



Association Suisse de l'Arbitrage
Schweiz. Vereinigung für Schiedsgerichtsbarkeit
Associazione Svizzera per l'Arbitrato
Swiss Arbitration Association



SOME PRELIMINARY COMMENTS

FROM THE PERSPECTIVE OF INTERNATIONAL ARBITRATION

on the

CCBE DRAFT "ETHICAL GUIDELINES

FOR LAWYERS SERVING IN ARBITRATION PROCEEDINGS"

The Swiss Arbitration Association (ASA) which groups arbitration practitioners from Switzerland and many other parts of the world, considered the draft "Ethical Guidelines for Lawyers Serving in Arbitration Proceedings" (the draft Guidelines) proposed for adoption by the Council of Bars and Law Societies of the European Union (CCBE). Given the important role which the CCBE, with active Swiss participation, plays in European legal practice, ASA has examined the draft Guidelines with particular interest.

Having considered at previous occasions the growing number of "guidelines" and other para-regulatory texts which seek to regulate or guide international arbitral practice and having recognised the particular importance of issues concerning counsel in international arbitration, ASA is concerned both about the principle of the draft CCBE Guidelines and their content. At this stage it expresses this concern in the following preliminary comments.

1. The role of counsel in international arbitration is an important subject which deserves the attention both of lawyers and their professional organisations and of the international arbitration community.
2. Rules and practices as they affect the conduct of lawyers in international arbitration are of a great diversity, depending on a variety of factors such as national and cultural background, professional regulations, types of arbitration and individual preferences. There may be a development towards some standard of conduct among counsel, specific to international arbitration. However, any movement in this direction, if it is taking place and if it would be desirable, is far from complete. International regulation, be it in the form of "guidelines" or other para-regulatory texts, appears at best as premature.





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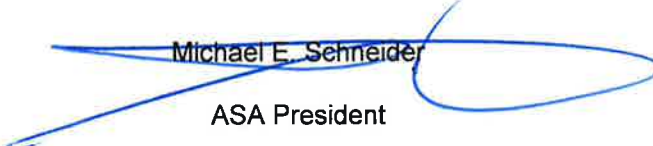
3. If it would be considered desirable or useful to prepare guidelines for the role and conduct of counsel in international arbitration, this should be a joint task involving those concerned by international arbitration, including not only professional organisations of lawyers, but also the international arbitration community and the users of arbitration.

4. The CCBE has made important contributions to the European legal practice notably by its Code of Conduct for Lawyers in the European Union. In a field of legal practice which, as international arbitration, is of a global nature, and where in many arbitration proceedings European lawyers act together with lawyers from other regions of the world, attempts at standardisation by a regional organisation is not only misplaced but undesirable and counterproductive. The voice of the CCBE should make itself heard in the international debate about the role of lawyers in international arbitration; but the CCBE should not attempt regulations on its own.

5. Arbitral tribunals often are composed of lawyers. However, lawyers are not the only profession which is found on international tribunals. In some arbitration traditions they are even in the minority or excluded altogether. There does not seem to be a justification for the preparation of guidelines specifically for "lawyers serving as arbitrators", as it is attempted in part II of the draft Guidelines. Such specialised regulations risk creating discriminations between lawyer-arbitrators and other categories of arbitrators. They are undesirable and counterproductive both from the perspective of the legal profession and of international arbitration.

6. The draft CCBE Guidelines give rise to concern also with respect to their specific content. However, a considered discussion of this content requires further examination of the draft and discussion among the members of ASA and the arbitration community in general.

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