Title: INTERNATIONAL COMMERCIAL ARBITRATION IN NATIONAL COURTS OF DEVELOPING COUNTRIES: CONFLICTS AND THE WAY FORWARD

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Introduction

The last 20 years have seen a dramatic removal of the barriers to trade and commerce across oceans and continental borders. The globalization of international trade and commercial interaction has indeed altered the nature of our collective economy in profound ways. Most particularly, this proliferation of free trade has opening nations in the developing sphere for foreign investment and greater access to global commodities. However, there still remain substantial gaps in many nations within this sphere in the evolution of legal infrastructure. This means that in many instances, the complexities of international law become garbled, distorted or undermined in the courts of developing countries. This is especially true where international commercial arbitration is concerned. Considerable adaptation is still necessary in the national courts of many developing countries, where dimensions of local politics, legal tradition, cultural and economic stability continue to obstruct the path to global consistency in commercial arbitration.

This continued gap is a cause for concern, primarily because this type of inconsistency serves as a deterrent to foreign investors. Multinational corporations and other global investment groups will be significantly less inclined to venture a costly risk in a country that does not afford consistent protection in arbitration proceedings. This, in turn, undermines the opportunity for the developing nation in question to enjoy the economic and infrastructural spoils of free trade. This points to the primary thesis of the proposed research, which is that international standardization of commercial arbitration standards and procedures, as well as extensive resource support and oversight with which to adequately accomplish this goal, are required in order for developing nations to enjoy the optimal effects of international commerce.

Ultimately, the importance of this proposal revolves on the inherent value of foreign investment into developing nations and the critical need to limit the bias of interest that tilts heavily toward global corporate developers. The proposal here calls for research that uses a single nation as an

example for how best to approach the modernization, consistency and accountability needed in international commercial arbitration.

Research Question

- Why international commercial arbitration in national courts of developing countries conflicts?

Proposed Methodology

At present, the proposed research is intended to be modest in its scope but detailed in its execution. Because of the economic and time-based limitations the proposed research, it will be appropriate to assemble data that is already existent as opposed to that which is gathered through experimental observation. With this stated though, the research is highly viable given both the wealth of available research and data on the subject and the remaining need for ongoing examination of a subject which also remains very much in a state of evolution.

The modest scope denoted in the section above would take the form of a preliminary literature review followed by the development and administering of a questionnaire. This would require the researcher to select a developing country whose national courts do not yet engage in modern international commercial arbitration but whose economic and political profile suggest readiness for an eventual transition. Using Bangladesh as a model, as yet unselected nation would be assessed through extensive literature review.

This review would be used to produce an overview of the primary deficiencies both locally and internationally preventing transition toward international commercial arbitration. This overview would in turn inform the development of a questionnaire to be administered to selected personnel working for legal NGOs both on the international scope and in the selected nation. More research is needed to determine the appropriate agencies to target or the best personnel to approach. Discussion of these steps will be outlined in the 'Methodology' section of the proposed research report.

The synthesis of 'Findings' from the 'Literature Review' and the Questionnaire will be used to draw several qualitative assessments of what is required by all parties to modernize a specific developing nation's approach to international commercial arbitration. It is hoped that these assessment could in turn be used as a template for moving the developing sphere as a whole toward a modern set of standards for commercial arbitration.

Sources

Several critical sources come to the present research courtesy of Professor A.F.M. Maniruzzaman, whose advocacy for improved standardization in international commercial arbitration helps light the way for the advances called for by the intended research. Specifically, Maniruzzaman (2003) identifies the Model Law, the Bangladesh Act, "and its counter in the sub-continent, i.e. the Indian Act" as templates for how to create effective national court standardization consistent with the thrust of international law in the area of commercial arbitration. These works of international law, which Maniruzzaman identifies collectively as the basis for the "recent trends of modernization in international arbitration law," also inform the premise of the proposed research.

Particularly, in discussion of the Bangladesh Act, Maniruzzaman demonstrates the reciprocal relationship between the international community and a uniquely developed legal culture in bringing commercial arbitration to its courts. This reinforces the premise underlying this proposal that cooperative compromise will be essential to modernizing the commercial courts of the developing sphere.

The source provided by Banani (2001) is also particularly useful in lending the research a voice of compromise. The Banani text identifies the limitations on both the international side and the side of local developing nations that have prevented global unification on the subject. The Banani source will be used to explore the degree to which the resistance of developing nations to what they perceive as the unfair practices of international commercial arbitration is actually justified.

By contrast, texts such as that by Gallagher & Shrestha (2011) point out that nearly a decade hence, greater equality and lesser bias is evident in international courts. This source helps to provide the counterpoint to resistance in the developing sphere by arguing that international arbitration "does not unfairly subject developing countries to arbitral panels…, that developing countries are not subject to more claims under the system, and that investors do not win the majority of cases. When foreign investors do win, the awards paid are not necessarily large amounts." (Gallagher & Shrestha, p. 2)