

# NEWS FROM ICSID

International Centre for Settlement of Investment Disputes

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## **Fourteenth Joint ICSID/AAA/ ICC International Court of Arbitration Colloquium on International Arbitration, Washington, D.C., November 21, 1997**

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

This colloquium will address the topic of "Institutional Arbitration: Uniformity and Diversity." It will take place on November 21, 1997 at the headquarters of the World Bank in Washington, D.C. Further details on the colloquium will appear in the next issue of *News from ICSID*.

## **First ICSID Additional Facility Proceedings Under the NAFTA**

As pointed out in previous issues of *News from ICSID*, the Investment Chapter of the North American Free Trade Agreement (NAFTA) provides for the resolution of disputes between  
*(continued on page 10)*

## **Institutional and Legal Reform in Africa: Challenges of a New Era**

*By Ibrahim F.I. Shihata, Senior Vice President and General Counsel, World Bank; Secretary-General, ICSID*

*The following is the text of a keynote address at the Conference on the Resolution of International Trade and Investment Disputes in Africa, Johannesburg, March 5-8, 1997*

I am grateful to the organizers of this conference for giving me the opportunity to come to South Africa for the first time and the privilege of addressing you today. I am particularly honored to be asked to give a keynote address following the excellent introductions to this conference by Their Excellencies Minister Omar and Minister Erwin.

The theme of this Conference is "The Resolution of International Trade and Investment

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Disputes in Africa.” As you all know, international trade and investment disputes are commonly resolved by international arbitral mechanisms—such as those provided by the institutions sponsoring this conference, the ICC International Court of Arbitration, the London Court of International Arbitration and the International Centre for Settlement of Investment Disputes or ICSID. As will certainly be clear from our deliberations, making wider and more effective use of such arbitral mechanisms may be of crucial importance to a country’s ability to attract much-needed foreign trade and investment. More important, however, for the promotion of both domestic and foreign investment and trade, is the development of an appropriate legal framework and a well-functioning judiciary. This morning, I shall discuss the relevance of legal and judicial reform to economic development in Africa. I hope that such a discussion will provide a useful backdrop to our subsequent consideration of the resolution of trade and investment disputes in the region while another paper I am submitting to this conference explains the important role ICSID can play in this respect.

The relationship between law and economic development is one that I have sought to emphasize and explain throughout my long involvement with development finance in three institutions over more than three decades. In the last several years, a number of developments have taken place to give this matter the attention it deserves beyond the narrow circles of development lawyers, and to bring institutional issues in general and legal and judicial reform in particular to the forefront of the development debate.

The dramatic political changes in Eastern Europe and the former Soviet Union in the late 80s and early 90s led to a revision of the legal framework that underpinned the political and economic system of these countries. They also emphasized the prominence of legal reform in the transformation from a command to a market economy.

More generally, the development experience of developing countries—including, of course, African countries—over a longer period has also revealed the relevance of governance issues, es-

pecially the need for the rule of law and for well-functioning administrative and judicial institutions, as a matter which is closely associated with, if not a prerequisite for, economic development.

An appropriate legal framework has also proven to be critical to protecting the environment, a fundamental element in sustainable development.

These combined factors have attracted increased attention in recent years from leading development institutions to the role of law in economic development. It is indeed commonly recognized now that the rapid growth of the poorer nations requires a number of conditions not necessarily of strict economic or financial character, such as appropriately defining the role of the state, achieving good governance, improving the performance of the civil service and supporting social structures conducive to economic development. These conditions can hardly be sustained in a society regulated by an obsolete legal system or deprived of enlightened and efficient legal, administrative and judicial institutions.

The question of how law can be utilized to achieve economic revival in the short run and sustainable economic growth in the long run addresses the key concept of an appropriate legal framework for development in a given country. This concept can be defined in terms of a system based on three pillars: The first pillar represents the legally binding rules. For such rules to be part of the law of the land they need not only to be known in advance but also to be actually enforced. Their interpretation and modification must also be made pursuant to previously known procedures. The second pillar consists of appropriate processes through which the binding rules are to be made and to be subsequently enforced in practice. The appropriateness of such processes requires participation in the making of the rules, realism in the reliance on existing institutions for their application and adequate safeguards against arbitrary or abusive application. The third pillar consists of well-functioning public institutions for the application of the rules and the settlement of disputes. Such institutions, to be effective at all, must be staffed

by trained and motivated individuals, must be transparent and accountable to citizens and must be bound by, and adhere to, adequate regulations.

Experience shows that such a system of rules, processes and institutions is needed to create a climate of stability and predictability, where business risks may be rationally assessed, transaction costs lowered, market failures addressed and governmental arbitrariness reduced. For economic policies to be implemented properly and effectively, they have to be translated into workable rules and applied by functioning institutions in a non-arbitrary manner. And if law is to be an effective vehicle for implementing policies and promoting orderly changes, sound regulation must precede or at least accompany liberalization of investment and trade. This is nowhere clearer than in the banking and public utilities sectors, where privatization and liberalization in the absence of appropriate regulation can have devastating effects. Appropriate regulation does not only correct market failures and excesses; it protects competition without which the market itself cannot operate. This is of course not a call for excessive regulation or for rigid procedures. On the contrary, such excesses could only lead to abuses of power and corruption, with gravely negative effects on the development process.

An appropriate legal framework is in particular a prerequisite for private sector development where its vital importance is relevant to all economic agents, and especially to the small entrepreneur. The promotion of private sector development, and more generally of the rights of the individual in society, raises broader issues closely linked to the definition and extension of the role of the state. Law addresses these issues as well as a matter of primary concern.

It will be misleading, however, to believe that efforts which are limited to the formal legal system would be sufficient. In all societies, informal rules of custom and usage play an important role. This is particularly relevant in developing countries where law enforcement may be weak and corruption may be widespread. In such situations, formal law may be readily replaced by informal rules which receive greater

compliance in practice. Legal reform cannot therefore serve its purpose if it does not pay adequate attention to the issues of enforcement, compliance and effectiveness. The concern with processes and institutions may help address these issues. Equally important is the content and fairness of the formal rules and the extent and quality of state intervention under them.

The general remarks I have made so far may be particularly obvious in the African context where the need for legal and judicial reform is in my view more pressing than in other regions.

Before examining with you how the consequences of outmoded and inefficient legal systems have affected the African development process, I want to recall some historical features underlying this process.

In the pre-independence stage, traditional societies were typically governed by a maze of rules and customs well known to all citizens. To quote a World Bank colleague, "the 'law books' were the collective memory of the tribe." During the colonial period, new sets of legislation and regulation were introduced in parallel with customary law. "Much of this so-called 'modern' legislation related to the administration of the state, and was essentially derived from the colonial power."

The result, as you all know, has been a mosaic of legal systems shaped by the Belgian, Dutch, English, French, Italian and Portuguese legacies transplanted over preexisting norms and practices of varied sources, mainly of Islamic or indigenous origins.

In post-independence Africa, to quote another source, "the immediate goal of [the new] governments was to 'Africanize,' rather than de-mobilize, the inherited structures of colonial governance."

The role of the courts also became ineffective in many respects due to arbitrary action by other branches of government. Regulations conflicting with existing legislation were sometimes promulgated without repealing such legislation, resulting in added confusion. Inexperienced, poorly trained and underpaid judges contributed

to the further weakening of the judiciary and the breakdown of the rule of law in several places. Excessive prohibitions and restrictions also gave way to avoidance and evasions and invited corruption. *Just as bad men make bad law, bad law makes bad men.* Furthermore, the wholesale importation of legal systems yielded severe problems, in particular in traditional sectors where custom and religious law could be more familiar and better obeyed in the community. Indeed, two legal systems now coexist in a typical African country: one customary and “indigenous,” the other “modern” and “metropolitan.” The modern system pays little attention to the possibilities of using indigenous legal structures and tends instead to replace them. Constitutionalism was not part of the colonial heritage either. As a noted commentator has stated, the “modern” sector of this dual legal system was not developed to control government; rather it was developed as an instrument of colonial policy to facilitate growth of a “modern” social sector. African lawyers did not, therefore, inherit from the colonial powers a tradition of constitutionalism and judicial review. On the contrary, “the political influence of the bar, like that of the received modern legal system, has been limited.”

In 1989, the World Bank published a landmark study on African development: “The Sub-Saharan Africa Long Term Perspective Study.” While earlier reports attributed Africa’s economic problems mainly to economic management factors, this study spelled out for the first time the centrality of the issue of governance, and pointed out the importance of establishing the rule of law, rehabilitating the judicial system, ensuring independence for the judiciary, and scrupulous respect for the law and human rights at every level of government.

Indeed, the legal system in African countries represents, albeit sometimes more acutely, the defects of legal structures in developing countries in general. The system is often unresponsive to the needs of important parts of the community, especially the poorest. Laws may be deficient, contradictory, unwritten or simply nonexistent. Their publication may be delayed or may not take place. The civil

service in charge of administering the laws and regulations may be poorly trained, poorly paid and unmotivated so that a climate of uncertainty and corruption may prevail. Delays in delivering decisions, interference from political and administrative officials in judicial proceedings, and poor enforcement or nonenforcement of judicial decisions undermine public confidence in the judiciary. The organizational structure of the judiciary may also be deficient and often characterized by a dearth of qualified (especially specialized) judges, inadequate court facilities and operating budgets, an absence of publications on applicable laws and judicial decisions, and a lack of training of magistrates and clerks.

Also critical is the fact that arbitration, conciliation and mediation facilities—such as the ones we will be considering in this conference—and relevant legal frameworks for such facilities are not always readily available, at times due to the state’s fear of “parallel justice” by alternate dispute resolution mechanisms. This is so in spite of the fact that many African countries are parties to such arbitration treaties as the one establishing ICSID and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Clearly, deficiencies in the legal and judicial systems, such as the ones I have mentioned in all candor, make investment decisions more difficult and costly and further dissuade investors, both domestic and foreign. These investors certainly take into account in their decisions such questions as whether property and contractual rights can be enforced and whether disputes can be resolved in an evenhanded and expeditious manner by an independent judicial body or through arbitration.

It is indeed important in the context of development and social change that law remains a reflection of the political and social will of the people and, as such, the enactment or amendment of laws remains one of the fundamental expressions of a country’s legal jurisdiction or sovereignty. This concept of “ownership” could be ensured by encouraging wide and frequent consultations through deliberative processes at various levels and by making sure that new legislation reflects to the extent possible basic so-

cial norms or an existing or emerging public opinion.

I have stressed how much “law,” in its widest sense as encompassing the whole legislative, regulatory and institutional framework, can act as a supportive structure and mechanism for developmental activities. It should be recognized, however, that it can also impede and severely limit their growth and efficient operation. Ill-considered laws, overregulation, poor administration or a deficient court system introduce a strong element of uncertainty, reducing the flexibility of the private sector and increasing the cost of doing business. Even well drafted laws and regulations will be of little use if their administration is poor or if they cannot be enforced by the existing administrative and judicial structures, or can, through corruption, be applied in ways that serve special interests at the expense of the public good. *Good laws in themselves are not enough.* In the African context, the legal profession is called upon to devise appropriate processes and contribute to strengthening public institutions, both administrative and judicial. In this manner, it would contribute to the fight against corruption and to protecting the integrity of the public procurement process through transparent simple procedures and appropriate regulations which do not exceed their public purposes.

As a conclusion, I would like to highlight a main point. The connection of the rule of law with the more efficient use of resources (human, institutional and economic) gives law the possibility of being a main factor, and the legal profession the opportunity of becoming an important actor, in the promotion of economic development and social change. In performing its role, law should not be seen as a passive tool which merely reflects the prevailing forces in society in a given stage of its development. It should also be used as a dynamic mechanism that can positively respond to and influence society’s growing needs for organization and development. Judges can also play a proactive role by pointing out the deficiencies in existing rules and proceedings and identifying the need for change.

The basic challenge is to work on modernizing and increasing the sophistication of the legal systems within culturally acceptable limits, so that they may provide a legal infrastructure for development and a supporting, rather than an obstructive, framework for the realization of the objectives of developmental efforts.

The discussions in today’s conference will surely help to highlight some of the ways to meet this challenge.

## Disputes Before the Centre

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

*November 12, 1996*

The Tribunal informs the parties that the proceeding is closed.

*February 21, 1997*

The Award is rendered.

- **Tradex Hellas S.A. v. Republic of Albania (Case ARB/94/2)**

*December 24, 1996*

Decision upholding jurisdiction rendered.

- **Leaf Tobacco A. Michaelides S.A. and Greek-Albanian Leaf Tobacco & Co. S.A. v. Republic of Albania (Case ARB/95/1)**

*January 30, 1997*

Following a settlement agreed by the parties, the proceeding is discontinued at the request of the Claimants.

- **Cable Television of Nevis, Ltd. and Cable Television of Nevis Holdings, Ltd. v. Federation of St. Kitts and Nevis (Case ARB/95/2)**

*January 13, 1997*

Award declining jurisdiction rendered.

- **Antoine Goetz and others v. Republic of Burundi (Case ARB/95/3)**

*December 4, 1996*

The Tribunal holds its first session with the parties in Paris.

*March 4, 1997*

The Claimants file their Memorial.

- **Compañía del Desarrollo de Santa Elena S.A. v. Republic 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)**

*December 24, 1996*

Gavan Griffith, Q.C. (Australian) accepts his appointment as Sole Arbitrator.

*February 26, 1997*

The Sole Arbitrator meets with the parties in Sydney.

- **Fedax N.V. v. Republic of Venezuela (Case ARB/96/3)**

*November 27, 1996*

The Tribunal is constituted. Its members are: Professor Francisco Orrego Vicuña (Chilean), President, Professor Meir Heth (Israeli) and Mr. Roberts B. Owen (U.S.).

*January 17-18, 1997*

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

The Respondent files a Memorial on its objections to jurisdiction.

*February 26, 1997*

Claimant files its Counter-Memorial on Respondent's objections to jurisdiction.

- **Metalclad Corporation v. United Mexican States (Case ARB(AF)/97/1)**

*January 13, 1997*

The Secretary-General registers a request for the institution of arbitration proceedings under the Additional Facility Arbitration Rules.

- **Société d'Investigation de Recherche et d'Exploitation Minière (SIREXM) v. Republic of Burkina Faso (Case ARB/97/1)**

*January 27, 1997*

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

- **Société Kufpec (Congo) Limited v. Republic of Congo (Case ARB/97/2)**

*January 29, 1997*

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

- **Compañía de Aguas del Aconquija S.A. and Compagnie Générale des Eaux v. Argentine Republic (Case ARB/97/3)**

*February 19, 1997*

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

- **Robert Azinian and others v. United Mexican States (Case ARB(AF)/97/2)**

*March 24, 1997*

The Secretary-General registers a request for the institution of arbitration proceedings under the Additional Facility Arbitration Rules.

## New Designations to the ICSID Panels of Conciliators and of Arbitrators

### BAHRAIN

#### *Panel of Conciliators*

Designations effective as of September 23, 1996: Messrs. Ahmed E. Al-Balushi, Ali Y. Al-Khayatta, Yousif Yacoob Yousif and Dr. Jaffer Al-Sayegh.

#### *Panel of Arbitrators*

Designations effective as of September 23, 1996: Messrs. Yousif Zain. Al-Abdeen Moh'd Zaynal, Mahmood Hashim Al-Kooheji, Aref Saleh Khamis and Mohamed Ali Taleb.

### COSTA RICA

#### *Panels of Conciliators and of Arbitrators*

Designation effective as of January 9, 1997: Professor Thomas Buergenthal.

### EGYPT

#### *Panel of Conciliators*

Designations effective as of April 23, 1996: Dr. Ahmed Sadek El Kosheri and Dr. Mahmoud Samir El-Sharkawi

#### *Panel of Arbitrators*

Designations effective as of April 23, 1996: Mr. Mahmoud Fahmy and Dr. Ahmed Esmat Abdel Meguid.

#### *Panels of Conciliators and of Arbitrators*

Designations effective as of April 23, 1996: Dr. Mohie El Din Ali Ashmawi and Dr. Moufid Shehad.

### FRANCE

#### *Panel of Arbitrators*

Designation effective as of July 26, 1996: Mr. Gilbert Guillaume.

### ICELAND

#### *Panels of Conciliators and of Arbitrators*

Designations effective as of August 9, 1996: Dr. Gunnar G. Schram and Messrs. Gudmundur Eiriksson and Eirikur Tomasson.

### KENYA

#### *Panel of Conciliators*

Designations effective as of July 22, 1996: Messrs. Dan K. Ameyo, Joseph N.K. Arap Ng'ok, Peter Wanyaga Muthoka and Godfrey Kassim Owango.

#### *Panel of Arbitrators*

Designation effective as of July 22, 1996: Mr. S.A. Wako.

### NORWAY

#### *Panels of Conciliators and of Arbitrators*

Designations effective as of August 27, 1996: Mrs. Else Bugge Fougner, Messrs. Henrik Bull, Hans Wilhelm Longva and Jens Fredrik Wilhelmsen.

### PARAGUAY

#### *Panel of Conciliators*

Designations effective as of September 11, 1996: Messrs. James Spalding Hellmer, Francisco Ogura Kono, Ovidio Otazu and Luis Fernando Villalba.

#### *Panel of Arbitrators*

Designations effective as of September 11, 1996: Messrs. Gregorio Poletti, Jorge Ramirez Ramirez, Walter Villalba Zaldivar and Gabriel Martinez Zarza.

### UNITED KINGDOM

#### *Panel of Conciliators*

Designations effective as of October 9, 1996: Sir Adrian Cadbury, Sir Sydney Lipworth, Messrs. Francis Neate and Mark Sheldon.

#### *Panel of Arbitrators*

Designations effective as of October 9, 1996: Mr. David C. Calcutt, The Honorable Lord Dervaird, Professor Robert B. Jack and Professor Elihu Lauterpacht.

## Institutional Discretion to Foster Arbitral Efficiency: The Case of ICSID

by Aron Broches, International lawyer and arbitrator, past Vice President and General Counsel, World Bank and past Secretary-General, ICSID

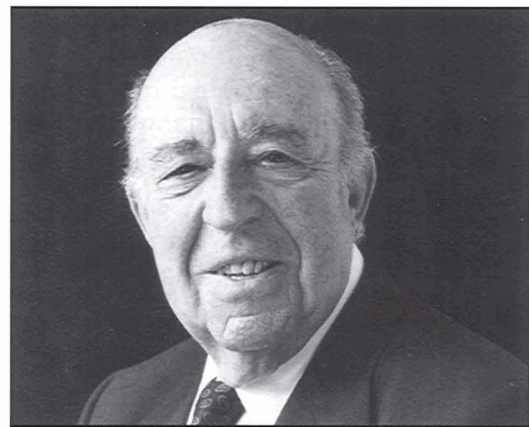
Remarks delivered at the Thirteenth ICSID/American Arbitration Association/International Chamber of Commerce Court of Arbitration Joint Colloquium on International Arbitration, New York, November 15, 1996

Looking at the Colloquium as a feast, the present section which is wedged between the two main courses—and please do not call them “entrees”—may serve as it were to clean the palate before moving on to the rich fare of the final section of the program.

In non-culinary terms, the present section is not concerned with the concept and scope of party autonomy in international arbitration. It rather envisions the case in which party autonomy, including the power to organize the proceedings, has for one reason or another fallen short of achieving arbitral efficiency and raises the practical question what contribution arbitral institutions (and we are talking of institutional arbitration) may make to achieve that objective.

It is by no means the first time that this question is discussed among members of the arbitration community. The pursuit of the ideal of arbitral efficiency has lost nothing of its importance and is continuing.

I want to recall in particular the Tenth International Arbitration Congress of the International Council on Commercial Arbitration held in Stockholm in 1990. One of the main subjects of the Conference was “Preventing Delay and Disruption of Arbitration.” This is a partial overlap with the issue we are discussing this afternoon. In Stockholm we were concerned with defense mechanisms against actions by parties, their counsel and arbitrators which, whether or not intended to have that effect, led to delay and, worse, disruption of arbitration. Our focus here is not the prevention of such results but rather the scope for positive action on the part of arbi-



Judith Walser

Aron Broches

tration institutions to increase the efficiency of the process. I shall briefly examine this in relation to the International Centre for Settlement of Investment Disputes (ICSID).

As most of you know, ICSID is an institution which administers a specialized autonomous and self-contained arbitration system established by a multilateral treaty, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. The reference to “States” is to Contracting States, i.e. States that have become parties to the Convention. They number 126 at the present time and 13 additional States have signed the Convention and are preparing to become Contracting States by ratifying or approving it.

Being a Contracting State or a national of a Contracting State is a necessary condition for having recourse to arbitration under the Convention whether as a claimant or respondent. However, the jurisdiction of the Centre and the arbitral tribunals constituted under the Convention rests on



consent of the parties. Traditionally, such consent has been evidenced by an arbitration clause in an agreement of the parties or a separate arbitration agreement. However, the Convention does not prescribe how consent is to be expressed and the Report of the Executive Directors of the World Bank with which the Convention was submitted to the Bank's members stated as an example that "a host State might in its investment promotion legislation offer to submit disputes arising out of certain classes of investment to the jurisdiction of the Centre and the investor might give his consent thereto in writing."

The potential for compulsory ICSID arbitration without a specific advance exchange of consents by the parties has been exponentially increased by provision for such arbitration in many of the hundreds of bilateral investment protection treaties and more recently in multilateral treaties such as the NAFTA and the Energy Charter Treaty. ICSID can no longer be considered an interesting institution of limited relevance.

The proceedings are governed by the Convention and the Regulations and Rules adopted by the Centre's Administrative Council. They are technical and complex instruments whose application may pose problems not only for counsel but also for arbitrators whose experience is limited to arbitrations which although "international" judged by subject matter, nationality or residence of the parties, are nevertheless part of the national legal order. In contrast, ICSID arbitration proceedings are governed entirely by public international procedural law. Because of these special characteristics and the fact that every proceeding includes a governmental party, the Regulations and Rules envisage an important administrative role for the Secretariat.

On one point the Convention itself does so in connection with the place of proceedings which unless otherwise provided will be held in Washington. The parties may however choose another place, away from Washington, at the Permanent Court of Arbitration or at other institutions with which the Centre has made arrangements for the purpose. Other venues must be approved by the Tribunal after consultation with the Secretary-General. While the place of arbitration has no legal significance, its choice may have important

consequences for the cost of proceedings and, more importantly, a cause for delay because of inadequate administrative and technical infrastructure. Arbitral Tribunals are not likely to disregard negative views of the Secretary-General.

The concern with speedy and efficient conduct of proceedings is reflected in the mandate of the President of the Tribunal to seek as a matter of priority the views of the parties on questions of procedure, including such matters as the language to be used in the proceedings, the number and sequence of the pleadings and time limits for their submission and dispensing with the written or oral procedure. It may be assumed that the Secretariat will play an important role in briefing the President. The Arbitration Rules also give a direct role to the Secretary-General, authorizing him to request a pre-hearing conference between the Tribunal and the parties "to arrange for an exchange of information and the stipulation of uncontested facts in order to expedite the proceedings."

However, by far the most significant potential for promoting arbitral efficiency flows from the rule which requires the Secretary-General to appoint a secretary for each Tribunal. This offers an opportunity to create an independent secretariat which through its familiarity with the institution can assist tribunals in matters of procedure and help "managing" the proceeding. The secretary is to follow the proceeding closely and should normally attend and keep a record of all of the Tribunal's meetings with the parties. The secretary is to be available to the President for whatever assistance or advice on questions of procedure he requests. The secretary can render particularly valuable service in guiding the Tribunal in walking safely through the rules of a specialized arbitration without threat of a successful request for annulment. But the degree of the secretary's involvement will depend on his relations with the President and the wishes of the latter.

On subjects such as documentation supporting claims and defenses the Rules contain detailed provisions many of which may be waived by the Tribunal or the parties. It would be perfectly proper for the secretary to draw the attention of the President to such possibilities and more generally to any points on which action by the Tri-

bunal or the parties may render the arbitral proceedings more efficient.

In an environment where the parties, their counsel and the arbitrators may come from different countries, if not continents, one should not underestimate the importance of such apparently pedestrian issues as verification of receipt of communications or confirmation of transportation and hotel reservations. Any misunderstanding or mishap may cause unforeseeable delays.

In the Centre's earliest years, I paid particular attention to the support function of the secretariat. This approach is being continued by Mr.

## **First ICSID Additional Facility Proceedings under the NAFTA**

*(continued from page 1)*

any of the States parties to the NAFTA (Canada, Mexico and the United States) and investors from another NAFTA party. The Investment Chapter sets forth the consent of the NAFTA parties that such disputes may be submitted to arbitration under the ICSID Convention, under the ICSID Additional Facility Rules or under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

Arbitration under the ICSID Convention is available for the resolution of investment disputes between member countries of ICSID and nationals of other member countries. Arbitration under the ICSID Additional Facility Rules is available for cases where one, but not both, of

Shihata and tribunals sitting wherever in the world are being provided with the assistance of highly competent multilingual staff, able to do their share in promoting arbitral efficiency.

Unlike ICC and AAA, the Centre does not levy an administrative charge, claiming only reimbursement of out of pocket costs, including travel and subsistence of persons acting as secretaries. No charge is made for the time they devote to this task. I hope that the Centre will continue this subsidy to the quality of arbitration in a delicate area. Even if this is not possible, the cost of secretariat service would only be a fraction of parties' total arbitration costs, including the cost of counsel.

the countries concerned is an ICSID member. Two of the NAFTA parties, Canada and Mexico, are not yet ICSID members. Arbitration under the ICSID Convention however stands as an alternative that can be resorted to once either of those two countries joins ICSID. Until then, ICSID Additional Facility Rules arbitration and UNCITRAL Rules arbitration are available for disputes between U.S. investors and either Canada or Mexico or between the U.S. and investors from either of the two other countries. In respect of disputes between Canadian investors and Mexico, or between Mexican investors and Canada, only UNCITRAL Rules arbitration is available (since, as indicated above, ICSID Additional Facility Rules arbitration is not available when neither the home nor the host country of the investor is an ICSID member).

This issue of *News from ICSID* notes (at page 6) the institution of the first two investor-State proceedings under the NAFTA which are also the first proceedings under the ICSID Additional Facility Rules.

## The Privatization Challenge: A Strategic, Legal and Institutional Analysis of International Experience

The World Bank has recently published a study that draws on lessons from privatization experience in over fifty countries. The author of the study, Pierre Guislain of the World Bank's Private Sector Development Department, addresses policy aspects, strategic approaches to privatization as well as legal issues ranging from constitutional requirements to the overall business environment. Annexes list legislation from over 100 countries and about 500 biographical references, as well as specialized journals and Internet resources on privatization.

The publication of *The Privatization Challenge* follows the publication in 1995 of Mr. Guislain's *Les Privatisations: Un défi stratégique, juridique et institutionnel*, which was reviewed in the Fall 1995 issue of the *ICSID Review—Foreign Investment Law Journal*. *The Privatization Challenge* may be purchased from: The World Bank, P.O. Box 7247-8617, Philadelphia, Pennsylvania 19170-8619, U.S.A.

## New ICSID Publications

The Centre has recently completed the Fall 1996 issue of its *ICSID Review—Foreign Investment Law Journal*. The issue includes an article on "U.S. Legislation Directed Against Persons Investing in Property Confiscated by

Cuba" by Preston Brown and the first instalment of a "Commentary on the ICSID Convention" by Christoph Schreuer.

The issue also reproduces papers delivered at the International Conference on the Settlement of Energy and International Electric Networks Disputes, held in Cairo on November 19-20, 1995, and co-sponsored by the Cairo Regional Centre for International Commercial Arbitration and the World Bank. These include "The Particularity of the Conflict Avoidance Methods Pertaining to Petroleum Agreements" by Ahmed S. El Kosheri; "Conflict Avoidance Through Prior Agreement: Offshore Delimitation Agreements, Offshore/Onshore Unitization and/or Joint Development Agreements" by Keith Highet; and "The Joint Development of International Petroleum Resources in Undefined and Disputed Areas" by Ibrahim F.I. Shihata and William T. Onorato.

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 subscription rates (excluding postal charges) are US\$57 for subscribers with a mailing address in a member country of the Organisation for Economic Co-operation and Development and US\$28.50 for others.

Other recent publications of the Centre include two new releases (96-3 and 96-4) of ICSID's collection of *Investment Treaties*. Included in these two releases are 55 new bilateral investment treaties entered into by some 45 countries during the years 1991-1995.

*Investment Laws of the World* (ten volumes) and *Investment Treaties* (six volumes) may be purchased from Oceana Publications, Inc., 75 Main Street, Dobbs Ferry, New York 10522, U.S.A., at US\$950 for the *Investment Laws of the World* collection and US\$550 for the *Investment Treaties* collection.

## **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.