CONGRATULATIONS

Hearty Congratulations are extended to our Chairman Mr. Hassan Mohammed Bin Al Shaikh for being elected as Chairman of the Dubai Chamber of Commerce and to our Vice-Chairman Mr. Ebrahim Zainal for being nominated as the First Chairman of the National Committee of the International Chamber of Commerce in Bahrain. We would like to take this opportunity to wish them good luck in the new portfolios being assigned to them and hope that they would be crowned with continued success, which we are sure would follow as a result of their sincere and dedicated hard work.

MESSAGE FROM THE CHAIR

During the symposium titled “Arbitration in the GCC States” held on 31st January – 1st February 1999 in Fujairah, U.A.E., it was recommended that a unified law on arbitration in the GCC States be enacted. It was also recommended that GCC States which had not yet ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 shall sign, ratify or accede to this Convention. Such recommendations are of specific and practical importance for they urge the GCC States to take the necessary steps to consolidate legal rules relating to arbitration within the Gulf community on the one hand and invite the GCC States to accede to the New York Convention with a view to make enforcement of arbitral awards more accessible on the other.

The current situation demonstrates that, notwithstanding the rapid strides, which have been made towards regulation and codification of commercial arbitration whether individually or collectively, there is yet an urgent need to develop the existing arbitration rules applicable in the GCC States.

His message continues on Page 9

17th Meeting of the Board of Directors of the GCC Commercial Arbitration Centre

23rd & 24th May 1999 Manama – Bahrain

The 17th Board meeting of the GCC Commercial Arbitration Centre was convened in Bahrain at the Centre’s premises at the Bahrain Chamber of Commerce and Industry Building on the 23rd and 24th of May 1999. This meeting was headed by the Chairman of the current session of the Centre’s BOD Mr. Hassan Mohammed Bin Al Shaikh, representative of the Federation of Chamber of Commerce and Industry in the UAE and represented by the other representatives of the GCC members of the Chambers of Commerce Mr. Ebrahim Zainal, Vice Chairman of the Board of Directors and representative of the Bahrain Chamber of Commerce and Industry, Mr. Ali Al Alawi representative of the Oman Chamber of Commerce and Industry, Dr. Hassan Al Mulla representative of the Council of Commerce and Industry of Saudi Arabia, Mr. Khalil Al Radwani, representative of the Qatar Chamber of Commerce and Industry, Dr. Salah El Jery, representative of Kuwait Chamber of Commerce and Industry and by the Centre’s Secretary General Mr. Yousif Zainal.

Contd. on Page 8
 AGREEMENT OF COOPERATION SIGNED WITH THE MALTA ARBITRATION CENTRE
26th MARCH, 1999-
VALETTA, MALTA

 AGREEMENT OF COOPERATION SIGNED WITH INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES
MAY 13th, 1999
WASHINGTON D. C.

 AGREEMENT OF COOPERATION SIGNED WITH THE AMERICAN ARBITRATION ASSOCIATION
MAY 13th, 1999
New York

GULF AIR

We would like to take this opportunity to express our sincere gratitude to M/s. Gulf Air for graciously accepting to be the official carrier of our events. We would like to thank them for the continued support extended by them to the Centre and hope that this pillar of support would continue to be extended in support of the Centre in the conduct of its activities.
THE G.C.C. COMMERCIAL ARBITRATION CENTRE ENTERS INTO AGREEMENTS OF COOPERATION WITH INTERNATIONAL ARBITRATION INSTITUTIONS IN VIEW OF ESTABLISHING STRONGER TIES IN THE FIELD OF COMMERCIAL ARBITRATION

The Secretary General of the GCC Commercial Arbitration Centre left for Washington DC on the 10th of May 1999. He was warmly received by Mr. Ibrahim Shihata, Secretary General of the International Centre for the Settlement of Investment Disputes-World Bank Group, Washington. An agreement of Co-operation was signed between the two organizations on May 11th 1999 at the ICSID office premises of the World Bank. “This agreement of cooperation would establish stronger ties between the Centre and the ICSID and would pave the way for more active interaction between the two Arbitration Centres in serving the community at large in the field of international commercial arbitration, thus promoting Bahrain as a Centre to settle disputes in the field of international arbitration”, said the Centre’s Secretary General, Mr. Yousif Zainal.

On the 13th of May, Mr. Yousif arrived in New York in order to sign an agreement of cooperation with the American Arbitration Association and to participate at the 5th Biennial Conference of the International Federation of Commercial Arbitration Institutions (IFCAI), which was being held at the Grand Hyatt on the 14th of May 1999.

The agreement of cooperation was signed with Mr. William Slate II, President of the American Arbitration Association (AAA). The agreement provides for the exchange of information between the two Arbitration Centres concerning training and programme development activities, provision of mutual administrative and other services when so required for the conduct of arbitration proceedings, the recommendation, and the capacity of technical experts, conciliators and arbitrators. This agreement of cooperation will be in effect for a period of one year and would be valid until either party gives notice of its intention to discuss an amendment to or cancellation of the Agreement.

The other agreements of cooperation signed with International Arbitration Institutions are the following: Deutsche Institution Fur Schiedsgerichtsbarkeit E.U. (DIS) Germany, The Arbitration Institute of the Stockholm Chamber of Commerce, the Bahrain Society of Engineers, WIPO Arbitration and Mediation Centre, the Yemeni Centre for Conciliation and Arbitration and the Malta Arbitration Centre. Other cooperation agreements similar to those mentioned above are expected to be signed with other Arbitration Centres around the world, said the Centre’s Secretary General. Agreements of cooperation with the Indian Council for Arbitration, the Kuala Lumpur Regional Centre for Arbitration, the Islamic Chamber of Commerce and Industry are among those that would be signed in the near future.

The Xth IFCAI General Assembly was convened on the 13th of May at 4.00 p.m. and was presided over by Mr. Michael Hoellinger who was joined by representatives from a number of arbitration institutions from around the world. The main topics on the agenda comprised of the adoption of the minutes of the Interim meeting held in Paris on May 3rd 1998, reports from the President, Secretary Treasurer and from the Institutional Section Chairman, suggestions for the 6th Biennial Conference which is to be held in Latin America in the year 2001 and the election of officers and council members. In this meeting, the GCC Commercial Arbitration Centre was appointed as a member to the IFCAI Council and Mr. Yousif Zainal was appointed as one of the two councilors to this council.
I. Introduction

As-salamu Aleykum. Commercial Union Assurance Company, plc wish you, your families and neighbours much health, happiness and prosperity.

I am grateful for the invitation to speak before this august body on the subject of ‘The Arbitration Clause in the Contract of Insurance’. It is a daunting task because so much could be said. However, I hope to hold your interest by focusing on this subject from the perspective of the Anglo-American tradition. Please accept my apologies in advance for not being able to discuss how the other important nations of the world use arbitration in the business of insurance.

The format of the paper is as follows:

- Arbitration in the Mists of Time
- The Anglo-American Tradition of Arbitration
  - England
  - The United States of America
- Why Arbitrate Insurance Disputes?
- Insurance Arbitration in the United States Today: Not Quite Simple
  - Conflicting Federal Goals: Arbitration vs the Business of Insurance
  - The Enforceability of Arbitration in US Law and Public Policy
  - The McCarran-Ferguson Act and Regulating the Business of Insurance
  - Marine Insurance and Federal Admiralty Jurisdiction
  - Kansas and Louisiana: Flies in the Ointment
- Insurance Arbitration – AAAs International or Commercial Arbitration Rules
- Insurance Arbitration in England Today: Simple and Straightforward

II. Arbitration In the Mists of Time

Although most likely known by other names, arbitration has probably existed as long as men living together in ordered societies have existed. One can safely presume that disputes were often referred to kings, rulers, warriors and despots for decisions for many thousands of years. Arbitrators today may be surprised to learn that the birth of democracy in Classical Greece has been attributed to the arbitral process.

In 594 BC Solon was selected Chief Magistrate of Athens. With this position he inherited the law code of Draco, which in its implementation had given rise to aristocratic in-fighting and a discontented population.

Solon was appointed (self-appointed perhaps) to resolve this problem, and thus managed to persuade ‘the people’ and ‘those in power’ to ignore ‘those who were in the game for plunder’ and agree a Spartan-type equality which satisfied both: thus, the aristocrats kept their money, land and status while the people received greater freedom and self-rule through the Assembly.

While things moved on now, these thoughts and facts nonetheless embody an important point for modern arbitration that distinguishes it from mediation and conciliation: ultimately, arbitration decisions correctly reached will be respected and enforced by the coercive power of States.

Arbitration is in its most simple form ‘the settlement of a question at issue by one to whom the parties agree to refer their claims in order to obtain an equitable decision’. While that definition today probably encompasses many types of Alternative Dispute Resolution (ADR) mechanisms, it serves as a useful starting point.

III. The Anglo-American Tradition of Arbitration

A. England

In English history, references to arbitration – then called ‘arbitrament’ – dates back to at least 1468, since the term appears in the YearBooks of that year. (Anon (1468), Y. B. 8 Edw. IV., fo.1, pl). The Middle English term ‘arbitrament’ is thought to derive from the Old French term ‘arbitrement’ and the Mediaeval Latin term ‘arbitramentum’. These terms were used a thousand years ago to mean anything from ‘the power to decide for others’ to ‘sentence accepted as authoritative’ to friendly agreement – compromise (SOED). These meanings all sound rather familiar?

As with the Italians and Dutch a century or two earlier, England began to emerge as one of the great trading nations of Europe during the Enlightenment. While the origins of Lloyd’s of London are traced back to Edward Lloyd’s coffee house in the 1680s, marine insurance transactions were happening in London for at least two centuries before then. While the Dutch nations were still in their economic ascendancy, the English Parliament enacted ‘An Act Touching Policies of Assurances Used Among Merchants’ (43 Elizabeth, ch 12 (1601) and ‘set up a court of arbitration with eight merchants to hear and decree causes concerning marine insurance “without formalities of pleadings or proceedings”. (American Arbitration Association Insurance ADR Manual (Shepards/McGraw-Hill, Inc. 1993) s 4.05. However, all was not smooth sailing for arbitration in England for several centuries.

Many English courts demonstrated hostility towards arbitration provisions: at first, because they did not appreciate the contractual nature of the mutual agreement to arbitrate future disputes; then later, because they did not believe parties should be able to out the courts of jurisdiction by the terms of their contract. Kill v. Hollister, 95 Eng. Rep. 532 (K.B. 1742); Mitchell v. Harris 30 Eng. Rep. 557, 560 (Ch. 1793). And it should come as no surprise, this same prejudice was demonstrated by courts from time to time in the United States as well.

England has since had a series of Arbitration Acts roughly over two time periods – those from 1889 to 1934 and those from 1950 to 1979. However, those Acts now, for the most part, are of no consequence. The best aspects of those Acts, along with certain important common law decisions and changes in international arbitration standards, have been re-codified in the Arbitration Act 1996. Undoubtedly, you will hear from other
speakers on this recent and momentous piece of unifying and clarifying legislation.

B. The United States of America

On May 3, 1768 the City of New York Chamber of Commerce held its first meeting. During this meeting it established a 'Committee of Arbitration' consisting of six gentlemen, for the purpose of 'adjusting any differences between parties agreeing to leave such disputes in this Chamber'. However, this reference to arbitration was consensual – without being contractual – and if a party chose, he could withdraw and start legal proceedings. In many instances, courts would not find that the withdrawing party was bound to resolve the dispute by arbitration – often for the same reasons as the English Courts (Tobey v. County of Bristol, 23 F. Cas. 1313, 1320-21 (CC Mass 1845)).

Early evidence of arbitration in marine insurance in the United States is seen by the following language in an Insurance Company of North America policy (No. 132) issued on March 25, 1793.

And it is agreed, that if any Dispute should arise relating to the Loss on this Policy, it shall be referred to two different Persons, one to be chosen by the Assured, the other by the Assurer, who shall have full Power to adjust the same; but in case they cannot agree, then two such Persons shall choose a third; and any two of them agreeing, shall be obligatory to both parties.

An 1804 fire insurance contract from the same company provided that:

If any dispute shall arise... such difference shall be submitted to the judgment and determination of Arbitrators indifferently chosen, whose award in writing shall be conclusive and binding on all parties.

So we see that arbitration has been a part of the insurance industry since the very beginning of the United States existence as a sovereign nation. Despite the occasional judicial hostility to arbitration agreements in contracts, a variety of statutes and schemes in the 1920s and 30s helped to solidify arbitration's place in the States. The New York Arbitration Act 1920 was the first statute to give effective support to institutional arbitration and individual agreements to arbitrate. This was soon followed by the United States Arbitration Act 1925, which is also known as the Federal Arbitration Act (FAA). In 1929, the Arbitration Committee of the Metropolitan Claim Association was established to resolve disputes between member insurance companies without court intervention. The success of this program led to the formation in 1943 of the Nationwide Inter-Company Arbitration Program (also known as the Arbitration Forums, Inc.) to resolve disputes between insurers and commercial insureds.

IV. Why Arbitrate Insurance Disputes?

In his address to the Fifth International Congress of Maritime Arbitrators in 1981, Cedric Barclay succinctly explained why arbitration plays a vital role in the administration of commercial justice. 'To be told expeditiously that you are right or wrong is of value in commercial dealings'. (Haight, 'Maritime Arbitration – The American Experience' (1995) 61 JCI Arb 3, 196). This pithy fact usually applies in whatever business endeavors one undertakes, whether transport, trade or financial services.

The reasons for arbitrating insurance disputes are no different than the reasons for arbitrating any kind of dispute:

- the parties can shape the timing, scope and the rules of the dispute resolution process by agreement, thus creating a flexible and appropriate mechanism to resolve their dispute,
- privacy and confidentiality are implied by law, if not expressly set out in the contract or the arbitral body's terms of engagement,
- arbitrators' render binding, final and enforceable decisions – other ADR techniques can only attempt to facilitate a settlement,
- arbitration is seen as a neutral and fair alternative to submitting to the jurisdiction of a particular party's courts,
- often arbitrators are 'experts' in the subject matter which they are called upon to resolve.

V. Insurance Arbitration in the United States Today: Not Quite Simple

A. Conflicting Federal goals: Arbitration vs. the Business of Insurance

I wish I could say otherwise, but things are not entirely straightforward when it comes to arbitration provisions in insurance contracts in the United States. Under US federalist system, the national government legislates on issues regarding things like the fundamental rights of people, admiralty and national defence, certain types of intellectual property and interstate/international commerce, while the various States' governments legislate on and regulate everything else, 'including the business of insurance'.

In general, however, where the two regulatory systems conflict, the federal government triumphs under the 'Supremacy' clause of the US Constitution (US CONST Art. VI, cl. 2).

B. The Enforceability of Arbitration in US Law and Public Policy

Arbitration in the United States received its first significant boost by the passage of the Federal Arbitration Act 1925 (9 U.S.C. sections 1 – 14 and 201 – 208), which requires enforcement of any written arbitration agreement contained in any

i. Maritime transaction or
ii. Any contract evidencing a transaction involving commerce.

It is impossible to argue otherwise: the scope of this Act is enormous. This Act sought to 'reverse[e] centuries of judicial hostility to arbitration agreements'. Scherk v. Alberto-Culver Co. 417 US 506, 510 (1974).

Section 2 of this Act makes these arbitration agreements 'valid, irrevocable, and enforceable save upon such grounds as exist at law or in equity for the revocation of any contract'. Section 3 requires a court to stay litigation on any matters that are properly the subjects of the arbitration agreement. Section 4 allows any party to compel the other to arbitrate where the contract specifies arbitration.

At the time of its enactment, the FAA was heralded as curing three principal evils:

1. The long delays typical of court proceedings;
2. The expense of litigation;
3. The failure, through litigation, to reach a just decision as measured by standards in the business world.


In 1970, the FAA was amended to incorporate the provisions of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). Since then the United States Supreme Court in a number of decisions in the
1980s has strengthened the federal policy of supporting arbitration agreements wherever the FAA applies. This federal presumption favoring arbitration 'applies with special force in the field of international commerce'. Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth Inc, 473 U.S. 614, 631(1985). Where States—such as New York, Alabama, Texas and Alaska (to name a few)—have enacted legislation or pronounced through judicial decisions a bias against arbitration generally (and not just in the insurance context), this bias has been overruled when it comes up against an arbitration properly within the terms of the FAA. Hamilton Life Ins. Co. v. Republic Nat. Life Ins. Co. 408 F. 2d 606 (2d Cir. 1969), A. G. Edwards & Sons v. Syyrud, 597 So. 2d 197, 200-1 (Ala. 1992), Triton Lines v. Steamship Mutual Underwriting Ass'n 707 F. Supp 277 (S.D. Tex. 1989), Organ v. Connor, 792 F. Supp 693 (D. Alaska 1992). Allied-Brace Terminix Cos. v. Dobson, 130 L.Ed.2d. 753 (US Sup Ct 1995). The situation becomes more complicated when a State enacts a statute that prohibits finding arbitration agreements in insurance contracts. This situation is discussed later.

C. The McCarran-Ferguson Act and Regulating the Business of Insurance

In a 1869 case called Paul v. Virginia, the US Supreme Court held that the business of insurance was not 'commerce' for reasons that don't make much sense to modern thinking. This meant that the federal government could not regulate the 'business of insurance'. Nonetheless, even when this decision was handed down insurers in one state often sold policies to policyholders in another state. This practice gave the transactions an interstate flavour—thus allowing, at least in theory, the federal government to regulate them.

This tension between federal and state regulation was finally resolved by the US Supreme Court again seventy-five years later in a case called United States v. South-Eastern Underwriters Association (1944). The South-Eastern Underwriters court rejected the 1869 decision and stated that the business of insurance was 'interstate commerce' and therefore subject to the Sherman Act 1890, which regulates anti-competitive behaviour. This decision created a panic among both the state governments, which would lose significant authority and revenue if they could no longer regulate insurers doing business in their states, and the federal government, which was not set up to regulate the business of insurance.

Congress reached a compromise met in the McCarran-Ferguson Act 1945, where the federal government specifically granted to the individual States the authority to regulate the business of insurance, subject only to a few exceptions involving anti-competitive behaviour and where Congress has not specifically acted in relation to the business of insurance. This last exception allows the Congress to regulate the business of insurance if it specifically chooses to do so.

D. Marine Insurance and Federal Admiralty Jurisdiction

Another complicating factor between the strong federal policy favoring arbitration and the states' regulation of the business of insurance is the Federal government's exclusive power to legislate on all maritime matters. (US CONST. Art. III, s. 2 cl. 1). This maritime provision, also called the 'Admiralty Clause', concerns all things relating to navigable waters and commerce on them. Undoubtedly, this power, in part, strengthens the federal government's ability to regulate international commerce and is usually interpreted for harmony with the 'Commerce' Clause.

In a seminal case, Wilburn Boat Co. v. Fireman's Fund Insurance Co. 348 U.S. 310, 313 (1955), the United States Supreme Court ruled that marine insurance policies are maritime contracts and therefore subject to the Admiralty Clause. However, because there was no established federal common law on the particular issue surrounding this marine insurance policy, the Court decided to leave the regulation of this contract to the relevant State, whose business it was to regulate insurance.

E. Kansas and Louisiana: Flies in the Ointment

Unlike the forty-eight other states in the US, Kansas and Louisiana have enacted specific legislation which prohibits arbitration as the exclusive remedy to resolve insurance contract disputes. Kan. Stat. Ann. S 5-401 and La. Rev. Stat. Ann s. 22-629 (A) (2). Both the Louisiana and Kansas statutes have been challenged. The Kansas statute has successfully weathered the challenge. In Mutual Reinsurance Bureau v. Great Plains Mutual Insurance Co. 969 F. 2d. 931 (10th Cir. 1992), the court found that because the statutory language at issue addressed the business of insurance, the McCarran-Ferguson Act pre-empted the FAA because the FAA was not an Act of Congress specifically designed to regulate the business of insurance.

In Louisiana, 'no insurance contract delivered or issued for delivery in [Louisiana]... shall contain any condition, stipulation, or agreement...depriving the courts of this state of the jurisdiction of action against the insurer...'. Essentially, this is an anti-arbitration provision that conflicts with the strong federal presumption favoring arbitration.

However, a recent federal appellate court decision on a Louisiana case avoided deciding which federal statute—the Federal Arbitration Act or the McCarran-Ferguson Act—triumphed. Instead, the court in McDermott International, Inc. v. Lloyd's Underwriters of London, 120 F. 3d 583 (5th Cir. 1997) interpreted that portion of the Louisiana statute dealing with 'delivery' of the contract in Louisiana. The court determined that since delivery did not happen in Louisiana, the statute did not apply and the arbitration clause in the policy was enforceable. The court reasoned that delivery did not effectively happen in Louisiana because the policy was negotiated in London and kept by the London brokers, even though they had faxed a copy of it to McDermott in Louisiana.

The message you should receive from this is that insurance arbitrations can be an effective way to resolve disputes in the United States (except Kansas). If you insure a Louisiana risk from an alien marketplace (such as London), it is likely your arbitration provisions will bind the Louisiana insured.

VI. Insurance Arbitration—AAA's International or Commercial Arbitration Rules

When including an arbitration clause into insurance contracts for United States risks it is always better to specify a particular set of rules of an arbitral body from which your arbitration will be conducted. While I know of no express prohibition against using an arbitral body like the GCC Commercial Arbitration Centre or the UK's Chartered Institute of Arbitrators or the London Court of International Arbitration, it is probably a safer alternative to use the various rules commonly administered by the American Arbitration Association (AAA). The AAA administers cases under its own Commercial Arbitration Rules or International Arbitration Rules (and supplemented by the Supplementary Procedures for International Commercial Arbitration), as well as under the International Arbitration Rules of the Asia/Pacific Center and the UNCITRAL Rules.
There are a few important lessons to know in advance when arbitrating under AAA rules. The first is that — unless your arbitration provision clearly specifies otherwise — the US arbitrator will not necessarily follow the law or render a written opinion. Another is that — unless your arbitration provision clearly specifies otherwise — arbitrators can award any kind of damages (even punitive) or injunctive relief against one or more of the parties. These are matters, which a prudent underwriter might want to consider in drafting an appropriate arbitration provision.

VII. Insurance Arbitration in England Today: Simple and Straightforward

I risk treading on other speakers’ subject matter if I discuss at any length the new Arbitration Act 1996. Rather than do that, I think a comment or two about arbitration use in insurance contracts may be all that I need to say for now. Of course, I cannot speak with absolute authority on all UK companies, but I would guess that in personal lines, business, arbitration provisions are not widely used for reasons I will discuss in a minute. However, I can certainly say that we try to write-in London based arbitration provisions under the Arbitration Act 1996 wherever we can into our commercial contracts. This reflects our confidence that the new Act will actually achieve the speed and cost savings that arbitration should bring over litigation.

As I alluded to earlier, a possible (but unlikely) barrier to arbitration provisions in insurance contracts in the UK arise from the application of the 1993 EEC Directive on Unfair Terms in Consumer Contracts.

While insurance contracts had been exempted from the UK’s Unfair Contract Terms Act 1977, no such explicit exemption was included in the Directive.

However, since this Directive only applies to transactions between ‘sellers or suppliers’ and ‘consumers’, it is important to note that ‘consumers’ are defined as ‘any natural person... who acts for purposes outside trade, business or profession.’

In the kind of business we tend to underwrite in the London Market, our clients are not ‘consumers’ because they are sophisticated companies and professionals buying insurance for their business endeavors.

However, let us say for argument that our clients are ‘consumers’. We then must review the Directive’s Preamble, which states: those terms that ‘clearly define or circumscribe the insured risk and insurer’s liability’ shall not be subject to assessments of unfairness since those terms were reflected in premium paid. Arbitration provisions are probably not within the terms, to which tacit exemption refers, thus their inclusion in the contracts of insurance are left to the member countries to decide with reference to article 3.3 and the further referenced ‘Annexed List’.

Nevertheless, given the UK government’s strong support for arbitration and London’s place as a major arbitral center, it seems unlikely that arbitration provisions will be deemed anything but fair and appropriate for all types of insurance contracts. This view also has support in the Association of British Insurers’ Statement of General Insurance Practice.

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THANKS UASC!! YOUR GENEROUS CONTRIBUTION AND ACTIVE PARTICIPATION IS HIGHLY APPRECIATED.

The GCC Commercial Arbitration Centre would like to express its sincere gratitude to the United Arab Shipping acknowledging it as a Mega Sponsor of the Symposium on Seaports and Shipping that it conducted jointly with the Port Services Corporation in Muscat from 12 – 14 April 1999.

The UASC did not stop with its generous contribution but also delegated Mr. Waleed Dawood, Vice President of the Middle East Region, to this Symposium as a speaker who presented a very informative paper on “UASC’S ROLE AS A NATIONAL LINE OF GCC IN SERVING THE ARABIAN GULF NEEDS”, which was another contributing factor that attributed greatly to the success of this event.
The points on the agenda for discussion and review by the BOD members comprised of a number of important administrative and financial reports submitted by the Secretariat of the Centre from the interim period of its 16th meeting conducted on 3rd and 4th of February in the U.A.E., to date.

After prolonged discussions and careful considerations, the BOD approved all of the reports, including the financial report that was submitted to them by the Secretariat. A number of new applications to the Centre’s panel of Experts were also approved for registration.

The Secretary General of the Centre drew the attention of the Board of Directors to the achievements of the Centre and the landmarks it had reached in the field of commercial arbitration. The following points were briefed by the Secretary General in his report submitted to the Board:

a. A reference made by the Gulf International Bank (GIB) in Bahrain to recourses any dispute that may arise between GIB and relevant parties to arbitration under the Centre’s auspices in accordance with the Regulations and Procedures applied by the Centre.

b. The increase in the number of agreements incorporating the Centre’s Standard Arbitration Clause in commercial companies and firms operating in the GCC Countries.

c. The staunch support extended to the Centre by the Ministries of Justice in the GCC States with particular reference made to the courts in Bahrain who now request recommendations from the Centre in selecting arbitrators from the Centre’s panel of arbitrators residing in Bahrain, and finally

d. The appointment of the Centre as one of the members to the International Federation of Commercial Arbitration Institutions (IFCAI) with the Secretary General of the Centre being appointed as one of the two councilors to this council.

These progresses achieved by the Centre were highly appreciated by the Board members who also acknowledged the good reputation that was being built up by the Centre since its date of inception and the confidence vested in the Centre’s role and functions by different commercial sectors.

A number of strategies were formulated to further activate the role of the Centre on par with those of the GCC Countries to establish stronger ties with the member chambers of commerce and industry through programmes of cooperation and mutual agreements.

The Board emphasized on the previous principles formulated by it with regard to the Arab Federation of Arbitration Centres, which was supposed to be a professional institution by itself. The Federation was to have a solid base and the representatives to this Federation were to be from Arbitration Centres and organizations rather than individual entities. This has been reflected in the recent meeting convened in Beirut, which was dedicated to discuss issues pertaining to the establishment of this Federation.

Before concluding the meeting, personalized visits were made by the Chairman accompanied by his colleagues - the representatives from the other member states of the GCC along with the Secretary General of the Centre to various Ministries. The officials were met individually by the Board members who expressed their heartfelt condolences on the sudden demise of HH Sheikh Isa Bin Salman Al Khalifa, the late Amir of Bahrain. Among the officials met were HE Mr. Ali Saleh Al Saleh, the Minister of Commerce, HE Sheikh Ebrahim Bin Khalifa Al Khalifa, Undersecretary of the Ministry of Finance and National Economy and HE Sheikh Abdul Rahman Bin Mohammed Al Khalifa-Undersecretary of the Ministry of Justice and Islamic Affairs. Various ways of enhancing mutual cooperation among the relevant bodies were also discussed in detail.

The discussions with HE Mr. Ali Al Saleh, the Minister of Commerce added another feather to the Centre’s cap. Mr. Ali Al Saleh assured the Centre of the continuous support that would be extended to it by the State of Bahrain as the host country and emphasized on the importance of issuing an internal executive Decree for Centre’s Chart, like the other institutions in the GCC countries, in order to further strengthen its position and the role it plays to face practical challenges. He further stated that such a decision would fulfill one of the most vital demands of the Centre at present.

This in its turn would encourage other GCC Countries to follow suit and issue executive decisions in the Centre’s favor, thus strengthening its structure multifold and further activating its role. HE Mr. Ali Al Saleh also expressed the concern of the State of Bahrain towards the Centre and its location in the country, stating that he had already handed over the matter to the Cabinet who in their turn had asked the Minister of Commerce to support the Centre through all possible measures to enable it to fulfill its tasks and functions effectively.

During their meeting with the Undersecretary Sheikh Ebrahim Bin Khalifa Al Khalifa, the Chairman of the BOD of the Centre Mr. Hassan Mohammed Bin Al Shaiikh expressed his sincere gratitude through the Undersecretary to His Excellency The Minister of Finance Mr. Ebrahim Abdul Karim, who was also the Chairman of the Gulf International Bank (GIB) for the confidence vested in the Centre by the GIB through the amendments made to the GIB Agreement by Amiri Decree No. 16 of 1999 regarding the reference of the Bank to the Centre for settlement of disputes that may arise between the Bank and the relevant parties. The Undersecretary, in his turn, assured his continuous support to the Centre and expressed his interest to enhance the progress of the Centre in the GCC region.

The next point discussed was with regard to the various methods that could be handled in activating the role of the Centre to a greater extent. Some practical measures were recommended by the BOD like for example, incorporating the Standard Arbitration Clause of the Centre into contracts/agreements concluded by the Government with other commercial entities or with any of its bodies or agencies and to also recognize the Centre as an authorized and qualified body for the settlement of commercial disputes by means of arbitration. Emphasis was made to the role played by the Ministry of Finance and National Economy to support the Centre, to activate its role, which also aimed at incorporating the Centre’s Arbitration clause into concluded contracts/agreements whenever it was deemed appropriate. His Excellency also expressed his desire strongly confirming his interest in the Centre stating that he would spare no effort to urge the GCC to support the role of the Centre.
Finally the BOD members had a meeting with HE Shaikh Abdul Rahman Bin Mohammed Bin Rashid Al Khalifa – Undersecretary of the Ministry of Justice and Islamic Affairs. The Centre’s delegates expressed their heartfelt gratitude to the Ministry and to the Undersecretary in particular, for the concern and interest towards the Centre as well as for his instructions that were given to the courts in Bahrain to refer to the accredited arbitrators registered on the Centre’s Panel and residing in Bahrain when appointing arbitrators. His Excellency also stressed on the importance of arbitration as an extension of the judicial system created to reduce the burden on the shoulders of the courts in Bahrain.

He further stated that the Ministry would spare no efforts to support the Centre during the meetings held by the Ministers of Justice of the GCC Countries. He also said that a recommendation had been issued in one of these meetings, which emphasized on the role played by the Centre as a part of the judicial mechanism in the GCC Countries. In conclusion, he pointed out the importance of intensified visits and meetings with relevant official bodies in the GCC as well as strengthening of relations with the main legal consultation offices in these countries.

Continues...

Apart from the uneven development of such rules as among the GCC States, as a de-facto matter, all GCC States are required to develop their respective commercial arbitration rules. Furthermore, said states are also required to unify the legal rules governing arbitration for certain countries, such as Bahrain and Oman, have already approved the UNCITRAL model law on commercial arbitration whilst countries like Qatar and UAE are content with inclusion of specific chapters dealing with arbitration in their respective civil and commercial acts. Saudi Arabia has enacted its arbitration rules separately. Kuwait has a totally different approach in connection therewith. It has, in addition to the provisions on arbitration as included in Kuwait Procedures Act, enacted specific judicial arbitration rules.

Notwithstanding similarities of legal rules relating to arbitration in the GCC states, there are certain dissimilarities that should be dealt with in this respect by enactment of a unified law on commercial arbitration in these countries, be it by following the model law of the United Nations Commission on Trade Related Law (UNCITRAL) or by adopting any other model standard form.

As regards the enforcement of foreign arbitral awards, we are of the view that regardless of the ratification by the GCC States of the “Convention on Enforcement of Judgements, Delegation and Judicial Notices in the GCC States” as approved at the GCC Summit held in Muscat in December 1996 that has equal legal effect as to both court judgements and arbitral awards in the contracting states that should not dispense with the accession to the New York Convention by the GCC Countries which have not yet ratified it (i.e. the United Arab Emirates and Qatar).

In conclusion, we opine that consolidation and codification of the arbitration legal rules will, on the last run, help foster the position of arbitration in the GCC Countries and will encourage local parties as well as foreign investors to refer their commercial dispute resolution to arbitration and this will by and large activate the role of the Centre.

We are fully prepared to cooperate with the relevant authorities and with the GCC General Secretariat to lay down a certain appropriate form for the unification of legislations relating to arbitration in the GCC States and to render any necessary counsel to speed up accession by the State of Qatar and the U.A.E. to the said New York Convention.

Hassan Moh’d Bin Al Sheikh
Chairman.
The UNCITRAL Arbitration Law: A Good Model of a Model Law
"first printed in the Uniform Law Review 1998-2/3"
By Mr. Gerold Herrmann

Personal Preface:
"Having had the pleasure of knowing Malcolm Evans for over twenty years — both of us working in the vineyard of commercial law unification — I should like to dedicate this article to him. While we were toiling or managing different lots within that vineyard, our work was similar and often relaxed. The much-needed maintenance of good neighbourly relations in terms of co-operation and co-ordination was facilitated by Malcolm's outstanding professionalism and personality. Looking back on those years, I am particularly saddened by the fact that his fatal illness prevented him from topping his exemplary career with further achievements and thereafter enjoying a well-deserved retirement together with his dear Carla."
Gerold Herrmann

INTRODUCTORY REMARKS:
(a) Conventional wisdom and alternative model

One of the recurrent questions in our vineyard was which tool or vehicle would best serve the purposes of the unification of laws. The classic form of, of course, has been the multilateral convention, with the substantive law provisions either annexed as a uniform law or incorporated in the convention text itself, and indeed this continues to be an important and essential instrument of unification, as is shown by convention texts recently adopted or still in the making by UNIDROIT or UNCITRAL.

However, in response to what a member of UNIDROIT'S Governing Council called "the limitations of attempting uniformity or harmonization through binding international legal instruments" other forms of texts, e.g. model laws, legal guides and statements of principle", have been developed. "The objective behind these more flexible approaches to achieving comparability of internal private laws is to allow greater freedom to States through their own domestic constitutional processes and legal vehicles to accommodate new international norms." 1

Among those other approaches, I shall concentrate on the form of a model law which UNCITRAL, unlike UNIDROIT, has already used as a vehicle of harmonization on several occasions (i.e. UNCITRAL MODEL LAWS on: International Commercial Arbitration, 1985; International Credit Transfers, 1992; Procurement of Goods, Construction and Services, 1994; electronic Commerce, 1996; Cross-border Insolvency, 1997). After all, a model law constitutes the only real alternative to a convention. It is intended to operate at the very same level — the statutory level — and usually includes mandatory provisions, i.e. provisions from which parties may not derogate.

It is this latter aspect especially, which compels us to distinguish clearly between the statutory and the contractual level.

Unfortunately, this need has not always been recognized and followed by the drafters of international rules, standards or usages in formulating or marketing those contractual rules or principles (examples of the "legislative zeal of contractual rulers" may be seen, e.g. in Article 20 of the Uniform Rules on Demand Guarantees (URDG) or in attempts to establish "unbreakable" liability limits or exclusions): Such fudging is not only confusing but potentially harmful that it helps to perpetuate the widespread misconception amongst businessmen that their contracts and any incorporated rules will stand up as the last and definitive word, as if there were no applicable law that might invalidate a conflicting clause (and it might fuel the temptation of a weak arbitrator to ignore the applicable law if faced with a thorny conflict-of-laws problem or with difficulties in ascertaining the foreign, "strange" law).

Imagine, for instance, the unwelcome surprise of a contractor and its banker who rely on the expiry of their performance guarantee, as corroborated by the rule of the incorporated URDG that no demand may be made after the expiry date, when told that there is a law out there and applicable which prohibits time limits by allowing only guarantees of indefinite duration, or which allows demands as long as the beneficiary actually possesses the guarantee document, or according to which a demand may be made within the general period of limitation or prescription of, say, twenty years, provided that the "material contingency" (the risk which the guarantee was intended to protect against) had occurred before the expiry date of the guarantee.

Such real-life examples also show the obvious error of those who, carrying over the above businessmen's misconception into the field of unification, deny the need for the 1995 United Nations Convention on Independent Guarantees and Stand-by Letters of Credit in view of the various contractual sets of rules for demand guarantees and standby. There are some issues that can be dealt with effectively only at the statutory level, e.g., fraud or abuse of right and the available injunctive relief, as well as backing up party autonomy by giving full effect to any exercise thereof.

Returning now to the comparison of convention and model law as tools of harmonization, the essential difference lies in their flexibility as regards the extent of acceptance. In the case of a model law, an enacting State may decide to copy the model, or to make slight modifications, or to adopt only a few of its provisions. That is in sharp contrast to the "take-it-or-leave-it" appeal of a convention, with its formalized and usually very limited modification-permits called "reservations". Unless this lack of flexibility is intentional, a convention is not really more "binding" than a model law.

Even if it has voted in favour of the convention at the diplomatic conference, a State is not bound unless and until it ratifies it (if it signed before) or accedes to it. While it is then bound towards the other States parties to the convention to make the substantive provisions the law of the land, even that binding effect can be terminated by denouncing the convention. Thus, the difference to a model law is minimal as regards the basic question of whether or not the State decides to take the international text. However, the difference is vast as regards the
This and other differences have been the subject of many learned writings which, however, are largely theoretical, for want of practical experience with model laws. While the Uniform Commercial Code has been for decades an exemplary and successful model law at the national level (of the United States of America), a model law with proven international or global acceptability has been in use only during the past decade.

Pointing to another difference (namely rapid implementation), the UNCITRAL Model Law on International Commercial Arbitration (hereinafter referred to as the “Model Law”) adopted by the Commission on 21 June 1985, became law in a first jurisdiction (British Columbia) less than a year later-as compared with the eight years which elapsed before the entry into force of the United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980), another UNCITRAL best-seller. The advantage of rapidity was very recently witnessed again, when Singapore enacted legislation (on 29 June 1998) based on the UNCITRAL Model Law on Electronic Commerce within just two years of its conclusion.

With many other jurisdictions having followed the British Columbia example, we now have a treasure trove of twelve years’ research-worthy experience which, set against the background of the objectives and expectations of the drafters, should provide valuable insights into the practical aspects of using a model law as a vehicle of harmonization.

(b) Preview of a success story

The success of the Model Law may be stated (or quantified) in few words: already today, more than one quarter of the world’s territory is covered by enactments based on the UNCITRAL Model... and more countries are to follow. As will be shown later (see Part IV), those enactments very rarely deviate from the Model, whilst adding quite a number of provisions on issues not regulated in the Model Law (see Part V).

Looking at individual countries or jurisdictions, success may be measured by the increase in arbitration cases and by the satisfaction voiced by leading experts on a given enactment. To take a Far Eastern jurisdiction as an example, Hong Kong increased its caseload from 54 to 185 within two years of enacting the Model Law, and the most frequent judicial interpreter of the Model Law, then Justice Neil Kaplan Q.C., Chairman of the Hong Kong International Arbitration Centre, concluded that, “apart from two specific cases, the Model Law has been in most part a great success and, from a day-to-day perspective, achieves its stated purposes”. According to his earlier review of Hong Kong’s experience, previously expressed fears that the Courts would be beset with applications involving the construction of the Model Law have proved groundless because [of special transitional provisions and] “the Model Law itself is fairly straightforward in language and may not at any time give rise to any serious problems.”

Thus we know today that the prediction of an eminent rapporteur at the ICCA Congress about the Model Law (Lausanne 1984) has come true, namely that “the new Model Law, when it is completed by UNCITRAL Arbitration Rules as a principal pillar in the worldwide system of arbitral justice” -not exactly a minimal contribution to the international arbitration community.

Not surprisingly, the Commission has always attached great importance to the two existing “pillars” and, for example, decided that due account should be taken of them in the preparation of the Model Law. As regards the successful 1958 New York Convention, whose fortieth anniversary we celebrated at “New York Convention Day” (10 June 1998) at the United Nations Headquarters in New York, it was earlier decided that there was no need for a revision or amendment, as had been suggested by the Asian-African Legal Consultative Committee (AALCC). It was felt that certain concerns underlying the AALCC recommendation, together with many other difficulties encountered in practice - sometimes labeled “pitfalls or defects” of international commercial arbitration - could and should be met by a model law.

II. REASONS FOR THE PROJECT PERSUASIVE AS REASONS FOR ADOPTION:

Generally speaking, the defects or shortcomings (described hereafter) that led to the UNCITRAL initiative also constitute the main reasons why a country adopts the Model Law. However, crucial in most cases witnessed by the author of this essay has been the clear realization of the unique advantages offered by the Model Law (see Part III).

In many countries, there had been little recognition of the special needs and features of international arbitration. Equal treatment with domestic arbitration tends to neglect the fact that in an international case, at least one of the parties is (and indeed often both parties are) from a foreign country and may thus not be familiar with the local law and traditions. Expectations such as are usually laid down in the arbitration agreement, including any agreed arbitration rules, may therefore be frustrated by conflicting mandatory provisions of law. Even provisions from which parties may derogate could provide a trap to unwary parties. Inappropriate provisions of this kind were often established with purely domestic arbitration in mind and in some cases were taken directly from local court procedures.

For international arbitration and its users, the law of the place must not only be good but it should also be known or at least easily ascertainable. For example, when parties are seeking to agree on a suitable place of arbitration, their counsel need ready access to the local law. If such information is not readily available, that may well be a reason for preferring another venue.

This knowledge factor (or “high-fidelity” factor) should be taken into account by any State desirous of hosting arbitration, not only arbitrations in which one of the parties is from the Host State but also other international arbitrations in which all parties are foreign. Conversely, it would help parties from the Host State if an arbitration in which they might be involved in another State were governed by the same or a similar law familiar to them. This is but one example of the eminent practical value of harmonization of national laws.

The above considerations suggest certain major conditions that an acceptable law for international commercial arbitration should meet. It should be of good quality, with solutions that are both sound and suitable for the specific needs of international arbitration; it should be easily recognizable by and understandable to foreign users; and, building on these two conditions, it should be similar to the law of many other States embodying generally recognized principles.

All three conditions are best met by legislation that follows, as closely as possible, the UNCITRAL Model Law on International Commercial Arbitration.
This Model Law has various unique features and advantages that no national law can offer, however advanced it may be. Above all, it is the only law that is truly universal in its origin, design and acceptability and that reflects, as described in the Explanatory Note of the Secretariat, a worldwide consensus on most of the crucial issues in international arbitration procedure.

III. UNIQUE FEATURES AND ADVANTAGES OF THE MODEL LAW

(a) Universal origin of the Model Law

The UNCITRAL Model Law on International Commercial Arbitration was prepared by a Working Group in the course of five sessions and adopted by the United Nations Commission on International Trade Law (UNCITRAL) on 21 June 1985. As is characteristic of any text emanating from that Commission, it is truly universal in origin. Representatives of more than fifty States from all regions and different legal and economic systems, as well as fifteen international organizations participated in the preparatory work. The delegations included many internationally known arbitration experts.

Representatives of more than fifty States from all regions and different legal and economic systems, as well as fifteen international organizations participated in the preparatory work. The delegations included many internationally known arbitration experts.

In view of the wealth of expertise assembled in the conference rooms, it is small wonder that the discussions, as reflected in the travaux preparatoires and acknowledged by commentators, were of remarkably high quality. As an important additional asset, there was considerable input of exercise and views from outside the conference rooms by many other experts and practitioners who offered comments on the draft text at various conferences and seminars all over the world.

As a result, the draft text was seen and critically reviewed by far more eyes than any national bill ever was or would be. The many different views, ideas and interests, coupled with the vast body of experience gained in different countries and legal systems, were brought together and brought to bear on the emerging text, in a process and spirit which was praised by one observer as “one of the best examples of constructive co-operation between North, South, East and West.” This commendable spirit of co-operation and compromise helped, for example, to bridge the gap between Common Law and Civil Law in procedural matters and to reconcile positions on which even countries with the same legal system differed, especially concerning the nature of the arbitral process and the role of the national courts.

The Model Law’s international formulation and universal participation is certainly conducive to wide acceptability. What counts is not merely the psychological point of having participated as such, but also the experience of having joined in a search for practical and acceptable solutions in a spirit of mutual understanding and compromise. I think one may add here the widespread sense of achievement or pride at not having fallen into the trap of settling for the lowest common denominator. As the final text proves, a high standard of quality was attained by adopting the best existing features or working out novel solutions.

While it is often said that the international origin of the text will contribute to its broad adherence and so enhance the extent of harmonization, what is rarely perceived or mentioned is that its international origin is likewise of considerable value in respect of individual countries, irrespective of the prevailing idea of harmonization. The reason lies in the unique character of national law governing international arbitrations. Such national law, unlike the ordinary laws of States, is primarily designed for foreign readers and users, be they parties, counsel or arbitrators. It is thus of advantage to have a model which was made primarily by foreigners and which reflects the various interests and expectations (similar to those of potential “customers”).

(b) Universal design and global attention

The universal design of the Model Law is well suited to accommodate the special nature of an appropriate law for international arbitration. Unlike a nationally formulated law, it was not designed for one particular State and hence was not written against the background of one particular domestic legal system and its traditional concepts. Instead, it was conceived as a true model for, potentially, all States of the world. To mention only one of the ensuing advantages for all users not familiar with the domestic legal scene, legislation based on the Model Law would rarely, if ever, refer to provisions of other laws of that State or to domestic procedures known only to the initiated. Like any other text emanating from UNCITRAL, the Model Law is unlikely to contain a legal term or concept known only in certain jurisdictions (e.g. “due process”, “natural justice”). It uses rather plain, descriptive language and reflects the substance (e.g. “equal treatment” and full opportunity to present one’s case”).

Its design as a model for potentially all States was affirmed by the General Assembly of the United Nations when it recommended, in its resolution 40/172 of 11 December 1985, that “all States give due consideration to the UNCITRAL Model Law on International Commercial Arbitration, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice.”

Harmonization and improvement of national laws are clearly expressed here as the twin goals of the United Nations appeal. “With both objectives, the originators of the Model Law have” – as recently certified by a very representative user, the former corporate counsel of a German business giant with vast arbitration experience- “caused international arbitration to develop in a direction which will have a significant effect on the practice of arbitration users”. Rather than trying to address problems by “denationalization” in terms of taking the arbitration outside any particular national law to make it “a-national” or “supranational” (as proponents of “balloon arbitration” would love to see), the Model Law cues the problems by improving those very procedural laws, which is more advantageous in terms of legal policy as well as for individual arbitration users. Naturally, the respective attractiveness of the goals of harmonization and improvement as reasons for adopting the Model Law vary from country to country and, to a large extent, depend on the state of development of the existing national law.

The need for improvement through legislation based on the Model Law has been felt particularly keenly in those States, which have no developed and comprehensive arbitration law. It is also felt by other States whose arbitration law is not fully suitable for international cases and, as we shall see, even by States with developed arbitration laws.
Potential recipients are offered a model text, which provides a number of further advantages in addition to those already mentioned. To start with a seemingly mundane point, fully appreciated only by overburdened legislators or time-pressed founders of arbitration centers, the text is ready and cast in an easily adoptable form. The adjustments required of individual States are minimal (e.g. the replacement of terms such as "this State" and the designation of the competent court or authority under Article 6). Many States will also benefit from the fact that the Model Law was established (and continuously compared and harmonized throughout the preparatory phase) in all six official languages of the United Nations (i.e. Arabic, Chinese, English, French, Russian and Spanish), unlike the texts of other formulating agencies which are drafted in one or at the most two languages and only subsequently translated into others, often without the agency exerting any control.

Another advantage of the Model Law is its comprehensive nature, including its natural structure which follows the normal phases of an arbitration (which - all teaching colleagues might wish to know – makes for a splendid syllabus). Its actual application and interpretation in a given State are aided by the above-mentioned extensive travaux préparatoires and will increasingly be helped along also by the growing body of case law in all States which adopt the Model Law. With the assistance of national correspondents, the UNCITRAL Secretariat is collecting the pertinent decisions and publishing abstracts thereof, with a view to making this emerging treasure available and in order to foster uniform interpretation. This collection of "Case Law on UNCITRAL Texts" (CLOUT) already contains almost 100 decisions on the Model Law (A/CN.9/SER.C/ABSTRACTS/1-17).

Yet another advantage will be appreciated by those who view commercial arbitration as a competitive service, which it pays to advertise. Prompt adoption of the Model Law has a welcome public relations effect. In the words of a Canadian arbitration expert, "[e]mbracing the Model Law is part of a clear signal that Canada not only welcomes, but is anxious to obtain and to facilitate international commercial arbitration," or by two non-Germans in respect of the recently enacted German Law: "The adoption of the Model Law is to be understood as a clear signal of Germany's integration into the increasingly harmonized customs and jurisprudence of international commercial arbitration. In this spirit, the law is to be celebrated. This 'signal' is meant primarily, although not exclusively, for a foreign audience."

A similar chord is struck by a leading arbitration expert from Germany when stating that: "particularly for non-German parties, lawyers and arbitrators it is important that the Act, both in substance and in wording, has been formulated on the basis of the UNCITRAL Model Law. As the Model Law is the result of a co-ordinated international effort by experts from industrialized and developing countries to achieve a modern legal framework for international arbitration, the new German Act can be considered to offer an effective framework for all national and international arbitrations in Germany." 15

Another guiding consideration, based on the Model Law's universal design, is to realize that adoption of the Model Law contributes to harmonization and may stimulate other countries to do likewise.

As shown by the example of Germany, the latter advantages and considerations apply and appeal even to those States, which already have a developed law that broadly meets the needs of international commercial arbitration. The fact that their law contains the same basic concepts as the Model Law does not necessarily militate against adoption but on the contrary makes it even easier. A careful comparison will often reveal considerable differences in individual provisions which, in the national law, tend to be spread over various acts and amendments. Even where a State wishes to maintain (some) different solutions, adoption of the Model Law even with some modifications would help foreign readers and users by facilitating comparison and providing transparency.

After all, the Model Law presents a well-structured international standard against which the various national laws are best measured and thereby any differences discerned. This standardizing effect (as a template or a true "comparative law") would obviously be best achieved if all States were to mould their laws in the shape of the Model Law. Any modifications would in this way be readily ascertainable by users in search of ready access and knowledge. Of course, modifications should be kept to a minimum if one wishes to ensure a good "hi-fi factor" and achieve the desired harmonization of national laws.

© Worldwide acceptability in countries with widely different legal backgrounds

These motives have been very much on the minds of various legislatures and law reform commissions in jurisdictions with advanced legislation. Besides Germany, an example in point is Australia, which enacted the Model Law in its original form (with optional rules added on issues not regulated in the Model Law), despite having brought up-to-date its commercial arbitration laws only a few years earlier. Hong Kong offers a similar example in that its Law Reform Commission recommended the adoption of the Model Law only a few years after the promulgation of its advanced arbitration law that had apparently not run into any serious criticism. 16

Similar sentiments and wisdom likewise prevailed in many other jurisdictions, which goes to show that the conclusion of universal acceptability was not merely hypothetical or wishful thinking but was corroborated in reality. In its first thirteen years, the Model Law was accepted, with limited deviations, in the following States and jurisdictions, representing all regions of the world as well as all legal and economic systems, at diverse levels of development: Australia, Bahrain, Bermuda, Bulgaria, Canada, Cyprus, Egypt, Germany, Guatemala, Hong Kong Special Administrative Region, Hungary, India, Iran (Islamic Republic of) Kenya, Lithuania, Malta, Mexico, New Zealand, Nigeria, Oman, Peru, Russian Federation, Singapore, Sri Lanka, Tunisia, Ukraine; within the United Kingdom of Great Britain and Northern Ireland; Scotland, within the United States of America; California, Connecticut, Oregon and Texas and Zimbabwe; Enactments are expected soon in a number of other countries e.g. Greece, Ireland, Kyrgyzstan, Mozambique, South Africa, Thailand (for up-to-date information on Model Law enactments as well as adherences to Conventions see Status of Conventions at the UNCITRAL homepage on the Internet: http://www.un.or.at/uncital>)

It is apparent that any State, if it were to follow the Model
Law closely in drafting its new arbitration law, would be in very good company, would benefit from that company and would give yet another, and probably the clearest, signal of having joined the global league of nations with a hospitable legal climate and infrastructure for international commercial arbitration. The UNCITRAL Secretariat would certainly be pleased if it could be of assistance to any State embarking on this important and exciting endeavour.

In considering whether to adopt the Model law, special regard should be had to the specific goal and orientation of that law namely that it is designed to be of particular benefit in international cases, in which one party is, and often both parties are, from a foreign State. As Lord Justice KERR put it in his important Alexander Lecture of 1984: “Arbitration rests on confidence in the arbitration laws of the venue, and both parties to an international contract primarily only have confidence in their own laws and misgivings about those of the other. The present result is, therefore, a tussle which is often resolved in favour of some neutral venue in a country with whose laws neither party is rather familiar; ... The concept underlying the Model Law is to put an end to this state of affairs by widening the parties’ choice of venue, and thus their choice of arbitration clauses for incorporation into their contracts. In so far as a country will have enacted legislation based on the Model Law, both parties will be able to find it easier to accept arbitration in that country, because they will know, basically where they stand” 10. This is clearly helped by the fact that the Model Law already today is better and more widely known than any national arbitration law.

This idea of providing a “service” to the international business community and its arbitrators and counsel has been expressed as follows by an experienced arbitrator and arbitration lawyer: “We must not forget that when we are working abroad – whether as arbitrators, expert witnesses or representing a party – we normally operate within the ambit of the local law and there must surely be an enormous practical advantage for us if that law is not only familiar but known to be effective. There will be a tremendous benefit both to practitioners and to businessmen if we know that we are working under the UNCITRAL system when we are overseas.” 11

Of course, the best way would be to adopt the Model Law in its entirety, as being deemed acceptable by such a globally representative and competent body as UNCITRAL. While this may sound overly optimistic, and even partial adoption would be a useful step towards greater harmony in the procedural framework of the international arbitration process, it is surely not extravagant to invite any legislator or adviser to think twice before proposing serious departures from the final UNCITRAL text. Such second thoughts should include a consideration of the general advantages of unification, here achieved through parallel unilateral actions. While on a number of crucial issues there are valid reasons for and against the rule ultimately adopted, the fact that there is an agreed-upon final text, the fruit of mutual concessions often on cherished and deep-rooted positions, should militate in favour of accepting the package (unless it is deemed to contain ultra-hazardous materials). This is not in order to please the proud model draftsmen but to make life easier for the ultimate addresses and customers i. e. the parties involved in international trade who wish to see the same legal framework for their dispute settlement at whatever convenient place they may wish to have their dispute settled.

It is satisfying to see that until now those responsible for preparing legislation based on the Model Law have generally followed the maxim “don’t deviate”. The Scottish Advisory Committee on Arbitration Law (seconded by the German Government) put it thus: “While certain changes to the Model Law are necessary in every country in order to accommodate it to the legal structures of that country, the main object of the Model Law is to provide a framework for arbitration, which is readily understandable by people of very different legal cultures. Accordingly, the Committee recommends that any legislation to give effect to its proposals should depart from the language of the Model Law only where essential. This is the course of action which has been taken in those countries which have already adopted the Model Law”. 12

IV. – RARE DEVIATIONS FROM THE CONSENSUAL MODEL

As concluded by a most eminent arbitration expert in his highly commendable 1994 survey of 22 enactments of the Model Law, “the success of the Model Law as a whole may be seen in the fact that there is no one particular article which generally has been deviated from”. 13 In fact, no one article has been deviated from by a considerable number, let alone the majority of enacting jurisdictions.

Interestingly enough, four deviations found in more than one enactments accord with a particularly strong minority view presented during the deliberations. The first relates to Article 28 (2) which envisages the “indirect” route (i. e. via conflict-of–law rules) for the arbitral tribunal’s determination of the “law” applicable to the substance of the dispute. A more progressive position, which the Commission at the time felt was not acceptable to many States, has been taken in some jurisdictions (e. g. British Columbia, Egypt, Germany, India, Mexico, Tunisia) by providing for the direct approach towards the law or the rules of law deemed appropriate under the circumstances. Bulgaria and Tunisia have limited the choice of the parties to a “law”, rather than “rules of law” as provided in Article 28 (1).

Another deviation concerning Article 28 was made by Bulgaria and the Russian Federation, which left out the provision on amicable composition (paragraph 3).

The second deviation relates to Articles 35 and 36 on recognition and enforcement of awards which have been left out in a number of enactments; typically by Member States of the 1958 New York Convention (e. g. Australia, Germany) and especially by those jurisdictions which had made use of the reciprocity reservation (e. g. Bermuda, Hong Kong). It appears that here the Model Law was too much ahead of its time by treating all arbitral awards rendered in international commercial cases alike, irrespective of where the arbitration happened to take place. As submitted elsewhere a such disregard of territorial borders – true “globalization” – is conducive to furthering the international, mobile and independent nature of arbitration, with which the traditional requirement of reciprocity is hardly compatible.

The third deviation relates to the number of arbitrators; some States require this to be an odd number (e. g. Egypt, India, Tunisia). Failing agreement by the parties on the number, the Model Law envisages a panel of three, while some States favour a single arbitrator (e. g. India, Mexico, Scotland and some states in the USA), probably often motivated by the – even more interesting – fact that their law applies not only to International cases (where there is the appropriate norm) but also to domestic i. e. non-international, arbitrations (thus also, e. g. Canada (Fed.), Egypt, Germany, Guatemala, Hungary, Kenya, New Zealand, Sri Lanka and Zimbabwe).
The fourth modification (in recent enactments made increasingly often) relates to the requirement of written form in article 7 (2). While the Model Law contains a flexible formula, clearly more embracing than the one of the 1958 New York Convention, certain situations are arguably not covered, certainly not covered beyond doubt, and have led to modified formulations, either referring to such situations as bills of lading (e.g. Singapore) and other instances of "half form" (e.g. Germany) or providing a list of criteria with a general catch all formula (e.g. Hong Kong, inspired by England). In my view, this question deserves in-depth study and possibly a uniform answer in any future Convention or sequel to the UNCITRAL Model Law (if the slightly atavistic requirement of written form is to be retained at all) as was suggested at the 1998 ICCA-Congress in Paris and at "New York Convention Day".

Another deviation is in my view saddening, since it rejects the most innovative and hard-fought compromise embodied in Articles 13 (3) and 16 (3). The pre-Model Law world was evenly divided on the question whether court control over the challenge of an arbitrator or over the jurisdiction of the arbitral tribunal should be exercised immediately (in order to prevent dilatory tactics). In clinging to this latter position, India and (but only for Article 16) Bulgaria forgo the benefits of the ingenious Model Law formula, which minimizes the dilatory potential and effect of immediate court control by providing for single instance court review (a device that Tunisia has unfortunately excluded). The beauty of this device is that it refers a matter which has proved impossible to solve at the abstract level to the very concrete stage of particular arbitration proceedings, with arbitrators who can assess the sincerity of applications and the financial implications of continuing the proceedings.

There are a number of deviations, made by one or two States, that all relate to the important Article 34 on setting aside the award. Following the example of Switzerland, Tunisia allows non-Tunisian parties to exclude recourse under Article 34, while New Zealand – at the other side of the scales – enables parties to opt for appeal on questions of law (probably motivated by the fact that its law extends to domestic arbitrations). Egypt adds as reasons for setting aside failure "to apply the law agreed by the parties to the subject matter of the dispute", and "nullity occurs in the arbitral award, or... the arbitral proceedings are tainted by nullity affecting the award. "This deviation has led to trouble (in the Chromalloy case), as did India’s deviation from Article 10’s unlimited freedom as regards the number of arbitrators by prohibiting even numbers. It took quite some ingenuity on the part of the Supreme Court to rescue the huge number of arbitration agreements which envisaged two arbitrators and, in case of need, an umpire (see CLOUT 177). Singapore adds to the reasons for setting aside those of fraud, corruption and breach of natural justice, while the appropriate approach of others (e.g. Australia, New Zealand) is merely to clarify that these reasons are covered by the Model Law ground of "public policy". Bulgaria, Egypt and Hungary did not retain the useful provision (paragraph (4)) of remission of the award to the arbitral tribunal. India empowers the court to extend the three-month period of paragraph (3) by one month.

Finally, there are several other deviations worthy of note. Egypt, in the case of a successful challenge, declares the arbitral proceedings null and void rather than follow the Model Law in providing for the replacement of the arbitrator thus challenged; Egypt also authorizes arbitrators to order interim measures of protection (under Article 17) only if so agreed by the parties. Egypt’s provision that no reasons need be given for the award if no reasons are required by the applicable procedural law (which, one would have thought, is that very Egyptian law) is more difficult to understand. Reasons are mandatory in the Russian Federation and Ukraine and, but only for arbitration in law, Peru. The possibility under Article 36 (2) of suspending enforcement during setting aside proceedings has been executed by Egypt and Peru, with Egypt prohibiting, instead, requests for enforcement during the three-month period for setting aside.

Apart from these relatively few deviations, a number of other modifications are to be found in national enactments, which cannot be regarded as real deviations. Rather, they are either adjustments of the scope of application – for example, dropping the factor "commercial" or allowing parties to opt out (e.g. Australia, Hong Kong, Malta, Scotland and Singapore) or (the same jurisdictions plus Nigeria) to opt in (which is more in the nature of a clarification in view of Article 1 (3)(c), unless that very provision is excluded, as e.g. by the Russian Federation and Ukraine) – or stylistic variations with no or scant interpretative effect (e.g. Zimbabwe, which excludes consumers; potentially troublesome, however, is India’s definition of "commercial in accordance with Indian law"). On the other hand, the various provisions that address issues not covered by the 36 articles of the Model Law are clearly not deviations. These provisions dealing with additional issues are briefly outlined in Part V below.

V. ADDITIONAL ISSUES NOT COVERED BY THE MODEL LAW

During the preparation of the Model Law, quite a number of topics were discussed which, for one reason or another, were not ultimately addressed in the Model Law. Not surprisingly, almost all of those topics later surfaced in one or several of the national enactments.

The most popular such addition is the re-discovered issue of conciliation or, in more American jargon, mediation. The relevant provisions (e.g. Bermuda, Hong Kong, India, Nigeria) range from the simple mention of that method of dispute settlement and the express authorization or encouragement of the arbitrator to use conciliation, to elaborate schemes setting out the rules of conciliation (usually copying the UNCITRAL Conciliation Rules).

Another additional issue concerns consolidation and multiparty arbitration. While court-imposed consolidation has – in my view – correctly – not been favored (except in some US States), court assistance is sometimes provided for implementing the procedural details of a consolidation agreed upon in principle (e.g. Australia, Canada), at times accompanied by elaborate schemes for appointing more than three arbitrators. A related provision that might help in multiparty situations is Germany’s court assistance to abrogate an agreed appointment mechanism that puts one party at a disadvantage by giving preponderant rights to the other.

Yet a series of topics relates to pecuniary or financial aspects, namely costs or fees (e.g. Australia, Bermuda, British Columbia, Germany, Mexico, Russian Federation and Ukraine) and interest (Australia, Canada, Hong Kong and Peru). As regards costs and fees, the solutions range from simple empowerment of the arbitral tribunal to decide on costs and fees to complex schemes setting out the criteria to be
taken to complex schemes setting out the criteria to be taken into account. As regards interest, the range again spans from simple empowerment (deemed necessary because of uncertainty surrounding traditional English law) to detailed rules on compound interest, on the time period during which interest accrues and on the applicable rate of interest (in some laws unfortunately fixed to the local judgment rate, irrespective of the currency in which the award was made).

A number of enactments address (and often limit) the liability of arbitrators and occasionally also that of the arbitration administrators, at times adding rules on privileges and immunities of counsel and witnesses (Australia, Bermuda, Germany and Peru).

Bulgaria expressly empowers arbitrators to fill gaps and adapt contracts, whilst other provide long lists of the individual powers of arbitrators; thereby illustrating (and hopefully not limiting) the "general conductor's license" of the arbitrator provided for in Article 19 (2).

Similarly detailed lists are found in some enactments (of common law tradition which favours such lists) as regards the possible interim measures of protection which an arbitral tribunal may order under Article 17 (some enactments even list possible court measures under Article 9). A number of enactments accord enforceability to the measures contained in Article 17 (Australia, British Columbia, Ontario, Peru, Scotland and Tunisia).

Many enactments contain the useful provision (especially in common law jurisdictions, e.g. Australia, Bermuda, Canada [Fred. and Hong Kong] that in applying and interpreting the Model Law regard may or shall be had to the legislative history, referring generally to the travaux preparatoires of the Working Group and the Commission or specifying two documents which for all practical purposes should suffice (the analytical commentary in A/CN.9/264 and Commission report A/40/17).

Some enactments include detailed procedural rules of the type found in the UNCITRAL Arbitration Rules, for example, on the repercussions of replacing an arbitrator on the previous hearings and decisions, on the question of representation of a party or on arrangements for administrative assistance.

Finally, some of the other topics addressed in one or more enactments can only be listed here: arbitrability; the capacity of a public entity to conclude an arbitration agreement; confidentiality and disclosure; dismissal of claim for want of prosecution; challenge of expert for lack of impartiality; declaratory court ruling on validity of arbitration agreement before establishment of arbitral tribunal; effects of death of party on arbitration agreement and proceedings; effect of setting aside.

VI. VARIETY IN UNIFORMITY: AN ACHIEVABLE GOAL

As stated at the beginning, the Model Law has proved to be an attractive model. It has been followed by most recent enactments, and it has been followed very closely — in the final enactments that is: almost all law reform commissions start out with hundreds of deviations in mind which, as the present writer personally experienced in at least 25 jurisdictions and as confirmed by a Hungarian expert, gradually vanish in the light of detailed explanations of the wisdom behind the Model Law provisions. This general experience in enacting States as well as the need for, and value of, detailed explanations are typical of situations in which a model law rather than a Convention is used as the vehicle for harmonization.

To quote one further commentator on the most recent enactment, that of Germany, a country which carries some weight both economically and juridically. "Now, at the dawn of the new millennium, a new era has begun for German arbitration, and once again, it is the UNCITRAL Model Law which has brought a great trading nation into those legal communities favourable to commercial arbitration, both in reality and (as importantly) foreign perception. Arbitration is now undoubtedly the most popular form of dispute resolution system for transnational trade in every advanced economy around the world; and the Model Law has become the yardstick by which every international user measures an arbitral forum".

The UNCITRAL Secretariat has, insofar as its extremely scarce resources permit, assisted legislators to the extent possible by reviewing draft texts, explaining the Model Law and referring to experiences in other jurisdictions. One example of such assistance is its advice to Singapore and other to avoid the problems encountered in Hong Kong in the context of the appointment of arbitrators by the court, which has to follow formal rules of serving process abroad. The easy way out, envisaged by the Model Law and in the meantime incorporated into Hong Kong Law, is to entrust with this task not a court but the leading arbitration centre.

Another type of crucial technical assistance is the collection of court decisions and arbitral awards on provisions of the Model Law as of any other legislative text emanating from UNCITRAL and, especially, the publication of abstracts ("Case Law on UNCITRAL Texts" (CLOUT), cf. UNCITRAL homepage http://www.un.or.at/uncitral/cloot). These readily available documents allow any judge, arbitrator, counsel or party to see how the Model Law is being applied worldwide — thus contributing to further harmonization in the real world of day-to-day application and interpretation.

Assistance has further been offered in the form of advice ("capacity building") in the establishment of new arbitral institutions or in the international orientation of existing ones. Such advice related to organizational and administrative matters as well as to the actual use of the UNCITRAL Arbitration Rules as institutional rules and the drafting of model clauses.

Yet another type of technical assistance, rendered with the support especially of the Chartered Institute of Arbitrators in a number of common law jurisdictions, has been to conduct arbitration courses at the entry and advanced levels, to familiarize lawyers and non-lawyers with the arbitral process, its special features in an international context and with the main provisions of the Model Law.

With these kinds of assistance and the rapidly growing treasure trove of actual experience and knowledge of a large number of persons, the Model Law is certain to help the world towards the sought-after uniformity of arbitration laws. Uniformity in no way impedes refinement, as the many individual additions have shown, nor does it prevent diversity in arbitration culture, as was amply discussed two years ago during the ICCA Conference at Seoul.

Allow me here to quote again the above-mentioned representative arbitration user, who concluded his "User's perspective" of the new German Arbitration Act with the words: "It will be fully in line with the requirements of arbitration users if the Model Law becomes the harmonized arbitral law for all
countries offering themselves as the seat of international arbitration proceedings, and the time will come when these countries are preferred more and more by the parties to international proceedings for the choice of seat for the arbitration tribunal. 26 27

With its success at the global level, the UNCITRAL Model Law on International Commercial Arbitration has proved that a model law, if properly selected, prepared and subsequently monitored and cared for, may constitute a viable alternative to a convention as an efficient tool of harmonization of laws. I remember, admittedly with some amusement, the lengthy "convention versus model law" discussions, both inside and outside the conference room, and recall with a degree of satisfaction our victory over the 'conventional' wizards with their appealing, but deceptive slogan: "Uniformity can be achieved only by a convention".

Indeed, an UNCITRAL arbitration convention of 1985 would today ensure identity or strict parallelism of arbitration laws, but (based on my best estimate) only in about five countries; that, at least, would be four more than the number achieved by the Uniform Law on Arbitration annexed to the Council of Europe Convention of 1966 and which should have been a warning to us all, it having reached the peak of conventional unification with its adoption by a mere one State (the country of the chairman). Moreover, the above account of the relatively rare deviations in the many enactments of the Model Law clearly shows that the built-in flexibility of a model law (if one gets it right) need not lead to unacceptable degrees of disparity.

End Notes:


2. LIM, "Remodeling the Model Law (Singapore Arbitration)", ASIA Law Jan/Feb 1995, p. 28

3. The two cases are the writing requirement and court assistance under Article 11, dealt with below (see text accompanying notes 26 and 27).

4. KAPLAN, "A model for Uniform Law (Hong Kong Arbitration)", ASIA Law, Jun/Feb 1995 p. 23

5. KAPLAN, "The Model Law in Hong Kong - Two Years on", 8 Arbitration 1996 pp. 42-53


8. The reports on the five sessions are contained in ACN/92/6, 225, 226, 227, 228 and 229: these reports as well as the relevant working papers are reproduced in UNCITRAL Yearbooks 1982, 1983 and 1984.


American Arbitration Association Launches Global Center for Dispute Resolution Research

New York, NY June 29, 1999 - The American Arbitration Association announced today that it is sponsoring the formation of the global center for Dispute Resolution Research. A highly autonomous, self-governing organization, the Global Center will be the first research facility dedicated to examining the use and effectiveness of dispute resolution practices on a worldwide basis.

The focus of the Global Center's work will be on gathering information about business-to-business disputes through global data collection, analysis, and independently sponsored research. The Global Center will have two gathering bodies - a Board of Trustees, which will deal with governance and funding, and a Research Advisory Committee, which will establish the Global Center's research agenda, make grants to researchers, and ensure that rigorous methods of analysis are utilized in the research.

One of the most important objectives of the Global Center is to assure that data collection, which will be undertaken through a global network of agencies and practitioners - including organizations that compete with the AAA - is as comprehensive as possible. The database will be computer maintained, with safeguards for completeness, accuracy and confidentiality. The work of the Global Center will be disseminated through periodic conference here and through publications highlighting research work completed and its application.

Members of the Board of Trustees include: The Hon. William H. Webster of Milbank, Tweed, Hadley & McCloy, LLP and former director of the Federal Bureau of Investigation and the Central Intelligence Agency; Robert R. Briner, Esq. Chairman of the International Court of Arbitration of the International Chamber of Commerce (ICC) in Paris; and Roberta Cooper Ramo, Esq., past president of the American Bar Association, to name a few.

The Centre would like to take this opportunity to congratulate the American Arbitration Association for sponsoring such a noble cause on the formation of this Global Centre which we are sure would be of great help to all in the field of dispute resolution and would like to mention here that it is willing to offer any assistance that this Centre may require from time to time in order to make this Global Centre successful in all its endeavors.
The GCC Commercial Arbitration Centre jointly conducts a seminar for the first time in conjunction with the International Trade Centre, more commonly known as the ITC – Geneva. This seminar will deal with ITC’s Model Contract for the International Sale of Manufactured Goods. Furthermore, it will give an overview of several other model international sales contracts, which are currently used. It will take into account the new ICC Incoterms applicable as of January 1st 2000. The course will also assist participants to acquire a better understanding of two major legal instruments, the 1980 Vienna Sales Convention and the 1994 UNIDROIT Principles on International Commercial Contracts. Therefore, this course is expected to provide a very useful package for those specializing in the international sale of goods.

A small introduction to the instructors of this programme:

Jean Francois Bourque: Senior Legal Advisor on legal aspects of foreign trade at the International Centre UNCTAD/WTO (ITC) – Geneva. He obtained his Doctor-at-law degree in France. Before working at ITC he served as special counsel at the International Court of Arbitration of ICC in Paris for 9 years and was Chief Editor of ICC International Court of Arbitration Bulletin for several years.

Prof. Alain Pruinier: Professor of international trade law and international private law at Laval University (Quebec City) for 30 years. In charge of a graduate course on the drafting of international sales contracts. He has been professor invited on international contracts in other universities in Canada, France and China. He practices arbitration in international trade disputes.

David Brown: Qualified as both an English solicitor and French avocat, he is a Paris based lawyer with the international law firm Herbert Smith. He has 15 years of experience in the field of drafting and negotiating international commercial contracts particularly for the construction industry and handles disputes arising under such contracts usually via international arbitration. Regular speaker at seminars conducted by the ICC in Paris.

Ali Al Aidarous: Managing Attorney of Ali Al Aidarous Attorneys & Counselors at Law. He is a UAE national who received his LL. B. in 1981 from Al-Ain University. He went on to undertake postgraduate studies in Commercial Law in France, at Universite Clermont – FD. He is a former legal advisor to the United Arab Bank, a local affiliate of France’s Societe General. Before starting his own firm, he was the Managing Attorney and Partner of a leading UAE law firm. He has vast experience and specializes in commercial and corporate transactions.
DIRECTORY OF LAW FIRMS IN THE GCC STATES

The committee in charge of this directory is compiling data that is to be incorporated in this directory. This directory being published in both Arabic and English is the first of its kind ever being introduced in the Gulf Region. The directory provides the user with off hand information as to the lawyers, legal practitioners and law offices in the GCC region and also provides foreign law firms outside the GCC to advertise the services they offer to those interested in the region.

This directory is expected to be released during October 1999. We appreciate the repeated requests made by many, to have the last date for sending in their enlistments extended. We therefore would like to take this opportunity to invite those who had missed out on the earlier mentioned cut-off dates and request them to do so before the 5th of September which would be the final extension date for receipt of enlistment/advetisements to this directory.

We hope that we would receive your entries before the above-mentioned cut-off date and solicit your co-operation and support in order to have the directory published by the end of October 1999.

FIRST INTERNATIONAL CONFERENCE ON ENGINEERING ARBITRATION
15–17 MAY
Manama, Bahrain

The GCC Commercial Arbitration Centre and the Bahrain Society of Engineers are jointly conducting this conference on Engineering Arbitration. Call for papers have already been sent out and authors are invited to submit their papers relevant to engineering arbitration which should contain original views/ideas/analysis on any one of the topics as mentioned in the brochure.

The synopsis of your paper should be sent to us before the 31st of October 1999 along with full contact details. All correspondence should be addressed to the Conference Secretariat at the following contact details:

FIRST INTERNATIONAL CONFERENCE ON ENGINEERING ARBITRATION
Bahrain Society of Engineers
P.O. Box 835
Manama, Bahrain
Tel: +973 727100
Fax: +973 729819
E-mail: mohandis@batelco.com.bh
Web Site: http://www.mohandis.org
The American Arbitration Association on May 14th 1999 hosted the Fifth Biennial Dispute Resolution Conference of the IFCAI at the Grand Hyatt Hotel in New York City. Just prior to this conference on May 13th 1999, the Xth IFCAI General Assembly was convened and presided over by Mr. Michael Hoellering who was joined by representatives from a number of arbitration institutions from around the world. This General Assembly was hosted by the American Arbitration Association at the premises of the AAA and was divided into two sections: One, which was the meeting of institutional section while the other, was the General Assembly. The meeting of institutional section was devoted to discuss relevant issues of international arbitration namely:

(a) The Proper "Service" of Notices and Documents on Arbitration Participants – has been introduced by Mr. Franke

(b) The Collection of Deposits to Cover Arbitration Fees and Expenses – has been introduced by Dr. Aboul-Enein

(c) The extent to which Arbitrators or Institutions Need to Assist in the Enforcement of Arbitral Awards in Certain Jurisdictions – has been introduced by Dr. Klein.

The main topics on the agenda of the General Assembly comprised of the following: the adoption of the minutes of the interim meeting held in Paris on May 3rd 1998, reports from the President, Secretary Treasurer and from the Institutional Section Chairman, suggestion for the 6th Biennial Conference which is to be held in Latin America during the year 2001 and the election of officers and council members. In this meeting, the GCC Commercial Arbitration Centre was appointed as a member to the IFCAI Council and Mr. Yousef Zainal was appointed as one of the two councilors to this council. Mr. Zainal’s election is both an honor and a testament to the accomplishment of the Centre’s board members, Mr. Zainal and the GCC Commercial Arbitration Centre especially when one considers that the Centre only became fully functional just four years ago in 1995.

At the IFCAI Conference, which was held on the following day (14th May) ten distinguished speakers addressed a general, international audience of arbitration and mediation practitioners, drawn from a wider scope than IFCAI member-representatives on various aspects of dispute resolution. One of the main themes discussed at the conference and faced by those involved in international arbitration and other forms of alternative dispute resolution is the appropriate recognition, understanding and harmonization of cultural differences; for without it, justice might not felt to have been served by those involved with or affected by the decision-making and award.
## FUTURE ACTIVITIES OF THE CENTRE

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