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**CAIRO REGIONAL CENTRE FOR
INTERNATIONAL COMMERCIAL ARBITRATION**

**REPORT
ON THE ACTIVITIES OF
THE CENTRE
DURING 1995**

PRESENTED BY

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Table of Contents

I-Introduction.....	2
II - Settlement of Interernational Commercial and Maritime Disputes	3-4
III-Organisation of International Events	5-9
IV - Panel of International Arbitrators	10
V - Role in the Implementation of National and Inter'al Prospective Projects	11-13
VI - Future Events	13-14
VII-Representation in International Conferences and Seminars ..	15
VIII - Conclusion of Cooperation Agreements	16
IX - A New Headquarters for the Cairo Centre	16
X - Draft Resolution to be Considered for adoption by the AALCC thirty-fifth Session	18-19
XI- Draft Resolution on the Headquarters of the Cairo Regional for International Commercial Arbitration.....	20

I - Introduction

Increasing reliance on arbitration in national and international trade is one of the main features of today's world business community. The global market, quick-paced, mercuric and demanding as it is, nowadays tends to rebuff the formality, rigidity, expensiveness and time consumption characterizing litigation. Within the framework of international regulations and the dictates of local applicable laws, arbitral procedures have a unique ability of adjusting procedures to the parties' precise needs. Arbitration fora, having the express authorization of parties involved, provide liaison between the parties and the tribunal. Among these forums the Cairo Regional Centre for International Commercial Arbitration (hereinafter the CRCICA) safely ranks one.

Since early inception, the CRCICA has managed to achieve a wide promotion of arbitration and other Alternative Dispute Resolution (ADR) techniques in the region¹. The Centre, through and altogether with its affiliates, *the Alexandria Centre for International Maritime Arbitration (ACIMA)*, *the Institute of Arbitration and Investment* and *the Arab-African Arbitrators Association*, manages to extend its scope of activities going far beyond the mere administration of the settlement of disputes.

Reviewing the multisided role of the CRCICA, this report is intended to shed light on the works and activities of the Centre since the submission of the last report to the thirty-fourth annual session of the AALCC on April, 1995. The review will include the CRCICA's efforts in the settlement of international commercial disputes, the organization of international events and other activities and contributions.

1- Such as Conciliation, Mediation, Technical Expertise, Committee Board Review and others.

II) Settlement of International Commercial and Maritime Disputes

According much to the status the CRCICA developed as a trustworthy arbitration forum, two major factors have evolved , the one legal and the other administrative, contributing to the continuation of success and achievements. The first of these factors deals with the enactment of the New Egyptian Arbitration Law no 27/94 (hereinafter the New Law/Law). The New Law has entered into force on the 22nd of May 1994 drawing to a close what seemed to have formed endless complexities concerning arbitration . _

The New Law unveils obvious flexibility that seems to dissolve the ambiguities and incoherence pertinent to the previous and, now-repealed, rules and regulations. For instance, the Law widens the interpretation of the term "international arbitration" stating that an arbitration is to be considered international if , among other things , the subject matter of the arbitration agreement, relates to more than one state *without* further requiring the parties' express agreement to that effect .

Insofar as the arbitration procedures are concerned , the New Law helped the promotion of arbitration by adopting a new principle , i.e. , "competence de la competence" , by virtue of which the tribunal is to have jurisdiction to rule on its own jurisdiction¹ . This definitely helps minimizing the interference of the national courts with the arbitral process, a cause having direct and positive effect on ensuring an expedited settlement of the disputes referred to arbitration. This, in turn, has activated the works of the CRCICA and has helped increase the number of international cases it administers .

The second factor is so much related to the process of bettering secretarial facilities the Centre is now witnessing . In the second half of the year 1995, the Centre managed to augment the lingual services provided by expanding the French Translation and Publication Section.

1 - Dr. Aboul-Enein , Mohamed , " Reflections on the New Egyptian Law on Arbitration"; published in Arbitration International , Vol. II , No. 1 1995 P. 80 ,

Besides Arabic and English versions, French versions of the New Egyptian Law and the CRCICA Information Booklet are now available. Some cases are now being administered in French. Similarly, whenever needed, the Centre provides in-session simultaneous translation services. These different endeavours towards bettering the services offered actually absorb communicative obstacles likely to prevent the smoothness of procedures, a characteristic totally indispensable in international arbitration.

Viewing the causal relation between these factors and the number of cases filed with the Centre, it is remarkable that, since the submission of the last report, the number of cases filed with the Centre has increased from sixty one international cases up to seventy two cases. Concurrently, the number of cases submitted for conciliation and/or mediation counted up to eleven cases.

Of obvious relevance is the fact that since April '95, being the date of submitting the last report, eight arbitral awards were issued in international cases. The time span during which most of these cases lasted, ranges from six to fourteen months.

It has always been the practice of the Cairo Centre to defuse the legal principles adopted by the numerous arbitral tribunals which are conducted every year under its auspices.

In fact, it has been noticed that such a practice is of great value in promoting the resort to arbitration by reflecting jurisprudence of arbitration as it accumulates in the practice of each arbitral institution. The new principles included in the awards delivered under the auspices of the Centre are being dispatched through the documents and publications of the Centre. However, it is worth mentioning to give here an example of two principles adopted by an arbitral tribunal in an award delivered in the first insurance case under the auspices of the Centre.

1- The nullity due to a " fundamental mistake "
Case no. 43 - Session of 15/11/1995

According to article 121 of the Egyptian Civil Law , a mistake is considered fundamental if it reaches a gravity which would have led a contracting party not to conclude the contract had he knew about it.

The arbitral tribunal considered that the other contracting party, if he was of good faith , should not object to the termination of the contract due to such a " fundamental mistake". This analysis is particularly valid in the case of insurance contracts which are fundamentally based on good faith and clear understanding of all the background of the insured risks .

2- The Nullity for Fraud
Case no. 43 - Session of 15/11/1995

The fraud cannot produce nullity unless it creates in the mind of a contracting party a fundamental mistake about the contract .

A fraud, in the legal sense, does not necessarily require positive act of deliberate deception. It can also take place by mere omission of an initial information or a relevant background .

III) Organisation of International Events

Taking full cognizance of the complementary relation between the practice and the theory, the method and the application , the CRCICA keeps nonreversible faith in the importance of providing educational bases for the conduct of masterfully-standard arbitrations. Bringing the faith into actuality, the Centre has taken the lead in organizing training programs and conferences to this effect. Following is a brief review highlighting the purposes and characteristics of each .

A)Two Successive Training Programs

Organized Jointly with:
the London Chartered Institute of Arbitrators
Held on :
June, 12 - 18 , 1995

On the 12th of June through the 18th , the CRCICA organized, jointly with the London Chartered Institute of Arbitrators, two sequential training programs to qualify, and accredit the professionalism of, African and Asian Arbitrators. The first program qualified those who succeeded to apply for Associate Membership of the Institute while the second qualified successful participants for Fellowship of the Institute. The two programs rank the sixteenth and the seventeenth in the series of training programs the Cairo Centre has organised.

Program Overview :

On the merely scientific level , the Programs scored outstanding success in updating participants' arbitration-related information and theories of approach. The assessment workshops having featured the Programs as a whole helped delegates practice arbitral agreements, award-drafting and partake in case studies. **On the professional level** , the Programs provided eligibility for either the Associate Membership or the Fellowship of the Institute.

Well estimating the importance of the London Institute's celebrated international status and the significance of having Asian and African Practitioners on its membership board, the CRCICA played a role in prompting the reduction of the subscription fees for the participants of the Cairo Programs. Practically speaking, this helped increase subscription applications and promised, in consequence, furnishing interstate professional relations to realize the objective of the Centre to formulate a qualified generation of international Afro-Asian arbitrators.

Participation :

The programs witnessed a multinational participation from lawyers, engineers and practitioners from different African and Asian Countries . The Egyptian Presence constitutes no more than 45 % while

the remaining 55 % represented attendees from other Countries with a majority from the Arab Countries .

B) Conference on
“ The Rules and Regulations of Procurement of Goods,
Construction and Services ”

Organized Jointly with :
The UNCITRAL, World Bank and
the International Law Institute of Washington
Held on :
September , 17 & 18 , 1995

On the 17th & the 18th of September '95 , the CRCICA organized a Conference on “ **the Rules and Regulations of Procurement of Goods, Construction and Services**”. Co-organized by the United Nations Commission on International Trade Law (UNCITRAL), the World Bank and the International Law Institute of Washington (ILI), the Conference ranked second in a whole planned series of conferences scheduled to cyclically trace and discuss the new occurrences in the rules and practices of international procurement. These conferences , though having the same bounding theme , are meant to present different angles of approaches. While the first conference focused on tackling and probing into the probability of “Reforming and Modernizing Procurement Rules in Developing Countries” (Cairo - January, 1994), the second came to put under analytic spot the new international rules recently enacted.

Conference Overview :

Coping with the recent variables and international changes related to government procurement, the agenda was scheduled to focus on the most important changes recently occurring in this regard. The general format has two complementary phases. At the beginning, international agreements and rules were handled ; the GATT as recently innovated and modified, the UNCITRAL Model Law on Procurement of Goods and Construction and the World Bank Procurement Rules as amended in January '95, were all put under full spot. Experts from the UNCITRAL, the World Bank and Members of the New GATT Drafting Committee rendered presentations and orchestrated discussions. Setting

the background, the local regulations of about thirteen Countries of the region were then discussed in comparison with one another .

Participation :

Viewing the fact that the Conference had the precedence in discussing most recent modifications in international rules, a great number of delegates from different fields and nationalities participated at the Conference. It was observable that the most remarkable attendance was from the natives of those countries whose procurement rules were discussed throughout the course of the Conference.

C) Conference on : “ The Settlement of Energy, Petroleum and Gas Disputes ”

Organized Jointly with :

The World Bank and the League of Arab States

Held on :

November , 18 -19 , 1995

On November, the 18th & the 19th, the CRCICA took the lead in organizing an international Conference on “**the Settlement of Energy , Petroleum and Gas Disputes** ”. Co-organized with the World Bank and the League of Arab States . The Conference shed light on the settlement and avoidance of disputes pertaining to Electric Networks, Nuclear Energy, Petroleum and Gas.

Conference Overview :

The agenda handled the avoidance and settlement of energy disputes from both the technical and the legal sides. It had the initiative in discussing the peaceful use of nuclear energy , a topic nowadays gaining momentum. Disputes pertaining to electric networks, Petroleum and Gas Disputes were widely tackled .

The fact that selected senior World Bank Officers participated rendered a special importance to the Conference especially in a region

concerned about the international rules and documentation set by international organizations and institutions .

Participation :

It was remarkable that the Conference gained outstanding attention. Representatives from different national and international organizations and associations shared the interest to participate. To exemplify and not to enumerate, representatives from the World Energy Council, the Netherlands Nuclear Energy, the Centre for Petroleum and Mineral Law Studies/University of Dundee and the Nuclear Power Authority of Egypt proved interested to attend the Conference .

The Conference played a significant role in gathering delegates of different nationalities. Notwithstanding the remarkable presence from the different Asian and African countries, the nationalities represented in the Conference went beyond these countries since some Europeans and Americans witnessed the event.

Finally, the Conference came to realize one of the major objectives of the CRCICA, i.e., providing liaison between international and regional legal institutes and authorities. The Centre acted and is still acting as a contact point between some European legal and academic institutes and some organizations of the Countries of the region .

Seminar on :

“ The Assessment of International Trade Contracts”

Jointly with :

The French Agency for Cultural and
Technical Cooperation

Held on :

December , 9 - 21 , 1995

On December the 9th through the 21st , 1995 , the CRCICA co-organized with the French Agency for Cultural and Technical Cooperation (*Agence de Cooperation Culturelle et Technique ACCT*) a Seminar entitled: “**The Assessment of International Trade Contracts**”. Other Co-organizers are the Sengor University/Alexandria and the Institute of International Business Law/ Cairo University. The

Seminar managed to discuss and review the different phases international contracts are likely to pass through including negotiations, contract drafting and finally enforcement or annulment thereof.

Seminar Overview :

Since long, the *ACCT* has successfully carried the mission of achieving cooperation and solidarity among the french-speaking countries of the world . To this effect , **“The Ministers of Justice of the Francophone Countries”** Conference (Egypt , October '95) combined trends with the Conference of **“The French-speaking Countries’ Presidents”** (Benin, November '95) , rendering unrelenting recommendation for the continuation and the promptness of the task . In immediate response , the Cairo Seminar was held to continue five the whole planned series of relevant seminars and to represent the first event of the sort in the Middle East .

Participation :

The Seminar witnessed a wide-ranged participation from bearers of twelve different nationalities with an obvious majority from the African french-speaking countries . Participants exchanged thoughts and shared enthusiasm for the initiation of cooperation among the french-speaking countries .

IV) Panel of International Arbitrators

Cognizant of the importance of furnishing users with wide choices of qualified arbitrators, the expansion of the CRCICA Panel of International Arbitrators is well underway . From an overall number of 423 arbitrators constituting the Panel, the year 1995 solely witnessed an increase of 109 recently-enrolled names. Since the date of issuing the last report , 75 names, out of the total 109 , have been enrolled .

As for the representation of foreign arbitrators on the list , about two-third of the list composes foreigners. This safely places the

CRCICA among organizations relatively enjoying premier positions in this regard. This development is in line with the views expressed and approved in the last International Federation of Commercial Arbitration Institution (IFCAI) Conference held in Hong Kong on November 21, 1995. The Conference discussions have traced a causal relation between the inclusion of foreign arbitrators in the panels of national and regional institutions and the globalization of arbitration as a means of settling international commercial disputes¹. In view of this causality, the CRCICA is taking unabated strides ahead .

V) Role in the Implementation of Prospective National and International Projects

A) New Post-Graduate Program

Viewing the scarcity of post-graduate programs in legal studies in the region and being quite cognizant of the importance of providing legal academic basis for the practicalities of trade , the CRCICA is partaking in establishing a post-graduate program in commercio-legal studies .

The Centre has recommended the Arab Academy for Science and Technology (AAST) , an international agency of the Arab League, to adopt and provide appropriate venue for the project. Through its membership in the International Association of Universities and the Federation of Arab Universities, the AAST is authorized to offer post-graduate courses in many disciplines and to award academic degrees related .

A cooperation agreement between the International Law Institute of Washington (ILI) and(AAST) would be concluded to this effect .

1- " Report on the Conference on Globalization and Harmonization of the Basic Notions in International Arbitration " , Gurry, Francis , Director of the World Intellectual Property Organization (WIPO) Arbitration Center , November'95.

The CRCICA Director has suggested the program curriculum to include matters related to :

- 1 - Arbitration ; means and technicalities
- 2- Investments ; drafting new relevant legislation and amendment of already existing ones.
- 3- International Trade in the light of the New GATT
- 4- Disputes pertinent to the Carriage of Goods by Sea

To ensure best results possible , the CRCICA has recommended contacting top World Universities such as Harvard and Georgetown Universities to select the newest approaches in International Trade Law and the most advanced among all contemporary approaches .

Last but not least , the CRCICA vows to provide all assistance possible during the implementation stage of the project by organizing training programs and providing case studies to back and bolster the theoretical phase of the study .

B) UNCITRAL / INSOL Expert Committee :

Targeting a worldwide reconciliation among the different legal systems of the world, the International Federation of Insolvency Practitioners (INSOL) and the United Nations Commission on International Trade Law (UNCITRAL) have started up a joint project regarding the Cross Border Insolvency's Access and Recognition . The project is heading forth as early as March '95 when the INSOL first prepared a report submitted to the Multinational Judges Colloquium (Canada , March 22 - 23, 1995) .

An Expert Committee was then assigned to provide input for the UNCITRAL Secretariat and Working Group . The Committee was formed from a number of judges from all over the world and upon a proposal of the UNCITRAL, **Dr. M.I.M. Aboul-Enein**, the CRCICA Director, was invited to join in . One of the main tasks of the Committee is to identify and agree on the components which nations would hopefully be able to embody in their laws to achieve the goals desired, thus getting over the diversities of their legal systems. In that vein, the Committee would be working on the preparation of a **menu**

approach of options in substitute of model legislation to well grasp the differences among national systems one another.

The Committee Members are now expected to give views on the further relief that should be included in the menu of options for consolidation and subsequent submission to the UNCITRAL Working Group expected to meet in April 1996 .

VI) Future Events Organized by the Centre

- 1 - International Seminar on
 "International Construction and Services Contracts"
 - Business Opportunities in World Bank Projects -
 17 - 22 March 1996

Co-organized by :

The Egyptian Society of Consulting Engineers (ESCONE)

In Cooperation with :

- World Bank
- International Trade Centre UNCTAD / GATT (ITC)
- United Nations Commission
 on International Trade Law (UNCITRAL)
- International Federation of
 Consulting Engineers (FIDIC)
- The FIDIC Group of African Member Association

- 2- A Training Program on
 " Maritime Arbitration "
 16 - 22 April 1996

Co-organized by :

Some American and European International Organizations to be shortly announced.

**3- An International Conference on
 " International Commercial Arbitration "
15 - 18 May 1996
 to be held in Beirut, Lebanon**

Co-organized by :

- League of Arab States
- Lebanon Association for Arbitration
- UNCITRAL

**4 - A Training Program on
 " Commercial Arbitration "
20 - 21 May 1996**

Co-organized by :

- American Arbitration Association (AAA)
- United Nations Commission on International Trade Law(UNCITRAL)
- League of Arab States through the year 1996.

**5 - An International Biennial Conference on :
 " European Unity and its Impact on the Arab World "
September 1996**

Co-organized by:

- European Commission in Egypt
- League of Arab States

**6 - An International Seminar on :
 " UNCITRAL Future Work "
December 1 - 5, 1996**

Co-organized by :

- UNCITRAL
- League of Arab States

VII) Representation in International Conferences, Meetings and Seminars

Since the submission of the last Committee Report, the CRCICA was represented in the following Seminars and Conferences :

- 1- *XIV Inter-American Conference on Commercial Arbitration* , San Antonio, Texas , U.S.A. , 20 - 22 September 1995 .
- 2- *The Middle East Gas Summit*, Abu Dhabi , UAE , 24-28 September, 1995 .
- 3- *Ist International LSM Black Sea Ports and Shipping Conference* , Istanbul , Turkey , 3-4 October 1995 .
- 4- *The Ministers of Justice of the Francophone Countries Conference*, Cairo , Egypt , October 1995 .
- 5- *Conference on Globalization and Harmonization of the Basic Notions in International Arbitration ; IFCAI Annual Conference* , Hong Kong , 20 - 21 November 1995 .
- 6- *Using and Understanding English Legal Concepts in International Contracts* , Copenhagen, Denmark , 4 - 6 December 1995.
- 7- *Chairing the Meeting of the Mediterranean Maritime Arbitration Association Council Meeting*, Genoa , Italy , 12 January 1996 .
- 8- *International Law Association Committee on International Commercial Arbitration* , Paris , France , 9 February 1996 .
- 9- *The Thirtieth Session of the UNCITRAL Working Group on Electronic Data Interchange* , Vienna , Austria , 26 February - 2 March 1996.

VIII) Conclusion of Cooperation Agreements

Being well aware of the importance of widening the scope of international relations among different arbitration organizations , the CRCICA entered , on the 17th of September, 1995 , into a cooperation agreement with the China International Economic and Trade Arbitration Commission (CIETAC) .

The scope of the agreement inter alia covers future cooperation in popularizing the institution of arbitration and promoting wider use of facilities available. The agreement represents the twenty-sixth cooperation agreement the Centre concluded since inception.

IX) A New Headquarters for the Cairo Centre

In View of the above-mentioned proliferation of the Cairo Centre's activities, its present rented premises is no longer sufficient .

In fact, it has been witnessed in many occasions that a session of arbitration is taking place in the Cairo Centre while a training program is conducted at the same time. For obvious reasons it is quite impossible to interfere with the time tables of running cases of arbitration. And it is equally impossible to change the dates of training courses and other programmed functions and activities of the Cairo Centre after those dates have been announced for the concerned public.

Such overlapped activities of the Cairo Centre is the main reason which made it necessary to acquire a bigger premises so as to accommodate all the requirements of arbitration, training courses, lectures , electronic data bank, library etc.

On the other hand, from a financial point of view, renting a headquarters of such a needed size would cost a huge amount of money which makes purchasing a headquarters to be permanently owned by the Cairo Centre a far better option taking into consideration that every