

COPENHAGEN ARBITRATION DAY 2018

Copenhagen Arbitration Day ("CAD") took place for the first time on 5 April 2018 at the historical building; the Old Stock Exchange, right in the center of the city of Copenhagen. The Danish Institute of Arbitration ("DIA") and ICC Denmark were the delighted hosts for the international arbitration event which was followed by a drinks reception and dinner at Restaurant Søren K in the Black Diamond (the Royal Danish Library).



Chairman of the DIA, Jesper Lett & Secretary General of ICC Denmark, Jens Klarskov



Some of the attendees were Supreme Court Judge Jens Kruse Mikkelsen (left) and Lotte Wetterling (middle)

THE DANISH INSTITUTE OF ARBITRATION



During CAD President of ICC International Court of Arbitration Alexis Mourre said:

"In the past three years, the Court has introduced novel policies to significantly improve the time and cost efficiency of its arbitrations, while increasing the transparency of its procedures and establishing the highest level of ethics for all players. At the same time, we have significantly expanded our global reach with the opening of four new offices in Shanghai, Abu Dhabi, Sao Paolo and Singapore"



Wendy Miles, QC, partner at Debevoise & Plimpton, London, said:

"International arbitration is an 'imagined order', like any other form of religious, legal or economic order. It is an idea that exists because we – its users – believe that it exists. We buy into the myth and believe in its reality. The fact that it is borne of an international convention makes it no less imagined; it still takes continuous effort to safeguard our belief in it. The Achmea decision promotes another imagined order being that of the EU legal order, also borne out of convention, here regional. The risk to international arbitration is that the Achmea court seeks to safeguard EU legal order by asserting its dominance over international arbitration, and potentially the N. Y. Convention."



THE DANISH INSTITUTE OF ARBITRATION



Wendy Miles QC, partner at Debevoise and Plimpton, London, also spoke about the idea of international arbitration, discussing Paulsson's *"civilized closure"* and Harari's *"imagined orders"*. She raised concern about the CJEU in the Achmea decision *"seeking to safeguard the EU legal order by asserting its precedence over international arbitration, and potentially even the New York Convention"*, and reminded participants of the *"continuous effort required to safeguard the idea and system of international arbitration as we know it today."*



Thomas Arendt (left), Wendy Miles (middle) and Torben Melchior (right)

"Civil law arbitrators still tend to favour that experts are appointed by the tribunal. However, there is a clear trend in international arbitration to rely on party-appointed experts, resulting in a "battle of experts". The Tribunal may take steps to mitigate that problem. The experts can draw up a list of issues on which they agree/disagree, and during the hearing witness conferencing, "hot tubbing", is useful."

said Torben Melchior, former President of the Danish Supreme Court.



THE DANISH INSTITUTE OF ARBITRATION



René Offersen, member of ICC International Court of Arbitration and partner i DLA Piper Denmark, said:

"In 2015 Queen Mary University of London carried out an empirical survey asking a number of identified stakeholders in the international arbitration environment which three arbitral institutions they preferred. An impressive 68 percent of the respondents pointed out ICC International Court of Arbitration as their preferred institution. Nearly twice as many as the second most preferred."



THE DANISH INSTITUTE OF ARBITRATION



Jeppe Skadhauge, Chairman of the Danish Arbitration Association and partner in Bruun & Hjejle, said:

"In our search for efficiency in arbitration, the noble art of design efficiency calculation may inspire us. Whether a carefully crafted chair, industrial wind turbines or an arbitration process - one aspect is to ensure the absence of superfluous parts and procedures. Learning from a true Danish design process, 'embracing' - involving - the user directly in our analysis is key."



Torsten Iversen, professor at the University of Aarhus, dedicated his presentation to the need for balancing of fairness and efficiency:

“Focus on efficiency is absolutely necessary, but efficiency is not everything. Since arbitration aims at a final and binding legal decision, the principles of due process must of course be observed. Everybody would agree that unnecessary delay and expense should be avoided, but one problem in this regard is that the ex ante and the ex post view on necessity may differ. Another problem is that efficiency, to a large extent, is a shared responsibility of arbitrators, counsellors, parties and the arbitration institution. However, the greatest responsibility for delay will ultimately lie with the president of the arbitral tribunal.”



THE DANISH INSTITUTE OF ARBITRATION



Henriette Gernaa, head of Disputes at Gorrissen Federspiel stated that users asked what was on the dispute resolution shelf and that they would go elsewhere with their disputes if each of the protagonist of international arbitration (users, counsel and arbitrators) do not contribute to meet users' demand for speedy and cost effective arbitration.



THE DANISH INSTITUTE OF ARBITRATION



Thomas Arendt, Senior Vice President of Vestas Legal & Compliance stressed that international arbitration today is big business and that what users, meaning customers, are looking for is a *“dispute resolution mechanism to resolve disputes in a timely and efficient manner with adequate, predictable and enforceable results”*.



THE DANISH INSTITUTE OF ARBITRATION

CAD was followed by a drinks reception ...



and dinner at Restaurant Søren K in *the Black Diamond*, a.k.a. the Royal Danish Library.



During dinner Mads Bryde Andersen, a law professor at the University of Copenhagen and the former chairman of the DIA, raised the following question for discussion: *Is arbitration a “vocation” (meaning a service rendered under some kind of moral imperative), a “profession” or an “industry”?*



He rejected the first possibility (*vocation*) as being too far from reality, given the fact that most arbitrators would prefer a relatively *boring* case with a huge amount in dispute (and an equivalent fee), to a more *interesting* case with a modest amount in dispute and a modest fee. For many reasons he also failed to see how arbitrators could reasonably be considered to be part of a *profession*: First, you only possess the title as “arbitrator” when appointed. Secondly, arbitration services are rendered within a multiple of different arbitration cultures that are all affected by different industries, countries and arbitration institutions. And last, but not least, arbitrators function without any organizational supervision, contrary to the case is in the ordinary professions. He therefore concluded that arbitration should merely be seen as one kind of *dispute resolution service*, offered by a (more or less) specialized arbitration industry and under strong competition. Given this reality he argued that the arbitration industry should always be mindful of what its customers (the parties in dispute and their counsel) want, given their very different and particular demands. As a consequence of this viewpoint, party autonomy should also play the predominant role in the determination of some of the difficult issues in arbitration, e.g. conflicts of interest or the use of administrative secretaries.

THE DANISH INSTITUTE OF ARBITRATION



COPENHAGEN ARBITRATION DAY 2018



THE DANISH INSTITUTE OF ARBITRATION

Supporting partners:

dreyersfond

THERIUM.	BRUUN & HJEJLE	Holst, Advokater	HORTEN
 <small>獨立仲裁員</small> <small>ARBITRATION CHAMBERS</small> <small>HONG KONG - LONDON</small>	PLESNER	 <small>LASSEN RICARD</small>	 <small>DLA PIPER</small>
Kammeradvokaten Poul Schmith	YAC	HjulmandKaptain	LUNDGREN S
Dansk Forening for Voldgift	COPENHAGEN CHAMBERS <small>INDEPENDENT ARBITRATORS</small>	KROMANN REUMERT	ANDERSEN PARTNERS <small>Advokatfirma</small>
DAHL advokatfirma	Gorissen Federspiel	VILTOFT	MAZANTI— ANDERSEN KORSØ JENSEN

For questions, please contact
the DIA by e-mail office@danisharbitration.dk or
René Offersen, member of ICC International Court of Arbitration, by e-mail rene.offersen@dlapiper.com

Save the date 04 April 2019