

# Kluwer Mediation Blog - August & September Digest

## **Kluwer Arbitration Blog**

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"In every negotiation the most important work is done by those in the shadows." Ian Wishart, as quoted by Bill Marsh in "Personal Connections."

August and September offered a particularly varied and vibrant selection of posts on the Kluwer Mediation Blog. The topics addressed, to name just a few, include: developments in the creation of the Japan International Mediation Centre - Kyoto; the introduction of mandatory mediation in Romania; developments in Vietnam's legal and institutional framework for commercial mediation; the potential which lies in establishing strong connections across conflicts; the mediation of art disputes; the timely and provocative idea of an Interdependence Day and an International Declaration of Interdependence; and the impact of artificial intelligence on alternative dispute resolution. A brief summary of each of the posts on the Kluwer Mediation Blog in August and September can be found below. Have a look - there is something for everyone...

In "What might artificial intelligence mean for alternative dispute resolution", James South and Andy Rogers of CEDR explore a number of questions regarding the impact of artificial intelligence on ADR including: What is AI likely to do in a setting which has been so focussed on combining subtle concepts such as legal rights and a sense of fairness (adjudication) or human interaction and coaching (mediation)? And where do these developments leave us and what will their impact be?

In "Guerilla Gardening - and a plea for a universal declaration of interdependence", John Sturrock offers the timely and thought-provoking idea of an Interdependence Day and an International Declaration of Interdependence. Drawing on the work of Yuval Noah Harari, Bobby Duffy and Martin Nowak, John identifies a bold antidote to the isolation, silos and alienation too frequently seen in current times.

In "Nourishment for the spirit: the 20th Tulane-Humboldt summer school on Alternative Dispute Resolution", Greg Bond shares the reflections of some of the students of the 2018 Tulane-Humboldt summer school. This year marked the 20th anniversary of this summer school which has trained over 2000 students from 87 countries on principled negotiation and mediation.

In "Using a speaking stick in mediation", Alan Limbury explains how he uses an aboriginal speaking stick in his mediations, and to great effect. Alan also shares the five functions of the speaking stick as identified by Alain Roy, a renowned French mediator, which capture why the beautiful speaking stick can be so efficient in mediations.

In "[The art of mediation and mediation of art disputes](#)", Rafal Morek identifies the particular nature of art disputes and explains why mediation is suited for such disputes. Rafal also lists some art disputes for which mediation has been successful and describes numerous initiatives by international organisations to promote the use of mediation for art disputes.

In "[Feel the earth move - shifts in the international dispute landscape](#)", Eunice Chua provides a comprehensive summary of a panel discussion at the recent 2018 UNCITRAL Emergence Conference which shared the title of this post. In particular, Eunice explores the two key themes which emerged from the panel discussion: first, the idea of a growing dispute resolution ecosystem; and secondly, a changing culture.

In "[Mediation in the theatre: no thanks](#)", Greg Bond describes a workshop he gave on mediation based on the plays and stories of German Romantic writer Heinrich von Kleist which are full of compelling conflict. Greg explains how he presented interests-based negotiation and then asked participants to be mediators for Kleist's obsessive characters. Greg also considers how the endings of other well-known literary works might have differed had there been some decent mediation.

In "[Evaluation or guidance? What do small claimants want from mediators?](#)", Charlie Irvine considers the perspective of those who use mediation in small claims where most have no legal representation. Charlie shares the claimants' views about what mediators do to assist and then contrasts this with the mediators' perspective on what might have been useful for the claimants. Charlie explains how the evaluative/facilitative debate inhibits practitioners from doing what may seem helpful and suggests changes to address this conundrum.

In "[Vietnam series: four key features of the commercial mediation framework](#)", Nadja Alexander offers an overview of the main features of Vietnam's legal and institutional framework for commercial mediation. By way of very brief overview, the four key features relate to mediator qualifications and requirements for foreign mediators, institutional mediation rules and enforceability of mediated settlement agreements.

In "[What have the robots ever done for us?](#)", Charlie Woods draws on a speech given by Adair Turner earlier this year on "Capitalism in the age of robots: work, income and wealth in the 21st-century" in which Turner argues that the rapid and unstoppable development of automation - which will play out over the next fifty to a hundred years - will have very profound implications for how we live and work. Charlie considers the implications of this development for the skills of mediators and, importantly, the contribution which such skills can make in these changing times.

In "[Personal connections](#)", Bill Marsh describes the connection between two officials, Olly Robbins (representing the UK) and Sabine Wayward (representing the EU), who have been instrumental in keeping the Brexit talks alive during difficult periods. Bill uses this example to explore the importance of personal connections in mediation and the value of direct engagement between the parties. Bill prompts us as mediators to reflect on how we might better enable parties to create connections across the divide.

In "[Total recall](#)", Geoff Sharp shares his theory that memory is predominantly visual and that it is greatly enhanced by visual thinking. Given that our ability as mediators to take in information, store it, and recall it is crucial to our work, Geoff offers some novel techniques on how to enhance this ability.

In "[Stone soup - linking mediation theory and practice](#)", Rick Weiler acknowledges the gap between mediation theory and practice, and describes the Stone Soup Dispute Resolution Knowledge Project at the University of Missouri which is designed to lessen that gap through the collaboration between

faculty, students, scholars, practitioners, educational institutions and professional associations. Rick provides a captivating summary of the Stone Soup fable upon which the project is based and shares how this fable's message has influenced his teaching.

In "Mandatory pre-institution commercial mediation in India: premature step in the right direction?", Juhi Gupta explains the key features of Section 12A of India's Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Bill which provides for mandatory pre-institution mediation for commercial disputes. Juhi also considers the further changes which may be needed in order for there to be a greater uptake of commercial mediation in India.

In "Corporate culture and business mediation", Paul Eric Mason draws on a number of examples from various cultures to explain how business and corporate culture can affect mediation.

In "Why don't we mediate the "big" disputes?", Rick Weiler uses Robert A. Baruch Bush's seminal article "What do we need a mediator for? Mediator's value-added for negotiation?" in arguing for a greater use of mediation in large disputes involving many parties.

In "Online Dispute Resolution in Brazil: a major opportunity for stakeholders", Andrea Maia and Daniel Becker identify key developments in Online Dispute Resolution across the globe and then turn their focus to Brazil. They explore the opportunity for further use of ODR in Brazil and consider the resistance in Brazil to an increased use of ODR.

In "Seeing is interpreting - we are all blind in different ways", Ting-kwok IU explores the ways in which our perspective might give us only a limited view. Ting-kwok uses the Kanizsa Triangle to illustrate that what we see may be an interpretation of what we think we have seen rather than what we have actually seen. Ting-kwok then describes the unique contribution which those who are visually impaired may be able to bring to mediation.

In "Mandatory 'mediation attempt'", Constantin-Adi Gavrilă explains recent legislative developments in Romania regarding mandatory information sessions on mediation and how such developments have been received.

In "Getting into gear: the Japan International Mediation Centre - Kyoto", James Claxton and Luke Nottage provide a detailed overview of key developments in the creation of the Japan International Mediation Centre - Kyoto, including the preparation of procedural rules and the compilation of a panel of mediators. James and Luke also share proposals to improve international arbitration services in Japan which, if realised, may present opportunities for symbiosis with the Japan International Mediation Centre - Kyoto.

In "What happens in mediation stays in mediation: new standards of informed consent to mediation in California", Rafal Morek provides a detailed overview of recent changes to California's confidentiality mediation regulations which bring about a robust and absolute approach to confidentiality in mediation.

In "Ethics in mediation: Caesar's wife must be above suspicion", Martin Svatos shares a recent experience in a mediation to explore the issues of impartiality, neutrality and independence in mediation and urges mediators to take the issue of conflict of interest very seriously.

In "Reconnecting with the power of symbolism", Rosemary Howell shares a compelling example of her students' creativity in depicting a symbolic environment of collaboration and co-operation. Rosemary acknowledges how her students' work has reignited her enthusiasm as a mediator and facilitator to be more creative in developing ways to use the power of symbolism to encourage collaboration and harness creativity.

In "Politics and posturing: anchoring versus creative options", Greg Bond uses a recent case from German politics to illustrate the claim for mediation as a decision-making tool. Greg uses this example to show that politics needs less posturing and more collaborative decision-making, even across political differences, and that the tools of mediation can help to achieve this.

In "Civility may not be enough - but it's a good start", drawing on the work of Mark Kingwell and Amartya Sen, Ian Macduff describes how civility is the oil that makes the dialogues of difference - and hence of justice, resolution, participation - possible. Ian identifies the important nuance that civility and dialogue are not joined in a linear fashion but rather feed on each other, each making the other possible - even if, as Ian says, in a muddling sort of a way.

In "Letting go", John Sturrock describes recent experiences of "letting go" and considers, more broadly, whether mediators need to let go of ego. In so doing, John notes that the whole point of being a mediator is that we fade away when the job is done and that all that should really matter to us as mediators is the sense of personal gratitude for having an opportunity to contribute to others' needs, to the best of our ability.