THE DRAFT ARBITRATION LAW IN EGYPT

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INTRODUCTION

The effectiveness of clauses providing for arbitration before an international arbitral institution has been the cause of some concern to those entering into contracts with public or private sector entities in Egypt. Such arbitration clauses had been considered by most authorities to be effective in ousting the jurisdiction of the Egyptian Courts (at least until such Courts were applied to for an enforcement order). This position was to a large extent founded on the fact that the Egyptian Code on Civil and Commercial Procedure permits parties to a dispute to submit to arbitration as an alternative to the jurisdiction of the Courts and the fact that Egypt is a signatory state of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958.1

During recent years, however, there have been a number of attempts to challenge international arbitration proceedings and to question the validity of the arbitration clauses themselves. Some of these challenges have relied upon a provision in the Egyptian Code on Civil and Commercial Procedure requiring the arbitration clause or agreement to actually appoint the arbitrators. Arguments have been advanced in order to make this requirement a matter of public policy applicable to international arbitration. Hence notwithstanding the agreement of the parties to submit to a chosen form of arbitration parties have attempted to frustrate this agreement by arguing that certain provisions contained in the domestic law on arbitration are overriding matters of public policy.2

The Egyptian Code on Civil and Commercial Procedure was enacted in 1968 and was prepared exclusively with domestic arbitration in mind. Because of the special considerations relevant to the increasing use of international arbitration a number of countries, primarily in Europe, have enacted legislation to govern specifically this

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1 Egypt acceded to this Convention on 9 March 1959.

2 For a discussion of the problems relating to international arbitration in the Egyptian context, the reader is referred to the following articles and papers: Professor Ahmed S El-Kosheri “Some Particular Aspects of Egyptian Official Attitudes towards International Commercial Arbitration,” L’Egypte Contemporaine, (April 1985); Professor Mohsen Chafik, “L’Arbitrage Commercial International en Droit Egyptien,” paper presented at the Arbitration Conference organised by the Cairo Regional Centre for Commercial Arbitration in January 1986; and Professor Ahmed S El-Kosheri, “Arbitration and the ICC Clauses,” paper presented at the conference organised by MEED (Middle East Economic Digest) and the American Chamber of Commerce in Egypt “Law and Business in Egypt” held in February 1986, Cairo.
type of arbitration. One of the prominent features of these laws is the restricted role of the Courts. Egypt has now prepared a draft of such a law.

The question had been raised as to how the recently established Cairo Regional Arbitration Centre could function effectively if the legal issues referred to above remained unresolved. For this reason the arbitration law was prepared with the aim of, among other things, removing the uncertainties relating to clauses providing for international arbitration, challenges to international arbitration proceedings and the enforceability of awards. The draft of this law will shortly be submitted to the People's Assembly.

Upon the passing of this law Egyptian legislation will for the first time recognise the distinction between domestic and international arbitration. The recognition of international arbitration (see Article 1 of the Draft referred to below) is significant in that it also implies acceptance of the different legal requirements of such arbitration (see the views of Dr G Herrmann quoted on p. 9). The rules contained in the Code of Civil and Commercial Procedure will continue to govern domestic arbitration.

The draft has been based to a large extent on the draft model law on international commercial arbitration adopted by UNCITRAL. To quote from Dr Gerald Herrmann, a member of the UNCITRAL Secretariat, the “UNCITRAL project aims at devising a legal régime specifically geared to international commercial arbitration to which the adopting states would accord priority (as “lex speciales”) over other national provisions of law dealing with arbitration.” Indeed it is the problems surrounding mandatory (or even non-mandatory) provisions of domestic law which were originally drafted for domestic arbitration and which have the potential to interfere with the agreement of the parties to arbitrate, that constitute one of the main reasons for the preparation of the UNCITRAL Model. Such problems include restrictions on submitting disputes to arbitrators, on the appointment of arbitrators, on the ability of the arbitrators to rule on their own jurisdiction and on the procedural rules to be followed. There is then the issue of intervention by the Courts and the problems that often arise at the enforcement stage.

As far as the writer is aware Egypt is the first country in the Arab Middle East to have prepared a draft law based on the UNCITRAL model. In this article this model shall be referred to as the UNCITRAL Model and the Egyptian Draft law referred to as the Egyptian Draft or just the Draft.

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3 The establishment of this Centre was the subject of a resolution of the Asian–African Legal Consultative Committee passed at a meeting in Doha on 23 January 1978. It was finally established pursuant to Presidential Decree No. 104 of 1984. There exists only one other such Centre operating under the auspices of the Asian–African Legal Consultative Committee, this having its seat at Kuala Lumpur. The Cairo Centre is to apply the UNCITRAL rules, as amended, unless the parties agree otherwise.


6 For a full discussion of these considerations see Section I and II of “The UNCITRAL Model Law—its background, salient features and purposes,” op. cit.