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ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION



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REPORT ON THE AALCO'S CENTRES FOR ARBITRATION

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## I. INTRODUCTION

### A. Background

1. The Asian-African Legal Consultative Organization (AALCO) during its 13<sup>th</sup> Session held in Lagos in 1973, proposed that apart from follow-up of the work of the UNCITRAL in the field of International Commercial Arbitration, the Organization should also make independent study of some of the more important practical problems relating to the subject from the point of view of the Asian-African region. Accordingly, the Secretariat prepared an outline of the study, which received favorable response from the Member States. The Secretariat thereafter prepared a detailed and comprehensive study and the Trade Law Sub-Committee considered this study during the Tokyo Session.

2. At the Tokyo Session (14<sup>th</sup> Session) held in 1974, AALCO endorsed the recommendations of its Trade Law Sub-Committee, that efforts should be made by Member States to develop institutional arbitration in the Asian and African regions. Thereafter, the Secretariat, following the mandate in the Tokyo Session, prepared a revised study on the same topic so as to enable the Trade Law Sub-Committee during the Kuala Lumpur Session, to formulate principles or model rules for consideration. At the Kuala Lumpur Session (16<sup>th</sup> Session) held in 1976, the Trade Law Sub Committee requested the Secretariat to undertake a feasibility study for establishing regional arbitration centers in the Asian-African region, to be placed before the Baghdad Session.<sup>1</sup>

3. At the Baghdad Session (17<sup>th</sup> Session) held in 1977, discussions were focused on the Secretariat study titled 'Integrated Scheme for Settlement of Disputes in the Economic and Commercial Matters', which envisaged *inter alia* the establishment of a network of Regional Centres for Arbitration functioning under the auspices of the AALCO in different parts of Asia and Africa so that the flow of arbitration cases to arbitral institutions outside the Afro-Asian region could be minimized.

4. At the Doha Session in 1978, the Organization in order to promote the development of the Afro-Asian region decided to establish Regional Centres for International Commercial Arbitration as a viable alternative to the traditional institutions in the West. It was envisaged that the two centers would function as international institutions under the auspices of AALCO with the following objectives:

- (a) Promoting international commercial arbitration in Asian and African regions;
- (b) Coordinating and assisting the activities of existing arbitral institutions, particularly among those within the two regions;

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<sup>1</sup> The Secretariat study elaborated the two basic objectives of the AALCO's integrated dispute settlement scheme. In the first place, to establish a system under which disputes and differences arising out of transactions in which both the parties belong to the Asian-African and Pacific regions could be settled under fair, inexpensive and adequate procedures. Secondly, to encourage parties to have their arbitrations within the region where the investment made or the place of performance under an international transaction was a country within this region. The conclusions made in the study were in favour of establishment of six sub-regions, namely East Asia, South-East Asia, West Asia, North Africa and West Africa. It was, however, pointed out that scheme could initially work with two centers and other centers could be established in the light of experience and volume of work.

- (c) Rendering assistance in the conduct of Ad Hoc arbitrations, particularly those held under the UNCITRAL Arbitration Rules;
- (d) Assisting in the enforcement of arbitral awards; and
- (e) Providing for arbitration under the auspices of the two centers where appropriate.

5. In pursuance of the above decision, an Agreement was concluded in April 1978 between the AALCO and the Government of Malaysia in respect of establishment of a Regional Center for Arbitration in Kuala Lumpur. A similar Agreement was concluded in January 1979 with the Government of the Arab Republic of Egypt in respect of establishment of a Regional Center for Arbitration in Cairo. The Agreements recognized the status of the Centers as intergovernmental organizations and conferred certain immunities and privileges for their independent functioning.

6. The Host Governments also offered suitable premises, financial grants and necessary staff to run the Centers. The Centers adopted UNCITRAL Arbitration Rules with suitable modifications and offered their services to any party whether within or outside the region for the administered arbitration and facilities for arbitration whether ad hoc or under the auspices of any other institution.

7. The success of these two Regional Arbitration Centers prompted the AALCO to establish two more centers, one in Lagos, which was formally inaugurated in 1989. The other Centre was established in Tehran, for which an Agreement was concluded between AALCO and Islamic Republic of Iran in 1997 and the President of the Islamic Republic of Iran has ratified the Agreement for implementation on 10 June 2003.

**(i) Regional Centre for Arbitration, Kuala Lumpur, Malaysia**

8. The Regional Centre for Arbitration, Kuala Lumpur (RCAKL) established in 1978, was the first such Centre in Asia.<sup>2</sup> The Centre offers facilities and assistance for the conduct of arbitral proceedings, including the enforcement of awards made in the proceedings held under the auspices of the Centre. The Rules for arbitration under the auspices of the Centre are the UNCITRAL Arbitration Rules of 1976 with certain modifications and adaptations. Other main functions of the Centre are to promote international commercial arbitration in the Asia-Pacific region and to render advice and assistance to parties who may approach the Centre.

9. Apart from these services the Centre also provides other options for the settlement of disputes such as mediation/conciliation under the Conciliation Rules of the Centre. The Centre, realizing the growing importance of intellectual property in the arena of Information and Communications Technology, also administer international and domestic “.my domain” name dispute resolution service, provided by the Malaysian Network Information Centre (MYNIC), which administers the “.my domain”. All domain name disputes are governed and administered in accordance with MYNIC's Domain Name Dispute Resolution Policy (MYDRP), Rules of the MYDRP and RCAKL Supplemental Rules.

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<sup>2</sup> Regional Centre for Arbitration Kuala Lumpur, Tel: +603-2142 0103 / 702 or Fax: +603-2142 4513; email: enquiry@rcakl.org.my

**(ii) Cairo Regional Centre for International Commercial Arbitration (CRCICA), Arab Republic of Egypt**

10. The Cairo Regional Centre for International Commercial Arbitration was established in 1979 by AALCO and the Egyptian Government for an experimental period of three years. In 1983, an agreement was concluded between AALCO and the Egyptian Government for granting permanent status to the Cairo Centre.<sup>3</sup>

11. The Cairo Centre offers specialized services to settle trade and investment disputes, through arbitration. It includes also Alternative Dispute Resolution techniques (ADR) such as conciliation, mediation and technical expertise. Apart from this, the Centre also offers advice to parties to international commercial and investment contracts with regards to drafting these contracts, promote arbitration and other ADR techniques in the Afro-Asian region through the organization of international conferences and seminars and organize training programs for international arbitrators and legal scholars from the Afro-Asian region through the Centre's Institute for Arbitration and Investment. The Cairo Centre follows the UNCITRAL Arbitration Rules with certain modification.

12. Apart from this, the Cairo Centre had also established the Institute of Arbitration and Investment in 1990; the Institute of Arab and African Arbitrators in Egypt in 1991; the Centre's Maritime Arbitration Branch in Alexandria, which is meant to deal exclusively with maritime disputes, in 1992; the Cairo Branch of the Chartered Institute of Arbitrators of London in 1999; Alexandria Centre for International Arbitration in 2001; and a Mediation and ADR Centre as a branch of the Cairo Centre to administer commercial arbitration and other peaceful non-binding means of avoiding and settling trade and investment disputes, in 2001.

**(iii) Lagos Regional Centre for International Commercial Arbitration (LRCSCA), Nigeria**

13. In 1980, an Agreement was concluded with the Federal Government of Nigeria for the location of a third Center in Lagos. The Centre was formally inaugurated in March 1989. On 26<sup>th</sup> April 1999, Hon'ble Alhaji Abdullahi Ibrahim OFR (SAN), the then Attorney General and Minister of Justice, on behalf of Nigeria and H. E. Mr. Tang Chengyuan, the then Secretary-General of the AALCO, signed an Agreement which formalized the continued functioning of the Center for a period of five years with effect from January 1999 to December 2004.<sup>4</sup>

**(iv) Tehran Regional Arbitration Centre (TRAC), Islamic Republic of Iran**

14. An Agreement was concluded between the Government of the Islamic Republic of Iran and AALCO on 3 May 1997, for the establishment of a Regional Center for

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<sup>3</sup> The Cairo Regional Centre for International Commercial Arbitration, 1, Al-Saleh Ayoub St., Zamalek, Cairo, Egypt. Telephones: (202) 7351333; 7351335, Fax: 7351336, email: [crcica@idsc.net.eg](mailto:crcica@idsc.net.eg) <[www.crcica.org.eg](http://www.crcica.org.eg)>

<sup>4</sup> Regional Centre for International Commercial Arbitration, 6<sup>th</sup> Floor, Marble House, 1 Alfred Rewane Road (Former Kingseway Road), Falomo, Ikoyi, Lagos, Nigeria. Fax: 00 234 1 2672385, email: [lrcica@metrong.com](mailto:lrcica@metrong.com)

Arbitration in Tehran.<sup>5</sup> At the AALCO's 42<sup>nd</sup> Session in Seoul, the Delegate of Islamic Republic of Iran informed that the Judicial Power has adopted the Agreement and that all the legal procedure applicable in the Islamic Republic of Iran for the ratification of the said Agreement is complete.

15. The President of the Islamic Republic of Iran ratified the Agreement for implementation on 10 June 2003. Dr. Moshkan Mashkour was appointed as the Director and the Secretary-General of AALCO as per Article V of the Agreement endorsed the Director's appointment. Further, the Islamic Republic of Iran expressed its readiness to negotiate with AALCO in order to prepare the Administrative Rules and Rules of Arbitration to be followed by the Centre as required by Article II (2) of the Agreement.

## **B. Activities of the Centres**

16. AALCO took upon the promotional functions for the centers in certain specified areas. It entered into Agreement with the World Bank's Center for Settlement of Investment Disputes, which envisaged that arbitration proceedings under the ICSID Convention of 1965 could be held in Kuala Lumpur or Cairo if the parties so agree. In order to encourage arbitration related to shipping matters, AALCO entered into agreement with the Japan Shipping Exchange Inc., which offered facilities for holding arbitration at the Kuala Lumpur Center.

17. Although in the beginning, the promotional activities of its Regional Arbitration Centers were primarily carried out by the AALCO, in view of experience accumulated over the years and the contacts established by these centers with Governments, governmental agencies and international institutions, such promotional activities are now mainly carried out by the Centers themselves. Such promotional activities are highlighted in the Reports of the Directors of the respective Centres. However, AALCO Secretariat periodically organizes international conferences and seminars aimed at promoting awareness about the role and functions of the Regional Centres for Arbitration.

18. It is a matter of great satisfaction that, over the years, there has been considerable increase in the number of cases, both international and domestic, referred to AALCO's Regional Arbitration Centres. The types of cases include oil contracts, insurance, intellectual property, construction contracts etc. and involve both public and private sectors. The resolution of commercial disputes by other Alternative Dispute Resolution (ADR) methods such as Mediation and Conciliation under the Rules of AALCO Centres is another option being favoured by the Parties.

19. An important function of the Directors of AALCO's Centres has been to act as an Appointing Authority in much arbitration. The Centres have been organizing international conferences, seminars and training courses in their respective regions. In addition, the Directors of the Centres have actively pursued the conclusion of co-operation Agreements with other arbitration institutions.

20. With a view to enhancing the role and activities of the AALCO Regional Arbitration Centres, the Secretary-General would like to urge the Member States to fully

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<sup>5</sup> Tehran Arbitration Centre, Ministry of Foreign Affairs, Tehran, Islamic Republic of Iran. Fax: 00 98 21 8829592

support the growing activities of these Centres and consider making financial contributions to help in the implementation of their plans and activities. Further, in this context, two concrete suggestions for their consideration are as follows:

- (i) The Member States may consider designating a body, for example, the national chamber of commerce or other industrial promotion organizations to be associated with the AALCO Regional Arbitration Centres as the Liaison Agency within the country, with a view to promoting the activities of AALCO Centres.
- (ii) Whilst entering into contracts on behalf of the Government, Public Corporations and other Government Undertakings, consideration might be given to including an arbitration clause for settlement of disputes under the arbitration rules of AALCO's regional arbitration Centre, where it is considered expedient for such disputes and differences being settled through AALCO's Regional Arbitration Centres.

21. Such an encouragement from the Member States would further boost the work of AALCO's Regional Arbitration Centres.

22. The following part provides the Reports of the Director of the Kuala Lumpur, Cairo and Tehran Centres, highlighting the details of the activities of the Centres in the year 2003 and the forthcoming events in 2004.

## **II. REPORT ON THE ACTIVITIES OF THE REGIONAL CENTER FOR ARBITRATION KUALA LUMPUR FOR THE YEAR 2003**

### **1. REPORT ON THE SILVER JUBILEE CONFERENCE**

The Regional Centre for Arbitration Kuala Lumpur (RCAKL) was established on 17th April 1978 and was formally inaugurated by the then Prime Minister of Malaysia, the late Tun Hussein Onn, on 17th October 1978. The year 2003 was a very distinctive one for RCAKL as it marked its 25th Anniversary. To commemorate its Silver Jubilee, RCAKL held the "International Conference on Settlement of International Commercial Disputes" from the 13th to 15th October 2003 in Kuala Lumpur.

The Conference was attended not only by participants from Malaysia, but also from Bangladesh, Bhutan, Cambodia, Democratic People's Republic of Korea, Fiji, India, Iran, Japan, Mongolia, Nepal, New Zealand, Pakistan, Philippines, Republic of Korea, Sri Lanka, Thailand and Vietnam.

The Conference was also attended by representatives of international organizations and other arbitral institutions, including H.E. Ambassador Dr. Wafik Zahir Kamil, the Secretary-General of the Asian-African Legal Consultative Organization (AALCO), and Dr. Li Zhenhua, the Deputy Secretary-General of AALCO. Also present were Mrs. Eunice R. Oddiri, the Director of the Regional Centre for Arbitration Lagos, Ms. Bette Shifman of the Permanent Court of Arbitration in the Hague, Mr. Adnan Amkhan of the Energy Charter Secretariat in Belgium, Mr. Warren Khoo of the Singapore International Arbitration Centre, Mr. Peter Scott Caldwell of the Hong Kong International Arbitration Centre, Ms. Shehara Varia of ICLP Arbitration Centre, Sri Lanka and Mr. Majed Al-Hedayan of the Riyadh Chamber of Commerce and Industry.

The Conference was also graced by the presence of members of the RCAKL International Panel of Advisers, namely, Tan Sri (Dr.) Muhammad Ghazali Shafie, the former Minister of Foreign Affairs, Malaysia, Dr. B. Sen, the former Secretary-General of AALCO and the current member of the Governing Council of UNIDROIT, and Professor Kazuaki Sono of Japan, the former Secretary of UNCITRAL.

In his welcome statement, Dato' Dr. Zakaria M. Yatim, the Director of RCAKL, expressed his gratitude to Dato' Seri Dr. Mahathir Mohamed, then I the Prime Minister of Malaysia. The Director quoted what Dato' Seri Dr. I Mahathir had said at the Prime Minister's keynote address at the Centre's similar Conference held on 3rd July 1979:

"This Conference is indeed most significant to all of us for it presents an opportunity for the distinguished delegates, who have come from these regions, to discuss ways and means of implementing a comprehensive and effective system for the settlement of disputes arising from international commercial transactions in our regions .... The Centre in Kuala Lumpur has an important role to play in bringing about stability and harmony in international trade in the Asia-Pacific region."

In welcoming the participants, the Director also recorded his thanks to everyone present as well as those who could not attend the Conference but had nevertheless sent their congratulatory messages.

The Director also informed the participants of the role RCAKL should have in the coming years. The Director added that whilst RCAKL had a distinguished International Panel of Advisers as well as an Advisory Group from diplomatic missions of the Asia-Pacific countries in Kuala Lumpur, the Conference provided an opportunity to seek the views of the Representatives of the Governments on this matter. The Director also said:

"As you know, RCAKL is an inter-governmental institution established under the auspices of the AALCO. It has a distinct role to promote international commercial arbitration in this region. It does not claim monopoly to seek referral of arbitration cases to the Centre. Our aim is to strengthen national arbitration institutions, organize training courses for lawyers and judges and the officials concerned with arbitration matters. Our endeavor is to help in the establishment of the infrastructure and to make the arbitral institutions in this region strong so that they can provide an alternative for conduct of arbitration in home-grown institutions, procedures and expertise. We wish to grow together."

The Director's welcome statement was followed by a statement by H.E. Ambassador Dr. Kamil, the Secretary-General of AALCO. In thanking the Government of Malaysia for its decision to host the first Regional Arbitration Centre in the Asia-Pacific region and thus translated AALCO's dream into reality, the Secretary-General of AALCO said:

"Thanks to the generous offer of the Government of Malaysia to host AALCO's first Regional Centre for Arbitration in Kuala Lumpur, a beginning was made. The Government provided a beautiful furnished premises, annual grant to meet the running cost and deputed a senior official as a Director and other necessary administrative staff. The Government of Malaysia amended its Arbitration Law and created a special category of international arbitrations conducted under the auspices of the Kuala Lumpur Centre. This helped the Centre to grow as a neutral and an independent international organization.

Today, the Kuala Lumpur Regional Arbitration Centre has achieved a unique status among the family of international arbitral institutions. Although it has been established under the auspices of AALCO, it functions as an independent and autonomous international Arbitral Institution. It enjoys privileges and immunities akin to any diplomatic organization. The Centre conducts and provides facilities for both domestic and international arbitrations. It has been designated as an appointing authority in many cases, including those conducted under the Permanent Court of Arbitration in The Hague. It has concluded Co-operation Agreements with Arbitral Institutions all around the world. It has helped the establishment of national arbitral institutions in the Asian region. It organizes periodically seminars, workshops and training courses to promote arbitration culture and expertise. It maintains a comprehensive panel of arbitrators, many of them is eminent experts on international commercial arbitration from the Asian and African region."

The Conference was formally inaugurated by Dato' Adam Kadir, the former President of the Senate, Malaysia. In his keynote address, Dato' Adam said:

"RCAKL was established 25 years ago under the auspices of the Asian-African Legal Consultative Organization (AALCO) with the support and assistance of the Government of Malaysia. In this regards I must pay, as did Dato' Dr. Zakaria M. Yatim, high tribute to our Prime Minister, Dato' Seri Dr. Mahathir Mohamed, whose foresightedness provided an opportunity to Malaysia to host the first Regional Arbitration Centre within AALCO. May I add, the smooth functioning of the RCAKL has been made possible by the keen interest shown by the Prime Minister's Office."

After the tea-break and photography session following the address by the Chief Guest, the Secretary-General of AALCO, as Chairman of the Session, invited the representatives of the Governments of the Asia-Pacific Region and International Arbitral Institutions & Centres to deliver their commemorative speeches. Twelve representatives delivered their commemorative speeches.

The topics for discussion began soon after the commemorative speeches were delivered. There were three main topics:

**(1) UNCITRAL MODEL LAW**

- National Experiences Relating to Court Intervention and Interim Measures of Protection
- The Experiences of the Countries and the Arbitral Institutions on the use of the UNCITRAL Rules;

**(2) State Immunity in International Trade Transactions; and**

**(3) Globalisation and Settlement of International Commercial Disputes.**

On the first day of the Conference, deliberation on the topic "**UNCITRAL MODEL LAW**" began with the presentation of the following topics by the following speakers:

- (i) "Extracts of Relevant Provision of Legislations or Interim Protection".

Speaker: **Dr. B. Sen** (Former Secretary-General AALCO)

- (ii) "Impartiality, Independence & Disclosure in International Commercial Arbitration",

Speaker: **Mr. Peter Caldwell** (Hong Kong International Arbitration Centre)

The day ended with an official dinner hosted by the Director of the Regional Centre for Arbitration Kuala Lumpur.

The topic on the second day of the Conference was "**Globalisation and Settlement of International Commercial Disputes**" with the presentation of the following topics by the following speakers:

- (i) "The New Role of Commercial Arbitration: The Guardian of Delocalisation of Law",

Speaker: **Prof. Kazuaki Sono** (Japan)

- (ii) "The Role of Arbitration in Intellectual Property Disputes",

Speaker: **Mr. Lee Tatt Boon** (Malaysia)

- (iii) "World Trade Organization".

Speaker: **Dr. Li Zhenhua** (Deputy Secretary-General AALCO)

- (iv) "Settling Investment Disputes under the Energy Charter Treaty".

Speaker: **Mr. Adnan Amkhan** (Energy Charter Treaty Secretariat, Belgium)

- (v) "The Permanent Court of Arbitration".

Speaker: **Ms. Bette Shifman** (Deputy Secretary-General of PCA)

The agenda for the afternoon session of the day was the continuation of the discussion on "**UNCITRAL MODEL LAW**", with the following speakers relating their respective countries' experience on the use of the UNCITRAL Rules:

- (i) **Prof. Kazuaki Sono** (Japan)
- (ii) **Mr. David A.R. Williams, QC** (New Zealand)
- (iii) **Dr. (Mrs.) Neeru Chadha** (India)
- (iv) **Mr. O. Sang Hun** (Democratic People's Republic of Korea)

The Chairman for the sessions on that day was Tan Sri Abdul Gani Bin Patail, the Attorney-General of Malaysia. His very presence created an extraordinarily lively ambience for discussions after each session throughout the day.

The second day ended with a visit by the participants to the Regional Centre for Arbitration Kuala Lumpur at Jalan Conlay. Participants from countries intending to establish their own national arbitration centres were highly impressed with the Centre.

The agenda for the third and the last day of the Conference started with the continuation of the discussion on the **UNCITRAL MODEL LAW**, with the following speakers relating their respective countries' experience on the use of the UNCITRAL Rules:

- (i) **Prof. Bharat Bahadur Karki** (Nepal)
- (ii) **Ms. Salma Benthe Kadir** (Bangladesh)
- (iii) **Mrs. Altansetseg Dashdorj** (Mongolia)
- (iv) **Mr. John Semisi** (Fiji)

The day continued with the discussion on the topic "State Immunity in International Trade Transaction", with presentations made by the following speakers:

- (i) **Mr. Ross Masud** (Pakistan)
- (ii) **Mr. Nabin K. Chettri** (Nepal)
- (iii) **Mr. Saleem Marsoof** (Sri Lanka)
- (iv) **Dr. Li Zhenhua** (Deputy Secretary-General AALCO)
- (v) **Mr. John Louis O'Hara** (Malaysia)
- (vi) **Ms. Sultana Nasira Khan** (Bangladesh)
- (vii) **Ms. Nguyen Thai Mo** (Vietnam)

The day once again ended with lively discussions among the participants, albeit with a visible tone of sadness at the end of day, when everybody bade farewell and bon voyage. In his closing speech, the Director recorded his appreciation for the co-operation he received from Ambassador Dr. Kamil. The Director concluded his speech by saying:

"The RCAKL is well set to be the beacon for arbitration in this region and will continue to assist countries in the region and their citizens in resolving their disputes. I am grateful to our International Panel of Advisers, Tan Sri Ghazali Shafie, Dr. B. Sen, Prof. Kazuaki Sono, Prof. Dr. Jur Karl-Heinz Bockstiegel and Prof. Dr. Hans Van Houtte, whose valuable advice are always an asset to me.

I would like to thank especially our organizing committee members, Mr. Vinayak Pradhan and Ms. Bharti Seth, who inspite of their busy schedules have been attending numerous meetings which I called, for organizational work related to the Silver Jubilee Conference."

The Director also expressed his gratitude to the assistance given by the Director-General of the Judicial & Legal Training Institute, the Prime Minister's Department, for allowing Ms. Halijah Othman to stand in as a compere and for using buses to transport the participants for their visit to the Centre.

## **2. REPORT ON THE MEETING OF THE INTERNATIONAL PANEL OF ADVISERS**

1. The International Panel of Advisers met in Kuala Lumpur during the Silver Jubilee commemoration of Regional Centre on 14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup> October 2003. The meeting was attended by Tan Sri Ghazali Shafie, Dr. B. Sen and Prof. Kazuaki Sono. Prof. Bockstiegel and Prof. Van Houtte were unfortunately unable to attend.
2. The panel of advisers took note of the fact that the Regional Centre at Kuala Lumpur was established under the auspices of the AALCC with the support and assistance of the Government of Malaysia in order to carry out several promotional activities such as promoting the growth of arbitration in the region including wider use of the UNCITRAL Arbitration Rules of 1976 by the countries of the region and to assist in the growth of national arbitration institutions throughout the region. It was also envisaged that the Regional Centre could administer arbitration under its own rules whenever considered appropriate.
3. The primary function thus entrusted to the Centre was the promotional activity in popularising the institution of arbitration and it was basically for that reason that

the Government of Malaysia had graciously agreed to provide financial support.

4. The panel expressed its deep satisfaction that during the past 25 years the promotional activities of the Centre had resulted in growth of national arbitration institutions almost in every country of the region covered by the Kuala Lumpur Centre. The panel also noted that the UNCITRAL Arbitration Rules had been used by the countries of the region to a wider extent and further that the UNCITRAL Model Law had formed the basis of new national legislations on arbitration in large number of country. Thus the promotional activities entrusted to the Centre had been substantially carried out during the past quarter of the century.
5. The panel was of the view the time has come to plan out new areas of activities which the Centre could usefully undertake. The panel reiterates that the promotional activities should continue to be one of the major functions of the Centre and as a further step in that direction the panel felt that the Centre could render assistance to the countries of the region in providing an appropriate structure for arbitration mechanism including such matters as training of arbitrators.
6. The panel was of the view that the Director of the Centre might investigate into possibility of holding courses and training programmes for facilitating the more effective use of national arbitration institutions. The panel felt that such courses could be held either at the seat of the Centre or in countries which request for such assistance so that a larger number of persons are in a position to attend the training programme.
7. Apart from the promotional activities, the panel is of the view that the time is perhaps now appropriate when the Centre should actively pursue the promotion of wider use of the Centre's facilities in provision of arbitration under its rules. In this connection, the panel took note of the fact of the discovery and greater exploitation of natural resources of the region particularly in the areas of oil and gas including liquefied natural gas. These could possibly provide opportunities for the Centre to offer its facilities to the countries of the region to arbitrate under its auspices in accordance with the Rules of the Centre which were primarily based on UNCITRAL Arbitration Rules and which rules were largely use in the oil and gas arbitration throughout the world. To investigate into the matter, the panel felt it might be useful to organise an international seminar in Kuala Lumpur on the topic of Settlement of Disputes arising out of energy contracts. The panel felt that it could be useful for the Centre to consult with some of the organisations engaged in the field of energy such as the Secretariat of the Energy Charter Treaty in Brussel and other institutions.
8. The panel also felt that the Centre might consider the possibility of enabling parties to hold their arbitrations under the Rules of the Centre at a venue chosen by the parties for the purpose in view of practical realities that some parties would prefer their arbitration to be held at the venue of their choice. Such arrangements were already envisaged in ICSID and ICC arbitrations.
9. The panel expressed the view that it would be useful for the Kuala Lumpur Centre to enter into co-operation arrangement with the other Regional Centres established

by the AALCC at Cairo, Lagos and Tehran as well as with the secretariat of the Permanent Court of Arbitration which has already shown an interest in the activities of Kuala Lumpur Centre.

10. The programme of work of the Centre would be reviewed from time to time as considered necessary.

### **3. DIRECTOR ATTENDS FORTY-SECOND SESSION OF ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION IN SEOUL, REPUBLIC OF KOREA**

Dato' Dr. Zakaria M. Yatim, Director of the Regional Centre for Arbitration Kuala Lumpur (RCAKL) attended the Forty-Second Session of the Asian African Legal Consultative Organization (AALCO) which was held in Seoul, Republic of Korea in June 2003.

In his statement made at the Fifth General Meeting, he said the Centre was conceived as part of AALCO's Integrated Scheme for the Settlement of Disputes in Economic and Commercial Matters in 1977. It was the first Centre of its kind in the Asian region established primarily to promote international commercial arbitration.

The AALCO's Scheme was unique in many ways, especially in regard to its broad-based nature in bringing within the system all activities in the field of commercial arbitration within the region, whether institutional or ad hoc. The unique nature of the Scheme was further evidenced by the fact that it created no vested interest in any particular institution and the broad objective which the Scheme tried to promote was the provision of an adequate, inexpensive and fair procedure through which economic and commercial disputes could be settled within the region.

He elaborated on the functions of the Centre and said that with the introduction of Section 34 of the Malaysian Arbitration Act in 1980, the RCAKL had become a neutral venue independent of national interests and not subject to the Malaysian domestic law.

He noted that there were several national arbitral institutions in the region, such as the Singapore International Arbitration Centre (SIAC), the Hong Kong International Arbitration Centre (HKIAC), the China International Economic and Trade Arbitration Commission (CIETAC), the Korean Commercial Arbitration Board (KCAB) and the Japan Commercial Arbitration Association (JCAA), which now administer various types of international commercial arbitration. Thus, Asia no longer needed to resolve its commercial disputes in the West, as was the situation after World War II.

Speaking about the RCAKL, he said that for more than two decades after the establishment of the RCAKL, foreign parties, not just within the Asian and the Pacific region but worldwide, where the other parties are from the region, had chosen to arbitrate at the RCAKL. Most of these parties use the RCAKL to resolve their commercial disputes with other parties from other countries. Apart from international arbitration, domestic parties have also preferred to resolve their disputes in accordance with the Rules of the RCAKL.

The RCAKL had turned 25 and preparations had been made to commemorate its Silver Jubilee. An ad hoc committee of five members headed by the Director was set up in this respect. He gave details of the three-day programme for the commemoration of the Silver Jubilee. He said that apart from the Conference, RCAKL would be publishing a book containing essays contributed by eminent writers on the settlement of commercial disputes and related subjects in a commemorative volume. He invited AALCO member governments and other governments in the Asian and the Pacific Region, as well as arbitrators accredited to the RCAKL to attend the 3-day Conference.

At the conclusion of the Forty-Second Session, AALCO passed, *inter alia*, I the following resolutions:

**Reiterated** the earlier decision of the AALCO on the necessity for the governments of Member States to promote and support the use of the regional arbitration centres;

**Congratulated** the Regional Centre for International Commercial Arbitration, Kuala Lumpur on the commemoration of its twenty-fifth anniversary in August 2003.

The full text of the resolutions is attached (see Appendix).

## APPENDIX

RES/42/ORG.3  
20 June 2003

### PROGRESS REPORT ON REGIONAL CENTRES FOR ARBITRATION

#### The Asian-African Legal Consultative Organization at its forty-second session,

**Having taken note** of the Progress Report on AALCO's Regional Centres for Arbitration contained in Document No. AALCO/XLII/SEO UL/200 3/0 RG. 3,

**Reaffirming** the commitment by the government of Member States towards enhancing the role of the regional arbitration centres,

**Recalling** its decision relating to the Integrated Scheme for the Settlement of Disputes in Economic and Commercial Transactions adopted at its Doha Session in 1978,

**Expressing** its satisfaction over the increasing use of the facilities and the opportunities offered for both domestic and international arbitrations under the auspices of its Regional Arbitration Centres,

**Welcoming** the completion of the procedures applicable in Islamic Republic of Iran for adoption of the agreement concluded between this government and the AALCO in the establishment of the regional centre for arbitration, dated 3 May 1997.

#### **4. RCAKL IS A DOMAIN NAME DISPUTE RESOLUTION SERVICE PROVIDER**

The RCAKL is now a **.my** domain name dispute resolution service provider. Such service enables disputes over domain names that are registered in Malaysia to be amicably settled out of court. The main functions of RCAKL with regards to such service are:

- to administer domain name disputes; and
- to render advice and assistance to parties who approach RCAKL with problems relating to domain name disputes.

The Malaysian Institute of Microelectronic Systems (MIMOS Bhd.) through the Malaysian Network Information Centre (MYNIC) had developed MYNIC's (.my) Domain Name Dispute Resolution Policy for the purpose of resolving disputes. MYNIC, a division of MIMOS, is responsible for the registration of .my domain name and the maintenance and operation of the domain name registry.

MIMOS appointed RCAKL as a .my domain name dispute service provider with effect from 17th April 2003.

As aforementioned, MIMOS had developed MYNIC's (.my) Domain Name Dispute Resolution Policy (MYDRP). In addition, there are also the Rules of MYNIC's (.my) Domain Name Dispute Resolution Policy (MYDRP Rules).

RCAKL had developed its Supplemental Rules for the purpose of the domain name disputes. In administering a proceeding, RCAKL uses the Supplemental Rules in conjunction with the MYDRP and the MYDRP Rules, and RCAKL must act consistently with MYDRP and MYDRP Rules. In the event of conflict between the Supplemental Rules and the MYDRP and the MYDRP Rules, the MYDRP and MYDRP Rules shall prevail, unless otherwise agreed between the parties to the proceeding.

The MYDRP provides that a complainant to a domain name dispute must prove two elements as follows:

- (i) that the domain name is identical or confusingly similar to a trademark or service mark to which the complainant has a right; and
- (ii) that the domain name is considered registered and/use in bad faith.

The complainant shall direct his complaint to RCAKL by submitting Form A (which is attached to the Complaint Transmittal Coversheet). The respondent may submit his response in Form B within fifteen working days from the date the proceeding commences.

RCAKL has a number of panellists from various countries. The list of panellists comprise of eminent individuals from India, Japan, Korea, Malaysia, Netherlands, Singapore, Sweden and Switzerland.

The Administrative Fees of RCAKL and the Proceeding Fees are as follows:

i) Single-Member Panel

<b>Single-Member Panel</b>			
<b>Number of domain names including in the Complaint</b>	<b>Panelist Fee (RM)</b>	<b>Administrative Fee (RM)</b>	<b>Total Fee (RM)</b>
1 to 2 domain names	2,000	500	2,500
3 to 6 domain names	2,400	600	3,000
7 to 10 domain names	3,000	750	3,750
11 to 15 domain names	3,600	900	4,500
More than 15 domain names	To be decided		

ii) Three-Member Panel

<b>Three-Member Panel</b>					
<b>Number of Domain names including in the Complaint</b>	<b>Proceeding Fees for three member Panel (RM)</b>	<b>President (RM)</b>	<b>Co-Panelist (RM)</b>	<b>Administrative Fee (RM)</b>	<b>Total Fees (RM)</b>
1 to 2 domain names	4,000	(2,000)	(1,000)	1,000	5,000
3 to 6 domain names	4,800	(2,400)	(1,200)	1,200	6,000
7 to 10 domain names	6,000	(3,000)	(1,500)	1,500	7,500
10 to 15 domain names	7,200	(3,600)	(1,800)	1,800	9,000
More than 15	To be decided				

To date RCAKL has administered one international domain name dispute and is constantly receiving enquiries.

## **5. DISPUTE RESOLUTION IN ISLAMIC BANKING TRANSACTIONS**

In September 2003, the Director was informed by e-mail that the Islamic Banking and Takaful Department of Bank Negara had prepared a draft proposal paper on "Arbitration Framework for Islamic Banking and Takaful Business". The proposal was approved by the Assistant Governor of Bank Negara, in particular with regard to the proposal to utilize RCAKL in administering arbitrations arising from Islamic Banking

transactions.

On 8th October 2003, a meeting was held at RCAKL. The meeting was between the Director and the representatives of the Islamic Banking & Takaful Department, namely, Ms. Rohana Yusof, the Senior Manager, and Mr. Mohamad Salihin Deris, the Senior Executive. Ms. Rohana informed the Director that in principle, it was agreeable to use RCAKL to administer the arbitrations, as RCAKL is a viable outfit for dispute resolution in Islamic Banking transactions and Takaful business.

A Memorandum of Understanding would subsequently be concluded between RCAKL and the Islamic Banking and Takaful Department of Bank Negara. Ms. Rohana informed the Director that Bank Negara was then waiting for the Central Bank of Malaysia (Amendment) Act 2003 to be passed by Parliament. Among the amendments to be made to the Act was the insertion of a new section, which provided for the establishment of a Syariah Advisory Council.

Among the amendments to the Act is the following provision:

"Where in any proceedings relating to Islamic banking business, takaful business, Islamic financial business, Islamic development financial business, Islamic development financial business, or any other business which is based on Syariah principles and is supervised and regulated by the Bank before any court or arbitrator any question arises concerning a Syariah matter, the court or the arbitrator, as the case may be, may –

- (a).....; or
- (b) refer such question to the Syariah Advisory Council for its ruling."

The meeting also discussed the question of costs of arbitration and the issue of accreditation of arbitrators to the panel of arbitrators to RCAKL.

## **6. DEPUTY MINISTER'S VISIT TO THE CENTRE**

The Honorable Deputy Minister in the Prime Minister's Department, Senator Dato' M. Kayveas, visited the Centre on 18th August 2003.

During his visit, the Director briefed him on the status and role of the Centre in the settlement of commercial disputes in the region of Asia and the Pacific.

Dato' Kayveas was very interested to find out in what way Alternative Dispute Resolution (ADR) could play a part in helping to resolve the backlog problem in the Malaysian courts.

The Director replied that one way was to encourage the parties to commercial transactions to resolve their disputes by arbitration at the Centre. He added that many were unaware of arbitration though the Centre had existed since 1978 and, therefore, the Centre would be going on a promotional drive to create awareness on the benefits of arbitration.

Another way was to expand the scope of statutory arbitration pursuant to section 32 of the Arbitration Act 1952 which states that:

" 32(1) This Act, except the the provisions thereof specified in subsection (2), shall apply to every arbitration under any other written law (whether, passed before or after the commencement of this Act), as if the arbitration were pursuant to an arbitration agreement and as if that other written law were an arbitration agreement, except so far as this Act is inconsistent with that other written law or with any rules or procedure authorized or recognized thereby."

According to the Director, in England, most of the disputes on small claims in UK were resolved by statutory arbitration. The position was the same in India.

Dato' Kayveas wanted the Centre to do research on statutory arbitration and to let him have a report of our research.

## **7. REPORT ON THE AUSTRALIAN PROPOSAL FOR THE ASIA-PACIFIC REGIONAL CONFERENCE ON ARBITRATION**

Professor Michael Pryles, President of the Australian Centre for International Commercial Arbitration, proposed, in his letter received by the Regional Centre for Arbitration Kuala Lumpur (RCAKL) on 16th May 2003, the formation of the Asia-Pacific Regional Conference on Arbitration. This letter was also addressed to several other arbitral institutions within the Asia Pacific region.

It was the purpose of the proposed Asia-Pacific Regional Conference to bring together arbitration centres and institutions in the Asia-Pacific Region in a formal association with the objective of *inter alia*, to promote arbitration in the Asian Oceanic Region and the writer also stated in the proposal that he envisaged the formation of the Asia-Pacific Regional Conference to undertake the following functions:

- (i) Joint promotion and training for international arbitrators and practitioners;
- (ii) Periodic conferences;
- (iii) Exchange of information;
- (iv) Mutual recognition of accreditations;
- (v) Joint publication; and
- (vi) Website links.

The Director informed H.E. Ambassador, Dr. W.Z. Kamil, Secretary General of AALCO, through his letter dated 11th June 2003 that one of the main functions of RCAKL was to promote international commercial arbitrations in the Asian and Pacific region. RCAKL had put in a great deal of efforts in carrying out its functions during the 25 years of its existence.

The AALCO' s disputes settlement scheme was unique in many ways, especially in regard to its broad-based nature in bringing within the system all activities in the field of commercial arbitration within the region whether institutional or *ad hoc*. The unique nature of the scheme, which is being applied for the first time in many parts of the world, was further evidenced by the fact that it created no vested interest in any particular institution and the broad objective which the scheme tried to promote was the provision of an adequate, inexpensive and fair procedure through which economic and commercial disputes could be settled within the region.

A high-level delegation from Australia led by the Honourable Mr. Daryl Williams, the Attorney-General of Australia, accompanied by The Honourable Sir Lawrence Street, former Chief Justice of New South Wales, His Excellency Mr. James Wise, the High Commissioner for Australia in Kuala Lumpur visited the RCAKL on 25th August 2003. During this visit, the proposal by Professor Michael Pryles, was broached by the Attorney-General.

In his letter dated 21st August 2003 to Y. Bhg. Tan Sri Ahmad Fuzi Bin Haji Abdul Razak, Secretary-General, Ministry of Foreign Affairs, Wisma Putra, the Director explained that RCAKL was established 25 years ago under the auspices of the Asian-African Legal Consultative Organisation (AALCO), an inter-governmental organization, comprising of 45 Member States from the Asian and African regions (of which Australia and New Zealand were permanent observers). The Government of Malaysia had the honour to host this Centre in Kuala Lumpur from its inception and had provided financial ; and material support for its functioning. The Centre had the status of an inter-governmental organization enjoying diplomatic privileges and : immunities accorded by the Government of Malaysia. AALCO had established three other such Regional Arbitration Centres which are located in Cairo, Lagos and Tehran, fully supported by the respective host Governments.

This Australian initiative to establish an Asia-Pacific Regional Conference on Arbitration would not only duplicate the functions which the RCAK were engaged in, but also created some confusion among the countries of the Asia-African region.

AALCO, at its 42nd Session held in Seoul in June 2003, adopted a Resolution (RES/42/ORG 3) in which, among other things, it reiterated its request to the Member States to promote and support the use of its Regional Centres.

When Professor Michael Pryles had earlier put forward this proposal for the formation of an Asia-Pacific Regional Conference on Arbitration, it was during the Fourth (4th) Symposium of International Commercial Arbitration in Asia-Oceania Region held in Tokyo in September 2003, where Malaysia was represented by Y. Bhg. Dato' Syed Ahmad Iddi, who concluded in his regional report presented at the 4th Symposium that:

"I have tried to input as much information and data as possible within this short space of time and pages. I hope readers are not thereby bored but rather that these indications of sources can lead the symposium and the ISDS (Institute for Socioeconomic Dispute Studies of Meijo University Graduate School of Law) and perhaps also Arbitration bodies in Japan (Nippon) to t probe deeper, feel the new trends, engage in dialogues with the KLRC and other centres/institutes and come up with Rules/Laws which can indeed be I helpful in all international commercial arbitration and motivate more interest Asia-Oceania wide and from other parts of the World. If we recall correctly, Nippon began to open your world to outsiders in 1867 and thus began the acceleration of your World Power base, through industrialization and economics. Your first Emperor, Jimmu, who brought together the islands in 660 BC, must surely be proud of your gains and achievements, (as are all of us here today)."

RCAKL appreciated the noble intentions of Australia, permanent observer to AALCO in the formation of the Asia-Pacific Regional Conference but the promotion and use of RCAKL would require the continued support and cooperation of the Member States of AALCO including that of AALCO's permanent observers Australia and New Zealand.

## **8. AMENDMENT TO THE RULES OF RCAKL**

On 1<sup>st</sup> August 2003, the Arbitration Rules were amended. Rule 11, as existed in August 2001, was deleted. Rule 11 stated:

"The parties and the Arbitrator agree that statements or comments whether written or oral made in the course of the arbitration proceedings shall not be relied upon to found or maintain any action for defamation, libel, slander or any related complaint."

It was felt that this Rule was not necessary as RCAKL enjoyed privileges and immunities under the International Organizations (Privileges and Immunities) Act 1992.

In order to be consistent with the policy of RCAKL being a non profit making institution, the Costs of Arbitration, stated under Appendix B, was also revised. Under the previous Rule, where the claim was more than S\$5,000,000.00, the Administrative Costs of RCAKL was up to the limit of US\$60,000.00. The amended provision under Appendix B reduced the upper limit to US\$30,000.00.

In addition to the aforementioned amendments, the existing Conciliation/Mediation Rules were also incorporated under the Arbitration Rules.

## **9. CO-OPERATION AGREEMENTS**

### **1. Co-operation Agreement between RCAKL and the Vietnam International Arbitration Centre (VIAC)**

At the Hanoi meeting on 19th March 2002 between the Director of RCAKL and Mr. Tran Hun Hunyh, the Director of the Legal Department of the Vietnam Chamber of Commerce & Industry (VCCI) and Vice-President of VIAC, it was agreed that a co-operation agreement would be concluded between RCAKL and VIAC.

The Co-operation Agreement was duly signed and came into effect on 14th January 2003.

Among the provisions incorporated into the Co-operation Agreement were:

- co-operation in popularising the institute of arbitration as a means of settling commercial disputes, and may undertake the organisation of seminars, conferences and educational programmes;
- providing each other facilities and any other step in arbitration proceedings under their auspices; and
- exchange of information, publications, materials or data of mutual interest in relation to trade and commerce in the field of commercial arbitration.

## **2. Memorandum of Understanding with the Lawyer's Committee of the Democratic People's Republic of Korea (KLC)**

In November 2003, the Director of RCAKL received a facsimile letter from the Secretary-General of the Lawyer's Committee of the Democratic People's Republic of Korea (KLC), expressing a desire to establish co operative relations with RCAKL in the field of arbitration. This was the result of the participation of delegates from DPR Korea at the Silver Jubilee Conference of RCAKL.

KLC, a governmental body which is coordinating legal matters in the field of, *inter alia*, economy, investment, intellectual property, energy, environment, arbitration and training for lawyers, in addition to establishing relations with foreign legal institutions, also submitted a draft Memorandum of Understanding for the Director's consideration.

Among the proposed provisions to be incorporated in the Memorandum of Understanding are:

- organisation of seminars, conferences and educational programmes on commercial arbitration;
- exchange of information, publications, materials or data of mutual interest in relation to trade and commerce in the field of arbitration; and
- rendering of assistance regarding any arbitral matters, including any steps in arbitration proceedings under the auspices of RCAKL.

RCAKL is studying the draft proposed by KLC and it is hoped that before long the Memorandum of Understanding will be concluded.

## **10. PROPOSAL BY THE PERMANENT COURT OF ARBITRATION IN THE HAGUE**

The Director was informed by the Government of Malaysia that in August 2003, the PCA made a proposal to the Government to set up a Regional Facility Centre in Kuala Lumpur.

A meeting to discuss the issue was held at RCAKL on 10<sup>th</sup> October 2003 between the Director and officials from the Legal Affairs Division of the Prime Minister's Department, led by its Director-General, Mr. Yaacob bin Hussin. A subsequent meeting was held at RCAKL on 30<sup>th</sup> October 2003 between the Director and officials from the Multilateral Political Division of the Ministry of Foreign Affairs, led by its Under-Secretary, Ms. Rohana Ramli.

At the second meeting, the Director was informed that PCA had since made an alternative proposal, that is, to use RCAKL as a liaison office. The proposal is currently being negotiated between the Government of Malaysia and the PCA.

In any event, if the proposal is not agreeable to both parties, a co-operation agreement between RCAKL and PCA can be concluded. Indeed, during his visit to RCAKL on 17 July 2002, Mr. Tjaco T. Van den Hout, the Secretary-General of the PCA, did suggest to the Director that PCA and RCAKL should consider entering into a co-operation agreement.

## **11. MEETING OF WORKING GROUP II (ARBITRATION), UNCITRAL**

The Director attended the 39th Session of the meeting of Working Group II of UNCITRAL in Vienna from 10 to 14 November 2003.

At the meeting, the Working Group discussed a "Revised draft of article 17 of the UNCITRAL Model Law on International Commercial Arbitration regarding the power of an arbitral tribunal to grant interim measures of protection" .

There were lengthy discussions on paragraph (7)(b )(i) of the Revised Draft which states:

"Be liable for any costs and damages caused by the measure to the party [against whom it is directed] [affected by the measure] [to the extent appropriate, taking into account all of the circumstances of the case, in light of the final disposition of the claims on the merits]".

Discussions will continue at the next meeting of the Working Group in New York in February 2004.

## **12. STUDY VISIT TO RCAKL BY LAW STUDENTS**

Sixteen first-year law students from Taylor's College in Subang Jaya visited RCAKL on 4th July 2003. The object of the visit was to introduce the students to Alternative Dispute Resolutions.

During the visit, a briefing was given by the Director, who spoke on the historical background of RCAKL, its status and functions and the procedural rules of arbitration administered under the auspices of RCAKL

## **13. VISITORS TO RCAKL**

During the year 2003, RCAKL had many visitors, both from within Malaysia, as well as from overseas:

### ***27th February 2003***

Professor Douglas S. Jones, a partner with Clayton Utz, a law firm in Australia.

### ***4th April 2003***

Professor Yashei Taniguchi, a member of the International Council of Arbitrators.

### ***22nd April 2003***

Dato' Kevin Woo from K.W. Associates Architects Sdn. Bhd.

### ***22nd May 2003***

Dato'Cheah Kong Wai, the Director-General of the Maritime Institute of Malaysia (MIMA).

### ***23rd May 2003***

Dr. Colin Y.C. Ong, the Principal Legal Consultant of the ASEAN Centre for Energy, Jakarta.

***26th June 2003***

Office bearers of the Chartered Institute of Arbitrators (Malaysia) led by its Chairman, Dato' Cecil W.M. Abraham.

***18th August 2003***

The Hon. Senator Datuk M. Kayveas, Deputy Minister at the Prime Minister's Department. [*Please refer to Pg: 15 J.*]

***25th August 2003***

The Hon. Mr. Daryl Williams, the Attorney-General of Australia, accompanied by the Hon. Sir Lawrence Street, former Chief Justice of New South Wales, H.E. Mr. James Wise, the High Commissioner for Australia, Mr. Simon Merrifield from the Political and Economic Section of the Australian High Commission, Ms Rachel Da Costa, Adviser to the Attorney General of Australia and Mr. Ian Northworthy, visited RCAKL. They had a general discussion with the Director. [*Please refer to pg: 16-18*].

***8th September 2003***

Mr. David Grief, the Senior Clerk of the Essex Court Chambers, United Kingdom.

***12th September 2003***

Mr. Tomas Kennedy Grant from Auckland, New Zealand.

***4th December 2003***

Mr. Christopher Gardner, QC, from Lamb Chambers, Inner Temple, London.

***15th December 2003***

Mr. Hugh McDermott, Counsel for the International Trade (South Asia/Pacific) of the England and Wales Law Society and Ms Sylun Ali, the International Executive Assistant (South Asia/Pacific) of the Law Society. They were accompanied by Mr. Steven Green, the Deputy Director for Trade and Investment of the British High Commission.

### III. REPORT ON THE ACTIVITIES OF THE REGIONAL CENTRE FOR INTERNATIONAL COMMERCIAL ARBITRATION, CAIRO (CRCICA)

#### BRIEF PROGRESS REPORT 2003-2004

In 2003/2004, there has been a symbolic correlation between CRCICA's celebration of its 25<sup>th</sup> anniversary and the significant progress in its workload. The present report is meant to shed light on the main aspects of the Cairo Centre's activities during 2003/2004 in case administration, international events, training and external relations.

#### □ Case Report

The total number of international arbitration cases filed before the CRCICA reaches **385** international cases. It is notable that case referrals increased in 2003 by 35% than 2002. In the first quarter of 2004 and a bit beyond, 15 international cases were filed before the Centre.

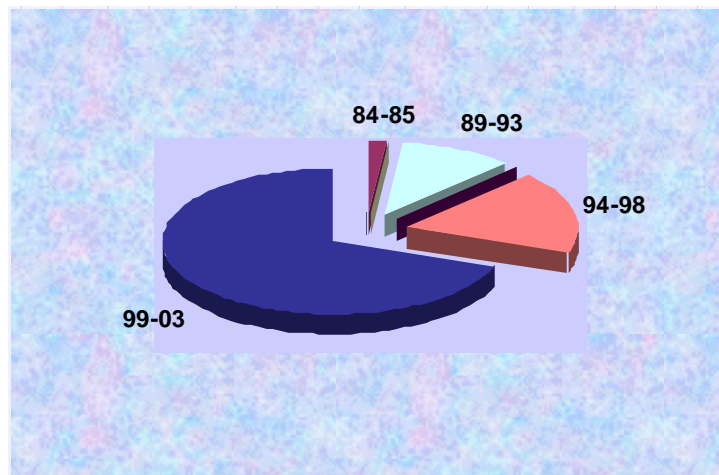


Illustration of the increase in case referrals since 1984 till 2003

Generally speaking, construction arbitration still ranks top among the types of arbitrations administered by the Cairo Centre. Other types of cases submitted to the Centre in 2003/2004 are related to media communications, rental contracts, hotel management, software contracts, oil contracts, insurance contracts, credit risk management contracts, intellectual property rights, distribution, investment and services agreements.

In 2003/2004, beside multinational corporations, parties to CRCICA arbitration proceedings have been business entities from a broad span of countries, including Egypt, Lebanon, Jordan, Saudi Arabia, the United States, Korea, Austria, Belgium, Germany, France, England, Switzerland, Spain and Romania. This variety in parties' nationalities is normally correlated by a similar variety in arbitrators'. In 2003/2004, CRCICA arbitral tribunals have been composed of different

nationalities from Egypt, Jordan, United Arab Emirates, Ireland, Italy, Spain, Switzerland, France, the United Kingdom and others.

In 2003/2004 CRCICA Construction Arbitrations, it has been obviously recurrent that arbitrators tend to employ some features of case management<sup>6</sup> in the proceedings to achieve both economy and expediency taking into consideration the complexities construction-related arbitrations usually involve. The most popular among these features is the Scott Schedule<sup>7</sup> which is generally prepared after the first exchange of evidence to assist both the parties and the tribunal in various ways, including the ability to focus on the issues involved and the relevant strengths and weaknesses of each party's case. Furthermore, it helps to identify points which are not in disputes or which are irrelevant and in turn it exposes the points which have to be decided.

The administrative flexibility that underlies the whole CRCICA Rules and Procedures actually invites the use and adoption of the different case management techniques as seen useful and appropriate. Article 15 leaves it up to "*the arbitral tribunal ( to ) conduct the arbitration as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case*"

#### □ **CRCICA Events**

Looking at the CRCICA Calendar of Events<sup>8</sup>, one can easily pattern out how CRCICA has grown to be a regional gateway for the works of various economically and legally influential international organizations. The World Trade Organization (WTO) chooses Cairo as a strategic springboard to air a message about its dispute settlement system in the only one of its kind celebratory conference in the region scheduled to be held on 19-20 November 2005 on the occasion of the 10<sup>th</sup> anniversary of the establishment of the WTO Appellate Body. Similarly, CRCICA will host two regional events of the United Nations Commission on International Trade Law (UNCITRAL) on the occasion of the 25<sup>th</sup> anniversary of the United Nations Convention on Contracts for the International Sale of Goods and the 20<sup>th</sup> anniversary of the UNCITRAL Model Law on International Commercial Arbitration. The Calendar also features pan-regional events ; on 18 – 19 December 2004, CRCICA will hold the Arbitration Colloquium for Northern African States jointly with King's College – University of London.

It is also quite clear that CRCICA is increasingly being chosen to be the seat of various international arbitration and commercial law regional establishments. In 2003/2004, CRCICA has been hosting and administrating the events of the Arab Union of

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<sup>6</sup> For more details about case management in construction arbitrations, see Dr. Nael Bunni, "Pre Hearing Case Management in Construction Arbitrations", Newsletter of the Cairo Regional Centre for International Commercial Arbitration, January 2004.

<sup>7</sup> A Scott Schedule is a working document prepared by both parties in the form of a schedule composed of a number of columns, usually compiled first by the claimant. It defines the positions of the parties with reference to their pleadings and records quite briefly the essential elements of each party's case.

<sup>8</sup> For Past 2003/2004 Events, see appendix (1) . For Future 2004/2005 Events, see appendix (2).

International Arbitration (AUIA), the Cairo Branch of the Chartered Institute of Arbitrators (CI Arb) and the Middle East Development Law Institute (MEDLI), the three of which are located at the CRCICA Offices .

While CRCICA is proceeding ahead in holding annual / biennial events in its international serialized conferences on the World Trade Organization Agreements (20-22 December 2003 ), E-Commerce (17-18 January 2004) , International Procurement (11-12 December 2004), International Energy Law (September 2004), it has introduced new topics and launched accordingly fresh series of conferences in 2003/2004 and will continue to feature them in 2005 and beyond. In this concern, CRCICA held its first international conference on Banking Risk Management and Dispute Settlement on 6 –8 December 2003 jointly with the World Bank, The Central Bank of Egypt and the International Financial Law Unit of the Centre for Commercial Law Studies – University of London. The banking series of conferences was launched to respond to the current regional and local controversies about the ideal supervisory and regulatory frameworks of Banks.

One more outstanding feature of CRCICA 2003/2004 Calendar of Events is the renovation of approach towards previously-handled topics. In the nineties, CRCICA held four international conferences on the effect of the European Union on the Arab Countries. By holding the fourth conference in 1996, it was obvious that the EU-Arab relations had curved up towards bilateral partnership agreements. By that time, it was still a little bit early to expose the different aspects of the partnership experience. CRCICA therefore stopped its Euro-Arab series of conferences some couples of years and monitored therein all developments and significant occurrences. Now, that many Arab countries entered into partnership agreements with the European Union especially the Host Country, it turns to be just timely to resume holding the Euro-Arab conferences dressed into a new garment, being the partnership agreements. Within the bounds of this, an international conference on the Euro-Arab Partnership Agreements will be held on 28-29 June 2004 at the Arab League jointly with the Egyptian-European Council, the Arab Investment Union and the Arab League.

Bilateral events are also an important mark of the 2003/2004 Calendar ; having concluded a historic cooperation agreement with the Chamber of National and International Arbitration of Milan ( CAM )<sup>9</sup> , CRCICA held and will be holding three important promotional seminars in Cairo and Milan about: “ *International Commercial Arbitration .. the Egyptian-Italian Perspective*”. CRCICA/CAM Partnership is seen highly instrumental in encouraging cross-investment in Egypt and Italy.

Educational programs have a very special portion in CRCICA future plans, in the summer of 2004, the Cairo Centre will hold a ten-day international arbitration Diploma jointly with the School of Arbitration (SIA) of Queen Mary – University of London. The Diploma will be the first of its kind in the region and will witness the contribution of international professors of arbitration as topped by Professor Julian DM Lew, the SIA Director and Prof. Loukas Mistelis, SIA Courses Director.

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<sup>9</sup> See below : Key 2003 Cooperation Agreement : CRCICA/CAM .. Boosting Forth Egyptian-Italian Cooperation.

CRCICA 2003/early 2004 Conferences were attended by participants from Egypt, Sudan, Lybia, Saudi Arabia, Kuwait, Lebanon, Syria, Jordan, Yemen, Qatar, Oman, Palestine, Bahrain, Iraq, Tunisia and Morocco. Also, Pakistan, France and England.

## **CRCICA ...**

### **Celebrating its 25<sup>th</sup> anniversary**

*As the CRCICA celebrates its Silver Jubilee, I look back with pride and satisfaction to the long and challenging way we passed by, having struggled through many hardships, reluctances and hostilities to seed the kernel of arbitration into a soil that had not by then attained fertility. Over many years and amidst many difficulties, the embryo grows into maturity, and now the matured is well through its third decade.*

***Mohamed Aboul-Enein***

On 20 January 2004, by the side of the River Nile, CRCICA celebrated its 25<sup>th</sup> anniversary. The Celebration was attended by key figures from Egypt, some Arab countries and international institutions, some of them are :H.E. Farouk Seif Al Nasr, Egyptian Minister of Justice ; Dr. Esmat Abdul-Meguid, Ex-Secretary General of the Arab League ; Dr. Abdul-Hamid Al Ahdab, President of the Arab Arbitration Association, Paris-France ; Dr. Hamza Haddad, Ex-Jordanian Minister of Justice, Director of the Law and Arbitration Centre ; Mr. Shaher Al Salhy, Secretary-General of the Yemeni Arbitration Centre ; Mr. Mark Appel, Vice President of the American Arbitration Association.

During the celebration, CRCICA Director presented medals of honor to some key figures for having boosted forth the works of the Cairo Centre : H.E. Farouk Seif El Nasr ; Dr. Esmat Abdul-Meguid ; the name of Coun. Mamdouh Attia, Late Egyptian Minister of Justice ; the name of Dr. Mohsen Shafik, father of commercial law in Egypt ; the name of Mr. Michael Hoellering, Late President of the International Federation of Commercial Arbitration Institutions (IFCAI) and General Counsel of the American Arbitration Association (AAA) .

### **Key 2003 Cooperation Agreement:**

#### **CRCICA/CAM**

#### **Boosting Forth Egyptian-Italian Cooperation**

On December the 16<sup>th</sup>, 2003, the Cairo Centre and the Chamber of National and International Arbitration of Milan ( CAM ) entered into a cooperation agreement to formalize the provision of joint arbitration services to parties involved in Egyptian-Italian trade and investment transactions. The Agreement was concluded on the sidelines of the Italian-Egyptian Investment Forum held under the auspices of the Egyptian Prime Minister, H.E. Dr. Atef Ebeid and organized by the United Nations Industrial Development Organization ( UNIDO ) and the Egyptian General Authority for Investment and Free Zones. Being concluded under the auspices of the Commercial Representation of the Egyptian Ministry of Foreign Trade and the Italian Embassy in Egypt, the Agreement came to be a materialization of the Egyptian-Italian Governmental Action Plan 2003-2004 signed by the two Governments and bearing the following recommendation:

*“In order to facilitate dispute settlements, the two parties ( the Egyptian and Italian Governments ) welcome a possible understanding between Cairo Centre for International Commercial Arbitration and the Chamber of Commercial Arbitration in Milan”*

Within the bounds of this, CRCICA and CAM agreed to hold a series of promotional seminars in Cairo and Milan through 2003/2004 to introduce their services and the scope of the cooperation agreement. The first one was held immediately after signing the Agreement on December the 16<sup>th</sup> and two others are planned for 2004, one in June in Cairo and another in September in Milan.

### **CRCICA in 2003/2004 :**

#### **A Significant Contributor in the Global Research Centre’s Activities**

Since the establishment of the Global Centre for Dispute Resolution Research in 1999, CRCICA has been part and parcel of all its activities for having its Director as the only member of the Board from the whole Afro-Asian Region. In 2003/2004, among some selected institutions all over the world, CRCICA has provided guidance to the International Law Institute which carries out a research for the Global Centre on *“critical factors in the establishment of a viable arbitration regime”*.

On April 22 and 23, 2004, the CRCICA Director contributed to the Global Centre’s Conference on the **“Implications for the Future of International Commercial Arbitration”**, which was held in the Hague, the Netherlands. In a prestigious panel discussion<sup>10</sup>, CRCICA took part in the conclusive session of the Conference entitled *“What will the Future Bring ?”* in which contributors discussed the future of international commercial arbitration against the background of some suggested amendments of the UNCITRAL Model Arbitration Rules<sup>11</sup>.

In Phase-One Report on its international research on the viability of international commercial arbitration, the Global Centre for Dispute Resolution Research certifies:

**CRCICA : “a highly professional arbitration institution...”**

Phase-One Report of the above mentioned research was announced at the Hague Conference including initial impressions of the arbitration regimes in nine countries including Egypt. Within this context, it was seen that *“In Egypt: There is a highly*

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<sup>10</sup> Other Panelists were : Mr. Jernej Sekolec, Secretary, United Nations Commission on International Trade Law (Chairman), Mr. William K. Slate II, President & CEO, American Arbitration Association, Mr. Tjaco van den Hout, Secretary General, Permanent Court of Arbitration, Ms. Anne Marie Whitesell, Secretary General, International Chamber of Commerce, International Court of Arbitration and Mr. Adrian Winstanley, Director-General and Registrar, London Court of International Arbitration.

<sup>11</sup> All Conference Proceedings will be soon available online through the Global Centre’s website: [www.globalcenteradr.org](http://www.globalcenteradr.org)

*professional arbitration institution, which handles a significant number of cases, including some involving international disputes.”*

<b>Appendix (1)</b>		
<b>2003/Past 2004 Events *</b>		
Date	Event	Other/Main Organizers
26-30 January 2003	International Arbitration Training Program	Middle East Development Law Institute (MEDLI)
19 April 2003	Construction Arbitration Seminar	The Cairo Branch of the Chartered Institute of Arbitrators
6-8 December 2003	First International Conference on: “Banking Risk Management, Restructuring and Settlement of Relevant Disputes”	The World The Central Bank of Egypt International Financial Law Unit of the Centre for Commercial Law Studies – Queen Mary / University of London
20-22 December 2003	The Fifth WTO Conference entitled: Beyond Cancun 2003 : “The Trade Future of Developing Countries at the Crossroads”	Egyptian Ministry of Foreign Affairs The Arab League WTO
16 December 2003	1 <sup>st</sup> CRCICA/CAM Arbitration Seminar	Chamber of National and International Arbitration of Milan (CAM )
17 – 18 January 2004	The Third International E-Commerce Conference	United Nations Commission on International Trade Law (UNCITRAL) The Egyptian Ministry of Communication and Information The Arab League
19 January 2004	Third Arab Judicial Colloquium	UNCITRAL The Arab League
6-9 March 2004	Arbitration Training programs leading to the Membership of the Chartered Institute of Arbitrators (CI Arb )	The Chartered Institute of Arbitrators (CI Arb) London – England
7 March 2004	Seminar on : New Trends in Construction Arbitration	As above

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Some dates are still tentative

## Appendix (2)

### Future Events

27 June 2004	Egyptian-Italian Arbitration Seminar and Workshop	Milan Chamber of National and International Arbitration
28-29 June 2004	International Conference on: European-Arab Partnership Agreements	The Egyptian-European Council The Arab League Arab Investors Federation
29 May – 2 June 2004	MEDLI WTO Course	Middle East Development Law Institute ( MEDLI )
29 May – 9 June 2004	MEDLI Procurement Course	As above
1-3 July 2004	The Fifth Biennial Conference of the Arab Union of International Arbitration ( Rabat-Morocco )	The Arab Union of International Arbitration (AUIA) Morocco Arbitration and Conciliation Centre
Undated Summer 2004	International Arbitration Diploma	The School of International Arbitration (SIA) – Queen Mary – University of London
1-2 September 2004	CIArb Entry Course leading to the Associate membership of the Chartered Institute of Arbitrators	The Cairo Branch of the Chartered Institute of Arbitrators
11-12 September 2004	The Fifth International Conference on International Energy Law and Practice	Egyptian Ministry of Petroleum The World Bank
11-12 December 2004	The Fifth International Procurement Conference	UNCITRAL World Bank
18-19 December 2004	The Arbitration Colloquium for Northern African States	King's College – University of London
13-14 January 2005	Second International Conference on Banking Risk Management and Dispute Settlement	The World The Central Bank of Egypt International Financial Law Unit of the Centre for Commercial Law Studies – Queen Mary / University of London
Undated mid-2005	Two UNCITRAL Conferences on the Convention on Contracts for the International Sale of Goods and the Arbitration Model Law	UNCITRAL Permanent Court of Arbitration ( PCA )
19-29 November 2005	A Celebratory International Conference on the WTO Dispute Settlement System	WTO Appellate Body

### **III. REPORT ON THE ACTIVITIES OF THE REGIONAL ARBITRATION CENTRE, TEHRAN (TRAC) FOR THE YEAR 2003 AND THE FORESEEN PLANS FOR THE YEAR 2004**

#### **Introduction**

This Report has been prepared by the Tehran Regional Arbitration Centre (hereinafter TRAC) for submission to the 43rd Session of the Asian African Legal Consultative Organization (AALCO), which will take place in Bali (Indonesia) from 21 to 25 June 2004.

It contains a short description of activities undertaken by the TRAC during 2003 and planned activities in 2004.

#### **I – Activities in 2003**

##### **A - Establishment of the TRAC**

Following the approval of the “Agreement between the Government of the Islamic Republic of Iran and the Asian-African Legal Consultative Committee on the Establishment of a Regional Center for Arbitration in Tehran” signed on 3 May 1997 (hereinafter the Agreement), by the Iranian Parliament and thereafter by the Expediency Council, the constitutional procedure for the ratification of the Agreement by the Islamic Republic of Iran was completed in June 2003 and on 20 Khordad 1382 (10 June 2003) the President of the Islamic Republic of Iran notified the said Agreement for implementation.

The Agreement has been published in the Official Gazette of the Islamic Republic of Iran on 18 June 2003.

Thereafter, with due regard to Article 5 of the Agreement, and following consultation between the Legal Adviser to the President of the Islamic Republic of and the President of the AALCO, Dr. Moshkan Mashkour was appointed on 22 July 2003 as Director of the TRAC.

Dr. Mashkour is a member of the Permanent Court of Arbitration (The Hague) and has in excess of 20 years of in-depth experience in the settlement of international disputes for being directly involved in a great number of major international *ad hoc* and institutional arbitrations.

##### **B – Arrangements for Premises and Financial Assistance**

In Article 5.2 of the Agreement concerning the establishment of the TRAC, the Government of the Islamic Republic of Iran has undertaken to provide premises as well as an annual grant for the functioning of the TRAC until it becomes financially independent.

Early after the appointment of the Director, the TRAC requested and obtained temporary office facilities from the Bureau of International Services of the Islamic Republic of Iran, comprised of three offices in a suitably located building in central Tehran. The TRAC has also been offered the use of existing secretarial staff and equipment including computers and international telecommunication links.

The TRAC has also liaised with Iranian authorities and, in particular, with the Management and Planification Organization, for the allocation of independent offices and an initial grant of one billion Iranian Rials.

### **C - Organizational Chart**

In early October 2003, the Organizational Chart of the TRAC was finalized. This Chart is enclosed as Annex "A".

The TRAC will be administered by the Director who will be assisted in this task by a Secretary General. The Secretary General will act as the head of the Secretariat. The Secretariat will be in charge of the implementation of the Arbitration Rules and will provide assistance to parties and arbitrators for the proper conduct of arbitration proceedings.

In order to reinforce the independence of the TRAC, the Director will be assisted for the most important tasks that will be attributed to him by the Arbitration Rules, such as the appointment, challenge and replacement of arbitrators, by an Advisory Board. The Advisory Board will comprise a number of eminent personalities with well-established experience in international arbitration. Members of the Advisory Board will be selected in consultation with the President of the AALCO from both member and non-member countries.

### **D - Drafting the Arbitration Rules**

Arbitration proceedings administered by the TRAC shall be governed by the Arbitration Rules. A draft of the Arbitration Rules has been prepared in October 2003 and circulated amongst experienced international lawyers.

The draft has been prepared on the basis of UNCITRAL arbitration rules. However, some of the UNCITRAL rules, which had been drafted initially for *ad-hoc* arbitrations, have been modified in the Draft to take into consideration the institutional character of arbitrations which shall be conducted under the auspices of the TRAC. Furthermore, certain modifications have also been introduced in the Draft Arbitration Rules in compliance with recent developments in the field of international arbitration.

Between October and December 2003 five sessions have been held with lawyers and legal scholars in order to finalize the Arbitration Rules.

### **E - Promotion of the TRAC**

The Director held various meetings from September to December 2003 with Iranian and Foreign lawyers to introduce the TRAC. The goal of these meetings was to explain and underline the advantages of settlement of disputes through arbitration and the independence of the TRAC from the Iranian Government and other Member Countries of the AALCO.

The Director also held several meetings with the legal departments of the National Iranian Oil Company (NIOC), the Ministry of Defence and Support for Armed Forces of

the Islamic Republic of Iran, the Ministry of Economic Affairs and Finance, as well as local and foreign private companies.

As a result of these meetings and other promotional activities, the Iranian Ministry of Economic Affairs and Finance has inserted a TRAC arbitration clause in its draft letters of guarantee. Several other parties have also agreed to refer disputes arising from their contracts to arbitration under the auspices of the TRAC. This includes one major gas export contract

## **II – Foreseen Plans for 2004**

### **A - Arrangements for Premises and Financial Assistance**

During January to April 2004, the Director continued to liaise with Iranian Authorities for allocation of suitable independent offices and payment of the grant needed for the functioning of the TRAC. As a result, H. E. Mohammad Khatami, President of the Islamic Republic of Iran, has ordered the Management and Planification Organization to make necessary budgetary arrangements. The Director will pursue his efforts in this respect.

In the meantime, the TRAC continues to use the temporary office facilities provided by the Bureau of International Services of the Islamic Republic of Iran and would like to express its gratitude in this respect.

### **B – Finalization of the Arbitrations Rules**

The Director has pursued meetings in 2004 with lawyers and professors of law in view of finalizing the Arbitration Rules. A good amount of progress has been made during these sessions and it is expected that the Arbitration Rules shall be submitted for approval to the President of the AALCO by the end of May 2004.

### **C- Promotional Activities**

The promotional activities continue in 2004. Regular meetings are scheduled with Iranian and foreign lawyers, as well as people in charge of the legal departments of both Iranian and foreign companies, in order to further explain the advantages of settlement of disputes under the auspices of the TRAC.

Arrangements have already been made with the National Iranian Oil Company, the Ministry of Defence and Support for Armed Forces of the Islamic Republic of Iran, as well as major Iranian banks, for organizing workshops on different aspects of international commercial arbitration.

It should also be noted that plans are well under way for holding an international conference in order to introduce the TRAC and its activities.

### **D – Completing the TRAC personnel/members**

The Director is currently in the process of consulting various authorities in order to find suitable candidates for the different administrative and advisory posts of the TRAC.