

President's Message

De la musique avant toute chose, et pour cela préfère l'impair

Wiping away a tear, I embark on my last President's Message. Its title and exhortation hark back to my youth in France, more precisely, to my days in school preparing for my *baccalauréat*. I was enrolled in "section A", which, contrary to what the letter "A" might flatteringly suggest at first sight, was *not* reserved for the more stellar pupils. To the contrary, "section A" was the side-track to which the mathematically- and scientifically-challenged would be shunted – in my case, more than justifiably.¹ So, instead of algorithms, impenetrable formulae and indecipherable little squiggles, we in "section A" would spend the bulk of our time studying humanities, not least French literature and universal philosophy.

Which brings me to the *title* of this President's Message. It is a quote from *Art poétique* by the French poet Paul Verlaine. Translated into English (in my home-grown translation), it reads, "Music before all else, and for that prefer the uneven". This is a rough and perhaps awkward translation, but it has a key virtue: it contains an uneven number of syllables.² Verlaine has always been one of my favourite poets, and this phrase encapsulates his artistic philosophy. Metronomic alexandrine verse was not for him: his most exhilarating musical poetry was crafted from *uneven* lines. This rapidly shaped my tastes in all art, for example in the visual arts (Picasso did not become famous for symmetry) and in architecture (Gehry's works are so much more fascinating than any neo-classical façade). And without any doubt, "prefer the uneven" forever influenced my approach to my favourite art form: music. Granted, 4/4 measures are the very backbone of Western music,³ but perhaps we forget all too quickly that Euterpe was born and raised in the Eastern Mediterranean, where uneven measures are the norm.

¹ Fortunately, there was a silver lining to this cloud of intellectual inferiority: "Section A" was also the natural destination for those of us who had (as I had) already decided that our future lay in the legal profession. I could thus rebut the taunts from the whiz-kids of "section C" – the section reserved for the true brains who would someday become engineers and physicists – by pointing out that one day I would be able to sue the daylights out of them. ("Daylights" was not the expression generally used on those occasions, but a more faithful transcription would have been unprintable.)

² At least, I hope so (being so mathematically challenged).

³ And I vow an unconditional love to Mozart and Bach, who rarely if ever ventured beyond the 3/4 waltz when it came to uneven measures (and please do not argue that a 6/8 is anything more than a double-tempo waltz).

And even in our modern pop music, it is the lilting alternation between 4/4 and 3/4 measures that gives *Solsbury Hill* its unmistakable groove.

In philosophy too, “*prefer the uneven*” rapidly became my vanishing point on the horizon of critical thinking. Whenever a solution is said to be “simple, solid and square”, alarm bells ring loudly at the back of my mind. An eternal doubter, I question whether anything “simple”, “solid” or “square” even exists in this world of human imperfection; and I treat “demonstrations” of “the simple”, “the solid” and “the square” with dollops of scepticism.⁴ For that matter, if I were asked to define the word “knowledge”, I would answer “the sum of what we realise we do not know”; and I would define the term “certainty” as “idiocy wrapped in smugness”. And if I had been an ancient Greek I would have revered Dionysus over Apollo Phoebus.⁵

The time has come to build the bridge between, on the one hand, my reminiscing and pseudo-artistic and philosophical digressions and, on the other, arbitration.

True to my doubting nature, I respectfully submit that this “bridge” is best built on a question: *What is it that makes the uneven so musical, so intriguing, so challenging?* Some would say that the uneven is missing a beat, that it is incomplete. I humbly disagree and venture the exact opposite thesis: The appeal of the uneven is its “plus”. Uneven measures add a beat, or a half-beat or a quarter-beat – the *iambus* – that puts the spring into the musical foot. Asymmetrical visuals entice the eye to look for more. Scepticism ensures that the mind never rests within a comfortable, equilateral box.

This brings me to my *exhortation*, which borrows from Paul Verlaine: “*In arbitration, may there be music before all else, and for that prefer the uneven*”.

The reader may understandably ask, what is the “*uneven*” in arbitration? My terribly unoriginal answer is: *diversity*.

Diversity is one of ASA’s main philosophical tenets, to the extent that it may be perceived as a slogan. It is much, much more than a mere slogan or catchphrase. Diversity should permeate arbitration at all levels, as I shall attempt to outline in what can and must necessarily be a short piece. In keeping with my Dionysian approach, my list will be rather pell-mell and iambic.

⁴ I am old enough to recall the time when the word “square” was actually a put-down and could be reformulated as meaning “un-cool”. Happily, I am still young enough to have never included either of these expressions in my active vocabulary.

⁵ The reference here being, of course, to Dionysian as opposed to Apollonian philosophy. That Dionysus was also the Greek god of wine, winemaking, grape cultivation, fertility, ritual madness, theatre, and religious ecstasy makes him a rather congenial figure but this is not determinative in the present context.

May *diversity* be the driving factor for all those who draft the rules in arbitration. Legislators must look beyond their borders; they must seek the experiences of others in other cultures. Importantly, they must eschew “squareness”, a neologism by which I mean trying to enact detailed one-size-fits-all rules; instead they must leave as much as possible to the parties, counsel and arbitrators, who in their infinite diversity (on which more below) are better placed to craft what is best for the infinite variety of cases that are the richness of international arbitration. Likewise, *diversity* must be the spiritual guide for all drafters of institutional rules. May they be guided both by their local or regional cultures and by inspiration from abroad. May they avoid simply replicating what has worked (or may not have worked) in other parts of the globe without considering the expectations of their natural users; but may they also travel far and wide to glean ideas and lessons to put to good use in their own rules.

May *diversity* always be a light to guide judges in their task. Although judges are of course rooted in the legal traditions and norms of their own jurisdictions, may they always bear in mind that international arbitration is a traveller with many passports. May they understand that parties to *international* arbitration have different backgrounds, different expectations, even different cultural and legal constraints, and that, although any judicial body must faithfully apply the law of the land where it is sitting, it must do so with an eye on the horizon.

This last remark applies exponentially to arbitral tribunals. Here, the “plus” coming from the uneven beat is especially loud. What word other than “square” (with the negative connotation explained in footnote 4) could adequately describe an arbitral tribunal of which the members are all of the same legal, cultural and perhaps even national background? Especially where the parties come from different corners of the earth, can international arbitration truly shine when the tribunal looks like a gathering of former students having read the law at the same universities after having attended the same schools? May *diversity* bring a true understanding of the parties’ positions, not just of their factual and legal submissions, but of the cultural wells from which these positions sprang. May *diversity* be the yeast that leavens their deliberations, bringing about that extra beat and element of self-doubt that invariably result in a decision that is better crafted, better drafted, better understood and, it is hoped, better accepted.

May *diversity* be the guiding principle for counsel, such that a truly international case is serviced by a truly international team of lawyers who each bring to the table their extra beat, their “plus”. This thought was recently expressed ever so aptly by a client who, looking around the table at a post-

oral closing celebratory dinner, remarked that the lawyers came from several continents, from several different legal systems and that, in his view, this diversity had been the special ingredient that had contributed decisively to the quality of the arguments made.

May *diversity* be the 3/8, the 5/4, the 9/8 of arbitration-focused university and professional training programs. May the pupils and faculty come from far and wide, may their ideas blend, clash, fuse, ricochet and multiply in a fertile potpourri, and may all of us benefit in the end.

Last, but very, very far from least, may *diversity* be the alpha and omega all of arbitration stakeholders, be they legislators, judges, institutions, lawyers, arbitrators or parties, when they congregate to discuss “best practices”. The reader will have noted the plural in the “practices”. “Best practice” in the singular is the epitome of “square”. How could it be conceivable for one way of doing arbitration to be the “best” way?⁶ What is best for a business in, say, New York or Geneva, might or might not be “best” for a business in, say, Seoul or Shanghai. Reverting to my analogies with music, it takes a trained ear and an open mind for a Westerner truly to appreciate Korean *p'ansori*. So why should we take it for granted that the Countess's *Porgi amor* in *Le Nozze di Figaro* should provoke sobs of emotion worldwide?⁷ No – decidedly no! May “best practice” in the singular be banished forever from our arbitration lexicon; and may the seeds of diversity germinate and flourish in rainbow of many, many different best practices.

I am getting carried away. It is time to conclude this testament.

The readers of my President's Messages will by now have understood that I frequently draw inspiration from – and make reference to – my cinematographic heroes. As the curtain closes, I cannot resist the temptation of quoting the unforgettable words of my greatest silver-screen hero of them all:

*THAT'S ALL, FOLKS!*⁸

ELLIOTT GEISINGER

⁶ Similarly, I always struggle to repress audible groans whenever I hear counsel or arbitrators extolling any given way of dealing with any given procedural issue as being the “traditional” way.

⁷ No disrespect meant: this aria invariably has precisely that effect on me.

⁸ Readers who have not recognised the adorable (if somewhat rotund) character quoted here may wish to do a quick google search. A little tip: include “Warner Brothers” in the search terms.

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