

# Kluwer Arbitration Blog

## Kluwer Mediation Blog – February and March Digest

Anna Howard (Centre for Commercial Law Studies, Queen Mary University of London) · Thursday, April 16th, 2020

*“I prefer to hope that this shift in perspective will be a chance for people, organisations, businesses, politics, whatever, to put so many of their ongoing disputes and conflicts aside because with this new perspective comes the realisation that these are not worth fighting. It is time to cooperate. May we go through and come out of this trouble cooperating more.”* Greg Bond in [In praise of distance](#)

The last couple of months on the Kluwer Mediation Blog have offered the usual variety of posts, including posts on: mandatory mediation in Greece; the mediation framework in Uzbekistan; the Global Pound Conference’s North America report; key case-law developments in Singapore; and the World Mediators Alliance on Climate Change. There are also numerous posts addressing the Covid-19 crisis, with a specific focus on its impact on mediation and mediators. You will find below a brief summary of, and link to, each post published on the Kluwer Mediation in February and March. We hope you find these useful.

In [The GPC North America report – reading between the lines](#), Rosemary Howell identifies her key take-outs from The GPC’s North America report. The report is the result of rigorous qualitative research on the data emerging from the open- text questions in the GPC series events across North America. These key take-outs include that: “it is time to lose the “A” in ADR in pursuit of a ‘party-centric approach to disputes resolution’”; “we are not a unified DR community”; and “We now have a model of what qualitative research can do and how to go about it.”

In [Singapore case note: settlement invoked as shield](#), Nadja Alexander and Shou Yu Chong explain that the Singapore Convention on Mediation makes clear that international settlement agreements may be used as a sword or invoked as a shield in judicial or arbitral proceedings. Nadja and Shou Yu explore this issue in the recent Singapore Court of Appeal case of *Rakna Arakshaka Lanka Ltd v Avant Garde Maritime Services (Pte) Ltd [2019] SGCA 33*.

In [Greece: mediation going compulsory: and they lived happily ever after](#), Haris Meidanis explains how the “fairytale” of mediation started in Greece back in 2008. He then charts the development of mediation in Greece since then, including the recent law (4640/2019) which establishes a “very broad compulsoriness of mediation.” Haris notes that while resistance to change persists, all the ingredients for success exist. He concludes that it seems that Greece has passed the tipping point

for mediation.

In [Why mediators need to stop apologising about justice](#), Charlie Irvine explains that mediators have long been on the back foot about justice. Charlie notes that lists of mediation's benefits rarely include justice, and focus instead on cost, speed, comprehensibility and humane-ness. In this post, Charlie takes a contrary position and sets out why mediators need to stop apologising about justice.

In [Mediation in Uzbekistan](#), Sherzodbek Masadikov provides an overview of the legal framework for mediation in Uzbekistan. Sherzodbek offers a brief historical background to mediation in Uzbekistan, followed by an analysis of the key provisions of the Law on Mediation which entered into force on 1<sup>st</sup> January 2019. Sherzodbek also considers further laws to facilitate the use of mediation in Uzbekistan.

In [The future is now!](#), Charlie Woods notes that the start of a new decade provides a great opportunity to reflect and plan. Charlie explains that the UN members agreed a broad agenda for what needs to be achieved by 2030 – as set out in the 17 Sustainable Development Goals and their associated targets. Charlie notes that the UN's sustainable development report for 2019 "The Future is Now" emphasises the importance of thinking of the goals and targets as a package and of focusing on the potential trade-offs and synergies between them. Charlie argues that mediation and mediators have a vital role to play in facilitating dialogue to help achieve the necessary developments.

In [Again, with decision trees](#), Rick Weiler returns to the topic of decision trees and shares with readers a website, [SilverDecisions](#), that greatly simplifies constructing a decision tree for mediated cases. Rick then explains how he uses the site in his mediations by referring to a recent mediation. Rick emphasises that the use of the decision tree exercise will help those involved in the mediation make better decisions.

In [Singapore Convention Series: Bill to ratify before Singapore Parliament](#), Nadja Alexander and Shou Yu Chong explain that the Singapore Convention will come into force six months after three States have ratified it into their domestic law. Nadja and Shou Yu outline the main provisions of the Singapore Convention on Mediation Bill, which was recently passed into law, and provide a comparative table of provisions between the Bill and the Convention.

In [Be water, my friend](#), Ting-Kwok IU explains his analogy of how the practice of mediation skills is like water. For example, Ting-Kwok explains that "A mediator when faced with highly stressful litigants who are eager to win over the others, has to be like water going along with the mind-set of each of the parties but at the same time retaining the quality of being able to help them see the other dimensions of the same matter in an unnoticeable manner."

In [The World Mediators Alliance on climate change?](#) John Sturrock calls for a World Mediators Alliance on Climate Change (WoMACC). John explains that WoMacc would "advocate for responses to climate change that protect and promote environmentally friendly dispute management and resolution" and that it "would coordinate action, provide leadership and help amplify the voices of mediators across the globe."

In [Mediating landscape and memory](#), Ian Macduff returns to a theme of local politics and history – the colonial history in New Zealand/Aotearoa and the confiscation of land in the 19<sup>th</sup> century to use it as a vehicle for thinking about a contemporary role for mediation in resolving the current

consequences of historical events.

In [Arbitration, neutral adjudication, conciliation: what's in a word? Designing and naming ADR processes – The example of an industrial relationships dispute in Germany](#), Greg Bond draws on a large on-going dispute in Germany as a lesson in how to design a dispute resolution process. Greg explains that what we can learn from this example is that ADR has a variety of processes to offer and that they can be cleverly combined in one dispute.

In [Coping with Covid fear](#), Martin Svatos explores the emotion of fear and, in particular, how mediators might tackle fear in the current Covid-19 climate. Drawing on techniques which mediators use to assist parties to overcome fear, Martin shares tips on how mediators might overcome the fears arising from current times, including: accepting fear, staying informed yet relaxed, engaging and continuing to work.

In [The interruption game – Why are we still playing?](#) Rosemary Howell explores research in the US and Australia on interruptions, including interruptions of female judges. Rosemary shares the key findings of such research and the reasons why female judges are interrupted at disproportionate rates by male colleagues and male advocates. Rosemary then draws on Stone, Patton and Heen's *Difficult Conversations* to suggest how, as a community of dispute resolvers, we might better deal with interruptions.

In [Introducing a new definition of mediation](#), Greg Rooney suggests a new definition of mediation and identifies the variety of approaches to mediation that fit within his proposed definition. Greg then applies the scientific principles of emergence and complexity to mediation and notes that “[t]he potential for the emergence of the new and the unexpected is the true power and promise of mediation.”

In [Reflections in the age of coronavirus \(Covid-19\)](#), Constantin-Adi Gavrila shares his reflections on the current Covid-19 crisis. These include that these times give us: the opportunity for self-reflection, including on the values and lessons arising from the Covid-19 pandemic; cause to pause and consider whether we are ready for what will happen next; and an awareness that the natural strategic approach is collaboration.

In [A neuro-linguist's toolbox – self-care and improvement: working with state \(Part 1\)](#), in the continuing series of the Neuro-Linguist's Toolbox, Joel Lee explores the concept of anchoring in neuro-linguistic programming. Joel explains that such anchoring is a stimulus-response conditioning and that it allows you to access states you need when you want them. Joel then describes how such an anchor can be created.

In [The new Brazilian data protection law and ODR](#), in the first of a four-part series, Andrea Maia and Gustavo Caneiro consider the new Brazilian General Data Protection Law which will come into force in August 2020 and, in particular, its relevance for ODR. Andrea and Gustavo identify a number of questions regarding the potential impact of this law on ODR and mediation, which will be answered in the later posts in the series.

In [Singapore Convention Series – Book review: The Singapore convention on mediation – a commentary by Nadja Alexander and Shouyu Chong](#), Michael Leathes provides a review of the aforementioned book by Nadja Alexander and Shou Yu Chong. Michael explains how the book “covers all the principles and details we need to negotiate and draft international settlement agreements.” He describes the book as “essential knowledge for every party, practitioner and

dispute resolver.”

In [In praise of distance](#) Greg Bond invites us to embrace the perspective shift that distance brings, a distance which has arisen in these Covid-19 times. Greg shares his hope that “this shift in perspective will be a chance for people, organisations, businesses, politics, whatever, to put so many of their ongoing disputes and conflicts aside because with this new perspective comes the realisation that these are not worth fighting. It is time to cooperate.”

In [Co-operation and the common good](#), against the backdrop of the Covid-19 climate Ian Macduff explores how people can be persuaded to do the right thing and act out of public rather than selfish interests. Drawing on works by Martin Nowak, Roger Highfield and Nicholas Christakis, Ian concludes that “the stronger evidence is that we are...on a long path to a humane society.”

In [Love over fear – holding on to hope](#), John Sturrock identifies the qualities needed to get through the current difficult times. John emphasises the importance of the qualities of humility and honesty, noting that leaders who manifest these qualities are emerging. Further, John calls for a continuation of asking questions and of listening to others and urges us to hold onto hope and in particular “[t]he hope of a future where we recognise that we ... are interdependent, vulnerable and much in need of cooperation in order to survive.”

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