

NEWS

FROM

ICSID

International Centre for Settlement of Investment Disputes

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Major Features:

- ICSID Review - Foreign Investment Law Journal
- MIGA Convention Approved - Already signed by Korea, Turkey, Ecuador, Senegal and Sierra Leone
- ICSID participates in the International Congress on Commercial Arbitration held in Rio de Janeiro July 29-31, 1985
- The International Chamber of Commerce hosts a third ICSID, AAA, ICC Symposium. Remarks of the Secretary-General on the Obstacles Facing International Arbitration

ICSID Review - Foreign Investment Law Journal

As announced in *News from ICSID*, Vol. 2, No. 2 (Summer 1985), ICSID will publish a new Journal collecting under one cover material on the law and practice relating to foreign investments.

The first issue should appear in the early Spring of 1986. It will include the following:

(a) *Articles by*

Mr. Ibrahim F.I. Shihata, "Towards a Greater Depoliticization of Investment Disputes - The Roles of ICSID and MIGA";

Professor Pierre Lalive, "Some Threats to International Investment Arbitration";

Dr. Rudolf Dolzer, "Indirect Expropriation of Alien Property".

(b) *Comments by*

Mr. Branko Vukmir, "Recent Amendments to the Yugoslav Joint Venture Law";

Mr. William T. Onorato, "International Petroleum Joint Development Regimes: Promoting Investment through Compromise to Obviate Political Risk";

(c) *Cases*

Klöckner v. Cameroon, Decision of the Ad Hoc Committee of May 3, 1985, annulling the Award of October 21, 1983.

(d) *Documents*

Convention Establishing the Multilateral Investment Guarantee Agency and Commentary on the Convention Submitted to Governments by the Board of Governors of the International Bank for Reconstruction and Development, October 11, 1985.

Treaty between the United States of America and the Kingdom of Morocco Concerning the Encouragement and Reciprocal Protection of Investments, July 22, 1985.

(e) *Bibliography*

(f) *Book Reviews*

Disputes before the Centre

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

May 6, 1985

Claimants-Oppositors file their Memorandum in Opposition to Indonesia's Request to Stay Enforcement of ICSID Award.

May 16-17, 1985

Preliminary session of the ad hoc Committee in Frankfurt. It is de-

August 6, 1985

August 30, 1985

September 7, 1985

ecided that Prof. Seidl-Hohenveldern will serve as the President of the Committee.

Respondent files bank guaranty dated July 3, 1985, as requested by the Tribunal.

Respondent files its Memorial.

The ad hoc Committee meets in Rome.

- October 15, 1985 Claimants-Oppositors file Counter-Memorial in Opposition to Indonesia's Application for Annulment.
- November 1, 1985 Indonesia files its Reply.
- Klöckner Industrie Anlagen GmbH et al v. the United Republic of Cameroon and Société Camerounaise des Engrais (SOCAME) S.A. (Case ARB/81/2) - Annulment Proceeding**
May 3, 1985 The ad hoc Committee renders its Decision annulling the Award of October 21, 1983.
- June/July, 1985 The dispute is resubmitted to ICSID arbitration pursuant to Article 52(6) of the Convention.
- Société Ouest Africaine des Bétons Industriels (SOABI) v. the State of Senegal (Case ARB/82/1)**
May 15, 1985 Baron van Houtte resigns as arbitrator.
- May 28, 1985 Claimant appoints Prof. J.C. Schultsz (Netherlands) as arbitrator in replacement of Baron van Houtte.
- May 30, 1985 Prof. Schultsz accepts his appointment. The Secretary-General notifies the parties and the other arbitrators that the Tribunal has been reconstituted and the proceeding resumed on May 30, 1985, in accordance with Arbitration Rule 12.
- July 29-31, 1985 The Tribunal meets in Paris (on July 29 and 30 in the presence of the parties).
- September 5, 1985 The Tribunal meets in The Hague.
- October 3, 1985 Respondent files a supplementary document.
- November 1, 1985 Claimant files its Response.
- The Liberian Eastern Timber Corporation (LETCO) v. the Government of the Republic of Liberia (Case ARB/83/2)**
May 30, 1985 The Tribunal meets in Paris.
- Atlantic Triton Company Limited v. the Republic of Guinea (Case ARB/84/1)**
May 6, 1985 Respondent files its "Réplique" to the Counter-Memorial.
- August 16, 1985 Claimant files its "Mémoire en Duplique".
- September 11-13, 1985 The Tribunal meets in The Hague in the presence of the parties.
- Colt Industries Operating Corp., Firearms Division v. the Government of the Republic of Korea (Case ARB/84/2)**
August 1, 1985 Respondent files its Rejoinder.
August 27, 1985 Claimant files a Request for Stay of Arbitration.
- September 13, 1985 Respondent files a Memorandum in Opposition to Colt's Application for a Stay of the Proceedings.
- November 18, 1985 The Tribunal meets in Washington, D.C. in the presence of the parties. The Tribunal issues an Order to stay the proceedings.
- SPP (Middle East) v. the Arab Republic of Egypt (Case ARB/84/3)**
May 13, 1985 Respondent files its Memorial on Objection to Jurisdiction.
- June 19, 1985 Claimant files its Observations on Jurisdiction.
- July 10-11, 1985 The Tribunal meets in The Hague, in the presence of the parties.
- July 23, 1985 The parties advise the Centre that Southern Pacific Properties Limited has been joined as a Claimant in the arbitration proceeding, subject to Respondent's reservation of jurisdictional defenses.
- September 12-14, 1985 The Tribunal meets in The Hague.
- November 27, 1985 The Tribunal issues a decision on the preliminary objections to jurisdiction.
- Maritime International Nominees Establishment (MINE) v. the Republic of Guinea (Case ARB/84/4)**
June 17, 1985 The Tribunal is constituted. Its members are: Mr. Donald E. Zubrod (US), President, appointed by both parties; Mr. Jack Berg (US), appointed by Claimant; and Prof. David J. Sharpe (US), appointed by Respondent.
- September 3, 1985 Claimant files its Memorial.
- September 6, 1985 The Tribunal meets in Washington, D.C.
- November 8, 1985 Respondent files its Counter-Memorial.
- Tesoro Petroleum Corporation v. the Government of Trinidad and Tobago (Case CONC/83/1)**
November 5-12, 1985 The parties address their submissions to the conciliator.
- December 3, 1985 The conciliator files his Report, formally closing the proceeding.



Ecuador signs the MIGA Convention: from left to right: Mr. Ibrahim F.I. Shihata, H.E. Francisco X. Swett, Minister of Finance and Public Credit, Ecuador, and Juergen Voss, Counsel, The World Bank.

MIGA Convention Approved – Already Signed by Korea, Turkey, Ecuador, Senegal and Sierra Leone

At their recent Annual Meeting in Seoul, the World Bank's Governors approved the Convention establishing the Multilateral Investment Guarantee Agency (MIGA) for transmittal to member governments of the World Bank and the Government of Switzerland and invited these governments to sign the Convention. Korea, Turkey and Ecuador signed on the same day the Convention was opened for signature; Senegal signed a few days later, followed by Sierra Leone. Further signatures are expected soon.

The projected MIGA and the International Centre for Settlement of Investment Disputes (ICSID) share a common objective: the encouragement of the flow of investment to and among developing countries by eliminating, or at least reducing, political risk as a barrier to such investment. ICSID serves this objective by providing a forum for the settlement of investment disputes under truly international rules, and thus inspires confidence in host countries and investors that such disputes will be resolved efficiently according to the legal and economic merits of the case. MIGA will provide technical assistance to countries on how to improve investment conditions and will issue guarantees for

foreign investments against non-commercial risks. These risks will include: the risk of loss as a result of host government restrictions on currency conversion and transfer (transfer risk); the risk of loss resulting from legislative or administrative actions or omissions of the host government which have the effect of depriving the foreign investor of his ownership or control of, or substantial benefits from, his investment (expropriation risk); the risk of a repudiation or breach of legal commitments by the host government in the cases where the investor has no access to a competent judicial or arbitral forum, or faces unreasonable delays in such a forum, or is unable to enforce a judicial or arbitral decision issued in his favor (repudiation risk); and the risk of armed conflict and civil disturbance.

ICSID is not solely a machinery for the settlement of investment disputes and MIGA will be more than an insurance operator. Both facilities are designed to enhance mutual understanding and confidence between host governments and foreign investors and increase the availability of the information, knowledge and expertise related to the investment process. ICSID compiles and disseminates information

on investment laws and their development. MIGA will carry out research and disseminate information on investment opportunities as well as render advice and technical assistance to developing member countries. The activities of the two institutions in this area are expected to be mutually supportive.

Upon payment of a claim, MIGA will be subrogated to such pertinent rights as the indemnified investor might have had against the host country. MIGA will then pursue these rights on its own account, thus acting as a buffer between the investor and the host country. While the availability of ICSID arbitration fosters the fair and expeditious resolution of investment disputes, MIGA's involvement will increase the prospects for the avoidance of such disputes and for their amicable settlement when they arise. This follows from MIGA's institutional structure and ensuing internal dynamics.

"The MIGA Convention directs MIGA to encourage the amicable settlement of disputes between investors and host countries. If a conflict arises nevertheless, MIGA will be placed in a unique position to facilitate an amicable settlement and to make sure matters are discussed on the basis of legal and economic criteria only. In other words, as in the case of ICSID, MIGA should contribute significantly to the depoliticization of investment disputes."

—A. W. Clausen, the President of the World Bank and Chairman of ICSID's Administrative Council

MIGA is designed as a cooperative institution where developed and developing countries will share financial responsibility and political oversight. MIGA's capital of \$1.082 billion will be subscribed by all members, each in accordance with its economic strength as measured in its allocation of shares of the World Bank's capital. Only twenty percent of the capital will be paid in (ten percent in cash and ten percent in non-interest-bearing promissory notes); the remainder will be subject to call in case of need to meet obligations. In addition to underwriting investments on the basis of its capital, MIGA is authorized to issue guarantees acting as administrator on behalf of sponsoring member countries. Revenues and expenditures attributable to sponsorship operations will be kept separate from MIGA's own finances, and losses from these operations will be shared by sponsoring countries on a pro rata basis. The sponsorship arrangement has no financial ceiling and allows MIGA to cover investments in all countries—not just in its developing member countries. Callable capital and loss-sharing obligations are only intended to establish MIGA as a credible insurer; they are not expected to be

actually drawn upon. Rather, MIGA is directed to meet its liabilities from premium income and other revenues such as returns on its investments. As all member countries have a vested interest in MIGA's self-sufficiency, they can be expected to cooperate towards this objective.

Each country will receive 177 membership votes and one additional vote per share. As a result, capital-exporting countries (developed countries) and capital-importing countries (developing countries) will have voting parity as groups, when all eligible countries join MIGA. During the first three years of MIGA's existence, each group of countries will be assured a minimum of forty percent of the total voting power through the allocation of supplementary votes, if necessary. During this period also, all decisions will require a special majority of at least two-thirds of the total voting power representing fifty-five percent of the subscribed shares of MIGA's capital, so that decisions will be taken with the support of both developing and developed countries. While supplementary votes and the special majority requirement will be cancelled after the three-year period, unsubscribed shares will then be reallocated by MIGA's Council to achieve voting parity between the two groups of countries on the basis of membership votes and subscription votes.

Like ICSID, MIGA will be based on the voluntary participation and cooperation of prospective member countries. Each country may freely decide whether it wishes to join MIGA and those countries not joining initially may accede later. To safeguard a host government's control over the admission of investments and MIGA's involvement in investments in its territory, the MIGA Convention provides that guarantees can only be issued with the host government's approval of the investment and its guarantee by MIGA against the risks designated for cover. Similarly, MIGA will render advice and technical assistance to member governments only upon their request.

As the ICSID Convention entered into force in 1966 upon its ratification by twenty countries (and presently has eighty-seven members), the MIGA Convention will also enter into force upon its ratification by twenty countries. In view of MIGA's financial character it is, furthermore, provided that these twenty countries shall include five capital-exporting countries and fifteen capital-importing countries and that the subscriptions of these countries total one-third of MIGA's authorized capital (i.e., approximately \$360 million).

As soon as these twenty countries have signed the Convention, the President of the World Bank will convene a preparatory committee consisting only of representatives of the signatory States to prepare the rules and regulations determining MIGA's operational and financial policies. These rules and regulations will then be submitted to MIGA's governing bodies for approval once the Convention enters into force.

"The ICSID Secretariat has been following developments of the Multilateral Investment Guarantee Agency with great interest. A great deal of cooperation can develop in the future between ICSID and MIGA. Both institutions share the common objective of improving investment conditions and attracting greater investment flows to developing countries. And both are based on the principle of voluntarism and the prior consent of host countries."

—Ibrahim F.I. Shihata, Secretary-General of ICSID

The establishment of MIGA will be a major landmark in the World Bank's efforts to play a catalytic role in encouraging the investment of capital for productive purposes and promoting private foreign investment. It is in line with efforts by the World Bank to facilitate conditions conducive to such investment, such as the creation of the International Finance Corporation in 1956, of ICSID in 1966, and the recent expansion of the Bank's cofinancing techniques. MIGA is a timely response of the World Bank to the sharp decline of investment flows to developing countries since the beginning of the decade and the increasing reluctance of investors to take advantage of investment opportunities in developing countries.

New Additions to the Panels of Conciliators and Arbitrators

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

AUSTRIA:

Panel of Conciliators—designation effective as of July 29, 1985:

Dr. Helmut Haschek (re-appointment).

Panels of Conciliators and of Arbitrators:

Dr. Werner Melis (re-appointment, designation effective as of July 29, 1985), and Dr. J. Hanns Pichler, M.Sc. (designation effective as of September 3, 1985).

Panel of Arbitrators—designation effective as of July 29, 1985:

Dr. Guido Nikolaus Schmidt-Chiari (re-appointment).

GABON:—designations effective as of October 9, 1985:

Panels of Conciliators and of Arbitrators:

M. Gustave Bongo, M. Alain Essiane, Mme Marie-Madeleine Mborantchouo, and M. Jean François Ntoutoume (re-appointment).

LIBERIA—designations effective as of July 2, 1985:

Panel of Conciliators:

Mr. Elwood J. Jangaba, Mr. Frank W. Smith, and Mr. E. Winfred Smallwood.

Panel of Arbitrators:

Mr. James S. Guseh, Mr. Momolue B. Tamba, Mr. Samuel McIntosh, and Mr. Philip A.Z. Banks, III.

MAURITIUS—designations effective as of July 5, 1985:

Panels of Conciliators and of Arbitrators:

Mr. Jean Marc David, CBE, QC (re-appointment), Mr. A. Hamid Moollan (re-appointment), and Sir Maurice Rault, KB, QC.

PAKISTAN—designations effective as of October 10, 1985:

Panel of Conciliators:

Mr. Mohammad Yaqub Ali Khan (re-appointment), and Mr. A.K. Brohi (re-appointment).

Panel of Arbitrators:

Mr. Justice Irshad Hasan Khan, and Mr. Syed Shari-uddin Pirzada (re-appointment).

PORTUGAL—designations effective as of August 12, 1985:

Panels of Conciliators and of Arbitrators:

Dr. Sebastiao Honorato, Dr. Antonio Gabriel Osario de Castro, Dr. Rui Eduardo Ferreira Rodrigues Pena, and Dr. Antonio Maria Pereira.

Recent Publications on ICSID

Broches, A., "The Experience of the International Centre for Settlement of Investment Disputes", in *International Disputes: Avoidance and Settlement*, Studies in Transnational Legal Policy (Rubin and Nelson eds., 1985) 75-97.

Delaume, G.R., "ICSID Arbitration Proceedings: Practical Aspects", 5 *Pace L. Rev.* 563-569 (1985).

Niggemann, F., "Zuständigkeitsprobleme der Weltbank - Schiedsgerichtsbarkeit im Licht der bisherigen Schiedsverfahren", *Praxis des Internationalen Privat- und Verfahrensrechts* 1985, 185-192.

Excerpts from the Award of November 21, 1984 in Case No. ARB/81/1, *AMCO Asia Corporation et al v. Government of Indonesia*, appear in 24 *International Legal Materials* 1022 (1985).

ICSID participates in the International Congress on Commercial Arbitration held in Rio de Janeiro July 29–31, 1985

An International Congress on Commercial Arbitration was held on July 29–31, 1985 in Rio de Janeiro at the headquarters of the Confederação Nacional do Comércio (National Confederation of Commerce).

The Congress which was attended by more than 200 participants from Latin American, African, Arab and Eu-

ropean countries and the United States considered a number of topics concerning the use and practice of international arbitration, including questions relating to the Brazilian experience, the Brazilian draft law on arbitration, and to the Inter-American Convention on International Commercial Arbitration.



ICSID was represented at the Congress by Mr. Ibrahim F.I. Shihata, Secretary-General and Mr. Georges R. Delaume, Senior Legal Adviser. Mr. Shihata's speech was entitled "Towards a Greater Depoliticization of Investment Disputes: the Contribution of ICSID and MIGA". The theme of his remarks was that the Calvo doctrine, which was prompted by abuse of diplomatic protection, has proved inadequate to prevent powerful States from espousing the claims of their nationals or to prevent Latin American countries, hard pressed to obtain funds from abroad, from accepting, in the context of investment disputes the jurisdiction of foreign fora. New international organizations, such as ICSID and MIGA have emerged, which are intended to balance the interests of developing countries and foreign investors and to encourage foreign capital flows to developing countries. These organizations provide ways to depoliticize the settlement of investment disputes by

offering to the parties international means of settling disputes and arriving at amicable settlements in the context of procedures exempt from political intervention.

Mr. Delaume's speech related to "State Contracts and Transnational Arbitration". It reviewed the type of issues that may arise in connection with the enforcement of an arbitration agreement to which a state is a party, the respective merits of ad hoc and institutional arbitration, the determination of the substantive rules applicable to State contracts, the tactics which may delay the conduct of the proceedings and the impact of sovereign immunity upon the enforcement of awards. Its main theme was to focus attention on issues that should be carefully considered by the draftsman of arbitration agreements in order to alert private and governmental parties to the seriousness of their commitment to arbitrate and to the likely effectiveness of the arbitral process.

The International Chamber of Commerce Hosts a Third ICSID, AAA, ICC Symposium

On October 24, 1985, a joint conference on Resolving International Commercial Disputes was held at the headquarters of the International Chamber of Commerce (ICC) in Paris. This conference is the third in a series of symposiums on the subject of transnational arbitration, co-sponsored by the Centre, the ICC and the American Arbitration Association (AAA), the first two of which had been held in November 1983 and November 1984 in Washington, D.C., at the headquarters of the World Bank (see *News from ICSID*, Vol. 1, No. 1, Winter 1984, p. 3 and Vol. 2, No. 1, Winter 1985, pp. 7-8).

This year's conference differed from the preceding ones by its coverage.

Arbitration has proven to be in the past decades the most efficient means of settling international disputes. Nevertheless, the manner in which disputes are settled is approached differently in relation to the type of relationship involved and to the various cultural backgrounds and interests of the countries or areas of the world. In order to bring these factors to the fore, the three sponsoring institutions decided to expand the scope of the conference beyond a review of their own experience in the field and to call on other institutions to participate in a widened and mutually beneficial discussion of the issues that they encounter in the administration of arbitration proceedings and their efforts to propagate arbitration as means of international dispute resolution.

The morning session began with presentations made by heads of the sponsoring organization, Mr. Ibrahim F.I. Shihata, Secretary-General of ICSID, Mr. Robert Coulson, President of the AAA and Mr. Michel Gaudet, Chairman of the ICC Court of Arbitration. Mr. Shihata's remarks are reproduced below.

The remainder of the morning session was devoted to the question whether a new practice is emerging from the experience of traditional institutions. The moderator was the Rt. Hon. Sir Michael Mustill, Lord Justice of Appeal, U.K. The session was divided into two parts. The first part included three speeches respectively devoted to: (1) the experience of ICSID, by Mr. Georges R. Delaume, Senior Legal Adviser, ICSID; (2) the experience of AAA, by Mr. Michael F. Hoellering, General Counsel, AAA; and (3) the experience of ICC, by Mr. Sigvard Jarvin, General Counsel, ICC Court of Arbitration. During the discussion which followed in the second part of the morning session, the moderator and the last three speakers were joined on a Panel by Messrs. B.M. Vigrass, Director and Registrar,

London Court of International Arbitration; Ulf Franke, Secretary General of the Arbitration Institute of the Stockholm Chamber of Commerce; and Werner Melis, Chairman of the Arbitral Centre of the Federal Economic Chamber, Vienna.

The afternoon dealt with the question: "Are new trends suggested by more recent experiences?" The moderator was Mr. Arthur von Mehren, Professor of Law, Harvard University. The speakers covered the following topics: (1) Applying UNCITRAL Rules: (a) the experience of the Asian-African Legal Consultative Committee (AALCC), by Mr. B. Sen, Secretary General; (b) the Regional Centre for Commercial Arbitration at Cairo, by Dr. Aboul Einen; (c) the experience of "Iran-United States Claims Tribunal", The Hague, by Professor Dr. Karl-Heinz Böckstiegel, President; (2) Commercial Arbitration in Eastern Europe, Compulsory Arbitration, Uniform Rules, Moscow Convention, by Professor Vladimir S. Pozdnjakov, President of the Foreign Trade Arbitration Commission at the USSR Chamber of Commerce and Industry, Moscow; (3) Settling Disputes in the Arab World, Arbitration and other Means - The Evolution of Law and Courts, by Mr. Samir A. Saleh, Attorney-at-Law, Vice-Chairman, ICC Court of Arbitration; (4) A Change in Latin America? The Experience of the Inter-American Commercial Arbitration Commission (IACAC) - The Evolution of Law and Courts, by Mr. Rafael E. Eyzaguirre, President.

The conference was attended by about 150 participants from the legal profession and business community.

In order to continue to keep abreast of current developments in international arbitration, the three sponsoring institutions have decided to hold a fourth joint symposium in the fall of 1986. The place of the colloquium will be San Francisco.



From left to right: Mr. Ibrahim F.I. Shihata, Secretary-General of ICSID, Mr. Robert Coulson, President of the AAA, and Mr. Michel Gaudet, Chairman of the ICC Court of Arbitration.

At the symposium, Mr. Shihata delivered the following remarks on the "Obstacles Facing ICSID's Proceedings and International Arbitration in General":

"ICSID was created almost twenty years ago to provide an internationally accepted forum for resolution of invest-

ment disputes between states and foreign investors. Unlike other arbitration institutions, ICSID is thus a specialized organization dealing with a specific category of disputes.

The significant increase in the last few years of ICSID's caseload shows that both investors and States are becoming particularly conscious of the merits of ICSID as a dispute settlement machinery. The number of inquiries addressed to the Secretariat by parties seeking information or assistance in the drafting of ICSID clauses is also increasing significantly.

The major features of ICSID are well known and have been the subject of an abundant literature. However, I believe that certain issues are worth recalling, not only because they are of particular concern to the States that are parties to ICSID proceedings and may affect their attitude towards ICSID and towards international arbitration in general, but also because I personally find them to be perfectly justified concerns. These include: issues regarding the nationality of the arbitrators, the duration of the proceedings and the costs of arbitration.

1. The Nationality of the Arbitrators

It is no secret that developing countries often see international arbitration as a facility administered, to a large extent, by nationals of the developed countries. This is not a phenomenon which is unique to ICSID arbitration. It applies as well, if not more, to other types of institutional arbitration.

In the case of ICSID, the States parties to a dispute have an effective remedy at their disposal, namely to participate actively in the appointment of arbitrators. Most of the provisions of the ICSID Convention regarding the number of arbitrators and the method for their appointment are permissive and the parties are free to make their own arrangements. The Secretariat keeps a Panel of Arbitrators consisting of four arbitrators to be designated by each Contracting State and of an additional ten to be designated by the Chairman of the Administrative Council. The parties to a dispute enjoy the discretion to choose persons whose names appear on the Panel or from outside the Panel.

In the event that the parties do not exercise their power of appointment or cannot reach agreement on the constitution of the tribunal, the Convention provides that the Chairman shall, at the request of either party, appoint the arbitrator or arbitrators not yet appointed. Yet, unlike the parties, the Chairman's freedom of choice is limited in the sense that he must appoint persons whose names appear on the Panel.

In practice, the parties to disputes chose arbitrators from developing countries only in nine cases out of a total of eighteen arbitration proceedings and in one out of two conciliation proceedings. More significantly, in two arbitration cases only, the parties agreed that the President of the Tribunal would be a national of a developing country. When the Chairman acted as appointing authority in ten arbitration proceedings the persons appointed by the Chairman

have, with one exception, been nationals of European countries. In two cases where the Chairman established ad hoc committees to consider requests for the annulment of awards, only one of the members of each committee was a citizen of a developing country.

This situation is attributable to two major factors. First, a number of our developing member countries have not designated persons to serve on the Panels. Second, other States have designated only public officials for that purpose. Such public officials, regardless of their qualifications, may not always be appropriate candidates and at any rate may not have the time to serve as arbitrators.

Nevertheless, it should be noted that certain developing countries have been more attentive than others to designating to the Panels persons of talent and independence. This has enabled the Chairman, as shown in recent proceedings regarding the annulment of ICSID awards, to appoint eminent jurists from developing countries.

I consider it essential to the future development of ICSID that this matter be given attention. The objective of the Convention is to "depoliticize" the settlement of investment disputes and to provide a climate of mutual confidence between investors and States favorable to increasing the flow of resources to developing countries under reasonable conditions. Clearly, one way to achieve this objective is to seek an increasingly diversified representation of nationalities in ICSID tribunals.

In many developing countries, there is no dearth of persons having the qualifications required by the Convention to act as arbitrators. ICSID must, therefore, continue its efforts to convince these countries to give renewed attention to the exercise of their right of designation in order to supply a roster of candidates particularly suited to serve as arbitrators on ICSID tribunals.

In some developing countries, a special effort ought to be made to train persons, and in particular lawyers, in matters concerning the settlement of transnational disputes.

A step in that direction has been made by ICSID in conjunction with the International Development Law Institute (IDLI) in Rome. Recently, ICSID cooperated with IDLI in organizing intensive seminars, in French and in English, on the subject of resolving international contract disputes for the benefit of senior lawyers in developing countries. This initiative ought to be pursued in cooperation with other specialized organizations, such as the Institutes sponsored by the ICC, by the AAA and by the London School of International Arbitration which is starting a new program in this field. ICSID will also launch in early 1986 a new periodical to be called ICSID Review - Foreign Investment Law Journal which should increase the awareness of, and the expertise in, issues related to investment disputes.

2. Duration of Arbitration Proceedings

Statistics regarding the average duration of such proceed-

ings have little value because of the many factors that may differentiate one proceeding from another. In this respect, ICSID arbitration does not differ from other forms of arbitration.

In the case of ICSID, however, a consideration of fundamental importance must be taken into account. ICSID's role is not limited to offering a specialized machinery for dispute resolution. Actually, the ultimate purpose of ICSID is to promote a climate of mutual confidence between States and investors that is conducive to an increasing flow of capital to developing countries. In the event of a dispute, the objective of ICSID is to restore that climate as far as possible. The fact that more than half of the ICSID proceedings that have been closed resulted in amicable settlement shows that ICSID has been successful in the pursuit of this objective.

With a view to increasing the effectiveness of ICSID, the ICSID Arbitration Rules as revised in 1984 offer a new procedure in the form of a "prehearing conference", which may be called by the Secretary-General or the President of an arbitral tribunal. The purpose of such a conference is to expedite the proceedings by permitting early identification of undisputed facts, thereby limiting the proceeding to the real areas of contention. In a similar spirit, the Rules also give the parties the right to request the convening of a prehearing conference between the tribunal and the parties in the hope that it will give their authorized representatives the opportunity to reach an amicable settlement. Such a settlement could take the form of an agreement between the

parties or could be recorded in an award in accordance with the ICSID Rules.

3. The High and Increasing Cost of International Arbitration

ICSID attempts to reduce the cost of proceedings to a minimum. Although costs necessarily vary from case to case, we believe that ICSID arbitration is less expensive than arbitration conducted under the auspices of other institutions.

The reason for this is not only that ICSID receives financial support from the World Bank and benefits from the use of its facilities and services, but also because ICSID endeavors to relate the expenses incurred by the parties to the work performed in relation to individual proceedings while bearing itself all the overhead cost of the Secretariat.

Also with a view toward economy, the fees of arbitrators are set at a stated daily rate, which is at the present time SDR 600 per 8-hour day of work or of attendance at meetings of the tribunal. To the extent that the duration of the proceedings can be shortened, either through the prehearing conference or otherwise, the cost of ICSID can be reduced at significant savings to the parties.

While efforts continue in ICSID to address the concerns I have mentioned, and their seriousness continues to be fully realized, we hope that they will be equally addressed by all the parties concerned with international arbitration with a view to enhancing its acceptability and its credibility as an appropriate mechanism for the settlement of disputes involving the governments of developing countries."

Investment Promotion Treaties

Treaty between the United States of America and the Kingdom of Morocco Concerning the Encouragement and Reciprocal Protection of Investments, July 22, 1984.

"Article VI

1. For purposes of this Article, an investment dispute is defined as a dispute involving (a) the interpretation or application of an investment agreement between a Party and a national or company of the other Party; or (b) a complaint concerning an alleged violation of any right conferred or created by this Treaty with respect to an investment.

2. In the event of an investment dispute between a Party and a national or company of the other Party, the parties to the dispute shall initially seek to resolve the dispute by consultation and negotiation. If the dispute cannot be resolved through these consultations and negotiations, the dispute

shall be submitted for settlement in accordance with previously agreed, applicable dispute settlement procedures. Any dispute settlement procedures regarding expropriation and specified in the investment agreement shall remain binding and shall be enforceable in accordance with the terms of the investment agreement, relevant provisions of domestic laws, and applicable international agreements regarding enforcement of arbitral awards.

3. (a) The national or company concerned may choose to consent in writing to the submission of the dispute to the International Centre for Settlement of Investment Disputes ("Centre") for settlement by conciliation or binding arbitration, at any time after six months from the date upon which the dispute arose, provided:

(i) the dispute has not, for any reason, been submitted by the national or company for resolution in accordance with any applicable dispute settlement procedures previously agreed to by the parties to the dispute; and

(ii) (a) in the case of a dispute between the United States and a national or company of Morocco, the national or company has not brought the dispute before the courts of justice or administrative tribunals or agencies of competent jurisdiction of the United States; or

(ii) (b) in the case of a dispute between the Kingdom of Morocco and a national or company of the United States, the dispute has been brought before the court of justice or administrative tribunal or agency of primary jurisdiction under the laws of Morocco and (1) such court, tribunal or agency has rendered a final judgement, or (2) one year has elapsed since the date on which the proceedings before such court, tribunal or agency were initiated. Upon submission of the dispute to the Centre, the complaint before the domestic courts of Morocco shall be withdrawn.

(b) Each Party hereby consents to the submission of an investment dispute to the Centre for settlement by conciliation or binding arbitration.

(c) Conciliation or binding arbitration of such disputes shall be done in accordance with the provisions of the Convention on the Settlement of Investment Disputes Between States and Nationals of other States and the Regulations and Rules of the Centre.

4. In any proceeding involving an investment dispute, a Party shall not assert as a defense that the national or company concerned has received or will receive from another source, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages."

Agreement between the Government of the Kingdom of Denmark and the Government of the People's Republic of China Concerning the Encouragement and the Reciprocal Protection of Investments, September 5, 1985.

"Article 8

Arbitration and Conciliation

(1) In the event of a dispute between a national or company of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party, the national or company concerned may file complaint with the competent authority of the other Contracting Party. Negotiations for settlement will then take place between the parties in dispute.

(2) If such dispute cannot be thus settled within six months, either Party to the dispute shall be entitled to submit the dispute to the competent

court of the Contracting Party accepting the investment.

(3) If a dispute involving the amount of compensation resulting from expropriation mentioned in Article 4 cannot be settled within six months after resorting to the procedure specified in Paragraph 1 of this Article by the national or company concerned, it may be submitted to an international arbitral tribunal established by both parties.

If the national or company concerned has resorted to the procedure specified in the above Paragraph 2 of this Article, the provisions of this Paragraph shall not apply.

(4) The international arbitral tribunal mentioned above shall be especially constituted in the following way: each Party concerned shall appoint an arbitrator. The two arbitrators shall appoint an arbitrator as Chairman, who is a national of a third State which shall have diplomatic relations with both Contracting Parties. The arbitrators shall be appointed within two months and the Chairman within four months from the date when one Party concerned notifies the other Party of its submission of the dispute to arbitration.

If the necessary appointments are not made within the period specified in the previous Paragraph, either Party may, in the absence of any other agreement, request the Chairman of the International Arbitration Institute of the Stockholm Chamber of Commerce to make the necessary appointments.

The arbitral tribunal shall determine its own arbitral procedures with reference to the "Convention on the Settlement of Investment Disputes Between States and Nationals of Other States", done at Washington on March 18, 1965. The decision of the arbitral tribunal shall be final and binding, and shall be enforceable in accordance with domestic laws. The arbitral tribunal shall state the basis of its decision and state reasons upon the request of either Party concerned.

Each Party concerned shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the Chairman in discharging his arbitral function and the remaining costs of the tribunal shall be borne equally by the Parties concerned.

(5) The provisions of this Article shall not exclude both Contracting Parties from using the procedures specified in Article 9 where a dispute concerns the interpretation or application of this Agreement."

Thailand Becomes the 92nd Signatory of the ICSID Convention



On December 6, 1985, Thailand signed the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. Thailand has become the ninety-second State to sign the Convention which has been ratified by eighty-seven States in all regions of the world. The Convention was signed on behalf of Thailand by His Excellency Kasem S. Kasemsri, Ambassador of Thailand to the United States.

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