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The Impact of Uniform Law on National Law: Limits and Possibilities

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ANSWERS TO THE QUESTIONNAIRE ADDRESSED TO THE NATIONAL REPORTERS. SWEDEN

From your national law perspective, would it be proper to include within the notion of "Uniform Law" usages of the trade or "customs", general principles of law, general principles of contract law or of the law of obligations, transnational law, lex mercatoria, general rules of procedure? Uniform Law below shall mean Uniform Law according to the meaning assigned to this expression in your reply to this Question 1.

I am unable to affirmatively answer the question, whether in Sweden it is prope to include these various elements and potential sources of law within the notion of "Uniform Law". Below, I will try to answer and explain my position in more detail.

Swedish lawyers' working material is laws and other regulations, international treaties, *travaux préparatoires*, court decisions, commercial practice and standardized agreements in the field of private law with some normative effect such as collective agreements and standard form contracts, and finally legal literature.[1] Acts and other regulations are as sources of law at the centre. Depending on who has been the enacting body, one distinguishes between four different categories: constitutional acts, acts, ordinances, and statutory instruments.

When discussing sources of law one must remember that from the late 11th century onwards, Sweden was fully exposed to the influence of Canon law, of Roman law - in particular that received and practiced by the trading city-republics of the German Baltic coast - and, more generally, of Continental socio-cultural influences[2]. Yet, despite this, some of the original Germanic patterns with regard, *inter alia*, to judicial organization, public law, and real property law were strong enough to hold their own throughout the modern development. The resulting mixture of Continental medieval ideas and institutions on the one hand, and national traditions on the other, was certainly, to a large extent,

[1] Michael Bogdan: Swedish law in the new millenium, Norstedts, Stockholm, 2000, p. 48.

[2] Stig Strömholm: An introduction to Swedish Law, 2nd ed., Norstedts, Stockholm, 1991, p.30.

rendered possible by the fact that an element which was extremely important in most of medieval Europe - a body of university-trained lawyers, whose thinking was permeated with Roman models and who came to hold increasingly influential positions on various levels from Naples to Lübeck, from Prague to Nantes - was almost entirely lacking in Sweden until the late 16th century.[3]

The 17th century was the great era of reform, and its achievements still largely subsist today. It was also a period of intense foreign influence: France and the Netherlands were added to Northern Germany as sources of inspiration, and Roman law made considerable progress through the intermediary of the university-trained lawyers who now began to fill not only the bench but also the various and ever-expanding branches of public administration. A new judicial system, with three Royal Courts of Appeal in Sweden proper and Finland, was created by Gustavus Adolphus in the 1610s and 1620s. Legislative reform took more time. The new national Code of Sweden (and Finland) dates from 1734. The Code of 1734 is still, formally, in force. Modern legislative reform has largely taken the form of amending, and gradually renewing altogether, the "Books" (Codes) of which the Code is composed.

Supranational legislation and international conventions are, as such, not immediately part of the internal Swedish hierarchy of norms. However, they may become part of this hierarchy, incorporated into national Swedish law and, as a rule, two steps are necessary to achieve this. As a first step the Government has to conclude the agreement and the Swedish Parliament has to approve it, and as the second step, the normative substance of the agreement has to be transformed into Swedish law. The transformation may, for example, take place by adding new provisions to an existing Act or ordinance or by enacting a new Act or ordinance, which transforms the substance but not necessarily the wording of the international agreement. Finally transformation can also be achieved by explicitly providing that the agreement shall be in force as Swedish law. In this case, the text or texts of the agreement, and, if necessary, a translation of the text into Swedish is annexed to the transformation Act, which will be recorded in *Svensk författningssamling* ("SFS"). This method is regularly applied to transform for example taxation treaties and social security treaties to Swedish law. It was also used in two very important projects in 1994: the

[3] Stig Strömholm: An Introduction to Swedish Law, 2nd ed., Norstedts, Stockholm, 1991, p. 30.

transformation of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the transformation of the law of the European Union into internally applicable law.

Commercial practice may also be an officially recognized source of law. This is laid down in Section 3, Sales Act (SFS 1990:931), which provides that "[t]he provisions of this Act do not apply when otherwise indicated by agreement, by practice which has been established between the parties, or by commercial practice, or other custom which must be deemed binding on the parties". Thus, commercial practice and other customs under the conditions laid down in this provision may take precedence over the provisions of the Act and may achieve the status of formal source of law.[4] I would say that INCOTERMS have gained such status.

General principles of contract law, such as the UNIDROIT Principles, *lex mercatoria* and general rules of procedure are not part of Swedish law. This is true also within the domain of international arbitration, at least as a general proposition.

To what extent has your country incorporated Uniform Law as national law through treaty ratification, other enactments or court decisions?

Sweden has incorporated the Vienna Sales Convention (CISG) into its Code.

In the area of arbitration, Sweden has ratified the content of the New York Convention in a form which closely follows the comparable provisions of the New York Convention. In ratifying the New York Convention, Sweden did not make either the "reciprocity" reservation or the "commercial nature" reservation available to the signatories. Accordingly, foreign arbitral awards, wherever rendered and whether of a commercial character or not, are enforceable in Sweden pursuant to the New York Convention.[5]

Consequently, I would say that to the extent that , the New York Convention reflects a general norm in international arbitration law, *i.e.* that arbitral awards shall be recognized and enforced., Sweden has incorporated a uniform law into its legal system when it accepts to recognize and enforce all foreign arbitral awards.

Sweden has not adopted the UNCITRAL Model Law on arbitration, nor the various IBA Guidelines.

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4 Michael Bogdan: Swedish law in the new millenium, Norstedts, Stockholm, 2000, p. 62.

5 Arbitration in Sweden, published by the Stockholm Chamber of Commerce, 1984, p. 161.

To what extent should your national law be considered as including Uniform Law when designated as proper law of the contract? The law governing the tort? When your country is designated as place (seat) of the arbitration?

When Swedish law is designated as the proper law of the contract it includes the limited number of elements that constitute uniform law according to the definitions listed in Question 1 above.

When Sweden is designated as place of arbitration it does not follow that Swedish contract law applies to the merits or in tort situations. The only direct effect of designating Sweden as a place of arbitration[6] is that Swedish law governs the arbitration agreement. Another law or laws may apply to the merits and to the arbitral procedure.

To what extent will legal notions in your country applicable in the process of deciding a dispute by courts or arbitrators (including public policy and international mandatory rules or lois de police (national or foreign)) accept Uniform Law incorporated in the foreign law (substantive or procedural) applicable, as the case may be, to the contract giving rise to the dispute/at the foreign arbitral place or seat?

Swedish courts accept that where a foreign law is applicable on the substance, they will also apply its elements of Uniform Law where these are found to be included in the foreign law. However, there exist exceptions to this principle.

Under the doctrine of *ordre public*, Swedish courts and authorities will refuse to apply provisions of foreign law, if such application would *in casu* lead to results that are "clearly inconsistent with the fundamental principles of the Swedish legal system". The doctrine is applied by the courts *ex officio*, *i.e.*, it need not be pleaded by the parties. The lack of express authorisation in a private international law statute to apply *ordre public* will not prevent its application in Sweden. On the other hand, such express authorisation will by no means result in routine application of *ordre public*, which is only applied only very restrictively.[7]

The exact principles of the Swedish legal order to be considered fundamental and therefore worthy of the protection of *ordre public* are not that easily identified. On the other hand, foreign private law provisions that discriminate against racial, ethnic or religious minorities (*e.g.*, a prohibition on interracial marriage) are strong candidates for *ordre public*

6 The Swedish Arbitration Act of 1999, Section 48, 1st paragraph.

7 Michael Bogdan and David Fisher in Bogdan: Swedish Law in the new millenium, Norstedts, Stockholm, 2000, p. 493.

reprobation. Even when a foreign rule is not deemed inconsistent with the fundamental principles of the Swedish legal order, certain so-called “internationally mandatory rules” of Swedish law, usually those designed to protect the weaker party (such as children or employees), may be applied instead of the foreign rule.[8]

A civil claim instituted in Sweden by which a foreign power seeks to enforce its public laws (*e.g.*, tax, currency or confiscation laws) will generally be dismissed, except in cases where Sweden is obliged by treaty to entertain such claims (see *e.g.*, the Council of Europe Convention on Mutual Administrative Assistance in Tax Matters). Such claims simply fall outside the scope of Swedish private international law rules.[9]

To what extent are arbitral awards officially published or informally disseminated in business and legal circles in your country? Is your country a stare decisis country? If so, to what extent does stare decisis apply to arbitral determinations/awards? To what extent is issue preclusion or collateral estoppel (if accepted in your legal system) applicable in arbitration (from court of law to arbitral tribunal and vice versa / between arbitral tribunals)?

Arbitral awards are not officially published in Sweden. However, the Stockholm International Arbitration Review, of which I was the General editor 1999-2007, publishes selected arbitral awards rendered under the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce, without specifying the parties’ identity.

Sweden is not a *stare decisis* country. Swedish courts are not formally bound by the decisions of higher courts, not even of those of the Supreme Court. However, the judgments of the Supreme Court play a significant role in practice, especially on such procedural matters as that are dealt with only briefly or not at all in the text of the statutes.[10]

(i) Issue preclusion, collateral estoppel and *res judicata* in Swedish Law.

Binding force (*rättskraft*) is only attacheds only to the judgment order (*domslut*); it does not extend to the grounds of decision (*domskäl*) enunciated by the court as the basis of its ultimate pronouncement. Correspondingly, the scope of the judgment order is limited to matters advanced by the parties as the immediate objects of their claim; the dispositive

8 *Ibidem*.
9 Michael Bogdan and David Fisher in *op.cit.*, p. 494.
10 Ulla Jacobsson, in Swedish Law, a survey, Juristförlaget, Stockholm, 1994, p. 489.

portion of the judgment may not encompass matters asserted merely as premises for the parties' ultimate demands.

However, by presenting a separate demand for a declaratory judgment on a threshold issue, a litigant in a Swedish court may obtain a conclusive ruling on the existence *vel non* of a legal relationship. For example, in conjunction with a creditor's suit for an accrued installment of interest on an unmatured debt obligation, either party may formally demand a declaratory judgment concerning the validity of the obligation. If such a demand is presented, the court disposes of the validity issue in the judgment order and the matter becomes *res judicata*.[11] If a declaratory judgment is not requested, even though the validity of the obligation is controverted between the parties, the issue is resolved by the court only as a ground of decision and remains subject to re-examination in a subsequent action.[12]

(ii) *Res judicata* effects[13].

Two distinct facets of the *res judicata* doctrine are recognized in Sweden. One has been described as "procedural" or "negative" effect and the other as "substantive" of "prejudicial" effect. Neither has a precise equivalent in the United States. Nor is traditional *res judicata* terminology in the United States-merger, bar and collateral estoppel - familiar to the Swedish jurist.

Procedural effect is considered the operative concept when a controversy resolved by judgment is renewed between the same parties, whether the parties appear in the same or in reverse positions in the second action. The former judgment is said to constitute a "procedural hindrance" necessitating dismissal (*avvisning*) of the second action by the court *sua sponte*.

Substantive or prejudicial effect is the operative concept when a prior adjudication is urged as the basis for a judgment on the substantive merits of a subsequent action, for example, when a judgment declaring the validity and interpreting the provisions of a contract is urged

[11] According to Ruth Bader Ginsburg and Anders Bruzelius: Civil Procedure in Sweden, Martinus Nijhoff, The Hague, 1965, p. 307, an equivalent procedure exists in most continental systems. Threshold issues capable of resolution by declaratory judgments are described as «prejudicial questions». See Millar, The Premises of the Judgment as *Res Judicata* in Continental and Anglo-American Law, 39 Mich. L. Rev. 1, 3-4 (1960) (distinguishing «prejudicial questions» from the more encompassing classification, grounds for or premises of judgment). *Cf.* Developments in the Law - Res Judicata, 65 Harv L. Rev. 818, 821 (1952) («this procedure [by which civil law countries have met the absence of the collateral estoppel concept] has the advantage of giving a clear statement of what was decided, as well as preventing preclusion of issues that were perfunctorily contested or only impliedly decided in the first action.»); *cf.* Smit, International *Res Judicata* and Collateral Estoppel in the United States, 9 U.C.L.A. L. Rev. 44, 69-74 (1962).

[12] Similarly, if the only demand advanced in an action is one for rent, the judgment will not become *res judicata* on the issue of the existence *vel non* of a landlord-tenant relationship.

[13] Ruth Bader Ginsburg and Anders Bruzelius: Civil Procedure in Sweden, Martinus Nijhoff, The Hague, 1965, p. 307.

in support of a claim for performance under the contract. The substantive effect of a judgment generally denotes its binding force in a subsequent action in which the claim is not the same.

However, the "substantive" effect of a prior judgment in Sweden does not correspond to the "collateral estoppel" effect of a prior judgment in the United States. Under the collateral estoppel concept, binding force in a subsequent proceeding is attributed to findings made by the court in arriving at its ultimate conclusion.[14] Substantive effect relates exclusively to the definitive status of a prior judgment order. No aspect of the *res judicata* doctrine in Sweden precludes re-examination of findings on specific issues not presented as the concrete object of a party's demand and resolved by express provision of the judgment order.[15] This principle is opposed to the concepts of collateral estoppel (USA) or issue estoppel (English law) which attach the force of *res judicata* also to legal issues and legal premises[16]. The thinking behind the Swedish approach is that the importance of a legal action and a specific issue figuring in that action could differ widely meaning that a party might not invest so much effort in one particular issue in the first litigation because of its relevant insignificance, while the situation could be radically different in a subsequent action.

(iii) Applicability of issue preclusion and collateral estoppel in arbitration.

Arbitral awards have the effect of *res judicata*.[17] This is so even in the case where the arbitrators have acted as amiable compositeurs (which in actual fact is a rare occurrence). Normally the finality of the award only concerns the parties to the action and their privies.

In view of the fact that arbitration is private and consensual in nature there is no obstacle against parties re-litigating any issue determined by a previous arbitral tribunal. This provides a contrast for the *ex officio* duty of state court judges to consider any possible situation of *lis pendens* or *res judicata* and to deny any substantive re-examination of such an action. This is logical, as the taxpayers' money is at stake in a state court setting and the

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[14] *Cf.* Smit, International *Res Judicata* and Collateral Estoppel in the United States, 9 U.C.L.A. L. Rev. 44, 69 n. 150, 71 (1962) (distinguishing the effect given to the entire prior judgment in subsequent proceedings from the effect given to particular findings).

[15] Ruth Bader Ginsburg and Anders Bruzelius: Civil Procedure in Sweden, Martinus Nijhoff, The Hague, 1965, pp. 306-309; Christer Söderlund: Lis pendens, Res judicata and the issue of parallel judicial proceedings, in Lars Heumann, Sigvard Jarvin: The Swedish Arbitration Act of 1999, Five Years On: A Critical Review of Strengths and Weaknesses, JurisNet LLC, New York, 2006, p. 347 et seq.

[16] Although, obviously the procedural implications are different, *Res judicata* constitutes a *jurisdictional* bar against entering on the merits at all while the issue estoppel only bars any departure from any prior conclusion made by a competent court on a particular issue.

[17] Most continental European legislations explicitly provide that "the arbitral award is *res judicata* in relation to the dispute it resolves" (Articles 1476 and 1500 of the French New Code of Civil Proceedings) and for instance Article 1055 of the German ZPO and Article 190 of the Swiss SPIL. In common law jurisdictions, however, the subject is passed over in silence (as in Swedish law).

public character of judgments enable judges to verify the re-emergence or duplication of actions (at least in theory). However, as no successful party would sensibly expose itself to such double-jeopardy, this issue is academic in nature.

So, if a prior award exists, the subsequent tribunal would not have to take note of this *ex officio.* This situation is necessitated by the practical consideration of the non-public nature of prior awards and - as matter of principle – as a consequence of the constitutive effect of a party's conduct confronted with a request for arbitration.

Even if the Swedish Arbitration Act does not explicitly say so, it is reasonable to assume that an objection based on *res judicata* has to be raised at the first opportunity by the respondent[18] as this defence is in the nature of an objection against the arbitrators' jurisdiction[19].

To what extent are national laws and state courts in your country "arbitration friendly"? Does your answer change depending on whether a state party or a state interest are directly involved in or affected by the resolution of the dispute or the contract may be labeled as "a public" or as an "administrative" contract under your legal system? Whether the arbitration is "international or domestic"? Whether its seat/place is within/outside your country?

Generally speaking, Sweden is an arbitration friendly jurisdiction. Local courts show a high degree of respect for the autonomy of the arbitral process.

There are exceptions, however, as a recent case, Titan v. Alcatel, shows.[20] Section 22 of the Swedish Act provides:

"The parties shall determine the place of arbitration. Where this is not the case, the arbitrators shall determine the place of arbitration.

The arbitrators may hold hearings and other meetings elsewhere in Sweden, or abroad, unless otherwise agreed by the parties."

As Messrs. Redfern and Hunter point out, the place (or seat) of an arbitration "is not merely a matter of geography. It is the territorial link between the arbitration itself and the law of the place in which the arbitration is legally situated".[21] Among the consequences of this link is that courts at the place of arbitration have jurisdiction over actions to set aside arbitral awards rendered at the place of arbitration. Thus, for example, Section 43 of the

18 Other arbitration laws and the UNCITRAL Model Law (Article 16.2) contain explicit provisions to this effect.

19 Christer Söderlund in op. cit. p. 350.

20 Sigvard Jarvin and Carroll S. Dorgan: Are foreign parties still welcome in Stockholm? Mealey's International Arbitration Report, Vol. 20, No. 7, July 2005, p. 42.

21 Redfern & Hunter, Law and Practice of International Commercial Arbitration, p. 84 (4th ed. 2004).

Swedish Act provides that an action against an award "shall be considered by the Court of Appeal within the jurisdiction where the arbitral proceedings were held". Section 46 of the Swedish Act stipulates that the Act applies to "arbitral proceedings which take place in Sweden, notwithstanding that the dispute has an international connection".

Titan Corporation v. Alcatel CIT S.A. arose from an ICC arbitration. The claimant in the arbitration was Alcatel CIT S.A. ("Alcatel"), a French company. The respondents were the Titan Corporation ("Titan") and Titan Africa, Inc., both American companies. Their dispute arose from a contract for the delivery of telecommunications equipment for installation in Benin. The place of arbitration (chosen by the parties in their arbitration clause) was Stockholm. The sole arbitrator was from the United Kingdom, and the hearings in the case were conducted in Paris and London. The arbitrator's award held that the respondents were jointly and severally liable and ordered them to pay certain sums of money to the claimant. The award stated that the place of arbitration was Stockholm. Titan, considering that the arbitrator had failed to address certain legal arguments to the effect that Titan was not a party to the relevant contract and therefore not liable to the claimant, commenced an action before the Svea Court of Appeal (the "Court") to set aside parts of the award, pursuant to Section 34 of the Swedish Act.

Upon the filing of Titan's application, the Court invited Titan to address the Court's jurisdiction. (The Court raised this issue *sua sponte*, without requiring that notice of Titan's application be served upon Alcatel. Thus, Alcatel did not participate in the proceedings and made no submissions on the jurisdictional issue.) The Court introduced its decision on the jurisdictional issue by stating that, as a "prerequisite for a Swedish court to deal with a dispute, there must be a Swedish judicial interest". The Court reviewed relevant provisions of the Swedish Act, noting in particular that Section 22(2) permits "part of a Swedish arbitration to be conducted abroad". Referring to the legislative history (*travaux préparatoires*) of the Swedish Act, the Court added: "The connection of the arbitration to the place [of arbitration] can be of a more or less tangible nature. There must, however, be some connection to the place of the arbitral proceedings."

The Court then reviewed the facts and found that the arbitration had no connection with Sweden.

- Neither the parties nor their dispute had any connection with Sweden: The parties to the arbitration were a French company and two American companies; the places of business of their counsel were Paris and London, respectively; the dispute arose from a contract regarding a telecommunications system to be installed in Benin.
- The arbitral proceedings had no connection with Sweden, as the hearings were held, with the consent of the parties, in Paris and London, and the arbitrator was from the U.K. One can assume that the arbitrator prepared his award in London.

The Court's decision in Titan is surprising. By requiring "some connection to the place of the arbitral proceedings", the Court has undermined party autonomy in Swedish arbitration law. The Swedish Act itself does not include this requirement. The Court referred on this point to the *travaux préparatoires* of the Swedish Act. This is an accepted practice under Swedish law, but the reliance upon *travaux préparatoires* to interpret and apply the Swedish Act makes it more difficult for foreign parties who do not have convenient access to the *travaux préparatoires* to know what Swedish law on arbitration is. In agreeing to ICC arbitration in Stockholm, the parties in this case presumably anticipated and intended that the Swedish courts would have jurisdiction over the arbitration, pursuant to the Swedish Act. The Court, however, has imposed a de-localization of the arbitration upon the parties, against their expressed will.

I conclude that the Titan decision runs against the trend in international arbitration and casts a shadow upon well-established practices. By making a tangible "connection" with Sweden a pre-requisite for jurisdiction, the Court appears parochial and protectionist in its vision of international arbitration.

Coming back to the questionnaire's general question of whether my statement, that Sweden is an arbitration friendly country, depends on whether a state or a state interest isare directly involved or affected, my answer is "no"; the arbitration friendliness applies to all parties and types of contracts. It applies equally to domestic and international cases and, as stated above, Sweden has not made the reciprocity exception under the New York Convention. It recognizes awards made in any Convention country.

To what extent are arbitral awards subject to control on the merits (including from the outlook of private international law or choice-of-law methodologies, rules or principles applicable or accepted in your country) or in respect of procedural notions or matters (e.g.,

due process) when rendered in your country or (if rendered abroad) when brought for enforcement/recognition in your country?

In Sweden, arbitral awards are not subject to control on the merits. A party may seek to have an award set aside on procedural grounds and on the grounds that the award does not fulfill basic requirements of form. The grounds upon which a party can seek to set an award aside are - more or less - identical with those listed in section V of the New York Convention.

What is the notion of and role played by public policy in the recognition or enforcement of arbitral awards rendered abroad? Of lack of arbitrability? International mandatory rules or lois de police (national or foreign)? To what extent do any of these reservations/notions serve the purpose of advancing primarily local or domestic notions regarding both substantive law and procedural law matters?

As a starting point, the position with respect to *ordre public* and foreign court judgments can briefly be described as follows.[22]

According to the Swedish principle of *ordre public*, foreign judgments that clearly contravene the basic principles of Swedish law may not be recognized or enforced in Sweden. This principle is mandatory and need not be asserted by any of the parties for the Swedish Court or authorities to regard a judgment as null and void. Some of the statutes giving recognition and enforceability to foreign judgments expressly refer to *ordre public* limitations. However, the absence of such provisions does not restrict the applicability of this general principle of Swedish law.

A brief account of the principle of *ordre public* is practically impossible. This is partly due to the fact that Swedish courts will seldom expressly refer to *ordre public*, but rather try other means to avoid such consequences of foreign judgments. The principle of *ordre public* does not exclude enforcing default judgments; and although punitive damages may not be awarded under Swedish law, this does not necessarily mean that it is contrary to Swedish *ordre public*. However, it is likely that punitive damages would be considered contrary to Swedish *ordre public* if the awarded punitive damages amount to a substantial sum.

[22] Transnational Litigation: A Practitioner's Guide, Oceana Publications Inc., New York, June 1997, Swedish Chapter by Tom G. Johansson and Sigvard Jarvin.

More particularly in the area of international arbitration, Professor Lars Heuman[23] states that the view is taken in the international literature and in case law that this rule should be restrictively interpreted and that enforcement may be refused if international public policy has been infringed, but not if the award is at variance with national public policy only. A different impression may be gained from a reading of the Swedish statutory text in section 55, point 2. When the New York Convention was incorporated into Swedish law, no thought was given to this distinction, and the usual Swedish way of describing public policy was opted for, namely, that reference to recognition and enforcement of the award is clearly incompatible with the basic principles of the Swedish legal system. There is, however, according to professor Heuman, no reason to believe that Swedish law should deviate from what has been commonly been taken to apply in the practice of various signatory countries. Thus, the Svea Court of Appeal should confine itself to considering whether the award is contrary to international public policy.

The uncertainty, with respect to the Swedish position, was pointed out at a recent international conference on the Arbitration Act[24] where Mr. Sutton said that there can be no objection in principle to the Act specifying that an award which determines non-arbitrable issues or contravenes Swedish public policy should be invalidated. The problem is one of definition and that problem arises whether the award is void (as in Sweden) or voidable (as under UNCITRAL). Professor Heuman points out that the boundaries between non-arbitrability and violation of public policy are not clear. This seems to be because "allowance for third-party and public interests can make a dispute non-arbitrable". Whilst, it is arguable that public policy may only reasonably be qualified by "restrictive approach" in respect of invalidating awards, there is less justification for omitting to specify what is or is not arbitrable. Mr. Sutton submitted that a clear definition would be particularly helpful, given the importance of Stockholm as a seat for international arbitrations. Section 6 of the Act makes a start, but, according to Professor Heuman, there are other cases in the field of real property law, labour law and fiscal law.

Bearing in mind your answers to questions 3-8 above, to what extent do arbitral awards or determinations influence, or may be considered as possibly influencing state court decisions

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23 Lars Heuman: Arbitration Law of Sweden: Practice and Procedure, JurisPublishing, New York, 2003, p. 740.

24 David St. John Sutton in Lars Heuman, Sigvard Jarvin: The Swedish Arbitration Act of 1999, Five Years On, A Critical Review of Strengths and Weaknesses, JurisPublishing, New York, 2006, p. 497.

or legislative change in your country? To what extent do courts of law in your country defer to determinations made by local or international arbitral institutions in charge of administering arbitrations? If no experience at hand, what would be the prospective answer to these questions? Please differentiate the areas of the law in which this influence exists or may potentially exist in the future.

There is not much experience to point to. Professor Heuman states, as reported under point 8 above, that Swedish courts should be expected to be influenced by the concept of truly international public policy when applying an *ordre public* defense.

I would not say generally that Swedish courts generally defer to determinations made by local or international arbitral institutions in charge of administering arbitrations. Some international arbitral institutions enjoy a good reputation and esteem, and their decisions are generally complied with and enforced.

Bearing in mind your answers to questions 1-9 above, to what extent do arbitral awards rendered in your country, enforced or enforceable in your country or concerning nationals of or residents in your country apply or may be deemed as based on Uniform Law? If no experience at hand, what would be your prospective answer to this question?

Foreign arbitral awards concerning contracts expressly governed by a Uniform Law concept as agreed by the parties are enforceable and enforced in Sweden (except for *ordre public* reasons).

I do not estimate that any larger number of domestic arbitral awards are based on concepts of Uniform Law.

Bearing in mind your answers to questions 1-10 above), what has been the impact of arbitral awards and determinations on introducing, firming up or applying Uniform Law, including through legislative change or the action of the courts, in your country? Of foreign court decisions regarding arbitral awards or determinations referring to or based on Uniform Law? If no experience at hand, what would be the prospective answers to these questions?

I do not know of any such experience.

Bearing in mind your answers to questions 1-9 above what has been the impact on the fashioning of your national legislation on arbitration – domestic or international – or on

arbitral awards rendered in your country or concerning nationals of or residents in your country of: (a) the action and rules of international arbitral institutions (e.g. the International Court of Arbitration of the International Chamber of Commerce (ICC), the American Arbitration Association (AAA) and its International Centre for Dispute Resolution (ICDR), the London Court of International Arbitration (LCIA)); (b) the works of international organizations (e.g., UNCITRAL, UNIDROIT, the European Union, NAFTA, the Organization of American States); and (c) foreign court decisions or legislation reflecting the influence of the action or works of institutions or organizations like the ones mentioned in subparagraphs (a) or (b) above? If no experience at hand, what would be your prospective answers to these questions?

The UNCITRAL Model Law was seriously considered for adoption when in 1999 Sweden adopted a new Arbitration Act. In the end, it was not adopted but in many respects the Model Law concepts were assimilated into the Swedish system, which was based on the 1929 Arbitration Act.

The UNIDROIT Principles are, in many ways, identical with concepts of Swedish law but they have not affected Swedish legislation relating to arbitration.

The Stockholm Arbitration Institute has adopted many solutions found in, and originally introduced by, the ICC Arbitration Rules.

Generally speaking, Sweden does not readily adopt solutions just because they have been introduced or adopted abroad and by other bodies. The evolution is slow but it is constantly on-going and the Swedish legislator is open to assessing other solutions. Development takes place gradually rather than through fundamental deep-going changes.

Paris, 4 April 2008

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