Case Note

SETTING ASIDE PRELIMINARY RULINGS ON JURISDICTION

International Research Corp plc v Lufthansa Systems Asia Pacific Pte Ltd
[2014] 1 SLR 130

and *PT Asuransi Jasa Indonesia (Persero) v Dexia Bank SA*
[2007] 1 SLR(R) 597

Following *PT Asuransi Jasa Indonesia (Persero) v Dexia Bank SA* [2007] 1 SLR(R) 597, it has been assumed that preliminary rulings on jurisdictions are incapable of being set aside in the same way that an arbitral award can because such rulings are not on the substance of the dispute which is what an award is defined as. However, this assumption came under some scrutiny recently in the High Court and Court of Appeal's decisions in *International Research Corp plc v Lufthansa Systems Asia Pacific Pte Ltd* [2014] 1 SLR 130. The aftermath of the Court of Appeal's decision leaves no doubt that the court has the power to overturn a tribunal's preliminary ruling. However, it arguably left open the question of whether a preliminary ruling can be set aside in the same way that an award can. This note suggests that the better view is that such preliminary rulings can be characterised as awards so-called with the corollary that it can be set aside in the conventional sense as understood in arbitration *lingua franca*.

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I. Introduction

1 The Singapore Court of Appeal's recent decision in *International Research Corp plc v Lufthansa Systems Asia Pacific Pte Ltd*[1] ("*IRC*") will no doubt be remembered for its departure from the strict rule that incorporation of an arbitration agreement in one contract into

* The views expressed in this note are the author's own and do not necessarily reflect the view of his colleagues and/or superiors.

1 [2014] 1 SLR 130.

another will only be recognised if there is specific mention in the latter contract of the arbitration agreement.[2] Prior to *IRC*, the law in Singapore as expressed by the Court of Appeal in *Star-Trans Far East Pte Ltd v Norske-Tech Ltd*[3] was that clear and express reference to an arbitration clause contained in one contract was required before a court would find that the clause had been incorporated into a separate contract in "two-contract" cases. The impact of this decision on the drafting of agreements in two-contract relationships will be significant. Commentaries analysing this aspect of the court's decision can be expected. However, an aspect which may not receive as much attention is the court's decision on the extent of its powers to deal with an arbitral tribunal's preliminary ruling on jurisdiction made pursuant to Art 16(3) of the 1985 United Nations Commission of International Trade Law ("UNCITRAL") Model Law on International Commercial Arbitration[4] ("Model Law"). Although the effect of this issue might at first blush seem less significant than the main holding on incorporation, it should not be. Any decision which pronounces on the extent of a court's power to intervene in an arbitration is always noteworthy because of the contribution to the understanding of the arbitration architecture in Singapore that governs the courts' interaction with arbitral tribunals which such decisions will inevitably make.

II. Summary of issue

2 At the High Court, the judge noted that while parties had a right to apply to the court to challenge a preliminary ruling on jurisdiction pursuant to s 10 of the International Arbitration Act[5] ("IAA"), it was unclear whether the court has the power to "set aside" the tribunal's ruling on jurisdiction should the court disagree with the tribunal's decision.[6] This was an issue because the applicant who was challenging the tribunal's decision that it had jurisdiction had sought an order that the tribunal's preliminary ruling be set aside. The judge's concern was that s 10(3) only states that the High Court may "decide the [application]"; nowhere in the section nor the IAA prescribes the remedy which the court could give in the event that it disagreed with the tribunal's decision. That, on its own, may not be a bar to the exercise of a power to set aside the tribunal's preliminary ruling. However, there was one other complication acting on the High Court. In another Court of Appeal decision which was binding on the High Court, *PT Asuransi*

2 *International Research Corp plc v Lufthansa Systems Asia Pacific Pte Ltd* [2014] 1 SLR 130 at [19]–[34].
3 [1996] 2 SLR(R) 196.
4 UN Doc A/40/17, Annex I (21 June 1985).
5 Cap 143A, 2002 Rev Ed.
6 *International Research Corp plc v Lufthansa Systems Asia Pacific Pte Ltd* [2013] 1 SLR 973 at [111]–[113].

Jasa Indonesia (Persero) v Dexia Bank SA[7] ("*PT Asuransi*"), it was held that for an instrument made by an arbitral tribunal to be capable of being set aside as an award under the IAA, it must "deal with the substance of the dispute". If it does not, it cannot be characterised as an award with the corollary that the instrument will not be subject to the usual recourses against an award which includes setting aside. The Court of Appeal agreed with the *amicus curiae* who had submitted that the *travaux préparatoires* of the Model Law demonstrated than an award does not include a preliminary ruling on jurisdiction. It followed therefore that even if the court disagreed with the tribunal's decision, it could not set aside the tribunal's ruling.[8] The High Court in *IRC* thus observed that the applicant's relief of setting aside was a term of art which applied only to *awards* and not preliminary rulings. Ultimately, this did not have any bearing on the High Court's decision as the judge agreed with the tribunal's preliminary ruling that it had jurisdiction.

3 This, however, was an issue for the Court of Appeal because it overturned the judge's decision on the facts and held that the tribunal did not have jurisdiction. Although both parties accepted that the court could give such a relief and more importantly declined to invite the court to revisit its decision in *PT Asuransi*,[9] it is self-evident that parties cannot confer on a court of law a power which the court does not have. Thus, the question of whether the Court of Appeal could set aside the tribunal's preliminary ruling remained live. The court answered this in the affirmative, albeit only briefly:[10]

> The expression 'set aside' or 'setting aside' is used in many different contexts. Understandably, it does not always mean the same thing. As with so many things, its meaning must depend on the context in which it is used and, in particular in this case, on *what* is being set aside. An application to the court to decide on the jurisdiction of an arbitral tribunal pursuant to s 10 of the IAA read with Art 16(3) of the Model Law 1985 is a perfectly legitimate means of challenging an arbitral tribunal's preliminary ruling on jurisdiction. It is immaterial in this context that, as a matter of form, the relief sought is expressed in terms of setting aside the arbitral tribunal's decision on jurisdiction.
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> It was evident to us that in praying for the Tribunal's positive ruling on jurisdiction to be set aside, the Appellant was merely asking that the Tribunal's positive ruling be reversed and that the court decide otherwise than the Tribunal had done. This much, it is clear, the court

7 [2007] 1 SLR(R) 597.

8 *PT Asuransi Jasa Indonesia (Persero) v Dexia Bank SA* [2007] 1 SLR(R) 597 at [62] and [68].

9 *International Research Corp plc v Lufthansa Systems Asia Pacific Pte Ltd* [2014] 1 SLR 130 at [67]–[68].

10 *International Research Corp plc v Lufthansa Systems Asia Pacific Pte Ltd* [2014] 1 SLR 130 at [69]–[70].

> is empowered to do under the rubric of 'decid[ing] the matter' in Art 16(3) of the Model Law 1985 …
>
> [emphasis in original]

In effect, the court was saying that in giving the court the power to "decide the matter", *ie*, determine challenges to tribunal's preliminary rulings on jurisdiction, the IAA had conferred on the court the power to set aside those preliminary rulings. The holding in *PT Asuransi* that only awards which *did not include preliminary rulings* could be set aside was not directly on point because the application there was to set aside pursuant to s 24 of the IAA, a provision which deals with the setting aside of awards. Following *IRC* and *PT Asuransi*, it would appear that a party can possibly make two *different* types of setting aside applications: (a) preliminary rulings, pursuant to s 10; and (b) awards, pursuant to s 24.

III. Comments

4 As both sets of lawyers in *IRC* took the position that a preliminary ruling could be set aside, it may be surmised that the court was not given very much assistance in terms of authorities and background to s 10 and the key phrase, "decide the matter". It is respectfully suggested that the phrase "decide the matter" in s 10(3), which can be traced to Art 16(3) of the Model Law, does not expressly confer on the court the power to set aside preliminary rulings *simplicter*. That said, preliminary rulings can be set aside when s 10(3) is read in conjunction with s 24 and Art 34, which governs the setting aside of arbitral awards. In other words, the proposition established by *PT Asuransi* is not entirely accurate and should be disapproved.

5 Before proceeding any further, it might assist to spell out the relevant parts of s 10 of the IAA and Art 16(3) of the Model Law:

> **Appeal on ruling of jurisdiction**
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> **10.**—(1) This section shall have effect notwithstanding Article 16(3) of the Model Law.
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> …
>
> (3) If the arbitral tribunal rules —
>
> (*a*) on a plea as a preliminary question that it has jurisdiction; or
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> (*b*) on a plea at any stage of the arbitral proceedings that it has no jurisdiction,
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> Any party may, within 30 days after having received notice of that ruling, apply to the High Court to decide the matter.

Article 16(3) of the Model Law reads as follows:

> **Article 16. Competence of arbitral tribunal to rule on its jurisdiction**
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> (3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this Article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in Article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

A. "Decide the matter"

6 Although the parliamentary material does not make clear where the phrase "decide the matter" in s 10(3) was derived, it is likely to have been inspired by Art 16(3), where the very same phrase can be found. Section 10 as it stands and as it stood previously before it was amended in 2012 specifically refers to Art 16(3) as the controlling provision. Although the phrase was only inserted during the amendment in 2012, the parliamentary material then does not clarify what the phrase means. What is clear, though, is that the rationale for the amendment was to enable applicants to challenge negative rulings on jurisdiction which was, as will be remembered, the very problem faced by the applicant in *PT Asuransi*.

7 Given that the phrase was borrowed from Art 16(3), regard should be had to Model Law *travaux* to discern the meaning of the phrase. Unfortunately, it is not entirely clear what the Working Group on International Contract Practices ("the Working Group") – who were behind the drafting of the Model Law – had in mind when they drafted that phrase. It is true, as the *amicus curiae* submitted in *PT Asuransi*, that the Working Group discussed but omitted to insert "award" into Art 16(3). However, that does not necessitate the conclusion that preliminary rulings ought *not* to be characterised as awards for the purposes of Art 16(3). The Working Group was in fact alive to the fact that the definition of "award" would have implications on various recourses which parties may have. Articles 34 (on setting aside) and 16 were expressly mentioned.[11] They did not define "award" only because it was late in the day and they had a "lack of time".[12] The inference invited

11 United Nations Commission on International Trade Law ("UNCITRAL"), *Report of the Secretary-General: Analytical Commentary on Draft Text of a Model Law on International Commercial Arbitration* (UN Doc A/CN.9/264) (25 March 1985) at p 72, para 3.

12 UNCITRAL, *Report of the Secretary-General: Analytical Commentary on Draft Text of a Model Law on International Commercial Arbitration* (UN Doc A/CN.9/264) (25 March 1985) at p 72, para 3.

to be drawn by the omission is therefore, with respect, relatively flimsy. Instead, once attention is trained onto the evolution of Art 16(3) through the drafting process, the deep connection between preliminary rulings, awards and setting aside becomes hard to ignore.

8 The starting point of this tracing exercise is the *Analytical Compilation of Comments by Governments and International Organisations*.[13] At that time, under the wording of the draft Art 16(3) then, the tribunal could rule on its jurisdiction as a preliminary question *or* in an award on the merits but in either case, that decision can only be challenged in setting aside proceedings. This meant that even if a tribunal had ruled on jurisdiction at an earlier stage, that ruling could only be challenged together with the final award subsequently. In response to this, the Austrian representative expressed the view that:[14]

> … the arbitral tribunal should have the possibility to rule on its jurisdiction as a preliminary question *in the form of an award. Such a ruling by the arbitral tribunal could then immediately be contested by any party in an action for setting aside under article 34*. [emphasis added]

9 The next development came in the form of the Secretary-General's Report ("the Report") in the *Analytical Commentary*.[15] The Report recommended that the tribunal shall have the discretion to cast its ruling "*in the form either of an award, which would be subject to instant court control*, or of a procedural decision which may be contested only in an action for setting aside the later (final) award on the merits" [emphasis added].[16] There is no mistaking the similarity between the Working Group's recommendation and the Austrian proposal. However, the Report also quickly noted that the present wording of Art 16(3) does not give the arbitral tribunal that option.[17] This was because the current wording only allowed for challenges against the rulings on jurisdiction at the setting aside of the final award. Notwithstanding, it is apparent

13 UNCITRAL, *Report of the Secretary-General: Analytical Compilation of Comments by Governments and International Organizations on the Draft Text of a Model Law on International Commercial Arbitration* (UN Doc A/CN.9/263) (19 March 1985).

14 UNCITRAL, *Report of the Secretary-General: Analytical Compilation of Comments by Governments and International Organizations on the Draft Text of a Model Law on International Commercial Arbitration* (UN Doc A/CN.9/263) (19 March 1985) at p 29, para 7(a).

15 UNCITRAL, *Report of the Secretary-General: Analytical Commentary on Draft Text of a Model Law on International Commercial Arbitration* (UN Doc A/CN.9/264) (25 March 1985).

16 UNCITRAL, *Report of the Secretary-General: Analytical Commentary on Draft Text of a Model Law on International Commercial Arbitration* (UN Doc A/CN.9/264) (25 March 1985) at p 41, para 14.

17 UNCITRAL, *Report of the Secretary-General: Analytical Commentary on Draft Text of a Model Law on International Commercial Arbitration* (UN Doc A/CN.9/264) (25 March 1985) at p 41, fn 59.

that the Working Group recognised a distinction between those preliminary rulings which could attract court intervention instantly, and others which could not. The criterion was that the former be in the form of an award.

10 Finally, the core of the thinking manifested in the final few meetings which took place before the Model Law was finalised and accepted by the UNCITRAL demonstrates that the setting aside of preliminary rulings *qua awards* was one of the methods of curial intervention under Art 16(3).[18] At the 309th meeting, on the topic of Art 16(3), the US representative, Holtzmann (who went on to co-author one of the leading commentaries on the UNCITRAL Model Law), stated that the compromise solution suggested by the Working Group would:[19]

> … enable the arbitral tribunal to decide the matter of its own jurisdiction *either in an interlocutory award, which would allow the parties immediate recourse to the court*, or in a less formal decision, which *would not*. [emphasis added]

The compromise solution referred to by Holtzmann was the suggestion recommended in the *Analytical Commentary* above.[20] Again, what this means is that if the tribunal finally determined the full merits of the jurisdictional challenge as a preliminary question *and* reflected their final decision in the form of an *award*, that decision would be susceptible to the setting aside challenges under Art 16(3) read with Art 34. However, if the tribunal determined it as a preliminary question in another way, *ie*, not in the form of an award which carries with it the final and binding connotation, that ruling may not be challenged immediately even if it may be challenged together with the final award on the merits.[21] The Chairman concluded the discussion in the 316th meeting by noting that the majority of the participants favoured the Austrian proposal. He suggested that Art 16(3) be amended accordingly, with assistance to be provided by the Austrian representative.[22]

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18 "Summary Records for Meetings on the UNCITRAL Model Law on International Commercial Arbitration" in *Yearbook of the United Nations Commission on International Trade Law* vol XVI (1985).

19 "Summary Records for Meetings on the UNCITRAL Model Law on International Commercial Arbitration" in *Yearbook of the United Nations Commission on International Trade Law* vol XVI (1985) at p 440, para 59.

20 See n 16 above and accompanying text.

21 The Indian representative, Sekhon, said that his delegation believed that it was the "substance of the order [*ie*, the decision reflecting the preliminary ruling] which mattered and not the form": "Summary Records for Meetings on the UNCITRAL Model Law on International Commercial Arbitration" in *Yearbook of the United Nations Commission on International Trade Law* vol XVI (1985) at p 442, para 22.

22 "Summary Records for Meetings on the UNCITRAL Model Law on International Commercial Arbitration" in *Yearbook of the United Nations Commission on International Trade Law* vol XVI (1985) at p 443, para 29.

11 After its amendment into the present version, Art 16(3) was passed and accepted by the UNCITRAL at its 18th session.[23] While there is no direct explanation for how the phrase "decide the matter" was eventually selected by the drafters, the foregoing background context makes clear two things. First, there was a preponderance of views towards tying immediate court control to the characterisation of the preliminary ruling as an award. Second, there was *no* mention whatsoever that the court of the seat before which challenges to preliminary rulings would be brought had the *discretion* to decide the relief which could be granted. Thus, it is respectfully suggested that the better view is that the intention behind Art 16(3) and the phrase "decide the matter" is that preliminary rulings are capable of being set aside *qua* awards, *as long as* – and this is a vital precondition – it is clear that the tribunal has finally determined the question of jurisdiction in its preliminary ruling in a manner that engages Art 16(3).

12 This approach also avoids the thorny question of what exactly are the legal effects of setting aside a preliminary ruling on a basis other than as an award: Does it render the preliminary ruling a nullity in the same way that setting aside of an arbitral award does? Can a court outside of the seat of arbitration nevertheless enforce a preliminary ruling as an award if the ruling is deemed to be an award under that jurisdiction's law, notwithstanding that it has been set aside at the seat *not* as an award under s 24 but as a preliminary ruling under s 10? This is not just an academic question, as the Court of Appeal clarified shortly thereafter in another seminal decision, *PT First Media TBK v Astro Nusantara International BV*.[24] The court there recognised that "certain types of recourse such as setting aside only apply to awards properly so-called", because of which there arose a question of whether certain decisions whether in the form of orders, rulings or awards could engage those recourses.[25]

B. Substance of the dispute and merits of the dispute

13 It only remains for one further point to be addressed briefly. One of the reasons for the proposition established in *PT Asuransi* that preliminary rulings are not awards is that they are not on "substance or *merits* of the dispute" [emphasis added].[26] The *amicus curiae* had submitted that this was an application of the definition of an award contained in s 2(1) of the IAA. "Award" is defined in s 2(1) as:

23 UNCITRAL, *Report of the United Nations Commission on International Trade Law on the Work of Its Eighteenth Session* (UN Doc A/40/17) (Vienna, 3–21 June 1985) at para 161.

24 [2014] 1 SLR 372.

25 *PT First Media TBK v Astro Nusantara International BV* [2014] 1 SLR 372 at [229].

26 *PT Asuransi Jasa Indonesia (Persero) v Dexia Bank SA* [2007] 1 SLR(R) 597 at [62].

> … a decision of the arbitral tribunal on the substance of the dispute and includes any interim, interlocutory or partial award but excludes any orders or directions made under section 12.

The court in *PT Asuransi* appears to have equated *substance* of the dispute with *merits* of the dispute. With respect, the substance of the dispute does not have to be the same as the *substantive dispute* or what is more commonly referred to as the *merits* of the dispute, whether linguistically or conceptually. Generally, there are three types of disputes which abound in arbitrations. The first is the underlying dispute for which parties resort to the arbitration. The second is dispute over the tribunal's jurisdiction. The third is dispute over procedure. The substance of the dispute should not be limited to disputes over the underlying claim; it should include any dispute that is *by nature* substantive as opposed to procedural.

14 It is easier to define what is substantive by defining what is procedural and therefore not substantive. Procedural disputes or disputes over procedure cover submission timelines, admissibility of evidence, discovery obligations, interim injunctions and the like. It is clear that these disputes are not substantive; this explains why the Model Law and national legislations have specific regimes governing such procedural orders.[27] For example, Art 19 of the Model Law confers on the tribunal broad powers to conduct the arbitration in such manner as it considers appropriate. In addition to that, s 12(1) of the IAA prescribes certain express powers of the tribunal which, when given, may be enforceable by the court via s 12(6). Hence, there is no gainsaying that the list of issues under s 12(1) are procedural, and would not go to the "substance of the dispute" requirement. Questions of jurisdiction, however, are a different creature. The right to compel another party to arbitrate a dispute and, conversely, the right to claim or defend oneself in a court of law and not be subject to arbitration are rights that are in the same category as the right to damages for breach of contract. The former are as much substantive as the latter.

15 Not only does the *travaux* suggests that the Working Group and UNCITRAL had at various points recommended characterising preliminary rulings as awards which could then be set aside as has been alluded to earlier,[28] there is nothing in the Model Law which can sustain an objection to characterising a decision on the substance of a *jurisdictional* dispute as an award.[29] If the parties have submitted their

27 The enforcement of certain orders is governed by ch VI of the UNCITRAL Model Law on International Commercial Arbitration 2006 (UN Doc A/61/17) Annex I (7 July 2006).

28 See nn 13–23 above and accompanying text.

29 There are two references to "substance of the dispute" in the Model Law on International Commercial Arbitration (UN Doc A/40/17, annex I; UN Doc (*cont'd on the next page*)

full arguments on the jurisdictional dispute, and the tribunal has considered them in full, what is contrary to arbitration principles or is so objectionable about calling the tribunal's decision one that is on the substance of *that* dispute and therefore an award under the IAA? The English Arbitration Act 1996[30] ("EAA"), which incorporates some but not all elements of the Model Law, certainly does not view that as a problem, and rightly so. Under s 31(4) of the EAA, where an objection is:

> … taken to the tribunal's substantive jurisdiction and the tribunal has power to rule on its own jurisdiction, the tribunal may—
>
> (a) rule on the matter in an *award* as to jurisdiction, or
>
> (b) deal with the objection in its award on the merits.
>
> [emphasis added]

That the language closely mirrors Art 16(3) is not pure coincidence. Section 31 was intended to replicate Art 16(3), as the Departmental Advisory Committee on Arbitration Law confirmed in its *Report on the Arbitration Bill*.[31] This award on jurisdiction may then be challenged under s 67, following which the court may confirm, vary or set aside the award in whole or in part. Neither principle nor policy stands in the way of the Singapore courts should they wish to interpret s 10 in the same manner.

16 A brief explanation on the position towards negative preliminary rulings on jurisdiction, *ie*, decisions by the tribunal that it does not have jurisdiction, is apposite for completeness. A law reform committee in Singapore has suggested that such decisions are not on the substance of the dispute as a tribunal which decides that it has no jurisdiction cannot make a decision that is binding. The committee, however, recommended that such decisions be amenable to judicial review.[32] Its recommendation, which was accepted by Parliament, and ultimately found its way into the IAA under s 10(3)(*b*) in 2012, is undoubtedly correct, albeit for a stronger and more direct reason. The reason why a negative ruling cannot be challenged in court – whether as an award or otherwise – was because the drafters of the Model Law did not intend for negative rulings to be captured by Art 16(3) in the first place. The rationale in the *travaux* for excluding negative rulings from

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A/61/17, annex I) (21 June 1985; amended 7 July 2006), *viz*, Arts 8 and 28. However, these references are neutral and do not support or negative the case for characterising preliminary rulings as awards.

30 c 23.

31 Departmental Advisory Committee on Arbitration Law, *Report on the Arbitration Bill* (February 1996) at para 140.

32 Law Reform Committee, Singapore Academy of Law, *Report of the Law Reform Committee on Right to Judicial Review of Negative Jurisdictional Rulings* (January 2011) at para 22.

the purview of judicial review is that once the tribunal has found that it does not have jurisdiction, it would be "inappropriate to compel [the same arbitrators] to continue the proceedings".[33] While it might be profitable from a jurisprudential perspective to query the reasoning behind this limitation for which support for the contrary view is abundant,[34] the point is now moot under Singapore law following the amendments to s 10 in 2012. The opening words of s 10(1) – "This section shall have effect notwithstanding Art 16(3) of the Model Law" – clarifies that whatever the position might be under Art 16(3), s 10(3)(*b*) which allows for judicial review of negative rulings takes precedence. The consequence which would follow the court's decision on a positive ruling of jurisdiction would equally apply to a decision on a negative ruling on jurisdiction.

IV. Conclusion

17 In the final analysis, the outcome in *IRC* is right in that the court may set aside preliminary rulings which are successfully challenged. However, the mechanism by which the preliminary ruling can be set aside need not be premised on an inherent discretion of the court to order any relief it deems fit as part of its mandate to "decide the matter". Rather, it ought to be because jurisdictional objections which are decided on the merits as a preliminary question qualify as decisions on the substance of that jurisdictional dispute for which the range of recourses against awards lie. Setting aside, being one of those recourses, is therefore an available relief for a successful challenge of a preliminary ruling. Unfortunately, the confluence of various factors in *IRC*, particularly the concessions placed before the court by the lawyers that "decide the matter" should be read as a *sui generis* power to order setting aside, contributed to the lost opportunity to revisit *PT Asuransi*. It may be some time before another appropriate case is before the Court of Appeal.

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33 UNCITRAL, *Report of the United Nations Commission on International Trade Law on the Work of Its Eighteenth Session* (UN Doc A/40/17) (Vienna, 3–21 June 1985) at para 163.

34 See, *eg*, Gary Born, *International Commercial Arbitration* vol 1 (Kluwer Law International, 2009) at pp 900–904, 954–955, 963–964 and 985–986.