Sharm El Sheikh V:
The Role of State Court in International Arbitration
Report

16 and 17 November 2014

The Cairo Regional Centre for International Commercial Arbitration (CRCICA) held its fifth biennial conference on the Role of State Court in International Arbitration on 16 and 17 November in Sharm El Sheikh, Egypt.

This round comes after several successive legal and judicial developments in the Arab world that has led to remarkable reforms with respect to the settlement of commercial and investment disputes in general and commercial arbitration in particular. A number of extremely interesting decisions have been rendered in most of the Arab states during the last two years. These decisions are worth of examination and scrutiny due to their important role in emphasizing the supportive, parallel and supervisory role of state courts in international commercial arbitration. It is undisputable that state courts play an important role to determine whether a particular place is convenient to be chosen as a seat for arbitration. The Conference aimed therefore to identify the salient judicial trends in the Arab world and to shed light over the latest judicial practices in the most significant seats of arbitration worldwide, including Europe (France, England, Switzerland, Sweden and Italy), Asia (Turkey), Africa (Sudan , Morocco and Tunisia), the United States and Latin America (Venezuela and Brazil). It attempted to study these trends by tackling the role of state courts during the four basic phases of the arbitration process starting from the arbitration agreement, the arbitral tribunal, the arbitration proceedings and ending with the arbitral award.

The conference was attended by 220 participants from 28 countries.

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Day One:

Opening Speeches:

The official opening of the Conference was held on 16 November 2014 and included a welcome speech by Dr. Mohamed Abdel Raouf, CRCICA Director and opening speeches by counselor Amin El Mahdi, Former Minister of Parliamentary Affairs and Transitional Justice , Former President of both the Egyptian State Council and the High Administrative Court, Vice-Chairman CRCICA Board of Trustees, counselor Dr. Borhan Amrallah, Secretary-General of the Arab Union of International Arbitration (AUIA), Former President of the Cairo Court of Appeal, Mrs Diana Droulers, Executive Director of the Arbitration Centre of the Caracas Chamber of Commerce and President of the International Federation of Commercial Arbitration Institutions (IFCAI) and Mr. Timothy Lemay, Principal Legal Officer and Head of the Legislative Branch of the International Trade Law Division / Office of Legal Affairs, the Secretariat of UNCITRAL. Opening speeches emphasized the importance of the Conference and the large number of participants from different legal cultures. Dr. Mohamed Abdel Raouf pointed out that the Conference coincides with the 35th anniversary of the establishment of CRCICA and with the winning by CRCICA of the GAR Award for best regional arbitration centre in 2013. Dr. Abdel Raouf thanked all the law firms and the international arbitration institutions that sponsored the Conference and collaborated in its organization. He emphasized that the Conference has seven sponsors, which is unprecedented showing its increasing importance. He also informed the participants that important meetings will be held during the two days of the Conference, for instance, CRCICA Advisory Committee meeting and the IFCAI Council meeting.

Counselor Amin El Mahdi and Mr. Timothy Lemay focused on the importance of the relationship between arbitration and state courts in light of the increase of the supportive role of state courts depending on the state. Mrs Diana Droulers emphasized the importance of the role that arbitration institutions play and stated that the number and value of the cases filed before an arbitral institution are the criteria of its success. Counselor Dr. Borhan Amrallah spoke about some

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important practical issues raised by the intervention of the Egyptian courts in appointing arbitrators when there is no agreement between the parties or when the two party-appointed arbitrators fail to appoint the chairperson. He underscored the importance of training arbitrators and invited law schools to teach arbitration for undergraduates.

Keynote Speaker:

Professor Dr. Ahmed Sadek El Kosheri delivered the keynote speech titled "Reflections on Some Leading Arbitral Awards". The speech presented the most important arbitration cases in which Professor El Kosheri was involved either as arbitrator or as a counsel. In these cases, in which awards were rendered unanimously and reflected a sense of justice, ethics and integrity. The first case was held during the 1960s with a sole arbitrator, Mr. Gunnar Lagrengen. The latter rejected the claimant's requests because he did not come to arbitration with clean hands since the contract on which he relied was concluded by fraud. Professor El Kosheri also mentioned the Aminoil case, where he acted as counsel for the Kuwaiti state. The claimant company had requested an amount of three billion USD as compensation for expropriation in 1977. The award was rendered in 1982. The tribunal applied the principles established by the OPEC according to which it was not acceptable to maintain the stabilization of the contractual terms in the case where the company has made the maximum profits out of the contract. Therefore, the claimant company was awarded a compensation of 10 million USD instead of the original three billions USD it claimed. In Professor El Kosheri's view, the position adopted by the award was just and fair. It put an end to the era where international arbitration was perceived as a tool of colonialism. The Iran-US claims tribunal applied the same principles to further petroleum disputes. Professor El Kosheri then presented a case where he acted as arbitrator among a five-member tribunal in the dispute between Yemen and Eretria regarding the Hanish islands in the Bab El Mandab strait. Unanimous awards were rendered for the dispute and for the delimitation of maritime borders due to the competence of the chairman of the arbitral tribunal. Islamic tradition was also applied to preserve the historical fishing regime around the Islands. Professor El Kosheri also pointed to the award rendered in the ICSID case *Metal Tech Ltd v. Republic of Uzbekistan* in 2013, where the tribunal held that it lacked jurisdiction

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because the investment subject matter of the dispute was made by fraud and; therefore, was not made in accordance with the host state laws as stipulated by the applicable BIT. He concluded that these awards are examples of cases where the tribunals applied principles of justice and integrity and resisted corruption.

First Session:

The first session was presided by Professor Dr. Hamza Haddad. It focused on the "Salient Legislative and Institutional Developments and Recent Judicial Application".

Judge Dominique Hascher spoke about the trends of the French supreme court towards arbitration in his presentation titled "The Role of the French Judiciary in Making Paris a Suitable Place for International Arbitration :The Experience of the French *Cour de Cassation*". He stated that the *Cour de cassation* has some major guidelines. For instance, the intervention of the state court at the outset and during the arbitration process is limited to what is strictly necessary to help the process to begin and continue, second, the judicial control of the arbitral award is only allowed after the end of the arbitration. To ensure the validity and effectiveness of the arbitration agreement, the *Cour de cassation* had declared it independent from all national laws. It adopted the competence-competence principle which limited the courts' intervention to assess the validity of the arbitration agreement during the course of arbitral proceedings. Judge Hascher highlighted that the French courts' control of the arbitral award is very limited. Hence, this control does not extend to the merits of the dispute and is confined to the respect of due process and of the arbitrator's mission. The *Cour de cassation* does not control the reasons of the award. These principles ensure the clarity and predictability of the legal regime applicable to arbitration and help making Paris an important seat for international arbitrations.

Ms. Annette Magnusson then spoke about the "Recent Developments in Sweden with Respect to the Judicial Review of Arbitration", focusing on the experience of the Svea Court of appeal in Sweden. The Court had issued Procedural Guidelines for the litigants showing the procedures to be followed and the time needed to decide cases of setting aside awards and requests

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to enforce foreign arbitral awards. Ms. Magnusson presented the basic procedures related to arbitral awards before Swedish courts and stated that the Svea Court of appeal hears almost 95 % of the setting aside cases filed against awards rendered in Sweden. In addition, the Svea Court of appeal has sole jurisdiction to hear requests for enforcement under the New York Convention. Due to the delay in the procedures before the Court, the latter initiated wide discussions among practitioners that included arbitral institutions, judges and attorneys. This dialogue led to the holding of a meeting in 2012 that resulted in the adoption of Procedural Guidelines. The Guidelines contain the procedures to be followed before the Court of appeal, the expected durations it may take, the means to speed up the procedures and to administer cases in a transparent way. Ms. Magnusson also pointed out that a committee established for the amendment of the Swedish arbitration act is now considering allowing Swedish courts to hear cases of enforcement of arbitral awards or other cases related to arbitration using the English language without need to an official translation.

In his speech titled "The Relationship between the Judiciary and Arbitration in the Arab World", Professor Dr. Abdel Hamid El Ahdab underscored to the important role that the French courts play in setting forth the rules applicable to arbitration. Many principles laid down by the French courts were later adopted by the legislator in the French arbitration act. He then presented the most important decisions rendered by Arab courts in the field of international arbitration. According to Professor El Ahdab, these decisions demonstrate the development of the Arab courts which follow the most recent international trends in this field. Among the most important principles, the decision of Jordanian courts holding that the failure to object to an irregularity or a breach of the arbitration agreement during the proceedings amounts to a waiver to raise the irregularity, the principle laid down by Kuwaiti court that women can be appointed and act as arbitrators, and the principle established by the Egyptian courts regarding the supremacy of the New York Convention over domestic laws. Dr. El Ahdab concluded his speech by asserting that arbitration is a dialogue between cultures and a mechanism that avoids the use of force. For him, arbitration is the equivalent of peace.

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Dr. Karim Hafez then discussed the concept of "Emergency Arbitrator" adopted by some arbitral institutions such as the ICC. He explained that the option to request interim or conservatory reliefs are very limited under the Egyptian civil procedures Code, which justify the importance of the existence of an emergency arbitrator. Dr. Hafez defined the emergency arbitrator as a person appointed immediately before the constitution of the arbitral tribunal to grant an interim relief until the case is fully considered by a tribunal. Arbitral institutions differ regarding the means to appoint the emergency arbitrator and the making of his decision. While some rules provide for an *inter parte* application to appoint an emergency arbitrator, other rules provide for an *ex parte* application and the arbitrator's decision is rendered in the absence of the other party. The emergency arbitrator can be challenged within few days of his appointment. His decisions are subject to review before the courts and/or before the arbitral tribunal once it is formed. In his concluding remarks, Dr. Hafez invited CRCICA and other Arab arbitral institutions to amend their rules to allow the appointment of an emergency arbitrator. This would help ensure the maximum effectiveness of the arbitral process.

Mr. Timothy Lemay then presented "The New UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration". Mr. Lemay highlighted the importance of transparency in investment disputes to increase the confidence in investor-state arbitration, especially in light of the large numbers of BITs and of cases relying on them. In an overview of the main features of the new rules, Mr. Lemay explained that they apply to investor-state arbitrations governed by UNCITRAL rules and based on international treaties made on or after 1 April 2014, unless the parties to the treaties agree otherwise. Arbitral proceedings based on these treaties and the hearings should be public. Submissions, witness statements, schedules of exhibits and other documents provided for in Art. 3 of the new Rules should also be made available to the public. However, transparency does not apply to confidential and protected information determined by the arbitral tribunal after consultation with the parties and in cases where confidentiality is required to preserve the integrity of the arbitration (such as the case where a witness needs protection, Art 7 of the new Rules). At the end of his presentation, Mr. Lemay pointed to the project of an international convention on

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transparency in treaty-based arbitration that was finalized this last summer and expected to be adopted by the UNCITRAL session that is now held.

Discussions:

A question was raised related to the separability of the arbitration agreement from any national law according to French case law even if the parties had chosen a national law to apply to their contract. Mr. Hascher replied that the arbitration agreement is governed by international rules and not the law of the contract. This rule is a consequence of the principle of separability of the arbitration agreement.

Ms. Magnusson replied to a question on the competence of the Swedish courts to set aside arbitral awards, stating that Swedish court are only competent to hear claims to set aside awards rendered in Sweden. She also indicated that emergency arbitrators exist under Swedish law. The decision of the emergency arbitrator is binding until a new decision is issued by the arbitral tribunal. If there arbitration proceedings were not filed within 30 days, his decision would come to an end. Dr. Hafez further stated that the wording of Art. 9 of the Egyptian Arbitration Act is not sufficient to enable the appointment of an emergency arbitrator, since it provides that the court can only decide on matters that the Act had referred to it. The appointment of an emergency arbitrator does not figure among these matters.

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Second Session:

The second session was presided by Ms. Diana Droulers. It discussed "State Courts and Arbitration Agreements".

Counselor Amin El Mahdi spoke first about the "Judicial Review of Egyptian State Contracts and Arbitration Agreements They Include, with a Special Emphasis on Sale Contracts within the Context of Privatization Policy". Counselor El Mahdi explained the position adopted by Egyptian administrative courts vis-a-vis the contracts for the sale of state-owned companies. The Egyptian administrative courts declared contracts made between the state entity that owns the company and the private investor who purchased it null and void as a consequence to the illegality (nullity) of the administrative decisions issued prior to the contract and approving the sale of the state owned company's shares to the private investor. He justified this trend by the provisions of the 1971 constitution before their amendment in 2007 that adopted a socialist approach to the economy and gave priority to the public sector and were therefore incompatible with the privatization process. Arbitration clauses included in these contracts were declared null and void for the failure to obtain the approval of the competent minister to arbitrate, a formality required by the Egyptian Arbitration Act. Counselor El Mahdi then exposed the state's attempts to enforce these decisions. The government requested the opinion of the General Advisory Committee for Legislation and Advising at the Egyptian State Council. The Committee took the view that specific performance is impossible in instances where the shares of the companies were sold to third parties. Compensation should be paid instead. Furthermore, an Act (no. 32/ 2014) was issued to limit the right to challenge state contracts or the administrative decisions related to them to the parties to these contracts. A proposal to amend this law is currently considered in order to limit the institution of criminal proceedings related to state contracts. The proposal provides for the necessity to obtain the written approval of the council of ministers before commencing criminal proceedings regarding a state contract. The government should not, in Counselor El Mahdi's opinion, adopt this law without further scrutiny.

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Mr. Frederico Straube spoke about "The Role of the Brazilian Judiciary in Enforcing Valid Arbitration Agreements: Compelling Non Cooperating Parties to Arbitrate". Mr. Straube distinguished the types of arbitration agreement under the Brazilian Arbitration Act. He exposed the difficulties raised by incomplete clauses that do not specify the applicable rules or the means to appoint arbitrators as well as pathological arbitration clauses. The Brazilian Arbitration Act provides for many ways to help the parties complete their agreement. Accordingly, a party shall notify the other of its intention to start arbitration proceedings and invite him to negotiate to fix the terms of the arbitration agreement. If the notified party fails to appear, the other party may file an action to request the judge to complete the agreement. In conclusion, the Brazilian Arbitration Act provides for various ways to invite a party to conclude a submission agreement completing the defective arbitration clause and set forth the possibility to recourse to the court to appoint an arbitrator instead of the defaulting party.

In his presentation titled "Judicial Review of the Arbitration Agreement in Morocco during and after the Arbitral Proceedings", Dr. Hassan Alami explained some principles set forth by Moroccan courts with respect to arbitration. The most important of these principles is the rejection by state court of cases filed despite the existence of an arbitration agreement, the duty of the court to refer the parties to arbitration unless the arbitration agreement is manifestly invalid, the competence-competence principle and the strict limitation of the grounds to set aside arbitral awards.

Dr. Ibrahim Draig spoke about the "The Role of the Sudanese Judiciary in Enforcing Arbitration Agreements". He discussed many examples showing the support of the Sudanese courts to arbitration. For instance, Sudanese courts rejected cases filed despite the existence of an arbitration agreement. They terminated cases filed before courts if the parties agree to arbitrate during the proceedings. Furthermore, Sudanese courts have interpreted arbitration agreements that refer to "arbitration before Sudanese courts" as expressing a will to settle the dispute by arbitration and not by state courts, since the terms of the clause included the term 'arbitration'.

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Discussions:

After the end of the session, there were general discussions about the problems caused by the privatization process in Egypt and the need to conduct further studies on the topic. Discussions also raised the issue of appointing women to act as arbitrators in light of its prohibition in some Arab states.

Third Session:

The third session was presided by Professor Dr. Abdel Hamid El Ahdab. It discussed "State Courts and the Arbitral Tribunal".

Professor Dr. Fathi Waly discussed whether "National Courts have jurisdiction over Challenges filed against Arbitrators in Institutional Arbitrations". He discussed the difficult coordination between the provisions of Arab domestic laws and those of institutional rules chosen by the parties regarding the challenge of arbitrators. He presented some decisions rendered by the Cairo Court of appeal which held that the challenge of arbitrators should be made according to the provisions of the law and cannot be governed by institutional rules. Professor Waly disagreed with this approach because it contradicts Art. 25of the Egyptian Arbitration Act. Art. 25 allows the parties to submit the arbitration proceedings to institutional rules. Accordingly, the state courts do not have an exclusive authority to decide on challenges of arbitrators because this issue is not of public policy.

Mr. Stefano Azzali then discussed the issue of "Institutional Decisions Regarding Arbitral Tribunals before State Courts". He started by presenting an overview of arbitration in Italy and explained the problems raised by the nature of the decisions rendered by arbitral institutions regarding formation of arbitral tribunals and challenge of arbitrators. These decisions are sometimes impossible to challenge separately from the final award. Mr. Azzali presented a case where a party challenged a decision rendered by an arbitral institution before the court. The court held that a party should challenge the decision before the arbitral institution itself. Mr. Azzali agreed with this approach since the institution is in a better position to decide.

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In his presentation, Mr. Sami Houerbi commented on "The new IBA Guidelines on Conflicts of Interests and the Use of Advance Waivers in ICC Arbitration". He presented the main features of these Guidelines especially those related to the relationship between the potential arbitrator's law firm and the parties to the arbitral proceedings. He also explained the issues raised by conditional declarations of independence and impartiality or the reservations that some arbitrators make in their declarations to allow his colleagues to act for or against any of the parties to the arbitration and to exclude the duty of any further disclosure. To conclude, Mr. Houerbi presented the positions of the ICC and the French courts of appeal regarding these reservations and advance waivers.

"The Academic immunity of Arbitrators" was the topic discussed by Professor Dr. Mohamed Salah Abdel Wahab. Dr. Abdel Wahab explained the problems raised by the contradiction between academic legal writing and the arbitrator's mission. Arbitrators became reluctant to express their opinions to avoid challenges based on the ground of the views they expressed in their academic writings. He criticized the paradoxical position of an arbitrator appointed by a party for the views he expressed in his writings and, at the same time, challenged by the other party on the ground of the same views. Dr. Abdel Wahab suggested to consider that general legal opinions expressed in an arbitrator's writings do not affect his independence and impartiality to hear a specific dispute. However, it is possible to challenge an arbitrator if the opinions he expressed are repeated regardless of the surrounding circumstances because this position indicates that his views will not vary depending on each case.

Discussions:

In response to a question about whether the ICC will issue rules to govern conflicts of interests, Mr. Sami Houerbi stated that there is no proposal for such rules and that the ICC only released Guidelines for in-house counsels.

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Another question related to whether the disclosure of circumstances that affect the arbitrator's independence and impartiality was of public policy, and whether the requirements of independence and impartiality were of public policy. Dr. Fathi Waly replied that independence and impartiality cannot be considered of public policy since it is possible to waive the arbitrators' challenge. However, the debate as to whether a waiver of independence and impartiality amounts to a waiver of a right before it exists (and therefore impossible under Egyptian law) remains open.

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Day Two:

Fourth Session:

This session was presided by Me. Philippe Leboulanger and focused on "State Courts and Arbitral Proceedings".

Professor Dr. Samir El Sharkawy spoke about "The Role of Egyptian Judiciary in Arbitral Proceedings". He explained the role of state courts in appointing arbitrators, to order provisional and interim measures in some cases and to summon reluctant witnesses pursuant to the Egyptian Evidence Act. He also presented the role of state courts in supervising the arbitral proceedings, for instance, the courts' authority to terminate the arbitral proceedings pursuant to Art. 45 of the Arbitration Act and the jurisdiction to hear requests to set aside arbitral awards. Professor Sharkawy took the view that the challenge of arbitrators should be governed by institutional rules since the provisions of the Act on challenge of arbitrators are not of public policy. He also stated that, according to Art. 9 of the Egyptian Arbitration Act, the administrative courts have jurisdiction in domestic arbitrations related to administrative contracts, while in international arbitrations the Cairo Court of appeal has exclusive jurisdiction.

Ms. Diana C. Droulers then exposed the "Recent Judicial Trends in Latin America Regarding Procedural Issues". Ms. Droulers started by a general overview of the most important Latin American states concerned with arbitration, namely, Mexico, Panama, Venezuela and Peru and the legal framework for arbitration in these countries as well as the most important arbitral institutions. She remarked that almost all institutions in Latin America have updated their rules in the last two years. Teaching arbitration at law schools and including it in the training of judges helped increase its importance. Ms. Droulers highlighted the denouncement by Venezuela, Ecuador and Bolivia of the 1965 Washington Convention for political considerations. She concluded by underscoring the necessity for a state to consider the interests of its national investors and to rely on legal rather than political considerations before withdrawing from international instruments.

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Counselor Dr. Borhan Amrallah spoke about "Interim and Provisional Measures between the Judiciary and the Arbitral Tribunal". He presented the position of different Arab legislations with respect to the arbitral tribunal's authority to order interim and conservatory measures. Some legislations conferred upon the arbitral tribunal the power to order these measures if the parties agreed to it (this is the case of Egypt, Jordan, Kuwait, Qatar) while others (for instance, Algeria) provided that some measures should only be ordered by state courts. Dr. Amrallah discussed the case where a party to arbitral proceedings fails to comply with an order to take an interim measures issued by the arbitral tribunal. It is accepted that the other party may recourse to state court to request the enforcement of the order; however, a debate arose as to whether the court should review the order issued by the tribunal before deciding to enforce it. Some judges and scholars took the view that the court should not review the tribunal's order, others maintain that the court must consider whether an arbitration agreement exist and whether the tribunal's order is contrary to public policy.

Mr. Murat R. Özsunay presented "The Role of State Courts in International Commercial Arbitration under Turkish Law". Mr. Özsunay exposed the main features of Turkish Arbitration Act, the most important of which is the distinction between domestic and international arbitrations, the principle of competence-competence. He also discussed the cases where Turkish courts interfere in the arbitral proceedings, for instance, for the appointment, challenge and replacement of arbitrators in *ad hoc* arbitrations. After the end of arbitral proceedings, Turkish courts hear requests to enforce and set aside awards. Courts may raise *ex officio* the inarbitrability of the dispute and the violation of public policy.

Discussions:

A question was raised regarding whether the court should review the interim measure ordered by an arbitral tribunal. Counselor Borhan Amrallah replied that he is of the opinion that the measure should be examined by the court before enforcing it. He also confirmed that the court that has jurisdiction in international arbitrations related to administrative contracts pursuant to Art. 9 of the Egyptian Arbitration Act is the Cairo Court of Appeal.

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Fifth Session:

The fifth session was presided by Professor Dr. Samir El Sharkawy and focused on "State Courts and the Enforcement of Arbitral Awards".

Professor Nassib Ziadé spoke about "The Relation between the New York Convention and Regional, Bilateral and other Instruments Applicable to the Enforcement of Foreign Arbitral Awards in Arab Countries". He discussed the coordination between the provisions of the New York Convention - ratified by the majority of Arab states - and the provisions of other instruments governing the enforcement of arbitral awards such as the Riyadh convention and other bilateral conventions that refer expressly to the New York Convention. The latter generally supersedes national laws based either on the existence of a general principle of supremacy of international conventions over domestic laws or on a provision in the domestic law that prescribes the priority of international instruments. However, if the provisions of the domestic law were more favorable to enforcement, the domestic law applies pursuant to Art. 7 of the New York Convention.Accordingly, if the domestic law allows the enforcement of an award that was set aside at the seat of arbitration, the award may be enforced.

In her presentation titled "The Enforcement of Arbitral Awards that Have Been Set Aside at the Seat: Towards a more Consistent Approach?", Ms. Samaa Haridi analyzed the most important and recent cases related to this issue in France, the United States, United Kingdom and the Netherlands. She concluded that courts accepted to enforce awards set aside at the seat in cases where setting aside relied on arbitrary grounds. She also remarked that the instances she examined related to cases where a public or a state owned entity was a party to the arbitral proceedings and profited from the setting aside of the award.

Ms. Hilary Heilbron then presented the "The Scope of Appealing Arbitral Awards under the English Arbitration Act 1996". Ms. Heilborn stated that English Arbitration Act limits the grounds for the setting aside of arbitral awards following the Model Law; however, it contains specific cases where review of the award is permitted in order to ensure that justice is rendered. These cases are provided for in Articles 67, 68 and 69 of the English Arbitration Act. These articles allow a party to

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appeal the award because the tribunal lacked substantive jurisdiction (Art. 67) and in case of serious irregularity affecting the tribunal, the proceedings or the award (Art. 68). In the latter case, the court may remit the award to the tribunal, in whole or in part, for reconsideration, set the award aside in whole or in part, or declare the award to be of no effect, in whole or in part. A party may also appeal to the court on a question of law arising out of an award made in the proceedings (Art. 69). Ms. Heilbron explained these cases and the possibility of waiver.

Me. Philippe Leboulanger spoke about "The Enforcement of Arbitral Award in Some Arab Countries". He presented an overview of the requirements to enforce foreign arbitral awards and the problems related to enforcement in Egypt, Lebanon, United Arab Emirates (UAE) and Qatar. He concluded that the Egyptian and Lebanese legal systems are characterised by predictability and provide legal security.

Mr. Hassan Arab presented "The Role of the Emirati Judiciary in the Enforcement of Arbitral Awards". He examined the practice of the Emirati courts before the ratification of the New York Convention by the UAE. He emphasized a development in the courts' decisions following the ratification of the New York Convention that reflects a favour to arbitration. He discussed a controversial decision rendered by Dubai Supreme Court in 2013 that rejected the enforcement of an ICC award. He concluded his presentation by raising the problems that face arbitration in the UAE, for instance, the multiplicity of the courts that have jurisdiction to hear requests for enforcement and setting aside arbitral awards, as well as the primitive character of the UAE Arbitration Act.

Discussions:

A comment discussed the situation where the losing party is threatened by many requests for enforcement in different states despite the fact that the award rendered against him was set aside at its country of origin. Ms Haridi replied that it is very difficult to avoid these threats, and the best solution to avoid this position is to limit, at the international level, the grounds for setting aside of awards to cases where a violation of international public policy occurred.

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Sixth Session:

This session was presided by Mr. Stefano Azzali and discussed "State Courts and the Challenge of the Arbitral Award".

Professor Dr. Hamza Haddad spoke about "The Practical Efficiency of the Setting Aside Motion as a Means of Judicial Review of Arbitral Awards". Dr. Haddad discussed the problems that follow the setting aside of the arbitral award and raised important questions related to the possibility to find other means to challenge awards and the possibility to establish an international court to hear challenges of awards.

Ms. Rabab Yasseen then presented "The Revision of Arbitral Awards in Switzerland". Ms. Yasseen explained the rules applicable to the revision process, the court that has jurisdiction to hear it, the time limits to apply for revision and its grounds. She emphasized that an application for revision must be based on the discovery of new facts, evidence or on the establishment of a criminal offence. If the application for revision is granted, the court refers the case to the arbitral tribunal that rendered the award. A new tribunal is constituted if it is impossible to convene the original one. She concluded by highlighting the importance of revision to guarantee a fair and proper outcome for the arbitration proceedings. A decision of the Federal Court to determine some conditions of the revision process and the possibility to waive it is awaited.

In his presentation titled "Overview of the Case Law of the Cairo Court of Appeal regarding the Setting Aside Motions filed Against Arbitral Awards", Counsellor Ismail Al Ziady presented the most important principles governing the decisions of the Cairo Court of Appeal regarding the setting aside of awards. These principles include that arbitration is governed by special international rules aiming at the protection of the interests of the business community, prioritize the parties' agreement and respect their legitimate expectations. He also highlighted that arbitration is different from adjudication by state courts, therefore the rules applicable to arbitration should not be based on those applicable to procedures before state courts.

In the last presentation, Dr. Ismail Selim spoke about "Public Policy and Delay Interests According to the Egyptian Arbitration Law". Dr. Selim explained the trends of Egyptian courts in

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supervising the interest rates decided by arbitral awards through an analysis of many decisions rendered by the Cairo Court of Appeal and the Egyptian Court of Cassation. The majority of these decisions set aside awards in parts where the interest rates exceeded the maximum rate provided for in the Egyptian Civil Code or in the Egyptian Commercial Code depending on the nature of interest (delay interest or compensatory interests). In conclusion, he suggested amending articles 226 and 227 of the Egyptian Civil Code in force since 15 October 1949.

Discussions:

A participant suggested that the interest rate provided for in the Civil Code is not applicable since the Central Bank Act (no.88/2003) applies. Dr. Selim replied that the cases decided by the Court of Cassation did not involve bank transactions and therefore the Act no.88/2003 is not applicable to these cases.

Another question was raised concerning the possibility to resort to state courts to fix the interest rate that was not fixed by the arbitral tribunal. Dr. Selim answered that it was impossible to have recourse to the courts since this issue falls within the mission of the arbitral tribunal. It is however possible to apply to the tribunal and request the issuance of an additional award if the applicable rules allowed it.

Final Session:

In the final session, Ms. Diana Droulers, Counselor Dr. Borhan Amrallah and Dr. Mohamed Abdel Raouf thanked the organising committee, the sponsors, the speakers and the participants. They invited the participants to attend important forthcoming events, including CRCICA celebration of the twentieth anniversary of the Egyptian Arbitration Act. They also invited to hold a conference for Arab judges in 2015 to discuss arbitration and the role of state courts in the arbitral process.

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