

President's Message

I would like to again thank François Knoepfler, Vice-President ASA, for the organization of a most interesting conference on 'Recognition and Enforcement of Awards in Europe' at the occasion of ASA's General Meeting on 8 September 2006 in Berne. From the discussions I had with a number of conference participants after the speakers' presentations, I gained the impression that not too many arbitration practitioners are aware of the ongoing debate as to whether arbitration should stay excluded from the scope of the Brussels Convention (now the Brussels I Regulation) and the Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters – or whether an effort should be made in the framework of the pending revision of the Regulation to now include arbitration. We are glad to be able to publish in this issue of the ASA Bulletin the presentations of Johnny Veeder and Alexis Mourre, who most succinctly set out the pros and cons around such an inclusion. From reading the presentations it becomes clear that extending the scope of the Brussels I Regulation (and the Lugano Convention) to arbitration in a manner truly supportive of arbitration would require a sweeping exception to a core principle of the Regulation (and Convention), namely that the court where a dispute has been first introduced has absolute priority to rule upon its own jurisdiction. Remember, we just managed in Switzerland to amend Art. 186 of the Swiss Private International Law Act to allow an arbitral tribunal to decide on its jurisdiction notwithstanding that an action on the same matter between the same parties is already pending before a state court or another arbitral tribunal. I personally have my doubts whether the officials negotiating the revision of the Regulation would consider it politically feasible or acceptable to introduce a general rule that would recognize the competence-competence of arbitral tribunals and give them the absolute priority to decide on their own jurisdiction irrespective of proceedings previously initiated before a state court on the same matter. Without such a rule, however, it may be best to leave things as they are and keep arbitration outside of the scope of the Brussels I Regulation and the Lugano Convention.

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