

Kluwer Arbitration Blog

Memories: Pieter Sanders – Centenarian

Albert Jan van den Berg (Hanotiau & van den Berg) · Friday, October 5th, 2012

Friday, 28 September 2012, I sit in my hotel room in London, preparing my presentation for the African International Law Awareness (AILA) training session that afternoon. A message from my assistant at the university of Rotterdam flashes on my laptop: “Pieter Sanders died yesterday—very sad isn’t it?” I am stunned. Two weeks ago I had travelled to his house in Schiedam to deliver to him in person the contribution I had written for the Dutch Journal on Arbitration, one week before he would turn 100. We had laughed a lot about it. It evolved in the remembrance of other stories. I had tried to prep him up for The Question that I expected he would be asked many times: “What is the secret of reaching 100?” “Don’t be bothered by what others say—go your own way,” he had answered.

He had lunch served, and at his instance we had drunk white Sancerre. At 1:00pm he had gone to bed, as usual. He had been sharp and cheerful. “How could he have left us?” I thought. It took me a while before I realized that, may be, this was the perfect moment for him. Actually, it seemed to me a brilliant timing: to have a coincidence of the eulogies at the occasion of one’s 100th birthday with one’s departure from this world. Then numerous thoughts of a period of 38 years that I had known Pieter crossed my mind. Admittedly, that Friday afternoon, I gave the presentation to the African students in London unprepared but highly inspired.

Below is the contribution that I shared with Pieter Sanders two weeks ago.

“*Herinneringen: Pieter Sanders*” was published in 2009. In this 131 page book, Pieter describes his impressive life. There is a lot covered: his youth in Schiedam, law studies in Leiden, first years as a lawyer, the hostage camp Beekvliet in Sint Michielsgestel, the Indonesian question, company law, advisor to the King of Morocco, becoming a professor, constructing the Erasmus University Rotterdam and his hobby – art. And then, of course, arbitration: 5 pages. This modest number is characteristic of Pieter Sanders’ multi-sidedness but does not do justice to his significance for national and international arbitration.

Pieter Sanders’ life in arbitration has countless highpoints: an outstanding doctoral thesis on the setting aside of arbitral awards; a prominent arbitration lawyer; top-level arbitrator; co-founder of the Netherlands Arbitration Institute (NAI) in 1949 and its chair for many years; member of the ICC Arbitration Commission since 1949; the “founding father” of the 1958 New York Convention; co-founder of ICCA in 1961 and its president for many years; drafter of the 1976 UNCITRAL Arbitration Rules; General Editor of the ICCA publications (in particular the *Yearbook Commercial Arbitration*); drafter of the 1986 Dutch Arbitration Act; author of the treatise *Het*

nieuwe arbitragerecht (The New Arbitration Law) and many other publications in the field of arbitration.

I would like to reverse the “*Herinneringen*” and record my memories of Pieter Sanders. There are so many of them. I can only mention a few and will limit myself to the decade from 1974 to 1984.¹⁾

I met Pieter Sanders for the first time in July of 1974 at his home on the Burgermeester Knappertlaan in Schiedam, where his office was also located. I did so at the recommendation of Prof. René David. I had done a post-graduate program with him in comparative law at the University of Aix-en-Provence. As luck would have it, he had chosen international commercial arbitration as that year’s subject. I became so fascinated with the subject – and it must be mentioned, also by his magnificent style of teaching – that I decided to write a doctoral thesis on international arbitration. René David referred me to “*mon ami Pieter Sanders*”. I had never heard of him because at the University of Amsterdam, they didn’t talk about professors from Rotterdam. Pieter Sanders turned out to be a very friendly person. Having listened to me, he was immediately ready to be my thesis adviser. I had chosen as subject: “*Arbitration and the Third World*”. That appealed to him because he had traveled to the Far East on behalf of the United Nations to study arbitration law and practice in the region. His report to the United Nations was typical of him: clear and blunt. While I was doing a Masters Degree at New York University, he referred me to his friend Martin Domke at the American Arbitration Association (AAA) in New York. The introduction served me in good stead because I was able to find a great deal of material in the AAA library. Martin Domke was also a phenomenal figure. He had popularized arbitration with the United States business community.

Halfway through my studies at New York University I received a letter from Pieter Sanders. He had been appointed as the General Editor of the *Yearbook Commercial: Arbitration* by the International Council for Commercial Arbitration (ICCA). The *Yearbook* would contain national reports, arbitral awards, court decisions and articles.

He asked me if I would be his collaborator and assist him with the editing of the *Yearbook*. According to him, I would be able to combine the editorial work with writing my thesis. It seemed like a good idea to me, but I had already made plans to hitchhike from New York to Peru. I wrote back that I happily accepted his offer, but I first wanted to explore Latin America. Looking back, it was a rather presumptuous letter. Who wouldn’t immediately accept an offer from Pieter Sanders? Pieter answered that he agreed that foreign travel was very important and that he could manage in the meantime.

I began to work with Pieter Sanders in July 1975. The circumstances were quite unusual. I was supposed to work half days at 800 guilders (approximately US\$ 400) a month, so that I could devote the rest of the day to working on my thesis. In reality, there was only one uninterrupted workday, and that was for Pieter Sanders: starting on Monday morning at 7:30 and finishing at 6:30 on Friday evening. I worked in a small office space and slept in an attic bedroom. Weekends were for the thesis.

Pieter Sanders was devoted to his wife Ida. She was the daughter of a banker, also named Sanders. They met each other on a ski trip: “Sanders, pleased to meet you”, “Sanders, pleased to meet you”, and that was the beginning of a relationship that would last more than a half century. Sadly, in 1960 Ida developed an illness that confined her to a wheelchair. She spent her days downstairs, his were spent upstairs. She had a lively intellect and led a book club and an art club (for which I made

the arrangements). I was deeply impressed by how Pieter took Ida everywhere with him in her wheelchair.

Pieter and Ida were great art lovers. The house was turned into a museum by Jacob Bakema, the architect who had designed the Lijnbaan in Rotterdam. The jewel in the crown was a Mondrian that Ida's father had bought in 1925 for 10 guilders (approximately US\$ 5). Ida had a view of it from the couch where she sat during the day. Pieter and Ida opened my eyes to a whole new world of art and artists. It was my job to move and place the art. I became my own collector within the collection. In my office I had placed a Henry Moore sculpture of three standing figures, a Christo "packaged" tree branch, a Donald Judd of two dimensional boxes and a Jan Schoolhoven sculpture that looked like a type-setter's letter tray. That was the art that I could more or less understand. Pieter's office was more eccentric. Walking in, you stumbled over a block of half-burnt lumber (Vialat). Hanging on the wall was a toaster. A straight razor stuck out of it with a blood-red towel hanging from it (Tony Cragg). On his bookcase was a sculpture of precariously balanced needles by George Rickey. An apparently simple wooden box was in fact an artwork (Boyd). No matter where you looked in the house, there was art. The bathroom tiles had been designed by Karel Appel. On a shelf in the kitchen there was a sculpture of a rearing horse by Marino Marini.²⁾ Every time Pieter came home from a trip abroad, he had bought another work of art.

Once, when Pieter and Ida were on vacation, a crate arrived. When it was opened, I saw two large marble stones, of which only one side was polished. I thought that they should be sent back to the quarry because they were not finished. When Pieter returned, I was surprised when he told me that that was how the stones in this sculpture by Ulrich Rückreim were supposed to look "because of the tension that they invoke".

Karel Appel was a close friend of Pieter Sanders. Their friendship dated back to the time (around 1950) that Karel Appel, then an unknown artist, stole some paints. Pieter stepped in as his lawyer and advised him never to do that again. Pieter then paid for his paints. Karel Appel was grateful for this the rest of his life, as evidenced by his many paintings in Pieter's collection. Like many other artists, Karel Appel visited Pieter and Ida often, driving up in his white Rolls Royce accompanied by his charming Asian girl friend. That, among so many other things, made my weekly stay *chez Sanders* so special.

One of Pieter's greatest talents was his ability to recognize an artist early in his or her career. That is how he discovered Karel Appel. Another example is Henry Moore. When he was still unknown, Pieter bought three sculptures from him that, by the way, he imported from England as "scrap metal". He never spent more than 5,000 guilders (approximately US\$ 2,500) for an artwork and he was proud of this. Whenever he gave visitors a tour of his home, he would tell them how much he had paid for the works and what they were then worth. The differences were huge. I believe that for Pieter this was just a hobby because he did not care about earning money from his art collection. He and Ida have donated almost their entire collection to museums.

Back to the legal side of my memories of Pieter. Editing the *Yearbook* was a many-faceted task. Communicating with the authors (Pieter's ICCA friends), (re-)writing national reports, collecting and summarizing court decisions, awards and literature, consulting with the publisher (Kluwer) – it was a huge job. Reading print proofs was the worst task for Pieter and he was happy to leave it to someone else.

At the same time, Pieter had his own concerns, ranging from the oversight committee of the

retirement home across from his house in Schiedam to difficult supervisory boards (OGEM). He was also occupied with creating the European Company for the European Commission in Brussels and the Code of Conduct for Transnational Corporations for the United Nations, for which he frequently traveled to New York.

Pieter's Hague Lectures in 1975 were another academic adventure. It was at that time that the theory of denationalized arbitration became popular. Pieter was on the fence about it; I thought it was ill conceived. We often discussed this subject. Finally, Pieter decided in his lecture that "International arbitration is like a young bird trying to fly; it rises in the air but from time to time it falls back upon its home nest."³⁾

In those years Pieter limited writing articles mainly to *Libri Amicorum* (his friends were turning 65). He asked me to suggest a topic. Thanks to my work on the *Yearbook*, I had insight into the current issues in arbitration. I had noticed that separability had become a hot issue. That provided the seed for Pieter's contribution on the autonomy of the arbitral clause in the *Liber Amicorum* for Frédéric Eisemann where he distinguished between the validity and the existence of the arbitration clause.⁴⁾ Thirty years later, this limit to the separability is increasingly recognized.

During my time with Pieter Sanders, he was also asked by UNCITRAL to draft arbitration rules. Willem Vis (the Vis Arbitration Moot is named after him) was the Secretary of UNCITRAL at that time and he came to Schiedam for extensive consultations.⁵⁾ I still can vividly recall Pieter and Willem discussing the provision on the decision-making by the arbitral tribunal. For him, it was a simple matter of a majority decision when the tribunal was made up of three arbitrators.⁶⁾ When I asked what would happen when no majority could be formed, Pieter and Willem answered that this did not occur in practice; in their opinion, there would always be a majority. Their vision was understandable because they based their thinking on the consensus model. They did not imagine situations such as the Iran-US Claims Tribunal or, more recently, investment arbitrations.

I also still clearly recall the discussions about what to do in case the parties had failed to designate an Appointing Authority. Pieter proposed the Secretary-General of the Permanent Court of Arbitration. Willem thought it was a good idea and so did Howard Holtzmann (an American lawyer who also was intimately involved in the drafting of the UNCITRAL Rules). The question was how to convince the Secretary-General. Wasn't that outside his competence? And would it fit in the framework of the well-defined tasks of the Secretary-General? In the end, Howard was assigned this mission. Not realizing the time difference, he phoned from New York to The Hague where it was the middle of the night. The Secretary-General, awoken from his sleep, had only one question: "What will it cost us?" Howard answered: "Nothing". Based on that, the Secretary-General responded: "If that is the case, I agree."

It was also through Pieter that I met Aron Broches. He was the drafter of the 1965 Washington Convention on investment disputes and Secretary-General of the International Centre for Settlement of Investment Disputes (ICSID), part of the World Bank in Washington DC. Although Aron and Pieter were good friends, Pieter preferred commercial arbitration. Pieter was also more focussed on practice than Aron. Aron's field of operation was international organizations and public international law. Sadly, his visionary work is not sufficiently recognized in The Netherlands.⁷⁾

Working on the *Yearbook* inspired me to write two doctoral theses (after I had concluded that writing a thesis about arbitration in the Third World was too broad a topic). The first was for Aix-en-Provence with René David as my thesis director. The thesis was a comparative law study of arbitration law in the Common Law countries. I had collected and edited that material for the first volume of the *Yearbook* which covered the Common Law countries. I defended the thesis in November 1977 in Aix-en-Provence.⁸⁾

The second thesis was based on the court decisions applying the New York Convention that I had collected for the *Yearbook*. Together with Pieter, I prepared an annual analysis and comparison. Pieter wanted it kept short (“People don’t read carefully.”) I felt that it was a shame not to make more use of the material. Moreover, I had noticed that the courts of the Contracting States gave diverse interpretations of the same provisions. That led me to the idea of not only analyzing and comparing, but also suggesting a uniform judicial interpretation. Thus, the title of my thesis became “*The New York Arbitration Convention of 1958: Towards a Uniform Judicial Interpretation*”. In one reading, Pieter went through the next-to last version of the manuscript and commented on it. The thesis defense was in 1981. It was a great honor for me that I was the only one of Pieter’s doctoral candidates to be awarded the degree “*cum laude*”.

Turning back from 1981 to 1978. That was the year that Pieter decided that he was getting old (!) and that he had to secure his scientific legacy. He had an extensive arbitration library that he wanted to donate. He first considered the Erasmus University, but they could not guarantee the necessary continuity. He then approached the Asser Instituut (an interuniversity institute for international law). The director at that time, Bert Voskuil, was greatly impressed with the collection. When he asked what he should do with it, Pieter answered: “I’ll give you an assistant as well, so that you can establish a department of international arbitration.” And so I moved from Schiedam to the Asser Instituut in The Hague. But not completely, because Pieter had bargained that I would work for him one day a week (which turned out to be two). That was the period when Judy Freedberg began to work on the ICCA publications. Rosabel Goodman (*née* Everard) succeeded me as an assistant to Pieter.

After spending two years at the Asser Instituut in The Hague, Pieter decided that the time had come for me to enter practice. He thought that the best place to do this would be at Van Doorne & Sjollema in Rotterdam which was specialized in commodity arbitration. The secretariat of the Netherlands Arbitration Institute was also located there. Just as I started there in August 1980, the Secretary-General of the NAI died in a tragic accident. Due to that circumstance, I happened to become the Secretary-General of the NAI, Pieter at that time being the chairman.

1980 was also the year that *Tijdschrift voor Arbitrage* (TvA – Journal for Arbitration) was started. It bothered Pieter quite a bit that in 1969 *Arbitrale Rechtspraak* (Arbitration Case Reports) ceased publication. As its editor, he had been its driving force for many years. The new concept was that arbitral institutions would provide their awards for publication in TvA in return for a fixed number of subscriptions. Pieter appointed me as editor-in-chief and I was assisted by an editorial board. I look back on the board meetings with great pleasure. The exchange of experiences in arbitration practice was not only very useful; it could also be very amusing. Pieter’s formula could not be maintained and eventually, the NAI came to the rescue and assumed the responsibility for the greater part of the subscriptions. The contents of the *Tijdschrift* were very interesting, enlivened all the more thanks to Pieter’s continuing contribution of annotations of court decisions. The selected court decisions were almost always favorable to arbitration: Pieter did not like bad news.

The Asser time (1978-1980) was also the time when the new arbitration law of 1986 was born. There are a number of versions of the genesis of this law. My recollection is that at a certain moment, I was phoned by René van Rooij, who at that time worked for the Department of Justice, charged with drafting legislation. He had found a draft arbitration law in a drawer. It was not clear who had drafted the text. René wanted to consult with me as to whether the time was ripe to amend the 150 year old arbitration law. We discussed it over lunch and afterwards I then told Pieter about it. He took over the helm and drafted a revised text. While Pieter was working on the revision, René moved into the business world and Jules Duijnste (who, sadly, died in 1987, much too young) took over. Jules and Pieter worked together and completed a draft law with explanatory memorandum in 1984. The Explanatory Memorandum (*Memorie van Toelichting*) states: “The present bill was drafted in close consultation with Professor P. Sanders.”⁹⁾ I was working in the Middle East in that period and was not involved in the drafting of the proposed law. After studying the published draft I had a number of criticisms and devoted a special issue of *Tijdschrift voor Arbitrage* and *Advocatenblad* to the draft.¹⁰⁾ Pieter and Jules did not hit it off and this threatened the amendment process. I got involved and worked with Jules writing the Memorandum in Reply (*Memorie van Antwoord*). That finally led to the law being adopted in 1986. Pieter was then once again actively involved with the new law, writing his famous “*Het nieuwe arbitragerecht*” (The New Arbitration Law) now in its 4th edition. Pieter and I, with the help of translators, authored a publication in which the law was translated into three languages and provided with explanatory footnotes.¹¹⁾

In 1982, Pieter turned 70 years old. At the time I found that quite a respectable age. Jan Schultz (professor of private international law and sadly missed) and I compiled a *Liber Amicorum*. There was no difficulty deciding on a title: “*The Art of Arbitration*”. Nor was there a problem with the cover. I had asked Karel Appel to design the cover and he readily agreed. We formally presented the book to Pieter at the ICCA Conference in Hamburg. It was gratifying to see how pleased Pieter was. Today, 30 years later, Pieter is 100 years old. For me now, that is quite a respectable age. Another *Liber Amicorum*? Pieter told me quite emphatically that he did not wish that. He is in every way, a very special person. All the more because he has transformed the maxim *Ars Longa, Vita Brevis* into *Ars Longa, Vita Longa*.

Albert Jan van den Berg, general editor Yearbook Commercial Arbitration and ICCA Congress Series, former general editor International Handbook on Commercial Arbitration. The author would like to express his gratitude to Judy Freedberg for the translating this contribution to the special issue of the Tijdschrift voor Arbitrage.

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References

- A very good overview of Pieter Sanders' 100 years is made by O. Sandrock, *Pieter Sanders 100 Jahre Europäische Aktiengesellschaft / New Yorker Übereinkommen von 1958 / UNCITRAL*, ZVglRWiss 111 (2012). An English translation is available at the ICCA website: www.icca-arbitration.org.
- ?2 Which the housekeepers used to dry plastic bags.
- ?3 P. Sanders, Trends in the Field of International Commercial Arbitration, p. 205, 288, *Collected Courses of the Hague Academy of International Law*, Vol. 145(1975).
- ?4 P. Sanders, L'autonomie de la clause compromissoire, *Hommage à Frédéric Eisemann, Liber Amicorum* (ICC Publishing 1978) p. 31.
- ?5 I became good friends with Willem Vis, from whom I learned a great deal during, in particular, about the internal functioning of the United Nations. Whenever he was in Holland, he always wanted to eat at restaurant Dorrius which then was located on the Spuistraat in Amsterdam. He was one of the rare fans of the Dutch kitchen, especially *raasdonders met spek* (marrow peas with lard).
- ?6 Artikel 31(1): "When there are three arbitrators, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators." Zie ook artikel 33(1) van de 2010 versie van het Uncitral Reglement.
- ?7 I also became good friends with Aron Broches. He wrote outstanding legal opinions and was a convincing expert witness in a case in Bermuda in which I was involved in 1986.
- ?8 The commendation *très bien* was probably thanks to the approximately 45 Dutch *amici et amicae* who accompanied me on the bus trip.
- ?9 18 464 nr. 3 p. 3.
- ?10 Aan de balie van het scheidsgerecht, TvA 84/6.
- ?11 The Netherlands Arbitration Act 1986. Text and Notes (Kluwer 1987).

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