

## WHY ARBITRATION MATTERS

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A year and a half ago, on a Sunday afternoon, I was sitting in the car with my husband and son on our way home – we had been somewhere for a family activity – and suddenly my phone rings. I pick up the phone, and on the other end is this strong and sparkling voice which says “Hi! This is Nina Lagergren.”

I am of course very surprised but we talk for a few minutes, and when I hang up the phone we have agreed to meet a few days later. I turn to my family, and I say “Raoul Wallenberg’s sister just called me.”

And as I say these words - *Raoul Wallenberg’s sister just called me* - I have this very strong sensation, and I still do when I talk about it, that this call is a defining moment.

It was as if everything I had done up until that point, in this capacity, had been pointing towards this moment. This call. *Hi! This is Nina Lagergren.*

So why am I telling you this story today, you ask. Why is this relevant? Because to me, it goes to the heart of what I want to talk about here today.

I want to talk about **WHY ARBITRATION MATTERS.**

And I am not thinking about the obvious advantages that we are all aware of. The ones that, if you would wake us up in the middle of the night, we would be able to recite. Speed, enforcement, flexibility, expertise. The list could go on.

No, I am talking about why it really matters. And why it matters not only for us here in this room, but for anyone outside this room who may never even have heard about international arbitration and is not likely ever to come into direct contact with an international arbitration matter. Why it matters to them.

And if these remarks here today leave you with some thoughts, or some arguments, that you can use after you leave this conference today, and when you meet someone who needs to understand why arbitration matters – at dinner tonight, or next week, or later – then I have achieved my objective.

The reason why Nina Lagergren called me that Sunday afternoon was that I had sent her a letter a few weeks earlier. She had been on the radio as I was driving home from the Swedish West Coast after the summer holidays. And I was so struck by her words that I had to pull the car over and send a text message to Ulf Franke: “Turn on the radio. Nina Lagergren is speaking.” And I immediately got a response. “I am listening. We can only hope we will be as alert when we are 93.”

Nina Lagergren was hosting a radio talk show that day. This is a Swedish summer tradition, where public figures from various backgrounds, age and experience, get 90 minutes to talk about anything they want, and play their favourite music. That afternoon in August, Nina Lagergren had been invited to host the programme.

Nina was sharing experiences from what I think can be described as nothing less than an extraordinary life. She of course talked about her brother, Raoul Wallenberg, and the family’s struggle to find out the truth about his fate. But she also shared from her own life with the well-known Swedish judge Gunnar Lagergren.

Nina and Gunnar were married in December 1943, and shortly thereafter Nina accompanied her husband to Berlin, where Gunnar had just been appointed Head of the Protective Power department at the Swedish Embassy in Berlin (during the Second World War, Sweden acted as Protective Power for 28 states in Berlin). This was at the

height of the war, and wives and families were not normally allowed to travel with their husbands to the mission in Berlin. But Gunnar had made it a precondition upon accepting the appointment that Nina would be allowed to go with him – as they had just been married – and so they went.

Speaking about this episode in her life, Nina said “I think it was the experience from Berlin during the war that made Gunnar focus so much of his career on peaceful resolution of disputes”.

That is when something went “click” in my mind, and when I got home I wrote a letter to Nina, to ask if she would be willing to meet with me, to talk more about her husband (who passed away in 2008) as part of a documentary we are preparing for the SCC Centennial. And then came the phone call. *Hi, this is Nina Lagergren.*

In less than a year, the Arbitration Institute of the Stockholm Chamber of Commerce will celebrate its 100<sup>th</sup> anniversary. In the century since SCC’s founding, international arbitration has aligned with and supported an exponential increase in international trade. It is a period characterized by a tremendous growth of the global economy.

Against this background, it is not surprising that we are living in times of warfare between states. We know that international trade encourages peaceful and stable relations among nations. As an example, a recent study from Stanford University, published in December last year, examined the metrics of economics and war since 1870, and concluded that “in the absence of international trade, no network of alliances is peaceful and stable.” Trade, legal norms and peace go hand-in-hand, defining the world around us. This is the background against which international arbitration must be assessed, and understood.

And yet, come 2015, when the European Commission presented its proposal for a new Investment Court System, the European Commissioner for Trade said we should no

longer use the word “arbitrators”. The Commission advocates a system of “public justice”, as opposed to a supposedly flawed system of “private justice”.

This is a deeply worrying conversation. And it needs to change.

And I say this not only because I represent an arbitral institution. This conversation is much bigger, and far more important, than the operations of one single arbitral institution. What we do at the SCC on a daily basis gave us reason to enter into the debate. The heritage of Gunnar Lagergren has given us the perseverance to keep going.

Because today, political shortsightedness risks undermining a well-functioning and important legal system which has been carefully carved out by states for centuries. Let us remember that international arbitration enjoys the confidence of thousands of private companies, as well as state-owned companies and governments. Every day on this planet, contracts worth many billions of dollars are entered into by public and private parties– contracts which include an arbitration clause.

Public and private parties refer to arbitration because they trust the system. They trust that international arbitration will offer a neutral and impartial resolution of their disputes, and a level playing field. They trust a procedure governed by the rule of law; at national level through legal frameworks, which thanks to the UNCITRAL Model Law on International Commercial Arbitration, but also other instruments, demonstrates an impressive consistency throughout the world, and at international level with the help of instruments such as the New York Conventions on the Enforcement and Recognition of Foreign Arbitral Awards and the Washington Convention on the Settlement of Investment Disputes. And they know that in the end, their rights, as defined in an arbitral award – should they be successful – must be respected and upheld by national courts in more than 150 jurisdictions as a matter of international law.

This is what international arbitration is. This is why it works. This is why it matters.

It is not a perfect system. You know it, and I know it. But it is also not a static system. It responds to changes in the world in which it operates. I would say this is happening every day. And that this is one of the strengths of international arbitration.

There are many examples, and you of course are familiar with them. But just as a reminder, I would like to mention a few.

More than 70 states have adopted the Model Law on International Commercial Arbitration. Add to that the many states that have enacted laws which recognize the principles of the Model Law, including Sweden. Second, as a response to concerns raised about investor-state arbitration, the UNCITRAL Rules on Transparency for Treaty-based Investor-State Arbitration were adopted in 2014, later followed by the Mauritius Convention. And as a third example, the IBA Guidelines on Conflict of Interest in International Arbitration enable courts all over the world to coherently define what we mean when we talk about arbitrators' impartiality and independence. And these are but a few examples of initiatives geared towards safeguarding legal consistency and predictability.

So when interest groups and political leaders seek to dismantle international arbitration, they are effectively seeking to dismantle a legal system which has been one of the cornerstones of international relations for centuries. It is the enforcement bar of the construction we call international trade. This is why we need to change the conversation. This is why we need to explain why arbitration matters.

And when we do, let us remind about the heritage of the likes of Gunnar Lagergren, who saw the horrors of war at first hand, and with this experience came to devote a large portion of their career to peaceful resolution of disputes. Let us share the inspiration offered by the brave examples of Professor Tang Houzhi in Beijing and Professor Sergei Lebedev in Moscow, who during the height of the Cold War and East-West tensions, developed international arbitration in China and the Soviet Union, to pave the way for

increased trade, and in the end more open societies. Let us point out that we cannot be blinded by the fact that we may not support the business or the core values of every single party using international arbitration. *It doesn't matter.* This is the essence of a well-functioning legal system.

We may not agree with the opinions or values of every fellow actor in society, or even the rights granted to them under the law. But we do not question their right to be equally treated under the law, in fair procedures, be it before a national court or an international tribunal.

This is what international arbitration is offering. This is why it matters.

Last year – in the second half of 2015 - the world saw a striking consensus on the challenges we are up against on this planet and what needs to be done to address them. At the United Nations Sustainable Development Summit in September 2015, world leaders adopted the 17 Sustainable Development Goals. Later in the year, in December, the world cheered as the 21<sup>st</sup> Conference of the Parties to the UN Framework Convention on Climate Change, most commonly referred to as the COP 21, resulted in 196 states adopting the Paris Agreement by consensus. Now the hard work begins, in carving out the details.

Fulfilling the promise of the Sustainable Development Goals and the Paris Agreement will require trillions of dollars in investment worldwide, over a long period of time: investment which needs a predictable, stable and transparent policy. But today, there is a shortage of policy. I spent a few days in Paris in the periphery of the negotiations, and if there is one message I took back with me it is this: to fulfill the promise of Paris we must bridge the policy gap on all levels; global, regional and national.

Policy to tackle global challenges needs to be long long-term, and reliable. And in the end policy will mean nothing if you cannot rely on its enforcement. This is also why international arbitration matters. We should not underestimate the power of

international arbitration to put force behind words, and ensure that long-term goals in support of global ambitions bite.

International arbitration has been part of global ambitions for centuries. It is my firm belief that it can also become an important piece of the roadmap for the future. The instruments are there, as is the experience. So let's put international arbitration to work to enforce policy designed to fulfil the ambitions of the Sustainable Development Goals and the Paris Agreement. I can think of no better way to demonstrate why arbitration matters.

To conclude. In 1955, the 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."

*Higher standards of living. General Peace and prosperity.*

This is the big picture. We should not let it not be stolen, or diluted, or forgotten. Instead, we need to explain the important heritage embedded in the fundamental principles of international arbitration to anyone who appears to have missed the big picture.

And if they don't seem to listen, explain again. And again. And again.

Thank you.