

Interview

Marijke Wolfs: 'Students today represent the next generation. Internationally oriented corporate mediators with the right experience, language skills and intercultural sensitivity are not easy to find'

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Marijke Wolfs, Director, Secretary General at ICC Netherlands



Marijke Wolfs

What is the ICC?

The International Chamber of Commerce (ICC) is the largest business organisation in the world. The ICC was founded 100 years ago by a group of entrepreneurs; in 2019 we celebrated our centennial. Currently, the ICC represents over 42 million member companies in 134 countries. ICC's mission is to create a global level playing field, reducing complexity for companies, promoting international trade and investment. We do this in three ways: through policy advocacy, standardisation and self-regulation and by offering high standard alternative dispute resolution services. The ICC is the business representative at the United Nations, the World Trade Organization, the World Customs Organization, WIPO, and of national governments. Besides that, the ICC has a long history in the development of the ICC model contracts, the ICC Incoterms(r) rules, Letters of Credits and the anti-corruption guidelines the ICC has developed and regularly updated over the past century. Last, the ICC is well known for its high-level quality alternative dispute resolution (ADR) services. Many are familiar with the ICC International Court of Arbitration, which was established in 1923.

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What is ICC mediation?

When we talk about ICC mediation, we talk about international corporate mediation, typically administered by the ICC International Centre for ADR in Paris and where applicable, facilitated by its local offices in countries all over the world. Mediation provides for the appointment of a neutral third party, a mediator, to help companies settle disputes. The number of ICC mediation cases have been growing steadily since the ICC started facilitating corporate mediation, back in 2001. By the way, we see mediation becoming increasingly popular.

How do people become aware of the existence of ICC mediation?

Well, many businesses are already very well acquainted with the dispute resolution services of the ICC, e.g. arbitration, dispute boards and also mediation. We have an excellent reputation as the ICC International Court of Arbitration has administered over 25,000 cases. Through this and because of the global character of the ICC – we have over 90 offices around the globe – many businesses have become acquainted with the ICC, including its mediation services.

What are the advantages for corporations when they opt for mediation through the ICC?

I think there are two main characteristics that distinguish ICC Mediation. First, the experience, the quality and the reputation of the ICC International Centre for ADR. We have a long-standing expertise in ADR procedures. We can rely on the global network of the more than 90 local offices of the ICC (of which ICC Netherlands is one) through which we have access to the best mediators globally. Depending on the characteristics of the case, the ICC can tap into its network in order to find the best mediator for the job, meeting the requirements of the parties in terms of language skills, experience, expertise and knowledge of the cultural aspects involved.

Second, the procedure for our mediation rules is well established. The ICC Mediation Rules provide clear parameters for the conduct of proceedings, while, at the same time, recognising and maintaining the need for flexibility. Thirdly ICC offers options to facilitate a combination of procedures such as mediation, arbitration and neutral evaluation, allowing for flexible, tailor made solutions to complex disputes.

Can you describe how ICC mediation works?

Parties initially file a request for mediation at the ICC International Centre for ADR, which is followed by an official acknowledgement on the basis of which the appointment of a mediator will commence. For ICC, the impartiality, the quality and the availability of the mediator are of extreme importance. If the parties agree on the appointment of the mediator, then the transfer of the files to the mediator will take place and there will be a first meeting with the mediator, where the manner in which the mediation shall be conducted is discussed.

This is followed by what we call the mediation notes, where everything that has been agreed upon by the mediator and the parties is confirmed. Then the actual mediation starts. Often, this takes one or maybe two days. Then termination of the case follows, which then hopefully is concluded with a settlement agreement. If not, the parties agree that they no longer wish to pursue the mediation or opt for another solution. The ICC International Centre for ADR follows all of these steps, which, again, safeguards the quality of the mediation.

Do you promote the use of mediation and in which ways?

Yes, we certainly do promote corporate mediation in the sense that we promote a variety of options that businesses may want to consider in terms of clauses to be included in their contracts. Mediation provides for a very interesting alternative to litigation, to arbitration. I think we can say corporate mediation is becoming more popular. We promote it through dedicated ICC Mediation brochures. There is even an ICC mediation brochure in Dutch that explains how ICC mediation works, but we also give insights through ICC seminars, trainings and conferences, where both lawyers and in-house council discuss experiences and best practices.

Within ICC Netherlands, we recently integrated the standing mediation working group into the Commission on Arbitration and ADR. Here we discuss the further promotion of ADR, the combination of mediation and arbitration and how to further enhance the quality of international corporate mediators. Finally, there is the ICC International Commercial Mediation Competition for students, a huge success, which was organised by our colleagues in Paris for the 15th time now.

Can you tell me more about the ICC Mediation Competition?

Recently, the 15th edition of the ICC Mediation Competition took place. This is a competition for students, taking place each year, early February. This competition has grown over the years, now with some 350 students and coaches from more than 60 universities worldwide and some 130 professional mediators who actually facilitate these competitions as mediators and judges. It is quite something. ICC Netherlands organises a student coaching session for the teams of the Dutch universities taking part in this international competition. For them, altogether, it is a fantastic experience, no matter where they end in the competition.

Why is it important to focus on students, do you think?

Students today represent the next generation. International business mediators with the right experience, language skills and intercultural sensitivity are nowadays not so easy to find, either in The Netherlands or more widely. We would like to be part of the development of more skills and promote mediation amongst talented students in this respect. At the same time, it is very important to educate students for their future profes-

sions within law firms or multinational enterprises, making them aware of the advantages of mediation.

Why do you think corporates should use mediation or not?

I think there are many advantages that may not be well known when it comes to mediation. Mediation is an extra instrument in the toolbox for resolving disputes, in addition to the existing means such as litigation and arbitration. In mediation parties try to find a combination of their relative interests rather than to concentrate on what keeps them divided. It offers an opportunity to resolve a dispute in constructive communication allowing the relationship between the parties to remain intact and sometimes even to turn a conflict into new business opportunities. It is especially attractive for businesses that operate in a sector where there are only a relatively small number of parties, who will also in future continue to meet and have to do business with each other. It is advantageous if you can resolve a dispute in an amicable way. It also can be a very efficient procedure to opt for. No doubt, it is an informal and most of the time short procedure, which if you're successful, will save you a lot of negative energy, time and also money.

Mediation is relatively young in The Netherlands compared to other developed countries. Why do you think that is?

Well, in The Netherlands, we already have a culture of settling disputes. I believe it is important that according to the rules of professional conduct for attorneys there is an obligation here to look for the possibility of a settlement before going to court. Furthermore, mediation today is less well known – corporations may have the feeling that it is easier to choose the legal approach in order to be sure where they stand. This is why we are in favour of promoting corporate mediation and providing insights into how mediation works.

Where do you stand on efforts to define and regulate mediation in The Netherlands?

We're currently not involved in the discussion on the regulation of mediation in The Netherlands. It must be said that we are an international business organisation, so we seek to promote rules and regulations that are mostly related to maintaining an international level playing field for business. Rules and regulations on mediation may, in the end, possibly affect the quality of mediators and mediation. At the same time, however, we believe that flexibility in terms of choice is also important for businesses. So, in this case, for now, we leave the debate to national stakeholders.

What else do you think might be of relevance for our readers to know?

I think it is worth mentioning that one of the advantages of mediation is the confidentiality and the flexibility of the procedure, also in terms of the outcome. Parties have a high degree of influence on the specifics of an outcome. This is especially useful for corporates.

At another level, Currently we look with much interest at the possibilities which the Singapore Convention, the 2019 United Nations Convention on International Settlement Agreements Resulting from Mediation may hold also for the Netherlands. The Convention could become an interesting instrument for the facilitation of international trade and the promotion of mediation as an alternative and effective method of resolving trade disputes.

Do you see corporates using it more and more?

I know some good examples of large corporations that over the past few years have developed their own vision and strategy on dispute resolution mechanisms to help them find which mechanisms are appropriate for them. I would like to stimulate other corporations to develop this. There is a lot to gain in terms of time and cost when you're able to choose the appropriate mechanism. Depending on the case, it's certainly worthwhile to consider the advantages of corporate mediation.