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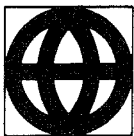
1984 ANNUAL REPORT



**International Centre for
Settlement of Investment Disputes**

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Settlement of Investment Disputes**

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International Centre for Settlement of Investment Disputes

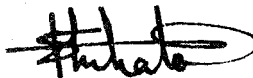
September 3, 1984

Dear Mr. Chairman:

Pursuant to Administrative and Financial Regulation 4(4), I hereby submit to the Administrative Council for its approval the Annual Report on the operation of the International Centre for Settlement of Investment Disputes required by Article 6(1)(g) of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. This Annual Report covers the fiscal year July 1, 1983 to June 30, 1984.

The report includes the audited financial statements of the Centre, presented pursuant to Administrative and Financial Regulation 18.

Sincerely yours,



Ibrahim F.I. Shihata
Secretary-General

Mr. A.W. Clausen
Chairman
Administrative Council
International Centre for Settlement of Investment Disputes

Introduction by the Secretary-General

This is the first annual report that I have the honor to submit to the Administrative Council. In form and substance, it differs from earlier annual reports. There are several reasons for this new presentation.

As Secretary-General, I take it that it is my duty to find ways for ICSID to assume a more important role in improving the investment climate at large, and in developing countries in particular. ICSID can play that role only to the extent that its potential clients, the investors and the host countries, agree to resort to the ICSID machinery either at the time of drafting an investment agreement or when disputes arise out of such an agreement.

For this to happen, it is essential that potential parties to investment disputes be fully aware of the many advantageous features of ICSID.

The annual report is one way to make the public aware of ICSID's activities and of the expanded role that it can play to promote an atmosphere of mutual confidence between investors and states.

In addition to this basic consideration, there are other factors which have prompted me to expand the coverage of the annual report.

To accomplish the objective that I have in mind, I feel that the annual report should

not merely be a statement of the events which took place during the year. It should also record the interpretation that the Secretariat can give to recent relevant developments and the Secretariat's assessment of ICSID's prospects, as well as suggestions for expanding its role.

This is the approach that I have already adopted in connection with the publication of "News from ICSID", two issues of which have been published this year. It appears to have been favorably received.

In recent years, certain ICSID awards have been published by other sources and comments on them, as well as on unpublished awards, have begun to appear.

In view of these developments, I believe that it would be proper for the Secretariat to prepare a digest of the legal principles applied by ICSID tribunals insofar as the principles relate to the interpretation and the implementation of the ICSID Convention. This can be done in abstract fashion, without comments or disclosure of any factual information. I believe that such a careful publication will help the general development of the law applicable to investment disputes and as such will serve an important public purpose.

There is also material in the public domain that can be usefully analyzed by t

Secretariat for the benefit of Contracting States and investors. This includes domestic investment laws and bilateral investment treaties. These laws and treaties are published by ICSID in two separate collections entitled "Investment Laws of the World" and "Investment Treaties". So far this material has been referred to in the literature on an *ad hoc* basis. I consider that it should be the object of systematic analysis since such an analysis may be of considerable help in assisting Contracting States in the drafting of statutory and treaty provisions and may also clarify the views of Contracting States as to what they regard as possible "investments" falling within the scope of the ICSID Convention. That study is under way. Its findings will eventually be recorded in annual reports and ICSID publications.

A similar function can be performed in regard to information which, even though it is not within the public domain, is known to the Secretariat. I have in mind particularly the clauses collected by the Secretariat referring investment disputes to ICSID conciliation/arbitration and the steadily increasing number of questions put to the Secretariat by potential users of ICSID. This information is part of ICSID's experience. In properly digested form, it can be of real assistance to both Contracting States and

investors. In order to build up additional information, I have requested Contracting States to supply examples of ICSID clauses used by them in existing investment agreements. I wish that all Contracting States would participate in this endeavor, which is clearly in the interest of the ICSID community as a whole. In due course, an analytic appraisal of contractual trends, including drafting problems, will be prepared by the Secretariat. This information will be recorded in annual reports as well as in separate ICSID publications dealing comprehensively with the subject.

These are merely examples of the means available to further ICSID's paramount objectives. ICSID should not be viewed merely as a mechanism of conflict resolution. It should be regarded as an effective instrument of international public policy which is meant in the final analysis to secure a stable and increasing flow of resources to developing countries under reasonable conditions.

It is my hope that the new format of the annual report will help achieve this fundamental objective.

Ibrahim F.I. Shihata
Secretary-General

Membership

The following States deposited their instrument of ratification on the dates indicated:

Barbados:	November 1, 1983
El Salvador:	March 6, 1984

The Convention was signed by Portugal on August 4, 1983. St. Lucia signed the Convention on June 4, 1984, and on the same day deposited its instrument of ratification.

Significance of ICSID Membership

At present, 90 States have signed the Convention and 86 States have ratified it.*

ICSID's membership thereby surpasses by far the membership of other international arbitration conventions, such as:

- New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, ratified by: 62 States
- European Convention on International Commercial Arbitration of April 21, 1961, ratified by: 20 States
- Inter-American Convention on International Commercial Arbitration of January 30, 1975, ratified by: 8 States

It is important to highlight also the widening geographical application of the ICS Convention. The most significant fact in regard is the adherence of Latin-American States to the Convention. Paraguay and Salvador are already members of ICSID a Costa Rica has signed the Convention. may be hoped that this unprecedented phenomenon will serve as an example to other States in this important region where a considerable part of worldwide foreign investment is concentrated.

It is also interesting to note the phenomenon of certain member States, such as Kuwait, Saudi Arabia and the United Arab Emirates, who are on the one hand, as developing countries, importers of investment and of technology and, on the other hand, important capital exporters. In this situation equally without precedent, ICSID may be used in regard to investment disputes involving nationals of a developing country.

In an era in which it has become increasingly difficult for a developing country to obtain official development assistance and in which foreign private investment has in recent years diminished markedly, ICS membership cannot be but a positive element in a developing country's policies. should be recalled in this regard that ICS was conceived not only as a dispute settlement mechanism but also, and principally as an institution contributing effectively to the establishment of an atmosphere of mutual trust between investors and States. ICS membership is, therefore, an important step in the pursuit of an economic policy which tries to attract foreign investment. This is clearly shown by the number of requests for information which potential investors have recently addressed to the Secretariat regarding the adherence of a State to the ICSID Convention.

*Portugal deposited its instrument of ratification on July 2, 1984, bringing the number of ICSID's members to 87.

Disputes before the Centre

New Cases

In the course of the fiscal year, the Secretary-General has registered:

- two arbitration requests:
Atlantic Triton Company Limited v. the Republic of Guinea (Case ARB/84/1, registered on January 19, 1984);
Colt Industries Operating Corp., Firearms Division v. the Government of the Republic of Korea (Case ARB/84/2, registered on February 2, 1984);
- one conciliation request:
Tesoro Petroleum Corporation v. the Government of Trinidad and Tobago (Case CONC/83/1, registered on August 26, 1983).

Status of Pending Proceedings

[A] Arbitration Proceedings

(1) *Amco Asia et al v. the Republic of Indonesia (Case ARB/81/1)*

September 25, 1983—The Tribunal issues an Award on its jurisdiction.

December 19-23, 1983—The Tribunal meets in Washington, D.C. in the presence of the parties.

March 19-24, 1984—The Tribunal meets in Copenhagen in the presence of the parties.

(2) *Klöckner Industrie Anlagen GmbH et al v. the United Republic of Cameroon and Société Camerounaise des Engrais (SO-CAME) S.A. (Case ARB/81/2)*

October 21, 1983—The Tribunal issues an Award on the merits. Attached to the Award is a dissenting opinion of one of the arbitrators.

February 16, 1984—The Secretary-General registers an application for annulment of the Award by Klöckner.

March 19, 1984—The Secretary-General notifies the parties that the *ad hoc* Committee provided for under Article 52(3) of the Convention has been constituted. The Committee, appointed by the Chairman of the Administrative Council, consists of Messrs. Pierre Lalive (Swiss), Ahmed El-Kosheri (Egyptian) and Ignaz Seidl-Hohenveldern (Austrian).

May 8, 1984—The *ad hoc* Committee holds its first meeting in Geneva.

May 23, 1984—The *ad hoc* Committee holds a preliminary session in Geneva in the presence of the parties.

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

December 2, 1983—The Chairman of the Administrative Council appoints Mr. Aron Broches (Netherlands) as arbitrator and President of the Tribunal, in replacement of Professor Rudolf Bindschedler (Swiss) who resigned.

January 21, 1984—The Tribunal meets in The Hague with the parties for a preliminary consultation on procedure.

May 16-17, 1984—The Tribunal meets in Paris.

- (4) *Swiss Aluminium Limited (ALUSUISSE) S.A. and Icelandic Aluminium Company Limited (ISAL) v. the Government of Iceland (Case ARB/83/1)*

October 3, 1983—Claimants inform the Secretary-General of an agreement between the parties to suspend proceedings pursuant to Arbitration Rule 45.

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

November 15, 1983—The Tribunal is constituted. Its members are: Messrs. Bernardo Cremades (Spanish), President, appointed by the Chairman of the Administrative Council, Frank Church (U.S.) appointed by the Claimant and D.A. Redfern (British), appointed by the Respondent.

March 1, 1984—Following the resignation of Mr. Frank Church, Claimants appoint Mr. Jorge G. Pereira (Portuguese) who accepts the nomination.

May 21, 1984—The Tribunal holds a preliminary session on procedure in Washington, D.C.

[B] Conciliation Proceedings

Tesoro Petroleum Corporation v. the Government of Trinidad and Tobago (Case CONC/83/1)

December 15, 1983—The parties agree to appoint Lord Wilberforce (British) as sole conciliator.

January 6, 1984—The Secretary-General informs the parties that Lord Wilberforce accepts the appointment.

March 9, 1984—Lord Wilberforce holds a preliminary procedural consultation in London.

Increase of Disputes Submitted to ICSID

To date 18 cases have been submitted to ICSID, out of which 16 were requests for arbitration proceedings, and two for conciliation proceedings. These figures should, however, be seen in the light of the following:

- Since its establishment in 1965 until 1981, nine cases were submitted to ICSID. All related to arbitration proceedings.
- Since the beginning of 1981, nine new cases (seven regarding arbitration proceedings and two regarding conciliation proceedings) were submitted.

This marks a significant growth in the number of cases submitted to ICSID in recent years.

Statistical Data on Cases

With the exception of *Gabon v. Société Serète* (ARB/76/1, discontinued, see Annual Report 1980/1981, page 39), all requests for arbitration or conciliation have been introduced by investors.

Eight cases out of the 18 submitted to ICSID are still pending, whereas 11 have been terminated in the following manner:

- seven have been settled amicably (in one case the parties requested that the settlement agreement be included in an award), or discontinued;
- in four cases awards have been rendered:
 - (i) two awards have rejected the principal claim of the investor as well as the counterclaims of the State party to the dispute. One of these awards is currently the subject of an annulment procedure (*Klößner et al v. United Republic of Cameroon et al*);

- (ii) two awards have been rendered in favor of the investors (*AGIP v. the Government of the People's Republic of the Congo*; *Société Ltd. Benvenuti & Bonfant v. the Government of the People's Republic of the Congo*).

Only the award in the case of *Benvenuti & Bonfant* has given rise to some difficulties of enforcement. Nevertheless, following the recognition of the award by the Court of Appeal of Paris in 1981, the *Société Benvenuti & Bonfant* has informed the Centre that the People's Republic of the Congo had given effect to the award in accordance with its terms.

The Subject-Matter of the Disputes

The subject-matter of the disputes submitted to the Centre reflects changes in the concept of investment in recent years. The disputes submitted to ICSID have included both traditional types of investment in the form of capital contributions and new types of investment, including service contracts and transfers of technology.

As examples of traditional types, one might mention cases relating to (i) the exploitation of natural resources, such as bauxite mining (*Alcoa/Kaiser/Reynolds v. Jamaica*), oil exploration and exploitation (*AGIP Congo*; *Tesoro v. Trinidad and Tobago*), forestry exploitation (*LETCO v. Liberia*); (ii) industrial investments regarding the production of fiber for exportation (*Gardella v. Ivory Coast*), or of plastic bottles for the domestic market (*Benvenuti & Bonfant v. Congo*), liquefaction of natural gas (*Guadalupe v. Nigeria*), and the production of aluminum (*ALUSUISSE v. Iceland*); (iii) tourism

development through the construction of hotels (*Holiday Inns v. Morocco*, *AMCO Asia v. Indonesia*); and (iv) urban development in the form of housing construction (*SOABI v. Senegal*).

Modern types of investments include the construction of a chemical plant on a turn-key basis, coupled with a management contract providing technical assistance for the operation of the plant (*Klöckner v. Cameroon*), a management contract for the operation of a cotton mill (*SEDITEX v. Madagascar*), a management contract for the conversion of fishing vessels and the training of crews (*Atlantic Triton v. Guinea*), and technical and licensing agreements for the manufacturing of weapons (*Colt Industries v. Korea*). In the same category, one might also mention a dispute, which is the only one brought by a State against an investor, relating to the breach of a contract for the construction of a maternity ward (*Gabon v. Serete*).

It should be noted that ICSID clauses in the archives of ICSID refer not only to investments in the classical sense but also to arrangements involving transfers of technology and know-how in such fields as industrial, agricultural or tourism development and in matters of air transportation and electronics.

The above remarks show that the absence of a clear definition of the notion of investment in the ICSID Convention, deplored by certain commentators, has, in effect, been a wise precaution. It permits the Convention to be adapted to changes in the form of cooperation between investors and host States and to respond to the needs of ICSID users.

Revision of the Regulations and Rules

Published Awards

Certain awards have been published, in each case without the Centre being involved in the divulging of such awards:

AGIP SpA v. the People's Republic of the Congo (published in its original French version in the *Rivista di Diritto Internazionale*, 1981, 863 and in the *Revue Critique de Droit International Privé*, 1982, 92; and in an English translation in 21 *International Legal Materials* 726 (1982) and 7 *Yearbook of Commercial Arbitration* 133 (1983)).

Société Ltd. Benvenuti & Bonfant srl. v. the People's Republic of the Congo (published in an English translation of the French original in 21 *International Legal Materials* 740 (with a corrigendum at page 1478 (1982)).

AMCO Asia et al. v. the Republic of Indonesia (Award on jurisdiction, published in 23 *International Legal Materials* 351 (1984)).

The second issue of "**News from ICSID**" Summer 1984 contains a summary of the legal rules on the application of the ICSID Convention as applied by the Arbitral Tribunal in the case of *AMCO Asia v. Indonesia* and *Klöckner v. Cameroon*.

The bibliography published by ICSID (ICSID/13) makes reference to publications discussing awards rendered, including certain awards of which the full text has not yet been published.

Given the experience acquired in conciliation and arbitration proceedings, the Secretary-General deemed it timely to revise the Rules. The purpose of this revision is not to make major modifications to the Rules, but rather to simplify or clarify certain provisions and to allow for more flexibility in the handling of proceedings.

On April 30, 1984, the Secretary-General addressed to the members of the Administrative Council a note relating to the revision of the Regulations and Rules, to which was attached the text of the proposed modifications.

anel of onciliators and of rbitrators

Pursuant to the Convention, each Contracting State may designate four persons to the Panel of Conciliators and four persons to the Panel of Arbitrators. Despite repeated appeals by the Secretariat, a third of the Contracting States have not made use of this prerogative.

Given the marked increase in the number of disputes submitted to ICSID, it is of particular importance that ICSID has lists that are as complete as possible in order to facilitate the selection of conciliators or arbitrators by the parties or, if and when needed, by the Chairman of the Administrative Council.

In December 1983, the Secretary-General addressed to Contracting States that had not yet made designations a letter underscoring the usefulness of such designations.

In February 1984, the Secretary-General transmitted to the Executive Directors of the World Bank a note requesting them to bring to the attention of the authorities of Contracting States the importance of designating to the Panels persons with qualifications required by the ICSID Convention. "provided in the Convention, such persons shall be of high moral character and recognized competence in the fields of law, commerce, industry or finance, who may be relied upon to exercise independent judgment".

In the course of this fiscal year, designations have been received by the Secretariat from the following Governments:

- **Egypt** - designations effective as of February 1, 1984:

Panel of Arbitrators: Dr. Ahmed Sadek El Kosheri, Dr. Mahmoud Samir El-Sharkawy, Mr. Mahmoud Fahmy, and Dr. Ahmed Esmat Abdel Meguid.

- **Ghana** - designations effective as of April 24, 1984:

Panel of Conciliators: Mr. J.S. Addo, Mr. J. Arthur (re-appointment), The Hon. Mr. Justice S.M. Boison, and Mr. C.F. Hayfron-Benjamin.

Panel of Arbitrators: Mr. G.E.K. Aikins, Dr. S.K.B. Asante (re-appointment), The Hon. Mr. Justice Osei Hwere, and Dr. Akilakpar Sawyerr.

- **Israel** - designations effective as of March 7, 1984:

Panel of Conciliators: Mr. Moshe Sanbar, Mr. Avraham Friedman, and Mr. Yehuda Gill.

Panel of Arbitrators: Mr. Mayer Gabay, Mr. David Sassoon, and Mr. Haim J. Zadok.

- **Lesotho** - designations effective as of October 4, 1983:

Panel of Conciliators: Mr. S. Monts'i, and Mr. P.T. Mafike.

Panels of Conciliators and of Arbitrators: Mr. T. Makeka, and The Hon. Mr. Justice B.K. Molai.

- **Netherlands** - designations effective as of March 14, 1984:

Panel of Conciliators: Prof. Dr. P. Kuin (re-appointment), Prof. Dr. J.R.M. van den Brink, and Dr. J. Zijlstra.

Panel of Arbitrators: Prof. Dr. P. Sanders (re-appointment), Mr. Y. Scholten, and Prof. Dr. J.C. Schultz (re-appointment).

Panels of Conciliators and of Arbitrators: Prof. Dr. P. Lieftinck (re-appointment).

New ICSID activities

- **Saudi Arabia** - designations effective as of March 9, 1984:

Panels of Conciliators and of Arbitrators: Dr. Abdulaziz M. Al-Dukheil, Mr. Abdul Aziz Rashed Ibrahim Al-Rashed, and Dr. Mahsoun B. Jalal.

- **Sierra Leone** - designations effective as of June 19, 1984:

Panel of Conciliators: Mr. A. Awooner-Renner, Mr. C.O.E. Cole, Mr. A.B. Gooding, and Mr. F. Tuboko-Metzger. *Panel of Arbitrators:* Dr. H.M. Joko-Smart, Mr. A.L.O. Metzger, Mr. N.D. Tejan-Cole, and Ms. Frances Wright.

- **Yugoslavia** - designations effective as of March 28, 1984:

Panels of Conciliators and of Arbitrators: Prof. Dr. Ksente Bogoev (re-appointment), Prof. Dr. Stojan Cigoj (re-appointment), Prof. Dr. Aleksander Goldstajn (re-appointment), and Prof. Dr. Vladimir Jovanovic (re-appointment).

In accordance with the provisions of Article 13(2) of the Convention, the Chairman of the Administrative Council designated on February 14, 1984, Prof. Dr. I. Seidl-Hohenveldern (Austrian), and on April 24, 1984, Mr. Heribert Golsong (German), to serve on the Panel of Arbitrators.

The Panels of Conciliators and of Arbitrators previously included in the Annual Report are presently included in a separate publication (ICSID/10). In view of the relatively frequent changes in the composition of the panels, it appeared useful to issue this separate publication, which can be kept up-to-date as the need arises.

ICSID as Designating Authority

In an increasing number of cases, the Secretary-General has accepted to become the designating authority in the framework of *ad hoc* arbitration clauses.

This is the case in respect to a number of clauses in financial agreements in the Euro-credit market and regarding a Latin-American country.

Another example is the following: the Secretary-General was informed in January 1984 that the Province of British Columbia and the City of Seattle intended to conclude an agreement affecting dams on the Skagit and Pend Oreille Rivers near the international boundary between Canada and the United States, and providing hydroelectric power by the Province to the City. This agreement was executed on March 30, 1984, and a treaty between the United States and Canada formalizing the agreement was signed on April 2, 1984.

The agreement provides for the settlement of disputes by an arbitral tribunal composed of three arbitrators and designates the Secretary-General of ICSID as the appointing authority in the event that one party does not appoint an arbitrator or that the two arbitrators appointed by the parties cannot agree on the choice of the presiding arbitrator. On January 20, 1984, the Secretary-General accepted to serve as appointing authority.

In a case involving the Tunisian Government and a French contractor, the Secretary-General has acted as designating authority.

In order to bring some uniformity in the provisions concerning the role of the Secretary-General as designating authority, the following model clause has been prepared. It assumes that the parties have agreed upon submitting disputes to a tribunal composed of three arbitrators. The

clause could be adapted to situations in which the parties would wish to provide for the appointment of a sole arbitrator or for that of a tribunal including more than three arbitrators.

"If any of the arbitrators shall not have been appointed within [state the time limit], either party may request in writing the Secretary-General of the International Centre for Settlement of Investment Disputes to appoint the arbitrators not yet appointed [and to designate an arbitrator to be the president of the arbitral tribunal]. The Secretary-General shall forthwith send a copy of that request to the other party.

The Secretary-General shall comply with the request within 30 days after its receipt [or such longer period as the parties may agree].

The Secretary-General shall promptly notify the parties of any appointment [or designation] made by him.

[Arbitrators appointed by the Secretary-General shall be chosen from countries other than those of which the parties are nationals.]"

In contrast with other arbitration institutions, services rendered by the ICSID Secretariat in *ad hoc* designations are free of charge.

ICSID and Multipartite Arbitration

Due to the complexities of contemporary transnational contracts, it may happen that disputes which involve different parties are the object of separate proceedings even though the issues involved bear a close relationship to one another. This problem arises not only in regard to commercial transactions, but also in contractual arrangements relating to investments and in the carrying out of large economic development projects.

It was unavoidable that the problem would arise in the context of ICSID arbitration. In some cases, the problem has been solved by means of appropriate arrangements concluded by the parties. Failing such arrangements, *ad hoc* solutions have to be considered. In this connection, reference may be made to three parallel proceedings instituted against Jamaica by Alcoa Minerals of Jamaica, Kaiser Bauxite Co., and Reynolds Jamaica Mines Ltd. and Reynolds Metals Co. The proceedings were instituted pursuant to ICSID arbitration clauses stipulated in each individual agreement between the claimants and Jamaica. The nature of the disputes was identical: it concerned the imposition of new taxes by Jamaica contrary to stabilization clauses in the agreements.

In these cases, the claimants appointed the same person as arbitrator.

Jamaica having failed to appoint an arbitrator, the claimants requested the Chairman of ICSID's Administrative Council to appoint, for each proceeding, two arbitrators and to designate one of them as President of each

tribunal. The Chairman made the necessary appointments and selected for the purpose the same two persons to serve on each tribunal.

On July 5-6, 1975, the three arbitrators considered each dispute and held in respect of each of them that the dispute fell within their "competence". The disputes were subsequently settled amicably (See Annual Report 1980/1981, pp. 34-39).

More recently, new situations have been submitted to ICSID. These include cases in which investment agreements containing an ICSID arbitration clause are intimately related to other arrangements, such as supply or sales contracts, which fall outside the scope of the ICSID Convention. In cases such as these, the Secretariat has suggested to the parties that they provide in the relevant arrangements for *ad hoc* arbitration incorporating, to the extent necessary, the ICSID rules and designating the Secretary-General as appointing authority.

It is quite clear that awards rendered under such arrangements could not be considered "ICSID awards". Nevertheless, this contractual machinery may have considerable advantages in coordinating the ICSID and the non-ICSID proceedings, particularly if both are administered by the same arbitrators.

ICSID and Fact-Finding Proceedings

The Secretary-General has acted as nominating authority for the nomination of an expert in a dispute of a technical nature between a Contracting State and a national of another Contracting State.

The fact-finding procedure provided for in the Additional Facility features in provisions included in investment treaties concluded by the United States with Panama and Senegal and by the United Kingdom with Belize and St. Lucia.

Promotional Activities

Washington, D.C. Conference

On November 18, 1983, the Centre hosted a conference at The World Bank headquarters organized by ICSID, the American Arbitration Association and the International Chamber of Commerce. The subject of the conference was the settlement of commercial and investment disputes. A summary of the conference activities appears in the first issue of a new ICSID publication entitled "News from ICSID".

The conference was a success and the three institutions decided to organize another joint conference in Washington in November 1984, on the subject of the law of international commercial and investment arbitration.

Sao Paulo Seminar

On April 6, 1984, the Secretary-General, accompanied by Mr. Delaume, Senior Legal Adviser, participated in a seminar held in Sao Paulo, Brazil, organized with the assistance of the UNDP Representative in Brazil and the research centre of the Sao Paulo Bar Association. The objective of the seminar was to familiarize Brazilian lawyers with the advantages and features of ICSID.

During the seminar, the Secretary-General stressed that adherence to the ICSID Convention is not necessarily incompatible with the Calvo doctrine and the notion of sovereignty. It may be recalled that, pursuant to the provisions of the Convention, diplomatic protection by the investor's State is excluded from the date on which parties agree to submit their dispute to ICSID up until the enforcement of the award. The Sec-

retary-General also mentioned that, according to the Convention, a State may consent to ICSID arbitration subject to the exhaustion of local remedies. In the specific case of Brazil, the Secretary-General recalled that Brazil not only attempts to attract foreign investors but is also itself a source of foreign investments and may, for both these reasons, take advantage of ICSID.

The discussion following this presentation and a summary of certain issues concerning the effectiveness of the Convention by Mr. Delaume have shown the participants' familiarity with ICSID and its activities.

This is the first ICSID promotional activity by the Secretariat in a non-member State. The reception received in Brazil has proven that this approach was worthwhile and needed to be pursued.

Other Conferences

The Secretariat was represented in different conferences such as the ones held: (i) in New Dehli by the African-Asian Legal Consultative Committee on the preparation of model investment treaties (January 30-February 1, 1984), (ii) in New Delhi by said Committee and UNCTAD on international arbitration March 12-14, 1984; and (iii) in Lausanne, by the International Council for Commercial Arbitration (May 9-12, 1984).

Relations with Member States

Apart from the correspondence referred to in regard to designations to the Panels of Conciliators and of Arbitrators, the Secretary-General addressed, in March 1984, a series of letters to Member States. The purpose of said letters was to request from each Member State information on the use it makes of ICSID, either in particular investment provisions, or in national legislation or bilateral agreements relating to investment promotion and protection.

It may be recalled that ICSID users have no obligation to inform the Secretariat of ICSID of the clauses which they stipulate in regard to investments. The Secretariat has succeeded in collecting in its archives about 300 ICSID clauses. There exist, no doubt, a great deal more. In fact, in several cases submitted to ICSID, the existence of the clause utilized by the parties was not known to the Secretariat before the registration of the request.

It is in the interest of the Member States to cooperate with the Secretariat with a view to increasing the documentation available to it. This information will be noted in its publications or in replies to requests from potential investors.

"News from ICSID"

A new publication by ICSID was started this year, entitled **"News from ICSID"**.

Its primary objective is to provide to Member States, to potential investors, and to the public at large current information on ICSID's activities as well as a short summary on certain questions related to such activities, such as the drafting of ICSID clauses, the negotiation of bilateral investment treaties or the role of national tribunals in the recognition and enforcement of ICSID awards.

Other Activities

During the past fiscal year, the Secretariat has contributed a number of articles to law reviews and professional publications. These are mentioned in "News from ICSID" and in the bibliography published by ICSID.

In addition to the assistance rendered by The World Bank to the International Development Law Institute (IDLI), established in Rome, whose objective is to assist in the training of lawyers from developing countries, ICSID has participated in the activities of IDLI through a session devoted to the settlement of disputes in state contracts.

Seventeenth Annual Meeting of the Administrative Council

Finance

The Seventeenth Annual Meeting of the Administrative Council took place on September 29, 1983 in Washington, D.C., on the occasion of the Annual Meeting of the Board of Governors of The World Bank.

In the course of the meeting, the Council approved the Seventeenth Annual Report on the activities of ICSID and the budget for the fiscal year 1984.

The Council also decided to temporarily continue the Additional Facility and to determine at its 1984 Annual Meeting either to maintain the Additional Facility or to terminate it for the future.

On the basis of a proposal by Mr. Clausen, the Council elected unanimously Mr. Ibrahim F.I. Shihata, Vice President and General Counsel of The World Bank, as Secretary-General for a term of six years.

Additional Facility

On April 30, 1984, the Secretary-General addressed to the members of the Administrative Council a report recommending that the Additional Facility be maintained.

The Financial Statements of ICSID for the fiscal year 1984 are set forth in Annex 3.

The expenditures of ICSID were, again, entirely covered by The World Bank pursuant to the Memorandum of Administrative Arrangements concluded between The World Bank and ICSID in February 1967, and by income from the sale of publications.

It was, therefore, not necessary to assess any excess expenditures to Contracting States pursuant to Article 17 of the Convention.

ICSID expenditures relating to pending conciliation and arbitration proceedings are borne by the parties in accordance with ICSID's Administrative and Financial Regulations.

Annex 1

List of Contracting States and Signatories of the Convention

(As of June 30, 1984)

The 90 States listed below have signed the Convention on the dates indicated. The names of the 86 States that have deposited instruments of ratification are in bold face, and the dates of such deposit and of the attainment of the status of Contracting State by the entry into force of the Convention for each of them are also indicated.¹

State	Signature	Deposit of Ratification	Entry into Force of Convention
Afghanistan	Sep. 30, 1966	Jun. 25, 1968	Jul. 25, 1968
Australia	Mar. 24, 1975		
Austria	May 17, 1966	May 25, 1971	Jun. 24, 1971
Bangladesh	Nov. 20, 1979	Mar. 27, 1980	Apr. 26, 1980
Barbados	May 13, 1981	Nov. 1, 1983	Dec. 1, 1983
Belgium	Dec. 15, 1965	Aug. 27, 1970	Sep. 26, 1970
Benin, People's Republic of	Sep. 10, 1965	Sept. 6, 1966	Oct. 14, 1966
Botswana	Jan. 15, 1970	Jan. 15, 1970	Feb. 14, 1970
Burundi	Feb. 17, 1967	Nov. 5, 1969	Dec. 5, 1969
Cameroon	Sep. 23, 1965	Jan. 3, 1967	Feb. 2, 1967
Central African Republic	Aug. 26, 1965	Feb. 23, 1966	Oct. 14, 1966
Chad	May 12, 1966	Aug. 29, 1966	Oct. 14, 1966
Comoros	Sep. 26, 1978	Nov. 7, 1978	Dec. 7, 1978
Congo, People's Republic of the	Dec. 27, 1965	Jun. 23, 1966	Oct. 14, 1966
Costa Rica	Sep. 29, 1981		
Cyprus	Mar. 9, 1966	Nov. 25, 1966	Dec. 25, 1966
Denmark	Oct. 11, 1965	Apr. 24, 1968	May 24, 1968 ²
Egypt, Arab Republic of	Feb. 11, 1972	May 3, 1972	Jun. 2, 1972
El Salvador	Jun. 9, 1982	Mar. 6, 1984	Apr. 5, 1984
Ethiopia	Sep. 21, 1965		
Fiji	Jul. 1, 1977	Aug. 11, 1977	Sep. 10, 1977
Finland	Jul. 14, 1967	Jan. 9, 1969	Feb. 8, 1969
France	Dec. 22, 1965	Aug. 21, 1967	Sep. 20, 1967
Gabon	Sep. 21, 1965	Apr. 4, 1966	Oct. 14, 1966
Gambia, The	Oct. 1, 1974	Dec. 27, 1974	Jan. 26, 1975
Germany, Federal Republic of	Jan. 27, 1966	Apr. 18, 1969	May 18, 1969 ³
Ghana	Nov. 26, 1965	Jul. 13, 1966	Oct. 14, 1966
Greece	Mar. 15, 1966	Apr. 21, 1969	May 21, 1969
Guinea	Aug. 27, 1968	Nov. 4, 1968	Dec. 4, 1968
Guyana	Jul. 3, 1969	Jul. 11, 1969	Aug. 10, 1969
Iceland	Jul. 25, 1966	Jul. 25, 1966	Oct. 14, 1966
Indonesia	Feb. 16, 1968	Sep. 28, 1968	Oct. 28, 1968
Ireland	Aug. 30, 1966	Apr. 7, 1981	May 7, 1981
Israel	Jun. 16, 1980	Jun. 22, 1983	Jul. 22, 1983
Italy	Nov. 18, 1965	Mar. 29, 1971	Apr. 28, 1971
Ivory Coast	Jun. 30, 1965	Feb. 16, 1966	Oct. 14, 1966
Jamaica	Jun. 23, 1965	Sep. 9, 1966	Oct. 14, 1966
Japan	Sep. 23, 1965	Aug. 17, 1967	Sep. 16, 1967
Jordan	Jul. 14, 1972	Oct. 30, 1972	Nov. 29, 1972
Kenya	May 24, 1966	Jan. 3, 1967	Feb. 2, 1967

¹The Convention was signed on behalf of the Republic of China on January 13, 1966, and ratified on December 10, 1968. At its Fourteenth Annual Meeting on October 2, 1980, the Administrative Council considered a communication received from the People's Republic of China (PRC), decided that the Republic of China be removed from the list of Contracting States and noted that pending study by the Government of the PRC of the possibility of becoming a party to the Convention. China is not a Contracting State.

²Denmark excluded, by a notification received on May 15, 1968, the Faroe Islands, by a notification received on October 30, 1968. Denmark extended the application of the Convention to the Faroe Islands as of January 1, 1969.

³Germany declared, on depositing its instrument of ratification, that the Convention would also apply to the Land Berlin.

State	Signature	Deposit of Ratification	Entry into Force of Convention
Korea, Republic of	Apr. 18, 1966	Feb. 21, 1967	Mar. 23, 1967
Kuwait	Feb. 9, 1978	Feb. 2, 1979	Mar. 4, 1979
Lesotho	Sep. 19, 1968	Jul. 8, 1969	Aug. 7, 1969
Liberia	Sep. 3, 1965	Jun. 16, 1970	Jul. 16, 1970
Luxembourg	Sep. 28, 1965	Jul. 30, 1970	Aug. 29, 1970
Madagascar	Jun. 1, 1966	Sep. 6, 1966	Oct. 14, 1966
Malawi	Jun. 9, 1966	Aug. 23, 1966	Oct. 14, 1966
Malaysia	Oct. 22, 1965	Aug. 8, 1966	Oct. 14, 1966
Mali	Apr. 9, 1976	Jan. 3, 1978	Feb. 2, 1978
Mauritania	Jul. 30, 1965	Jan. 11, 1966	Oct. 14, 1966
Mauritius	Jun. 2, 1969	Jun. 2, 1969	Jul. 2, 1969 ⁴
Morocco	Oct. 11, 1965	May 11, 1967	Jun. 10, 1967
Nepal	Sep. 28, 1965	Jan. 7, 1969	Feb. 6, 1969
Netherlands	May 25, 1966	Sep. 14, 1966	Oct. 14, 1966 ⁵
New Zealand	Sep. 2, 1970	Apr. 2, 1980	May 2, 1980 ⁶
Niger	Aug. 23, 1965	Nov. 14, 1966	Dec. 14, 1966
Nigeria	Jul. 13, 1965	Aug. 23, 1965	Oct. 14, 1966
Norway	Jun. 24, 1966	Aug. 16, 1967	Sep. 15, 1967
Pakistan	Jul. 6, 1965	Sep. 15, 1966	Oct. 15, 1966
Papua New Guinea	Oct. 20, 1978	Oct. 20, 1978	Nov. 19, 1978
Paraguay	Jul. 27, 1981	Jan. 7, 1983	Feb. 6, 1983
Philippines	Sep. 26, 1978	Nov. 17, 1978	Dec. 17, 1978
Portugal	Aug. 4, 1983		
Romania	Sep. 6, 1974	Sep. 12, 1975	Oct. 12, 1975
Rwanda	Apr. 21, 1978	Oct. 15, 1979	Nov. 14, 1979
Saudi Arabia	Sep. 28, 1979	May 8, 1980	Jun. 7, 1980
Senegal	Sep. 26, 1966	Apr. 21, 1967	May 21, 1967
Seychelles	Feb. 16, 1978	Mar. 20, 1978	Apr. 19, 1978
Sierra Leone	Sep. 27, 1965	Aug. 2, 1966	Oct. 14, 1966
Singapore	Feb. 2, 1968	Oct. 14, 1968	Nov. 13, 1968
Solomon Islands	Nov. 12, 1979	Sep. 8, 1981	Oct. 8, 1981
Somalia	Sep. 27, 1965	Feb. 29, 1968	Mar. 30, 1968
Sri Lanka	Aug. 30, 1967	Oct. 12, 1967	Nov. 11, 1967
St. Lucia	Jun. 4, 1984	Jun. 4, 1984	Jul. 4, 1984 ⁷
Sudan	Mar. 15, 1967	Apr. 9, 1973	May 9, 1973
Swaziland	Nov. 3, 1970	Jun. 14, 1971	Jul. 14, 1971 ⁸
Sweden	Sep. 25, 1965	Dec. 29, 1966	Jan. 28, 1967
Switzerland	Sep. 22, 1967	May 15, 1968	Jun. 14, 1968
Togo	Jan. 24, 1966	Aug. 11, 1967	Sep. 10, 1967
Trinidad and Tobago	Oct. 5, 1966	Jan. 3, 1967	Feb. 2, 1967
Tunisia	May 5, 1965	Jun. 22, 1966	Oct. 14, 1966
Uganda	Jun. 7, 1966	Jun. 7, 1966	Oct. 14, 1966
United Arab Emirates	Dec. 23, 1981	Dec. 23, 1981	Jan. 22, 1982
United Kingdom of Great Britain and Northern Ireland	May 26, 1965	Dec. 19, 1966	Jan. 18, 1967 ⁹
United States of America	Aug. 27, 1965	Jun. 10, 1966	Oct. 14, 1966
Upper Volta	Sep. 16, 1965	Aug. 29, 1966	Oct. 14, 1966
Western Samoa	Feb. 3, 1978	Apr. 25, 1978	May 25, 1978
Yugoslavia	Mar. 21, 1967	Mar. 21, 1967	Apr. 20, 1967
Zaire	Oct. 29, 1968	Apr. 29, 1970	May 29, 1970
Zambia	Jun. 17, 1970	Jun. 17, 1970	Jul. 17, 1970

⁴Until Mauritius attained its independence on March 12, 1968 it was covered by the ratification of the United Kingdom

⁵On depositing its instrument of ratification, the Netherlands restricted the application of the Convention to the Kingdom in Europe; by a notification received on May 22, 1970, the Netherlands withdrew that restriction and thus extended the application of the Convention to Suriname and the Netherlands Antilles. Suriname having attained independence on November 25, 1975, the Convention ceased to be applicable to Suriname as of that date.

⁶On depositing its instrument of ratification, New Zealand, pursuant to Article 70 of the Convention, excluded from its coverage the Cook Islands, Niue and Tokelau

⁷Until St. Lucia attained its independence on February 22, 1979, it was covered by the ratification of the United Kingdom

⁸Until Swaziland attained its independence on September 6, 1968, it was covered by the ratification of the United Kingdom

⁹The United Kingdom, pursuant to Article 70 of the Convention, excluded from its coverage the following territories for whose international relations it is responsible: Jersey, Isle of Man, British Indian Ocean Territory, Pitcairn Islands, British Antarctic Territory, Sovereign Base Areas of Cyprus. By notifications received on June 27, 1979, and November 17, 1983, respectively, the United Kingdom extended the application of the Convention to Jersey as of July 1, 1979, and to the Isle of Man as of November 1, 1983.

Annex 2

Resolutions of the Administrative Council

The following resolutions were adopted by the Administrative Council at its Seventeenth Annual Meeting on September 29, 1983.

AC(17)/RES/52 - Approval of the Annual Report

The Administrative Council

RESOLVES

To approve the Seventeenth Annual Report on the Operation of the Centre as set forth in the attachment to Document AC/83/5.

AC(17)/RES/53 - Adoption of Budget for Fiscal Year 1984

The Administrative Council

RESOLVES

To adopt, for the period July 1, 1983 to June 30, 1984, the budget set forth in paragraph 2 of Document AC/83/1.

AC(17)/RES/54 - Additional Facility

The Administrative Council

Considering the Report of the Secretary-General on the first five years of operation of the Additional Facility set out in Doc. AC/83/3 dated July 27, 1983

RESOLVES

To decide at the 1984 Meeting of the Administrative Council whether to continue the Additional Facility or to terminate it for the future.

AC(17)/RES/55 - Election of the Secretary-General

The Administrative Council

RESOLVES

- (a) that Mr. Golsong's resignation, for personal reasons, as Secretary-General be accepted, effective at the close of business on September 30, 1983;
- (b) that the Council wishes to express its deep appreciation to Mr. Golsong for the excellent services rendered to IC-SID in his capacity as Secretary-General;
- (c) that Mr. Ibrahim F.I. Shihata be elected to the post of Secretary-General for a full term of six years, that is, from October 1, 1983 until the close of the 1989 Annual Meeting of the Administrative Council of the Centre;
- (d) that he be permitted to continue his employment by the World Bank Group;
- (e) that while so employed he receive no remuneration from the Centre.

Annex 3

Report and Financial Statements

Expressed in United States dollars

Statement of Changes in Fund Balance

	For the year ended June 30	
	1984	1983
Contribution of services to Centre by International Bank for Reconstruction and Development	\$ 242,191	\$ 246,929
Advances to Centre from parties to arbitration proceedings	471,622	60,000
Expenditures on behalf of Centre by International Bank for Reconstruction and Development	(242,191)	(246,929)
Disbursements by Centre for fees and expenses for arbitration proceedings	(333,603)	(60,830)
Decrease (increase) in advances from parties to arbitration proceedings	(138,019)	830
Change in fund balance	<u>\$ —</u>	<u>\$ —</u>

Statement of Composition of Fund Balance

	June 30, 1984	June 30, 1983
Cash in bank	\$ 201,191	\$ 59,504
Advances from parties to arbitration proceedings	(195,687)	(57,668)
Payable to International Bank for Reconstruction and Development	(5,504)	(1,836)
Fund balance	<u>\$ —</u>	<u>\$ —</u>

continued next page

Annex 3 continued**Note to Financial Statements**

June 30, 1984 and June 30, 1983

The Memorandum of Administrative Arrangements between the Centre and the International Bank for Reconstruction and Development (the Bank) which became effective as of October 14, 1966, provides, that, except to the extent that the Centre may be reimbursed by the parties to proceedings for fees and expenses of members of Conciliation Commissions, Arbitral Tribunals or Committees of Arbitrators, the Bank shall provide the following services and facilities to the Centre:

- (1) the services of staff members and consultants; and
- (2) other administrative services and facilities, such as travel, communications, office accommodations, furniture, equipment, supplies and printing.

The Centre does not have resources of its own. The reported expenditures on behalf of the Centre represent the value of the services provided by the Bank and include only those amounts identified by the Bank as being directly related to the Centre, and, accordingly, do not include any indirect or overhead costs of the Bank. The reported contributions of \$242,191 and \$246,929 in 1984 and 1983, respectively, are equal to the value of services provided by the Bank, less reimbursements by the Centre from its sale of publications and registration fees. The expenditures made on behalf of the Centre by the Bank are shown below:

	For the year ended June 30	
	1984	1983
Staff personal services	\$ 181,368	\$ 181,658
Travel	18,973	34,209
Contractual services, including printing, promotional activities, research, and miscellaneous	45,402	42,066
Administrative services and facilities	3,018	996
	<u>\$ 248,761</u>	<u>\$ 258,929</u>
Less: Reimbursements by Centre from sale of publications and registration fees	6,570	12,000
Total	<u>\$ 242,191</u>	<u>\$ 246,929</u>

The Centre's expenses which are attributable to arbitration proceedings are borne by the parties in accordance with the Centre's Administrative and Financial Regulations. In accordance with these Regulations, the Secretary-General calls on the parties to make advance deposits with the Centre from time to time to defray these expenses. The cash balances reflected in the statement of composition of fund balance represent advances from parties to proceedings and amounts due to the Bank.

Report of Independent Accountants

1801 K Street, N.W.
Washington, D.C. 20006
July 25, 1984

To International Centre for Settlement
of Investment Disputes
Washington, D.C., 20433

In our opinion, the accompanying statement of composition of fund balance and the related statement of changes in fund balance present fairly the composition of fund balance of the International Centre for Settlement of Investment Disputes for the years ended June 30, 1984 and 1983, and the changes in fund balance for the years then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year and in accordance with the Administrative Arrangements between the International Bank for Reconstruction and Development and the International Centre for Settlement of Investment Disputes, as discussed in the Note to the accompanying statements. Our examinations of these statements were made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

Price Waterhouse

Annex 4**Publications of ICSID**

Legislative History of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (4 Volumes)

ICSID/2	Convention on the Settlement of Investment Disputes between States and Nationals of Other States, and Accompanying Report of the Executive Directors of the International Bank for Reconstruction and Development <i>(English, French, Spanish)</i>
ICSID/3	List of Contracting States and Other Signatories of the Convention <i>(English, French, Spanish)</i>
ICSID/4/Rev.1	Regulations and Rules <i>(English, French, Spanish)</i>
ICSID/5/Rev.1	Model Clauses Recording Consent to the Jurisdiction of the International Centre for Settlement of Investment Disputes <i>(English, French, Spanish)</i>
ICSID/8	Contracting States and Actions Taken by Them Pursuant to the Convention <i>(English, French, Spanish)</i>
ICSID/10	List of the Members of the Panels of Conciliators and of Arbitrators <i>(English)</i>
ICSID/11/Rev.1	Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings <i>(English, French, Spanish)</i>
ICSID/12	Explanatory Brochure on the Centre <i>(English, French, Spanish)</i>
ICSID/13	Bibliography on ICSID <i>(English)</i>
ICSID/14/(A)	Regulations and Rules for Arbitration Proceedings <i>(English)</i>
ICSID/14/(C)	Regulations and Rules for Conciliation Proceedings <i>(English)</i>

Publications regarding national legislation and bilateral investment treaties*National Legislation*

The Centre has for several years been publishing a collection of national investment legislations. This collection, entitled "Investment Laws of the World", consists of 10 loose-leaf volumes. Updates are made periodically, as the need arises, for each country (at present 64).

Bilateral Treaties

In 1983, the Centre published a collection of bilateral investment promotion and protection treaties, including about 200 treaties concluded since 1960. This collection is now kept in two loose-leaf volumes. An up-date is being prepared. The two publications may be obtained from Oceana Publications, Inc., Dobbs Ferry, N.Y. 10522 (United States).

ICSID

SEAT:
1818 H Street, N.W.
Washington, D.C. 20433, U.S.A.

Telephone: (202) 477-1234
Cable Address: ICSID