MESSAGE FROM THE CHAIRMAN OF THE BOARD

At this latest meeting held in Bahrain, the BOD thoroughly considered the Centre’s situation in the light of the tendency of certain bodies in some GCC States to set up local and regional arbitral institutions.

Based on the firm fact that the Centre is the competent authority, within the GCC region, to determine disputes that may arise between nationals of the GCC States (Whether individuals or establishments) or between them and third parties from outside the GCC States, including disputes arising out of enforcement of the Unified Economic Agreement and its executive resolutions, and as long as the Centre represents a regional and international mechanism assisting the private and public sectors in the GCC States to settle commercial disputes, it is presently required that such sectors shall extend the necessary support to this new born Gulf Centre.

The attitude of certain bodies in some of the GCC States towards creating commercial arbitral regional and domestic institutions shall not serve the purpose for which the Centre has been incorporated by leaders of the GCC States at their summit meeting in Riyadh in 1993. On the contrary, such attempts

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The Centre Joins the Internet Society

Internet users can now visit the G.C.C. Commercial Arbitration Centre on the following address:
www.alnadeem.net/arbit

The Centre appointed al-nadeem Information Technology to design its Web Site on the World Wide Web (WWW). The site gives a brief description about the Centre, its charter and arbitration regulations, as well as other activities.

More details on Page 15

SECRETARY GENERAL ENROLLED AS ACCREDITED ARBITRATOR WITH ICSID

Recently, the Secretary General of the GCC Commercial Arbitration Centre, Mr. Yousif Z. A. Zainal, has been nominated as an accredited arbitrator with the International Centre for Settlement of Investment Disputes (ICSID) whose headquarters are situated in Washington D.C.

The Ministry of Finance in the State of Bahrain has nominated Mr. Zainal together with three other persons for the role of Accredited Arbitrators with the said International Centre for a period of four years.

It is worthwhile mentioning that ICSID was incorporated in 1966. The Centre is a competent authority to hear and adjudicate in disputes that may arise between contracting States and foreign investors, whether individuals or private companies.
Banking & Finance Dispute Resolution Through Arbitration

Bahrain 14 - 15 April, 1997

SECOND SESSION
Chairperson: Mr. Zuhair S. Al-Herbish
Speakers:
1. Dr. Abdul Wahab Khayattah
2. Mr. Majeed M. Qaroub

FIRST SESSION
Chairperson: Dr. Hussain Al Baharna
Speakers:
1. Dr. Hasan Elsa Al Mulla
2. Mr. Joseph L. Brand

FOURTH SESSION
Chairperson: Mr. Yousif Zainal
Speakers:
1. Mr. David Bennet
2. Mr. Terence Witzmann
3. Dr. Abbas Hellal

THIRD SESSION
Chairperson: Mr. Abdul Al-Ayoub
Speakers:
1. Mr. Moawiyah El Nany
2. Mr. Martin Varley

SIXTH SESSION
Chairperson: Mr. Hassan Radhi
Speakers:
1. Mr. Richard H. Greindler
2. Mr. Adel Al-Abyouki

FIFTH SESSION
Chairperson: Dr. Luwa Mutlaq
Speakers:
1. Dr. Hesham S. Bissat
2. Mr. Essam Al-Tamimi
THE OBJECT OF ARBITRATION, ABOVE ALL, IS TO PROVIDE A SYSTEM BY WHICH PARTIES CAN BE CONFIDENT OF HAVING THEIR DISPUTES RESOLVED SWIFTLY, FAIRLY AND CONCLUSIVELY BY A PERSON OR PERSONS KNOWLEDGEABLE ABOUT THE SUBJECT MATTER WITH WHICH THE DISPUTE IS CONCERNED. TO MAINTAIN THAT CONFIDENCE, IT IS ESSENTIAL THAT THE ARBITRATION PROCEEDINGS WILL NOT BE DELAYED OR DIVERTED BY EXTERNAL COURT INTERFERENCE OTHER THAN IN THE INTERESTS OF SAFEGUARDING PUBLIC INTERESTS AND ENSURING THE ENFORCEABILITY OF VALID AWARDS.

IT IS WORTHWHILE FROM TIME TO TIME TO REMIND OURSELVES WHAT THE POINT OF ANY GIVEN STATUTE OR SERIES OF RULES IS IN THE UK AND OTHER WESTERN JURISDICTIONS; ARBITRATION HAS MOVED A LONG WAY FROM ITS ORIGINS OF PROVIDING A QUICK AND RELATIVELY CHEAP METHOD OF DISPUTE RESOLUTION AND HAS BECOME MORE OR LESS A REPLICA OF FORMAL LITIGATION PROCEEDINGS. IN SOME WAYS THAT WAS DESIRABLE, IT WAS CERTAINLY INEVITABLY GIVEN THAT THE MAJORITY OF PRACTITIONERS WERE USED TO THE WAYS OF LITIGATION AND SOME PERHAPS, MORE CYNICALLY, PREFERRED THE MORE FORMALIZED APPROACH WHICH GENERALLY LED TO HIGHER FEES.

THE POWERS OF THE NATIONAL JUDICIARY CANNOT AND SHOULD NOT BE ELIMINATED ALTOGETHER BECAUSE THERE WILL REMAIN MATTERS FOR THE COURTS WHICH ARE FOR THE ULTIMATE BENEFIT OF USERS AND WHICH HELP TO MAINTAIN THE OVERALL ATTRACTION OF ARBITRATION; SUCH AS POWERS OF ENFORCEMENT OF AWARDS AND POWER TO SECURE THE ATTENDANCE OF MATERIAL WITNESSES.

THE NEW UK ARBITRATION ACT RECOGNIZES THE ABOVE IN MANY WAYS AND WHILST I DO NOT HOLD IT OUT AS BRING A PARADIGM, IT DOES CONTAIN PROVISIONS WHICH MAY SERVE AS A CATALYST FOR FUTURE CONSIDERATION WITHIN THE GCC.

PROBABLY THE SINGLE MOST IMPORTANT MEASURE HAS BEEN TO MAKE IT MANDATORY TO HAVE AN ARBITRATION CLAUSE IN THE CONTRACT RATHER THAN OPT TO GO TO THE COURT. THIS MAY SEEM MUMBLINGLY OBVIOUS, BUT, FOR EXAMPLE, IT HAS BEEN OFTEN HELD IN THE PAST THAT WHERE THERE IS AN UNPAID CERTIFICATE IN FAVOUR OF A CONTRACTOR AND NO SOUND REASON FOR NON-PAYMENT, THERE IS NO DISPUTE CAPABLE OF BEING REFERRED TO ARBITRATION. THIS HAS NOW CHANGED, SO THAT UNLESS IT CAN BE SHOWN THAT THE CLAUSE HAS BECOME INOPERATIVE OR VOID THE DISPUTE MUST BE ARBITRATED UNLESS THE DEFENDANT HAS ACTUALLY TAKEN A PROCEDURAL STEP IN THE COURT PROCEEDINGS. THIS IS AUGMENTED BY THE POWER VESTED IN THE ARBITRATORS TO MAKE SEPARATE AWARDS IN THE OVERALL REFERENCE E.G. IF PART OF THE CLAIM IS INADMISSIBLE DUE.

MESSAGE FROM THE CHAIRMAN....

Shall dissipate efforts made by the GCC States to give prominence to one regional and International Centre supplementing the existing mechanisms with a view to enhance development of commercial arbitration in the GCC States. Creation of new arbitration centres may have an adverse impact on the Centre, for they may result in a state of duality and perplexity, users of arbitration might be confused and our efforts toward one integrated regional territory could be wasted and dissipated.

We believe that, first of all, the members (i.e. The Chamber Commerce in the GCC States) and the concerned Ministries should not encourage and not participate in setting up new arbitral institutions and organisations in their countries for the reasons mentioned above; Secondly, all efforts shall be directed towards support of this Gulf Centre to create a convenient climate for the integration of the existing institutions and Centres which, if taken together, are considered as administrative and organisational frameworks formed, before the incorporation of the Centre, new focussed into a single unified Gulf Arbitration System.

Khalil Ebrahim Radhiwani
Chairman of the BOD
BIENNEAL CONFERENCE OF THE
INTERNATIONAL FEDERATION OF COMMERCIAL
ARBITRATION INSTITUTIONS (IFCAI)

On
THE INSTITUTIONAL RESPONSE TO CHANGING NEEDS OF USERS

Hosted by
The World Intellectual Property Organization (WIPO)
with the collaboration of the Swiss Arbitration Association (ASA)

Geneva, October 24, 1997

Participation and Registration
The Conference is open to any interested person. The registration fee is 400 Swiss Francs. It covers participation in the Conference, the welcome cocktail, a morning and afternoon coffee and tea, lunch, a set of the papers distributed at the Conference and a copy of the bound volume of paper that will be published after the Conference.

PROGRAMME
October 24, 1997

Friday, October 24

09.00 Welcome by Michael F. Hollering, President, International Federation of Commercial Arbitration Institutions (IFCAI), New York

09.15 - 10.45 THE REVISION OF ARBITRATION RULES
CHAIR: M.I.M. Aboul-Enein, Director, Cairo Regional Centre for International Commercial Arbitration

The approaches adopted in and underlying reasons for the recent revisions of the Rules of the American Arbitration Association (AAA), China International Economic and Trade Arbitration Commission (CIETAC), German Institution of Arbitration (DIS), International Court of Arbitration of the International Chamber of Commerce (ICC), London Court of International Arbitration (LCIA) and world Intellectual Property Organization (WIPO).

Speakers: Horacio Grigera Naon, Secretary General, International Court of Arbitration of the International Chamber of Commerce (ICC)
William K. Slate II, President, American Arbitration Association (AAA)
Tang Houchi, Vice-Chairman, China International Economic and Trade Arbitration Commission (CIETAC)
V. V. Veeder, Q. C., London Court of International Arbitration (LCIA)

10.45 - 11.15 Coffee Break

11.15 - 11.45 THE REVISION OF ARBITRATION RULES (cont’d)
Speakers: Karl-Beinz Bockstiegel, Chairman, German Institution of Arbitration (DIS)
Francis Gurry, Director, WIPO Arbitration and Mediation Centre

11.45 - 13.00 THE PERSPECTIVE OF USERS
CHAIR: Ulf L. Franke, Secretary General, The Arbitration Institute of the Stockholm Chamber of Commerce

What users are looking for from the arbitral process? appointment procedures the management of cases by arbitration institutions, financial aspects. Length of proceedings; how can user interests best be represented in arbitration institutions.

Speakers: James Carter, Sullivan & Cromwell, New York
Rene van Rooij, General Counsel, Oil Products, Shell International Limited, London

13.00 - 15.00 Lunch

Key Note Speaker:

Robert Badinter, President, Arbitration Commission of the International Conference of Ex-Yugoslavia, President, Court of Conciliation and Arbitration of the Organization on Security and Cooperation in Europe (OSCE), Formerly Minister for Justice and President, Constitutional Council, France

15.00 - 16.00 THE RELATIONSHIP BETWEEN THE COURTS AND THE ARBITRAL PROCESS
CHAIR: B. W. Viggrass, Consultant Director, London Court of International Arbitration (LCIA)

Defining the proper limits of judicial intervention in and assistance for the arbitral process; how national can an international arbitration be?

Speakers: The Hon. Justice J. S. Verma, Chief Justice of India
The Hon. Austin N. E. Amisah, President, Court of Appeal, Botswana, and formerly member, Court of Appeal, Ghana.

16.00 - 16.30 Coffee Break

16.30 - 17.30 THE GROWTH AND USE OF MEDIATION THROUGHOUT THE WORLD
CHAIR: Marc Blessing, Bar & Karrer, and Past President, Swiss Arbitration Association (ASA), Zurich

Contd. in next page
The BOD of the Centre convened its tenth meeting in Bahrain on the 11th of May 1997, in the presence of members of the Board representing the Chamber of Commerce & Industry of the GCC States. The meeting was presided by his Excellency Mr. Khalil Ibrahim Radhwan, representative of Qatar Chamber of Commerce & Industry and Chairman of the present session of the Board of Directors. The Board reviewed the reports prepared by the Centres Secretariat. The Board discussed a number of organisational, administrative and financial issues pertaining to the Centre's activities during the previous period and also reviewed the financial report. The Board expressed its satisfaction as to the Centre's progress of work and the positive outcomes and achievements attained so far. During its discussions, special attention was paid to the Centre's budget of 1998. In this regard, the Board welcomed the resolution adopted by the Council of the Federation of GCC Chambers of Commerce and Industry, approved at its latest meeting in Muscat on 1st of April, to finance the Centre's budget for the forthcoming years equally between the Unions and Chambers of the GCC States with effect from the beginning of 1998, provided that members' Unions and Chambers shall finance the Centre's budget for 1998 which amounts to BD 80,000/-.

The Board expressed its gratitude to the members' chambers for their continuing support extended to the Centre, particularly the Bahrain Chamber of Commerce & Industry for its financial support during the first three years of the Centre's life (1995, 1996 and 1997).

The Board further emphasized the importance of increasing such support by all members' chambers.

Furthermore, the Board gave emphasis to co-operation and coordination with the General Secretary of the GCC and the Secretary of the Federation of Chambers of the GCC States with a view to develop the Centre's work and to activate its role. The Board expressed its contentment for diffusion of legal awareness relating to arbitration in the region and the increasing role of the Chamber of Commerce & Industry in encouraging their members to resort to arbitration. The Board highlighted the necessity of developing the existing dispute resolution mechanisms so as to supplement the Centre's work and to avert any dissipation of the efforts of the GCC and its Chambers and to grant a more effective and distinctive role to the Centre as a mechanism for commercial dispute resolution.

In this regard, the BOD urged the Federation of the Chambers to persuade its members (who are in the meantime promoters of the Centre) not to encourage the setting up of new Centres or regional or domestic arbitration organisations which might result in duality, perplexity and dissipation of the Centre's efforts aiming at an actual regional and international mechanism of commercial dispute resolution in the GCC States.

The Board viewed the prospective plans of the Centre in the light of the growing, information base pertaining to all aspects of commercial arbitration in the GCC States. The Board, therefore, welcomed the General Secretary's initiative to establish close cooperation with the United Nations Development Program (UNDP) by conducting a comprehensive survey of rules and laws relating to commercial arbitration in the GCC States. The judicial precedents pertaining to the enforcement of foreign arbitral awards by the courts of the GCC States volume of arbitration cases in these countries and the different areas of arbitration and obstacles hampering the development of commercial arbitration.

The Board urged the Secretary of the Centre to make extensive contacts with UNDP and to proceed with this proposal by completing the laying down of final conceptions and eventually approving it.

On the other hand, the Board approved new applications for registration in the panel of accredited experts and thus the total number of accredited experts has become 159, in addition to the panel of accredited arbitrators, who number 42.

The Board expressed its gratitude to the Government of Bahrain for providing the necessary facilities for the Centre in the State of Bahrain. The Board also complemented the concerned Ministries and bodies in the State of Bahrain and in other GCC States for their support of the Centre's activities and particularly the Gulf mass media's supportive role of the Centre's initiatives and activities.
REPORT ON
KUWAIT INTERNATIONAL COMMERCIAL ARBITRATION CONFERENCE
APRIL 27 - 29, 1997

BY LIZ HALL

In recognition of the growing importance of international arbitration to attract, maintain and protect foreign investment necessary for international peace and stability through economic development and of arbitration's unique characteristic to quickly resolve disputes, with expertise, thereby promoting economic harmonization amongst countries with different legal systems, without compromising on any nation's individuality and beliefs, the State of Kuwait held an extremely successful and memorable three day conference on International Arbitration. This important conference, which attracted more than 55 speakers and Chairmen from the highest ranks of internationally renowned experts from home and abroad, from a rich diversity of fields - from academics to legal practitioners to past and present senior officials in government and non-government institutions, was organized by the Ministry of Justice and the Kuwait Foundation for the Advancement of Sciences under the patronage of Acting Prime Minister and Minister of Foreign Affairs Sheik Sabah Al Ahmed Al-Sabah. The conference was opened by the Minister of Justice and Minister for Awqaf and Islamic Affairs, Mr. Mohammed Dhefallah Sharar, and managed by the Assistant Deputy Minister for Expertise and Arbitration of the Ministry of Justice, Mr. Nasser Mohammed Al-Nasrallah. Arabic was the official language of the conference; however, there was excellent, simultaneous translation into English and French. While it is true to be said that no expense was spared, it is also true that this was exceeded by Kuwait's warm hospitality to all delegates and written materials for perusal after the conference. Translators from the Ministry of Justice were on constant call from early morning to late at night for the three days to ensure attendees had no language problems to prevent them from learning the most in a very short time about Kuwait's structural systems and infrastructure, geography, culture, religion and the effect of the Gulf War, even on a personal basis. Because so much had to be covered substantively there was little free time; but what there was had been organized with social activities (a dinner hosted by the Minister of Justice and luncheon hosted by the Kuwait Chamber of Commerce and Industry) and several cultural trips.

As reported in the last BULLETIN, the conference was divided into seven main themes: (1) International Arbitration and its Role in the Settlement of Commercial and Investment Disputes; (2) Practical Problems Facing International Arbitration in Commercial and Investment Disputes and the Recommended Remedies; (3) International Arbitration and its Impact on Promoting Investment and Capital In-Flow; (4) Preparing International Arbitrators to Deal with Commercial and Investment Disputes; (5) Arbitration in Kuwait Investment Agreements Concluded with Other Countries; (6) The International Arbitration System in Islamic Legislation in the Field of Commerce and Investment; and (7) Arbitration in Kuwait and its Characteristics. To successfully provide depth within the breadth of these topics required the honed skills of the 55 speakers who were kept within their allotted 10 minutes; under the watchful eyes of the Chairmen. This did, of course, prompt quick-witted repartees between the speakers and their chairmen sparking participation from the audience which was particularly lively on the third day when the theme concentrated on Kuwait's system of arbitration and its use to resolve disputes in Kuwait's investment agreements. At the time of the conference there were approximately 65 cases of arbitration with about US$100 million in dispute, according to the Director of Judicial Arbitration and Administration, Mr. Sultan Al-Atefi, which evidenced the immediate relevance of the conference.

The GCC Commercial Arbitration Centre was officially represented by Mr. Youssif Z. A. Zainal, Secretary General, who spoke on the fourth theme and Mr. Ali Bin Khames Alawi, Board member and past Chairman, who spoke on the sixth theme. Other speakers who are also our members were: Dr. Giorgio Bernini, formerly Italy's Minister for Foreign Trade and past Chairman of the ICCA, and Dr. Ahmed El-Saied Sharaf El-Din, Professor of Civil Law at the Faculty of Law at the University of Ain Shams and an international arbitrator, who both spoke on the first theme; Dr. Saleh Baker Al-Tayer, Chairman of the Arab European Studies Centre, and Mr. Antonio Albert de Fina, past Presidents of the Australian Centre for International Commercial Arbitration and The Institute of Arbitrators (Australia), who both spoke on the second theme; Mr. Richard Kiender, a partner of Jones Day Reavis & Pogue (Germany) and an international arbitrator, and Dr. William Pissort, Professor of International Law and Head of the Belgian Delegation to the Committee on the Development of Trade, United Nations - Geneva, who both spoke on the third theme; Dr. Abdul Hameed Al-Ahmad, Chairman of the Arab Association for Internal Arbitration who chaired the fourth theme, and Dr. Hussein Al Barbana, Ex-Minister of State for Legal Affairs and Deputy Chairman of the Arab Association for International Arbitration, who both spoke on the fifth theme. From this list you can see the only theme we had no member speak on was the last one, "Arbitration in Kuwait and its Characteristics". Personally speaking, as an attendee of the conference and as a member of our Centre, congratulations on your distinguished success and thank you all for your efforts, time and contribution which help to make the Centre grow stronger.

I should like to end this article with an apology, a recommendation, a hope and a prayer. There was far too much material of depth and breadth to be succinctly condensed within the limited space here to do the State of Kuwait; the organizers, patrons, chairmen and speakers of the conference and the other conference justice. But herein lies the value and recommendation of the official publication of the conference. We all, I am sure, look forward to watching the conclusions of the conference materialize and wish Kuwait every success, including the speedy return of her citizens whom we all pray are being kept safe and sound.
THE CONTRIBUTION OF ICSID TO THE SETTLEMENT OF INVESTMENT DISPUTES WITH A PARTICULAR REFERENCE TO ARAB COUNTRIES

By
Ibrahim F. I. Shihata
Senior Vice President and General Counsel, World Bank Secretary-General, International Centre for Settlement of Investment Disputes

I. INTRODUCTION

ICSID or the International Centre for Settlement of Investment Disputes is one of the five International Organizations that make up the World Bank Group. It was created in 1966 by the Convenion on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention of the Washington Convention). To date, 126 countries have signed and ratified the ICSID Convention to become Contracting States.

ICSID provides facilities for the conciliation and arbitration of investment disputes between Contracting States (or their constituent subdivisions or agencies) and investors who qualify as nationals of other Contracting States. ICSID's objective in making such facilities available is to help foster confidence between governments and foreign investors conducive to increasing the flow of international investment. The ICSID Secretariat does not itself conciliate or arbitrate the disputes submitted to it. This is the task of conciliation commissions and arbitral tribunals which are constituted for each dispute, normally through appointment by the parties. The Secretariat assists in the initiation and conduct of conciliation and arbitration proceedings, performing a variety of administrative functions in this respect. The Secretariat also undertakes research and publication activities in the field of arbitration and investment law with a view to promoting international investment and the progressive development of foreign investment law. ICSID publications include the semiannual ICSID Review-Foreign Investment Law Journal and loose-leaf collections of investment laws of the World and of Investment Treaties.

The ICSID Contracting States include thirteen Arab countries: Egypt, Mauritania, Morocco, Somalia, Sudan and Tunisia were indeed among the first countries that ratified the ICSID Convention. Jordan, Kuwait, Saudi Arabia and the United Arab Emirates became ICSID members in 1972, 1979, 1980 and 1982 respectively. Algeria, Bahrain and Oman became Contracting States only in 1995 and 1996. Lebanon, Djibouti, Iraq, Libya, Qatar, Syria and Yemen have not become ICSID members yet despite the attractive features of the ICSID system of settling disputes. These features are discussed below.

II. MAIN FEATURES OF THE ICSID SYSTEM

Eight basic features of the ICSID system are worth emphasizing:

First, the ICSID system is based on a treaty, the ICSID Convention. Of course, many other international arbitration systems can be said to be based in some measure on international agreements. In particular, the area of the enforcement of arbitral awards is now, in large part, based on international treaties. But what distinguishes the ICSID system from others is that the Convention that establishes it provides a comprehensive and largely self-contained, institutional system for the resolution of disputes falling within its jurisdiction.

A second feature of the ICSID system is that it is a specialized one: its scope is limited to investment disputes between a Contracting State or a designated constituent subdivision or agency of that State and a national or another Contracting State. The fact that the Convention does not define the term "investment" has enabled ICSID tribunal to take a flexible position on its meaning. They have accepted jurisdiction over differences arising in connection with certain types of service and construction contracts as well as disputes relating to more traditional types of investments such as those made under concession agreements.

The treaty-based and specialized nature of the ICSID system is linked to the primary purpose of ICSID as the promotion of foreign investment flows among its member countries, the drafters of the ICSID Convention were willing to go further than other international arbitration systems in providing a modern arbitration and conciliation system to deal with this particular type of dispute.

The third feature of the ICSID system is that it is entirely voluntary. No procedures may be held under the Centre's auspices unless both parties have consented in writing to submit the dispute to ICSID. Indeed, the condition of consent is so fundamental to the ICSID system that it has been described as being the "cornerstone" of the Centre's jurisdiction. The consent of the parties need not, however, be contained in a single instrument, such as an investment contract. In their 1965 Report on the ICSID Convention, the Executive Directors of the World Bank who formally approved the final text of the Convention, suggested, as one alternative to consents in a single instrument, that "a host State might

1. The texts of the Convention on the Settlement of Investment between States and Nationals of Other States (the ICSID Convention) and of its accompanying Report the Executive Directors of the World Bank who approved the text of the Convention are reprinted in Doc. ICSID/2.
2. See Doc. ICSID/2, List of Contracting States and Other Signatories of the Convention (April 8, 1996). The total number of the signatories to date is 139 countries.
4. See ICSID Convention at Art. 25(1).
5. For details on cases submitted to the Centre, its semiannual newsletter, News from ICSID, and Doc. ICSID/16/Rev.4, ICSID Cases (July 31, 1995).
7. See ICSID Convention at Art. 25(1).
8. See Executive Directors' Report, supra note 1, at para 22.
in its investment promotion legislation offer to submit disputes arising out of certain classes of investments to the jurisdiction of the Centre, and the investor might give his consent by accepting the offer in writing. The same approach may be followed in bilateral and multilateral investment promotion treaties. There are today indeed at least 20 investment laws, over 600 bilateral investment treaties and 4 multilateral investment agreements in which governments have given their consent to submit to ICSID arbitration disputes with any investors covered by the laws or treaties. The matching consent of the investors can, under most of these laws and treaties, simply be given by initiating arbitration proceedings pursuant to the law or treaty in question.

A fourth feature of the ICSID system is the wide scope it gives to party autonomy in the determination of applicable law and procedures. This is so because the Convention contains few mandatory provisions in this respect while at the same time insulating ICSID proceeding from national arbitration laws.

The Convention gives parties complete freedom to determine the substantive rules of law according to which their arbitral tribunal will decide the dispute; they may even authorize the arbitrators to decide in equity, as amiables compositores. Similarly, parties to ICSID proceedings have considerable discretion to tailor to their needs the rules governing the conduct of their proceeding. Their discretion is limited only by imperative provisions of the Convention such as those requiring that there be an uneven number of arbitrators and that their award be reasoned. The Centre has detailed sets of rules and conciliation rules for the conduct of ICSID proceedings. For the most part, however, the provisions of these rules will only apply in the absence of agreement by the parties to the contrary.

A fifth feature of the ICSID system is its effectiveness. The ICSID rules provide mechanisms to ensure that a party cannot frustrate the proceedings. If, for example, one of the parties refuses to cooperate in the appointment of arbitrators, the tribunal may still be constituted through appointments by the Chairman of the ICSID Administrative Council. Even if a party fails to participate in an arbitration, the Convention assures that the proceedings can continue and lead to an award.

And the Convention assures the effectiveness of ICSID arbitral awards once they have been rendered. Under a unique provision of the Convention, each Contracting State undertake to recognize such awards as binding and to enforce the pecuniary obligations imposed by the awards as if they were final judgments of the State's courts. A party may obtain recognition and enforcement of an award by simply furnishing a certified copy thereof to the competent court or other authority designated for this purpose by each Contracting State. The role of the courts of Contracting States is thus limited to assisting in the recognition and enforcement of ICSID awards; they have no power to review the merits of such awards in any way. In this manner, an ICSID award has a privileged treatment not enjoyed by arbitral awards under other International Arbitration Systems.

The sixth feature for the ICSID system is that it is relatively inexpensive. The Centre endeavours to relate expenses incurred in the cases to the work actually performed in connection with the proceeding and the World Bank bears all the overhead costs of the ICSID Secretariat. In addition, the fees of ICSID arbitrators are reflected in fixed per diems and do not represent a percentage of the amount in dispute.

The seventh feature of the ICSID system is that ICSID arbitration is exclusive of any other remedy. Not only are domestic courts in Contracting States precluded from interfering in the conduct of ICSID proceedings, but the Convention also provides that ICSID arbitral awards shall not be subject to any appeal or to any other remedy except those provided in the Convention itself. These are the remedies of rectification of errors, interpretation and revision of an award by the arbitral tribunal, and annulment of an award by the ad hoc committee to be established by the Chairman of ICSID's Administrative Council, all of which are remedies internal to the ICSID system.

The ICSID Convention provides for the possibility of annulling an award rendered under the ICSID Convention on one or more of the following five limited grounds: that the tribunal was improperly constituted; that it manifestly exceeded its powers; that there was corruption on the part of an arbitrator; that there was a serious departure from a fundamental rule of procedure; and that the award failed to state the reasons on which it was based. In accordance with the Convention, applications by parties to annul awards on such grounds are referred to a three-member ad hoc committee appointed by the Chairman of ICSID's Administrative Council. The committee has the power to annul an award on any of the stated grounds. If there is an annulment, either party may re-submit the dispute to a new ICSID tribunal. Though the application of the annulment procedure has been criticized by some commentators, this remedy is an important safeguard of the ICSID system in the absence of external safeguards, such as national courts, to ensure the integrity of the ICSID arbitral process.

The eighth and last feature for the ICSID system is that recourse to ICSID arbitration insulates the dispute from the political arena. Under the ICSID Convention, a Contracting State is prevented from giving diplomatic protection or bringing an international claim in respect of a dispute which one of its nationals and another Contracting State have consented to submit to ICSID arbitration. The right of protection will, however, revive if the State party to the dispute fails to abide by and comply with the award rendered in the dispute. The State party to the
dispute cannot frustrate ICSID proceedings after it has given its consent to ICSID arbitration. However, the ICSID Convention allows a Contracting State to require, as a condition of its consent to ICSID arbitration, prior exhaustion of local remedies 23.

These are some of the features of the ICSID system that have helped it to attain widespread acceptance. Most of these features may also be found in the 1974 Convention of the Settlement Disputes between Host States of Arab Investments and National of Other Arab States 24 whose members comprise ICSID as well as non-ICSID Arab members.

Besides providing facilities for conciliation and arbitration under the ICSID Convention, ICSID has since 1978 set out a set of Additional Facility Rules 25 under which the ICSID Secretariat is authorized to administer certain proceedings between States and nationals of other States which fall outside the scope of the Convention. These include conciliation and arbitration proceedings for the settlement of investment disputes where one of the parties is not a Contracting State or a national of such a State, as well as conciliation and arbitration proceedings for the settlement of disputes that do not arise out of an investment, provided that the underlying transaction is not an "ordinary commercial" one and that at least one of the parties is a Contracting State or a national of a Contracting State. Awards rendered under this facility do not enjoy, however, the same status as ICSID awards. In particular, such awards may be subject to review by national courts.

While the range of proceedings that ICSID may administer is thus broad, there are cases which cannot be brought under either the Convention or the Additional Facility Rules. In such cases, parties have in a number of occasions sought the assistance of ICSID in arranging for ad hoc conciliation or arbitration, usually by having the Secretary General of ICSID undertake to appoint some or all of the conciliators or arbitrators in certain contingencies defined by the parties. This may in particular be done in the context of contracts or bilateral investment treaties providing for arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), which are specially designed for ad hoc proceedings. This may also be done in some multilateral agreements, referred to below, such as the North American Free Trade Agreement (NAFTA) which was concluded among Canada, Mexico and the United States.

III. SOME ASPECTS OF ICSID'S RECORD

Despite the proliferation in recent years of ICSID clauses in national laws and international agreements and an upsurge of new ICSID cases, the total number of disputes to have been submitted to the Centre is understandably not as high as the cases brought to other leading arbitration institutions. After all, these are disputes involving governments where parties try to settle their differences through negotiation and to avoid litigation to the extent possible. Even when proceedings have been instituted, they have often subsequently been discontinued following an amicable settlement of the dispute. Of the 38 cases so far submitted to ICSID, 3 were conciliations and the remaining 35 arbitrations. Of the conciliation disputes, two proceedings were closed after an agreement was reached by the parties. Of the arbitration cases, fourteen were similarly settled by the parties on agreed terms before the rendition of an award. The comparatively low number of cases and the high incidence of agreed settlement after the institution of proceedings testify that clause providing for binding ICSID arbitration may have a useful deterrent effect in avoiding actions which lead to disputes and serve as an inducement to seek negotiated settlements of disputes when they arise.

As mentioned earlier, since the entry into force of the ICSID Convention, several countries have included in their investment legislation provisions containing general "offers" or contents to submit disputes with foreign investors to ICSID arbitration. These provisions typically provide that all disputes between the State and foreign investors over the interpretation or application of the investment law concerned shall, unless the disputing parties agree otherwise, be settled by arbitration under the ICSID Convention or, if the investor is not a national of a Contracting State, then by ICSID Additional Facility arbitration 26.

As indicated above, there are comparable provisions in over 60 BITs setting forth binding consents by the States parties to arbitration under the ICSID Convention. Some of the more recent BITs combine such consents with further consents to arbitration under the UNCITRAL Arbitration Rules and under the ICSID Additional Facility Rules, thus also opening up recourse to these other forms of arbitration if desired or appropriate.

Following the pattern established by these recent BITs, four multilateral investment treaties provide for the settlement of investment disputes under either the ICSID Convention, the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules. One such treaty is the December 1994 Energy Charter Treaty 27 concluded among 49 countries and the European Communities which is meant to liberalize trade and investment in the energy sector. This Treaty, which regulates trade and investment in the energy sector, including petroleum, may be of particular interest to Arab countries. The three other multilateral treaties with similar provisions referring to ICSID are the above mentioned December 1992 North American Free Trade Agreement (NAFTA), the January 1994 Colombia, Mexico and Venezuela Free Agreement.

Jurisdiction in all of the cases brought to ICSID until about the mid 1980s was founded upon consents to arbitration recorded in the traditional manner by a clause in a single instrument such as an investment contract. Since then, the Centre has registered nine cases (two of them involving Egypt) where there was no such contract between the parties and where jurisdiction was instead upon arbitration provisions in the investment legislation of the State party or in a bilateral investment treaty.

There has been considerable variety among the cases submitted to ICSID. Parties to ICSID proceedings have included the governments of 30 different countries from each of the major regions of the world and nationals of over 30 other countries. Of the 35 arbitration cases so far registered by ICSID, four of them involved the governments of three Arab countries, 28 namely Egypt, Morocco and Tunisia. The case involving Tunisia could in fact be called an inter-Arab dispute as the other party in that case was an investor from Saudi Arabia. Most of the ICSID cases involving Arab parties happen to have been in the

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25. The Additional Facility Rules are reproduced in Doc. ICSID/13 (June 1979).
28. While the proceedings in these three cases were discontinued following the settlement of the dispute by the parties, the fourth case led to an award.
construction and tourism sectors. However, a number of cases involving non-Arab parties may be of interest to Arab oil-producing countries because they involve petroleum disputes. The petroleum cases involved oil companies from Britain, Italy and the United States and the Governments of countries in the Caribbean, the Pacific, in South Asia and in Sub-Saharan Africa. Like the majority of ICSID cases, most of the petroleum cases led to an amicable settlement of the dispute before the rendition of an arbitral award. The ICSID petroleum cases have in fact yielded only two awards, one rendered in 1979 in favour of the foreign company concerned and the other rendered in 1994 in favour of the government concerned.

It may be noted that ninety-five different individuals from thirty-seven countries have so far served on the commissions, tribunals and committees thus far constituted in ICSID proceedings. In this context, nationals from Algeria, Egypt and Sudan have been appointed as arbitrators or ad hoc Committee members in five of the cases submitted to ICSID. Three of these were appointed by the Chairman of the Administrative Council of ICSID.

IV. CONCLUSION

The Centre provides its conciliation and arbitration services and undertake its various other activities at no cost to its member countries. As the World Bank meets ICSID’s administrative expenses in full, the Contracting States have never been asked to contribute to the Centre’s administrative budget. At the same time, membership in ICSID opens the door for a country to benefit from all of the Centre’s facilities, but entails no obligation to submit itself to ICSID’s jurisdiction.

In the last ten years, the number of ICSID’s member States has increased by almost 45 percent to its present level of 126. The growth in membership has been continuous. China and eight republics of the former Soviet Union have joined ICSID within the last several years. Latin American countries, having opposed the ICSID Convention when it was first mooted in the World Bank, were long absent from the list of Contracting States, there are however now twelve Latin American Contracting States. Three further Latin American States have signed the Convention and are in the process of ratifying it. As indicated earlier, thirteen Arab countries are ICSID Contracting States.

In parallel with this expansion in membership, and in part because of it, consents to ICSID arbitration have continued to proliferate. Clause providing for the settlement of disputes under ICSID’s auspices have become a standard feature of investment agreements involving Contracting States and investors from other Contracting States. Consent to ICSID arbitration in investment laws are also becoming more common, as countries revise their legislation to attract greater flows of foreign investment. The very large number of bilateral investment treaties with comparable ICSID clauses has likewise shown constant growth. In addition, there are now multilateral treaties containing similar consents to ICSID arbitration.

The growth in ICSID’s membership, the proliferation of ICSID clauses in contracts, laws and treaties and the extent to which it has been established that ICSID arbitration is suitable for disputes arising out of a variety of different kinds of investment between governments and investors of countries of various stages of economic development, are all factors that underline the extensive acceptance and use of the ICSID system and indicate that there may be further recourse to it in future.

G.C.C. Commercial Arbitration Centre on the Internet

Surfers of the Internet can now browse the G.C.C. Commercial Arbitration Centre Web site that has been recently designed and launched by al-Nadeem Information Technology. This site is planned to service three groups of visitors:

1. Those interested in activities and functions offered by the Centre, and rules and regulations related to arbitration in the Gulf region.

2. Customers looking for arbitration and soliciting services seeking a list of arbitrators, members and non-members.

3. Arbitrators can have their names and services listed on the site.

In order to promote the services of the site, the Centre is offering its members coverage of their presence on the site for an annual charge of US$ 50. Non-members can also be listed, for an annual charge of US$ 100. The Centre views this presence as a first step in its introduction of Internet services to its activities. For some, it may seem a little premature to begin a discussion on all the possible services that can be brought to the site, but as the Internet gains more popularity everyday, the G.C.C. Commercial Arbitration Centre hopes it will be able to give its members beneficial advice on further uses of this futuristic tool.
THE ROLE OF THE EXPERT WITNESS IN ARBITRATION

Bahrain 8 -9 November, 1997

The proper use of the "Expert" is essential for successful arbitration. The Tribunal relies on the experts to assist their understanding of complex technical issues. The parties in dispute rely on the experts to assist them with the presentation of the technical aspects of their case. The Expert himself needs more than just his knowledge of the particular speciality. He must be trained in the preparation and presentation of his knowledge as evidence before the Tribunal.

Whilst the importance of expert evidence is universally recognised its objectivity is increasingly being questioned by legal advisers and arbitration tribunals throughout the world. Many experts see their role as being an advocate for the party who appointed them. Tribunal appointed experts are sometimes seen as being restricted by their own background. The result is that courts and tribunals view expert evidence with scepticism.

An objective expert is an asset - a subjective one is a liability.

In addition to objectivity the expert, if he is to be effective, must present his evidence in a manner which will be both understood and believed by the Tribunal. This requires the expert to present his written report in an order and form that is readily understood.

If called upon to give evidence the expert must do so confidently and with assurance. This demands both a knowledge of what is required and an understanding of what is going to happen. Effective oral presentation requires a genuine feeling of self confidence.

This seminar is intended to instil into the participants a knowledge of what is required from an expert witness in arbitration. Those presenting the seminar are experienced in both giving evidence to a Tribunal and receiving it as a Tribunal. They can therefore give a balanced view of how expert evidence should be prepared and presented.

The subjects to be covered include:

- How expert reports should be prepared and presented for maximum effect.
- The way in which the technical expert can assist the lawyers and help with attempts to reach a negotiated settlement.
- An understanding of the requirements of cross examination to prepare the Expert for his appearance in court.

This Seminar will be of interest to the Arbitrators and others who sit on Tribunals, the lawyers who instruct the expert and present the case on behalf of the Parties and those who have the technical expertise and wish to use their expertise as an expert witness.

Tentative Programme

Day One

Session 1 The Role and Duties of the Expert
Session 2 The Brief and Instructions
Session 3 Terms of Engagement
Session 4 Code of practice for Experts
Session 5 Fact Finding and Early Evaluation
Session 6 The Expert Report
Session 7 The Meeting of Experts

Overnight the participants will be given the opportunity to prepare a sample project which will form the basis of Day 2.

Day Two

Session 1 The Rules of Evidence and the Expert
Session 2 Evidence-in-Chief
What is required: What to avoid
Session 3 Cross Examination
What to Expect: How to Respond: The Dangers
Session 4 General Discussion on the Roles and Responsibilities of the Expert

Objectives At the end of the course, participants should be able to:
Understand the role and responsibility of an Expert.
Understand the importance to both Client and Expert of an adequate brief.
Be aware of what is required in an Expert Report.
Be aware of the pressures on an Expert and how to avoid those which may effectively disqualify him.
Be aware of the principles and practices in giving evidence before a variety of tribunals.
Understand the purpose of the Examination-in-Chief.
Understand the methods of cross-examination and recognise the traps.

Timetable

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<th>Time</th>
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<tr>
<td>0930</td>
<td>Coffee and Welcome</td>
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<tr>
<td>1100</td>
<td>Coffee</td>
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<tr>
<td>1300</td>
<td>Lunch</td>
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Tutor

GDG Cottam B.Sc. (Eng.) FIEI FCIArb MAE
Mr. G F Hawker TD B.Sc.(Eng.) Feng FICE CEng FIEI FIStructE MScIILS (France) MConsE

Fees

- For Members: BD. 255/
- For Non-Members: BD. 345/

Fees covers course tuition, full written documentation, refreshments and two luncheons.