

World Arbitration & Mediation Report



- SPECIAL
INTRODUCTORY OFFER -
the NEW Latin American Arbitration Review
Subscribe Today - Special Offer
(see inside back cover for details)

Vol. 17, No. 8

Covering Dispute Resolution in the United States and Around the World

August 2006

- SPECIAL ISSUE -

Introducing the *Latin American Arbitration Review (LAAR)*,
the best bridge to Latin American Arbitration Practice.

HIGHLIGHTS

One of the **most controversial** ICSID cases involving Latin America, *Aguas del Tunari, S.A. v. Republic of Bolivia*, was discontinued on March 28, 2006 because of a **settlement** by the parties. The case attracted a significant amount of attention around the world because of the **violent public protests** that erupted in Bolivia shortly after Aguas del Tunari and the Government concluded a concession agreement involving the privatization of water services in the city of Cochabamba. News of **increased water rates** in the **impoverished city** caused a **public outcry** bringing an end to the concession agreement in April 2000. (Story begins on page 248.)

MERCOSUR has concluded the legal framework for the **creation of a parliament**. The issue is a **hotly-debated** one for Latin America. Many countries are reluctant to submit to a regional decision-making authority. (MERCOSUR News on page 247.)

ICC World Business Law Institute creates a prize for **excellence** in international law **research**. The **prize** is intended to give recognition to "fresh new voices" in legal scholarship on transborder topics. The Institute is a think-tank meant to foster uniformity of business and trade practices, especially in the area of arbitration. The amount of the prize is (U.S.) \$10,000 and will be awarded every two to three years. (Story on page 251.)

In *Suez, Sociedad General de Aguas de Barcelona, and*

CONTENTS

Regional News	243
MERCOSUR News	247
Investment Arbitration.....	248
National Court Decisions.....	252
International News.....	254
Articles and Commentary.....	254
Documentary Resources.....	267

InterAguas v. Argentina, an ICSID Tribunal reiterated criteria for **amicus curiae participation** in arbitration cases. The Tribunal concluded that its authority to accept amicus participation depends on **three basic criteria**: 1) the **appropriateness** of the subject matter of the case; 2) the **suitability** of a given nonparty to act an *amicus curiae* in that case; and 3) the **procedure** by which the **amicus** submission is made and considered. (Story on page 251.)

A **Chilean court** has granted **interim measures** to a Chilean company prior to its initiation of arbitral proceedings against a German affiliate company. This case is an example of the increasing tendency of Chilean courts to adhere to and apply the Chilean International Commercial Arbitration Law enacted in 2004. (The National Court Decisions Section begins on page 252.)

George Foster of Dechert LLP writes an article entitled "Recent Setbacks for Foreign Investors in Latin America and What They Mean for the Future of Investment Treaty Arbitration in the Region." According to Mr. Foster, "Despite having entered into a number of investment treaties that give many foreign investors significant protections against **adverse State actions**, and despite having felt the sting of investor claims under these treaties in the past, **governments in Latin America** are becoming **increasingly bold** in their dealings with investors." (The Articles and Commentary Section begins on page 254.)

PENNSTATE



The Dickinson
School of Law

JurisNet LLC, Huntington, NY, USA

Published in conjunction with Penn State University's
Institute for Arbitration Law and Practice, Carlisle, PA, USA

WORLD ARBITRATION &
MEDIATION REPORT

-EDITORIAL STAFF

Editor-in-Chief:

Thomas E. Carbonneau
Penn State Dickinson School of
Law

Executive Editor:

Crystal L. Stryker, Esq.
Penn State Dickinson School of
Law

Editors:

Nadja Alexander, International
Mediation, Australian Centre
for Peace and Conflict Studies,
Queensland (Australia)

Frédéric Bachand, Investment
Arbitration, McGill Law Faculty
(Montréal)

Welber Barral, Latin American
Arbitration, Universidade Federal
de Santa Catarina (Brazil)

Richard Chernick, Editor for
Arbitration Law & Practice, JAMS
(Los Angeles)

James Coben, Domestic Mediation,
Dispute Resolution Institute,
Hamline University School of Law

Robert Davidson, Editor for
Arbitration Law & Practice,
JAMS (New York)

Christopher Drahozal, U.S.
Arbitration Law, University of
Kansas School of Law

Paul Friedland, International
Arbitration, White & Case LLP
(New York City)

Barry Garfinkel, International
Arbitration, Skadden Arps Slate
Meagher & Flom (New York City)

Grant Hanessian, International
Arbitration, Baker & McKenzie
(New York City)

Gail Partin, Research Editor, Penn
State Dickinson School of Law

David Zaslow, International
Arbitration, Baker & McKenzie
(New York City)

Production Manager:

Wendy M. Ser

Editors-At-Large:

William W. Park,
Boston University School of Law
Jan Paulsson,
Freshfields (Paris)

Editorial Assistants:

Shailey Gupta-Brietzke
Julie R. Phillips
Emily C. Reese
Sean P. Triano

Submission Information

Editorial correspondence should be
directed to Professor Thomas Carbonneau,
Editor, *World Arbitration and Mediation
Report*, 71 New Street, Huntington,
New York 11743 (USA), or Penn State
Dickinson School of Law, 150 South
College Street, Carlisle, PA 17013-2899.
You may call him at (717) 240-5153;
email: tec10@psu.edu.

IN THIS ISSUE

REGIONAL NEWS

Latin American Arbitration Conference in Buenos Aires.....	243
Calendar of Workshops, Seminars and Conferences.....	244

MERCOSUR NEWS

Toward the Establishment of a MERCOSUR Parliament.....	247
Venezuela to Become a MECOSUR Nation.....	247

INVESTMENT ARBITRATION

<i>Aguas del Tunari, S.A. v. Republic of Bolivia:</i> One of the Region's Most Controversial Cases is Settled by the Parties.....	248
<i>EnCana Corporation v. Republic of Ecuador:</i> ICA Tribunal Renders Award in Favor of Ecuador	249
<i>Suez and InterAgua v. Argentina:</i> Investors' Claims are not Extinguished by Withdrawal of Corporation from Proceedings/Spanish Investors Benefit from MFN Clause.....	250
<i>Suez, Sociedad General de Aguas de Barcelona,</i> <i>and InterAgua v. Argentina:</i> ICSID Tribunal Reiterates Criteria for <i>Amicus</i> <i>Curiae</i> Participation in Arbitration Cases.....	251

NATIONAL COURT DECISIONS

Argentina: Argentine Courts Grant Interim Measures Pending Arbitral Proceedings.....	252
Chile: Chilean Court Duly Applies the New Arbitration Law.....	252
Venezuela: Venezuelan Supreme Court Affirms the Right of Constitutional Review of Arbitral Awards Through <i>Amparo</i> Proceedings: <i>Corporación Todosabor v. Häagen Dazs</i>	253

INTERNATIONAL NEWS

Bolivia Orders Army to Take Over Natural Gas Fields.....	254
Queen Mary/Pricewaterhouse Study Shows Corporate Lawyers Around the World Prefer Arbitration.....	254

ARTICLES AND COMMENTARY

Brazil Changes Legislation to Allow Arbitration in Government Contracts by Eduardo Grebler and Flávia Bittar Neves.....	254
Recent Setbacks for Foreign Investors in Latin America and What They Mean for the Future of Investment Treaty Arbitration in the Region by George K. Foster.....	255
Risks for Property Rights in Latin America: Obtaining Protection under International Law by Omar E. Garcia-Bolivar.....	265

DOCUMENTARY RESOURCES

A Translation of Paraguay's Arbitration Statute.....	267
--	-----

LATIN AMERICAN
ARBITRATION REVIEW

-EDITORIAL STAFF

General Editor:

Thomas E. Carbonneau

Editor-in-Chief:

Mary H. Mourra, Esq.

Advisory Board:

Martin Gubbins, Partner
Estudio Correa Gubbins
Av. Apoquindo 3500, piso 11
Las Condes 755-0105
Santiago, Chile
Tel: (56-2) 59 10 100;
Fax: (56-2) 59 10 101
martin.gubbins@estudiocg.cl
<http://www.estudiocg.cl>

Diego P. Fernandez Arroyo
Departamento Derecho
Internacional Privado
Facultad de Derecho - Universidad
Complutense de Madrid, 28040
Madrid, Spain

Eduardo Grebler, Partner
Grebler Pinheiro Mourão E Raso
Advogados
Rua Pernambuco, 353 - 7º andar
30130-150 - Belo Horizonte,
Minas Gerais, Brazil
Tel: (31) 3261-1400;
Fax: (31) 3261-8199

José Antonio Moreno Rodriguez,
Partner,
Moreno Ruffinelli & Asociados
Avenida Perú 1044
Asunción, Paraguay
Tel: (595.21) 214.688;
Fax: (595.21) 215.134

Fernando Aguilar, Partner
Marval, O'Farrell & Mairal
Av. Leandro N. Alem 928, 7th Floor
C1001 AAR, Buenos Aires,
Argentina
Tel: (54-11) 4310 0100;
Fax: (54-11) 4301 0200

Philip Dunham, Partner
Dechert LLP, Paris
7, place d'Iena,
Paris 75116, France

Gilberto Giusti, Partner
Pinheiro Neto Advogados
Rua Boa Vista, 254, 9º Andar
CEP 01014-907 São Paulo - SP
Brazil

Plínio Simões Barbosa, Partner
Barbosa, Müssnich & Aragão
Advogados - Av. Almirante
Barroso, 52 - 32º andar, Rio de
Janeiro, Brazil
Tel: (55) (21) 3824-5862;
Fax: (55) (21) 2262-5536

Felipe Ossa
Freshfields Bruckhaus Deringer
2 rue Paul Cézanne
75008 Paris
Tel: +33 1 44 56 54 83
Fax: +33 1 44 56 44 00/01/02/03

Submission Information

Editorial correspondence should be
directed to Mary H. Mourra, Editor-in-
Chief, *Latin American Arbitration
Report*, 71 New Street, Huntington,
New York 11743 (USA), or Penn State
Dickinson School of Law, 150 South
College Street, Carlisle, PA 17013-2899. You
may email her at: mhm11@dsl.psu.edu.