

FRANCISCO GONZÁLEZ DE COSSÍO

ARBITRAJE DE INVERSIÓN



EDITORIAL PORRÚA
AV. REPÚBLICA ARGENTINA 15
MÉXICO, 2009

PROLOGUE

“There are more books than awards on investment arbitration,” one of my colleagues sighed recently. “Do I have to read them *all*?” she asked with a fair degree of desperation. “No, not all of them” I answered honestly. At that moment, I did not have the proofs of Francisco González de Cossío’s book. If I had had it at the time, I would certainly have added: “But this one you should read!”

I do not know how Mr. González de Cossío does it, but, after his impressive work called in short “*Arbitraje*,” he manages again to deal comprehensively with an adjacent field of law that is not easily to make accessible to the average reader. He is indeed a very prolific writer, considering that his other area of expertise is competition law, on which subject he publishes also extensively.

What makes this book so special? It is not only the way in which Mr. González de Cossío treats investment arbitration is such a clear and concise manner. It is also that it is one of the first wide-ranging publications in the Spanish language, addressed in particular to the Latin American world.

Latin America and investment arbitration, the numbers are impressive: out of the more than 2,600 bilateral treaties, approximately 20% includes a country from the region.¹ In addition, various countries have concluded or are negotiating Free Trade Agreement with chapters dealing with investment (e.g., the United States and Dominican Republic, Central America Free Trade Agreement (DR-CAFTA); Chile and the United States; Colombia and the United States).

Latin America and investment arbitration, many countries in the region have had their fair share in practice. In a number of cases,² Argentina is clearly the leader (48 cases), with Ecuador (14) and Venezuela (9) currently being the runners up. Bolivia, Peru, Costa Rica and Chile were or still are involved in various investment arbitrations. A

¹ UNCTAD, Nota de la Secretaría y IIA Monitor de TD/B/C.II/MEM.3/2 n ° 2 (2008); Monitor de la UNCTAD AII n ° 1 (2009).

² See: www.unctad.org/iia-dbcases.

case in point is Mexico (18 cases), Mr. González de Cossío's home country. Mexico understood that if a country is a Party to multilateral and bilateral investment treaties, it can expect that cases will be filed against it. So, Mexico allocated an appropriate budget for its legal defence and organized "in-house" a formidable team of specialized lawyers (the *Dirección de Negociaciones Comerciales Internacionales* de la Secretaría de Economía). That "investment" paid off. Mexico prevailed in more than 70% of the investment cases filed against it and in the cases in which it lost the award was less than what was claimed. Mexico paid the awards against it without demur. From time to time politicians in Mexico wondered why money was allocated to the defence in investment case, but when they were confronted with the achievements, criticism silenced and actually transformed in admiration. In doing so, Mexico set the example for a number of other countries in the region where the defence to investment cases is voiced on a political public level rather than where it should be made: in the arbitration itself. On the other hand, I share Mr. González de Cossío surprise that Mexico has not joined the Washington Convention of 1965. Now Canada has adhered to that Convention, Mexico is "home alone" within the NAFTA framework.

When adherence to the Washington Convention of 1965 is mentioned, denunciation should be noted as well. Bolivia (2007) and Ecuador (2009) left ICSID. However, neither country has denounced any of the bilateral treaties to which it is a Party. In my view, it would be a mischaracterization to regard the denunciations as a rejection of the system of investment protection and arbitration in itself.

Mr. González de Cossío's book on investment arbitration also comes at a right moment for Latin America. A recent initiative of the Law School of the University of Miami (with whom Mr. González de Cossío is affiliated) and Unctad to convene a meeting for Government officials to discuss their experiences in investment arbitration was met by an overwhelming response. Where participants in the world of international commercial arbitration can have informal discussions in places such as Tylney Hall (protected by the Chatham House Rule),³ government officials had no such opportunity. The meeting, attended by many government officials from Latin American countries, was an astounding success. Finally, practical experiences could be exchanged peer-to-peer. The University of Miami and Unctad are to be commended for the initiative. It immediately puts Miami on the map for places were

³ "When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed."

international arbitration can be discussed not only in theory but also in practice by both sides. Mr. González de Cossío's book will undoubtedly be a lightning rod for his Latin American colleagues, and not only them. As I repeated to my colleague who is not a Latina but who can read Spanish: "Yes, you should read this one."

ALBERT JAN VAN DEN BERG