbitration—is the binding character of such consent. Once the parties have consented to resort to ICSID conciliation, they are, as in the case of the arbitration proceedings, bound to carry out their undertaking. Consent to have recourse to ICSID conciliation is irrevocable and cannot be withdrawn unilaterally by a party. In contrast, in the case of ICC and UNCITRAL conciliation, a party may prevent conciliation from going forward even if both parties had previously agreed to resort to such conciliation. This, of course, allows for the early termination of proceedings thought to be fruitless. In comparison, the approach followed by the ICSID system of conciliation has the merit of giving a greater opportunity for the conciliation mechanism to work.

From the initiation of the proceeding through the constitution of the Commission or Tribunal, the procedures for ICSID conciliation and for ICSID arbitration are almost identical. In regard to the stages following the constitution of the Conciliation Commission, the rules applicable to ICSID conciliation proceedings, while similar to the rules of other conciliation systems such as those of the ICC and the UNCITRAL, differ from the rules applicable to ICSID arbitration proceedings.

#### *Similarities between ICSID Conciliation and ICSID Arbitration*

In keeping perhaps with the binding character of the undertaking to resort to ICSID conciliation, the rules that govern the institution and registration of an ICSID conciliation request are the same

as those that govern arbitration. As in the case of the arbitration proceedings, the machinery is set in motion by a written conciliation request submitted, in accordance with Rule 1 of the ICSID Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings (ICSID Institution Rules), by either party or both parties to the ICSID Secretary-General. The request must, pursuant to Article 28(2) of the ICSID Convention and ICSID Institution Rule 2, designate the parties to the dispute, state their addresses, contain information concerning the issues in dispute indicating that the dispute is a legal one arising directly out of an investment and state with the appropriate documentation that the other jurisdictional requirements under the ICSID Convention are met. After acknowledging the receipt of the conciliation request, according to ICSID Institution Rule 5(1)(a), the ICSID Secretary-General has two possible courses of action. First, he may, consistently with Article 28(3) of the ICSID Convention and ICSID Institution Rule 6(1)(a), register the request in the Conciliation Register and, on the same day, notify the parties of the registration. In such case, he will also invite them to proceed to constitute the Conciliation Commission, as required by ICSID Institution Rule 7 (d). Secondly, however, if the Secretary-General “finds, on the basis of the information contained in the [conciliation] request, that the dispute is manifestly outside the jurisdiction of the Centre,” then he must refuse registration, pursuant to Article 28(3) of the ICSID Convention and ICSID Institution Rule 6(1) (b), with the consequence that the request will not reach a Conciliation Commission. As in the case of arbitration requests, the Secretary-General’s refusal to register a conciliation request is not appealable. On the other hand, again as in the case of arbitration, registration of a request by the Secretary-General does not at a later stage preclude a Conciliation Commission, in accordance with Article 32 of the ICSID Convention and ICSID Conciliation Rule 29, from finding that the dispute is outside the jurisdiction of the Centre.

Upon registration of the request, the parties should proceed to constitute a Conciliation Commission as soon as possible. Although the ICSID Convention and Conciliation Rules give the parties wide latitude in respect of the constitution of a Conciliation Commission, they also assure that a failure of the parties to agree or cooperate with each other will not frustrate the proceedings. In this respect also, the arrangements for ICSID conciliation proceedings are similar to those applicable to arbitration proceedings. The ICSID Convention and Conciliation Rules give the parties the opportunity

both to agree on the number of conciliators (subject to the requirement provided for by Article 29(2)(a) of the ICSID Convention that the number be one or uneven), on the method of their appointment and on the actual appointment of conciliators. If the parties cannot themselves succeed in forming such a Conciliation Commission, fallback provisions of the ICSID Convention and Conciliation Rules can be brought into play to ensure a timely constitution of the Commission. Thus, Article 29(2)(b) of the ICSID Convention and ICSID Conciliation Rule 2 (3) provide that in the absence of party agreement on the method of constitution of the Commission within sixty days after registration of the conciliation request, either party may require that the Conciliation Commission comprise three conciliators, one appointed by each party and a third, presiding, conciliator, appointed by agreement of the parties. Article 30 of the ICSID Convention and ICSID Conciliation Rule 4 further provide that if the Commission is not constituted within ninety days after registration of the conciliation request, or such other period as the parties may agree, the Chairman of the ICSID Administrative Council (the President of the World Bank) will, at the request of either party, make the necessary appointments. The Chairman is restricted by Article 31(1) of the ICSID Convention in his choice of conciliators to members of the Panel of Conciliators maintained by the Centre, whereas the parties may, but need not, appoint conciliators from the Panel. Should the parties decide to appoint conciliators from outside the ICSID Panel of Conciliators, the appointees must, according to Article 31(2) of the ICSID Convention, possess the same qualifications as persons serving in the Panel. Article 14(1) of the ICSID Convention provides that Panel members “shall be persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, who may be relied upon to exercise independent judgment.” In whichever way the conciliators have been appointed, they must confirm that they possess those qualities in relation to the case before them. In this respect, conciliators are required by Conciliation Rule 6(2) to sign, no later than at the end of the first session of the Commission, a declaration stating that they will “not accept any instruction or compensation with regard to the proceeding from any source except as provided in the Convention on the Settlement of Investment Disputes and in the Regulations and Rules made pursuant thereto.” In their declaration pursuant to Conciliation Rule 6(2), conciliators are also required to disclose any previous or subsisting “professional, business and other relationships” between them and the parties that might call into question their independence. In their declaration under Conciliation

Rule 6(2), conciliators furthermore undertake to keep confidential “all information” coming to their knowledge as a result of their participation in the proceeding, “as well as the contents of any report drawn up by the Commission.” All of these arrangements duplicate the corresponding provisions on arbitration proceedings in the ICSID Convention and the rules adopted pursuant to it (except that in the case of conciliation, unlike arbitration, there are no restrictions as to appointment of co-nationals of the parties).

Some of the features of ICSID conciliation can be found in other public international law conciliation systems. For instance, the 1982 United Nations Convention on the Law of the Sea (UNCLOS) provides for the “compulsory” submission to conciliation procedure of certain disputes relating to marine scientific research in the coastal State’s exclusive economic zone or on its continental shelf, of certain disputes relating to the living resources of the coastal State’s exclusive economic zone and, in certain cases, of disputes relating to sea boundary delimitations or involving historic bays or titles. Any party which is notified by the other party to the dispute shall, pursuant to Section 2 of Annex V of the UNCLOS, be “obliged” to submit to the conciliation proceeding, even though “[t]he report of the commission, including its conclusions or recommendations, shall not be binding upon the parties.” As explained below, the ICSID system of conciliation differs, however, from the UNCLOS system insofar as the latter provides that the failure of a party to submit to such conciliation proceedings “shall not constitute a bar to the proceedings.”

#### *Differences between ICSID Conciliation and ICSID Arbitration*

Following the constitution of the Conciliation Commission, there are marked differences between the rules applicable to ICSID conciliation proceedings and the rules applicable to ICSID arbitration proceedings. The differences reflect the basic distinction between conciliation, which seeks to bring the parties to an agreed settlement, and arbitration, which is intended to lead to a binding and enforceable determination of the dispute by the Arbitral Tribunal.

As in other conciliation systems, ICSID conciliation may result in no more than a recommendation to the parties of terms for the settlement of their dispute. An ICSID Conciliation Commission has, unlike an ICSID Arbitral Tribunal, no power to impose on the parties a decision regarding their dispute. Its duty is instead, under

Article 34(1) of the ICSID Convention, “to clarify the issues in dispute between the parties and to endeavour to bring about agreement between them upon mutually acceptable terms.” In one conciliation case submitted to ICSID, the sole conciliator stated in his recommendation that he conceived his task as being

to examine the contentions raised by the parties, to clarify the issues, and to endeavour to evaluate their respective merits and the likelihood of their being accepted, or rejected, in Arbitration or Court proceedings, in the hope that such evaluation may assist the parties in reaching an agreed settlement.

If the parties reach such an agreed settlement, the Commission shall, pursuant to Article 34(2) of the ICSID Convention and ICSID Conciliation Rule 30(1), close the proceedings and draw up a report noting the issues in dispute and recording that the parties have reached agreement. ICSID Conciliation Rule 30(1) further provides that the parties may request that the report record the detailed terms and conditions of their agreement. Parties are normally bound by such an agreement, though the ICSID Convention, unlike Article 13(3) of the UNCITRAL Conciliation Rules and Article 7(a) of the ICC Rules of Optional Conciliation, does not provide for this expressly nor does it require, unlike the two other instruments, that the parties sign a settlement agreement.

In order to enable the Conciliation Commission to perform its task efficiently, the ICSID Convention and Conciliation Rules set forth a flexible conciliation procedure. Thus, Article 34(1) of the ICSID Convention and ICSID Conciliation Rule 22(2) do not require the Conciliation Commission to make its recommendations, if any, after completing the examination of the issues. The Commission may instead make such recommendations “at any stage of the proceeding.” Moreover, it may repeat its efforts “from time to time.” For the sake of the informality and the speedy progress of the proceeding, Paragraphs (1) and (2) of ICSID Conciliation Rule 22 allow the Commission to make its recommendations “orally or in writing” to the parties who “shall be associated with its work as closely as possible.” These provisions are comparable to Article 7 of the UNCITRAL Conciliation Rules, according to which the conciliator, while taking into account “the wishes the parties may express,” may “at any stage of the conciliation proceedings, make proposals for a settlement of the dispute,” proposals which “need not be in writing.”

Other provisions of the ICSID Conciliation Rules reflect the flexible and informal character of ICSID conciliation procedures. Thus, while, under ICSID Arbitration Rule 29, an ICSID arbitration proceeding comprises, unless the parties otherwise agree, separate written and oral phases of procedure, the Conciliation Rules allow the intermixing of the two procedures. Though ICSID Conciliation Rule 25(1) requires the President of the Conciliation Commission to invite each party to file, within thirty days upon the constitution of the Commission or such longer time limit as he may fix, a written statement of its position, the same provision authorizes either party “at any stage of the proceeding” to “file such other written statements as it deems useful and relevant.” As to the oral procedure, the Commission may, consistently with ICSID Conciliation Rule 22(3), request, at any stage of the proceeding, “from either party oral explanations, documents and other information” as well as “evidence from other persons” and, pursuant to ICSID Conciliation Rule 23, may call witnesses and experts. ICSID Conciliation Rule 28(1) likewise provides that either party may “at any stage of the proceeding, request that the Commission hear the witnesses and experts whose evidence the party considers relevant.” The sequence of the written statements and the oral evidence is therefore solely determined by the progress of the settlement discussions and the close association of the parties to the work of the Commission.

Another difference between ICSID arbitration proceedings and ICSID conciliation proceedings which stems from the latter’s non-adversarial character is that, while under ICSID Arbitration Rule 35(2) and (3), witnesses and experts are obliged to make solemn declarations upon their honour and conscience before giving their evidence or statement, witnesses and experts called in conciliation proceedings are exempted from such a requirement. To contribute further to easing a settlement and creating a less adversarial proceeding, Article 61(1) of the ICSID Convention requires for all conciliation proceedings that fees and expenses of members of the Commission as well as the charges for the use of the facilities of the Centre be borne equally by the parties. The same approach is adopted by Article 17 of the UNCITRAL Conciliation Rules and Article 9 of the ICC Rules of Optional Conciliation. This is not the case of arbitration proceedings where, in accordance with Article 61(2) of the ICSID Convention, the Tribunal shall, subject to a contrary agreement of the parties, decide how and by whom, “the expenses incurred by the parties in connection with the proceedings” as well as “the fees and expenses of the members of the

Tribunal and the charges for the use of the facilities of the Centre shall be paid.”

While the parties’ undertaking to submit their dispute to ICSID conciliation is binding on them, the parties are not bound to comply with the Commission’s recommendations. The provisions of the ICSID Convention with respect to conciliation proceedings strike a balance between these two considerations. On the one hand, parties to an ICSID conciliation are, pursuant to Article 34(1) of the ICSID Convention, under the obligation to “cooperate in good faith with the Commission in order to enable the Commission to carry out its functions.” ICSID Conciliation Rule 23 elaborates on the implications of such a commitment. In addition to providing it with all relevant documents, information and explanations, parties must enable the Commission to hear such witnesses or experts as it may desire and to visit any place connected with the dispute. They must also comply with any time limits agreed with or fixed by the Commission. Similar obligations are provided for by Article 11 of the UNCITRAL Conciliation Rules which reads that “[t]he parties will in good faith cooperate with the conciliator and, in particular, will endeavour to comply with requests by the conciliator to submit written materials, provide evidence and attend meetings.” On the other hand, if, at any stage of the ICSID conciliation proceeding, one party fails to appear or participate in the proceeding or it appears to the Conciliation Commission that there is no likelihood of agreement between the parties, the Commission must, in accordance with Article 34(2) of the ICSID Convention and ICSID Conciliation Rule 30(2) and (3), close the proceeding and draw up a report recording the outcome. Furthermore, while Article 34(1) of the ICSID Convention requires parties to give “their most serious consideration” to the Commission’s recommendations and while the Preamble to the ICSID Convention states that “due consideration” shall be given by the parties to the Commission’s recommendations, parties are, as mentioned above, under no obligation to accept them. This contrasts with the situation that characterizes an ICSID arbitration proceeding. There, neither the default and lack of cooperation by one of the parties nor the inability of both parties to reach an agreement may constitute an obstacle to

the pursuit of the arbitration proceeding and the rendition of the award. In addition, Article 53(1) of the ICSID Convention provides that the award rendered by an Arbitral Tribunal is “binding” on the parties who must “abide by and comply with” its terms.

#### *Blending Conciliation and Arbitration Features*

It has been suggested (Broches, *The Convention on the Settlement of Investment Disputes between States and Nationals of Other States*, 136 *Recueil des cours* 331, 337 (1972)) that parties to a conciliation proceeding may always agree in advance to accept the Commission’s recommendation as a binding determination of their dispute. Such an agreement will not, however, bestow on the Commission’s recommendation the status of an arbitral award and will not extend to its recommendation the benefit of Article 54(1) of the ICSID Convention. According to this provision, each Contracting State, whether or not it or one of its nationals has been a party to the proceeding, undertakes to recognize the final and binding character of an ICSID arbitral award and to enforce within its territories the pecuniary obligations imposed by that award “as if it were a final judgment of a court in that State.”

While conciliation proceedings are distinct under the ICSID system from arbitration proceedings, arbitrators may, at the request of the parties, assist them in reaching a settlement to their dispute. In fact, under the 1984 ICSID Arbitration Rules, a pre-hearing conference may be held between the Arbitral Tribunal and the parties to facilitate an early amicable settlement. Whether or not as a result of such a pre-hearing conference, the parties to arbitration proceedings have reached settlement agreements during the arbitral proceedings in the majority of cases which have been submitted to the Centre. In one such case, the parties requested the Arbitral Tribunal to embody their settlement in an award.

The true meaning of some of the terms used to refer to dispute-settlement mechanisms may be the source of difficulties. In this respect, some societies which have a cultural inclination towards conciliation may confuse this concept with arbitration. It is

therefore necessary for parties from different cultural backgrounds who are negotiating a dispute-settlement agreement to agree in advance in detail about the rules of the game, to understand their implications and to abide by them.

### Conclusion

Providing for a compulsory means of dispute settlement which ends at most with a non-binding recommendation may at first sight appear questionable, if not paradoxical. There are, however, a number of reasons in favor of this approach.

A first reason is that a party, having consented initially to resort to a specific means of dispute settlement, should not be allowed to disregard its commitment at a later stage. As the expression of the initial wish of the parties, the dispute-settlement clause is sometimes a "package deal" carefully negotiated and agreed upon by the parties, which ought to be observed in good faith. For instance, when the parties agree in their contract to submit future disputes to conciliation, or to conciliation followed by arbitration in case conciliation proves to be fruitless, the conciliation clause should not be considered without effect or subject to further confirmation. On the contrary, conciliatory efforts should be exhausted before full-scale adversarial proceedings are engaged in. A party that does not believe in the virtue of conciliation should not agree in the first place to insert a conciliation clause in its contract.

A second reason in favor of this approach is that when a party is unwilling to submit to a conciliation proceeding, that party is not necessarily opposed to conciliation per se. There may simply be disagreement between the parties on the method of constitution of the Conciliation Commission and on the actual appointment of conciliators. It only seems reasonable in such a case to give an appointing authority the power to take the necessary steps and make the relevant designations in order to allow the conciliation proceedings to take place. It is noteworthy in this respect that the ICSID Convention contains adequate safeguards, at least at the initial stages of the proceedings, against the lack of agreement between the parties or the non-cooperation of either.

## New ICSID Publications

New publications of the Centre include the Spring 1996 issue of the *ICSID Review—Foreign Investment Law Journal*. The issue features the following articles: "The Promotion and Protection of German Foreign Investment Abroad," by Joachim Karl; "Decisions Ex Aequo et Bono Under the ICSID Convention," by Christoph Schreuer; and "The Implementation of ICSID Arbitration Agreements," by Carolyn B. Lamm and Abby Cohen Smutny.

The issue also includes a review by Alejandro A. Escobar of Recent Treaties for the Promotion and Protection of Investment Concluded by Latin American States. Fourteen such treaties are also published in the issue.

Jan Paulsson and C.F. Amerasinghe provide the issue's reviews of *The World Bank in a Changing World: Selected Essays and Lectures*, Volume II (Ibrahim F.I. Shihata) and *The International Law on Foreign Investment* (M. Sornarajah) respectively.

The *ICSID Review—Foreign Investment Law Journal*, which appears twice yearly, is available on a subscription basis from the Johns Hopkins University Press, Journals Publishing Division, 2715 North Charles Street, Baltimore, Maryland 21218-4319, U.S.A. Annual subscriptions rates (excluding postal charges) are US\$55 for persons with a mailing address in a member country of the Organisation for Economic Co-operation and Development and US\$27.50 for others.

Other recent publications of the Centre include a new release (96-2) of ICSID's collection of *Investment Treaties*. Included in release 96-2 are 20 new bilateral investment treaties entered into by some 15 countries during the years 1994 to 1996. These are Albania, Argentina, Barbados, Bolivia, Brazil, Chile, China, Denmark, Ecuador, Germany, Jamaica, Latvia, Paraguay, Peru and the United Kingdom. Investment Treaties (six volumes) may be purchased from Oceana Publications, Inc., 75 Main Street, Dobbs Ferry, New York 10522, U.S.A. at US\$595.



## Thirteenth Joint ICSID/AAA/ ICC International Court of Arbitration Colloquium on International Arbitration New York, November 15, 1996

The program for the colloquium announced at page 1 is as follows:

- 8:30 a.m. Registration of Participants  
9:00 a.m. *Welcome and Introduction*  
William K. Slate II, President, AAA  
9:15 a.m. *Recent Institutional Developments:  
ICC International Court of Arbitration,*  
Alain Plantey, Chairman, ICC Court  
*International Centre for Settlement*  
*of Investment Disputes, Ibrahim F.I.*  
Shihata, Secretary-General, ICSID  
*American Arbitration Association,*  
William K. Slate II, President, AAA  
10:10 a.m. Discussion  
10:30 a.m. Coffee Break  
11:00 a.m. *Recognition of the Autonomy Principle:  
Treaties, National Legislation and*  
*the Courts:*  
Karl-Heinz Böckstiegel, President,  
London Court of International  
Arbitration  
11:30 a.m. *The Power of Parties to Organize the*  
*Arbitral Procedure:*  
Chairman: Alain Plantey, Chairman,  
ICC International Court of Arbitration  
Marc Lalonde, Stikeman Elliott  
Delissa A. Ridgway, Chair, Foreign  
Claims Settlement Commission of  
the United States  
12:15 p.m. Luncheon  
2:00 p.m. *The Power of Parties to Organize the*  
*Arbitral Procedure (continued):*  
Keith Highet, Member, Inter-American  
Juridical Committee of the Organi-  
zation of American States  
2:30 p.m. *Discussion*  
Chairman: Ibrahim F.I. Shihata,  
Secretary-General, ICSID  
3:00 p.m. *Institutional Discretion to Foster*  
*Arbitral Efficiency:*  
Aron Broches, Former Secretary-  
General, ICSID  
Michael F. Hoellering, General  
Counsel, AAA  
Richard Hulbert, Cleary, Gottlieb  
Steen & Hamilton

- 4:00 p.m. *The Power of Parties to Choose and*  
*Exclude Applicable Law:*  
Emmanuel Gaillard, Shearman  
& Sterling  
Howard M. Holtzmann, Former  
Judge, Iran-United States Claims  
Tribunal  
Ahmed S. EL-Kosheri, Kosheri,  
Rashed & Riad  
5:00 p.m. Discussion  
5:30 p.m. *Closing Remarks*  
William K. Slate II, President, AAA  
5:45 p.m. Adjournment  
Reception

For further information on the colloquium, contact: **Mr. Jeffrey T. Zaino**, Program Director, XIIIth Joint Arbitration Colloquium, American Arbitration Association, 133 Federal Street, Boston, Massachusetts 02110-1703, U.S.A. Tel: (617) 695-6061, Fax: (617) 451-0763.

## Joint Conference on the Resolution of International Trade and Investment Disputes in Africa

The topics to be discussed at the conference, announced at page 1, will focus on dispute resolution from the business perspective, responses to problems and changing requirements of dispute resolution institutions, international dispute resolution rules and model legislation, mediation and conciliation as alternatives for the settlement of trade and investment disputes and national and regional options in Africa.

The speakers at this conference will include Dullah Omar, Alec Erwin, Ibrahim F.I. Shihata, Bola A. Ajibola, Robert Briner, Karl-Heinz Böckstiegel, Eric Schwartz, John Tackaberry, Gerold Herrmann, Pieter Sanders, Albert J. van den Berg, Yves Derains and Richard Christie.

For further information on this conference, contact the Association of Arbitrators (Southern Africa), attention: **Ms. Diana Lister**, Johannesburg, South Africa, tel.: (27) (11) 884-9917; fax: (27) (11) 320-0533.

## List of Contracting States and Other Signatories of the ICSID Convention (as of September 15, 1996)

The 139 States listed below have signed the Convention on the Settlement of Investment Disputes between States and Nationals of Other States on the dates indicated. The names of the 126 States that have deposited their instruments of ratification are in bold, and the dates of such deposit and of the attainment of the status of Contracting State by the entry into force of the Convention for each of them are also indicated.

<i>State</i>	<i>Signature</i>	<i>Deposit of Ratification</i>	<i>Entry into Force of Convention</i>
<b>Afghanistan</b>	Sep. 30, 1966	June 25, 1968	July 25, 1968
<b>Albania</b>	Oct. 15, 1991	Oct. 15, 1991	Nov. 14, 1991
<b>Algeria</b>	Apr. 17, 1995	Feb. 21, 1996	Mar. 22, 1996
<b>Argentina</b>	May 21, 1991	Oct. 19, 1994	Nov. 18, 1994
<b>Armenia</b>	Sep. 16, 1992	Sep. 16, 1992	Oct. 16, 1992
<b>Australia</b>	Mar. 24, 1975	May 2, 1991	June 1, 1991
<b>Austria</b>	May 17, 1966	May 25, 1971	June 24, 1971
<b>Azerbaijan</b>	Sep. 18, 1992	Sep. 18, 1992	Oct. 18, 1992
<b>Bahamas</b>	Oct. 19, 1995	Oct. 19, 1995	Nov. 18, 1995
<b>Bahrain</b>	Sep. 22, 1995	Feb. 14, 1996	Mar. 15, 1996
<b>Bangladesh</b>	Nov. 20, 1979	Mar. 27, 1980	Apr. 26, 1980
<b>Barbados</b>	May 13, 1981	Nov. 1, 1983	Dec. 1, 1983
<b>Belarus</b>	July 10, 1992	July 10, 1992	Aug. 9, 1992
<b>Belgium</b>	Dec. 15, 1965	Aug. 27, 1970	Sep. 26, 1970
Belize	Dec. 19, 1986		
<b>Benin</b>	Sep. 10, 1965	Sep. 6, 1966	Oct. 14, 1966
<b>Bolivia</b>	May 3, 1991	June 23, 1995	July 23, 1995
<b>Botswana</b>	Jan. 15, 1970	Jan. 15, 1970	Feb. 14, 1970
<b>Burkina Faso</b>	Sep. 16, 1965	Aug. 29, 1966	Oct. 14, 1966
<b>Burundi</b>	Feb. 17, 1967	Nov. 5, 1969	Dec. 5, 1969
Cambodia	Nov. 5, 1993		
<b>Cameroon</b>	Sep. 23, 1965	Jan. 3, 1967	Feb. 2, 1967
<b>Central African Republic</b>	Aug. 26, 1965	Feb. 23, 1966	Oct. 14, 1966
<b>Chad</b>	May 12, 1966	Aug. 29, 1966	Oct. 14, 1966
<b>Chile</b>	Jan. 25, 1991	Sep. 24, 1991	Oct. 24, 1991
<b>China</b>	Feb. 9, 1990	Jan. 7, 1993	Feb. 6, 1993
Colombia	May 18, 1993		
<b>Comoros</b>	Sep. 26, 1978	Nov. 7, 1978	Dec. 7, 1978
<b>Congo</b>	Dec. 27, 1965	June 23, 1966	Oct. 14, 1966
<b>Costa Rica</b>	Sep. 29, 1981	Apr. 27, 1993	May 27, 1993
<b>Côte d'Ivoire</b>	June 30, 1965	Feb. 16, 1966	Oct. 14, 1966
<b>Cyprus</b>	Mar. 9, 1966	Nov. 25, 1966	Dec. 25, 1966
<b>Czech Republic</b>	Mar. 23, 1993	Mar. 23, 1993	Apr. 22, 1993
<b>Denmark</b>	Oct. 11, 1965	Apr. 24, 1968	May 24, 1968
<b>Ecuador</b>	Jan. 15, 1986	Jan. 15, 1986	Feb. 14, 1986
<b>Egypt, Arab Republic of</b>	Feb. 11, 1972	May 3, 1972	June 2, 1972
<b>El Salvador</b>	June 9, 1982	Mar. 6, 1984	Apr. 5, 1984
<b>Estonia</b>	June 23, 1992	June 23, 1992	Jul. 23, 1992
Ethiopia	Sep. 21, 1965		
<b>Fiji</b>	July 1, 1977	Aug. 11, 1977	Sep. 10, 1977
<b>Finland</b>	July 14, 1967	Jan. 9, 1969	Feb. 8, 1969
<b>France</b>	Dec. 22, 1965	Aug. 21, 1967	Sep. 20, 1967
<b>Gabon</b>	Sep. 21, 1965	Apr. 4, 1966	Oct. 14, 1966
<b>Gambia, The</b>	Oct. 1, 1974	Dec. 27, 1974	Jan. 26, 1975
<b>Georgia</b>	Aug. 7, 1992	Aug. 7, 1992	Sep. 6, 1992
<b>Germany</b>	Jan. 27, 1966	Apr. 18, 1969	May 18, 1969
<b>Ghana</b>	Nov. 26, 1965	July 13, 1966	Oct. 14, 1966
<b>Greece</b>	Mar. 16, 1966	Apr. 21, 1969	May 21, 1969
<b>Grenada</b>	May 24, 1991	May 24, 1991	June 23, 1991
Guatemala	Nov. 9, 1995		
<b>Guinea</b>	Aug. 27, 1968	Nov. 4, 1968	Dec. 4, 1968
Guinea-Bissau	Sep. 4, 1991		
<b>Guyana</b>	July 3, 1969	July 11, 1969	Aug. 10, 1969
Haiti	Jan. 30, 1985		
<b>Honduras</b>	May 28, 1986	Feb. 14, 1989	Mar. 16, 1989
<b>Hungary</b>	Oct. 1, 1986	Feb. 4, 1987	Mar. 6, 1987
<b>Iceland</b>	July 25, 1966	July 25, 1966	Oct. 14, 1966
<b>Indonesia</b>	Feb. 16, 1968	Sep. 28, 1968	Oct. 28, 1968
<b>Ireland</b>	Aug. 30, 1966	Apr. 7, 1981	May 7, 1981
<b>Israel</b>	June 16, 1980	June 22, 1983	July 22, 1983
<b>Italy</b>	Nov. 18, 1965	Mar. 29, 1971	Apr. 28, 1971
<b>Jamaica</b>	June 23, 1965	Sep. 9, 1966	Oct. 14, 1966

<b>Japan</b>	Sep. 23, 1965	Aug. 17, 1967	Sep. 16, 1967
<b>Jordan</b>	July 14, 1972	Oct. 30, 1972	Nov. 29, 1972
Kazakhstan	July 23, 1992		
<b>Kenya</b>	May 24, 1966	Jan. 3, 1967	Feb. 2, 1967
Kyrgyz, Republic of	June 9, 1995		
<b>Korea, Republic of</b>	Apr. 18, 1966	Feb. 21, 1967	Mar. 23, 1967
<b>Kuwait</b>	Feb. 9, 1978	Feb. 2, 1979	Mar. 4, 1979
<b>Lesotho</b>	Sep. 19, 1968	July 8, 1969	Aug. 7, 1969
<b>Liberia</b>	Sep. 3, 1965	June 16, 1970	July 16, 1970
<b>Lithuania</b>	July 6, 1992	July 6, 1992	Aug. 5, 1992
<b>Luxembourg</b>	Sep. 28, 1965	July 30, 1970	Aug. 29, 1970
<b>Madagascar</b>	June 1, 1966	Sep. 6, 1966	Oct. 14, 1966
<b>Malawi</b>	June 9, 1966	Aug. 23, 1966	Oct. 14, 1966
<b>Malaysia</b>	Oct. 22, 1965	Aug. 8, 1966	Oct. 14, 1966
<b>Mali</b>	Apr. 9, 1976	Jan. 3, 1978	Feb. 2, 1978
<b>Mauritania</b>	July 30, 1965	Jan. 11, 1966	Oct. 14, 1966
<b>Mauritius</b>	June 2, 1969	June 2, 1969	July 2, 1969
<b>Micronesia</b>	June 24, 1993	June 24, 1993	July 24, 1993
Moldova	Aug. 12, 1992		
<b>Mongolia</b>	June 14, 1991	June 14, 1991	July 14, 1991
<b>Morocco</b>	Oct. 11, 1965	May 11, 1967	June 10, 1967
<b>Mozambique</b>	Apr. 4, 1995	June 7, 1995	July 7, 1995
<b>Nepal</b>	Sep. 28, 1965	Jan. 7, 1969	Feb. 6, 1969
<b>Netherlands</b>	May 25, 1966	Sep. 14, 1966	Oct. 14, 1966
<b>New Zealand</b>	Sep. 2, 1970	Apr. 2, 1980	May 2, 1980
<b>Nicaragua</b>	Feb. 4, 1994	Mar. 20, 1995	Apr. 19, 1995
<b>Niger</b>	Aug. 23, 1965	Nov. 14, 1966	Dec. 14, 1966
<b>Nigeria</b>	July 13, 1965	Aug. 23, 1965	Oct. 14, 1966
<b>Norway</b>	June 24, 1966	Aug. 16, 1967	Sep. 15, 1967
<b>Oman</b>	May 5, 1995	July 24, 1995	Aug. 23, 1995
<b>Pakistan</b>	July 6, 1965	Sep. 15, 1966	Oct. 15, 1966
<b>Panama</b>	Nov. 22, 1995	Apr. 8, 1996	May 8, 1996
<b>Papua New Guinea</b>	Oct. 20, 1978	Oct. 20, 1978	Nov. 19, 1978
<b>Paraguay</b>	July 27, 1981	Jan. 7, 1983	Feb. 6, 1983
<b>Peru</b>	Sep. 4, 1991	Aug. 9, 1993	Sep. 8, 1993
<b>Philippines</b>	Sep. 26, 1978	Nov. 17, 1978	Dec. 17, 1978
<b>Portugal</b>	Aug. 4, 1983	July 2, 1984	Aug. 1, 1984
<b>Romania</b>	Sep. 6, 1974	Sep. 12, 1975	Oct. 12, 1975
Russian Federation	June 16, 1992		
<b>Rwanda</b>	Apr. 21, 1978	Oct. 15, 1979	Nov. 14, 1979
<b>Saudi Arabia</b>	Sep. 28, 1979	May 8, 1980	June 7, 1980
<b>Senegal</b>	Sep. 26, 1966	Apr. 21, 1967	May 21, 1967
<b>Seychelles</b>	Feb. 16, 1978	Mar. 20, 1978	Apr. 19, 1978
<b>Sierra Leone</b>	Sep. 27, 1965	Aug. 2, 1966	Oct. 14, 1966
<b>Singapore</b>	Feb. 2, 1968	Oct. 14, 1968	Nov. 13, 1968
<b>Slovenia</b>	Mar. 7, 1994	Mar. 7, 1994	Apr. 6, 1994
<b>Slovak Republic</b>	Sep. 27, 1993	May 27, 1994	June 26, 1994
<b>Solomon Islands</b>	Nov. 12, 1979	Sep. 8, 1981	Oct. 8, 1981
<b>Somalia</b>	Sep. 27, 1965	Feb. 29, 1968	Mar. 30, 1968
<b>Spain</b>	Mar. 21, 1994	Aug. 18, 1994	Sept. 17, 1994
<b>Sri Lanka</b>	Aug. 30, 1967	Oct. 12, 1967	Nov. 11, 1967
<b>St. Kitts and Nevis</b>	Oct. 14, 1994	Aug. 4, 1995	Sep. 3, 1995
<b>St. Lucia</b>	June 4, 1984	June 4, 1984	July 4, 1984
<b>Sudan</b>	Mar. 15, 1967	Apr. 9, 1973	May 9, 1973
<b>Swaziland</b>	Nov. 3, 1970	June 14, 1971	July 14, 1971
<b>Sweden</b>	Sep. 25, 1965	Dec. 29, 1966	Jan. 28, 1967
<b>Switzerland</b>	Sep. 22, 1967	May 15, 1968	June 14, 1968
<b>Tanzania</b>	Jan. 10, 1992	May 18, 1992	June 17, 1992
Thailand	Dec. 6, 1985		
<b>Togo</b>	Jan. 24, 1966	Aug. 11, 1967	Sep. 10, 1967
<b>Tonga</b>	May 1, 1989	Mar. 21, 1990	Apr. 20, 1990
<b>Trinidad and Tobago</b>	Oct. 5, 1966	Jan. 3, 1967	Feb. 2, 1967
<b>Tunisia</b>	May 5, 1965	June 22, 1966	Oct. 14, 1966
<b>Turkey</b>	June 24, 1987	Mar. 3, 1989	Apr. 2, 1989
<b>Turkmenistan</b>	Sep. 26, 1992	Sep. 26, 1992	Oct. 26, 1992
<b>Uganda</b>	June 7, 1966	June 7, 1966	Oct. 14, 1966
<b>United Arab Emirates</b>	Dec. 23, 1981	Dec. 23, 1981	Jan. 22, 1982
<b>United Kingdom of Great Britain and Northern Ireland</b>	May 26, 1965	Dec. 19, 1966	Jan. 18, 1967
<b>United States of America</b>	Aug. 27, 1965	June 10, 1966	Oct. 14, 1966
Uruguay	May 28, 1992		
<b>Uzbekistan</b>	Mar. 17, 1994	July 26, 1995	Aug. 25, 1995
<b>Venezuela</b>	Aug. 18, 1993	May 2, 1995	June 1, 1995
<b>Western Samoa</b>	Feb. 3, 1978	Apr. 25, 1978	May 25, 1978
<b>[Yugoslavia, Socialist Federal Republic of</b>	Mar. 21, 1967	Mar. 21, 1967	Apr. 20, 1967]
<b>Zaire</b>	Oct. 29, 1968	Apr. 29, 1970	May 29, 1970
<b>Zambia</b>	June 17, 1970	June 17, 1970	July 17, 1970
<b>Zimbabwe</b>	Mar. 25, 1991	May 20, 1994	June 19, 1994

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L'apport jurisprudentiel CIRDI aux contrats de génie civil dans les pays arabes, 1995 *Revue de droit des affaires internationales* 867.

*Emole, Chijioke E.*

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*Gaillard, Emmanuel*

Centre International pour le règlement des différends relatifs aux investissements: Chronique des sentences arbitrales, 123 *Journal du droit international* 273 (1996).

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*Paulsson, Jan*

Arbitration Without Privity, 10 *ICSID Review—Foreign Investment Law Journal* 232 (1995).

*Schreuer, Christoph*

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*Sornarajah, M.*

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