


# Kluwer Arbitration Blog

## The Flight of Icarus

Roger Alford (General Editor) (Notre Dame Law School) · Friday, April 10th, 2009

 One hundred years ago international arbitration was viewed as the great hope for world peace. No international tribunals were yet in existence, but the Permanent Court of Arbitration was up and running and having an extremely successful first decade. There was one key problem with the world of arbitration at that time: the *corpus* of international law. There were effective procedures for resolving international disputes, but there was inadequate law to resolve those disputes.

That dilemma was nicely summarized by Georg Hagerup in the [Nobel Peace Prize Lecture](#) that he gave on August 24, 1912 on behalf of the Institute of International Law:

It is my opinion that the truly pacifistic movement has no more dangerous enemies than those who believe that they can anticipate natural developments and who try to persuade people to tackle the lofty summit of universal peace by a sort of “[flight of Icarus](#)” which would inevitably end, I fear, as sadly as did Icarus himself.... Some people are convinced that universal compulsory arbitration in international relations is such an aircraft, just the one to carry us safely into the reign of perpetual peace. I must say frankly that this is a fatal misconception far removed from the true facts of international life. No one will deny that arbitration is an effective instrument for settling many kinds of international disputes, and the ever increasing use of it in our time is one of the most heartening and most promising facets of modern international life.... We must not lose sight of the fact that international jurisdiction must necessarily take the same role in relations between nations that tribunals play in disputes between individuals. Such jurisdiction is a means of resolving questions of law. However, the time is still a long way off when all civilized nations, large as well as small, will be ready to submit to arbitration questions of interests, especially of vitally important interests.... Those who do not realize that, in the present state of mankind, arbitration is incapable of avoiding or resolving large-scale international conflicts of interests, lay themselves open to cruel disillusionment. Not until the day when international life in its entirety is governed by the principles of law and justice, will it be possible to apply arbitration, universally and without exception, to the relations between nations.... The advance of international law is the basis necessary to all efforts for peace and justice in international relations.

That quote is fascinating to me, precisely because it seems we have now reached the point in

history when virtually every dispute in international relations *can* be resolved by recourse to law through international dispute resolution. Can one think of an arena of international relations in which there is not *some* law on point that an international adjudicator can marshal to resolve the dispute? It may be treaty law, customary international law, general principles derived from municipal law, or domestic law. There are ambiguities and inconsistencies to be sure, but a complete absence of law?

Every private or public agreement that commits the parties to resolve international disputes peacefully through an adjudicative process bears witness to the confidence that law exists and can be called up to resolve the dispute. Every arbitration appointment is a quiet voice of confidence by the arbitrator that there is some law he or she can call upon to govern the dispute. And every decision reached by that arbitrator is one more stitch in the fabric of international law.

That is a remarkable achievement in the space of a century. In the course of a few generations we have come from a world where international relations was principally governed by interests to a world where it is principally governed by law. Not every dispute is resolved peacefully, but almost every dispute could be resolved peacefully by recourse to adjudicators applying law to facts.

A century ago the wings of international relations were made of wax, and the fate of Icarus was cruel disillusionment. Now those wings are tightly knit together through the bonds of law, and perhaps there is a new ending to the story. The modern-day Icarus is overjoyed as the wind rushes through his hair and he beats his wings wildly as he ascends higher and higher. He cannot hear his father far below yelling, “Stop, stop you are going too high! Your wings will melt!” He feels the warmth of the sun in his face. His wings hold firm.

Roger Alford

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