

Tribute to Professor Albert Jan van den Berg

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by Erica Stein¹

Good afternoon, everyone. I am Erica Stein, an independent arbitrator based in Brussels, and I have the pleasure of taking you through this last panel of the day.

The title of this panel would indicate that the next 20 minutes will be dedicated to the Launch of the 2nd Edition of ICCA's Guide to the Interpretation of the 1958 New York Convention. While that is partly true, this is also a moment to follow up from the wonderful panel we just listened to.

We just heard many ways in which the NY Convention is a human endeavor. We heard from judges who apply it. From practitioners who use it, and whose clients rely on it. This morning, we also heard from one of the visionaries and influencers of the New York Convention, Piet Sanders. Without much further ado, I am honored to now turn the floor over to another visionary and influencer of the NYC, Albert Jan van den Berg, to launch the Second Edition of the Judges' Guide.

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Albert Jan

The launch of the Judges' Guide has just happened. So you may all be asking yourselves: why is Stein back up on the podium? I can tell you why. Because I have the immense pleasure of now honoring you, Albert Jan, as a visionary and influencer in the human endeavor that is the NY Convention, just as you had previously done for Piet in producing the video we saw earlier today.

For those of you who do not know me, I should start by saying that I worked for Albert Jan for six years at the beginning of my career. He showed me what it means to be a diligent, careful, thoughtful, and insightful arbitrator. He showed me what it means to understand the honor and privilege of being entrusted by parties to decide their disputes. He made me love the profession. In many ways, he made me want to follow in his footsteps. In short, he is my mentor.

But let's go back in time in this human endeavor to when Albert Jan started working for his mentor, Piet Sanders. After studying law in the Netherlands and France, Albert Jan went to New York. Halfway through his studies at NYU, Piet asked Albert Jan to assist him with editing the ICCA Yearbook on Commercial Arbitration, of which Piet had become the General Editor. Piet proposed that Albert Jan combine editing with writing his thesis. Albert Jan liked the idea, but liked the idea of hitchhiking from New York to Peru more. So he did that first – before returning to the Netherlands in July 1975 to start working in Piet's attic, analyzing awards and cases. (Although Piet reportedly encouraged Albert Jan to pursue his foreign travels, I

cannot help but think that Piet put Albert Jan in the attic as some sort of payback...)

Regardless, the work in Piet's attic planted two important seeds:

- The first was the publication, in 1981, of Albert Jan's thesis, which has become the seminal treatise on the New York Convention. Keep in mind – because I will come back to this later – that the objective of that thesis was to achieve the uniform interpretation and application of the Convention across jurisdictions;
- And the second seed was his nearly 50-year relationship with ICCA, first as Piet's assistant, and then as General Editor of ICCA Publications for 32 years, not to mention as the founder and chair of its judiciary committee, as a member of ICCA's governing board and its President between 2014 and 2016.

These two seeds of his thesis and work at ICC grew together over time to affirm Albert Jan's influence on how we look at the New York Convention.

Albert Jan's influence grew through practicality. While working in Piet's attic, Albert Jan developed an indexing system to catalog cases according to topics that concern the interpretation and application of the Convention. That indexing system is still applied throughout all ICCA materials related to the Convention today. This has made accessing relevant information to the Convention possible and efficient.

Albert Jan's influence on how we look at the New York Convention grew through curiosity. Ever since his thesis, Albert Jan has always been on the lookout for interesting decisions on the Convention, from across the world, particularly when courts are confronted with the important issues of the Convention for the first time. Because he is a sleuth, he has kept our knowledge about the application of the Convention up-to-date and global. In so doing, he has inspired others to participate in this effort. For instance, he inspired the conception of the ICCA Tsinghua working group that worked on the Compendium on Chinese Arbitration Laws, and then the collection of Chinese arbitration cases.

Albert Jan's influence on how we look at the New York Convention grew through sharing. Albert Jan has not only sought out interesting decisions - he has always reviewed them, catalogued them, and readily shared his views as to why and where the courts got it right, or wrong. Albert Jan has never stopped trying to make information on the Convention available to as wide an audience as possible – not only through his work at ICCA, but also personally. We have just heard from Albert Jan about the revamp of his website.

Albert Jan's influence on how we look at the New York Convention grew through teaching. As we have just heard, ICCA decided to publish the Judges Guide. Following up from this, Albert Jan and others at ICCA came up with the idea to “put the show on the road” to bring the Guide directly to the Judges. These ICCA Roadshows have been a great success, reaching 79 countries and 2074 judges

around the world. Albert Jan has, alongside colleagues, trained over 400 judges himself, in Ghana, Mexico, Indonesia, Rwanda, Malaysia, Mauritius, Brazil. And closer to home, in 2015, he carried out a Roadshow here in Hong Kong and, later that same year, visited the Supreme People's Court to discuss the application of the New York Convention there, as well.

Albert Jan has not only taught judges. He has taught hundreds of students about the New York Convention – from Miami to Geneva, from Washington to Singapore, from Rotterdam to Beijing. His impact cannot be understated. To give some local color, Albert Jan started teaching at Tsinghua University from the moment the International Arbitration and Dispute Settlement course was set up in 2012.

I have just confirmed the ways in which Albert Jan has influenced how we look at the New York Convention. But let me mention why he is a visionary, as well:

First, as I mentioned at the outset, Albert Jan's objective with his 1981 thesis was to achieve the uniform interpretation and application of the Convention across jurisdictions. Looking at Convention decisions today, we see that his lifetime of work has led to this result. Innumerable courts regularly refer to his thesis to determine how to decide key issues. More recently, the Judge's Guide has started to play that role, as well, with citations to the guide found in cases reported from Australia to the UK, from the Benelux to Brazil, with Cyprus, Ecuador, Georgia, India, Israel, Portugal, Singapore, and Switzerland in between. Albert Jan's goal

of uniformity has, largely, been achieved. And it is only right that the 2nd edition of the Judges' Guide (2024) has been dedicated to him:

“Echoing the words of Professor Pieter Sanders, author of the Foreword to the First Edition as Honorary General Editor of the Guide, who passed away in 2012 shortly after its publication, we expect that this Second Edition of the Guide will serve as a tool in advancing the mantra he repeated on many occasions: ‘May the New York Convention Live, Flourish and Grow’.

“If there is one person that embodies this motto it is Prof. Albert Jan van den Berg. As founder and chair of the Judiciary Committee, a position that he held for ten years, as general editor of ICCA’s Yearbook Commercial Arbitration for thirty-two years, as creator of the essential database www.newyorkconvention.org, as well as through his entire career, his contributions to the study and development of the New York Convention are unparalleled. For these reasons and many more that would require long pages to be listed, this Second Edition of the Guide is dedicated to him.”

Second, Albert Jan is a visionary because, despite the Convention’s success, he is willing to recognize its flaws and demand something better. In his keynote at the ICCA Congress in Dublin in 2008, celebrating the Convention’s 50th anniversary, Albert Jan suggested that it was time to modernize the Convention and proposed a new Draft Convention. In his words, the new Draft Convention was to improve upon the current New York Convention by “being readily understandable by practitioners and judges in many countries”, by “keeping the text to a bare minimum” and “offering clear and simple solutions based on current practice”.

Albert Jan continues to push himself, and us, forward intellectually, and it may be that one day, his vision of a modernized Convention may well become a reality.

With this, Albert Jan, I wish to say thank you, on behalf of the IA community, for having played your part as an influencer and visionary in the human endeavor that is the New York Convention. And I also wish to thank ICCA and the organizers for having given me the opportunity to come up here and say these few words in your honor.
