

Dear Colleagues,

It is for me a great honor to present the *laudatio* for this first ASA Prize for Advocacy in International Commercial Arbitration.

Before addressing the merits of the laureate, I will take the liberty of doing first the *laudatio* of ASA itself.

Last week, I was interviewed for the television in Singapore at the occasion of the opening of Maxwell Chambers and the journalist asked me what could effectively be done by Singapore to become a major venue of international arbitration. I answered that in my opinion, in order to be a very successful venue for international arbitration, you need to have very good hardware and very good software. The hardware is composed of many items such as an “easy-to-reach place”, convenient facilities, flexible, arbitration-oriented legislation and a judiciary which does not interfere with arbitration except when it is so requested or where it is indispensable for the protection of fundamental values or principles. But the hardware is not enough. You also need very good software: a substantial number of law firms and lawyers motivated by, and dedicated to, international arbitration; prominent scholars who contribute by their writings and their teaching to the development of international arbitration and to the emergence of new talents; and finally, last but not least, a strong, well-administered and ambitious arbitration association which plays the role of meeting point for all generations of arbitrators, a place where know-how is exchanged and hot topics are debated. And my final comment to the journalist – which I reiterated a few hours later to the Minister of Justice who had invited a few arbitrators to discuss the same issue – was that the best example I could give of a country having the best possible hardware and software was Switzerland. And I would add that one of the main engines

behind Switzerland's success story is the dynamic and innovative Swiss Arbitration Association which, year after year, under the guidance of very dynamic presidents, has been able to profile itself as the most active, creative, imaginative, arbitration association, a breeding ground for new ideas and new talents.

And it is again in this spirit that ASA has decided to create the ASA Prize for Advocacy in International Commercial Arbitration whose objective is to encourage Counsel who, through their exceptional talents in advocacy, contribute most effectively to the Association's objective of promoting the effective resolution of international commercial disputes through arbitration. Congratulations to ASA for this initiative.

What are the qualities of a good Counsel in an arbitration case? They have been superbly enunciated in the ASA Charter of Advocacy in International Commercial Arbitration. Everyone should read them carefully because they are a very good summary of what an arbitral tribunal expects from Counsel in an arbitration procedure.

But let us now come to our laureate.

I am extremely pleased that ASA has decided to grant its first Prize to Franz Schwarz, considering that he is a clear illustration of all the qualities expected from a talented arbitration lawyer in the new generation.

Franz Schwarz is indeed quite a young lawyer, still in his thirties but all lawyers and arbitrators who had the privilege of seeing him in action in arbitration procedures agree that he is definitely one of the best lawyers of his generation, somebody that you will hear more and more about in arbitration circles in the years to come.

Franz received his first law degree, graduating top of his class, at the University of Vienna, School of Law, in 1995, and subsequently completed his post graduate studies at the

London School of Economics in 1999. He has qualified as Rechtsanwalt in Austria and is presently a partner in the litigation department of a major American law firm and a Vice Chair of its International Arbitration Practice Group. Franz is presently based in London but acts as Counsel both in civil law and common law procedures, and in ad hoc arbitrations as well as arbitrations conducted according to the rules of the ICC, the LCIA, the Vienna and Stockholm Chambers of Commerce to take just a few examples. Beyond his role in arbitration procedures, Franz also counsels clients on conflict of laws issues and international enforcement of arbitration awards and judgements, in commercial as well as in investment cases.

According to the ASA Charter of Advocacy, as was emphasised this morning, effective advocacy in international commercial arbitration is above all about communication with the tribunal, understanding its task and assisting the tribunal in meeting its obligation. This implies among other things making a clear, concise and user friendly presentation of the case, ensuring that all submissions, whether written or oral, are logically structured and as succinct as possible, presenting the evidence in a manner which facilitates the task of the panel in establishing the facts that are relevant for the decision and assisting the tribunal in understanding the legal and technical rules relevant for the resolution of the dispute, as well as the cultural, commercial and technical context in which the parties conduct their business.

This is what arbitrators who had the pleasure of having Franz appearing in front of them as Counsel, have experienced. They confirm that he is of great assistance to the panel, that he presents his clients' position in a very clear and efficient way, that when the tribunal tells him that it is sufficiently informed of a certain aspect of the case, he immediately stops his cross-examination and turns to another topic. Lawyers and arbitrators who have seen him in action confirm that they have been extremely impressed by his exceptional talent. He can plead a case alone from A to Z during a full week, cross-examining all the witnesses efficiently and with great skill.

One of the other qualities enunciated by the ASA Charter is for Counsel to have a true international approach to international arbitration and arbitral procedure, not sticking to the local procedure in which Counsel has been educated – as is unfortunately still often the case in some jurisdictions – but approaching the case from a genuinely international perspective.

Again, those who have seen Franz acting as Counsel confirm that it is undoubtedly another quality that he brilliantly demonstrates, probably due to his dual training and education in the Austrian and English law systems. And Franz confirms this approach himself in the major treatise on International Arbitration in Austria that he published last year with Christian Konrad: “... *this book recognizes that in today’s world, a discussion of national arbitration law is incomplete without recourse to international practice and procedures. Transnational disputes must be mindful of, and respect, the often different cultural and legal backgrounds and expectations of the parties, their counsel and the arbitrators. This book ... draws from, and seeks to reconcile, processes available in civil and common law jurisdictions in order to serve the overriding goal of ensuring that arbitration remains predictable, expeditious and fair*”.

This is clearly a “*profession de foi*” that Franz applies when he acts as Counsel in international arbitration procedures.

In the quotation that I just read, Franz Schwarz says that one of the ultimate goals of arbitration is to be fair; and indeed, we will all agree, fairness has to be omnipresent in arbitration: as reminded by the ASA Charter of Advocacy, not only must the process be fair but Counsel must also demonstrate fairness in his relationship to the other players in the arbitration procedure. Counsel should refrain from ambush tactics, should refrain from aggressiveness, should treat the other party’s advocates, witnesses and experts with dignity and courtesy. Counsel should also avoid personal attacks: they are not only

counterproductive, they are against the spirit of international arbitration. Lawyers and arbitrators who have experienced Franz in international arbitration confirm that he behaves himself as a gentleman, with great intellectual honesty, in the most courteous way and when he expresses – rarely – what the French would refer to as “*une petite pique*”, it is always done within acceptable limits and in a very elegant way.

Again, those who have seen Franz Schwarz act as Counsel in an international arbitration report that they have been impressed by his efficiency, his clarity, his mastery of the procedure, his commitment to the defense of the case, his determination but also his flexibility. They confirm that he is definitely one of the most talented lawyers of the new generation of arbitration specialists – and indeed, he has been so identified in the most recent expert guides. Chambers UK reports that he has “*a razor-sharp written style*”, Chambers Europe refers to him as “*a star in the making*” and as “*a convincing and dynamic individual, with a remarkably sharp mind*”.

And, as if lawyering was not enough, Franz has, in the continuation of his work as Counsel, published last year with a colleague a one thousand page treatise on International Arbitration in Austria. Those who read the book have been impressed by the know-how and maturity that he is demonstrating. This is a further confirmation, if needed, that ASA made the right decision in granting him their first Prize for Advocacy in International Commercial Arbitration.

You may have asked yourself the question: does Franz Schwarz know that he is a very talented lawyer? The reports that ASA has received tend to lead to an affirmative answer. First, when you are that good, it is difficult to conceive that you do not realize that you are a brilliant lawyer. But there is one element which cannot mislead: the lawyers and arbitrators who have been consulted confirm that, at various points during his oral arguments or cross-examination of witnesses, Franz has the habit of saying that he apologizes for the quality of his English. You will have noticed, as I have, that his English

is just perfect. There is therefore only one interpretation of this little element of *pédanterie* and it is the following. In reality, Franz is telling us: “*gentlemen, you have realized how good my English is. But don't forget that it is not my mother tongue which is German*”.

Yes, we are convinced that Franz Schwarz is conscious that he is a very talented Counsel.

Franz, we wish you the greatest possible success and we hope and expect that beyond your work as Counsel, you will be in the years to come and during all your career, an advocate of the objectives and values that the Swiss Arbitration Association sought to promote among young lawyers by creating the ASA Advocacy Prize. And once again congratulations for a well-deserved award.