FROM THE CHAIR

Now 40 years have passed since the adoption of the New York Convention concerning “The Recognition and Enforcement of Foreign Arbitral Awards”. This Convention is dated to 1953 when the International Chamber of Commerce presented the draft Convention concerning the Implementation of Foreign Arbitration Awards to the United Nation’s Economic and Social Counsel, which reviewed this project and submitted it to the UN Conference of International Commercial Arbitration held in the UN headquarter during the period 20th May to 10th June, 1958 when it was approved in its current form.

This Convention highly contributed in facilitating the procedures of Implementing Foreign Arbitration Awards all over the world, especially after at least 116 countries joined this important convention.


The Centre’s Board of Directors met in Bahrain on the 15th and 16th of April to conduct their 13th meeting. The representatives from the Chambers of Commerce of all six G.C.C. States and the Secretary General were present at both meetings. The meetings, headed by the Chairman Dr. Salah Khalifa El-Jary, included Mr. Ebrahim Zainal – Deputy Chairman, Dr. Hassan Isa Al-Mulla, Mr. Hassan Mohammed Bin Al-Shaikh, Mr. Khalil Ebrahim Radhwan, Mr. Ali Bin Khamis Al-Alawi and Mr. Yousif Zainal, the Centre’s Secretary General.

The 13th meeting convened by the Centre’s Board, was to activate its role as a regional and international mechanism for resolving commercial disputes in the region. A number of administrative, organizational and financial issues were discussed and reviewed in the reports presented by the Secretariat.

ADD TO YOUR PROFESSIONAL DIMENSIONS

The first call for enlistment in the directory of law firms of the G.C.C. States has already been announced. Patrons of the Centre are requested to enlist themselves in this directory and increase their professional visibility thus continuing to extend their valuable support to the Centre in its project. If you have any further queries please do not hesitate to contact us. Details as to the print area and rates are also provided on our Web Site.

SEMINAR ON THE INITIAL AND CONTINUING TRAINING AND QUALIFICATIONS OF ARBITRATORS

Under the Patronage of His Excellency Mr. Ali Saleh Al Saleh, the Minister of Commerce, the seminar scheduled for November 14 – 15th on The Initial and Continuing Training and Qualification of Arbitrators has received very good response from over 17 arbitration institutions around the world. Some of the leading arbitration centres like the American Arbitration Association, the ICC, the CIArb, the ICSID, have confirmed their participation and will be presenting papers on the subject matter. The G.C.C. Commercial Arbitration Centre would also be publishing a booklet with regard to this event which would contain a programme of the event, the topics to be covered along with the name of the speakers and also a small brief on the speaker and the institution represented by him.

Seminar on the Use of Arbitration in Insurance and Banking
Dubai - 27th MAY 1998

First Call for Applications

Applications have been distributed with regard to enlistment in the Directory of Law firms of the GCC States. The detail as to the enlistment/advertisement is available on our Website www.ainadeem.net/arbit.

Those interested in enlisting/advertising in this directory are requested to send in their application forms at the earliest.
USE OF ARBITRATION IN INSURANCE AND BANKING

A paper presented by Mr. Andrew Bandurka representing
An English International Law firm
Holman, Fenwick & Willian at the

1. Arbitration is the most popular form of dispute resolution between reinsurers and their reassureds. Most contracts of treaty reinsurance contain an arbitration clause, and this has been so for several decades. Given the pre-eminence of London as a reinsurance centre, a very substantial number of reinsurance contracts provide for arbitration of disputes in London, as a result of which a considerable body of expertise has been built up in London by lawyers and arbitrators alike. This paper attempts to set out some of the advantages (and disadvantages) of arbitration within the context of reinsurance and, in particular, addresses some of the important changes in reinsurance arbitration which will be brought about by the English Arbitration Act 1996, which came into effect on 31st January 1997. The views expressed are personal, given from the standpoint of a legal practitioner who specializes in reinsurance litigation and arbitration, rather than from an academic standpoint.

2. Before embarking upon an analysis of its strengths and weaknesses as a form of dispute resolution, it is worth reminding ourselves that arbitration, like litigation, is designed to ascertain the facts which underlie a particular dispute, and (usually but not exclusively) to apply the law to those facts and thus adjudicate fairly between the parties. Mediation, an increasingly popular form of dispute resolution, seeks not to adjudicate, but to find areas of agreement and reconcile differences, without necessarily ascertaining facts, nor applying law. Because arbitration is a process of adjudication, any measures designed to speed up the process of arbitration or to reduce its cost have a price in that the quality of the ultimate adjudication may be compromised by these measures.

Arbitration – Advantages and Disadvantages

3. The fundamental strength of arbitration, as compared with litigation, is that the parties are free to choose arbitrators who are thoroughly acquainted with the practices of the business in question (in this case reinsurance) who will not insist on keeping court hours, or keeping to court formalities, and who can adapt the arbitral procedure to suit the features of the individual case so as to achieve a fair result with a minimum of cost, delay and fuss. The relative finality of arbitration awards (which are significantly much more difficult to challenge on appeal than court judgements) is an attractive feature to commercial men, as is the confidentiality of arbitral proceedings. So far as the international business community is concerned the freedom to specify both the applicable law of the arbitration, and the seat of the arbitration (i.e. where it takes place) can prove valuable means of overcoming the shortcomings of the court system in the country where a business partner is situated. These shortcomings may encompass lack of experience in commercial matters, or even perceived bias towards nationals in some jurisdictions.

4. Of course there are several disadvantages to arbitration. Paradoxically, the fact that the agreement to arbitrate is executed by the parties before any dispute has arisen is usually (and justifiably) cited as an advantage of arbitration, since it is extremely difficult to achieve agreement on most things once a dispute has arisen. In some cases, however, this can work against one of the parties who, having agreed to arbitrate, may prefer to litigate a particular dispute, because of the particular advantages that court proceedings might have. Under English law, such a party will probably be bound to arbitrate, unless his business partner frees him from this obligation. The advantages of court proceedings range from a substantial array of ancillary relief and powers including Mareva injunctions and committal for contempt of court. Another disadvantage of arbitration is that, unlike a court decision, no binding precedent is created by an arbitration award. If a point of some general importance is at stake, then the courts (through representative proceedings) provide a relatively straightforward procedure for rendering a judgement binding on several parties at once. This may be particularly important in the field of reinsurance in a subscription market like London, where one reassured may have several contracts of reinsurance, arranged in layers, with each layer being subscribed to by different sets of reinsurers. If the reassured wishes to obtain a binding decision against all his reinsurers, in relation to a particular dispute, then he will have a ready means of joining all reinsurers into the same court proceedings (i.e. a representative action) and so obtaining a binding judgement against all. To pursue a consolidated arbitration against all reinsurers at the same time, on the other hand, will require the individual consent of each reinsurer, which may not readily be forthcoming.

5. Some of the perceived advantages of arbitration, have, in certain instances, proved to be illusory. Thus the confidentiality attaching to arbitration proceedings is rarely complete. Steps taken to enforce an award will lead to the award becoming public, as indeed will steps taken to use the award to enforce rights against third parties. Thus for instance if a reassured loses an arbitration against his contractual partner, his reinsurer, as a result of some negligent act or omission of the intermediate reinsurance broker (with whom the reassured will almost never have an arbitration agreement), then court proceedings against the broker will be necessary in order to compensate the reassured for his loss of reinsurance cover. In these proceedings the reassured may wish to rely upon the arbitration award as evidence of the broker’s negligence. This will not only lead to the broker learning of the results of the award (and any findings of fact contained within it)
but, given the public nature of court proceedings, may lead to publication generally of the award. Further in this vein, any appeal against arbitration award will lead to publication of the award, and any findings of fact, or recitals of evidence, which are set out in the award.

**Some criticisms of English arbitration – the “old” regime**

6. Some aspects of English arbitration have attracted criticism over recent years, and this criticism can loosely be grouped under three main headings:

a. Confusion – English arbitration law has hitherto been set out in the Arbitration Acts of 1950, 1975 and 1979, and volumes of case law dating back in some cases to the 18th century. Whilst this substantial body of law is certainly very well developed, and sophisticated, it is most confusing for an arbitrator (particularly a non-lawyer) to fully research and understand the scope of his powers and duties as an arbitrator. This difficulty probably inhibits the effectiveness of a non-legal arbitrator who, not confident of his powers and duties, may be rather more timid than a legally qualified arbitrator does.

b. Intervention by the Courts – the courts play a very necessary role in supporting the arbitral process (for example by providing remedies for misconduct of an arbitrator, or providing ancillary relief, such as injunctions), and the right to appeal against an arbitral award on a point of law is recognized as an important check on arbitration. Nevertheless the English courts have been criticized as being too meddlesome in the arbitral process. One example of this arose in the case of Copee Lavalin-v-Ken-Ren [1994] 3 W.L.R. 631, in which the English House of Lords ordered one party to an ICC arbitration to provide security for the other parties’ costs. The parties were Belgian, Austrian and Kenyan, and the substantive governing laws of the contracts were Belgian and Austrian. The decision attracted considerable criticism because the dispute had no natural connection with England, and the readiness of the court to impose itself on the conduct of the arbitration was seen as unwarranted interference in the arbitral process. Another example of perceived judicial interference is the English court’s reluctance to recognize and enforce “equity” or “honorable engagement” clauses, which are common in reinsurance contracts. This will be discussed in some detail below.

c. Inflexibility – in much arbitration, the tribunals have been content to allow the parties’ legal representatives to slavishly follow court procedure regarding exchange of pleadings, oral submissions, and documentary discovery. This completely ignores the flexibility which is afforded by arbitration, and increases the delays and costs associated with arbitration, so much so that the total costs (including the arbitrators’ costs, and the venue costs) may outstrip the costs of equivalent proceedings in court, if allowed to do so.

**The Arbitration Act 1996 – the “new” regime**

7. After several years of debate, extensive consultation with the business community which uses arbitration, and careful redrafting, the Arbitration Act 1996 is now on the English statute book. All arbitrations commenced after 31st January 1997 (primarily where the seat of the arbitration is in England, Wales or Northern Ireland) will be subject to the new legal regime (irrespective of when the arbitration agreement was made). All arbitrations commenced before that date would be subject to the “old” regime. The Act was designed to adopt what was seen to be the best features of the UNCITRAL Model Law, and those uncontroversial features of English law, which were recognized as valuable. These were incorporated into a single code, which a non-lawyer can easily understand. In doing so, the Act deals effectively with the confusing nature of the old law, and this in itself should result in more confident and knowledgeable arbitration tribunals.

8. The Act also has the aim of restricting access to the English Court by the parties in arbitration, except in necessary cases, and recognizes the importance of party autonomy in leaving the parties to have their dispute decided in the manner agreed by them (i.e. arbitration). The range of powers available to arbitrators under the Act is wider than before, which is consistent with the theme of devolving greater power upon the arbitral tribunal, and correspondingly reducing the powers of the Courts in relation to arbitration.

9. The Act also recognizes the importance of arbitral institutions and gives them partial immunity from suit in relation to the assistance, which they give. This extends to the provision of arbitration rules, the suggestion of suitable arbitrators, and general consultative services. Within the reinsurance context this feature of the Act recognizes the value of ARIAS (AIDA Reinsurance and Insurance Arbitration Society).

10. The Act itself runs to many pages and I have selected just a few key features to highlight the impact which I believe it will have on the resolution of reinsurance disputes.

11. **Equity Clauses**

These clauses (which are alternatively known as “honorable engagement” clauses) provide that arbitrators shall not be governed by strict rules of law, but should be guided instead by principles of fairness, or equity, or some similar formulation. Typical examples of such clauses are as follows:

- “the arbitrator shall...
  
  ...be entitled to act as amiable compositeur”

- “be entitled to decide according to equity and good conscience and shall not be obliged to follow the strict rules of law”

- “interpret this treaty as an honorable engagement and may abstain from following the strict rules of law”

The intention underlying such clauses (which are widely used in, and are almost unique to, reinsurance treaties, rather than facultative risks is obvious. The clauses were originally formulated at a time when reinsurance
practitioners were more concerned with resolving the disputes (which inevitably arose from time to time) in accordance with commonly accepted principles of market practice and fairness, rather than in accordance with strict principles of law. Those principals of law had been developed by judges with an incomplete understanding of the business in question. Such clauses are used in the United States, and in Continental Europe, where, in contrast to England, they have been successfully recognized and utilized. It is possible (although I have no personal experience of it) that such clauses have been used successfully in English arbitrations, without complaint by the parties. However the position under English Law for some time has been that if one party (i.e. the aggrieved losing party) chooses to challenge an award made pursuant to such a clause) then he would be successful in rendering that award void and unenforceable. The high water mark of English judicial opposition to equity clauses arose in the case of Orion etc. v Belfort etc. [1962] 2 Lloyd’s Rep 257 when Mr. Justice Megaw had to consider a clause which provided:

"the arbitrators ... are relieved from all judicial formalities and may abstain from following strict rules of law. They will settle any dispute under this agreement according to an equitable rather than a strictly legal interpretation of its terms."

The learned judge held that since the court could not review an award, which was not based upon English legal principles, the clause ousted court jurisdiction and was void as a matter of public policy. [However, it did not render the entire agreement unenforceable as binding in honour only].

12. This decision, and other decisions like it, gives rise to the anomaly that an English court would (under the New York Convention) recognize a foreign award made pursuant to an equity clause, but may not recognize an English award so made. Since the Orion case was decided, the English courts have adopted a less strict view of equity clauses, and whilst maintaining that a clause which purports to oust English Law and the jurisdiction of the courts is probably void (see Home v-Mentor, 1998, The Times, 26th December) a clause which allows the arbitrators to depart from strict rules of the construction of contracts, or which allows relaxation of the rules of evidence, will be recognized as valid and it will be difficult to overturn (on appeal) an arbitrators’ interpretation of the meaning of a reinsurance contract. See the cases of Eagle Star v-Yuval [1978] 1 Lloyd’s Rep 357, Home v-Adas [1983] 2 Lloyd’s Rep 674, Home v-Mentor and Hiscox v Outhwaite (No.3) 199, unreported. Despite the extensive case law on the subject, which predate the 1996 Act, it is quite difficult to find any definitive guidance by the English courts as to the scope of the freedom given to arbitrators by an equity clause. Whilst this may be attributed to the various differences in the drafting of the commonly used equity clauses, I personally feel that there is some reluctance to set out any comprehensive guidance regarding equity clauses because of a general judicial discomfort concerning such clauses.

13. The 1996 Arbitration Act has brought about what may prove to be quite a far-reaching change to the manner in which reinsurance arbitrations are conducted.

Equity clauses are now expressly recognized and enforceable under Section 46 (1) (b) of the Act, with one important qualification. Such a clause will only be given if the agreement to arbitrate (and not just an arbitration commenced pursuant to it) was entered into after 31st January 1997. It was felt by the Advisory Committee which helped draft the Act that this recognition of equity clauses should not have the retrospective effect which would occur if Section 46 (1) (b) had applied to arbitrations commenced after January 1997, in respect of contracts formed before that date. Reinsurance, by its nature, is a business which sometimes gives rise to disputes many years after contract formation and the Committee felt it unwise to redefine the meaning of a clause which the parties may have included on the basis of an understanding gained from cases such as Eagle Star v-Yuval etc (as outlined above).

14. One important consequence of arbitration pursuant to an equity clause is that there is no scope for appeal to the courts on a point of law, since the arbitrators are not bound to apply the law in any event. One effect of the recognition of such a clause may be that more arbitrations will now be conducted by market men, as opposed to lawyers, and possibly a greater number of non-English reinsurance professionals will become involved in English arbitrations, since they will have greater experience of operating within equity clauses than will English arbitrators. In addition, they will be able to bring to the arbitration their market experience, and principles of fairness, which may differ from, but provide a beneficial complement to, English notions of market practice and fair dealing.

15. Clearly the recognition of equity clauses, if embraced by the reinsurance community, could amount to a very significant change in the arbitration of reinsurance disputes in England. Drafters of reinsurance contracts should always have placed considerable importance on specifying the arbitral seat, and the applicable law. It is now essential for the drafter’s to consider whether an equity clause should be included.

Arbitration Act 1996 – Procedure and Evidence

16. Section 34 of the Act gives the arbitral tribunal power to decide all procedural and evidential matters (subject to the right of parties to agree any such matter). The procedural and evidential matters referred to include (but not exhaustively) the following:

a. when and where proceedings are to be held;
b. the language used in the proceedings and whether translations of any documents are to be supplied;
c. whether and if so written statements of claim and defence are to be used (as opposed to, say, letters setting out the parties’ submissions);
d. whether and if so which documents should be disclosed by the parties and at what stage;
e. whether and if so what questions should be put to and answered by the parties;
f. whether to apply strict rules of evidences as to admissibility, relevance or weight of any material,
whether oral or written or otherwise.

g. inquisitorial powers i.e. whether the tribunal should itself take the initiative in ascertaining the facts and the law and
h. whether there should be oral or written evidence or submissions.

17. Many of these powers were already possessed by arbitrators prior to the 1996 Act. However they have never been set out in a comprehensive and readily comprehensible form and so the straightforward recital of the powers, in the Act, should in itself bring about greater use of these procedures by arbitrators, particularly non-legally qualified arbitrators. In addition, the Act recognizes the freedom of the parties to confer additional powers on the arbitrators.

18. An important new power is that set out in (g) above, being the power of inquisition. Inquisitorial proceedings are quite common in Continental Europe but such English case law, as there is demonstrated hostility towards an inquisitorial procedure being adopted by arbitrators. Thus for instance in Town and City Properties (1988) 4 BLR 109 an arbitrator was removed under Section 23 (1) of the Arbitration Act 1950, when he conducted an inquisitorial procedure with an expert witness, in the face of a request by the claimant that there should be a full hearing with full cross examination of the expert witness. Using this new inquisitorial power arbitrators can now insist that certain documents or evidence by produced at their behest, and insist that particular points of law should be addressed before them, and thus take a much more active role in ascertaining and resolving the real core of the issues in dispute.

19. Section 33 of the Act provides that the Tribunal shall act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his case and dealing with that of his opponent, but with a robust tribunal, there is no reason, in my opinion, why summary proceedings should not be very effective way of rapidly overcoming unmeritorious defences.

20. A rather bolder proposition is that under the 1996 Act, with an appropriately drafted equity clause, it should be perfectly feasible for English arbitration tribunals to apply the principle of proportionality in insurance and reinsurance disputes. Under the Marine Insurance Act of 1906 a reinsurer’s remedy for non-disclosure of material fact is rescission of the contract. The consequence of rescission is that the contract is treated as if it never existed, premium is returned to the reassured, and the reinsurer is under no obligation to pay claims (and indeed will be entitled to a return of any claims monies already paid). As has been observed many times both in legal cases and legal text books, this can bring about a particularly harsh result for a reassured, particularly where the failure to disclose a material fact has occurred innocently, and the fact in question is unconnected with the claims which the reassured seeks to recover from his insurer. If the reinsurance contract contains an equity clause (entered into after 31st January 1997) then the tribunal would be able to uphold the validity of the contract, yet require the reassured to pay an extra premium designed to reflect the increased risk represented by the undisclosed fact. Such an award would not be subject to any appeal on a point of law and would, in the right circumstances, be a much fairer reflection of the merits of the reinsurers’ case, than would the remedy of rescission. Rescission would be the only remedy available in the English courts.

**Arbitration Act 1996 – Overview**

21. Much of the workings of the new Act will take place behind closed doors, and so it will be difficult to make an assessment of the impact of the Act for some time, since an assessment will be based on personal experience and anecdotal evidence. If the Act is seen to be a success in reforming those unattractive features of English arbitration law which are discussed above, then businessmen should prove themselves rather more willing to adopt arbitration clauses which provide for arbitration in England. A rather more visible barometer of the success of the Act will be the attitude of the English Court to interference in the arbitral process under the new regime. I am not aware of any challenges being made in the High Court to arbitral Awards made under the Act (although some case law is now emerging on other aspects of the Act). In the example given above regarding summary judgement, it would theoretically be possible for the aggrieved losing party to challenge the award in court on the grounds of serious irregularity (i.e. failure by the tribunal to comply with the duty to give him a reasonable opportunity of putting his case and dealing with that of his opponent) but in my view, such a challenge would be relatively difficult to maintain. Only time will tell.

22. There is no doubt that the codification of arbitration law, in the Act, will be very valuable,
particularly to non-lawyer arbitrators. In addition the reforms brought about by the Act, and in particular the recognition of equity clauses, the duty to avoid unnecessary delay, expense and the inquisitorial powers given to arbitrators, should result in important changes to the manner in which reinsurance arbitrations are conducted. The Act should undoubtedly assist in cutting down the delays and costs associated with arbitration, whilst not compromising on the fairness of the proceedings. In the light of this, any commercial enterprise which enters into contracts with its business partners should give very careful consideration to the following:

1. before the contract is made, the parties should consider carefully whether an arbitration clause should be included. Without such a clause it may be very difficult, if not impossible, to refer a dispute to arbitration once a dispute has arisen. If an arbitration clause is to be included within the contract, then very careful consideration should be given as to all of its terms, including in particular, the seat of the arbitration (England or elsewhere), the law applicable to the arbitration (and whether there should be an equity clause) and which (if any) special powers should be given to the arbitrators,

2. Once a dispute has arisen under an arbitration clause, then the choice of arbitrators is important. So far as the Arbitration Act 1996 is concerned a robust panel of arbitrators, who will be prepared to use all of the powers at their disposal, in order to achieve a fair result of quickly and without unnecessary costs will be of great importance. Notwithstanding the existence of the dispute, and the terms of the arbitration clause, it should still be possible for the parties, by agreement, to tailor some aspects of the arbitral procedure to cater for the circumstances of their individual case, thus achieving mutual benefits in terms of costs and efficiency.

JUST A FEW MOUSE CLICKS CAN TAKE YOU A LONG WAY... INTO THE HEART OF THE CENTRE’s WEB SITE

The users of the Internet can browse through the Centre’s Web Site where information as to the Centre’s services and its future activities is easily accessible.

The rules and regulations of the Centre, its future activities with regard to the various seminars and short courses conducted by it, the publications of the Centre are all available on the Centre’s Web Page. Furthermore, facilities are provided to members to use the E-mail services provided, whereby members can send in their enquiries or any other documentation relating to Commercial Arbitration Issues, thus further enhancing interaction between the Centre and the visitors of its site. A list of the Arbitrators and Experts registered on its panel is also provided and members can take the initiative to register themselves on the Web Page by contacting Al-nadeem Information Technology on their site address: www.alnadeem.com.bh

The Centre’s main page consists of the following topics:

- Profile: The formation and establishment of the Centre is given in brief.
- The Publications of the Centre: This includes the latest issues of the Bulletins, which cover different activities, news, and topics related to Commercial Arbitration in Arabic and English.
- The Forms: Arbitrators’ and Experts’ registered on the Centre’s panel and requisitions forms for registration to the Centre’s panel are provided for the use of the visitors to the Centre’s Web Site.
- Arbitrators and Experts List: This includes two lists – one for the accredited Arbitrators and the other for the accredited Experts from GCC, Arab and foreign countries who have registered themselves with Al Nadeem Information Technology and benefited from this service by publicizing their Law Firms and individual status.
- Activities of the Centre: Details of the Seminars, Symposia, Meetings and forums organized by the Centre annually are provided with the details pertaining to the date and venue of the event.

For further information, please visit our Site on: www.alnadeem.net/arbit

Or E-mail us at the following address: arbit395@batelco.com.bh
A TWO-DAY UNCITRAL GATHERING IN NEW YORK CITY AT UN HEADQUARTERS

A Fortieth Anniversary Celebration of the New York Convention and a Uniform Commercial Law Information Colloquium

A special commemoration was organized by The United Nations Commission on International Trade Law, "UNCITRAL," and held on June 10th at the United Nations headquarters in New York to celebrate the fortieth anniversary of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which was concluded on June 10, 1958 at New York and is currently adhered to by 116 States, including Kuwait, Bahrain and Saudi Arabia. On June 11th UNCTRAL held a uniform commercial law information colloquium to provide information on its current and future work in electronic commerce, project and receivables financing and cross-border insolvency. The GCC Commercial Arbitration Centre was represented by its Secretary General, Mr. Yousif Zainal, at both events.

The programme on the New York Convention was divided into five sections, starting from the needs that gave it birth to future needs that may require changes.

The condensed information covered a vast area on the value and effect of the Convention, looking at its enforcement provisions, its application and implementation and any future improvement.

Session 1: The Birth: Forty Years Ago, was chaired by the Chairman of UNCTRAL and Mr. Koﬁ Anan, the UN Secretary-General, gave the opening address. Mr. Pieter Sanders, Honorary President of the International Council for Commercial Arbitration, spoke on "The Making of the Convention" and Mr. Ottarndt Glossner, a delegate at the 1958 Conference and current Honorary President of the German Institution for Arbitration, gave the address, "From New York (1958) to Geneva (1961) – A Veteran’s Diary.

Session 2, The Value: Three Assessments, was chaired by Mr. Tang Houzhi, Vice-Chairman of the China International Economic and Trade Arbitration Commission. Mr. Robert Briner, Chairman of the International Court of Arbitration of the International Chamber of Commerce, presented the "Philosophy and Objectives of the Convention"; followed by Mr. Fali Nariman, President of the International Council for Commercial Arbitration, who discussed "The Convention’s Contribution to the Globalization of International Arbitration". The session ended with Ambassador Emilio Cardenas, Executive Director of HSBC Roberts S. A. de Inversiones, Buenos Aires, who spoke on the "Benefits of Membership".

Session 3, The Effect Enforcement of Arbitration Agreements and Arbitral Decisions, was chaired by Sheikha Haya Al Khalifa, a practicing attorney in Bahrain. There were five speakers. Mr. Neil Kaplan, Chairman of the Hong Kong International Arbitration Delvolve, a practicing attorney in Paris, presented "Non-Signing Parties to the Arbitration Agreement". Mr. V. V. Veeder, a practicing attorney in London, spoke on "Provisional and Conservatory Measures"; Mr. Alexander Comarone substituted for Mr. Sergei Lebedev, President of the Maritime Arbitration Commission, considered "Court Assistance with Interim Measures" and Mr. Jan Paulsson, Vice President of the London Court of International Arbitration and a practicing attorney in Paris, concluded with "Award Set Aside at the Place of Arbitration". The floor was then opened for discussion until lunch.

Section 4, The Bench: Judicial Application of the Convention was chaired by Mr. Howard Holtzmann, Honorary Chairman of the Board of the International Arbitration Committee of the American Arbitration Association. The five judges who shared their views on applying the Convention were J. Aboul-Enein of the Egyptian Constitutional Court; J. Michael Goldie of the Court of Appeals of British Columbia, Canada; J. Jon Newmann, a Circuit Judge and former Chief Judge for the U.S. Circuit Court of Appeals for the Second Circuit in New York; J. Supradit Hutasingh, a former Justice of the Supreme Court in Thailand; and Ana Piaggi- Vanossi of the Argentinean Commercial Court. After their views the floor was opened to the audience.

Section 5, The Future: What Needs to be Done, was chaired by Mr. Muchadeyi Masunda, Executive Director of the Commercial Arbitration Centre in Harare, Zimbabwe. In this final session there were also five speakers starting with Mr. Gerold Herrmann, the UNCTRAL Secretary General, who updated the audience on "Improving the Implementation – A Progress Report on the Joint UNCITRAL/IBA Project". Mr. Jose Maria Abascal Zamora, a professor and practicing attorney in Mexico City followed with "Enhancing Dissemination of Information, Technical Assistance and Training". Mr. Albert Jan van den Berg, a professor in Rotterdam and practicing attorney in Amsterdam, considered "Striving for Uniform Interpretation". Mr. Werner Melis, Chairman of the Presiding Council of the International Arbitration Court, Austrian Economic Chamber, discussed "Considering the Advisability of Preparing an Additional Convention Complementary to the New York Convention". The last speaker of the day, Mr. Gavan Griffith, a practicing attorney in and former Solicitor-General of Australia, presented "Possible Issues for an Annex to the UNCITRAL Model Law". The floor was then opened to the audience who were afterwards invited to a commemorative programme and cocktail reception hosted by the Association of the Bar of the City of New York and American Arbitration Association. The guests were welcomed by Mr. Alan H. Kaufman and Ms. Florence Peterson and listened to speeches by Mr. Gerold Herrmann and Mr. J. Martin Hunter, Q. C. (London).
The Uniform Commercial Law Information Colloquium was held the next day in the context of UNCITRAL’s thirty-first session and divided into three sections on the topics of electronic commerce, receivables financing, privately financed infrastructure projects and cross-border insolvency.

Session 1, Topical Messages from Cyberspace was chaired by the Chairman of UNCITRAL. The first speech, “The UNCITRAL Model Law on Electronic Commerce – A Landmark in Cyberspace,” was given by Mr. Renaud Sorieul, Senior Legal Advisor of the UNCITRAL Secretariat. Mr. Sorieul explained that the purpose of the Model Law is to offer national legislators a set of internationally acceptable rules as to how a number of legal obstacles on the use and uncertainty about the legal effect or validity of paperless messages may be removed thereby creating a more secure environment for electronic commerce. The objectives of the Model Law includes facilitating the use of electronic commerce, not least by treating paper-based requirements (such as a “writing” and “signature”) to determine how those purposes and functions can be satisfied by electronic techniques. The Model Law and its Guide to Enactment were adopted in 1996 and are an international reference in legal thinking on electronic commerce. Following Mr. Sorieul was Mr. Michael E. Schneider, a practicing attorney in Geneva, who presented “Dispute Settlement in Cyberspace”. Ms. Gabrielle Kaufmann-Kohler, a professor and practicing attorney in Geneva, discussed “Issues of Jurisdiction and Conflicts of Laws in Cyberspace”. Professor Raymond T. Nimmer, Reporter on UCC Article 2B at the National Conference of Commissioners on Uniform State Laws and from Houston, spoke on “Contracting in Cyberspace”. The concluding speaker of this section was Mr. George Thomson, Deputy Minister of Justice for Canada, who suggested “Possible Future Work by UNCITRAL”. The floor was then opened to the audience.

Session 2, Project and Receivables Financing, was chaired by Mr. Harold S. Burman of the U.S. Department of State and also had five speakers, two on privately financed infrastructure projects and three on receivables financing. In “UNCITRAL’s Draft Legislative Guide for Privately Financed Infrastructure Projects”, Mr. Jose Angelo Estrella Faria, a legal officer of the UNCITRAL Secretariat, explained the purpose and aims of the legislative guide which covers fundamental issues in a total environment from relevant State legislation to procedures for the award of privately financed infrastructure projects, to the general contractual terms to the settlement of disputes “to achieve an appropriate balance between the need to attract private investment for infrastructure projects and the need to protect the interests of the host government and the public”. UNCITRAL continues to work closely with relevant, outside experts and international organizations, such as UNIDO, the World Bank and regional development banks. Mr. Carlos Gustavo Kriege, former President of the Arbitration and Advisory Committee of the Pan-American Surety Association and Vice-President of the Guarantees Committee of the International Credit Insurance Association, discussed different aspects of unconditional and conditional guarantees in “Performance Securities in Privately Financed Infrastructure Projects”.

After an open floor discussion Mr. Spiros V. Bazinas, a legal officer of the UNCITRAL Secretariat, presented “UNCITRAL’s Draft Convention on Assignment in Receivables financing”. Mr. Bazinas noted that payment claims for money is of paramount importance to trade finance, that the bulk of corporate wealth in developed countries is found as receivables and that in developing countries receivables may be the only asset to secure financing. Assignments are an essential feature for receivables financing therefore they must be legally effective and enforceable. The purpose for the draft Convention is to “remove obstacles to receivables financing arising from the uncertainty existing in various legal systems as to the effectiveness of assignments with an international element and the effects of such assignments on the debtor and third parties” and has progressed on numerous issues as, for example, the effectiveness of assignments of future receivables despite a contractual anti-assignment clause. The draft Convention also considers debtor protection and has a tentative conflict of laws priority rule, the priority being subject to the law of the assignor’s location. The draft Convention is scheduled for submission to the Commission for adoption in 2000, if the Working Group completes it works by 1999. Professor Steven L. Schwarz from Durham reviewed international securitization and concomitant legal issues, such as commingling and perfection, and showed how the draft Convention would simplify and reduce the costs of these transactions in “Cross-Border Securitization”. Mr. John P. Figliozzi, Senior Vice President of Heller International in Chicago, took a look into the future in “Good Old Factoring in the 21st Century” and identified a present obstacle in the international arena, the lack of “uniform procedures to gather information” and “a uniform legal environment to perfect an interest in collateral” which renders cross-border risk analysis “ineffective and expensive” causing factoring finance companies to forgo opportunities. Mr. Figliozzi saw the draft Convention as a “major step forward” in overcoming this obstacle, facilitating “increased international asset-based commerce”, enhancing competition and making “greater availability of finance in all our national markets”.

Session 3, Cross-Border Insolvency Law: Current Issues, chaired by Professor Manuel Olivencia Ruiz from Sevilla, was subdivided into 1. UNCITRAL Model Law on Cross-Border Insolvency: Salient Features and Benefits and 2. Current Work of International Organizations. Without in any way diminishing the importance and relevance of UNCITRAL’s work in electronic commerce and project and receivables financing to enhance States’ international economies presented in the two morning sessions, it is interesting to note in passing that there were 14 speakers on this topic.
and to consider its present relevance to events of this decade, let alone the past year.

There were eight speakers in the first sub-division. Mr. Jernej Sekolec, a Senior Legal Officer at the UNCITRAL Secretariat, laid the foundation with “UNCITRAL Model Law on Cross-Border Insolvency in a Nutshell”. Many national insolvency laws cannot adequately cope with international insolvencies resulting in delays to rescue financially troubled businesses, unfair and inefficient administration of insolvency procedures, and slow protection of debtor assets against dissipation and fraud creating and maintaining an unpredictable financial and legal environment, which impedes capital flow into and international investment in that State. The Model Law, while respecting different national procedural laws and substantive insolvency laws, was designed to bring certain predictability by offering solutions to threshold issues, such as: providing access for the administrator of a foreign insolvency proceeding (“foreign representative”) to the courts of the enacting State, which would determine the relief warranted for optimal disposition of the insolvency; determining when the foreign insolvency proceeding is “recognized” and what the consequences may be; providing a transparent regime for foreign creditors to commence or participate in insolvency proceedings in the enacting State; permitting courts in the enacting State to cooperate more effectively with foreign courts and foreign representatives; authorizing courts in the enacting State and State insolvency administrators to seek foreign assistance; allowing concurrent insolvency proceedings in the enacting and foreign States and establishing rules of cooperation; and establishing rules for coordination of relief granted in the enacting State in favour of other insolvency proceedings taking place in other States with regard to the same debtor. The Model Law on Cross-Border Insolvency was adopted just over two years ago, on May 30, 1997.

Professors Jay Westbrook from Austin and Peter Winship from Dallas looked at the examples of the United States, which may adopt the Model Law as a new chapter in its Bankruptcy Code in 1998, and Eritrea, which may also adopt the Model Law in its draft Commercial Code in 1998, in “First Legislative Considerations Towards Enactment of the Model Law in the United States and Eritrea”. In both States the Model Law was not incorporated verbatim but the changes were mainly stylistic. The paper, “The UNCITRAL Model Law and the European Union Convention on Insolvency” by Professor Rafael Iñesta-Ortiz from Madrid compared the EU’s Convention on Insolvency Proceedings, which was finished two years before the Model Law was adopted but has been neither signed nor ratified by all EU Member States, to the Model Law and opined that the Model Law might be more acceptable to the EU members because it both avoids contentious issues in the Convention and allows a greater potential of harmonized European insolvency law as non-EU members could also adopt it. Mr. Mario Thurner, from the Institute of Central and Eastern European Business Law in Vienna, gave an overview of his research project in “Cross-Border Insolvency Law in Economies in Transition”. The project is researching the insolvency systems of Bulgaria, Croatia, Poland, Romania, the Russian Federation, Slovakia, Slovenia, the Czech Republic, the Ukraine and Hungary and is currently focused on the issues of security for loans in insolvency, employment in insolvency, the general legal conditions for optimum structural adjustments through insolvency and selected questions of cross-border insolvency law. He stated that none of these States are considering adopting the Model Law and Croatian insolvency law has been conformed to the EU Convention on Insolvency.

Judges Burton Lifland of the US Bankruptcy Court and Ana Piaggi-Vanossi of the Commercial Court in Buenos Aires presented a bench’s view in “Judges Evaluating the Model Law”. Judge Piaggi-Vanossi stated that Argentina’s bankruptcy law of 1995 is presently under revision, that as Argentina is an emerging country with competitive, international economic features it needed to have a transparent, flexible and coordinated legal framework in transnational competition and felt that if Argentina adopted the Model Law’s provisions, it would mean: greater certainty about the powers of local and better communication with foreign courts in cases of multinational insolvency; appropriate coordination in situations of parallel proceedings with respect to a single debtor; simplification and greater compatibility in transnational judicial and administrative cooperation; greater flexibility in procedures containing evidence; maximization of predictability with the consequent decrease in country risk and its consequences; assimilation and emulation of efficient practices of administration in multinational insolvencies; attracting and providing assistance, in proceedings of this kind, with other states; simplification of reorganization of troubled companies, limiting the social cost of the transaction; combating international fraud; and preventing – with some effectiveness – the dispersal and concealment of the debtor’s property.

Mr. Neil Cooper, a Chartered Certified Accountant practicing in London, looked at “An Insolvency Administrator operating Under the Aegis of the Model Law”. The stages covered were getting the appointment of the foreign representative recognized, discretionary relief and other consequences once the application for recognition has been made, relief available upon recognition of the foreign representative, treatment of creditors, cooperation and concurrent proceedings. After Mr. Cooper’s speech, the floor was opened to the audience, which then ended the first sub-session.

The second sub-session, Current Work of International Organizations, was opened by a speech, “Cross-Border Insolvency of Banks (INSOL and the Group of Thirty)” by Mr. Richard Gitlin, a practicing attorney in Hartford, wherein he stated that the Model Law intentionally does not include insolvencies of financial institutions, including banks because its application would require more study. The Group of Thirty, INSOL and UNCITRAL are currently
studying the issue to determine if the Model Law should cover financial institutions and if other forms of cooperation are possible. Mr. Ernest Patrikis, Vice President of the Federal Reserve Bank in New York, elaborated further on the unique situation of distressed banks in “Cross-Border Insolvency of Banks (The Group of Ten)”. He observed that insolvent banks are different from insolvent commercial corporations thereby requiring them to have different insolvency rules. This was illustrated by pointing to use of the stay which would freeze the bank’s assets thereby creating systemic risk when the proper course of action would be to wind-down the bank’s business in an orderly fashion to ensure the liability side of the bank’s balance sheet remains manageable. He also stated that these rules should recognize the unique relationship between banks and their supervising authorities which in many States are central banks that intervene to address larger systemic concerns and may act as receivers.

Messrs. Richard Broude, a practicing attorney in New York, and Daniel Glosband, a practicing attorney in Boston, discussed the “IBA Committee J’s Work Towards a Model for Substantive Insolvency Law; Experience with the IBA Cross-Border Insolvency Concordat”. Committee J of the International Bar Association is concerned with Insolvency and Creditors’ Rights and participated in the development of UNCITRAL’s Model Law. It also has undertaken two of its own projects; the Cross-Border Insolvency Concordat, which harmonizes proceedings under different insolvency regimes, and the Model Bankruptcy Code, which harmonizes underlying substantive law. The Concordat provides a legal framework of general principles in the absence of a treaty or legislation like the Model Law and has been followed in several cross-border cases. Professor Carl Felsenfeld from New York took “A look into the Future” and neatly divided the past, present and future into three. The past concerned the three main areas the Model Law addressed so successfully, party access from one jurisdiction into the bankruptcy court of another jurisdiction, recognition by bankruptcy courts of proceedings in other jurisdictions, and cross-border cooperation of bankruptcy courts and judges. The present concerns three main areas that need further work; insolvency of banks, insolvency of insurance companies and specific insolvency topics (automatic stay, priorities, discharge, creditors’ rights, secured transactions, dissemination of information, issues of universality and reorganization procedures) for inclusion in the Model Law. The future related to a three-part agenda of research undertaken by international groups to determine if consensus exists for refinement by UNCITRAL, bank entry by the Group of Ten at the Bank for International Settlements in Geneva and the Group of Thirty, insurance entry by an international insurance group which is based at the Insurance College in New York City, and other specific areas by the Committee J of the International Bar Association, the United States American Law Institute and the draft European Union Convention. Professor Felsenfeld called upon these and other groups like INSOL and international bankruptcy judges who were invaluable for the Model Law’s success to regularize their work so that they with UNCITRAL may proceed to some preliminary decisions about the future activities UNCITRAL should take in the three new areas. The floor was then opened to the audience.

Mr. Hans Corell, Under-Secretary-General and the Legal Counsel of the United Nations closed the colloquium.
The Comité Francais de l’Arbitrage hosted the fourteenth Congress of the International Council for Commercial Arbitration (ICCA) in Paris, France from May 3rd to 6th, 1998. The theme, “Increasing the Effectiveness of Arbitration Agreements and Awards”, paid special recognition to the highly successful New York City Convention, which was later celebrated in New York City on June 10 in a one-day tribute hosted by the United Nations Commission on International Trade Law (UNCITRAL). Mr. Yousif Zainal represented the GCC Commercial Arbitration Centre at the ICCA Conference.

After a welcoming evening reception on May 3rd, the participants listened to three keynote speakers the next morning. Mr. Pieter Sanders began with “The History of the New York Convention” followed by Mr. Gerold Hermann, Secretary General of UNCITRAL, who explained “The New York Convention: Its Objectives, Its Future” and Mr. A. J. Van Den Berg concluded with “The Application of the New York Convention by the Courts”. With this setting, the participants were divided into three working groups, which over the next two days discussed various subjects under an assigned topic. Each working group had a chairman who reported on his group’s discussions and recommendations at the plenary session on May 6th, which closed the conference.

The three working group topics were “Arbitration clauses: Achieving Effectiveness”, “Arbitration Procedure: Achieving Efficiency Without Sacrificing Due Process” and “Arbitration Awards: Solving Problems of Enforcement”. Each topic was divided into three different subjects. Each session had a moderator and lasted half a day during which the subject was opened with two presentations and then developed first by a distinguished panel of commentators and afterwards by the working group’s members. Although the topics and subjects are classical, the purpose of the Congress was to consider them in the “continuation of the New York Convention”, according to the Chairman of the French Arbitration Committee, Mr. Bertrand Moreau, in his welcoming address.

In considering the topic of arbitration clauses, the first working group, under the chairmanship of Mr. V. V. Veeder, studied the subjects of “The Elements of an Effective Arbitration Clause”. The two presentations were “Choosing between Broad Clauses and Detailed Blue Prints” by Mr. Paul-A. Gelinas and “Article II.2 of the New York Convention and the Courts” by Mr. Guillermo Aguilar Alvarez in the first subject, “The Law Applicable to the form and Substance of the Arbitration Clause” by Mr. Julian D. M. Lew and “The Law Applicable to Arbitrability” by Mr. Bernard Hanotiau in the second subject and in the third subject “Article II.3 of The New York Convention and the Courts” by Dr. Singhvi and “Separability and <<Kompetenz-Kompetenz>>” by Mr. Antonias Dimolitsa.

In considering the topic of arbitration procedures, the second working group, under the chairmanship of Howard Holtzmann, studied the three subjects of “The Constitution of the Arbitral Tribunal”, “Identifying and Applying the Law Governing the Arbitration Procedure” and “Measures Against Dilatory Tactics”. Under the tribunal’s constitution the group listened to “Factors to Consider in Choosing Efficient Arbitrators” by Mr. Horacio Grigera Naon and “The Authority of Truncated Tribunals” by Mr. Stephen Schwebel. The presentations in the second subject were “The Role of the Law of the Place of Arbitration” by Ms. Gabrielle Kaufmann-Kohler and “The Extent that Procedural Decisions of the Arbitrators are subject to Court Review” by Mr. Sigvard Jarvin. Mr. Yves Fortier discussed “The Minimum Requirements of Due Process” and Mr. Jean-Pierre Ancel, “The Cooperation between Arbitrators and the Courts” in the third session.

The third working group, under the chairmanship of Mr. Karl-Heinz Bockstiegel, considered the topic of arbitration awards, which was divided into the three subjects of “The Legal Landscape (Multilateral Conventions, Bilateral Treaties, National Laws)”, “The Enforcement of Awards Nullified in the Country of Origin” and “Enforcement in Action”. The first session here was unique in that there was no panel of commentators but three papers, which were “The Practical Application of Multilateral Conventions” by Mr. Andrea Giardina, “Experience with Bilateral Treaties” by Mr. Franz Matscher and “Experience with National Laws on Enforcement of Awards” by Mr. Wang Sheng Chang. On the subject of enforced awards nullified in the country of origin, “The French Experience” was given by Mr. Emmanuel Gaillard and Mr. David W. Rivkin presented “The American Experience”. Ms. Lucy F. Reed spoke on the “Experience of Practical Problems of Enforcement” and Mr. Jan Paulsson discussed “Towards Minimum Standards of Enforcement: Feasibility of a Model Law” in the third subject.

A great deal of work had gone into the preparation of this Congress and the organization of the agenda, ensuring its success. Each session had a different moderator, panel of commentators and speakers and their mix was such that no country was twice represented at the same session, ensuring the diversity of discussion. These papers are a valuable addition to the library of the GCC Commercial Arbitration Centre.
In recognition of the paramount impact the industries of insurance and banking have on the Gulf and global economies; the need for cost-effective, efficient, timely and expert resolution of disputes in these businesses outside the courtroom; the need to update and have two-way flows of communication amongst arbitrators, party representatives, insurers, re-insurers and bankers on the latest developments within their respective fields of expertise for non-litigious dispute resolution to become or remain the preferred choice of dispute resolution for these industries and the little attention given to this significant topic in public for a, the Commercial Conciliation and Arbitration Centre of the Dubai Chamber of Commerce and Industry jointly with the GCC Commercial Arbitration Centre held on May 27, 1998 in Dubai a one-day seminar on the use of arbitration in insurance and banking. Mr. Abdul-Rahman Al Mutawi, General Director of the Dubai Chamber of Commerce and Industry, and Mr. Youssif Zainal, Secretary General of the GCC Commercial Arbitration Centre, warmly welcomed the four speakers and participants and encouraged everyone to pursue the activities discussed in the seminar so that disputes could be handled promptly, comprehensively and effectively.

The seminar was divided into three topics: arbitration in the Middle East, arbitration in insurance and reinsurance and arbitration in banking and had four speakers. Mr. Youssif Zainal chaired all four sessions and the participants enthusiastically discussed issues raised after each of the four presentations. The seminar ended with a lively general discussion. Approximately 100 people, over half being lawyers but with a good representation from banks and insurance companies attended the seminar. The attendees mainly came from the Emirates, Oman, Bahrain and Kuwait. Because of the speakers’s success in stimulating commentary on the points raised in their papers and with due regard for the purpose of the seminar, we have decided to publish two speeches in this issue of the BULLETIN and two in the next issue so that all our members can benefit from the views expressed therein. This seminar joined two important industry segments the GCC Commercial Arbitration Centre has previously addressed. In June 1996 and April 1997 the Centre looked closely at arbitration in banking and insurance dispute resolution (please see issues 3 and 5 of the BULLETIN). In March 1998 the Centre held a two-day seminar on the use of arbitration in insurance and reinsurance disputes (please see issue 8 of the BULLETIN). Many important issues are still unsettled in the use of arbitration in insurance, reinsurance and banking disputes; therefore we welcome written opinions from our readers because dialogue should promote further awareness and imaginative resolutions of these issues.

Mr. Alec Emmerson, a partner of the international English Law firm, Clyde & Co., spoke on, “The Advantages and Disadvantages of Arbitration of Middle East Disputes” from the view point of banks and financial institutions on the one hand and as a litigator on the other hand. Mr. Emmerson pointed to nine, potential advantages in arbitration, which are specialist expertise of the decision maker/s, procedural flexibility, confidentiality, recoverable costs, finality of award, application of a foreign law by a practicing member of the relevant bar, greater scope for international enforceability, jurisdictional neutrality for sovereign parties and cultural acceptance. While these potential advantages are not an exhaustive list, Mr. Emmerson also stated that they might not always apply in individual transactions. A bank, like any other party, “must consider the most appropriate means of resolving any potential disputes having regard to the size and nature of such disputes together with the respective merits of court or arbitral proceeding in the relevant jurisdictions”. Mr. Emmerson noted that litigation was the traditional preference for banks and financial institutions because the nature of their usual claims of non-payment lent courts more effective and efficient. However, he noted that international centres like London, Paris and New York were reconsidering the exclusivity of beneficial court procedures or powers (such as, summary judgement, pre-trial attachment, interlocutory assistance, and enforcement) and urged countries in the Middle East to do the same. Of particular relevance to the Middle East and growing global importance is arbitration in accordance with Sharia principles for banks and financial institutions. Mr. Emmerson’s points on this issue were quickly pursued by the audience in the discussion period that followed and illustrated that this topic needs to be brought to the public.

Mr. Andrew Bandurka, a partner of the international English law firm, Holman Fenwick & Willan, gave a paper entitled “Arbitration in Insurance and Reinsurance”, which is printed in full starting on page (4).

Mr. Larry Domingo, Legal and Strategic Affairs Assistant to the CEO of the Arab Insurance Group (ARIG), opening with a very amusing yet poignant anecdote that succinctly encapsulated entrenched emotions felt by polarized, combatant parties, developed an area of ground laid down by Mr. Bandurka by concentrating on several, fundamental legal problems in reinsurance documentation and offering pragmatic solutions in his speech, “Advantages of Arbitration as a Means of Reinsurance Dispute Resolution”. Mr. Domingo discussed what should be (not forgetting what is) contained in the arbitration clause of reinsurance contracts and reviewed the English court welcome of “Honorable Engagement” clauses in order to identify
and reap the benefits of arbitration in reinsurance disputes.

After lunch, Mr. David Wilson, a partner of the international English law firm of Trowers & Hamlin, gave the seminar’s final speech, “Arbitration in Banking”.

Included or subsumed within all four papers to a greater or lesser extent are the issues of ‘equity’ or ‘amicable composition’ and the law. Equitable principles are extremely important because when properly used in appropriate situations the spirit of the law is released from the harsh consequences imposed by a strict application of the letter of the law. As justice is or is seen to be done between the parties, equity allows even the loser to accept the decision as fair. In litigation judgements can be appealed, which is a substantial, inherent check in the system. A potential hazard of unchecked equity is that justice can degenerate into “gut justice” leaving everyone dissatisfied as in situations when the strict letter of the law prevails. What checks are there or should there be in arbitration if finality of awards takes precedence over judicial review based on points of law (leaving aside lack of notice or opportunity to be heard, bias, impropriety, etc.)? From a user’s perspective, how is an arbitral system different from a judicial system, which has no precedent and is generally perceived, rightly or wrongly, by the public to rubber stamp the opinion of the court appointed expert?

If the latter system is subject to harsh criticism on substantive grounds and avoided by potential users, what distinguishes arbitration from this treatment? As alternative dispute resolution procedures mature into “appropriate dispute resolution” procedures of equal stature with litigation, the strengths, weaknesses, purposes and aims in these different methods will need to be identified and reassessed so that the more social goals which presently may be missing such as, certainty and predictability are appropriately assimilated from litigation. For instance, if the importance of confidentiality is anonymity of the parties but not the disputants’ contentious issues or their resolution, then a global editing system could be devised allowing publication of all awards.

A special thank you is sent to Messrs. Hassan Mohammed Bin Al-Sheikh, Vice-Chairman of the Dubai Chamber of Commerce and Industry and board member of the GCC Commercial Arbitration Centre, Abdul-Rahman Al Mutawi, and Majed Bashier, Legal Advisor and Secretary General of the Commercial Conciliation & Arbitration Centre of the Dubai Chamber of Commerce and Industry and to the Dubai Chamber of Commerce and Industry for their generous and gracious hospitality, which helped ensure from the beginning the seminar’s success.

By Liz Hall.

SEMINAR ON ARBITRATION IN PETROLEUM AND OTHER ENERGY CONTRACTS
ABU DHABI 13TH & 14TH OCTOBER 1998

The G.C.C. Commercial Arbitration Centre will be conducting a specialized seminar in Abu Dhabi in conjunction with the Abu Dhabi Conciliation & Arbitration Centre on the 13th & 14th of October 1998. This seminar is entitled as "Seminar on Arbitration in Petroleum and Other Energy Contracts".

The Centre has been conducting a number of seminars and short courses since its inception in 1995, thus promoting arbitration awareness among the public in all the different spheres of both commercial and industrial activities with special attention to those involved in different sectors of commercial arbitration. Among the different seminars conducted by the Centre, the subject of this seminar bears significant implication because, petroleum and energy in general, are considered to be vital sectors in the GCC States, as their primary resource of income is dependent on oil and natural gas. Some states of the region have had negative experience in arbitration concerning oil concessions in the early stages of oil discovery and reproduction. Since that time, arbitration has been developed in International, Arab and Gulf arenas, and has opened wide prospective for arbitration in this vital and important sector.

Renowned and specialized Arab and foreign lecturers have been selected to present papers and to have open discussions with the participants, thus sharing their ideas and experiences on this subject. The lecturers include Dr. Ahmed Sadeq Kotheri, Dr. Atef Suleiman, Dr. Mouftaia Al-Sayed in Arabic and Dr. Peter D. Cameron, Professor William T. Onorato and Professor Thomas Waede in English. The lectures would be simultaneously translated in both Arabic and English.

This seminar is being conducted in coincidence with the opening of International Petroleum Conference & Exhibition in Abu Dhabi, which will represent two significant events for the oil, gas and energy sector in general.

You are hereby invited to participate in this important event and contribute to the success of this venture. Your participation will support and encourage the Centre in organizing more of such seminars and short courses and to proceed forward in one of its primary aim of providing training programmes.
The following GCC States have consequently adopted the Convention: Kuwait 1978, Bahrain 1988, and Saudi Arabia 1414 H, and it is expected that the other members of the Counsel will join this important convention in the near future, thus contributing to the unification of legal rules relating to the implementation of foreign judgments issued abroad any of the GCC States.

The GCC States have realized the importance of implementing the judgments issued in the Member States of the GCC, whether they were issued by courts judgments or by arbitration awards and for this sake, the wise leaderships of the Counsel adopted a joint Convention called “Agreements on the Enforcement of Court Judgments, Delegations and Judicial Notices in the GCC States” during their Summit in Muscat, December 1995.

Article (12) of this Convention equalized the implementation of judgments issued by courts and the implementation of Arbitrators awards in Member States. This is considered to be a victory for Arbitration and supports Arbitration Institutions in Member States and before all is our GCC Centre.

We hope that the 40th anniversary of New York Convention will be a good opportunity to push forward the wheel of the GCC Commercial Arbitration towards more open spheres.

A report from the board contd. from page 1

The future activities of the Centre and approval of new applications for the registration in the Centre’s Panel were among the other important issues discussed by the Board.

In its efforts to consolidate and expand relations with different Gulf and Islamic organizations, the Board discussed and approved a draft protocol of co-operation with the Kuwait Institute for Judiciary and Law, in which the Centre would provide technical assistance to the Kuwait Institute to introduce the subject of commercial arbitration into its different training programmes.

The Board also discussed and approved a draft protocol of co-operation with the Islamic Chamber of Commerce and Industry. In accordance with the terms of this protocol, the Centre would provide the necessary arbitration services to the Chamber as well as the necessary facilities for its members to conduct arbitration and provide any necessary assistance like the appointment of arbitrators, secretarial services, a venue for the hearings and translation facilities. The Centre would also provide communication channels to the disputing parties and the arbitration panel. Further, the Centre would assist in conducting research and studies related generally to commercial law and arbitration and in qualifying arbitrators and experts from Islamic countries within a comprehensive training programme.

In order to obtain more support for the Centre’s activities and its roles as a regional dispute resolution mechanism, the members of the BOD met with the State of Bahrain’s Minister of Cabinet Affairs and Information, Minister of Justice and Islamic affairs, Minister of Commerce and the Minister of Oil and Industry.

The Ministers emphasized the important role of the Centre, assured the continued support of the State of Bahrain and welcomed the Centre’s proposals to further activate its role.

At its 14th meeting convened at the Dubai Chamber of Commerce and Industry on the 28th of May 1998, the Board of Directors discussed a number of topics which related to the future activities of the Centre and to the comments and proposals received by the Secretariat to amend a few articles of the Centre’s Charter and Arbitral Rules of Procedure in order to fulfill the requirements of arbitration users.

The Board reviewed and discussed in detail the comments and proposals put forth. The members unanimously agreed to refer the matter to the Secretariat who would prepare a detailed study for discussion at the next Board meeting. The members also agreed that the review should contain a comparison between the Centre’s Arbitral Rules of Procedure and those of renowned arbitration institutions.

The Board approved of a number of applications for registration in the Panel of Experts accredited by the Centre.

Finally, the Board expressed its thanks to the Dubai Chamber of Commerce and Industry for having graciously hosted the meeting and making it a success.