

Commonwealth Arbitration

Memorandum by the Commonwealth Secretariat

1. When Law Ministers met in Christchurch in 1990, the Minister of Justice and Attorney-General of Nigeria, Prince Bola Ajibola, (now, of course, a Judge of the International Court of Justice at The Hague), suggested that the time might have come "for careful examination of the possibility of setting up an international arbitration centre for the Commonwealth".

2. In its communiqué, the Meeting noted in para 33 that international arbitration could be both time-consuming and unduly expensive, and agreed to invite the Secretary-General to explore the suggestion that there was potential within the Commonwealth association for enhanced co-operation in this area, and also in mediation and conciliation.

3. In response, the Secretariat commissioned two papers (before this Meeting as LMM(93)27 and LMM(93)28). The papers were given preliminary consideration by Senior Officials when they met in Singapore, but only in so far as the proposals concerned the resolution of international commercial disputes. It was felt that the second question - whether inter-state Commonwealth disputes should be covered by Commonwealth arrangements - required initial consideration at the broad policy level before it was considered in detail by Senior Officials.

International commercial disputes

4. In respect of international commercial disputes, the Senior Officials Meeting decided to establish a small working group to undertake a study of a proposed somewhat more limited arrangement; one which would not establish a new centre but rather would focus on making maximum use of existing (and future) international arbitration centres in various parts of the Commonwealth. The attached Draft Report from the Working Group was prepared by the group's convener in the light of discussions at Singapore and subsequent exchanges of correspondence. It has not been formally agreed, in that some members have not yet responded to the final paper, but it is believed to reflect a consensus view and it is therefore before this Meeting for consideration for adoption.

Inter-state disputes

5. The question of inter-state Commonwealth arbitrations is a matter which raises issues that would need to be discussed at the highest level and therefore re-

quires no more than preliminary consideration by Law Ministers at this stage. Accordingly the Meeting is asked to consider whether, in the light of the two papers above-mentioned, there would be merit in exploring the development of the option for governments, should they wish to do so, to determine inter-state intra-Commonwealth disputes through an appropriate mechanism. If so, such guidance might include how the matter might best be progressed from this point forward. One option would be for the proposals in the papers to be considered in detail by the next Meeting of Senior Officials of Commonwealth Law Ministries, in the light of the discussions at Mauritius under this agenda item.

DRAFT REPORT OF THE WORKING GROUP ON THE PROPOSED COMMONWEALTH ARBITRATION ASSISTANCE SERVICE ("CAAS")

1 Senior Officials of Commonwealth Law Ministries meeting in Singapore from 30 March to 2 April 1992 requested a Working Group consisting of representatives of Singapore (Convener), Australia, Canada, Hong Kong, India, Nigeria, Pakistan and Sri Lanka to study the proposal for the establishment of a Commonwealth Arbitration Assistance Service. The mandate of the Working Group was to undertake such a study and to report its findings. It was also to report on the scope and functions of the proposed Service, its organisational and administrative structure, and the costs and funding implications of having such a Service.

Background

2 At the meeting of Commonwealth Law Ministers held in Christchurch, New Zealand, from 23 to 27 April 1990 Ministers noted that international arbitration could be both time-consuming and unduly expensive, and it was suggested that there was potential within the Commonwealth association for enhanced co-operation in this area, and also in mediation and conciliation. They agreed to invite the Commonwealth Secretary General to explore this suggestion, and to report when next they met.

3 At their Singapore meeting in 1992 Senior Officials had before them discussion papers prepared by Dr Barry Sen and by Mr Sharad Rao, as well as a memorandum on the subject from the Commonwealth Secretariat. At the conclusion of their discussions Senior Officials recognised the need to facilitate an inexpensive yet effective system of dispute resolution for commercial disputes utilising existing resources, expertise and facilities.

4 There was clear consensus among Senior Officials that there should not be a new arbitration centre as such set up on a pan-Commonwealth basis, which could result in duplication of efforts of national centres and would require substantial long-term funding. Accordingly, Senior Officials decided to invite a small working group to undertake a detailed study of the establishment of a Commonwealth Arbitration Assistance Service.

5 Senior Officials agreed that the terms of reference of the Working Group should include making proposals on:

- (a) The scope and functions of the proposed Service, its organisational and administrative structure; and
- (b) costs and funding implications of such a Service.

6 Countries indicating a wish to participate in the Working Group are mentioned in paragraph 1 of this note. It was agreed that the Working Group would be self-financing (ie Governments participating to pay their own costs) in respect of its work and meetings.

Working Group

7 The Working Group conducted discussions through correspondence and is pleased to recommend to the Law Ministers for adoption the formation of CAAS along the lines set out hereunder.

Objectives of CAAS

8 CAAS is a service to provide assistance to Commonwealth users to facilitate an effective and cost-efficient system of dispute resolution for commercial disputes utilising existing Commonwealth resources, expertise and facilities. It is to complement, not compete, with existing Commonwealth national or regional arbitration centres.

9 The objectives of CAAS shall be:

- To assist, encourage, promote and facilitate the resolution of international disputes by arbitration, conciliation and other methods of alternative dispute resolution within the Commonwealth; and
- To harness and optimise the use of existing resources, expertise and facilities within the Commonwealth for this purpose.

Structure and administration

10 The facility is a service arrangement, not intended

to be a functional arbitration centre, for the coordination and handling of information and associated aspects relating to arbitration and for the rendering of assistance to Commonwealth countries and interests in all these matters. The Service will be administered by the Commonwealth Secretariat from its headquarters in London.

11 As the facility is essentially an information service which could be initiated by and within the current mandates of the Legal Division of the Commonwealth Secretariat it is envisaged that its administration will not require any extra staff or substantial funding.

Advisory Committee

12.1 There shall be an Advisory Committee of not more than _____ which will advise and assist the operation of the facility. (The Committee may call for or raise funds to cover any non-recoverable expenses of the Service).

12.2 Members of the Committee shall be persons nominated by Member States from their national arbitration centres. Each member state shall be allowed to nominate 1 person only.

12.3 If there are more nominees than _____, the nominees shall elect from amongst themselves _____ to serve on the Committee.

12.4 The term of the Advisory Committee shall be 1 year but members may be renominated or re-elected.

12.5 The Advisory Committee shall meet at least once a year.

12.6 Each member or nominee shall be responsible for the expenses of their own participation.

Functions

13 CAAS will undertake the following functions:

- (a) Serve as repository for arbitration rules, relevant legislations and judicial or arbitral decisions in the Commonwealth.
- (b) Promote harmonisation of arbitration laws and the accession by Member States to international conventions on arbitration.
- (c) Provide information on the arbitration centres or schemes available in the Commonwealth, and the types of services which those centres or schemes could offer.
- (d) Provide information concerning the types of dispute which could be resolved through existing Commonwealth arbitration centres, and the modalities for their resolution.
- (e) Provide information on the courses or programs available for the training of arbitrators, mediators and other ADR professionals.
- (f) Compile in consultation with Governments and arbitration centres lists of appropriate Common-

wealth persons competent and qualified to serve as arbitrators, conciliators, mediators, tribunal members or willing to serve in any specialist capacity.

- (g) To provide such other related assistance as may be requested by Commonwealth users.

Requests for assistance

14 Commonwealth users wishing to seek assistance under the CAAS may make requests through -

The Director
Legal & Constitutional Affairs Division
Commonwealth Secretariat
Marlborough House
Pall Mall
London SW1Y 5HX
United Kingdom
Tel: 071 747 6410
Fax: 071 747 6406

Costs incurred by the Commonwealth Secretariat in connection with the requested assistance shall be borne by the requesting party. The Commonwealth Secretariat may charge such administrative fees as it deems appropriate.

Costs and Funding

15 Initial start up costs may not be substantial but would necessarily be incurred for:

- (i) collation of information to form basic database on arbitration legislation, rules, judicial or arbitral decisions;
- (ii) setting-up of database including computer hardware, software and database costs;
- (iii) dissemination of information on the service.

16 Initial funding may be by way of contributions from Member States. Subsequent funding shall be the responsibility of the Advisory Committee.

17 The CAAS should be implemented for a trial period of 5 years. Thereafter Law Ministers may decide to continue or discontinue the service depending on whether the service meets the needs of Member States.