



ANA PALACIO ELECTED SECRETARY-GENERAL OF ICSID



On September 20, 2006, the Administrative Council of ICSID unanimously elected Ms. Ana Palacio as the Centre's new Secretary-General. Ms. Palacio, a Spanish national, was appointed Senior Vice President and World Bank Group General Counsel in June 2006.

Ms. Palacio was previously a member of the Spanish Parliament, where she chaired the Joint Committee of the two Houses for European Union Affairs. She held this post from 2004 until taking up her new World Bank duties in late August 2006. From 2002 to 2004, Ms. Palacio served as Foreign Minister of Spain under Prime Minister José María Aznar. As the first woman Foreign Minister in Spain, she held at the time the most senior post ever to have been filled by a woman in the Spanish Government. During her tenure as Foreign Minister, Ms. Palacio also represented Spain on the Praesidium of the European Convention where she was actively involved in the debate and in the drafting of legislative texts concerning reforms of the treaties governing the European Union.

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MEMBERSHIP NEWS

On January 25, 2006, Syria deposited with the World Bank its instrument of ratification of the ICSID Convention. In accordance with its Article 68, the ICSID Convention entered into force for Syria on February 24, 2006. With this recent ratification, the number of ICSID Contracting States has reached 143. An up-to-date list of the ICSID Contracting States and Other Signatories of the Convention is available on the Centre's website at <http://www.worldbank.org/icsid>. ■

AMENDMENTS TO THE ICSID RULES

The ICSID Administrative Council adopted amendments to the ICSID Regulations and Rules and to the ICSID Additional Facility Rules, which came into effect on April 10, 2006. As amended, the rules now provide for preliminary procedures concerning provisional measures, expedited procedures for dismissal of unmeritorious claims, access of non-disputing parties to proceedings, publication of awards, and additional disclosure requirements for arbitrators. The texts of the amended rules are posted on the ICSID website and available on request from the Centre in a booklet form. ■

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DISPUTES BEFORE THE CENTRE

Eleven new proceedings were instituted before the Centre in the first half of 2006. With these proceedings, the total number of cases registered with ICSID by June 30, 2006 reached 210.

Ten of the new arbitration proceedings were brought under the ICSID Convention and one under the ICSID Additional Facility Rules. Seven of the new cases are based on ICSID arbitration provisions of investment treaties. In two of the cases, claimants are seeking to establish ICSID jurisdiction on the basis of a similar provision contained in investment contracts with the host State. In two further proceedings, the jurisdiction of the Centre is being asserted alternatively on the basis of treaty and law provisions referring to ICSID arbitration.

In total, there were 113 ICSID cases pending before the Centre during the period January – June 2006. One hundred and twelve of them were arbitration proceedings and one a conciliation case. The pending cases involved nine arbitration proceedings governed by the Additional Facility Rules and 95 original arbitration proceedings under the ICSID Convention. Eight additional proceedings involved applications of parties seeking post-award remedies.

During the period January – June 2006, seven original ICSID Convention proceedings were concluded, six of which were arbitration proceedings and one a conciliation proceeding. The conciliation proceeding was concluded with a report of the conciliation commission. Awards were rendered in two of the six concluded arbitration proceedings and four other cases were discontinued at the request of one or both parties involved. In addition, a decision on rectification of the award was issued in one of the cases. In another case, an *ad hoc* committee issued its decision on an application for the annulment of an award previously rendered.

In total, fourteen arbitral tribunals and one *ad hoc* committee were constituted in the cases pending during the period January – June 2006 and eighteen hearings and fifteen first sessions were held. ICSID tribunals issued in the period seven decisions on jurisdiction, a decision on a request for provisional measures, a decision on an application for bifurcation of jurisdiction from the merits, and a decision on issues of State responsibility and disclosure.

Procedural developments in the disputes before the Centre during the period January 1 – June 30, 2006 are provided below. The latest developments in the caseload may be followed on the Centre's website at <http://www.worldbank.org/icsid>, which is regularly updated.

■ **Compañía de Aguas del Aconquija S.A. and Vivendi Universal v. Argentine Republic (Case No. ARB/97/3) – Resubmission**

February 15, 2006

The Claimants file a reply on the merits.

May 19, 2006

The Respondent files a rejoinder on the merits.

■ **Victor Pey Casado and President Allende Foundation v. Republic of Chile (Case No. ARB/98/2)**

February 13, 2006

After receiving observations from the parties and the members of the Tribunal, the Acting Secretary-General moves to request the recommendation of the Secretary General of the Permanent Court of Arbitration (PCA) on a proposal for disqualification filed on August 23, 2006.

February 21, 2006

On the recommendation of the Secretary General of the PCA, the Chairman of the ICSID Administrative Council upholds the application for disqualification of one of the arbitrators.

March 31, 2006

The Claimants appoint Mohamed Chemloul as an arbitrator.

April 25, 2006

The Acting Secretary-General is notified by the other members of the tribunal, pursuant to ICSID Arbitration Rule 8(2), of their decision not to consent to a resignation filed by one of the arbitrators on August 26, 2005.

■ **Patrick Mitchell v. Democratic Republic of the Congo (Case No. ARB/99/7) – Annulment Proceeding**

There have been no new developments to report in this case since the last issue of *News from ICSID*.

■ **Consortium R.F.C.C. v. Kingdom of Morocco (Case No. ARB/00/6) – Annulment Proceeding**

January 18, 2006

The *ad hoc* Committee issues a decision on the Claimant's application for annulment of the award.

■ **World Duty Free Company Limited v. Republic of Kenya (Case No. ARB/00/7)**

January 18 – 19, 2006

The Tribunal holds a hearing on preliminary issues at The Hague. The Claimant files a submission on preliminary issues.

- January 27, 2006
The Claimant files authorities in support of its submission of January 18, 2006.
- February 21, 2006
The Respondent files observations on the Claimant's submission of January 18, 2006.
- **Antoine Goetz and others v. Republic of Burundi (Case No. ARB/01/2)**
There have been no new developments to report in this case since the last issue of *News from ICSID*.
 - **Enron Corporation and Ponderosa Assets, L.P. v. Argentine Republic (Case No. ARB/01/3)**
February 26, 2006
The parties file post-hearing briefs.
March 16, 2006
The Tribunal appoints, after consultation with the parties, an independent expert.
May 26, 2006
Following the resignation of an arbitrator, the proceeding is suspended pursuant to ICSID Arbitration Rule 10(2).
 - **MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Republic of Chile (Case No. ARB/01/7) – Annulment Proceeding**
January 25, 2006
The Respondent files a reply.
March 8, 2006
The Claimants file a rejoinder.
April 10, 2006
The *ad hoc* Committee holds a hearing in Paris.
 - **CMS Gas Transmission Company v. Argentine Republic (Case No. ARB/01/8) – Annulment Proceeding**
April 18, 2006
The *ad hoc* Committee is constituted. Its members are: Gilbert Guillaume (French), President; James R. Crawford (Australian); and Nabil Elaraby (Egyptian).
June 5, 2006
The *ad hoc* Committee holds its first session in Paris.
 - **Repsol YPF Ecuador S.A. v. Empresa Estatal Petroleos del Ecuador (Petroecuador) (Case No. ARB/01/10) – Annulment Proceeding**
January 31, 2006
The *ad hoc* Committee holds its first session in Quito.
 - February 23, 2006
The *ad hoc* Committee issues a procedural order concerning the termination of the stay of enforcement of the award.
 - March 2, 2006
The Respondent files a memorial.
 - March 31, 2006
The Claimant files a counter-memorial.
 - April 15, 2006
The Respondent files a reply.
 - May 2, 2006
The Claimant files a rejoinder.
 - June 28, 2006
The *ad hoc* Committee issues a procedural order concerning the production of documents.
 - **Noble Ventures, Inc. v. Romania (Case No. ARB/01/11) – Rectification Proceeding**
May 19, 2006
The Tribunal issues a decision on the request for rectification of the award.
 - **Azurix Corp. v. Argentine Republic (Case No. ARB/01/12)**
April 17, 2006
The Tribunal declares the proceeding closed in accordance with ICSID Arbitration Rule 38(1).
 - **F-W Oil Interests, Inc. v. Republic of Trinidad & Tobago (Case No. ARB/01/14)**
February 28, 2006
The Tribunal declares the proceeding closed in accordance with ICSID Arbitration Rule 38(1).
March 3, 2006
The Tribunal renders its award.
 - **Fireman's Fund Insurance Company v. United Mexican States (Case No. ARB(AF)/02/1)**
There have been no new developments to report in this case since the last issue of *News from ICSID*.
 - **LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc. v. Argentine Republic (Case No. ARB/02/1)**
There have been no new developments to report in this case since the last issue of *News from ICSID*.

- **Aguas del Tunari S.A. v. Republic of Bolivia (Case No. ARB/02/3)**

January 27, 2006
The Respondent files a request for the discontinuance of the proceedings.

March 28, 2006
The Tribunal issues an order taking note of the discontinuance of the proceeding pursuant to ICSID Arbitration Rule 44.

- **PSEG Global Inc. and Konya Ilgin Elektrik Üretim ve Ticaret Limited Sirketi v. Republic of Turkey (Case No. ARB/02/5)**

March 17, 2006
The Respondent files a rejoinder on the merits.

April 3 – 12, 2006
The Tribunal holds a hearing on the merits in Washington, D.C.

May 26, 2006
The parties file post-hearing briefs.

- **SGS Société Générale de Surveillance S.A. v. Republic of the Philippines (Case No. ARB/02/6)**

There have been no new developments to report in this case since the last issue of *News from ICSID*.

- **Hussein Nuaman Soufraki v. United Arab Emirates (Case No. ARB/02/7) – Annulment Proceeding**

January 20, 2006
The Respondent files a counter-memorial.

March 30, 2006
The Claimant files a reply.

May 15, 2006
The Respondent files a rejoinder.

June 13 – 14, 2006
The *ad hoc* Committee holds a hearing on the application for annulment in Washington, D.C.

- **Siemens A.G. v. Argentine Republic (Case No. ARB/02/8)**

There have been no new developments to report in this case since the last issue of *News from ICSID*.

- **Champion Trading Company and Ameritrade International, Inc. v. Arab Republic of Egypt (Case No. ARB/02/9)**

June 5 – 6, 2006
The Tribunal holds a hearing on the merits in Paris.

- **Salini Costruttori S.p.A. and Italstrade S.p.A. v. The Hashemite Kingdom of Jordan (Case No. ARB/02/13)**

January 10, 2006
The Tribunal declares the proceeding closed in accordance with ICSID Arbitration Rule 38(1).

January 31, 2006
The Tribunal renders its award.

- **Ahmonseto, Inc. and others v. Arab Republic of Egypt (Case No. ARB/02/15)**

January 23, 2006
The Claimants file a post-hearing brief.

March 20, 2006
The Respondent files a post-hearing brief.

May 9 – 10, 2006
The Tribunal holds a hearing on oral arguments in Geneva.

- **Sempra Energy International v. Argentine Republic (Case No. ARB/02/16)**

February 6 – 14, 2006
The Tribunal holds a hearing on the merits in Santiago de Chile.

April 3, 2006
The parties file post-hearing briefs.

- **AES Corporation v. Argentine Republic (Case No. ARB/02/17)**

January 23, 2006
The Tribunal suspends the proceeding following the request of the parties.

June 29, 2006
The Tribunal further suspends the proceeding following the request of the parties.

- **Tokios Tokelès v. Ukraine (Case No. ARB/02/18)**

January 16 – 19, 2006
The Tribunal holds a hearing on the merits in Paris.

March 27, 2006
The parties file post-hearing briefs.

- **Camuzzi International S.A. v. Argentine Republic (Case No. ARB/03/2)**

February 6 – 14, 2006
The Tribunal holds a hearing on the merits in Santiago de Chile.

April 3, 2006
The parties file post-hearing briefs.

- **Empresas Lucchetti S.A. and Lucchetti Peru, S.A. v. Republic of Peru (Case No. ARB/03/4) – Annulment Proceeding**

February 16, 2006
The *ad hoc* Committee holds its first session in Washington, D.C.

May 18, 2006
The Claimant files a memorial.

- **Metalpar S.A. and Buen Aire S.A. v. Argentine Republic (Case No. ARB/03/5)**

April 27, 2006
The Tribunal issues a decision on jurisdiction.

- **M.C.I. Power Group, L.C. and New Turbine, Inc. v. Republic of Ecuador (Case No. ARB/03/6)**

February 2, 2006
The Tribunal issues a procedural order concerning the organization of the hearing on the merits.

March 20 – 24, 2006
The Tribunal holds a hearing on the merits in Washington, D.C.

- **Camuzzi International S.A. v. Argentine Republic (Case No. ARB/03/7)**

February 3, 2006
The Tribunal issues a procedural order suspending the proceeding following the request of the parties.

- **Continental Casualty Company v. Argentine Republic (Case No. ARB/03/9)**

February 22, 2006
The Tribunal issues a decision on objections to jurisdiction and issues a procedural order concerning the continuance of the proceedings on the merits.

May 8, 2006
The Respondent files a counter-memorial on the merits.

- **Gas Natural SDG, S.A. v. Argentine Republic (Case No. ARB/03/10)**

There have been no new developments to report in this case since the last issue of *News from ICSID*.

- **Pan American Energy LLC and BP Argentina Exploration Company v. Argentine Republic (Case No. ARB/03/13)**

There have been no new developments to report in this case since the last issue of *News from ICSID*.

- **Miminco LLC and others v. Democratic Republic of the Congo (Case No. ARB/03/14)**

There have been no new developments to report in this case since the last issue of *News from ICSID*.

- **El Paso Energy International Company v. Argentine Republic (Case No. ARB/03/15)**

April 27, 2006
The Tribunal issues a decision on jurisdiction and a procedural order concerning the continuance of the proceeding on the merits.

- **ADC Affiliate Limited and ADC & ADMC Management Limited v. Republic of Hungary (Case No. ARB/03/16)**

January 17 – 25, 2006
The Tribunal holds a hearing on jurisdiction and the merits in London.

March 10, 2006
The parties file post-hearing briefs.

- **Aguas Provinciales de Santa Fe, S.A., Suez, Sociedad General de Aguas de Barcelona, S.A. and Interagua Servicios Integrales de Agua, S.A. v. Argentine Republic (Case No. ARB/03/17)**

March 17, 2006
The Tribunal issues an order concerning the petition filed by non-disputing parties for participation as *Amicus Curiae*.

April 14, 2006
Following Aguas Provinciales de Santa Fe, S.A.'s withdrawal of its claim, the Tribunal issues an order concerning the discontinuance of the proceeding with respect to Aguas Provinciales de Santa Fe, S.A.

May 16, 2006
The Tribunal issues a decision on jurisdiction and a procedural order concerning the continuance of the proceeding on the merits.

- **Aguas Cordobesas, S.A., Suez, and Sociedad General de Aguas de Barcelona, S.A. v. Argentine Republic (Case No. ARB/03/18)**

March 17, 2006
The Tribunal suspends the proceeding following the request of the parties.

- **Aguas Argentinas, S.A., Suez, Sociedad General de Aguas de Barcelona, S.A. and Vivendi Universal, S.A. v. Argentine Republic (Case No. ARB/03/19)**

March 24, 2006
Following Aguas Argentinas, S.A.'s withdrawal of its claim, the Tribunal issues an order concerning the discontinuance of the proceeding with respect to Aguas Argentinas, S.A.
- **Telefónica S.A. v. Argentine Republic (Case No. ARB/03/20)**

There have been no new developments to report in this case since the last issue of *News from ICSID*.
- **Enersis, S.A. and others v. Argentine Republic (Case No. ARB/03/21)**

March 28, 2006
The Tribunal suspends the proceeding following the request of the parties.
- **Electricidad Argentina S.A. and EDF International S.A. v. Argentine Republic (Case No. ARB/03/22)**

There have been no new developments to report in this case since the last issue of *News from ICSID*.
- **EDF International S.A., SAUR International S.A. and León Participaciones Argentinas S.A. v. Argentine Republic (Case No. ARB/03/23)**

January 13, 2006
The Claimants file a rejoinder on jurisdiction.

March 8, 2006
The Tribunal holds a hearing on jurisdiction in Washington, D.C.

May 26, 2006
The Tribunal suspends the proceeding following the request of the parties.
- **Plama Consortium Limited v. Republic of Bulgaria (Case No. ARB/03/24)**

April 27, 2006
The Tribunal issues a procedural order concerning the production of documents.

May 25, 2006
The Tribunal issues a further procedural order concerning the schedule for the filing of written submissions and the presentation of oral arguments.
- **Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines (Case No. ARB/03/25)**

January 6 – 17, 2006
The Tribunal holds a hearing on jurisdiction and liability in Washington, D.C.

June 6, 2006
The Tribunal issues a procedural order concerning the schedule for additional written filings by the parties.

June 6 – 23, 2006
The Tribunal issues successive procedural orders concerning the amendment of the schedule for additional written filings by the parties.
- **Inceysa Vallisoletana S.L. v. Republic of El Salvador (Case No. ARB/03/26)**

There have been no new developments to report in this case since the last issue of *News from ICSID*.
- **Unisys Corporation v. Argentine Republic (Case No. ARB/03/27)**

April 10, 2006
The Tribunal further postpones the first session following the request of the parties.
- **Duke Energy International Peru Investments No. 1 Ltd v. Republic of Peru (Case No. ARB/03/28)**

February 1, 2006
The Tribunal issues a decision on jurisdiction.

June 19, 2006
The Claimant files a memorial on the merits.
- **Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan (Case No. ARB/03/29)**

April 25, 2006
The Claimant files a memorial on the merits.
- **Azurix Corp. v. Argentine Republic (Case No. ARB/03/30)**

There have been no new developments to report in this case since the last issue of *News from ICSID*.
- **Corn Products International, Inc. v. United Mexican States (Case No. ARB(AF)/04/1)**

June 28, 2006
After considering the parties' observations, the Tribunal issues its final decision regarding certain disclosures and issues of state responsibility.

■ **Total S.A. v. Argentine Republic (Case No. ARB/04/1)**

There have been no new developments to report in this case since the last issue of *News from ICSID*.

■ **Western NIS Enterprise Fund v. Ukraine (Case No. ARB/04/2)**

January 27, 2006

The Respondent files a post-hearing brief.

March 16, 2006

The Tribunal issues an order concerning proper notice of the claim.

May 26, 2006

The parties file a joint request for the discontinuance of the proceeding.

June 1, 2006

The Tribunal issues an order taking note of the discontinuance of the proceeding pursuant to ICSID Arbitration Rule 43(1).

■ **Cemex Asia Holdings Ltd v. Republic of Indonesia (Case No. ARB/04/3)**

There have been no new developments to report in this case since the last issue of *News from ICSID*.

■ **SAUR International v. Argentine Republic (Case No. ARB/04/4)**

February 28, 2006

The Tribunal issues a decision on jurisdiction.

March 10, 2006

The Tribunal issues a procedural order concerning the continuance of the proceedings on the merits.

April 7, 2006

The Tribunal suspends the proceeding following the request of the parties.

■ **Compagnie d'Exploitation du Chemin de Fer Transgabonais v. Gabonese Republic (Case No. ARB/04/5)**

January 27, 2006

The Tribunal issues a procedural order concerning the schedule for the filings on the merits.

May 17, 2006

The Claimant files a memorial on the merits.

■ **OKO Osuuspankkien Keskuspankki Oyj and others v. Republic of Estonia (Case No. ARB/04/6)**

March 8, 2006

The parties file submissions on costs.

March 17, 2006

The parties file reply submissions on costs.

■ **Sociedad Anónima Eduardo Vieira v. Republic of Chile (Case No. ARB/04/7)**

February 13, 2006

The Respondent files a reply on jurisdiction.

April 14, 2006

The Claimant files a rejoinder on jurisdiction.

■ **BP America Production Company and others v. Argentine Republic (Case No. ARB/04/8)**

There have been no new developments to report in this case since the last issue of *News from ICSID*.

■ **CIT Group Inc. v. Argentine Republic (Case No. ARB/04/9)**

March 2, 2006

The Claimant files a counter-memorial on jurisdiction.

April 25, 2006

The Respondent files a reply on jurisdiction.

May 25, 2006

The Claimant files a rejoinder on jurisdiction.

■ **Alstom Power Italia SpA and Alstom SpA v. Republic of Mongolia (Case No. ARB/04/10)**

January 6, 2006

The Claimant files a request for the discontinuance of the proceeding pursuant to ICSID Arbitration Rule 43(1).

January 9, 2006

The Respondent confirms its agreement to the Claimant's request of January 6, 2006.

March 13, 2006

The Tribunal issues an order taking note of the discontinuance of the proceeding pursuant to ICSID Arbitration Rule 43(1).

■ **Russell Resources International Limited and others v. Democratic Republic of the Congo (Case No. ARB/04/11)**

There have been no new developments to report in this case since the last issue of *News from ICSID*.

■ **ABCI Investments N.V. v. Republic of Tunisia (Case No. ARB/04/12)**

There have been no new developments to report in this case since the last issue of *News from ICSID*.

- **Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt (Case No. ARB/04/13)**

January 30, 2006
The Tribunal holds a hearing on jurisdiction in Paris.

June 16, 2006
The Tribunal issues a decision on jurisdiction.
- **Wintershall Aktiengesellschaft v. Argentine Republic (Case No. ARB/04/14)**

March 10, 2006
The Claimant files a memorial on the merits.

June 13, 2006
The Respondent files a memorial containing objections to jurisdiction.
- **Telenor Mobile Communications AS v. Republic of Hungary (Case No. ARB/04/15)**

April 28, 2006
The Tribunal holds a hearing on jurisdiction in London.

May 15, 2006
The Respondent files a submission on costs.

May 16, 2006
The Claimant files a submission on costs.

May 23, 2006
The Respondent files a further submission on costs.
- **Mobil Exploration and Development Inc. Suc. Argentina and Mobil Argentina S.A. v. Argentine Republic (Case No. ARB/04/16)**

February 14, 2006
The Claimants present an ancillary claim.
- **France Telecom S.A. v. Argentine Republic (Case No. ARB/04/18)**

March 29, 2006
The Acting Secretary-General issues an order taking note of the discontinuance of the proceeding pursuant to ICSID Arbitration Rule 44.
- **Gemplus, S.A., SLP, S.A. and Gemplus Industrial, S.A. de C.V. v. United Mexican States (Case No. ARB(AF)/04/3)**

June 1, 2006
The Respondent files a counter-memorial on the merits.
- **Talsud, S.A. v. United Mexican States (Case No. ARB(AF)/04/4)**

June 1, 2006
The Respondent files a counter-memorial on the merits.
- **Archer Daniels Midland Company and Tate & Lyle Ingredients Americas, Inc. v. United Mexican States (Case No. ARB(AF)/04/5)**

May 16, 2006
The Respondent files a counter-memorial on the merits.
- **Duke Energy Electroquil Partners and Electroquil S.A. v. Republic of Ecuador (Case No. ARB/04/19)**

January 18, 2006
The Claimants file a reply on the merits and a counter-memorial on jurisdiction.

March 6, 2006
The Respondent files a rejoinder on the merits and a reply on jurisdiction.

March 17, 2006
The President of the Tribunal holds a pre-hearing conference with the parties by telephone.

March 23, 2006
The Tribunal issues a procedural order concerning the organization of the hearing on jurisdiction and the merits.

March 31, 2006
The Claimants file a rejoinder on jurisdiction.

April 24 – 27, 2006
The Tribunal holds a hearing on jurisdiction and the merits in Washington, D.C.

May 4, 2006
The Tribunal issues a procedural order concerning the procedural calendar.

June 30, 2006
The parties file post-hearing briefs.
- **Vannessa Ventures Ltd. v. Bolivarian Republic of Venezuela (Case No. ARB(AF)/04/6)**

January 13, 2006
The Claimant files a memorial on the merits.

February 28, 2006
The Claimant presents an ancillary claim.

March 15, 2006
The Tribunal authorizes the presentation of the Claimant's ancillary claim in accordance with Article 47(2) of the ICSID Additional Facility Arbitration Rules.

■ **RGA Reinsurance Company v. Argentine Republic (Case No. ARB/04/20)**

There have been no new developments to report in this case since the last issue of *News from ICSID*.

■ **DaimlerChrysler Services AG v. Argentine Republic (Case No. ARB/05/1)**

There have been no new developments to report in this case since the last issue of *News from ICSID*.

■ **Compañía General de Electricidad S.A. and CGE Argentina S.A. v. Argentine Republic (Case No. ARB/05/2)**

June 5, 2006

The Tribunal is constituted. Its members are: Pierre Tercier (Swiss), President; Georges Abi-Saab (Egyptian); and Henri C. Alvarez (Canadian).

■ **LESI, S.p.A. and Astaldi, S.p.A. v. People's Democratic Republic of Algeria (Case No. ARB/05/3)**

March 27, 2006

The Respondent files a counter-memorial on the merits and a memorial on jurisdiction.

May 8, 2006

The Claimants file a counter-memorial on jurisdiction.

May 17, 2006

The Tribunal holds a hearing on jurisdiction in Paris.

■ **I&I Beheer B.V. v. Bolivarian Republic of Venezuela (Case No. ARB/05/4)**

January 6, 2006

The Tribunal issues a procedural order concerning procedural matters.

February 17, 2006

The Claimant files a memorial on the merits.

March 30, 2006

The Respondent files objections to jurisdiction.

May 4, 2006

The Tribunal issues a further procedural order concerning procedural matters.

■ **TSA Spectrum de Argentina, S.A. v. Argentine Republic (Case No. ARB/05/5)**

June 12, 2006

The Tribunal is constituted. Its members are: Hans Danelius (Swedish), President; Georges Abi-Saab (Egyptian); and Grant D. Aldonas (U.S.).

■ **Bernardus Henricus Funnekotter and others v. Republic of Zimbabwe (Case No. ARB/05/6)**

There have been no new developments to report in this case since the last issue of *News from ICSID*.

■ **Saipem S.p.A. v. The People's Republic of Bangladesh (Case No. ARB/05/7)**

February 20, 2006

The Claimant files a memorial on the merits.

May 15, 2006

The Respondent files a counter-memorial on jurisdiction and the merits.

■ **Parkerings-Compagniet AS v. Republic of Lithuania (Case No. ARB/05/8)**

February 24, 2006

The Claimant files a memorial on the merits.

■ **Togo Electricité v. Republic of Togo (Case No. CONC/05/1)**

January 9 – 10, 2006

The Commission holds a hearing in Paris.

February 24, 2006

The Claimant notifies the Commission that the parties have failed to reach an agreement and files a request for the closure of the proceeding.

March 7, 2006

The Respondent files a request for the closure of the proceeding.

March 27, 2006

The Commission declares the proceeding closed.

April 6, 2006

The Commission issues its report in accordance with Article 34(2) of the ICSID Convention and Rule 30(2) of the ICSID Conciliation Rules.

■ **Empresa Eléctrica del Ecuador, Inc. (EMELEC) v. Republic of Ecuador (Case No. ARB/05/9)**

February 28, 2006

The Tribunal is constituted. Its members are: Bernardo Sepúlveda Amor (Mexican), President; W. Michael Reisman (U.S.); and John Rooney (U.S.).

June 5, 2006

The Tribunal holds its first session by telephone conference.

■ **Malaysian Historical Salvors, SDN, BHD v. Malaysia (Case No. ARB/05/10)**

March 16, 2006

The parties file memorials on jurisdiction.

April 24, 2006

The parties file replies on jurisdiction.

■ **Asset Recovery Trust S.A. v. Argentine Republic (Case No. ARB/05/11)**

March 24, 2006

The Tribunal is constituted. Its members are: Jaime Irrázabal Covarrubias (Chilean), President; Ernesto Canales Santos (Mexican); and A.A. Cançado Trindade (Brazilian).

May 19, 2006

Following a proposal for disqualification of an arbitrator, the proceeding is suspended in accordance with ICSID Arbitration Rule 9(6).

June 7, 2006

The Claimant files observations on the proposal for disqualification.

■ **Bayview Irrigation District and others v. United Mexican States (Case No. ARB(AF)/05/1)**

February 14, 2006

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

April 20, 2006

The Respondent files a memorial on jurisdiction.

June 23, 2006

The Claimants file a counter-memorial on jurisdiction.

■ **Noble Energy Inc. and Machala Power Cía. Ltd. v. Republic of Ecuador and Consejo Nacional de Electricidad (Case No. ARB/05/12)**

January 4, 2006

The Tribunal is constituted. Its members are: Gabrielle Kaufmann-Kohler (Swiss), President; Henri C. Alvarez (Canadian); and Bernardo M. Cremades (Spanish).

March 9, 2006

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

June 26, 2006

The Claimants file a memorial on the merits.

■ **EDF (Services) Limited v. Romania (Case No. ARB/05/13)**

February 6, 2006

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

February 23, 2006

The Tribunal issues a procedural order concerning the schedule for the filing of written submissions contained in the minutes of the first session.

■ **RSM Production Corporation v. Grenada (Case No. ARB/05/14)**

January 16, 2006

The Tribunal holds its first session in London.

■ **Waguih Elie George Siag and Clorinda Vecci v. Arab Republic of Egypt (Case No. ARB/05/15)**

January 10, 2006

The Tribunal is constituted. Its members are: David A.R. Williams (New Zealand), President; Francisco Orrego Vicuña (Chilean); and Michael C. Pyles (Australian).

March 24, 2006

The Tribunal holds its first session in Paris.

May 12, 2006

The Claimants file a memorial on the merits.

June 12, 2006

The Respondent files a memorial on jurisdiction.

■ **Cargill, Incorporated v. United Mexican States (Case No. ARB(AF)/05/2)**

June 21, 2006

The Tribunal is constituted. Its members are: Michael C. Pyles (Australian), President; David D. Caron (U.S.); and Donald M. McRae (Canadian).

■ **Rumeli Telekom A.S. & Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan (Case No. ARB/05/16)**

January 30, 2006

The Tribunal holds its first session by telephone conference.

March 31, 2006

The Respondent files objections to jurisdiction.

April 26, 2006

The Tribunal issues a decision joining the objections to jurisdiction to the merits.

April 28, 2006

The Tribunal issues a procedural order concerning the production of documents.

May 17, 2006

The Tribunal issues a further procedural order concerning the production of documents.

■ **Desert Line Projects LLC v. Republic of Yemen (Case No. ARB/05/17)**

January 6, 2006

The Tribunal is constituted. Its members are: Pierre Tercier (Swiss), President; Ahmed S. El-Kosheri (Egyptian); and Jan Paulsson (French).

March 8, 2006

The Tribunal holds its first session in Paris.

March 16 – May 2, 2006

The Tribunal issues successive procedural orders concerning the filing of factual witness statements and the production of documents.

June 30, 2006

The Claimant files a memorial on the merits.

■ **Ioannis Kardossopoulos v. Georgia (Case No. ARB/05/18)**

February 27, 2006

The Tribunal is constituted. Its members are: L. Yves Fortier (Canadian), President; Francisco Orrego Vicuña (Chilean); and Arthur Watts (British).

May 4, 2006

The Tribunal holds its first session in London.

■ **Helnan International Hotels A/S v. Arab Republic of Egypt (Case No. ARB/05/19)**

February 10, 2006

The Tribunal is constituted. Its members are: Yves Derains (French), President; Rudolf Dolzer (German); and Michael J.A. Lee (British).

April 14, 2006

The Tribunal holds its first session in Paris.

May 17, 2006

The Tribunal issues a decision on provisional measures.

May 31, 2006

The Respondent files a memorial on jurisdiction.

June 23, 2006

The Tribunal issues a procedural order concerning the production of documents.

■ **Ioan Micula, Viorel Micula and others v. Romania (Case No. ARB/05/20)**

There have been no new developments to report in this case since the last issue of *News from ICSID*.

■ **African Holding Company of America, Inc. and Société Africaine de Construction au Congo S.A.R.L. v. Democratic Republic of the Congo (Case No. ARB/05/21)**

May 4, 2006

The Tribunal is constituted. Its members are: Ahmed S. El-Kosheri (Egyptian), President; Teresa Giovannini (Swiss); and Otto L.O. de Witt Wijnen (Dutch).

May 11, 2006

Following a proposal for disqualification of an arbitrator, the proceeding is suspended in accordance with ICSID Arbitration Rule 9(6).

May 17, 2006

Following the resignation of an arbitrator, which was consented to by the other members of the Tribunal, the Acting Secretary-General notifies the parties of a vacancy on the Tribunal and the proceeding remains suspended pursuant to ICSID Arbitration Rule 10(2).

■ **Biwater Gauff (Tanzania) Limited v. United Republic of Tanzania (Case No. ARB/05/22)**

February 9, 2006

The Tribunal is constituted. Its members are: Bernard Hanotiau (Belgian), President; Gary B. Born (U.S.); and Toby T. Landau (British).

March 23, 2006

The Tribunal holds its first session in Paris.

March 31, 2006

The Tribunal issues a procedural order concerning the Claimant's request for provisional measures.

May 24, 2006

The Tribunal issues a procedural order concerning the parties' requests for production of documents.

■ **Ares International S.r.l. and MetalGeo S.r.l. v. Georgia (Case No. ARB/05/23)**

April 10, 2006

The Tribunal is constituted. Its members are: J. William Rowley (Canadian), President; John Beechey (British); and Emmanuel Gaillard (French).

May 22, 2006

The Tribunal holds its first session in London.

■ **Hrvatska Elektroprivreda d.d. v. Republic of Slovenia (Case No. ARB/05/24)**

April 20, 2006

The Tribunal is constituted. Its members are: David A.R. Williams (New Zealand), President; Charles N. Brower (U.S.); and Jan Paulsson (French).

- **Spyridon Roussalis v. Romania (Case No. ARB/06/1)**
January 10, 2006
 The Acting Secretary-General registers a request for the institution of arbitration proceedings.
- **Química e Industrial del Borax Ltda. and others v. Republic of Bolivia (Case No. ARB/06/2)**
February 6, 2006
 The Acting Secretary-General registers a request for the institution of arbitration proceedings.
- **The Rompetrol Group N.V. v. Romania (Case No. ARB/06/3)**
February 14, 2006
 The Acting Secretary-General registers a request for the institution of arbitration proceedings.
- **Vestey Group Ltd v. Bolivarian Republic of Venezuela (Case No. ARB/06/4)**
March 14, 2006
 The Acting Secretary-General registers a request for the institution of arbitration proceedings.
- **Phoenix Action Ltd v. Czech Republic (Case No. ARB/06/5)**
March 23, 2006
 The Acting Secretary-General registers a request for the institution of arbitration proceedings.
- **Rail World LLC and others v. Republic of Estonia (Case No. ARB/06/6)**
April 5, 2006
 The Acting Secretary-General registers a request for the institution of arbitration proceedings.
- **Togo Electricité v. Republic of Togo (Case No. ARB/06/7)**
April 10, 2006
 The Acting Secretary-General registers a request for the institution of arbitration proceedings.
- **Sistem Muhendislik Insaat Sanayi ve Ticaret A.S. v. Kyrgyz Republic (Case No. ARB(AF)/06/1)**
April 12, 2006
 The Acting Secretary-General registers a request for the institution of arbitration proceedings.
- **Libananco Holdings Co. Limited v. Republic of Turkey (Case No. ARB/06/8)**
April 19, 2006
 The Acting Secretary-General registers a request for the institution of arbitration proceedings.
- **Branimir Mensik v. Slovak Republic (Case No. ARB/06/9)**
May 10, 2006
 The Acting Secretary-General registers a request for the institution of arbitration proceedings.
- **Chevron Block Twelve & Chevron Blocks Thirteen and Fourteen v. People's Republic of Bangladesh (Case No. ARB/06/10)**
June 30, 2006
 The Acting Secretary-General registers a request for the institution of arbitration proceedings.

NEW SECRETARY-GENERAL OF ICSID

(Continued from page 1)

Before joining the Spanish Government as Foreign Minister, Ms. Palacio was a member of the European Parliament during the 4th (1994–1999) and 5th (1999–2002) sessions of legislatures. She chaired a number of Parliamentary Committees including the Legal Affairs and Internal Market Committee (1999–2001) and the Justice and Home Affairs Committee (2001–2002). She was also elected to chair the Conference of Committee Chairmen, the Parliament's most senior body for the coordination of its legislative work, in two half legislatures (1999 and 2001). Ms. Palacio's work at the European Parliament focused on legislation concerning the internal market and on security and human rights issues.

A lawyer by profession, Ms. Palacio has held a number of senior positions in the governing bodies of the Madrid Bar, as well as the European Bar. She is an honorary member of the Bar of England and Wales. She is also a member of the Board of Trustees and former Executive President of the Academy of European Law; and Distinguished Professor of the European College in Parma. Ms. Palacio holds a Law Degree from the Universidad Nacional de Educación a Distancia and a BA in Political Science and Sociology (with Award for Academic Achievement) from the Universidad Complutense in Spain. She graduated from the Lycée Français (Baccalauréat in Mathematics).

Ms. Palacio's outside activities have included serving on the Board of Trustees of the Carnegie Corporation of New York and on the Advisory Boards of a number of institutions and foundations. Ms. Palacio is also a member of the Global Advisory Council of *The American Interest* and of *Revue de Droit de l'Union européenne*, in which she regularly publishes articles. She has published extensively in a number of international political journals, including *Foreign Affairs* and *Géopolitique*, and has been listed by the *Wall Street Journal* among the 75 global opinion leaders. In October 2001, the same newspaper published a feature article on her in its supplement on 12 influential players on the world business stage. ■

ICSID PUBLICATIONS

The Fall 2005 issue of the *ICSID Review—Foreign Investment Law Journal* was published recently. The issue features articles by Gabrielle Kaufmann-Kohler on global implications of the U.S. Federal Arbitration Act and by Anthony C. Sinclair on the substance of nationality requirements in investment treaty arbitration. The issue also reproduces the texts of the award rendered in *Consortium R.F.C.C. v. Kingdom of Morocco* (ICSID Case No. ARB/00/6) and the Decision on Respondent's Objections to Jurisdiction issued in *Aguas del Tunari S.A. v. Republic of Bolivia* (ICSID Case No. ARB/02/3), which is accompanied by a declaration by one of the arbitrators. The issue also contains the texts of three decisions on the stay of enforcement of an ICSID award, issued in *Patrick Mitchell v. Democratic Republic of the Congo*, (ICSID Case No. ARB/99/7), in *MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Republic of Chile* (ICSID Case No. ARB/01/7) and in *Repsol YPF Ecuador S.A. v. Empresa Estatal Petroleos del Ecuador (Petroecuador)* (ICSID Case No. ARB/01/10). The issue further contains a book review by Christoph H. Schreuer, reviewing R. Doak Bishop, James Crawford and W. Michael Reisman's book entitled "Foreign Investment Disputes: Cases, Materials and Commentary." Further, Stanimir A. Alexandrov reviews a recent UNCTAD publication, "International Investment Agreements: Key Issues" (Volume I), edited by Karl P. Sauvant and Jörg Weber.

During the period January – June 2006, the Centre also published two new releases for its *Investment Treaties* collection. These releases contain the texts of forty bilateral investment treaties from forty-five countries. The collection now comprises 1,080 treaties concluded between 1959 and 2005 by some 165 countries from all major regions of the world.

The Centre also published in the period a new set of booklets, reproducing the English, French and Spanish texts of the amended ICSID Regulations and Rules and ICSID Additional Facility Rules, which took effect on April 10, 2006. ■

THE CONSULTATION PERIOD REQUIREMENT IN INVESTMENT TREATIES AS A MATTER OF JURISDICTION, ADMISSIBILITY OR PROCEDURE

By **Martina Polasek, Counsel, ICSID**

Many investment treaties contain dispute settlement clauses that provide for consultations and negotiations between an investor and a State before a dispute may be submitted to international arbitration. The requirement to attempt an amicable settlement often specifies a certain period of time, usually triggered by events giving rise to the dispute or by the covered investor's notification of the dispute to the State. These consultation and negotiation periods, also known as "waiting" or "cooling off" periods, typically vary from three to twelve months. Their purpose has been described as to allow for good faith consultations and negotiations that might lead to an amicable settlement before the institution of formal proceedings. While the objective seemingly has not raised any debate, the nature and consequences of this pre-arbitration requirement have been discussed in a number of cases brought under investment treaties, usually in the framework of the relevant tribunal's jurisdictional determinations. State parties have in several instances objected that the investor did not comply with the consultation provision, in most cases arguing that a jurisdictional requirement or a precondition to jurisdiction was not met, that the claim was premature or inadmissible, or that a procedural prerequisite was not satisfied.

Many ICSID tribunals have held that the consultation period requirement was observed without entering into a discussion on the nature of the condition. Nevertheless, where the tribunals found that, under the interpretation of the clause, the factual compliance with the requirement was an issue, the classification of the requirement itself as one relevant to jurisdiction, admissibility or procedure became important in determining the consequences of a potential noncompliance. A lack of jurisdiction or admissibility would mean that the claim could not be heard by the tribunal, or at least not yet. If the requirement were procedural, however, this would seem to give the tribunal more discretion to hear the claim.

So far, no ICSID tribunal has dismissed a case for failure to comply with a consultation period, although one tribunal rejected a part of a claim (see *below*, Award of February 10, 1999 in *Antoine Goetz*

and others v. Republic of Burundi (ICSID Case No. ARB/95/3) (*Goetz*), available on ICSID's website). However, a recent order in the now discontinued case *Western NIS Enterprise Fund v. Ukraine* (ICSID Case No. ARB/4/2) (*WNISEF*) has indicated that such failure might warrant a dismissal of the entire claim (see Order of March 16, 2006, available on ICSID's website). The case was brought to ICSID under the Ukraine-United States bilateral investment treaty (BIT) of 1994, which provided that the parties to the dispute should initially seek a resolution through consultation and negotiation and that, if the dispute could not be settled amicably and if six months had elapsed from the date on which the dispute arose, the investor could submit the dispute to ICSID (BIT Article VI(2) and (3)). One of the respondent's objections during the jurisdictional phase of the proceeding was that the six-month period, which the respondent argued was a precondition for jurisdiction, had not been observed. The respondent submitted that the dispute could not have arisen on the date indicated by the claimant and in any event had not been properly notified to the respondent. The claimant argued that the determining dates for purposes of the six-month period were the date on which the dispute arose and the date of consent, and that a notice in writing was not necessary or should at least be judged liberally. The claimant had produced certain documentation in support of its allegations that it had, in fact, attempted to consult with Ukraine regarding the dispute; however, there was no evidence of a written notice from the claimant to the respondent invoking claims under the BIT.

The tribunal decided to rule on the question of the six-month period before ruling on its jurisdiction, which, it stated, was unaffected by the Order. Having declared that "proper notice is an important element of the State's consent to arbitration, as it allows the State, acting through its competent organs, to examine and possibly resolve the dispute by negotiations" (see para. 5 of the Order), the tribunal found that the claimant had not given proper notice of the claim under the BIT. This defect, the tribunal concluded, could be remedied by a suspension of the proceeding during which the claimant could give proper notice to the respondent.

If proper notice were given within a certain period of time, the proceeding would be reactivated after six months or according to the parties' agreement; if not, the case would be dismissed.

The *WNISEF* Order is interesting as to how the tribunal determined the nature of the consultation period requirement and the consequence arising from its noncompliance. The tribunal did not expressly discuss whether the requirement was a matter of jurisdiction, admissibility or procedure, but gave certain indications in this respect and, compared with previous jurisprudence, took a novel approach on the issue. This article explores how the consultation period requirement in investment treaties has been classified by arbitral tribunals so far, with particular focus on the solution offered by the *WNISEF* Order.

JURISDICTION AND ADMISSIBILITY

What is clear from the *WNISEF* Order is that it did not consider the consultation period requirement as a condition for the tribunal's jurisdiction, since it held that jurisdiction was not affected. This is consistent with the approach of most other ICSID tribunals which have pronounced themselves on this question, with certain exceptions (see, e.g., para. 88 of the Decision on Jurisdiction of January 14, 2004 in *Enron Corporation and Ponderosa Assets, L.P. v. Argentine Republic* (ICSID Case No. ARB/01/3) (*Enron*), available at www.asil.org/ilib/Enron.pdf). In *Goetz*, the tribunal found that a part of the claim which had neither been properly notified to the respondent nor been subject to negotiations at diplomatic level as required by the relevant treaty was "irreceivable" (*supra*, para. 93 of the Award). The tribunal did not elaborate further on this concept. Similarly, the *WNISEF* Order indicated that the requirement was mandatory and that noncompliance would lead to a dismissal of the claim, with the distinction that the claimant was given the opportunity to remedy the deficient notice.

The solution in *WNISEF* resembles the decision on jurisdiction in *SGS Société Générale de Surveillance S.A. v. Republic of the Philippines* (ICSID Case No. ARB/02/6), Decision of January 29, 2004, available on ICSID's website (*SGS v. Philippines*), which upheld the tribunal's jurisdiction but found that the claim was inadmissible and, therefore, concluded that the proceeding was suspended until the claim was ripe. The inadmissibility related to a different issue than a consultation period, namely whether a dispute settlement clause in a bilateral investment

treaty may automatically override a valid contractual choice of forum by the parties to determine essentially contractual claims. The *SGS v. Philippines* tribunal stated that there was an *impediment* to hearing the claim, as a party cannot rely on a contract as the basis of its claim without itself complying with the dispute settlement clause of that contract. The tribunal stated that such impediment was a matter of admissibility. It declared that "normally a claim which is within jurisdiction but inadmissible (e.g., on grounds of failure to exhaust local remedies) will be dismissed, although this will usually be without prejudice to the right of the claimant to start new proceedings if the obstacle to admissibility has been removed (e.g., through exhaustion of local remedies)" (see para. 171 of the Decision on Jurisdiction). However, the tribunal found that there was a certain degree of flexibility in the way admissibility is applied, at least regarding questions of competing fora. Under the general power to make orders required for the conduct of proceedings (ICSID Arbitration Rule 19), the tribunal stayed the case until the condition for admissibility was satisfied. Although the suspension in *WNISEF* was limited in time and the claim would have been dismissed if certain conditions were not satisfied, the similarity of the solution in *SGS v. Philippines* would seem to suggest that, as in *SGS v. Philippines*, the *WNISEF* tribunal also classified the issue in that case as one of admissibility.

The distinction between jurisdiction and admissibility in the context of the ICSID Convention has been debated by several tribunals and by doctrine. Some tribunals have held that the distinction is not necessary or appropriate, observing that the Convention "deals only with jurisdiction and competence" (see, e.g., para. 33 of the Decision on Jurisdiction of January 14, 2004 in *Enron* (*supra*) and para. 41 of the Decision on Jurisdiction of July 17, 2003 in *CMS Gas Transmission Company v. Argentine Republic* (ICSID Case No. ARB/01/8), available on ICSID's website). The tribunal in *LESI, S.p.A. and Astaldi, S.p.A. v. People's Democratic Republic of Algeria* (ICSID Case No. ARB/5/3) stated in a recent decision on jurisdiction that inadmissibility may have an impact on the jurisdiction of a tribunal (see para. 58 of the Decision on Jurisdiction of July 12, 2006, available on ICSID's website). In this connection, the tribunal added that objections to admissibility and jurisdiction must be treated separately because they concern different questions, but that the distinction has no practical consequence in ICSID circumstances, as the review mechanism under the ICSID Convention is the same for both types of questions.

In his article "Jurisdiction and Admissibility," Jan Paulsson suggests that issues of admissibility should be finally heard by the arbitrators and should not be subject to review, even in the context of the ICSID Convention's review mechanism (see *Global Reflections on International Law, Commerce and Dispute Resolution, Liber Amicorum in Honour of Robert Briner*, ICC Publishing, November 2005, p. 608). He therefore considers the distinction between jurisdiction and admissibility important and proposes how to distinguish whether an objection relates to the former or the latter. In this respect, the author indicates that objections concerning compliance with consultation periods are threshold issues that should be classified as matters of admissibility (see *id.* p. 616).

An ICSID annulment committee has yet to analyze the question whether a ruling in a case rejected for inadmissibility could become annulable under Article 52 of the ICSID Convention. Aside from this question, could the distinction between jurisdiction and admissibility have any other bearing? The decisions in *WNISEF* and *SGS v. Philippines* seem to suggest this, as they imply that the tribunals in those cases had the power to suspend the proceedings while the impediment to hearing the case was being rectified. A tribunal which would conclude that it has no jurisdiction would have no such power.

JURISDICTION AND PROCEDURE

While few cases have indicated that the requirement to consult and negotiate is a matter of jurisdiction or admissibility, several have qualified it as a matter of procedure. In *Ethyl Corporation v. Government of Canada (Ethyl)*, an UNCITRAL case under the North American Free Trade Agreement (NAFTA), the tribunal questioned whether the NAFTA parties intended, as a condition for the tribunal's jurisdiction, that the "procedural requirement" allowing the investor to submit a claim to arbitration if six months had elapsed from "the events giving rise to a claim" (Article 1120 of the NAFTA) must be fulfilled prior to the submission of a notice instituting arbitration proceedings. The tribunal concluded that a denial of jurisdiction and dismissal of the claim would "disserve, rather than serve, the object and purpose of NAFTA" (see para. 85 of the Award on Jurisdiction of June 24, 1998, 38 ILM 708 (1999)). It found that, in the circumstances of that case, where it seemed clear that no consultation or negotiation was even possible, it could be argued that the six-month "cooling off" period, which was intended to permit time to resolve the matter amicably,

would not serve any purpose (see para. 84). Nevertheless, the tribunal found that the controversy could have been avoided if the claimant would have waited six months after the legislative measures complained of finally entered into force before commencing the arbitration, instead of "jumping the gun" at a time when the relevant bill was still being considered (see para. 87). The tribunal therefore awarded costs against the claimant with respect to that part of the argument.

In another UNCITRAL case, *Ronald S. Lauder v. The Czech Republic*, which was brought under the Czech Republic-United States BIT, the tribunal interpreted the consultation period provision and found that the claimant had not complied with the six-month "waiting" period. However, as in *Ethyl*, the tribunal stated that, considering the circumstances of the case, the satisfaction of the requirement would not serve any purpose, especially since the respondent had not shown that it would have agreed to negotiate with the claimant and, had it desired to negotiate, could have done so after receiving notice of the initiation of arbitration proceedings. In this regard, the tribunal concluded that the requirement was "not a jurisdictional provision, i.e. a limit set to the authority of the Arbitral Tribunal to decide on the merits of the dispute, but a procedural rule that must be satisfied by the Claimant" (see para. 187 of the Final Award of September 3, 2001, available at <http://ita.law.uvic.ca/documents/LauderAward.pdf>).

In *SGS Société Générale de Surveillance S.A. v. Islamic Republic of Pakistan* (ICSID Case No. ARB/01/13), an ICSID case under the Pakistan-Switzerland bilateral investment treaty, the tribunal supported the view that consultation periods were "directory and procedural" rather than "mandatory and jurisdictional" (see para. 184 of the Decision on Jurisdiction, available on ICSID's website). Also in this case, the tribunal put weight on the fact that the respondent had not shown any inclination to enter into consultations in regard to the treaty dispute, and determined that it would be ineffective from the point of view of case management to suspend the arbitration and require the claimant to first consult with the respondent before re-filing the claim. In *Wena Hotels Limited v. Arab Republic of Egypt* (ICSID Case No. ARB/98/4), although the respondent withdrew the objection to noncompliance with the three-month period under the Egypt-United Kingdom bilateral investment treaty, the tribunal observed that an upholding of the "procedural" objection would have had little effect but to delay the proceedings, since the noncompliance could

have been easily rectified (see Section VII of the Decision on Jurisdiction of June 29, 1999, 6 *ICSID Rep.* 74 (2004)).

The tribunal in *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan* (ICSID Case No. ARB/03/29) reached a similar conclusion, stating that a resubmission of a new request would not benefit either party (see para. 100 of the Decision on Jurisdiction of November 14, 2005, available on ICSID's website). The Pakistan-Turkey BIT in that case prescribed a six-month consultation period following a written notification containing "detailed information." The tribunal held that it did not need to make a definitive ruling whether a constitutional petition filed by the claimant before the courts of Pakistan could amount to such a notification, because, in light of the object and purpose of the notice requirement, it did not have an absolute character but constituted a merely procedural rule. As the purpose of the notice was to allow negotiations between the parties and the respondent had in any event not reacted to a later proper notice (delivered by the claimant before the initiation of the ICSID proceeding but before the six-month period had elapsed), it would be an "overly formalistic approach" in the circumstances of the case to consider the start of the six-month period to be the date of the later notice (see para. 102 of the Decision). Similarly, the tribunal in *Consortium Groupement L.E.S.I.-DIPENTA v. Algeria* (ICSID Case No. ARB/03/8) held that the requirement did not have an absolute character and could be dispensed with in cases where it was evident that a consultation attempt would fail due to the definitiveness in the attitude of the other party (see para. 32 of the Award of January 10, 2005, available on ICSID's website).

The line of cases holding that the requirement to consult and negotiate before initiating arbitration proceedings is of a procedural nature rather than a condition precedent for jurisdiction has been criticized in *Generation Ukraine Inc. v. Ukraine* (ICSID Case No. ARB/00/9) (*Generation Ukraine*), where the tribunal incidentally interpreted the same bilateral investment treaty as the tribunal in *WNISEF*. The *Generation Ukraine* tribunal observed that it "would be hesitant to interpret a clear provision of the BIT in such a way so as to render it superfluous, as would be the case if a 'procedural' characterization of the requirement effectively empowered the investor to ignore it at its discretion" (see para. 14.3 of the Award of September 16, 2003, 44 *ILM* 404 (2005)).

THE REASONS FOR A DISTINCTION

The exact distinction between an issue of jurisdiction, more specifically an issue of admissibility, and a procedural rule is rather unclear. However, there are reasons for making a distinction in view of the possible consequence: a dismissal of the claim. The decisions which held that the consultation period requirement related to procedure rather than jurisdiction indicated that it was a non-absolute requirement that could be evaluated on a case-by-case basis in view of the purpose of the exercise: to allow good faith negotiations between the parties which might lead to an amicable settlement. These decisions seem to indicate a concern for the utility of the fulfillment of the requirement in circumstances where it seemed that consultations would be futile and that the claim might in any event be re-submitted. The concern raised in *Generation Ukraine* was that such a classification, with the effect that the investor could disregard the consultation period at his discretion, would render the provision meaningless. Would it matter how long the consultation period was as long as an attempt to reach a settlement had been made and failed? Would it, on the other hand, make sense to dismiss a case and require the claimant to start a new despite the fact that attempts at consultation were unsuccessful or likely to fail? It appears that the decisions dealing with an objection concerning the compliance with the consultation period requirement under treaties strived to strike a balance between the efficacy and the purpose of the requirement.

It appears from prevailing jurisprudence addressing the nature of the requirement of consultation and negotiation periods that a tribunal has certain powers to impose consequences other than immediate dismissal of a claim in cases of noncompliance. Christoph Schreuer suggests that noncompliance could only be a bar to hearing a case in extreme circumstances, e.g., in cases of "procedural bad faith such as starting arbitration prematurely in order to put pressure on the opposing party in negotiations" (Christoph H. Schreuer, "Travelling the BIT Route, Of Waiting Periods, Umbrella Clauses and Forks in the Road," *The Journal of World Investment & Trade*, Vol. 5, No. 2, April 2004, p. 239). He concludes that an appropriate consequence of premature proceedings in other cases, those where procedural bad faith was not a factor, could be the awarding of costs against the claimant, as in *Ethyl*.

The *WNISEF* Order offers another solution: the rectification of the deficient notice and the suspension of the proceeding until the consultation period lapses. ■

DESIGNATIONS TO THE ICSID PANELS OF CONCILIATORS AND OF ARBITRATORS DURING THE PERIOD OF JANUARY 1 – JUNE 30, 2006

Pursuant to the ICSID Convention, the Centre maintains a Panel of Conciliators and a Panel of Arbitrators. Under Article 13 of the Convention, each Contracting State may designate up to four persons to each Panel who will serve for a renewable period of six years. Up to 10 persons may be designated to each Panel by the Chairman of the Administrative Council.

In the period January 1 to June 30, 2006, the governments of Colombia, Egypt, France, Malawi, Mongolia and Singapore made designations to the ICSID Panels. The names of the recently designated appointees are provided below. A complete list of all Panel members is posted on the ICSID website at <http://www.worldbank.org/icsid>.

Colombia

Panel of Conciliators

Designations effective February 17, 2006:
Elizabeth Cadena Fernández, Nicolás Lloreda, Néstor Humberto Martínez Neira and Ignacio Sanín Bernal

Panel of Arbitrators

Designations effective February 17, 2006:
Enrique Gómez-Pinzón (re-appointment), Fernando Mantilla-Serrano, W. Michael Reisman and Eduardo Silva Romero

Egypt

Panel of Arbitrators

Designations effective January 31, 2006:
Ahmed Esmat Abdel Meguid, Mohamad Ibrahim Mostafa Abul-Enein, Nabil Elaraby and Mahmoud Samir El-Sharqawy

France

Panel of Conciliators

Designations effective March 22, 2006:
Jean-Pierre Ancel, Pierre-Raoul Duval, Pierre Mayer and Henri Toutée

Panel of Arbitrators

Designations effective March 22, 2006:
Emmanuel Gaillard, Gilbert Guillaume (re-appointment), Dominique Hascher and Brigitte Stern (re-appointment)

Malawi

Panel of Arbitrators

Designation effective April 24, 2006:
A. Peter Mutharika

Mongolia

Panel of Arbitrators

Designation effective May 12, 2006:
Michael D. Nolan

Singapore

Panel of Conciliators and of Arbitrators

Designations effective February 13, 2006:
Joon Seng Goh, Joseph Grimberg, Michael Hwang and Lip Ping Thean

17TH ANNUAL ITA WORKSHOP

The Seventeenth Annual Workshop of the Institute for Transnational Arbitration (ITA) was held on June 15, 2006 in Dallas, Texas. The workshop was co-chaired by Jack J. Coe of Pepperdine University School of Law, Barton Legum of the Paris office of Debevoise & Plimpton LLP, and Margrete Steves, Acting Lead Counsel, ICSID. By means of a mock arbitration proceeding, the workshop addressed various issues arising in the context of an investment treaty arbitration under the ICSID rules. Distinguished arbitrators and practitioners experienced in the field of international arbitration acted as role players and commentators, highlighting the various stages and the

possible challenges that might arise in an investor-State arbitration proceeding under the ICSID rules.

Three ICSID Counsel, Aurélie Antonietti, Gabriela Alvarez Avila and Ucheora Onwuamaegbu also participated as role players in the mock proceeding, thereby providing insight into the screening process preceding the registration of a request for arbitration at ICSID.

The eight scenes of the workshop have been recorded and edited for educational purposes. A set of two DVDs, containing mock scenes and expert commentary will be available from the ITA shortly. ■

TWENTY-THIRD AAA/ICC/ ICSID JOINT COLLOQUIUM ON INTERNATIONAL ARBITRATION

On November 17, 2006, ICSID will be hosting the 23rd in the series of annual colloquia on International Arbitration, co-sponsored by the American Arbitration Association (AAA), the International Court of Arbitration of the International Chamber of Commerce (ICC) and ICSID. The panel discussions will focus on (i) recent developments at the three institutions; (ii) production of documents and other evidentiary issues; (iii) new challenges regarding confidentiality; and (iv) selected substantive issues arising from arbitration involving State parties. During the luncheon session, a panel will take questions and observations from colloquium participants, enabling an interactive discussion on current issues in international arbitration.

For the conference brochure and registration information please visit the ICSID website at <http://www.worldbank.org/icsid>. The program is also reprinted on page 20 of this issue. ■

LCIA SYMPOSIUM IN CO-OPERATION WITH ICSID

On Saturday, November 18, 2006, the London Court of International Arbitration, in co-operation with ICSID, will hold a Symposium based on current issues of interest in the field of international arbitration. The topics will be proposed in advance by delegates and then be debated from the floor. The symposium will follow immediately the AAA/ICC/ICSID 23rd Joint Colloquium on International Arbitration, thereby allowing for a continuation of discussions arisen at the previous day's Joint Colloquium. It will be held at the Fairmount Hotel in Washington, D.C. The conference program and registration form is available on the LCIA website at <http://www.lcia.org>. ■

TWENTY-THIRD AAA/ICC/ICSID JOINT COLLOQUIUM ON INTERNATIONAL ARBITRATION — PROGRAM

MORNING SESSION

8:30 a.m. – 9:00 a.m.

Registration and Coffee

9:00 a.m. – 9:10 a.m.

Welcome and Introduction

9:10 a.m. – 10:00 a.m.

Recent Developments at the American Arbitration Association, the ICC International Court of Arbitration and the International Centre for Settlement of Investment Disputes

Ana Palacio

Senior Vice President and World Bank Group General Counsel, World Bank Secretary-General, ICSID

William K. Slate II

President and Chief Executive Officer, American Arbitration Association, New York

Pierre Tercier

Chairman, ICC International Court of Arbitration, Paris

10:00 a.m. – 10:15 a.m.

Coffee Break

10:15 a.m. – 11:30 a.m.

Production of Documents and Other Evidentiary Issues

Eric Schwartz — Moderator

Freshfields Bruckhaus Deringer, Paris

Bernard Hanotiau

Hanotiau & van den Berg, Brussels

Ben H. Sheppard, Jr.

University of Houston Law Center

Robert H. Smit

Simpson Thacher & Bartlett LLP, New York

11:30 a.m. – 11:45 a.m.

Coffee Break

11:45 a.m. – 1:00 p.m.

New Challenges Regarding Confidentiality

Sophie Nappert — Moderator

Denton Wilde Sapte, London

James H. Carter

Sullivan & Cromwell LLP, New York

Makhdoom Ali Khan

Attorney General for the Islamic Republic of Pakistan, Islamabad

Anne Marie Whitesell

Secretary General, ICC International Court of Arbitration, Paris

1:00 p.m. – 3:00 p.m.

Lunch

Recent Developments in International Arbitration—Interactive Discussion with Expert Panel

Barton Legum — Moderator

Debevoise & Plimpton LLP, Paris

Horacio Grigera Naón

American University, Washington College of Law, Washington, D.C.

Abby Cohen Smutny

White & Case LLP, Washington, D.C.

Hon. John Charles Thomas

Hunton & Williams LLP, Richmond

AFTERNOON SESSION

3:00 p.m. – 4:30 p.m.

Arbitration Involving States: Substantive Issues

Raul E. Vinuesa — Moderator

Vinuesa y Asociados, Buenos Aires

■ *Denial of Justice: Where the Procedural Meets the Substantive*

Franz T. Schwarz

WilmerHale, London

■ *Applicable Law and Administrative Acts in Arbitrations Involving States*

Karl-Heinz Böckstiegel

University of Cologne

■ *Umbrella Clauses — Where Do Matters Stand?*

J. Christopher Thomas, Q.C.

Thomas & Partners, Vancouver

4:30 p.m. – 4:45 p.m.

Closing

5:00 p.m. – 6:45 p.m.

Reception