

The UNCITRAL Arbitration Rules and the Settlement of Investment Disputes: The Experience of The CRCICA

**Dr. Mohamed Abdel Raouf
Deputy Director & Secretary-General
Cairo Regional Centre for International
Commercial Arbitration**

I- Introduction

- The UNCITRAL Arbitration Rules were approved by the General Assembly of the United Nations by virtue of Resolution No. 31/98 on December 15, 1976.
- The UNCITRAL Arbitration Rules were issued originally to apply to ad hoc arbitrations. They were, however, adopted, with certain amendments, in many arbitral institutions, like the AAA, Stockholm Arbitration Institute (SCC) and the CRCICA.
- In 2006, thirty years after their adoption, the member States decided to revise the UNCITRAL Arbitration Rules. For this purpose, Six sessions of the UNCITRAL's Working Group II on Arbitration and Conciliation were held and the final version of the amended Rules is expected to be available for adoption by 2010.

Introduction (*cont.*)

- The CRCICA is an independent non-profit **international organization** established since **1979** following the decision of the 19th session of the Asian African Legal Consultative Committee to establish two arbitration centers in Cairo and in Kuala Lumpur.
- Pursuant to the **Headquarters Agreement** concluded with the Egyptian Government in 1987, the CRCICA and its 4 branches enjoy all **privileges and immunities** of independent international organizations in Egypt.
- The CRCICA **applies the UNCITRAL Arbitration Rules** of 1976 with minor modifications, the most recent of which were introduced in June 2007.
- The UNCITRAL Arbitration Rules as applied by the CRCICA were very **efficient** in the settlement of many the CRCICA investment disputes.

II- The CRCICA and the Settlement of Investment Disputes

- A) Investment Cases before the CRCICA
- B) Arbitration Agreements in the CRCICA's Investment Cases
- C) Types of Investment Contracts submitted to the CRCICA
- D) Nature of Investment Disputes submitted to the CRCICA

A) Investment Cases before The CRCICA

- Till 1990, **only four investment cases** were registered before the CRCICA, including two cases relating to hotel management operations, while the other two cases related to oil investments.
- Till the end of 2008, the total number of international cases registered with the CRCICA is **635 cases, including 117 international investment cases** representing 18%.
- Out of the 117 cases, **final arbitral awards** were issued in **97 cases** representing 83%. **4 awards** were challenged before national courts out of which 2 awards were set-aside.
- Out of the 117 cases, the parties agreed on an **amicable settlement** in **6 cases** after the initiation of the arbitral proceedings and before issuing the award. In all 6 cases, an **arbitral award on agreed terms** (recording the said settlements) was issued.
- **20 investment cases are still pending** before the CRCICA.

B) Arbitration Agreements in The CRCICA's Investment Cases

- The CRCICA's Investment cases were filed based on arbitration agreements found in three types of legal documents: **International Investment Treaties (2 cases), State Contracts (44 cases) and Private Investment Contracts (71 cases).**
- The first case filed on the basis of an international investment agreement is Case No. 112/1998 opposing a **Libyan** public company for foreign investment (Claimant) and a **Syrian** ministry (Respondent). A treaty was signed between Libya and Syria on January 21st, 1978 to establish a Libyan-Syrian company for industrial and agricultural investments. The final award was issued on September 29, 1998.
- The second case is Case No. 165/2000 opposing an **Egyptian** company (Claimant) and **Lebanon** (Respondent). The final award was issued on July 4th, 2000.

C) Types of Investment Contracts Submitted to The CRCICA

- Foreign investment disputes submitted to the CRCICA generally arise out of international investment contracts pertaining to **manufacturing**, **natural resources** and **service** sectors.
- The most common form of investment contracts submitted to the CRCICA is **joint venture agreements**.
- Parties to investment contracts submitted to the CRCICA came from the following countries: Saudi-Arabia, U.A.E., Lebanon, Syria, Libya, Spain, France, Italy, United Kingdom, Switzerland, Germany, Belgium, The Netherlands, U.S.A, Kuwait, China and Egypt.

D) Nature of Investment Disputes Submitted to The CRCICA

- Investment disputes submitted to the CRCICA fall within the following categories: **Hotel management operations and renewal disputes**, design, development and contractor disputes in investment projects, **transfer of technology**, purchase of stocks and capital investment, natural resources disputes, **BOT and management disputes**.
- Some disputes arose due to the **interference of public authorities** with the contractual rights of the investor. Others arose from the **changed circumstances**, from **administrative decisions** with respect to the investment. Some disputes arose on **environmental** grounds and one dispute arose out of allegations of **corruption**.

III- The Impact of using The UNCITRAL Rules In the Settlement of Investment Disputes

- A) Wider Scope of Party Autonomy
- B) More Flexibility in the Conduct of the Arbitral Proceedings
- C) More respect of the Parties' Legitimate Expectations
- D) More Favorable Climate for Amicable Settlements

A) Wider Scope of Party Autonomy

- The Scope of application of the Party autonomy principle under the UNCITRAL Arbitration Rules is the **widest** compared to other institutional arbitration rules.
- According to Articles 5, 6 and 7 of the UNCITRAL Rules, the parties have **full liberty to appoint their arbitrators**. There are **no restrictions or limitations pertaining to the nationality of party-appointed arbitrators**. (Except for what is included in Article 6/4 regarding the **advisability** of appointing the Chairman or the sole arbitrator of a nationality other than the nationalities of the parties.)
- The Parties' choice may be challenged **only** when made in conflict with the arbitration agreement or the requirements provided for by the applicable law.

B) More Flexibility in the Conduct of Arbitral Proceedings

- Under Article 1 of the UNCITRAL Arbitration Rules, the parties are entitled to **modify such rules according to their wish**. The parties are, thus, free to dictate the procedures to be followed.
- Pursuant to Article 15 of the same Rules, the arbitral tribunal is granted the **widest possible scope of liberty to conduct the arbitration in such manner as it considers appropriate** without any restriction or limitation except the mandatory rules of the applicable law and provided that the parties are treated with equality and that *“at any stage of the proceedings each party is given a full opportunity of presenting his case”*.

C) More Respect of Parties' Legitimate Expectations

- Under Article 33 of the UNCITRAL Arbitration Rules, the arbitral tribunal shall apply the law **designated by the parties** as applicable to the substance of the dispute.
- Failing such designation by the parties, the arbitral tribunal shall apply the **law** determined by the **conflict of laws rules**, which it considers applicable. In all cases, the arbitral tribunal shall decide **in accordance with the terms of the contract** and shall take into account the usages of the trade applicable to the transaction.
- Under the above provision, In the absence of an agreement between the parties, the parties legitimately expect that **a national law** is to be applied to the merits of their dispute. According to the CRCICA's practice, there were **no shocking surprises** in this respect.

D) More Favorable Climate for Amicable Settlements

- The wider scope of party autonomy, the flexibility in the conduct of the arbitral proceedings and the respect of the parties' legitimate expectations, as guaranteed under the UNCITRAL Arbitration Rules, contribute to the creation of a sense of **more understanding** between the parties and to the existence of **less adversarial environment**, leading to a more favorable climate for amicable settlements, agreed upon terms and awards by consent.
- According to the CRCICA's experience, almost **6%** of the investment cases filed under its Rules were **amicably settled** between the parties after the initiation of the arbitral proceedings and before the award. Six awards were issued based on agreed upon terms and, in some cases, the parties **resumed their business relationship** after the award. This is definitely more appropriate to the spirit and the objectives of long term investment relationships.

THANK YOU

www.crcica.org.eg