

TEXT OF THE STATEMENT BY THE SECRETARY-GENERAL OF THE ASIAN-AFRICAN LEGAL  
CONSULTATIVE COMMITTEE AT THE INAUGURATION OF THE REGIONAL CENTRE FOR  
ARBITRATION AT CAIRO

On behalf of the Asian-African Legal Consultative Committee it is my privilege and pleasure to convey to Your Excellency our sincere thanks and gratitude for agreeing to inaugurate the Regional Centre for Arbitration at Cairo which was brought into being as a result of the agreement between Your Excellency's government and the Asian-African Legal Consultative Committee concluded on the 28th January 1979. We are most thankful to Your Excellency for sparing your time in the midst of your heavy commitments and to your government for their co-operation and assistance without which the establishment of this Centre would not have been possible.

The Regional Centre which would now commence its functions officially has been established in pursuance of the decision of the Asian-African Legal Consultative Committee taken at its Baghdad and Doha Sessions in 1977 and 1978. It represents an important landmark in bringing about regional co-operation between the countries of Asia and Africa in the field of trade, commerce and economic relations by providing for the first time a machinery suited to our needs for settlement of disputes in the economic field both between the countries of our region as also those with countries of other regions. The functions entrusted to the Regional Centre are unique in many ways because the Centre will not merely be an institution providing for arbitration under its own auspices but its principal functions will include several broad-based objectives such as co-ordination of activities of national institutions in the region served by the Centre, providing facilities for ad hoc arbitration as also in arbitrations held under the auspices of other institutions and rendering of assistance in the enforcement of awards. Thus the work which has been being undertaken in the field of commercial arbitration by various chambers of commerce and other national institutions in the region will not only remain unaffected but endeavours will be made through the promotional activities of our Centre to enhance their effective functioning by encouraging parties to resort to local institutions at the situs of the dispute wherever available.

The Regional Centre will function as an international institution acting for the time being under the auspices and supervision of the Asian-African Legal Consultative Committee but at the expiry of a period of two years it would be for the governments of the region to decide upon the appropriate mechanism which would enable the Centre to continue to function at an international level.

It may not be out of place for me to take a few minutes of your time to explain the background in which the Asian-African Legal Consultative Committee took the initiative in the establishment of its Regional Centre for co-ordination and arbitration.



As you are no doubt aware, the developing countries of our region almost simultaneously with the achievement of their political independence had to begin their struggle for emancipation from the stranglehold of a colonial economic system which necessarily meant a change in the pattern of trade and commerce and marketing of primary commodities which constitute the wealth of these nations coupled with rapid industrial development with a view to economic upliftment of their people. The declaration of the first and second development decades by the United Nations, the establishment of the UNCTAD and the UNCITRAL followed by the adoption of the declaration of the New International Economic Order together with its Programme of Action had given clear recognition and lent new dimensions to the need for evolving practical ways and means for transforming a colonial economy into a balanced economic structure to suit the needs of the changing pattern of the world community composed of free nations, both developed and developing. Even though the results achieved, so far, despite a series of major initiatives, have fallen short of the expectations of the developing countries, the negotiations have at least helped to create a climate conducive to international co-operation to bring about desired changes and accelerating the growth of developing nations.

One of the major areas where such changes have been considered essential as a matter of practical necessity is in regard to the system of settlement of disputes in the economic field. You may recall that the basic pattern of trade and commerce in relation to the countries of our region during the colonial period consisted almost wholly in our being sellers of raw material and purchasers of finished products, the transaction in respect thereof being concluded mainly, if not entirely, in the metropolitan capitals of the colonial empires. This had naturally resulted in the growth of bodies and institutions in those centres offering facilities for settlement of disputes under their auspices. These institutions however proved to be inadequate to meet the needs of the changing pattern of trade and commerce after the emergence of new nations in Asia and Africa and there has been a growing demand on the part of the developing countries ever since the Havana Conference held in 1947-48 for establishment of suitable machinery in order to provide fair, inexpensive and expeditious procedures for settlement of disputes particularly those concerning their developing projects including foreign investments and transactions in primary commodities. It was in this light that the International Convention on Settlement of Investment Disputes was concluded in the year 1965 under the auspices of the World Bank and the UNCITRAL soon after its establishment in 1968 had decided to include international commercial arbitration as one of the priority items on its Agenda.



Major initiatives had also been taken at regional level in Latin America, in Western Europe as also between the COMECON countries resulting in conclusion of regional conventions or arrangements which had satisfactorily resolved many of the problems in the field of settlement of disputes in so far as those regions are concerned. The efforts of the Economic Commission for Europe had also resulted in conclusion of a Convention in 1961 which had proved to be extremely valuable in the East-West Trade.

However, in so far as the countries in Asia and Africa are concerned, no appreciable changes could be brought about so far and the contractual provisions relating to settlement of disputes in most cases had continued to contain arbitration clauses for reference of disputes to bodies and institutions which had emerged during the colonial period presumably due to the superior bargaining position of the parties who wished to invest in or trade with our region and the absence of any appropriate institution suitable for handling international arbitrations within our region. During the present decade, the number of disputes and differences arising out of such contracts which have been referred to these bodies at the instance of the parties outside the region had reached alarming proportions and the result of this continuing trend of resorting to such private institutions has not been satisfactory to either side. It has not been uncommon for foreign contractors to use the prospect of an expensive and protracted arbitration as a form of pressure on developing countries to accede to their demands. At the same time there have been occasions where governments faced with an arbitration by a tribunal in whose composition they had little choice had raised the plea of sovereign immunity. Furthermore, the municipal courts on several occasions were left with no alternative but to refuse to enforce an arbitral award rendered under unfair procedures or in violation of the principles of natural justice. The result has been a sense of uncertainty and instability and consequent reluctance on the part of many states and their nationals to enter into foreign collaborations or to invest abroad. The United Nations International Development Organization in one of its most recent studies, whilst drawing attention to the absence of an adequate dispute settlement system as being one of the causes hampering wider co-operation between developed and developing countries in the field of industrialisation, has pointed out that the problems arising between partners of the industrialised and developing countries with their basic inequalities could not appropriately be dealt with by existing arbitration institutions which had a colonial history.



It is in this background that the AALCC at its Seventeenth Session held in Kuala Lumpur in July 1976 had decided to give urgent attention to this matter and at its Eighteenth Session held the following year in Baghdad, the Committee decided to establish an integrated scheme for settlement of disputes through regional arbitration centres having several broad-based functions.

The Committee was greatly encouraged in the initiative which it decided to take by the adoption of the UNCITRAL Arbitration Rules and the endorsement given to it by the General Assembly. The UNCITRAL Rules for the first time have brought together an uniform but flexible set of procedures which could be universally applied in international arbitrations both ad hoc and institutional. What is needed now is the wider use and application of these rules and the institutions which could provide adequate facilities for conduct of arbitrations under those rules. This is one of the major areas which we are seeking to achieve through our integrated disputes settlement scheme and which has two major objectives. The first is to bring about a system under which disputes and differences arising out of transactions in which both the parties belong to the Asian-African and Pacific region could be settled under fair, inexpensive and adequate procedures. The second is to encourage parties to have their arbitrations in our region where the investment made or the place of performance under an international transaction is a country within this region.

A great deal of interest has already been generated within the past year in our disputes settlement scheme not only in the countries of our region but also in much wider circles. Several governments of the region as also governments of those countries which have close economic ties or large investments in our region have nominated their leading jurists including Chief Justices, Attorneys General, and Judges of Supreme Court for inclusion in our international panel of arbitrators. But perhaps the most important development is the conclusion of our agreements with the World Bank's Centre for Settlement of Investment Disputes for reciprocal assistance in the conduct of arbitration at the request of the institution concerned. I might mention here that the World Bank's system in regard to settlement of investment disputes has assisted to a large extent in creating stability and good faith in the field of foreign investments because out of nearly 3000 contracts in which the ICSID arbitration has been provided for, only nine disputes have so far arisen over a period of twelve years. The only hesitation which some of the countries of our region had in agreeing to incorporate an ICSID arbitration clause was the fact that under the Convention on the Settlement of Investment Disputes, the venue of the arbitration was to be in Washington. This drawback has now been removed in view of the conclusion of our agreement with the World Bank which will enable parties,



if they so choose, to have the arbitration proceedings under the Convention wholly or in part at the seat of the Kuala Lumpur Centre. A similar arrangement is being concluded today in regard to the Cairo Centre.

I might mention that our disputes settlement scheme is closely linked with some of the initiatives which we are taking in the economic field to promote the interests of the countries of our region, the more important of which include a programme designed to promote co-operation among the countries of the region especially amongst the developing countries inter se with a view to accelerate the process of industrialization through harnessing of their resources.

We believe that a fair and acceptable system for settlement of disputes is a sine qua non in promoting stability and good faith in international transactions and this could be best achieved if the disputes and differences are settled through arbitration by an international panel under the auspices of national institutions of the country where the contract is to be performed or under the rules of regional or international institutions where the parties prefer to have resort to such an institution. It is in this context that our scheme for settlement of disputes provides for the growth and establishment of national institutions in this region, provision of facilities for arbitration under the auspices of our Regional Centres and also in encouraging parties to resort to international institutions like the ICSID wherever appropriate for settlement of their disputes.

The success of our venture will be borne out not through the number of disputes that are referred to our Regional Centres but in eradicating a system in which the machinery of arbitration can constitute a form of pressure on the developing countries of our region. The essence of our endeavour is to create greater confidence and stability in international transactions by ensuring to the parties that an adequate and fair procedure would be available if disputes and differences do arise and that factor alone should lead to an atmosphere for the parties themselves to carry out their obligations in co-operation and good faith thus leading to a greater degree of economic co-operation between the nations. I feel sure that our Cairo Centre located in a country known for its progressive and dynamic outlook will act as a catalyst to generate that confidence to foster the industrial growth and development of our region. The progress made in the Latin Americas gives us cause for hope and what we need now is the active co-operation of the Governments as well as the Chambers of Commerce in the countries of our region.



Before I conclude I would like to thank Your Excellency once again for finding time to inaugurate the Regional Centre for Arbitration at Cairo.

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