INTERNATIONAL COMMERCIAL ARBITRATION

A Transnational Perspective

Third Edition

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Questions and Comments

1. Do you agree with the Dutco case outcome? The parties agreed to the arbitration clause, as written, didn't they? Should the Cour de cassation have given more weight to this consideration?

2. Was it a mistake for Siemens and BKMI to proceed with the arbitration under protest? Or was it a mistake on Dutco's part to bring a claim against both Siemens and BKMI? Why didn't the three disputants agree to have each party appoint an arbitrator? Could Dutco have sought court assistance at the stage of choosing arbitrators? What court? When? and What assistance? How should a court have responded?

3. In the wake of the Dutco case, a number of arbitral institutions amended their rules. Read in the documents supplement, for example, ICC Rules Art. 10; London Court of International Arbitration Rules Art. 8; and AAA International Rules Art. 6(5).

Which of these institutional approaches do you prefer?

4. Suppose the parties prefer ad hoc arbitration, would the UNCITRAL rules be adequate? If not, how would you advise the parties? Would it be a solution to choose UNCITRAL rules and a sole arbitrator? But what if the parties prefer three arbitrators? For a discussion of drafting arbitration clauses for multi-party arbitration, see Paul D. Friedland, ARBITRATION CLAUSES FOR INTERNATIONAL CONTRACTS (2000).

5. The *DUTCO* case also prompted at least one national legislator to consider multi-party disputes. The 2003 Japan Arbitration Act (Law No. 138 of July 25, 2003, in force since March 1, 2004) devoted two provisions to multi-party situations. According to Article 16, if the parties have not agreed on the number of arbitrators, the presumed number is three, but "[w]hen there are three or more parties in an arbitration, the court shall determine the number of arbitrators upon request of a party." (Article 16(3) According to Article 17(4), if the parties fail to agree on the procedure of appointment, "[w]hen there are three or more parties, the court shall appoint arbitrators upon request of a party." Suppose these norms had been applicable when the *DUTCO* arbitration tribunal was formed. What result?) (Assume that the arbitration agreement is the same as in the real *DUTCO* case—providing for three arbitrators nominated according to ICC Rules—but the lex arbitri is the new Japanese Act.)

III.3. CHALLENGES

III.3.a. Introduction

Albert Jan Van Den Berg,[f] REPORT ON THE CHALLENGE PROCEDURE

The Arbitral Process and the Independence of Arbitrators 87-93 (ICC ed., 1991)*

INTRODUCTION

1. There is no doubt that the impartiality and independence of arbitrators are fundamental requirements of the arbitral process. It is

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* *The Arbitral Process and the Independence of Arbitrators*. ICC Publication No.

not within the scope of my presentation to discuss the circumstances in which an arbitrator can be deemed not to meet these requirements. This question is the subject of the previous session concerning the standards of behaviour of arbitrators.

2. My view on this question is that we should be rather strict in interpreting and applying the requirements: any arbitrator—whether appointed by a party or a third person—should be absolutely impartial and independent. In case of any objective doubt as to impartiality, he or she should not act.

Avoidance Of Challenge

3. A preliminary observation regarding the subject of my presentation on the challenge procedure concerns the avoidance of challenge. At the outset, a prospective arbitrator can avoid a challenge at two stages.

4. First, if, when he is approached by a party or a third person with the invitation to act as arbitrator, he believes that there will probably be objective doubts in the eyes of any of the parties about his independence or impartiality, he should decline the invitation forthwith. The flattery of the invitation should not cause him to take lightly circumstances which may affect his impartiality or independence.

5. Second, if the prospective arbitrator does not decline and accepts the invitation, but there are circumstances which might give rise to doubt about his impartiality or independence, he should disclose them in writing to both parties and, if an arbitral institution is involved, to the latter as well. The duty to disclose is a requirement of most modern arbitration cases and arbitration rules.[1] If a party then objects on serious grounds, he should resign, without a formal challenge procedure being necessary. If no party promptly objects, the right to challenge the arbitrator will in most cases be forfeited.

Possible Reasons For The Recent Increase Of Challenge Procedures

6. Having regard to the foregoing, one may wonder why the number of formal challenge procedures in international arbitration has increased so dramatically.[2] As I see it, there are four probable reasons for

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1. *See, e.g.*, UNCITRAL Model Law on International Commercial Arbitration of 1985, Art. (12)1; Netherlands Arbitration Act 1986, Art. 1034. However, the French (1981) and Swiss (1987) International Arbitration Law do not contain provisions concerning disclosure. With respect to arbitration rules, *see, e.g.*, ICC Rules (1988), Art. 2(7); UNCITRAL Arbitration Rules (1976), Art. 9 ; NAI Rules (1986) Art. 11.

2. For example, the number of challenges brought before the ICC Court of Arbitration was 11 in 1986 and 22 in 1987.

this increase. Considering the limitations of my presentation, [I] will merely mention them.

7. A first reason may be that the interpretation as to what constitutes impartiality and independence has become stricter.

8. A second reason may be that parties from certain countries who previously did not use or scarcely used international arbitration misconceive the requirements of impartiality or independence of the arbitrator whom they have to appoint.

9. A third reason may be that challenge of an arbitrator can be a powerful delaying tactic. A challenge may also be thought to have a psychological effect on the challenged arbitrator. Even if the challenge is rejected, some parties think that the challenge has the effect that the challenged arbitrator will be more impartial and independent towards them than towards the other party. A variation on the * * * [third] reason is that a party deliberately appoints an arbitrator who lacks impartiality and independence in an attempt to frustrate the arbitral process.

10. And a fourth reason may be that the increase in the challenge proceedings is just one aspect of the general tendency which we witness in our times that international arbitration has become more litigious in procedural respects.

The Two Issues Concerning Challenge Procedures

11. I may now turn to the subject of my presentation: the challenge procedures. For these procedures, one has to look first at the law applicable to the arbitration. Any rules of a mandatory nature regarding the challenge of arbitrators in that law must be deemed to prevail over provisions on the same subject in arbitration rules.

12. With the purpose of not complicating my presentation unduly, it is assumed that the arbitration law of the place of arbitration governs international arbitration since this principle is applied in most cases in practice.

13. Certain countries, such as France and Switzerland, make a distinction between domestic and international arbitration. Similarly, the UNCITRAL Model Law is limited to international commercial arbitration. This distinction does not affect the principle that the arbitration law of the place of arbitration governs international arbitration: in these countries one has to consult the special law on international arbitration if the arbitration in that country can be qualified as international under that law.

14. The exception to the above principle is ICSID arbitration which is outside the reach of national arbitration laws and is solely governed by

the Washington Convention of 1965 and the Rules and Regulations issued thereunder.[3]

15. Every arbitration law requires either expressly or implicitly that an arbitrator be impartial and independent. Every arbitration law also provides that compliance with this requirement is subject to court supervision. The manner in which this is done, however, varies from country to country. Here we come to the first issue which I would like to consider: at what moment can court control be exercised?

16. Arbitral institutions frequently have their own procedure for challenging arbitrators appointed by them or under their auspices. The concurrent existence of such institutional procedure and the challenge procedure provided in the applicable arbitration law raises the second issue which I would like to consider: to what extent are institutional challenge procedures compatible with the applicable arbitration law?

17. Both issues involve a balancing of various considerations, which are not always easy to reconcile:

(a) the arbitration should take place with due dispatch and the possibility of delaying tactics should be reduced to a minimum;

(b) it should be avoided that, when completed, an arbitration turns out to have been a waste of time and money because the award cannot be enforced on account of some irregularity in the arbitral tribunal;

(c) a serious complaint about an arbitrator's impartiality or independence should be honoured;

(d) a satisfactory degree of international uniformity in the interpretation and application of the grounds for challenging an arbitrator should be attained.

A. Court Control

18. Most arbitration laws provide that a party can challenge an arbitrator during the arbitration before a court.[4] The advantage of this system is that a question about the arbitrator's impartiality or independence can be decided forthwith. Once the court has rendered a decision, it is unlikely that the question will arise thereafter in the arbitration proceedings or during enforcement and/or setting aside proceedings relating to the award.

3. The procedure for disqualification of an arbitrator is provided in Arts. 57 and 58 of the Washington Convention and in Rule 9 of the Arbitration Rules.

4. *Although the U.S. Federal Arbitration Act does not contain any provision on challenging an arbitrator, U.S. courts do allow the challenge of an arbitrator during the arbitral proceedings under their inherent power to remove an arbitrator. See H. Holtzmann, National Report United States, in the International Handbook on Commercial Arbitration, p. 14.* [Authors' note: Holtzmann has more recently commented, concerning U.S. practice: "Courts generally do not remove arbitrators before or during the arbitration proceeding, although they have an inherent power to do so. In practice, judicial review of the qualifications of arbitrators usually occurs after an award has been rendered, when one party seeks to set aside the award on the ground that the arbitrators should have been disqualified for being partial." Id., Supplm. 13, at 17 (1992).]

19. The system of challenge in court during the arbitration has the disadvantage that it can be used as a delaying tactic. An average challenge procedure in court takes one to six months. This disadvantage will be aggravated if the court decision is open to appeal and even recourse to the Supreme Court. Modern arbitration laws therefore provide that the court decision on the challenge is not subject to appeal.[5]

20. The arbitration laws of some countries provide that during the arbitration a party may bring a challenge before the arbitral tribunal itself and that if the arbitral tribunal rejects the challenge, the impartiality or independence of the arbitrator can be questioned before a court *only after the award is made*, either in enforcement proceedings or in proceedings relating to the setting aside of the award. I understand that this system, for example, prevails in Sweden.[6]

21. The advantage of this system is that a delay in the arbitration proceedings is minimized. Furthermore, if the arbitral tribunal accepts the challenge, no subsequent arbitration proceedings will take place which may turn out to have been a nullity.

22. A disadvantage is that if the arbitral tribunal rejects the challenge, a court may have a different view, resulting in a refusal to enforce or a setting aside of the award.

23. Another disadvantage can be that a direct discussion between a party and the arbitral tribunal occurs about the impartiality or independence of one or more of the latter's members. Such a discussion may have an impact on the further conduct of the arbitration proceedings if the arbitral tribunal rejects the challenge. In my view, it seems preferable that such a direct confrontation does not take place but rather that a third party (court or arbitral institution) is entrusted with the judging of the question whether an arbitrator lacks impartiality or independence.[7]

24. Before moving to the second issue, it should be noted that court control over the impartiality or independence of an arbitrator is not confined to the courts of the country where the arbitration takes or has taken place. Court control can also be exercised in foreign countries where enforcement of the award is sought under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. According to Art. V(2)(b), the enforcement court may, on its own motion, refuse enforcement of the award if it violates the public policy of its country. It is generally accepted that this ground for refusal of

5. *See, e.g.*, UNCITRAL Model Law on International Commercial Arbitration of 1985, Art. 13(3), text quoted at n. 14 infra; Netherlands Arbitration Act 1986, Arts. 1035 and 1070.

6. U. Holmbäck, National Report Sweden, in The International Handbook on Commercial Arbitration, p. 7.

7. The procedure discussed in the text, which involves a decision by an arbitral tribunal on a challenge, is to be distinguished from the case—which can be found in many arbitration acts—where a challenge is to be notified to the arbitrator and only if the arbitrator does not resign upon receipt of the notification, the challenge can be brought before the court. The latter case does as a rule not include a direct discussion between the challenging party and the arbitral tribunal.

enforcement encompasses the lack of impartiality or independence of an arbitrator.[8]

25. In practice, however, this court control appears to be rather theoretical. In none of the more than 330 court decisions from 23 Contracting States reported in the Yearbook Commercial Arbitration to date, has a court refused enforcement on account of a lack of independence or impartiality of an arbitrator. In this connection, the courts frequently apply the narrow criterion of international public policy.

B. Institutional Challenge Procedures

26. As observed, most arbitral institutions provide for a challenge procedure within the framework of the institution.

An example is the Court of Arbitration of the International Chamber of Commerce whose Rules (in effect as of 1 January 1988) contain an improved challenge procedure to be brought before, and to be decided by, the Court of Arbitration.[9]

27. Institutional challenge procedure should, however, be compatible with the applicable arbitration law which, as explained before, can be deemed in most cases to be the arbitration law of the place of arbitration. The issue is whether, and if so to what extent, an arbitral institution can provide its own challenge proceedings. Basically, three systems can be said to exist in this respect.

(i) Challenge to be decided exclusively by a court

28. Arbitration acts of certain countries provide that a court has exclusive jurisdiction to decide on the challenge of an arbitrator. I understand this to be the case, for example, under the Swiss Concordat on Arbitration of 1969.[10] It means that provisions in arbitration rules pursuant to which the arbitral institution rules on a challenge cannot be applied if the place of arbitration is located in such country.

29. The advantage of this system is that in case of institutional arbitration the arbitral proceedings will not be delayed by proceedings in two instances, i.e., first, the arbitral institution and, second, the court.

30. A disadvantage of this system in the context of international arbitration is that a court may have views on the impartiality or

8. See the author of this contribution, The New York Arbitration Convention of 1958 (Deventer 1981) p. 377; see also the same author, Commentary Court decisions New York Convention 1958, Article V sub ground 2 '2, which appears annually in Part V of the Yearbook Commercial Arbitration.

9. The challenge provisions are contained in Art. 2(8)–(9) of the ICC Rules.

10. R. Briner, National Report Switzerland, in the International Handbook on Commercial Arbitration, p. 8. The Swiss International Arbitration Law of 1987 provides in Article 180(3):

"To the extent that the parties have not made a provision for this challenge procedure, the judge at the seat of the arbitral tribunal shall make the final decision."

According to M. Blessing, The New International Arbitration Law in Switzerland, 5 Journal of International Arbitration (1988) p. 9 at 40, this provision has the effect that "In respect of the challenge procedure the agreement by the parties has priority. This means that, in the case of ICC arbitration, the ICC's exclusive competence to rule on a challenge is now fully recognized."

independence of an arbitrator which differ from the views of courts in other countries and, in particular, from those of the international arbitral institution concerned. An arbitral institution will have an interest in having a uniform concept of impartiality and independence which can be applied to all arbitrations administered by it, irrespective of the place of arbitration. Such uniformity will be lost if courts in various countries interpret differently the requirements of impartiality and independence.

(ii) Challenge to be decided exclusively by arbitral institution

31. The system whereby the arbitral institution decides exclusively on a challenge without court interference, is implied in the French law on international arbitration of 1981.[11] This system means, for example, for ICC arbitration that the ICC Court of Arbitration is the sole judge for challenges brought against ICC arbitrators if the place of arbitration is situated in France.[12]

32. The advantage of this system is that it limits the challenge procedure to one instance and that, as a consequence, the delay in the arbitral proceedings can be minimized (provided that the arbitral institution can act with due dispatch on a challenge brought before it). The advantage of having a uniform concept of impartiality and independence was mentioned above. That advantage, however, can be attained only if a fairly large number of countries accept an exclusive competence of an institutional decision on a challenge. At present, this is not the case since very few countries appear to be prepared to adopt this approach.

33. A disadvantage of this system can be that the legal status of the institution's decision on the challenge may be uncertain. This gives rise to the question whether a court is bound by such decision, in particular in proceedings after the award is made. Perhaps, a French court may not be allowed to review in enforcement or setting aside proceedings relating to the arbitral award a decision of the ICC Court of Arbitration rejecting a challenge. But would a foreign court be obliged to give a binding effect to such decision in enforcement proceedings under the New York Convention of 1958?

34. A different question of a more fundamental nature is whether a court control over an institutional decision on an arbitrator's challenge is necessary at all. With due respect to those arbitral institutions which carry out their functions with great diligence on the basis of longstanding experience, they are nevertheless composed of private individuals. The principle still remains that the trial of disputes is a prerogative of State courts. That prerogative can be attributed to private mechanisms of doing justice by national legislators. In the international context, the same can be achieved by international conventions amongst States (e.g., the Washington Convention of 1965) but not otherwise.

11. Y. Derains, National Report France, in International Handbook on Commercial Arbitration p. 11.

12. The same principle seems to prevail under the Swiss International Arbitration Law of 1987. See n. 10 supra.

35. It would, in my opinion, be wishful thinking to consider that at present an international arbitration system can effectively exist outside the reach of national legislation and/or international conventions. Since the impartiality and independence are the cornerstones of arbitration, a State court should have the last word thereon, whether during the arbitration or after the award is made.

(iii) Challenge to be decided by arbitral institution with a possibility of recourse to a court against the institutional decision on the challenge

36. Most arbitration acts provide a system by which the parties may agree on a challenge procedure, which includes a third person (usually an arbitral institution) who decides on the challenge. The challenge can, however, subsequently be brought before the court, since recourse to the court cannot be excluded by agreement of the parties.[13]

37. This system can, for example, be found in Art. 13 of the UNCITRAL Model Law on International Commercial Arbitration of 1985:

> "1. The parties are free to agree on a procedure for challenging an arbitrator, subject to the provision of paragraph (3) of this article.
>
> "2. Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in Art. 12(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.[14]
>
> "3. If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in Art. 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award."

13. This system can be deemed to prevail under the Netherlands Arbitration Act 1986 as well. Although the text of Art. 1035 of the Act does not provide expressly for a challenge procedure agreed to by the parties, it is assumed that such procedure is to be followed before a challenge can be brought to the President of the District Court. It is also assumed that the President will generally follow the institution's decision on the challenge. If the time limit for bringing the challenge before the President will expire before the institution has taken a decision on the challenge, the request for a challenge should be filed pro forma with the President with the request to suspend the proceedings until the institution has given a decision. See P. Sanders and A.J. van den Berg, The Netherlands Arbitration Act 1986, [n.31 (1987)].

14. I consider it rather unfortunate that the arbitral tribunal is to decide on the challenge under the UNCITRAL Model Law. See text accompanying no. 7 supra.

38. The advantage of this system is that an arbitral institution has the opportunity to decide on the challenge. In case of respectable arbitral institutions, it is likely that a court will follow the institution's decision. This advantage promotes the desired degree of uniformity in the concept of impartiality and independence in international institutional arbitration. It also has the advantage that a court can exercise a certain control over arbitral institutions which take their functioning less seriously. Furthermore, once the court has decided on the challenge, the question of impartiality or independence is not likely to arise any more during the arbitration and after the award is made (unless other circumstances affecting the impartiality or independence come up).

39. A disadvantage of this system is that it may delay the arbitral proceedings since two instances—the arbitral institution and the court—can be called upon to decide on the challenge.

40. A question for the above system is whether the court should examine the question of impartiality and independence *de novo* or should limit itself to a marginal review of the institution's decision on the challenge. Under the former method, the court may take into account the institution's decision as persuasive authority but nevertheless engage in its own examination of the circumstances giving rise to the doubts as to the arbitrator's impartiality or independence. This type of examination seems to prevail in virtually all countries which adhere to the above system. Under the marginal control method, the court would limit its review to whether a reasonable arbitral institution could have come to the decision.

41. In my view, the method of an examination *de novo* is to be preferred since, although the court is likely to reach the same conclusion as the arbitral institution, it alleviates any doubt about the correctness of the institution's decision. Such a clear situation is beneficial for the remainder of the arbitral proceedings. Moreover, the question then is less likely to be raised successfully again after the award is made, than could be done if the court's review were marginal only. The method of an examination *de novo* would also be more in line with the court's control over this fundamental aspect of the arbitral process.

Some Other Procedural Aspects

42. Besides the differing statutory systems for the challenge procedure, some other differences merit brief mention.

(a) Time limits

43. Certain arbitration acts contain a time limit for bringing a challenge against an arbitrator. For example, the Swiss Statute on International Arbitration of 1987 provides in Art. 180(2) that "The ground for challenge must be notified to the arbitral tribunal and the other party without delay". Other Acts do not contain such time limits and leave the question of the time limit to the agreement of the parties (which is usually embodied by arbitration rules). An example of the latter is the French law on international arbitration of 1981.

* * *

(b) Challenge of a party-appointed arbitrator

46. Most arbitration acts provide that a party may not challenge an arbitrator whom he has appointed, except on a ground which came to that party's attention after such appointment. This is, for example, the case for the Swiss Statute on international arbitration of 1987 (Art. 180(2)) and the Netherlands Arbitration Act 1986 (Art. 1033(2)). Other Acts, such as the French law on international arbitration, are silent in this respect.

47. The ICC Rules do not contain a provision regarding the challenge of a party-appointed arbitrator either. Consequently, if an ICC arbitration takes place in a country where the arbitration act does not impose limitations on the party's right to challenge the arbitrator appointed by him, this may open the door to a delaying tactic by that party—enabling him to appoint and subsequently challenge a biased arbitrator.

(c) Suspension of arbitral proceedings

48. The UNCITRAL Model Law of 1985 and the Netherlands Arbitration Act 1986 contain express provisions on the question of the effect of the bringing of a challenge on the arbitral proceedings. Art. 13(3) of the Model law provides in pertinent part: "While such a request (for a challenge) is pending (before the court), the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award". Art 1035(1) of the Dutch Act provides: "The arbitral tribunal may suspend the arbitral proceedings as of the day of receipt of the notification (of the challenge)". Thus, the tribunal has a discretionary power to suspend the proceedings in the case of a challenge. It may decide to continue the proceedings notwithstanding the challenge, for example, if the challenge appears prima facie unjustified.

49. The Rules of the Netherlands Arbitration Institute contain a similar rule on suspension of proceedings pending a challenge.[16] On the other hand, the ICC Rules and UNCITRAL Rules are silent in this respect. ICSID Arbitration Rules provide for an automatic suspension of the proceedings until a decision has been taken on the proposal for disqualification of an arbitrator.[17]

CONCLUSIONS

50. Court control over the impartiality and independence of an arbitrator is indispensable. This principle is not different for international arbitration unless another control mechanism is provided on the basis of an international convention such as the Washington Convention of 1965.

51. The procedure for bringing a challenge is provided to a differing degree of detail in the various arbitration acts. Furthermore, the

16. NAI Rules, ART. 19(5).

17. ICSID Arbitration Rules, Rule 9(6).

arbitration acts differ as to whether, and if so to what extent, a challenge procedure can be entrusted to an arbitral institution. In the international context, it emphasizes the need for a careful choice of the place of arbitration.

52. The provisions in the challenge procedure in the various arbitration rules also vary. Some are rather succinct, thereby creating uncertainties; others are more detailed.

53. It seems to me that a fairly large number of arbitral institutions should review the challenge proceedings provided in their rules. The better the institutional challenge procedures are regulated, the more likely it is that courts will follow an institution's decision on a challenge. This attitude of the courts will be beneficial to international arbitral institutions in the sense that they can establish an internationally uniform interpretation and application of the grounds for challenging arbitrators and that it may deter challenging parties from bringing unmeritorious challenges before a court.

Questions and Comments

1. Assume the UNCITRAL Model Law applies. Suppose the parties choose ad hoc arbitration and do not choose any arbitral rules. Who decides on a challenge to an arbitrator? Does the challenged arbitrator participate in the decision? If the parties, still in ad hoc arbitration, had chosen UNCITRAL Rules, how would this have affected the challenge procedure?

2. At what point in the arbitration process are courts competent to decide a challenge to an arbitrator? In New York Convention countries can the issue be raised on enforcement of the award? Under what provision of the Convention? If a challenge has previously been decided by the arbitrators themselves or by an arbitral institution, how much deference to that decision should a court give in enforcement proceedings? Should courts be authorized to decide on challenges before or during arbitral proceedings?

III.3.b. Challenges—How Conclusive Is the Challenge before the Arbitral Institution?

REFINERIES OF HOMS AND BANIAS (SYRIA) v. INTERNATIONAL CHAMBER OF COMMERCE[g]

Tribunal de grande instance of Paris, March 28, 1984; Court of Appeal, Paris, May 15, 1985.
Mealey's Int'l Arb'n Rep. 502 (1986).*

TRIBUNAL DE GRANDE INSTANCE OF PARIS, MARCH 28, 1984—SUMMARY AND EXTRACTS.

In this arbitration between a Syrian party and a Yugoslav party, the Court of Arbitration granted a request for the recusation of the arbitra-

g. 1985 Revue de l'arbitrage 140.

* Mealey's International Arbitration Report. Reprinted with the permission of LexisNexis, a division of Reed Elsevier Inc.