MESSAGE FROM THE CHAIRMAN

We are glad to note that the first edition of this Bulletin, issued in December 1995, could create an impact among legal professional and businessmen. The overwhelming response from the business and professional fraternity, reflected in the letters received at the Centre Headquarters, is a morale booster for us to continue publication of this Bulletin to make it a platform for sharing of views and ideas.

During the past three months, since our inaugural issue, the Centre has achieved notable progress in its efforts to serve the business community in the Gulf Co-operation Conical States. The number of arbitrators registered with the Centre has gone up to 331 while the figure of approved experts of different specializations has touched 108. Another encouraging factor is that more and more contracting parties are now showing interest in incorporating the arbitration clause, pursuant to the rules and regulations of the Centre, in their commercial contracts and agreements. The G.C.C. commercial Arbitration Centre expresses its appreciation to the legal and engineering consultancy offices and accounting and auditing firms of the G.C.C. States for their whole hearted support and patronage in this matter. The Centre also places on record the valuable services rendered by the outgoing Chairman, Mr. Ibrahim Zainal, from the days of its inception.

The Muscat Meeting of the Centre was an important landmark and it provided a forum for assessment of the performance of the Centre during 1995. This meeting also approved the plan of action for the year 1996. The members once again resolved to support the Centre in its endeavor to provide distinct and quality arbitral services.

We hereby renew our commitment to the G.C.C. Countries and the respective Chambers of Commerce and to the business community as a whole that we will continue to pursue the objectives for which the Centre is established and will not spare any effort in making the Centre an active mechanism for settlement of commercial disputes inclusive of those pertaining to the application and implementation of the Unified Economic Agreement.

Once again, I take this opportunity to thank everyone for continued assistance and support.

RESULTS AND DECISIONS OF THE SIXTH MEETING OF THE BOARD OF DIRECTORS.

MUSCAT - SULTANATE OF OMAN
3rd JANUARY 1996

The sixth Meeting of the Board of Directors of the GCC Commercial Arbitration Centre, held in Muscat, Sultanate of Oman, on 3rd of January 1996, was attended by all the members of the Board, who represented the Chambers of Commerce in the six GCC countries, and the Secretary General of the Centre. It was the first time to hold a meeting of the Board outside the headquarter of the Centre. This is due to the transference of the chairmanship of the Centre to Sultanate of Oman according to the rotation system followed in the GCC meetings. The chairmanship of the current session of the Board of Directors till the end of 1996 is taken over by Mr. Ali Bin Khamis Al-Alawi, representative of the Omani Chamber of Commerce and Industry. Mr. Ebrahim Zainal, representative of the Bahrain chamber of Commerce and Industry has been elected as the Deputy Chairman of the Board for the current session. The meeting has discussed several matters and subjects related to the procession of the Centre during the previous 1996 session. The Board has discussed the Annual Report on the activities of the Centre during 1995 and has expressed its satisfaction at the steps taken towards acquainting different economical sectors in the GCC countries with the services and facilities introduced
An Entry course and a Fellowship Course in International Commercial Arbitration.

Within its efforts to upraise the qualification and efficiency of those working in the field of legislation and arbitration, the Centre, in collaboration with Chartered Institute of Arbitrators, will organize two courses, an Entry Course and a Fellowship Course, in international commercial arbitration, from 13 to 17 April 1996 in the State of Bahrain. This is the first time when specialized courses in commercial arbitration are held by the Centre. Within its priorities, the Centre has already set up its concern to upraise the efficiency and qualification of its arbitrators and experts by organizing specialized meetings, symposia and courses. The Centre has also set up an ambitious plan to distribute the arbitration and legislation idea among the GCC countries in particular, as well as to enlighten economical sectors in these countries to the importance and the role of commercial arbitration and alternative means in setting commercial disputes.
by the Centre after the completion of its organizational and administrative structures. The Board has also expressed its satisfaction at and appreciation of the General Secretariat of both the GCC and the Federation of the Chambers of Commerce, Industry and Agriculture in GCC Countries. The Board has expressed its gratitude and appreciation to the Bahrain Chamber of Commerce and Industry for its financial support to the Centre. The Board has also expressed its gratitude and appreciation to the Omani Chamber of Commerce and Industry for the facilities to hold the Sixth Meeting of the Board of Directors successfully.

The Meeting has approved the workplan of the Centre for the year 1996 which includes the following issues:

WORKPLAN OF THE CENTRE FOR 1996

1 - On the administrative and organizational level
   1-1 To complete the registration of experts in the Panel of Experts.
   1-2 To continue the registration of arbitrators in the Panel of Arbitrators, giving emphasis to high qualification and efficiency.

2 - On the informational and marketing level
   2-1 To continue the informational campaign through newspapers, magazines, radio broadcasting, TV programs and other means of media.
   2-2 To continue issuing the periodical Bulletin of the Centre (3 issues per annum).
   2-3 To issue an informational brochure about the Centre.

3 - On the level of upraising the legislative and arbitral awareness and promoting the Arbitrators and Experts of the Panels.
   3-1 To organize two short courses (a preliminary and an advanced)
   3-2 To organize a one day seminar on “Arbitration in the Field of Technology Transformation” in collaboration with the Geneva based World Intellectual Property Organization (WIPO). Another seminar is proposed to be organized in the UAE.

4 - On the level of relationships with Universities, Institutes and Colleges in the GCC Countries.
   The Centre will attempt to develop its relations with post-secondary educational institutes in the GCC countries in order to create linkage between academic knowledge and practical implementation with the aim of taking advantages of capabilities and potentialities of these institutes. Relevant steps shall be as follows:

4-1 To coordinate in holding specialized courses in the field of commercial arbitration.
4-2 To coordinate in setting up an idea of organizing a high diploma program in the field of commercial arbitration.
4-3 To take advantages of capabilities and potentialities of qualified persons in order to support and improve the qualification of the Panels of Arbitrators and Experts.
4-4 To support the library of the Centre with books and periodicals issued by the relevant institutions.
4-5 To coordinate in setting up an idea of issuing a periodical magazine specialized in commercial arbitration and legislation.

5 - On the level of relationship with the Arab and International Arbitration Institutions:
   5-1 To continue strengthening relationship with arbitration and conciliation centres and committees in the GCC countries.
   5-2 To continue strengthening and developing relationship with Arab and regional arbitration institutions.
   5-3 To develop relationship with international arbitration Institutions.

6 - On the level of activation of the main role of the Centre as a specialized body and mechanism to settle commercial disputes.
   6-1 To continue urging advocates, engineers, legal accountants etc., either through their occupational societies or individually, to include the arbitration clause in their contracts and agreements in accordance with the rules and regulations of the Centre.
   6-2 To emphasize that:

   - Commercial, Industrial, Financial and Service companies and institutions working in the GCC countries consider the Centre as a specialized body in the field of commercial arbitration by including the arbitration clause according to Article 2, paragraph 2 of the “Arbitral Rules of Procedure” of the Centre in their contracts and agreements with other parties.

   - Boards of Directors of large companies and institutions are addressed and asked for holding meetings with the heads of their departments in an effort to give a clear idea about the role which can be played by the Centre in the field of settling commercial disputes.
In its efforts to consolidate and to expand the cooperation / coordination with similar international, regional and national institutions in the field of commercial arbitration, the GCC Centre, recently, has signed the agreement of cooperation with the German Institution of Arbitration.

As planned, similar agreement will be signed with other arbitration institutions in the future.

The following is the wording of the agreement:

**AGREEMENT OF COOPERATION BETWEEN THE G.C.C. COMMERCIAL ARBITRATION CENTRE, BAHRAIN AND THE DEUTSCHE INSTITUTION FÜR SCHIEDSGERICHTSBARKEIT E.V. (DIS)**

Being Convinced that the use of commercial arbitration through fair and expeditious procedures lends confidence and stability to international trade, Deutsche Institution für Schiedsgerichtsbarkeit and the G.C.C. Commercial Arbitration Centre, Bahrain agree as follows:

1. The above organizations will cooperate in popularizing arbitration as a means of settling disputes arising out of international commercial transactions.

2. The organizations will promote a wider use of arbitration under their auspices by lectures, conferences, seminars and other means.

3. The organizations shall provide each other, upon request, facilities or administrative services for the taking of any step in the arbitration proceedings. Expenses incurred shall be reimbursed by the institution requesting the facilities.

4. The organizations will exchange information and, whenever possible, lectures and publications of mutual interest in the field of commercial arbitration.

5. The organizations will promote visits to the other's offices.

6. This agreement shall become effective on January 1996.

In witness thereof, the authorized representatives of the above organizations have appended their signatures to this agreement.

RA Jens Bredow
Secretary General
German Institution of Arbitration
Date: 18 January 1996.

Yousif Z.A.M. Zainal
Secretary General
G.C.C. Commercial Arbitration
Date: 18 January, 1996
1. A "Panel of Qualified Experts" (the Panel) shall be established at the Centre. The Panel shall comprise of various professions, which Arbitral Tribunal at the Centre may resort to.

2. The applicant requesting registration in the Panel shall submit a written request to the Centre’s Secretary General indicating the specialization and the field in which he wishes to be registered, attaching therewith all necessary supporting documents. The Secretary General shall present all applications to the next Centre Board of Directors meeting for approval.

3. The applicant to the Panel shall meet the following conditions:

A) He must have obtained at least Bachelor Degree or equivalent Degree from an accredited/recognized university or college.

B) He must be distinguished in his field of specialization and must have at least seven years of experience in his field for a Bachelor Degree holder and five years of experience for Master Degree (Training periods excluded).

The Centre’s Board of Directors may exempt distinguished traders and manufacturers from qualification requirement provided that they have at least ten years of experience in their field of specialization.

C) He must be licensed, by the authority of the state he belongs to by nationality or the state of residency, for practicing the profession in which he has requested to be registered for. The membership of a professional association in his field of specialization is preferred.

D) The applicant should not have been charged for any criminal offenses.

E) He must not be less than (35) years of age.

4. The Centre shall retain from the total fees payable to the expert a proportionate of 3% from the sums paid to him upon conclusion of the assignment he undertakes.

5. In preparation of the Panel, the Centre seeks the assistant of all Chambers of Commerce and Industry as well as relevant Professional Associations in the GCC States.

6. Qualified Arbitrators at the Centre are eligible to register in the Panel if they meet the requirements spelled out in point (3) above.
The Author is a practising barrister and arbitrator who has experience in the role of both the advocate and the arbitrator. He is a chartered engineer and Reader in Civil and Structural Engineering at the University of Sheffield. Mr. O’Reilly was the Legal Advisor at the Chartered Institute of Arbitrators.

The book covers all aspects relating to costs involved in arbitration. There is detailed analysis of the costs of the parties and fees of the arbitrators, together with the law and practice of allocation of costs, awards as to costs, the taxation of cost, offers of settlement, orders for the security of costs and applications to the court in respect of costs. This summary places emphasis on the chapters dealing with arbitration in general rather than specifically relating to a country or law.

Chapter 1 defines “costs” as all costs and expenses in respect of the entire arbitration proceedings. Such costs include legal advice and representation, arbitrator’s fees, costs of factual evidence and expert witness, costs of accommodation and administrative support during the entire arbitration proceedings and administrative support during the entire arbitration proceedings and any other related expenses.

Chapter 2 deals with the arbitrator’s entitlement of fees and expenses. The Author states “it is well established that the arbitrator in a commercial dispute is entitled to be paid for his services”. However, if no agreement as to fees was made at the time of the appointment, then “reasonable” fees and expenses must be allocated. If there is no express agreement on fees the arbitrator’s entitlement will be drawn from the terms implied in the agreement. In addition, under the “Arbitrator’s Lien” the Arbitrator is entitled to withhold any award until the terms and conditions of such fees and expenses are agreed. The decision on the appropriate level of fees and expenses is governed by several factors such as the standing of the arbitrator in his primary profession together with his expertise and experience; due consideration is to be given to the location and duration of the proceedings, the extent and nature of the dispute, the potential award and the means of the parties.

Chapter 3 addresses the question of the costs of the reference and awards. The arbitrator’s power and duty to award costs are by necessity “discretionary” but there are guidelines and qualifications - there is the agreement of the parties and the principle that the arbitrator must not misdirect himself in exercising such discretion; the power to “direct and by whom” costs are to be paid can only apply to the parties of the reference and the power to direct “in what manner” such costs are to be paid must be exercised with proper discretion.

Chapter 4 provides the practical considerations in awards as to costs. It is crucial to know that “an order for costs is not strictly enforceable until it forms part of an award”.

Chapter 5 covers taxing of settling costs.

Security for the costs of arbitration proceedings is discussed in Chapter 6. In providing respondents with protection against inability of claimant to provide security for some or all of the respondent’s projected costs.

Chapter 7 continues the discussion of offers and protection of costs.

Chapter 8 details applications to the court in respect of costs. These applications are based exclusively on the Arbitration Act of the UK.

* Hussain Almahdi is the Managing Director, GCC Gulf Global Consultancy based in Bahrain, Arbitrator and Expert registered at the GCC Commercial Arbitration Centre in Bahrain, Ph.D. Candidate - Energy Management - U.S.A.; MS Economics - USA; MBA Accounting - USA; BS Economics - Kuwait.
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 ضمن توجهات المركز فتشجع أعضاءه من المحكمين والخبراء المعتمدين لديه لحضور المؤتمرات والندوات والدورات وغيرها من فعاليات التحكيم التجاري والقانون، سواء على المستوى المحلي أو الإقليمي أو الدولي، فأن نشرة التحكيم التجاري الخليجي خدمة لقرائها ستقوم بتزويدهم بمعلومات أساسية حول ذلك.

ويسرنا أن نطلع قراءنا في هذا العدد على الفعاليات التالية التي وصلت إلى المركز وبإمكان المهتمين الاتصال بالمركز للحصول على مزيد من المعلومات حول تلك الفعاليات:

As a part of the Centre’s Policy to encourage its members of Panels of Arbitrators and Experts to attend the Conferences / Seminars on Arbitration and Law, we are pleased to publish the following information received by the Centre:

<table>
<thead>
<tr>
<th>Venue &amp; Date</th>
<th>الزمان والمكان</th>
<th>Organizer</th>
<th>الهيئة المنظمة</th>
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| GENEVA - 28 & 29 - MAY 1996  
GENEVA 30 & 31 - MAY 1996 | الزمن والمكان | WORD INTELLECTUAL PROPERTY ORGANIZATION  
(WIPO) | الجهة المنظمة | WIPO TRAINING PROGRAMS IN INTELLECTUAL PROPERTY DISPUTES | اسم الفعالية |
| PARIS - 13 - 16 JUNE - 1996 | الزمن والمكان | ICC - INSTITUTE OF INTERNATIONAL BUSINESS LAW AND PRACTICE | الجهة المنظمة | WORKSHOP ON INTERNATIONAL COMMERCIAL ARBITRATION | اسم الفعالية |
| PARIS - 9 - 13 SEPTEMBER, 1996 | الزمن والمكان | ICC - INSTITUTE OF INTERNATIONAL BUSINESS LAND AND PRACTICE | الجهة المنظمة | INTERNATIONAL COMMERCIAL ARBITRATION - PIDA SEMINAR FOR NATIONALS OF DEVELOPING COUNTRIES | اسم الفعالية |
| PARIS - 24 - 28 JUNE 1996 | الزمن والمكان | HOSTED BY CHAMBER ARBITRALE MARITIME DE PARIS | الجهة المنظمة | 12th MEETING OF INTERNATIONAL CONGRESS OF MARITIME ARBITRATION | اسم الفعالية |
| BRUSSELS, BELGIUM  
9 - 12 SEP 1996 | الزمن والمكان | INTERNATIONAL ENCYCLOPEDIA OF LAWS | الجهة المنظمة | 1st WORLD LAW CONFERENCE; LAW IN MOTION | اسم الفعالية |
| SEOUL - KOREA  
10 - 13 - OCTOBER 1996 | الزمن والمكان | INTERNATIONAL COUNCIL FOR COMMERCIAL ARBITRATION (ICC A) | الجهة المنظمة | CONFERENCE ON INTERNATIONAL DISPUTES RESOLUTIONS TOWARDS AN INTERNATIONAL ARBITRATION CULTURE | اسم الفعالية |
CASE SUMMARY:

An action was filed by a local company before the Dubai Court wherein the Plaintiff requested that the Court order three Defendants to pay damages for breach of purchase and sale agreement. Alternatively, the Plaintiff requested that the matter be referred to arbitration in Dubai. The Dubai Court of Cassation referred the matter to arbitration in Geneva or Paris in accordance with the terms of the purchase and sale agreement. Although the first and second Defendants failed to challenge the jurisdiction of the Court in their first appearance in the case as required under UAE law of Civil Procedure, the Court recognized the challenge to its jurisdiction on the basis of the timely challenge filed by the third Defendant. In cases where Defendants are sued jointly, the Court held that the benefits of any relevant defense filed by any one of the individual Defendants will be applied to the remaining Defendants. The Court therefore referred the matter to arbitration with respect to all Defendants. The Court also held that an arbitration clause contained in an agreement, if applicable, should be enforced in accordance with its terms. The Court therefore referred the matter to arbitration in Geneva or Paris as provided in the purchase and sale agreement, rather than referring the matter to arbitration in Dubai in accordance with the Plaintiff’s request.

CASE IN DETAIL:

An action was filed before the Dubai Court by a local company against three Defendants requesting that the Court order the Defendants to be jointly and severally liable to pay Dhs. 2,000,000 as damages in connection with the purchase and sale of Brazilian coffee. The Plaintiff requested that the Court refer the matter to arbitration in Dubai, but not in Geneva or Paris as provided for in the purchase and sale agreement. In its judgement, the Court of First Instance held that Dubai Courts had no jurisdiction over the case and that the matter was to be referred to arbitration in Geneva or Paris. In response to the appeal filed by the Plaintiff, the Court of Appeal upheld the judgement delivered by the Court of First Instance.

The Plaintiff appealed further to the Court of Cassation arguing that under the UAE Law of Civil Procedure, the arbitration clause contained in the purchase and sale agreement should be nullified and the Dubai Courts should assume jurisdiction over the matter. In its decision, the Court of Cassation upheld the lower court judgements and referred the matter to arbitration in Geneva or Paris, despite the Plaintiff’s request to have the matter referred to arbitration in Dubai.

Paragraphs (1) and (5) of Article 203 of the UAE Law of Civil Procedure provide:

(1) In general, contracting parties may provide in the main contract or under a later annex for referring any dispute arising between them in respect of the execution of any certain contract to one or more arbitrator(s). Arbitration may also be agreed to or conducted under special conditions in particular cases.

(5) If the opponents agree to refer any dispute to arbitration for settlement, such dispute may be subject of a lawsuit before the Court. However, should either party resort to legal proceedings before the Court disregarding the arbitration clause and if the other party did not object to the same during the first session, the lawsuit may be examined and the arbitration clause shall be no longer binding.

In accordance with these provisions, the Court held that local courts may hear a matter concerning an agreement containing an arbitration clause. Unless the Defendant or his representative challenges the jurisdiction of the Court during the first hearing of the case and requests that the matter be referred to arbitration in accordance with the terms of the agreement. When there is more than one Defendant in a particular case, any Defendant may challenge the jurisdiction of the Court on the date of the first hearing after which he has officially become named in the case. Furthermore, if a Defendant is named in the case subsequent to the naming of another Defendant who did not challenge the Court’s jurisdiction, the challenge by the subsequent Defendant and resulting transfer to arbitration, will also apply to the previously named Defendants.

In this case, the lawyer of the first and second Defendants did not challenge the jurisdiction of the Court and did not attempt to transfer the case to arbitration on the date of the first hearing. The case was, however, subsequently transferred to another bench. After which time, the third Defendant filed his defence and challenged the jurisdiction of the Court by requesting the case be referred to arbitration. The Court held that when several Defendants are being sued jointly, the joint Defendants may benefit from any of the applicable defenses individually raised by any one of the Defendants. In this case, the third Defendant’s timely challenge of the Court’s jurisdiction and request to refer the matter to arbitration, was recognized by the Court and was applied retrospectively to the other Defendants who failed to challenge the Court’s jurisdiction as required under the law.

The Court of Cassation further held that the Court will not rule contrary to the terms of an arbitration clause contained in an agreement. Therefore, the Court refused to refer the case to arbitration in Dubai since the arbitration clause contained in the agreement provides for arbitration elsewhere.
Report on 
the Conference on Globalization and Harmonization of the Basic Notions in International Arbitration 
of 
the International Federation of Commercial Arbitration Institutions (IFCAI), 
hosted by the Hong Kong International Arbitration Centre (HKIAC) 
Hong Kong, November 21, 1995 

by 

Francis Gurry 
Director, WIPO Arbitration Center 
World Intellectual Property Organization (WIPO) 

1. The Biennial Conference of the International Federation of Commercial Arbitration Institutions (IFCAI) that was hosted in Hong Kong on November 21, 1995, by the Hong International Arbitration Center (HKIAC) on the theme of “Globalization and Harmonization of the Basic Notions in International Arbitration” was clearly a very successful event. Its success was apparent from the numbers who attended (around 100), the quality of the papers presented and the amount of discussion generated by those papers. Three ingredients, in particular, can be identified as having contributed to the success of the Conference: 

- the timely and well chosen theme as well as the rich program constructed around that theme, for which thanks are specially due to Dr. Marc Blessing (President, Swiss Arbitration Association), the intellectual architect of the program; 

- the superb execution of the Conference and the attendant organizational arrangements, for which thanks are specially due to Professor Neil Kaplan (Chairman, HKIAC) and Peter Caldwell (Secretary General, HKIAC); and 

- the well chosen venue, in the middle of the dynamic and rapidly changing Asian region, which proved to be particularly appropriate in view of the theme of the Conference. 

2. While many issues were covered in the course of the Conference, five areas may be identified as particularly pertinent to arbitration institutions where suggestions were made concerning the administration of international commercial arbitration or issues were identified as requiring attention by institutions administering international commercial arbitration: 

(i) Arbitrators, 
(ii) Awards, 
(iii) Users, 
(iv) ADR, 
(v) The Internationalization of National Arbitration Institutions. 

Arbitrators 

1. The point was made in the opening session, by Arthur Marriott (Wilmer, Cutler & Pickering, London), that, in order for arbitration to be globalized, there was a need to enlarge the circle
Report
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of
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(v) The Internationalization of National Arbitration Institutions.

Arbitrators

1. The point was made in the opening session, by Arthur Marriott (Wilmer, Cutler & Pickering,
London), that, in order for arbitration to be globalized, there was a need to enlarge the circle
part of both arbitrators and administering institutions. In particular, he argued that means had to be found to give expression to the voice of the users of international commercial arbitration in order to respond better to their needs and to improve the quality of services offered in international commercial arbitration.

2. The practice of the American Arbitration Association in issuing questionnaires to parties and their legal representatives after the termination of an arbitration in order to solicit comments on the process was alluded to by Michael Hoellering as one way of giving users a greater voice.

**ADR**

1. Alternative Dispute Resolution (ADR), in the sense of dispute-resolution procedures outside the courts other than arbitration, was discussed in two main ways. First, the question was posed as to what the role of arbitral institutions in respect of ADR should or would be (Gerald Aksen, Reid & Priest, New York). The educational role that has been commenced by some arbitration institutions in this respect was alluded to by Ms. P.G. Lim (Director, Kuala Lumpur Regional Center for Arbitration), referring to the training of mediation provided by the Kuala Lumpur Center.

2. The different cultural approaches to the use of mediation within arbitration and the differing levels of acceptance of such use were also discussed. The main areas of difference are to be found in respect of the degree of activism in promoting mediation by the arbitrator and the question whether an arbitrator can also perform the role of mediator in the same dispute, while still leaving open the possibility of re-assuming the role of arbitrator in that dispute.

**The Internationalization of National Institutions**

1. Three suggestions were made throughout the Conference as to ways in which national arbitration institutions might become more internationalized, thus assisting the process of the globalization of international commercial arbitration.

2. First, the need for foreign arbitrators to be represented on the lists of national institutions was, as mentioned above, emphasized. While it was thought that, ideally, there should be no restrictions on nationality for representation on the lists of institutions, the practical difficulties of linguistic competence and level of remuneration remained as barriers.

3. Secondly, it was considered to be desirable that there should be some foreign input into the rules of arbitration institutions, in order to ensure the acceptability of those rules on an international basis.

4. Finally, the need to eliminate restrictions on the foreign representation of parties in arbitrations in particular countries was considered essential in order to achieve the widespread acceptance of international commercial arbitration throughout the world.