Why Choose Stockholm: Reflections of an English Lawyer After Eighteen Years Practising International Arbitration in Sweden

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Sixteen years ago, in February 2009, I published an article in the *Stockholm International Arbitration Review*, with the following somewhat-unusual title, "Why choose Stockholm: reflections of an English lawyer after two years of practising international arbitration in Sweden".[1]

A brief explanation is called for. After over 10 years practising international arbitration in the City of London, I moved to Stockholm in June 2006, together with my Swedish wife and our young family. The plan was to live in Stockholm for a few years while our children were small, but we ended up staying put. I became a Swedish *advokat* and a partner of Vinge, and I became more and more involved in the arbitration community in Stockholm. Among other things, I have served on the Executive Committee of the Swedish Arbitration Association, and I have been a member of the Board of the Arbitration Institute of the Stockholm Chamber of Commerce (recently renamed the SCC Arbitration Institute, the "**SCC**"). I am currently co-head of the SCCL Research Panel for Arbitration and Other Forms of Dispute Resolution. Time flies, as the saying goes.

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1 James Hope, *Why choose Stockholm: reflections of an English lawyer after two years of practising international arbitration in Sweden*, SIAR 2008-2, pp. 21–38. This article was the text of a lecture given to a group of lawyers from various firms in Stockholm on 26 August 2008.

Now, on the occasion of the SCCL's 25th anniversary, it seems fitting to revisit my earlier article. Have things changed? In particular, can I still recommend Stockholm as a seat of international arbitration?

I will use most of the same headings as in my original article.

1. A thriving arbitration centre

Sweden, and in particularly Stockholm, remains a well-recognised centre for international arbitration. The arbitration community in Stockholm is thriving, as was most recently evidenced at the time of writing by the Swedish Arbitration Days conference on 23–24 January 2024, when over three hundred international arbitration lawyers celebrated the 20th anniversary of the Swedish Arbitration Association.

1.1 The SCC Arbitration Institute

The SCC remains firmly at the heart of the Stockholm arbitration community, and one of the most obvious changes since 2009 is the way in which the SCC has transformed itself over these years. Back in 2009, the SCC was quite an old-fashioned, male-dominated institution. That may sound like a criticism, but no criticism is intended. On the contrary, the SCC has a very impressive history, and much of its success is due to the achievements of the SCC's former Secretary General, Ulf Franke, during his 35-year career.

However, Ulf Franke retired in March 2010, and the SCC took the opportunity to change and to modernise. Since then, the SCC has had three female Secretaries General: Annette Magnusson, Kristin Campbell-Wilson and now Caroline Falconer. The institution has also moved its premises in Stockholm several times during this period: from the Odd Fellows building at Västra Trädgårdsgatan 11A, to Malmskillnadsgatan 46, to Brunnsgatan 2, and then to its current address at Regeringsgatan 29.

This journey has resulted in considerable change, and in particular the SCC has shown itself to be at the forefront of modernisation. Some particular innovations stand out, including the creation of the rules for expedited arbitrations in 2010, the introduction of emergency arbitration in 2010, the creation of the SCC platform for the filing of electronic documents in 2019, and the launch of the SCC Express service in 2021.

The SCC's modernisation drive has also included some amusing gimmicks; including the SCC's AI-developed unisex perfume "SCCENT", and

the SCC Clauses Socks "The Sense", which were produced in three different colours representing the SCC's three favourite dispute resolution clauses – SCC Arbitration ("Midnight Blue"), SCC Expedited Arbitration ("Luxurious Lavender") and SCC Express ("Emerald Elegance").[2]

1.2 Changes to the SCC arbitration rules

In 2009, I reported that the SCC had recently revised its arbitration rules. Since then, there have been three more revisions, in 2010, 2017 and most recently 2023.

The principal changes in 2010 were the creation of separate rules for expedited arbitrations, and the introduction of the emergency arbitrator procedure, allowing parties to seek urgent interim measures before the constitution of the arbitral tribunal. At that time, emergency arbitration was something of an innovation, and some questions were raised about whether it would work.[3] Since then, however, emergency arbitration has become a standard feature of international arbitration.

The 2017 arbitration rules constituted a wholesale revision of the rules, on the occasion of the 100th anniversary of the SCC Institute.[4] I had the privilege of being part of the rules committee, and I can vouch for the fact that a careful process was undertaken under the expert guidance of Jakob Ragnwaldh and Celeste Salinas Quero.[5]

The key changes in the 2017 arbitration rules were as follows:[6]

- provisions for multi-party and multi-contract disputes,
- provisions for consolidation of arbitrations,

[2] https://sccarbitrationinstitute.se/en/the-sensations/.

[3] In particular, there were concerns about the "opt-out" nature of the new emergency arbitrator procedure, whereby parties that had agreed to SCC arbitration before the introduction of the emergency arbitration procedure were nevertheless deemed to have consented to the new procedure. For an account of the new procedure at the time, see Patricia Shaughnessy, *Pre-arbitral Urgent Relief: The New SCC Emergency Arbitrator Rules*, Journal of International Arbitration, Volume 27, Issue 4 (2010) pp. 337–360.

[4] The SCC also published a book on the occasion of its centenary. See Franke, Magnusson & Dahlquist, *Arbitrating for Peace: How Arbitration Made A Difference*, Kluwer Law International, 2016.

[5] Jakob Ragnwaldh, Celeste Salinas Quero and Fredrik Andersson subsequently published a comprehensive guide to the new SCC Arbitration Rules: Ragnwaldh, Andersson & Salinas Quero, *A Guide to the SCC Arbitration Rules*, Kluwer Law International, 2019.

[6] For a detailed summary of the changes in the 2017 arbitration rules, see https://sccarbitrationinstitute.se/wp-content/uploads/2024/12/main_changes_new_rules_2017.pdf.

- summary procedure, allowing for the dismissal of claims or defences that are manifestly without merit,
- a change to the default number of arbitrators, giving discretion to the SCC Board unless otherwise determined by the parties,
- a requirement for the tribunal to hold a case management conference promptly upon receipt of the case file,
- an express requirement for the parties and the tribunal to act efficiently and expeditiously,
- a provision on security for costs,
- a provision concerning tribunal secretaries,
- some changes to the expedited arbitration rules, and
- an appendix concerning investment treaty cases.

The 2023 arbitration rules included a new rule allowing for the tribunal to decide whether hearings would be held in person or remotely. This change was made in response to the Covid-19 pandemic, during which the arbitration community suddenly needed to deal with the issue of whether a party could be forced to accept remote hearings. Most commentators in Sweden were of the view that arbitral tribunals had this power, but with at least one notable exception,[7] and the issue was not entirely clear. This change to the SCC rules has now given SCC tribunals express power to decide that hearings can be held remotely, thus putting the issue beyond doubt in the context of SCC arbitration.

1.3 Statistics

I also reported on the SCC's statistics in my earlier article. I noted that in 2007 there were 170 new cases before the SCC. Since then, the number of cases per year has fluctuated – from a high of 213 cases in 2020 to a low of 143 cases in 2022, the latest published figure being a total of 204 cases in 2024. Thus, on average, the number of cases has remained relatively stable.[8]

I also noted in 2009 that the SCC's figure of 170 new cases in 2007 compared favourably with the LCIA's figure of 127 international cases in

[7] See Stefan Lindskog, *Virtuella slutförhandlingar i skiljeförfaranden mot parts bestridande*, SvJT 2021, pp. 293–302. See also Kristoffer Löf, *Remembrance of Things Past – a reply to Stefan Lindskog's argument that only a traditional hearing is a hearing in arbitration*, SvJT 2021, pp. 406–417.

[8] For details of the SCC's statistics over the years, see https://sccarbitrationinstitute.se/en/about-scc/scc-statistics/.

2007 and the Swiss Chambers of Commerce's 58 international cases in 2007. Since then, however, the LCIA has seen quite a steady increase in cases, up to high of 407 cases in 2020 and 327 cases in 2023.[9] By contrast, the Swiss Arbitration Centre registered a total of 100 new cases in 2023.[10] On the other hand, all these institutions have rather small caseloads by comparison with the ICC, which registered 870 cases in 2023,[11] and 831 cases in 2024.[12]

One notable development in SCC cases is that SCC arbitration is now sometimes used in connection with foreign seats of arbitration and foreign applicable laws. In 2024 there were 3 SCC arbitrations in London, 3 in Helsinki, 2 in Oslo, 1 in Copenhagen and 1 in Toronto. Many different applicable laws are also involved; in 2023 there were 9 cases under English law, 3 cases respectively under CISG, Ukrainian law, Czech law and Finnish law, and 2 cases respectively under Danish law and Russian law; 6 other applicable laws were involved in other cases.[13]

In summary, the SCC appears to have a reasonably healthy caseload.

1.4 The "pool" of arbitrators and diversity

Since 2009, the "pool" of arbitrators has continued to expand. Two particular innovations at the SCC have been the Swedish Arbitrator Training Programme[14] and the Diploma Course for International Arbitrators.[15]

Thus, although there continues to be a reasonably small pool of well-known arbitrators, the pool has grown wider and more diverse. The SCC has taken particular steps to increase the percentage of female arbitrators. When gender was first noted in the statistics in 2016, the SCC appointed 22.5% female arbitrators, whereas the total for all appointments was 16% female arbitrators. By comparison, in 2023 the SCC appointed 55% female arbitrators and the total for all appointments was 39% female arbitrators.[16]

9 https://www.lcia.org/media/download.aspx?MediaId=988.

10 https://www.swissarbitration.org/update-from-the-swiss-arbitration-centre-3/.

11 https://iccwbo.org/news-publications/news/icc-dispute-resolution-statistics-2023/.

12 https://iccwbo.org/news-publications/news/unveiled-2024-icc-arbitration-and-adr-preliminary-statistics/#:~:text=In%202024%2C%20the%20number%20of,of%20the%20last%20five%20years.

13 For details, see https://sccarbitrationinstitute.se/en/statistics-2023/. Statistics on applicable laws do not yet appear to have been published for 2024.

14 https://sccarbitrationinstitute.se/en/courses/arbitrator-training-programme/.

15 https://sccarbitrationinstitute.se/en/courses/diploma-course-for-international-arbitrators/.

16 https://sccarbitrationinstitute.se/en/about-scc/scc-statistics/.

1.5 Stockholm University's ICAL Masters Programme

No summary of Stockholm's place in the world of international arbitration would be complete without mentioning Stockholm University's Masters Programme on International Commercial Arbitration Law (ICAL).[17] Under the wise and expert leadership of Patricia Shaughnessy, the ICAL programme has developed to become one of the leading training programmes for international arbitration worldwide.

The ICAL program is now well-known throughout the world, and ICAL alumni can be found in all corners of the world. It is truly a success story, and the success story continues today under the equally expert guidance of Daria Kozlowska Rautiainen and Crina Baltag.

2. Detailed and well-developed arbitration law

Swedish arbitration law has also developed considerably since 2009. In particular, the Swedish Arbitration Act was revised in 2018, and there have been some prominent arbitration cases in the Swedish courts as well as a considerable amount of new literature on Swedish arbitration.

2.1 Revisions to the Arbitration Act

The changes to the Arbitration Act in 2018 were rather minor, but they are nevertheless of some importance.[18] In particular:

- The procedure for challenging jurisdiction in the courts was revised and amended.
- The time limit for commencing set-aside cases in court was reduced from 3 months to 2 months.
- Some changes were made to the procedure for appointing arbitrators in *ad hoc* cases, including in situations where there are more than two parties.
- A provision was added to allow for consolidation of arbitrations, if agreed upon by the parties.

[17] https://www.su.se/english/search-courses-and-programmes/jiclm-1.411462.

[18] Full details and comments on the changes are set out in the preparatory works. See *En modernisering av lagen om skiljeförfarande*, Regeringens proposition 2017/18:257. The Swedish government bill was preceded by a careful review of Swedish arbitration, carried out by Former Chief Justice Johan Munck and a panel of arbitration law experts; see *Översyn av lagen om skiljeförfarande*, SOU 2015:37.

- A new provision was added concerning the choice of substantive applicable law.[19]
- Certain changes were made to set-aside proceedings in the Swedish courts.
- A provision was added confirming that, unless otherwise agreed by the parties, the arbitrators may choose to hold meetings in a place other than the seat of arbitration, either in Sweden or abroad.[20]
- A provision was added stating that the courts in set-aside cases may, at the request of a party, hear evidence in English without translation into Swedish.

It is notable, and somewhat regrettable, that the government chose not to implement several of the recommendations that had been put forward by the expert committee in its review of the Arbitration Act. In particular:

- The majority of the expert committee had proposed that the time limit for bringing challenge cases should remain at three months,[21] but the government nevertheless reduced the time limit to two months. In my personal experience, it can often require considerable time to obtain full instructions and investigate the case, particularly when foreign clients are involved. Moreover, the challenge grounds need to be decided at the start and cannot be changed later. Thus, the reduction in the time limit has made it more difficult for counsel who are instructed to bring challenge cases. On the other hand, the overall amount of time involved in bringing challenge cases has not been appreciably reduced, since the main cause of

[19] Previously, section 48 of the Arbitration Act set out provisions concerning the applicable law of the arbitration agreement, but there was no provision in the Act concerning the substantive applicable law. Section 27 a of the Act now also sets out provisions concerning the substantive applicable law.

[20] This constitutes a codification of the position as explained by the Supreme Court in NJA 2010 s. 508, where the Court clarified that the Swedish Arbitration Act applies where the parties have agreed to hold the proceedings in Sweden, even if the hearings are held abroad, or if the arbitrators come from abroad, or if the arbitrators have carried out their work abroad, or if the agreement does not otherwise have any connection with Sweden. Earlier, in a much-criticised decision (RH 2005:1), the Svea Court of Appeal had come to the opposite conclusion, holding that the court did not have jurisdiction to consider a challenge case where the hearings had taken place in London and the case did not otherwise have a connection to Sweden, even though Stockholm was the agreed place of arbitration.

[21] One member of the expert committee wrote a separate opinion, proposing that the time limit should be reduced to 30 days.

delay in challenge cases is the somewhat-prolonged nature of the court procedure and the difficulty in finding court time for hearings.
- The expert committee had proposed that the rules on invalidity of arbitral awards under section 33 of the Arbitration Act should be abolished, with issues of *ordre public* being included under the challenge grounds in section 34 of the Act. The expert committee noted that section 33 was something of an oddity internationally. Nevertheless, the government decided not to adopt this recommendation.
- The expert committee also proposed various other changes to the challenge procedure in Swedish courts, which the government nevertheless decided not to adopt, including that the Svea Court of Appeal should be the only court of appeal with jurisdiction to hear such cases.
- The expert committee proposed that section 40 of the Arbitration Act, which forbids arbitrators from refusing to issue their award until they have received payment, should be abolished. However, the government did not agree.
- Also on the issue of costs, the expert committee proposed that an exception should be made to section 41 of the Arbitration Act, so that costs decisions by arbitral institutions should not be subject to challenge in the courts. This proposal was aimed at reversing the decision of the Supreme Court in NJA 2008 s. 1118. However, here too the government did not agree.

2.2 Prominent arbitration cases

There have been many interesting arbitration cases in Sweden since 2009, and it is not possible to do justice to them all within the scope of this article. I have chosen to mention the following cases:

- NJA 2019 s. 171 (*Belgor*): This case concerned an international arbitration in which the final award was challenged before the Svea Court of Appeal. The Svea Court set aside part of the award, and unusually for a challenge case, the court granted leave to appeal to the Supreme Court. Both parties appealed to the Supreme Court, and the Supreme Court was therefore provided with a rare opportunity to consider several important issues of arbitration law and practice. The following key points arise from the Supreme Court's judgment:
  - An arbitration agreement cannot cover all possible future disputes between the parties, and therefore the scope of the arbitration agree-

ment must concern a defined legal relationship. The phrase "defined legal relationship" in this context should be given a broad interpretation
  - On the other hand, commercial parties can be taken to have intended that the purpose of the arbitration agreement is to resolve disputes quickly in a single procedure.
  - Where a court is asked to review an arbitral tribunal's decision on jurisdiction, it should be noted that the arbitral tribunal is often in the best position to determine its own jurisdiction, and therefore the court's starting point should be that the arbitral tribunal came to a correct decision on issues of interpretation and evaluation of evidence.
  - Where a tribunal wrongly concludes that the parties are in agreement upon a certain issue, this can give rise to a procedural irregularity. However, this will only be sufficient to constitute grounds for setting aside the award if the challenging party was not responsible for the tribunal's wrong conclusion. It is also necessary to show that there is a clear link between the tribunal's wrong conclusion and the outcome of the case.
  - Where a party claims that it has been denied the opportunity to present its case, then as a starting point the arbitral tribunal's decisions regarding, for example, extensions of time should be upheld, unless such decisions are clearly unreasonable. The challenging party also needs to show that it was not responsible for the situation that has arisen.
  - The arbitral tribunal's decisions concerning the burden and standard of proof are substantive issues that are not subject to reconsideration by a court within the context of a challenge case.

- NJA 2019 s. 382 (*CicloMulsion*): This is one of the very few cases where the courts have set aside an award on grounds of procedural irregularity. The Court of Appeal for Skåne and Blekinge partially set aside the award and granted leave to appeal, and the losing party then appealed to the Supreme Court. The Supreme Court noted that the arbitral tribunal had set out its position on a certain key issue in the form of a procedural order, and the arbitral tribunal had also stated that it would not change its position on that issue without giving the parties an opportunity to make further submissions on the matter. However, several years later in a partial award, the arbitral tribunal came to a different position on the

same issue, without having given the parties an opportunity to make submissions. The Supreme Court found that the arbitral tribunal had failed to follow important principles of procedural fairness, and that in such circumstances there was a procedural irregularity which should be presumed to have affected the outcome of the case. Accordingly, the Supreme Court refused the appeal.

- NJA 2022 s. 965 (*Republic of Poland v PL Holdings S.á.r.l.*): This case concerned an intra-EU investment treaty arbitration, and the courts' determinations with respect to such cases in light of the *Achmea* decision. The case was unusual because Poland had failed to make a timely objection to the jurisdiction of the arbitral tribunal. In those circumstances, the Supreme Court sought a preliminary ruling from the ECJ on the question of whether the *Achmea* decision prevented an investor and a member state from agreeing by conduct to a specific *ad hoc* arbitration clause. The ECJ confirmed that an investor and a member state are indeed prevented from entering into such an *ad hoc* arbitration clause. The Supreme Court then subsequently confirmed that it was bound by the ECJ's ruling. Accordingly, the Supreme Court declared that the arbitral award was invalid under section 33 of the Arbitration Act on the grounds that the award was clearly incompatible with the basic provisions of the Swedish legal system (including EU law as determined by the ECJ).

2.3 Swedish literature on arbitration law

There is a considerable amount of literature on Swedish arbitration law. Most of the books that existed in 2009 have been updated, including the textbooks by Stefan Lindskog and Finn Madsen. In addition, several other books have been published since 2009, including:

- Kaj Hobér, *International Commercial Arbitration in Sweden*,
- Fredrik Andersson et al., *Arbitration in Sweden*,
- Robin Oldenstam et al., *Mannheimer Swartling's Concise Guide to Arbitration in Sweden*, and
- A Magnusson et al., *International Arbitration in Sweden: A Practitioner's Guide*.

Mention should also be made of the Swedish Arbitration Association's recent publication, *Högkvalitativa skiljeförfaranden i Sverige*, which is a collection

of reports by leading practitioners which seeks to collect, identify and establish details of what distinguishes good arbitration practice and procedure in Sweden.

My previous article was published in the *Stockholm International Arbitration Review* (SIAR). That publication no longer exists, but it has been replaced by the *Stockholm Arbitration Yearbook* (SAY) which is published under the auspices of the Stockholm Centre for Commercial Law.

3. Relatively low costs and quick procedures

I pointed out in 2009 that there were concerns in the world of international arbitration that arbitrations were often too long and too expensive. Of course, those are still concerns in 2025, and it would be difficult to argue that the arbitration community has been successful in addressing them.

The concerns about speed are easier to address, though, and here there has been some progress. As mentioned above, the SCC's rules on expedited arbitrations have been widely adopted and are generally thought to work well, and the SCC has also expressly added provisions in its general arbitration rules requiring arbitrators and parties to act in an efficient and expeditious manner.[22] The statistics also show that the SCC is managing to ensure efficiency, with 63% of the SCC arbitrations concluded in 2024 lasting less than 12 months from the date of referral of the case to the tribunal to the date of the final award, and 95% of all cases concluded in 2024 lasting less than 24 months from the date of referral of the case to the tribunal to the date of the final award.[23]

SCC arbitration does generally appear to be quicker than ICC or LCIA arbitration. The ICC has reported that, in cases that concluded by way of final award in 2023, including where the proceedings were suspended by party agreement for any length of time, the average duration was 27 months and the median duration was 25 months.[24] For LCIA cases, the median LCIA arbitration lasts a total of 20 months.[25]

[22] SCC Arbitration Rules 2023, articles 2, 14, 23, 28, 39, 49 and 50.

[23] SCC statistics for 2024 (https://sccarbitrationinstitute.se/en/statistics-2024/).

[24] ICC Dispute Resolution 2023 Statistics, page 15 (https://iccwbo.org/wp-content/uploads/sites/3/2024/06/2023-Statistics_ICC_Dispute-Resolution_991.pdf).

[25] LCIA Report, Costs and Duration: 2017–2024 (https://www.lcia.org/media/download.aspx?MediaId=1032).

However, the cost of arbitration remains high, and lawyers' fees have increased substantially since 2009. I pointed out in 2009 that arbitration in Sweden cost less than arbitration in, for example, London. I referred in particular to the fact that the cost of living was lower in Stockholm, and that lawyers' hourly rates were considerably lower at that time in Stockholm than they were in London.

I cannot say the same today. The economic development in Stockholm over the last decade is in many ways a success story, but the cost of living in Stockholm has increased very considerably since 2009.[26] I also cannot say that hourly rates are necessarily lower in Stockholm than in London. In my experience, there is considerable variation in both cities, and in many cases the highest hourly rates in Stockholm are comparable to those in London.

It is therefore not possible to say, in general terms, that arbitration in Stockholm is necessarily cheaper than in London.

4. Procedures in Swedish arbitration

In 2012, Matthew Saunders published an article entitled "*Arbitrating in Stockholm: perks and pitfalls*".[27] That article, which was written from an English lawyer's perspective, was somewhat critical of Swedish arbitration procedures.

Later in 2012, I published a reply to Matthew Saunders' article with an article of my own, entitled "*Sweden fights back*".[28] I pointed out that comparing different seats of arbitration is rather like comparing different sports; whereas England will always be better at rugby, Sweden will always be better at ice hockey. My conclusion was that the friendly rivalry between different seats of arbitration is to be welcomed.

I suggested in my earlier article that Swedish arbitration had some particular features that could be adopted internationally. I mentioned three features: live witness evidence instead of written witness statements, recordings instead of transcription by court reporters, and recitals by arbitrators. How-

[26] For example, it has been noted that the average purchase prices for one- and two-dwelling buildings for permanent living increased by over 56 percent from 2013 to 2023. See https://www.statista.com/statistics/1358732/stockholm-sweden-purchase-prices-dwellings/.

[27] Commercial Dispute Resolution, May 15, 2012.

[28] Commercial Dispute Resolution, October 1, 2012.

ever now, with the benefit of greater experience, I must admit that I am not so enthusiastic about these features of Swedish arbitration.

4.1 Live witness evidence vs. written witness statements

There are clearly some problems with witness statements, which often take a large amount of time and money to prepare, and which tend to be drafted by lawyers without always reflecting the witness's own words.[29] Nevertheless, the benefits of written witness statements often outweigh the disadvantages. In particular, written witness statements give fair notice to the other parties of the detailed evidence that is intended to be given, and the witness statements also considerably shorten the time needed for the oral hearings.

Live witness evidence has the great benefit of allowing the tribunal the opportunity to hear the witness giving testimony in his or her own words. However, there are considerable downsides with this procedure. In particular, hearings can easily become far too long, and there is also a real risk of new points being raised at the hearing. Although the Swedish procedure of providing statements of evidence can work well in theory, in practice the procedure is often abused, thus failing to give fair notice of the points that are likely to be raised by the witness at the hearing.

There is no perfect solution, but some principles should at least be adhered to. I have previously made the following suggestions:[30]

- Disproportionate drafting of witness statements should be penalised by means of costs orders.
- Witness statements should be, so far as possible, in the witness's own words.
- Witness statements should be confined to the factual evidence which the witness would be able to give orally.
- Witness statements should not include opinion evidence.
- Witness statements should not discuss legal propositions.
- Witness statements should not engage in legal argument.

[29] I have written about these issues quite extensively elsewhere. See James Hope, *Witness Statements in International Arbitration*, Scandinavian Studies in Law, Volume 63, 2017, pages 437–457, and James Hope, *Witness statements: the cost of gilding the lily*, Commercial Dispute Resolution, May–June 2014.

[30] James Hope, *Witness Statements in International Arbitration*, Scandinavian Studies in Law, Volume 63, 2017, pages 456–457.

- In appropriate circumstances, consideration can be given to asking each party to identify the factual witnesses whom it intends to call and which of the pleaded facts the various witnesses would prove.
- In appropriate circumstances, consideration can be given to identifying or limiting the issues to which factual evidence may be directed, limiting the number of witnesses to be called, and/or limiting the length or format of witness statements.
- In appropriate circumstances, consideration can be given to having witness summaries instead of full witness statements.
- In order to prevent the over-preparation of witness statements, witnesses should be allowed to amplify their witness statements by giving a modest amount of supplementary oral evidence at trial.

4.2 Tape recording vs. shorthand writers

I suggested in my earlier article that the Swedish practice of audio (or video) recording is often cheaper and more efficient that using court reporters.

But again, with the benefit of greater experience, I am not so sure. Although transcription by courts reporters is expensive, and the benefit of recordings is that the recording is essentially free, this can be a false economy. Listening to, and transcribing, parts of the recording at a later stage takes time and costs money. By contrast, the cost of court reporting seems to be decreasing. With the benefit of modern technology, it is now possible for the court reporter to attend the hearing remotely, which allows for considerable savings in costs.

4.3 Recitals

Under Swedish court procedure, the "recital" (Sw. *recit*) is essentially the first part of the court's judgment – containing the formal description of the parties, details of the procedure, and summaries of the parties' respective cases – which the court circulates to the parties in advance of the hearing. I suggested in my earlier article that this procedure can be used in arbitration as a means for the arbitrators to obtain confirmation from the parties that their cases have been properly and adequately summarized, and I suggested that this procedure could be adopted internationally.

Recitals are indeed useful if done properly, and Swedish courts often produce excellent recitals. However, too often, arbitral tribunals resort to a "cutting and pasting" exercise which results in overly-long recitals, without

the benefits that a summary would have provided. Moreover, for the recital to work well, there needs to be a clear link in the arbitral award between the parties' arguments as set out in the recital and the tribunal's subsequent reasoning and decision-making. However, I have quite often seen awards where the recital bears little relation to the subsequent reasoning.

Now, with the benefit of more experience, it seems to me that recitals often fail to identify the important issues in the case. Instead of preparing a long summary of the parties' respective arguments, counsel and arbitrators should focus upon identifying the issues in dispute.

4.4 What procedures should be adopted?

What is best practice in international arbitration? The answer, in my view, is that it depends on the case. One of the benefits of arbitration is its flexibility, and arbitral tribunals should take care to consider carefully what procedures are suitable for each case. Sometimes a fully international procedure is appropriate; in other cases it may be sensible to adopt procedures that resemble Swedish court practice. One size does not fit all.

5. A dedicated hearing centre?

I suggested in my earlier article that it was worth considering whether the time had come for the SCC to set up a specialist hearing centre, with dedicated facilities for arbitration hearings.

It is therefore good to be able to write now that such a hearing centre has now been set up – the Stockholm International Hearing Centre (SIHC), with venues in Strandvägen, Posthuset and Odenplan.[31]

Another obvious development since 2009 is the rise of online and hybrid hearings. Such hearings were almost unknown before the Covid-19 pandemic, but the pandemic forced the arbitration community to change its practices very quickly. Most pre-hearing conferences now take place online, using video conferencing technology. During the pandemic, many evidential hearings also took place entirely online. Since then, many practitioners have preferred to revert to in-person hearings, but hybrid elements remain commonplace.

It should be stressed in this context that the hearing technician is now a vital member of every hearing team. Failure to engage a suitably-qualified

[31] https://sihc.se/.

hearing technician can result in considerable problems, particularly in hybrid hearings where technical challenges inevitably arise in accommodating the different needs of those in the hearing room and those taking part online.

6. Few successful challenges to Swedish arbitral awards

Challenge or set-aside proceedings are a necessary feature of any system of arbitration. However, since every successful challenge is to some extent a procedural failure, it is to be hoped that the number of successful challenges is low. The latest statistics in Sweden confirm that this remains the case.

A survey for the period 1 January 2024–31 May 2014 showed that 7 arbitral awards were set aside during that period pursuant to section 34 of the Act, and only 1 award was declared invalid pursuant to section 33 of the Act, equal to only 6% of all decided cases.[32]

Recently, the law firm Westerberg published a comprehensive survey of challenges to arbitral awards during the period 1 January 2004 to 31 December 2023, the Westerberg Arbitration Tracker 2024.[33] In summary:

- 367 challenge cases were filed in court during the period, *i.e.* an average of 19 new cases per year.
- Over the period, the courts of appeal have persistently increased their productivity, resulting in quicker turn-around from the filing of a challenge case until its resolution, with approximately 50% of cases being resolved within 12 months from filing, and 75% of cases being resolved within 18 months from filing.
- Out of the 367 challenge cases surveyed, 336 cases were resolved by 31 December 2023, and the arbitration award was set aside or annulled in 21 cases when assessed on the merits, being 6% of the resolved cases.
- Out of the 21 awards that were successfully challenged, 10 awards were set aside because of the arbitral tribunal's excess of mandate.

It follows that the number of successful challenge cases remains comparatively low.

[32] *Översyn av lagen om skiljeförfarande*, SOU 2015:37, page 79.

[33] https://westerberg.com/wp-content/uploads/2024/05/Westerberg-Arbitration-Tracker-2024.pdf.

7. And finally, Stockholm's place in the world

Perhaps the biggest change since 2009 is the change in the geopolitical landscape.

In 2009, Stockholm proudly marketed itself as the leading arbitration centre for east/west disputes.[34] Stockholm's leading position was born out of the cold war, when Stockholm was chosen as a centre for dispute resolution between the USSR and the USA. Later, Stockholm also became a leading centre for dispute resolution between China and the USA.

Until early 2022, Stockholm continued to market itself in this way. Several Swedish law firms held an annual trip to Russia to market Stockholm as a centre for dispute resolution. They urged Russian companies to choose Stockholm as a seat of arbitration, and Swedish law as the governing law of their contracts. The clear message was that Stockholm was a neutral place where Russian parties would be able to obtain a fair hearing.

However, on 24 February 2022, Russia invaded Ukraine, and the world changed forever.[35]

Tragically, at the time of writing three years later, the war is still going on. And Stockholm is no longer considered neutral. Most obviously, of course, Sweden has now joined the Nato alliance. Many Swedish companies, including most Swedish law firms, have cut all ties with Russia. And sanctions have been imposed on many Russian individuals and companies by the EU.

Where does this leave Sweden's position as a centre for east/west disputes? I think three points can be made.

[34] See, *e.g.*, Per Runeland, *Sweden Thrives as a Neutral Arbitration Ground*, 8 November 2004 (http://www.mondaq.com/article.asp?articleid=29427), who notes that Stockholm became popular as an arbitration venue during the 1960s and 1970s:

> "*When trade picked up between the United States and the Soviet Union, the method of resolving any disputes was one of the key issues. Recognizing the wide acceptance of Sweden as a venue for international arbitration, the then U.S.S.R. Chamber of Commerce and Industry, the American Arbitration Association and the Stockholm Chamber of Commerce developed a model arbitration clause for use in contracts between parties in the United States and Soviet foreign trade organizations. This clause became known as the 'Optional Arbitration Clause for Use in Contracts in U.S.A.-U.S.S.R. Trade 1977' and provided for arbitration in Stockholm, Sweden, under the auspices of the Stockholm Chamber of Commerce.*"

[35] Of course, those who were following world events more closely will have realized that Russia had invaded Ukraine several years earlier. But in the Stockholm arbitration market, none of that was noticed until the full-scale invasion took place in 2022.

7.1 The SCC continues to be neutral

The SCC continues to be neutral, and the SCC continues to appoint neutral arbitrators. In fact, the SCC still handles a considerable number of east/west disputes. Many older contracts still provide for SCC arbitration, and such disputes will continue to be handled by the SCC for several years to come. Russian parties are still welcome to arbitrate before the SCC, and they still do so in considerable numbers.[36]

However, at the time of writing, and with just a few notable exceptions, most Swedish lawyers and Swedish law firms continue to refuse to act for Russian clients.

7.2 The SCC's position in the world has changed

In the longer term, it is clear that the SCC has lost its pre-eminent reputation as a centre for east/west disputes. In particular, the SCC has lost its standing amongst Russian and Chinese parties. This is due to several factors. For Russian parties, there are concerns about EU sanctions, and it must also be admitted that Russian parties have difficulties finding adequate representation in Sweden.

Anecdotally, there are also concerns in Russia about Swedish law being unpredictable and uncertain, following the much-publicised decision in an arbitration between Naftogaz and Gazprom, in which the arbitral tribunal applied section 36 of the Swedish Contracts Act in order to adjust the terms of the contract.[37]

However, the SCC has a bright future more generally. As noted above, the number of cases before the SCC is broadly the same as it was in 2009. Parties from many different countries use SCC arbitration.[38] Instead of being known predominantly for east/west disputes, I suggest that the key feature of SCC arbitration today is efficiency. The SCC consistently leads the way in adopting and promoting modern and efficient practices and procedures,

[36] The SCC's 2024 statistics record that there were 23 Russian parties in cases commenced during that year, which was the greatest number of all foreign parties using the SCC that year (https://sccarbitrationinstitute.se/en/statistics-2024/).

[37] The award was challenged before the Svea Court of Appeal, and an English translation of the Court's judgment in the challenge case is available on the SCC's website: https://www.arbitration.sccinstitute.com/documentfile/getfile?portalId=89&docId=3816089&propId=1578.

[38] The SCC's 2024 statistics show that 488 parties from 40 different countries used SCC arbitration during that year (https://sccarbitrationinstitute.se/en/statistics-2024/).

such as the SCC platform, the SCC Express procedure, the SCC's focus on diversity, and the SCC's strong presence on social media.

7.3 The rule of law is more important than ever

Finally, I think it is important to stress that we must continue to uphold the rule of law and the rule-based legal order, by which all parties are given a fair hearing and a fair trial. In short, we must continue to uphold our own rules.

I made this point on LinkedIn at the beginning of the war in 2022. Naïvely, I assumed that all lawyers would agree with me, but I was wrong. I was accused by some of seeking to tout for work from Russian clients, which was a distortion of what I actually wrote. Readers can judge my words for themselves.[39]

My point is simple, but it is vitally important. All parties need to be given a fair trial. We cannot have a system which is open to some, but not to others. Our own rules prohibit us from discriminating on grounds of nationality, or race, or belief.

I remain hopeful that all lawyers support a rules-based system, both a rules-based system of international dispute resolution, and a rules-based system of international public law. If we do support this, then we need to uphold it. And we particularly need to uphold it when the issues raised are difficult and controversial.

In our rules-based system, even murderers have a right to a fair trial. And even those whom we do not like, and who may come from countries that are responsible for hideous and unspeakable acts, have a right to a fair trial before our system of international arbitration. If you do not like this, ask yourself what the alternative is.

However, the rules-based system is under threat. At the time of writing, the new President of the USA has made it clear that he does not support the rules-based legal order. It appears that for him – as for President Putin of Russia – might is right. Against this background, the importance of upholding the rule of law is more important than ever before.

[39] https://www.linkedin.com/posts/james-hope-3279506_ruleoflaw-activity-6903736009649995776-hOgA?utm_medium=ios_app&rcm=ACoAAAE1Is8Bouz8Gir7GA6XhbvMA8uccIL0ufE&utm_source=social_share_send&utm_campaign=copy_link.

8. Conclusion

To return to the question that I posed at the start of this article, can I still recommend Stockholm as a seat of international arbitration? My answer is yes, and I would particularly recommend SCC arbitration.

As I mentioned at the end of my earlier article, tourists who have been to the magnificent golden hall on the first floor of Stockholm's City Hall will remember the mosaic of the Queen of Lake Mälaren, a stern and wise figure who dispenses justice between the peoples of the east and the west. Fittingly, that magnificent golden hall was the venue for the Swedish Arbitration Association's recent anniversary dinner in January 2025.

I ended my earlier article by stating that I was confident that the Queen of Lake Mälaren's services would continue to be required for many years to come. I still think that is true, but in 2025 Stockholm has a new role. She is no longer the neutral figure that she once was, but she remains a symbol of justice for the modern world.

As the world advances towards a highly uncertain future, may we in Stockholm continue to show the world how to dispense justice wisely and fairly.