

Historic documents in arbitration

the 1979 “Exchanged letters” behind

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INTERNATIONAL COUNCIL FOR COMMERCIAL ARBITRATION

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This special supplement to the ICCA Newsletter is written by CRCICA Director Dr. Ismail Selim.

The Genesis of AALCO's regional arbitral centres (1974-1979)

Over four decades ago, the Asian-African Legal Consultative Organization (AALCO), then known as the Asian-African Legal Consultative Committee (AALCC), implemented a visionary scheme to establish notable arbitral centres in Asia and Africa similar to existing ones in Europe and America.

The initiative was triggered at AALCC's Tokyo Session of 1974 and further discussed in the AALCC sessions held at Kuala Lumpur and Bagdad in 1976 and 1977 respectively, with the aim of examining the feasibility of establishing six arbitral centres in Asia and Africa. At the Doha Session in 1978, a decision was made to begin by establishing the first two centres – one in Cairo and the other in Kuala Lumpur.

In January 1979, an agreement was reached through 'Exchanged Letters' between AALCC and the Egyptian Government to establish the "Cairo Regional Center for International Commercial Arbitration" (CRCICA, or the Cairo Centre). In the 1979 Exchanged Letters agreement, the Cairo Centre would be established for an initial period of three years. Other AALCC notes, memoranda and exchanged letters would follow, revealing challenges faced by CRCICA once established.

Saddam's attempt to relocate CRCICA from Cairo to Bagdad (1980 -1983)

From subsequent letters exchanged between AALCC and Egypt, it appears that following Egypt's entry into a peace treaty with Israel, which was seen as a betrayal of the Palestinian cause by most Arab countries at that time, former Iraqi President Saddam Hussein led an Arab boycott movement against Egypt. At the Jakarta Session of April 1980, Iraq requested the relocation of CRCICA from Cairo to Bagdad "in view of the possibility that a number of Arab countries in West Asia and North Africa might not be willing to use the facilities of the [Cairo] Centre". AALCC responded by suggesting a compromise to the governments of the member states whereby CRCICA's promotional work would not cover the concerned Arab countries in West Asia and Africa, noting that it "has been in operation since February 1980 and a number of agreements have incorporated an arbitration clause designating the Cairo Centre as the arbitral institution". Moreover, Sudan and Eastern African Countries were still willing to maintain CRCICA in Cairo and to use its facilities there, and ICSID had entered into a cooperation agreement with AALCC in February 1980 with regard to the Cairo Centre.

By defending Egypt as the host state, AALCC proved to be visionary, stating in a 1983 memorandum annexed to the Exchanged Letters that "the regional centres should be located in well-known centres of commerce and industries and in countries where the independent functioning of the Centre can be assured together with availability of competent

lawyers and lack of restrictions on transfer of funds needed for conduct of arbitration proceedings”. Maintaining CRCICA in Cairo enabled the institution to grow, in a pro-arbitration environment that has ensured its current notability.

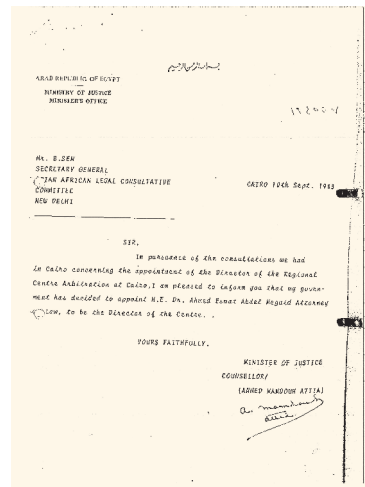
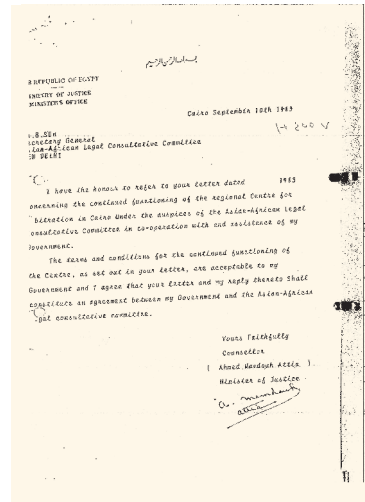
A Road Map: Accelerating the growth of a start-up arbitral institution

The 1979 Exchanged Letters reflected AALCC’s vision and detailed a number of functions subsequently entrusted to CRCICA.

Ad-hoc arbitrations and proceedings administered under the rules of other arbitral institutions

The Memorandum attached to the 1979 Exchanged Letters revealed the long term daunting task of incorporating an arbitral centre clause into contracts and the referral of disputes arising therefrom. It mentions that promotional activities are necessary and that “out of over 5000 contracts which had incorporated an ICSID clause, only 11 disputes had so far arisen”. Hence, the 1979 Exchanged Letters provided a mandate for CRCICA to offer to administer and host ad hoc proceedings. It also recommended that CRCICA provide hearing services to cases administered under the rules of existing arbitral institutions located outside the region. Such a visionary approach was justified in the Memorandum annexed to the 1979 Exchanged Letters, by stating that “it would keep the Centre active and provide a source of income [...] it would help to draw attention to the Centre so that in the future parties will be attracted to [resort to arbitration] under the rules of the Centre”.

Since that time, CRCICA has administered a vast majority of cases under its rules and less frequently provides administrative, financial and hearing services to ad hoc proceedings and cases administered under the rules of other arbitral ▶



Two of the first letters exchanged between the Asian-African Legal Consultative Committee (AALCC) and the Egyptian Government to establish the Cairo Centre for International Commercial Arbitration (CRCICA).

institutions. Today, CRCICA is the sole alternative hearing centre of the Court of Arbitration for Sports (CAS) in Africa and has entered into a cooperation agreement with the PCA, whereby cases administered by the PCA can be heard at CRCICA.

A Multinational Governing Body

According to the 1979 Exchanged Letters, following the expiration of a three-year experimental period, CRCICA “will then have its governing body composed of persons representative of the region served by the Centre for promotional purposes”. In practice, it took CRCICA many more years to materialize this visionary direction. Today, 80% of CRCICA’s Board of Trustees are from the Afro-Asian region and the remaining 20% are from Europe – highlighting that, although based in Egypt, 75% of members are non-Egyptian.

The Memorandum annexed to the 1979 Exchanged Letters also suggested the creation of an advisory panel to advise the Director of CRCICA “on the promotional activities of the Centre”. Today, the Advisory Committee of CRCICA plays a much more pivotal role. It is composed from eminent African, Asian and other experts in arbitration, to carry out important functions such as decisions on challenges to arbitrators.

Promoting Arbitration in the Afro-Asian region and assisting existing arbitral institutions

The promotion of commercial arbitration African and West Asian countries is one of CRCICA’s goals as per the provisions of Letters. Very early on, CRCICA achieved this goal through

the organization of major international conferences and seminars and the publication of research serving both the business and legal communities.

By way of example, the Cairo Centre publishes redacted and anonymized extracts from awards rendered under its auspices in regular volumes.

It attracts legal scholars from the Afro-Asian region and beyond through the organization of training programs and workshops in cooperation with organizations such as CIArb. And it has entered into more than 80 cooperation agreements with arbitration institutions and has actively participated in the activities of the International Federation of Commercial Arbitration Institutions (IFCAD) and ICCA.

Finding a permanent home - the Headquarters Agreement of 1987

Pursuant to subsequent ‘exchanged letters’ of 1983 and 1986, CRCICA continued to function as an experimental centre until it was granted the permanent status of an international non-governmental organization endowed with all necessary privileges and immunities, by virtue of a Headquarter Agreement concluded in 1987 between AALCC and Egypt. Such a status, ensuring CRCICA its independent functioning, had already been planned in the 1979 Exchanged Letters.

Tribute is due here to Mr. B. SEN, then Secretary General of AALCC, for implementing this visionary approach to establishing secure regional commercial arbitral institutions. ■