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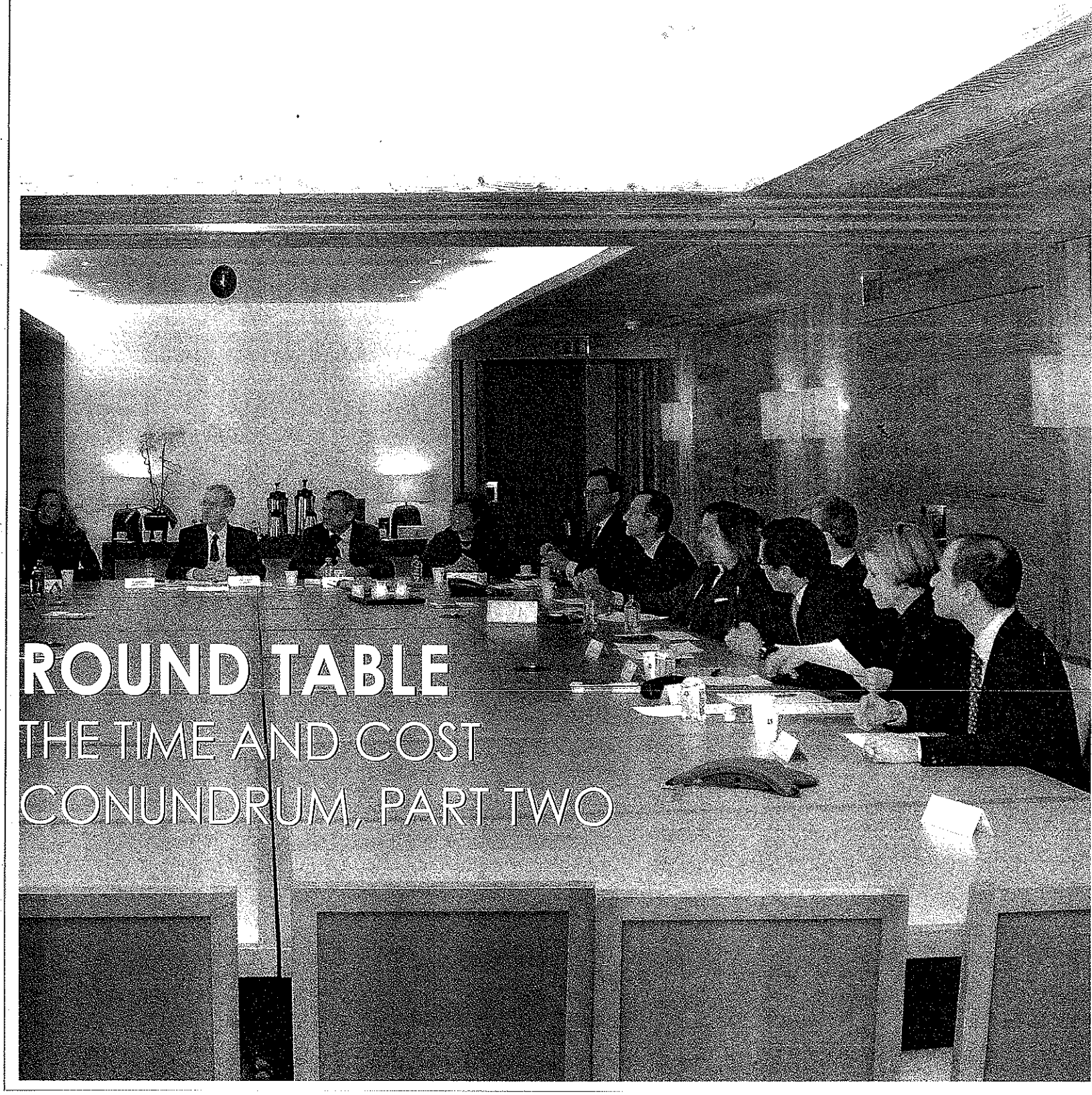

ROUND TABLE

THE TIME AND COST CONUNDRUM, PART TWO

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SUBSCRIPTION DETAILS
To subscribe please contact:
www.GlobalArbitrationReview.com
87 Lancaster Road
London W11 1QQ
United Kingdom
Tel: +44 20 7908 9942
Fax: +44 20 7229 6910
subscriptions@
globalarbitrationreview.com

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EDITORIAL

The past few weeks have seen another country leave ICSID; the ICC growing younger, and more feminine; ICCA selecting Singapore for 2012; the biggest win in a treaty case for quite a while; a denouement in the "case of the three Michaels"; not one but two Swiss Federal Tribunal decisions of note; and the launch of LCIA India.

Ninety-nine per cent of the above are covered in this edition of *GAR*. In fact the list could be even longer, but some of those will have to wait until the next edition (out soon).

As well as our regular departments, this edition features a new one. In "The essentials of" contributors will boil down a complex issue to a back pocket guide, or provide a checklist approach to a recurring knotty problem (on those occasions, it will have the tag "A structured approach to" in the Contents). We hope that readers will embrace the idea and send ideas for contributions. Leading it off, David Moss of Lovells tackles stabilisation clauses.

We also have the final instalment of our "Round table on Time and Cost", in which the three teams – the arbitrators, the advocates and the arbitration users – seek solutions to a real mystery: namely, if everyone knows the formula for great arbitration, why are complaints still heard about spiralling delays and cost? Last time, the teams took it in turns to diagnose root causes. Now, they're going to propose some constructive ideas. Will they unlock the mystery, or... start passing the buck? Find out, starting on page 12. Our warmest thanks to the magnificent practitioners who took part and to Jean-Claude Najar of GE's in-house team, who wanted to attend but was called away unavoidably at the 11th hour, and to Freshfields Bruckhaus Deringer in Paris for hosting us.

IN THIS ISSUE

Conference reports

A look at various conferences held recently

CHILE: Two regional centres set out their stall

Two local chambers of commerce, one from Chile, one from Brazil, are on a joint-charm offensive to draw international cases to their region. By **Gonzalo Biggs** (partner) at Figueroa & Valenzuela in Santiago, and member of the board directors of the American Arbitration Association

In June, the Arbitration and Mediation Centres of the Santiago Chamber of Commerce and the Brazil–Canada Chamber of Commerce of São Paulo are to hold a joint seminar in São Paulo. That event will in fact be their second recent collaboration. In December, they collaborated to host a seminar in Santiago. That meeting featured the signing of a mutual cooperation agreement, by the centre's presidents, Frederico Straube (Brazil–Canada Chamber of Commerce) and Carlos Eugenio Jorquiera (Santiago Chamber), and a lunch hosted by Brazil's Ambassador, Mario Vilalva.

Speakers outlined the differing paths arbitration had taken in each country, and the more recent convergence.

Cooperation on early international disputes

In something of a local anomaly, Brazil and Chile share a unique and positive experience in international arbitration going back to the 19th century. During the War of the Pacific of 1879 to 1884 (between Chile, Peru and Bolivia), seven European countries raised claims on behalf of their citizens for damages caused by Chilean troops. In those days, such claims would often escalate into major international conflicts. Brazilian diplomacy, however, persuaded creditor countries to accept international arbitration, which was then undertaken in Chile. International arbitration tribunals were duly established – with arbitrators from Brazil, Chile and the respective European country – and these functioned during a four-year period in Santiago, and their awards were fulfilled, without recourse, by all the claimants. One authority thinks this may well be the longest period an international arbitration tribunal has functioned in a Latin American country. The length of this arbitration is explained by Chile's geographical remoteness and hazardous routes of access. In addition to not being accesible by land, prior to the opening of the Panama Canal, the only route available to arbitrators was through the treacherous Cape Horn or the Strait of Magellan.

Domestic traditions

Of the two countries, Chile has the longer pro-arbitration tradition, consistent and uninterrupted since its first arbitration act of 1875. An early acceptance and practice of ad hoc arbitration, reflected in the jurisprudence and abundant literature on the topic, gave way in 1992 to the use of institutional arbitration after the Santiago Chamber of Commerce founded its Mediation and Arbitration Centre. That centre now administers the great majority of the arbitrations undertaken in Chile. To date, it has administered around 1,000 cases, of which 69 per cent were terminated within six months.

Brazil's legislation, on the other hand, was not favourable or supportive of arbitration, and indeed a long-standing prejudice against the concept – especially from judges – impeded its use. Things changed dramatically, however, in the 1990s, when Brazil ratified the Inter-American Convention on International Commercial Arbitration (also known as the 1975 Panama Convention) in 1995 and enacted a modern arbitration law in 1996 based on the UNCITRAL Model Law. That law applies to both domestic and international commercial arbitrations. In December 2001 Brazil's Supreme Court rejected a constitutional challenge to the law, resolving that a domestic arbitration award is as enforceable as a court judgment and not subject to judicial review. Then in 2002, Brazil ratified the New York Convention on the Recognition and Enforcement of Arbitral Awards, to wide acclaim from the international arbitration community, which now regards arbitration in Brazil as part of the fold.

The role played by arbitral centres

In the face of the inclement environment in Brazil, the Brazilian side of the seminar, the Brazil–Canada Chamber of Commerce in São Paulo, has provided strong local leadership geared at introducing a modern approach to arbitration. Founded in the 1970s, its Arbitration and Mediation Centre received the ISO 9001:2000 certificate in 2004. It has helped to establish Brazil, and more specifically, São Paulo, as a trustworthy site for international commercial arbitration. Since 1996 Brazil has been a Model Law country.

Those present at the event felt that both Chile and Brazil have gained a degree of prominence in the wider field of international arbitration. Their national enterprises have participated in ICC arbitration in Paris and both nations have participated in significant controversies before the World Trade Organization. In addition, prominent Chilean and Brazilian jurists have been appointed to arbitrate international cases. In Chile's case, its lawyers are often found deciding matters at ICSID, while Brazilian jurists can be found among the members of the appellate body of the World Trade Organization and the International Court of Justice.

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In 2004, Chile enacted a new arbitration law (No. 19,971) on international commercial arbitration, also based on the UNCITRAL Model Law, bringing their arbitration communities closer.

This meeting, and the one that takes place in June, were inspired, organisers said, by the growing amount of bilateral trade and investments between the two countries. The December event took place at the Santiago Chamber's Centre, and featured among other speakers your writer and Luiz Olavo Baptista, of São Paulo, who is a senior partner at his own law firm and a current member of the appellate body of the World Trade Organization. The audience consisted mainly of lawyers in private practice. Among other things the event testified to the two countries' still excellent diplomatic relations and to the importance to the wider region of Chile's many free trade agreements with major industrialised countries, as a route for foreign investors.

The two centres have promised to continue active promotion of Santiago and São Paulo as sites for international commercial arbitration.