

# New York Convention Roadshow



## Returns to Brazil

by Adriana Braghetta, President of Comitê Brasileiro de Arbitragem

In March 2012, the New York Convention Roadshow stopped off in Brasilia at the Superior Court of Justice ("STJ" - the main Court dealing with arbitration issues in Brazil.). ICCA Governing Board

Member Albert Jan van den Berg gave a lecture explaining the main purposes of the Convention, its application and interpretation throughout the world, attended also by Governing Board Member Adriana Braghetta. The role of the STJ is twofold: a 15-member group of Justices is in charge of analyzing requests to recognize foreign awards, and the STJ rules as the highest court of judicial review over cases from the Brazilian lower courts, discussing the interpretation of federal statutes.

After showing an impressive knowledge of the Brazilian case law on arbitration, Prof. van den Berg noted that the Brazilian judiciary had become a model to be followed, as the STJ centralizes the control of the recognition of foreign awards in an efficient and transparent manner. He also told Brazilian judges that they should refer to the New York Convention more often than the Brazilian Arbitration Act (which has similar provisions). This comment was well received by the judges. STJ Chief Justice at that time Justice Ary Pargendler emphasized that arbitration is essential for the judiciary in Brazil. More than 100 judges and clerks participated in the seminar, receiving a copy of ICCA's Judge's Guide in Portuguese.

The March Roadshow was followed by further important dialogue between Brazilian judges and the arbitration community on 3 December 2012 at the STJ. This took the form of a seminar organized by Justice João Otávio Noronha of the STJ, together with Cesar Augusto Guimarães Pereira, president of CAIEP. Justice Noronha invited Prof. van den Berg to open the seminar as a special guest. Several members of the arbitration community participated in different panels, including: former Supreme Court Justice Ellen Gracie Northfleet, Governing Board Member Adriana Braghetta, Pedro Batista Martins, Eduardo Talamini, José Emilio Nunes Pinto, Cândido Rangel Dinamarco, Arnaldo Wald, Carlos Alberto Carmona, Mauricio Gomm Santos, Cesar Guimaraes Pereira, Hermes Marcelo Huck, José Miguel Júdice and Justice Felix Fischer (STJ Chief Justice).

Important issues discussed with the Brazilian judges included uniform criteria to recognize foreign awards; judge d'appui, urgent measures and antisuit injunctions; enforcement of arbitral awards and setting aside proceedings; the interaction among the Brazilian Arbitral Act (9.307/96), the New York Convention and other treaties; and, finally, international systems of recognition of foreign awards. The event was again a success, with the participation of several members of the Brazilian judicial system.

**In 2013, the Roadshow will visit Bahrain, Italy, Rwanda and Zimbabwe. ■**



# Update from the CCIAG

by Isabelle Hautot, Chair of the CCIAG



Since its inception in 2006, the main concern of the **Corporate Counsel International Arbitration Group (CCIAG)**, an association of corporate counsel, has been to address users' dissatisfaction with the way arbitration has changed towards ever more complexity - streamlining arbitration and rendering it more effective, particularly from a time and cost perspective. While all stakeholders

have varying degrees of responsibility for the current state of affairs, the CCIAG acknowledges that users themselves share responsibility. In order to play a role in the future evolution of arbitration, users themselves need to be more involved in the decision-making process related to arbitration, and take more responsibility for the key strategic decisions made before, as well as during, the arbitral proceedings. Raising awareness of this among corporate counsel is one of the first steps to be taken towards increasing users' control over the arbitral process, and more generally, over the process of resolution of commercial conflicts. This is one of the objectives of the CCIAG.

Today, multiple factors require arbitration users to rationalize their strategies. When their companies face a conflict, corporate counsel need to be open to the entire range of conflict resolution tools, set amicable settlement as a step prior to contentious action, and use various modes of mediation and

conciliation to achieve that goal. Yet, (re)taking control of conflicts inevitably implies an increase in proactive responsibility of the parties; and more responsibility entails more risk-taking. To address this issue, the CCIAG has set itself the further goal of playing an active role in clarifying and promoting dispute resolution methods through exchanging member's experiences - striving for greater systematization of conflict management. This benefits users and therefore arbitration itself, as a well-managed conflict should result in more efficient arbitration, lighter both in costs and delays.

Through a well-developed interface between its members and other stakeholders in the arbitral process (arbitral institutions, arbitrators, law firms), the CCIAG can also advocate a better understanding of the user's actual needs. So far, those have included the need for increased transparency in the nomination of arbitrators, the need to ensure the highest quality of arbitrators, thoughts around a more transparent appraisal of arbitrator performance, and more reliable confidentiality; further needs could be met by arbitral institutions having an increased role as appointing bodies. In this way, the CCIAG remains attentive to the parties' requirements, including the quality and efficiency of arbitrators.

In order to initiate the changes users want to see, the CCIAG is in the process of redefining itself as an arbitration users' interest group, aiming to optimize management of disputes in the best interests of the users. As the CCIAG is an association of corporate counsel, it is resolutely business-oriented, with a strong focus on efficient conflict resolution as its main objective. ■