President's Message

The purpose of the Swiss Arbitration Association (ASA) as set out in the articles of association is to promote arbitration, in particular commercial arbitration, on a national as well as an international level. The Executive Board of ASA recently concluded that this purpose would include the submission of an *amicus curiae* brief to a US Court.

The cause of the intended intervention was a bribery claim filed against three arbitrators under the Racketeer Influenced and Corrupt Organizations Act (RICO) in the US District Court for the Eastern District of Texas. The three arbitrators concerned were, and still are, ASA members and none of them is a US citizen or resident of the United States. The plaintiff before the Texas Court had previously lost an arbitration against the Nigerian National Petroleum Co., which had been conducted in Switzerland. The plaintiff had appealed the arbitration award, but the Tribunal's award was subsequently upheld by the Swiss Supreme Court, and later on by the US District Court for the Northern District of Texas and the US Federal Court of Appeals for the 5th Circuit.

ASA was prepared to submit an *amicus curiae* brief not to address the merits of the plaintiff's accusations but to explain to the US judge that Swiss law as the law of the seat of the arbitration provides for suitable remedies to have accusations of bribery investigated and arbitral awards set aside if there were any substance to the accusations. It can of course not be the aim to shield arbitrators from bearing the responsibility for misconduct or to make awards influenced by such misconduct immune from challenge. That would do no favour to international arbitration. The issue of general concern, however, is with which remedies misconduct and awards affected by it should be properly addressed. It is my firm belief that initiating litigation against individual arbitrators under the US RICO Act outside the seat of the arbitration is inconsistent with the legal regime governing international arbitration and a serious threat to the arbitral process.

Fortunately, before filing ASA's amicus brief, the US District Court for the Eastern District of Texas issued on 15 March 2006 a judgment dismissing the plaintiff's RICO claim, inter alia, for lack of subject matter jurisdiction. It is noteworthy that the Court qualified the claim as 'an impermissible attack on a foreign arbitral award'. Excerpts from the judgment are reprinted in this issue of the Bulletin, p. 377.

The last report is that the Texas District Court judgment was appealed to the 5th Circuit Court of Appeals. The saga goes on!

Zurich, May 2006 Markus Wirth