



# General Assembly

Distr.: General  
27 May 2008

Original: English

[Start]

## United Nations Commission on International Trade Law

### CASE LAW ON UNCITRAL TEXTS (CLOUT)

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## INTRODUCTION

This compilation of abstracts forms part of the system for collecting and disseminating information on court decisions and arbitral awards relating to Conventions and Model Laws that emanate from the work of the United Nations Commission on International Trade Law (UNCITRAL). The purpose is to facilitate the uniform interpretation of these legal texts by reference to international norms, which are consistent with the international character of the texts, as opposed to strictly domestic legal concepts and tradition. More complete information about the features of the system and its use is provided in the User Guide (A/CN.9/SER.C/GUIDE/1/REV.1). CLOUT documents are available on the UNCITRAL website: (<http://www.uncitral.org/clout/showSearchDocument.do>).

Each CLOUT issue includes a table of contents on the first page that lists the full citations to each case contained in this set of abstracts, along with the individual articles of each text which are interpreted or referred to by the court or arbitral tribunal. The Internet address (URL) of the full text of the decisions in their original language is included, along with Internet addresses of translations in official United Nations language(s), where available, in the heading to each case (please note that references to websites other than official United Nations websites do not constitute an endorsement of that website by the United Nations or by UNCITRAL; furthermore, websites change frequently; all Internet addresses contained in this document are functional as of the date of submission of this document). Abstracts on cases interpreting the UNCITRAL Model Arbitration Law include keyword references which are consistent with those contained in the Thesaurus on the UNCITRAL Model Law on International Commercial Arbitration, prepared by the UNCITRAL Secretariat in consultation with National Correspondents. Abstracts on cases interpreting the UNCITRAL Model Law on Cross-Border Insolvency also include keyword references. The abstracts are searchable on the database available through the UNCITRAL web-site by reference to all key identifying features, i.e. country, legislative text, CLOUT case number, CLOUT issue number, decision date or a combination of any of these.

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Printed in Austria

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**CASES RELATING TO THE UNCITRAL MODEL ARBITRATION LAW  
(MAL)**

**Case 778: MAL 16**

Egypt: Ad hoc arbitration hosted by the Cairo Regional Center for International Commercial Arbitration

No. 474/2006

7 November 2006

Original in Arabic

Unpublished

Abstract prepared by Mohamed Abdel Raouf

[**Keywords:** *arbitration agreement; subject-matter of the dispute; jurisdiction; kompetenz-kompetenz*]

The Arab claimant entered into a subcontract with a construction company for the construction of buildings. The latter commenced arbitration proceedings against the company pursuant to the ad hoc arbitration agreement stipulated in the subcontract.

During the arbitration proceedings, the respondent challenged the jurisdiction of the Arbitral Tribunal alleging that the arbitration agreement did not determine the matters to be referred to arbitration, and, thus, the arbitration agreement would not be valid unless a submission agreement was concluded between the parties. The claimant rejected the submission agreement drafted by the respondent stating that the arbitration agreement was a valid document granting the Tribunal the jurisdiction to settle the dispute.

Based on article 22 of the Egyptian Arbitration Law [equivalent to MAL 16], the Tribunal held that the arbitration agreement was a valid agreement and that it had jurisdiction to settle the dispute.

**Case 779: MAL 30 (1)**

Egypt: Ad hoc arbitration hosted by the Cairo Regional Center for International Commercial Arbitration

No. 497/2006

17 February 2006

Original in Arabic

Unpublished

Abstract prepared by Mohamed Abdel Raouf

[**Keywords:** *procedure; settlement agreement; arbitral award; termination of proceedings*]

The claimant, a company based in an African country, entered into a contract with an African Association for the construction of a compound. A dispute arose between the parties regarding the performance of their respective contractual obligations. The claimant referred the dispute to arbitration in accordance with the ad hoc arbitration clause included in the contract.

After the closure of the hearings, the parties requested these to be reopened in order to record the conditions of a settlement agreement reached thereby in the form of an arbitral award on agreed terms.

The Tribunal recorded the conditions of the settlement agreement and ordered the termination of the arbitral proceedings based on Article 41 of the Egyptian Arbitration Law [equivalent to MAL 30 (1)].

**Case 780: MAL 4**

Egypt: Cairo Regional Center for International Commercial Arbitration

No. 312/2002

28 November 2004

Original in English

Unpublished

Abstract prepared by Mohamed Abdel Raouf

**[Keywords:** *arbitration agreement; plea of inadmissibility; time-limit; waiver*]

The claimant, a Swiss Company, entered into a Share Sale and Purchase Agreement with the Egyptian counterparts for the purchase of the share capital of an Egyptian company. Later on, the Swiss company commenced arbitration proceedings against the respondents based on the arbitration clause stipulated in the Agreement, which referred all potential disputes between the parties to arbitration under the Rules of the Cairo Regional Center for International Commercial Arbitration (CRCICA). In its notice of arbitration, the claimant requested the respondents to reimburse certain amounts of money paid to the tax authority and which were supposed to be borne by the respondents pursuant to several contractual provisions.

In their first submission, the respondents raised a plea of inadmissibility based on a waiver by the claimant of the arbitration clause. According to the respondents, before initiating the arbitral proceedings, three of the respondents, in their capacity as ex-shareholders of the purchased company, had filed a case before the competent national court against the claimant who neither invoked the arbitration clause nor submitted a plea for non-admissibility before the said court. The claimant, instead, submitted a memorandum of defence, thus, according to the respondents, waiving its right to arbitration.

Among the arguments invoked in response to this plea of inadmissibility, the claimant contended that it was very late for the respondents to raise such objection.

Applying article 8 of the Egyptian Arbitration Law [equivalent to MAL 4], the Tribunal found that the jurisdictional objection by the respondents was raised in their very first memorandum and was thus made within a reasonable period. The Arbitral Tribunal considered that all other subsequent measures taken by the respondents including the nomination of their arbitrators and payment of their share in the arbitration costs, did not constitute a tacit acceptance of arbitration as the means of settling the dispute.

However, the Arbitral Tribunal, after examining the grounds of the respondents' objection, rejected it concluding that the waiver of the right to arbitrate under an arbitration clause may not be presumed. It has to be clear and unequivocal in expressing the party's intention to waive its contractual right to have the dispute settled by arbitration.

**Case 781: MAL 16**

Egypt: Cairo Regional Center for International Commercial Arbitration

No. 111/1998

12 July 1999

Original in Arabic

English Summary: published in *Arbitral Awards of the Cairo Regional Centre for International Commercial Arbitration II (1997-2000)*, Kluwer Law International, 2003, 63.

Abstract prepared by Mohamed Abdel Raouf

**[Keywords:** *arbitration agreement; jurisdiction; kompetenz-kompetenz*]

The claimant, a company based in an Africa country, entered into a subcontract with another African company, that was the main contractor chosen by a local authority for building a power plant. The general conditions of the Contract comprised an arbitration clause referring potential disputes to arbitration under the Rules of the Cairo Regional Center for International Commercial Arbitration (CRCICA).

During the arbitral proceedings, the respondent invoked the nullity of the arbitration agreement alleging that the general conditions of the contract were disputed between the parties and that, consequently, the reference to such agreement was not clear as per article 10 (3) of the Egyptian Arbitration Law.

This argument was rejected by the Tribunal in the light of article 22 of the Egyptian Arbitration Law, which is consistent with article 21 of the UNCITRAL Arbitration Rules [and equivalent to MAL 16]. The Arbitral Tribunal ruled that it had jurisdiction to settle the dispute.

Eventually, the Arbitral Tribunal rejected the plea for the nullity of the arbitration agreement because it had been invoked after the submission of the respondent's defence on the merits and it was groundless.

**Case 782: MAL 32 (2)(c)**

Egypt: Cairo Regional Center for International Commercial Arbitration

No. 101/1997

11 March 1999

Original in Arabic

English Summary: published in *Arbitral Awards of the Cairo Regional Centre for International Commercial Arbitration II (1997-2000)*, Kluwer Law International, 2003, 155

Abstract prepared by Mohamed Abdel Raouf

**[Keywords:** *arbitral proceedings; termination of proceedings*]

The claimant, a thermal insulation company with its place of business in an African country, entered into a subcontract with the respondent, a European company, which had been awarded a contract by a governmental authority for the establishment of a power plant. The claimant filed for arbitration against the respondent based on the arbitration clause inserted in the subcontract referring all potential disputes between the parties to arbitration under CRCICA Rules.

After the arbitral proceedings had been initiated, some of the shares of the respondent company were sold to another company. The claimant did not, therefore, want to continue such proceedings against a respondent having no more legal

standing. The matter raised before the Arbitral Tribunal was whether the respondent was still a party to the arbitration and whether the Arbitral Tribunal was properly constituted.

Invoking the fact that the purchaser company was not a party to the arbitration agreement and thus had not appointed an arbitrator, the arbitrators ordered the termination of the proceedings for impossibility of continuation based on Article 34 (2) of the UNCITRAL Rules and the provisions of the applicable laws [equivalent to MAL 32 (2)(c), which was explicitly referred to in the arbitral award]. Neither party objected to such termination.

**Case 783: MAL 16**

Egypt: Ad hoc arbitration hosted by the Cairo Regional Center for International Commercial Arbitration

No. 105/1998

14 December 1998

Original in Arabic

English Summary: published in *Arbitral Awards of the Cairo Regional Centre for International Commercial Arbitration II (1997-2000)*, Kluwer Law International, 2003, 11

Abstract prepared by Mohamed Abdel Raouf

[**Keywords:** *arbitration agreement; jurisdiction; kompetenz-kompetenz*]

The claimants, a company located in Africa and an Asian businessman, entered into an agreement of sale of shares with a European businessman. The Sale Agreement comprised an ad hoc arbitration clause.

Once the proceeding was initiated however, the respondent challenged the jurisdiction of the Arbitral Tribunal alleging that the arbitration clause was invalid since it violated the Capital Market law, which provided a special type of arbitration being the sole means of settlement of all disputes resulting from the sale of shares.

The Arbitral Tribunal held the arbitration clause valid granting it jurisdiction to settle the dispute, based on Article 22 of the Egyptian Arbitration Law [equivalent to MAL 16].

**Case 784: MAL 16**

Egypt: Cairo Regional Center for International Commercial Arbitration

No. 67/1995

11 August 1996

Published in Arabic

English Summary: published in *Arbitral Awards of the Cairo Regional Centre for International Commercial Arbitration*, Kluwer Law International, 2000, p. 153.

Abstract prepared by Mohamed Abdel Raouf

[**Keywords:** *arbitration agreement; jurisdiction; kompetenz-kompetenz*]

The parties (two companies with their place of business in the Gulf region) entered into a contract for the sale of jewellery and watches in the country of the claimant. This latter initiated arbitration proceedings in accordance with the arbitration clause stipulated in the contract and referring the potential disputes to arbitration under the

Rules of the Cairo Regional Center for International Commercial Arbitration (CRCICA).

The respondent challenged the jurisdiction of the Arbitral Tribunal because of the invalidity of the arbitration agreement and requested the arbitrators to decide on such plea before hearing the merits of the dispute.

The award explicitly referred to Article 21 of the UNCITRAL Arbitration Rules and to Articles 22 of the Egyptian Arbitration Law [equivalent to MAL 16], which states "...In general the Arbitral tribunal should rule on a plea concerning its jurisdiction as a preliminary question. However the Arbitral tribunal may proceed with the arbitration and rule on such a plea in its final award". The Arbitral Tribunal, thus, decided to rule on the plea pertaining to its jurisdiction jointly with the merits and to issue only one award.

**Case 785: MAL 12 (2), 13 (2)**

Egypt: Ad hoc Arbitration hosted by the Cairo Regional Center for International Commercial Arbitration

No. 51/1994

25 March 1996

Published in Arabic

Summary in Arabic: published in *Arbitral Awards of the Cairo Regional Centre for International Commercial Arbitration (1984-2000)*, 2002, 48.

Summary in English: published in *Arbitral Awards of the Cairo Regional Centre for International Commercial Arbitration*, Kluwer Law International, 2000, 81.

Abstract prepared by Mohamed Abdel Raouf

**[Keywords:** *appointment of arbitrators; challenge of arbitrators; conflict of interest*]

A contract for works relating to sanitary drainage (work and materials contract) was entered into between the parties. The contract did not include an arbitration clause, but later on the parties concluded a submission agreement.

After the arbitration was commenced, the respondent challenged the chairman of the Arbitral Tribunal alleging that he was partial and that he would have been introduced as a witness of the facts.

The Arbitral Tribunal rejected the challenge filed by the Respondent pursuant to Article 18 (1) of the Egyptian Arbitration Law No. 27 of 1994 [equivalent to MAL 12 (2)], where the Arbitral Tribunal reasoned that the circumstances raised by the Respondent did not cast serious doubts to the chairman's impartiality or independence.

It is worth noting that in compliance with a decision rendered by the Supreme Constitutional Court in November 1999, Article 19 of the Egyptian Arbitration Law [equivalent to MAL 13 (2)] was amended. According to such amendment, national courts, and not the arbitral tribunals, have exclusive jurisdiction to decide upon challenges submitted against any arbitrator.

**Case 786: MAL 1 (3), 20 (1), 22 (1)**

Egypt: Cairo Regional Center for International Commercial Arbitration

No. 1/1994

31 October 1995

Published in Arabic

Summary in Arabic: published in *Arbitral Awards of the Cairo Regional Centre for International Commercial Arbitration (1984-2000)*, 2002, 310.

Summary in English: published in *Arbitral Awards of the Cairo Regional Centre for International Commercial Arbitration*, Kluwer Law International, 2000, 135.

Abstract prepared by Mohamed Abdel Raouf

[**Keywords:** International nature of arbitration; place and language of arbitration]

In 1989, a maritime company with its place of business in an African country, the claimant, entered into a contract with two other maritime companies located respectively in Central America and the Gulf Region for operating and exploiting a vessel in Jeddah and Suez.

The contract, which included an arbitration clause referring the potential disputes to arbitration before the Cairo Regional Center for International Commercial Arbitration (CRCICA), was entered into prior to the enforcement of the Egyptian Arbitration Law of 1994. However, the Arbitral Tribunal applied this Law in compliance with its first article according to which the provisions of such a Law “*shall apply to any arbitration pending at the time it enters into force or which commences thereafter, even if it is based on an arbitral agreement concluded before the Law entered into force*”.

Taking into account the different nationalities of both the claimant and the respondents and since the contract stipulated that CRCICA had jurisdiction to settle any dispute in relation thereto, the Arbitral Tribunal held that the arbitration was an international arbitration in accordance with Article 3 of the Egyptian Arbitration Law [equivalent to MAL 1 (3)].

Furthermore, since the arbitration clause was silent with respect to the place and the language of arbitration and given that the parties did not subsequently determine any of such procedural matters, the Tribunal decided that the place of arbitration was Cairo-Egypt and that the language of the arbitration was the Arabic language. Such decision was based on Articles 28 and 29 (1) of the Egyptian Arbitration law [equivalent to MAL 20 (1) and 22 (1)] regarding the place and the language of arbitration respectively.