

# Frustration over Appeal Court move

**E**STHER Mallach from the Hamburg firm Dabelstein & Pasehl said she understood Orient Shipping's frustration at the Argentine Appeal Court decision to reject enforcement of the foreign arbitral award, despite the fact that Argentina had apparently signed up to the New York Convention on Mutual Recognition of Foreign Awards, *writes Christopher Mayer.*

"In our experience German courts — and in particular the Commercial Court Divisions — are familiar with the workings of the New York Convention and would not rule on the merits of the arbitration claim and restrict themselves to issues specifically referred to in the convention when it comes to decide as to whether the award should be acknowledged and declared enforceable.

"Notwithstanding the aforesaid, it is not unheard of that even European Courts can sometimes be a bit reluctant in accepting that



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"This may have its cause in the fact that not all courts are familiar with the New York Convention, especially in areas of commerce where arbitration is not as common a remedy to resolve disputes as within the shipping industry.

"Most problems are encountered when recognition and enforceability are sought in relation to a default award as it opens the respondent [to] the wide and open field to argue

that it was improperly served with the initial claims document, or if the respondent argues that there was no arbitration agreement at all because, for example, the charter party containing the arbitration clause was not signed even though the parties 'lived' the charter party for a significant period of time until the dispute arose.

"In either situation a court unfamiliar with (a) the maritime industry and practice and (b) the workings of the New York Convention may well cause some disruption in the process of recognition and enforcement.

"On the whole, however, we do not have the impression that London arbitration awards are being blackballed by (continental) courts as a matter of course. London arbitration is here to stay.

"Notwithstanding the above, the decision of the Argentinean Appeal Court in the Orient Shipping case may motivate local maritime communities and their arbitration circles to invite the bench (on a friendly basis) in order to introduce or refresh the ins and out of arbitration in general and the New York Convention in particular."