NEWS FROM ICSID

International Centre for Settlement of Investment Disputes

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Major Features:

- Major Progress towards the Establishment of MIGA
- ICSID and the Courts
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New Chairman of the Administrative Council. On July 1, 1986, Mr. Barber B. Conable succeeded Mr. A. W. Clausen as President of the World Bank. Mr. Conable also succeeds Mr. Clausen as Chairman of ICSID's Administrative Council, a position occupied *ex officio* by the President of the Bank. Mr. Conable, who is pictured above, was a practicing lawyer and served as a U.S. Congressman from 1965 to 1985.

Further Progress towards the Establishment of MIGA

The last issue of *News from ICSID*, Vol. 3, No. 1 (Winter 1986) reported the opening for signature of the Convention Establishing the Multilateral Investment Guarantee Agency (the MIGA Convention) on October 11, 1985 at the Annual Meeting of the World Bank's Board of Governors in Seoul, Korea. The MIGA Convention will enter into force upon its ratification by five industrial countries and fifteen developing countries provided that the subscriptions of these countries total at least one-third of MIGA's initial authorized capital of $1.082 billion. The Governors provided that once the MIGA Convention had been signed by the number of countries whose ratifications were required for entry into force, the President of the World Bank would convene a committee of the signatory states to prepare the draft by-laws, rules and regulations required for the initiation of MIGA's operations. When the MIGA Convention enters into force, the drafts of this preparatory committee would be submitted to MIGA's governing bodies for adoption.

Three countries signed the MIGA Convention on the same day that it was opened for signature. As of July 8, 1986, thirty-three countries had signed the Convention, including six industrial countries and twenty-seven developing countries. These countries account for subscriptions totalling over 44 percent of MIGA's authorized capital. The committee of signatory States which will prepare the draft rules and regulations needed for the initiation of MIGA's operations will meet in Washington in mid-September 1986, and as the ICSID Secretary-General observed in a recent address before the American Society of International Law, "the prospect of having an operational MIGA in 1987 is no longer a remote possibility."

Disputes before the Centre

AMCO Asia et al v. the Republic of Indonesia (Case ARB/81/1) - Annulment Proceeding

November 15, 1985	Claimants-Oppositors file their Rejoinder to Indonesia's Application forAnnulment.
January 7-13, 1986	The *ad hoc* Committee meets in Vienna (from January 8-10 with the parties).
April/May, 1986	The *ad hoc* Committee meets in Paris and in Vienna
May 16, 1986	The *ad hoc* Committee issues its decision. The decision annuls the Award of November 20, 1984.

Klöckner-Cameroon (Case ARB/81/2) - Resubmission

March 3, 1986	The Tribunal is constituted, following resubmission of the dispute to ICSID arbitration in the summer of 1985. Its members are: Carl F. Salans, Esq. (U.S.) President, appointed by both parties; Me. Juan Antonio Cremades Sanz Pastor (Spanish), appointed by Klöckner; and H.E. Jorge Castaneda (Mexican), appointed by Cameroon.
April 18, 1986	The Tribunal meets in Paris for a preliminary procedural consultation.

Société Ouest Africaine des Bétons Industriels (SOABI) v. the State of Senegal (Case ARB/82/1)

January 8-9, 1986	The Tribunal meets in The Hague.
January 29, 1986	The Tribunal issues Procedural Order No. 5 requesting additional information.
March 3-4, 1986	The Tribunal meets in Amsterdam and The Hague.
March/April, 1986	The parties submit information requested by the Tribunal.

The Liberian Eastern Timber Corporation (LETCO) v. the Government of the Republic of Liberia (Case ARB/83/2)

December 9-11, 1985	The Tribunal meets in Paris to hear witnesses.
February 10, 1986	The President of the Tribunal declares the proceeding closed in accordance with Arbitration Rule 38(1).
March 31, 1986	The Award is rendered.

Atlantic Triton Company Limited v. the Republic of Guinea (Case ARB/84/1)

February 19, 1986	Claimant files Memorial, dated

	December 1, 1985, as requested by the Tribunal at its hearing in September 1985.
February 25, 1986	The President of the Tribunal informs the parties that the proceeding is closed in accordance with Arbitration Rule 38(1).
March/April 1986	The Tribunal meets in Paris and in Rotterdam.
April 21, 1986	The Award is signed by the arbitrators.

Colt Industries Operating Corp., Firearms Division v. the Government of the Republic of Korea (Case ARB/84/2)
No new developments since the publication of the last *News from ICSID*.

SPP (Middle East) v. the Arab Republic of Egypt (Case ARB/84/3)

November 21-27, 1985	The Tribunal meets in London.
November 27, 1985	The Tribunal issues a decision on the preliminary objections to jurisdiction and stays the proceeding until proceedings in the French courts have finally resolved the question whether the parties agreed to submit their dispute to the jurisdiction of the International Chamber of Commerce.

Maritime International Nominees Establishment (MINE) v. the Republic of Guinea (Case ARB/84/4)

December 4, 1985	The Tribunal recommends provisional measures and in particular that: (i) MINE immediately withdraw and permanently discontinue all proceedings in national courts, and commence no new action, arising out of the dispute; and (ii) MINE dissolve every existing provisional measure in litigation in national courts and seek no new provisional remedy in a national court.
December 20, 1985	Claimant files its Reply to the Counter-Memorial.
December 24, 1985	Claimant files Application for Reconsideration and Modification of the Tribunal's recommendations of December 4, 1985.
February 5, 1986	The Tribunal denies Claimant's Application.
March 10, 1986	The Tribunal meets in Washington, D.C. in the presence of the parties.

New Additions to the Panels of Conciliators and Arbitrators

The following Governments have made designations to the Panels of Conciliators and of Arbitrators:

BOTSWANA—designations effective as of February 20, 1986:
Panels of Conciliators and of Arbitrators:
Mr. I.S. Kirby, Mr. E.W.M.J. Legwaila, Mr. J.Z. Mosojane, and Mr. P.T.C. Skelemani.

DENMARK—designations effective as of June 11, 1986:
Panels of Conciliators and of Arbitrators:
Mr. Isi Foighel (re-appointment), Mr. Kurt Haulrig, Mr. Per Magid, and Mr. Frank Poulsen.

KOREA—designations effective as of May 22, 1986:
Panel of Conciliators:
Dr. Soung Soo Kim, Mr. Kwang Young Kim, Mr. Hai-Hyung Cho, and Mr. Choon Taik Chung.
Panel of Arbitrators:
Mr. Suk Yoon Koh, Mr. Doo-Hyun Kim, Dr. Sang Hyun Song, and Dr. Ju-Chan Sonn.

MOROCCO—designations effective as of November 25, 1986:
Panels of Conciliators and of Arbitrators:
Mr. Bensalem Ahmed (re-appointment), Mr. Mohammed Hassan, Mr. Hassan Kettani, and Mr. M'Fadel Lahlou.

SENEGAL—designations effective as of April 15, 1986:
Panel of Arbitrators:
Mr. El Hadji Demba Diop (re-appointment), Mr. Mouhamadou Moctar MBacke, Mr. Yoro Bocar Sy.

UNITED KINGDOM—designation effective as of April 28, 1986:
Panel of Conciliators:
Mr. D.C. Calcutt, QC (replacement)

Recent Publications on ICSID

Gaillard, Emmanuel
L'Interdiction de se contredire au détriment d'autrui comme principe général du droit du commerce international, Revue de l'Arbitrage, 1985, 241-58.

Khan, Philippe
Souveraineté de l'Etat et règlement du litige - régime juridique du contrat d'Etat, Revue de l'Arbitrage, 1985, 641-61.

Lalive, Pierre
Some Threats to International Investment Arbitration, 1

ICSID Review - Foreign Investment Law Journal 26-40 (1986).

Rambaud, Patrick
Deux arbitrages CIRDI, Annuaire Français de Droit International, 1984, 391-08.

Shihata, Ibrahim F.I.
Towards a Greater Depoliticization of Investment Disputes: the Roles of ICSID and MIGA, 1 ICSID Review - Foreign Investment Law Journal, 1-25 (1986).

Soley, David A.
ICSID Implementation: An Effective Alternative to International Conflict, 19 Int'l Lawyer 521-44 (1985).

ICSID and the Courts

by Bertrand P. Marchais

In two recent decisions, domestic courts have confirmed the exclusive character of consent to ICSID arbitration and the rule according to which domestic courts in Contracting States must abstain from any action that might interfere with the conduct of ICSID proceedings (Article 26 of the ICSID Convention).

This rule of "judicial abstention" (see Delaume, "ICSID Arbitration and the Courts," 77 Am. J. Int'l L. 784 (1983)) has been considered in situations in which one of the parties to an ICSID clause requested the assistance of domestic courts to order provisional measures.

The first case in point was *Atlantic Triton Company Limited v. People's Revolutionary Republic of Guinea* (ICSID Case No. ARB/84/1), during the course of which the Atlantic Triton Company instituted attachment proceedings relating to the property of Guinea in France. In a decision rendered on October 26, 1984 (*République populaire révolutionnaire de Guinée et Société Guinéenne de Pêche (SOGUIPECHE) c/ Société Atlantic Triton*, Journal du Droit International, 1985, 925-44, Revue de l'Arbitrage, 1985, 439-56, (an English translation of the decision appears in *News from ICSID* Vol. 2, No. 2 (Summer 1985) 6-9)), the Court of Appeal of Rennes, France, made an unqualified application of the rule and vacated the attachments.

The rule is reaffirmed under similar circumstances in the decisions of the judge for attachment matters of the Court of First Instance of Antwerp and of the Tribunal of First Instance of Geneva, in *Maritime International Nominees Establishment (MINE) v. the Republic of Guinea* (ICSID Case No. ARB/84/4); excerpts of these decisions are reproduced below in English translation.

To set these decisions in the proper context, it should be recalled that under Article 47 of the Convention, an ICSID Tribunal may recommend any provisional measures which should be taken to preserve the respective rights of the parties. Article 39 of the Arbitration Rules provides that recommendations on provisional measures can be made by the arbitral tribunal either at the parties' request (Article 39(1)) or on the tribunal's own initiative (Article 39(3)). This is, in effect, what happened in the present case. As stated by the Court of Geneva, the ICSID arbitration tribunal recommended that:

> *1. . . . MINE immediately withdraw and permanently discontinue all pending litigation in national courts, and commence no new action, arising out of the Dispute. . . .*
>
> *2. . . . MINE dissolve every existing provisional measure in litigation in national courts (including attachment, garnishment, sequestration, or seizure of the property of Guinea, by whatever term designated and by whatever means performed) and seek no new provisional remedy in a national court.*
>
> *3. Pursuant to Article 47 and the applicable ICSID Regulations and Rules, the Tribunal will take into account in its award the effects of any non-compliance by M.I.N.E. with its recommendations.*

The facts of the case may be summarized as follows:

In 1971, MINE, a Lichtenstein corporation fully owned by a Swiss national, and the Republic of Guinea, entered into an agreement providing for the creation under the laws of Guinea of a joint venture. Subsequently, the parties agreed upon a stipulation that expressly provided for the submission of disputes to ICSID.

Notwithstanding this agreement, MINE obtained an *ex parte* award rendered under the auspices of AAA. MINE instituted proceedings in a U.S. Federal Court and obtained confirmation of the award. This decision was reversed by the Court of Appeals for the District of Columbia. The court based its decision not on the Convention, but on considerations found in the Foreign Sovereign Immunity Act (FSIA). It ruled that although consent to arbitration might constitute a waiver of immunity under the FSIA, no such waiver could be inferred from a consent to arbitration under the auspices of ICSID since American courts were "powerless to compel ICSID arbitration." By consenting to ICSID arbitration Guinea had not waived its immunity and the lower court should have declined jurisdiction.

In May 1984 MINE filed a request for arbitration before ICSID. An arbitral tribunal was constituted which assumed jurisdiction over the dispute in July 1985.

Nevertheless, MINE moved, on the basis of the AAA award, to seek attachment of assets of the Republic of Guinea located in Europe. It obtained attachment orders in Antwerp and in Geneva. Guinea's response was twofold. It requested the arbitral tribunal to recommend that MINE discontinue such procedures. In response to Guinea's request, the arbitral tribunal recommended on December 4, 1985 the above quoted provisional measures. Guinea also

applied to the domestic courts involved to have the attachments vacated.

It was in this context that (1) the Tribunal of Antwerp on September 27, 1985, and (2) the Tribunal of Geneva on March 13, 1986 rendered their decisions. It should be noted that prior to the rendering of the decision of the Geneva Tribunal, the case had been considered by the Federal Tribunal of Switzerland (the Swiss Supreme Court) and that the Court had acknowledged the exclusivity of ICSID proceedings according to Article 26 of the Convention.

1. *Decision of the Tribunal of Antwerp*

Public Hearings of the Judge for Attachment Matters
September 27, 1985
Case Number 6.551
The Republic of Guinea and its Public Institutions, Plaintiff
v.
Maritime International Nominees Establishment
(MINE), Defendant

The Judge for Attachment Matters decides the following:

. . .

Considering that the parties agreed that disputes arising between them would be settled by the International Centre for Settlement of Investment Disputes (ICSID) by virtue of the Washington Convention, as appears from the agreement entered into by the parties on August 19, 1971, on December 6, 1974 and January 23, 1975;

That the present Defendant, after having introduced proceedings against the present Plaintiff before the ordinary courts, referred the matter to the ICSID in 1984, and that ICSID declared itself competent (p. 68 of the report of the ICSID arbitral hearing on July 3, 1985);

That ICSID thus is exclusively competent and excludes the intervention of the national courts of a state which ratified the Washington Convention;

That Belgium ratified the Washington Convention by Law of July 17, 1970;

That Article 26 of the Washington Convention reads as follows:

> *"Consent of the parties to arbitration under this Convention shall, unless otherwise stated, be deemed consent to such arbitration to the exclusion of any other remedy;"*

That the term "remedy" means: The means by which a right is exercised or the violation of a right is prevented, redressed or compensated. Remedies are of four kinds: by act of the injured party, the principal of which are prohibition, recaption, security, entry, abatement and attachment according to the texts submitted by the Plaintiff and not seriously contested by the Defendant;

That the parties did not declare, as allowed by Article 26 of the Washington Convention, that a remedy other than arbitration provided for by the Convention was allowed;

That, consequently, according to Article 26 of the Washington Convention of March 18, 1965, any possibility to introduce an action before the national courts of one of the Contracting States, in this case Belgium, is excluded for the contracting parties including the possibility to institute proceedings to obtain an attachment (see above, concerning "remedy") (Court of Appeal of Rennes, France, October 26, 1984, *News from ICSID*, Vol. 2, Nr. 2, Summer 1985, 6-9);

That the other criteria, i.e, the urgency (article 1413 of the Judicial Code) and the certainty, the exigible and fixed nature of the claim of the seizing defendant party, do not have to be examined; the same applies to the question of the applicability of the principle of the immunity of the State;

Consequently that, as said above, it is established that we are not competent as a result of the agreement between the parties to submit all disputes arising between them to the International Centre for Settlement of Investment Disputes established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington on March 18, 1965 and ratified by Belgium by Law of July 17, 1970, especially Article 26 of this Convention;

Consequently, that the claim of the Plaintiff is founded insofar as it seeks to obtain the lifting of the attachments of goods in the hands of third parties . . . .

FOR THESE REASONS:

We, J. VANDERHOEGHT, judge for attachment matters in the Court of First Instance sitting at Antwerp, assisted by B. Zajtmann, clerk;

. . .

Declare that the following attachments for security made at the request of the Defendant are lifted . . . .

2. *Decision of the Tribunal of Geneva*

Republic and Canton of Geneva
Court of First Instance, Eighth Chamber
Judgment No. 2514
Thursday, March 13, 1986
between
Maritime International Nominees Establishment, applicant
and
The Republic of Guinea, respondent

This day, THE COURT renders the following judgment:

. . .

Whereas considering that according to the act signed December 6, 1974, and January 23, 1977, the parties agreed to submit their difference to ICSID,

Whereas a proceeding is pending before the ICSID arbitral Tribunal, which was initiated by MINE on May 7, 1984, and

Whereas according to Article 26 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, dated March 18, 1965, the consent of the parties to arbitration under the Convention is, unless otherwise agreed, considered as implying a waiver of all other remedies,

Whereas Switzerland ratified the Convention of March 18, 1965,

Whereas the Convention is thus part of Swiss law (see ACJ of 11/13/81 I.S.A. c/ ST, p. 8),

Whereas it should be recognized that in referring to this Court, the petitioner is not acting in conformity with Article 26 of the Convention,

Whereas in the decision dated December 4, 1985 (p. 7) the Federal Tribunal noted the exclusivity of the ICSID arbitration proceeding,

Whereas the ICSID Arbitral Tribunal itself held that the litigation instituted by MINE in national courts constitutes a violation of its request for ICSID arbitration and constitutes "other remedy" within the meaning of Article 26 of the Convention,

Whereas in its decision on provisional measures dated December 4, 1985, the ICSID Arbitral Tribunal recommended to MINE that it withdraw and permanently discontinue all pending litigation in national courts, as well as dissolve all other provisional measures (see respondent's exhibit 1),

Whereas on February 5, 1986, the ICSID Arbitral Tribunal rejected MINE's request for rehearing and modification relating to the provisional measure rendered December 4, 1985 (see respondent's exhibit 35),

Whereas recourse to ICSID arbitration should be considered as an implied waiver of all other means of settlement (art. 26) . . . when a State agrees to submit a dispute to ICSID arbitration and to thereby give an investor access to an international forum, this State should not be exposed also to other means of pressure or to other remedies (Revue de l'Arbitrage 1983, Le CIRDI et l'Immunité des Etats, Georges R. Delaume, p. 144, 145, 157),

Whereas in a case between the parties, relating to their dispute relative to the contract of August 19, 1971, the Attachment Judge of Antwerp upheld the exclusivity of ICSID, which had accepted jurisdiction, and held that the intervention of national courts of a State which has ratified the Washington Convention is excluded (see respondent's exhibits 11, 12),

Whereas it may be pointed out that in its response to the public law appeal (p. 22, 23), MINE emphasized that the lifting of provisional measures, if granted, should be ordered by the Arbitral Tribunal, because the question is directly linked to the competence of ICSID,

Whereas the ICSID Arbitral Tribunal has ruled on these provisional measures, and recommended their withdrawal in its decision of December 4, 1985,

Whereas according to the Message of the Federal Council, concerning the approval of the Convention on the Settlement of Investment Disputes between States and Nationals of other States, by virtue of a general principle of international law, a claim may only be brought before an international authority after the exhaustion of all local remedies. This rule is equally valid when the parties choose arbitration as the means of settling their dispute. With regard to arbitration as provided for by the Convention, the consent of parties must be considered as indicating waiver of all other remedies (F.F. 1967 2, p. 1466),

Whereas the request which MINE filed with this Court is contrary to the exclusive nature of ICSID arbitration as provided in Article 26 of the Washington Convention of March 18, 1965,

Whereas MINE thus could not appear before this Court,

Whereas in addition, for the same reasons, the award invoked by MINE cannot be considered binding (art. 5 ch. 1 of the New York Convention),

Whereas there is yet another reason why the request cannot be acted upon,

Whereas the award of the American Arbitration Association tribunal invoked by MINE was rendered in June 1980,

Whereas for this same dispute with the Republic of Guinea, MINE instituted a new arbitration proceeding before ICSID in May 1984,

Whereas this arbitration proceeding is currently pending,

Whereas the award invoked by MINE in support of its request cannot be considered as final,

Whereas as a result of MINE's conduct, which has initiated a new arbitration proceeding, the dispute between the parties may not be considered definitively settled,

Whereas the question whether an award is binding must be decided in the first place under the law governing the arbitration proceeding. Within the scope of their autonomy, the parties freely designate the law of the proceeding (see art. 5(1)(d) of the New York Convention). As a consequence of the preeminence which the New York Convention gives to their free will, the parties may establish their own rules of procedure or may adopt pre-existing rules, either official or private (see J d T 1982, p. 369, 370),

Whereas the parties agreed to submit their disputes to the ICSID Arbitral Tribunal,

Whereas following the American Arbitration Association's award, the petitioner went before ICSID,

Whereas this request for arbitration by MINE implies that MINE has accepted Article 26 of the Washington Convention of March 18, 1965, as the law which governs the arbitration proceeding,

Whereas MINE has thus acknowledged that the award of June 1980 had no binding effect and, above all, did not have the right to come before this Court,

Whereas for all the foregoing reasons, the request filed on October 23, 1985, by MINE is dismissed . . . .

For these reasons,

THE COURT

Acting by means of summary judgment:

Dismisses the request of MARITIME INTERNATIONAL NOMINEES ESTABLISHMENT filed on October 23, 1985, and dismisses all its pleas;

Orders MARITIME INTERNATIONAL NOMINEES ESTABLISHMENT to pay to THE REPUBLIC OF GUINEA the sum of SF 25,000 for expenses;

Dismisses all other pleas of the parties . . . .

Note: The full text of these decisions will appear in the second issue of *ICSID Review - Foreign Investment Law Journal*. The translation of the decision of the Geneva Court is based on texts provided by Cadwalader, Wickersham & Taft, Washington, D.C. The full text of the decision of the Tribunal of Antwerp also appears in 21 International Legal Materials 1639 (1985).

ICSID/MIGA and International Lending

Mr. Georges R. Delaume, Senior Legal Adviser, ICSID, attended the Fourth Annual Institute on International Finance organized by the Southern Methodist University, Dallas, Texas, on April 16–18, 1986. The subject of the Institute was: "Prospects for International Lending and Rescheduling." A faculty of over 30 experts drawn from government, international organizations, central banks, universities, and the private business and financial sectors participated. The proceeding will be published in a two-volume work. Mr. Delaume's speech was entitled "ICSID and International Lending." It reviewed the major features of ICSID arbitration/conciliation and discussed the contribution that ICSID can make to the settlement of loan disputes. The paramount advantage of ICSID is the exceptional degree of fairness and legal protection that it affords to both lenders and borrowers. The balancing of interests between the parties, which is the characteristic feature of ICSID, assures lenders of effective remedies and also protects borrowers from harrassment in domestic courts. As a result, borrowers may be more willing to comply with an ICSID award than with another type of award or with a judgment rendered in a leading financial center, including that in which the lenders operate. Proceedings relating to loan disputes could be accelerated if the parties agreed to submit disputes to a sole arbitrator or conciliator particularly versed in financial matters. Also the new prehearing conference instituted in 1984 (see Parra, "Revised Regulations and Rules," *News from ICSID* Vol. 2, No. 1 (Winter 1985), 4) can afford both lenders and borrowers an opportunity to assess realistically the situation and may be conducive to a settlement in the form of rescheduling of debt or some other type of arrangement mutually satisfactory to the parties.

On behalf of Mr. Ibrahim F.I. Shihata, Secretary-General of ICSID, Mr. Delaume commented on the possible contribution that the Multilateral Investment Guarantee Agency (MIGA) could make to further international lending. MIGA could accomplish this objective in two ways. MIGA will perform a broad range of promotional activities, including research, dissemination of information on investment opportunities in developing countries and the provision of technical advice and assistance to remove impediments to the investment flow in both developed and developing countries. Also, MIGA will guarantee, coinsure or reinsure eligible investments, which may include medium and long-term loans relating to investments contributing to the economic development of the host country. MIGA will also be in a unique position to facilitate amicable settlements. It will be able to moderate the conflicting claims of investors (including lenders) and States and to increase the likelihood of settlement. It might alleviate the burden of such settlements on the governments concerned. For example, MIGA might accept local currency on a temporary basis and pay the investor/lender out of its own fund in freely usable currency.

Fourth Symposium on International Commercial Arbitration and Transnational Litigation

with specific emphasis on dispute resolution in the Asia/Pacific Region

This symposium co-sponsored by the American Arbitration Association, the Court of Arbitration of the International Chamber of Commerce and the International Centre for Settlement of Investment Disputes, together with the International Bar Association, will be held on September 11 and 12, 1986 in the Westin St. Francis, Union Square, 335 Powell Street, San Francisco, California 94102. Information regarding participation in this symposium can be obtained from the American Arbitration Association, 445 Bush Street, 5th Floor, San Francisco, California 94108.

ICSID and National Investment Laws

Consent to ICSID conciliation/arbitration may be expressed in specific stipulations in investment agreements, in bilateral investment treaties (Delaume, ICSID and Bilateral Investment Treaties, *News from ICSID*, Vol. 2, No. 1 (Winter 1985) 12-20) or in domestic investment legislation.

The provisions found in Article 4 of Law No. 85-03 of January 29, 1985 of the Republic of *Togo* and in Title V, Articles 30 and 31 of Law No. 85-001 of June 18, 1985 of the Democratic Republic of *Madagascar*, which are reproduced below, illustrate the type of legislative enactments that are found also in the investment laws of other countries such as *Zaire* (Ordonnance-Loi No. 79-027 of September 28, 1979, art. 36, Investment Laws of the World ("ILW"), Zaïre at 14); *Guinea* (Ordonnance-Loi No. 239/PRG/84 of October 3, 1984, art. 48.2, ILW, Guinea at 16-17); *Ivory Coast* (Loi No. 84-1230 of November 8, 1984, art. 10, ILW, Ivory Coast at 3-4); *Mauritania* (Ordonnance No. 79-046 of March 15, 1979, art. 22, ILW, Mauritania at 5); *Sri Lanka* (Greater Colombo Economic Commission Law No. 4 of 31 January 1978, art. 26, ILW, Sri Lanka at 14); *Benin* (Loi No. 82-005 of May 20, 1982, art. 57(2), ILW, Benin at 16); the *Arab Republic of Egypt* (Law No. 43, of June 19, 1974, art. 8, ILW, Arab Republic of Egypt at 6-7); or *Tunisia* (Loi No. 69-35 of June 26, 1969, art. 20, ILW, Tunisia at 7; Loi No. 81-56 of June 23, 1981, art. 25, Journal Officiel de la République Tunisienne, June 26, 1981 at 1533).

These laws can be classified into two broad categories. A first category includes laws containing on the part of the country involved a unilateral and express consent to refer investment disputes to ICSID. This is the case of the Togolese Law, which provides that if a dispute cannot be amicably settled, the dispute shall be submitted to ICSID arbitration. Since both parties must consent to ICSID arbitration, this type of provision constitutes a unilateral offer that needs to be accepted by the investor. This can be done in a number of ways, such as in an investment agreement, a statement contained in an application for an investment, a simple statement by the investor that he agrees to refer to ICSID a particular dispute concerning an investment, or in a request for arbitration submitted to ICSID after a dispute has arisen.

The second category includes laws which, although they refer to the possibility of using ICSID conciliation/arbitration facilities, make reference to ICSID as one of several means of settling investment disputes. The Malagasy law is a typical example of this kind of legislation. It offers three alternative means of settling disputes between Madagascar and foreign investors, namely in accordance with: (i) the provisions of the Malagasy law itself; (ii) the ICSID Convention; or (iii) the Additional Facility administered by ICSID. Under the circumstances, it is clear that the final choice would have to be made by agreement between the Malagasy Government and the investor involved, and that only that agreement could constitute consent to use the particular procedure having the preference of the parties.

Loi No. 85-03 du 29 janvier 1985
portant réaménagement du Code des Investissements de la République Togolaise

Article 4

"Tout différend qui pourrait surgir entre le Gouvernement Togolais et l'investisseur au sujet de l'une ou plusieurs clauses de la présente loi est réglé à l'amiable. En cas de désaccord persistant, le conflit est soumis à l'arbitrage du Centre International pour le Règlement des Différends Relatifs aux Investissements (CIRDI) pour règlement définitif."

Loi No. 85-001 du 18 juin 1985
relative au Code des investissements
de la République Démocratique de Madagascar

"TITRE V
PROCEDURES DE CONCILIATION
ET D'ARBITRAGE

"...

Art. 30 - Tout litige entre une personne physique de nationalité malgache ou une personne morale de droit malgache et la République Démocratique de Madagascar relatif à l'application du présent Code sera réglé par la procédure de conciliation et d'arbitrage instituée au présent titre V.

Tout litige entre une personne physique ou morale étrangère et la République Démocratique de Madagascar relatif à l'application du présent Code peut être réglé d'accord préalable entre les parties conformément à l'une des procédures de conciliation et d'arbitrage découlant:

– soit des dispositions des articles 31 à 40 du présent Code;

– soit de la Convention du 18 mars 1965 pour le règlement des différends relatifs aux investissements entre Etats et ressortissants d'autres Etats, établie sous l'égide de la Banque internationale pour la Reconstruction et le Développement et ratifiée par la République Malgache en vertu de la loi no. 66-011 du 5 juillet 1966;

– soit, si la personne concernée ne remplit pas les conditions de nationalité stipulées à l'article 25 de la convention susvisée, conformément aux dispositions des règlements de mécanisme supplémentaire, approuvé par le Centre International pour le Règlement des Différends Relatifs aux Investissements (CIRDI).

Art. 31. - Toute action en contentieux arbitral doit, à peine d'irrecevabilité, être précédée d'une instance de conciliation devant une commission ad hoc *ou devant le CIRDI lorsque attribution de compétence a été donnée à cette instance par les parties.*

. . ."

The other articles under Title V contain detailed provisions pertaining to the procedure for ad hoc conciliation and arbitration under Malagasy law. The text of these articles together with that of the Investment Code itself will be reproduced in full in the second issue of *ICSID Review - Foreign Investment Law Journal.*

Bilateral Investment Treaties Concerning the Reciprocal Encouragement and Protection of Investments

Three bilateral treaties have recently been concluded between the United States of America and (1) the Republic of Turkey (on December 3, 1985), (2) the Republic of Cameroon (on February 26, 1986), and (3) the Arab Republic of Egypt (the original treaty which was signed on September 29, 1982 has been modified by a Supplementary Protocol of March 11, 1986).

The three treaties provide that Investment Disputes may be settled by way of (1) consultation and negotiation between the parties, (2) any dispute-settlement procedures upon which a Contracting State and a national or company of the other Contracting State have previously agreed, and (3) Arbitration and Conciliation under the ICSID Convention and the ICSID Rules and Regulations.

In addition, these treaties provide that by signing the treaty each Party consent to submit the dispute to the Centre and that any company of either Party owned or controlled by nationals of the other Party shall be treated as a national or company of such other Party for the purpose of Article 25(1) of the Convention.

The text of each of the treaties will be reproduced in full in the second issue of *ICSID Review - Foreign Investment Law Journal.*

ICSID Review - Foreign Investment Law Journal

As announced in *News from ICSID*, Vol. 3, No. 1 (Winter 1986), the first issue of the Review appeared in April 1986.

A second issue will appear in October 1986. It will include, inter alia, the following:

(a) *Articles by:*

Mr. Georges R. Delaume, "ICSID and the Transnational Financial Community";

Messrs. Ahmed El-Kosheri and Tarek Riad, "The Law Governing a New Generation of Petroleum Agreements";

Ms. Natalie Lichtenstein, "Legal Implications of China's Economic Reforms".

(b) *Comments by:*

Mr. Ibrahim F.I. Shihata, "MIGA and the Standards Applicable to Foreign Investments";

Messrs. Lester Nurick and Stephen J. Schnably, "The First ICSID Conciliation: Tesoro Petroleum Corporation v. Trinidad and Tobago";

Messrs. Charles C. Adams, Jr. and Vincent Sol, "Madagascar's New Investment Code: Definite Progress."

(c) *Cases*

The Republic of Guinea and its Public Institutions v. Maritime International Nominees Establishment, decision of the Judge for Attachment Matters, Tribunal of First Instance, Antwerp, September 27, 1985.

Maritime International Nominees Establishment v. The Republic of Guinea, judgment of the Tribunal of First Instance, Geneva, March 13, 1986.

(d) *Documents*

The 1985 Malagasy Investment Law.

Treaty Concerning the Reciprocal Encouragement and Protection of Investments between the United States of America and The Arab Republic of Egypt (Treaty of September 29, 1982 as modified by Supplementary Protocol of March 11, 1986).

Agreement for the Promotion, Protection and Guarantee of Investment among Member States of the Organization of Islamic Conference; approved and open for signature at the 12th Islamic Conference of foreign ministers held in Baghdad, Iraq from June 1 to June 5, 1981 (Previously unpublished.)

(e) *Bibliography*

(f) *Book reviews.*

See back cover for details on subscribing to *ICSID Review - Foreign Investment Law Journal.*

Signature and Ratification of the ICSID Convention

Ecuador signs and ratifies the Convention

On January 15, 1986, the ICSID Convention was signed in Washington, D.C., by His Excellency Dr. Edgar Teran Teran, Minister of Foreign Affairs, Ecuador. Present at the signing was His Excellency Leon Febres-Cordero R., President of Ecuador.

The instrument of acceptance was deposited on the same day. Ecuador became the 93rd State to sign the Convention and the 88th Contracting State. In accordance with Article 68(2), the Convention entered into force for Ecuador on February 14, 1986.

His Excellency Leon Febres-Cordero R., President of Ecuador (right) with Mr. Ibrahim F.I. Shihata, Secretary-General, ICSID on the occasion of the signature and deposit of instrument of acceptance by Ecuador of the ICSID and MIGA Conventions.

Honduras signs the Convention

On May 28, 1986, the ICSID Convention was signed in Washington, D.C. on behalf of Honduras by His Excellency Carlos Lopez-Contreras, Secretary of State for Foreign Relations, bringing the number of Signatory States to 94.

Seated from left to right: Mr. Ibrahim F.I. Shihata, Secretary-General, ICSID; H.E. Carlos Lopez-Contreras, Secretary of State for Foreign Relations, Honduras; Mrs. Leonor Filardo de Gonzales, Executive Director, The World Bank.

Standing from left to right: Miss Maria Antonia Vazquez, Minister-Counselor, Embassy of Honduras, Washington, D.C.; Mr. Roberto Flores Bermudez, Director of External Policy, Honduras; Mr. George T. Park, Loan Officer, The World Bank; Mr. Humayun Mirza, Senior Adviser to the Vice President, Latin America and Caribbean Region, The World Bank; Mr. Policarpo Callejas, Adviser to the Secretary of State for Foreign Relations, Honduras.

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