

Presentation
of
The first ICCA Lifetime Merit Award
to
Professor Pieter Sanders

Montreal

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Closing Ceremony

*Gerold Herrmann**

Ladies and Gentlemen:

We have reached what in our program is called "Closing Ceremony". Some of you might be sad about having reached the closing. But, in fact, you should all rejoice: the only people who may justifiably be sad are the local taxi drivers. But nobody here in the room. We will first have a wonderful ceremony and only then a short, automatic, painless closing. The reason for the heartbreaking ceremony is that we have amongst us a great man of honour, a laureate who will receive the newly created ICCA Lifetime Merit Award ... and that will in fact be a truly unique event, at least for the foreseeable future.

When I attended my very first ICCA Congress 1982 in Hamburg I was deeply impressed by the fact that the world's leading group of arbitrators took the time during a busy congress to celebrate the seventieth birthday of one of its members. What a decent group of people, I thought.

You can imagine how happy I was when twenty years later my first honourable task as President of ICCA was to congratulate that same person on his ninetieth birthday, again at a special dinner.

And today my happiness is truly unbounded when I am given the opportunity of handing to that very same person the newly created ICCA Lifetime Merit Award. May I now ask our Secretary General to escort Mr. Arbitration, our Pieter Sanders, to the podium.

Dear Pieter, I congratulate you wholeheartedly and give you this very special award on behalf of ICCA, and that means on behalf of all its members. Since you are always present at our meetings, I had, of course, to prepare the matter by written communications. And since signatures may only be used with the consent of the signer, I invited anyone not willing to sign to let me know within a fixed period of time. Instead, I got rousing replies, such as

Ahmed El Kosheri: "I certainly full-heartedly welcome Gerold's initiative toward our mentor and extraordinary figure as honorary President."

Tinuade Oyekunle: "Splendid idea! Professor Pieter Sanders, a father of all, has done a lot to enhance the image of ICCA internationally. It is an award well deserved."

Yves Derains: "As always, Gerold has had a splendid idea. I fully support it."

Ivan Szasz: "It is a wonderful idea. I wholeheartedly support it."

* President of ICCA.

PLENARY SESSION

Giorgio Bernini: "Simply to express my enthusiastic consent to the initiative honouring Pieter Sanders with the newly established ICCA Lifetime Achievement Award. The idea of handing him a silver tray as a token is excellent and I shall be honoured to have my signature engraved on the tray."

Neil Kaplan: "I am delighted to support the gift to Pieter. It's a wonderful and appropriate gesture."

Marc Lalonde: "My first arbitration ever was with Pieter as chairman. What a wonderful experience it was! I think the idea of a special and exclusive gift is more than appropriate in this case."

Martin Hunter: "Of course, I wholeheartedly approve and will not be able to prevent tears coming to my eyes on the occasion."

This is also a good moment to mention that it was Werner Melis who proposed the silver tray and arranged for its perfection, with all the signatures and a Viennese-style rim. Thank you, Werner.

Now to the most important part of our ceremony: the description of the merits of our laureate. He personifies as no one else the development and progress of arbitration.

Already the beginning of his career is of special importance in this respect. When he joined his first law firm, it was then the general practice that new members could freely use the logistical infrastructure of the firm, on the assumption that they had only a few clients, if any at all, of their own. However, in Pieter's case, soon half the law firm was working for him, because he rapidly became known as an expert in this absolutely new field called arbitration.

To describe the following decades of his achievements in arbitration, allow me to quote from my keynote address delivered at the ICCA Congress 1998 in Paris:

"Pieter the Great (also known as Professor Sanders) ... has done (and still does) more than anyone else in the vineyard of international commercial arbitration, as an active arbitrator, as a prolific author of seminal articles and encyclopaedic treatises, and as an expert rule-maker or law-giver.

Here I am thinking in particular of his contribution as main consultant in the preparation of the UNCITRAL Arbitration Rules. It is a tribute to his unmatched expertise and vision that these worldwide used rules, even after twenty-two years, are not in need of revision."

(I should like to add from today's perspective that UNCITRAL currently undertakes a revision and it shows Pieter's largesse to his own product that he has made proposals therefor.)

"At least equally important was his much earlier legislative contribution to the 1958 New York Conference, as one of the veterans we are happy to have with us today, together with Dr. Glossner. When reading the Summary Records of that Conference, one is struck by his insightful and influential interventions that

helped shape provisions which turned out to be of fundamental importance in the years to come: Art. II with its referral instruction to courts so as to enforce arbitration agreements; Art. V with its now classic list of exhaustive grounds for refusing enforcement, to be proven by the opposing party; and the abolition of 'double-exequatur'.

(I am happy to learn from Pieter, however, that it survived as the name of a cocktail, with added pleasure because of my preference for doubles.)

Professor Sanders' foresight is also evidenced by the fact that, anticipating the almost chronic financial crisis of the United Nations, he decided to collect and analyse, in the context of the ICCA Yearbooks, the court decisions applying and interpreting the New York Convention. This invaluable work has later been taken over by his former disciple, Professor van den Berg, while Pieter himself became General Editor of the ICCA Handbook."

By the way, Pieter's influence on the 1958 New York Convention is still very conspicuous today, although subtle. As you know, the title speaks only of arbitral awards, but not of arbitration agreements. The reason is that the important Art. II dealing with agreements was introduced together with other articles during the last part of the conference, based on a draft version invented and typed on a Sunday by the Dutch delegate Pieter Sanders. At that late time, one did not want to change the title of the Convention.

Pieter contributed, also greatly, to the progress at the 1961 Geneva Conference, elaborating the European Convention. In connection with this Conference, a historically significant meeting took place in Chambésy where, although under a different name, ICCA was founded.

Clearly a highlight in the history of ICCA were the eight years (from 1978 to 1986), really the formative years, when Pieter was our President. As former Secretary of UNCITRAL, I remember particularly fondly the good and close cooperation with Pieter in the elaboration of UNCITRAL texts on dispute settlement. As already mentioned, Pieter was our main consultant for the UNCITRAL Arbitration Rules and, I can say, he was the principal draftsman. These Rules are not only the ones most frequently used in ad hoc proceedings, but they are also very widely used in administered or institutional arbitrations. Traditional arbitration institutions offer services under these Rules in addition to their own rules, and the great majority of institutions established or internationalized after 1976 use the UNCITRAL Arbitration Rules as they are institutional rules.

I mention this only because there are still some people on this globe who view the UNCITRAL Rules as ad hoc rules. Only a few weeks ago I was invited by a lawyer to contribute to a new book an article on these Rules to form the first part of a chapter entitled "Ad Hoc Arbitration". And I thought that by now everyone knows the truth: the Rules themselves do not say that they are only for ad hoc proceedings. In fact, there existed for some time two separate drafts, until it was realized that the proceedings themselves are the same; the only differences lie in the appointment of arbitrators and certain administrative formalities which could be dealt with by appropriate additions. When we noted in 1981 that many institutions used our Rules and invented various administrative additions, we drafted and circulated the well-known Recommendations

to assist arbitral institutions in using the UNCITRAL Arbitration Rules. The whole ad hoc saga was really a PR ploy of the ICC and its supporting countries. They also managed to include the reference to "ad hoc" in the relevant General Assembly resolution.

Please excuse me that I elaborate on this issue of ad hoc v. institutional arbitration. It is not only relevant to the background and use of the UNCITRAL Arbitration Rules, but also for ICCA. As you know, for many years we had members in ICCA who were really there as representatives of certain arbitral institutions and remained members even after having left their post in the institution. Since the establishment of IFCAI, the International Federation of Commercial Arbitration Institutions, this is no longer necessary. ICCA can perform a useful role for institutional as well as ad hoc arbitration and act as a kind of world conscience or forum for international commercial arbitration.

Pieter also told me another anecdote concerning the ICC. In 1982 I was asked to give a report at an ICCA Congress, although I was not yet a member of ICCA. The topic was conciliation (since UNCITRAL had just concluded its Conciliation Rules, again with the expert assistance of Pieter Sanders). In my report I spoke of the benign neglect of conciliation at the time and mentioned as one typical example that the ICC did not envisage any fee for the conciliator. The reason given for that gap was that no remuneration was justified for that short ritual before any real proceeding, i.e., arbitration. When Pieter suggested as a member of the ICC Arbitration Commission that the ICC should take the UNCITRAL Conciliation Rules and offer real conciliation services, the answer by its then Secretary-General, Frédéric Eisemann, was: the day we accept a text of the UN, we can close our boutique.

I am happy to report that the relationship between the ICC and UNCITRAL has considerably improved. Obviously, Paris has realized that UNCITRAL is not really a competitor and has made great improvements in the world of arbitration, especially by its Model Law.

Speaking of the Model Law reminds me of another interesting situation showing Pieter's practical no-nonsense approach to problems. One of the most controversial issues was whether a party which was unhappy about an arbitral tribunal's decision that it had jurisdiction should immediately go to court (so as to avoid unnecessary waste of money and time) or only once the award was made (in order to prevent dilatory tactics). Faced with this question Pieter gave the (Dutch law) answer: Of course only at the end, because that party might win in the arbitration and would then, of course, not object to the jurisdiction.

Ladies and gentlemen, you would not get a complete picture of Pieter if I would not tell you that he is by far the most active and industrious member of ICCA, always with useful proposals concerning our publications and congresses. He is indeed a living encyclopaedia of ICCA products. He is also a living encyclopedia of modern art. In fact, he probably has the largest collection thereof, with two museums exhibiting exclusively his objects of art. And he is a great patron of the arts, having discovered many young talents, e.g., Karel Appel, who today ranks as No. 2 on the Dutch hit list after de Kooning.

Moreover, Pieter follows a very strict timetable during the day and still has many plans to realize. When I called him some time ago and asked whether he would come to Montreal (what a question!), he replied that on Thursday 1 June, his son was to be

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given a farewell party as director of the Concertgebouw (Concert Hall) in Amsterdam and that he had to be there, but that he could fly on Friday to Montreal ... as he did, so as to be with us today.

My final remark concerns what I regard as the most touching aspect, which best illustrates what a wonderful human being Pieter is: despite his high age, he continues to care for and to lift himself his charming wife Ida, who is confined to a wheelchair.

Ladies and gentlemen, please honour Pieter Sanders by the longest standing ovation in the history of ICCA, and thereby we close.