SETTLEMENT OF INTERNATIONAL TRADE DISPUTES THROUGH LITIGATION AND ARBITRATION: A COMPARATIVE EVALUATION

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I. SETTLEMENT OF INTERNATIONAL TRADE DISPUTES: INTRODUCTORY REMARKS

In contemporary international trade and commerce an individual, a private firm or an incorporated firm – national or multi-national – extensively participates in transnational commercial activities. A State influenced by the philosophy of a welfare state is also not an exception. Either directly or through its agencies or instrument, it frequently undertakes commercial activities having transnational effects. Such a transnational commercial transaction may be either with another sovereign State, its agencies or instrument or a national, natural, or juristic person of another state.

During the past few decades international trade and commerce results in internationalisation of the market. Coupled with the rapid increase in international commerce this, self evidently, induces greater potentialities for generating international trade disputes.

The international business community, like any other trader, desires to have a prompt, economical and fair conflict-resolution mechanism. Conflict-resolution devices available to the parties are: negotiation, conciliation, mediation, litigation and arbitration.

II LITIGATION IN NATIONAL COURTS OR INTERNATIONAL ARBITRATION: A QUESTION OF CHOICE

Direct negotiation and conciliation may lead to an agreement and, therefore, the conflict may thereby be resolved. However, when negotiation and conciliation between the parties to an international trade dispute fail intervention of a disinterested and impartial third party becomes inevitable for resolution of the dispute. In such situation the parties have two choices: to proceed either to litigation or arbitration.

2.01. Litigation: Perspectives and Problems

In the context of international trade disputes, unlike national trade disputes, there is no international judicial forum to process and adjudicate upon international commercial disputes. Therefore, to resolve their dispute, parties to an international dispute will have either to resort to a national court or to international arbitration.

Parties to an international contract may prefer national courts for adjudication of international trade disputes because of more settled procedures in the courts with power to compel attendance of witnesses and the production of documents, strict rules of evidence and the power to give binding decisions.

A party to an international commercial dispute, however, may be reluctant to resort to litigation due to a number of discouraging factors and a few undesirable results of the conventional litigation process. The more prominent are outlined below.

2.01.1 Opportunity for forum-shopping

A claimant, who is likely to be unfamiliar with the substantive as well as the procedural rules of the courts of the defendant's home country, place of business or residence, may be reluctant to have his claims adjudicated before a judge in a remote country obliged to follow rules of procedure unfamiliar to the claimant and alien to his own national legal system.

Further, international trade disputes which involve one or more foreign parties and national legal systems, may exhibit equally effective and justifiable 'jurisdictional links' with more than one state. In the absence of internationally accepted rules governing the jurisdiction of national courts, a given international trade dispute, which falls within the competency of the courts of more than one country, obviously allows forum shopping. Assuming that jurisdictional links are decisively ascertained, the courts of most of the countries are open to disputes involving one or more foreign parties and legal systems. The multi-jurisdictional character of international trade disputes adds a distinct dimension and complexity to their judicial settlement. It requires knowledge of the legal systems of more than one country, of differing bases of jurisdiction, and of procedures for determination of choice of law, proof of foreign law and enforcement of decisions. Because of differences in the substantive and procedural laws, and the varied policies and perceptions of national courts to the resolution of international trade disputes, each party to a dispute will obviously be tempted to identify relative advantages and disadvantages in the selection of one of the available judicial forums for conflict-resolution and will accordingly opt for one of the most favourable forums, leading to the possibility of simultaneous actions before the courts of two or more countries in respect of the same dispute.

2.01.2 Inordinate delay, exorbitant costs and difficulty in enforcement of judgments
Even where litigation is confined to a single jurisdiction, the involvement of nationals of different jurisdictions tends to create a few notable procedural complications and pragmatic problems, such as inordinate delay in disposal of cases; and difficulty in enforcement of judgments and sovereign immunity. These may divert the time and resources of the litigant from the central issues involved in the disputes, and thus may make the conventional judicial adjudication of international commercial disputes less satisfactory and attractive.

Inordinate delay in disposal of international commercial disputes and exorbitant litigation costs are further contributed to by court proceedings conducted in a country other than that of the claimant with concomitant expenses required for travel, service of process and taking of evidence in foreign countries. Procedural variance between legal systems and the need to comply in transnational litigation further contribute delay in conflict resolution. Further, a judgment delivered by a national court because of the principle of territorial sovereignty, does not have its own force. Accordingly it does not receive automatic recognition and enforcement in another forum. Enforcement of a foreign judgment may be resisted on the grounds of lack of jurisdiction of the foreign arbitral tribunal, denial of procedural due process and contravention of the public policy of the forum in which enforcement is sought. Invoking a variety of defences by a recalcitrant party not only creates difficulty and causes unreasonable delay, but also provides another opportunity to prolong, rather than to resolve, the underlying international commercial dispute.

2.01.3. Sovereign immunity and act of state
The increasing involvement of a state, itself or through its agencies or instrumentalities, in commercial activities leads to some practical problems. One such significant problem is that of sovereign immunity and Act of State doctrine. If one of the parties to the contract is a state, or a state entity or instrumentality, the private party may be reluctant to submit its dispute to the national courts of the state party. It may be afraid of encountering judges who are predisposed to their law with which they are familiar. The state or its instrumentality,on the other hand, may not be willing to submit itself to the national courts of the private party by relying upon the doctrine of sovereign immunity premised on the principle of the independence, the equality, and the dignity of states and the consequential maxim *par in parem non habet imperium.*

Though the state immunity rules in vogue accord immunity to a state for its governmental or public or *acta jure imperii,* and not to its commercial or private or *acta jure gestionis,* national immunity acts do not provide uniform criteria to differentiate acta jure gestionis from *acta jure imperii*[1]. Different approaches and perceptions of national legislations and domestic courts to *acta jure imperii* and *acta jure gestionis* and consequential uncertain

implications provide additional opportunities to parties for forum shopping and legal manoeuvering. Similarly, the Act of State doctrine, which precludes adjudication of disputes of a foreign state undertaken in its sovereign capacity enables national courts to peep into sovereign or non-sovereign acts of a foreign state, offering unclear distinction between activities of a governmental nature and of a commercial character. It, therefore, affords substantial opportunity for delaying tactics even though such a doctrine, in the ultimate analysis, may be inapplicable.

2.02. International Commercial Arbitration: Perspectives and Problems

Such situations have not only dissatisfied the international business community but also made parties reluctant to go to a court for adjudication of an international commercial dispute. They began to concentrate on a better alternative, third party, conflict-resolution mechanism. Influenced by the relative efficacy and cheapness of arbitration, as compared to litigation in national courts, parties have increasingly turned to international commercial arbitration as an alternative conflict-resolution device.

International commercial arbitration,[2] which is a consensual conflict-resolution mechanism, *inter alia*, offering informal, cheaper and quicker settlement of international trade disputes, minimises the opportunity for forum shopping; ensures easy and effective enforcement of arbitral awards and eliminates the relevance of the doctrine of sovereign immunity from the arbitral process.

The practice in vogue of incorporating arbitration clauses, or choice of law clauses, in international contracts minimises uncertainty of conflicting bases of jurisdiction in the settlement of international trade disputes; and consequential forum-shopping. Absence of opportunity for 'forum-shopping' coupled with compliance with well-defined rules regulating pre-hearing and hearing proceedings, submission of documents to the tribunal, use of expert witnesses, proof of foreign law and other necessary preliminary issues ultimately make arbitration cheaper and speedier compared to litigation.

International arbitral awards, which are based on consent of the parties to submit their disputes to the agreed arbitral tribunal, generally receive a greater measure of enforcement than judgments rendered by national courts. Enforcement of an arbitral award generally requires the enforcing court only to pass a judgment on whether an award has been properly rendered.

International commercial arbitration, being a consensual adjudicatory mechanism, avoids not only the unduly nationalistic decision-maker but also provides a neutral forum for the settlement of international trade disputes. It, accordingly, does not afford justifiable opportunity to a state, or its instrumentality, which as agreed to arbitration, to avoid its arbitral obligation on the ground that submission to the arbitration either injures

its prestige, causes dishonour or affects its dignity. One of the well-accepted principles in the international arbitral process is that a state by submitting itself to arbitration waives its defence of immunity and thereby is precluded from invoking jurisdictional immunity before the agreed arbitral tribunal. Similarly, the policy considerations underlying the doctrine of Act of State are not applicable to arbitral proceedings.

A comparative evaluation of judicial settlement of international trade disputes in national courts and of international commercial arbitration as a conflict-resolution device for the settlement of international trade disputes, undoubtedly makes the international commercial arbitral process not only preferable to litigation but also acts as a viable substitute for national courts. The effectiveness of international arbitration lies in the fact that it does not associate itself with procedural complications and uncertainties commonly associated with litigation. It gives a very high degree of binding character to agreements to arbitrate commercial disputes and ensures effective and smooth enforcement of the resultant arbitral awards.

Even though the international commercial arbitral process, compared to litigation, is recognised by the international business community as an effective device for the resolution of international commercial disputes, it cannot function effectively without the assistance of national courts and municipal laws. The international arbitral process, unlike the domestic arbitral process which is governed by a single system of law, does not have its own precise legal arbitral framework. Procedural uncertainties (resulting from the absence of a precise legal arbitral framework applicable to the international commercial arbitral process); law applicable (*lex loci situs*, or *lex loci performis* or *lex loci arbitri* or *lex mercatoria* or equitable principles); role and relevance of the plea of sovereign immunity in any action to compel a state or its agencies to the arbitral forum, or in enforcement of the resultant award against a foreign state, are but some of the problems associated with international commercial arbitration.[3]

2 02.1 Determination of the applicable law

International commercial arbitration, unlike a national court, does not derive its authority from a state but from an agreement to arbitrate. It is, therefore, difficult in international commercial arbitration to ascertain the applicable law, substantive and procedural. The rule prominent in a national legal system that the conflict of laws rules of the forum determine the applicable law may not be of a great help in international commercial arbitration. Could an international arbitrator, if he chooses the applicable law through a private international law rule, apply the conflict of laws rules? What conflict of laws system could he apply? Has he to take into account *lex loci situs*, or *lex loci performis*, or *lex loci arbitri* or any other system of law to ascertain the conflict of law rules to ascertain the applicable law?

Or could there be any other methods for determining the applicable substantive rules other than of applying a particular system of conflict of law? Are a few significant issues relating to the problem of law applicable to international commercial arbitration.[4]

The problem becomes more acute and pertinent when the place of arbitration bears no connection with the parties or the subject of the dispute. In such a situation another significant question as to the authority of an arbitral tribunal to decide the question of applicable law on the ground of a non-national system of law, namely, *lex mercatoria*, which is devoid of precision and is still in the evolutionary stage, emerges. Further, even if these issues are settled and an arbitral tribunal decides to ascertain the law applicable to the transnational disputes before it, it may find it difficult as the members who belong to different nations and have different legal training and traditions, may not be unanimous on the conflict of law rules that should be applied.[5] That difficulty may further be compounded by the unsettled state of conflict of laws rules in many legal systems.[6]

It is generally said that arbitration, being an autonomous process, recognises autonomy of the parties to select, through the arbitration clause, the law applicable to their mutual contractual rights and obligations. But it is not clear as to whether such an autonomy is unrestricted, enabling the parties to select any law unconnected either with the subject matter or the parties to the contract. It is generally believed that choice of law by the parties should be legal, bona-fide and not contrary to public policy of the forum which applies the selected choice of law rules. Even in this situation, a set of questions worth noting emerges. Does an arbitrator have authority to test the autonomy of the parties and thereby the propriety of the law selected by the parties? If yes, should he rely upon the conflict of laws system: and of which party? Or should he recognise that freedom without relying on any conflict of laws rule? None of these approaches solves the problems satisfactorily from the perspective of either party. The problem is not resolved even if the parties to an arbitration have not selected the applicable law. In that situation the arbitrator has to make a search for the underlying inclination of the parties: or to determine an applicable law which he deems appropriate. Keeping in view the varied national laws and conflict of law rules of different states connected with the issue before the arbitrator, it is not easy for the arbitrator to rely either on national or private international law rules of either of the parties; or international conflict of laws system; or *lex mercatoria*. Resort to either of these approaches simply resurfaces the problems associated with determination of applicable law relying upon conflict of law rules.

However, in the context of international commercial arbitration, a view has been pursued, though unsettled but gaining increasing support, that an international arbitral tribunal, unlike a national court, has no situs and

it is, therefore, not bound to follow the conflict of law rules of the arbitral forum.[7] A few international conventions and rules of arbitration also give almost complete freedom to parties to choose the applicable law in the absence of any choice of laws rules.[8]

2.02.2. Sovereign immunity and international commercial arbitration

The involvement of a state in trade and commerce having transnational effects also adds a peculiar dimension to the international arbitral process and raises a number of pertinent issues. One such issue is the plea of sovereign immunity. The notion of sovereign immunity connotes that sovereign state is not subject to a suit in its own courts, or in the courts of other nations, unless it consents. However, most of the states doubting the propriety of the maxim *par in parem non habet imperium* in the extended commercial activities of a state and believing in the *rule of law* and ideals of justice, do accept the restrictive theory of sovereign immunity premised on the distinction between public or governmental acts (*acta jure imperii*) and private or commercial acts (*acta jure gestionis*) by according immunity only to the former. Almost all the national, regional and international instruments dealing with sovereign immunity recognise commercial activity of a state or its instrumentality as an exception to the doctrine.[9]

Commentators generally agree that the plea of sovereign immunity is not applicable in the international commercial arbitral process as the agreed arbitral tribunal, which is a consensual forum applying *lex consensualis* or *lex mercatoria*, cannot justifiably be linked with any state authority. Therefore the appearance of a state before an arbitral tribunal does not either amount to violation of equality or offend the dignity of that state.[10]

It is unnecessary to mention that the view-point that a foreign state, which has entered into a valid arbitration agreement with a private party, cannot invoke the plea of sovereign immunity before an agreed arbitral tribunal to bar its jurisdiction and an arbitral tribunal is not bound to rely upon the prevailing rules of immunity – international as well as national – to adjudicate the claim of sovereign immunity, goes well with the rationale and *raison d'être* of conflict-resolution through arbitration and with fundamental notions of international arbitral process. Such a line of argument ostensibly, debars a state or its entity from pleading immunity from the international arbitral process to avoid its arbitral obligations according to its discretionary approval.

A closer examination of regional as well as international instruments dealing with state immunity and national immunity acts of the European, American and Commonwealth countries also reveals that submission of a foreign state to an agreed arbitral tribunal, through an arbitration agreement between it and a private party, amounts to an implicit waiver ,of state immunity and therefore the state cannot invoke the plea of sovereign immunity.[11]

2.02.3 Enforcement of arbitral awards

Another basic problem in the area of settlement of transnational trade disputes, through arbitration, is recognition and enforcement of arbitral awards. Legal systems of almost all countries reveal wide disparities and remarkable differences in law and practice regarding recognition and enforcement of foreign arbitral awards. The difference is particularly pertinent in the area of conditions to be satisfied; grounds for refusal of enforcement; nature of remedies available; and methods of recognition and enforcement to be adopted. These differences which are obvious consequences of the wide variety of theoretical and political approaches adopted in national jurisdictions, obviously lead to non-uniform and unpredictable results and tempt parties to international trade to forum shopping for enforcement of foreign arbitral awards.

The sole reliance on the diverse national arbitration laws of the place of arbitration and the place where enforcement of arbitral award is sought; lack of familiarity with such laws; non-availability and inadequacy of the assets of the reluctant party in a country (or countries) to meet the award; attitude of the prospective court, international or parochial, to the recognition and enforcement of the award have not only hampered the administration of arbitral justice but have also proved detrimental to the development of international commercial arbitration in particular and international trade in general.

However, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration on June 10, 1958[12] attempts to ensure effective and smooth enforcement of foreign commercial awards. The Convention, *inter alia*, stipulates procedures for seeking enforcement, enumerates restrictive and exclusive grounds for such enforcement and imposes *onus probandi* on the recalcitrant party to prove existence of either of the grounds justifying refusal of recognition and enforcement of an award.

The New York Convention has not only acquired the status of a principal international instrument in the field of recognition and enforcement of foreign arbitral awards but has also greatly influenced regional conventions and national laws. Almost all the states adhering to the Convention have implemented it by specific legislation, more or less modelled on the provisions of the Convention.

The Convention, however, exhibits a few prominent practical impediments and weaknesses. It recognises two reservations, namely, reciprocity and commercial. The latter gives way to a certain degree of latitude to national laws by allowing them to restrict the application of the Convention to awards made in a contracting state and to a difference which is considered commercial under their *lex fori*. The commercial reservation, which is interpreted differently by national courts, has unfortunately not only surrendered the Convention to the national laws

but also, to some extent, diluted efficacy of the Convention as an international instrument in the area of recognition and enforcement of foreign arbitral awards. Similarly, a set of problems has emerged out of the interpretation of some of the grounds enumerated in the Convention for refusal of enforcement of an award. They are: determination of arbitral procedure; determination of the binding character of an arbitral award; non-arbitrability of the subject-matter and violation of public policy. The Convention leaves doubts as to the extent of parties autonomy in selecting rules of arbitral procedure and the rule of *lex loci arbitri* in determining arbitral procedural irregularity. It also enables national courts to take different approaches to the question as to the 'moment' at which an award can be considered to have become 'binding' for enforcement purposes.

A few courts have taken the position that 'binding force' needs to be determined according to the law applicable to the award[13] while others have felt that it should be determined in an autonomous manna independent of the applicable law.[14] Both approaches can be justified on equally compelling grounds.[15] Similarly, *suo moto* or *suo sponte* refusal of recognition and enforcement of a foreign award by an enforcing court on unspecified and uncertain grounds of non-arbitrability of subject-matter, and violation of public policy of the forum has also created some noticeable problems. These grounds have not only widened discretion of the enforcing courts in refusing enforcement of awards but also led to setting up non-uniform standards in enforcement of foreign arbitral awards. National courts, however, with a view to minimising non-uniformities and uncertainties, have made distinction between domestic or *ordre public internee* and international or *ordre public externe* to apply different standards of public policy to the purely domestic cases and the cases involving transnational effects and to adopt a somewhat liberal approach in the international context of the cases involving a foreign element. Further, the Convention does not provide grounds for setting aside an award by allowing indirect inclusion in the Convention of the 'domestic grounds' for setting aside of an award.

The Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade and Law (UNCITRAL) in 1985[16] attempts to ameliorate these weaknesses. It not only recognises autonomy of parties in determination of the arbitral procedure but also allows arbitral tribunals, in the absence of stipulation of arbitral procedure, to follow appropriate procedure ensuring equal treatment to the parties and allowing every party a full opportunity of presenting its case. The Model law, in addition to the exclusion of the grounds for refusal of recognition and enforcement of an arbitral award, also enumerates exclusive grounds for setting aside an award thus, eliminating unwarranted indirect inclusion in the Model Law of the domestic grounds for setting aside an award. It is important, however, to emphasise here that the Model Law becomes applicable and operative

only when a state's national system adopts it as a law governing arbitration. It is worth noting that states' response to the Model Law is encouraging[17].

III. CONCLUSION

This examination of the relative perspectives and problems of the settlement of international trade disputes through courts and arbitration, reveals that international commercial arbitration offers a viable ad effective conflict-resolution device for the judicial settlement of international trade disputes. It affords an extremely useful means of minimising the opportunity for some of the more unattractive kinds of procedural manoeuvering frequently met in judicial settlement of international trade disputes.

Some of the prominent discouraging factors associated with a few pertinent problems relating to international commercial arbitration, such as the applicable law, availability to a state or its instrumentality of a plea of sovereign immunity, and recognition and enforcement of arbitral awards rendered in international arbitral process are further, minimised by legal instruments-national, regional and international. Fortunately, international arbitral tribunals, national courts and *opinio juris*, with a view to strengthening international commercial arbitration as a conflict-resolution mechanism, have been showing their inclination to the spirit reflected in these instruments.

The international business community, realising the advantages of international commercial arbitration in the settlement of disputes arising out of international commercial agreements, is increasingly resorting to arbitration. National arbitration acts, particularly modelled on, or influenced by, the recent regional and international instruments, and domestic courts through playing a supportive role demonstrate further support for international commercial arbitration.

ABBREVIATIONS (used in footnotes of this paper)

A.I.R. – All India Reporter.
Cal. West. Int'l.L.J. – California Western International Law Journal. Hastings Int'l & Comp L.J. – Hastings International and comparative Law Journal.
I.C.L.Q. – International and Comparative Law Quarterly.
I.L.M. – International Legal Materials.
Jr. Int'l. Arb. – Journal of International Arbitration.
Philippine Int'l. L.J. – Philippine International Law Journal.
Vand. J. Transnat'l. L. – Vanderbilt Journal of Transnational law.
Yr. B. of Com.Arb. – Yearbook of Commercial Arbitration.

FOOTNOTES

1 Generally see, United Nations, *Materials on Jurisdictional Immunities of States and their Property* (ST/Leg/Ser.8/20. 1980) (Hereinafter referred to as *UN Materials*).

2 International commercial arbitration, which has no sharply defined content, may be

described as a third party private adjudication of commercial disputes with international aspects or a foreign element, based on agreement between two (or more) parties to such a transnational commercial transaction, who have agreed to settle disputes, present or future, arising out of such a transaction through arbitration and to abide by the decision of the agreed arbitral tribunal.

3 See, Katona, Problems of Arbitration in International Trade, 23 *Acta Juridica* 57 (1981); Rhodes, The Pitfalls of International Commercial Arbitration, 17 *Vand. J.Transnat'l.L.* 19 (1984) and Ouchi, Problems of Competence of International Commercial Arbitral Tribunals, 3 *Philippine Int'l.L.J.* 16 (1964).

4 See generally, Lando, The Lex Mercatoria in International Commercial Arbitration, 34, *I.C.L.Q.* 747 (1985); Pars, The *Lex loci arbitri* and International Commercial Arbitration, 32 *I.C.L.Q* 21 (1983); Dani Lowicz, The Choioe of Applicable Law in International Arbitration, 9 *Hastings Int'l & Comp.L.R.* 235 (1986).

5 See generally, Carlo Croff, The Applicable Law in an International Commercial Arbitration: Is it Still a Conflict of Laws Problem? 6 *Int Law* 613 (1982); Peter S. Smedresman, Conflict of Laws in International Commercial Arbitration: A Survey of Recent Developments, 7 *Col West. Int'l L.J* 263 (1977); Julian D. M. Lew, *Applicable Law in International Commercial Arbitration: A Study in Commercial Arbitration Awards* (Oceana, Dobbs Ferry, 1978) and Redfern & Hunter, *Law and Practice of International Commercial Arbitration* (Sweet & Maxwell, 1986) ch. 2.

6 For example, see Restatement (Second) of Conflict of Laws $$ 8-10 (1971) of the USA.

7 See, *Sapphire International Petroleum Ltd v. National Iranian Oil Co. 13 I.C.L.Q.* 1011 (1964). Also see, 5 *Yr. B. Com. Arb.* 168 (1980).

8 For example see, the European Convention on International Commercial Arbitration, 1961 (art vii); UNCITRAL Arbitration Rules (art. 33) and UNCITRAL Model Law on International Commercial Arbitration, 1985 art. 28 (2)].

9 See generally, *UN materials supra* n.1. Also see Inter-American Draft Convention in Jurisdictional Immunity of States, 22 I.L.M. 292 (1983) (art.5) and International Law Commission, Draft Articles on Jurisdictional Immunities of States and their Property, 26 I.L.M. 625 (1987) (art. 11).

10 Generally see, *Soleh Boneh International Ltd, and Water Resources Development International v. Republic of Uganda and National Housing and Construction Corporation of Uganda,* 1 *Yr. B of Com.Arb.* 133-135 91976); *SPP (Middle East) and Southern Pacific Properties Ltd. Hong Kong v. Arab Republic of Egypt and EGOTH, 22, I.L.M. 752-784 (1983) and Westland Helicopter Ltd. v. Arab Organisation for Industrialisation United Arab Emirates, Kingdom of Saudi Arabia, State of Qatar, Arab Republic of Egypt and British Helicopter Co.,* 23 *I.L.M.* 1071 (1984). Also see, J. Gillis Wetter, Pleas of Sovereign Immunity and Act of Sovereignty before International Arbitral Tribunals, 2 *Jr. Int'l Arb.* 7 (1985) and Stockholm Chamber of Commerce, *Arbitration in Sweden,* (Stockholm, 1984) p. 14.

11 See, ILC Draft Articles on Jurisdictional Immunities of States, 1986 (art. 20); European Convention on State Immunity, 1972 [art. 12(1)]; ILA Draft Convention on State Immunity, 1983 (art. III); the State Immunity Act, 1978 [s. 9(1)]; the Singapore State Immunity Act, 1979 (s. 11); the South African Foreign States Immunities Act, 1981 (s. 10); the Pakistan State Immunity Ordinance, 1981 (s. 10) the Australian Foreign State Immunity Act, 1985 (s. 17). Also see, *UN Materials,* supra n. 1.

12 For text see E/Conf. 26/8/Rev. 1. UN/DOC. E/Conf. 26/9/Rev 1. For an excellent commentary, see Van den Berg, *The New York Arbitration Convention of 1985: Towards Uniform Judicial Interpretation* (Asser/Kluwer, 1981).

13 For example see, *Animalfeeds International Corp. v. S.A.A. Becker et Cie, 2 Yr. B. of Com. Arb.* 244 (1977); *Bobbie Brooks Inc. v. Lanificio Walter Berasi S.A.S.,* 44 *Yr. B. of Com. Arb.* 289 (1979); *Fertilizer Corporation of India v. IDI Management Inc.,* 7 *Yr. B. of Com. Arb.* 363 91982) and *Oil and Natural Gas Commission v. Western Company of North America,* A.I.R. 1987 S.C. 674.

14 For example see, *La Navier S.A. v. Italgrani, 4 Yr. B. of Com. Arb.* 277 (1979) and

Gotaverken v. GNMTC, 4 *Yr.B.of Com.Arb.* 237 (1979).

15 However, the prevailing judicial pronouncements and opinions of jurists prefer the first approach.

16 For test see, 24 *I.L.M.* 1302 (1985).

17 For example see, Canadian Arbitration Law, [26 *I.L.M.* 714 (1987)]; Djibouti Arbitration Law [25 *I.L.M.* 1 (1986)]; Netherlands New Statute on Arbitration of 1986 [26 *I.L.M.* 921 (1987)]; Florida International Arbitration Act, 1986 [26 *I.L.M.* 949 (1987)]; Swiss Statute on International Arbitration 1987, [27 *I.L.M.* 37 (198)]; Belgian Statute on Setting Aside of Arbitral Awards, 1985 [25 *I.L.M.* 725 91986)]. For comparative analysis of recent statutes see, the UNCITRAL Model Law and Recent Statues on International Commercial Arbitration, 2 *ICSID Review* No. 2 (1987).

AUSTRALIAN CENTRE FOR INTERNATIONAL COMMERCIAL ARBITRATION

OFFICIAL OPENING OF NEW FACILITIES IN MELBOURNE

On the 14th March 1995, The Hon. Jan Wade, Attorney General – Victoria officially opened new and enlarged hearing rooms and administrative facilities for The Centre at Level 1, 22 William Street, Melbourne. The Opening coincided with an Institute of Arbitrators Australia Council meeting.

The President of ACICA, Mr A.A. de Fina and Directors were pleased to welcome members of the Victorian Supreme and County Courts, the Family Law Court, Councillors of the Institute, senior public servants and Institute members to the function.

The Centre now occupies the whole of the first floor of the building which has been completely refurbished to provide six large hearing rooms , retiring rooms and other facilities of a very high international standard.

The Institute's Headquarters and Victorian Chapter Administration continues to be located at the Centre.