



# 2019 BCDR ANNUAL REPORT





A painting by Bahraini artist Rashid Al-Oraifi



# TABLE OF CONTENTS

I. MESSAGE FROM THE CHIEF EXECUTIVE	2
II. BCDR SECRETARIAT AND BOARD OF TRUSTEES	4
III. ARBITRATION CASEWORK	6
Case Statistics	8
IV. NEW MEDIATION RULES	10
V. CONFERENCES AND OTHER EVENTS	12
BCDR-SCC Conference	12
Commemorating the Life and Legacy of Dr. Ahmed El-Kosheri	14
Tribute to Professor Francisco Orrego Vicuña	15
The 24th Annual Conference of the GCC Commercial Arbitration Centre	16
The Hague Academy of International Law	17
EFILA Annual Conference	18
Vienna Investment Arbitration Debate	19
UNCITRAL Working Groups II, III and VI	19
Further Events Planned for 2020	19
VI. PUBLICATIONS	22
The BCDR International Arbitration Review	22
Liber Amicorum Samir Saleh	23
Other Publications Available	23
VII. UNCITRAL	24
UNCITRAL Working Group II on Expedited Procedure	24
UNCITRAL Working Group III on Investor-State Dispute Settlement (ISDS) Reform	25
VIII. CONCLUDING REMARKS	26

# I. MESSAGE FROM THE CHIEF EXECUTIVE



**CHIEF EXECUTIVE OFFICER**  
Professor Nassib G. Ziadé

I am very pleased to report another successful year for the Bahrain Chamber for Dispute Resolution (BCDR) in all areas of our activity: casework, conferences, collaborative ventures, publications, participation in the work of UNCITRAL, and education.

The number of cases referred to BCDR is growing at a steady pace.

During 2019, BCDR introduced its new and much-improved mediation rules to complement the state-of-the-art arbitration rules that were introduced at the end of 2017. The introduction of the mediation rules was timed to coincide with the signing of the Singapore Convention on Mediation, which was attended by BCDR's Chief Registrar, Ahmed Husain.

In 2020, we expect to publish new rules for the administration of ad hoc arbitrations by BCDR, so completing a comprehensive suite of dispute resolution options.

Though our 2017 arbitration rules have been widely acclaimed, we are constantly monitoring their application in practice, and developments in the field, and we are actively considering areas in which these may be further enhanced and refined in a new edition in due course.

In 2019, BCDR hosted and participated in 12 conferences on both commercial and investor-State arbitration.

BCDR has continued to be active in the field of publications, including the much-praised *BCDR International Arbitration Review*, two issues of which have been dedicated to the new arbitration rules. Issues on third-party funding and conflicts of interest are planned for 2020. BCDR has also released the *Liber Amicorum Samir Saleh*, the second in a planned series of publications honoring Arab jurists noted for their contribution to the practice and study of international law and arbitration in the Arab world.



## I EXPRESS MY APPRECIATION TO ALL THOSE WHO HAVE SUPPORTED A VIBRANT AND FINANCIALLY INDEPENDENT BCDR OVER THE YEAR, AND WHO CONTINUE TO GIVE THEIR SUPPORT.

BCDR continues to play an important role in the work of UNCITRAL, heading the Bahraini delegation at the meetings of UNCITRAL's Working Groups II, III and VI, and preparing the submissions for Working Groups II and III on expedited arbitration and investor-State dispute settlement (ISDS) reform, respectively.

BCDR's mission is facilitated by the favorable environment in which it operates. The Kingdom of Bahrain boasts a reliable and effective legal system and a judiciary that is supportive of arbitration. The country has adopted, in 2015, the UNCITRAL Model Law on International Commercial Arbitration (the Model Law), as amended in 2006, and in 2019 passed a mediation law largely inspired by the 2018 UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation.

Bahrain's arbitration law recognizes the immunity of arbitrators in relation to acts or omissions in the performance of their duties, except where these result from bad faith or a gross mistake.

Recent decisions of the Bahraini courts, including the Court of Cassation, demonstrate attitudes and practices of the judiciary consistent with current approaches to the interpretation and application of the Model Law and other arbitration-related international treaties.

By way of example, Bahrain's High Court of Appeals has distinguished between the physical place of arbitral proceedings and the legal place, or seat of an arbitration. In Appeal No. 4823/2017, decided on 27 December 2018, and subsequently upheld by the Court of Cassation (Appeal No. 194 of 2019, decided on 16 October 2019), the High Civil Court of Appeals recognized the power of an arbitral tribunal to determine the physical place of an arbitration and its freedom to deliberate in whatever manner and wherever it chooses, without being

limited to the geographical location of the seat of arbitration. This decision upholds the principle of flexibility that is central to arbitration and key to ensuring the efficiency and cost-effectiveness of proceedings.

The practice of the Bahraini courts in matters relating to the annulment, recognition, and enforcement of arbitral awards is consistent with both the Model Law and the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. In Appeal No. 14954/2014, decided on 23 February 2017, and subsequently upheld by the Court of Cassation (Appeal No. 92 of 2017, decided on 19 March 2019), the High Civil Court of Appeals confirmed Bahrain's abidance by the UNCITRAL Explanatory Note on the Model Law when interpreting the country's Model Law-based arbitration legislation. This represents a guarantee of stability and predictability for parties.

I express my appreciation to all those who have supported a vibrant and financially independent BCDR over the year, and who continue to give their support: our loyal staff, the Members of the Board of Trustees, our partners in conferences and seminars, our many friends and advisers who have worked with us to improve our services over the year, and who have generously given of their time to contribute to our journal. Also, to the increasing number of contracting parties who are entrusting the resolution of their disputes to BCDR.

**Professor Nassib G. Ziadé**  
**CEO**



## II. BCDR SECRETARIAT AND BOARD OF TRUSTEES

### SECRETARIAT

#### CHIEF EXECUTIVE OFFICER

Nassib G. Ziadé

### LEGAL STAFF

#### CHIEF REGISTRAR & COO

Ahmed Husain

#### CEO ADVISOR

Nawazish Choudhury

#### SENIOR CASE MANAGER

Salim Sleiman

#### ACTING SENIOR CASE MANAGER

Khaled Al Khayat

#### CASE MANAGERS

Hanin Alkhan

Fatema Al Zayed Al Jalahma

### GENERAL ADMINISTRATION STAFF

#### ACCOUNTING OFFICER

Bassam Ghassan Beidas

#### FINANCIAL ADMINISTRATOR

Aisha Ishaq

#### HEAD OF ICT

Yousif Al Saif

#### SENIOR ICT SPECIALIST

Hussain Ebrahim

#### HR OFFICER

Fatema AlWardi

#### BUSINESS DEVELOPMENT COORDINATOR

Khaled Chilwan

#### COO ASSISTANT

Mahnaz Kadhemi

#### CHIEF REGISTRAR ASSISTANT

Amal Fareed

#### CLIENT RELATIONS SPECIALISTS

Essra Ahmed

Dana Isa

#### TRANSPORT OFFICER

Hussain Al Hujairi



BCDR Secretariat



---

## BOARD OF TRUSTEES



### **CHAIRPERSON**

Shaikha Haya bint Rashed Al-Khalifa

### **BOARD MEMBERS**

William K. Slate II  
Yousif Abdulhusain Khalaf

Richard Naimark  
Jan Paulsson

Rashed Abdul Rahman Ibrahim  
India Johnson



BCDR Board of Trustees (with Jan Paulsson, absent), plus BCDR Chief Executive Officer



### III. ARBITRATION CASEWORK

As mentioned, BCDR operates in an arbitration-friendly legal environment, with a pro-arbitration judiciary. Bahrain is a contracting State of the New York Convention, and, in 2015, adopted the UNCITRAL Model Law on International Commercial Arbitration (Model Law) for both international and domestic arbitration.

BCDR's casework emanates from disputes brought before the BCDR Court and BCDR's international arbitration wing, BCDR-AAA. The BCDR Court administers disputes in excess of 500,000 Bahraini Dinars (approx. USD 1.3 million) in which at least one party is a financial institution licensed by the Central Bank of Bahrain, or the dispute is of an international commercial nature. BCDR-AAA administers cases under the BCDR-AAA arbitration rules and mediation rules.

BCDR has a team of case managers proficient in Arabic, English, and French, who oversee each case from commencement to conclusion, whether by award or settlement.



BCDR Case Managers. From left to right: Fatema Al Zayed Al Jalahma, Hanin Alkhan, Khaled Al Khayat and Salim Sleiman

Substantially re-modelled BCDR-AAA arbitration rules came into effect on 1 October 2017 to take account of Bahrain's enactment of legislation adopting the Model Law in 2015, and to reflect best practices in arbitration as identified by the latest rules of leading international and regional arbitration institutions, as well as the 2010 UNCITRAL Arbitration Rules.

The new rules, drafted in a wide consultation process by a high-level Rules Review Committee established by the BCDR Board of Trustees, embody current best standards in international arbitration. The committee comprised, in addition to BCDR's CEO, Professor Nassib Ziadé, former Director General of the London Court of International Arbitration (LCIA) Mr. Adrian Winstanley OBE, and former Deputy Secretary-General of the International Centre for Settlement of Investment Disputes (ICSID) and former Secretary-General of the International Council for Commercial Arbitration (ICCA) Dr. Antonio Parra.

The French version of the rules was prepared by Mr. Fady Béchara (attorney-at-law, Lebanon) and Professor Ziadé, and the Arabic version by Mr. Ahmed Husain (BCDR's Chief Registrar), Dr. Faris Nesheiwat (attorney-at-law, Jordan) and Professor Ziadé.

The following are among the notable changes from the previous, 2010, rules.



---

## Initiation of proceedings

The Request for Arbitration need no longer include the Statement of Claim, which may be filed at a later stage after the appointment of the tribunal. Similarly, Respondents need only submit a brief Response to the Request for Arbitration and may file a full Statement of Defence in a subsequent exchange of written submissions.

---

## Appointment of arbitrators

Under the previous rules, the parties were free to choose any procedure they wished for appointing arbitrators, including one that did not involve the institution. Under the new rules, whilst the parties may still nominate arbitrators, only BCDR-AAA may formally appoint any party's nominee.

---

## Notification of challenges to arbitrators

The previous rules did not require notification of a challenge to be sent to the arbitral tribunal. For greater transparency and efficiency, the new rules require that a challenge be notified to all of BCDR-AAA, the other parties and the tribunal; and BCDR-AAA may request information on the challenge from the challenged arbitrator, the parties and any other members of the tribunal.

---

## Secretary of the tribunal

There are entirely new rules covering the appointment, functions and limitations of secretaries to the tribunal.

---

## Expedited procedure

A new provision on expedited procedure provides for the appointment of a sole arbitrator in cases where the claim and counterclaim together do not exceed USD 1 million, regardless of whether the parties have agreed elsewhere to a three-member tribunal. This procedure includes a number of other measures to shorten the proceedings and moderate costs.

---

## Summary procedure

In a further response to growing concerns about delay and costs in arbitration, the new rules allow for the summary determination of any legal or factual issue to which the tribunal considers that the summary procedure can and should be applied.

---

## Joinder and consolidation

There are new and detailed provisions for the joinder of parties. There are also new provisions for the consolidation of arbitrations with the parties' agreement, or when based on the same arbitration agreement or arising from the same legal relationship.

---

## Party representation

The new rules include provisions extensively regulating the conduct of party representatives, drawing on the IBA Guidelines on Party Representation in International Arbitration and prohibiting any behavior likely to obstruct or jeopardize the integrity of the arbitration. Sanctions for breaches of these regulations are also included in the rules.

---

## New fee structure

New provisions on the funding of the arbitration aim to moderate the cost of access to justice and the cost of arbitration generally. There is now a fixed filing fee of USD 3,000 payable by the Claimant when filing the Request for Arbitration, irrespective of the amount in dispute, followed by a case management fee calculated on the basis of the sums at issue, payable after the filing of the Response to the Request for Arbitration. Arbitrators' fees are now subject to a cap of USD 500 per hour and USD 4,000 per day, save in exceptional circumstances.

---

## Model arbitration clause

Appendix II of the new rules contains a model arbitration clause which the parties may insert in their contracts to refer their potential disputes to arbitration under BCDR-AAA.



The English, Arabic and French versions of the arbitration rules are available on BCDR's website [www.bcdr-aaa.org](http://www.bcdr-aaa.org).



## CASE STATISTICS

### Caseload

A growing caseload reflects BCDR's now firmly-established position as a reputable and reliable arbitration center, with universally-applicable state-of-the-art rules.

Between its establishment in 2010 and the end of 2019, BCDR registered 282 cases.

Following the expected lead time for a developing caseload at a new institution, registrations are now accelerating, with 41 new cases registered in 2019 with monetary claims amounting to USD 1.44 billion.



**282** Total number  
of cases registered

**41** New cases  
registered in 2019

**USD 1.44 billion**

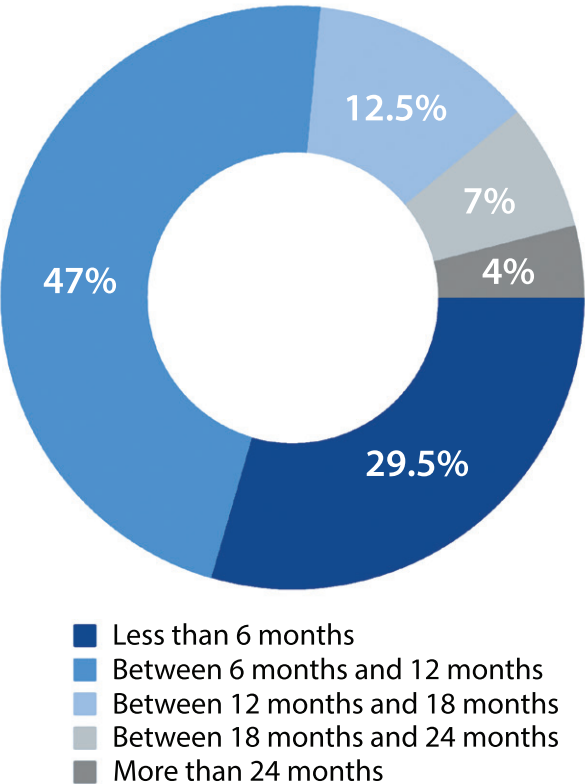
Value of monetary claims  
for 2019



Duration of proceedings

Of cases concluded:

- 29.5% were concluded within less than 6 months;
- 47% between 6 months and 12 months;
- 12.5% between 12 months and 18 months;
- 7% between 18 months and 24 months; and
- 4% of cases in more than 24 months.

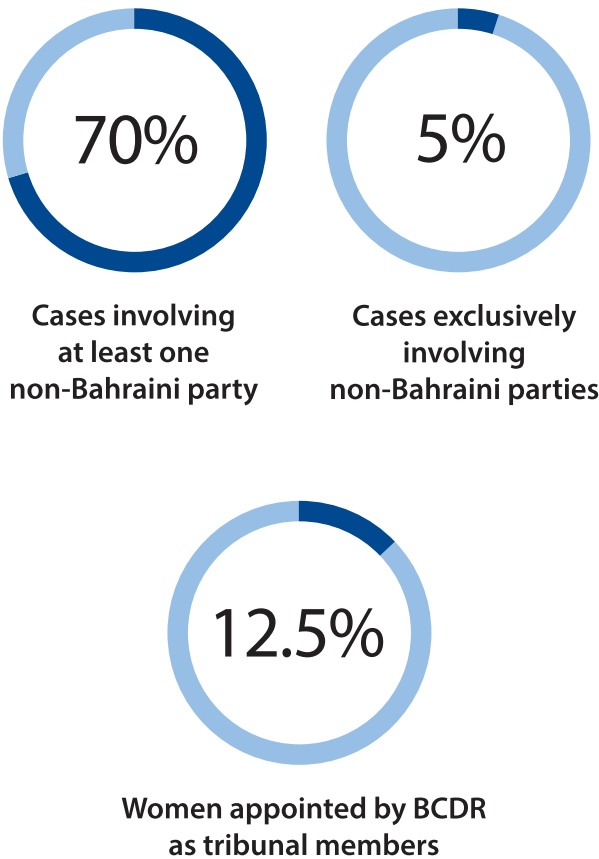


Nationalities and gender

Over 70% of BCDR cases to date have involved at least one non-Bahraini party. Approximately 5% of BCDR cases to date have involved exclusively non-Bahraini parties.

Tribunal members appointed by BCDR have included individuals from Australia, Bahrain, Egypt, France, Jordan, Lebanon, Syria, Singapore, Tunisia, and the United Kingdom.

One in 8 of the tribunal members appointed by BCDR have been women.



Economic sectors

Cases administered by BCDR to date have covered disputes arising in aviation; banking and finance; construction; consultancy; insurance; Islamic finance; paintings and antiques; pensions; real estate; steel management; and waste management.



## IV. NEW MEDIATION RULES

On 1 July 2019, BCDR-AAA published its new mediation rules, in English, Arabic and French, with all three versions being equally authoritative. The new rules make a timely and welcome addition to the legal framework for mediation in the region.

Their introduction was timed to coincide with the signing of the United Nations Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention on Mediation) which is intended to facilitate the cross-border enforcement of mediated settlements.

BCDR-AAA believes that the Singapore Convention on Mediation and BCDR-AAA's new mediation rules have the potential to reshape the ADR landscape in the MENA region. They offer disputing parties in the regional and global economies the prospect of settling their disputes more quickly and at a

substantially lower cost than more contentious dispute resolution mechanisms, and now with greater certainty and efficacy of enforcement should the need to enforce settlement terms arise.

The new BCDR-AAA mediation rules in their English version were the product of a rigorous drafting process undertaken by the same Rules Review Committee established by the BCDR Board of Trustees as had re-drafted the BCDR-AAA arbitration rules; Mr. Adrian Winstanley, Dr. Antonio Parra and Professor Nassib Ziadé.

For consistency across the range of BCDR-AAA's dispute resolution services, the committee harmonized the new mediation rules with the 2017 arbitration rules and followed best practices in mediation as reflected in the most recent rules and procedures of other major institutions.



In order to ensure that the new mediation rules also meet the specific needs of Bahrain and the wider MENA region, BCDR-AAA invited comments on the draft rules from practitioners and other interested parties, and consulted potential users for their review and feedback. The committee carefully considered all comments received, incorporating those that it believed would enhance the rules in the final draft.

The French version of the rules was prepared by Mr. Fady Béchara (attorney-at-law, Lebanon), Mr. Salim Sleiman (Senior Case Manager at BCDR) and Professor Ziadé, and the Arabic version by Mr. Ahmed Husain (BCDR's Chief Registrar), Dr. Faris Nesheiwat (attorney-at-law, Jordan), Mr. Sleiman and Professor Ziadé.

Like the 2017 arbitration rules, the new mediation rules reflect the strength of BCDR-AAA's commitment to delivering transparent and cost-effective dispute resolution services by clarifying and streamlining the process.

The following are among the most noteworthy provisions of the new rules:

- greater detail and clarity regarding the procedure for commencing mediation, whether initiated by all, some or only one of the contracting parties, with or without a pre-existing agreement to mediate (Article 2);
- clarification of the date of commencement of the mediation, being the date of receipt by BCDR-AAA of both request for mediation and filing fee in the case of a prior agreement to

mediate, or (subject to receipt of the fee) the date on which all parties agree to mediate in the case of no prior agreement (Article 3);

- simplification and acceleration of the process of selecting and appointing the mediator, and updated provisions on independence and impartiality (Article 4);
- increased flexibility for parties and mediators in pursuit of a fair and expeditious outcome (Article 6);
- the option for parties to commence or continue parallel arbitral or judicial proceedings (Article 11);
- a revised fee schedule aimed at maximizing cost-efficiency and including a cap on mediators' hourly rates (Appendix I); and
- model mediation clauses which the parties may insert in their contracts to refer their potential disputes either to mediation under BCDR-AAA rules, or to mediation followed, if necessary, by arbitration under BCDR-AAA rules (Appendix II).

In order to meet its commitment to providing flexible, multilingual and cost-effective dispute resolution services for domestic and international cases, BCDR-AAA will closely monitor developments in the regional legal framework for mediation and will seek to ensure that its services always incorporate best practices in the field.

The English, Arabic and French versions of the new mediation rules are available on BCDR's website [www.bcdr-aaa.org](http://www.bcdr-aaa.org).



From left to right: Antonio Parra, Nassib Ziadé and Adrian Winstanley, the BCDR Rules Review Committee



## V. CONFERENCES AND OTHER EVENTS

An important part of BCDR's mission is to engage in legal education through the hosting of, and participation in, international conferences on arbitration and other dispute-settlement mechanisms, and on international law generally. Below are reports on recent and planned events.

---

### BCDR-SCC Conference

BCDR's final conference of 2018 was a joint event with the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) on the topic of current issues in investment arbitration.

Held in Manama, the conference attracted more than 150 high-level government representatives, policymakers, international dispute resolution practitioners and leading academics. Enlightening discussions took place on key questions facing the world of investment arbitration, illustrating BCDR's leading role as a regional and international centre for dialogue on important dispute resolution issues.

Shaikha Haya bint Rashed Al Khalifa, Chair of the BCDR Board of Trustees, opened the conference, praising the cooperation between BCDR and SCC. She said that the conference was timely, given the preoccupation of UNCITRAL Working Group III with the reform of investor-State dispute settlement. Shaikha Haya thanked the Ministry of Foreign Affairs and the Ministry of Justice and Islamic Affairs of Bahrain for their patronage of the conference, which was testimony to Bahrain's support for BCDR's important role in promoting the rule of law in the region.

Shaikha Rana Isa Al Khalifa, Undersecretary of the Ministry of Foreign Affairs of Bahrain said that the Ministry considered it important to be present at the conference to support BCDR's efforts to bring together leaders in the field to address important current issues. She recalled the work of Bahrain in developing a regulatory framework to encourage investment, including establishing rules for investment dispute resolution, and creating and maintaining a legal framework to protect the rights of all parties to a dispute and to facilitate the recognition and enforcement of foreign arbitral awards.

The conference was then addressed by Ms. Annette Magnusson, SCC Secretary-General, who said that panel discussions would focus on the ultimate goal of international dispute resolution mechanisms: to resolve disputes fairly, efficiently, expeditiously and cost-effectively. She said that international arbitration is among the main pillars of international trade.

Professor Nassib Ziadé then drew attention to the topicality of the subjects to be discussed and to the work already undertaken by BCDR in this field. On the question of procedural efficiency in investment arbitration, BCDR-AAA had, he said, included in its 2017 Arbitration Rules provisions allowing for the appointment of emergency arbitrators to order urgent measures, for the resolution of disputes through expedited procedures, and for the summary disposition of claims.

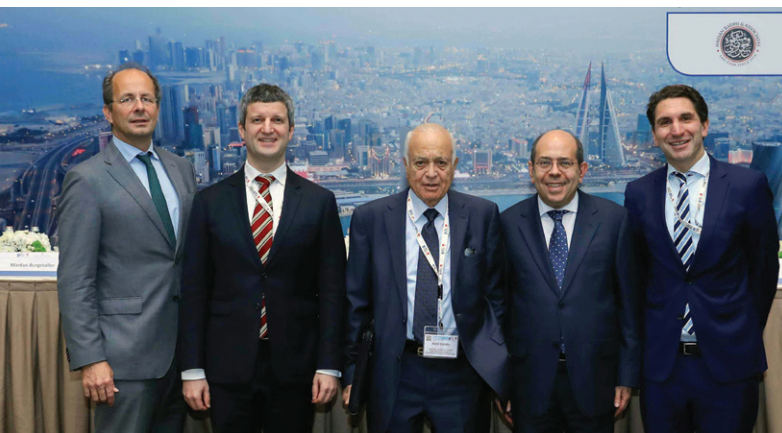
The first panel of the day then discussed whether investment disputes should be submitted to international arbitration or to a permanent investment court. This debate was moderated by His Excellency Dr. Nabil Elaraby, Chairman of the Board of Trustees of the Cairo Regional Centre for International Commercial Arbitration, and former Judge of the International Court of Justice (ICJ). The speakers were Prof. Dr. Marc Bungenberg, Chair of Public Law, Public International Law and European Law at Saarland University, Saarbrücken; Dr. Markus Burgstaller, Partner at Hogan Lovells, London; Prof. Dr. Nikos Lavranos, Secretary-General of the European Federation for Investment Law and Arbitration, Brussels; and Professor Nassib Ziadé.

The second panel, moderated by Mr. Adrian Winstanley, discussed procedural efficiency in investment arbitration. The speakers were Dr. Karim Hafez, Senior Partner at Hafez, Cairo, and independent arbitrator; Ms. Ginta Ahrel, Partner at Lindahl, Stockholm; Ms. Anne Hoffmann, independent arbitrator, Dubai; and Mr. Johan Sidklev, Partner at Roschier, Stockholm.

The third panel, moderated by Dr. Antonio Parra, reflected on how to strike a balance between the protection of investments and the host country's right to regulate. The speakers were Dr. Crina Baltag, Senior Lecturer in Law at Bedfordshire University; Mr. Mahmoud M. Elkhrahy, Legal Advisor of the Ministry of Foreign Affairs of the Kingdom of Bahrain; Mr. Francisco González de Cossío, Founding Partner of González de Cossío Abogados, SC, Mexico City; and Mr. Alexander Uff, Partner in the International Arbitration Practice of Shearman & Sterling, London.



Speaking at the opening session, from left to right: Annette Magnusson, Nassib G. Ziadé, Sh. Haya Al Khalifa and Sh. Rana Al Khalifa



A group picture of Panel 1, from left to right: Marc Bungenberg, Markus Burgstaller, H.E. Nabil Elaraby, Nassib G. Ziadé and Nikos Lavranos



A group picture of Panel 2, from left to right: Karim Hafez, Ginta Ahrel, Adrian Winstanley, Anne K. Hoffmann and Johan Sidklev



A group picture of Panel 3, from left to right: Mahmoud M. Elkhrahy, Crina Baltag, Antonio R. Parra, Alexander Uff and Francisco González de Cossío



A group picture of Panel 4, from left to right: Laila El Shentenawi, Mohamed Abdel Raouf, Annette Magnusson, Eloïse Obadia and Hannah Tümpel

The fourth and last panel was moderated by Ms. Annette Magnusson and considered to what extent conciliation and mediation were efficient ways of settling investor-State disputes. The speakers were Ms. Hannah Tümpel, Director of Communications and Engagements at United World Colleges, London; Ms. Laila El Shentenawi, Senior Associate, Al Tamimi & Co., Dubai; Dr. Mohamed Abdel Raouf, Partner, Abdel Raouf Law Firm, Cairo; and Ms. Eloïse Obadia, Investment Legal Consultant at the World Bank, Washington DC.

The conference closed with remarks from Ms. Magnusson and Professor Ziadé, followed by a screening of *The Quiet Triumph – How Arbitration Changed the World*, a moving SCC documentary describing the history and role of international arbitration in creating a peaceful international order and upholding the rule of law.



## Commemorating the Life and Legacy of Dr. Ahmed El-Kosheri

In June 2019, Professor Nassib Ziadé was a speaker at an event organized by the Cairo Regional Centre for International Commercial Arbitration (CRCICA) to commemorate the life and legacy of the late leading Arab jurist Dr. Ahmed El-Kosheri.

This event covered two themes: Dr. Ahmed Sadek El-Kosheri: a prominent figure in Egypt and worldwide; and Professor El-Kosheri's legacy: reflections on some of his most important contributions.

Discussions on the first theme were led by Dr. Nabil Elaraby. Other speakers included Prince Dr. Bandar Bin Salman Al-Saud, a Vice-Chair of CRCICA's Board of Trustees; Dr. Mahmoud Samir El Sharkawy, a professor of commercial and maritime law and former Dean at Cairo University law faculty; and Counsellor Mahmoud Fahmy, a former Vice-President of the Egyptian Council of State and Chair of the country's Capital Markets and Investment Authority. This session closed with the screening of a short documentary about Dr. El-Kosheri.

The second session was chaired by Dr. Tarek F. Riad, Managing Partner of Kosheri, Rashed & Riad Legal Consultants and Attorneys and then Chair of the Executive Committee of the Dubai International Arbitration Centre.

The speakers were Dr. Abdel Hamid Al-Ahdab, President of the Arab Association for International Arbitration; Dr. Philippe Leboulanger, founding Partner of Leboulanger & Associés, a Vice-Chair of CRCICA's Advisory Committee and member of its Board of Trustees; and Professor Moufid Shehab, a professor of public international law at Cairo University, President of the Egyptian Association of International Law, and a former Egyptian minister of parliamentary and legal affairs.



Speakers at the second session. From left to right: Moufid Shehab, Nassib G. Ziadé, Tarek F. Riad, Philippe Leboulanger and Abdel Hamid Al-Ahdab

Professor Ziadé closed the second session with a speech entitled "Remedies in the context of corruption in Investor-State arbitration." Referring to Dr. El-Kosheri's qualities, experience, encyclopedic knowledge, and deep and original thinking, Professor Ziadé expressed admiration for Dr. El-Kosheri's exemplary reputation, achievements, modesty, and generosity, and praised his remarkable role in shaping the legal rules that govern investment arbitration issues.

BCDR had previously paid homage to Dr. Ahmed El-Kosheri at a ceremony in Bahrain in March 2015. That event was attended by some 150 of Dr. El-Kosheri's colleagues and friends from around the world, and was marked by the release of *Festschrift Ahmed Sadek El-Kosheri* which included articles by 46 academics, practitioners, and colleagues of Dr. El-Kosheri on various legal subjects related to his work.



Audience members at the event



Nassib G. Ziadé speaking during the second session

## Tribute to Professor Francisco Orrego Vicuña

BCDR was a co-sponsor of events held in London in October 2019 to pay tribute to the late Professor Francisco Orrego Vicuña, a leading international jurist. The events were attended by past and present judges of the International Court of Justice, international arbitrators, and local arbitration practitioners.

London was chosen as the city in which Professor Orrego had obtained his doctorate, had served as the Ambassador of Chile to the UK, and had often sat as arbitrator.

Organized by Professor Orrego's family, with the Chilean Ministry of Foreign Affairs, Heidelberg University's Center for Latin America, the Department of Law of the London School of Economics (LSE), Baker Botts LLP, and BCDR, a memorial service was held on 1 October at St. James's Church, Spanish Place, presided over by the Apostolic Nuncio to Great Britain, Monsignor Edward Adams. A symposium was held the following day in the Shaw Library at the LSE.

The symposium began with welcome addresses from Dr. Jan Kleinheisterkamp, an associate professor of law at the LSE, and His Excellency David Gallagher, Chile's ambassador to the United Kingdom. These were followed by five panel discussions celebrating the legacy of Professor Orrego and the contribution that he had made to international law in the numerous distinguished positions that he had held – judge ad hoc of the International Court of Justice, judge ad hoc of the International Tribunal of the Law of the Sea, President of the World Bank Administrative Tribunal, judge of the International Monetary Fund (IMF) Administrative Tribunal, international arbitrator and mediator, scholar, teacher, and academic.

The fifth and last panel of the symposium, entitled "Professor Orrego Vicuña and International Arbitration," was chaired by Professor Nassib Ziadé and included panelists Professor Juan Fernández-Armesto, arbitrator, partner at Armesto & Asociados, and a vice-president of the governing board of the International Council for Commercial Arbitration (ICCA); Mr. José Ricardo Feris, partner at Squire Patton Boggs and former deputy secretary general of the International Court of Arbitration of the International Chamber of Commerce (ICC); and Dr. Gabriel Bottini, partner at Uría Menéndez.

Professor Ziadé remarked that Professor Orrego had left his mark in almost all areas of international law, from public international law (including the delimitation of land and maritime boundaries) to investment law, commercial law, trade law, environmental law, and international administrative law. He referred to Professor Orrego's immense human qualities, his kindness, humility and sense of humor.



Speakers at the fifth and last panel of the symposium entitled "Professor Orrego Vicuña and International Arbitration." From left to right: Gabriel Bottini, Juan Fernández-Armesto, Nassib G. Ziadé and José Ricardo Feris



Dame Rosalyn Higgins GBE QC moderating the first panel of the symposium entitled "Professor Orrego Vicuña and the Development of International Law." From left to right: Jean-Marc Thouvenin, Dame Rosalyn Higgins GBE QC, Samuel Wordsworth QC, Sir Christopher Greenwood GBE CMG QC speaking during the symposium



Audience members at the symposium



The 24th annual conference of the GCC Commercial Arbitration Centre in Salalah, Oman, in August 2019, brought together a wide range of speakers to share their views and practical experience of arbitration in GCC countries. The conference was structured around five main panels: arbitration under the foreign investment laws of GCC countries; arbitration in investment promotion, and protection agreements between GCC countries and non-GCC countries; the agreement for the promotion, protection and guarantee of investments among the member States of the Organisation of the Islamic Conference, and its role in resolving investment disputes; the settlement of disputes between a host State and a foreign investor from another State party to the 1965 Washington Convention; and the settlement of investment disputes in Arab countries.

Professor Nassib Ziadé gave a speech, in Arabic, entitled “Highlighting the challenges of international arbitration in investment disputes: yesterday’s beginnings, today’s paths, and future directions,” describing the international law concepts used by States to resolve investment-related disputes before the emergence of arbitration, including diplomatic protection in the eighteenth, nineteenth, and early twentieth centuries.

Professor Ziadé also spoke of the origins and development of arbitration between foreign investors and States, briefly tracing its history from the adoption of the 1965 Convention on the

Settlement of Investment Disputes, which established the International Centre for Settlement of Investment Disputes (ICSID), to the current deliberations of Working Group III of the UNCITRAL on investor-State dispute settlement reform.

He went on to discuss the main shortcomings of the current investor-State arbitration system, such as conflicts of interests, the lack of diversity and equitable representation in tribunal appointments, increasingly long and costly arbitral proceedings, and inconsistent interpretations of the same substantive standards. But he cautioned against abolishing the current investment arbitration system and replacing it with a permanent investment court, which he considered likely to have an adverse impact on investment, advocating instead the examination and cure of the roots of the current problems rather than mere focus on their symptoms.

Mr. Ahmed Husain, BCDR Chief Registrar, moderated a panel on the settlement of investment disputes in Arab countries. This panel comprised Dr. Fahad Mohammed Al-Rifai, CEO of Dr. Fahad Al-Rifai International Arbitration Law Firm in Saudi Arabia; Dr. Mahmoud Omar Mahmoud, professor of comparative law and former legal advisor to King Abdulaziz University; and Dr. Mohammed Saeed Abdullah Al-Shayab, head of the private law department and professor of commercial law at the Sultan Qaboos University Faculty of Law in the Sultanate of Oman.



From left to right:  
Majdi Ibrahim Qasim, Hassan Radhi, Nassib G. Ziadé and Ahmed Najem



From left to right:  
Mohammed Saeed Abdullah Al-Shayab, Mahmoud Omar Mahmoud, Fahad Mohammed Al-Rifai, and Ahmed Husain



Audience members at the event

In September 2019, BCDR was one of the leading co-sponsors of a conference entitled “Current Challenges to International Law: the Role of Societies for International Law,” organized by the Societies of International Law at The Hague Academy of International Law.

There were five roundtables and twelve panel discussions, all of which stimulated debate and dialogue among the societies for international law and the national branches of the International Law Association on the many issues with which international law is currently confronted.

Professor Nassib Ziadé spoke at the closing roundtable of the first day of the meeting. Moderated by the Vice-President of the International Court of Justice, Judge Hanqin Xue, this roundtable explored the subject of Shadows and Lights on the Peaceful Settlement of International Disputes, considering multiple means of dispute resolution and questions raised by their coexistence. Also speaking at the closing roundtable were Mr. Philippe Gautier, Registrar of the International Court of Justice; Professor Hélène Ruiz Fabri, Director of the Max Planck Institute for Procedural Law; and Mr. Ben Juratowitch QC, Partner at Freshfields Bruckhaus Deringer.

Speaking in French on the subject “The Investment Law ‘Market’: ICSID and Regional Arbitration Centres, Competition or Complementarity?,” Professor Ziadé recalled the uniqueness and predominance of the ICSID system, whose strength, he said, rests on every ICSID Contracting State’s obligation to recognize an ICSID award as binding, and to enforce it as if it were a final judgment rendered by a court of that State.

Referring to figures from the United Nations Conference on Trade and Development (UNCTAD), Professor Ziadé noted, however, that there was a growing trend for investment disputes also to be administered by arbitration centers other than ICSID. This competition was coming not from regional arbitration centers but from arbitration centers with a global reach, such as the Permanent Court of Arbitration (PCA), the Arbitration Institute of the Stockholm Chamber of Commerce (SCC), and the International Court of Arbitration of the ICC. Professor Ziadé was not surprised by this development, as investment treaties, including those between emerging countries, refer almost exclusively to arbitration centers in the West; the Cairo Regional Center for International Commercial Arbitration (CRCICA) being one of the few exceptions.

Professor Ziadé then referred to the 1980 Unified Agreement for the Investment of Arab Capital in the Arab States and the 1981 Agreement for the Promotion, Protection and Guarantee of Investments among the Member States of the Organisation of the Islamic Conference as examples of regional investment agreements providing for the option of ad hoc arbitration. Such instruments, he said, should present a real opportunity for regional arbitration centers to attract investment arbitration disputes.

Professor Ziadé stressed, however, that regional centers would need to operate in accordance with international standards if they were to attract such disputes. To this end, they should equip themselves with modern arbitration rules, recruit qualified staff, and compile rosters of experienced arbitrators. Above all, the countries in which regional centers are located should create the conditions in which international arbitration can thrive by adopting liberal arbitration laws, granting adequate immunities to arbitrators, and demonstrating the arbitration-friendliness of their courts.



Nassib G. Ziadé speaking during the conference



The plenary roundtable on Shadows and Lights on the Peaceful Settlement of International Disputes. From left to right: Philippe Gautier, H  l  ne Ruiz Fabri, Hanqin Xue, Ben Juratowitch OC, and Nassib G. Ziad  



### Attendees at the roundtable

The meeting ended with closing remarks from the President of the United Nations General Assembly, Her Excellency María Fernanda Espinosa, and a joint declaration by the Societies for International Law affirming the important role of these societies in accompanying, anticipating, and promoting positive developments in international law.





Courtyard of Nuzul Guest House in Muharraq, Kingdom of Bahrain

## EFILA Annual Conference

BCDR was one of the cooperating partners at the 5th annual conference of the European Federation for Investment Law and Arbitration (EFILA) held on 30 January 2020 at Herbert Smith Freehills' offices in London.

The issues covered at this well-attended event included investment and investor protection under EU law; alternative tools for effective investment/investor protection; and the future of the Energy Charter Treaty (ECT) and of intra-EU ECT disputes.

Professor Nassib Ziadé chaired the panel on alternative tools for effective investment and investor protection. He was joined by panelists Mr. Mark Appel (Arbitrator, Mediator, ArbDB Chambers); Ms. Mélida N. Hodgson (Partner, Jenner & Block LLP); Ms. Eloïse M. Obadia (Investment Legal Consultant, World Bank); and Professor Gerard Meijer (Partner, Linklaters).

The topics covered by this panel comprised mediation, including whether ISDS mediation is different from commercial dispute mediation; recommending measures to increase the use of ISDS mediation; examining whether the confidential nature of mediation can be reconciled with transparency in ISDS disputes; and whether mediation, as a process, is equally accessible and appropriate for private parties and states alike.

The discussions also covered the desirability and efficiency of resorting to conflict prevention tools to avoid disputes arising or crystalizing. Finally, and, in the wake of the Achmea judgment and the EU's proposals for a permanent international investment court system, the panelists examined the adequacy of EU State courts as an alternative to intra-EU investment arbitration.

Ms. Meg Kinnear, Secretary General of ICSID, gave a keynote speech on the topic Alternative Dispute Resolution in investment – the role of complementary mechanisms and approaches. This was in effect a report on, and discussions around, the proposed new ICSID mediation rules, which are progressing through a thorough drafting and consultation process.

Other speakers and moderators included Professor Loukas Mistelis (Queen Mary University of London and Chair of the Executive Board of EFILA); Ms. Raffaella Assetta (European Commission, Deputy Head of DGFISMA); Dr. Patricia Nacimiento (Partner, Herbert Smith Freehills); Lord Goldsmith QC (Partner, Debevoise & Plimpton) and Prof. Dr. Nikos Lavranos (Secretary General of EFILA).



Panel on alternative tools for effective investment and investor protection. From left to right: Mark Appel, Mélida N. Hodgson, Nassib G. Ziadé, Eloïse M. Obadia, and Gerard Meijer



Audience members at the conference

---

## Vienna Investment Arbitration Debate

In October 2019, BCDR participated in the Vienna Investment Arbitration Debate organized by Prof. Dr. August Reinisch of the University of Vienna and Dr. Moritz Keller of Clifford Chance, Frankfurt, and covering the latest issues in investment arbitration. The event was held on the premises of the Vienna University's Law School. Professor Nassib Ziadé debated with Prof. Dr. Marc Bungenberg of Saarland University whether there was a need for

more consistency in investor-State dispute settlement (ISDS) jurisprudence, and hence a need for reform. The debate, which was moderated by Professor Reinisch, also considered whether any such reform would eventually prevent the evolvement of new investment protection standards or lead to the disappearance of the fair and equitable treatment (FET) standard as we currently know it.



The panel at the debate. From left to right:  
Moritz Keller, Nassib G. Ziadé, August Reinisch and Marc Bungenberg



A delegate asking a question to the panel

---

## UNCITRAL Working Groups II, III and VI

BCDR has been leading the Bahraini delegation to the sessions of UNCITRAL Working Group III since 2018.

BCDR led the Bahraini delegation at (i) the 69th and 70th sessions of UNCITRAL Working Group II on expedited arbitration from 4 to 8 February 2019 in New York, and from 23 to 27 September 2019 in Vienna; (ii) the 37th and 38th sessions of UNCITRAL Working

Group III on ISDS Reform from 1 to 5 April 2019 in New York, and from 14 to 18 October 2019 in Vienna; and (iii) the 35th session of UNCITRAL Working Group VI on the judicial sale of ships from 13 to 17 March 2019 in New York.

BCDR will lead the Bahraini delegation to the sessions of UNCITRAL Working Groups II and III in 2020.

---

## Further Events Planned for 2020

### *BCDR/CLDP Mediation Day*

BCDR and the Commercial Law Development Program (CLDP) of the US Department of Commerce will jointly stage a mediation training day at BCDR's offices in Manama. The training will be delivered by Mr. Michael Patchett-Joyce, Barrister at Ely Chambers in the UK, Mr. Adrian Winstanley, Ms. Alya Ladjimi, Manager of the ICC International Centre for ADR, and Mr. Ahmed Husain, BCDR Chief Registrar. The course will provide a general overview of mediation as an effective means of dispute resolution; the Singapore Convention on Mediation; BCDR-AAA's newly-published (2019) Mediation Rules; the newly enacted 2019 Bahraini legislation on mediation; and latest developments in mediation, both on the international and regional scene.

### *BCDR/Arnold & Porter International Arbitration Academy in the Middle East*

BCDR and Arnold & Porter will hold two days of seminars at the Royal University for Women in Riffa. The seminars will be delivered by Arnold & Porter's Senior Partner, Ms. Maria Chedid, and Senior Associate, Dr. Kabir Duggal, and will cover practical issues that commonly arise at the key stages of commercial and investment arbitration, from the filing of the request and the constitution of the tribunal, through the unfolding of the proceedings and the parties' submissions, to the final award. This two-day event will also feature Keynotes from Mr. Adrian Winstanley, and Professor Nassib Ziadé.



### *10th Middle East Vis Pre-Moot*

BCDR and the Commercial Law Development Program (CLDP) of the US Department of Commerce will organize the 10th Middle East Vis Pre-Moot. The vast and universally-acclaimed annual Willem C. Vis commercial arbitration moot competition is now in its 27th year.

More than 50 “pre-moot” competitions are organized at venues around the world. Of these, the Middle East Vis pre-moot organized by BCDR, in partnership with the Commercial Law Development Program (CLDP) and the Center for International Legal Education of the University of Pittsburgh, is the only preparatory moot in the MENA region.

The objective is to encourage and support MENA teams in the main moot competition, providing an unmissable opportunity for budding dispute resolution leaders in the region. Teams of law students test their skills in simulations of real-life cases and are assessed in mock arbitrations by renowned specialists in the field, whose advice and encouragement are invaluable to the students’ future development. The contacts established during the pre-moot also help participants to build up a network for their future careers.

Launched in 2011, the Middle East Vis Pre-Moot currently attracts contestants from faculties from many countries, including Afghanistan, Bahrain, Iraq, Jordan, Kuwait, Lebanon, Saudi Arabia, Sri Lanka, Tunisia, and the United Arab Emirates. Over the years, as

many as 535 students have benefited from the support of around 350 mentoring arbitration practitioners, academics, and jurists.

The Pre-Moot comprises two phases. The first, which usually takes place in October, provides training in legal research and writing, with a view to preparing participants for the written part of the moot.

The second phase focuses on advocacy skills in preparation for the oral part of the moot. This phase lasts five days and is hosted in Bahrain by BCDR and the Royal University for Women of Bahrain. It comprises three parts: oral advocacy training for students; a roundtable at which arbitrators discuss current developments in arbitration related to the Vis Moot problem; and a competition consisting of a mock arbitration in which the students are graded on their oral pleading skills by arbitrators renowned in the region and internationally, under conditions similar to those of the oral rounds of the Vis Moot in Vienna.

BCDR is proud to be closely associated with this important formative experience, which increases awareness of international commercial arbitration, raises standards of advocacy, and, more widely, consolidates the study and practice of international commercial law and arbitration in the Middle East by laying foundations for the future.



Group photo of the participants at the 9th Middle East Vis Pre-Moot in 2019

---

*Second annual symposium on International Commercial law:  
40 years of the CISG and current issues in arbitration*

BCDR will organize the 2nd annual symposium on international commercial law and arbitration, at the Royal University for Women in Riffa, in collaboration with the Center for International Legal Education of the University of Pittsburgh, the Commercial Law Development Program (CLDP) of the US Department of Commerce, and the Royal University for Women.

This event will celebrate the 40th anniversary of the UN Convention on Contracts for the International Sale of Goods (CISG) and will bring together high-profile practitioners and academics to engage in a debate on current issues around the practice of international commercial law and dispute settlement.

Regionally and internationally acclaimed practitioners will take part, including Professor Ronald Brand, Ms. Maria Chedid, Prof. Dr. Stefan Kröll, Professor Jan Paulsson, Dr. Hassan Ali Radhi, Prof. Dr. Maxi Scherer, Professor Ingeborg Schwenzer, and others.

---

*Launch of BCDR's Young initiative*

BCDR will launch its 'Young' initiative as a platform to increase awareness amongst young professionals engaged or interested in dispute resolution, principally in the MENA region, and to encourage them to work together to address the many challenges facing the legal and business communities across the MENA jurisdictions.

Reports on all past events, and the dates of all future events can be found on the BCDR website **[www.bcdr-aaa.org](http://www.bcdr-aaa.org)**.



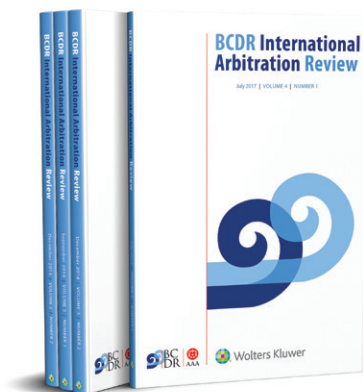
Bahrain World Trade Center in Manama, Kingdom of Bahrain



## VI. PUBLICATIONS

BCDR produces an international law journal and other scholarly publications which are unmatched in the region. These initiatives enhance the reputation of BCDR as a centre for learning and education.

### The BCDR International Arbitration Review



Since the publication of the first issue of the *BCDR International Arbitration Review* (the *Review*) in 2014 (on the subject of the recognition and enforcement of foreign arbitral awards in the Arab States of the Gulf), the *Review* has been recognized as being among the leading scholarly journals in the field.

Writing in *Rivista dell'Arbitrato*, the journal of the Italian Association for Arbitration, leading arbitrator Professor Piero Bernardini has acknowledged the *Review* as a “wise initiative,” recognized for the “quality of its content” and the “renown of those contributing reports and articles,” to be welcomed as a “reliable source of continuous and comprehensive information regarding the law and practice of international arbitration in the Gulf States.”

In *Arbitration International*, the official journal of the LCIA, Constantine Partasides QC has acknowledged the importance of the *Review*, noting that its value extends beyond the Arab world, making it a “source of law, practice and opinion of general import” and “a platform also for global figures to contribute on global subjects,” whilst “providing a rich and emphatic answer from a region of the world that has its own contribution to make to the state of our art.”

Writing in the *Revue de l'arbitrage*, the journal of the Comité français de l'arbitrage, Professor Charles Jarrosson of the University of Paris II (Panthéon-Assas) wrote (in the English translation of his original French) that “one of the aims of this journal is to broaden the knowledge and study of arbitration in this part of the world, currently beset by great turmoil.”

Published biannually and featuring content in both Arabic and English, the *Review* comprises articles, case summaries and other significant reports; each issue focusing on a current theme or topic that is particularly, but by no means exclusively, relevant to the Arab Region.

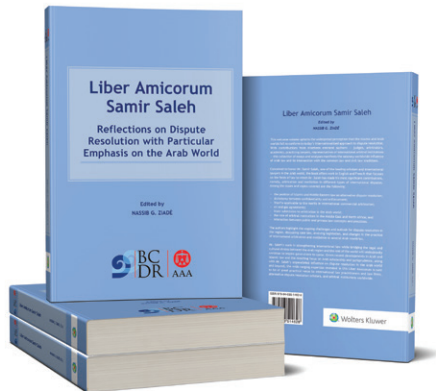
Since that first issue on the enforcement of awards, the *Review* has covered the topics of women's voices in international arbitration; arbitration in Egypt; international investment arbitration in the Middle East; construction arbitration in the Middle East; and a comprehensive review and analysis by leading practitioners of the 2017 BCDR-AAA arbitration rules spread over two issues and being a great example of international teamwork, bridging cultural, linguistic, and legal traditions.

Contributors to the two issues on the 2017 BCDR-AAA arbitration rules, which were published in 2019, included: Mr. Gary Born (and Ms. Dharshini Prasad); Mr. James Castello; Mr. Mark Friedman; Professor Emmanuel Gaillard; Dr. Rémy Gerbay (and Mr. Alex Harris); Ms. Andrea Menaker (and Mr. Eckhard Hellbeck); Ms. Sophie Nappert; Dr. Antonio Parra; Prof. Dr. Maxi Scherer (and Ms. Nathalie Allen Prince); Dr. Ismail Selim (and Mr. Georges Ghali); Mr. John Townsend (and Mr. Alexander Bedrosyan); Ms. Melanie Willems; Mr. Adrian Winstanley; and Professor Nassib Ziadé.

Issues on third-party funding and on conflicts of interest will be published in 2020.

## IN THE ABSENCE IN THE ARAB WORLD OF A FORUM FOR HONORING ARAB SCHOLARS AND PRACTITIONERS WHO HAVE DISTINGUISHED THEMSELVES THROUGH THEIR CONTRIBUTION TO THE PRACTICE AND STUDY OF INTERNATIONAL LAW AND ARBITRATION, BCDR STARTED IN 2015 SUCH A TRADITION.

### Liber Amicorum Samir Saleh



*Liber Amicorum Samir Saleh: Reflections on Dispute Resolution with Particular Emphasis on the Arab World* is an anthology of nineteen articles in English and in French focused on law and dispute resolution in areas in which the distinguished Arab jurist, Mr. Samir Saleh, worked.

Through his many writings, Mr. Samir Saleh, a leading Arab specialist in international commercial arbitration, has inspired discussion on international commercial arbitration in the Middle East and has made a significant contribution to the study of Middle Eastern commercial law.

In the 1970s, he served as legal advisor to the Sultan of Oman, deepening his understanding of the Middle Eastern and Islamic legal culture. After the outbreak of the civil war in Lebanon in 1975, he moved to London, where he established a practice as an expert in Middle Eastern and Islamic law and taught Middle Eastern arbitration law at London University's School of Oriental and African Studies. In 1982, he was appointed the first-ever Vice-Chairman of the ICC International Court of Arbitration from the Arab region.

Contributors to the Saleh *Liber Amicorum* included: Dr. Omar M.H. Aljazy; Mr. Roger Assi; Professor Benjamin G. Davis; Dr. Ahmed S. El Kosheri; Judge Dominique Hascher; Professor J. Martin Hunter (and Mr. Renan Ferdiani Torres Peres); Mr. Joe Issa El-Khoury; Professor Sélim Jahel; Mr. Sigvard Jarvin; Mr. Ramzi Joreige; Judge Mouhib Maamari; Dr. Ghaleb Mahmassani; Dr. Fadi Moghaizel; Mr. Fadi B. Nader; Dr. Nathalie Najjar; Ms. Mirèze Philippe; Dr. Hassan Ali Radhi; and Professor Nassib Ziadé.

In the absence in the Arab world of a forum for honoring Arab scholars and practitioners who have distinguished themselves through their contribution to the practice and study of international law and arbitration, BCDR started in 2015 such a tradition. The Saleh *Liber Amicorum* is the second in a series of publications. It follows the *Festschrift Ahmed Sadek El-Kosheri: From the Arab World to the Globalization of International Law and Arbitration* which was published in 2015.

### Other Publications Available



In 2014, BCDR published an Arabic translation of the ICCA Guide to the interpretation of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The Arabic version of the Guide is principally aimed at Arab judges determining applications under the New York Convention, and seeks to achieve a unified judicial approach to the recognition and enforcement of foreign arbitral awards.

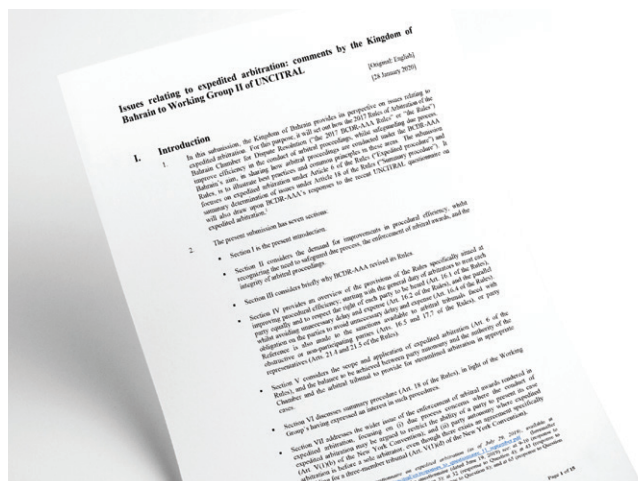
BCDR also makes available in separate booklets its Rules of Arbitration and its Rules of Mediation in English, Arabic and French.



# VII. UNCITRAL

As reported by the CEO in his opening message, BCDR heads the Bahraini delegation at the meetings of UNCITRAL Working Group II on expedited arbitration, Working Group III on possible reforms of investor-State dispute settlement, and Working Group VI on the judicial sale of ships. In this role, BCDR acts as a bridge between the regional and the international arbitration communities.

## UNCITRAL Working Group II on Expedited Procedure



UNCITRAL Working Group II has been given a broad mandate that may result in UNCITRAL (i) providing guidance to arbitral institutions on best practice and common principles aimed at striking a balance between the expeditious resolution of commercial disputes and respect for due process; and (ii) developing best practice in the early dismissal of claims through summary procedure.

While recognizing the increasing demand from users for improvement in procedural efficiency, the Bahraini submissions, drafted by BCDR, strongly support the view that any efforts to promote efficiency must not compromise due process, the effective enforcement of arbitral awards, or the integrity of arbitral proceedings – all mainstays of international arbitration.

Bahrain's submissions explain how improving efficiency at all stages of the conduct of arbitral proceedings, while safeguarding the fundamental right of the parties to be heard, is at the core of the 2017 Rules of Arbitration of BCDR-AAA (the "Rules"), under which, arbitral tribunals have been given wide powers aimed at facilitating efficient arbitration.

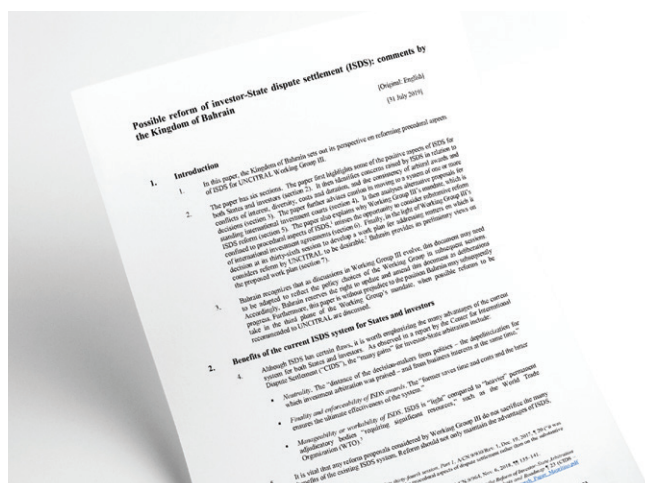
The submissions focus on expedited arbitration under Art. 6 of the Rules, which provides the framework for accelerated arbitration in cases in which the combined amount of any monetary claims does not exceed USD 1 million, or in which the parties have agreed in writing that the expedited procedure will be adopted irrespective of the sums at issue. Key characteristics of expedited arbitration under the Rules include: (i) the mandatory appointment of a sole arbitrator, even where there is a pre-existing agreement that there should be three; (ii) case-frontloading, which provides that a claimant's request for arbitration and a respondent's response must take the form of a statement of claim and a statement of defence and any counterclaim; and (iii) a 30-day time limit from the close of proceedings for the issue of the final award. It is anticipated that this expedited procedure will widen access to justice for parties (especially small and medium-sized businesses) with relatively modest claims who may otherwise be deterred from commencing an arbitration out of a concern for lengthy and costly proceedings.

Another innovation addressed in the submissions is the summary procedure set out in Art. 18 of the Rules, which empowers the tribunal, in broad and flexible terms, to determine on a summary basis any legal or factual issue considered by the applicant party (and agreed by the tribunal) to be material to the outcome of the arbitration. As a further safeguard of due process, all other parties are given the opportunity to respond to the application for summary procedure, and if the application is allowed, the tribunal must promptly notify the parties of the subsequent procedural steps to be taken.

The submissions conclude that provisions relating to expedited proceedings and summary procedure are welcome developments in the evolution of international arbitration and should become the norm.

Bahrain's submissions can be read in full on the BCDR website [www.bcdr-aaa.org](http://www.bcdr-aaa.org).

## UNCITRAL Working Group III on Investor-State Dispute Settlement (ISDS) Reform



UNCITRAL Working Group III is mandated to identify procedural concerns in current ISDS practice and procedure and to consider whether and if so, what reform would be desirable in the light of any identified shortcomings.

BCDR produced the submissions that were filed by the Government of Bahrain in August 2019, and which have been published on the UNCITRAL website and translated in all official languages of the UN. These submissions have been regularly cited by other delegates to the Working Group.

In Bahrain's submissions, BCDR highlights some of the positive aspects of the current ISDS system for both States and investors, and stresses that any reform of the ISDS system must maintain and improve upon these advantages. These include the neutrality of ISDS in respect of political and business interests, the finality and enforceability of ISDS awards, and the fact that current ISDS is more manageable and financially economical than such adjudicatory bodies as the World Trade Organization.

Whilst conceding that the current system does raise concerns regarding conflicts of interest, diversity, costs and duration, and the inconsistency of arbitral awards and decisions, the Bahraini submissions urge that any move to a system of one or

more permanent investment courts should be considered with caution. Not only may such a system fail to address the flaws in the current ISDS system, as identified above, it may actually give rise to entirely new problems including the politicization of the appointment of judges.

Bahrain has also expressed its regret that the opportunity has not been taken to consider substantive as well as procedural reform of the ISDS system, including the reform of substantive treaty protections.

Bahrain's submissions propose five alternative proposals for reform:

- binding codes of conduct to be developed by arbitral institutions to address all aspects of conflicts of interest, including the selection of arbitrators, arbitrators' ethical duties, arbitrator challenges, and the ethical conduct of counsel and institutions' staff;
- a wider pool of arbitrators, including from developing countries, so that all legal systems of the world are fairly and inclusively represented on the arbitration tribunals that shape ISDS jurisprudence;
- joint interpretative committees to harmonize the interpretation of treaty provisions, rather than an appeal mechanism;
- arbitrators dedicated to annulment proceedings to ensure consistency in the application of the ICSID Convention and Rules by annulment committees; and
- new grounds for annulment in international investment agreements to extend the circumstances in which annulment is permitted in the ICSID system.

Bahrain's submissions can be read in full on the BCDR website [www.bcdr-aaa.org](http://www.bcdr-aaa.org).



## VIII. CONCLUDING REMARKS

BCDR looks forward actively to maintaining its contribution in the years ahead to the development and promotion of best practices in arbitration and all other forms of alternative dispute resolution for the benefit of global commerce and harmony, and to continuing to enhance its reputation as a center of learning and education. BCDR will also seek to continue to grow its network of partnerships with other arbitration institutions and international law bodies.







An alleyway near Shaikh Ebrahim Center for Culture and Research in Muharraq, Kingdom of Bahrain



غرفة البحرين لتسوية المنازعات



*Bahrain Chamber for Dispute Resolution*

Suite 301 (3rd Floor)  
Park Plaza  
Building 247 Road 1704  
Diplomatic Area 317  
Manama  
Kingdom of Bahrain  
P.O. Box: 20006

**Telephone:** +973 17 511 311  
**Fax:** +973 17 511 300  
**E-mail:** [info@bcdr-aaa.org](mailto:info@bcdr-aaa.org)  
**Website:** [www.bcdr-aaa.org](http://www.bcdr-aaa.org)