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OF THE STOCKHOLM CHAMBER OF COMMERCE

International Dispute Resolution
- a Modern Success Story of Legal Integration,

Speech by Annette Magnusson, SCC Secretary General

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Ladies and gentlemen

Thank you very much for this kind introduction and thank you to the organizers for inviting the Stockholm Chamber of Commerce to be part of this very important event. It is truly a pleasure to be addressing you here today.

My topic for the next 15 minutes is *International Dispute Resolution - a Modern Success Story of Legal Integration,* and I will approach this subject by talking about three of the perhaps most important instruments for legal integration on the international level in this area of law.

But first – as a brief background – I will say a few words about the role of the Sweden and the Stockholm Chamber of Commerce in this context and in particular the role of the Arbitration Institute of the Stockholm Chamber of Commerce, for those of you who may be wondering why a Swedish arbitral institution is speaking on legal integration at a Euro-Asian Juridical Congress.

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I will give you three reasons.

First, a general observation – it is no co-incidence that chambers of commerce engage in matters of dispute resolution and legal integration. Legal certainty and predictable rules of law goes to the core of what we aim to achieve as organizations; economic developments and prosperity including fruitful cross-border trade.

The second reason for Sweden's role in international dispute resolution in a Euro-Asian perspective may be illustrated with an event that took place in Stockholm on 21 October 2003, when King Carl XVI Gustaf of Sweden presented the Royal Order of the Polar Star to professor Tang Houzhi (China), professor Sergei N Lebedev (Russia), and judge Howard M Holtzmann (USA). They received the Order in appreciation of their outstanding achievements in international commercial arbitration, in particular for their work in this field related to Sweden.

The award ceremony stands as a symbol of the close co-operation Sweden has had for more than 35 years with first the Soviet Union - and then the Russian Federation, and China, in developing the environment for international trade through modern rules on dispute resolution.

In 1977 the Stockholm Chamber of Commerce took part in the signing of the so-called Optional Clause Agreement between the Soviet Union and the United States, for dispute resolution, and in 1978. the first exchange of delegations took place between China and Sweden to talk about arbitration matters. Many have since followed in its footsteps.

The optional clause agreement from 1977 was upgraded in 1992 as the Russian Federation replaced the Soviet Union as a party to the agreement.

Finally, a there is third reason explaining the role of Sweden here today, and that is that a common denominator of the member states of the Euro-Asian Economic Community and the Shanghai Cooperation Organization is that the international business community in all of these countries opt for Stockholm as a preferred venue for dispute resolution in their international agreements.

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At the Arbitration Institute of the Stockholm Chamber of Commerce – the SCC - we handle around 200 new cases per year, and many with an East-West, or East-East, dimension. SCC is also a preferred venue for disputes relating to energy.

Russia, China, Kazakhstan and other CIS republics are common nationalities in our caseload.

I would also like to take this opportunity to mention that as of a few months we have made Swedish legislation available in Russian and Chinese on the SCC website.

So – returning back to the main topic for this presentation – why could we call international dispute resolution "*a modern success story of legal integration*"?

Going back to a remark made earlier; modern rules for dispute resolution are closely connected to issues of rule of law and in the end - economic development.

This fact was recognized very early by the international legal community and has been a strong driving force.

For more than 50 years states have jointly developed an international legal framework for dispute resolution in a way that stands unprecedented in an international law perspective. And from the very outset, the purpose of this development has been to facilitate trade, and meet the needs of international business.

Today I will give you three examples of this successful legal integration.

The first ideas prompting the development towards the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards,* most commonly referred to as the New York Convention, were voiced in 1955 at the meeting of the UN Committee on enforcement of international arbitral awards. It was noted during the meeting that existing legal instruments no longer met the needs of international business, and that a more modern instrument needed to be put in place.

Hopes and ambitions were high, as illustrated by the delegation from the International Chamber of Commerce which stated that a new legislation "*would be a constructive step towards*

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facilitating international trade, and ultimately towards higher standards of living and so towards general peace and prosperity."

After only three years of drafting, the New York Convention was signed at a UN Conference in 1958. It was signed in a very positive spirit. Yet, the president of the conference noted that

"*it was still too early to tell whether the instrument . . . would serve the ends of trade and justice. That would only be shown by experience. . . .the actual situation would not be really improved until a large number of states had ratified the Convention or acceded to it*."

Today we know that the Convention has had a tremendous impact – it has even being credited as being one of the most significant demonstrations of international co-operation regarding commercial law post-World War II. It has been ratified by more than 140 states.

The widespread ratification of the Convention is a unique feature of the New York Convention which has contributed to its lasting impact. The key to its success is the legal certainty provided by the convention for parties involved in international trade. And the principles laid down in the Convention have since been followed in other instruments.

The next step for this successful legal integration came in the 1970's as states sought to further facilitate trade and to overcome problems arising from trade between countries with different legal systems. Again, the setting was the United Nations and its Committee on International Trade Law - UNCITRAL.

A draft for common rules of arbitration was developed, and by 1975, the rules had been circulated to governments, regional UN commissions and 70 centers of international commercial arbitration.

Key issues of the new rules were party autonomy, and that municipal law should take precedent if in conflict with the proposed rules.

The drafting continued quickly, and in 1976 the Commission was ready to vote to adopt the *UNCITRAL Arbitration Rules*.

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In so doing, the Commission recognized that "*the establishment of rules for ad hoc arbitration that are acceptable to those engaged in trade in countries with different legal, social and economic systems, would significantly contribute to the development of harmonious economic relations between peoples*."

Since the initial adoption in 1976, the UNCITRAL Arbitration Rules has been renewed once, in 2010, and they are widely used, notably also by states, illustrated by the fact that the UNCITRAL Arbitration Rules are the second most common set of rules used for investor-state arbitration.

Under the UNCITRAL Arbitration Rules a number of international institutions act as appointing authority, and the Arbitration Institute of the Stockholm Chamber of Commerce is one of them.

The third and final cornerstone of legal integration which I will mention here today is the *UNCITRAL Model Law on International Commercial Arbitration*.

Similar to the UNCITRAL Arbitration Rules, the suggestion for the UNCITRAL Model Law was made many years before serious work on draft the law began, as early as in 1957.

At this early stage, however, the Commission was not prepared to draft a model law itself, and instead resolved to support regional and inter-governmental organizations already working in the field. But in early 1980s, the UN Working Group on International Contract Practices received a mandate to pursue the idea of a model law. Again, the ambition was well received by the member states and a complete draft of the new model law could be submitted for approval in early 1985.

Governments praised the work of the working group, and stated that "*The leading underlying principles of the model law (i.e. party autonomy, equality, completeness, compatibility of the model law with the 1958 New York Convention,* lex specialis *rule) is a good foundation for international regulation*."

And as the Model law was formally adopted by the UN General Assembly, the General Assembly recognized the value of arbitration to resolve disputes in international commercial

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relations and expressed that it was "[c]*onvinced that the establishment of a model law on arbitration that is acceptable to States with different legal, social and economic systems contributes to the development of harmonious international economic relations*"

Today, close to 70 jurisdictions can be titled "Model Law Jurisdiction", with an ever larger number of jurisdictions having enacting legislation adhering to the underlying principles of the model law. And the number of model law jurisdictions is constantly growing.

The success of legal integration in international dispute resolution demonstrates the inherent power of a common goal.

States and the international legal community – including the states represented here today - early recognized the benefits of a common framework to promote trade and economic development, and to support a general development towards peace and prosperity.

In so doing, the member states of the Euro-Asian Economic Community and the Shanghai Cooperation Organization have contributed to a strong foundation in support of an efficient Euro-Asian co-operation and economic development, and we wish you great success in your important mission for the future.

Sweden, and the Arbitration Institute of the Stockholm Chamber of Commerce, extend its support. And we look forward to contributing to your continued success as we fulfill our role as the common denominator in international dispute resolution in an Euro-Asian context.

Thank you.

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