

Upcoming Events

- ◆ SARCO Seminar in Thimpu, 27th June, 2016
- ◆ SARCO Seminar in Kathmandu, 15th August, 2016
- ◆ SARCO Seminar in Karachi, August, 2016
- ◆ 7th Governing Board Meeting in Karachi on 22nd and 23rd September, 2016
- ◆ Side Event for the delegates attending the 19th SAARC Summit in Islamabad, November, 2016
- ◆ SARCO Seminar in Bengaluru, December, 2016



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SAARC

Arbitration Council

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NEWS LETTER

6th Governing Board Meeting

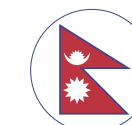
The 6th meeting of the Governing Board of the SAARC Arbitration Council (SARCO) was held from 19th to 20th September, 2015 in Lahore, Pakistan. Delegates from all eight member states were present at the meeting. They were represented by senior government officials including, Chief Judge of Criminal Justice Task Force and the Judicial Advisor of Afghanistan; Deputy Secretary, Law and Justice Division of Bangladesh; Registrar of Companies, Department of Industry, of Bhutan; Director (L&T), Ministry of External Affairs, of India; Deputy Solicitor General of Maldives; Under Secretary, Ministry of Law, of Nepal; Deputy Legislative Advisor, Ministry of Law and Deputy Director (SAARC), Ministry of Foreign Affairs, of Pakistan; Director-General (Legal), Ministry of External Affairs, of Sri Lanka and Director ETF of SAARC Secretariat. The delegate from Nepal, Mr. Dalbahadur Adhikari was elected as the new Chairman of the Governing board of SARCO, as Maldives completed its term. During the meeting, the GB reviewed the activities carried out by SARCO during the year 2015 and the proposed budget for the year 2016. The management letter issued by the auditors for the year 2014 was also reviewed and the meeting commended the secretariat staff for maintaining accounts according to the international standards in a transparent manner. Having discussed matters relating to administration and policy, the Governing Board adopted the final report to be presented to the Programme Committee. The Governing Board members congratulated the newly elected Chairman and thanked the outgoing Chairperson for conducting the Governing Board meetings efficiently during her tenure of office.



Seated (left to right): Ms. Fathimath Haleem (Maldives), Mr. Thusantha Wijemanna, DG SARCO, Mr. Dalbahadur Adhikari, (Chairperson), (Nepal), Dr. V.D.Sharma (India), Ms. L.Savithri, SAARC Secretariat

Standing Row I (Left to right): Mr. Syed Kamal Hossain, (Bangladesh) Mr. Nasrullah Zazai (Afghanistan), Mr. Karma Yeshey (Bhutan), Mr. Raja Naeem Akbar (Pakistan), Mr. Zaman Sangari (Afghanistan), Mr. C.A.H.M Wijeratne (Sri Lanka), Mr. Kamran Taj (Pakistan).

Standing Row II (Secretariat Staff - Left to right): Mr. Hasan Seroosh Akram, Mr. Muhammad Amjad, Mr. Malik Imran Ahmed, Mr. Tahir Bukhari, Mr. Faazaan Mirza.





SARCO Interactions at a Glance

SARCO in Malé

Maldives International Arbitration Centre (MIAC) and SAARC Arbitration Council (SARCO) jointly organized a seminar titled Arbitration and Conciliation- Alternate means for Settlement of Commercial Disputes in SAARC Countries at Male on 12 September 2015. The Attorney General of Maldives Uz. Mohamed Anil, graced as the Chief Guest while Senior Partner at Suood & Anwar Co. Uz. Mohamed Shahdhy was the Special Guest of Honor at the seminar.

Chairperson of MIAC Mrs. Aminath Laila, SARCO Board Member Uz. Fathimath Haleem and Deputy Director (LAW) of SARCO, Mr. Malik Imran Ahmed were also present at the seminar and delivered keynote papers.

In her address, Uz. Fathimath Haleem said that arbitration council like SARCO will facilitate cross border trade and investment in the SAARC region and the need of creating awareness among the business community of methods of Alternate Dispute Resolution. She also said the increasing commercial disputes and delay in dispute resolution process undermine the potential of SAARC to re-emerge as global trade hub. SARCO should focus on credible and efficient settlement mechanisms for commercial disputes to transform this region to a global growth center.

Attorney General of Maldives Uz. Mohamed Anil said that the Alternative Dispute Resolution (ADR) alongside the conventional judicial system is the commencement of new chapter in Maldives. He said that SARCO is an institutional platform where disputes arising from business and trade deals can be dealt with care, impartiality and professionalism. He said that ADR culture of settling disputes through mediation, arbitration and conciliation in Maldives can be a remarkable catalyst in boosting trade and commerce. He also said that trust and confidence over ADR could make it more popular and effective in the region.

After the seminar MIAC entered into a Memorandum of Understanding (MOU)



with SARCO to cooperate with each other in achieving their institutional objectives. Chairperson of MIAC made the concluding remarks on the occasion.

Study Visit to Kuala Lumpur Regional Centre for Arbitration (KLRCA)



Mr. Malik Imran Ahmed, Deputy Director (Law) and Mr. Faazaan Mirza, Legal Research Assistant of SARCO, made a study visit to the KLRCA on 27th November 2015. They were welcomed by Ms. Alia Abdullah, the Head of Business Development in KLRCA. They also met, Ms. Smrithi Ramesh, International Case Counsel and Ms. Rammit Kaur Charan Singh, Head of Legal Services, at KLRCA. The main objective of this study visit was to discuss and exchange views with regard to the problems faced by the parties in settling disputes from the region. Discussions were conducted in a candid and professional manner. At the outset, two short presentations on the two centre were made by Ms. Smrithi Ramesh, and Mr. Imran Ahmad respectively.

At the request of SARCO, KLRCA explained how they overcame the preliminary difficulties when setting up KLRCA. The development of the centre, through improvement of infrastructure and human resource was also considered. Similarity of approach in upgrading the rules of procedure was found. The parties noted that SARCO has updated its Rules of Arbitration and is in the process on updating its Rules of Conciliation, in keeping with the development taking place internationally. The business environment of Malaysia and the ASEAN and the method of promoting Arbitration came under discussion of the parties. SARCO may consider in the future, to make available its Rules of Procedure, in the official languages of SAARC member states, as done by KLRCA.

SARCO signs a MoU with BIAC & DCCI



SAARC Arbitration Council (SARCO) in collaboration with Bangladesh International Arbitration Centre (BIAC) and Dhaka Chamber of Commerce & Industry (DCCI) organized a seminar titled The Role of SARCO as an arbitration Centre in the Region on February 27, 2016 at the DCCI auditorium. The key speakers of the event were; Minister of Law, Justice and Parliamentary Affairs Anisul Haq, Chief Executive Officer BIAC, Mr. Muhammad A (Rumee) Ali, Director General SARCO, Mr. Thusantha Wijemanna, President DCCI, Mr. Hossain Khaled and Former Attorney General Barrister, Mr. Fida M. Kamal. Speakers stressed that increase in trade and investment disputes highlights the need for quick disposal of the pending lawsuits to bringing dynamism back into trade and business. A quick and cost-effective dispute resolution system is the central prerequisite of trade and investment to flourish. This is only possible through Alternative Dispute Resolution (ADR) methods that include arbitration and mediation. It was also suggested that SARCO should emphasize on the efficient settlement of these disputes that can eventually transform this region into an ideal growth Centre. They urged that business community should come forward to execute the ADR mechanism to resolve these disputes.

Two Memoranda of Understanding (MOUs) were endorsed and executed between SARCO and BIAC and SARCO and DCCI. The salient feature of the MOU involved the collaborations to resolve the commercial, trade and investment dispute in South Asia through ADR methods.



Method of Alternative Dispute Resolution in the present day world, and the Role of SARCO

place over the years in arbitral practice.

The SAARC Arbitration Council will resolve the disputes and is competent to settle the disputes between the parties to the arbitration agreement which includes individual firm, company, Government, government organization or Government undertaking. The disputes to be settled by the Regional Forum may involve private international law which can be decided by the panel of arbitrators of the SAARCO and Jurist of the SAARC Countries.

In article 36(2) of the SAARC arbitration Rules it is provided that the Award shall be final and binding on the parties. The parties undertake to carry out the Award without delay. In the ICC Rules also the Award is final and binding upon the parties as from the date of notification. If one of the parties should refuse to carry out the Award voluntarily the others party may obtain enforcement by commencing exequatur proceeding before the national courts of law. That procedure of enforcement of the Award is provided for by the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

The provision for enforcement of Award by the national courts should be simplified in order to complete the proceeding without any further legal battle. The legislative Authority of SAARC Countries may take necessary step towards that direction for enforcement of the Award in their own Jurisdiction. Enforcement proceeding should be dealt with by a specified forum and not by ordinary civil court so that the Award can be enforced within shortest possible time.

To make the SAARC Arbitration council more efficient and effective the parties to the arbitration proceeding before the Regional Forum, their appointed representative and / or lawyer must have a mindset to settle the dispute peacefully and in friendly manner and they must give up the adverse contesting attitude so that the parties can avoid the recourse to the courts proceeding. The parties should obey and comply with the award passed by the Tribunal constituted under the Rules. There must not exist any resentment in the mind of the parties from the beginning, throughout the proceeding and at the conclusion as well. The disputing may lose one million dollars getting defeated by the award, but they may gain ten million dollars if they can continue with the trade or business agreement after settlement through ADR process. Thus investment climate will be created resulting in the free flow of invest-

ment amongst the member countries. If the parties can practice such kind of settlement that will ultimately benefit the peoples of the region. As a results unemployment problems of the SAARC Countries will be solved to a great extent and overall human development will be accelerated. The aim of SAARCO is to promote by all the efforts in their jurisdiction the friendly settlement of all disputes as per the Rules on the basis of the principles of equity and right.



Justice Rtd MD. Awlad Ali
Former Judge of the Supreme Court of Bangladesh.
Member Permanent Court of Arbitration,
at the Hague

SARCO participates in 13th SAARC LAW Conference

13th SAARCLAW Conference was held on 5th March, 2016 at Kathmandu, Nepal. The Legal Community of SAARC region participated in the 13th SAARC LAW Conference and explored the possibility of enhancing connectivity in SAARC through law, justice, good governance and development. The working papers were presented in four thematic committees with following themes: Governance and Human Rights, Corporate and Business law, Justice Administration and Dispute Settlement, Legal Education and Legal Profession. Mr. Thusantha Wijemanna, Director General of SAARC Arbitration Council (SARCO) participated in the event. He addressed the sessions on Justice Administering and Dispute Settlement. In his speech he urged the participating lawyers to request their clients to avail the services of



SAARC Arbitration Council (SARCO) to settle their disputes with their counterparts in SAARC member states. He said that SAARC Arbitration Council (SARCO) is an independent institution in which all SAARC Member States are represented through its panel of arbitrators and conciliators. He said that the main objectives of SARCO are to provide a legal framework within the region for fair and efficient settlement of commercial investment and such other disputes through conciliation and to propagate arbitration and conciliation as effective means of dispute resolution in the region.

SARCO's Achievements

SARCO has successfully concluded three Conciliations matters approximately amounting to USD 500,000 in the first quarter of 2016. These Conciliations matters ranged from market price variance, delivery and carriage and recovery of arrears. The Parties having agreed on the term of settlement executed an agreement to this effect at the end. The matters were referred by the Governments of India and Pakistan. The Conciliation rules of SARCO were used in settling the matters.

Council of Ministers of the SAARC member States met in 2014, and agreed to incorporate SAARC Arbitration Clause in future bi-lateral or Multi-lateral agreements signed between Member States. Hence it was incorporated into the SAARC Framework Agreement for Energy Cooperation signed at the Kathmandu Summit in 2014.

The Member States also agreed to encourage its citizens to include the Model Clause in to their commercial and/or trade agreements because SARCO arbitrators being from the region will understand the nuances which are unique to the region when settling commercial disputes.



Method of Alternative Dispute Resolution in the present day world, and the Role of SARCO

The concept of Arbitration and mediation is nothing new, it was prevalent in the sub-continental jurisdiction. In British India petty civil disputes in the rural areas used to be settled by the elders and headman of the society, salish. In the sub-continent there was common civil Procedure Code where there were provisions for arbitration for settlement of disputes of civil nature. Alternative dispute resolutions in some way or other have been in existence in every society from time immemorial. Arbitration in USA dates back to the eighteen century. In the sub-continent Arbitration Act 1940 was enacted by extracting some provisions from the original Code of Civil Procedure. To meet the needs of the hour Bangladesh has enacted Arbitration Act, 2001 by repealing the Arbitration Act, 1940. In the present Act provisions have been made with regard to the International commercial arbitration, recognition and enforcement of foreign arbitral Award.

There has been global advancement and development of Trade, business and other economic activities. In the present world every nation state have some kind of economic, business and Trade relationship and out of that commercial dispute may arise and it shall arise, that is why Arbitration laws have been enacted in many countries of the world for settlement of disputes peacefully without going to court. Arbitration is deemed to be a faster, more economic and less time consuming to resolve domestic and international dispute.

The ICC Rules are in existence for decades. The ICC recommended all parties wishing to make reference to ICC arbitration in their foreign contracts to use the following standard clause:

All disputes arising in connection with the present contract shall be finally settled under the Rules of conciliation and Arbitration of the International chamber of commerce by one or more arbitrators appointed in accordance with the said rules

In ICC Rules of Arbitration there exist the International Court of Arbitration. The function of the Court is to provide for the settlement of dispute by arbitration of business disputes of an international character. The court does not itself settle the disputes. But the court has some part to play in the matter of appointment of arbitrator. Procedure of arbitration as down in ICC rules are similar in many respect to those of UNCITRAL Arbitration Rules. Having read the IIAM Rules 2009 published by the Indian Institute of Arbitration & Mediation

(IIAM) it is seen that the appointment procedure is a bit different. Rule 13 of the IIAM Rules provides for if three (3) arbitrators are to be appointed each party shall appoint one (1) arbitrator. The two (2) arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the Tribunal. In the aforesaid rules the option is given to the parties to appoint arbitrator of their own choice in case of three members Tribunal. About the Enforceability of award it has been provided in Rule 49 E&F that every Award shall be binding on the parties as the parties undertake to carry out the Award. But if any party fails to comply with the directions made in the award, the award can be executed and enforced under the Code of Civil procedure 1908 in the same manner as if it were a decree of the court. Similar enforcement of Award procedure has been incorporated under section 44 of the Arbitration Act, 2001.

In the Rules of the Singapore International Arbitration Centre (SIAC) which came in to force in April, 2013, in amended form it has been provided that if three arbitrators are to be appointed each party shall nominate one arbitrator. If a party fails to make a nomination within specified time the president of the court of Arbitration shall proceed to appoint the arbitrator on its behalf. In the Administered Arbitration Rules of Hong International Centre the procedure of appointment of arbitrators are a bit dissimilar.

In the Arbitration Act 2001 enacted by Bangladesh it has been provided that in arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall be the chairman of the Arbitral Tribunal. There is no guide line or specific provision for payment of fee or remuneration of the arbitrators nominated by the parties, and parties through their representative agent or lawyer settle the remuneration of the arbitrator by negotiation with the arbitrator. In such provision of nomination or appointment of arbitrators of three members Tribunal there is possibility of any appointed arbitrator being influenced unfairly and unduly. In that case the independent character and impartiality of arbitrator may be impaired.

Bangladesh International Arbitration Centre (BIAC) has framed the Arbitration Rules 2011 in conformity with the Arbitration Act 2001. There also it has provided for, in Rule 7(1) that when the arbitration agreement

provides for three arbitrators, each party shall nominate one arbitrator and the two party nominated arbitrators shall appoint the third arbitrator who shall serve as the presiding arbitrator. But in BIAC rules Arbitrators fee chart has been inserted.

The SAARC Arbitration rules framed by the SAARC Arbitration council is latest and modern one. In framing the rules regard has been paid to the other Arbitration Rules which are concisely mentioned above, and consequently it has its own characteristic which will enable the contracting parties to settle the dispute and difference effectively and within shortest possible time, provided the disputing parties co-operate with the Tribunal constituted under the Rules in taking necessary steps in the arbitration proceeding. Rules of procedure of SAARC Arbitration council are based on the UNCITRAL model law, and the Awards given shall be deemed to be Foreign Awards.

Permanent Court of Arbitration Rules are also based on the 2010 UNCITRAL Arbitration Rules with change made in order to reflect the public international law elements that may arise in disputes involving a state, state controlled entity and / or inter-governmental organization, etc etc. Some other Optional Rules of Permanent Court of Arbitration for arbitrating disputes between two states, for arbitrating disputes between two parties of which only one is a state, for Arbitration involving international organizations and states, for Arbitration between international organization and private parties, for arbitration of dispute relating to Natural Resources and / or the Environment with changes in order to reflect the public international law element which pertains to disputes which may involve states and utilization of natural resources and environmental protection issues, for conciliation of disputes relating to natural Resources and / or the Environment with certain required changes and Optional Rules for Arbitration of disputes relating to outer space activities are also based on the 2010 UNCITRAL Arbitration Rules with certain changes in order to reflect the characteristics of disputes to be resolved by the permanent court of Arbitration.

The UNCITRAL Arbitration Rules as revised in 2010 were adopted by the United Nation Commission on International Trade Law as per resolution of General Assembly of the United Nations and it became the model law and are in use in order to conform to current practices in international Trade and to meet the changes that have taken



SARCO Interactions at a Glance



SARCO strengthens its alliance with LCCI

As a follow-up activity of the Seminar held in Lahore on 9th April, 2015, the officials of SARCO held discussions with LCCI on 1st April, 2016.

At this meeting a Memorandum of understanding (MOU) was signed between the parties to further strengthen the process

LCCI members to avail the services of SAARC Arbitration Council (SARCO) to settle their disputes out of the court with their counterparts in SAARC member states. He said that SAARC Arbitration Council (SARCO) will always be an outstanding alternative dispute resolution forum in the region that would encourage the people of SAARC Member States to make cross border investment and trade.



of arbitration and mediation in the region and to facilitate the activities of each other. While the Director General SAARC Arbitration Council Mr. Thusantha Wijemanna signed on behalf of the Council, the Vice President Lahore Chamber of Commerce and industries Mr. Nasir Saeed signed the MOU on behalf of the Chamber.

The parties highlighted the importance of business community utilizing ADR to settle their disputes. By way of developing close liaison with each other both can add value to present services available to the business community for resolving their disputes through conciliation and arbitration.

The Director General SARCO, Mr. Thusantha Wijemanna in his address, urged the

alternative dispute resolution forum in the region that would encourage and the people of SAARC Member States to make cross border investment and trade.

SARCO collaborates with ICC Sri Lanka

The second seminar for this year was organized by the SAARC Arbitration Council (SARCO) and International Chamber of Commerce Sri Lanka (ICCSL) in Colombo on 4th April, 2016. Dr. Harsha Cabral, Presidents Counsel and a member of the panel of arbitrators of SARCO delivered the key note address. He pointed out that appointment of incompetent retired judges and the over-whelming participation of lawyers in arbitration proceedings as the two main factors that hinder the commercial arbitration in Sri Lanka. He regarded Arbitration as a highly efficient alternative dispute resolution method in resolving commercial disputes which should be encouraged. When litigation case takes over five years to get a ruling, arbitration takes 6-12 months to get an enforceable award, he said. In highlighting the advantages, Dr. Cabral emphasized that one key characteristic in arbitration is that the parties are autonomous. This allows the parties to have the freedom to appoint their own judge, to agree on their own rules and laws. This degree of flexibility is not offered in the court system, stated Dr. Cabral.

The SAARC Arbitration Council (SARCO) Director General Mr. Thusantha Wijemanna elaborated on the necessity of a strong regional arbitration circuit to increase economic integration among the South Asian countries. He stated that one major reason for the low trade between the countries of the region is the lack of faith in the resolution mechanism available. He highlighted the opportunities available for regional trade and investment and compared South Asia with ASEAN regions. Mr. Malik Imran, Deputy Director (SARCO) explained the enforceability of SARCO award through the local judicial system.





Need for a SAARC Centre

From archives



Need for a SAARC Centre

Most of the SAARC countries have opened their doors to foreign investors and have already become quite successful in their endeavor to draw investments. Although the perks offered to investors vary between these countries, some features are common to all, e.g. the liberalization of their economies, deregulation of markets, tax concessions, removal of restrictions on remittance of profits abroad, and making the local currency either fully or partly convertible. Some of these countries have started to revise the legal regimes that apply to commercial matters, while others are contemplating to do so.

Dispute

An important aspect of concern to foreign investors is dispute settlement. The need to have a reliable dispute resolution mechanism outside of the local courts has become one of the fundamental requirements in modern international commerce. A favorite method of dispute settlement universally accepted in international investment and trade is arbitration.

It is considered normal to have an arbitration clause in an international commercial contract. Arbitration has been embraced to such a degree by businessmen, that it would be most unusual to find an international commercial contract that does not provide for arbitration.

Even if no such provision has been made, frequently parties to commercial contracts make submission agreements to arbitrate, after their disputes arise. The importance of arbitration in international commercial transactions cannot therefore be overemphasized. Commercial arbitrations can be broadly categorized into Ad-hoc and Institutional arbitrations, which are two distinct methods of proceeding. In an ad-hoc arbitration, the arbitration clause in the original agreement, provides for arbitration without naming any arbitral institution and without reference to its rules.

Parties to an institutional arbitration however will decide which arbitral institute shall administer their arbitration and the parties must conduct the arbitration, in accordance with the set of rules of the arbitral institute of their choice.

Freedom

Ad-hoc arbitrations are attractive mostly because they give the parties the freedom to fashion the arbitration to meet their wishes and facts of the dispute. There is a preference

amongst the States, when there are disputes between them to adopt an ad-hoc arbitrations, ICSID arbitrations being an exception. But businessmen who select ad-hoc arbitrations can sometimes face numerous difficulties.

Ad-hoc arbitration requires parties to agree and adopt special rules concerning the arbitration, but drafting such rules can be both costly and time consuming. If an adequate legal regime is not available at the seat of arbitration, it makes ad-hoc arbitration even more difficult.

Further in the event of the ad-hoc arbitration clause not providing for a place of arbitration, the support of the local courts may not be obtained, as courts may decline to assume jurisdiction. In addition to these fundamental matters, parties or the tribunal will have to make all arrangements such as arranging a place for the sitting, obtaining services of translators and stenographers and they may also have to appoint a Registrar to attend to the administrative matters. Last, but not the least important is the spirit of cooperation between the parties to an ad-hoc arbitration as long as the goodwill remains and the parties cooperate things progress smoothly but if a party becomes uncooperative, particularly at the outset before appointing the tribunal and agreeing on the rules, it can sabotage the arbitration, and very little can be done to resurrect it.

Arbitration

International legal practitioners who are aware of such difficulties often advise their clients to have the arbitration administered by an institution. Usually it the practice to opt for the arbitral clause recommended by the institution concerned. Although this may not be mandatory it is always safe to do so. Depending on the institution, arbitration will either be fully administered or semi administered. There are many arbitral institutes in existence and among them is the American Arbitrators Association (AAA), International Chamber of Commerce (ICC), International Centre for the Settlement of Investment Disputes (ICSID), London Court of International Arbitration (LCIA), Stockholm Chamber of Commerce (SCC) are some of the best known.

When selecting an arbitration institute, businessmen will be influenced by the institutes set of rules, applying to arbitrations, the cost of having the arbitration administered by the institute, the efficiency of the administration, how well known the institute is, etc. Other advantages of having

an arbitration administered by an institution can be stated as follows:

- Lack of modern arbitration laws regarding appointment of arbitrators and conduct of proceedings in the country where the arbitration is to take place, can be remedied where the set of rules of the arbitral institute is comprehensive and provided for unforeseen situations.
- The Rules of an arbitral institute usually provide for any contingency and they regulate the arbitration from beginning to end and therefore the parties need not depend on the supportive role of the local courts.
- The arbitral institute is usually the channel of communications for all correspondence between the parties and therefore, even if feelings are strained between them, the arbitration will not stalled,
- An arbitration clause free of defects can be adopted by the parties as recommended by the institute
- Trained staff will ensure that the tribunal is appointed, advance payments are made, time limits adhered to, etc.
- The institution will arrange the place where the sitting will take place, provide stenographers and translators and generally see to it that the arbitration proceeds as smoothly as possible.
- Arbitrators fee will be arranged by the institute and this removes a worry that can affect the arbitrators in non-administered arbitrations where sometimes they find that it can be quite difficult to collect their fees.

When one looks at the advantages of institutional arbitration, it is an inescapable fact that they have an edge over ad-hoc arbitrations, yet there are some criticisms that can be directed towards the institutional arbitrations. One of these is the delay which sometimes occurs.

When an institution becomes too bureaucratic or unwieldy, its efficiency suffers and this can affect the speed with which it attends to the organizing of the arbitration. Secondly, some institutions, by imposing too short time limits to file the statements of claim and defense, make it difficult for a respondent to reply, especially in complex arbitrations.

But the biggest criticism of some of the famous arbitral institutes is their administrative costs. Quite often parties, who select

administered arbitrations for all its advantages over the ad-hoc variety, are in for a great shock when confronted with the high costs of some of the well-known institutes. Parties are quite often blissfully unaware of the high costs until the dispute arises and is referred to arbitration, and many do not anticipate such high costs, particularly if the claim is small, some institutes demand a high initial fee to set the arbitration in motion. High administrative fees are demanded by some of these huge arbitral institutes, whose operations have become expensive due to their size.

Select

So the question arises whether it is cost effective for businessmen in developing countries to select such institutions to administer their arbitrations? Is it prudent to select such bodies where the price of the contract itself may be small? Also when the arbitration is to take place in one's own country or a neighboring country, is it necessary to select an institute several thousand miles away, to do the administering? Isn't it time for the SAARC countries to unite and form an arbitral institute, not only to cater to state organizations and businessmen of the region, but also to investors from countries outside the region, who do business in SAARC countries? The author feels that an institute as suggested is timely and with the help and encouragement of SAARC governments, would fill a void which exists in the area of arbitration in this part of the world.

Decision

A good comprehensive set of rules is a pre requisite for any successful arbitral institute, therefore drafting a book of rules should be the top priority, once a decision is taken to establish such an institute. Arrangements should be made to prepare the infrastructure for a Secretariat, which should initially be manned by a small but efficient staff, which can gradually expand depending on the demand. The services of stenographers and translators either on part time or full time basis should be secured. An institute of this nature will need all the assistance and encouragement, the SAARC governments can give, to get the institute off the ground, and the governments can go a little further and direct State commercial institutes to opt for an arbitration clause which will be administered by the proposed centre.

The author feels that such a centre could also embark on a program to train arbitrators

and also that it should maintain a list of competent arbitrators. In the setting up of such a centre if necessary, assistance could be obtained from the Sri Lanka National Arbitration Centre (SLNAC). If the setting up of the centre proves successful, another aspect that can be considered is, to provide for arbitrations between member states in the same way ICSID has done. For this, a different set of Rules, based on a multilateral treaty may become necessary. It is to be hoped that SAARC governments will take decision on this matter and that before long, an arbitral institute in the South Asia region will become a reality.



by Y.J.W. Wijayatilake
President's Counsel, Former Attorney
General of Sri Lanka

Affiliated Institutions

National Centre for Dispute Resolution (NCDR) Pakistan.

Indian Council of Arbitration (ICA)

All India Association of Industry (IAIA)

Sri Lanka National Arbitration Centre (SLNAC)

Maldives International Arbitration Centre (MIAC)

Pakistan Mediation Centre

Bangladesh International Arbitration Centre (BIAC).

Dhaka Chamber of Commerce and Industries (DCCI).

Lahore Chamber of Commerce and Industries (LCCI).

International Chamber of Commerce Sri Lanka (ICC Sri Lanka).

SAARC Development Fund (SDF).

South Asian University (SAU).

Centre of International Investment and Commercial Arbitration (CIICA)

SARCO takes initiative to resolve Cotton Trade disputes in South Asia

SARCO delegation held separate meetings with Cotton Association of India in Mumbai and Karachi Cotton Association, in Pakistan to discuss problems faced by the Cotton industry in South Asia with regard to trade of cotton in the region and beyond. Since there is no other recognized forum in the region, to resolve Cotton-Trade related disputes, the cotton traders of South Asia, today, are forced to refer their disputes to the International Cotton Association (ICA) in UK to be settled under the ICA Rules. The cost of arbitration to resolve the dispute under the ICA procedure is very high therefore, the traders of South Asia find it difficult to bear and as a result either they avoid going for ICA Arbitration or allow it to be decided ex-parte.

SARCO having realized the needs of the cotton trade and its related problems, is considering the possibility of establishing a specialized tribunal for the cotton trade under its auspices by adopting rules of ICA to suit the region's needs. Therefore, SARCO with the collaboration of cotton associations of Pakistan, India and Bangladesh, intends to make a separate panel of Arbitrators who will be experts in cotton related issues and will have know-how of the business environment in South Asia.