MESSAGE FROM THE CHAIR

From the date of its establishment, the Cooperation Council for the Arab States of the Gulf (GCC) has taken strenuous efforts to fully associate itself in the field of commercial arbitration. After having resolved to adopt commercial arbitration, by enacting regulations and laws that were related to arbitration and by acceding to relevant conventions, concrete measures were adapted to frame this arbitral setup on a regional level in order to enable it to cater to the needs of both the private and government sectors in the GCC level. This effort resulted in the establishment of the GCC Commercial Arbitration Centre whose main objective is to provide the private sectors in the GCC countries with a speedy mechanism to resolve commercial disputes.

Amendments to the Arbitral Rules of Procedure of the Centre

The GCC Commercial Arbitration Centre has amended its Arbitral Rules of Procedure, which were in force from November 1994. The reasons for these amendments were to better serve the business community and to cater to the user's needs.

For more details refer to pages 14 & 15

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ICCA International Conference 2000 on
"International Arbitration and National Courts: A Never Ending Story"
March 2 - 4, 2000 New Delhi.

The Conference will discuss the following subjects:
- The Contract: What causes courts to disregard agreements to arbitrate, and how can such agreements be improved to avoid that fate?
- Interim relief: How can it be obtained without harming the arbitral process?
- The proceedings: How to avoid judicial interruptions
- Looking to enforcement: Awards that pass Judicial scrutiny.

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18th Meeting of the Centre's Board of Directors

The representatives of the Gulf Chambers of Commerce, who are also members of the Centre's Board of Directors, met at the Centre's premises in Bahrain to have the 18th BOD meeting of the Centre convened. The meeting held on 4th November 1999 was chaired by Mr. Hassan Mohammed Bin Al Shaikh, who at that time was both Chairman of the current session of the BOD of the Centre as well as that of the Dubai Chamber of Commerce and Industry.

The chairmanship of the BOD was transferred to the member representing the Council of Saudi Chambers of Commerce and Industry Dr. Hasan Eisa Al Mulla with effect from 27th November 1999.

For a more detailed report turn to page 4

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CHANGE

The address of the Centre's Website has been changed to www.gccarbitration.com. The Centre takes this opportunity to welcome all visitors to its site to benefit from the details provided by it in its Website and also actively participate in the future activities of the Centre thus extending their continuous cooperation and support.

Page 2 for information available on site
We would like to take this opportunity to thank Gulf Air for its continued support extended to the Centre in all the activities conducted by it. Gulf Air, being the official carrier of all events conducted by the Centre, provides discounted rates for all Speakers, Participants and others who attend the various events conducted by the Centre from time to time.

The Secretariat of the Centre would also like to express their appreciation to the contribution and support extended by Gulf Air to the Centre in the conduct of its activities.
THE BOARD MEMBERS OF THE CENTRE

Dr. Hasan Eisa Al Mulla - Chairman
Representative of the Council of Saudi Chambers of Commerce & Industry

Mr. Ebrahim Mohammed Zainal - Vice Chairman
Representative of the Bahrain Chamber of Commerce & Industry

Mr. Hassan Mohammed Bin Al Shaikh
Representative of the Dubai Chamber of Commerce & Industry

Mr. Ali Khamis Al Alawi
Representative of the Oman Chamber of Commerce & Industry

Dr. Salah Al Jeri
Representative of the Kuwait Chamber of Commerce & Industry

Mr. Khalil Al Radhwani
Representative of the Qatar Chamber of Commerce & Industry

THE CENTRE'S SECRETARY GENERAL
Mr. Yousif Z.A.M. Zainal

Kindly address all correspondence to:

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NOTE
THE VIEWS EXPRESSED AND INFORMATION PROVIDED IN THIS BULLETIN ARE NEITHER NECESSARILY THOSE OF THE GCC COMMERCIAL ARBITRATION CENTRE NOR THOSE OF ITS BOARD OF DIRECTORS. THE GCCCAC HAS NO LIABILITY WHATSOEVER THAT MAY BE PLACED UPON IT.
The BOD members at this meeting also assessed the development of cordial relationships with the Member Chambers of Commerce, the GCC General Secretariat and the Executive Authorities in the GCC States.

The Centre put forth some suggestions with an aim to further strengthen the existing ties with the aforementioned chambers and authorities as well as with Arab and Foreign chambers of commerce. It also stressed on the need to strengthen ties with Arab and Foreign arbitration institutions. A financial report of the Centre for the period up to 31st October 1999 was also provided by the Secretariat for the Board members’ review which had been approved.

The Board acknowledged the support extended by the other member chambers of commerce and thanked them for their financial and moral support extended to the Centre. It also urged the Secretariat of the Centre to spare no efforts in establishing stronger ties with these member chambers and their affiliates, which it was sure, in turn, would ultimately lead to activating the role of the Centre in serving the private sector. Sincere gratitude was also expressed by the Board to the Union of the Gulf Chambers of Commerce and Industry as well as to all the member chambers for their continuous support extended to the Centre.

The informational advertisement about the Centre and propagation of arbitral awareness among relevant bodies promoted by the Centre was well appreciated by the Board members. A plan of action was to be set up for the next academic year, which would emphasize and concentrate on special contacts with large commercial, industrial and financial institutions in all GCC States in order to urge and encourage them to resort to arbitration as a safe and appropriate means for the settlement of disputes.

The Board was also acquainted with the decision taken by the Commercial Cooperative Committee (Ministries of Trade in GCC States) in its last meeting in Al-Ain, U.A.E. on 5th October 1999 with regard to the introduction of certain amendments to some Articles of the Arbitral Rules of Procedure of the Centre which had earlier been put forth by the Centre.

The Board appreciated the approval of these amendments by the Commercial Cooperative Committee as it strongly believed that these amendments would be in favor of the Centre by encouraging the parties in dispute to refer to arbitration under the Centre’s auspices by grant-

The Board of Directors also expressed their consent with the decision of the Ministers of Commerce members of the Commercial Cooperative Committee on emphasizing the importance of supporting the Centre, its role, activities and specialization and on urging the relevant authorities and related public and private commercial bodies to refer to the Centre for the settlement of their disputes.

In the same context, the Board expressed its deep consent with the decision of the aforementioned Ministers on the importance of urging the relevant authorities in the Member States of the GCC to issue internal decisions, decrees for the ratification of the Decision of the Supreme Council on the establishment of the Centre and therefore to approve of the Charter of the Centre and the request to the General Secretariat of the GCC to continue its contacts with the Member States in this respect. It is worth mentioning that the Cabinet of Ministers in Bahrain has recently discussed a memorandum submitted by the Minister of Cabinet Affairs and Information with regard to the issuance of a Decree on the approval of the Charter of the GCC Commercial Arbitration Centre, whereas the Cabinet has decided to submit the memorandum to the Ministerial Commission for Legal Affairs. Possibly the Decree will be issued in the near future and it will undoubtedly support the Centre and further strengthen its legal position.

The BOD welcomed the aforementioned positive trend of the Cabinet of Ministers in the host country in supporting the role of the Centre. It expressed its appreciation to the fruitful efforts towards the issuance of the executive instrument of the Charter of the Centre, which will give the power of enforcement of the arbitral awards issued by arbitral panels formed in accordance with the rules of the Centre. It is hoped that the other GCC countries will imitate the host country by issuing the executive instrument of the Charter of the Centre.

The BOD expressed its obligation and appreciation to the Ministers of Commerce and the members of Commercial Cooperative Committee for their great concern towards the Centre and their support to activate its role by issuing such important decisions which positively affect the future of the Centre. It urged the GCC General Secretariat to pursue the process of the implementation of these decisions with the relevant authority at the GCC States in order to implement this decision.

The BOD decided to convene its next meeting in Riyadh in February 2000 after the transfer of chairmanship of the BOD to the representative of the Saudi Council of Commercial and Industrial Chambers.
which commensurate with increase in the volume of both commercial exchange on regional, sub regional and international levels and those of the investments in the GCC countries leading to a wider opportunity for recourse to arbitration.

The positive aspects of arbitration are reflected in the flexibility of the procedures, prompt settlement of cases, access to expertise and confidentiality. Another contributing factor to the rapid acceptance and widespread of arbitration as a speedy measure to resolve disputes is the increasing burdens on the local courts which are overloaded with law cases. Thus a practical solution in which Gulf businessmen would find a safe refuge as well as an appropriate method for the settlement of commercial disputes was the need to resort to arbitration which was strongly recommended by the leaders of the Supreme Council of the GCC States.

With an optimistic foresight, the leaders of the Supreme Council of the GCC unanimously decided at their meeting held in Riyadh in 1993, to establish the GCC Commercial Arbitration Centre as an appropriate legal framework for commercial arbitration at the GCC level. This Centre was to be managed by the private sector and was expected to play a distinguishable role in the economic arena.

The establishment of the Centre was a result of a deliberate and clear trend to facilitate the settlement of commercial disputes of different economic sectors as well as to provide the private sector with an appropriate legal foundation by creating a strong base for facilitating the settlement of commercial disputes, which would help to support this sector to play a substantial role in the process of the current socio-economic development in the GCC countries.

This trend, which synchronizes with the general trends of the GCC countries towards deliberated and planned privatization, aims also to encourage the developing private sector to play an active and prominent role in all aspects of economic life, including development of mechanisms for the settlement of commercial disputes and by taking the lead of initiating the entire supervision of organizing and directing this judicial edifice which is represented by the GCC Commercial Arbitration Centre as an extension of the judicial system in the GCC countries.

As referred to earlier, the political heads in the GCC countries have provided the private sector with an appropriate legal and organizational body for the settlement of commercial disputes and have empowered it to undertake the matter of administration and development of this edifice to attain greater heights.

We are of the belief that the private sector in the GCC countries, which recognizes the vital role played by the Centre and which is convinced of the advantages of commercial arbitration, will be the most preferred future judicial trend to be resorted to more widely and therefore would have to interact with this institutional framework and practice its desired role in promoting arbitration and supporting the Centre.

To be summed up, the establishment of the Centre is to facilitate speedy dispute resolution measures to those in the private sector, thereby activating the role of the Centre to a greater extent in the economic arena and in the process of socio-economic development.

Dr. Hasan Eisa Al Mulla
Chairman

NEW PUBLICATIONS

The Cairo Regional Centre for International Commercial Arbitration has published its first set of awards in English containing 32 awards issued during the period from 1983 till end 1986.

The awards have been compiled, translated and commented by Professor Dr. Mohie Eldin Alam Eldin, one of the legal consultants of the said Centre, and former Member to the ICC International Court of Arbitration in Paris, as well as a member on the Centre’s panel of arbitrators and experts.

The new publication is found in the bookshops of Kluwer Law International all over the world. The book contains also annexes for:
1. The documents of establishment of the Centre
2. The rules of conciliation, arbitration, expertise of the Centre and
3. The Law of arbitration in civil and commercial matters of Egypt.

The GCC Commercial Arbitration Centre would like to use this opportunity to congratulate the Cairo Regional Centre for International Commercial Arbitration and Prof. Dr. Alam Eldin and wishes them to be able to release the following volumes of this valuable book which is first of its kind in the Arab World.
Work of the United Nations Commission on International Trade Law
During its Thirty-Second Session
A Brief Overview of the Substantive Issues Considered and Decisions Made

The United Nations Commission on International Trade Law held its thirty-second session at Vienna from 17 May to 4 June 1999. The Commission, during the session, considered a number of substantive issues, as well as matters relating to its future programme of work.

Substantive Issues
The three issues to which the Commission devoted most of its consideration were: privately financed infrastructure projects, work in the area of electronic commerce, and the draft convention on assignment in receivables financing. The Commission also considered possible future work with respect to international commercial arbitration, as well as with respect to insolvency law.

Other Matters
Monitoring the implementation of the 1958 New York Convention, Case Law on UNCITRAL texts, training and assistance, status and promotion of UNCITRAL texts, General Assembly resolutions on the work of the Commission, coordination and cooperation with other organizations, and a number of other issues, including a request for endorsement of International Standby Practices (ISP98) and Uniform Rules for Contract Bonds (URCB), were addressed by the Commission at this session.

Overview
The following is a brief summary of the work undertaken by the Commission with respect to the substantive issues it had before it and to the extent relevant, the decisions made by the Commission with respect to those issues:

Privately financed infrastructure projects
At its twenty-ninth session, in 1996, after consideration of the note by the Secretariat on build-operate-transfer and related types of projects (A/CN.9/424), the Commission decided to prepare a legislative guide to assist States in preparing or modernizing legislation relevant to those projects. The Commission requested the Secretariat to review issues suitable for treatment in such a legislative guide and to prepare draft materials for consideration by the Commission. At its thirty-first and thirty-first sessions, the Commission considered progress made in the field of the legislative guide.

At this session, the Commission expressed its satisfaction with the progress of the work on preparation of the legislative guide. The draft guide was viewed as being of particular interest to those countries that strove to attract foreign investment capital in order to finance such projects. The Commission noted, however, the importance of keeping the appropriate balance between the objective of attracting private investment for infrastructure projects and the protection of the interests of the host Government and the users of the infrastructure facility.

Further, the Commission considered various specific suggestions concerning the draft chapters of the legislative guide, as well as proposals for changing the structure of the legislative guide and reducing the number of chapters. The Commission requested the Secretariat to continue the preparation of future chapters, with the assistance of outside experts, for submission to the Commission at its thirty-third session. (For a more detailed view of the discussions in the Commission concerning the draft legislative guide, see document A/54/17, paras 12-307).

Electronic Commerce
The Commission, at its thirtieth session, in 1997, had entrusted the Working Group on Electronic Commerce with the preparation of uniform rules on the legal issue of digital signatures, and certification authorities. At its thirty-first session, in 1998, the Commission noted that the Working Group, in its preparation of draft uniform rules on electronic signatures had experienced manifest difficulties in reaching a common understanding of the new legal issues arising from the increased use of digital and other electronic signatures. It was also noted that a consensus was still to be found as to how those issues might be addressed in an internationally acceptable legal framework. However, it was generally felt by the Commission that the progress achieved so far indicated that the draft uniform rules on electronic signatures were progressively being shaped into a workable structure.

At the current session, the Commission expressed its appreciation for the efforts accomplished by the Working Group in its preparation of draft uniform rules on electronic signatures. While it was generally agreed that significant progress had been made in the understanding of the legal issues of electronic signatures, it was also felt that the Working Group had been faced with difficulties in the building of a consensus as to the legislative policy on which the uniform rules should be based.
While a number of different views were expressed with respect to future work in the area, the widely prevailing view was that the Working Group should pursue its task on the basis of its original mandate. The Commission reaffirmed its earlier decisions as to the feasibility of preparing such uniform rules and expressed its confidence that more progress could be accomplished by the Working Group at its forthcoming sessions.

Future work in the field of electronic signatures

Various suggestions were made with respect to future work in the field of electronic commerce, for possible consideration by the Commission and the Working Group after completion of the uniform rules on electronic signatures. These suggestions included: electronic transactional and contract law; electronic transfer of rights in tangible goods; electronic transfer of intangible rights; rights in electronic date and software (possibly in cooperation with the World Intellectual Property Organization (WIPO)); standard terms for electronic contracting (possibly in cooperation with the International Chamber of Commerce (ICC) and the Internet Law and Policy Forum (ILPF)); applicable law and jurisdiction (possibly in cooperation with the Hague Conference on Private International Law); and online dispute settlement systems.

The Commission took note of the various proposals. It decided that, upon completing its current task, namely, the preparation of draft uniform rules on electronic signatures, the Working Group would be expected, in the context of its general advisory function regarding the issues of electronic commerce, to examine some or all of the above-mentioned items, as well as any additional items, with a view to making more specific proposals for future work by the Commission.

Assignment in receivables financing

The Commission had considered legal problems in the area of assignment at its twenty-sixth to twenty-eighth sessions (1993 – 1995) and had entrusted, at its twenty-eighth session, in 1995, the Working Group on International Contract Practices with the task of preparing a uniform law on assignment in receivables financing. That Working Group had proceeded with its work on the assumption that the text being prepared would take the form of a convention and would include private international law provisions.

At this current session, the Commission considered the reports of the Working Group on the progress achieved thus far. Noting that the draft Convention had attracted the interest of the international trade and finance community, the Commission expressed its appreciation for the significant progress achieved by the Working Group. At the same time, the Commission noted that a number of specific questions remained to be addressed by the Working Group, including the questions: whether the draft Convention would apply only to assignments in a financing context or to other assignments as well; whether certain assignments, such as those involved in securities and clearing-house transactions, should be excluded or simply dealt with differently; and whether anti-assignment clauses contained in public procurement contracts should be treated differently from such clauses in other types of contracts.

A number of views were expressed as to the outstanding issues. The Commission referred those views to the Working Group. It requested the Working Group to proceed with its work expeditiously so as to make it possible for the draft Convention, along with the report of the next session of the Working Group, to be circulated to Governments for comments in good time and for the draft Convention to be considered by the Commission for adoption at its thirty-third session (2000). As regards the subsequent procedure for adopting the draft Convention, the Commission noted that it would have to decide at its next session whether it should recommend adoption by the General Assembly or by a diplomatic conference to be specially convened by the General Assembly for that purpose.

The Commission, at its thirty-first session in 1998, with reference to the discussions at the New York Convention Day, considered that it would be useful to engage in a consideration of possible future work in the area of arbitration at its thirty-second session in 1999. It requested the Secretariat to prepare a note that would serve as a basis for the considerations of the Commission.

Possible Future Work in International Commercial Arbitration

At the current session, the Commission had before it a document it had requested at its thirty-first session on issues and problems identified in arbitral practice, which the Commission might wish to address in its future work programme. It was generally considered that the time had arrived to assess the extensive and favourable experience with national enactments of the UNCITRAL Model Law on International Commercial Arbitration (1985) as well as the use of the UNCITRAL Arbitration Rules and the UNCITRAL Conciliation Rules, and to evaluate in the universal forum of the Commission the acceptability of ideas and proposals for improvement of arbitration laws, rules and practices.

The Commission, following an exchange of views on possible future work in the area of international commercial arbitration, decided to entrust the issue to a working group and requested the Secretariat to prepare the necessary studies. It was agreed that the priority items for the working group should be conciliation, requirement of written form for the arbitration agreement, enforce-
ability of an award that had been set aside in the State of origin. It was expected that the Secretariat would prepare the necessary documentation for the first session of the working group for at least two, and possibly three, of those four topics. As to the other topics discussed, which were accorded lower priority, the working group was to decide on the time and manner of dealing with them.

**Insolvency Law**

The Commission had before it a proposal by Australia on possible future work in the area of insolvency law. The proposal referred to recent regional and global financial crises and the work undertaken in international forums in response to those crises. Reports from those forums stressed the need to strengthen the international financial system in three areas: transparency, accountability, and management of international financial crises by domestic legal systems. According to those reports, strong insolvency and debtor-creditor regimes were an important means for preventing or limiting financial crises and for facilitating rapid and orderly workouts from excessive indebtedness. The proposal urged that the Commission consider entrusting a working group with the development of a model law on corporate insolvency to foster and encourage the adoption of effective national corporate insolvency regimes.

The Commission expressed its appreciation for the proposal. It noted that different work projects had been undertaken by other international organizations such as the International Monetary Fund, the World Bank and the International Bar Association on the development of standards and principles for insolvency regimes. It noted that the broad objective of these organizations, while differing in scope and working methods as a consequence of their respective mandates and membership, was to modernize insolvency practices and laws. The initiatives taken in those organizations were proof of the necessity of assisting States to re-assess their insolvency laws and practices. Those various initiatives, however, were also in need of strengthened coordination, where appropriate, so as to avoid inefficient duplication of work and achieve consistent results.

It was generally agreed that the Commission could not take a final decision on committing itself to establishing a working group to develop model legislation or another text without further study of the work already being undertaken by other organizations and consideration of the relevant issues. To facilitate that further study, the Commission was invited by the Secretariat to consider the possibility of devoting one session of a working group to ascertaining what, in the current landscape of efforts, would be an appropriate product (such as a model law, model provisions, a set of principles or other text) and to defining the scope of the issues to be included in that product. Diverging views were expressed in response.

Various views were expressed with regard to the proposal made by the Secretariat. The prevailing view, however, was that an explanatory session of a working group should be convened to prepare a feasibility proposal for consideration by the Commission at its thirty-third session.

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Programme on Negotiating and Drafting of International Sales Contracts – A Report
Bahrain

Organised jointly by the GCC Commercial Arbitration Centre and the International Trade Centre (Geneva) for the first time, a Programme on Negotiating and Drafting of International Sales Contracts was convened in Bahrain on the 21st and 22nd of November 1999.

The programme was conducted by a panel of four; Professor Jean Francois Bourque, Senior Legal Advisor on Legal Aspects of Foreign Trade at the International Trade Centre, Mr. David Brown, a Paris based lawyer with the International Law Firm Herbert Smith, Alain Frujiner, who is professor of international trade law and international private law at the Laval University in Quebec and by Mr. Ali Al Aidarous, who has established a law firm Ali Al Aidarous Attorneys and Counsellors at Law in the UAE.

The programme had a practical presentation, like a manual, and the material was geared to general application by the participants. Interesting questions were asked and observations and experiences shared by the audience during the lectures, which attributed to the active interaction between the participants and instructors. Homework set at the end of the first day and due the next morning was a case study on the UNIDROIT Principles of International Commercial Contracts (1994).

The programme dealt with ITC’s Model Contract for the International Sales of Perishable Goods as well as ICC’s Model Contract for the sale of Manufactured Goods. Furthermore, an overview of several other model international sales contracts that were currently used with an in-depth discussion on the new ICC Incoterms applicable as of 1st January 2000 was provided to the participants of this programme.

The Centre has been conducting a number of seminars and short courses since its establishment in 1995 in order to create awareness among the public in all the spheres of both commercial and industrial activities with special attention to those involved in different sectors of commercial arbitration. This particular programme bears unique significance as it aims to develop practical knowledge and skills on international contract drafting and negotiation with more emphasis on commercial sales contracts in order to increase competitiveness and avert onerous litigation.

Spread over a period of two days and commencing from 9.00 am to 2.30 p.m., the first day addressed the International legal framework for International Commercial Sales (Vienna Convention, UNIDROIT Principles etc.) with Case Studies on these rules followed by the Drafting of Sales Contracts covering both the main clauses that dealt with parties, goods, delivery, price, payment and documents while the second part covered the retention of title clause, payment, late delivery, force majeure, default and mitigation of harm.

The second day commenced with an overview of the existing international model sales contracts, comparing contractual provisions in contracts for the sale of manufactured and perishable goods and raw products. Dispute resolution clauses in sales contracts and their consequences followed by case studies on negotiating dispute resolution clauses were addressed after the break. Mr. Ali Al Aidarous, speaker from the region, presented a paper on “The CISG and the National Laws”.

The programme was brought to a close after a session of general discussion and certificates distributed to the participants of this programme at the closing ceremony.

Based upon the feedback received from the appraisal forms that were distributed to the participants just prior to the close of the programme, a majority of them expressed the need for a longer duration of 3 – 4 days so that the subject could be discussed in more detail. Others were of the opinion that there could be simultaneous translation of the lectures by which they felt that they could better comprehend what was being said. Yet others felt that other related topics like those with regard to the Formatting of Contracts and Dispute Resolution could be added to the list of topics to be addressed.

Thus the Programme on the whole was well appreciated and a great success for the Centre with more to come. The Secretariat of the Centre would like to express its sincere gratitude to the International Trade Centre and to Mr. David Brown, Prof. Alain Frujiner and Mr. Ali Al Aidarous for their wholehearted contribution which contributed a great deal to the success of this programme.
SHIP-GENERATED MARINE POLLUTION: 
THE INTERNATIONAL PREVENTION AND COMPENSATION SYSTEM

Prof. Edgar Gold, C.M., Q.C., Ph.D.

In early 2000 the G.C.C. Commercial Arbitration Centre in Bahrain plans to hold an international conference on ship-source marine pollution. Although I very much regret being unable to be there, I am delighted to offer this brief article which is designed to provide a general overview of the subject. It should be noted that the subject of this paper here has been insufficiently discussed in the Gulf region and it is hoped that the Bahrain symposium will raise much-needed interest on the problems that can be created by marine pollution.

In an increasingly environmentally conscious world ship-source marine pollution has, for a long time, been singled out for special attention. This attention is hardly commensurate with its actual contribution to marine pollution which, today, is considered to be less than twelve percent of the total. In other words, it is land-source marine pollution that is today the major problem. This was already clearly recognized in the deliberations of the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro in 1992.

On the other hand, as strange as it may seem, marine pollution accidents also have positive effects! The former Secretary General of the International Maritime Organization (IMO), C. P. Srivastava, mentioned on more than one occasion that without the Torrey Canyon disaster, there probably would have been no effective IMO, nor any of its important pollution conventions and, without the Amoco Cadiz oil spill, there would probably be no Standards of Training (STCW) nor new Salvage Conventions. In fact, national legislative responses to marine pollution accidents are often directly attributable to the repercussions, political and otherwise, from such accidents. For example, many states, Australia, Canada and the U.K. amongst these, revised their marine pollution legislation after the Torrey Canyon accident in 1967. Canada’s Shipping Act was again extensively revised after the Arrow disaster in 1971; France revised its legislation extensively after the Amoco Cadiz grounding in 1978; and, in the more recent past, the United States reached strongly after Exxon Valdez; Australia after the Kirki and Iron Baron disasters; the North African states after the Kharg V spill; the Malacca Straits states after the Nagasaki Spirit and Maersk Navigator collisions; and the U.K., again, after the Braer and Sea Empress groundings.

As a result, action at the IMO’s international level was commensurately speeded up. However, the Gulf region, despite very heavy oil production and tanker activities, has so far been spared from very serious ship-generated oil spills. Although this is very good, it also appears to have made states in the region rather complacent about the problem. As a result, Gulf States generally lag behind other regions in achieving up-to-date oil spill legislation in conformity with IMO conventions. This is illustrated by the attached table, which shows that, with the exception of Oman, and the U.A.E. the record of acceptance of the ten most important IMO pollution-related conventions is not very good.

In other words, the periodic, serious marine pollution accident appears to have indirect positive benefits for the marine environment by tightening up regulations, focusing attention, stimulating pollution control and related scientific research, and generally raising environmental consciousness in the shipping industry. All of this is very good providing that revisions of laws and updating of responses occur at the international level and are then quickly implemented at the national level. It is hardly necessary to stress that shipping is an international industry that can only be regulated with globally accepted rules developed through inter-governmental organizations. This approach ensures uniform solutions expressed in terms of international maritime law.

As a result, the IMO has attempted, ever since its founding in 1958, to balance the various interests involved under its guiding principle of “towards safer ships and cleaner seas”. At the base of this principle is the undeniable fact that shipping is an essential component of international trade and commerce and that, in the carriage of pollutant cargoes, such as oil and oil products, and hazardous and noxious substances, that are potentially harmful to the marine environment. As a result, due to increasing global environmental consciousness, the environmental risk factor has become of almost paramount importance for the maritime industry and its principal global agency, the IMO.

The IMO’s states membership, including the Gulf States, recognized long ago that an international industry, with transnational trading links, required a uniform international, regulatory system. This was confirmed by the conclusion of the United Nations Convention on the Law of the Sea, 1982, that recognized not only the need for “generally accepted international regulations” for shipping and navigation, but also
that the IMO would be the “competent international organization” to develop such rules. As a result, the IMO has developed some 50 international conventions, protocols and related agreements concerned with “safer ships and cleaner seas”. These treaties have been carefully prepared and negotiated, are widely accepted, and form today the basis of a significant sector of modern international maritime law.

A reasonable international liability and compensation system for oil pollution damage has also been in operation for almost three decades. Protection and indemnity insurers (P&I Clubs) cover their shipowner/charterer members for about thirty different risks related to ship operation to a theoretically unlimited ceiling. This system is supported through a complex arrangement of reinsurance, and through the International Group of P&I Clubs, which has access to reserves in excess of USD2 billion. An exception to unlimited coverage relates to oil pollution, with a limitation ceiling of USD500 million that, under special circumstances, can be raised to USD700 million. This is part of a mutual liability system that has worked extremely well for over a century. It spreads the risk evenly across the world fleet and all shipowners benefit. In addition, the coverage provided appears to be quite sufficient for all but the most catastrophic accidents. As unlimited coverage for catastrophic pollution accidents is not insurable, P&I cover has to be limited.

At this time two widely accepted international liability and compensation schemes for oil pollution damage are in existence. The first is the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC/69), in effect since 1975, and accepted by over 100 states. The CLC governs the liability of shipowners for oil pollution damage and makes them strictly liable within a limitation ceiling, also linked to the vessel’s tonnage. The amounts recoverable under the scheme are calculated as Special Drawing Rights (SDR) of the World Bank and are approximately USD200 per ton up to a ceiling of USD18 million.

In cases where the CLC coverage is insufficient, another international scheme comes into operation. This is the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (FUND), which entered into force in 1978 and has been accepted by over 80 states. The FUND is financed by a state levy on oil imports in contracting states and is thus based on “oil at risk at sea”. It is administered by the International Oil Pollution Compensation Fund (IOPCF), an international organization composed of FUND member states. The funds available are also calculated in SDR’s, and are approximately USD50 million which, in special circumstances, can be increased to about USD100 million. These schemes provide adequate coverage for all but the most catastrophic oil spills. In fact, to date, only three out of 70 major claims handled by the IOPCF have exceeded available limits.

At the IMO in 1992, the international maritime community completed a revised version of the CLC and FUND Protocols that had failed in 1984 due to lack of U.S. support. The new 1992 Protocols provide an increased level of liability for marine pollution oil claims, as originally set out in the 1984 version, and entered into force in 1996. The CLC Protocol provides the following limits – expressed in Units of Account (UOA), i.e. the Special Drawing Rights (SDR) of the World Bank system:

- Vessels up to 5,000 GT – 3 million UOA
- Vessels over 5,000 GT – 520 UOA/ton up to 59.7 million UOA

The FUND Protocol can increase the maximum compensation available to 135 million UOA. However, in cases where at least three FUND members have received at least 600 million tons of contributing oil in the previous year, the limit may be increased to 200 million UOA. In other words, this international system now provides a relatively easily accessible oil pollution compensation regime.

Also in 1996 a new International Convention Relating to the Liability for the Carriage of Hazardous and Noxious Substances at Sea (HNS Convention) was concluded at the IMO. There has been concern for some time that the concentration on oil pollution had neglected pollution damage from other substances, which in some cases, might be even more harmful to the marine environment than hydrocarbons. A first attempt to conclude a HNS Convention in 1984 failed and, after almost 12 years of further work, the 1996 HNS Convention was successfully concluded. It is not yet in force. It basically follows the “two-tier” liability system developed under the CLC and FUND schemes for oil pollution.

The regime provides the following coverage:

**Tier I:**
- Vessels up to 2,000 GT – 10 million UOA
- Vessels up to 50,000 GT – 1,500 UOA/ton in addition
- Vessels over 50,000 GT – 360 UOA/ton in addition up to 100 million UOA

**Tier II:**
- International HNS Fund providing:
  - Compensation up to 250 million UOA if Tier I is insufficient or unavailable.

There is also ample evidence that the combination of high ability limits and more extensive national,
It is hoped that the STCW Convention and London Dumping Convention (LC) revisions; the wider acceptance of the OPRC Convention, Salvage Convention 1989, and Intervention Convention, that permit coastal states to take early and decisive action and to help each other, the entry into force of the HNS Convention; and, the development of the International Safety Management Code (ISM Code), as well as the expansion of the port state control inspection systems; will further tighten the enforcement net to ensure maximum compliance with international regulations. For example, the oil exporting states in the Gulf region could make a significant contribution to “safer ships and cleaner seas”. This could be achieved by increasing port-state inspections of vessels loading in their ports and oil terminals. Ideally, Gulf states should develop a regional port state control system that can then be closely linked to the existing and developing European, Asian, Caribbean, Indian Ocean, South American and Mediterranean systems.

It is also essential that the uniform, international, marine pollution compensation system, which is best suited to spread liabilities as evenly as possible amongst all interested parties, should continue. If the upper limits of such compensation are not considered adequate, negotiations must take place at the IMO to increase these. There must also be more concentration on prevention than on compensation. Whether this is achieved by addressing the serious human-error problems, that are the major cause of maritime accidents, or through attempts to drive sub-standard vessels from the seas, or both, it should be done through a widely-accepted uniform system dedicated to strengthening the maritime industry on which global trade and prosperity depend. The Gulf States have an important role in all of this. Perhaps the G.C.C. can provide the necessary catalyst for action!

References

1. B.A., LL.B., Ph. D., Q. C. MCIT, FNI, ACIARB; Master Mariner (FG); Senior Member of the Canadian Maritime Law Bar; Past-President, Canadian Maritime Law Association; Adjunct Professor of Maritime Law, Dalhousie University, Halifax, NS, Canada; Visiting Professor of Maritime Law and Canadian Member of the Board of Governors, World Maritime University, Malmo, Sweden and IMO-International Maritime Law Institute, Malta; Registered Arbitrator and Expert, G.C.C. Arbitration Centre, Bahrain.


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10. Protocol of 1992 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (CLC PROT 1992) has been accepted by 34 states; and Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC PROT 1992) has been accepted by 32 states. States parties to the revised CLC and FUND regimes include almost all the major maritime states with the exception of the U.S.A.

11. See, Gold Note 5, supra, pp.242-3


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O = Accepted but superseded by new convention  X = Accepted  *= Not yet in force

MARPOL: International Convention for the Prevention of Pollution from Ships 1973/78
INTERV.: International convention Relating to Intervention on the High Seas in Cases of Oil Pollution, 1969
LC: Convention on the Prevention of Pollution by dumping of Wastes and other Matter, 1972
CLC'69: International Convention Civil Liability for Oil Pollution, 1969
CLC'92: CLC Protocol of 1992
OPRC: International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990
SALV: International Convention on Salvage, 1989

Information as of 1 September 1999.
It is a common practice that almost all active arbitration institutions review, between time to
time, their rules in order to first of all meet the user’s needs and to reflect what has been
achieved internationally in the field of dispute resolution. This revision would also reflect, to
some extent, the presidencies and court judgments passed in different national jurisdictions
on arbitration.

Based on that, the Board of Directors of the Centre envisaged the need for reviewing the
Arbitral Rules of Procedure of the Centre after a lapse of 5 years from the date of their initial
enforcement in November 1994. These revisions were derived from valid comments and
suggestions received from Arab and Foreign Jurisprudence on the Arbitral Rules of Procedure
of the Centre, which had been discussed in detail at some of the events conducted by the
Centre through the last 5 years. These amendments were executed in the following articles
on arbitration agreement (Art. 2:2), the place of arbitration (Art. 6), the language of arbitration
(Art. 7) and the composition of the arbitration panel (Art. 8, 9,12 & 13). A new Article has
also been incorporated and adopted to reflect multi-party arbitrations. The amendments
deleted two articles: - (Article 38) concerning the nullity of the arbitration award through the
Secretary General and (Article 41) relating to a return of a proportionate amount of 3% to the
Centre from the sums paid to the arbitrators upon conclusion of the cases and assignments
undertaken at the Centre. (Details of the amendments/inclusions are provided below for
your reference)

Based on the above-mentioned modifications, the scope of the arbitration agreement has
further been widened so as to cover all disputes arising from or related to the contract. As far
as the language of the arbitration proceedings was concerned, the change would allow the
parties or the arbitral tribunal to decide the language of the same, not limiting it to any
particular language and by taking into consideration the conditions of arbitration including
the language of the contract.

As for the place of arbitration, the amendment does not restrict the seat of arbitration to the
Centre’s headquarters in Bahrain. It provides an option whereby the parties can decide on
the place of their choice failing which, the arbitral tribunal will decide on the place of
arbitration. The arbitral tribunal may also conduct any hearing or deliberations in any place
it deems appropriate.

The Arbitral Tribunal shall be composed of a single arbitrator or three arbitrators as mutually
agreed upon between the parties. In case there is no agreement, the Secretary General shall
form the Tribunal with one arbitrator, unless he finds that the nature of the dispute requires
to be formed by three arbitrators.

The Arbitral Rules of Procedure were ratified by the GCC Commercial Cooperative Committee
(Ministries of Commerce in the GCC member states) on 5th October 1999 and were to be
adopted with immediate effect.

DIRECTORY OF LAW FIRMS IN THE GCC STATES

The directory of law firms in the GCC States is under the process of being compiled and formatted onto the CD-ROM. This directory is expected to be released by the end of January 2000. The Centre would like to take this opportunity to thank the advertisers and those who have enlisted in this directory for their kind support and cooperation extended to the Centre in this project.
AMENDMENTS TO THE GCC COMMERCIAL ARBITRATION CENTRE'S ARBITRAL RULES OF PROCEDURE

ARTICLE 2 (Point 1 remains unchanged)

2. In case of reference to arbitration, it is proposed that the following text be included in the Arbitration Agreement:
All disputes arising from or related to this contract shall be finally settled in accordance with the Charter of the Commercial Arbitration Centre for the States of the Cooperation Council for the Arab States of the Gulf.

ARTICLE 6

1. The Arbitral Tribunal shall determine the place of the Arbitration unless agreed upon by the parties.
2. The Arbitral Tribunal may, after consultation with the parties, conduct hearings and meetings at any place it considers appropriate unless otherwise agreed by the parties.
3. The Arbitral Tribunal may hold the deliberations in any place it deems appropriate.
4. In all cases, the award is considered passed in the place determined for arbitration and on the date mentioned therein.

ARTICLE 7

In the absence of an agreement by the parties, the Arbitral Tribunal shall determine the language or languages to be used in the proceedings of arbitration taking into account the conditions of arbitration including the language of the contract.

ARTICLE 8

The Arbitral Tribunal shall be composed of a single arbitrator or three arbitrators as mutually agreed upon between the parties. In case there is no agreement, the Secretary General shall form the Tribunal with one arbitrator, unless he finds that the nature of the dispute requires to be formed by three arbitrators.

ARTICLE 9

5. A copy of the Arbitration Agreement and the documents relating to the dispute. (Point 1 – 4 remain unchanged)

ARTICLE 12

1. If the Arbitral Tribunal consists of a single arbitrator, the parties shall agree on his appointment within the period fixed in the preceding Article, otherwise the Secretary General shall appoint an arbitrator from among the Centre's Arbitrator's Panel within two weeks from the expiry of such period. The Secretary General shall notify all parties of such appointment.
2. If the applicant for arbitration fails to nominate the arbitrator he wishes to elect in his application, the Secretary-General shall appoint the arbitrator within two weeks from the date of receiving the application.
3. If the party, against whom arbitration is referred, fails to nominate the arbitrator of his election during the period stipulated in the preceding Article, the Secretary General shall appoint an arbitrator within two weeks. (Point 4 remains unchanged).

ARTICLE 13 (New Article incorporated)

Where there are multiple parties, whether as claimant or as respondent and where the dispute is to be referred to three arbitrators, the multiple claimants jointly, and the multiple respondents jointly shall nominate an arbitrator.

If the parties fail to appoint arbitrators as mentioned hereinafore, the Secretary General shall appoint all the arbitrators including the Chairman of the Tribunal.

ARTICLE 14

If either party disputes the validity of appointing one of the arbitrators, the Secretary General shall settle such dispute within two weeks by a final decision provided that this dispute on the validity shall be presented before holding the hearing fixed for considering the dispute.

ARTICLE 38 - DELETED

ARTICLE 41 - DELETED.

Please note that the amendments made to the Arbitral Rules of Procedure of the Centre are provided above. These include articles and sub-divisions only where amendments have been made. The other articles and sub-divisions that are not mentioned above remain unchanged.

STANDARD ARBITRATION CLAUSE OF THE CENTRE

"All disputes arising from or related to this contract shall be finally settled in accordance with the Charter of the Commercial Arbitration Centre for the States of the Cooperation Council for the Arab States of the Gulf."
EXPERT’S ROLE IN ARBITRATION
A Paper presented by Lawyer Jalila Al Sayed at a Seminar on “The Role of the Expert Witness in Arbitration” November 1997 - Bahrain

Litigants normally go to the ordinary courts of law to settle their disputes but the law has allowed them to refer any dispute arising between them to arbitration owing to its speed and effectiveness in addition to ensuring guarantees for the parties involved in disputes since they can exercise the option in electing their own arbitrators.

Just like a judge, an arbitrator cannot always have enough knowledge on complex technical issues in spite of their significance and necessity in resolving the dispute given that a dispute cannot be settled where the arbitrator has a limited legal knowledge or technical expertise. Therefore, the law allows arbitrators to seek the assistance of experts and specialists to get acquainted with their views with respect to the matters referred to arbitration to enable him to get a proper understanding and realization of the facts of the dispute so as to be able to resolve it.

We notice that in Bahrain expertise focuses also on the determination of the law applicable to the dispute. It is also noted that it is permitted to apply custom and usage arising from certain contracts as in the case of insurance, investment in securities, banking and construction business activities where there are no laws regulating some contracts in such fields. The Bahraini lawmaker has established that commercial custom and usage do constitute a third source of laws after the statutory provisions and mutual agreement of the parties.

In fact, the expansion in various business activities witnessed in the Gulf region has not been matched by a corresponding legislative development, hence the local or international custom and usage have come to play a major role in determining the legal positions of litigants. Accordingly, it has become essential to seek the assistance of experts in each area of the business activities to prove the prevailing custom in such business transactions. In view of the growing reference of matters by the law courts and arbitration panels to experts, their role has grown in importance and it has become essential to introduce a legislation governing their activities, hence the Experts Roll Law of 1995 was enacted.

It is assumed that the activities of an expert should focus on factual matters and not on legal matters which should be left to the arbitrators. However, the separating line between matters of facts and matters of law has become a very thin giving litigant the impression that an expert appointment implies authorising the experts to exercise actual judicial powers. Therefore, a case can be won or lost before the expert before the results of his investigations reaches arbitral tribunal. Therefore, the lawmaker has been concerned with deciding the principles that must be complied with by an expert for the proper discharge of his duties so as to ensure the fulfillment of the greatest possible guarantees for protection of the parties to the dispute. So in the following I will discuss the most significant provisions of the law with respect to the selection of an expert, determination of his mandate, manner of carrying out his duties, drawing up his report, discussion of the report by the arbitral tribunal, expert’s fees and finally the effect of a breach by the expert of his obligations.

First: Expert’s Appointment and Determination of his Mandate:

(a) Expert’s Selection:

Reference to experts (either one expert or three experts) is a matter to be decided by the arbitral tribunal if necessary whether of its own accord or upon a request from one of the litigants. The arbitral tribunal shall have the right to elect the experts should the litigants fail to do that. However, if they agree on such election, the tribunal shall be obliged to accept such agreement.

The experts will be selected from the Experts Roll regulated according to Legislative Decree No. 3/1995, but the tribunal may elect experts who are not included in the Roll in special cases. It should be noted that the number of experts registered on the Roll is only 26 experts (18 chartered accountants, 7 civil engineers and one computer expert). Meanwhile, the tribunal may appoint a civil servant to be nominated by the administrative authority by which the civil servant is employed.

(b) Rule of the Expert’s Nomination:

An expert may not proceed with his duties without the issue of a ruling by the arbitral tribunal for his nomination, otherwise his report
will be null and void. Considering that expert's work is part of the evidence procedures, the ruling for reference to an expert should not necessarily by substantiated and it is also not subject to appeal on an independent basis. However, the tribunal may change its mind about a ruling for reference to an expert provided that the reasons for the change shall be indicated in the minutes of the hearing at which it has been decided. In all cases, a copy of the ruling must be lodged with the competent court within 3 days from the date of handing it down. The court has to notify it to all the parties to enable them to exercise their prescribed legal rights within the permitted time limits such as the plea for challenging the expert or payment of a deposit within the required time period. A ruling delivered by the arbitral tribunal for reference to an expert must contain the following details:

(1) A detailed account of the Expert's mandate and the measures that he will be authorized to take:

The requirement to determine the factual and technical matters that must be investigated by the expert will enable him to avoid indulging into the legal matters which he should not examine. This also guarantees for the litigants not to delegate to the expert any legal authority for resolving legal issues. Where the expert goes beyond the terms of his mandate, his report will be rendered null and void. The reason for invalidity will be the fact that the arbitrators have sub-delegated part of their judicial powers to the expert which, in turn, means that the arbitrators have gone beyond the scope of the arbitration agreement that would lead to the nullity of the arbitration award, in addition to the nullity of the expert's report.

As for the measures which the ruling can authorize the expert to take include but are not limited to carrying out an inspection, examination of books, hearing the testimonies of witnesses with administering oath, etc.

(2) Deposit amount on account of the Expert's fees and expenses:

The ruling for appointment must fix the deposit amount, the litigant required to make such payment, time limit for making this payment and the sum that can be withdrawn from it on account of the expert's expenses. The ruling will also fix the date of hearing the case in case of making the deposit and an earlier date for the hearing in case of failure to make such deposit.

If the deposit is not made by the litigant instructed to make it, other litigants may be authorized to make such payment.

However, if none of the litigants make the said deposit, the expert will be under no obligation to carry out his mandate. Then, the court will decide the forfeiture of the right of the litigant instructed to lodge the required deposit to invoke the ruling unless he submits acceptable reasons justifying his failure to pay the deposit on the fixed time.

(c) Giving the Expert Notice of his Appointment

Two days after the placement of the deposit, the tribunal will invite the expert by a registered letter to review the Case file and to receive a copy of his appointment as well as a copy of the case file if so permitted by the tribunal or the litigants. If the expert is not registered on the Experts Roll, he must take oath promising to perform his duties honestly and sincerely otherwise his duties will be null and void. In this regard, a question will be raised as to whether taking the oath before the arbitral tribunal is a legally valid action. In the light of the lack of any judicial precedent confirming the contrary, I do not personally see that this action is illegal because the law has authorized an arbitral tribunal to ask the witnesses to take oath.

(d) Expert's Retirement:

An expert may request to be exempted from carrying out his duties within 5 days from the date of receipt of a copy of the appointment ruling but he must mention the reason for such action.

If the tribunal does not agree to exempting the expert or where the expert fails to carry out his mandate within the required time limit, it may refer the matter to the court having jurisdiction to hear the dispute in order to pass a judgment compelling the expert to pay the costs which had been incurred in vain and the payment of damages, if relevant, without prejudice to disciplinary actions.

(e) Challenging the Expert by Litigants:

The litigants will be empowered within one week from the handing down of a ruling for an expert's appointment (or date of giving notice thereof if they have not attended the hearing for handing down the judgment) to plead for dismissing the expert if his neutrality is not guaranteed in the sense that he may have a relationship or acting as an agent of one of the litigants. The presentation of a plea for dismissal shall not be barred by the fact that the appointment of an expert has taken place by the mutual agreement of the litigants where there are, after the conclusion of such agreement, reasons justifying his dismissal or if it is proved to the litigants were not aware of the reason for such dismissal at the time of agreeing on the expert's appointment.
If it is ruled to dismiss the expert after completing the execution of his mandate, a ruling will be handed down rendering his report null and void upon the request of the litigants.

In such case, a ruling handed down in respect of the dismissal shall be final.

Some legal luminaries have held the opinion that the arbitral tribunal is not empowered to hear a case for dismissal of an expert because the litigation challenge is beyond the judicial authority vested in the arbitral tribunal pursuant to the arbitration agreement and because one of the parties in the action, i.e., the expert, is not a party to the arbitration agreement. Therefore, those who hold this view felt that the case for dismissal should be heard by the court having the exclusive jurisdiction to resolve the substantive dispute.

**Second: Accomplishing the Mandate:**

(a) Inviting the Litigants and Hearing their Statements:

An expert must carry out his mandate personally otherwise his report will be rendered null and void. He must start to carry out his duties within 15 days from the date of receiving a copy of the ruling for his appointment by calling the litigants to attend a meeting by sending out registered letters 7 days before the date of such meeting. The fifteen-day period may be reduced to 3 days and the seven-day period may be reduced to one day in case of urgency. Non-adherence by the Expert to such periods of time may not be regarded to be a nullity of the action taken thereunder.

Since the adversaries principle is one of the most significant legal principles in the Bahraini judicial system, the lawmaker has rendered the expert’s findings null and void in the case of failing to invite the litigants as required. The crucial factor will always be the arrival of the invitation to the litigants at the appropriate time but not in sending it out. Non-arrival of an invitation at the right time will render the expert report null and void even in cases where it has been proved that no damage was caused to the litigants due to the failure of complying with that requirement. However, the nullity may be avoided where an invitation is not sent out or where it arrives at an inopportune time in case the litigants attend the expert’s business meeting and were able to make their defence and remarks at a later time because the purpose of sending out the invitation will be realized in that case.

The nullity arising from failure to invite the litigants is not part of the public order in the sense that:

- the concerned party may implicitly or explicitly relinquish it.
- only the concerned party has the right to benefit therefrom.
- the judge does not have the power to enforce it of his own accord.
- it may not be raised for the first time before the Court of Cassation.

If the litigants have been invited as required, the expert must proceed with carrying out his duties even in their absence.

The expert will hear the statements of witnesses and their remarks but where any of the litigants fails to co-operate the expert may notify the arbitral tribunal to this effect in order to take the necessary action such as the replacement of the expert.

The lawmaker stipulates that a non-co-operative litigant may be rendered liable to pay a fine (at least BD 20) unless the litigant gives an acceptable reason justifying his non-co-operation. Nevertheless, giving this authority to the arbitral tribunal is still an unresolved matter given the fact that an arbitrator is not a public officer and does not have, even with the litigants’ agreement, the power to rule for payment of a fine by a litigant or a witness.

In addition, the lawmaker allows the court to rule for the suspension of the case for a period not exceeding 3 months instead of passing a ruling against the plaintiff to pay a fine. If the suspension period expires without execution by the plaintiff of the court’s order, it may pass a verdict considering the case null and void after hearing the statements of the defendant. I personally believe that the arbitral tribunal does not have any of the aforesaid two powers because suspending the proceedings 3 months is contrary to the fundamental purpose of reference to arbitration, which is the speedy resolution of disputes. In addition, considering a judgement null and void is not part of the arbitrators’ powers according to the arbitration agreement.

An expert may hear statements without having the oath taken by the litigants witnesses or the persons whom the expert decides that they should be heard if he is given permission to do so.

However, an expert may not base his view on the statements of such persons only but must have his opinion based on whatever relevant evidence or facts that come to his knowledge in addition to the technical expertise in his area of specialization.

All persons giving statements before the expert shall not be considered as witnesses because hearing of witnesses is part of the arbitrator’s
powers as provided for in the law. Since hearing the statements of such persons after having the oath taken is part of the duties of the judicial power vested in the arbitrators only, hence the expert’s report will be rendered null where it is based on the statements of such persons after having their oath taken.

No public or private organization should refrain without a legal justification from giving the expert access to the necessary information and documents enabling him to accomplish his mandate.

(b) Minutes of the Expert’s Meetings:

The minutes must include the following details:

(1) Attendance by the litigants and capacities of their representatives.
(2) Litigants’ statements and comments signed by them or by their representatives.
(3) A detailed account of the discharge of the expert’s duties and statements of such persons that he has heard of his own accord or at the request of the litigants and their signatures. An expert will not be obliged to hear all the litigants who attend in person and in this respect he enjoys a discretionary power.

(c) Submission of the Report:

The expert shall submit to the arbitral tribunal a report signed by him on the results of his mandate and the views and bases upon which he has relied. If the court has appointed 3 experts but only two of them have carried out the deliberations and drawn up the report but the third refrained from taking part with them, their report would be null and void. If the report does not carry the expert’s signature, the report would be deemed as a draft only, which may be altered. Submission of the report should not bar the submission of a supplement thereto afterwards.

The expert will submit his report and minutes of his meetings as well as all the documents delivered to him to the tribunal and the litigants must be given notice of such submission within 24 hours by means of a registered letter. This time limit is only indicative with no invalidity arising from failure to comply therewith where it is proved that the litigants have reviewed the report in spite of failure to give them notice thereof.

If the expert is unable to accomplish his mandate within the prescribed time limit, he must submit to the tribunal before the expiry of the time limit a memorandum indicating the reasons preventing him from completing his mandate. The tribunal may grant him a further period of time or refer the matter to the competent court to rule for payment of a fine (not exceeding BD 50) while giving him more time to complete the discharge of his duties or to assign it to another person while compelling him to refund the part of the deposit paid to him in addition to compelling him to pay damages if they are relevant without prejudice to the disciplinary measures against him.

Rulings for replacement of an expert or compelling him to refund the deposit may not be appealed against.

(d) Examining the Expert, Returning the Mandate thereto or Replacing Him:

The tribunal may order that the expert be summoned to appear before it at a hearing for examining him. He shall be asked the questions it deems appropriate of its own accord or at the request of the litigants. The tribunal may return the mandate to the expert to remedy the omission or wrongdoing and may replace him by another expert while ordering him to refund the deposit received by him on account of his expenses or shall be empowered to appoint two other experts to join him.

(e) Appointment of an Expert to Present a Verbal Opinion:

The tribunal may appoint an expert to express his verbal opinion at the hearing without submitting a report and his opinion will be recorded in the minutes of the hearing.

Third: Assessment of the Expert’s Fees:

The expert’s fees shall be assessed by an order of the tribunal at the time of delivering its award in respect of the case or during 3 months from the date of submitting the report. He may recover such fees from the deposit kept with the tribunal. However, if the deposit is less than the assessed fees, the tribunal shall determine the party to be obliged to pay the balance of the expert’s fees.

The expert and the litigants may appeal before the court originally having competence to hear the dispute with respect to the assessment of the fees within 8 days from the date of giving him notice thereof.

An appeal by the litigant compelled to pay the fees shall not be admitted unless it is filed with the concerned court.

Filing an appeal shall result in a stay of execution of the order delivered for assessment of the fees.

An appeal shall be heard after privately giving notice to the expert and the remaining litigants.
shall be heard by the court and shall be resolved by a judgment. If the court reduces the fees, the litigant who has paid the fees to the expert may recover the difference from him.

**Fourth: Expert’s Liability:**

The expert’s liability is divided into three kinds:

1. **Civil Liability:**

   It is based upon the rules of default liability due to the lack of a contract between the litigants and the expert. In order to determine the expert’s liability, proof must be provided confirming that he has committed wrongdoing resulting in damages to any of the litigants. This includes the delay in carrying out the mandate without a legitimate cause or the expert’s failure to carry out the mandate without having been exempted therefrom even though he has given the mandate to others to undertake it or has failed to observe the principle of adversaries between the litigants by failing to deliver the documents or defence of one of them to the other and so on and so forth.

2. **Criminal Liability:**

   This applies in cases of receiving a bribe, giving a false testimony or disclosure of secrets.

3. **Disciplinary Liability:**

   This applies where a litigant files a complaint against the expert with the relevant authority according to the Expert Roll Law. Disciplinary proceedings take place before the Disciplinary Board the expert will have the power to exercise his right to defend. The Board’s decisions may be appealed against before the High Court of Appeal. Penalties include giving a warning, temporary suspension from practising as an expert and striking off the expert’s name from the Rolls.

**Fifth: Review of an Example of an Expert’s Report:**

A court has delivered a verdict for the appointment of an expert as follows:

The Court has decided to appoint...as an expert in the Case to review its documents, details and information provided by the Parties, to determine the relationship between the Plaintiff and the Defendant since the creation thereof.

and until the date of filing this case, developments of this relationship, settlement of the account between the two Parties to determine the amount of the debt owed by the Defendant to the Plaintiff while taking into account the charging of simple interest on the balance of indebtedness from the date of filing the Case at the rate of 7%.

In order to carry out his duties, the Expert will be empowered to take all the necessary actions he deems fit including the hearing of witnesses’ statements without taking the oath.

For the implementation of this mandate, the Expert prepared his report in six chapters as follows:

Chapter One: Review of the Case File and its Documents.

Chapter Two: Meeting with Parties to the Dispute.

The Expert held a meeting with the Plaintiff’s representative at his business premises and took delivery of the relevant documents. The Expert sent registered letters to the Plaintiff and to his attorney for holding a meeting with them but they failed to attend. Therefore the expert prepared a draft of the report which was sent to the Parties. Then, the Plaintiff attended and made his comments on the draft.

Chapter Three: Review of the origin of the Relationship and its Development between the two Parties.

Chapter Four: Analytical Details of the Movements of the Account Subject to the Case.

Chapter Five: Fulfilling the Court’s Requests Individually as Indicated in the Expert Reference Verdict.

Chapter Six: Conclusion and Accounting Result.

The Expert concluded his report by providing an assessment of his fees and enclosed with his report the letters sent to the Parties, their replies, minutes of meetings with them and copies of the documents provided to him.
MICHAEL F. HOELLERING TO SERVE
AMERICAN ARBITRATION ASSOCIATION IN NEW ROLE
AS SENIOR COUNSEL – INTERNATIONAL

Following 40 Years of Distinguished Service, Former AAA General Counsel to Devote
Full Time to International Arbitration Matters

announced that Michael F. Hoellering, a recognized, international leader in
the field of arbitration and mediation, would step down as the Association’s
General Counsel, a position in which he has served for 19 years. Mr.
Hoellering will now assume the role of Senior Counsel – International, where
he will continue to assist arbitral institutions and individuals worldwide on
behalf of the American Arbitration Association.

We would like to take this opportunity to congratulate Mr. Michael F.
Hoellering on this new portfolio being assigned to him and wish him success
in his new office.

FIRST INTERNATIONAL CONFERENCE ON
ENGINEERING ARBITRATION
15th – 17th May 2000
BAHRAIN

The Technical Committee met on a number of occasions to review the abstracts received from
various speakers with regard to the above-mentioned Conference. Abstracts have been received in
both Arabic and English, and letters have been sent out to the various individuals advising them of
the Technical Committee’s decision.
Around 5 keynote speakers have been selected and advised of their selection by
the Technical Committee.

This Conference being conducted jointly by the GCC Commercial Arbitration
Centre and the Bahrain Society of Engineers is to be held in Bahrain. Papers will
be in both Arabic and English with simultaneous translation.

For further details with regard to this Conference, please address all your
correspondence to:

The Conference Secretariat
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
Seminar on Dispute Resolution in Stock Exchange and Investment

30th & 31st January 2000
Muscat – Sultanate of Oman

A seminar on Dispute Resolution in Stock Exchange and Investment is being jointly organized by the GCC Commercial Arbitration Centre – Bahrain, the Oman Stock Exchange and the Oman Chamber of Commerce and Industry. This event is to be held on the 30th & 31st January 2000 in Muscat – Sultanate of Oman.

The growing importance of the financial sector in the GCC States and the development of its roles in trade and investment, after the establishment and expansion of the Stock Exchange Markets with the increase in the volume of investments in the GCC Countries were among the main factors that contributed to the need for more closer study to the settlement of disputes in this sector. Despite the existence of firm mechanisms for dispute resolution in the Stock Exchange Markets by means of arbitration, there are some developments in judicial, jurisprudence and organizational matters that would contribute to the future of arbitration and adjudication in this sector. In addition to this, there are some other areas within the financial sectors in general, which have not taken advantage of the services provided by dispute resolution. Globalization, which is now knocking at our doorstep, also affects the service sector, of which finance and investment are part and parcel of.

This seminar is being conducted for the first time in such a way focusing on all vital areas in the financial dispute resolution areas. The seminar is being conducted in Arabic and English with simultaneous translation.

Registrations to this seminar are open and we, at the Centre, request all those interested to participate and benefit from the topics that would be discussed in this event. Provided below are a list of the topics along with the names of the speakers who would be presenting papers.

<table>
<thead>
<tr>
<th>No.</th>
<th>NAME</th>
<th>TITLE OF PAPER</th>
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<tbody>
<tr>
<td>1.</td>
<td>Phillippe Leboulanger</td>
<td>The Arbitrability of Security Transactions Disputes (English)</td>
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<tr>
<td>2.</td>
<td>Hamza Mohd. Al Zubair</td>
<td>Major Characteristics of Securities Industries Dispute Resolution Mechanisms (English)</td>
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<tr>
<td>3.</td>
<td>Dr. Hani Sarie El Din</td>
<td>Settlement of Disputes Arising out of Acquisition Transactions, Private Placements and GDR’s. (Arabic)</td>
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<tr>
<td>4.</td>
<td>Tarek NASR</td>
<td>Disputes Relative to Corporate Finance: (English)</td>
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<td>5.</td>
<td>Sameh El Torgoman</td>
<td>Yet to be advised</td>
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<tr>
<td>6.</td>
<td>Ali Bin Khamis Al Alawi</td>
<td>Yet to be advised</td>
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<tr>
<td>7.</td>
<td>Dr. Nagla Nassar</td>
<td>Yet to be advised</td>
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For further details, please contact the GCC Commercial Arbitration Centre on P.O. Box 2338, Manama, Bahrain
Tel: (973) 214800 / 211827
Fax: (973) 214500 or E-mail: arbit395@batelco.com.bh