NEWS FROM ICSID

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Major Features

- Twenty-First Annual Meeting of ICSID's Administrative Council
- Setting up the Initial Procedural Framework in ICSID Arbitration
- Notification Under Article 25(4) of the ICSID Convention
- ICSID Hosts a Fifth ICSID/AAA/ICC Colloquium
- ICSID Review - Foreign Investment Law Journal

Twenty-First Annual Meeting of ICSID's Administrative Council

The twenty-first Annual Meeting of ICSID's Administrative Council, which comprises representatives of the 89 States parties to the ICSID Convention, was held in Washington, D.C. on October 1, 1987.

Mr. Barber B. Conable, the Chairman of the Administrative Council, made the opening statement and presided over the first part of the meeting. The remainder of the meeting was chaired by the Honorable Edward Seaga, Prime Minister of Jamaica and the representative of Jamaica on the Administrative Council.

The Chairman of the Administrative Council, Mr. Barber B. Conable (right) and the Secretary-General, Mr. Ibrahim F.I. Shihata (left) at the twenty-first Annual Meeting of the Council.

In his address, Mr. Conable noted that the Centre had made a promising start as it entered its third decade of activity. Membership in ICSID as well as the Centre's caseload had continued to increase since the last annual meeting, illustrating the confidence of both host countries and investors in ICSID as a neutral and effective forum for the settlement of disputes. Following Mr. Conable's statement, the Secretary-General, Mr. Ibrahim F.I. Shihata, reported to the Administrative Council on the events that had taken place during the past year, including developments in the cases pending before ICSID tribunals and in the Centre's research and promotional activities.

During the meeting, the Administrative Council approved the 1987 ICSID Annual Report and the Centre's budget for fiscal year 1988.

Disputes before the Centre

Amco/Indonesia (Case ARB/81/1) - Resubmission

October 20, 1987	The Tribunal is constituted. Its members are: Prof. Rosalyn Higgins (British), President, appointed by agreement of the parties, Mr. Marc Lalonde (Canadian), appointed by Amco Asia, and Mr. Per Magid (Danish), appointed by Indonesia.
December 21, 1987	The Tribunal meets in London.
January 31/ February 1, 1988	The Tribunal meets in London in the presence of the parties.

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

November 13, 1987	The President of the Tribunal declares the proceeding closed, in accordance with Arbitration Rule 38(1).
January 26, 1988	The Award is rendered.

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

December 14–16, 1987	The Tribunal meets in The Hague.
December 16, 1987	The Tribunal issues a Procedural Order, declaring the proceeding closed, in accordance with Arbitration Rule 38.
February 25, 1988	The Award is rendered.

Colt Industries Operating Corp., Firearms Division v. the Government of Korea (Case ARB/84/2)

March 4, 1988	The Tribunal meets in Washington, D.C. in the presence of the parties. The Tribunal issues an Order granting a further stay of the proceeding.

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

September 8–10, 1987	The Tribunal meets in Paris.
September 28, 1987	Claimant files its Final Submission on Jurisdiction.
October 2, 1987	Respondent files its "Mémoire en Réplique".
December 7–12, 1987	The Tribunal meets in Washington, D.C.

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

July 6, 1987	The Tribunal meets in New York.
August 10, 1987	The President declares the proceeding closed.
October 9 and 13, 1987	Each party agrees to extend the time limit for the Tribunal to complete and sign its Award until December 31, 1987.
January 6, 1988	The Award is rendered.

Dr. Ghaith R. Pharaon v. the Republic of Tunisia (Case ARB/86/1)

February 2, 1988	Claimant files its Memorial.

Société d'Etudes de Travaux et de Gestion SETIMEG S.A. v. the Republic of Gabon (Case ARB/87/1)

December 10, 1987	The Tribunal is constituted. Its members are: Prof. Claude Reymond (Swiss), President, appointed by the parties, Mr. Edgar Faure (French), appointed by Claimant, and Mrs. Marie-Madeleine Mborantsuo (Gabonese), appointed by Respondent.

Mobil Oil Corporation, Mobil Petroleum Company, Inc., Mobil Oil New Zealand Limited v. New Zealand Government (Case ARB/87/2)

November 4, 1987	The Tribunal is constituted. Its members are: Sir Graham Speight (New Zealand), President, appointed by the parties, Mr. Stephen Charles (Australian), appointed by Claimants, and Prof. Maureen Brunt (Australian), appointed by Respondent.
December 4, 1987/ February 12, 1988	The President of the Tribunal meets with the parties in Auckland for preliminary procedural consultations.

Asian Agricultural Products Ltd. v. The Democratic Socialist Republic of Sri Lanka (Case ARB/87/3)

January 5, 1988	The Tribunal is constituted. Its members are: Dr. Ahmed S. El-Kosheri (Egyptian), President, appointed by the Chairman of the Administrative Council, Prof. Berthold Goldman (French), appointed by Claimant, and Dr. S.K.B. Asante (Ghanaian), appointed by Respondent.
February 23, 1988	The Tribunal meets in Washington, D.C. in the presence of the parties.

Occidental of Pakistan Inc. v. The Islamic Republic of Pakistan (Case ARB/87/4)

October 7, 1987	The Secretary-General registers a request for the institution of arbitration proceedings.
February 1, 1988	Mr. Anthony Colman, QC (British), appointed by Claimant, accepts his appointment as arbitrator.
March 22, 1988	Mr. Ashrafullah Khan (British), appointed by Respondent, accepts his appointment as arbitrator.

New Additions to the Panels of Conciliators and of Arbitrators

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

EL SALVADOR
Panels of Conciliators and of Arbitrators:
Dr. Eduardo Jiménez de Aréchaga (Uruguayan) (designation effective as of February 12, 1988), Prof. Prosper Weil (French) (designation effective as of December 28, 1987)

GUYANA—designations effective as of September 8, 1987:
Panel of Conciliators:
Mr. Michael Brassington, Mr. Paul Chan-a-Sue, Mr. Clarence Hughes, Mr. R.M. Luckhoo.
Panel of Arbitrators:
Mr. H.B.S. Bollers (re-appointment), Mr. C. Lloyd Luckhoo (re-appointment), Mr. Rex H. McKay (re-appointment), Mr. Salahuddeen M.A. Nasir (re-appointment)

IRELAND—designations effective as of January 29, 1988:
Panels of Conciliators and of Arbitrators:
Mr. James Cawley, Mr. Eoghan Fitzsimons (re-appointment), Mr. Vivian Lavan, Mr. Ronan Walsh

ITALY—designations effective as of December 21, 1987:
Panels of Conciliators and of Arbitrators:
Mr. Piero Bernardini (re-appointment), Prof. Andrea Giardina (re-appointment), Prof. Giorgio Sacerdoti (re-appointment), Mr. Giorgio Sangiorgio (re-apppointment).

KENYA—designation effective as of August 10, 1987:
Panel of Conciliators:
Mr. B. Mareka Gecaga (re-appointment), Mr. Brian H. Hobson (re-appointment), Mr. Jared Benson Kangwana.
Panel of Arbitrators:
Mr. S.A. Wako.

UNITED KINGDOM—designations effective as of December 3, 1987:
Panel of Conciliators:
Sir Christopher Audland, CMG, Sir Michael Butler, GCMG, Sir Adrian Cadbury (re-appointment), Mr. D.C. Calcutt, QC (re-appointment).
Panel of Arbitrators:
Mr. David A.O. Edward, CMG, QC (re-appointment), Mr. Elihu Lauterpacht, QC (re-appointment), Sir Patrick Neill, QC, Sir Ian Sinclair, KCMG, CMG, QC.

ZAIRE—appointment effective as of October 19, 1987:
Panel of Arbitrators:
Mr. Phanzu-Nianga di Mazanza

Setting up the Initial Procedural Framework in ICSID Arbitration

Introduction

ICSID arbitral proceedings are governed by various sets of rules. The basic rules are, of course, provided by the treaty which created the ICSID arbitral mechanism, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the Convention). Detailed provisions on the initiation, conduct and administration of arbitral proceedings are contained in rules and regulations adopted by ICSID's Administrative Council pursuant to the Convention. These include rules governing the submission to and registration by ICSID of requests for arbitration (the "Institution Rules"); rules of procedure applicable to the conduct of arbitration proceedings once a request has been registered (the "Arbitration Rules"); and ICSID's Administrative and Financial Regulations, two chapters of which deal with aspects of the Centre's administration of proceedings. (ICSID's Institution and Arbitration Rules and its Administrative and Financial Regulations were revised with effect from September 26, 1984. Unless otherwise indicated in this article, references here are to the revised Rules and Regulations.)

Taken together, these various sets of rules establish a procedural regime which is perhaps more detailed than that created by the rules of any other major international arbitration institution. Though they are comparatively detailed, the ICSID rules can to a considerable extent be modified by the parties to suit their needs. This is particularly true with respect to the Arbitration Rules proper. The Convention places few limits on the ability of parties to modify these Rules by common agreement. Moreover, as they are meant to be easily adaptable to the different circumstances of each proceeding to which they apply, the ICSID Arbitration Rules offer, on many procedural questions, choices to the parties, coupled with mechanisms to ensure that there is an applicable provision if the parties do not reach agreement on one or more such questions.

These include such important questions as the quorum requirement for sittings of the Arbitral Tribunal and the language or languages of the proceeding. ICSID Arbitration Rule 20(1) requires a Tribunal to apply any agreement of the parties on procedural matters which is consistent with the Convention and ICSID's Administrative and Financial Regulations. However, parties seldom agree in advance, in their arbitration agreement or at the time a request for arbitration is addressed to the Centre, on particular procedural matters such as those mentioned above. Yet, if parties wish to make the procedural choices open to them under the Arbitration Rules, it is generally necessary that they should do so at an early stage of the arbitration if the proceeding is to take place smoothly.

To facilitate this, the ICSID Arbitration Rules provide for a preliminary procedural consultation to be held between the parties and the President of the Tribunal as soon as possible after the constitution of the Tribunal. The present article briefly describes this mechanism and how procedural questions requiring early resolution have been dealt with in ICSID arbitrations. The process as a whole may be viewed as the setting up of the initial procedural framework of an ICSID arbitration, a process in which participants are the Tribunal members, the ICSID Secretariat, as well as the parties themselves.

The Preliminary Procedural Consultation

The preliminary procedural consultation is provided for in ICSID Arbitration Rule 20(1). The consultation may be conducted in any manner by the President of the Tribunal, through correspondence, for example, or in one or more meetings between the President and the parties. Arbitration Rule 20(1) states that in the preliminary procedural consultation, the President of the Tribunal shall seek the parties' views on questions of procedure and in particular on the following matters:

(a) the number of members of the Tribunal required to constitute a quorum at its sittings;
(b) the language or languages to be used in the proceeding;
(c) the number and sequence of the pleadings and the time limits within which they are to be filed;
(d) the number of copies desired by each party of instruments filed by the other;
(e) dispensing with the written or the oral procedure;
(f) the manner in which the cost of the proceeding is to be apportioned; and
(g) the manner in which the record of the hearings shall be kept.

In the majority of cases, actual decisions on such matters have been deferred until the first session of the Tribunal, which under Arbitration Rule 13(1) must be held within 60 days after the constitution of the Tribunal or such other

period as the parties may agree. One obvious reason for this is, as will be shown below, that the resolution of some of these matters may require a decision by or the concurrence of the full Tribunal. Indeed, the first session of a Tribunal is normally devoted primarily to procedural questions. Thus the agenda for the first session may well call for decisions on each of the matters listed in Arbitration Rule 20(1)(a)-(g) as well as on other matters. These may now be examined in more detail.

Quorum at Sittings of the Tribunal

This question is addressed in Arbitration Rule 14(2), which provides that unless the parties agree otherwise the presence of a majority of the members of the Tribunal shall be required at its sittings. The usual practice has been to require the presence of all Tribunal members at the sittings of a Tribunal except that a majority may suffice in exceptional circumstances, such as when an arbitrator cannot attend by reason of force majeure or, in some instances and provided that the arbitrator who is not present is consulted, when only matters of procedure are to be considered at a sitting.

The Language or Languages to be Used in the Proceedings

Arbitration Rule 22 permits parties to agree on the use of one or two languages to be used in the proceeding. Such language or languages need not be an official language of the Centre (i.e., English, French or Spanish) provided that if the parties agree on any language that is not an official one, the Tribunal must give its approval after consultation with the Secretary-General. If the parties do not agree on any language, then Arbitration Rule 22(1) requires that each of them choose one of the official languages of the Centre. In practice, English and French have been the only languages so far employed in ICSID proceedings. Most ICSID arbitral proceedings in the 1980s have been conducted solely in English or in French, while only 3 have been bilingual proceedings where the use of both languages was approved.

For bilingual proceedings, the Rules give some discretion to the Tribunal to decide how the approved language or languages will be used during the proceeding. The underlying consideration is that, in the case of bilingual proceedings, the Tribunal will be in a better position, in view of the circumstances of the case and particularly the linguistic capabilities of the parties and of the arbitrators, to judge what is needed and what is not and to be guided in so doing by considerations of costs as well as fairness to the parties. Under Arbitration Rule 22(2), the Tribunal is empowered to decide whether translation and interpretation will be required at the hearings (Arbitration Rule 22(2) provides that, in the case of a bilingual procedure, either of the selected languages may be used on this occasion). It may also be mentioned that pursuant to Regulation 30(3) of the Administrative and Financial Regulations, the Tribunal can waive the requirement set out in that regulation that any document which is not in a language approved for the proceedings be accompanied by a certified translation into a such language.

Pleadings and Time Limits

Pursuant to Arbitration Rule 31(1), the written pleadings include a memorial by the requesting party and a counter-memorial by the other party. Arbitration Rule 31(1) provides that if the parties so agree or if the Tribunal deems it necessary, the memorial and counter-memorial will be followed by a reply by the requesting party and a rejoinder by the other party. Arbitration Rule 31(3) explains that a memorial should contain a statement of the relevant facts; a statement of law; and the submissions. A counter-memorial, reply or rejoinder should contain an admission or denial of the facts stated in the last previous pleading; any additional facts, if necessary; observations concerning the statement of law in the last previous pleading; a statement of law in answer thereto; and the submissions. In the majority of cases, the parties have agreed that the written procedure should include all of these pleadings, a memorial, counter-memorial, reply and rejoinder, filed in that order. In one case the requesting party deemed its request for arbitration also to be its memorial.

Under Arbitration Rule 26(1), the time limits for the completion of various steps in the proceeding are to be fixed by the Tribunal. The Rule permits the Tribunal to delegate to its President the power to fix such time limits and this has been done in the majority of cases, subject in some instances to the requirement that the President consult with the other members of the Tribunal before setting time limits. In general, it may be said that the schedule fixed for the filing of written pleadings has in most cases permitted the written phase of the proceeding to be completed within about a year of the first session, though extensions of time limits (which may be granted by the Tribunal or, when it is not in session, by its President) and such events as stays of proceedings frequently prolong the written phase.

Copies of Instruments

Unless the Tribunal provides otherwise after consultation with the parties and the ICSID Secretary-General, any instrument (such as a written pleading) must, under Arbitration Rule 23, be filed in the form of a signed original accompanied by copies in the number of members of the

Tribunal plus two more additional copies. In the case of a Tribunal of three members (all ICSID Arbitral Tribunals have so far had this number of members), a party will therefore normally file the original of an instrument plus five copies. The original and one copy is retained by the Centre, which then distributes one copy to each arbitrator and one to the other party. In most ICSID arbitrations, parties have been satisfied with this arrangement, though in a few cases they have agreed that each party should receive more than one copy of instruments filed by the other.

Dispensing with the Written or the Oral Procedure

Arbitration Rule 29 provides that unless the parties agree otherwise the proceeding will comprise a written phase followed by an oral one. While parties may dispense with either phase, all ICSID arbitrations which have run their full course have included both written and oral procedures, the latter normally being conducted after the main written pleadings have been filed, though in most cases supplementary written exchanges have taken place during or following the conclusion of the oral phase.

Apportionment of Advances on Costs

Article 61(2) of the Convention provides that except as the parties otherwise agree, the Tribunal shall decide in its award how and by whom the costs of the proceeding shall be borne. In a few cases, parties have agreed in advance that, for example, they should bear the costs of the arbitration equally, but most often they have left the matter to be determined by the Tribunal in its award. The practice of ICSID Tribunals has varied on this matter. Most of the Tribunals have decided that costs should be shared equally by the parties, but some have awarded costs to the winning party.

During a proceeding, the fees and expenses of the Tribunal and other direct costs of the arbitration are met by advances from the parties which the Centre from time to time requests them to make to cover anticipated expenditures during periods of 3 to 6 months. Without prejudice to any ultimate decision by the Tribunal on the apportionment of costs, the general rule, which is set out in Administrative and Financial Regulation 14(3)(d), is that the parties should each pay one half of such advances. The same regulation permits the parties or the Tribunal to decide on a different division of the advance payments. This possibility is elaborated upon in Arbitration Rule 28(1) which provides that the Tribunal, absent agreement by the parties to the contrary, may at any stage of the proceeding decide the portion of the direct costs of the proceeding which each party should advance pursuant to Administrative and Financial Regulation 14. Rule 28(1) also gives the Tribunal the power to decide "with respect to any part of the proceeding," that one of the parties should bear the related costs in full or in a particular share.

A related question which is normally considered at the outset of the arbitration is the level of the fees and expenses that the Tribunal will receive. Under Administrative Financial Regulation 14(1) and the Centre's Schedule of Costs, the fees of arbitrators are at present set at 600 Special Drawing Rights (equivalent at current rates to some US$850) per day of work performed in connection with the proceedings and per day of attendance at meetings. Arbitrators are also reimbursed for any direct expenses reasonably incurred and, on the basis of the norms applicable to Executive Directors of the World Bank, for their subsistence and travel expenses. However, Article 60 of the Convention permits parties and the Tribunal to agree on different arrangements for arbitrators' fees and expenses.

Records of Hearings

The Arbitration Rules leave this matter entirely up to the parties and the Tribunal. They are free to decide whether minutes should be kept of the hearings, and if so by whom, and whether other methods of keeping the record (e.g. sound recordings or verbatim transcripts) would suffice or would also be needed. For each ICSID arbitration the Secretary-General of the Centre appoints a Secretary to the Tribunal (who in most cases is an ICSID counsel). If the Secretary of the Tribunal is to be present at a hearing (and the Secretary must be present if the President of the Tribunal or the ICSID Secretary-General so directs), the Secretary may well be asked to keep the minutes of the hearing. Before the ICSID Regulations and Rules were revised on September 26, 1984, they in fact provided that the Secretary of the Tribunal should attend and keep minutes of all hearings. These requirements were, however, made more flexible in the revised Regulations and Rules as it was felt they could impose an unnecessary financial burden on parties who, for hearings taking place away from the seat of the Centre, are required to cover the expenses for the Secretary to travel to such hearings. However, Article 44 of the Convention provides that unless the parties agree otherwise, the Arbitration Rules applicable to their proceeding shall be those in force on the date of their agreement to have recourse to ICSID arbitration. As a result of this provision, most arbitrations currently pending before ICSID are governed by the Arbitration Rules in force before September 26, 1984 which assume that the Secretary of the Tribunal will keep minutes of (and by implication to attend) all hearings. Particularly for arbitrations which are governed by the Arbitration Rules in effect prior to September 26, 1984, the question whether this

arrangement should be maintained for the proceeding is thus one of the matters often dealt with during the preliminary procedural consultation or at the first session of the Tribunal. In recent years, the most common practice where meetings are to be held away from the seat of the Centre, has been to request the presence of the Secretary at the first session of the Tribunal and to allow for it on a case by case basis as required for subsequent meetings. In several cases, the parties and the Tribunal have agreed that the Tribunal, or its President, could make the necessary arrangements for keeping the minutes of these meetings by, for example, appointing an assistant to perform this task.

Other Matters

Other procedural and administrative matters which have been decided upon at first sessions have included how communications should be channeled among the parties and the Tribunal; the means by which the Tribunal may take decisions; the place of proceedings, and whether a pre-hearing conference should be held.

(i) *Channel of Communications*

Administrative and Financial Regulation 24 provides that during the pendency of any proceedings, the ICSID Secretary-General shall be the official channel of communications among the parties and the Tribunal. This regulation also provides that instruments and documents are to be filed or introduced into the proceeding by transmitting them to the Secretary-General who, as mentioned earlier, retains the original and one copy for the files of the Centre and arranges for appropriate distribution of the other copies. Regulation 24 however envisages that the members of the Tribunal may communicate directly with each other as may the parties if the communication is not one required by the Institution or Arbitration Rules.

On some occasions, particularly where the parties and the arbitrators are located far from ICSID's seat (in Washington, D.C.), the Centre has agreed to modify the foregoing arrangements. In addition to sending the original and one copy to the Centre, parties have, for instance, been allowed to dispatch the appropriate number of additional copies of instruments and documents directly to the members of the Tribunal as well as to the other party. In all cases, however, including those where such alternative arrangements have been made, the general rule, set out in Administrative and Financial Regulation 29, is that time limits for the filing of instruments are deemed to be satisfied when ICSID receives the documents on the indicated date.

(ii) *Decisions of the Tribunal*

Echoing Article 48(1) of the Convention, Arbitration Rule 16(1) provides that decisions of the Tribunal are to be taken by a majority of the votes of all of its members. Abstentions count as negative votes. Except with respect to such decisions as the actual award of the Tribunal, which must always be signed by the arbitrators who voted for it, Arbitration Rule 16(2) adds that a Tribunal may decide to take any decision by correspondence among its members, provided all of them are consulted. In the majority of cases, Tribunals have decided that they could take decisions by correspondence although in some instances they have restricted this to decisions concerning procedural matters only. Under Arbitration Rule 16(2), decisions taken by correspondence are to be certified by the President of the Tribunal.

(iii) *Place of Proceedings*

ICSID arbitration proceedings need not be held at the Centre's seat in Washington, D.C. In accordance with Article 63 of the Convention and arrangements made pursuant to that Article, proceedings may, if the parties so agree, also be held (a) at the seat of the Permanent Court of Arbitration at the Hague or at the seats of the Asian-African Legal Consultative Committee Regional Arbitration Centres at Cairo and Kuala Lumpur or (b) at any other place approved by the Tribunal after consultation with the ICSID Secretary-General. However, in the absence of agreement to the contrary by the parties or any required approval by the Tribunal proceedings are held at Washington, D.C.

Within this wide range of potential places of the proceedings, practical considerations rather than strictly legal ones generally determine the choice of a venue for the arbitration since provisions of the Convention insulate ICSID arbitration from the control of national courts and confer jurisdictional and certain other immunities upon participants in ICSID proceedings. The choice of a non-member country of ICSID as the venue for proceedings has been avoided in practice in all ICSID cases to date. However, the choice of possible venues is not seriously restricted by this factor since ICSID members include 89 countries from all the major regions of the world. There is thus great scope for the choice of the place of proceedings to be made simply on the basis of such practical considerations as the place of residence of the parties and of the members of the Tribunal as well as on the basis of the need to choose a "neutral" location. In a high proportion of cases, this freedom has been used to have meetings held in several different places (sometimes as many as 4), with the venue being changed as convenience required. In practice, the place designated as the place of proceedings has been used for holding hearings and in the majority of cases it has been agreed that the arbitrators could meet among themselves at another mutually convenient location.

Under Administrative and Financial Regulation 26, the Secretary-General, in addition to being responsible for making the necessary arrangements for the holding of proceedings at the seat of the Centre, is also required if the parties

so request to make or supervise such arrangements if proceedings are held elsewhere. In this connection, it may be noted that apart from the seat of the Centre the place most frequently chosen as a venue for proceedings has, so far, been Paris, where the World Bank (to which ICSID has close links) has its European office and where therefore ICSID can easily provide the facilities needed for the holding of the proceedings.

(iv) *Pre-Hearing Conference*

The possibility of holding a "pre-hearing conference" in the course of the proceedings has in some instances been another item on the agenda. Such conferences, which are provided for under Arbitration Rule 21, may be held between the parties and the Tribunal either, at the request of the Secretary-General or at the discretion of the President of the Tribunal, to arrange for an exchange of information and the stipulation of uncontested facts in order to expedite the proceeding or, at the request of the parties, to consider the issues in dispute with a view to reaching an amicable settlement of the dispute. The pre-hearing Conference mechanism was introduced in the revised Rules and Regulations in effect as of September 26, 1984 and therefore has not yet been widely used in practice. Recourse to this mechanism should become more frequent as the number of cases which are governed by the revised Rules and Regulations increases.

* * *

Several further matters often appear on the agenda of first sessions. For example, parties have normally been asked, at the time of the first meeting, to confirm, or to notify to the Secretariat if they have previously done so pursuant to Arbitration Rule 18(1), the names and authority of any agents, counsel or advocates who will be representing or assisting them in the proceeding. In addition, the parties have at the first session generally been asked to confirm that the Tribunal has been properly constituted. The fact that the arbitrators have all duly signed the declarations required of them under Arbitration Rule 6 is also usually noted at the first session (if by the end of this session any arbitrator has failed to sign such a declaration, affirming his willingness to judge the case impartially and disclosing any relationship he may have with the parties, he will be deemed to have resigned from the Tribunal). On some occasions, it has been possible to fix the dates of subsequent sessions, though more often it has simply been agreed that such dates would, in accordance with Arbitration Rule 13(2), be determined by the Tribunal after consultation with the Secretary-General and with the parties as far as possible. Finally, at the first session there may be occasion for the parties to agree, if they have not already done so, on the law which will be applied by the Tribunal to the substance of the dispute or whether the Tribunal should be authorized to decide the dispute *ex aequo et bono*. (Article 42(1) of the Convention provides that in the absence of agreement between the parties on the proper law, the Tribunal must apply the law of the State party to the dispute "and such rules of international law as may be applicable.")

Conclusion

While the procedural framework which is thus created at the initial stage of the arbitration should contain as many of the basic elements which are necessary for the smooth conduct of the proceeding at this stage, it cannot and in fact should not attempt to be exhaustive. A number of items can for various reasons only be determined at a later stage as the arbitration progresses. The need to have a site visit, for instance, may only become apparent after the parties' first pleadings, at which time the arbitrators may also request the parties to attend to such matters as indicating to the Tribunal whether the parties will be calling witnesses or experts, and if so, how many witnesses and experts and the matters on which they will be making their statements. In any event, the establishment of the initial procedural framework will not generally prevent the arbitrators and the parties from adapting and developing it further throughout the proceeding, as and when procedural issues arise.

Bertrand P. Marchais
Counsel, ICSID

Notification Under Article 25(4) of the ICSID Convention

Article 25(4) of the Convention provides that:

"Any Contracting State may, at the time of ratification, acceptance or approval of this Convention or at any time thereafter, notify the Centre of the class or classes of disputes which it would or would not consider submitting to the jurisdiction of the Centre. The Secretary-General shall forthwith transmit such notification to all Contracting States. Such notification shall not constitute the consent required by paragraph (1)."

On October 23, 1987 the Secretariat of the Centre received the following notification from the Government of Guyana:

"On July 8, 1974 the Government of Guyana notified the International Centre for Settlement of Investment Disputes, under Article 25(4) of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, as follows -

> In accordance with Article 25 of the Convention on the Settlement of Investment Disputes between States and Nationals of other States, Guyana hereby notifies the International Centre for Settlement of Investment Disputes that Guyana would not consider submitting to the jurisdiction of the Centre legal disputes arising directly out of an investment relating to the mineral and other natural resources of Guyana.

Having carefully reconsidered the matter the Government of Guyana has decided to withdraw the aforesaid notification and hereby does so.

Hereafter the Government of Guyana will, in accordance with Article 25 of the said Convention, refer to the Centre legal disputes to which that Article applies and which the parties to the dispute consent in writing to submit to the Centre."

The notification was transmitted to all Contracting States on October 30, 1987.

Recent Publications on ICSID

Audit, Bernard,
Comment, Société Atlantic Triton c. République populaire révolutionnaire de Guinée, Jugement du 18 novembre 1986, Cour de Cassation, 76 *Revue Critique de Droit International Privé* 760–73 (1987).

Broches, Aron
Awards Rendered Pursuant to the ICSID Convention: Binding Force, Finality, Recognition, Enforcement, Execution, 2 *ICSID Review - Foreign Investment Law Journal* 287–334 (1987).

Delaume, Georges R.
Judicial Decisions Related to Sovereign Immunity and Transnational Arbitration, 2 *ICSID Review - Foreign Investment Law Journal* 403–23 (1987).

Law and Practice of Transnational Contracts 315–97 (1988).

Gaillard, Emmanuel
Quelques observations sur la rédaction des clauses d'arbitrage CIRDI, 97 *Recueil Penant* 291–303 (1987).

Comment, Société Atlantic Triton c. République populaire révolutionnaire de Guinée et société guinéenne de pêche (Soguipêche), Jugement du 18 novembre 1986, Cour de Cassation, 114 *Journal du Droit International* 125–33 (1987).

Chronique des sentences arbitrales du Centre International pour le Règlement des Différends Relatifs aux Investissements, 113 *Journal du droit international* 197–252 (1986), 114 *Journal du droit international* 135–91 (1987).

Redfern, D.A.
ICSID - Losing its Appeal?, 3 *Arbitration International* 98–118 (1987).

van den Berg, Albert Jan
Some Recent Problems in the Practice of Enforcement under the New York and ICSID Conventions, 2 *ICSID Review - Foreign Investment Law Journal* 439–56 (1987).

Membership in the New York Convention

On October 26, 1987, the Government of Costa Rica ratified the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) while the Government of the Republic of Cameroon acceded to the New York Convention on February 19, 1988.

This brought to 75 the number of States that have either ratified or acceded to the New York Convention. The Convention has also been signed by 3 States which have not yet ratified it.

Investment Laws of the World (ILW)

A new release (Release 87/4) of the ILW collection has been issued in December 1987. This release includes the basic investment legislation of the following countries: Togo, Morocco, Korea (update), Maldives, Somalia, Guinea, Venezuela, the Philippines and Burundi.

ICSID Hosts a Fifth ICSID, AAA, ICC Colloquium

On October 16, 1987 a joint colloquium on Arbitration and the Courts, Practical Aspects of Administered International Arbitration, was held at the headquarters of the World Bank in Washington, D.C.

The main purpose of the colloquium was to review and discuss some of the practical issues which arise, at the various stages of the arbitral process, from the relationship between domestic courts and administered arbitration. The colloquium was also intended to address recent developments in treaty law and in domestic laws on arbitration. This colloquium was the fifth in a series of conferences on the subject of International Arbitration initiated in November 1983

Pictured at the fifth ICSID/AAA/ICC Colloquium are, from left to right: Mr. Michel Gaudet, Chairman, ICC Court of Arbitration; Mr. Robert Coulson, President, American Arbitration Association; Mr. Ibrahim F.I. Shihata, Secretary-General, ICSID.

under the joint auspices of ICSID, the American Arbitration Association (AAA) and the International Chamber of Commerce (ICC).

Five specific topics were addressed during the colloquium which was divided into a morning and an afternoon session. The format adopted provided that for each topic, the formal presentation would be followed by a discussion period during which the floor was open to comments, led by selected intervenors, from the participants to the conference.

The morning session began by introductory remarks by Mr. Ibrahim F.I. Shihata, Secretary-General of ICSID, Mr. Michel Gaudet, Chairman of the ICC Court of Arbitration and Mr. Robert Coulson, President of the AAA. Two specific topics were addressed during this session. The first topic related to "Judicial Attitudes Towards Decisions Taken by Arbitral Institutions - Current Trends: the Experience of the AAA, ICC and ICSID" and was addressed in turn by a representative of each institution. The speaker for the AAA was Mr. Michael F. Hoellering, General Counsel; for the ICC Court of Arbitration the speaker was Mr. Stephen R. Bond, Secretary-General and for ICSID, Mr. Bertrand P. Marchais, Counsel. The comments which followed these presentations focussed, inter alia, on the issue of provisional measures in international arbitration and were led by Dr. Ahmed Sadek El-Kosheri, Professor of International Economic Law and Senior Partner, Kosheri and Rashed, Cairo, Egypt and by Mr. William Rand, Attorney, Coudert Brothers, New York. The next subject concerned "National Legislation and the Role of Arbitral Institutions: A Comparative Analysis of Domestic Laws and the UNCITRAL Model Law." It was addressed by two speakers, Mrs. Samia Rashed, Professor of International Law and Attorney, Cairo, Egypt and Mr. Emmanuel Gaillard, Professor of International Commercial Law and European Counsel, Shearman and Sterling, Paris, France. In his speech, Professor Gaillard provided a comparative evaluation of the UNCITRAL Model Law and of some of the legislation which have been recently enacted by developed countries while Professor Rashed's speech focussed on legislation from developing countries, particularly the new law on arbitration in Egypt. The comments which followed these presentations were led by Mrs. P.G. Lim, Director of the Regional Centre for Arbitration in Kuala Lumpur, Malaysia who provided information on the current activities of the Regional Centre and by Mr. Stephen M. Boyd, Partner, Bryan, Cave, McPheeters and McRoberts, Washington, D.C. who provided an update on the work which is currently done in the US on the UNCITRAL Model Law.

During the luncheon, Mr. Aron Broches, the first Secretary-General of ICSID and now of Counsel, Holtzmann, Wise and Shepard, New York, spoke on some recent developments in ICSID arbitration.

The first topic of the afternoon session related to "the Enforcement of Awards in the Context of the New York and the ICSID Convention;" the speaker was Mr. Albert J. van den Berg, Partner, van Doorne and Sjollema, Rotterdam and General Editor of the Yearbook of Commercial Arbitration. The second subject, which concerned "Judicial Decisions related to Sovereign Immunity and Transnational Arbitration," was presented by Mr. Georges R. Delaume, former Senior Legal Adviser, ICSID and Counsel to Curtis, Mallet-Prevost, Colt and Mosle, Washington, D.C. Mr. Frank E. Nattier, Attorney and Counselor at Law, Austin, Texas led the comments on the first of these topics and Mr. Mark Feldman, Partner, Washington Office of the law firm Donovan, Leisure, Newton and Irvine and Adjunct Professor of international commercial arbitration, Georgetown University Law Center, led the comments on the second. The final topic was "The Inter-American Convention, Recent Developments" and was addressed by Mr. Hugo Caminos, Assistant Secretary-General for Legal Affairs, Organization of

American States, Washington, D.C. The comments which followed were led by Mr. Charles Norberg, Director General, Inter-American Commercial Arbitration Commission, who reviewed the future prospects of the Convention.

The conference was attended by close to 100 participants from the legal profession and the business community (Some of the speeches which were delivered during the colloquium have been published in the form of articles in the Fall 1987 issue of ICSID Review - Foreign Investment Law Journal. Others will be published in the Spring 1988 issue.)

A general view of the fifth ICSID/AAA/ICC Colloquium

A sixth ICSID/AAA/ICC joint colloquium will be held in Paris, France on October 27, 1988. The theme of the colloquium will be "The Arbitral Process and the Independence of Arbitrators." The colloquium will be hosted by the Court of Arbitration of the International Chamber of Commerce, 38 Cours Albert 1er 75008 Paris.

(For further information, contact Mr. Guillermo Aguilar-Alvarez, General Counsel, ICC Court of Arbitration. Telephone: (1) 45-62-34-56; Telex: 65-0770 ICC HQ.)

News from Other Institutions

–The American Arbitration Association (AAA) will hold an "International Arbitration Day" in Philadelphia on April 13, 1988. The guest of honor will be King Carl XVI Gustaf of Sweden.

The program for Arbitration Day, co-sponsored by the Stockholm Chamber of Commerce, will feature concurrent seminars with international themes. The seminars being offered include:

- Issues in International Commercial Arbitration
- Insurance Claims
- Construction Claims
- Labor-Management Relations

Among the speakers will be members of the Stockholm Chamber of Commerce including Swen Swarting, President of the Stockholm Chamber of Commerce. Among the other speakers are The Honorable Helen M. Witt, Chairman, National Mediation Board; Stephen I. Schlossberg, Director, Washington Branch, International Labor Organizations; Judge Abraham J. Gafni, Court of Common Pleas; James F. Mundy, Esq., Raynes, McCarty, Binder, Ross & Mundy; Robert A. Korn—Korn, Kline, & Kutner, P.C.

Additional information may be obtained by contacting Donna Silberberg, Public Relations Director, AAA, Tel. (212) 484-4006.

–The Cairo Regional Centre for International Commercial Arbitration, with the cooperation of the UNCITRAL Secretariat, is organizing a seminar on "International Commercial Arbitration and Promotion and Protection of Foreign Investments in the Afro-Asian Region."

The Seminar will be held in Cairo, Egypt, from March 28 to March 31, 1988. Among the topics which will be addressed are:

- Asian African Legal Consultative Committee (AALC) Scheme for Settlement of Disputes in Economic and Commercial Matters, and Facilities and Activities of Regional Centres for International Commercial Arbitration (Cairo-Kuala Lumpur).
- Rules of International Commercial Arbitration in the Arab World.
- Development in Rules of International Commercial Arbitration in the Egyptian Law.
- A Study of Samples of the Arab and African National Laws concerning Foreign Investments.

ICSID Review - Foreign Investment Law Journal

A fourth issue of the Review appeared in the Fall of 1987. Its main features are:

Articles by

Mr. Aron Broches, "Awards Rendered Pursuant to the ICSID Convention: Binding Force, Finality, Recognition, Enforcement, Execution";

Professor Beverly M. Carl, "The New Approach to Latin American Integration and its Significance to Private Investors";

Mr. Ibrahim F.I. Shihata, "Eligibility Requirements for MIGA's Guarantees";

Mr. Georges R. Delaume, "Judicial Decisions Related to Sovereign Immunity and Transnational Arbitration";

Professor Emmanuel Gaillard, The UNCITRAL Model Law and Recent Statutes on International Arbitration in Europe and North America";

Mr. Albert Jan van den Berg, "Some Recent Problems in the Practice of Enforcement under the New York and ICSID Conventions";

(The Articles by Georges R. Delaume, Emmanuel Gaillard and Albert Jan van den Berg are based on papers presented by them at the Fifth Joint ICC/AAA/ICSID Colloquium on Arbitration and the Courts which took place in Washington, D.C. on October 16, 1987 and which is described at pp. 11–13 of this issue).

Comments by

Mr. Istvan Pogany, "Bilateral Investment Treaties: Some Recent Examples";

Mr. John A. Westberg, "The Applicable Law Issue in International Business Transactions with Government Parties—Rulings of the Iran-United States Claims Tribunal".

Cases

Attorney General of New Zealand v. Mobil Oil New Zealand Ltd. et al., Decision of the High Court of New Zealand, June 1987.

Documents

Decision No. 220 of the Commission of the Cartagena Agreement, May 11, 1987.

Investment Incentive Agreement Between the Government of the United States of America and the Government of the State of Bahrain, April 25, 1987.

Bibliography

Selective Bibliography on the Iran-United States Claims Tribunal prepared by Mr. Nassib G. Ziadé.

The fifth issue of the Review will be published in the spring of 1988.

NEWS FROM ICSID

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