

6. STATEMENTS BY THE DIRECTORS OF AALCO'S REGIONAL CENTRES FOR ARBITRATION

(i) STATEMENT OF MS. EUNICE ODDIRI, DIRECTOR OF THE REGIONAL CENTRE FOR INTERNATIONAL COMMERCIAL ARBITRATION, LAGOS

Introduction

The Regional Center for International Commercial Arbitration seizes this opportunity to congratulate the newly elected President of AALCO - Dr. P. S. Rao and the Vice President - Chief Bola Ige (SAN), Hon'ble Attorney General of the Federation of Nigeria and Minister of Justice.

It extends its best wishes to all the very distinguished Delegates who have attended this Fortieth Annual Session of the Asian-African Legal Consultative Organization (AALCO) as delegations of Member Countries as well as in an Observer Status.

Our very best wishes extend also to the new Secretary-General of the Organization His Excellency, Amb. Wafik Z.Kamil and indeed to his very capable assistants in the AALCO Secretariat.

We congratulate them, for such display of excellence in the superb arrangements for this Session.

To the Government of India, we salute their warmth, in people and climate and in their show of gracious hospitality to all their guests.

In delivering this report on the activities of the Lagos Centre for the year ending 2000, I should like to seek the permission of Mr. President to briefly comment on the relevance of the Lagos Centre since its inception in practical terms in April 1999 - [soon after the execution of the Headquarters Agreement in relation to that Centre, between AALCO and the Host Government of Nigeria] vis-à-vis the economic developments within the sub-region in the period under contemplation.

Now, the new democratic dawn which has broken in a number of countries such as Nigeria in Sub-Saharan Africa in recent years has juggled in its wake a renewed thirst for economic interaction amongst parties from these countries within the sub-region and between them and parties from other regions and jurisdictions; this in turn has triggered off the fervor for the existence of a very functional arbitral institution within the sub-region which would offer or administer international commercial arbitration under its own rules and offer facilities for administering on ad-hoc basis.

Perhaps, I should give a practical example to illustrate this role, which the Lagos Centre has been required to play in this past one year.

Let me use Nigeria as an example, the recently stepped-up policy of the Federal Government of Nigeria, to divest itself of a large percentages of its interests in certain economically viable sectors of the Nigerian economy, such as cement, telecommunications, steel sectors have spelt an increased volume of international trade and investments between different nationals and business organizations from different jurisdictions within the sub-region.

Cooperation Agreements

The consequent result has been that the Lagos Center has sought within this period to enter into cooperation agreements, with some of these business organizations with a view to having the Lagos Center's Model Arbitration Clause incorporated in their International Agreements. In all, the Centre succeeded within the period of this report to enter into cooperation assurances with about fifteen business organizations and ten public/private organizations made up of Government ministries, banks, insurance companies and law firms within the sub-region. The import of this cooperation is to incorporate the Center's arbitration clause as follows within the agreements, which they would draw up with Government business that they are now coming to seek. The arbitration clause reads:

"Any dispute controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be decided by arbitration in accordance with the Rules for Arbitration of the Regional Center for Arbitration in Lagos".

It may be important to note Parties may wish to consider adding if they like:

The appointing authority shall be the Regional Center for Arbitration, Lagos;
The number of arbitrators shall be(one or three);
The place of arbitration shall be(town or country);
The language(s) to be used in the arbitral proceedings shall be.....;
The law applicable to this contract shall be that of

The same thing should also happen if they choose the Regional Centre for a conciliatory role rather than arbitration. So, we now offer them arbitration in the co-operation agreements we enter into.

Model Conciliation/Mediation Clause

Second, as regards, Model Conciliation/Mediation Clause it reads that

"Any dispute, controversy or claim arising out of or relating to this Contract or the breach, termination or invalidity thereof, shall be settled by Conciliation or mediation in accordance with the Rules of Conciliation/Mediation of the Regional Center for Arbitration in Lagos".

In a similar but separate vein, within this past year efforts were also commenced by the Center to enter into specific cooperation agreements with other international arbitration

institutions for the purpose of exchange of information and views and mutual assistance between the organizations. Thus, agreements from the following arbitral institutions were sought:

- International Council for Commercial Arbitration (ICCA), Stockholm, Sweden;
- London Court of International Arbitration (LCIA), Fleet Street, London;
- International Federation of Commercial Arbitration Institution (IFCAI), New York, USA;
- Ghana Arbitration Center;
- World Intellectual Property Organization (WIPO), Geneva, Switzerland; although in this instance they say they do not enter into separate co-operation agreements with individual arbitration institutions.
- South African Arbitration Center;
- International Bureau of the Permanent Court of Arbitration (PCA), The Hague, Netherlands; they too made the same comments as WIPO that they do not enter into separate agreements with individual bodies.
- China International Economic & Trade Commission (CIETAC), Beijing, China;
- Arbitration Court, Abidjan, Cote d'Ivoire;
- Chartered Institute of Arbitrators, London whose Executive Secretary actually visited the Centre on the 9th of November and thereafter sent the signed co-operation agreement which was executed in October/November 2000;
- Institute of Construction Arbitrators of Nigeria - Agreement executed in June 2000.

Now, the third function that we have achieved in the last one-year is that we moved into a new office premises.

Movement To A New Premises

The Center moved in the first week of November 2000 from its old office premises (allocated by the Host Government of Nigeria) with an area of about 3,000 square meters to a new office complex in order to allow for a comprehensive reconstruction, planned for the former.

The Center's present office is situated at No. 1, Kingsway Road - Falomo, Ikoyi - Lagos, Nigeria; it is housed in an expansive office complex overlooking the Lagos Lagoon on the East side, with a picturesque view of the Ikoyi Golf Club on the West side.

Bordered by the serene of the beautiful Catholic Church of Assumption, the Center offers a calm and very peaceful environment, for the facilitation of the resolution of disputes.

The facilities available at Lagos Center include:-

- Two hearing rooms seating 12 to 27 people;
- Waiting lounge for witnesses;
- Arbitrator's retiring room;
- Counsel's rooms;
- A specialized library;

- Secretarial services on request;
- Photocopying, Facsimile Copier, E-mail/Internet facilities;
- Screen projectors, transparency projectors and slide projector, Liquefied Crystal Digital (Multimedia) projector;
- Each hearing room is equipped with secured document storage facilities;
- Catering facilities are available if required at nearby standard restaurants; transportation is provided by the Center;
- Large coffee lounge capacity for 32 persons;
- Coffee and tea service.

The Opening of the Centre

The Hon'ble Attorney General of the Federation and Minister of Justice, Chief Bola Ige (SAN) kindly agreed to declare the new premises of the Center open on 18th June 2001. The details of which will be related in the 2001 Annual Report.

Patronage of the Centre

What we have been able to achieve in these two years, the statistics within the sub-region show that the use of arbitration and other Alternative Dispute Resolution (ADR) methods in resolving commercial disputes arising from international trade and investments was on the increase within Sub-Saharan Africa in the year 2000. In this regard, the Lagos Center within this period facilitated 8 Ad-hoc and one international arbitration by providing facilities and services for such arbitrations including the use of its hearing rooms.

Inquiries

We have had a lot of inquiries from people and organizations and persons seeking to know more about the functions of the Centre and how to incorporate the Centre's model arbitration clause into these agreements. In addition, it received inquiries regarding the drafting of arbitration clauses, especially under the UNCITRAL Rules. These inquiries were all attended to by replies and information bulletins that were forwarded to such inquirers.

We also recommended within this period to several disputants, on requests, names of Arbitrators, from its panel of international arbitrators and register of domestic arbitrators, both of which are constantly being updated to include names of renowned international arbitrators, jurists and judges as well as diplomats and other experts drawn from countries in Asian and African Regions and from States outside the region which have continued to have close economic links or large investments in the region.

We have also honoured several requests during this period to recommend mediators and conciliators from such registers kept by the Center. It also maintains a list of Arbitral Institutions within the sub-region.

Now we go to the Promotional programmes during the last one year.

Promotional Programmes during the last one year

In accordance with Article 1 of the Headquarters Agreement in relation to the Lagos Center, which mandates the Center to promote international arbitration in the Sub-Saharan region, the Lagos Center held the following promotional events within the period of this report:

First, we organized an Introductory Course/Workshop on International Commercial Arbitration, organized by Foundation for International Commercial Arbitration and Alternative Dispute Resolution (SICA-FICA), The Hague, Netherlands, in association with the Regional Center for International Commercial Arbitration, Lagos;

The theme was *"Commercial Access to Commercial Justice"* and was held from 7th - 9th June, 2000.

This three-day Course/Workshop was held at the Abuja Sheraton Hotel with 60 participants, including four Justices of the Supreme Court of Nigeria and over a dozen State High Court Judges across the various States of Nigeria and other highly respectable practicing arbitrators from the sub-region.

Among the tutors was Mr. Julian Critshaw a renowned arbitrator and partner in the Law firm of Freshfields of London, as well as being a joint author with Professor Merkins of a textbook on International Commercial Arbitration.

Second, we held an **Arbitration Day**, jointly with the Nigerian Bar Association during its Annual General Conference held at Sheraton Abuja, Nigeria from the 20th - 26th August, 2000. A full day was given to the Lagos arbitration centre for discussing arbitration matters during that time.

And lastly, we also held Quarterly Arbitration Dinners/Lectures on the following topics:

- *"Commercial Dispute Resolution: Crucial Role of Arbitration"*, 2 February 2000 at Sheraton Hotel, Lagos;
- *"Preliminary Meetings in Arbitral Proceedings"*, 2 May 2000 at Hilltop Hotel, Jos - Nigeria;
- *"Is Arbitration Really Cheap?"*, 18 July 2000 at The Presidential Hotel, Port Harcourt - Nigeria;
- *"Arbitration Without Delay"*, 18 December 2000 in Kaduna - Nigeria.

May I conclude by adding that our sincere thanks are hereby commended to the Host Government of Nigeria, who has been very magnanimous in discharging its financial obligations to the Center under Article V.2 of the Headquarters Agreement in relation to the Center.

Since the Center is a non-profit organization I urge the Asian-African Legal Consultative Organization to honour its obligations under Article V.3 of the Headquarters Agreement in relation to the Lagos Center making its contributions to the Center.

My appeal to you, Excellency Ambassador Dr. Kamil is to please consider the remittance towards the contribution of the AALCO.

I thank you all for a patient hearing.

(ii) STATEMENT OF DATO' DR. ZAKARIA M. YATIM DIRECTOR, REGIONAL CENTRE FOR ARBITRATION KUALA LUMPUR

It is a very great pleasure for me to address the General Meeting of the 40th Session of the Asian-African Legal Consultative Organization(AALCO) here in New Delhi.

Last year, I had the privilege of addressing the 39th Session of the AALCC after my appointment as Director of the Regional Centre for Arbitration, Kuala Lumpur (The Centre) on 1 February, 2000.

When I assumed duties as Director of the Centre last year, my major task was to promote the activities of the Centre as an international institution for the settlement of commercial disputes in Asia and the Pacific. As we all know, it is one of the major functions of the Centre to promote and popularize arbitrations and other modes of settlement of commercial disputes in the region.

With globalization, international trade transactions have no boundaries. And with modern technologies, such commercial transactions can be conducted by electronic means. We all know that international trade transactions are conducted daily, not only intra-regional but also inter-regional.

It is imperative, therefore, that the trading partners within the region as well as outside the region must be made aware of the facilities available at the Centre in Kuala Lumpur. Under the Rules of the Centre, parties to a dispute are assured of a fair and inexpensive hearing by an impartial tribunal.

It is for this reason that the Centre decided to establish an International Panel of Advisors to advice the Centre in promoting its many activities, not only within Asia and the Pacific, but also outside the region.

I am happy to announce here that the International Panel of Advisors was constituted on 18 October 2000. The Members of the Panel of Advisors are Tan Sri Mohd. Ghazali Shafie (Malaysia), Dr. B. Sen (India), Prof. Dr. Bockstiegel (Germany), Prof. Dr. Hanz van Houtte (Belgium) and Prof. Kazuaki Sono (Japan).

Tan Sri Mohd. Ghazali Shafie was a Foreign Minister of Malaysia. Before he entered politics, he was the Secretary General of the Ministry of Foreign Affairs in Kuala Lumpur. He is a recipient of the Dag Hammarskjöld Award. Dr. B. Sen was the Secretary General of the

AALCC for many- many years. He was mainly instrumental in establishing the Centre in Kuala Lumpur, Cairo and Lagos. Prof. Bockstiegel was the President of Iran-US Claims Tribunal. Prof. Hanz van Houtte was the Commissioner of the UN Compensation Commission, Geneva. Last, but not least, Prof. Kazuaki Sono was the Secretary of UNCITRAL. He has made great contributions in the establishment of the Centre in Kuala Lumpur.

I also wish to mention here that, as from last year, the Centre has published two issues of its Newsletter. Both issues of the Newsletter were circulated worldwide.

This year, the Centre, in association with Petroliam Nasional Bhd (Petronas) of Malaysia, Shell Malaysia and Esso Production Malaysia Inc. are preparing an International Seminar on Oil and Gas Industry to be held in Kuala Lumpur for two days early next year. Among the topics to be discussed at the Seminar are *inter-alia*:

- a) Key provisions in Oil and Gas Contracts;
- b) Protection of the environment in relation to exploration and Exploitation (both on-shore and off-shore) and refining of Petroleum;
- c) The question of governing law;
- d) Dispute resolution in the Oil and Gas Industries; and LNG transportation.

On behalf of the organizers of the seminar, I sincerely hope that Member Governments of the AALCC will be able to send their representatives to participate at the two-day Seminar. Further details regarding the date, speakers, other relevant information will be provided in due course. We will be inviting representatives of the major companies in Asia, Europe and the United States to present papers on the topics I just mentioned.

This year, UNCTAD, in collaboration with the Centre, will conduct a one-week training course for arbitrators in Kuala Lumpur. We welcome UNCTAD's initiative to conduct the course, and hope that the course will be conducted annually.

At present, the Centre's Panel of Arbitrators comprise former judges, senior lawyers, engineers, architects, quantity surveyors and other technical people who are experienced and qualified arbitrators from all over the world.

I wish to mention here that the Centre is currently revising its Cooperation Agreement with the Tokyo Maritime Arbitration Commission (TOMAC). It is hoped that when the Cooperation Agreement is revised, the Centre will be able to designate TOMAC as an appointing authority and vice versa. It is also hoped that, under the revised Cooperation Agreement, the Centre and

TOMAC will hold regular training courses, particularly in the area of shipping disputes.

May I conclude, that I very much hope Member States of the AALCC in Asia, their agencies and other entities in their respective countries will utilize the dispute settlement facilities available at the Centre. After all, they created the Centre.

(iii) CAIRO REGIONAL CENTRE FOR INTERNATIONAL COMMERCIAL ARBITRATION

(Some excerpts of the Report on the activities of the Cairo Regional Centre are being reproduced as the Director of the Centre, Dr. Aboul Enien could not attend the 40th session of AALCO, but had sent a copy of the same which was considered and was circulated to all Member States)

Promotional Activities of the Cairo Regional Centre for International Commercial Arbitration (CRCICA)

The year 2000 was an exceptionally glorious year of progress for CRCICA. It was a year of records in the administration of arbitral cases as well as the organization of international events. On various other scales, the Centre achieved during the year remarkable progress whether related to arbitration in particular, or investment at large. Also distinctive about the Millennium Year was the inauguration of the Centre's New Extension, the floor area of which is 400 square meters raising as such the total area of the Centre to 1200 square meters adding a large hearing room with 130 square meters.

As regards domestic arbitration, one of the important achievements was the issuance of **Administrative Decree No. 1/2000** (hereinafter **A.D. 1/2000**) which caters to arbitrations of relatively minimal value (ADMV). As the disputed amounts in these cases are of lesser value, it becomes extremely difficult for the parties to pay the stipulated minimum fees for administrative arrangements provided by the Centre and the arbitrators fees¹[1]. Effective from 1 November 2000, the **A.D.1/2000** provides for the appointment of sole arbitrators in arbitrations of minimal value. Moreover, the Decree also leaves it to the parties to either choose their arbitrator or request the Centre for effecting the appointment.

The period under review saw the Centre acting as the appointing authority in 17 arbitration cases, (134 arbitrations in 2000 and 4 cases in 2001 against 5 cases in 1999). These appointments were of either chairmen of arbitral tribunals or co-arbitrators, based on UNCITRAL list procedures, with some slight exceptions where it proved necessary to rely on the discretion of the Centre. The Centre was also involved in the administration of 12 ad hoc international arbitrations. In such instances of institutional arbitrations the Centre does not apply the 'standard proportionality criteria' while fixing administrative fees, but charges a reasonable lump sum amount after consultations with the arbitral tribunal. It is envisaged that in the near future the scope of CRCICA assistance to *ad hoc* arbitration will extend beyond mere

1[1] The fee structure of the Centre is as follows: Administrative Fees of a minimum \$3000 in international arbitrations and \$1500 in domestic cases; Fees of Arbitrators: A minimum of \$5000 per arbitrators in international cases and \$3000 in domestic cases.

administration to include consultative services as well. The Centre will soon be taking an initiative to propose and consider the possibility of providing technical assistance to the various entities especially the syndicate of Engineers resorting to arbitration generally and to an *ad hoc* one in particular. The scope of such service would, *inter alia* include the ethical *how abouts* of appointing co-arbitrators, post-appointment moralistic attitudes and technicalities related to legal and procedural matters.

CRCICA Online Resolution Service

Beginning from 1999, the CRCICA had been studying the possibility of devising an online arbitration mechanism. Towards this end, the Investment and Arbitration Institute organized a number of seminars and workshops. By November 2000, the Centre has been successful in establishing an expert project plan for such a mechanism, which is expected to be fully operational by 2001. The online dispute resolution service will be able to expedite the dispute resolution process and also help to reduce the costs of the parties. Among other things, such a service would involve internet-based case filing facilities, on line case management and tracking facilities and video-link capabilities.

During the period under review, CRCICA organized a number of conferences, workshops and seminars covering diverse subjects such as commercial arbitration, insolvency, effects of globalization and WTO, dispute settlement in construction disputes and Build-Operate-Transfer (BOT) contracts. A number of conferences specially dealing with WTO and BOT were also organized. The subjects discussed were: WTO dispute settlement mechanisms and regional responses; and experience of BOT projects, in the light of the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects. Similar conferences are to be held during the course of 2001.

The CRCICA also organized training courses on “International Arbitration Methodologies of the Region”, as a part of the Standard International Arbitration Course. It also provided customized training for foreign scholars and local training course for undergraduates of Law School, Cairo University.

Co-operation Agreements

During the period under review CRCICA signed new co-operation agreements with the *Rabat Conciliation and Arbitration Centre* on 7 January 2001 and with the *Arab Arbitration Chamber for Construction Contracts* on 31 January 2001.
