

Opening Address Professor Pieter Sanders

As Chairman of ICCA I should like, first of all, to express my great satisfaction that so many of you have accepted the invitation to participate in this Interim Meeting – twice as many as we had initially anticipated.

No less than 548 participants and 115 accompanying persons have registered. This is certainly due to the great importance of the subject of this meeting. On the other hand, this overwhelming attendance is certainly also due to the thorough preparation of this Interim Meeting. We are grateful to the seven Rapporteurs, all members of ICCA's Council. Each of them has prepared a highly interesting Report on one of the aspects of the UNCITRAL Draft Model Law. Last but not least, our host organization for our meeting, the Association suisse de l'Arbitrage, has done a wonderful job in organizing and preparing what I may call a "massive hearing" on UNCITRAL's Project.

After this official opening meeting, Mr. Sono, Secretary of UNCITRAL, will address you as the first speaker, and after him Professor Szász. Professor Szász has been a highly effective Chairman of the Working Group which elaborated the draft we are going to discuss these two days. He will give you a further general introduction on the subject of our meeting.

The idea of a Model Law on Arbitration is not new. Long ago, in the sixties, when the Council of Europe was preparing what was to become the Uniform Law of Strasbourg, 1966, the ICC had already suggested that it might be preferable not to draft a Uniform Law but a *Model* Law. Drafters of a Model Law have more freedom to introduce in the model the best solutions, which are not necessarily based on the national law of the drafters. In drafting a *Uniform* Law, experience has shown that each of the participants in such a venture tries to see that the Uniform Law will deviate as little as possible from his own national law. This is the reason why Strasbourg ended up with 13 reservations that can be made to the articles of the Uniform Law on Arbitration, apart from the fact that the articles themselves do not always contain the ideal solution. Of course, when drafting a Model Law one is also inspired by one's own law. It may then take an effort to distance oneself from this law and to recognize that another solution, advocated by other participants in the drafting exercise, may be better.

In any case, I believe UNCITRAL made a wise decision in choosing the model law approach. It was, in my opinion, also wise to limit the model to international commercial arbitration, although this creates the problem of distinguishing between national and international. Why wise? Because it provides the opportunity to maintain for national arbitrations the familiar national arbitration system. This may make Governments more inclined to accept the Model Law as such. When the dual system is introduced, domestic arbitrations will still be held under the old national arbitration system. However, a country which has introduced the dual system will, nevertheless, be in a position to attract

international arbitrations as those will be governed by UNCITRAL's generally (I hope!) accepted Model Law.

Of course, no Government is prevented from introducing into its legislation the Model Law for national as well as international arbitrations. What is good internationally may also be good for domestic arbitrations. Maybe this will be the result in the end. But the step-by-step approach as chosen by UNCITRAL, starting with a Model Law for international arbitrations only, has been, in my opinion, the right approach.

UNCITRAL's Project has been split up in seven parts and will be discussed in seven working sessions in the presence of all of you. Such a massive hearing requires quite some self-control from all those who will participate in the debate. For each of the seven subjects there is – as you will have seen from the program – only 90 minutes.

In ICCA's Council meeting of yesterday it was agreed that each of the Rapporteurs will have up to 15 minutes maximum to highlight the issues arising from the subject. After the short introduction of each Report by the Rapporteur, the Chairman will then submit a list of questions to the participants for discussion. In this way we hope to structure the debate of what I called a massive hearing. In order to have as many reactions from the floor as possible, the interventions must be strictly limited to 3 minutes. As 75 minutes are left for the debate on each Report, the limitation of the speakers to 3 minutes will make a maximum of 25 interventions per Report possible. Besides these oral interventions, participants who did not have an opportunity to take the floor may submit, immediately after each session, their observations in writing.

The discussion on UNCITRAL's Project will take place on the basis of the final version of the Model Law, as prepared by the Working Group in February of this year. Those who registered in time have already received this final version together with the seven Reports. Copies of the final version have been made available here, both in English and in French. In order to avoid confusion, all interventions should be based on this final version. Not only criticism but also approval of solutions as proposed by the draft Model Law or approval of suggestions made by the Rapporteurs, will be welcome. In-depth criticism on a well defined and specific issue should indeed be possible within 3 minutes, and approval may be even briefer.

All the interventions and the general trend resulting from them will be summarized for each of the seven sessions separately by its Chairman during our closing meeting on Saturday morning. To assist our Chairmen in the drafting of their summing-up report for the Saturday morning meeting, our very efficient organizing committee has provided a qualified assistant for each Chairman. You, in turn, may assist the assistant by drafting yourself in a few lines the gist of your intervention!

Why do I go into so much detail? Because very soon after this interim meeting a Book will come out, containing the seven Reports and the seven summing-ups of the interventions. Speedy publication is required, as in the course of this year Governments are to be consulted on the final version of the Working Group. The seven Reports and your interventions as summed up after each Report, will be of great interest also for Governments when submitting their reaction to

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UNCITRAL. It will not be until 1985 that a Conference will be held where Governments will establish and, hopefully, by general consent, approve a final text of the Model Law. What has been said in Lausanne may, therefore, be of influence on the final text of the Model Law.

The *Lausanne Congress Book* will be sent to you, free of charge, at the address you have given to the Congress organization. You may receive it as early as September of this year. It will be an ICCA Publication, number 2 in our *Congress Series*. The Report of our seventh Congress, held in 1982 in Hamburg, was number 1 in this new Series.

ICCA has quite a publication program. For carrying out this program ICCA is fortunate to have the cooperation of the Arbitration Section of the inter-university T.M.C. Asser Institute in The Hague. All of you will be aware of our *Yearbooks*, of which Volume IX just came out. This year we started a new publication: the *International Handbook on Commercial Arbitration*. This contains, in loose-leaf form, an updated version of National Reports, previously published in the *Yearbooks*, together with the texts of the arbitration law and all other legal provisions referred to in these Reports. The Binder with the first 6 National Reports just came out. Before the summer the first supplement containing 7 more National Reports will appear, accompanied – in English! – by all relevant legal texts. This *Handbook* will constitute a unique collection of all arbitration laws, worldwide, together with National Reports explaining the arbitral law and practice in each country.

These publications are one of the means by which ICCA strives to achieve its goals: promotion and development of arbitration. Congresses, held every four years (our next Congress will be in New York, May 6–9, 1986), and Interim Meetings held between the Congresses, are another means for the promotion and development of arbitration.

ICCA is an organization of friends, all experts in the field of arbitration. It is governed by a Council composed of 32 members. They come from every part of the world and are selected by cooptation. The number of Council members must be restricted as otherwise ICCA would become unworkable. This means that not all countries where arbitration is practised can be represented on the Council. However, so far, and I am speaking about several decades, ICCA has fulfilled its task satisfactorily. We have held Congresses in Paris, Rotterdam, Venice, Moscow, New-Delhi, Mexico City and Hamburg. Interim Meetings have been held in London, Vienna and Warsaw, and today we start our Interim Meeting here in Lausanne.

The activities of ICCA have been recognized by the United Nations which already quite some time ago gave ICCA the status of a NGO (non-governmental organization under Resolution no. 1296 (XLIV) of the Economic and Social Council of the United Nations on Arrangements for Consultation with Non-governmental Organizations). As such a NGO we, together with several other organizations, are advising UNCITRAL and helping to get the voice of arbitration practice heard when UNCITRAL works on projects in this field. Such was the case at our Congress in New-Delhi in 1975, where the draft of the UNCITRAL Arbitration Rules was discussed. This again will be the case these

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days in Lausanne with the UNCITRAL Project for a Model Law on International Commercial Arbitration.

I herewith declare this interim meeting opened.