

# Editorial

*Pierre A. Karrer\**

## *Tailor-Made Litigation*

International arbitration is becoming more and more like litigation, so one hears: yes and no.

Litigation is handled by experienced professionals, with the help of an elaborate, modern infrastructure—secretariat, computers, telefax, interpreters, verbatim reporters—or at least it should be. Why should international arbitration not make use of all these means too? If it is to handle the complex disputes that it does, and do it over great distances as it must, in various languages and with highly-paid participants all around, it is imperative for it to have every advantage on its side. The remaining difficulties are still great enough.

These difficulties are very specific and seldom encountered to the same extent in ordinary litigation: differences in mentality, style, values, perception of the role of lawyers, business executives and decision-makers—in short, cross-cultural differences.

To overcome these difficulties open-minded, highly educated professionals, who are truly international in their outlook and enjoy comparative law in action are needed. It is not only arbitrators who must try to understand, then rise above, the limitations of their background, but also lawyers representing parties. This is a lifelong task. Let us involve young lawyers in live arbitration.

The more arbitration is truly international, the more it should shun the well-trodden paths of ordinary litigation. This is designed to work impartially for numerous disputes between different parties, some of them quite unsophisticated. It also works in a routine: no wonder it has formalist tendencies, even tricky ones sometimes. If countless cases have to be handled simultaneously that is what happens.

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In contrast, international arbitration must be concerned in every specific case with shaping a procedure that allows the parties to be heard, and to present their case in a suitable, comfortable way for them. The arbitrators are the servants of the parties and arbitral procedure the handmaiden of justice.

But what kind of justice? There is probably no such thing as arbitral justice or a body of law to be applied exclusively by international arbitrators. The way an international arbitral tribunal proceeds and makes its award on the merits should be every bit as rational as that of a court of law: amateurism has no place in that process.

International arbitration should be tailor-made litigation.