



UNCITRAL ARBITRATION RULES AND THE SETTLEMENT OF INVESTMENT DISPUTES: THE EXPERIENCE OF CRCICA

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INTRODUCTION



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- CRCICA is an **independent, non-profit**, self-financed **international organization** established in **1979** under the auspices of the Asian African Legal Consultative Organization (**AALCO**) by dint of a Headquarters Agreement between Egypt and AALCO endowing CRCICA with all necessary privileges and immunities ensuring its independent functioning.
- CRCICA adopted, with minor modifications, the **1976 UNCITRAL Arbitration Rules**. CRCICA Arbitration Rules were amended in **1998, 2000, 2002, 2007** and **2011**.
- The present CRCICA Arbitration Rules entered into force in **March 2011** and are based upon the **new 2010 UNCITRAL Arbitration Rules** with minor modifications emanating mainly from the Centre's role as an arbitral institution and an appointing authority.



INTRODUCTION

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- The revision of CRCICA Arbitration Rules serves the following **four basic purposes**:
 - It guarantees **collegial decision-making** with respect to several vital procedural matters (including the rejection of appointment, the removal and the challenge of arbitrators).
 - It seeks to **modernize the Rules** and to **promote greater efficiency** in arbitral proceedings.
 - **It fills in a few gaps** that have become apparent over the years.
 - It **adjusts the original tables of costs** to ensure **more transparency** in the determination of **the arbitrators' fees**.

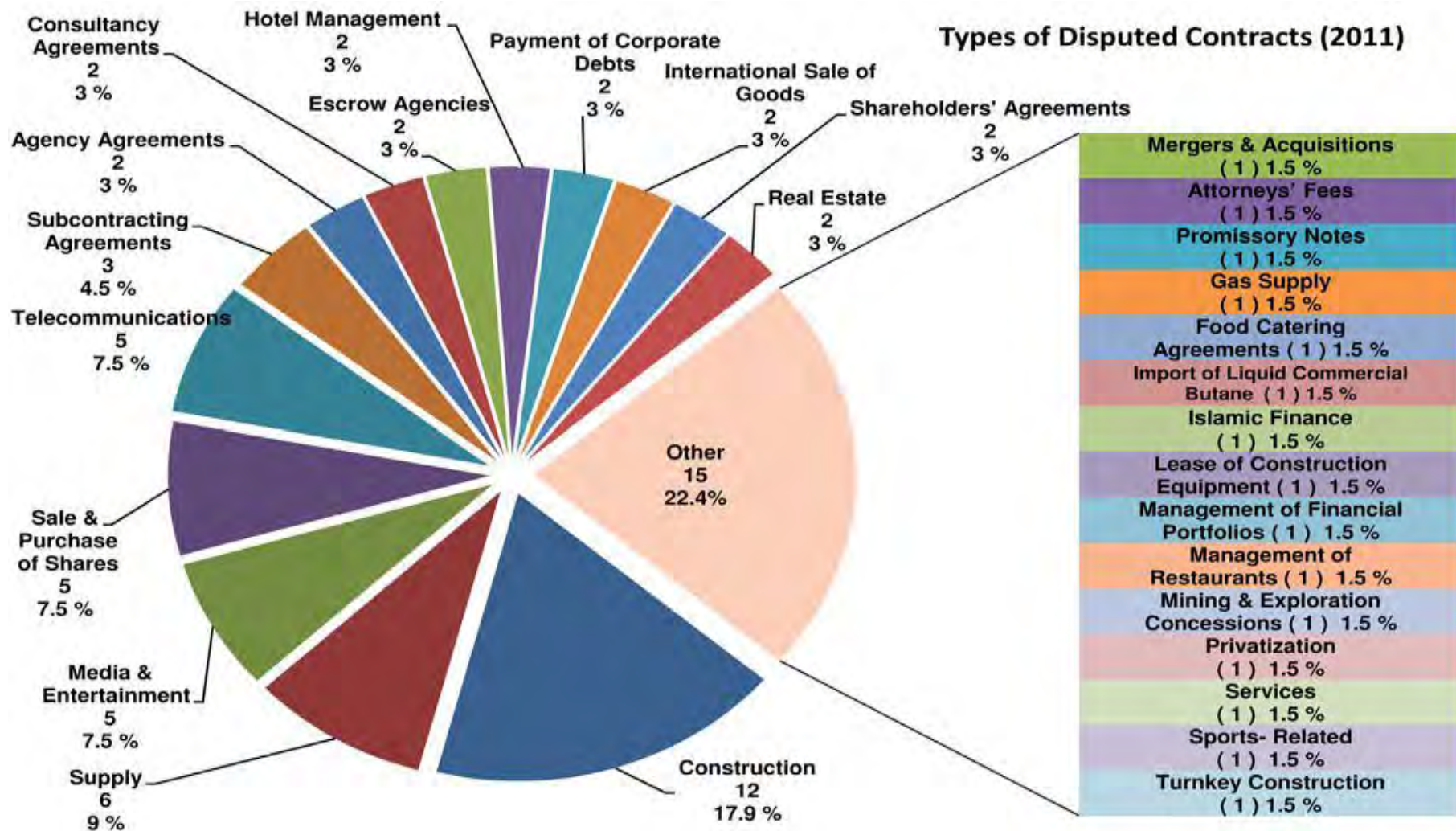
CRCICA RECENT CASELOAD (2011-2012)

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- The total number of arbitration cases filed under the auspices of CRCICA until **30 September 2012** reached **853** cases. In **2011**, **66** new arbitration cases were filed before CRCICA, which is exactly the same number of cases filed in 2010. Among the 66 new cases filed in 2011, **19** were **international cases** against 16 cases in 2010, scoring as such a **19%** annual increase in international cases.
- In the first half of **2012**, **61** new arbitration cases were filed, scoring as such **49%** annual increase compared to the first half of 2011 (30 cases).

A- TYPES OF DISPUTED CONTRACTS (2011)

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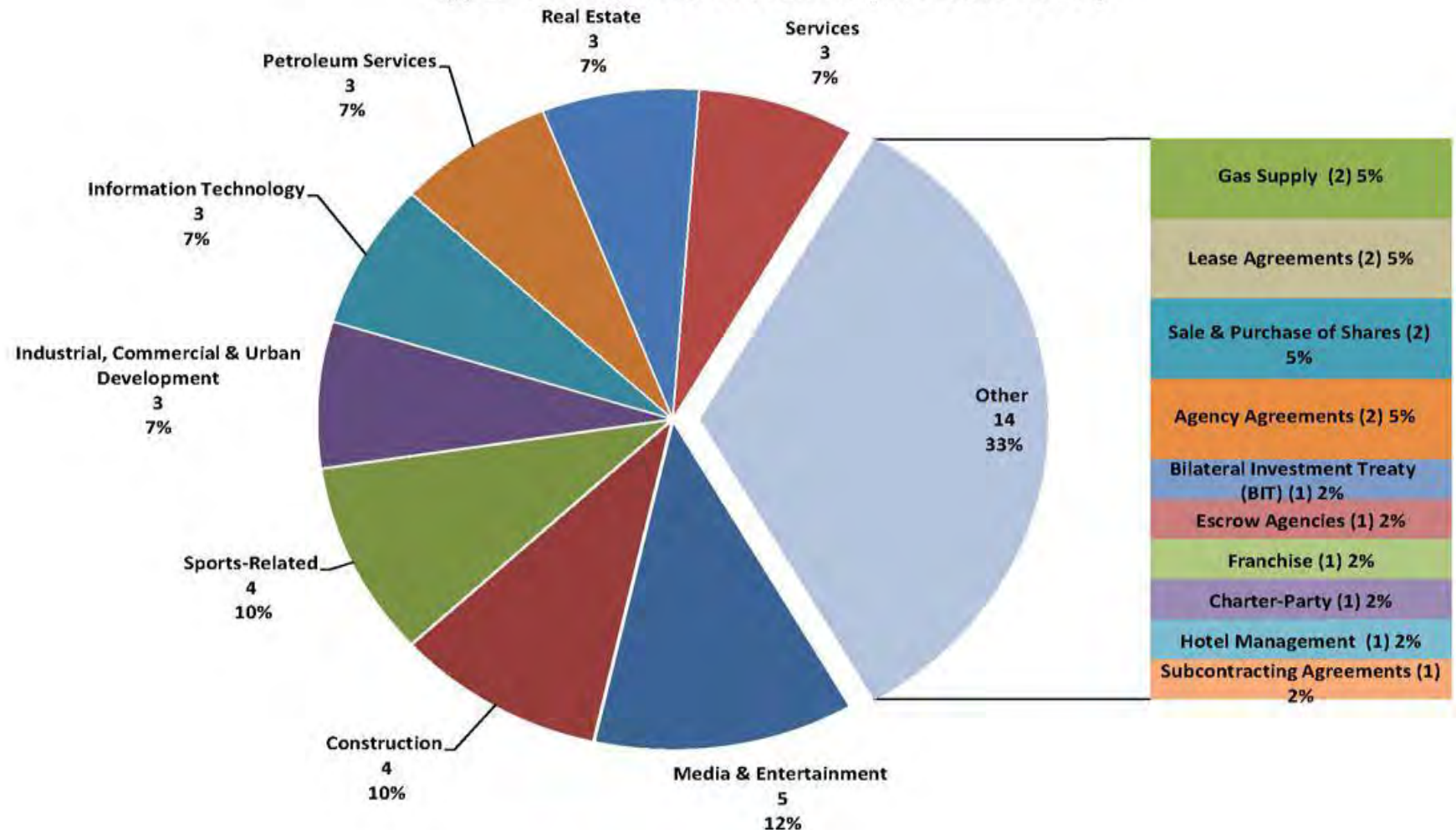
A- TYPES OF DISPUTED CONTRACTS (2011)

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- **Construction** disputes still rank on top of CRCICA's caseload (17.9%), while disputes arising out of **supply contracts, telecommunications, sale and purchase of shares** and **media and entertainment** are witnessing a remarkable increase.
- **2011** witnessed the filing of the first CRCICA **sports-related dispute** concerning the satellite broadcasting of a sportive event.
- Other salient types of disputed contracts in **2011** are as follows: a case relating to the review of **gas supply** prices, an **Islamic finance** dispute arising out of a contract for **Mudarabah** and **Murabaha**, the **privatization** of a well-known publicly-owned department store, **real estate** domestic dispute arising out of the sale of a vacant land in Sahl Hashish as well as an international dispute arising out of the sale of properties in Alexandria, two cases arising out of **escrow agency** agreements, a case relating to the **import of liquid butane**, a case relating to the **acquisition** of an industrial manufacturer of food products, a case relating to **promissory notes** and a case arising out of a **food catering** agreement.

B- TYPES OF DISPUTED CONTRACTS (1ST HALF 2012)

Types of Disputed Contracts (First half 2012)

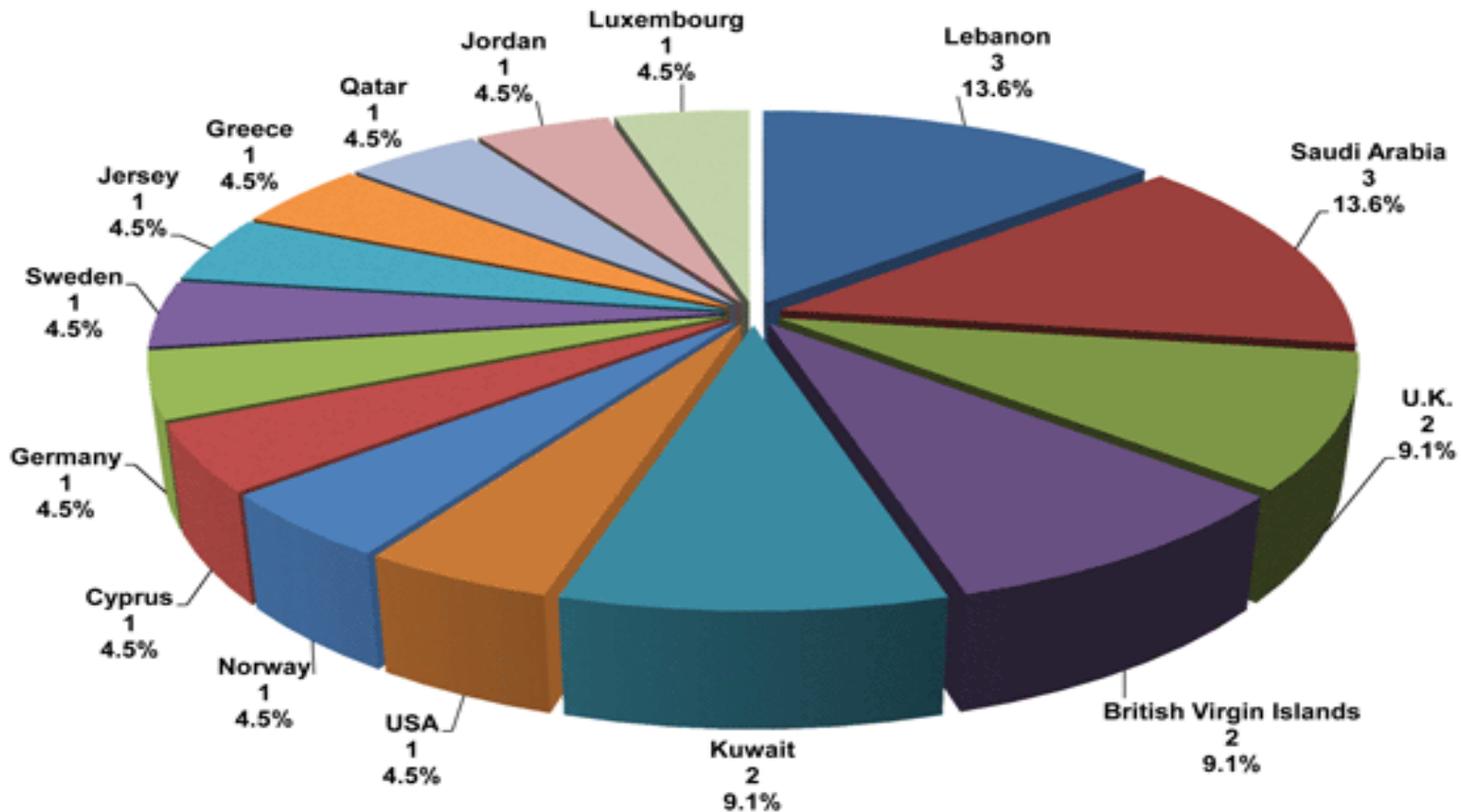


B- TYPES OF DISPUTED CONTRACTS (1ST HALF 2012)

- The first half of **2012** witnessed the filing of an **inter-Arab investment arbitration based on a Bilateral Investment Treaty (BIT) concluded between two north African Arab states**, referring investment disputes between the investors of the contracting states and the host state to arbitration under CRCICA's auspices.
- Other salient types of disputed contracts in 2012 are as follows: **Sports-related** disputes, Information Technology, real estate, three cases relating to the **industrial, commercial and urban development** in three Egyptian governorates (Luxor, Damanhur and Suez), a maritime case arising out of a **charter-party** and a dispute relating to a **franchise** agreement.

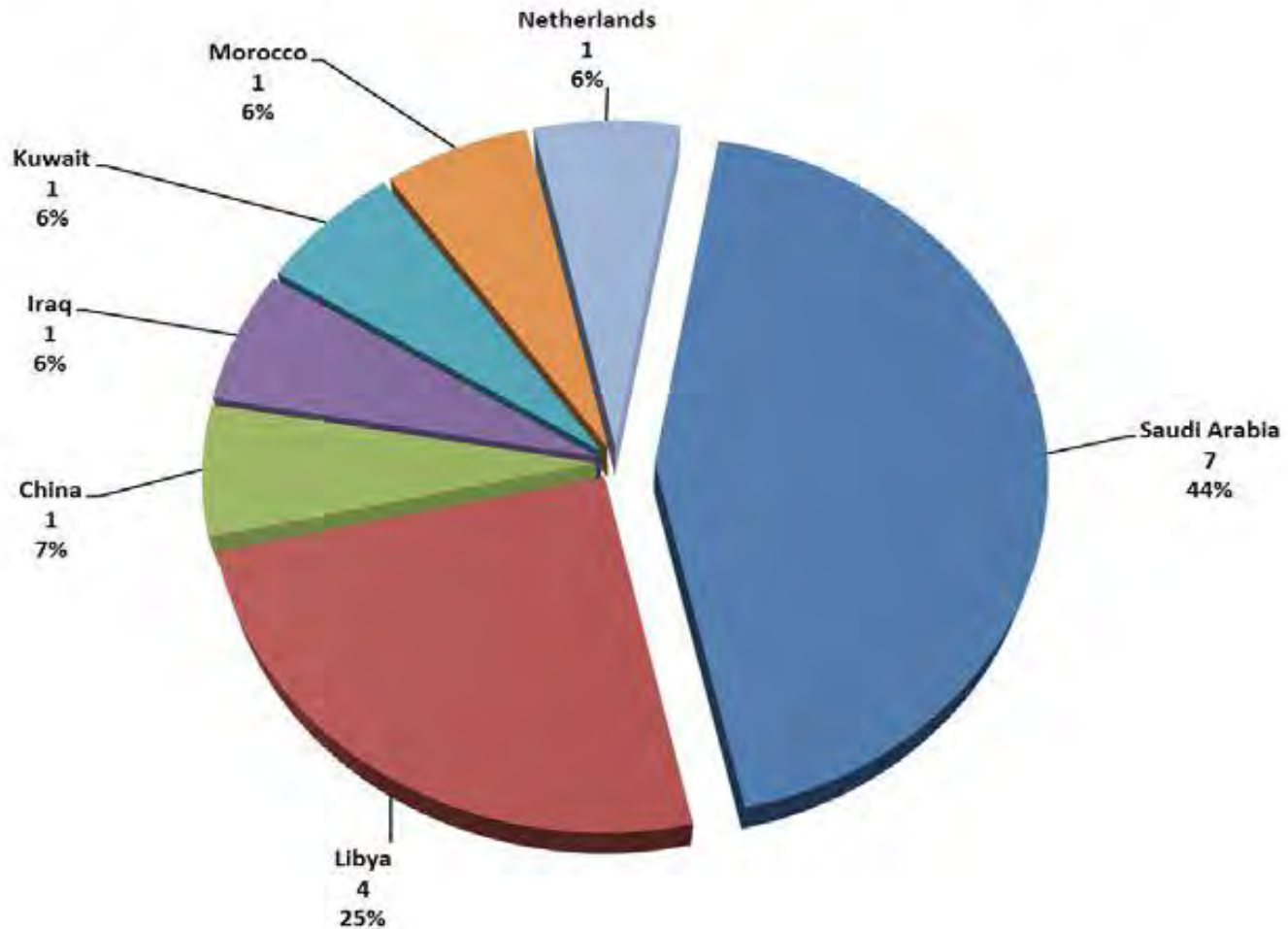
C- NATIONALITIES OF NON-EGYPTIAN PARTIES (2011)

Nationalities of Non-Egyptian Parties (2011)



D- NATIONALITIES OF NON-EGYPTIAN PARTIES (1ST HALF 2012)

Nationalities of Non-Egyptian Parties (First half 2012)

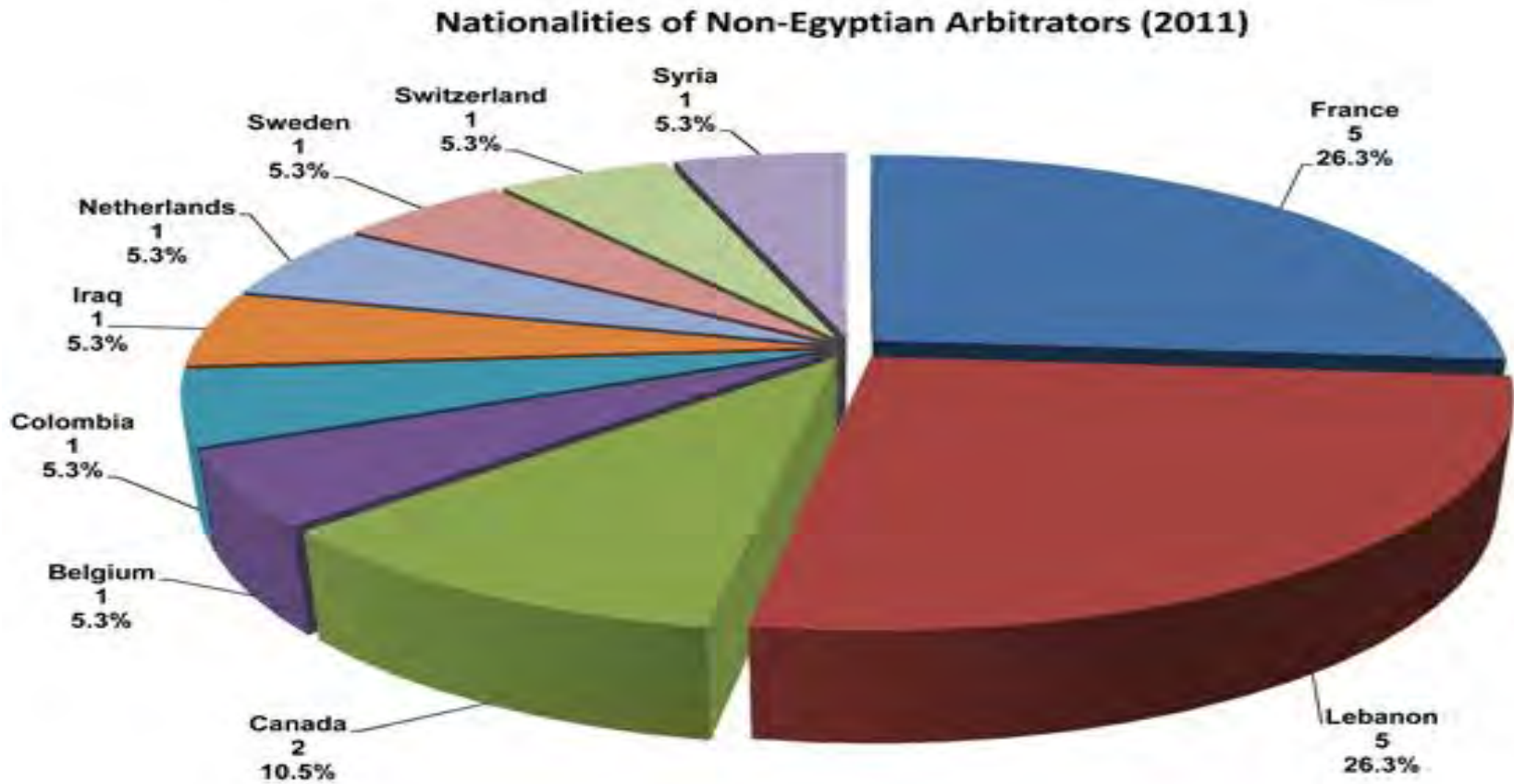


NATIONALITIES OF NON-EGYPTIAN PARTIES (2011-2012)

- CRCICA is pleased to see that, in **2011** and the first half of **2012**, its Arbitration Rules have been selected by **Scandinavian parties** from **Norway** and **Sweden** and notes an increasing number of cases involving companies incorporated in the **British Virgin Islands, Jersey** and **Luxembourg**, relating mainly to **sale and purchase of shares and shareholders' agreements**.
- CRCICA also notes an interesting number of cases involving parties from **Germany, Greece, Cyprus, the United Kingdom, the United States of America, China** and the **Netherlands**. CRCICA is also very satisfied with the Arab representation in its caseload. This includes **Saudi Arabia, Libya, Lebanon, Kuwait, Iraq, Qatar, Morocco** and **Jordan**.

E- NATIONALITIES OF NON-EGYPTIAN ARBITRATORS (2011)

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NATIONALITIES OF NON-EGYPTIAN ARBITRATORS (2011- 2012)

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- In **2011**, **French** arbitrators rank on top of non-Arab arbitrators, while **Lebanese** arbitrators are the most frequently appointed Arab arbitrators.
- In the first half of **2012**, arbitrators from **Tunisia**, **Lebanon** and the **United Kingdom** were appointed.

CRCICA's NEW BOARD OF TRUSTEES

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The current members of the BOT are (in alphabetical order):

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Dr. Ali Bin Fetais AL MARRI

Prince Dr. Bandar Ben Salman AL SAUD

Dr. Ziad A. AL-SUDAIRY

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Prof. James CRAWFORD

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Mr. Philippe LEBOULANGER

Dr. Nayla Comair OBEID

Judge Hisashi OWADA

Prof. Dr. Fouad A. RIAD

Mr. Michael SCHNEIDER

Chairman:



CRCICA's NEW ADVISORY COMMITTEE

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The current members of the AC are (in alphabetical order):

Dr. Mohamed Salah ABDEL WAHAB

Coun. Dr. Borhan AMRALLAH

Prof. Dr. Mohamed BADRAN

Prof. Dr. Aktham EL KHOLY

Prof. Dr. Ahmed S. EL KOSHERI

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Mr. Philippe LÉBOULANGER

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CRCICA's Investment Caseload

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- Till **1990**, only **four investment cases** were registered under the auspices of CRCICA, including **two** cases relating to **hotel management** operations, while the other **two** cases related to **oil investments**.
- Till the end of **2008**, the total number of cases registered with the CRCICA was **635** cases, including **117** investment cases representing **18%**.
- Out of the **117** cases, final arbitral awards were issued in **97** cases representing **83%**.
- Out of the **117** cases, the parties reached **amicable settlements** in **6** cases after the initiation of the arbitral proceedings and before issuing the award. In all **6** cases, an **arbitral award on agreed terms** (recording the said settlements) was issued.

CRCICA's Investment Caseload

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- **From 2009 until 30 September 2012**, the total number of new cases registered with CRCICA reached **218** cases, including **32 investment cases**, representing **15%**.
- In **2009-2011**, out of the **18** registered investment cases, **8** final awards were rendered.
- Since its inception in 1979 till date, the **total number** of CRCICA's **investment cases** reached **149** cases representing **17%** of its total caseload.
- In **2012**, the parties to an investment case arising out of a **sale and purchase of shares** agreement agreed to refer it to **mediation** under the auspices of the Centre. The mediation was successful and a **settlement agreement** was concluded.
- In **2012**, a **conciliation** case relating to a **real estate** investment was registered under the auspices of the Centre. The parties reached an **amicable settlement**.

Arbitration Agreements in CRCICA's Investment Cases

- CRCICA's Investment cases were filed based on arbitration agreements found in three types of legal instruments: **International Investment Treaties (3 cases)**, **State Contracts (47 cases)** and **Private Investment Contracts (99 cases)**.
- The first case filed on the basis of an **international investment agreement** is Case No. 112/1998 opposing a **Libyan** public company for foreign investment (Claimant) and a **Syrian** ministry (Respondent). A treaty was signed between Libya and Syria on January 21st, 1978 to establish a Libyan-Syrian company for industrial and agricultural investments. The final award was issued on September 29, 1998.
- The second case is Case No. 165/2000 opposing an **Egyptian** company (Claimant) and **Lebanon** (Respondent). The final award was issued on July 4th, 2000.
- The third case is Case No. 816/2012, an **inter-Arab investment arbitration** based on a **Bilateral Investment Treaty (BIT)** concluded between **Libya and Morocco**, referring investment disputes to arbitration under CRCICA's auspices.

Types of Investment Contracts and nature of Investment Disputes submitted to CRCICA

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- Investment disputes submitted to CRCICA generally arise out of investment contracts pertaining to **manufacturing, natural resources, real estate, hotel management, shareholders' agreements, and sale and purchase of shares.**
- The most common forms of investment contracts submitted to the CRCICA are **joint venture agreements and sale and purchase of shares.**
- Parties to investment contracts submitted to the CRCICA came from the following countries: **Saudi Arabia, U.A.E., Lebanon, Syria, Libya, Spain, France, Italy, UK, Switzerland, Germany, Belgium, The Netherlands, Cyprus, USA, Kuwait, China, Russia, Morocco, Jordan, Qatar and Egypt.**

Types of Investment Contracts and nature of Investment Disputes submitted to CRCICA

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- Investment disputes submitted to the CRCICA fall mainly within the following categories: **Hotel management operations**, design, development and contractor disputes in investment projects, **transfer of technology**, **sale and purchase of shares** and **capital investment**, **natural resources** disputes, **real estate**, **concession agreements** and **BOT**.
- Some disputes arose due to the **interference of public authorities** with the contractual rights of the investor. Others arose from the **changed circumstances (Force Majeure)**, from **administrative decisions** with respect to the investment. Some disputes arose on **environmental** grounds and one dispute involved allegations of **corruption**.

The Impact of using the UNCITRAL Rules on the Settlement of Investment Disputes

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- Wider Scope of Party Autonomy
- More Flexibility in the Conduct of the Arbitral Proceedings
- More respect of the Parties' Legitimate Expectations
- More Favorable Climate for Amicable Settlements

Wider Scope of Party Autonomy

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- The Scope of application of the Party autonomy principle under the UNCITRAL Arbitration Rules is the **widest** compared to other arbitration rules.
- According to Articles **5, 6 and 7** of the 1976 UNCITRAL Rules and **7 to 10** of the 2010 UNCITRAL Rules, the parties have **full liberty to appoint their arbitrators**. There are **no restrictions or limitations pertaining to the nationality of party-appointed arbitrators**.
- The Parties' choice may be challenged **only** when made in conflict with the arbitration agreement or the requirements provided for by the applicable law.

More Flexibility in the Conduct of the Arbitral Proceedings

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- Under Article 1 of the UNCITRAL Arbitration Rules, the parties are entitled to **modify such rules according to their wish**. The parties are, thus, free to dictate the procedures to be followed.
- Pursuant to Article 17 of the Rules, the arbitral tribunal is granted the **widest possible scope of liberty to conduct the arbitration in such manner as it considers appropriate** without any restriction or limitation except the mandatory rules of the applicable law and provided that the parties are treated with equality and that *“at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting his case”*.

More Respect of The Parties' Legitimate Expectations

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- Under Article **35/1** of the UNCITRAL Rules, the arbitral tribunal shall apply the **rules of law** designated by the parties as applicable to the substance of the dispute.
- Failing such designation by the parties, the arbitral tribunal shall apply the **law** which it determines to be appropriate. In all cases, the arbitral tribunal shall decide in accordance with **the terms of the contract**, if any, and shall take into account any **usage of trade** applicable to the transaction.
- Under the above provision, In the absence of an agreement between the parties, the parties to investment disputes legitimately expect that **a national law** is to be applied to the merits of their dispute. According to the CRCICA's practice, there were **no shocking surprises** in this respect.

More Favorable Climate for Amicable Settlements

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- The wider scope of party autonomy, the flexibility in the conduct of the arbitral proceedings and the respect of the parties' legitimate expectations, as guaranteed under the UNCITRAL Arbitration Rules, contribute to the creation of a sense of **more understanding** between the parties and to the existence of **less adversarial environment**, leading to a more favorable climate for amicable settlements and consent awards.
- According to the CRCICA's experience, almost **5%** of the investment cases filed under its auspices were **amicably settled** between the parties after the initiation of the arbitral proceedings. **7** awards were issued based on agreed upon terms and, in some cases, the parties **resumed their business relationship** after the award. This is definitely more appropriate to the spirit and the objectives of long term investment relationships.

CONCLUSION

- The rich variety of CRCICA's investment disputes and the nationalities of the parties clearly illustrates the **importance** of arbitration as a means of settlement of investment disputes and confirms the **credibility of institutional arbitration** under CRCICA's auspices.
- According to CRCICA's experience, the settlement of investment disputes under the **UNCITRAL Rules, as applied by CRCICA**, is very **efficient**.
- Upon the invitation of the Centre or on their own initiative, the parties to some investment disputes are increasingly resorting to **mediation and conciliation** before or even after filing an arbitration. Arbitration clauses inserted in investment contracts and treaties should respond to this demand.
- The percentage of **consent awards** rendered in **investment disputes** is higher than those rendered in purely **commercial** ones.



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