TABLE OF CONTENTS

FOREWORD iii

AUSTRALIA

Sea Containers Ltd v. ICT Pty Ltd, Judgment of the New South Wales Court of Appeal rendered in 2002 in case [2002] NSWCA 84 1

SUBJECT-MATTER:

Misconduct of arbitrators.

Observations by Frank Bannon and Mathew Stulic 19

AUSTRIA

*B*** Bank Ag v. Prof Dr. K and Prof Dr. F* and *Manfred S v. Chamber of Commerce of Austria in Vienna and two parties in support of the Respondent: S*** GmbH, and S*** s.r.o., Czech Republic* Decisions from the Austrian Supreme Court rendered in June 2005 in Case No 9 Ob 126/04a and in November 2006 in Case No 6 Ob 207/06v ("The B-Bank and Manfred S cases") 25

SUBJECT-MATTER:

The nature of the relationship between parties of an arbitration and the arbitrators.

Observations by Fatima-Zahra Slaoui 43

Observations by Gerold Zeiler 57

Observations by Frank Bannon and Mathew Stulic 63

BELGIUM

SNF SAS (France) v. CYTEC INDUSTRIE (Holland) Decision by the First Instance Court of Brussels rendered on 8 March 2007 in Case No 2005/ 7721/ A ("The Belgian SNF Case") 69

SUBJECT-MATTER:

Whether and arbitral award should be set-aside on the ground that the award violated public policy consisting of EC Competition Law (Article 81 of the EC Treaty [Article 101 Treaty on the Functioning of the European Union ("TFEU")]).

CANADA

SJO Catlin & Others Syndicate Nos. 1003 and 2003 Lloyd's of London, et al. v. Jardin Lloyd Thomson Canada Inc. et al., Judgment of the Court of Appeal of Alberta rendered on 18 January 2006 in Case 2006 ABCA 18 ("The Jardine Case") 89

SUBJECT-MATTER:

Whether the assistance that an arbitral tribunal may request from a court in taking evidence, pursuant to Article 27 of the *UNCITRAL Model Law on International Commercial Arbitration*, as implemented In Alberta, can include compelling the pre-hearing oral examination for discovery of third party witnesses.

Observations by Henri Alvarez 103

Observations by Janet E. Mills 115

Dell Computer Corporation v. Union des consommateurs and Olivier Dumoulin, Judgment of the Court of Appeal of Québec rendered on May 30, 2005 in Case [2005] R.J.Q. 1448 (On Appeal Before The Supreme Court of Canada) 119

SUBJECT-MATTER:

Whether an arbitration clause found in a consumer contract concluded on the Internet can affect the jurisdiction of Québec courts over a class action.

Observations by Frédéric Bachand.....131

Stefan Kanitz, Hugh Wallis, Richard Pearce, James Carnegie and John R. Wilson v. Rogers Cable Inc., Judgment of the Ontario Superior Court of Justice rendered in 2002 in case [2002] O.J. No. 665.....141

SUBJECT-MATTERS:

(1) Electronic commerce. Whether a contract might be amended – and an arbitration clause included – through the posting of a website notice.
(2) Whether the arbitration agreement was invalid because it was unconscionable.

Observations by Bradley J. Freedman and Edward C. Chiasson.....157

Yugraneft Corporation v. Rexx Management Corporation, Decision by the Alberta Court of Appeal rendered on August 5, 2008 in Case No 0701-0230-AC ("Yugraneft Corporation vs. Rexx Management Corporation") 171

SUBJECT-MATTERS:

Limitation period governing application seeking the recognition and enforcement of a foreign arbitral award.

Observations by Gerald W. Ghikas 181

Smart System Technologies Inc. v. Domotique Secant Inc., Decision by the Court of Appeal of Quebec rendered on March 11, 2008 in Case No 500-09-016097-057 ("Smart Systems Technologies Inc. vs. Domotique Secant Inc.") 191

SUBJECT-MATTERS:

Whether a foreign award should be denied recognition and enforcement on the grounds that it was unreasoned, that the arbitrators exceeded their jurisdiction and that one of the arbitrators improper communicated with one of the parties. Whether the respondent is estopped from resisting the application on the ground that it failed to challenge the award before the courts of the seat of arbitration.

CHINA

B company (People's Republic of China) v. JV company (People's Republic of China) and HK company (People's Republic of China), Judgments on Jurisdiction by Beijing Second Intermediate People's Court rendered on 13 September 2001 and Beijing High People's Court rendered on 12 December 2001.....201

SUBJECT-MATTER:

Jurisdiction—Whether a contract between a joint venture and one party to the joint venture, which has no arbitration clause, shall be subject to the arbitration clause of the joint venture contract.

Observations by Ping Liu 207

Contestarshipping Company Limited of Cyprus (Cyprus) v. Sinotrans Guangdong Zhangjiang Company (P.R. China), Decision by the Guangzhou Maritime Court, P.R. China, rendered in 1998.....211

SUBJECT-MATTERS:

(1) Law applicable to decide properness of notice of the arbitration proceedings under Article V.1 b) of the New York Convention

(2) Authority to conclude the contract containing the arbitration clause (public policy)
(3) Party to the arbitral award to be recognized and enforced, English name of Chinese party

Observations by Ping Liu 219

DENMARK

KVM Industrimaskiner A/S (Denmark) v. Construction Action Vale Ltd (Canada), Maître J. (Chairman of the arbitral tribunal), Professor L (arbitrator), and Judge H (arbitrator) Decision by the Danish Western Court of Appeal rendered on 27 January 2004 in case B-21717-00 221

SUBJECT-MATTERS:

(1) Challenge of the amount of arbitrators' fee fixed by the arbitrators in an international *ad hoc* arbitration.
(2) VAT on arbitrators' fees.

Observations by Ole Spiermann 235

Republic of Latvia v. SwemBalt Aktiebolag, Decision of the Maritime and Commercial Court, Copenhagen rendered in 2003 in case S-22-01 241

SUBJECT-MATTERS:

(1) Challenge of an arbitral award rendered under the Agreement between Sweden and Latvia on the Promotion and Reciprocal of Investments, SÖ 1992:93 (the "BIT"); question whether there was an investment in the meaning of the BIT.
(2) *Ne bis in idem* where two requests for arbitration made.
(3) Whether a Swedish court judgment declaring the award valid is also valid in Denmark pursuant to Article 26 of the European Court Convention.

Observations by Christoph Liebscher 259

EGYPT

El Motahidah Company for Trade and Contracting (Egypt) v. The President of The Republic (Egypt), The Prime Minister (Egypt), The President of The Legislative Committee of The People's Assembly (Egypt) and Shell Company for Marketing, Judgment of The Supreme Constitutional Court of Egypt rendered on 9 May, 2004 in Case No. 15 of the Judicial Year 24 (The "El Motahidah v. Shell Case") 265

SUBJECT-MATTERS:

(1) Whether the Egyptian Arbitration Law violates the constitutional principle that a party is entitled to litigate on two levels by giving the court of appeal exclusive jurisdiction over actions for setting aside arbitral awards.
(2) Whether the Egyptian Arbitration Law violates the constitutional principle of equality by providing for disparate treatment of parties resorting to arbitration and those resorting to litigation.

Observations by Dr. M.I.M. Aboul-Enein 273

Khatib Petroleum Services International Co. v. Care Construction Co. (CC); and Care Service Co. (CS), Judgment by Egypt's Court of Cassation rendered in June 2004 in Case No. 4729 of the Judicial Year 72 ("The Group of companies doctrine in Egyptian Law") 275

SUBJECT-MATTERS:

Extension of the arbitration agreement to a non-signatory company, in domestic proceedings, based on criteria of economic unity and identity of economic management; the extent to which theories of extension in groups of companies are in conformity with Egyptian Law.

Observations by Dr. Karim Youssef.....279

ENGLAND

(HOUSE OF LORDS)

Lafarge Redlands Aggregates Ltd v. Shepard Hill Civil Engineering Ltd, Judgment of the House of Lords rendered in 2000 in case [2002] 1 W.L.R. 1621 287

SUBJECT-MATTERS:

Multi-party arbitration. Whether a contractor can rely on tri-partite arbitration arrangements to avoid or delay arbitration with a sub-contractor.

I.C.E. 5th Edition (June 1973) Standard form of Contract for Civil Engineering Works and the F.C.E.C. Standard Form of Sub-Contract (September 1984 Edition) (the "Blue Form").

Observations by Stewart Shackleton.....301

(COURT OF APPEAL)

Sun Life Assurance Co. of Canada (Canada) and American Phoenix Life and Reassurance Co. (USA) and Phoenix Home Life Mutual Insurance Co. (USA) v. The Lincoln National Life Insurance Co (USA), Judgment by the Supreme Court of Judicature Court of Appeal (Civil Division), England rendered in 2004 in Case [2004] EWCA Civ. 1660.....303

SUBJECT-MATTER:

Issue estoppel (estoppel by *res judicata*) created by an arbitral award in another arbitration between different parties in a related dispute.

Observations by Salim A. H. Moollan 331

Approved Judgments by The High Court of Justice (1) Case No. [2003] EWHC 2602 (Comm) (2) Case No. [2002] Ewhc 121 (Comm), Introduction 337

(1) Approved Judgment By The High Court of Justice Queens Bench Division Commercial Court, on 4 February 2004, In Case No. [2003] EWHC 2602 (Comm), Nisshin Shipping Co Ltd. v. Cleaves & Company Ltd. and Others 338

SUBJECT-MATTER:

Permit of a third party to access the arbitration agreement.

(2) Approved Judgment By The High Court of Justice Queens Bench Division Commercial Court, on 4 February 2004, in Case No. [2002] EWHC 121 (Comm), Peterson Farms Inc. v. C & M Farming Limited.....354

SUBJECT-MATTER:

Group of companies' doctrine**.**

Observations by Michael E. Davis 373

Hussmann (Europe) Limited v. Ahmed Pharaon (formerly trading as Al Ameen Development and Trade Establishment, Judgment by The Supreme Court of Judicature Court of Appeal (Civil Division) rendered on 4 March 2003 in Case [2003] Ewca Civ 266.....381

SUBJECT-MATTER:

Functus officio of an arbitral tribunal.

Observations by Sarosh R. Zaiwalla 407

Capital Trust Investments Ltd v. Radio Design TJ AB and others, Judgment of the Court of Appeal rendered in 2002 in case [2002] Civ 135 415

SUBJECT-MATTERS:

(1) Arbitration clause in an applicant form for the subscription of shares.
(2) Scope of the arbitration agreement.
(3) Waiver under section 9(3) of the English Arbitration Act 1996.
(4) Stay of court action under section 9(4) of the English Arbitration Act 1996.

Observations by David St. John Sutton 437

Union Discount Company Ltd. v. 1. Robert Zoller & others, 2. Union Cal Ltd., Judgment of the Court of Appeal rendered in 2001 in case [2001] EWCA Civ 1755 441

SUBJECT-MATTER:

Costs incurred in foreign jurisdiction. A party was unable to recover costs in foreign proceedings. Whether party was entitled to recover foreign costs as damages for breach of exclusive jurisdiction clause in subsequent proceedings.

Observations by Otto Sandrock 453

Observations by Jean-Louis Delvolvé 469

Observations by Claes Zettermarck 475

Veba Oil Supply & Trading GmbH v. Petrotrade Inc., Judgment of the Court of Appeal (Civil Division) rendered in 2001 in case 1832 481

SUBJECT-MATTER:

When is an expert's departure from instructions deemed to be material?

Observations by R. Doak Bishop and Richard Deutsch 487

1. AT&T Corporation, 2. Lucent Technologies Inc v. Saudi Cable Company, Decision of the Court of Appeal (Civil Division) rendered in 2000 in case [2000] EWCA Civ 154 – the "Saudi Cable" case 493

SUBJECT-MATTERS:

(1) What constitutes bias on the part of an arbitrator?
(2) What constitutes misconduct on the part of an arbitrator?

(3) Whether an arbitral institution's decision on a challenge of an arbitrator is final.
(4) Whether the arbitrator should be removed and awards set aside on ground of bias.

Observations by William K. Slate II.....517

Observations by David P. Roney, Viviane Frossard and Angelina M. Petti.....521

Observations by Stefano Azzali and Benedetta Coppo.....537

Svenska Petroleum Exploration AB, Sweden v. Government of the Republic of Lithuania and AB Geonafta, Lithuania, Decision by the English Court of Appeal (Civil Division) rendered in 2006 in Case No. B6/2005/2737.....555

SUBJECT-MATTER:

(1) Where a foreign state, which had agreed in writing to submit a dispute to arbitration within s.9(1) of the English State Immunity Act 1978, could claim immunity in respect of English proceedings under s.101(2) of the Arbitration Act 1996 to enforce a foreign arbitration award.
(2) Contract interpretation under Lithuanian law.
(3) Whether a party that does not challenge an arbitral award at the place of arbitration within a reasonable time will be precluded from attacking the award later at the place of enforcement of the award.

Observations by Per Runeland and Julia Zagonek.....567

Observations by William McKechnie.....597

John Foster Emmott v. Michael Wilson & Partners, Ltd., Decision of the England and Wales Court of Appeal Rendered 12 March 2008 in case No. 2007 Folio 1521, ("Emmott v. Michael Wilson & Partners Limited").....605

SUBJECT-MATTER:

Confidentiality of documents produced for the purposes of an arbitration in London—Distinction between privacy and confidentiality—Limits to duty of confidentiality.

Observations by Stewart Boyd.....643

(COURT OF APPEAL & HOUSE OF LORDS)

Fiona Trust & Holding Corporation & ors v. Yuri Privalov and others, Judgment of the Supreme Court of Judicature Court of Appeal (Civil Division), London rendered in January 2007 in Case No. [2007] EWCA CIV 20 653

Premium NAFTA Products, Ltd. v. Fili Shipping Co., Ltd., Judgment of the House of Lords of Appeal, London rendered in October 2007 in Case No. [2007] UKHL 40.....671

SUBJECT-MATTERS:

(1) Interpretation of arbitration agreements
(2) Scope of separability principle

Observations by Gilles Cuniberti 685

(COMMERCIAL COURT)

AIG Capital Partners, Inc. and CJSC Tema Real Estate Company, Ltd. v. The Republic of Kazakhstan, Decision by the High Court of Justice, Queen's Bench Division, rendered in 2005 in Case No. 2004/536.....693

SUBJECT-MATTERS:

Whether an arbitral award against a state, rendered in ICSID arbitration pursuant to a Bilateral Investment Treaty, may be enforced by obtaining from an English court so-called Third Party Debt and Charging Orders against certain cash and securities held in London by third parties pursuant to an agreement between these third parties and the central bank of the state in question.

Questions of state immunity from enforcement pursuant to the State Immunity Act of 1978.

Observations by Judith Gill.....709

EUROPEAN COURT OF JUSTICE

Elisa Maria Mostaza Claro v. Centro Movil Milenium SL, Judgment of the European Court of Justice (First Chamber) rendered in 2006 in Case C-168/05 ("The Mostaza Claro Case") 717

SUBJECT-MATTER:

Whether a failure to raise the unfair nature of a term during arbitration proceedings precludes the possibility to raise that objection in the context of an action brought against the arbitration award.

Observations by Roman Jordans 727

FINLAND

Parties not disclosed, Decision of the Finnish Supreme Court rendered in 2005 in Case KKO 2005:14 733

SUBJECT-MATTER:

Liability in damages of an arbitrator

Observations by Matti S. Kurkela 745

Observations by Justus Könkkölä 747

Werfen Austria GmbH v. Polar Electro Europe B.V., Zug Branch, Decision of the Supreme Court of Finland rendered on 2 July 2008 in Case No. S2006/716 ("Werfen Austria GmbH v. Polar Electro Europe B.V., Zug Branch") 751

SUBJECT-MATTER:

Whether—by awarding damages on the basis of a legal doctrine that neither party invoked nor had an opportunity to comment on—the arbitral tribunal exceeded its authority or failed to provide the parties a sufficient opportunity to present their cases.

Observations by Petra Kiurunen 765

Observations by Sophie Nappert 775

FRANCE

(COUR DE CASSATION)

Louis Juliet, Benoît Juliet v. Paul Castagnet (arbitrator), Pierre Couilleaux (arbitrator) and Adolphe Biotteau (arbitrator), Decision by the French Cour de Cassation, First Civil Chamber rendered on 6 December 2005 in case 1660 FS-P+B 779

SUBJECT MATTER:

Liability of arbitrators who have failed to render an award before the deadline for the arbitral proceedings.

Observations by Louis Degos 781

State of Israel v. National Iranian Oil Company (NIOC), Judgment of the French Cour de Cassation First Civil Chamber rendered on 1 February 2005 in case No. 01–13.742/02–15.237 787

SUBJECT MATTER:

Whether a French court can appoint an arbitrator on behalf of an obstructing party at the request of the other party in an arbitration that is not taking place in France or subject to French procedural law.

Observations by Guillaume Tattevin 791

Observations by François-Xavier Train 799

(SUPREME COURT)

ABC International Bank PLC (France), The Inter-Arab Investment Guarantee Corporation (IAIGC) (Kuwait) v. BAII Recouvrement (France), Decision by the French Supreme Court, First Civil Chamber rendered in 2004 in case 1231 FS-P 809

SUBJECT MATTER:

Whether French courts can order a company to pay interest as from the date of an international arbitral award, "post-award interest."

Observations by Christopher R. Seppälä 813

UOPNV v. BP France SA & others, Judgment by the Supreme Court in France rendered in February 2007 in Case No. JCP, 2007 I 168 ("UOP v. BP") 817

SUBJECT MATTER:

Validity or applicability of an arbitration agreement simultaneously designating two arbitration institutions and/or rules.

Observations by Emmanuelle Cabrol 821

(COURT OF APPEAL)

La Direction Générale de l'Aviation Civile de l'Emirat de Dubaï v. International Bechtel Company (Panama), Decision by the Paris Court of Appeal rendered on 29 September 2005 in Direction Générale de l'Aviation Civile de l'Emirat de Dubaï v. International Bechtel Co., LLP (The "DAC Dubai v. Bechtel" case) 827

SUBJECT-MATTER(S):

(1) Enforcement of an arbitral award set aside in the country of origin.
(2) Law applicable to the effectiveness of an arbitral award.

Observations by Philippe Pinsolle 835

Observations by Alexis Mourre 847

S.A. Thalès Air Defence v. G.I.E. Euromissile et al., Decision by the Paris Court of Appeal rendered on 18 November 2004 in case No. 2002/60932 867

SUBJECT-MATTER:

Whether an arbitral award should be set aside on the ground that the award violated public policy consisting of EC Competition Law (Article 81 of the EC Treaty ("EC"); currently Article 101 of the Treaty on the Functioning of the European Union ("TFEU")) which should have been applied by the arbitral tribunal *ex officio*.

Observations by Diederik de Groot 881

ABC International v. Diverseylever, Judgment of the Paris Court of Appeal rendered in 2002 in cases 2001/10769 and 2001/15479.....889

SUBJECT-MATTER:

Characterisation of an arbitrator's decision to dismiss a party's application for interim payment – award or procedural order?

Observations by Charles Kaplan and Gilles Cuniberti 901

(1) The Murmansk State Technical University 2. Association Brest 2000 v. 1. Compagnie NOGA d'Importation et d'Exportation (2) The Government of the Russian Federation 3. Fauveder SA, Decisions of the Brest County Court and the Paris Court of Appeals rendered in 2000 – the "Noga" case and the Seizure of the Sedov 905

The Seizure of Sedov

SUBJECT-MATTER:

Whether the seizure pursuant to an SCC Institute Award of the Sedov, a Russian tall ship, by NOGA, a creditor of the Russian Federation, was contrary to international public law, French national law or international private law.

The Noga case

SUBJECT MATTER:

Whether the seizure, pursuant to an SCC Institute Award, of intangible property and property placed in a strongbox in the hands of the Banque Commerciale pour l'Europe du Nord-Eurobank to the detriment of the Embassy of the Russian Federation in France, the Permanent Delegation of

the Russian Federation to UNESCO and the Commercial Representation of the Russian Federation in France, was valid.

Observations by Emmanuel Gaillard.....933

SNF SAS (France) v. CYTEC INDUSTRIES BV (Holland), Decision by the Paris Court of Appeal rendered on 23 March 2006 in Case No. 04/19673 ("The French SNF Case") 939

SUBJECT-MATTER(S):

Whether an arbitral award should be set-aside on the ground that the award violated public policy consisting of EC Competition Law (Article 81 of the EC Treaty [Article 101 TFEU]).

GERMANY

Parties not disclosed, Judgment by the Federal Supreme Court of Germany rendered in 2004 in case II ZR 65/03 947

SUBJECT-MATTER:

Whether a dispute regarding the payment of the initial contribution to a limited liability corporation is arbitrable.

Observations by Roman Jordans 953

X v. Y, Decision of the Berlin Higher Regional Court (Kammergericht) rendered in 1999 in case 28 Sch 17/99 965

SUBJECT-MATTER:

Construction of an arbitration agreement; Reference to a non-existing German arbitration institution

Observations by Jens Bredow 969

Parties not disclosed, Decision by the Federal Court of Justice of Germany rendered on April 17, 2008 in Case No III ZB 97/06.....973

SUBJECT-MATTERS:

Circumstances under which a party may be estopped from invoking one of the defenses set out in Article V of the New York Convention—Whether the respondent is estopped from resisting an application seeking the recognition and enforcement of a foreign award on the ground that it failed to challenge the award before the courts of the seat of arbitration.

Observations by Dr. Stefan Kröll and Dmitry Marenkov.....981

KAZAKHASTAN

ZAO International Airport Astana (Kazakhstan) v. Mabetex Project Engineering S.A. (Switzerland), Judgment of the Judicial Collegium for Civil Cases of the Supreme Court of Kazakhstan rendered in 2004, Resolution No. 3A-121/2-04 1003

SUBJECT-MATTER:

Requirements for a valid arbitration clause under the laws of Kazakhstan.

Observations by M. K. Suleimenov 1013

LATVIA

Swedish company "Forscan Timber Export" AB v. Latvian company "Interwood," Judgment by the Riga Regional Court, Civil Cases Board rendered on 19 August 2004 in case: CA-4208/20.2004 (Forscan Timber Export AB v. Interwood) 1021

SUBJECT-MATTER(S):

(1) Determination of the jurisdiction in case of similar names of arbitral institutions.
(2) Arbitrator's knowledge of the language agreed in the arbitration agreement
(3) Competence – competence
(4) Issuance of the writ of execution

Observations by Ziedonis Ūdris and Inga Kačevska 1029

THE NETHERLANDS

Marketing Displays International Inc. (USA) v. VR Van Raalte Reclame B.V. (The Netherlands), Judgments by the District Court of The Hague rendered on 27 May 2004 in (1) case KG/RK 2002-979 and 2003-1617 and by the Court of Appeal of the Hague on 24 March 2005 in (2) case 04/694 and 04/695 (Marketing Displays International Inc. v. VR Van Raalte Reclame B.V.) 1039

SUBJECT-MATTER(S):

(1) Leave for enforcement under the New York Convention
(2) Article 81 EC (currently Article 101 of the Treaty on the Functioning of the European Union ("TFEU")
(3) (International) public policy

Observations by Diederik de Groot 1055

Staat Der Nederlanden v. B.V. Nederlands Elekriciteit Administratiekantoor, Decision of the District Court of The Hague, The Netherlands rendered on 1 August 2007 in Case No. LJN: BB1424, 255948 / HA ZA 05-3983 1067

SUBJECT-MATTER(S):

Conformity with public policy of an arbitral award made in The Netherlands and involving a dispute between Nederlands Elektriciteit Administratiekantoor and the State regarding the amount of the payable non-market-compatible costs of the unprofitable Demkolec plant.

Observations by Diederik de Groot 1077

Yukos Capital S.A.R.L. v. OAO Rosneft, Decision of the Amsterdam Court of Appeal Rendered on April 28, 2009 in Case No. 200.005.269/01 ("Yukos Capital S.A.R.L. vs. OAO Rosneft").....1085

SUBJECT-MATTER(S):

Application seeking the recognition and enforcement of arbitral awards made in Moscow under the rules of the International Court of Commercial Arbitration at the Chamber of Trade and Industry the Russian Federation—Awards subsequently annulled by Russian Courts—Whether awards can nevertheless be recognized and enforced in The Netherlands

Observations by Eric A. Schwartz 1099

Bursa Büyüksehir Belediyesi v. Gűris Insaat Műhendislik A.S., Siemens A.G., Siemens Sanayi Ve Ticaret A.S. and Tüvasas Türkiye Vagon Sanayi A.S., Decision of the Supreme Court (*Hoge Raad*), The Netherlands Rendered on 5 December 2008 in Case No. C07/166HR (LJN: BF3799; NJ 2009, 6).....1111

SUBJECT-MATTER(S):

Annulment of an arbitral award made in The Netherlands due to defective signature. The award was signed only by two of the three arbitrators, while the declaration that the third arbitrator had refused to sign the award, was not signed by these two arbitrators.

Observations by Diederik de Groot 1115

NORWAY

X v. Y, Decision of the Hågoland Court of Appeal, 16 August 1999 1129

SUBJECT-MATTER:

Enforcement of an arbitration agreement entered into through exchange of e-mails.

Observations by Gunnar Nerdrum 1135

RUSSIA

(COMMERCIAL COURT)

The Consortium Kodest Engineering (Italy) v. Limited Liability Company "Most Group" (Russia), Judgment of the Presidium of the Higher Commercial Court of the Russian Federation rendered on 22 February 2005 in case 14548/04 "The Kodest Case".....1139

SUBJECT-MATTER(S):

(1) Whether the burden of proof with respect to the New York Convention Article V(1)(b) is on the defendant or the claimant.
(2) Whether the defendant was given proper notice of the arbitration proceedings.

Observations by Dominic Pellew.....1147

Pressindustria S.p.A. v. Tobolsk Petrochemical Combine, Judgment of the Federal Commercial Court of the Western Siberian Okrug rendered in 1999 in case F04/1402-291/A70-99 and judgment of the Presidium of the Higher Commercial Court rendered in 2003 in case 2853/00 1151

SUBJECT-MATTERS:

(1) Dissolution of a joint venture – the relevance of mandatory rules according to Russian law.
(2) Whether the arbitral tribunal went beyond the scope of the arbitration clause.

Observations by Dominic Pellew.....1163

SINGAPORE

Luzon Hydro Corp. (Philippines) v. Transfield Philippines Inc. (Philippines), Judgment of the Singapore High Court rendered in 2004 in case [2004] 4 SLR 705; [2004] SGHC 204.....1171

SUBJECT-MATTER:

Whether the expert had gone beyond his mandate and the agreement of the parties and whether not providing the parties with the information supplied by the expert to the arbitral tribunal was a breach of natural justice in making the award.

Observations by Devashish Krishan 1179

SWEDEN

*Bankruptcy Estate of Svenska Kreditförsäkringsaktiebolaget (Sweden) v. Unione Italiana di Riassicurazione S.p.A, et al,*Decision by the Stockholm District Court rendered in 2001 in Case K3-4897-92 and decision by The Svea Court of Appeal rendered in 2001 in Case Ö 5337-01 and Decision by the Swedish Supreme Court rendered in 2003 in Case Ö 3504-01 1189

SUBJECT-MATTER:

Applicability of an arbitration clause in bankruptcy proceedings.

Observations by Christer Söderlund 1195

JSC Novokuznetsk Aluminium Plant (Russia) v. Base Metal Trading S.A. (Switzerland), Decision by the Stockholm District Court rendered in 2004 in case Ä 860-04 and Decision by the Svea Court of Appeal rendered in 2004 in case ÖÄ 4247-04 1203

SUBJECT-MATTER:

Finality of a determination by an arbitration institution regarding a challenge of an arbitrator's impartiality.

Observations by Robin Oldenstam 1207

(SUPREME COURT)

The Arbitration Institute of the Stockholm Chamber of Commerce v. Office of the Prosecutor-General of Sweden, Decision by the Supreme Court of Sweden rendered on 16 June 2004 in case Ö 853-03.....1213

SUBJECT-MATTER:

Whether, by virtue of criminal investigations in Russia, documents contained in a case file at the Arbitration Institute of the Stockholm Chamber of Commerce should be handed over to Russian authorities pursuant to the European Convention on Mutual Assistance in Criminal Matters of 1959.

Observations by Annette Magnusson.....1217

A.I. Trade Finance Inc. and Bulgarian Foreign Trade Bank v. GiroCredit Bank Aktiengesellschaft der Sparkassen, Judgment of the Supreme Court rendered in 2000 in case N T 1881-99 (the "Bulbank" case).....1227

SUBJECT-MATTER:

Confidentiality in international arbitration in Sweden.

Observations by M.I.M. Aboul-Enein 1239

Observations by Gerald Aksen 1241

Observations by Gregory Reid and Lucy Greenwood 1247

MS Emja Braack Schiffahrts KG v. Wärtsilä Diesel AB, Decision of the Supreme Court rendered on 15 October 1997 (the "Emja" case) 1253

SUBJECT-MATTER:

Assignment of an arbitration agreement.

Esselte AB v. Swedish State Pension Fund, including the First, the Second and the Third Board of Directors (the AP-Fund), Decision of the Supreme Court rendered on 3 April 1998 1257

SUBJECT-MATTER:

Whether claims which partly were claimed in an earlier arbitration roceedings by way of set-off should be regarded *res judicata* in a second arbitration proceedings. The claims were dismissed in the first arbitration proceedings.

Observations by Stewart Boyd 1275

Observations by Joachim Kuckenburg 1279

Skandinaviska Färginstitutet v. Birgitte Hartmann and her company Institut für Farbe, Decision of the Supreme Court rendered in 2000 in case T 12-99 (the "IFA" case) 1285

SUBJECT-MATTERS:

The right to introduce set-off claims in an arbitration.

Observations by Gustaf Möller 1291

3S Swedish Special Supplier AB v. Sky Park AB, Judgment of the Supreme Court rendered in 2000 in case T 5119-99 (the "3S" case) 1295

SUBJECT-MATTERS:

Recourse against a party which has not complied with a request for advance payment of the arbitration tribunal's costs.

Observations by Jingzhou Tao, Anne-Laure Vincent and Michael Polkinghorne 1301

Anders Jilken ("A J") v. Ericsson AB, Judgment by the Swedish Supreme Court rendered in November 2007 in Case No. T 2448-06 ("The Lind case").....1309

SUBJECT-MATTER:

Disqualification of arbitrator for appearance of lack of impartiality/ independence.

Observations by John Fellas.....1317

Observations by Patrik Schöldström.....1325

(COURT OF APPEAL)

The Titan Corporation (USA) v. Alcatel CIT SA (France), Decision by the Svea Court of Appeal in Sweden rendered in 2005 in case No. T 1038–05.....1329

SUBJECT-MATTER:

When is an award deemed to have been rendered in Sweden?

Observations by Patricia Shaughnessy.....1335

Observations by Christer Söderlund.....1345

Republic of Kazakhstan v. MTR Metals Ltd. (Cyprus), I. Partial Award on Jurisdiction & Final Award rendered in 2001 in SCC case 85/2000 & *MTR Metals Ltd. (Cyprus) v. Republic of Kazakhstan,* II. Decision by the Svea Court of Appeal rendered on 25 May 2004 in case T 1361-01 1351

I. SUBJECT-MATTER(S):

(1) Jurisdiction of the arbitral tribunal; whether the agreement to arbitrate can be concluded from parties conduct before a state court.
(2) State immunity as a bar to arbitration?
(3) Issue of succession of parties.

II. SUBJECT-MATTERS:

(1) Jurisdiction of the arbitral tribunal.
(2) Possible bias of the arbitral tribunal.
(3) One arbitrator excluded from the deliberations?

Observations by Kendall Moholitny.....1385

Observations by Ola Åhman 1395

Dirland Télécom S.A. (France) v. Viking Telecom AB (Sweden), Decision by the Court of Appeal for Western Sweden rendered on 29 December 2003 in case T 4366-02 1409

SUBJECT-MATTER:

Non-compliance with mandatory European telecommunications Law – does it constitute a violation of Swedish *ordre public* ?

Observations by Diederik de Groot 1421

The Czech Republic v. CME Czech Republic B.V., Judgment by the Svea Court of Appeal, Stockholm, rendered in 2003 in case T 8735-01 (the "CME v. Czech Republic" case) 1427

SUBJECT-MATTERS:

(1) Whether an arbitrator was excluded from the deliberations.
(2) Whether the tribunal failed to take into consideration applicable law.
(3) Whether the tribunal lacked jurisdiction due to *lis pendens* and *res judicata*.
(4) Whether the tribunal exceeded its mandate – the concept of joint tortfeasors.
(5) Whether the tribunal exceeded its mandate – decision concerning determination of the damage.
(6) Whether the tribunal exceeded its mandate – previous investors and prior breaches.
(7) Whether the judgment of the Court of Appeal may be appealed.

Observations by Noah Rubins 1453

Observations by Stanisław Sołtysiński and Marcin Olechowski 1471

Observations by Hans Bagner 1495

Observations by Tore Wiwen-Nilsson 1503

SwemBalt Aktiebolag v. Republic of Latvia, Decision of the Svea Court of Appeal, Stockholm, rendered in 2002 in case Ö 7192-01 1513

SUBJECT-MATTERS:

(1) Enforcement of an award rendered under the Agreement between Sweden and Latvia on the Promotion and Reciprocal Protection of Investments (SÖ 1992:93) ("the BIT");
question whether the re was an investment in the meaning of the BIT.
(2) Should enforcement be refused on the ground that the arbitral tribunal lacked jurisdiction for reasons of *lis pendens*?

Observations by Christoph Liebscher 1531

1. The A Company, 2. The B Company v. The Former Soviet Republic, Jurisdictional Award rendered in 1998 in SCC cases 38/1997 and 39/1997 & Judgment of the Stockholm District Court rendered in 2001 in cases T 1510-99 & Judgment of the Svea Court of Appeal, Stockholm, rendered in 2002 in case T 4496-01 – The "Government Guarantee" case 1537

SUBJECT-MATTERS:

(1) Application, under Swedish law, of an arbitration clause laid down in a business contract, to a third party guarantor.
(2) Applicable law. Whether a choice of "governing law" in a supply contract is applicable when determining whether a guarantor is bound by an arbitration clause in the supply contract.
(3) Is state sovereign immunity a bar to arbitration?

Observations by Hans Smit 1561

American Pacific Corporation v. Sydsvensk Produktutveckling AB in bankruptcy, and Mr. Jan Andersson, Decision of the Svea Court of Appeal, Stockholm, rendered in 2001 in case Ö 4859-00.....1569

SUBJECT-MATTERS:

(1) Recognition and enforcement of a foreign arbitral award.
(2) Allocation of costs as between the parties in the enforcement proceedings.

Observations by Lars Edlund 1573

Planavergne S.A. v. Kalle Bergander i Stockholm AB, Decision by the Svea Court of Appeal, Stockholm, rendered in 2001 in case Ö 4645-99.....1575

SUBJECT-MATTERS:

(1) Recognition and enforcement of a foreign arbitral award; law applicable to the legal form of the arbitration agreement.
(2) Enforcement of a declaratory judgment regarding the costs of the arbitration.

Observations by Lars Edlund 1579

Rolf Gustafsson v. Länsförsäkringar Bergslagen-Wasa ömsesidigt, Judgment by the Svea Court of Appeal, Stockholm, rendered in 2000 in case 8090-99 1581

SUBJECT-MATTER:

Whether an award was based on matters not submitted by the parties to the arbitrators.

Observations by Martin Wallin 1591

Transnational Company Kazchrom v. 1. AIOC Resources AG, in liquidation 2. Mr Edward Moran, Judgment of the Svea Court of Appeal, Stockholm, rendered in 2000 in case T 6902-99 (the "Kazchrom" case) 1599

SUBJECT-MATTERS:

(1) Universal succession under Kazakh law.
(2) Validity of an arbitration agreement following a universal succession.
(3) Service of a request for arbitration and procedural documents, with a Kazakh company.

Observations by Aigoul Kenjebayeva 1609

The Government of the Russian Federation v. Compagnie NOGA d'Importation et d'Exportation S.A, Judgment of the Svea Court of Appeal, Stockholm, rendered in 1998 in case 925-98-80 (the "Noga" case) 1615

SUBJECT-MATTER:

Whether a second arbitral award covered a question already decided with *res judicata* effect in a first award; application of Article 31(2) of the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (1988).

Observations by Patrik Schöldström 1625

Fagep v. V/O Stankoimport, Decision of the Svea Court of Appeal, Stockholm, rendered on 23 December 1997 1629

SUBJECT-MATTERS:

(1) An arbitral award is not void pursuant to section 20, 1st subs. of the Swedish Arbitration Act 1929 (no valid arbitration agreement).
(2) An arbitral award is not void pursuant to section 20, 2nd subs. of the Act, (absence of arbitrator's signature on the award).

(3) The award should not be set aside pursuant to section 21, 1st subs., point 1 of the Act (award given after the expiration of the period laid down).
(4) A party was considered as having waived an irregularity of the proceedings according to section 21, 2nd subs. of the Act.

Observations by Gustaf Möller 1641

Rapla Invest AB in liquidation (Sweden) v. TNK Trade Limited (Cyprus), Judgment by the Svea Court of Appeal, Stockholm, Rendered on 7 December 2006 in Case No. T 5044-04 ("The Rapla Invest v. TNK Trade Case").....1645

SUBJECT-MATTER:

(1) Failure by the arbitral tribunal to apply legal rules or principles -jura novit curia in Swedish arbitration.
(2) Failure by the arbitral tribunal to examine an invoked ground.
(3) Disqualification of an arbitrator due to previous connection with a party.

Observations by Martin Wallin and Katarina Mild 1661

Soyak International Construction & Investment Inc., Turkey v. the arbitrators (i.e., Mr. Werner Melis, Austria; Mr. Kaj Hobér, Sweden; and Mr. Steffen Kraus, Germany), Decision of the Svea Court of Appeal rendered on 25 September 2006 in Case No. Ö 1952-05 ("The Soyak Case").....1669

SUBJECT-MATTER:

Can a decision on fees to the arbitrators made by an arbitral institution be appealed?

Observations by Patrik Schöldström.....1685

Observations by Marie Öhrström.....1693

(DISTRICT COURT)

Judgments by The Stockholm District Court rendered in 2003 in (1) Case T 7898-00 And (2) Case T 3697-01, Introduction 1701

(1) Open Joint Stock Company "Yukos Oil Company" (Moscow, Russian Federation) v. Petro Alliance Services Company Ltd (Houston, Texas, USA), Judgment by the Stockholm District Court rendered on 25 April 2003, In Case T 7898-00.....1701

SUBJECT-MATTER:

Whether parties can dispose of the validity of the arbitral award.

(2) MÍR Müteahhitlik ve Ticaret A.S. (Ankara, Turkey) v. The Commercial Bank MOST-Bank (Moscow, Russia), Default Judgment by the Stockholm District Court rendered on 12 October 2003, in Case T 3697-01 1703

SUBJECT-MATTER:

Setting aside of an arbitral award for alleged procedural irregularity and excess of arbitral authority according to the 1929 Swedish Arbitration Act through default judgment.

Observations by Carita Wallgren-Lindhom and Gisela Knuts 1707

Mr. A and others v. Mr. B, Decision of the Stockholm District Court rendered in 2001 in case Ä 7197-01.....1713

SUBJECT-MATTER:

Appointment of arbitrator. Application of Section 14 of the Swedish Arbitration Act (1999). Doctrine of joinder of necessary parties.

Observations by Georgios Petrochilos 1719

SWITZERLAND

(SUPREME COURT)

Undisclosed Parties, Decision by the Swiss Supreme Court rendered on 6 October 2004 in case 4P117–2004.....1729

SUBJECT-MATTER:

Admissibility of appeals filed against partial awards *stricto sensu*.

Observations by Pierre-Yves Gunter 1745

KK Ltd. (Turks and Caicos Islands v. FF (Paris, France), Judgment of the Swiss Supreme Court rendered in 2003 in case 4p.137/2002. 1751

SUBJECT-MATTERS:

(1) Swiss courts' powers to review foreign law.
(2) French law on representation of companies.
(3) Security for costs before Swiss courts.

Observations by Laurent Hirsch 1761

X v. Y, Judgment of the Supreme Court rendered in 2002 in case 4P.226/2001 1773

SUBJECT-MATTERS:

(1) Request to set aside an arbitral award on the ground that one co-arbitrator failed to attend the deliberation (Swiss PILS –LDIP, Article 190, para 2, lit.a).
(2) Request to set aside an arbitral award on the ground that the parties were not treated equally and a party was refused the opportunity to be heard (PILS, Article 190, para 2, lit.d).
(3) Alleged violation of public order on the ground that the arbitrators had failed to examine a violation of Greek and European competition law (PILS, Article 190, para 2, lit.e).

Observations by Konstantin Razumov 1787

The Republic of Lebanon v. France Telecom Mobile International (FTMI), France; Telecom Mobile Lebanon (FTML), Lebanon, Judgments by the Swiss Supreme Court rendered on 10 November 2005 in (1) Case 4P.98/2005 svc and (2) Case 4P.154/2005/svc (The "Republic of Lebanon v. FTMI & FTML" Cases 1795

SUBJECT-MATTER:

(1) Validity of an exclusion agreement (excluding applications to courts to set aside an award). Effects of a partial exclusion agreement, namely the waiver to challenge an award due to lack of competence.
(2) Effects of an exclusion agreement on correction awards.

Observations by Laurent Lévy.....1817

X. (English Company) v. National Property Fund (Czech Republic), Judgment by the Swiss Supreme Court rendered on 4 February 2005 in (1) Case 4P.236/2004.....1827

SUBJECT-MATTER:

(1) Exclusion of annulment action in arbitration clause

Czech Republic through the Ministry of France v. X. (Dutch Company), Judgment by the Swiss Supreme Court Rendered on 7 September 2006 in Case 4P.114/2006.....1839

SUBJECT-MATTER:

(1) Exclusion of annulment action in Bilateral Investment Treaty
(2) Scope of jurisdiction of an arbitral tribunal

(COURT OF FIRST INSTANCE)

Air (PTY) Ltd. v. International Air Transport Association (IATA) and C. SA, Decision by the Geneva Court of First Instance rendered on 2 May 2005 in Case C/1043/2005-15SP 1867

SUBJECT-MATTER:

Anti-arbitration injunction

Observations by Matthias Scherer and Teresa Giovannini 1877

UKRAINE

Court Recommendations in December 2007 by the Presidium of the Highest Commercial Court of Ukraine ("Ukrainian Court Edict") 1895

SUBJECT-MATTER:

(1) Activities of and corporate relations concerning a Ukrainian joint stock company shall be governed exclusively by the laws of Ukraine.
(2) Agreements providing for the application of foreign law to Ukrainian corporate relationships including the relationships between shareholders are null and void and violate Ukrainian public policy.
(3) Agreements limiting the scope or effect of Ukrainian mandatory legal provisions (such as competition law and rules regarding the invalidity of agreements) are null and void.
(4) Shareholders' agreements, even under foreign law and entered into by, for instance, non-Ukrainian holding companies cannot govern questions of corporate governance in a Ukrainian company and, hence, cannot be enforced to the extent they are at variance with Ukrainian company law.
(5) The Recommendations seek to exclude Ukrainian corporate disputes from determination by international arbitration (paragraph 2 of Section 6.2).

Observations by Serhii Sviriba and Olga Glukhovska 1903

Observations by Tatiana Slipachuk and Per Runeland 1907

Observations by Alexander Vaneev 1915

USA

Professional Realty and Development Corporation (USA) v. Sloan Electric (USA), Judgment of the Appellate Court of Illinois, Third District, rendered in 2004 in case no. 3–03–0563 1919

SUBJECT-MATTER:

Gross error of law and manifest disregard of law as grounds to set aside arbitral awards in the United States.

Observations by Grant Hanessian 1935

Observations by Ihsan Dogramaci.....1943

1. Stephen B. Sawtelle, 2. Hackett Associates, Inc. v. 1. Waddell & Reed, Inc., 2. Torchmark Corporation, Judgment of the Supreme Court New York County Appellate Division rendered in 2003 in case 754 N.Y.S. 2D 264 1959

SUBJECT-MATTER:

Punitive damages in arbitral award.

Observations by Steven C. Bennett 1973

Buckeye Check Cashing, Inc. v. Cardegna et al., Decision by the Supreme Court of the United States rendered on 21 February 2006 in Case No. 04-1264 1977

SUBJECT-MATTER:

Gross error of law and manifest disregard of law as grounds to set aside arbitral awards in the United States.

Oxus Gold Plc. V. Jack A. Barbanel, Decision by the United States District Court for the District of New Jersey rendered in 2007 in Case No. MISC 06-82-GEB 2007 U.S. Dist. LEXIS 24061 (The "Oxus Gold" Case) 1985

SUBJECT-MATTER:

Whether a U.S. court may compel testimony and production of documents from third parties residing in the U.S. for use in an arbitration undertaken pursuant to an investment treaty.

Observations by Grant Hanessian 1999

Termorio S.A. E.S.P. and LeaseCo Group, LLC v. Electranta S.P., et al., Decision by the United States Court of Appeals for the District Court of Columbia Circuit in 2007 in Case No. 06-7058 ("The Termorio Case").....2009

SUBJECT-MATTER:

Enforcement in the United States of an international arbitration award set aside in the country of origin.

Observations by Daniel Schimmel and Christopher Ryan.....2027

Hall Street Associates, L.L.C. v. Mattel, Inc.., Decision by the Supreme Court of the United States Rendered on 25 March 2008 in Case No. 06-989 ("Hall Street vs. Mattel").....2039

SUBJECT-MATTER:

Judicial review of arbitral awards—Enforceability of clauses providing for expanded judicial review under the U.S. Federal Arbitration Act.

Observations by Jonathan Gass.....2057

Observations by Davor Babić.....2073

INDEX.....2081