

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

Montreal

3 June 2006

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

