

**The 2016 ASA Prize
for Advocacy in International Commercial Arbitration**

A Laudatio for Melissa Magliana

By Raëd Fathallah

Dear Colleagues,

Dear Friends,

Two years ago, ASA granted me one of the greatest honors of my professional career by awarding me the ASA Prize for Advocacy in International Commercial Arbitration.

Today, I am given the very special privilege of presenting the 4th edition of the ASA Prize to this year's laureate. It is a special privilege because of what the ASA Prize stands for and the values it seeks to promote; and because of the outstanding character of this year's awardee.

The ASA Prize is unique in its aim of recognizing and indeed championing the skills and the role of advocacy in international arbitration. Not only does the ASA Prize recognize the work of young practitioners who have, through their established practice, demonstrated exemplary advocacy skills but it also seeks to promote certain guiding principles to be followed by arbitration counsel in their practice – benchmarks which are increasingly relevant in the evolving nature of our practice.

The ever-expanding diversity of legal systems and traditions that come together in the field of international arbitration is one, if not the greatest, of the riches of this field. It is also one of its greatest challenges. In this context, the ASA Charter offers to the international arbitration community guidelines for advocacy without borders. Importantly, these guidelines in their content and applications are perfectly adaptable to the fast-evolving nature of international arbitration.

At the core of the principles set out in the ASA Charter we find 'respect', 'ethics', 'loyalty' and 'intellectual honesty'.

It can be said that arbitration practitioners have lately been experiencing increased pressure - be it from clients, opposing counsel, arbitrators, market competitors from around the globe, as well as new actors such as third party funders. A reminder then of the importance of the values of counsel conduct as championed by the principles of the ASA Charter is never redundant.

The healthy growth of international arbitration, its legitimacy, and its ability to face up to some of its critics will greatly depend on the upholding of these principles.

One person that embodies these principles is this year's laureate; the first Swiss laureate and also the first woman laureate.

I am delighted that, after a very rigorous and challenging selection process, and from a pool of many outstanding candidates, the ASA Board has decided to grant its Prize this year to Melissa Magliana.

While many would say that international arbitration is only as good as the Arbitrator, I would take a slightly broader view and say that international arbitration is only as good as those who

practice it. I would venture that this perspective on international arbitration was also part of ASA's goal in establishing such a prize – awarding this prize to whom it deems to be exemplary international advocates to lead by example.

Melissa, through her credentials, talent and personality, epitomizes all the qualities of an exemplary international arbitration advocate.

I am a great believer that a fundamental tenet of international arbitration is its very particular culture. A lot has been written and said about the “culture of international arbitration” and the interplay of the legal traditions of those who practice it. Of equal importance is the quintessentially “cultural aspect” of international arbitration; that is, the requirement for “cultural sensitivity” in the true sense of the words – be that *via-à-vis* our own client; opposing legal counsel; and indeed the arbitral tribunal.

The ability to adapt to, and the desire to learn about, other legal cultures should indeed be part of the DNA of every international arbitration advocate.

Unsurprisingly, Melissa, a citizen of the U.S., Italy, and now Switzerland, who has been immersed in civil law and common law culture and speaks 5 languages, has been unanimously praised as representing the very particular culture of international arbitration and possessing such cultural wealth and sensitivity, both personally and professionally, required to be able to handle any situation that the practice can throw at you.

While she is known to most of you, a glance at her personal and professional paths may explain, at least in part, Melissa's unsurprising success as advocate.

Born to Italian parents, Melissa grew up in the United States until her early teens before moving to the South of France to complete her high school and earn her international baccalaureate. Pre-destined for a career in world affairs, she then returned to the United States to earn her Bachelor of Arts (*magna cum laude*) in Political Economy from Princeton University.

Her early love for international law led her to focus her research on the question of self-determination at the European Academy of Bolzano in Italy, and undertake an internship at the Permanent Mission of Lichtenstein to the United Nations in New York.

She then obtained her Juris Doctor from Columbia University School of Law where she received the highest honors including the Whitney North Seymour Medal for outstanding trial advocacy. After qualifying as a lawyer in New York and clerking at the Federal Court in the Eastern District of New York, Melissa was determined to pursue a career in international arbitration. She crossed the Atlantic once more and chose to settle in Switzerland and joined her current firm Homburger in 2005.

She has been with her firm since then and was promoted to counsel in 2012 and, last but not least, she was elected as co-chair of ASA under 40 Group in 2014.

As if Princeton and Columbia were not enough, and given her perfectionist nature, Melissa decided to return to school to perfect her knowledge of civil law and the legal system of the country that she now calls home, obtaining a law degree from the University of Lucerne in 2014.

Melissa's impressive international profile is equaled by her outstanding advocacy skills. The decisive factor in selecting the laureate is that the candidate's advocacy skills exemplify the principles set out in the ASA Charter of Advocacy which tells us that Counsel must be clear, concise, and communicate her case and the evidence in a user friendly manner, which facilitates

the tribunal's task in establishing the facts and understanding the legal and technical rules that are relevant for its decision.

The testimonials we have received leave no doubt that Melissa indeed embodies such skills in her work as an exceptional advocate. Melissa has been described as "*an example of how other young lawyers should do advocacy in international commercial arbitration*".

She is described as someone who is "*always focused on moving the dispute forwards*" and as "*a powerful litigator and a tireless and diligent counsel*." One out of many satisfied clients praised "*Melissa's outstanding work, exemplary case management and her determination and dedication that go beyond the call of duty*."

Melissa's oral advocacy is unanimously praised for being brief and very "punchy", hitting the opponent "*where it hurts*", but always in a non-abrasive manner. In other words, "*while eschewing aggressiveness, her advocacy does not lead to any undue concessions*".

Her skills of persuasion include, it is said, a natural ability to captivate the listeners' attention, including, most importantly, that of the Tribunal.

Melissa's advocacy style is intertwined – it has been noted – for demonstrating respect for all relevant actors, a fundamental attribute for any advocate.

It goes without saying, but it is never said enough, that an exemplary advocate can be measured *inter alia* by their ethics, intellectual honesty and the duty of loyalty and respect to all actors in the process. The ASA Charter specifically recommends the respect of the "*dignity of the other party, its witnesses and experts*", and that the other party should be treated with "*courtesy and personal attacks should be avoided*". Melissa is repeatedly praised for her respectful advocacy style and cordial and rapport to adversaries. We were even provided with a telling example of when Melissa was facing less experienced counsel and adopted an entirely respectful and appropriate approach, refusing to take advantage of the situation.

As an arbitration practitioner in Switzerland, Melissa is in the most esteemed of company. Switzerland has indeed produced some of the world's greatest arbitration specialists, many of which are present here today. Switzerland has made an instrumental contribution to the field of international arbitration practically, academically, as well as through its pioneering organizations such as ASA.

I cannot think of anyone better suited than Melissa to carry the Swiss torch and illustrate the "truly" international nature and tradition of excellence of the Swiss arbitration bar.

Melissa, we all wish you the greatest and continued success and hope that other arbitration advocates will follow your shining example.

On behalf of all of us here, congratulations for a well-deserved prize and I now invite you to take the floor to address the audience.