

Introduction



Mohamed Abdel Raouf

Director of the Cairo Regional Centre for International Commercial Arbitration (CRCICA)

American abolitionist Wendell Phillips once said ‘Revolutions are not made, they come’. This has recently been the case in several Middle Eastern countries that have been at the forefront of the world’s collective consciousness with inspiring revolutions in Tunisia, Egypt and Libya, ongoing uprisings in Syria and Yemen, as well as anti-government demonstrations in Algeria, Bahrain, Jordan and Morocco.

This introduction provides an overview of the recent developments in arbitration in the Middle East addressing, inter alia, the impact of the ‘Arab Spring’ as well as institutional developments, arbitration caseload and legislative changes.

Role of Middle Eastern arbitration lawyers in political and economic change

The Middle Eastern legal profession, including arbitration lawyers, played an important role in the uprisings of the region and is still contributing as a significant voice of reform that put into action aspirations for a better future featuring political change, economic and social improvement, and better rule of law in terms of society fighting corruption and enforcing human rights.

In Egypt, since the revolution on 25 January 2011, all has been changing in the country hosting the headquarters of the Cairo Regional Centre for International Commercial Arbitration (CRCICA). The former director of CRCICA and the current chairman of its board of trustees, Dr Nabil Elaraby, was made Egypt’s foreign minister in March 2011 within an interim government tasked with implementing democratic and economic reforms. A former diplomat and judge at the International Court of Justice, Dr Elaraby was a member of the ‘council of the wise’ that held meetings with Mubarak’s government prior to his departure to communicate the wishes of the protestors. This informal group included some 30 high-profile Egyptian lawyers, writers, political scientists, a famous businessman and a chemistry laureate. Dr Elaraby has made various dramatic changes in Egypt’s foreign policy and has carved a fresh diplomatic track for Egypt since taking over the ministry. A few months later, his exceptional reputation led to his unanimous election as the secretary general of the League of Arab States.

Middle Eastern practitioners are hoping for the establishment of new, effective and transparent political regimes that encourage business and investment and improve the rule of law in the region.

There is also hope of a change in the way Middle Eastern countries interact with foreign investors. In countries like Libya and Tunisia, the expected crackdown on corruption and increased respect of private law, in addition to their respective natural resources, would attract more foreign investors thus contributing to the development of the region.

Subject to a smooth and healthy transition to new political regimes, Middle Eastern countries could become the investment hotspots of the region. More favourable investment climates in these

countries and sustainable democracies would definitely pave the way for strong new societies and economies.

The Arab Spring and arbitration

Arbitration as a method of dispute resolution has deep historical roots in the Arab Middle East, predating not only the creation of the region’s states as we know them today but also Islam.

Egypt has a strong tradition of arbitration that can only be enhanced by a new political regime with an improved rule of law. Arbitration is widely used as the preferred means of commercial dispute resolution on both domestic and international levels. The enactment of the Egyptian Law No. 27/1994 regarding arbitration in civil and commercial matters, which is based on the UNCITRAL’s Model Law of 1985, represented a substantial leap forward for the system of arbitration in Egypt and in the Arab World at large, where many countries have adopted it as a model for their own legislations.

In Tunisia, the forthcoming amendments to the arbitration legislation and greater independence of the judiciary would contribute to the transformation of the country’s arbitral offering. The recent creation of the Tunisia Forum for Arbitration and Mediation, aiming at increasing the awareness of arbitration in Tunisia, is also a major step towards the development of arbitration practice in this country.

In Libya, the arbitration law was about to be amended when the current turmoil broke out and one hopes that it will be a priority for the new Libyan government among other major legal, social and political reforms. The long awaited Libyan draft arbitration law is based on the Unified Arab Code of Civil Procedure and the UNCITRAL Model Law, as well as Egyptian, Tunisian and, to some extent, French law. Unlike Egypt and Tunisia, Libya is yet to sign the New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards.

With old political regimes gone and judicial reforms underway, arbitration in the Middle East, as well as other alternative dispute resolution mechanisms, are becoming the principal means of settling commercial and investment disputes.

New CRCICA Arbitration Rules

The above developments come at an important time for Middle Eastern arbitral institutions.

Founded in 1979 as an independent non-profit international organisation, and already a major regional arbitration provider, CRCICA now appears to be on a drive to become a major administrator of international cases relating to the Arab world.

As of 1 March 2011, CRCICA has adopted a new set of Arbitration Rules based on the new UNCITRAL Arbitration Rules, as revised in 2010, with minor modifications emanating mainly from CRCICA’s role as an arbitral institution and an appointing authority.

The revision of CRCICA's Arbitration Rules builds on the amendments it has already introduced in 2007 and serves four basic purposes. First, it guarantees collegial decision-making with respect to several vital procedural matters, including the rejection of appointment, as well as the removal and the challenge of arbitrators. Second, it seeks to modernise the Rules and to promote greater efficiency in arbitral proceedings. Third, it fills in a few holes that have become apparent over the years. Finally, it adjusts the original tables of costs to ensure more transparency in the determination of the arbitrators' fees.

The new Rules give expression to CRCICA's long-standing commitment to offer users an arbitral procedure substantially modelled on the UNCITRAL Arbitration Rules and aim at confirming the Centre's position as a leading regional arbitral institution.

The new CRCICA Rules have thus far received a very positive appraisal. They were considered as 'modern and competitive' and an important step forward for CRCICA that will 'serve to increase its regional and international presence' as they 'distinguish the institution from its competitors'.¹

In the new Rules, CRCICA has implemented a significant change in the way it determines arbitrators' fees. Fees under the previous versions of the Rules were regarded as low.² They have been increased to show more respect to the legitimate expectations of parties and arbitrators. The new Rules fix ascending flat-rate fees for disputes under US\$3 million in value and allow the Centre more discretion to determine fees for disputes of greater value, within certain boundaries. CRCICA hopes the new section on costs will help to attract more cases of all sizes, while not depriving the parties of their right to select the best international arbitrators.³

The Arabic version of the new CRCICA Arbitration Rules is neither a replica of the UNCITRAL's Arabic version nor a mere translation of the English version, but rather another original version of the Rules applicable to proceedings conducted in the Arabic language. The time spent by CRCICA in selecting the right legal term, the correct verb and the most commonly used legal Arabic will soon make this version very popular among other Arab-speaking countries.

Increasing arbitration caseload and growing appeal

In spite of the recent events in the region, the arbitration caseload in most Middle Eastern arbitral institutions has grown at a very high rate.

Until the end of September 2011, 54 new arbitration cases were filed under the auspices of CRCICA. In 2010, 66 new CRCICA arbitration cases were filed against 51 cases in 2009, scoring a 35 per cent annual increase. The recent disruption caused to the performance of some contracts has given rise to force majeure and insurance related claims. Mediation and other ADR mechanisms are expected to play an important role in the near future in order to peacefully resolve commercial and investment disputes.

The Dubai International Arbitration Centre (DIAC), which was founded by the Dubai Chamber of Commerce in 2004 as an independent non-profit arbitral institution, has registered 206 new arbitration cases in the first half of 2011, compared to 186 in the first half of last year – an increase of almost 11 per cent that the DIAC attributes to a heightened awareness in the business community of the importance of arbitration as a means of settling commercial disputes.

Qatar International Center of Arbitration (QICA), which was established in 2006 as an arm of the Qatar Chamber of Commerce

and industry, handles between 40 and 50 cases a year and is the arbitration forum named in almost all contracts signed by Qatari government entities.

The GCC Commercial Arbitration Centre located in Bahrain is one of the oldest and most active arbitration centres in the Gulf. Recent years have witnessed a consistent increase in its caseload. It is also well known for the quality of its training programmes, involving tutors and participants from all over the region.

The Middle East's rapidly growing economy already attracted the London Court of International Arbitration (LCIA), which has established the LCIA DIFC Arbitration Centre in Dubai. The Bahrain Chamber for Dispute Resolution (BCDR) has also been established in partnership with the American Arbitration Association (AAA).

Despite the current political climate, Middle Eastern countries still have a growing appeal. Analysts are actually confident about the region's general long-term prospects, claiming it has the potential to become the world's next big economic force.

The International Chamber of Commerce (ICC), which recently launched its new Arbitration Rules (which go into effect on 1 January 2012), has selected Dubai to organise a launch event on the occasion of the IBA Annual Conference (from October to November 2011). This will be followed by local launch events in Cairo, Istanbul and Beirut. The ICC is also considering launching an Arbitration Training Centre in the Middle East to promote arbitration in the region and to provide young practitioners and law students with the chance to strengthen their skills and legal capabilities. Further, the ICC announced the new YAF regional coordination committee members, which included members from Egypt, Iran, UAE and Turkey.

New arbitration leaders

The year 2011 has witnessed the appointment of new directors at CRCICA and DIAC, as well as a new CEO and secretary general at the Doha-based QICA.

The Dubai International Arbitration Centre has appointed former ICSID deputy secretary general Nassib Ziadé as its new Director. Ziadé's 25 years' experience in administering international legal proceedings and well known commitment to ethics and efficiency will ensure that DIAC operates in accordance with the highest international standards.

Minas Khatchadourian, an Egyptian professor and arbitrator, has been appointed as CEO and secretary general of the QICA. One of his top priorities is to publish a new set of rules based on the new 2010 UNCITRAL Rules. QICA's future projects also include updating its roster of arbitrators to include a greater number of international figures, establishing a sort of permanent 'Dispute Adjudication Board (DAB)' adapted to construction contracts disputes (pre-arbitration) and establishing new forms of dispute resolution such as internet domain names and securities arbitration.

It is expected that under these new leaderships, the arbitral institutions in the Middle East will be exploring new horizons.

The Middle Eastern countries and arbitral institutions have started this year of political unrest with new political regimes, new institutional rules, an increasing arbitration caseload and new arbitration leaders. This change brings new opportunities that the Middle Eastern countries are prepared to meet.

It is true that, in a revolution, as in a novel, the most difficult part to invent is the end; but revolutions never go backwards.

Notes

- 1 Caline Mouawad and Rocio Digon, *Modern and Competitive: The New CRCICA Rules*, *the International Journal of Arab Arbitration*, Volume 3, No. 1-2011, pages 17 to 24.
- 2 In their study comparing the costs of various arbitral institutions published in *GAR* in 2010 (www.globalarbitrationreview.com/news/article/28915/arbitration-costs-compared/), Louis Flannery and Benjamin Garel found CRCICA to be by far the most affordable of six worldwide institutions for cases of various values. In that study, CRCICA was compared with the DIAC, HKIAC, ICC, MKAS, SCC and the arbitration courts of the Swiss Chambers of Commerce.
- 3 It is worth noting that one of the two authors of the abovementioned study calls the adoption by the Centre of the new costs schedules a 'smart move' that will not deter current users of the Centre and 'will certainly persuade more arbitrators to accept appointments, which, in the mid and long-term, will help the Centre's image and reputation.' After updating his costs comparisons tables to factor in the changes to CRCICA's costs regime, he concludes that the Centre remains the least expensive institution for smaller disputes (from US\$100,000 to US\$1 million in value) and that it is also the least expensive institution for cases in the US\$500 million to US\$1 billion range, although significantly more expensive than it used to be. He also considers the costs in mid-size cases to be 'in the same range as its most affordable competitors.'

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www.globalarbitrationreview.com/news/article/29328/all-change-cairo/

About the author

Dr Abdel Raouf is the Director of the Cairo Regional Centre for International Commercial Arbitration (CRCICA) and Lecturer on international commercial arbitration at the Institute of International Business Law (IDAI), Cairo University– Paris I Sorbonne. He holds of a PhD in arbitration from the University of Montpellier I, France. Prior to this, he obtained a Diploma, DEA en Droit des Contrats d’Affaires, Montpellier Business Law School, University of Montpellier I, France as well as a Master’s degree in International Business Law (LLM), Institute of International Business Law (IDAI), Cairo University. He has acted as counsel and arbitrator in numerous domestic and international commercial arbitrations under the Rules of CRCICA, UNCITRAL, ICC, AAA, ICSID, DIAC and the GCC. He is the author and co-author of several legal publications on arbitration (in Arabic, English and French). He is a CEDR accredited mediator, an elected officer in the Council of the International Federation of Commercial Arbitration Institutions (IFCAI), an approved tutor at the Chartered Institute of Arbitrators (CI Arb – London), a resource person in International Investment Agreements and Investment Disputes, the United Nations Conference on Trade and Development (UNCTAD), an expert in ISDS, the Organization for Economic Co-operation and Development (OECD), an arbitrator listed in the Panel of Arbitrators of the Court of Arbitration for Sport (CAS), a member of the Editorial Board of the *Journal of Arab Arbitration* issued by the Arab Union of International Arbitration, in addition to being one of the founders of the Egyptian Arbitration Forum (EAF).