



## *STOCKHOLM AS A NEUTRAL PLACE FOR ARBITRATION*

### INTRODUCTION

There are a lot of factors to encounter before submitting to an agreement to arbitrate. In the face of contemporary globalisation, it is of great importance to have sufficient information concerning the law applicable to the contract as well as the law applicable to the arbitral proceeding before submitting to arbitration. Once the dispute has arisen, it may however end up being very time consuming and costly to acquire knowledge both on the substantive foreign laws, as well as of the laws governing the conduct of the arbitration, the *lex arbitri*. The ingenious global arbitration community offers great guidance and assistance in this respect in terms of the arbitration institutes that have been established for this purpose. Once the formal requirements for a valid arbitration clause are met and the arbitration institute admits its own competence to rule on the subject matter, focus can be directed towards where it is best needed – resolving the dispute and settling the conflict.

In the past, the common practise was to conduct the arbitration in the country of the defendant. This method was criticized due to the impartiality this might have on the proceedings and thus the natural solution was to move the arbitral proceedings away both from the country of the defendant as well as from the country of the claimant. This was one of the factors that gave rise to the development of the arbitral institutes which offered a complete solution

for the conduct of the arbitral proceeding in the most efficient manner for all parties.

### THE ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE

One of the more famous and well renowned arbitration institutes is located in Stockholm and is a separate entity within the Stockholm Chamber of Commerce. The Arbitration Institute of The Stockholm Chamber of Commerce (the SCC Institute) offers a fix set of model clauses sufficient to cover the requirements for a valid arbitration agreement in Stockholm, as well as a set of arbitration Rules that are applicable in the case where the parties submit to arbitration under the SCC Institute. The current Rules of the SCC Institute came into force on the 1 of April in 1999, at the same time as the new Swedish Arbitration act. Together, these two sets of rules form an efficient platform for arbitration in Sweden. The SCC Institute was founded in 1917 and has ever since it was recognised in the late 70's as a neutral centre for dispute resolution by the United States and the Soviet Union in the field of East-West trade disputes, offered its services to over 40 countries throughout the world.

### NEUTRALITY IN STOCKHOLM

Through the work of the SCC Institute, Stockholm has gained the reputation of being the ideal location for a neutral arbitrary proceeding. This picture is however under constant scrutiny from the international

arbitration community, which by all means pushes the development forward and enables the arbitration institute to adapt to the demands of the international commercial community. The main difference from rules of other institutes is that the Rules of the SCC Institute are designed to offer an efficient and quick arbitration without jeopardizing the outcome of the award or violating due process. Additionally, the extent to which an award is challengeable according to national legislation is an important factor in choosing the venue for arbitration. The neutrality often referred to when addressing arbitration in Sweden is not meant in a strict traditional political sense. It is rather an indication that the laws of the country, as well as the legal tradition, enhance a successful arbitration that meets the requirements of international commercial actors. The possibility to challenge the award before the national courts in Sweden is limited, and even when they are challenged and successfully submitted to trial under the Svea Court of Appeal, the appeal court has been proven reluctant to set aside an arbitral award or declare it invalid. During a five year period, only ten cases were retried on the merits. In one out of these cases the challenge resulted in a successful outcome. In reality, this means that the main idea of arbitration is endorsed by the Swedish national courts, contributing to the efficiency and stability of the arbitral award once rendered and supporting the fundamental idea of the arbitral award as final and binding on the parties.

The fact that the official website of the SCC Institute is represented in three languages, apart from Swedish and English, Russian being the odd choice, is evidence of the success for Stockholm as a venue for East/West arbitrations. This also has an historical explanation. A tailored model clause was created to cover the necessary requirements for a valid arbitration agreement for use in contracts between U.S. parties and the Soviet foreign trade

organisations. This model clause directed arbitration to Stockholm, when Moscow was refused by one of the parties, and submitted the parties to arbitration under the SCC Institute. This tradition prevailed after the fall of the Soviet Union in the early nineties when the trade with the United States came in to life again.

## **NATIONALITY OF THE PARTIES SUBMITTING TO ARBITRATION UNDER THE SCC INSTITUTE**

In 2005 arbitrations with domestic parties dominated the arbitrations submitted to the SCC Institute for natural reasons, with Great Britain as the second best represented in the arbitral proceedings, followed by a number of eastern states as well as the U.S. China represents a surprisingly large percentage of the submitted arbitrations. Least represented are the countries from the Middle and Far East but worth mentioning are however disputes involving parties from Saudi Arabia, Egypt, Eritrea, South Korea, Hong Kong and Peru. This statistics indicate that the SCC Institute handles both national and international arbitrations, rather than purely international disputes, which not all other institutes do. The SCC Institute is the third largest arbitration institute in terms of submitted arbitrations, after the American Arbitration Association and the International Chamber of Commerce in Paris. Since arbitral proceedings often are held in camera, i.e. in private, the number of cases presented only refer to known cases.

Earlier on, in 2003, the SCC Institute reached the zenith of its activities during a ten year period. At the time, there was little difference between the number of national and international arbitrations. This leads to the conclusion that the increase in popularity for alternative dispute resolution is starting to settle, and also that the national disputes have become as common as the international ones. These figures suggest that Stockholm no longer is the self evident option for East/West arbitrations since many

competing institutes offer their own set of rules to govern the arbitral proceedings.

As a result, the Far East has become a new target area. The rapid increase in commercial activities in the People's Republic of China is displayed by the increase of arbitrations submitted to the SCC Institute recently. Most of the disputes are still handled domestically but the SCC Institute is the by far most engaged institute when it comes to settlements abroad.

At the official website of the SCC Institute there are many helpful tools for any one interested in arbitration as an alternative dispute settlement mechanism. A calculator can be found that indicates the costs of the dispute under submission to the Institute. The main variables are the number of arbitrators, the kind of chosen rules, and the amount in dispute. In 2005 the SCC Institute offered renewed guidelines for the arbitrators with the purpose to serve as a practical tool and source of information when conducting arbitrations under the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce. A few pages discuss the administrative guidelines including the documents required for submission to initiate an arbitral process at the Institute. The main part of these guidelines is devoted to explaining the costs and fees to be paid in order to cover the costs of the Institute as well as the same for the arbitrators. The final pages illustrate a model award, and also provide instructions for appeal in certain cases. Further, the guidelines include listings on hearing rooms suitable for arbitration in Stockholm with contact details, as well as contact information for translators for those who wish to be assisted by them during the proceedings. The Institute tries to meet the need for practical guidance and assistance when it comes to settlements among purely foreign parties in Sweden, in order to enable the conduct of the arbitration in all respects. Taking

into consideration the development towards an increasing number of arbitrations submitted by parties from the Far East, perhaps in the near future an additional language on the official website will be Chinese.

Staffan Michelson

Hiba Sabbagh