Sida Evaluation 98/34

Support to Building an Institutional Capacity for Arbitration in Sri Lanka

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Department for Infrastructure
and Economic Cooperation

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Foreword

The present evaluation report has in draft form led to some strong reactions both in written and oral form by the two parties implementing the Project, the Institute for the Development of Commercial Law and Practice (ICLP) of Sri Lanka, and the Swedish Institute for Legal Development (SILD) of Stockholm. It is claimed that the evaluation report contains various factual mistakes, but more importantly, that it is based on pre-concieved notions of a negative nature. Rather than making an assessment of the relevance of these claims, refuting them and/or incorporating them in the final version of the report, we have decided to submit the draft unaltered, attaching the written comments by ICLP and SILD to the draft as annexes to the report. We believe that such a procedure would best serve the purpose of transparency of the evaluation process.

There are obviously some factual mistakes made by us in the evaluation report and the comments by ICLP and SILD serve as the correction in this report. We apologise for such mistakes, in particular for making an incorrect citation to a report by Professor Peiris from 1992. However, more importantly the authors of the evaluation report and the Project institutions have in some respect quite different views not related to facts but to interpretation of facts. We believe it is essential to bring these out in the open, especially as many of them concern a third party, the Sri Lanka National Arbitration Centre (SNLAC). Complex issues such as development and institution building raise many controversial issues, and any user of an evaluation report should benefit from a variety of views. Furthermore, the importance of allowing as much transparency as possible in this matter is reinforced by the fact that the evaluation team is alleged by ICLP to have deliberately tried to "mislead SIDA" and that "only statements of a negative nature alleged to have been made by various persons are incorporated in the report". Especially the team leader is being charged with "bearing animosity towards the ICLP Arbitration Centre" and and with "misconduct" during the evaluation with negative implications for future funding of the Centre.

In this situation, we believe that it is most important to be honest to the reader. For this reason we have incorporated the full comments as submitted by SILD and ICLP.

Claes Lindahl (MPI team leader)

Executive Summary

Background

Sweden has supported the building of institutional capacity for arbitration in Sri Lanka since 1992. SwedeCorp commissioned in 1993 the Swedish Institute for Legal Development (SILD) to undertake a feasibility study jointly with a team of Sri Lankan lawyers linked to the Institute for the Development of Commercial Law and Practice (ICLP). Their report concluded that the legal framework for arbitration in Sri Lanka was not in line with modern standards and in need of reform through a new arbitration law. The report also concluded that there was a need to establish a new arbitration centre. In 1993, a sub-committee of the Ministry of Justice in Sri Lanka had begun drafting an Arbitration Act. One of the members of the sub-committee was also a member of the SILD-ICLP study team and the draft law therefore became a subject for discussion by the study. In May 1995 the Arbitration Act was passed by the Parliament.

In February 1995 SwedeCorp approved a SEK 7 million technical assistance project for building an institution for arbitration in Sri Lanka including the following acticvities:1) assisting with finalisation of the new draft law; 2) providing information about the new law through the publication of a booklet and leaflet; 3) training of arbitrators through seminars and courses; 4) developing co-operation between the Arbitration Centre and the Arbitration Institute of the Stockholm Chamber of Commerce (AISCC); and 5) introducing a system for training law students at Colombo University in the general principles and methods of commercial arbitration.

The overall objective of the Project was:

> *to bring arbitration law and practice in Sri Lanka in line with modern principles and methods of commercial arbitration in order to attract foreign investors and to meet the demands of the business community in Sri Lanka for speedy dispute resolution.*

SwedeCorp contracted SILD to implement the two-year Project. It was expected to end in March 1997 but due to delays partly related to the security situation in Sri Lanka the Project has been extended to September 1998. The budget has remained the same. Sri Lanka (ICLP) has suggested a new phase after the current agreement expires. This includes further training workshops; drafting guidelines for arbitrators; regional promotional seminars; short-term training of the ICLP Arbistration Centre's staff, further equipping the Centre and preparation of promotional materials for the Arbitration Centre.

The evaluation

Sida commisioned an evaluation in April 1998. The pupose of the evaluation was to analyse the results of the Project as compared to its objectives and to determine whether the Project activities were performed according to the plan; to assess the impact of the Project; and based on the above, discuss the needs for and the feasibility of continued collaboration between Sri Lanka and Sweden in the field of arbitration. A mission to evaluate the Project took place in May 1998. It comprised three members: Claes Lindahl, team leader, Gustaf Möller, justice of the Supreme Court of Finland, and Sundeep Waslekar, specialist on governance.

Findings

The following activities have been undertaken by the Project:

- Publishing: a booklet serving as a commentary on the new law; a leaflet with the same purpose; a web-site and an Annual Report for the ICLP Arbitration Centre,

- Establishment of the ICLP Arbitration Centre in March 1996. The Centre has been equipped with office facilities financed by ICLP. A library has been established with Sida funds and Sida has paid the rent of the premises for 2,5 years (1998-2000).
- Training of staff: both the Secretary General and the Administrative Secretary of the Centre have been sent on various short-term training and study tours financed by Sida.
- Demonstrations and training events, partly for promotional purposes, partly for enhancing the skills amongst existing or potential arbitrators in Sri Lanka, including mock arbitration demonstrations, workshops and a seminar for arbitrating in the construction industry.
- Various promotional activities in the Asian region, for example a two day regional seminar in Colombo and a seminar in Madras in India.

The activities undertaken by the Project were basically those planned originally in 1995, or added during the extension of the Project in 1997 and 1998. The exception is that a planned introduction of a system for the training of law students at Colombo University in general principles and methods of commercial arbitration which has not yet been carried out.

The new Arbitration Act which came into force in Sri Lanka in August 1995 is modelled on the UNCITRAL Model Law on International Commercial Arbitration. The new Act has further drawn inspiration from the draft Swedish Arbitration Act of 1994. Since the Sri Lankan Arbitration Act had been in force for less than three years it is too early to give any final judgment on how it has impacted on arbitration in Sri Lanka. Nevertheless, the new law has made it clear that a valid arbitration agreement is a bar to court proceedings if so pleaded. Another shortcoming which has been remedied by the new Act is that once an arbitration has commenced, no court intervention is allowed. The new law also made it clear that once an award has been rendered there can be no review of the merits, but only a possibility of having an award set aside on very narrowly defined procedural grounds.

In a system which is overburdened with commercial cases in which 10-15 years of proceedings is not rare, the backlog clogs the judicial system as a whole. This reduces the capacity of the system to dispense justice to the population at large, causing deterioration of the quality of governance. A non-functioning judiciary system also risks creating non-formal alternative measures. In some of Sri Lanka's neighbouring countries businessmen have shown an increasing tendency to seek the help of organized crime syndicates to settle commercial disputes. These often resort to high handed tactics such as physical assaults and murders. Some criminals, with support from their clients in the commercial sector, contest elections and enter the legislative processes. Sri Lanka is so far largely free of such tendencies, but the development in the region shows the importance of development of commercial arbitration outside the court system.

in the longer perspective the Sida/SwedeCorp Project has contributed to improving the legal framework by facilitating the creation of an arbitration law and undertaking considerable promotion surrounding the law and the institution of arbitration. A study visit to Sweden in 1992 and the interaction between Sri Lankan judiciary experts linked to the committee of the High Court and Swedish legal experts appears to have been instrumental in institutionalising the modern arbitration act.

When the Project was initiated, there existed two recognised forums for arbitration in Sri Lanka: the Sri Lanka National Arbitration Centre, and the Ceylon Chamber of Commerce.The former, (SLNAC), was established in 1983. At the moment, between 75-100 ongoing cases are administered by SLNAC and in the course of one year SLNAC administers about 200 arbitrations. SLNAC is currently by far the most utilised institution for arbitration with a waiting time of several months for use of its premises. The Ceylon Chamber of Commerce has been involved in arbitrations since the 1960s. The utilisation of the Chamber as a venue for arbitration is limited. The Chamber held two arbitrations in 1996-1997 and one in 1998 which is still on-going. These arbitrations are in the fields of commodities such as tea, rubber and coir.

The ICLP Arbitration Centre has so far handled 11 arbitration cases, all between domestic firms, most of them in the construction industry. The ICLP Arbitration Centre has a panel of local arbitrators which to a large extent the same as those used by SLNAC. The Council of Management of ICLP has adopted Arbitration Rules which entered into force in February 1996. No arbitrations have so far been held under the Rules of the ICLP Arbitration Centre, but a case is pending.

The experience of SLNAC proves that there was a significant domestic demand for arbitration outside the courts long before the new law or the Project. A growing number of commercial enterprises are also becoming aware of the benefits of arbitration. This domestic demand has not yet spilled over into utilisation of the ICLP Arbitration Centre. There are several explanations for this:

- Many firms are used to SLNAC which has been in operation for 15 years. Companies which use arbitration as a matter of routine, seem to have confidence in SLNAC and see no need for change.
- The ICLP Arbitration Centre is not yet well known in Sri Lanka.
- Sri Lanka is a highly factionalised society. A centre associated with a particular group of law firms or business firms, might be considered partial.

According to the Project document, the justification for building the institution of arbitration in Sri Lanka was partly to service the needs of foreign investors. As a matter of routine, major foreign investors in Sri Lanka tend to include arbitration clauses with settlement in an established institution in a third country - often London, Paris or Singapore - or in the foreign investors' home country. While the establishment of the institution of arbitration might be of little importance for attracting foreign investments in a short-term perspective, and the Project is unlikely to have had an impact in this respect, the institution is important in a longer perspective. Sri Lanka needs to establish a positive profile in a competitive global business community, especially if it wants to compete with other strengths than very low labour costs. A functional arbitration institution is an element of such an environment, while the emergence of alternative dispute mechanisms such as use of criminal syndicates, would act as a clear deterrent to FDIs. The project is clearly in line with such an objective.

Sri Lanka aspires to sell arbitration services internationally, and especially in a regional context. This expectation is part of a broader vision to develop Sri Lanka as a regional commercial/financial hub. While Sri Lanka has many inherent features positive for such a vision, the market prospects in the South Asian context is limited in the view of the Evaluation. Furthermore, the international business community Sri Lanka is still too insulated for such a vision to be more than a distant dream. The fact that Sri Lanka for more than a decade has been involved in a civil war is also a major factor preventing the country from exploring the opportunity as a regional financial service centre.

The primary rationale for the establishment of the ICLP Arbitration Centre was to enhance the supply of arbitration facilities in Sri Lanka. The basis for the Project, and specifically for the creation of the ICLP Arbitration Centre, was the SILD/ICLP 1994 report. This report failed to offer a comparative perspective on the operations of SLNAC or the Chamber of Commerce. Nor was there any discussion of whether the strengthening of SLNAC would have been a feasible option. Thus, the SILD/ICLP report, while elaborate on the need for changing the practice and law in commercial arbitration, gave an incomplete picture of the prevailing organisational set-up at the time when SwedeCorp was considering support for arbitration. The built up of two, or rather three, venues for arbitration in Sri Lanka, has had several negative effects in the view of the evaluation Mission:

- The existing human and organisational capacities in commercial arbitration in Sri Lanka at the time of the start of the Project were not utilised properly. Rather, a situation of competition between two centres emerged.
- The existence of several arbitration centres is not conducive if Sri Lanka wants to promote itself to foreign investors.

- Sri Lanka might have problems of financially sustaining several arbitration centres. Currently, ICLP Arbitration Centre is highly subidised by it company members and Sida, and ICLP is requesting continuous funding for the Centre by Sida.

Countries with a volume of business many times larger than Sri Lanka tend to have one general arbitration centre. This is the case of Sweden, the UK and United States. It is difficult to see why Sri Lanka needs two or three centres.

The Project has undertaken a series of short-term workshops for improving the skills of arbitrators, attended by a considerable number of legal professionals, mostly from the business sector. While such inputs have been well conducted and played an essential role in propagating the use of the institution of arbitration, it is questionable if it has had any significant impact on the practice of arbitration, mainly due to the fact that such a change process is time consuming. The Project has so far made little headway in introducing arbitration as a subject at the University level in spite of its activity planning. One reason for this appears to be resistance to change within the higher education system.

The evaluation concludes that the Project has made a certain contribution towards the overall stated objective, but far from fulfilled it. Of the expected results stated in the original Project profile, three out of four might be considered achieved. However, the Project itself has only made a significant contribution to one of these. The Project has had a lower degree of effectiveness than desired due to the following key factors:

- the Project established a new, competing arbitration centre rather than building upon the existing centre;
- Swedish resource persons for were 'over-used' for promotional activities rather than for training of trainers;
- efforts were spent on marketing of the ICLP Arbitration Centre abroad, rather than building capacity at home;
- there has been limited attention to the long term up-grading of the arbitration skills of Sri Lankan lawyers at the University or College level.

Lessons learned

While the Project has been ambitious and has performed the tasks it set out to do quite well, the design had clear weaknesses. This stems from the 1994 study by SILD/ICLP which did not provide SwedeCorp with an accurate assessment of the situation of arbitration in Sri Lanka at the outset of the Project, nor discussed the pros and cons of alternative actions. Also SwedeCorp's decision-making can be questioned. Thus, SwedeCorp did not seek an independent view of the situation; commissioned a feasibility study by an institution already *de facto* involved in implementation of a project; and did not use competitive bidding in awarding the contract for implementation on questionable grounds. As a result, the Project has provided considerable subsidies to one of the centres and nothing to the other, hence creating distortion in the market forces. Such a distortion is unfortunate in a private sector development project.

Recommendations

There is a need to undertake much more training of arbitrators and technical support staff, both of persons currently acting as arbitrators and of new professionals. The introduction of arbitration at the University level and at Law Colleges is a matter of priority. There is also a need to develop a cadre of local 'trainers' which can carry on the human resource development in Sri Lanka. Co-operation rather than competition between the centres for arbitration should be sought. The current process of factionalism, with each centre linked to certain personalities and intererst spheres, is a sign of an undeveloped institution and a general reflection of Sri Lankan factionalism. The marketing of Sri Lanka abroad as a venue for arbitration should take second place and be postponed until a sufficiently effective institution is in place. In the domestic market, SLNAC is an established player in the delivery of services. On the other hand, ICLP has been efficient in public policy related work. A division of labour should be sought: SLNAC might concentrate on improving its service capacity while ICLP might focus on advocacy and policy related activities.

Further Sida support for arbitration in Sri Lanka is well merited. However, this support should be made neutral (i.e. not tied to any one centre), and more focused on upgrading the human resource skills and the promotion of the use of arbitration in the domestic industry. Sida should try to foster co-operation between the different parties towards one effective Sri Lankan arbitration centre. A new phase should be based on an independent assessment of the current situation, the needs and the opportunities. At the regional level there are hardly any institutions playing a policy and advocacy role. In this context Sri Lanka can provide expertise in the drafting of laws to Bangladesh, Nepal, Pakistan and the Maldives. Similarly there are considerable prospects for training arbitrators all over South Asia. Sida might consider a regional initiative in South Asia in line with this.

CONTENTS

1 INTRODUCTION

1.1 The objective of the evaluation

Sweden has supported the building of institutional capacity for arbitration in Sri Lanka since 1992. This support has been carried out in two phases: one, here called the 'Pre-project', took place from 1992 to 1994 with the support of SIDA and SwedeCorp. The second, here called the Project has been carried out between 1995 and 1998. It is the latter which is the main subject for this evaluation. The Project was initiated in February 1995 by SwedeCorp, and taken over by the newly formed Sida in July 1995. The existing agreement expires in September 1998 after a one and a half year extension.

Sida commisioned an evaluation in April 1998 in view of the end date of the Project. According to the terms of reference, the pupose of the evaluation was:

1. to analyse the results of the Project as compared to its objectives and to determine whether the Project activities were performed according to the plan;

2. to assess the impact of the Project; and

3. based on the above, discuss the needs for and the feasibility of continued collaboration between Sri Lanka and Sweden in the field of arbitration.

The detailed terms of reference are given in Annex 2.

1.2 The team and method for the evaluation

A mission to evaluate the Project took place in May 1998. It comprised three members: Claes Lindahl, team leader, Gustaf Möller, justice of the Supreme Court of Finland, and Sundeep Waslekar, specialist on governance. The mission lasted ten days during which the team members held extensive discussions with representatives of the judicial system in Sri Lanka, the Government, business and the aid community. The team was supported in Sri Lanka by the ICLP Arbitration Centre which arranged most of the meetings. The mission expresses its gratitude to the staff of the Centre for the logistics support provided.

2 THE PROJECT

2.1 The Pre-project phase (1992 - 1994)

The Swedish support for building an institutional capacity for commercial arbitration in Sri Lanka dates back to 1992 when Professor Peires, then Vice Chancellor of the University of Colombo, and Mr Ratwatte, Attorney-at-Law, visited Stockholm for the purpose of studying commercial arbitration in Sweden. The visit was hosted by SIDA on the initiative of the Swedish Embassy in Colombo. It resulted in an expression of Sri Lankan interest for Swedish support in institution building. It was suggested that as a first step a review of the existing situation as regards arbitration in Sri Lanka should be carried out.

The visit in Sweden had been arranged by the Swedish Institute for Legal Development, SILD, a private non-profit association established in 1992. Based on the interest expressed by the Sri Lankans, SwedeCorp commissioned SILD to undertake a feasibility study in September 1993 and to propose improvements in the Sri Lankan legal framework to faciliate commercial arbitration. The study was undertaken jointly by SILD and a team of Sri Lankan lawyers linked to the Institute for the Development of Commercial Law and Practice. ICLP is

a private sector non-profit organisation established in 1992 with the support of some of Sri Lanka's leading business and law firms. Their report, issued in September 1994, concluded that the legal framework for arbitration in Sri Lanka was not in line with modern standards and in need of reform through a new arbitration law to facilitate Sri Lanka's economic liberalisation and its adaption to an open market economy. The report also concluded that there was a need to establish a new arbitration centre.[1]

In 1993, a sub-committee of the Ministry of Justice in Sri Lanka had begun drafting an Arbitration Act. A draft was presented to the Ministry of Justice in December 1993. One of the members of the sub-committee, Mr Kanag-Isvaran, was also a member of the SILD-ICLP study team. The draft law therefore became a subject for discussion by the study. In view of this, SwedeCorp extended the contract with SILD to provide support for drafting the law. An element of this was a visit to Sweden by the Sri Lankan team in November 1994. The proposition for a Sri Lankan law was printed in March 1995, the bill was passed by the Parliament in May of the same year, and in August 1995 the Arbitration Act became operational. The Sri Lankan act was influenced by the new draft Swedish Arbitration Act which had been submitted to the Swedish Ministry of Justice in 1994.

2.2 The Project (1995 - 1998)

In February 1995 SwedeCorp approved a technical assistance project for building an institution for arbitration in Sri Lanka. The Project was for two years with a budget of SEK 7 million[2]. It included the following acticvities:

1) assisting with finalisation of the new draft law;

2) providing information about the new law through the publication of a booklet and leaflet;

3) training of arbitrators through seminars and courses;

4) developing co-operation between the Arbitration Centre and the Arbitration Institute of the Stockholm Chamber of Commerce (AISCC); and

5) introducing a system for training law students at Colombo University in the general principles and methods of commercial arbitration.

According to the Project Profile prepared by SwedeCorp, the overall objective of the Project was:

> *to bring arbitration law and practice in Sri Lanka in line with modern principles and methods of commercial arbitration in order to attract foreign investors and to meet the demands of the business community in Sri Lanka for speedy dispute resolution.*[3]

The expected results of the Project according to SwedeCorp's decision memorandum were:

1. enactment of an arbitration law;
2. selected number of qualified Sri Lankan lawyers capable of conducting arbitration;
3. the Arbitration Centre capable of administering arbitration cases; and
4. a system for training of law students in the field of arbitration.

The details of the Project Profile are provided in Annex 1.

[1] SILD/ICLP: *Report on a study made on possible areas of cooperation between Sweden and Sri Lanka regarding commercial arbitration,* 1994

[2] SwedeCorp: *Beslut Arbitration Sri Lanka,* Stockholm 1995-02-06

[3] op cit

2.3 Implementation

SwedeCorp contracted SILD to implement the Project. No competitive bidding took place, and SwedeCorp noted that the consultancy fees considerably exceeded those normally paid for development work. The contract sum was SEK 5 million, of which a maximum SEK 3.6 million was allocated for fees. The basis of SwedeCorp's decision to avoid competitive bidding seems to have been SILD's previous involvement in Sri Lanka during the Pre-project phase and the specialised nature of the technical assistance to be provided.

The Project was expected to end in March 1997. Due to delays partly related to the security situation in Sri Lanka, partly to lower spending of the Project than anticipated, the Project was first extended to December 1997, thereafter to September 1998.[4] For the extension, new activities above those orginally planned were included, such as payment of rent for the ICLP Arbitration Centre and a regional seminar for promotion of arbitration in South Asia.[5] The budget has remained the same.

The following activities have been undertaken by the Project. Some of these have been financed by SwedeCorp/Sida, others by ICLP.[6]

Finalising the law

The Arbitration Act was already prepared in draft and the proposition to the Parliament being printed when the Project started. Therefore the Project had little to do with its enactment. Nevertheless, as noted above there were considerable consultations between the Sri Lankan parties drafting the bill and Swedish arbitration experts during the Pre-project phase. Also, during the extension of the project in 1998, the Project has supported the drafting of Supreme Court Rules in relation to the Act (see below).

Publications

A booklet of 15 pages with the purpose of serving as a commentary on the new law was drafted by the Project team. Subsequently the booklet has been published with a forward of the Chairman of the Law Commission in Sri Lanka. It is now distributed by ICLP Arbitration Centre as a matter of routine. A leaflet has also been prepared and published by the Project. In addition to these two planned activities, a web site page has been developed and ICLP Arbitration Centre is now presented on Internet (www.lanka.net/iclp). ICLP has also undertaken other publication activities such as issuing of Annual Reports, placing articles in newspapers to publicise the new law and the Arbitration Centre.

Establishing the Centre

An Arbitration Centre was established by ICLP at the premises of the Sri Lankan Board of Investment (BOI) at the World Trade Centre in Colombo. The Centre was officially opened in March 1996. The Centre has been equipped with office facilities such as computer, printer, telephone and fax, copy machine and furnitures, all financed by ICLP. A library has been established with Sida funds. The security situation in Sri Lanka, and the targetting of the World Trade Centre by the Tamil Tigers (LTTE) on several occassions, caused ICLP to decide to relocate. ICLP proposed locating the Centre in an office at the hotel Taj Samudra complex. A request for payment of the rent for such an office for five years was made to Sida. Sida approved Rs 2 million (SEK 0.3 million), of the requested Rs 4 million, i.e. covering 2.5 years' rent. The Centre opened for business in the new premises in May 1998.

[4] Sida*: Förlängning av avtal med SILD för skiljedomsprojekt på Sri Lanka*, Sthlm 1998-03-24.

[5] Sida: *Förlängning av avtal,* 1997-03-24.

[6] The text below is based on various progress reports by the Project.

Long-term staff for the Arbitration Centre

In 1995 ICLP/SILD proposed a Swedish expert to work as a Secretary General of the Arbitration Centre for a minumum of one year. Sida approved the proposal and an expert was identified[7]. However, the fielding of the person was postponed due to security reasons and eventually the long-term technical assistance was abandoned for the same reason. A Sri Lankan Secretary General was appointed in March 1996 on a part-time basis. A full-time Sri Lankan Administrative Secretary was appointed during the same year. The salaries for both staff are paid by ICLP.

Study tours for ICLP staff

Both the Secretary General and the Administrative Secretary - two young female lawyers - have been sent on various short-term training and study tours financed by Sida. These include study visits to Stockholm (1996); Oxford (1996) and Washington DC (1997) for the Secretary General, and to Stockholm (1997) and London (1997) for the Administrative Secretary.

Training and workshops

The Project has undertaken a series of demonstrations and training events, partly for promotional purposes, partly for enhancing the skills amongst existing or potential arbitrators in Sri Lanka. These include:

- A one-day mock arbitration demonstration in April 1995 with participation of six Swedish laywers.
- A two-weekend resident mock arbitration training workshop was planned for 1995, but postponed several times due to the security situation in Sri Lanka. It was finally conducted in November 1996. Three Swedish arbitration experts participated and 70 lawyers, mostly from the corporate sector, attended the workshop. The workshop was video filmed for use in further training activities.
- A second mock-arbitration training workshop was undertaken in October 1997 with about 60 participants, and with Swedish arbitration experts acting as resource persons.
- A one-day workshop was conducted in March 1996 with the participation of 80 persons and another one-day seminar in August 1996 with the participation of 50 persons. The latter two were undertaken by ICLP resource persons.
- A seminar for arbitrating in the construction sector was arranged by ICLP with Sri Lankan resource persons, attended by 100 persons.
- An evening forum on arbitration was held in October 1997 with three Swedish resource persons. It was attended by 30 persons.

Regional promotion

Various promotional activities in the Asian region have been undertaken by the Project:

- The Sri Lankan team made two visits to India in 1997 for promotional purposes.
- A two day regional seminar named *An Asian need: Neutral venues for arbitration in the region*, was held in Colombo in July 1997.[8] Swedish resource persons participated in the seminar. About 40 persons participated of which about 30 were from abroad, mainly from India, but a few were also from the Maldives and Malaysia.
- A seminar was held in Madras (Chennay) in India in April 1998 with the participation of Swedish resource persons.

[7] Thorsten Cars, Judge of Svea Court of Appeal

[8] ICLP: Plan of Activities Jan. - August 1998

Cooperation with AISCC

Aside from SILD personnel, the Swedish resource persons which have been utilised for the Project have been provided mainly by the Arbitration Institute of the Stockholm Chamber of Commerce. [9] ICLP has also signed an agreement of co-operation with AISCC.

Survey on the arbitration environment in Sri Lanka

In the plan for the extension of the Project to September 1998, a survey of the arbitration environment in Sri Lanka is proposed. The survey would study how commercial contracts are agreed upon in Sri Lanka, the tendencies for disputes, *and* undertake *a thorough analysis of the arbitration competition in Sri Lanka*. The survey, to be conducted by the Sri Lankan firm, Lanka Market Research Bureau, had not yet been carried out at the time of the evaluation mission.

2.4 Implemented vs. planned activities

Comparing the planned activities under the Project with those actually carried out, the following conclusions can be drawn:

- The finalisation of the law required no Project inputs.
- The planned information activities surrounding the new law have been performed.
- The Project has held a series of training sessions for arbitrators. The Project document gives no guideline as to whether the number of sessions expected and the number of potential arbitrators envisaged were reached.
- A link has been established between the ICLP Arbitration Centre and the Arbitration Institute of the Stockholm Chamber of Commerce.
- The planned introduction of a system for the training of law students at Colombo University in general principles and methods of commercial arbitration had at the time of the mission not been carried out, although a plan to introduce such a course in a second phase of the Project (1999) has been proposed.

In addition to the originally planned activities, the Project has undertaken a series of other activities included in the plan for the extension of the Project in 1997 and 1998, for example, the promotion of the Arbitration Centre in the South Asian region. The Project (and Sida funding) has also been more strongly focused on the Arbitration Centre *per se* than the original plan foresaw, for example, by financing the Centre's rent, equipping its library and training its staff.

2.5 Sri Lankan contributions to the Arbitration Centre

Twelve major Sri Lankan companies which are the funding members of ICLP have committed grants to the ICLP Arbitration Centre amounting to a total of Rs 12 million (appr. SEK 1.6 million).[10] These grants are being paid to the Centre over a three year period. The Centre has used the funds partly for providing the Centre with office equipment and furnishing and partly as deposited money. The interest from the deposited funds is used to pay for some of the recurrent costs of the Centre. The commitments by the companies must be seen as a strong endorsement of ICLP and an indication of Sri Lankan ownership of the Project.

[9] The Swedish experts which have been involved in the Project are: Gotthard Callissendorf, Ulf Franke, Kaj Hober, Harald Nordenson, Ulf Nordeson and Jan Ramberg.

[10] The companies are Aitken Spence, Asia Capital, Central Finance, Chemical Industries, Commercial Bank of Ceylon, Hatton National Bank, Hayleys, John Keels, National Development Bank, Sampath Bank, Seylan Bank and Vanik Incorporation.

2.6 Proposal for a second project phase

ICLP has suggested a new phase for Sida financing for another two years (1998-99) after the end of the current one. Suggested Activities to be included are as indicated below:

- further mock-arbitration training workshops for potential arbitrators (proposed Sida contribution: Swedish resource persons, including travel costs);
- short-term training of the Secretary General and Administrative Secretary in Kuala Lumpur (Sida contribution: travel expenses);
- drafting guidelines for arbitrators (Sida contribution: Swedish technical assistance);
- promotional seminars in India, the Maldives and Pakistan (Sida contribution: Swedish resource persons, including travel);
- extension of the Centre's library (Sida contribution: procurement of books); and
- preparation of further promotional materials for the Arbitration Centre (Sida contribution: printing costs).[11]

Sida had at the time of writing made no commitment for a second phase, but referred to the present evaluation as a basis for such a decision.

3 THE SETTING: THE LEGAL ENVIRONMENT IN SRI LANKA

3.1 The legal framework

The judicial system in Sri Lanka has a colonial heritage and is based on British law. Arbitration was formally linked to the legal system in the 19th century. The two principal statutes enacted in the 19th century governing arbitration were the Arbitration Ordinance No. 15 of 1866 and the Civil Procedure Code of 1889. The Civil Procedure Code governs both voluntary and compulsory arbitration, while the Arbitration Ordinance deals only with compulsory arbitration. In addition to these old statutes there were a few other statutes which provided for arbitration in very limited situations.

In the civil courts of original jurisdiction in Colombo, commercial matters have dominance over others. The courts are called upon daily to decide upon numerous complex disputes arising from commercial, corporate, mercantile relations as well as mundane matters such as the recovery of debts. As a result, the courts of Sri Lanka are clogged with cases awaiting disposal. For instance, in the High Court some commercial cases that were filed ten years ago have not yet been disposed of. The backlog is to some extent not only due to the legal system and procedures, but also to the lack of an adequate infrastructure. For instance, the proceedings are recorded by stenographers and tape-recorders are not used.

The judges in the Civil Courts are not trained in resolving complex commercial disputes before they are appointed to such courts. With the liberalisation of the economy in 1977, and the increasingly strong emphasis by the government to privatise a large part of the economy and to attract foreign direct investments (FDI), commercial conflicts have increased. The need for a modern arbitration law was thus obvious at the stage when SIDA provided support for a study tour to Sweden in 1992.

[11] ICLP: *Proposed Plan of Activities for New Contract with Sida.*

3.2 The new Arbitration Act

As noted above, the Arbitration Act No. 11 came into force in Sri Lanka in August 1995. As many other national laws on arbitration, for example, the Australian, Canadian, German, Hungarian and Russian which have been enacted during the last decade, the Sri Lankan Act is to a great extent modelled on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration. The new Act has further drawn inspiration from, and is to some extent based on, the draft Swedish Arbitration Act of 1994. As discussed above, Swedish support during the Pre-project has played an essential role in the formation of the Sri Lankan Act during its draft stage.

Even though the Arbitration Act replaces the piecemeal legislation existing until then and incorporates the latest development in the field of commercial arbitration, the new Act has not abolished all the problems relating to commercial arbitration in Sri Lanka. One problem which still remains is that the procedure to get an order for enforcement of an arbitral award from the High Court (i.e. to get a judgment according to the award under sect. 31) takes at least one to one and a half years. Even to get an interim relief takes more than one year. This is partially due to the fact that the Supreme Court has not yet made the rules envisaged in Sect. 43 of the Act. This section provides that the Supreme Court may make rules with respect to: (a) any application or appeal made to any court under this Act and the costs of such application or appeal; and (b) the payment of money into and out of the Court in satisfaction of a claim to which the arbitration agreement applies and the investment of such money. Parties are thus still experiencing delays in having arbitral awards enforced and in obtaining interim relief because the Courts are even today prone to adopt a litigious procedure in handling such applications. The Court is granting many postponements for arguments on objections raised.

The task to draft the above mentioned Supreme Court Rules was given to Dr. R.B.Ranaraja who retired from the Court of Appeal at the end of November 1997. Mr. Ranaraja has now drafted such rules. Neither Mr. Ranaraja nor anybody else met by the Mission was, however, able to inform when these rules will be adopted and enter into force.

Another reason why parties often are experiencing delay with the enforcement procedure in the High Court is the provision on consolidation of an application for enforcement and an application for setting aside in Sect. 35 of the Act. According to this provision the court shall consolidate the applications where an application to enforce an award and to set aside an award are pending. This means in practice that enforcement will automatically be delayed if the party against whom enforcement is sought, i.e. the losing party, makes an application to have the award set aside.

Also an application to the High Court to take the necessary measures towards the appointment of an arbitrator to remove an arbitrator may protract the arbitration. Even in such cases the right to an oral hearing is regarded to be a fundamental right of a party. A problem was further that process servers could be corrupted. If summons were to be served by post, one might encounter the same problems with the postman. In court proceedings it was an every day occurrence that the documents were served on an Attorney-at-Law representing the party concerned. According to article 12 of the Draft Rules any notice/summons relative to an application/appeal arising from arbitral proceedings served on Attorney-at-Law representing a party to such arbitral proceedings or left at the office of such Attorney-at-Law shall be presumed to be duly served on the party whom the Attorney-at-Law represents and unless Court directs otherwise, shall be as effective for all purposes in relation to the application/appeal as if the same had been served on the party in person.

3.3 The organisational structure for arbitration

Prior to the establishment of the ICLP Arbitration Centre, there existed two recognised forums for arbitration in Sri Lanka, the Sri Lanka National Arbitration Centre, and the Ceylon Chamber of Commerce.

Sri Lanka National Arbitration Centre

The Sri Lanka National Arbitration Centre (SLNAC*)* was established in 1983. Its founder, and leader, H.E.P. Cooray, Attorney-at-Law, is a person with considerable experience and knowledge of domestic as well as of international commercial arbitration. SLNAC is well connected to the international network of arbitration institutions. In fact, Mr Cooray had extensive contacts with Sweden and Swedish experts in arbitration at the time of initiating the Centre. By the late 1980s, SLNAC handled a considerable number of arbitrations, and the difficulties of the Centre in providing sufficient services appears to have been one reason for establishing a new centre by the 1992 study.

At the moment, between 75-100 ongoing cases are administered by SLNAC and in the course of one year SLNAC administers about 200 arbitrations. The arbitrations concern usually construction, leasing, hire-purchasing or commodities. The arbitrations are all *ad hoc* arbitrations. SLNAC is currently by far the most utilised institution for arbitration with a waiting time of several months for use of its premises. Its charge for services is Rs 1,000 per hour.

SLNAC is incorporated under the Companies Act as a Company limited by Guarantee and governed by a board of Governors nominated by various professional associations and other representative bodies. This Centre is the only one permitted by law to use the words "National" and "Sri Lanka" in its title.

SLNAC is serviced by the Sri Lankan National Committee of the International Chamber of Commerce (ICC) and both organisations have their headquarters in the same building in Colombo. This is probably the reason why the SLNAC often incorrectly and misleadingly is referred to as ICC National Council of Arbitration. The arbitrations which are taking place in the facilities of SLNAC, however, have nothing to do with ICC Arbitrations, which are administered by the Court of International Arbitration at the International Chamber of Commerce in Paris.

Ceylon Chamber of Commerce

The Ceylon Chamber of Commerce has been involved in arbitrations since the 1960s. Arbitration proceedings held by the Chamber are usually for disputes between members of the Chamber. They are held under the *Rules for Arbitration* of the Chamber. These rules where adopted in 1963 and amended in 1997. The utilisation of the Chamber as a venue for arbitration is limited. The Chamber held two arbitrations in 1996-1997 and one in 1998 which is still on-going. The arbitrators are always persons who are on the Board of Arbitration of the Chamber. There are 24 persons on the Board of which only one is a lawyer. Most of those persons act as arbitrators only in the fields of commodities such as tea, rubber, coir, etc. Thus the matters referred to arbitration to the Ceylon Chamber of Commerce often concern quality of goods.

According to the rules of the Chamber a dispute and a difference shall normally be decided on the basis of the written statement of the parties and the documents accompanying such statements. The Bench (arbitral tribunal) shall, however, have the power to call for any other documents and, if the arbitral tribunal thinks fit, to appoint a time and place for the hearing of the reference and to hear any oral evidence. The arbitral tribunal may further, at its discretion at any time before making its award and at the expense of the parties concerned, refer to, act upon, or adopt the advice or recommendation of any person having special knowledge relating to the particular industry, commodity, or branch of trade concerned in the reference, or of any expert, or of any qualified accountant, and may also, at like expense of the parties, consult and adopt the advice of proctor, solicitor or counsel on any question of law, evidence, practice or procedure arising in the course of the reference. The arbitral tribunal may also in its discretion, and at the expense of the parties concerned, appoint any expert, accountant, or lawyer to sit with the arbitral tribunal as an assessor.

The arbitration proceedings held by the Ceylon Chamber of Commerce differ in one important respect from arbitrations held under the 1995 Arbitration Act. As was the case under English law until 1979, the arbitral tribunal may on reference by a Court, state a special case for the opinion of the Court or give its award in the form of a special case for the opinion of the Court. This procedure by way of special and consultative case is unknown in modern arbitration statutes. The reason why it has been maintained in the Ceylon Chamber of Commerce Rules for Arbitration is probably due to the fact that the persons acting as arbitrators under these rules are usually not lawyers.

The differences between arbitrations held by the Ceylon Chamber of Commerce and those administered by SNALC and the ICLP Arbitration Centre, both as far as the matters submitted to arbitration and the procedures are concerned, has the consequence that the Chamber does not compete with the others. On the contrary there is a co-operation between the Ceylon Chamber of Commerce and the other two centres. The ICLP also has a representative serving on the Committee of the Chamber for the year 1997/1998.

The ICLP Arbitration Centre

The ICLP Arbitration Centre began operation in March 1996. It has so far handled 11 arbitration cases, all of a so-called *ad hoc* nature and all between domestic firms, most of them in the construction industry. The Centre provides the logistical support in such arbitration at an hourly fee of Rs 750. The Board of the ICLP Arbitration Centre consists of two leading businessmen, two former judges, the legal draftsman of Sri Lanka and the Deputy Solicitor General of Sri Lanka, while the chief executive authority of the ICLP Arbitration Centre is the Secretary General.

The ICLP Arbitration Centre has a panel of local arbitrators which has assembled in consultation with its Council of Management. These arbitrators are to a large extent the same as those used by SLNAC. So far, the Centre does not have any panel of international arbitrators, even though it is mentioned in its annual report of 1996 that the Centre proposes to finalise a panel of international Arbitrators in consultation with the "Swedish Team" shortly.

The Council of Management of ICLP has adopted Arbitration Rules which entered into force on 29 February 1996. However, no arbitrations have, so far been held under the Rules of the ICLP Arbitration Centre, but a case is pending. The ICLP recommends the following arbitration clause:

> *Any doubt, difference, dispute, controversy or claim arising from, out of or in connection with this contract, or on the interpretation thereof or on the rights, duties, obligation or liabilities of any parties thereto, or on the operation, breach, termination or validity thereof, shall be settled by arbitration in accordance with the Rules of Arbitration Centre of the Institute for the Development of Commercial Law and Practice.*

The Centre claims that this Arbitration clause is currently inserted in a number of commercial contracts. For example, the law firm for which the Secretary General works part-time, tries as a matter of routine to insert such a clause in the commercial contracts the firm handles. The Managing Director of National Development Bank of Sri Lanka also informed that the National Development Bank - one of ICLP's funding companies - had inserted either the recommended arbitration clause or at least a clause providing for arbitration administered by ICLP in about 5-10 contracts. The practice seemed in the latter case still not to make any reference to an institution or to any arbitration rules in an arbitration clause.

Other venues

There are also occasional cases of arbitration under the International Chamber of Commerce (ICC) and the International Centre for the Settlement of Investment Disputes (ICSID). If ICC had any arbitration of its own, using Sri Lanka as a venue, it would not necessarily depend on SLNAC for co-operation. Besides the facilities available in Sri Lanka, parties also go abroad for arbitration. This often happens when there is an involvement of foreign parties who demand an overseas location. Singapore, Paris and London seem to be the most common venues, but the foreign partner also sometimes insists on arbitration in its home country, a case which has occurred with Chinese companies.

3.4 The practice of arbitration

As noted above, arbitration was practised to resolve disputes between commercial companies and other entities in Sri Lanka also before the enactment of the new Arbitration Act. The arbitrations which take place in Sri Lanka concern mainly disputes between domestic enterprises but sometimes also disputes between a Sri Lankan and a foreign enterprise. In the latter case, arbitration is generally conducted outside Sri Lanka on the request of the foreign partner. However, SLNAC reports that about 10 percent of its cases are between a domestic and a foreign enterprise. Arbitrations where both parties are foreigners seem not to have taken place in Sri Lanka so far.

In the arbitration cases in Sri Lanka where the sole arbitrator or the arbitrator acting as chairman of the arbitral tribunal is a lawyer, the arbitrator is very often a retired judge. As is the case in at least most Common Law countries an active judge is not allowed to act as an arbitrator. The fact that the arbitrator tends to be a retired judge has often as a consequence that the arbitration is conducted in the same way as court proceedings. This leads not only to the effect that arbitrations take much too long, but the spirit of the arbitration is litigation.

According to sources involved in arbitration, Sri Lanka has a few retired judges who are considered of good professional standard in arbitration, besides an equal number of distinguished Sri Lankan lawyers who work mostly abroad as international arbitrators. In addition, there are half a dozen construction industry specialists (senior engineers and university professors) who are used as arbitrators for disputes in the construction industry, the industry with the most common commercial disputes in Sri Lanka. However, a general view expressed to the evaluation Mission was that Sri Lankan arbitrators are not sufficiently professional.

Ad hoc vs institutional arbitrations

The fact that an arbitration in Sri Lanka is administered by ICLP Arbitration Centre or SLNAC does not mean that the arbitration is conducted under the Arbitration Rules of an institution or under some other Arbitration Rules. In Sri Lanka the administration of an arbitration by an institution means usually only that the institution provides facilities for the arbitration e.g. premises for a hearing and stenographers, typists and others to perform secretarial functions.

When parties in Sri Lanka include an arbitration clause in a commercial contract they usually only agree that any disputes arising out of or relating to the contract shall be settled by arbitration without making reference to the rules of any institution or other pre-established rules e.g. the UNCITRAL arbitration rules. Arbitration is thus usually *ad hoc* arbitration even if the hearings are held in the premises of SLNAC or at another arbitration institution. In those cases the arbitrators may, unless the parties agree otherwise, conduct the arbitration in such a manner as they consider appropriate, provided that the parties are treated with equality and are afforded the opportunity of presenting their respective cases in writing or orally, and of examining all documents and other material furnished to the arbitrator by the other parties or any other person. Once a dispute has arisen the parties sometimes agree that the arbitration shall take place in accordance with an existing set of arbitration rules.

The Attorney General who had experience of about 10-15 commercial arbitrations, (*inter alia* ICC Arbitration, arbitration in accordance with the UNCITRAL Rules, Arbitration in Australia and Singapore) informed the evaluation Mission that he still preferred court proceedings. One of the disadvantages with arbitration is that the arbitrator is often a retired judge. Another disadvantage is that the party-appointed arbitrators often were partisan. He thought that business in Sri Lanka had to grow before the ICLP could become an arbitration centre of importance.

The logistics of arbitration

Besides insufficiently skilled arbitrators, another draw back of the practice of arbitration in Sri Lanka is the logistical support. Unlike Europe where tape recorders are used to record arbitration proceedings, in Sri Lanka stenographers are used. As a legal expert explained, this habit stems from the court where stenographers are used for maintaining records. Several people interviewed complained about the shortage of efficient stenographers.

4 THE IMPACT OF THE PROJECT

4.1 The impact of the new Act on dispute settlements

The Sri Lankan Arbitration Act No 11 of 1995 is a modern statute and incorporates much of the latest development in the field of commercial arbitration. Since the Arbitration Act had been in force for less than three years at the time of the evaluation it is too early to give any final judgment on how it has impacted on arbitration in Sri Lanka. Nevertheless, the new law has made it clear that a valid arbitration agreement is a bar to court proceedings if so pleaded. Under the old law this was not the case unless the agreement stipulated that the award of an arbitrator or arbitrators is to be a condition precedent to the enforcement of any rights under the contract. In such a case a party has no cause of action in respect of a claim falling within the clause, unless and until a favourable award has been obtained, i.e. a clause commonly called *Scott v Avery* after the name of the leading English case in which such a clause was declared valid.

Another shortcoming which has been remedied by the new Act is that once an arbitration has commenced, no court intervention whatsoever, including the stated case procedure, is allowed. The only exception is the right to go to court to try the validity of the arbitration agreement. However, this will not automatically mean that the arbitrators must stay the arbitration. Such decisions are left to their discretion. The new law also made it clear that once an award has been rendered there can be no review of the merits, but only a possibility of having an award set aside on very narrowly defined procedural grounds.

According to the new law, party autonomy is accepted to the largest extent possible in conducting the arbitration proceedings, i.e. the arbitrators must follow the rules agreed upon by he parties. The arbitrators are not obliged to follow the same rules of procedure as the courts unless the parties have so agreed. Furthermore, the Act provides in principle for an efficient enforcement procedure. As mentioned above, parties often experience delay with the enforcement procedure in the High Court due to the provision on consolidation of an application for enforcement and an application for setting aside. Also the enforcement of interim measures ordered by an arbitral tribunal seems to be very difficult in practice.

4.2 Impact on governance

The importance of taking commercial disputes between business entities out of the court system cannot be exaggerated. In a system which is overburdened with commercial cases in which 10-15 years of proceedings is not rare, the backlog clogs the judicial system as a whole. This reduces the capacity of the judicial system to dispense prompt justice to the population at large, causing deterioration of the quality of governance. The development of an alternative dispute resolution mechanism is not only essential for the commercial climate of Sri Lanka, but also for the distribution of justice. From this point of view, the development of an arbitration institution outside the court system was, at the time when the Project was initiated, highly relevant and continues to be so.

A non-functioning judiciary system risks creating non-formal alternative measures. An example of the situation in neighboring South Asia would illustrate the significance of alternative dispute resolution including arbitration. In India there are currently 30 million cases pending in various high courts and the Supreme Court. As a result of such a massive backlog, a case can take 10 to 15 years to be settled. Since businessmen cannot wait that long, they have shown an increasing tendency to seek the help of organized crime syndicates, such as the Mafia, to settle commercial disputes. These include recovery of loans, credit card dues, property disputes and many other kinds of conflicts. The Mafia often resort to high handed tactics such as physical assaults and murders. Many companies, including some foreign banks, are reported by the media to be using such crime syndicates for quick dispensation of justice. As a result, the criminals have gained strength and pose a fresh challenge to the law enforcement agencies of the Government. Some criminals, with support from their clients in the commercial sector, contest elections and enter the legislative processes. A similar tendency is observed in Pakistan, Nepal and Bangladesh.

So far, Sri Lanka seems largely free of such crime in the commercial sector. With the liberal economic policies introduced by successive governments since 1977, the private sector is growing in the country. It is bound to demand facilities for dispensation of justice, amongst other services. If the formal court system fails to provide adequate quantity and quality of services, there is a risk that Sri Lankan business might follow the Indian and Pakistani examples of encouraging organised crime to intervene in commercial disputes.

We can conclude that in the longer perspective the Sida/SwedeCorp Project has contributed to improving the legal framework in Sri Lanka by facilitating the creation of an arbitration law and undertaking considerable promotion surrounding the law and the institution of arbitration. While the causal relationship cannot be established, the study visit to Sweden in 1992, the interaction between Sri Lankan judiciary experts linked to the committee of the High Court, and Swedish legal experts appears to have been instrumental in institutionalising the modern arbitration act. Thus, the Swedish assistance has addressed an urgent need, not only to improve the environment for commercial transactions, but also for governance at large. At the same time it must be realised that the process of changing the system of governance is slow, and that a Project over a few years cannot be expected to create such a change by itself. The longer term impact has to do both with the demand of arbitration in Sri Lanka from domestic industries, foreign investors in the country and from international business wanting a third country for settlement of disputes. It also has to do with the supply of arbitration in the sense of a legal framework, the professional practice and associated human resource base and the organisational set up for arbitration. The Project has attempted to a larger or smaller extent to address both these demand factors and supply factors as further discussed below.

4.3 The impact on the demand for arbitration

There are various kinds of potential demands for arbitration in Sri Lanka. The primary demand would come from domestic industry. The secondary demand would come from disputes between Sri Lankan and foreign companies, mostly for projects and joint ventures in Sri Lanka. There is also an aspiration in Sri Lanka that the country will emerge as a regional financial hub for South Asia creating demand for using it as a neutral venue for international arbitration. For instance, disputes between Indian and Pakistani or Indian and European companies could be settled in Sri Lanka. The objective of the Project was to serve particularly the first two demands, but Sri Lanka as a service centre for regional arbitration seems also to have played a role at the conceptualisation of the Project.

Domestic demand

The experience of SLNAC proves that there was a significant domestic demand for arbitration outside the courts long before the new law or the Project. In fact, according to Dr. Peires, one of the reasons in the 1992 study tour recommendations for providing support to arbitration was the congestion at the SLNAC. The mission has the impression that Sri Lankan businesses have an attitude of amicable and efficient settlements of disputes outside the courts, but that the courts can and are used by a party which does not want a settlement, but prefers a prolongation.

Some industry patterns are discernible from random inquiries about the need for arbitration in Sri Lanka. According to most observers, the following sectors have shown the maximum propensity to resort to arbitration:

- Construction (highest propensity)
- Leasing and hire-purchase (high propensity)
- Commodity trading

The demand in the construction industry can be attributed to the development works undertaken by the state sector where huge contracts are given to a multiple set of parties. In fact, the Government has established the Institute for Construction Training and Development to resolve disputes in the construction industry. It does not provide arbitration but facilitates conciliation through negotiation.

Most bankers identify leasing as an important sector for arbitration. Some banks incorporate arbitration clauses in the leasing contracts entered by them. There is thus a high potential that insurance might prove to be a vital sector for arbitration. Commodity trading, especially tea, is a traditional business in Sri Lanka. The traders have been using arbitration rather than depending on expensive court procedures.

On the basis of random inquiries, it appears that there is a potentially significant demand in the domestic market in the future. A growing number of commercial enterprises are becoming aware of the benefits of arbitration. An expression of this is the fact that SLNAC is booked for three months on any given date. Surprisingly, this domestic demand has not spilled over into utilisation of the ICLP Arbitration Centre more than to a very marginal extent. There are several explanations for this:

- Many firms are used to SLNAC which has been in operation for 15 years. Companies which use arbitration as a matter of routine, seem to have confidence in SLNAC and see no need for change.
- The ICLP Arbitration Centre is not yet well known in Sri Lanka. While the Centre has undertaken some promotional activities within the business community in Sri Lanka, it surprised the evaluation Mission that the Centre was so poorly known within that community. For example, the head of the organisation in charge of the privatisation of public sector companies and projects - the Private Enterprise Reform Commission - possibly handling the largest portfolio of both domestic and foreign investments, had never heard of the Centre, but was very keen to get to know about it. Similar views were expressed by several business leaders outside the funding family of ICLP.

- Sri Lanka is a highly factionalised society. A centre associated with a particular group of law firms or business firms, might be considered partial. This is true for both SLNAC and ICLP, but it is a particular draw back for a new, unproven centre.

The limited demand for the ICLP Arbitration Centre's services is even more surprising, given ICLP's high standing in the Sri Lankan business community, and the funding of the Centre by twelve leading firms. Inquiries in the business community revealed that the large companies who had provided financial support to the ICLP Arbitration Centre seemed to have had limited need to encourage arbitration in their own transactions. The explanation for their financial support was a desire to contribute to their social responsibility for the development of arbitration in general terms. Thus, their support to the ICLP Arbitration Centre seems less a reflection of the demand for domestic arbitration mechanisms and more a good-will measure to ICLP. For example, one of the funding companies of the ICLP Arbitration Centre in the leasing business continued to use the SLNAC facilities as a matter of routine, had a record of about 50 arbitration cases with SLNAC, and had no intention of changing.

The support of ICLP is also an expression by the funding companies of the desire to promote Sri Lanka as a regional (or global) player in business. Thus, there might be an attitude in the business community that the existing framework for arbitration is sufficient for Sri Lanka's domestic business, but if Sri Lanka wants to be seen as an attractive venue for foreign investments, a modernisation is required.

While analyzing the domestic demand for arbitration, it is necessary to bear in mind that not all business disputes in Sri Lanka may be submitted to arbitration. Clause 48 of the Arbitration Act, 1995 specifically states:

> *For the avoidance of doubts, it is hereby declared that nothing in this Act shall apply to arbitral proceedings conducted under the Industrial Disputes Act or any other law, other than the Board of Investment of Sri Lanka law, making special provision for arbitration. Thus, the Act does not apply to disputes between management and labour.*

Demand by foreign investors

According to the Project document, the justification for building the institution of arbitration in Sri Lanka was partly to service the needs of foreign investors. How valid was this assumption? The question of arbitration in the case of a dispute generally comes far down on the list of criteria that determine foreign investment transactions. As a matter of routine, major foreign investors in Sri Lanka tend to include arbitration clauses with settlement in an established institution in a third country - often London, Paris or Singapore - or in the foreign investors' home country. On the other hand, the local partner might find arbitration outside Sri Lanka a negative aspect in a business deal due to cost reasons, for instance. From the local business community's point of view functional arbitration at home is a clear advantage, although the evaluation believes it is not a condition of major influence in any business transaction. Sri Lanka competes for foreign investments on a global market and generally the foreign partner tends to dominate such deals. Hence, the potential concern by the local partner over arbitration at home might have a low importance in the determination of the transactions.

However, the existence of a well functioning judicial system, including modern arbitration, is an integral part of the business environment, and it has an impact on Sri Lanka's overall profile in such a context. In a world with increasing competition for foreign investments and trade, the quality of the business environment is essential. Besides production costs, *transaction costs* in the meaning of costs and risks related to any commercial transaction, tend to be increasingly important, influencing investors to focus on certain markets. The evaluation therefore concludes that while the establishment of the institution of arbitration might be of little importance for attracting foreign investments in a short-term perspective, and the Project is unlikely to have had an impact in this respect, it is important in a longer perspective. Sri Lanka needs to establish a positive profile in a competitive global business community, especially if it wants to compete with other strengths than very low labour costs. A functional arbitration institution is an element of such an environment, while the emergence of alternative dispute mechanisms such as use of criminal syndicates, would act as a clear deterrent to FDIs.

The Project is working towards the establishment of such an environment and has taken the first steps in establishing it by supporting the new Arbitration Act, building capacity in arbitration, and promoting the institution.

International demand

Sri Lanka aspires to sell arbitration services internationally, and especially in a regional context. This expectation is part of a broader vision to develop Sri Lanka as a regional commercial/financial hub. The ambitions of Sri Lanka are primarily focused on South Asia. Since the formation of the South Asian Association for Regional Cooperation (SAARC) in 1985, the South Asian elite has been gradually promoting the South Asian identity through the establishment of various South Asian regional institutions. The governments of the region have already decided to establish a South Asian Free Trade Area within five years. A high-powered expert group is also examining the prospect of advancing towards the South Asian Economic Community.

Sri Lanka expects that the country will benefit from the prospective common market or the economic community in South Asia. India and Pakistan are the largest members of SAARC, but they have been engaged in conflict since their independence in 1947. Bangladesh is the third largest country in the region, but it has had phases of strained relations with Pakistan and India. Bhutan and Nepal are also involved in a bilateral conflict. Nepal, the Maldives and Sri Lanka are considered neutral countries. Of them, the Maldives is a mini-state with about a quarter million population and Nepal is too impoverished with low literacy, weak infrastructure and land-locked geography to be a serious contender as a commercial centre. On the other hand, Sri Lanka has a good supply of educated, English-speaking manpower, well developed infrastructure and a port. Therefore, it should have potential to become a regional centre for financial and other services, including acting as a venue for settling commercial disputes within the region.

Besides the disputes between companies in SAARC member states, Sri Lanka also hopes to be accepted as a venue for disputes between South Asian companies and extra-regional corporations. For instance, an Indian and an European company are expected to prefer Colombo to London or Singapore on account of lower costs. Sri Lanka also expects to attract arbitration from South India. The arbitration centre in India is attached to the Federation of Chambers of Commerce and Industry based in New Delhi. For companies in southern Indian commercial cities such as Chennai (Madras) and Trivandrum, access to Colombo could be considered easier than access to New Delhi. In an integrated South Asia, the South Indian companies might therefore prefer Colombo to New Delhi.

The vision of Sri Lanka as a regional arbitration centre is based on the hypothesis that Sri Lanka has good relations with all SAARC member states and therefore it would be accepted as a neutral venue. The political neutrality of Sri Lanka is a fact. But it is not clear how it would be transformed into neutrality in the arbitration business. These expectations need to be examined against the background of the following realities:

- Intra-SAARC trade is merely 2.5 percent of the total trade of South Asian countries, thus making the vision of a SAARC common market an academic exercise with limited operational significance in the short and medium term.
- There is limited official trade between India and Pakistan, two disputing nations, as pointed out earlier. The relations between India and Bangladesh are at times strained but not so severe as to search a neutral venue for commercial dispute resolution. The Indian and Bangladeshi companies can meet in either country.
- It is true that many southern Indian companies might not be enthusiastic about New Delhi, but cities such as Chennai and Trivandrum are well developed. Since both SLNAC and ICLP only offer venues and technical staff, Chennai and Trivandrum can claim to possess equally good, if not better, venues and stenographers.

There may be some scope for disputes between Indian and extra-regional companies, but it appears limited. Most Indian companies would prefer a venue such as Singapore or London if an Indian venue was not acceptable. The main advantage of Sri Lanka as an arbitration venue would be the low cost factor, but big South Asian companies often do not care for cost advantages. Under the circumstances, the expectation about securing international customers might be highly inflated.

Sri Lanka's prospects as a neutral venue for arbitration are restricted to South Asia. In South-east Asia, Singapore has an internationally acclaimed arbitration centre which has been in operation since 1991. There are mixed reports about the success of the arbitration centre in Kuala Lumpur. According to one version, the KL centre did not attract any proceedings for the first twelve years. China and Korea have their own arbitration centrers. Thus, the East Asian market is in-effect out of bounds for Sri Lanka except for whatever business SLNAC might generate through its co-operation agreements with the centres in China and Korea.

The vision of Sri Lanka as a regional financial centre is strong in the minds of the business community and Government since the liberalisation of the economy, and especially during the last decade when the global competition for FDI has escalated. This vision is reinforced by the fact that services account for the most rapidly increasing trade and investments, and that services in trade become increasingly important. Sri Lanka also has many features positive for such a vision. However, the market prospects in the South Asian context might be limited. Furthermore, the international business community Sri Lanka is still too insulated for such a vision to be more than a distant dream. At last, but not least, the fact that Sri Lanka for more than a decade has been involved in a civil war in the North East with ocassional spill over effects in Colombo is a major factor preventing the country from exploring the opportunity as a regional financial service centre.

4.4 The impact on the supply

The supply side analysis looks at the impact of the Project on arbitration facilities available, on the human resources in Sri Lanka for commercial arbitration, and also on the practice of arbitration.

The centres for arbitration

The primary rationale for the establishment of the ICLP Arbitration Centre was to enhance the supply of arbitration facilities in Sri Lanka. The foundation stone for the establishment of the ICLP Arbitration Centre was laid by the report prepared by SILD and ICLP, identifying possible areas of co-operation between Sweden and Sri Lanka in the field of commercial arbitration in September 1994. When SILD was commissioned to prepare the report, its terms of reference included:

- *to diagnose the current situation in Sri Lanka with regard to commercial dispute resolution;*
- *to assess the viability of an Arbitration Centre in Colombo.*

The supply side analysis in the SILD/ICLP report of 1994 examined the need for a new arbitration centre under the auspices of ICLP *vis-à-vis* the shortcomings of the judicial system. However, it did not offer any comparative perspective on the transaction volume, shortcomings or scope of the existing facilities at SLNAC or the Chamber of Commerce at the time of the study. Although these venues were mentioned by name, there was no discussion of their history nor of their operations, strengths or weaknesses. Nor was there any discussion of whether the strengthening of SLNAC would have been a feasible option. It is the view of the evaluation Mission that the SILD/ICLP report, while elaborate on the need for changing the practice and law in commercial arbitration, gave an incomplete picture of the prevailing organisational set-up at the time when SwedeCorp was considering support for arbitration. The report only partly fulfilled its terms of reference.

SwedeCorp, in its turn, appears not to have undertaken any independent assessment of the current situation, but relied entirely on the SILD/ICLP report for its decision. It might be seen as ironic that the Project at its tail end in 1998 plans to undertake a survey of the competition in arbitration in Sri Lanka. Such an analysis should have preceded the Project.

The built up of two, or rather three, venues for arbitration in Sri Lanka, has had the following negative effects in the view of the evaluation Mission:

- The existing human and organisational capacities in commercial arbitration in Sri Lanka at the time of the start of the Project were not utilised properly. Rather, a situation of competition between two centres emerged. While competition might have its own value, it is questionable if it is a good use of scarce Sri Lankan resources to develop an arbitration institution. SLNAC not only had extensive experience, but its leader is also a knowledgeable arbitrator, a resource poorly utilised.
- If Sri Lanka wants to promote itself on the international market either to foreign investors or to international firms looking for a neutral venue for arbitration, the existence of several arbitration centres is not conducive, and rather reinforces the common external view of the country as factionalised.
- The ICLP Arbitration Centre was established partly with the objective of serving the international business community, and ICLP has actively tried to promote the Centre in the region with Sida funding. However, a serious draw back in such efforts is the very limited domestic experience of the ICLP centre.
- Countries with a volume of business many times larger than Sri Lanka tend to have one general arbitration centre. This is the case of Sweden, the UK and United States[12]. It is difficult to see why Sri Lanka needs two or three centres.
- Sri Lanka might have problems of financially sustaining several arbitration centres. Currently, ICLP Arbitration Centre is highly subidised by it members and Sida. While ICLP is backed by a business community with considerable resources, ICLP preferred to ask Sida for funding of the rent of its premises at the time of the move from the BOI premises to the hotel Taj Samudra office complex. ICLP has also proposed a second phase project with Swedish funding for such activities as equipping a library and printing publication materials. Such financing has nothing to do with capacity building or transfer of know how, but are signs of ICLP's difficulty in establishing itself on the local market so as to attain self-financing.

The supply of arbitrators

The profession of commercial arbitration was far from unknown in Sri Lanka at the time the Sida/SwedeCorp Project was initiated. However, the practice of arbitration was beset with certain problems (besides the lack of a modern law). The problems were, *inter alia* that retired judges from district courts generally act as arbitrators. Many of them did not differentiate between arbitration and court proceedings. They tended to expect the same time-consuming rules as they were used to in the courts, defeating the very purpose of arbitration. They also tended to have an experience in the criminal and civil cases, with little exposure to commercial disputes. Arbitration cases therefore tended to be a replica of court proceedings.

[12] In some countries, there exist also specialised commodity arbitration centres

The Project has undertaken a series of short-term workshops for improving the skills of arbitrators, attended by a considerable number of legal professionals, mostly from the business sector. While such inputs have been well conducted and played an essential role in propagating the use of the institution of arbitration, it is questionable if it has had any significant impact on the practice of arbitration, mainly due to the fact that such a change process is time consuming. Most persons whom the Mission interviewed claimed that the practice is still to a large extent influenced by the court proceedings and that little will change until Sri Lanka has developed a younger cadre of professional arbitrators. As noted earlier, the Project has so far made little headway in introducing arbitration as a subject at the University level in spite of its activity planning. One reason for this appears to be resistance to change within the higher education system.

In summary, changing the practice of arbitration is a longer and more cumbersome process than enacting a law, or establishing an(other) arbitration centre. The evaluation must conclude that the Project has fallen short of its expected results in human resource development. The Project document was partly too ambitious in this respect, given the short time frame, but the Project has also made less headway in training than anticipated.

4.5 Has the project fulfilled its objectives and attained its expected results?

The overall objective of the Project was, as stated earlier:

> *to bring arbitration law and practice in Sri Lanka in line with modern priciples and methods of commercial arbitration in order to attract foreign investors and to meet the demands of the business community in Sri Lanka for speedy dispute resolution.*

This objective contains four elements or sub-objectives:

1) Bringing arbitration law in line with modern principles and methods of commercial arbitration;

2) Bringing arbitration practice in line with modern priciples and methods of commercial arbitration;

3) Attracting foreign investors; and

4) Meeting the demands of the business community in Sri Lanka for speedy dispute resolution.

In the view of the evaluation, the first sub-objective has been reached, although the Project itself played a marginal role in this. The second sub-objective is far from achieved, as such a process by necessity is slow. The third objective is long-term and has so far has not been achieved, while the fourth objective is at most marginally achieved. It must be recognised that the explicit objective of the Project was ambitious, and basically not realistic given the resources and time frame for the Project. It might be considered a vision and a direction rather than an objective.

The expected results of the Project, according to the Project profile as earlier discussed, are less ambitious and as such more realistic. The expected results and the evaluation's judgement of their attainment are summarised:

Table 1: Summary of results expected and achieved through the project

Expected results	***Current situation***	***Project contribution***
Enactment of an arbitration law	Yes, law in place	Pre-project significant: Project very marginal
Selected number of qualified Sri Lankan lawyers capable of conducting arbitration	Yes, dependent on what 'selected number' entails	Limited change compared to pre-project situation
The Arbitration Centre capable of administering arbitration cases	Yes	An additional centre established
A system for training of law students in field of arbitration	No	None so far

The evaluation concludes that the Project has made a certain contribution towards the overall stated objective, but far from fulfilled it. Of the expected results, three out of four might be considered achieved. However, the Project itself has only made a significant contribution to one of these.

4.6 Cost-effectiveness

Have the achieved results been commensurate with the resources spent, and could a higher degree of goal attainment been achieved with the resources available? The conclusion of the evaluation is that the Project had a lower degree of effectiveness than desired due to the following key factors:

- the Project established a new, competing arbitration centre rather than building upon the existing centre;
- Swedish resource persons for were 'over-used' for promotional activities rather than for training of trainers;
- Efforts were spent on marketing of the ICLP Arbitration Centre abroad, rather than building capacity at home;
- There has been limited attention to the long term up-grading of the arbitration skills of Sri Lankan lawyers at the University or College level.

The evaluation believes that the establishment of a new arbitration centre was not a cost-effective use of aid resources. A better use would have been collaboration with SLNAC rather than competition. Collaboration, rather than establishing a parallel centre, would have freed resources for training of the Sri Lankan human resource base and would also have utilised the existing considerable experience in arbitration in Sri Lanka at the outset of the Project. Another weakness is that the Project used extensively the Swedish experts and the AISCC as resources in the various training events. It would have been a better use of aid resources to use the Swedish experts in intensive training of trainers - in Sri Lanka or in Sweden. These trainers could then have carried on with the local training. It appears that ICLP has had an additional motive for the frequent use of the Swedish experts in the sense of projecting an image of the ICLP Arbitration Centre both at home and abroad.

The limited attention to the upgrading skills and changing the attitudes of local arbitrators is poorly matched with ICLP's ambitions of portraying Sri Lanka as a regional venue for arbitration. If Sri Lanka wants to project itself as such a venue, it would have to possess an adequate supply of persons able to chair international arbitration. If Sri Lanka does not have a pool of such competent persons, it would find it difficult to emerge as a

venue for international arbitration cases. The marketing of Sri Lanka abroad before the institution of arbitration is sufficiently well developed in supply can in fact be highly counterproductive. If Sri Lanka does not live up to its projected image as a host for regional arbitration, this can create bad will. Such a lost market image and opportunity is quite expensive to correct at a later stage. In the view of the evaluation, the considerable resources allocated to promoting the centre abroad would have been better spent in developing a domestic capacity for arbitration.

In conclusion, while the Project has been ambitious and has performed the tasks it set out to do quite well, the design had clear weaknesses. This is related to the 'feasibility study' by SILD/ICLP which did not provide SwedeCorp with an accurate assessment of the situation of arbitration in Sri Lanka at the outset of the Project, nor discussed the pros and cons of alternative actions. SwedeCorp's decision-making can also be questioned in this context. Thus, SwedeCorp:

1) did not seek an independent view of the situation, but appeared to have relied entirely on the SILD/ICLP report;

2) commissioned a feasibility study by an institution already *de facto* involved in implementation of a project; and

3) did not use competitive bidding in awarding the contract for implementation. The evaluation does not concur with the argument that the services to be provided were so specialised that no other organisation could have competed with SILD.

5 THE FUTURE

5.1 Sustainability of the institution of arbitration

There is sufficient domestic demand from the business sector in Sri Lanka for commercial arbitration outside the court system to make such an institution viable and sustainable. SLNAC has been self-financing for a long time based on the fees charged to the disputing parties for use of the facilities. As far as the evaluation Mission has been informed, no external support has been provided to SLNAC since its beginning. On the other hand, ICLP is to a large extent subsidized by the interest accrued from the initial grants of Rs 12 million made by the member companies as well as by the project funding from Sida. The fees levied by ICLP for the *ad hoc* arbitration cases under its auspices are not sufficient to pay for rent, salaries and other administrative expenses. A lead time is to be expected for a new institution before it has reached a break-even point. However, the existence of two competing organisations is probably not conducive to the overall sustainability of the institution of arbitration in Sri Lanka.

A problem created by the Sida/SwedeCorp Project is that it has provided considerable subsidies to one of the centres and nothing to the other, hence creating distortion in the market forces. The evaluation believes this was not the intention of the funding agencies, but a result of the incomplete information available to SwedeCorp at the stage of the Project design, as discussed above. Nevertheless, such a distortion is unfortunate in a private sector development project.

5.2 The way ahead

Sri Lanka is in a process of developing a functional institution for arbitration, but there is still a long way to go until an effective institution is at hand, especially if foreign investors are considered or if Sri Lanka wants to be considered a service centre for regional businesses in a longer term perspective. The steps which seem to be required are discussed below.

There is a need to undertake much more training of arbitrators and technical support staff, both of persons currently acting as arbitrators and of new professionals. The introduction of arbitration at the University level and at Law Colleges is a matter of priority. There is also a need to develop a cadre of 'trainers' which can carry on the human resource development in Sri Lanka.

Further promotion of the use of the institution of arbitration amongst the domestic business community and in the legal community is required.

Co-operation rather than competition between the centres for arbitration should be sought. The current process of factionalism, with each centre linked to certain personalities and interest spheres, is a sign of an undeveloped institution and a general reflection of Sri Lankan factionalism. It is unfortunate that the Swedish assistance has contributed to this, and if Sida is considering any further assistance in the field of arbitration, a joint venture should be promoted.

The marketing of Sri Lanka abroad as a venue for arbitration should take second place and be postponed until a sufficiently effective institution is in place. On the other hand, we see an opportunity for Sri Lanka in the longer run in the South Asian region, also as a resource centre, as is further elaborated upon below.

5.3 Finding a division of labour

In the domestic market, SLNAC is an established player in the delivery of services. On the other hand, ICLP is a new player primarily interested in public policy related work. Both have good track-records, SLNAC in service delivery, ICLP in introducing new legislation. Perhaps, SLNAC and ICLP can negotiate a division of labour. SLNAC might concentrate on improving its service capacity while ICLP might focus on advocacy and policy related activities.

At the regional level, ICLP has the necessary contacts with the policy community to link Sri Lanka to any SAARC-level initiatives. SAARC LAW had plans to float a regional arbitration centre which have been aborted. Nevertheless, its support would be vital in popularising any arbitration programme in the region. Similarly, the SAARC Chamber would provide access to national chambers in SAARC countries. The modalities of co-operation can range from a formal pact between ICLP and SAARC LAW or the reconstitution of the ICLP Board to include prominent South Asian lawyers and chamber of commerce representatives.

There is also a provision under the official SAARC programme to create regional centres with official recognition from the seven governments. Sri Lanka can easily offer to host a regional commercial arbitration centre with the help of SAARC LAW, SAARC Chamber and other non-governmental networks, and with final recognition from the SAARC Secretariat.

In brief, the arbitration community in Sri Lanka and also in the South Asian region is too small to have too much competition between several entities. There are different kinds of roles to be played and each of them has one to fulfil based on its comparative strengths. If different entities work in co-operation and co-ordinate with each other, they can promote arbitration, relieve pressure on the judicial system, and improve the quality of governance. Together they can make a difference.

5.4 Other initiatives in Legal Reform

The future prospects for arbitration cannot be isolated from the broad programme for commercial legal reform in Sri Lanka. There are a series of on-going or planned external initiatives in this:

- The World Bank had conceptualized a set of comprehensive legal reform proposals in commercial law. The salient features of the planned World Bank assistance include: establishment of a Commercial Court; establishment of a training institute for judges; and establishment of a law library in the Attorney General's Office. The World Bank has an ongoing programme to support computerisation of the Supreme Court. While an ambitious project was planned, it has been scaled down considerably due to the implementation capacity at the Ministry of Justice.
- Asia Foundation, with funds from the US Agency for International Development (USAID), is considering supporting commercial arbitration. It has yet to work out its priorities. There is some indication that it might support the promotion of arbitration in the small and medium sized business sector.
- At the regional level, SAARC LAW, an association of lawyers and jurists, organises seminars on legal reform. It had plans to develop a regional arbitration centre but these plans have been aborted.

5.5 Opportunities for Sri Lanka as a regional resource centre

ICLP has established a track record as an effective institution for addressing policy issues in the legal framework. It was instrumental in introducing the new law in 1995. It has also arranged seminars and training programmes which have been praised by participants. Conversations with eminent sections of the legal community testify the reach which ICLP has established in the top policy-making circles in a short time. At the regional level there are hardly any institutions playing a policy and advocacy role. The Indian Council of Arbitration, New Delhi, and business associations in India occasionally conduct a seminar. In view of the magnitude of the problem, the advocacy efforts undertaken so far are highly inadequate. Arbitrators in Mumbai (Bombay), India's commercial capital, informed Mission members that they would welcome advocacy and educational work led by an institution in Sri Lanka. Arbitrators in Bangladesh have invited Sri Lanka to explore cooperation and ICLP has received indications of interest from Pakistan and the Maldives, besides India, for conducting seminars to introduce arbitration.

In the context of advocacy at the regional level, Sri Lanka can especially provide expertise in the drafting of laws to Bangladesh, Nepal, Pakistan and the Maldives. India has introduced a new law only in 1995, at about the same time as Sri Lanka did. Similarly there is there are considerable prospects for training arbitrators all over South Asia. Arbitrators in India informed the evaluation Mission that there was an extremely short supply of arbitrators in that country, despite the presence of a few internationally reputed names in the field. Random inquiries provide firm indications of demand for arbitration training in South Asia. Therefore, there is considerable scope for providing services if a pool of trainers is available to impart training.

6 RECOMMENDATIONS TO Sida

6.1 The case for further support

Sida, and earlier SwedeCorp, has played a certain pioneering role in the development of arbitration in Sri Lanka. This institution building is not completed and a case can be made for contiuous support. However, the current Project approach has faults for reasons discussed above. The evaluation team therefore recommends to Sida to reconsider its current approach in support of arbitration in Sri Lanka. Such support should be made neutral (i.e. not tied to any one centre), and more focused on upgrading the human resource skills and the promotion of the use of arbitration in the domestic industry. If possible, Sida should try to foster co-operation between the different parties towards one effective Sri Lankan arbitration centre which is as free from factionalism as possible. In fact, Sida could be considered as having a morale obligation for continous support in a new direction to rectify the partisan approach and distortions which it nurtured in the past. The evaluation believes that arbitration well merit further support in this direction for dual reasons: that it contributes to a more efficient business environment, but also that it can improve the institution of justice and governance at large by releasing the courts.

6.2 The need for a base survey

If Sida considers a new phase of institution building in arbitration, it should be based on an independent assessment of the current situation, the needs and the opportunities. The evaluation team has not been in a position to undertake such an assessment, nor was it a part of its terms of reference. While the planned survey by ICLP might provide further information, the evaluation believes that such a 'base study' should be be truly independent, given the past history of the Project. Questions to be addressed by such a base study are:

- Propensity and willingness of commercial enterprises to settle disputes out of court;
- Quantitative assessment of arbitration awards implemented without the assistance of the court since the introduction of the new law in 1995;
- Experience of SLNAC facilities and demand for increasing its capacity;
- Propensity and willingness of foreign partners of Sri Lankan enterprises to settle disputes through arbitration in Sri Lanka *vis-à-vis* foreign locations;
- Reasons for acceptance of Sri Lanka's arbitration space by foreign companies;
- Industry analysis of demand for arbitration by various sectors;
- Firm level analysis of all important law firms in their tendency to insert an arbitration clause in commercial contracts;
- Institution level analysis of banks, investment authorities, privatization authorities and others in their tendency to insert an arbitration clause in commercial contracts;
- Prospects of new sectors in the future creating demand for arbitration in Sri Lanka.

6.3 A regional initiative

Sida might also consider a regional initiative in South Asia in line with the discussion above. Such an initiative would have the dual function of 1) providing an essential service to the region in its current shift towards open market economies and 2) providing a niche service to Sri Lanka for which the country has a comparative advantage.

Annex 1: Project Profile

Expected results	*Planned activities*	*Verifiable indicators*	*Implemented activities*	*Achieved results*
Enactment of an Arbitration Law	Assisting in finalising the draft new law	Promulgation of a new Arbitration Act	Marginal if anything during the Project	Law in place since 1995 - expected result achieved, but largely independent of 1995-98 Project. However, considerable influence in 'pre-project activities'
	Information through publication of booklet and leaflet		Booklet and leaflet published; also other promotion materials developed	
Selected number of qualified Sri Lankan lawyers capable of conducting arbitration	Training of arbitrators through seminars and courses	Active participation by the foremost lawyers in Sri Lanka in seminars and training courses arranged by project	Two mock training workshops and several one-day workshops arranged well attended	Activities carried out, but the degree of influence on the legal community difficult to acertain. Training nevertheless judged to be of good or high quality
A system for training of law students in field of arbitration	Introduction of a system for training of law students at Colombo University	Arbitration courses at the University popular and well attended	Nothing undertaken so far, but a plan prepared for extension of project in 1998	Results not achieved
An Arbitration Centre capable of administering arbitration cases	Co-operation between the Arbitration Centre and the AISCC	Recognition by foreign investors and the business community in Sri Lanka of the Arbitration Centre	Centre established in 1996 in good facilities paid for by Project and with adequate equipment; staff provided with training overseas; good co-operation with AISCC established	Centre capable of administering arbitration cases; The recognition by foreign investors and the Sri Lankan business community not particularly high due to limited awareness and limited track record of Centre.

Annex 2: Terms of reference

INEC/NÄR
Åsa Heijne

1998-04-08

Diarienummer:
INEC 1995-1020

Terms of Reference for the Evaluation of Sida's Support to the Building of an Institutional Capacity for Arbitration in Sri Lanka.

1. Background

In 1994 a study was made of the existing situation in Sri Lanka as regards commercial arbitration. The background was the realisation that the existing legal and institutional framework for arbitration in Sri Lanka was outdated and not able to meet the requirements of modern society. The study was done by the Swedish Institute for Legal Development (SILD) together with a team of Sri Lankan lawyers.[1]

The study found that the institutional set-up was inappropriate for efficient arbitration. The Ceylon Chamber of Commerce settled disputes between members of the Chamber, according to the by-laws of the Chamber. A part from this there was no other national facility for arbitration. Disputes could, however, be settled by the International Chamber of Commerce, with proceedings being held in Paris. Another possibility referred to disputes emanating from the Investment Protection Agreements that Sri Lanka had entered into with various countries. Such disputes was settled by the International Centre for Settlement of Investment Disputes. In short, there existed no proper institution for arbitration. The alternatives were either inappropriate or expensive.

The study, however, also found a modern law of arbitration was a precondition for any further reform measures in the area of arbitration. The legal framework suffered from several shortcomings. Chief among them were the procedural rules of the Civil Procedure Code which caused delays in the proceedings. There was a need for a faster and better integrated procedure for the conduct of commercial arbitration and a curb on unnecessary challenges and appeals. It was suggested that the arbitration agreement must in principle be a bar to court proceedings and no court intervention must be allowed.

Sweden was considered as a good example for Sri Lanka to follow when developing a new system for arbitration of commercial disputes. First, Sweden is perhaps unique in the sense that arbitration of commercial disputes is more

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[1] *Report on a study made on possible areas of co-operation between Sweden and Sri Lanka regarding commercial arbitration.* SILD. Stockholm, 1994.

commonly used than in other countries. Furthermore, Sweden has become the venue for an increasing number of international arbitration, not necessarily involving Swedish nationals.

The report therefore recommended that Sweden should offer expertise that could assist Sri Lanka in modernising its arbitration system. The discussions were held by SwedeCorp and the Government of Sri Lanka and in early 1995 the parties had agreed on a project. SILD was given the assignment to implement the project, together with the Sri Lankan Parties. The project would run for two years, 1995 - 1996. In May 1997 the project was extended up to the end of 1997. It was further extended from January 1998 to September 1998.

2. Purpose and Scope of the Evaluation

The evaluation shall analyse the results from the project and it's impact on the settlement of commercial disputes in Sri Lanka. The purpose of the evaluation is to facilitate the parties learning from the experiences gained.

3. The Assignment

The evaluation consist of three parts. The first shall focus on the results from the project and the second shall concentrate on analysing the impact of the project. The third, finally, shall on the basis of the evaluation of results and impact discuss the feasibility of continued collaboration between Sweden and Sri Lanka in the field of arbitration

3.1 Evaluating activities, results and the project purpose

When analysing the results the point of departure shall be the Project Profile which was prepared for the project. The Profile outlines the various objectives of the project as well as specifying the indicators to be used for measuring goal fulfilment. The following steps in the intervention logic shall be evaluated:

Activities

* Assistance in finalising the draft Arbitration Act.
* Publication of booklet and leaflet to introduce the new Arbitration Act.
* Training of future arbitrators through seminars and training courses.
* Assistance in developing cooperation between the Arbitration Centre and the Arbitration Institute of the Stockholm Chamber of Commerce.
* Cooperation with the University of Colombo for training of law students in general principles and methods of commercial arbitration.

When evaluating activities the evaluators shall primarily verify whether they were performed according to plan and if not, what were the reasons for not doing so. The evaluators shall also assess if the activities were relevant for achieving the results. The evaluators shall also perform an analysis of expenditures incurred under the project. The evaluators shall also, if possible estimate the contributions

made by the project participants to the project, but which are not covered by the project budget. One example of such a contribution could be the time the Sri Lankan put into the project, but which is not covered by the project budget.

Results

Planned results	Indicators of verification
* Enactment of an Arbitration Law in principal conformance with the draft discussed during phase 1 of the project	Promulgation of a new Arbitration Act
* A selected number of qualified Sri Lankan lawyers capable of conducting arbitration and/or acting as counsellors in arbitral proceedings	Active participation by the foremost lawyers in Sri Lanka in seminars and training courses
* The Arbitration Centre capable of administering arbitration cases	Recognition by foreign investors and the business community in Sri Lanka of the Arbitration Centre
* A system for training of law students in the field of arbitration	Arbitration courses at the university popular and well attended

Project purpose

Planned project purpose	Indicators of verification
Establish a modern and efficient system for international and domestic commercial arbitration in Sri Lanka	Clauses in both international and domestic commercial contracts referring to arbitration in Sri Lanka and to the arbitration rules of the Arbitration Centre in Sri Lanka
	Reasonable number of arbitration cases conducted by Sri Lankan lawyers and administered by the Arbitration Centre within a five-year period from the start of the project.

When evaluating the achievement of the results and the project purpose, the evaluators can use the identified indicators of verification, but are also free to suggest other indicators for measuring performance.

3.2 Evaluating impact

The issue of impact is largely reflected in the Overall Objective of the project - "*To bring arbitration law and practice in Sri Lanka in line with modern principles and methods of commercial arbitration in order to attract foreign investors and to meet the demands of the business community in Sri Lanka for speedy dispute resolution*".

It is recognised that it is still too early to evaluate impact in a more careful way. But it is nevertheless of interest to explore the issue to the extent possible. The Centre was established in March 996 and the impact analysis should ideally start from that date. Impact in this case emanates from two things: the new Arbitration Law and the existence of the Centre. The impact of the Law can be illustrated by contrasting a typical arbitration case as it was done **before** the new Law, with a case that was handled **after** the new Law became operational. Are there any significant differences in terms of efficiency between the two cases?

The effectiveness of the Arbitration Centre in settling disputes can be highlighted by comparing it with the procedures that existed before the establishment of the Centre. The evaluators are asked to select a few cases that have been brought for arbitration to the Centre and use them for describing an alternative scenario - how would the disputes have been settled if the Centre had not been there? Are their any significant differences to the clients of the Centre in terms of costs, timeliness and appropriateness?

3.3 Lessons learned and recommendations for the future

On the basis of the findings from the evaluation of achievement of objectives, the evaluators shall also assess if there is a need for any further cooperation between Sweden and Sri Lanka in the field of arbitration. If the evaluators establishes such a need, then they shall prepare a set of recommendations regarding the purpose and orientation of the cooperation, a suitable mode of organisation of the cooperation, identification of the parties in the cooperation and their division of labour.

When analyzing lesses learned, the evaluators shall in particular look into the requirements for sustainability of the Centre. What is required of the Centre to be able to maintain its operations in the future and continue to offer effective arbitration in Sri Lanka? The evaluators shall identify the ciritical determinants of sustainability and assess if they can reasonably be met in the future. The evaluators shall also discuss to what extent any future cooperation can cntribute to enhancing the prospects for sustainability.

4. Evaluation team and time schedule

The evaluation team shall be composed by two - three persons. One with solid expertise from commercial arbitration in theory and practice, and one with experience from evaluating development projects, Sri Lanka, support to private sector development and familiar with Sida.

The evaluation shall be completed no later than 15 August 1998.

5. Methodology

To be proposed by the consultant.

6. Reporting

The evaluation report shall be written in English and should not exceed 30 pages, excluding annexes. Format and outline of the report shall follow the guidelines in **Sida Evaluation Report - a Standardised Format** (Annex 1.) 5 copies of the draft manuscript shall be submitted to Sida no later than , 1998. Within 2 weeks after receiving Sida's comments on the draft report, a final version in 5 copies, and on a diskette, shall be submitted to Sida.

Subject to decision by Sida, the report will be published and distributed as a publication within the Sida Evaluation series. The report shall be written in Word 6.0 for Windows (or in a compatible format) and should be presented in a way that enables publication without further editing.

The evaluation assignment includes the production of a Newsletter summary following the guidelines in **Sida Evaluation Newsletter - Guidelines for Evaluation Managers and Consultants** (Annex 2) and also the completion of a **Sida Evaluations Data Work Sheet** (Annex 3). The separate summary and a completed Data Work Sheet shall be submitted to Sida along with the draft report.

Annex 3. Persons met

Mr. N Abeyesekera, Legal Draftsman
Legal Draftsman's Department , Supreme Court

Ms A. Aluiwihare, Secretary General
ICLP Arbitration Centre

Dr. A. Amerasinghe, Judge
Supreme Court of Sri Lanka

Mr D. Ambani, Chairman
Metropolitan Group

Mr R. Asirwatham, Precedent Partner
Ford Rhodes Thornton & Company

Mr K. Balendra, Chairman
John Keels Holdings

H.E.P. Cooray, Attorney-at-Law,
Sri Lanka National Arbitration Centre

C.P De Silva, Chairman
Lanka Orix Leasing Company

Mr G.E.S Dirckze, Chairman
Georg Steurt & Co

Dr N. Durswamy
World Bank

Mr M.T.L. Fernando, Precedent Partner
Ernst & Young

Mr R. Fernando, Managing Director
National Development Bank of Sri Lanka

Ms Åsa Heijne, Programme Officer
Sida/INEC

Mr R. Jayasunere
Asia Foundation/USAID

Mr C. Jayasuriya, Secretary General
Ceylon Chamber of Commerce

Mr U.L. Kadurugamuwa, Senior Partner
FJ & G De Saram

Mr K. Kanag-Isvaran, Advocate
President's Council
Mr Laduwahetty, Senior Arbitrator

Mr N. Murugesu, Partner
Murugesu & Neelakadan Law Firm

Mr H. Nordenson, Director General
Swedish Institute for Legal Development

Dr. R. Ranaraja, former Judge
Court of Appeal of Sri Lanka

Mr M. Selvanatahan, Chairman
Carson Cumberbatch & Co

Mr J.F Soza, Director
Judges Institute

Mr M. Tittawella, Director General
Public Enterprise Reform Commission

Ms S. Varia, Administrative Secretary
ICLP Arbitration Centre

Mr Weeramantry, Arbitrator

Mr C. Wijenaike, Chairman
Central Finance Co

Mr R.Wijesinghe, Director General
Board of Investments of Sri Lanka

Mr R. Wijeyathillake, Managing Director
Hatton National Bank

Mr T. Åkesson, Charge d'Affairs
Swedish Embassy

Annex 4: Comments to the draft report by ICLP and SILD[13]

[13] The underlining in these comments are added by the evaluation team.

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VEC - 1995-1020
LH - LKA

22 nd October 1998

BY TELEFAX

Ms. Asa Heijne,
Swedish International Development Co-operation Agency,
Stockholm,
Sweden.

Dear Madam,

RE.EVALUATION OF SIDA SUPPORT TO BUILDING AN INSTITUTIONAL CAPACITY FOR ARBITRATION IN SRI LANKA.

Thank you for forwarding a copy of the draft evaluation report ("the Report") and for inviting our comments thereon.

Although the Report when taken as a whole has made many valid points there are several erroneous statements therein and it is important to correct those before we proceed to make any other observations thereon.

- At page 17 of the report we find the following statement :-

  " it is the view of the evaluation mission that the SILD /ICLP report, while elaborating on the need for changing the practice and law in commercial arbitration,

gave an incomplete picture of the prevailing orgnisational set up at the time when Swedcorp was considering support for arbitration. The report only partly fulfilled its terms of reference."

Due to this alleged 'incomplete picture' the evaluation mission is of the view that there were negative effects by the "built up of two or rather three venues for arbitration in Sri Lanka."

The allegation that the SILD/ICLP report gave an 'incomplete picture of the prevailing organisational set up at the time ' is wrong.

The said erroneous allegation appears to have been made by the evaluation mission because it seems to be under the impression that at the time the SILD/ICLP report was written there existed an arbitration centre named the Sri Lanka National Arbitration Centre (SLNAC) and the SILD/ICLP report failed to refer to the same.

This impression is wrong. The relevant facts are that at the time the SILD/ICLP report was written there was a body called the Sri Lanka National Council of the International Chamber of Commerce and the Ceylon Chamber of Commerce. The latter has certain defined rules to resolve disputes that arose inter se between their members.

The facts were categorically mentioned in the SILD / ICLP report and the SILD/ICLP report explained the shortcomings that prevailed in Sri Lanka in the context of those facts that existed then.

The SILD/ICLP report therefore further explained why there should be an arbitration centre for the conduct of institutionalised arbitration and the need to enact a new law, before establishing such a centre, providing, *interalia*, for the

enforcement of awards made in such arbitration proceedings both locally and internationally.

The Report states wrongfully that the SLNAC was established in 1983. In fact the SLNAC was incorporated in 1993. The SLNAC and the Sri Lanka National Council of the ICC referred to above is headed by the same person, run by the same staff and is in the same location.

The appellation arbitration centre is a misnomer for the SLNAC because it is not an arbitration centre in the true sense of the word. It merely has rented space in a building and it provides such space to parties who wish to conduct arbitration proceedings therein. Such parties are also provided with secretarial services by it and it liases between arbitrators and such parties. All arbitrations conducted at the SLNAC are *ad hoc* and not in accordance with any established rules. An Arbitration Centre in the true sense of the word should have well defined rules and have the ability to conduct institutionalised arbitration as is the case with the ICLP Arbitration Centre.

The Sri Lanka National Council of the International Chamber of Commerce was in existence prior to 1993 and is still in existence. However, it has never conducted any ICC arbitrations and could never do so because the Arbitration and Conciliation Rules of the ICC do not permit such a body to conduct ICC arbitration proceedings on their own. In fact the Director of ICC Asia, when visiting the Centre in December 1997 informed the ICLP Arbitration Centre that no ICC Arbitration was held in Sri Lanka for seven years. Subsequent to that however, an ICC Arbitration was held in Sri Lanka and it was administered by the ICC International Court of Arbitration in Paris with the assistance of the ICLP Arbitration Centre.

The evaluation report also states in page 13 that Professor G.L. Peiris who was a member of the team that first visited Sweden in respect of the project stated that in the 1992 study recommendations for providing support to arbitration were made due to

"the congestion at the SLNAC". This is false because the copy of the said 1992 report with us, does not contain any such statement and in fact there is no reference whatsoever to the SLNAC in the said report. Furthermore, the said 1992 report identifies the Institute for the Development of Commercial Law & Practice as the first identified organisation in Sri Lanka who could be involved in the project.

The evaluation mission has stated in the Report that the SLNAC is the only Centre permitted by Law to use the words " National" and "Sri Lanka". This statement seems to have been added to their report with the object of giving some prestigious position to the SLNAC which they do not have. On the contrary, the inclusion of those words gives the wrong impression. The promotion of the ICLP Arbitration Centre has been done with the active participation of senior Ministers of the Cabinet whose portfolios are relevant to the work of the ICLP. The Minster of Justice, the Minister of Trade and Commerce and the Minister of Foreign Affairs have personally attended and addressed various public events that were organised by the ICLP to promote their object and further its vision of having an arbitration centre of international standard in the true sense of the word. The Attorney General of Sri Lanka is a member of the Council of Management of the ICLP. The Board of the ICLP Arbitration Centre is comprised of the Solicitor General of Sri Lanka and the Legal Draftsman of Sri Lanka. The SLNAC does not have any such officers of the State in their organisation. Further, Her Excellency the President of Sri Lanka has personally given messages of support for publication in newspapers in Sri Lanka in support of the ICLP. None of this has happened in the case of the SLNAC. Thus though the ICLP does not have the words "national" or "Sri Lanka" in its name it is truly the centre that has support at a national and State level.

The evaluation mission was aware of these facts but have sought to mislead SIDA by stating that SLNAC is the only centre that has been permitted the use of the words 'national' and Sri Lanka' in its name.

- At page 8 the Report states " The Sri Lanka National Arbitration Centre (SLNAC) was established in 1983. Its founder, and leader, H.E.P Cooray , Attorney at Law, is a person with considerable experience and knowledge of domestic as well as of international commercial arbitration" and at page 4 the Report states that " Both Secretary General and Administrative Secretary- two young female lawyers...." . These two statements have no relevance except to unjustly disparage the ICLP Arbitration Centre. The fact that the officials are young or female is not the relevant factor. What is relevant is a comparison of the work done by them and by the person said to be with 'considerable experience and knowledge'.

- The ICLP was set up to meet the urgent need of the country to have an institutionalised arbitration centre of international standard. The need for the establishment of such centre is also explained in the report prepared by Professor G.L. Peiris in 1992.

- ICLP , with the assistance of SILD and SIDA brought an internationally recognised arbitration system, viz, the Swedish system, to Sri Lanka and the maintenance of that system according to internationally known standards were ensured by the affiliation of the ICLP Arbitration Centre to the Stockholm Arbitration Institute.

  Consequently, as made aware to the evaluation mission, other international arbitration centres in Europe and Asia have also entered into co-operation agreements with the ICLP and there now exists an institution which operates an arbitration centre in Sri Lanka in the true sense of the word conducting institutionalised arbitration in accordance with rules based on the rules of the Stockholm Arbitration Institute.

It will be appreciated therefore that the concepts of the two centres viz, the ICLP Arbitration Centre on the one hand and the SLNAC/ Sri Lanka National Council of the ICC, on the other hand being so far apart, those do not bear any comparison with each other. Thus, all of the statements contained in the Report based on a comparison are erroneous.

In any event the existence of more than one arbitration centre in any country is not a drawback. On the contrary the existence of more than one arbitration centre is conducive to the growth of alternative dispute resolution as a preference to litigation by rigid court practice. Thus, when the evaluation mission state in their Report that there are negative effects by the "built up of two or rather three venues for arbitration in Sri Lanka" and when they state that the project has established a 'competing centre' they do not seem to appreciate or understand how arbitration can be made popular in a country.

On the other hand ICLP has and indeed we made the evaluation mission aware of the fact that ICLP has always encouraged the existence of more than one arbitration centre. We believed that such an existence would be good and the parties having disputes will benefit thereby.

- The evaluation team has not appreciated the fact that for the Centre to have cases heard under its Rules, disputes must arise from agreements which have clauses agreeing to refer a dispute arising therefrom for resolution at the ICLP Arbitration Centre. The Centre has existed only for 2 ½ years and whilst during that time many agreements have been entered into incorporating the arbitration clause of the Centre only a few disputes have arisen between the parties during that short time. Therefore, the evaluation team should not have compared the number of cases all of which are ad hoc by nature that are being conducted by the SLNAC with the number of cases before the ICLP Arbitration Centre. ICLP, unlike the SLNAC does not focus its activities and/or services around ad-hoc arbitrations.

In all of the above stated circumstances it will be appreciated that the observation of the evaluation team that the SLNAC should have been developed without starting the ICLP arbitration has no merit .

- The Report states that the Project has made little headway in introducing arbitration as a subject at university and law college level for the reason that there is a resistance to change. The statement that ICLP has made little headway is unjustified and the

reasoning given is factually incorrect.

ICLP has as a first step in this procedure introduced lectures on arbitration at the practical training courses conducted during the apprenticeship period of young lawyers by the Sri Lanka Law College. All young lawyers passing out from the university and the law college follow this course. The introduction of a course on arbitration to the university and law college is the last activity on the list of activities to be carried out by the Project and it has not been possible for the Centre to focus on this aspect in its 2 ½ year existence. The change in the syllabus in the university and the law college require compliance with a long drawn out procedure laid down by statute and any delay will be due to this fact rather than any resistance to change.

- The role played by the Project in the drafting of the law has not been fully set out in the Report and has been incorrectly relegated to a 'pre project' achievement.

The first activity of the Project was assisting in the drafting and finalisation of the law. The draft law prepared by the subcommittee of the Ministry of Justice prior to the commencement of the project was not the basis for the present Arbitration Act. The sub committee appointed by the Government of Sri Lanka had been drafting a law for a considerable period of time and had made little headway. The SLLD/ICLP study team together with the Legal Draftsmans' Department prepared a new draft. ICLP was greatly responsible for having of the draft expeditiously passed as an Act of Parliament.

- The objectives of the promotional cum training sessions conducted by ICLP were not only to promote the concept of arbitration and to train arbitrators but also to demonstrate to lawyers the manner in which an arbitration should ideally be conducted. Lawyers are familiar with court proceedings which are of an adversarial or confrontational nature and the similar type of arbitration proceedings followed by arbitrations conducted , for example at the SLNAC.

- It is evident that the evaluation team has arrived at their conclusions on SLNAC without meeting with all relevant persons, and we have strong reasons to believe that their conclusions would have been otherwise if the team met with such other persons as well.

  Further, the Evaluation team did not act fairly by failing to present their allegations to any of the members of the ICLP. Even though the leader of the team had the opportunity to raise such questions with Mr. U.L Kadurugamuwa when he met with him at lunch to further discuss the work of ICLP he did not do so.

- It may be noted that the additional publications referred to in page 3 of the report under the heading publications were facilitated by ICLP 's own funds.

- Under the heading 'Study Tours for ICLP Staff' in page four of the report, it may be noted that the Secretary Generals trip to Washington and the Administrative Secretary's visit to London were not financed by Sida.

  It may be also noted that such visits though few and short termed have been of immense benefit to the Centre. For instance, the Secretary General's visit to UK and Washington enabled the promotion of the Centre internationally and thereafter the Centre has been in contact with many eminent persons in the field of international arbitration.

  Some benefits that have flown from the Administrative Secretary's visit to Stockholm and the UK is that she has been able to adopt a simpler version of the computerised system she was introduced to in Stockholm. The contacts made on those visits are useful in the day to day running of the Centre. For example, the Centre was able to obtain the services of an international arbitration reporting team at the request of a party for international arbitration held recently in Sri Lanka with the assistance of the Chartered Institute of Arbitrators of the UK.

The London Court of International Arbitration and the Chartered Institute of Arbitrators of the U.K have also assisted the Centre on several occasions by recommending names of international arbitrators whenever the Centre have made requests to them upon inquiries received by the Centre from parties to contracts/disputes arising therefrom.

- The list of activities compiled by ICLP for the second phase of the Project has been incorrectly listed in the Report and should include the following items, namely the introduction of training courses to university and the Law College and the printing of an Annual Journal.

- The conduct of a survey on the arbitration environment in Sri Lanka at this point of time is not ironic as the evaluation team deems it to be. Since it is now 2 ½ years after the establishment of the Centre , the time is appropriate for a full evaluation of how receptive the commercial community and the legal fraternity are to its establishment so that necessary remedial measures , if any, may be taken at this juncture to pursue the objects and vision of the project in the best possible manner.

- Page 7 of the Report refers to continuing delays in the High Court in Sri Lanka. It may be noted that these findings were the result of research done by the ICLP Arbitration Centre. These results were provided to the Evaluation team. It is subsequent to this research that the necessity to draft Supreme Court Rules emerged to eradicate the problems that were identified by such research. The Rules have been drafted under the aegis of the ICLP and will be finalised shortly.

- With reference to page 10 of the Report where reference to the venue of ICC arbitrations are referred to it may be noted that the evaluation team was apprised of the fact that the ICLP Arbitration Centre had assisted ICC Paris in administering an international arbitration which was held in Sri Lanka a few weeks prior to the visit of the

evaluation team. This in our view is a clear indication that ICLP is gaining recognition as a Centre of international standard.

- We note that though the evaluation team met with Dr.A.R.B Amerasinghe, Judge of the Supreme Court of Sri Lanka and Chairman of the Law Commission of Sri Lanka, and the Faculty Board of the Faculty of Law University of Sri Lanka no reference is made in the Report to the results of such meeting. Only statements of a negative nature alleged to have been made by various persons are incorporated in the Report.

- Obviously comments made in the Report such as that the ICLP Arbitration Centre is associated with a particular group and that Sri Lanka is a factionalised society are based on comments made by a few persons for personal reasons. The evaluation team should have verified the veracity of such statements before including those in the Report.

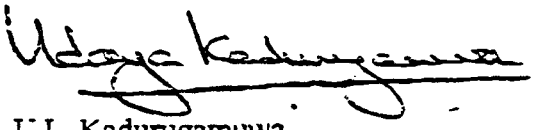
- We believe that some of the erroneous statements were made due to pre conceived notions of the leader of the evaluation team. It was apparent to us that he approached the evaluation with the belief that all persons involved in non governmental organisations do so for personal gain. For instance, at the beginning of the very first meeting he had with some of the members of the Council of Management of the ICLP referring to the promotion done in India of the ICLP Arbitration Centre as a centre of international standard following the Swedish system, he said, ".... so you have spent good holidays in Bombay ?'. Another member of the evaluation team realising the sinister implication of the remark was quick to interrupt the leader by saying "....surely, if they needed a holiday they would have gone to the Maldives instead ."

Due to certain other statements made publicly by the leader we had to write to him about his misconduct whilst engaged in this evaluation. That letter was copied to you at the time. We believe that he bears an animosity towards the ICLP Arbitration Centre.

Public utterances such as those referred to in that letter made by the leader have delayed assistance promised by other donors but we believe that when they realise the falsity of such statements they will go ahead with such assistance. Fortunately, there are already signs of disappearance of the adverse effect of the misconduct of the leader.

Yours faithfully,

INSTITUTE FOR THE DEVELOPMENT
OF COMMERCIAL LAW AND PRACTICE



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2.3.2 Sri Lanka

26 oktober 1998

Ert beslutsnr GD 40-94/95,
projektnr 398008-3

Sida
INEC/NÄR
105 25 Stockholm

Attention: Åsa Heijne

Evaluation of Sida Support to Building an Institutional Capacity for Arbitration in Sri Lanka: comments by SILD to the Draft Final Report August 1998

SILD has been invited to comment upon the report.

We regret the delay in responding. This is partly due to the fact that we have been waiting for ICLP to provide their own comments before offering ours.

We welcome the opportunity to discuss the report and the comments by SILD and ICLP with two of the evaluators at the meeting scheduled to take place at Sida on the 28th October 1998.

Purpose of evaluation

The purpose of the evaluation was to analyse the results of the Project as compared to its objectives and to determine whether the Project activities were performed according to the plan; to assess the impact of the Project; and based on the above discuss the need for and the feasibility of continued collaboration between Sri Lanka and Sweden in the field of arbitration (Executive Summary page i).

Objectives fulfilled?

The evaluation concludes that *"the Project has made a certain contribution towards the overall stated objective but far from fulfilled it"* (page 19).

It appears that the evaluators may have reached this conclusion by not applying the proper objective.

The overall objective of the Project, according to the Project Profile, was *"to bring arbitration law and practice in Sri Lanka in line with modern principles and methods of commercial arbitration in order to attract foreign investors and to meet the demands of the business community in Sri Lanka for speedy dispute resolution"*.

The evaluators write (page 18): *"It must be recognised that the explicit objective of the Project was ambitious, and basically not realistic given the resources and time frame for the Project. It might be considered a vision and a direction rather than an objective"*.

Still, the evaluators stress (page 18) that the Project - i.e. SILD and ICLP - failed in the "sub-objectives" of attracting foreign investors (*"has so far not been achieved"*) and meeting the demands of the business community (*"is at most marginally achieved"*) and, hence, "far from fulfilled the overall stated objective".

The results attained should instead have been be measured against the stated project purpose which was *"to establish a modern and efficient system for international and domestic commercial arbitration in Sri Lanka"* according to the Project Profile, and not against the overall objective which is essentially the objective of the Sri Lanka Government and the business community at large.

(The report could have added that, in all fairness, an evaluation of this ambitious project should perhaps have been carried out at the end of the five year period envisaged in the Project Profile, that is, in the year 2001 rather than in 1998 taking into consideration the one year delay caused by the security situation).

Results attained?

When assessing the impact of the Project the evaluators acknowledge *"that in the longer perspective the Project has contributed to improving the legal framework in Sri Lanka by facilitating the creation of an arbitration law and undertaking considerable promotion surrounding the law and the institution of arbitration"* (page 12).

The report concludes by stating (on page 19): *"Of the expected results three out of four might be considered achieved."*

But, surprisingly, the report goes on to say that *"the Project itself has only made a significant contribution to one of these"*.

The evaluators readily agree that SILD and ICLP played an important role in the enactment of an arbitration law (first of four expected results according to the Project Profile): *"[The] interaction beween Sri Lankan judiciary experts linked to the committee of the High Court and Swedish legal experts appears to have been instrumental in institutionalising the modern arbitration act."* (Summary page ii).

But the evaluators nevertheless consider that *"the Project had little to do with its enactment"* (page 3) since much of the expert work connected to the new law was actually carried out prior to signing in February 1995 of the two-year contract with SwedeCorp.

The joint SILD/ICLP report in September 1994 highlighted that *"the absence of a comprehensive Arbitration Act replacing the piecemeal legislation now existing makes the Sri Lankan legal framework in arbitration totally inadequate to meet the ever increasing demands for alternative dispute resolution called for by the commercial community in Sri Lanka.*

The report also contained an account of how the Swedish team had had the opportunity, during the course of its study of possible areas of co-operation regarding commercial arbitration, to discuss and comment on a draft arbitration law being prepared by the Ministry of Justice.

The report strongly recommended that this window of opportunity for further refinement of the draft act should be utilized. SwedeCorp, being agreeable to this proposal, arranged for SILD and ICLP to continue this work under a prolongation of the existing contract instead of waiting for the new contract to come into place.

SILD and ICLP therefore disagree with the statement *"the Project had little to do with the enactment of the new Arbitration Act"* since all expert work concerning the new draft law carried out by them and financed by SwedeCorp/Sida subsequent to the joint report in September 1994 should be considered as belonging to the Project regardless of whether the funding came out of en extension of an existing contract with SwedeCorp or under the two-year contract signed in February 1995.

The second expected result according to the Project Profile - a selected number of qualified Sri Lankan lawyers capable of conducting arbitration and/or

appearing as counsels in arbitral proceedings – is deemed by the evaluators as not having been attained (*"limited change compared to pre-project situation"*).

The report states (page 18) that the *"Project has undertaken a series of short-term workshops for improving the skills of arbitrators, attended by a considerable number of legal professionals, mostly from the business sector. While such inputs have been well conducted and played an essential role in propagating the use of the institution of arbitration it is questionable if it has had any significant impact on the practice of arbitration"*.

First it should be said that the purpose of the workshops was also to demonstrate to lawyers the manner in which an arbitration should ideally be conducted and to illustrate the kind of problems currently confronting arbitrators engaged in international commercial arbitration.

As pointed out in the evaluation report ad-hoc arbitration in Sri Lanka has until now tended to be a replica of court proceedings.

The evaluators conclude, apparently without having probed the matter in any depth, that *"the Project has made less headway in training than anticipated"* and that *"the Project has fallen short of its expected results in human resource development"*.

We sincerely believe that statements of the kind quoted above have no place in a serious evaluation report unless they are substantiated.

The evaluators admit that the third expected result – an arbitration institute capable of administering institutional arbitration – has been attained when the Project established the ICLP Arbitration Centre but argues that it was not cost-effective to create the ICLP Arbitration Centre as a forum for institutionalised arbitration as it could have been done by collaborating instead with SLNAC. We will comment on this under the next heading.

Finally, the evaluators write that the fourth expected result – a system for training of law students in the field of arbitration – has not occurred so far.

This is not quite correct since the Project has taken at least some steps towards attaining this result by introducing lectures on arbitration at the practical training courses for young lawyers at the Sri Lanka Law College.

In summary, SILD does not agree with conclusion in the evaluation report that the Project has only contributed to one out of four expected results.

Instead, we think that the co-operating teams from Sweden and Sri Lanka has essentially managed to attain the results they set out to achieve.

Better use of aid resources if collaborating with SLNAC instead of establishing ICLP Arbitration Centre?

When the Project was initiated there existed, according to the evaluation report, two recognised forums for arbitration in Sri Lanka, the Sri Lanka National Arbitration Centre (SLNAC) and the Ceylon Chamber of Commerce (Summary ii).

The evaluators are therefore of the opinion that the SILD/ICLP report in 1994 *"gave an incomplete picture of the prevailing organisational set-up at the time when SwedeCorp was considering support for arbitration"* (Summary iii) and that the ICLP/SILD *"did not provide SwedeCorp with an accurate assessment of the situation of arbitration in Sri Lanka at the outset of the Project"* (page 20)

If the evaluators had chosen to interview SILD on at least this issue prior to submitting the draft to Sida (as they were advised to do according to their terms of reference for the evaluation) they would have got the following answer.

Neither at the time when our 1994 report was written nor at any later time prior to our reading the evaluation report has any of the Swedish team members ever heard any mentioning – oral or written – of an arbitration institute in Sri Lanka called SLNAC.

The evaluation report states that SLNAC was established in 1983 and that Professor Peiris mentioned SLNAC in his 1992 report.

As a matter of fact there is no reference whatsoever to SLNAC in the 1992 report and we do not believe that SLNAC existed as an operating arbitration institute when we wrote our report in 1994.

It is important that Sida understands that the closest we have ever come to Mr Cooray and his institute is when he appeared once at the practical case study (Mock Arbitration Demonstration) in April 1995 and argued against a new arbitration act in Sri Lanka which, as we recall it, he felt was not required at all. As a matter of fact when we later reported to Sida on this exercise ("The afternoon session included ---- a lively discussion on the pros and cons of the various provisions in the proposed new law on arbitration"), it was Mr Cooray's energetic resistance to the draft law that we had in mind.

Under these circumstances there was no reason for SILD and ICLP to approach Mr Cooray with a view to initiating any kind of co-operation.

As has been pointed out by ICLP in its own comments to the evaluation report, the Project has all along been actively endorsed by the Minister of Justice, the Minister of Trade and Commerce and the Minister of Foreign Affairs who personally attended and addressed various public events that were organised by ICLP to promote the core objective of establishing a modern and efficient system for international and domestic commercial arbitration in Sri Lanka. None of them made any reference to an arbitration institute called SLNAC nor did they propose co-operation or contact with Mr Coorey.

The evaluation mission believes that the establishment of a new arbitration centre was not cost-effective use of aid resources. A better use would have been collaboration with SLNAC rather than competition (page 19).

If the Swedish team would have been informed at the relevant time of SLNAC and its activities we are doubtful that we would have acted differently.

There was a need to establish a modern institutionalised arbitration centre of international standard as Professor Peiris had explained already in his report in 1992. ICLP provided an excellent vehicle for the bringing of an internationally recognised arbitration system to Sri Lanka and the maintenance of that system according to internationally known standards through the affiliation of the ICLP Arbitration Centre with the Arbitration Institute of the Stockholm Chamber of Commerce.

That would most probably never have materialised in a co-operation with an arbitration organisation linked to the ICC and headed by someone actively opposed to the introduction of a modern arbitration law in Sri Lanka.

Swedish Institute for Legal Development

Harald Nordenson

/ Åsa Wikberg, sekr

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2.3.1 Sri Lanka

11 November 1998

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Evaluation of Sida Support to Building an Institutional Capacity for Arbitration in Sri Lanka; SILD:s proposals for changes, amendments and deletions

Further to the meeting at Sida on 28th October 1998 and our offer, accepted by you, to provide you with inputs for finalising your report, please find below our contribution (headings are those of your report).

Executive Summary

Under the heading *Findings* (page i and ii) it may be noted that the web site and the seminar for the construction industry was financed by ICLP.

Regarding demonstration and training events (page ii, first point) we propose changing the wording to read: *".. primarily for enhancing the skills amongst existing and potential arbitrators and counsels to arbitrating parties in Sri Lanka and also for promotional purposes. Such events included....."*

On page ii, sixth paragraph, (and on page 8), the report states wrongfully that the SLNAC was established in *1983*. In fact the SLNAC was incorporated in 1993.

On page ii, penultimate paragraph, it may be noted that ICLP handled eleven ad-hoc cases as at May 1998. It now handles 20 ad-hoc cases and one case under its Rules. I may also be mentioned that ICLP assisted ICC Paris in administering an international arbitration held in Sri Lanka.

When discussing the situation of competition between two centres in Sri Lanka and comparing with foreign institutions it is obviously misleading to refer to SLNAC as an *"arbitration centre"*. Only arbitration centres like the Arbitration Institute of the Stockholm Chamber of Commerce or the ICLP Arbitration Centre would e.g.

- provide a frame work of rules for the entire proceedings;
- act as appointing authority when necessary;
- deposit and manage monies received as security;
- prevent delay by imposing time limits on the proceedings and on the rendering of the award.

In our view a venue that merely provides a roof for ad-hoc arbitration cases and provides stenography facilities for such cases cannot call itself an *"Arbitration Centre"*.

This part of the executive summary should be revised taking into account our comments on SLNAC both above and below.

1. *Introduction*

1.1 *The object of the evaluation*

We would ask you to reconsider your "formalistic" approach (your own word) and include all work done by SILD and ICLP subsequent to our 1994 report as part of the implementing phase of the project (see our comments to your report, page 4, fifth paragraph).

2. *The Project*

2.1 *The pre-project phase*

The SILD/ICLP report in September 1994 was based on two study tours, one by the Swedish team to Colombo in November 1993 and one by the Sri Lankan team to Stockholm in March 1994.

The first visit during the implementing phase was when the Swedish team visited Colombo in November 1994 to continue working on the draft Arbitration Act (much of such work had also been done during the two preceding visits mentioned above).

As far as we know, SwedeCorp decided to support the drafting of a new law on arbitration because of the necessity for the enactment of such a law for the reasons given in the SILD/ICLP report.

2.2 *The project*

The list of activities (page 2) should (as ICLP has pointed out) include also *introduction of training courses to the Law College* and the *printing of an Annual Journal.*

2.3 Implementation

It may be noted that the additional publications referred to (on page 3) under the heading *Publications* were facilitated by ICLP's own funds.

The ICLP Arbitration Centre at the Taj Samudra complex opened for business in May 1997, not in 1998 as stated in the report (page 4, first paragraph).

It is not correct that Sida has financed a study tour for the Secretary General to Washington DC and a study tour for the Administrative Secretary to London (page 4, third paragraph). Please therefore delete those places and also the reference *"female"* which is irrelevant.

The seminar in Chennay (page 5, first paragraph, third point) included only one Swedish resource person.

When listing the training and workshop activities (the bulk of our work together with the legislative assistance) one would have hoped that they would not have been so barrenly described. They were indeed preceded by a tremendous lot of work including complete scripts for the participants.

It is a misunderstanding that the Arbitration Institute of the Stockholm Chamber of Commerce has provided experts to the project. AISCC has been represented by its Secretary General, Mr Ulf Franke. All other experts have been provided through SILD.

They no doubt represent the finest expertise available in Sweden today, as at least one of the evaluators, Justice Möller, knows well and that should have been highlighted in the report (and not only in a note which also did not list them all). If you intend to elaborate on this we will be pleased to provide CVs or similar. Meanwhile we include a copy of a

presentation of those Swedish arbitration experts participating in the Residential Training Course held in 1996,
Appendix 1.

2.4 *Implemented vs. planned activities*

Point one (page 5) that *"the finalisation of the law required no project inputs"* is incorrect for the reasons stated in ICLP's and SILD's comments to Sida.

The following sentence in point three is difficult to understand and should be deleted or its meaning clarified. *"The Project document gives no guideline as to whether the number of sessions expected and the number of potential arbitrators envisaged were reached".*

2.5 *Sri Lankan contributions to the Arbitration Centre*

"Twelve major companies ..." should be corrected to read *15 major companies* and the total in the second line should read *14 million.*

In the footnote numbered 10, the following companies should be added: *Carson Cumberbatch & Co, E.B. Creasy Ltd and Lankem Ceylon Ltd.*

3.2 *The new Arbitration Act*

It should be added that the task to draft the Supreme Court Rules was given to Dr Ranaraja as part of the Project and included a study visit by him to Stockholm in April 1998 hosted by SILD.

3.3 *The organisational structure for arbitration*

When it comes to the presentation of the SLNAC (page 8) we refer to ICLP's comments to the report (page 5 in the ICLP comments) and urge you to take note of what is said therein.

At least, the evaluation report should include a passage summarising the objections made by SILD and ICLP regarding the way SLNAC and Mr Cooray have been presented.

We wish to add the following to what has already been said by ICLP and SILD regarding SLNAC and Mr Coorey.

At the time that the SILD/ICLP report was written the forum that was functioning was called the SLNC-ICC (meaning Sri Lanka National Committee of the ICC). According to the records with the Registrar of Companies, SLNAC was incorporated on the 1st of January 1993 but it is not clear when they started to function. All operations have been and continue to be at the same site and with the same facilities. The distinction between the two names SLNC-ICC and SLNAC is not highlighted. The forum is generally known as "Cooray's or CNAPT Arbitration Centre" (CNAPT is the acronym for Ceylon National Association for the Prevention of Tuberculosis and is also the name of the building in which the arbitrations are conducted).

As ICC runs the International Court of Arbitration in Paris, it is highly improbable that the same organisation would be agreeable to *"service"* SLNAC - a sort of competitor in the field of arbitration - through its national committee in Sri Lanka as alleged in the report (page 8, penultimate paragraph).

3.4 The practise of arbitration

The contents of paragraph 1 on page 11 are unsubstantiated and should therefore be redrafted. The description of arbitration cases depicts the type of arbitration conducted by the SLNAC and the situation that prevailed before the project. After the establishment of the ICLP Arbitration Centre the concept of institutionalised arbitration was introduced to Sri Lanka.

4.3 The impact on the demand for arbitration

Under the heading *Domestic demand* it is incorrectly stated (in first paragraph) that Dr Peiris referred to *"congestion at the SLNAC"*. There is no reference at all made to SLNAC in Professor Peiris' report. The mistake is of course explained by the fact that the evaluators did not, admittedly, read that report.

On page 14, third paragraph, last sentence, reference is made to one of the funding companies of ICLP and its unwillingness to use ICLP as a venue for future arbitations. We have obtained from the company in question, Orix Leasing Company, a letter stating their present view in the matter, Appendix 2.

On page 16 (second paragraph, second point) it is indicated that neutral venue is searched only when parties come from states that are in conflict. This is a misunderstanding and the paragraph should perhaps be deleted.

4.4 The impact on the supply

It is incorrectly stated in the report (page 17, second paragraph) that SLNAC was mentioned in our 1994 report *("Although these venues were mentioned by name, there was no discussion...")*.

We feel it would be only fair if the final version of the evaluation report states that, according to SILD/ICLP, the idea of establishing co-operating with Mr Cooray and his arbitration facilities at the Sri Lanka National Council of the ICC was never brought up by anyone although both teams met with hundreds of Sri Lankan lawyers, businessmen and government official during the course of the project.

It may therefore be concluded that this idea is nurtured by the evaluation team only and is not shared by the Sri Lankan government or the business community and possibly not even by Mr Cooray himself since he never approached the arbitration project with this idea.

In last paragraph (page 18) it is stated that *"the Project has also made less headway in training than anticipated"*. The evaluators have not carried out any form of scrutiny to justify such a general criticism. The statement should be deleted.

4.6 Cost-effectiveness

It is simply not correct to say (second point on page 19) that the *"Swedish resource persons were over-used for promotional activities rather than for training of trainers"* and I challenge you to prove that we devoted more than a small fraction of the experts' time on promotional activities.

The evaluators believe that "*a better use* (of aid resources) *would have been collaboration with SLNAC rather than competition*".

We are not hopeful that this statement be deleted but it is certainly a totally unsubstantiated conclusion. The little we know of Mr Cooray and his activities lead us to believe that there was no scope for co-operation had the idea ever been brought to us.

We trust that Lars Liljeson and Åsa Heijne, when visiting Colombo next week, will find out from the Sri Lankan Government and from the business community if they share the opinion of the evaluators that Sida was wrong in supporting the SILD-ICLP co-operation for introducing a modern and efficient system for international and domestic commercial arbitration in Sri Lanka.

Finally, on page 20 (second point) it is ridiculous to criticise SwedeCorp for having *"commissioned a feasibility study by an institution already de facto involved in implementation of a project"*.

If this criticism is valid we would have been disqualified from making the report simply because we hosted the visit by Professor Peiris in Stockholm in 1992!

Yours sincerely,

Harald Nordenson

Encl.

Appendix 7

SWEDISH PARTICIPANTS

Prof. Jan Ramberg - Born in 1942 . Professor of Private (Commercial) Law at the University of Stockholm and former Dean of the Law Faculty. Vice President of the Commission on International Commercial Practice of the International Chamber of Commerce. Member of the London Court of International Arbitration. Has extensive experience in international Commercial Arbitration. Author of numerous books, articles and legal publications in the field of commercial and maritime law.

Mr.Gotthard Calissendorff - Born in 1921, former partner of Mannheimer Swartling - former deputy chairman of the Swedish Bar Association- former member of the Executive council of the ICC National Committee in Sweden . Has extensive practice in international commercial arbitration.

Dr .Ulf Nordenson - Born in 1924 , former Justice of the Supreme Court of Sweden - Chairman of the arbitral tribunal in numerous arbitrations both Swedish and international - Author of a book on liability in tort and numerous articles on private law and arbitration law .

Mr.Ulf Francke - Born in 1945 . Secretary General of the Arbitration Institute of the Stockholm Chamber of Commerce. Senior Vice President and Head of the Legal Department of the Stockholm Chamber of Commerce. Secretary General of the International Council for Commercial Arbitration

Mr.Kaj Hober - Born in 1952. Partner of Mannheimer Swartling at their head office in Stockholm. Has been involved in legal aspects of East-West trade for many years, has participated in numerous Arbitrations as counsel in some and as an arbitrator in others - A member of the expert group that reviewed the Swedish Arbitration Act - A member of the Board of the Arbitration Institute of the Stockholm Chamber of Commerce. Author of many books, articles and legal publications.

Mr.Harald Nordenson - Born in 1946. Partner of Setterwalls at their office in Stockholm. Has worked extensively on foreign investment projects in developing countries . Executive Director of the Swedish Institute for Legal Development

SRI LANKAN PARTICIPANTS
Who need no introduction

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Mr .K.C. Kamalsabayason P.C.

Mr .S.C Crosette-Thambiah

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Mr. S.L. Gunasekera

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Mr .Denzil J. Gunaratne

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Appendix 2

ORIX Group

ICLC Lanka ORIX Leasing Company Limited
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November 6, 1998

FAX – 346163

ICLP Arbitration Centre
2-4, Taj Samudra Office Complex,
25, Galle Face Centre Road,
Colombo 3.

Dear Sir /Madam,

This refers to an inquiry made by you on 03rd November '98, in connection with the handling of arbitrations by our company and we wish to inform you as follows.

Our company carries on the business of leasing and as such, the Company enters into lease agreements with its clients.

In event of default in payment or non-performance by the Lessee, steps are taken by our company to refer the dispute for Arbitration, as stipulated in the Lease Agreement. In many instances the Lessee is unrepresented in which event the arbitration cases filed by us proceed ex parte.

Therefore, proceedings in such cases do not exceed 2 to 3 sittings and the costs of such arbitrations are significantly less than usual proceedings.

Though we have used the services of the SLNAC in the past, the company is also now using the services offered by the ICLP Arbitration Centre for reasons such as:-

1. The increase in number of arbitrations.
2. Limited space available at SLNAC
3. Cost advantage.
4. Lapses and deterioration in recent times of the quality of service (secretarial, administrative etc.,) of SLNAC.

For your information please.

Yours faithfully,
LANKA ORIX LEASING COMPANY LIMITED.

Mrs. A. Nugaduwa
MANAGER - LEGAL

Recent Sida Evaluations

98/20 Cooperation with the Kaliningrad International Business School. Jakub Swiecicki
Department for Central and Eastern Europe

98/21 Two International Training Programmes in the Philippines, Tanzania and India. Total Maintenance Management and Project Management. Kim Forss, Lars Bjern, Suresh Pingale, Yvonne Swfontek
Department for Infrastructure and Economic Cooperation

98/22 Energy Saving and Pollution Abatement in Jiamusi Paper Mill, China. An investment project supported by a concessionary credit from Sweden. Karlis Goppers
Department for Infrastructure and Economic Cooperation

98/23 Programme for Total Quality Management in Russia. Lars Rylander
Department for Central and Eastern Europe

98/24 Swedesurvey Projects in Russia and Ukraine. Land registration systems and information management. Ivan Ford, Susan Nichols, Mark Doucette, Jaap Zevenbergen
Department for Central and Eastern Europe

98/25 Sustainable Dry Forest Management. Sida-supported collaborative research project between Burkina Faso and Sweden. Karin Gerhardt, Kerstin Jonsson, Eva Evers Rosander
Department for Natural Resources and the Environment

98/26 International Centre for Research in Agroforestry, ICRAF 1990-1997. Bo Tengnäs, Arne Eriksson, Terry Kantai, Alice Kaudia, Jeff Odera
Department for Natural Resources and the Environment

98/27 Cooperative Reform and Development Programme, CRDP in Uganda. Mick Moore, Lindah Mangali, Z Ojoo
Department for Natural Resources and the Environment

98/28 Water and Environmental Sanitation Programme, WES in Uganda. Clifford Wang, Eva Poluha, Jerker Thorvaldsson, Sam Mutono
Department for Natural Resources and the Environment

98/29 The Nordic Funded Rural Employment Sector Programme in Bangladesh. Claes Lindahl, Julie Catterson, Robert Andersen, Inge-Merete Hirshholmen, Shamima Nasrin, Petra Stark
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98/31 The Impact of the Sida Financed International Training Programme. A case study of the Philippines. Kim Forss, Lars Bjern, Benjamin Milano
Department for Infrastructure and Economic Cooperation

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Department for Democracy and Social development

98/33 Centre for Legal Education and Aid Networks in Kenya. Fran Biggs
Department for Africa

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