
Kluwer Arbitration Blog

Preliminary Findings From An Empirical Study of International Commercial Mediation and Conciliation

S.I. Strong (University of Missouri School of Law) · Thursday, December 4th, 2014

Two months ago, readers of the [Kluwer Arbitration blog](#) were asked to participate in some ongoing surveys relating international commercial mediation and conciliation. The studies were being conducted to assist UNCITRAL and UNCITRAL Working Group II (Arbitration and Conciliation) as they consider a proposal from the Government of the United States regarding a possible convention in this area of law. The issue will be taken up at the Working Group II meeting in February 2015, with a report from the Working Group due to the Commission in July 2015.

The survey that was being conducted by the University of Missouri School of Law has now been completed, and a preliminary report of the research findings is available for free download [here](#). The study was very successful, thanks in large part to the assistance of the readers of this blog, and generated responses from 221 participants from all over the world. Survey respondents included private practitioners, neutrals, in-house counsel, government lawyers, academics and judges with expertise in both domestic and international proceedings.

The project was constructed with two goals in mind. First, the study attempted to discover and describe current behaviors and attitudes relating to international commercial mediation and conciliation so as to set a benchmark for further analysis in this field. This sort of foundational research was critical, since there have been no previous in-depth empirical studies dedicated solely to consensual means of resolving international commercial disputes.

Although the information sought in this part of the survey was somewhat basic, it nevertheless provided important insights to parties and policymakers regarding current practices and procedures in this area of law. Thus, this part of the study obtained data relating to how often mediation and conciliation are currently used in the international commercial context; how mediation and conciliation are initiated in the international commercial context; why parties do or do not use mediation or conciliation in international commercial disputes; how parties might be encouraged to use mediation and conciliation in the international commercial context; and which types of international commercial disputes are best suited to mediation and conciliation.

The results to these questions were intriguing and will doubtless be very useful as the international legal and business communities consider the use of consensual forms of dispute resolution in the coming years. However, the data also identified one area where the survey could have done more. According to the respondents, parties hesitate to use mediation and conciliation in international commercial disputes because they know very little about the procedures and even less about the purported benefits of the process, most particularly the extent to which parties can expect to save time and money as a result of mediation and conciliation. Unfortunately, this study did not ask any questions about economic and related issues. Hopefully additional studies on this issue will be conducted quickly so that parties and policymakers have sufficient information on which to base their decisions.

The study's second goal was to support UNCITRAL's work relating to a proposed new international convention. Thus, the survey asked a variety of questions relating to issues of interest to the UNCITRAL debate in order to provide participants in the UNCITRAL process with information that would be useful to their deliberations.

The results from this series of questions were particularly surprising, both because these types of questions had never been asked before and because of the content of the answers. Although the intensity of responses varied according to the question, one of the clearest aspects of the study was the level of interest in a new international convention relating to international commercial mediation and conciliation. Not only were participants very strongly in favor of a new instrument in this area of law, but respondents were very clear that any convention that is drafted in the area of international commercial mediation and conciliation should address both the front end of the process (ie, agreements to mediate or conciliate a dispute) and the back end of the process (ie, settlement agreements arising out of an international commercial mediation or conciliation).

Overall, the study collected detailed data on 34 different questions, making it the most detailed empirical research in the area of international commercial mediation and conciliation to date. The results described in the preliminary report will be published next year in an article that will not only present an expanded final analysis of the underlying data but that will also include several normative proposals regarding the shape of any future international action in this area of law.

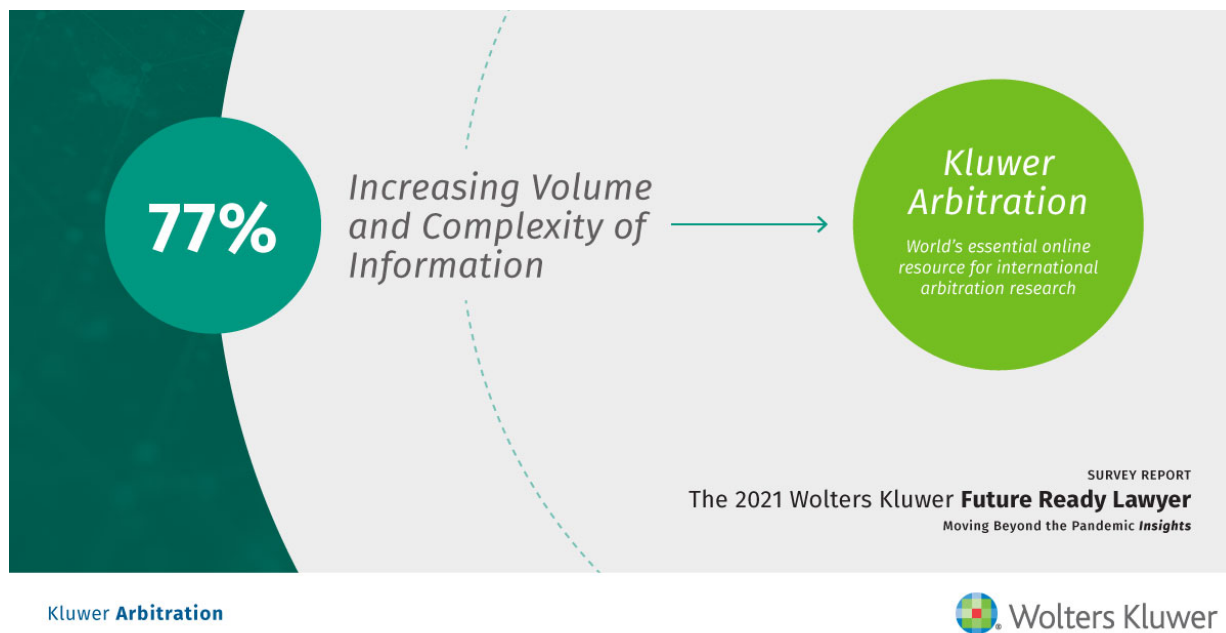
Study findings can currently be found on SSRN under "Use and Perception of International Commercial Mediation and Conciliation: A Preliminary Report Relating to the Proposed UNCITRAL Convention on International Commercial Mediation and Conciliation", by Prof. S.I. Strong of the University of Missouri School of Law.

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