



ADDRESS BY
PROF. DR. RAHMAT MOHAMAD,
SECRETARY-GENERAL OF AALCO
AT THE
INTERNATIONAL CONFERENCE ON “EMERGING TRENDS IN
INTERNATIONAL COMMERCIAL ARBITRATION”,
AT INDIA HABITAT CENTRE, LODHI ROAD, NEW DELHI,
18-19 DECEMBER 2010
(delivered on Saturday, 18th December 2010)

Good Morning everybody,

Hon'ble Mr. Justice R.V. Raveendran, Supreme Court of India,

Dr. Uddesh Kohli, Chairman, Construction Industry Arbitration Council (CIAC),

Mr. T.K. Vishwanathan, Secretary-General, Lok Sabha,

Mr. John Savage, Board Member, Singapore International Arbitration Centre

Mr. Pravin H. Parekh, Senior Advocate, Supreme Court of India,

Mr. Chander Verma, Chairman, Construction Industry Development Council (CIDC),

Distinguished Guests, Ladies and Gentlemen,

It is indeed a great honour and pleasure for me to address this august gathering of distinguished experts on arbitration matters. I take this opportunity to thank the Construction Industry Arbitration Council (CIAC) for inviting Asian-African Legal Consultative Organization

(AALCO) to be part of the two days International Conference on “Emerging Trends in International Commercial Arbitration”.

On behalf of the Organization, I extend my sincere congratulations to the President of the CIAC, Dr. Uddesh Kohli and his colleagues for their excellent preparations for the Conference. I am confident that with your wisdom and vast experience, the Conference would yield fruitful results.

Distinguished Guests, Ladies and Gentlemen,

Allow me to recapitulate briefly the history of AALCO and its involvement with the international trade law and arbitration related issues. The Asian-African Legal Consultative Organization, an inter-governmental Organization was established in 1956, as a tangible outcome of the historic Conference of the Asian and African States held in Bandung, Indonesia in 1955. The basic purpose of the Organization as conceived by the founding fathers is to serve as a consultative forum for consideration of legal issues of common concern and thus to promote co-operation on international law matters among the States of the Asian and African regions. Since its inception, AALCO has considered a number of international law issues which are of direct and prime concern to its Member States. In late sixties, by establishing its relationship with UNCTAD, UNCITRAL and other relevant international Organizations, international trade law issues found place in AALCO’s work programme.

One of the major achievements of the Organization in the economic field is the adoption of its ‘Integrated Scheme for Settlement of Disputes’ (in 1978) with a view to creating stability and confidence in economic transactions with the countries of the Asian-African region. This Scheme envisaged the development of national arbitration institutions,

establishment of Regional Centres under the auspices of the AALCO and making available the services of the specialized arbitration institutions to the countries of the region within the framework of the Integrated Scheme. This scheme was considered as a cardinal programme and one of the Organization's major contributions to the international commercial dispute resolution.

Pursuant to the scheme, the Regional Centres for Arbitration at Kuala Lumpur, Malaysia for the Asian region and at Cairo for the African region were established in 1979 on an experimental basis for a period of three years. As they were found to be successful in realization of their objectives, they were made permanently functional. Later two new such Centres were established in Lagos (Nigeria) in 1989 and Tehran (Islamic Republic of Iran) in 2003. The fifth such Centre is in the process of being established in Nairobi (Kenya). Towards establishing such a Centre in Nairobi, an agreement was signed between the AALCO and the Govt. of Kenya in 2007 at Cape Town, South Africa.

These Centres have been established on the basis of an agreement between the AALCO and the respective host Governments. The World Bank's International Centre for Settlement of Investment Disputes (ICSID) has concluded formal agreements with the Organization in relation to its Regional Centres for mutual cooperation and assistance. Although the Centres have been established under the auspices of AALCO, the Centres function as independent international organizations and for this purpose have been conferred with certain diplomatic privileges and immunities by the respective host Governments. The Centres are headed by a Director, appointed by the Host Government in consultation with the Secretary-General of AALCO.

Distinguished Guests, Ladies and Gentlemen,

The need for international commercial arbitration and its services at global level is increasing day by day. The information and communication technology (ICT) has given a new meaning to international commercial transactions and business. E-commerce has now become an indispensable part of our daily commercial activities. This has also given rise to both traditional as well as contemporary international commercial disputes all over the world. The scope of international commercial arbitration has also widened due to the disputes arising out of contracts on sale of goods, distributorship, agency and intermediary contracts, construction, engineering and infrastructure contracts, intellectual property contracts, domain name dispute resolutions, online dispute resolutions, joint venture agreements, maritime contracts, employment contracts, medico-legal disputes etc. The list is just illustrative as the business transactions are too many and it is difficult to categorize all of them here.

Therefore, keeping in view of all the developments, it is necessary to formulate the procedural rules for the arbitration accordingly. There are still challenges and opportunities in this specialized subject which Asian and African countries need to explore and address. Particularly, there is a dire need for the present arbitral setup to recognize and accommodate different cultural and legal traditions. Further, the traditional advantages of arbitration such as cost effectiveness and simplicity of procedure seem to have become redundant. These problems and lack of harmonization in arbitral law and practice have resulted in constant tension with national courts in the recognition and enforcement of foreign arbitral awards. At the same time, there is pressure on the developing countries to make their arbitral and other laws appropriate to attract investments.

If arbitration is to continue to be a preferred means of resolving trade disputes, it has to address the realities and specific needs of the developing countries. There is also a need for harmonization of arbitral law in Asian and African regions. These are some of the issues which need a serious consideration by the experts who are working in this field.

Distinguished Guests, Ladies and Gentlemen,

Going by the programme and by the preparations, I am confident that there is going to be serious discussion here on the emerging trends and also some of the challenges that we are facing today in the field of international commercial arbitration.

I wish the Conference all success.

Thank you very much.