

President's Message

Arbitration Advocacy – The ASA Prize

“*Tant vaut l’arbitre, tant vaut l’arbitrage*” – this old saying still holds true. But no less important for an effective and satisfactory arbitration are the advocates. They “argue” the case; and the manner in which they do so is of critical importance for the conduct of the proceedings by the arbitral tribunal. Equally important, and possibly not always fully appreciated, the advocates “make” the case. It is they who transform a mass of diverse individual events into a set of “facts” that make a story. Structured by legal rules, the story turns into a “case” and leads to a request for relief on which the tribunal has to decide.

In their role as counsel or advocate in an arbitration, lawyers interact first with their clients and all of those who contribute to making the case; then with their opposing counsel and eventually with the arbitral tribunal and other participants in the process, such as the witnesses, the experts and occasionally an arbitral institution. Each of these interactive steps has its own particularities, with different objectives and methods and, most importantly, varies according to the protagonists.

While the difference between arbitrators and judges sitting in court litigation has always been recognised, the specificity of counsel work in arbitration is still insufficiently understood. However, there is growing awareness that the skills and qualifications required of a litigator, including before a jury, are not the same as those of effective advocacy in international arbitration. A sign of this is the range of new activities which have emerged in recent years. One is advocacy training offered specifically for arbitration.¹ Another one is the growing number of arbitration advocacy competitions, starting with the remarkably successful Vis Commercial Arbitration Moot,² which brings together students from all over the world aspiring to become arbitration lawyers. In addition, associations have sought to provide guidance and even rules to ensure what they see as a “level playing field” for counsel in international arbitration: the CCBE³ launched an attempt at preparing Ethical Guidelines for Lawyers serving in Arbitration Proceedings but wisely abandoned the project.⁴ This did not

¹ In Switzerland one may mention the Foundation for International Arbitration Advocacy (FIAA), Geneva, the programme for a Master in International Dispute Settlement (MIDS), Geneva, and the Swiss Arbitration Academy in Zurich.

² The Willem C. Vis International Commercial Arbitration Moot (www.cisg.law.pace.edu/vis.html).

³ Council of Bars and Law Societies of the European Union.

⁴ For the position of ASA on this initiative see the ASA Website: www.arbitration-ch.org/publications/Some-Preliminary-Comments.pdf.

discourage the American Bar Association from launching and pursuing a similar project.

In recognising the importance of counsel in international arbitration, ASA has taken a different direction: rather than seeking to prescribe guidelines for the conduct of counsel and advocates in international arbitration, it has sought to highlight the essential requirements of outstanding arbitration advocacy in a personalised manner by attributing, every other year, the ASA Prize for Advocacy in International Commercial Arbitration.⁵

As an organisation of arbitrators, counsel, academics and users of international arbitration services from Switzerland and many other parts of the world, ASA can rely on first-hand experience of a wide variety of arbitration advocacy. This provides a sound basis for selecting examples from which to choose the laureate of the ASA Prize.

The process for selecting the candidates is described on the ASA website: it is based on the information gathered by the Selection Committee; for the evaluation the process also relies on the concrete experience of ASA Board members with the candidates' performance as advocates. The process combines transparency, as a necessary requirement to avoid nepotism, with elements designed to protect the confidentiality of the arbitration cases which serve as credentials in the selection process.

Any arbitration practitioner in the world may propose a candidate.⁶ The criteria for the selection of the laureate are set out in a Charter of Advocacy in International Commercial Arbitration, first presented in 2008.⁷ The text of the Charter is work in progress; it is open for discussion and for continuous revision as experience grows and diversifies. All of our members and friends are invited to contribute to the process by proposing candidates as well as amendments to the text of the Charter.

The first laureate, presented at the ASA conference in Geneva on 29 January 2010 by Professor Bernard Hanotiau, was Franz Schwarz.⁸ At the last ASA conference, held in Lausanne on 27 January 2012, the prize was attributed to **Philippe Pinsolle**. The *laudatio* was presented by Professor Henry Peter and is reproduced in this edition of the Bulletin.⁹

⁵ For further details on the ASA Prize see at its website: www.arbitration-ch.org/asa-prize.php

⁶ It should be noted that proposals of members from the same law firm or organisation are not accepted and members of the ASA Board are not eligible.

⁷ The latest version can be found on the ASA Website (www.arbitration-ch.org/The-ASA-Charter.pdf).

⁸ Bernard Hanotiau's *laudatio* is published in volume 36 of the ASA Special Series and can also be found on the ASA Website.

⁹ ASA Bull. 1/2012, p. 235.

ASA is proud of the contribution it makes to the promotion of good advocacy in international arbitration in this way and looks forward to receiving your proposals of candidates for the next edition of the prize.

Geneva, February 2012

MICHAEL E. SCHNEIDER
ASA PRESIDENT

SAVE THE DATE

ASA Conference Fall 2012

*Kapitel 12 IPRG unter der Lupe: Bedarf das Schweizer Recht der internationalen Schiedsgerichtsbarkeit einer Reform?/
Réflexions critiques sur le chapitre 12 LDIP: le droit suisse de l'arbitrage international doit-il être révisé?*

Konzipiert als Meinungsbildungskonferenz betreffend die Revision von
Kapitel 12 IPRG

Berne, 28 September 2012
For more information see www.arbitration-ch.org