

A Call from an Arbitration Activist

Kluwer Arbitration Blog

September 23, 2014

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Please refer to his post as: Annette Magnusson, 'A Call from an Arbitration Activist', Kluwer Arbitration Blog, September 23 2014, <http://arbitrationblog.kluwerarbitration.com/2014/09/23/a-call-from-an-arbitration-activist/>

I woke up one morning and found myself on the barricades.

It probably happened gradually. I just wasn't paying attention. Nevertheless, here I am. On the barricades.

I'm still a bit lost up here. The barricade is definitely outside my comfort zone. No security blanket in sight. Only a discomfiting sense of urgency, and a nagging feeling that we are on the verge of losing something important.

What drove me up here? I ask myself. Probably a number of things.

I am here because of think-tanks with high-pitched voices, lashing out at international arbitration on the basis of cases not yet decided.

I am here because of a lack of perspective in the debate on the pros and cons of international arbitration, not least in an investor-state context. At best un-informed, at worst ill-intentioned.

And I am here because of yet another event where we as an institution have been referred to as a "service provider" in a "highly competitive market". No critique against the individual speaking; it has just become the accepted language. Still, it fundamentally contradicts what we stand for on so many different levels.

But the decisive moment, which led me to finally take that step up onto the barricades, was three weeks ago, as I sat at in the car, on my way home from vacation, and the voice of Nina Lagergren unexpectedly appeared on the radio.

Nina Lagergren is a very impressive person. A lady in the true sense of the word. She is probably best known for her search for the truth about her brother, Raoul Wallenberg, the Swedish diplomat who is estimated to have saved tens of thousands of Jews from the Holocaust through his actions in Budapest at the end of World War II. Raoul Wallenberg disappeared in 1945 after having been imprisoned by Soviet forces and his sister has since been at the forefront in the fight to uncover his fate.

But Nina Lagergren was also married to Gunnar Lagergren, until he passed away in 2008. And Gunnar Lagergren, also engaged in the fate of Raoul Wallenberg, was one of Sweden's most respected lawyers in the international arena. He acted in many internationally well-known arbitration cases, including interstate disputes of major geopolitical significance. For example, he chaired the *Rann of Kutch* arbitration, which ended military hostilities between India and Pakistan over a border dispute,

and the *Taba* disputes, by which Egypt and Israel were able to settle a border dispute on the Sinai peninsula. Gunnar Lagergren was also the very first president of the Iran-United States Claims Tribunal in the Hague, where his experience and skills played a decisive role in establishing and safeguarding the proper functioning of the tribunal, and a judge in the European Court for Human Rights in Strasbourg, between 1977 and 1988. These are but mere examples of Gunnar Lagergren's accomplishments from a long international career in the service of international justice and public international law.

Gunnar Lagergren's international career started in 1943, when he was asked to head the Protective Power department at the Swedish Embassy in Berlin (during World War II, Sweden accepted 114 mandates for 28 states as Protective Power). It was a daring and challenging mission for a young lawyer and his wife, Nina, who joined her husband in Berlin, as bombs fell over the city.

And as I was listening to Nina Lagergren recalling the horrors of war on the radio, one sentence stayed with me. Nina said: "Gunnar's experience from Berlin during the war surely came to influence the rest of his career and made him focus on peaceful means for dispute resolution."

Hearing Nina speak about her late husband, and the events which came to define his life's mission, it suddenly became painfully clear to me that the soul of international arbitration is on the verge of being sent off to the backyard of history. Or even worse, that it stands a risk of being hi-jacked.

Somehow, in the maelstrom of opinions expressed through think-tank opinions, social media, blogs, conferences, political debates, daily papers, websites, television news desks or radio reporting – you name it – we have lost touch with the big picture.

It's time to re-connect.

"Peaceful resolution of disputes". Think about that for a while. These are powerful words. And this is what arbitration is offering.

International arbitration has made important contributions to the relationships between states, both in strictly geopolitical contexts, but also in commercial disputes with – or without – geopolitical driving forces. Conflicts which were offered a constructive avenue of resolution in the absence of arms – thanks to the mechanisms we know as international arbitration. In different forms, but all accepted by the international community.

Why is this important in a commercial arbitration context? Because it defines who we are.

A shared understanding between states of the inherent value of neutral and peaceful resolution of disputes is the foundation upon which international arbitration rests. It is in our DNA.

States have repeatedly used arbitration for solving conflicts in highly complex and sensitive situations. And states have invested much effort in negotiating common rules for international arbitration. We know them as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the UNCITRAL Model Law on Commercial Arbitration and the UNCITRAL Rules on Transparency in Treaty-based Investor-state arbitration – just to mention a few.

It is not coincidence that the 1955 delegation from the International Chamber of Commerce, in the work leading up to the New York Convention, described the potential of the future convention as a piece of legislation that *"would be a constructive step towards facilitating international trade, and ultimately towards higher standards of living and so towards general peace and prosperity."*

That is the big picture. Let it not be stolen, or diluted or forgotten. Instead, let us explain the

important heritage embedded in the fundamental principles which we practice on a daily basis to anyone who appears to have missed the big picture. And if they don't seem to listen, explain again. And again.

There is too much conflict in the world today to allow us to forget about the potential for peaceful resolution of disputes - on any level. The world has seen the alternative on too many occasions, and it is not a comforting sight.

So this is why I am up here on the barricades: To safeguard a legal universe which the international community has been painstakingly building together for centuries. To make sure we do not lose what has been gained over the last 100 years.

I may be here for a while. So I am asking - will you join me?