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FEATURED Q&A

How Useful Has ICSID Been as an Arbitration Forum?

Q Venezuelan Oil Minister Rafael Ramírez said Sept. 21 that Venezuela is proposing to pay ExxonMobil \$1 billion to compensate the company for assets President Hugo Chávez seized in 2007 as part of his nationalization drive. The amount is far less than the \$12 billion ExxonMobil had originally sought through arbitration in the World Bank's International Center for the Settlement of Investment Disputes, or ICSID. How effective has ICSID been at mediating this and other disputes in Latin America? Will Venezuela, or other Latin American countries, follow Ecuador and Bolivia in pulling out of ICSID? Are investment treaties and arbitration bodies like ICSID helping to instill investor confidence in the region?

A Beatrice Rangel, member of the Advisor board and director of AMLA Consulting: "Key to understanding this offer is the fact that PDVSA is technically bankrupt and the value of Venezuelan debt must be close to that of Greece. Under these stressful conditions and with the added uncertainty surrounding President Hugo Chávez' health prognosis, an unresolved conflict with Exxon could be of paralyzing consequences for the Venezuelan oil industry. Exxon is a veteran in Venezuela, having had a presence since the inception of the oil industry in that country. It has developed important technologies for crude and heavy oils, is a leader in oil services and has enough

weight in the world of financing to make life complicated for the Venezuelan regime. The Venezuelan government's decision to settle the dispute is a sign that it has assessed these dangers and is willing to start negotiations. From the reputational view point, the government of Venezuela positions itself as a party willing to discuss and settle the issue and places upon Exxon the burden of proving the ills of this offer. The ICSID oblivion should not surprise anyone. The Bolivarian regime has given the world ample signs that it does not share

Continued on page 4



Bolivian Government Continues to Struggle with Backlash

Bolivian communications minister Iván Canelas said Wednesday the government has accepted a new invitation from Guaraní indigenous leaders to negotiate over a controversial highway project through their lands. See story on page 2.

Photo: Bolivian Government.

Inside This Issue

FEATURED Q&A: How Useful Has ICSID Been as an Arbitration Forum?	1
In Speech to Hispanics, Obama Says U.S. Prepared to Change Cuba Policy	2
United States Using Development Loans to Pressure Argentina: Report	2

Mexico Economic Growth Stronger in July, But Outlook Remains Weak	3
Alstom Consortium Wins \$420 Million Hydro Project in Brazil	3
By The Numbers: Argentina's Triumphant Fernández Needs to Face Reality	3

NEWS BRIEFS

Venezuela Expropriates Ferry Company Over Bad Service

A decree by President Hugo Chávez expropriating ferry service company **Conferry** became official Wednesday, local daily *El Universal* reported. The government accuses the company, which operates to and from Margarita Island, of "profiteering" and low-quality service. Business groups complain they cannot provide reliable service levels due to delays in obtaining foreign currency needed for parts.

Mexican Government Dispatches Federal Troops to Veracruz State

Mexico is sending troops and federal police to Veracruz state where gunmen last week dumped 35 tortured bodies on a busy avenue in front of motorists, the Associated Press reported. Federal security spokeswoman Alejandra Sota says the federal forces will reinforce operational and intelligence work in the state of Veracruz, according to the report. She did not say how many troops and officers are being sent, however. Veracruz's government has asked federal prosecutors to take over the body-dumping investigation.

Boeing Names Donna Hrinak New President for Brazil Unit

The Chicago-based **Boeing Company** on Wednesday named Donna Hrinak, who serves currently as a board member of the Inter-American Dialogue, its president of **Boeing Brazil**. The appointment, which is effective Oct. 14, is the latest in a string of corporate leadership roles Hrinak has taken since leaving the government. A former U.S. ambassador to Brazil, Venezuela, Bolivia and the Dominican Republic, she most recently held senior roles at **PepsiCo** and **Kraft Foods**.

Political News

In Speech to Hispanics, Obama Says U.S. Prepared to Change Cuba Policy

President Barack Obama on Wednesday said that he would always be ready to change policy towards Cuba, but said he needed evidence from the communist state it was ready to reform, AFP reported. In an Internet roundtable with questions posed by Hispanic journalists that was simultaneously translated into Spanish, Obama said his gradual easing of some U.S. restrictions on Cuba in 2009 had been intended to hint at steps that could follow if Havana stepped away from a "Cold War" mentality. "As long as I'm president, I will always be prepared to change our Cuba policy if and when we start seeing a serious intention on the part of the Cuban government to provide liberty for its people," Obama said. Before he would act, Obama wants Cuba to release

Cuba rejected Obama's offer as "old and repetitive."

political prisoners and to provide people with basic human rights. Cuban Foreign Minister Bruno Rodríguez rejected Obama's offer as "old and repetitive." Its hardline Cuba policy has long put the United States at odds against public opinion in many countries of Latin America and the Caribbean. In related news, thirty-four U.S. lawmakers on Wednesday asked Spanish oil company **Repsol** to keep out of Cuban waters, saying the firm's pending offshore drilling plans would support the Castro regime and "bankroll the apparatus that violently crushes dissent," the *Miami Herald* reported. "The decaying Cuban regime is desperately reaching out for an economic lifeline, and it appears to have found a willing partner in Repsol to come to its rescue," said the author of a letter to the company, Rep. Ileana Ros-Lehtinen (R-Fla). Exploratory drilling offshore Cuba could begin as soon as December.

Bolivian Government Continues to Struggle with Indigenous Backlash

Bolivian authorities were on the defensive again Wednesday and sought to calm increasingly violent protests against the administration of President Evo Morales. Thousands of people marched from the suburb of El Alto into the capital of La Paz yesterday, chanting "Evo is a fascist!" and "Evo is a lackey of Brazilian companies," which are financing a major new road through indigenous lands, AFP reported. Miners set off sticks of dynamite. Authorities had initially called the strike unnecessary as Morales had on Monday suspended plans to build the road. Two government ministers resigned this week. But by late Wednesday, Morales himself apologized for Sunday's violence. "Forgive me. Pardon me...There was no presidential order (to dispel the protests)," Morales said, AFP reported. He called the protests a "wake-up call from the Bolivian people."

Economic News

United States Using Development Loans to Pressure Argentina: Report

The United States is attempting to block multilateral development loans to Argentina as leverage to pressure the South American nation over longstanding debt default negotiations, Bloomberg News reported Wednesday. A spokeswoman for the Treasury Department confirmed this week that the U.S. voted against financing two projects for Argentina valued at a combined \$232 million at the Inter-American Development Bank as part of the effort, according to the report, which also stated that the administration plans to vote against additional lending from the World Bank to Argentina. Observers see the U.S. moves as the strongest to date against the administration of Cristina Fernández de Kirchner, who has held a tough line against international investors holding out for remuneration after the country's massive 2001-02 debt default. Some U.S. lawmakers have begun to pressure Treasury over the matter, which may

affect the \$357 million in additional U.S. capital slated for development banks next year, Bloomberg News reported.

Mexico Economic Growth Stronger in July, But Outlook Remains Weak

Mexican economic activity rose 0.88 percent in July from the previous month, government statistics agency INEGI said on Wednesday. The increase in July, which amounts to 3.74 percent growth year-over-year, was more than double analysts' median forecast, Reuters reported. Both the secondary and tertiary sectors of the economy posted "solid expansions" in sequential terms. Global credit worries and uncertain demand from the United States pushed economists to recently trim their view on Mexican economic growth this year to 3.81 percent, according to Reuters. Despite the positive figures in July, however, some economists remain cautious. "Going forward we expect activity to soften on the back of weakening external demand (already visible in the poor performance of manufacturing exports during August) and softening consumer and business sentiment as households and corporates turn more defensive given heightened global risk and uncertainty," Alberto Ramos, an analyst at **Goldman Sachs**, wrote in a research note circulated Wednesday.

Company News

Alstom Consortium Wins \$420 Million Hydro Project in Brazil

French construction firm **Alstom** said Wednesday it won a contract worth \$420 million from **Consórcio Amapá Energia** to provide power equipment for the new 373 MW Santo Antonio do Jari hydroelectric plant to be built on the river Jari in Brazil's Amazonian region. The plant, which is to be built in consortium with Brazilian engineering companies **CESBE** and **Areva Koblit**, will be commissioned in late 2014. The "run-of-river" hydro power plant will use river current to produce energy and is subject to large variations in seasonal water flow, a technical challenge that makes the project more difficult to engineer.

By the Numbers

A Look at Latin American Data by the Dialogue's Claudio Loser

Argentina's Triumphant Fernández Needs to Face Reality



WASHINGTON—When Argentine President Cristina Fernández de Kirchner spoke at the U.N. General Assembly, she did so with great confidence about Argentina. That was also her economic advisors' tone during last weekend's meetings of the International Monetary Fund and World Bank.

Fernández de Kirchner's electoral triumph next month is virtually assured. Argentina's economy has grown at an average annual rate of about 7 percent during the Kirchner period, exports continue to do well and foreign reserves are high by most standards. Some commentators have suggested that the United States and Europe should follow the "Argentine model." However, is Cristina conveying the right image about Argentina, or is the country riding on an unstable bubble? By most independent accounts, it is the latter.

Argentina should be a major international economic player. The country is the (distant) third-largest economy in Latin America. However, Argentina has failed in many areas, including trade, investment, finance and even cooperation in the fight against illegal drugs, and many indicators of well-being are deteriorating.

Because the perception is that the country's policies are flawed, capital flight has continued, with more than \$200 billion held abroad, excluding reserves. The rest of the world sees reasons to mistrust the Argentine government, which is not gaining friends at the global level.

Meanwhile, the country has seized pension and other assets, and has taken unilateral and capricious actions on its debt, with a large amount of arrears outstanding. Argentina is taking discriminatory actions against its trading partners. In fact, today it is the most protectionist country in the world after Russia, according to Global Trade Alert.

Argentina is also the only G-20 member that refuses to undergo the mandatory country review of policies and statistics under the IMF's Article IV. It has been admonished by the Financial Action Task Force, an inter-governmental body that combats money laundering and terrorist financing. There is also strong evidence of corruption and crony-capitalism close to power, even if it may not implicate Cristina directly.

Embarrassingly, Argentina is the only member of the G-20 that has a B-rating—six levels below investment grade—and is in arrears to the Paris Club, even though it has the ability to pay. Moreover, rather improperly, it protects its reserves by holding them at the Bank for International Settlements. There they are immune from attachment by other members acting in good faith.

Under these conditions, it is really unfortunate that Argentina has not been called to order in a more serious way. Argentina unfairly benefits from reduced import duties by advanced economies; it continues to borrow from international agencies even as it does not comply with its international obligations and is in arrears with major trading partners.

Tough actions will be required by the Argentine government, both internally and externally, to improve its performance. Otherwise, the Argentine people will continue to lose true opportunities of sustainable growth due to the current disregard for international norms.

Claudio Loser is a senior fellow of the Inter-American Dialogue and president of Centennial Group Latin America.

Featured Q&A*Continued from page 1*

the Bretton Woods approach to international economics. I believe all like-minded regimes will attempt to follow suit. But, alas, the cost for one too many of these regimes could be too high to bear."

A Jonathan Hamilton, partner at White & Case and editor of Latin Arbitration Law: "Minister Ramírez once stated: 'Se acabó el arbitraje' (arbitration is over.) Arbitration and ICSID are not close to being over in Latin America. ICSID today is a credible World Bank institution with unique experience in investor-state arbitration and a recent augmentation of its multilingual legal team, organization and operations in Washington. It has 147 member states including most Latin American countries. Historically, Latin America lacked a mechanism for the resolution of investor-state disputes. This void at times prompted diplomatic conflict, economic chaos and even coup d'états. ICSID and investment treaties changed that history. Latin American countries spent two decades building a legal framework for investment arbitration by ratifying the ICSID convention and investment protection treaties. The result is a system that facilitates the rule of law and economic growth by controlling the risks of doing business across borders. In this context, Bolivia and Ecuador notably are the only two states in the world that have sought to denounce the ICSID convention and thereby deconstruct the legal framework that had been promised to investors. Observers note the downsides of denunciation, which has questionable legal effect, does not eliminate other investment protections, may encourage additional claims and may discourage negotiated settlements by eroding the rule of law. It is no less serious a threat that Argentina appears to be engaged in a de facto campaign to undermine the viability of ICSID through extreme procedural disruption, unfounded attacks on arbitrators, and sheer evasion. Ultimately, it took decades to build the framework for investment protections and development, and it cannot be undone quickly or without significant consequences."

A Judd Kessler, partner at Porter, Wright, Morris & Arthur in Washington: "The fact that two or three Latin America governments have decided to renounce their participation in the ICSID Convention may make news, but is not a real indicator regarding ICSID's effectiveness. Since it began registering cases in 1972, ICSID has registered 351 cases—with much increased activity in the past 10-12 years. That means over three hundred cases that have not become diplomatic confrontations between two nation-states. Contrary to the impressions of some, the ICSID system is not about politics. It is about law. But the system is based on certain assumptions—one of which is that when parties make legal commitments, they should first take the trouble to understand the legal implications of what they are signing and second, they should be prepared to stand behind their words. Certainly there are foreign investors who do not live up to that standard. There are also a number of governments who, once having signed the ICSID Convention with the stated purpose of attracting greater flows of foreign investment, have later become concerned that the process somehow infringes on their sovereignty, that they disagree with one or more awards affecting them or that the publicity resulting from the issuance of certain awards may have uncomfortable political reverberations. These governments have the right to withdraw and that is entirely their decision to make. But, on the whole, governments throughout the world seem relieved to have the ICSID process (among others) when the stakes are high and tempers begin to rise. Venezuela may or may not withdraw, but if it does, my guess is that we will not see a wave of additional withdrawals from ICSID precisely because the system takes great care to see that these disputes are handled by professionals who know international investment law and give the cases the respect and care they deserve. While far from perfect, the ICSID really is grounded on the will of the contracting parties, on transparency and on principles of international law rather than politics or ideology."

Latin America Advisor

is published every business day by the Inter-American Dialogue, Copyright © 2011

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Latin America Advisor is published every business day, except for major U.S. holidays, by the Inter-American Dialogue at:
1211 Connecticut Avenue, Suite 510
Washington, DC 20036
Phone: 202-822-9002 Fax: 202-822-9553
www.thediologue.org ISSN 2163-7962

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