The first edition of the Directory of Lawyers and Jurists in the GCC States is available at the Centre in two formats - CD-ROM and Hard Copy. This directory, in both Arabic and English languages, would provide the user with concise information on a wide range of law firms and legislation in the GCC States.

The directory could be broadly classified under two main sections: Section one which deals with a classified collection of laws, rules and regulations relating to commercial arbitration in the GCC States and International Laws and conventions for e.g. the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.

Section two pertains to the enlistment in the directory, which is again categorically divided into two parts: alphabetical enlistment and country-wise enlistment provided alphabetically under each GCC country.

Foreign law firms have also extended their kind support to the Centre by advertising the services being provided by them in the field of arbitration.

The rates for the CD-ROM and hard copy of the directory are as follows:

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The above-mentioned rates do not include postage and forwarding charges and are in Bahraini Dinars.
BOARD OF DIRECTORS OF THE CENTRE

Mr. Mohammed Bin Ali Bin Nasser Al Kaliyoumi, Chairman – Representative of the Oman Chamber of Commerce and Industry.

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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.

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Standard Arbitration Clause of the GCC Commercial Arbitration 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."
ANNOUNCEMENTS

 AGREEMENTS OF COOPERATION SIGNED DURING THE 16TH ICNA CONGRESS MEETING IN LONDON

Mr. Yousif Zainal, Secretary General of the GCC Commercial Arbitration Centre participated at the 16th ICCA Congress held in London during 12th – 15th May 2002.

This Conference also provided the Centre with a base to have agreements of cooperation signed with the London Court of International Arbitration (LCIA), the Permanent Arbitration Court at the Croatian Chamber of Commerce, the Permanent Arbitration Court attached to the Chamber of Commerce and Industry of Slovenia and the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania.

These agreements were signed in order to promote international commercial arbitration and to help in establishing stronger ties between organizations engaged in commercial arbitration by exchange of publications, using the services provided by each other when required, conduct of joint activities which would create awareness and inculcate knowledge of arbitration in the minds of the members of both organizations etc.

The Centre has entered into agreements of cooperation with a number of other leading international arbitration organizations and for a detailed reference kindly visit the Centre's website at www.gccarbitration.com

PUBLICATIONS

Practitioner's Handbook on International Arbitration

Practitioner's Handbook on International Arbitration

edited by
Frank-Bernd Weigand

C.H.Beck · DJØF

Edited by
Frank-Bernd Weigand

The Handbook covers both international arbitration rules and national law in the field of arbitration.
BACKGROUND TO THE PROBLEM

Arbitration is the preferred form of Dispute Resolution between parties to large engineering contracts throughout the world. Contracts create legally enforceable duties, obligations, and benefits between the contracting parties but not the associated and interrelated relationships associated with such complex projects. The potential difficulties with such projects typically include disputes as to whether or not the completed facility meets its performance specification and the parties interested in such disputes includes the owner, those who have provided funding, the contractors, specialists subcontractors, suppliers, and design consultants including engineers, project managers and cost consultants.

The numerous and separate contractual relationships may or may not include a clause providing for arbitration in the event of such disputes and even where they do, the different wording of arbitration agreements in the multitude of contracts may create issues which, if there is a dispute, become critical.

Consider a relatively simple example. The Government of one of the GCC States, concerned by the environmental impact of uncontrolled waste disposal, has decided to commission a state of the art waste disposal facility comprising an incinerator with a power generating facility. A joint venture company ("JV") with shareholders from the public and the private sectors is created and is awarded a contract to design build and operate the facility for 25 years. The capital cost is repaid from the income from a long term contract with the municipal government for the waste disposal and the contract to sell the power generated by the incinerator to the local power company.

The contractual relationships such a project requires are many and varied. There will be the JV and Shareholder Agreements. Funding Agreements may include local and international banks. Contracts must be agreed for the disposal of the waste and for the supply of energy to the local power company. The design of the facility will involve numerous engineering specialists and sub specialists whose designs will be included with the tender documentation provided to the contractors who may take responsibility for the design and the construction. The Contractor may itself be a JV and will enter contracts with specialist, nominated, and domestic sub-contractors and suppliers.

A simple diagram illustrates the increasingly complex interrelationship between the various parties to the project. (Diagram not included due to space constraints)

The project proceeds, the plant is completed, and commences operations yet despite the best efforts of all concerned it fails to process the quantities of waste specified and fails to meet its contractual obligations to the local power company. The resultant dispute will be concerned with the technical performance criteria of the project but will involve nearly all the parties involved and therefore many separate contracts.

Common sense may suggest that all the parties affected should appear in the same place at the same time before the same tribunal whose decision should apportion responsibility and order the payment of appropriate compensation as between the various interested parties—in other words a multi party arbitration.

Unfortunately, when the various parties come to consider their respective positions and take legal advice, many will conclude that a multi party arbitration is not in their best interest.

The fictitious dispute I have outlined gives some idea of the complexity of the dispute resolution process that will be required. Achieving a multi party arbitration is difficult, the alternative is multiple arbitrations where in some the project owner will be a party and in others though not a party but nevertheless affected by the decisions.
There are many practical problems with multiple arbitrations including:

- findings of fact of one tribunal that do not bind another;
- different findings of law on the same or related questions of fact;
- timing difficulties in managing the arbitrations – for example different venues
- different disclosure requirements for the same category of documents;
- Costs-if there are two arbitrations, Arbitration1-AvB and Arbitration 2-AvC. In 1 A may be ordered to pay B's costs and on the same issues in 2A is awarded its costs against C but these cannot recover the costs A paid to B.

The solution to these problems would therefore seem to be a single multi-party arbitration but the difficulties which must be overcome have exercised the minds of the most eminent international arbitration specialists for many years.

At the heart of these difficulties is the central premise in any arbitration agreement that the contracting parties must agree to arbitrate and not have it imposed on them by someone who is not a party to their contract.

As Monsieur Jean-Louis Delvolve observed in 1994, "The difficulties in multi-party arbitrations all result from a single cause. Arbitration has a contractual basis; only the common will of the contracting parties can entitle a person to bring a proceeding before an arbitral tribunal against another person and oblige that other person to appear before it. The greater the number of such persons, the greater the degree of care which should be taken to ensure that none of them is joined in the proceeding against its will".

The requirement for multi-party arbitration can arise for a number of reasons but as we have seen fall into two distinguishable categories, firstly where there are several parties to one contract, and secondly where there are several contracts with different parties.

One Contract – Multiple Parties

An example of the problems that arise in this category was the arbitration between BKMI Siemens and Dutco (1992). Dutco contracted with a joint venture comprising two German companies. When a dispute arose an ICC arbitration was commenced against the two companies. Each claimed the right to appoint an arbitrator which in consequence would have created a panel of more than three arbitrators, which the ICC Rules do not permit. The ICC determined that the two German companies should jointly nominate one arbitrator. The ICC's decision was successfully challenged in the French Cour de Cassation with the consequence that the arbitral tribunal's jurisdiction was found to be invalid. The parties' agreement to arbitrate had provided that each should appoint an arbitrator. The ICC not being a party to the contract could not change the contract.

Both the ICC and the LCIA in their current rules recognize the right of the parties to nominate an arbitrator if they can agree but takes the right away and vests it in the institution if they do not agree. A number of commentators have suggested that such rules may themselves cause difficulties with recognition and enforcement of arbitral awards if the award is seen to be the result of a tribunal being imposed on the parties rather than accepted by them on a consensual basis.

A party seeking to enforce an award under the provisions of the New York Convention may find that enforcement is refused if the court in the state considering the application of enforcement concludes that:

"the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, failing such agreement, was not in accordance with the law of the country where the arbitration took place".

Multiple Contracts and Multiple Parties

This is the situation envisaged with the Incinerator Project. The problem with multiple arbitration is illustrated by the decision of the English Court of Appeal known as the "Adgas Case".

Adgas commenced an arbitration in England against the main contractors, Bechtel, when one of the storage tanks for the gas was found to be defective. Bechtel denied liability but in the alternative argued that if the tank was defective it was the fault of a Japanese subcontractor. Bechtel responded by commencing a separate arbitration (also in London) against the subcontractor. Adgas declined a request to bring the subcontractor into the main dispute with Bechtel on the grounds that to do so would complicate the
proceedings which would take longer and be more expensive. The subcontractor also refused to be joined preferring to see whether the main arbitration established the likelihood of liability.

The English Court clearly saw the sense of consolidating the two arbitration believing that to do so would save time and money and avoid the risk of inconsistent awards,

"As we have often pointed out, there is a danger in having two separate arbitrations in a case like this. You might get inconsistent findings if there were two separate arbitrations. This has been said in many cases....it is most undesirable that there should be inconsistent findings by two separate arbitrators on virtually the self same question, such as causation. It is very desirable that everything should be done to avoid such a circumstance".

The critical problem which the English Court acknowledged was the lack of the consent of the parties,

"There is no power in this Court or any other Court to do more upon an application such as this than to appoint an arbitrator or arbitrators as the case may be. We have no powers to attach conditions to that appointment, and certainly no power to inform or direct an arbitrator as to how he should thereafter conduct the arbitration".

The English Court, however, found a practical way around the problem and simply appointed the same arbitrator to both disputes.

The Adgas case illustrates the problem and the practical limitations on the solutions the English Court could provide in 1982.

THE SOLUTIONS

A great deal of thought has been given in many countries to the problem of multi-party dispute resolution, and this paper will attempt to summarize the solutions that have evolved in different jurisdictions. There are effectively three types of solution:

1. **Provision of statutory powers** for the courts of a particular jurisdiction to order the consolidation of arbitral proceedings (The Netherlands, Hong Kong, Australia, certain states in the USA and the UK).

2. **The incorporation of institutional rules** (which provide for consolidation) in the various contracts that make up the project (e.g. FIDIC, AAA, ICC, CIMAR).

3. **The contractual provision for joinder** — drafting effective and consistent arbitration clauses in all the contracts within the project.

1. **Statutory Provision for Consolidation of Proceedings**

As we have already seen a fundamental requirement for arbitration is that it is a consensual process agreed by the contracting parties. It follows that when a legislature contemplates whether or not to provide for consolidation of multiple arbitrations which relate to the same or very similar factual disputes, they must decide whether to make the statutory provision for consolidation permissive in nature or alternatively to make it a matter of compulsion. If the permissive nature of the legislative power requires that all of the affected parties agree to the consolidation then one has to question whether this is a "false" solution as Monsieur Philippe Le Boulanger believes. Conversely, if the legislative provision amounts to compulsory court control of the arbitral process there is a strong argument for questioning whether such court interference is inconsistent with the consensual nature of arbitration.

Another question is whether consolidated arbitrations are in fact workable. There may be unforeseen changes in the selection of arbitrators, problems with the constitution of the tribunal, and differing rules regarding access to judicial review of the arbitration proceedings for different parties. Finally, as previously noted, there is the risk of a challenge to an enforcement under the New York Convention.

The great majority of states do not make statutory provision for the consolidation of similar disputes. Many though not all of the exceptions have a tradition of the English Common Law and where the judges have played a major role in trying to achieve consolidation and the legislation has followed the lead given by the judicial decisions.

Consolidation has been expressly incorporated into a number of treaties including Article 1126 of the North American Free Trade Agreement (NAFTA) between Canada, Mexico and the United States which allow for total or partial consolidation of disputes concerning foreign investment which are subject to Article 1120 of the Treaty whenever the different disputes have a question of law or in fact common. Where such cases arise the Secretary General of ICSID
appoints a three member tribunal which proceeds under the UNCITRAL Procedural Rules and has jurisdiction over the issue that it considers should be consolidated.

Staying in North America the American Arbitration Association Insurance Rules in the State of New York provide for the consolidation of arbitrations which relate to the same accident and which concern related facts. The World Intellectual Property Organization (WIPO) Arbitration Centre also allows third parties to be joined into proceedings under certain conditions. North America has its fair share of "false" and "real" legislative solutions with the arbitration law of British Columbia and the International Arbitration Act of Florida being regarded as "false" solutions because of the requirement for the consent of all the parties.

The "real" solution may be said to exist in The Netherlands, Hong Kong, Argentina and the States of California and Massachusetts.

Within Europe the old Eastern Bloc States, such as Bulgaria, Hungary and Poland have retained the provisions for arbitral consolidation, originally imposed by the USSR under the Moscow Treaty. Interestingly, these States together with the Russian Federation have retained both the provision for consolidation and arbitral procedure to implement consolidation.

The Netherlands

Book 4 of the Code of Civil Procedure Section 2 provides:

- Article 1045: Joinder of third parties is allowed in arbitrations - but does not appear to distinguish between international and domestic arbitrations - all third parties may be asked to join in.
- Article 1046: Where the subject matter is the same, domestic proceedings may be consolidated by the President of the District Court of Amsterdam. The parties need to try to agree on the procedural rules applicable to the consolidated proceedings - if they don't the Judge can rule on that too.

Hong Kong

Hong Kong Law No. 7205 provides that the Court may consolidate where there are common issues of law or fact or the matters arise out of the same or a series of transactions or for some other reason. The Court may also order concurrent or sequential hearings or stay proceedings. However, this only applies to:

- Domestic arbitration agreements if the parties haven't opted out of the provision; and
- International arbitration agreements if the parties have opted in.

If Law 7205 did not apply the UNCITRAL model law applies (Hong Kong Law 7390). The model law contains no provision for consolidating different but related arbitrations.

A commentator looking at the Hong Kong Law noted in 1999 that when Hong Kong considered changes to its arbitration law and specifically whether to provide a mandatory court power to consolidate arbitrations the idea was rejected despite the apparent attractions of doing so. Hong Kong concluded that the international view was "unclear on the best way to regulate consolidation".

Australia

The International Arbitration Act of 1974 contains consolidation provisions at Part III Sections 22-24. These appear to be "optional rules" where the parties have to opt in. The rules only apply to international arbitrations. The tribunal itself may consolidate where it is persuaded that the disputes are substantially the same. What is less satisfactory is the provision that where there is more than one tribunal the tribunal then meets to discuss the position, a situation which one suspects could lead to "turf wars" particularly since the rules appear to provide that nothing will happen if the rival fail to agree.

The state of New South Wales in Part 3 of its Commercial Arbitration Act provides that the arbitrator may make an order to consolidate where there are several arbitrations with the same arbitrator (Section 26). If the arbitrator won't make an order the Courts may do so. Where there are different arbitrators a party may ask the arbitrator to provisionally order consolidation. There is provision for discussion with the other arbitrators involved and if they fail to reach agreement the Court may make an order.

New Zealand

The 1996 Arbitration Act in Schedule II again provides "optional rules". These apply to domestic arbitrations unless the parties opt out and to international arbitrations if the parties opt in. Where the same tribunal is hearing related proceedings it, or if it doesn't, the Court, may order consolidation.
as with the New South Wales provision, if there are several related proceedings but different tribunals and one tribunal orders consolidation or similar-a "provisional order"- the Court may order consolidation. It may also make consistent, provisional orders of the Tribunal which would otherwise be inconsistent.

**Saudi Arabia and the GCC States**

In the Gulf States there is generally little of any evidence of statutory provision for consolidation and no provision for consolidation in the Kingdom's arbitration Rules and Codes. Bahrain and the UAE are among the states which have adopted the UNCITRAL model law and UNCITRAL rules for international arbitration. Domestic arbitration incorporates the principles of the Sharia Law. Domestic arbitrations are normally conducted under the auspices of the local Chambers of Commerce where consolidation does not appear to be provided for.

**France**

International arbitration is governed by powers given to the French Courts under the provision of Article 1492 of the New Code. This does not make specific provision for consolidation and the prevailing view of French jurists is that only the contracting parties can decide to adopt measures which overcome the difficulties of multi-party arbitration.

**England**

Before the 1996 Arbitration Act the leading commentators Mustill and Boyd observed that:

"one of the weakest features of the English arbitral procedure is its inability to deal with third party situations".

If that was true before 1996 it is still true today as Section 35 of the 1996 Act does not confer a power on the Court to consolidate arbitral proceedings without the consent of all of the parties. What it does is to recognize that the parties may agree to consolidate or to have concurrent hearings. When the Act was being drafted there was a proposal to either give the tribunal or the Court or both the power to order consolidation or concurrent hearings. The Government's Departmental Advisory Committee on Arbitration law rejected the proposal, commenting:

"In our view it would amount to a negotiation of the principle of party autonomy to give the tribunal or the Court power to order consolidation or concurrent hearings. Indeed, it would to our minds go far towards frustrating the agreement of the parties to have their own tribunal for their own disputes. Further difficulties could well arise, such as the disclosure of one arbitration to another. Accordingly, we would be opposed to giving the tribunal or the Courts this power. However, if the parties wish to invest the tribunal with such a power, then we would have no objection*.

This committee's view echoes the comments of Lord Denning (the Principal Judge in the Adgas case 10 years earlier) when he observed that consolidation would save time and money and avoid the risk of inconsistent awards, but against this concluded that the courts have no powers to attach conditions to the appointment and certainly no power to inform or direct an arbitrator in England.

**Contract (Rights of Third Parties) Act 1999**

The most recent development in England in this area is the contracts (Rights of third Parties) Act 1999. Section 8 provides that third parties who are able to claim a substantive benefit under a contract may join in an arbitration between the parties to that contract. This may help in multi-party arbitration situations. The problems in the Adgas case would have been resolved by the English court in a different way had this Act been in place in 1982.

Unfortunately, there is significant opposition to the new Act because of the obvious implication it has for the rights of contracting parties to make their own contractual bargain without interference from either the legislature or the Courts. This is at the heart of the common law principle of *privy of contract*. Recognizing the degree of opposition the new Act permits parties to opt out of its provisions and in most commercial contracts, during the limited period the act has been in force, the evidence appears to be that it is indeed being excluded.

To be continued in the next issue....

**FOOTNOTES**

2 New York Convention Article V.1 (d)
5 Mustill & Boyd, "Commercial Arbitration" 2nd Ed. 1989
In line with the procedures chalked out in the Centre’s Charter and in rotation to the venue for Board meetings convened outside the host country Bahrain, the 26th meeting of the Board of Directors of the Centre was convened in the State of Kuwait on 24th & 25th April 2002.

Chaired by Mr. Mohammed Bin Ali Bin Nasser Al Kiyouni, representative of the Oman Chamber of commerce and industry, the others present were Mr. Bader Abdullah Al Danwish, Vice Chairman and Representative of the Qatar Chamber of Commerce and Industry, Mr. Mohammed Eid Rashid Bukhamnas, representative of the Bahrain Chamber of Commerce and Industry, Dr. Ibrahim Eissa Al Eissa, Representative of the Federation of Chambers of Commerce and Industry, Saudi Arabia, Mr. Waleed Khalid Al Daboos, Representative of the Kuwait Chamber of Commerce and Industry along with the Secretary General of the Centre, Mr. Yousif Zainal. (Mr. Khalifa Al Mattar representative of the Chamber of Commerce and Industry of the United Arab Emirates was unable to attend).

The motive behind convening meetings outside the host country and in other Member States was to enable more interaction between the Board Members and the Ministers and Officials of high rank. These meetings and discussions also provided the Ministers and Officials with an insight as to the role played by the Centre in the field of commercial arbitration which also reflects the recognition and support extended by these officials to the Centre.

Meetings with HE Mr. Salah Khorsheed, Minister of Commerce and Industry, HE Dr. Yousif Hamad Al Ebrahim, Minister of Finance and HE Mr. Ahmed Yacoub Bakr Al Abdullah, Minister of Justice were held in high esteem by the Board members. These meetings also provided an opportunity for the Board members to express their thanks and appreciation to the State of Kuwait for the continuous support extended to the Centre.

Discussions were held as to how mutual relations could be further improved and as to how these Ministers and Officials of high rank, each in their own capacity, help in further activating the role of the Centre.

Special emphasis was laid on encouraging the concerned authorities to issue executive decisions on the Charter of the Centre, in line with the decisions upheld by the other Gulf States thus activating the Centre’s role with regard to settlement of disputes in general and those arising out of the implementation of the New Unified Economic Agreement.

Another prime area discussed was encouraging these Member States to incorporate the Standard Arbitration Clause of the Centre in contracts signed by them, wherein one of the parties to the contract would be partially or wholly State-owned. The fact that the Centre was established by these Member States to resolve commercial disputes is noteworthy to mention. The Courts in Kuwait were also urged to recognize and refer to the members enlisted on the Centre’s panel of arbitrators and experts while dealing with or re-directing cases to arbitration.

The Board also referred to the meetings convened by them with HE Ali Mohammed Thunaiyan Al Ghanem, the first Deputy Chairman of the Board of the Chamber of Commerce and Industry, also attended by Mr. Ahmed Rashed Al Marhoon, Manager of the Chamber of Commerce and other members on the Board of the Kuwait Arbitration Centre including the President of the Kuwait Bar Association.

This meeting featured an open, frank and heart to heart discussion in which HE Mr. Abdul Wahab Al Wazzan, Vice Chairman of the Chamber and the Board members expressed their grievances and views on subjects of disputes in commercial arbitration and the Centre’s role in resolving these disputes. From the Centre’s delegation, views expressed were related to the latest achievements and all round development of the Centre especially with regard to cases being referred to most of which one of the parties were from Kuwait.

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It was unanimously decided that a clear vision was to be prepared by the Centre in which future relations between both the Centre and the Kuwait Chamber of Commerce and Industry was
To set the stage for talking about the psychology of dispute resolution as it actually occurs, I would like you first to imagine the ideal tribunal and setting for resolution of a legal dispute. The ideal litigants fully and honestly present all relevant and no irrelevant information to the tribunal. The ideal tribunal, learned in the applicable law, is strictly objective, without either incentives or inclinations to find the position of one side more persuasive than that of the other side. The applicable law is clear once the relevant facts have been decided. Civilized exchange is the rule and emotional outbursts do not occur. Proceedings are well-organized and efficient. The decision is correct and the litigants on both sides go away accepting that justice has been done. It is an attractive picture, but I do not know how many real proceedings in which you have participated match this ideal, or indeed if anyone has even been blessed to have had such an experience. In my too-many years watching dispute resolution in the United States, I would be hard-pressed to identify a single proceeding that would fully measure up to this standard. After all, in the real world we deal with human beings C litigants, witnesses, arbitrators and judges C who come, albeit with good intentions, to dispute resolution proceedings with human motivations, biases, and weaknesses. Dispute resolution, whatever the tribunal, is always a perilous undertaking. Evidence in the abstract tends to look different from evidence in the concrete. Decision-makers may filter evidence and arguments through different lenses. Those features may explain why a wise senior partner in the firm where I practiced law would counsel supremely confident clients who were considering litigation that no matter how strong they thought their case was on the merits, they could be certain of winning it no more than 75% of the time.

Moreover, the parties on the opposite sides of any dispute C whether it is a drainage dispute between neighbors or a multi-million Euro loss allegedly caused by a breach of contract C engage in dispute resolution for vindication, that is, to win.

At the simplest level, no matter what a judge or panel of arbitrators decides, one of the parties must go away with less than they wanted. But, as I will suggest to you today, that simple picture of dispute resolution is misleading C and the process by which a trial or arbitration is conducted can have a powerful effect on the psychology and reactions of the prevailing party. Perhaps more importantly, it will also affect the reactions of the losing party and the willingness of that party to accept the decision of the tribunal without requiring further enforcement efforts C which of course can be a concern in international arbitration.

In stressing the psychological dimensions of dispute resolution, I do not mean to ignore the powerful economic concerns of the parties. Indeed, I should disclose that in one of my two identities as a research psychologist and as an attorney, I was trained at what has been referred to in the U. S. as the center for law and economics, the University of Chicago. As a result, I have a healthy respect for the power of economics in explaining human behavior. What I mean to stress here, however, is that the economic story is an incomplete one when it comes to understanding dispute resolution and, in particular, to understanding how parties react to their experiences in arbitration and litigation.

Some of what I will be speaking about you will find familiar C what psychologists call "tacit knowledge," the implicit rules that a skilled and experienced person uses in carrying out his or her well-practiced craft C what accomplished arbitrators may do almost automatically. But in another way, I expect that what I have to say may not be common knowledge among arbitrators. I will be describing some findings from research on dispute resolution in order to highlight the characteristics that promote successful dispute resolution, and, in particular, to identify structures and procedures that threaten smooth and non-acrimonious proceedings and compliance with decisions. Although some of my discussion will apply to dispute resolution in general, I will also focus on
some of the distinctive issues that can threaten successful arbitration and suggest ways to minimize them.

1. How Does Procedure Matter?

One view that a decision-making tribunal might take is that its exclusive responsibility is to arrive at a correct decision. A more sophisticated way to describe this obligation would be to characterize it as the responsibility to arrive at a decision that is consistent with the evidence and appropriately guided by the relevant law. This goal, based on studies of the psychology of dispute resolution, is too limited and there are other critical features of the tribunal's activities that are desirable and indeed may be required to ensure the legitimacy of the decision-making tribunal and to maximize the likelihood that the parties will accept and carry out the terms of the tribunal's decision with a minimum of coercive threat. It will also affect the practical and crucial business decision as to whether they will be willing to subject themselves to the arbitration process in the future.

In making the case for the importance of these other features, I will draw heavily on the work of many scholars who, particularly in the past 25 years, have studied the process of dispute resolution and its consequences. John Thibaut, Laurens Walker, and more recently Tom Tyler, E. Allan Lind, and Yuen J. Huo, among others. Before much of this work began, the dominant thrust of research on dispute resolution focused on distributive justice. Distributive justice occurs when parties competing for scarce resources receive fair allocations as the outcome. Under what circumstances various outcomes would be Viewed as fair? Researchers had discovered, for example, that people in work settings were strongly affected by equity concerns in judging the fairness of pay and promotion decisions that is, they perceived differential outcomes as fair when those different outcomes could be attributed to differences in contributions for example, if one party put in more time, or contributed greater expertise. The research has only limited value for our concerns here, however, because if also found that people tended to exaggerate the value of their own contributions, much as the parties to a contract dispute tend to overvalue their own efforts to fulfill contract terms and they tend to undervalue the efforts of the opposing party. Thus, in practical terms, it is hard to provide opposing parties with the level of compensation they believe reflects the value of their own contribution creating the seemingly intractable problem of making people satisfied with outcomes in what game theorists call a zero-sum game: what one party wins, the other must lose.

Against this backdrop, Thibaut and Walker began a new set of investigations, focusing on the procedures used to reach allocation decisions. Their early studies showed that the level of satisfaction people felt with the decision of a third party was strongly influenced by their perceptions of the fairness of the procedures used by the third party to reach that decision. That is, even when actual outcomes were held constant and even when those outcomes were negative, the perceived fairness of the procedures strongly influenced the parties' satisfaction with the verdict and willingness to accept the legitimacy of the decision.

Perhaps most important for its application to international arbitration, these and more recent studies of procedural justice show that people are more willing to accept decisions and to adhere to agreements over time when they perceive those decisions as having been produced by fair procedures. Moreover, the authority and perceived legitimacy of the institutions that produce the decisions are enhanced when the procedures used to produce the decisions are viewed as fair again, even when those decisions involved unfavorable outcomes. The value of enhanced authority and legitimacy for international arbitration is clear; contracting parties will be more willing to include an arbitration clause in their agreements if they recognize the fairness and legitimacy of the institution that will resolve any disputes that arise.

What then are the procedural characteristics that cause disputants to perceive the process of reaching a decision on their dispute as fair? Distilling 25 years of research, psychologists have identified several features that consistently emerge as powerful components of perceptions about the fairness of procedures for dispute resolution. They include: 1) neutrality, that is, did the decision-maker treat the disputants in an evenhanded, nondiscriminatory way? 2) trust, that is, did the decision-maker fully consider the views and needs of the disputants? And 3) treatment with respect and dignity, that is, was the decision-maker appropriately polite and respectful in dealing with disputants and the dispute?
All three of these features can be influenced, if not controlled, by a judge or arbitrator through a combination of the choice of the decision-maker and how the decision-maker behaves in the course of conducting the proceeding and arriving at a decision. The choice of an arbitrator, not surprisingly, can be significant and contested terrain, because it will affect the expectations of the parties to the arbitration proceedings and can thereby affect their reactions. The choice of senior judges, professional notables, and leading continental academics as the principal arbitrators in the early days of international arbitration reflects the value of the social capital they brought to arbitration through their prestige and reputation. As international arbitration has become more common, procedure should play a larger role in affecting how disputants evaluate their arbitration experience.

It is instructive to look at both the overlap and the difference between the set of questions that disputants are likely to consider about procedural justice and the list of criteria for the choice of an arbitrator identified by Mauro Rabino - Sammartano. He lists eight criteria (p. 320). Three of them relate to the nuts and bolts of conducting an arbitration proceeding: skills in the appropriate language, time availability, and availability to travel, if required. One, the experience of the arbitrator, relates to the important issue of expertise, although the experience of the arbitrator can be a double-edged sword when perceptions of fairness are at issue: a positive feature if the expertise arises in a neutral way, for example, from judicial experience, but a potential liability, if, for example, the potential arbitrators experience and expertise arose from long employment in one sector of an industry or in the country of one party to a dispute. The remaining characteristics, that is, the nationality of the arbitrator, the possession of a balanced mind, independence and impartiality more directly implicate the three features that promote a sense of procedural justice.

A. Perceived Trust

Trust has a surprisingly powerful effect on all interactions, including negotiations and other forms of dispute resolution. In today's age of e-mails and electronic information exchange, researchers have been investigating the effects of trust on the negotiation of conflicts and formation of contracts between strangers. In a series of intriguing experiments, they have shown that a brief non-substantive get-acquainted telephone conversation with a stranger before a negotiation conducted by e-mail can affect both the likelihood of an impasse in the negotiations and the joint profitability of any agreement the parties may reach. Half of the pairs of participants in the study were given some biographical information about one another and were instructed to have a 5-minute social conversation on the telephone in which they could discuss anything but business or the negotiation. The other half had no pre-negotiation conversation with their partner. All of the parties then conducted a negotiation by e-mail over the course of the next week. The rapport stimulated by the telephone conversation led to greater trust and lower rates of impasse in the negotiations for those who had spoken before the e-mail negotiation began. The results of this study and others like it not only emphasize the importance of trust, but also should give pause to some of the enthusiasm recently expressed about the ability of new technology to eliminate in-person proceedings in the name of efficiency.

Just as trust leads negotiators to be more willing to work at reaching a jointly acceptable resolution, if parties perceive an arbitrator or other third party decision-maker as motivated to fully consider the concerns and needs of the parties, that perception instills confidence that the parties are being treated fairly. In arbitrations or court hearings, trust that the third-party decision-maker will fully consider the disputants views and needs thus can have a substantial effect on perceptions of procedural justice. When parties turn to a tribunal to reach a decision on their dispute, it means that they have failed to settle their differences themselves and that they are choosing or being forced to bring in a stranger to resolve the dispute. This loss of control is threatening, and one way in which the threat can be addressed is to ensure that the party retains some crucial input in the process. Thus, the opportunity for what has been called Avoice@plays an important role in the perceived fairness of the hearing. Avoice@ may be expressed orally or in a written form, but constraints placed on what the party has an opportunity to present can influence the parties' sense of fairness. For example, a party may want to show the tribunal a document that has not been authenticated, or provide testimony that amounts to inadmissible hearsay or opinion
Evidence. When rules of evidence prevent this material from being presented, those exclusions are often a source of frustration to parties who want to share what they see as relevant information. One of the attractions of some alternative dispute resolution procedures, such as mediation, is that they generally do not limit the parties from expressing themselves fully and on their own terms, even if some of what they say is not directly on point or does not carry the standard indicators or reliability.

There is some ambiguity about why voice is so important. One possibility is that the opportunity to fully tell ones side of the story is in itself a crucial element in dispute resolution that expression is an end in itself. Alternatively, the importance of voice may arise only from its perceived instrumental character, that is, that the party feels that if he is given the opportunity to speak on the issue, the decision-maker will use what has been said in arriving at a decision. The best evidence suggests that both expressive and instrumental motivations give voice its importance. Some research suggests that people value the opportunity to speak in the course of a proceeding even when they believe that what they are saying is having little or no impact on the decisions being made. For example, in a study by Lind, Kanfer, and Earley, participants who were given an opportunity to express their views either before or after a decision was imposed on them both rated the decision process as fairer than participants who were never given an opportunity to voice their positions. Those who voiced their positions before the decision was reached, however, rated the procedure as fairer than those who had the opportunity to speak only after the decision was reached. Participation effects on the judged fairness of procedures are enhanced when people believe that what they are saying is affecting the outcome of the dispute. Moreover, people tend to overestimate the amount of control they do have, so to the extent that opportunity for voice bolsters a sense of control, it is likely to enhance impressions of fairness even when the views expressed do not actually influence the decisions that are made.

From an arbitrator's perspective, building feelings of trust by maximizing the opportunity for the parties to have voice has some disadvantages in terms of efficiency it may require substantial patience and may even argue for permitting some material to be presented that the arbitrators know they will not ultimately rely on in reaching their decision. Nonetheless, a more permissive approach than one that, for example, might be permitted under the strict rules of evidence in an American jury trial, may have the advantage of bolstering parties' sense of fairness with the proceedings. Of course, an arbitrator can go too far in permitting the parties to generate evidence that the tribunal will not consider. In their ground-breaking study of international commercial arbitration, Dezalay and Garth report on the fascinating interview research in which no doubt many of you in the audience participated. In one interview, the respondent reported the following story (with identities appropriately protected) about an arbitration in which he had participated: the chairman of the panel permitted the parties to hold witness hearings, although the norm was not to do so. The parties arranged to have the transcripts of most of the hearings transcribed by a court reporter and delivered to the arbitration panel, but the last volume was unavailable in time to submit it. When the attorney explained that he could not argue a particular point because of the absence of the transcript, the chairman expressed surprise and revealed that the transcripts were for the parties rather than for the panel and that the panel would not ever read them. The disappointed attorneys for both sides had anticipated that the panel would appreciate their efforts. The attorney who Dezalay and Garth interviewed characterized the miscommunication about the value of what the parties had done as a disaster, presumably because of the unnecessary expense that had resulted and the assumptions that the parties had made about what the panel would consider in reaching its decision. Although the tribunal had permitted an extra opportunity for voice, confronted with the evidence that the additional material they provided was destined to fall on deaf ears, the opportunity was identified as an empty and costly one. The key is maximum but not an unduly expensive or deceptive opportunity for the parties to present their case.

B. Perceived Neutrality

A second and powerful element in procedural justice is the perception of neutrality on the part of the decision-maker that is, the belief that one is being accorded evenhanded treatment, that the
playing field for dispute resolution is level. Respect for the fact-finding ability and legal expertise of the decision-maker is not sufficient. Honesty, unbiased treatment, and consistency are also requirements if an authority is to be perceived as neutral. Most legal systems recognize the importance of apparent neutrality in their proceedings. Judges in the United States, for example are required to recluse themselves from cases in which they have a conflict of interest, for example, in the form of stock ownership in one of the parties. Disqualification is mandatory for conduct that calls a judge's impartiality into question. Nonetheless, a variety of features undermine the appearance, if not the fact of neutrality. Perhaps the most common example that exists in the United States is where state court judges are elected to their judicial positions either at the trial or appellate level. In 38 of the 50 states, judges must raise funds to support their election campaigns from the very attorneys who appear in their courts. Other instances that undermine the appearance of neutrality may arise when a judge breaks the normal pattern of silence and makes statements about a case before hearing all of the evidence or during a pending appeal, as Judge Jackson did last year in the Microsoft antitrust litigation. In that instance, the Court of Appeals found that most of Judge Jackson's findings had been correct, but remanded the case to another judge for re-hearing on the remaining issues because of the inappropriate statements Judge Jackson made in interviews with reporters in the course of the trial, and publicly while the case was on appeal. Another factor influencing the appearance of partiality may arise if the judge formerly practiced law with one of the law firms or lawyers appearing in the judges' courtroom. The legal system operates on the presumption that the judge can put aside any natural affinity for her former colleagues as long as she no longer has a financial relationship with the firm. Standard practice requires a disclosure of the prior affiliation, but not a disqualification of the judge from hearing the case.

The makeup of the typical 3-arbitrator panel implicitly acknowledges the dangers of partiality by permitting each of the parties to nominate one of the arbitrators. While each arbitrator is formally expected to play a judicial role that answers to the neutral goal of legal accuracy, the structure of the tribunal recognizes that legal accuracy may be open to multiple interpretations. The party-nominated members of the panel increase the likelihood that the arguments and vote of at least one member of the tribunal will be informed by what each party believes is the correct way to view the dispute. Thus, the mixed structure of the arbitration panel provides both some measure of neutrality through balance, and incorporates opportunity for voice within the tribunal. Two difficult problems remain, however. The party-selected members of the panel must balance dual demands on their loyalty; to the party that selected them and to the law as represented by the panel as a whole and the evidence presented in the case. Second, a third member of the panel must be selected who has no marked association with or evident inclination to favor one of the parties. The party-selected members can control the choice of the chair only if they can agree. It is unclear how well this system provides the balance it is intended to create. What is missing is research on the frequency and choice of chairpersons in arbitration panels, and a study of how their selection affects process and outcomes, and how it affects the ultimate satisfaction of the parties with the proceedings.

If the system of arbitration is increasingly to attract cases, it is crucial that it be perceived as both efficient and impartial. Moreover, a presumption of impartiality must be maintained within the community of international arbitrators whose colleagues may appear before them as counsel on one day, and may sit beside them on the same panel of arbitrators on another occasion. Yet the arbitration context presents an unusually complicated set of interlocking loyalties and incentives. As a result, there is ample room for loyalties to influence judgments, whether consciously or unconsciously, and for parties or their representatives who are not part of this network of colleagues to be concerned about the neutrality of the tribunal. The controversial approach taken by the ICC, the declaration of independence requiring the disclosure of any significant relationship between the proposed arbitrators and counsel for the parties to the arbitration, implicitly acknowledges the potential costs that partiality or the appearance of partiality can have for the health of purpose. And indeed, the evidence from studies of procedural justice suggests that the attention to how parties will perceive the neutrality of the arbitration panel is warranted.

It is, as Dezalay and Garth have pointed out, no accident that much international commercial arbitration takes place in locations that are not local to either party. Despite the extra costs and
inconvenience that a distant location can impose, a detached location suggests an image and perhaps a reality of independence for the tribunal that would be more difficult to project on the home turf of one or the other of the parties.

C. Treatment with Dignity and Respect

The third key component of procedural justice judgments from the point of view of a disputant is treatment with dignity and respect. Such treatment conveys to disputants not only that they are valued participants in the proceeding but also that the proceeding itself is being treated as important. Politeness and respect are ways to impress on participants the seriousness with which the occasion is being treated. In one study, Lind and his colleagues interviewed litigants whose cases had been subjected to arbitration, trial, or settlement conferences. They found that litigants perceived arbitration as very fair because it was viewed as dignified, while they viewed settlement conferences as unfair because they were seen as undignified. While formality can promote a feeling of dignity, formality is not the key. Both arbitrations and trials were viewed as dignified, although arbitrations tend to be less formal than trials. The sources of perceived dignity are politeness and respect.

II. Outcomes

My discussion thus far has focused on the nature of proceedings that can instill confidence in the parties. The comfort and positive reactions of litigants are of course important in and of themselves. To the extent that litigants are satisfied with their treatment, they will have good words to say about both arbitration and the arbitrators. But building perceptions of procedural justice has an additional important pay-off: it increases the likelihood that the parties will accept and comply with the findings of the tribunal. In a study of litigants whose cases were subjected to mandatory non-binding arbitration in eight United States courts, Lind, Kulik, Ambrose, & de Vera Park 20 marked the rate at which litigants (both corporate and individual) exercised their right to a trial at the conclusion of the arbitration. Not surprisingly, litigants with more positive outcomes were more likely to accept the arbitration decision and less likely to opt for a trial. But importantly, there was a separate and independent predictor of whether the arbitration award was rejected namely, a litigant’s perception of the procedural fairness of the arbitration proceeding.

Up to this point, I have not referred to the actual quality of decision-making. Does that mean that I am suggesting a focus on mere window dressing by stressing factors that influence perceptions of procedural justice a kind of soporific for the disputants that lacks substance?

FOOTNOTES

1 Robert Sternberg, TACIT KNOWLEDGE
2 See, e.g. J. Stacy Adams, Inequity in Social Exchange, in 2 ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY 267 (1965)
3 Equity was defined as the apportionment of outcomes in proportion to each individual’s contributions to those outcomes
4 John Thibaut & Laurens Walker (1975), PROCEDURAL JUSTICE: A PSYCHOLOGICAL ANALYSIS
9 Yves Dezalay & Bryant Garth (1996), DEALING IN VIRTUE: INTERNATIONAL COMMERCIAL ARBITRATION AND THE CONSTRUCTION OF A TRANSNATIONAL LEGAL ORDER
10 INTERNATIONAL ARBITRATION & LAW AND PRACTICE
15 Yves Dezalay & Bryant G. Garth (1996), DEALING IN VIRTUE: INTERNATIONAL COMMERCIAL ARBITRATION AND THE CONSTRUCTION OF A TRANSNATIONAL LEGAL ORDER.
16 Id. At 106
17 See 26 U.S.C. 455 (a); in re School Asbestos, Litig., 977 F.2d 764, 783 (3d Cir. 1992).

To be contd. In the next issue
INTRODUCTION

A Workshop and Seminar on International Contracts and the Transfer of Technology is to be held in the Kingdom of Bahrain from 28 – 30 September 2002. Under the patronage of HE Mr. Ali Saleh Al Saleh, Minister of Commerce and jointly organized by the GCC Commercial Arbitration Centre and the Union Internationale Des Avocats-Paris, this event would discuss the accelerating development of new technologies that pose unprecedented challenges to business.

OBJECTIVE - Workshop on Intellectual Property Rights IPRs – Overviews and requirements with specific emphasis on technical IPRs like Patents

The workshop scheduled for September 28 being conducted in the English language, will give a general introduction of Intellectual Property Rights IPRs, being a major means for supporting competitiveness and as being the main subject in Technology Transfer matters. The workshop will refer to the different kinds of IPRs, both of technical nature, e.g. Patents and Utility Models, and of non-technical nature e.g. Trademarks. It will explain purpose and goals of such IPRs, requirement to achieve such IPRs and will refer also to application and grant procedure before the Patent Offices. The workshop will further relate to international regulations with respect to prosecution and enforcement of IPRs as well as to licensing of IPRs as a means of Technology Transfer. The workshop will in more detail refer especially to technical IPRs, specific requirements for getting a technical IPR granted and will refer also to possible in house procedures to enhance utilization of in-house knowledge and experience and to strengthen the company’s Intellectual Property position in the world wide competition.

OBJECTIVE - Seminar

The seminar will provide a forum for all participants to receive general information on Intellectual Property Rights IPRs as well as on international contracts and the Transfer of Technology, playing an increasingly important role in the competitive world market. The seminar will also provide a platform for a dialogue between experts and managers as well as of government officials being of high importance for the interdisciplinary area of Intellectual Property Rights and Transfer of Technology. The seminar will refer to national and international regulations and to national and international co operations especially based on Transfer of Technology and IPRs, with specific considerations of the situation of Arab countries. The seminar will also refer to the possibilities of protecting innovations with specific reference to business method and software inventions. The seminar will be a platform for exchanging experiences especially in the area of IP and for implementing a network between experts for the rising demands of the future market.

WHO SHOULD ATTEND

Workshop: The workshop is of a specific interest to all professional and academic persons having either a technical background and being active e.g. in an R & D department or a technical or production department or having a legal background and being active as e.g. legal advisors to the management.

Seminar: Legislators, Judges, Arbitrators, Lawyers, Legal Advisors, Government Officials, Policy Makers and IT professionals, academic and scholars.

LANGUAGE

Workshop would be conducted in the English language simultaneously translated to Arabic while the seminar would be in both Arabic and English with simultaneous translation.

VENUE

The event would be held at the Gulf Hotel, where discounted room tariffs have been arranged. Those interested in making reservations are requested to kindly fill in the hotel reservation form attached and fax it to the hotel. Visa arrangements are also being taken care of by the hotel authorities.

OFFICIAL CARRIER

Gulf Air would be the official carrier of this activity and would provide attendees with discounted airfares.
SUMMARY
In an action filed before the Dubai Court of Cassation, the Petitioner requested the court to revoke the petitioned judgment on the basis that the judgment was issued repugnant to the law and misapplied the same and lacked reasoning when it considered the validity of the agreement.

The Court of Cassation confirmed that notification of the parties to a dispute with the issued judgment via any means must show proof that the issued judgment has been conveyed to both parties, otherwise either party has the right to challenge the same.

Also, the Court of Cassation confirmed that since the litigants agreed to refer to arbitration in case of any dispute resulting from the agreement signed between the parties, such agreement shall not be considered void and shall never be considered invalid unless the same parties expressly otherwise agreed.

CLAIM
The Petitioner filed a case against the Respondent and requested the court to oblige the latter to pay the claimed amount which was realized as a result of works done by the Petitioner in favour of the Courts were not the qualified forum to review the case as the agreement signed between the parties includes an arbitration clause.

COURT OF FIRST INSTANCE
The Court of First Instance rejected the case because of the existence of the arbitration clause in the agreement signed between the litigants.

COURT OF APPEAL
The Court of Appeal upheld the appealed judgment.

COURT OF CASSATION
The Petitioner challenged the petitioned judgment arguing that it was issued repugnant to the law, misapplied the same and lacked reasoning. The Respondent pleaded for the court not to accept the petition as it was filed after the lapse of the legal period for filing an appeal.

Regarding the plea of the Respondent, the Court of Cassation confirmed that, according to Article (203) of the Civil Procedures Law, if the parties agreed upon arbitration, they have no right to resort to the court unless the same parties, at any stage, amend such clause. Hence, if amended then it should be considered cancelled, and this is because of the compromising nature of arbitration renders the same as having nothing to do with the public order and such clause may be assigned either explicitly or implicitly, but such implicit assignment must be through an act or procedure clearly confirming such assignment.

Since the Court of First Instance found for the incapacity of the same to review the case, the Court of Cassation upheld the same and rejected the argument of the petitioner.

The 16th ICCA congress, hosted by the Chartered Institute of Arbitrators was held from 12-15 May 2002 at the Royal Lancaster Hotel in London. This important conference was declared open by Dr. Fali S. Nariman, President of the International Council of Commercial Arbitration (ICCA) and well attended by around 500 participants who represented leading arbitration institutions.

The GCC Commercial Arbitration Centre was represented by its Secretary General, Mr. Yousif Zainal. It is worthy of mention that the 11th ICCA Congress was hosted and held in Bahrain during February 1993. During the course of the conference, Mr. Zainal signed Agreements of Cooperation with the London Court of International Arbitration (LCIA), and with the institutions of Slovenia, Romania and Croatia.

The Conference was titled "International Commercial Arbitration: Important Contemporary Questions". As rightly stated by Ms. Karen Gough in the brochure’s welcome address, this year’s programme witnessed a break in tradition. Hitherto, ICCA Congress had been themed to cover one or more main topics. This Conference however, had no central theme, but a number of topics selected for examination and grouped together under the Conference title. A change was also noticed in the way in which topics were presented and discussed. As with previous Congresses, delegates were encouraged to submit short papers on the Congress topics during discussion sessions. However, some subjects were more of formal debate while others were subjects of contrasting, and at times, of conflicting opinions.

The Conference could be broadly classified under 4 main sessions:

1. The parties, not the arbitrators, control the arbitration
2. Six Contemporary Questions under which
   a. The requirement of a written form for an arbitration agreement
   b. Interim measures of protection
   c. The need of a model law of Conciliation?
   d. Aspects of illegality in the formation and performance of contracts
   e. Illegality in the conduct of arbitration and
   f. Detection of forgery and fraud were discussed
3. The psychological aspects of dispute resolution

Each session had a chairperson and speakers who spoke for and against the motion. The Congress was declared open by Dr. Fali S. Nariman, President of ICCA.

The first day of the Conference debated the topic "Parties, not the arbitrators, control the arbitration". Chaired by Mr. Henri Alvarez, Canada, speakers who spoke for the motion were Prof. Hans Smith, USA and Prof. Gabrielle Kaufmann from Switzerland. Speakers against the motion were Rt. Hon. Lord Mustill, England and Ms. Sally Fitzgerald from New Zealand. The points discussed were as to whether institutions should make it plain by rules and by conduct that the parties’ will is to prevail or as to whether arbitration had an overriding duty which may cause them to disregard the will of the parties, restraints upon arbitrators’ powers under various statutory regimes and finally should respect for the consensual nature of arbitration be tempered by the fact that arbitration is a vital part of the efficient functioning of international trade and investment, particularly given the growth of Bilateral Investment Treaties and Trading Blocs such as NAFTA?

Speakers for the motion argued the case that the concept of party autonomy refers to the decisions made by the parties on certain issues and procedural matters which governs the arbitrators. Speakers against argued that party autonomy is not absolute and must yield to the requirements of fairness, economic and expedition of international commercial arbitration.

The second session on contemporary questions discussed 6 major issues. Topics discussed under this session were "The requirement of a written form of an arbitration agreement" which was chaired by Mr. Jernej Sekolec, Secretary General of UNCITRAL and Mr. Toby Landau,
England provided a paper on the said subject. Interim measures of protection was next discussed and speakers were Mr. Donald Francis Donovan from USA and Dr. Jacomij u van Haersolte-van Hof De Brauw from the Netherlands. This session was continued on the second day commencing with the subject on "Do we need a model law on conciliation? Conciliation was briefly summarized and the paper then moved on to discuss the need for a model law of conciliation and if needed what it should say. How should questions of mandatory versus voluntary use, ethical standards, selection of mediators etc. were addressed in continuation.

Fourth issue discussed under session two was the Aspects of Illegality in the formation and performance of contracts chaired by Mr. Jan Paulsson, France speaker Mr. Richard Kreindler-Germany.

Different aspects of illegality, both in the formation of contracts and in the conduct of arbitration were discussed.

Fifth and sixth issues under session two were also chaired by Mr. Jan Paulsson. The subjects discussed were Illegality in the conduct of arbitration by Professor Bernard Hanoi, Belgium and the detection of forgery and fraud by Mr. Peter V. Tytell from USA respectively.

Session three discussed the psychological aspects of dispute resolution, while the last day of the Conference discussed Arbitration under Investment Treaties. Guest speakers Dr. Fali S. Nariman and Mr. Tjaco van den Hout drew the conference to a close at 1300 hours on 15th May 2002.

The next ICCA Congress is scheduled to be held in Beijing – China during May 2004.

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SECOND CONFERENCE ON ENGINEERING ARBITRATION

5 – 7 MAY 2002.
RIYADH, KINGDOM OF SAUDI ARABIA

In continuation of the First Conference on Engineering Arbitration organized by the GCC Commercial Arbitration Centre in Bahrain during May 2000, the Second Conference was convened in collaboration with the Saudi Engineering Committee and the Saudi Arbitration Team during 5 -7th May 2002 in Riyadh, Kingdom of Saudi Arabia.

This event was preceded by a workshop on "Principles of Domestic and International Arbitration" which was run simultaneously in both Arabic and English languages side by side. The venue for the event was King Faisal Conference Hall, Intercontinental Hotel, Riyadh, Saudi Arabia. Topics such as Introduction to International Arbitration, Various Arbitration Centres, Different Arbitration Procedures, Award Writing Procedures and Award Enforcement were discussed by eminent speakers from various parts of the world. A detailed report of this event is provided in the Arabic Bulletin for those who are interested.

The Conference papers are available at the Centre for those interested who are requested to forward their requests to

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The Chamber of National and International Arbitration of Milan, Italy, (www.camera-arbitrale.com) a special body of the Chamber of Commerce of Milan, set up in 1986, administers arbitral proceedings under its Rules and thorough its bodies, the Arbitral Council and the Secretariat. It also provides conciliation services and during the last part of the year 2001 has accomplished the new ODR service RisolviOnline (www.risolvionline.com) a step forward to an up to date solution to a wide range of matters.

The 2001 statistics show an increasing growth and widening of the Chamber activity.

71 new arbitration proceedings got started by the Chamber of Milan during the year 2001, involving a total of 187 parties from Europe, United States, Africa and countries of the Mediterranean basin, fact that stands for the widening of the geographical spread of the Chamber activity. Parties involved were in 31.5% of cases privates, in the greater part of (65.8%) societies, and in 2.6% of cases joint owners of blocks of flats.

The efficiency of the Chamber in handling such a various range of matters relies on the high professional expertise of its arbitrators, on whose appointments and activity the Institution exercises a piercing glance throughout the whole arbitral proceedings.

137 arbitrators were involved in 2001 proceedings, coming from different countries and from various branch of competence (i.e. professionals, university lecturers, technical experts, retired magistrates). In 66.1% of cases the proceedings were handled by an arbitral tribunal (three arbitrators) and for the rest (33.9%) by a sole arbitrator. In 40.1% of cases the appointing authority was the Arbitral Council, in 55.5% of cases appointments were made by the parties or by the two arbitrators designed by them. Finally, in 4.4% of cases Tribunals were appointed by different authorities. All the designations, coming from any appointing authority, were submitted to the control and confirmation of the Arbitral Council.

The average time of the Milan Chamber arbitration, from the filing of Request

For Arbitration up to the fulfillment of the procedures is 11 months.

The most outstanding evidence of the 2001 statistics relies in the increasing variety of economic and financial activities involved in the matters on which the arbitrators were called upon to decide. Together with the constant presence of real estate (5.6%) and supply (4.2%) cases the Chamber has registered a growth of activity in company law (26.8%) commercial law (14%) and contracts cases (22.5%) mostly dealing with transactions agreements and antitrust disputes, especially related to international cases.

The breath of the Chamber activity in new branches of law bears evidence of the effort of supplying an efficient and versatile answer to the latter request of the market in such fields as: sponsorship and cooperation agreement, agreement of allotment and e-commerce contracts.

The graphic points out to the variety of economic activities and matters covered by the proceedings administrated by the Chamber.

Much of the development both in quantity and quality of the Chamber activity is owed to the control and determination expressed by the Arbitral Council, made up of 9 members (with two foreign members) outstanding professionals in legal and economical fields.
Introduction:
A joint workshop is organized for the first time between the GCC Commercial Arbitration Centre, the Court of Arbitration of the International Chamber of Commerce Paris and the National Committee of ICC in Bahrain during 6-8 October 2002. This event would be under the patronage of HE Mr. Ali Saleh, Minister of Commerce and would be conducted in the English language.

Speakers:
HE Sheikha Haya Rashid Al Khalifa, Mr. Serge Lazareff, Mr. Jan Paulsson, Mr. Hassen Ali Radhi, Ms. Mireze Phillippe, Ms. Laetitia de Montalivet and Mr. Nabil Antaki.

Venue:
The event is scheduled to be held at the Diplomat Hotel, Bahrain.

Subjects being discussed:
- What is Arbitration?
- Arbitration in the Gulf
- Overview of Bahrain Arbitration’s Law
- General Characteristics and positioning of ICC Arbitration
- Presentation of mock-case and organization of the work
- How to use Arbitration: drafting and negotiation he Arbitration clause the-conditions of validity
- Preparation of the request and tactics
- Role of the Secretariat of ICC International Court of Arbitration, before the Terms of Reference
- Selection and Appointment of arbitrators - strategy in constituting the Arbitral Tribunal
- Terms of Reference
- Organization of the procedure: from the Terms of Reference to the hearings
- Different procedural approached - hearings, testimony and other evidence Civil Law and Common Law
- Islamic, Civil and Common Law
- Simulation of the procedure
- The award - Deliberation and Dissenting Opinions
- Role of the Secretariat of ICC International Court of Arbitration, from the Terms of Reference to the end of the procedure
- Scrutiny of the Award by the ICC Court
- International Commercial Arbitration in the Gulf: settlement of Disputes in Distribution and Agency Contracts / Construction Contracts in the Gulf
- Enforcement of Arbitral Awards - The New York Convention
- Costs of an Arbitration

Each session would be followed by question and answers and would enable dialogue between the participants and instructors of this workshop.

For more details, kindly contact the GCC Commercial Arbitration Centre.
The International Federation of Commercial Arbitration Institutions (IFCAI) was founded in 1985 in New York to facilitate permanent relations between commercial arbitration institutions. Comprising of over 80 members from close to 50 countries, IFCAI resorts to make known their services, and disseminate information on law, rules, awards and court decisions in the sphere of international arbitration and conciliation.

Ground work for the next IFCAI conference which is scheduled to be held in Bahrain during March 2003 is underway. Subjects for discussion, speakers and chairpersons to be approached in this regard are all being planned. The first brochure announcing the Conference theme and the subjects being discussed is due to be published and circulated during November.

Previous conferences convened by IFCAI were held in Cairo, Milan, Hong Kong, Geneva, New York and Prague respectively. IFCAI Conferences are convened once in every two years and subjects being discussed at these conferences are based on International Commercial Arbitration.

Members on the Centre’s panel of arbitrators and experts are requested to actively participate and benefit from this conference. For more details kindly contact the Centre at:

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