

Special Address by H.E. Prof. Dr. Kennedy Gastorn, Secretary General, AALCO

[Signing Ceremony between Government of Malaysia and Asian-African Legal Consultative Organization (AALCO), 7th February 2018, Wednesday, Auditorium, Bangunan Sulaiman, Kuala Lumpur]

- YB Dato' Sri Azalina binti Dato' Othman Said, Minister in the Prime Minister's Department in charge of Legal Affairs;
 - Ybhg. Tan Sri Dato' Sri Haji Mohamed Apandi bin Haji Ali, Attorney General of Malaysia and Chairman of the Advisory Board of KLRCA;
 - Former Chief Justice Rt. Hon. Tun Arifin Bin Zakaria;
 - Datuk Professor Sundra Rajoo, Director of KLRCA;
 - Datuk Professor Rahmat Mohamad, Former Secretary General, AALCO;
 - Distinguished officials, dignitaries, guests, participants, ladies and gentlemen,
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I. Introduction

It is my immense pleasure and privilege to deliver the special address to this august gathering of dignitaries on the momentous occasion of the Signing Ceremony of the Supplementary Agreement to the the Host Country Agreement between the Government of Malaysia and AALCO.

We are here today to celebrate the decision of the government of Malaysia, as the host country, to elevate KLRCA's status as a global Alternative Dispute Resolution (ADR) hub, especially in regards to its historic name change to from Kuala Lumpur Regional Centre for Arbitration (KLRCA) to Asian International Arbitration Centre (AIAC).

In this era of globalization, the world is increasingly interconnected and "flattened".¹The gallop of international cross-border transactions and commerce has beseeched, recognized and confirmed the benefits of ADR in general.

The contemporary problems and disputes solicit increasingly specialized attention, and underline the need for confidentiality, flexibility and global enforceability. Therefore, ADR mechanisms like arbitration, which pay heed to party autonomy and have subject experts in the panel, are gaining immense prominence and popularity. In fact, the demand for ADR services in Asia especially, has led to the revitalization and reform of KLRCA which has continued to innovate its rules on arbitration and ADR.

International arbitration and ADR have catered to the rule of law over the years, such extra-judicial methods having been practised since antiquity. Structural and formal codification of such methods in order to tackle more complex disputes over time is what we loosely refer to as ADR today.²

Significantly, one of the definitions of ADR has depicted the same as

"...a broad spectrum of structured processes, including mediation and conciliation, which does not include litigation though it may be linked to or integrated with litigation, and which involves the assistance of a neutral third party which enables parties to resolve their disputes."³

The word "arbitration" is conspicuously absent in this definition of ADR. However, despite views suggesting otherwise,⁴ ADR has conventionally been treated as not excluding

¹The author, Friedman, has drawn on his travels to India, China and Middle East, and on the explosion of technologies, to show how knowledge and resources are connecting all over the planet as never before. Thomas L. Friedman, *The World is Flat: The Globalized World in the Twenty-first Century* (2006, Penguin Books Ltd., England) 5.

²Sundra Rajoo, "Overview of ADR in Malaysia" in Tun Arifin Zakaria, Sundra Rajoo and Philip Koh (eds.), *Arbitration in Malaysia- A Practical Guide* (2017, Sweet and Maxwell, Thomson Reuters Malaysia) 1-22, 2.

³Law Reform Commission, *Consultation Paper on Alternative Dispute Resolution 50* (2008, Ireland), 2.12 at http://www.lawreform.ie/_fileupload/consultation%20papers/cpADR.pdf.

⁴"Arbitration is closer to litigation and part of mainstream practice, leaving the term ADR to refer to mainly consensual rather than to adjudicating processes." Brown and Marriott, *ADR Principles and Practice* (1999, Sweet and Maxwell, London) 9; "We can and should discard any further suggestion that ADR is to be

arbitration. The scope of the term ADR, as defined by Datuk Professor Sundra Rajoo, can appropriately be quoted in this context:

“The broad term ADR comprises an entire array of dispute resolution forms, such as arbitration, mediation, conciliation, adjudication, settlement conferences and neutral evaluation which stands parallel to the judicial processes also known as litigation.”⁵

Thus, ADR focuses on consensus building and the non-antagonistic resolution of disputes, and pays obeisance to active participation and principle of mutuality and reconciliation. The non-invasive and private nature of ADR allows for preservation and continuity of business relationships.⁶ ADR promotes culture of compromise and results in a peaceful and acceptable settlement of the dispute and should greatly be preferred to adversarial litigation in court or before an arbitral tribunal.⁷

Arbitral tribunals often have several advantages over judicial settlement bodies, as summed up commendably by Shaw:⁸

“Arbitration is an extremely useful process where some technical expertise is required, or where greater flexibility than is available before the International Court is desired. Speed may also be a relevant consideration... the establishment of arbitral tribunals has often been undertaken in order to deal relatively quietly and cheaply with a series of problems within certain categories...”

One of the major achievements of the Asian-African Legal Consultative Organization (AALCO), in its programme in the economic field, has been the launching of its Integrated Scheme for Settlement of Disputes in the Economic and Commercial Transactions in 1978. Realization had dawned on AALCO, during its Thirteenth Annual Session held in Lagos (Nigeria) in 1973, about the significance and need of conducting an independent study on some of the important practical problems relating to International Commercial Arbitration from the point of view of the Asian-African region.

understood as including arbitration.” Laurence Street, “Languages of Alternative Dispute Resolution”, 1992 *Alternative Law Journal* 145.

⁵*Supra* note 2.

⁶*Ibid.*

⁷ F.S. Nariman, “Redefining the Landscape of ADR in Asian Jurisdiction”, *Kuala Lumpur International ADR Week*, 15 May 2017, 27.

⁸M Shaw, *International Law*, 5th edn (2003, Cambridge University Press) 958- 959.

Thus, acknowledging the importance of arbitration as a device to settle International Commercial disputes, AALCO had aspired to cater to two basic objectives. *Firstly*, 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 where the investment made or the place of performance under an international transaction was a country within this region.

II. Vision and Leadership of KLRCA: A Story of Success

Pursuant to the Integrated Scheme for Settlement of Disputes in the Economic and Commercial Transactions, it was decided to establish Regional Arbitration Centres under the auspices of AALCO. The first AALCO Regional Centre for Arbitration to be established was the one at Kuala Lumpur. The centre was formally inaugurated by the then Rt. Hon'ble Tun Hussein Onn, Prime Minister of Malaysia on 17 October 1978. It is still considered as an important landmark in the movement for promoting Asian-African solidarity in international legal matters and economic relations.

Before the emergence of new ADR fora and the diversification of the existing centres in Asia and Africa, the fora for ADR had primarily been concentrated in certain main European cities. Whilst Asian and African economies continued their dynamic growth, their importance as a key engine in the global economy continued to expand. With their economic development largely driven by cross-border trade and investment, the prospects of an increasing number of disputes became inevitable and the need to make institutional arbitration available and easily accessible became more pronounced than ever.⁹ Therefore, with the objective of establishing 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 peacefully under fair, inexpensive and adequate procedures, AALCO launched the aforementioned Integrated Scheme, in pursuance of which the first regional centres, *viz.*, the Kuala Lumpur Regional Centre for Arbitration (KLRCA) and the Cairo Regional Centre for International Commercial Arbitration (CRCICA) were born in 1978 and

⁹Mohamed Abdel Raouf, "Emergence of New Arbitral Centres in Asia and Africa: Competition, Cooperation and Contribution to the Rule of Law" in Stavros Brekoulakis *et. al.* (eds.), *The Evolution and Future of International Arbitration* (2016, Kluwer Law International, The Netherlands) 322-323.

1979 respectively to function as international institutions with the objectives of promoting international commercial arbitration in the Asian-African regions and providing for the conduct of international arbitrations under the auspices of such centres. It was envisaged that these two Arbitration Centres would function to coordinate and assist the activities of existing arbitral institutions, particularly among those within the two regions; to render assistance in the conduct of Ad Hoc arbitrations, particularly those held under the UNCITRAL Arbitration Rules; and to assist the enforcement of arbitral awards. The success of these two centres spearheaded the establishment of three more centres in Lagos (Nigeria), Tehran (Islamic Republic of Iran) and Nairobi (Kenya) in 1989, 1997 and 2016 respectively.

In current times, the practices of ADR are “increasingly displacing, infiltrating and transforming conventional methods of legal dispute resolution”¹⁰ as the highly diverse and largely innovative field of ADR is gaining unprecedented acceptance. The KLRCA, initially established for a period of three years by a formal exchange of letters between the Malaysian Government and the then AALCC, was thereafter formally inaugurated in 1978. Subsequently, an agreement was signed between the Government of Malaysia and the then AALCC relating to the Regional Centre for Arbitration in Kuala Lumpur on 29 July 1981, and a Headquarters Agreement was signed in 1989 for the Centre. In order to formalize the continued functioning of the KLRCA, with effect from 1 January 1992, an Agreement between AALCO and the Government of Malaysia relating to the Regional Centre for Arbitration in Kuala Lumpur was signed on 14 February 2004. Thus, The KLRCA owes its origin and sustenance to the continued support of the Malaysian Government. AALCO is immensely appreciative of this and salutes such continued support.

KLRCA, a non-profit, non-governmental arbitral institution, 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. 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

¹⁰*Supra* note 2.

property in the arena of Information and Communications Technology, also administers 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.

Having thus traversed through the scheme of functioning of the KLRCA in brief, it would now be apt to take stock of the workings of the Centre in recent times. KLRCA has developed new rules to cater to the growing demands of the global business community such as the KLRCA i-Arbitration Rules, the KLRCA Fast Track Rules as well as the Mediation and Conciliation Rules. There has been tremendous interest in the i-Arbitration Rules and this is evident with KLRCA winning the prestigious Global Arbitration Review Award for “Innovation by an Individual or Organisation in 2012”. The sustained growth of the KLRCA since 2010 has further been strengthened in 2016. Other than its core activity of handling an administering ADR cases, KLRCA is tasked with the mission of promoting and building capacity in the area of ADR. This includes organising reputable and timely events to educate and create awareness amongst the public on the area of ADR.

A grand total of 54 events were held throughout the year. Among them 15 talks were organized under the KLRCA Talk Series held at the centre. It is a free forum that is meant to be informative to all those who are interested in arbitration and ADR.

In its continued effort to make the KLRCA a world class ADR hub, KLRCA hosted its first KLRCA International Investments Arbitration Conference which was also the biggest of its kind in Asia. The year 2016 also saw the first ever KLRCA Certificate Programme in Sports Arbitration with 52 candidates sitting for the four day course. In furtherance to this, KLRCA-SLAM (Sports Law Association of Malaysia- Pro Tem) sports law conference was organized in December 2016.

Other training programmes such as KLRCA- CIArb Mediation Programme and the KLRCA Summer Academy on International Investment Law and Dispute Settlement were organized as part of the KLRCA’s continuous endeavour in capacity building. 2016 also saw many new initiatives take-off such as the KLRCA Young Practitioners Group and the Pilot Project in Construction Mediation. Many of these initiatives will be ongoing in the year 2017 as the KLRCA continues to brand itself as a worldwide hub for alternative dispute resolution.

I take immense pride in this success of the KLRCA and congratulate Datuk Professor Sundra Rajoo and his team for making us proud.

III. The Road Ahead of Us Under the New Name

To quote William Shakespeare in *Romeo and Juliet* - Juliet asked “*What’s in a name? that which we call a rose/ By any other name would smell as sweet.*”¹¹

Therefore, KLRCA would undeniably “retain that dear perfection”,¹² as manifest in its story of success. However, we understand that the name change is a part of rebranding initiatives as KLRCA now functions beyond its regional scope at an international level. This phenomenal progress should be sustained to enhance its capacity beyond its horizon. The emergence of the Centre as a global ADR hub solicits acknowledgement of its “international” character. The fact that the Centre has ventured into domains of ADR other than arbitration as well and has made a mark as a stalwart in ADR in the Asian region, calls for applause and recognition.

The change of name is in appreciation of the elevation of status of the Centre from a *centre of arbitration* to a *full-fledged ADR hub* of global repute and to credit its contributions in the field of ADR.

In view of the vision and achievements of KLRCA, I hope that the Centre continues to provide institutional support as a neutral and independent venue for the conduct of domestic and international arbitration proceedings in the Asian region. The capacity building programmes undertaken by the KLRCA have been exemplary.

I extend my best wishes to the Centre for their future plans, including the plan to organize the First Asian Conference for Students and Young Practitioners, scheduled to be held in March 2018, which aspires to disseminate knowledge among young generation of arbitration practitioners.

¹¹William Shakespeare, *Romeo and Juliet*, Act II Scene II.

¹²Ibid.

I hope that KLRCA, as a co-ordinating agency in AALCO's integrated disputes settlement system, will continue to discharge its broad-based functions up to our expectations, as always.¹³ Such functions include:

- generation of stability and confidence in international economic transaction within the Asia-Pacific region;
- promotion of the institution of arbitration as an effective means for settlement of disputes;
- the wider use and application of the UNCITRAL Arbitration Rules within the region;
- the establishment and growth of national arbitration institutions; and
- encouraging inter-institutional cooperation.

IV. AALCO Annual Arbitration Forum (AAAF)

In this context, let me talk about the newly proposed annual event primarily among AALCO's Arbitration Centres and the national arbitral institutions - the AALCO Annual Arbitration Forum (AAAF). The 337th meeting of the Liaison Officers of AALCO held in August 2017 discussed this matter as one of the matters in the agenda.¹⁴

It is expected to be held in Malaysia for the first time this year, in pursuance of KLRCA kindly agreeing to host the event. AAAF will undoubtedly prove to be a better forum to promote the Arbitration Centres among Member States.

The theme for each year will be decided and agreed jointly between the AALCO Secretariat and the respective Arbitration Centres. The venue shall be the AALCO Headquarter or an Arbitration Centre, preferably on rotational basis.

The proposed host for this new initiative in 2019 is the Cairo Regional Centre for International Commercial Arbitration (CRCICA).

¹³ Press Release, "Malaysia and AALCO Signs Host Country Agreement", 26 March 2013, at 2.

¹⁴ The Draft Agenda for the 337th Meeting of the Liaison Officers, available at: <http://www.aalco.int/The%20Draft%20Agenda%20for%20the%20337th%20Meeting%20of%20the%20Liaison%20Officers2.pdf>

In view of the soaring demand for ADR in the developing economies of Asia and Africa, the primary objective of creating the AAAF is to reinforce the existing close cooperation and coordination among AALCO Regional Arbitration Centres and to provide a platform for creation of necessary networks or alliances with other similar institutions of Asia and Africa.

The forum has the potential to provide technical assistance and conduct capacity building activities in Member States, thereby aiding them in strengthening their national legislative and judicial frameworks in the field of ADR.

It will also be a platform to encourage interested Member States to establish regional arbitration centres in their capitals. We look forward to discussing the details of the first AALCO Annual Arbitration Forum with you in due course.

In concluding my speech, I once again salute the decision of the Government of Malaysia and the leadership of the Centre to elevate KLRCA's status as a global hub for Alternative Dispute Resolution (ADR)!

Thank you.