



INTERNATIONAL COUNCIL FOR COMMERCIAL ARBITRATION

On 1 November 2013, the International Council for Commercial Arbitration (ICCA) announced the election of Prof. Dr. Albert Jan van den Berg as its President-elect. Prof. van den Berg was elected by the ICCA Governing Board on the basis of the 30 August 2013 Program Presentation below. He will take office at the ICCA Congress in Miami, 6 - 9 April 2014.

Election of ICCA's President as of Miami 2014

Program Presentation by Albert Jan van den Berg

Dear Friends,

In the letter of 12 June 2013, which you received by email from the *ad hoc* Transition Committee for Election of ICCA's President 2014 (composed of Karl-Heinz Böckstiegel, Yves Fortier, Pierre Tercier and Jan Paulsson), the Committee wrote: "*The candidates so nominated will be invited to submit a written program outlining their views of the future of ICCA, in particular as to what they intend to achieve in the next four years.*" The Committee also sent you the "*Adoption Time Table for Election of ICCA's President 2014-2018,*" requiring candidates to present their program by 1 September 2013. It is against this background that I send you this program presentation.

First, a few words about why I accepted the nomination: it was not my original intention to put my name forward as ICCA's next President. I changed my mind in the beginning of July 2013 for two reasons. First, many of you encouraged me to be a candidate. Second, I realised that the work ahead of us in transitioning to and implementing the new ICCA Constitution and Bylaws would require substantial efforts of a transitional President. I believe that my experience at ICCA, in particular with publications, establishing the structure of the organisation, and the new Constitution, will allow me to contribute to the important work to be done in the next years.

The way forward

ICCA is considered by the arbitration community as the leading organisation for promoting knowledge about, and use of, international arbitration. It enjoys this reputation thanks to the stature of the persons associated with it, its independence, and the unique congresses and publications it sponsors.

The strong and visionary leadership of ICCA in recent years has taken ICCA in the direction of more transparency of its organisation and participation by the worldwide arbitration community. I intend to continue to go in that direction.

In my view, the way forward for ICCA is to act on the basis of our core values, to preserve what we are good at, to adjust to new circumstances within the limits of our human and financial resources, and to implement our revised structure cautiously.

Transition and Implementation

As of 1 January 2014, we will have a new Constitution and Bylaws. For a number of years, I felt that the SoPP should be replaced and it was an honour and pleasure for me to be on the Committee that created the Constitution and Bylaws in close consultation with the GB Members and Advisory Members. I am very pleased with the result. The transition and implementation are yet to come and will involve significant and time consuming efforts.

At the May 2013 London Meeting, the Governing Board took a bold measure. It voted unanimously in favour of the proposal of the SoPP Committee to replace the entire Board within the next 7 years. This vote abolished the practice of perpetuated membership of ICCA. The implementation will not be easy. It will be carried out with the assistance of the *ad hoc* Transition Committee and the Nomination and Membership Committee. Every year there will be five new GB Members. One of my functions as President will be to assist new GB Members to find their place within ICCA and to assure continuity. I believe it also to be my role to keep the departing Members involved in ICCA for their wisdom and friendship.

The philosophy of ICCA's new Constitution and Bylaws is to put greater emphasis on the work of Committees and to expand the scope of what can be addressed by the organisation as a whole. The Standing and Special Committees will be chaired by GB Members, whilst the remaining members can be both General Members and GB members. In this way, General Members will be more closely involved in ICCA's activities. This is another change that, in my view, requires careful attention and guidance in years to come in order to be successful.

An important part of the transition work concerns the Dutch foundation (*stichting*) which currently acts in the interest of ICCA. ICCA itself functions globally and is recognised as an NGO. Against this background, the Bylaws (Article 30) require the GB to establish a Special Committee to review the use by ICCA of the ICCA Foundation, called the "ICCA Foundation Committee." The ICCA Foundation Committee is to investigate the various options and to give recommendations to the Board. It will be vital to find the right structural vehicle for ICCA that best allows us to achieve our program and financial goals. Implementing this will be critical to accomplishing the goals of ICCA and will be a priority for ICCA leadership.

Finances and Human Resources

ICCA's capital is tiny and the annual revenues are barely sufficient to cover the salaries and expenses, even with the additional revenues from General Membership. At present, ICCA has an unbalanced budget. I am strongly committed to working with the Finance Committee to get a balanced and sustainable budget.

The ICCA Bureau has many tasks (see Article 15 Bylaws) and does an impressive job. It is, however, stretched on human resources. The 3,5 FTE cannot be compared with the staff of larger organisations such as ASIL or the IBA. Yet, the Executive Director (Lise Bosman) and her staff are responsible for the ICCA Publications, the ICCA website, the administration of General Membership, cooperation with the Permanent Court of Arbitration, and coordination and assistance with ICCA Committees and projects (for example, the project to develop ICCA Protocols for Fair and Efficient Arbitration). We need sound plans to improve this situation.

The Committees

One of the key components of the new structure is the Standing and Special Committees: a number of Committees are already active, whilst others are still to be established. Below I offer a few thoughts about possible future work of a number of these Committees.

Congress Committee. The ICCA Congresses are regarded as different from other arbitration congresses. As one participant told me: "ICCA Congresses are not only networking for me, I also learn something." At the same time, we are being warned of two dangers: the varying quality of the presentations (the "political slots") and the ever growing attendance. These are two concerns that Congress Programme Committees will address, in part by having a rigorous speaker selection process, and perhaps by considering other additional formats to complement the existing large seminars. We may also consider standardising the superb methodology of the current Programme Committee for Miami for future ICCA Congresses.

Publications Committee. The ICCA Publications have their "Unique Selling Points." They are authoritative; they have exclusivity (e.g., commercial awards); they have high calibre authors; they give unprecedented coverage of court decisions on the New York Convention and other important arbitration treaties; and they are carefully edited. ICCA is a major contributor to the content of the Kluwerarbitration.com online service. However, there are also concerns. Publishing has shifted to instant online news reporting, mostly available without subscription. This applies, in particular, to court decisions and investment awards. As a result, the Publications Committee may want to do some fundamental rethinking in order to retain our current position. For example, we may have to rethink the format of the Yearbook. We may also have to consider what news items ICCA can offer beyond its newsletter on its own website or otherwise. We may further wish to establish country groups for contributing to the ICCA Publications with help of the

General Members.

Judiciary Committee. The ICCA New York Convention Road Shows for the judiciary have been successful so far. We should continue this judicial outreach as there are still many countries to cover and some others need refresher courses. The Road Shows can be expanded as they no longer need to be taught by GB Members only, and provide another opportunity to involve ICCA General Members.

Users Committee. I believe that we should also reach out to other stakeholders in international arbitration. An obvious primary one is corporate counsel, and an important start has been made through the establishment at our meeting in May of the GB's Corporate Counsel Liaison Group. I fully support the expansion of the work of this group. For example, it would be helpful to have corporate counsel input on their concerns with arbitration, and to devise practices with them that foster the continued use of arbitration. This group could also make a significant contribution in considering alternate methods of dispute settlement that are proving effective for corporate users. These are matters to be taken up by the Users Committee.

Young ICCA Committee. Young ICCA is vibrant. The buddy system works well and we should continue to give the Young ICCA members support as much as we can with the help of the Young ICCA Committee, for instance by encouraging GB Members to be active participants in the Young ICCA Mentoring Programme, and take part in Young ICCA's skills training workshops.

Concluding Remarks

It would be an honour for me to lead ICCA at this important juncture, and if given this opportunity I would ensure, together with the Members of the Executive Body and under the guidance of the Governing Board, that also for the next generation ICCA continues to be the premier worldwide independent organisation for the promotion of the knowledge about, and the use of, arbitration and other forms of international dispute settlement. It is time for us to embrace ICCA's past and for us to work towards its future.
