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EDITOR'S NOTE

Even though now efforts are being made to promote the concept of mediation and popularize it through court-referred mediations, we have failed to make any steps for the improvement of the process of arbitration. Recently in a Seminar it was opined by some of the international lawyers that arbitration in India is quite different from the rest of the world. It is to a certain extent true. Arbitration procedure in India closely resembles court procedure. The delay, procedural hurdles, lack of professionalism and deficiency of trained and expert arbitrators are some reasons where India suffers. The shortage of institutions for administering arbitrations and the lack of awareness about institutional arbitration also has contributed to the present state of affairs. Legal professionals and users of arbitration have to join hands in improving the quality of arbitration procedure. Let us co-operate and work towards this.

We look forward to your suggestions, contributions and comments in making this magazine more useful.

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'Conflict Matters - Managing Conflict and High Emotion in Mediation'

: TONY WHATLING

Conflict is inevitable; it is a daily experience for all of us. It is such an every day experience that we often fail to label it as such and in many instances deal with it very effectively. Definitions of conflict are many and varied but Pruit [1981 in Haynes. 1987] describes it as 'an episode in which one party tries to influence the other or an element of the common environment and the other resists'. Haynes adds that 'This nonjudgmental definition is useful because it legitimates conflict. It also suggests that the mediator is therefore the manager of the negotiation [conflict]. Conflict management and negotiation management become the same' [John M. Haynes & Gretchen L. Haynes *Mediating Divorce* 1989].

Considering the central place that conflict has in the business of family mediation, relatively little has been published about it – at least in terms of how to assess its level and manage its effects. It was only in 1994 that Folger and Jones explored differences in personal 'Conflict Ideologies' [Joseph P. Folger & Tricia Jones, eds. *New Directions in Mediation*. 1994].

Conflict continues to preoccupy mediators across the entire range, from novice to the most experienced. In this article I will explore some general ideas about conflict, consider how and why it is brought to mediation, who is responsible for its management and propose some options for its effective management. Within the scope of this paper it is not possible to address the influence on conflict of differences in gender and culture. There is still a great deal of work to do in understanding and managing the effects of such diversity.

Conflict is 'Change Energy'. It creates energy to move from something or somewhere. Conflict can signal constructive ways of bringing about change and of re-ordering lives.

Two key ideas about conflict: Firstly, we all hold personal 'life-scripts' about conflict. Depending on our early life experiences, we may regard conflict as potentially exciting, energising and positive. We may see it as scary, worrying, potentially painful and essentially negative. We may of course be somewhere in between. Where we stand personally is not predictive of our effectiveness as mediators, but we do need to be aware of how conflict affects us personally, as well the effect it is having on the process of the negotiating parties. As Haynes points out 'Conflict is frightening to most people. Most professionals either are scared of conflict between clients and so try to suppress it, or believe that it is inherently wrong and so avoid it. Yet conflict is universal to all mediation cases. The question is not whether conflict exists but how it can be made constructive', [John M. Haynes & Gretchen L. Haynes, *Mediating Divorce.* 1989].

Conflict energy

My second key point is that conflict is 'Change Energy'. It creates energy to move from something or somewhere - to something or somewhere else. Conflict can arise from dissatisfaction- for example with a particular personal situation, a way of working within an organisation, a relationship or a product. Without 'dissatisfaction-conflict', there would be little impetus to improve or develop systems, relationships or indeed technology. A major landmark in my own development as a mediator involved adapting my personal constructs so as to be able see conflict as potentially positive, creative and productive.

Conflict then can create the required energy to bring about the 'psycho-social' transition associated with the ending of a close personal relationship, i.e. separation and divorce. Without 'conflict energy', the transition might be difficult to achieve. With a few couples, a wish to avoid any acrimony has appeared to protract the negotiation of practical arrangements for separation. It has almost been that they were working so hard to be civilized, that they were failing to generate sufficient heat to create the split.

It has been interesting to note the language shift from the early days of practice development in the UK, when we tended to refer to the mediator's role in 'controlling' conflict, to the point when we changed to the more accurate term of 'managing' conflict. The latter term clearly acknowledges the potential benefit in not suppressing conflict energy. It recognises that it is the task of the mediator to assess the relative level of the conflict and to orchestrate it to the benefit of the change process.

In the words of Marian Roberts, 'Conflict can signal constructive ways of bringing about change and of re-ordering lives. At least the potential for positive change is greater where there is anger than where there is the helplessness and hopelessness of depression' [Roberts, M., *Mediation in Family Disputes.*].

Managing not controlling

As mediators, we are responsible for managing the process in such a way as to create the conditions that enable individuals to manage the responsibility they have for their own behaviour.

Too much process control may lead the parties to hand over responsibility for their behavior to the mediator. Too little process control can create a sense of anything-goes and the build-up of frustration and arousal to danger level. I recall one couple I saw whose reputation for high conflict preceded them and in consequence led me to over-control the many and frequent indicators of argument between them. I was able to keep them in the session for almost an hour before they both erupted in frustration anger and left the building. Clearly my anxiety about their conflict and my high level of control resulted in neither of them feeling that they were heard and understood by me.

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A prevailing concern for mediators is that the high emotions that are so commonly brought to the session will at some point go out of control. At best one or other of the parties might leave; at worst someone will be hit. Violence in the session is fortunately rare. Where it does happen it is almost always client-to-client. The only two reported instances of violence to mediators I am aware of, were the result of mediators stepping in the way of a 'swipe' aimed by one partner at the other (in one instance a heavy handbag swung with enough force as to cause bruising).

To sum up then, conflict not managed effectively can lead to frustration, anger, aggression and/or withdrawal. If the mediator does not manage the conflict then the conflict may manage the mediator- and the process.

The physiology of conflict and anger

It appears that the 'stimulus effect' of a potential threat to our safety, security and well being, creates a state of 'arousal' which in turn activates what is known as the 'lower brain' or 'primitive brain' i.e. located in the spinal cord. A lay explanation of this is that if we touch a hot surface, our nervous system only needs send the message as far as the spinal cord so as to get a message back, stimulating the muscular action required to remove the hand. This 'autonomic' reaction (i.e. things start happening without any communication as yet with our higher brain), starts production of adrenalin or noradrenalin and around the same time engagement of the higher brain is triggered. Again in lay terms, what is happening is a physiological preparation for the energy required for 'fight/flight' options, i.e. stay and fight, (a response to production of adrenalin), or run away (a response to production of noradrenalin). It is not really known why one person produces more of what might be called 'fight-fuel' and another 'flight-fuel', though it is likely that genetic and gender differences plus 'social conditioning/life experience' factors all play a part. Once the higher brain is in action, rational or more conscious decision-making about fight/flight is possible. This mature 'reflective process' usually creates an awareness of the potential negative consequences and results in a gradual calming down and return to rationality. For example in mediation practice it is likely to follow soon after a client has left

the room, hopefully assisted by the support of a calm mediator and/or cup of tea.

Conversely, however, for some individuals, the involvement of the higher brain may trigger the production of hormones, which can result in a form of self-reinforcing aggressive behavior. Unfortunately, this state of chemically reinforced emotional 'high', in turn results in a reduction in our capacity for rational thought and behavior. When this level is reached, the brain continues to produce 'brain opiates' designed to maintain the required levels of 'fight' energy and resistance to fatigue and pain. Whilst the latter is known to be essential to troops in battle, it is clearly undesirable in the mediation setting. In the event that this 'emotional high' level is reached, it can take up to 1 1/2 hours for the effects to wear off i.e. to 'come down' to the optimum level for rational thought and behavior.

Safe practice

Most of our clients attend mediation with a 'good enough' degree of free will, if only to 'tell their story' about how badly the other side has been and is behaving. Most people in dispute do actually want a resolution, a settlement of the conflict. In other words, dispute resolution negotiations are usually less about *whether* to settle than *when, how and on what terms.* Most people, approaching a service they have not used before intuitively pay attention to how to behave as an effective consumer of that service. They probably regard themselves, and want to be seen by the mediator as *a) reasonable, b) rational and c) a 'good parent'.* This is likely to help them to moderate behaviour that in another context could become unmanageable. It has often been said that the mere presence of a demonstrably impartial third party is usually enough to influence behavior for the better. Couples often say "We have not been able to talk to each other like this for months/years - we only seem to be able to do this here"

Pre-referral steps

There are a number of steps that can be taken to reduce the risks of negative conflict occurring, even at pre-referral. These include sending clear and language-appropriate information to the parties which spells out our concern about violence or abuse, the mediation values and principles and constructive behaviours that are associated with effective negotiations. It is important to ensure that policies and guidelines on domestic abuse are well established in the Service and to give potential referrers realistic and constructive expectations of mediation. For example, I referred above to a situation where a mediator intercepted a blow aimed at the other party. Subsequently, we learned that at least three agencies involved in the referral (Family Court Welfare, Social Services and the referring solicitor), were all very familiar with the long history of conflict and family violence in this case. They had not mentioned it to the Service.

Reception

The best examples of reception facilities are those that present a calm and welcoming atmosphere with comfortable temperature, - availability of a gender-balanced range of magazines, refreshments, and access to clean toilet facilities. There are practical and budgetary limitations but many possibilities do not involve major financial outlay. My dentist makes very effective use of background calming 'music' in his waiting room! Perhaps the acid test is to try sitting in your reception area, envisioning the unfortunate circumstances that might have brought you to this Service and then ask yourself how comfortable you would be to wait there.

Furniture

In the mediation room, the chairs should be of equal shape, height and size - and arranged with appropriate body spacing. Where high conflict exists, the normal 'social body-space' distances probably need to be increased. For me, the right chair is one that strikes the balance between comfort and business i.e. the office style armchair. The dining chair can be lacking in support for one to two hours, whilst the soggy, floor level style is too casual and difficult to get out of. Opinions also differ on use of tables, with some mediators preferring the high table for sitting round, not least for the amount of paper-work that can be involved in finance and property. My preference is for the round coffee style table at approximately knee height, providing as it does, the advantage of space for papers without the potential 'defensive-barrier' effect of the high table. Seating arrangements that focus the party's attention on the mediator(s) at this stage are probably preferable to having them 'eyeball-to-eyeball' or 'head-to-head'.

Establishing ground rules

Reminding about the mediation process, principles and ground rules in a calm, jargon free, confident, unhurried style sets the tone for how things are going to be conducted in the session, and centralises the mediator as the manager of the process. It also establishes the norm that one person speaks at a time and when that is happening others listen, i.e. it models 'turn-taking'. In the 'hand-bagging' example referred to earlier, I learned that the female client had repeatedly made angry interruptions over this brief introduction stage. With

hindsight, we could see that this was early warning that she would not keep to the 'social contract' and was a significant predictor of what followed. The maximum use of effective core verbal and non-verbal communication skills is, therefore, crucial at this stage i.e. attending, active listening, clarifying, summarising, paraphrasing, understanding and acknowledging.

Gaining clients' co-operation in understanding their conflict styles

There may be very valuable information that can be gathered from the client about their conflict patterns. Clients are no less able than mediators, to know what upsets and angers them and how they tend to react when that happens. In that sense they can be said to be the '' in their own conflict, frustration tolerance and anger patterns, as well as those of their partner/spouse. We can use a range of open-ended and circular questions, to build up an understanding of what might help this individual and this couple to maintain the conflict at a constructive level. For example, I might ask, "What happens to you personally when you two argue or disagree"? - "Can you give me an example of how you might respond"? "I guess some of us react by getting angry and feeling like hitting out, whereas others respond by withdrawal, or humour, - how do you personally react?" - "If it came to an argument in mediation, how do you think you might respond, and how might I recognise that it was happening to you"? Circular questioning can then be used to learn about the conflict style of the other party, for example "What sort of things might she/he say, that you might say or do in the session that would make it hard for them to stay calm?" [*The use of questions in domestic abuse screening.* Tony Whatling - unpublished])

Being heard

Each party has a basic human *need* to be *'and understood'* (This is not the same as the *wish* they may well have to be judged to be right). Only when this *need* is met are they likely to be ready to work together as negotiators. At the beginning of the process, it is unlikely that the parties can hear and understand each other. It is almost impossible to overdo the even-handed summarizing, paraphrasing and clarifying at this stage, as clients will increasingly begin sending back verbal and non-verbal signals that they are reaching this important 'understood' state. When this is working well, the foundations are set for this mutual capacity in the later stages, for example option development.

To argue or take sides with the positions of either party at this stage is to risk losing the session before it has effectively begun. The mediator needs to check frequently for understanding, rather than assume knowledge of what the words mean. Apart from the real importance of needing to understand, it helps to calm and slow the pace.

One particular woman I worked with told me that when her ex husband looked at her with a certain 'smirk on his face' she 'saw red' and wanted to hit him. She associated that particular look with his ability to belittle her. During mediation, he demonstrated a convincing level of understanding of this systemic component of their relationship, but he maintained that it was a personal facial characteristic- a 'way of looking'- when he felt psychologically uncomfortable. Whatever the 'truth' or reality of our verbal analysis and understanding of the behaviour, the 'effect' impaired their ability to communicate constructively. Eventually I proposed a list of options, including moving their chairs to an angle where they could converse without direct face-to-face contact. It worked and the couples were able to reach agreement.

Feelings and emotions can be 'normalised' as being appropriate in the circumstances. Having done so it can help to switch the focus of both content and process. For example if the argument about contact times is becoming circular and 'rising' in intensity then propose a switch to parenting principles to be listed on the flip chart.

Assessing the quality of the conflict

Assessment is needed of the constructive versus negative quality for each couple, in terms of what was learned at intake. One very memorable couple described a 15-year relationship of high verbally abusive conflict. It was what had attracted them to each other in the first place!

Does the conflict look and sound even-handed, or is it oppressive- or having an intimidating effect? Its level can be monitored- whether it is declining or rising in volume. Surprisingly many people find it hard to sustain high levels of verbal conflict, so will calm down of their own accord. If mediators can avoid being alarmed by this almost inevitable and often noisy ventilating process and a wish to shut it down, they can concentrate instead on assessing its quality. Apart from its potential cathartic benefits for the couple, it has some added advantages for a mediator intervention.

Strategies if conflict persists

As part of my introduction, I always ask for mutual agreement that I should stop the session if it is no longer constructive, making the point that they too can ask for 'time-out' if it becomes too difficult to stay calm. If

necessary, I move up through the 'gears' of process control assertively, for example restating the ground rules, introducing new ones in response to what has happened, stopping 'triggers' (i.e. key words, tone, looks), and abusive language or threatening behavior. I may comment on the effects of anger, threatening or oppressive behavior, on the other party and on me, the mediator. It is usually enough to comment on the difficulty in hearing and understanding what the angry person is trying to say.

Ignoring provocative comments can also sometimes be effective but if they recur, they have to be dealt with. Humour is risky but can be very effective, as can be asking a client to replace complaints about what the other does wrong or badly, with what they want them to do differently in future. Re-framing, normalising and/or mutualising involve redefining 'negative attribution' labeling (e.g. 'lazy', 'irresponsible', 'amoral', 'a bad parent'), as concerns and/or evidence or emotions that are understandable in the context of such meetings.

Dealing with high arousal

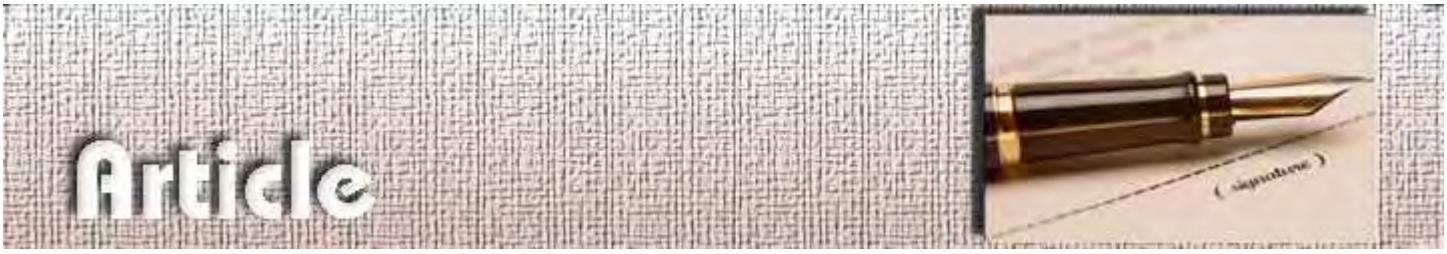
When anger arousal has reached 'red-alert' level the warning signals have probably been missed or ignored. It actually takes several seconds to get up and leave a room, and there have usually been several minutes of signals preceding the act. If I observe those signals I can comment on them, for example "You are looking upset/ sounding angry and look as if you might be thinking of leaving. Is that what is happening to you?" If a client leaves the room, they have in effect taken over of management of the process so I prefer to prevent that before it gets that far.

If in the fairly rare situation the physiological arousal 'high' occurs in joint session, it is very important to get the angry person's attention. They may well be looking intently at and have moved their body towards the target of their anger, and away from me. The best way to get their attention is by repeating their name, escalating the volume if there is no immediate response, and at the same time asking them to look at you. Immediately I get a response I maintain non-threatening eye-contact, acknowledge the anger, declare `time-out' and stand up so as to demonstrate that a move is going to happen. I usually ask the more passive party to leave the room, since they are less likely to want to argue about the need to do so. I consider whether to 'caucus' or 'shuttle mediate' with each party, to offer further joint or solo appointments on another date etc. *When in doubt, I stop mediation.*

Whilst there are undoubtedly elements of 'science' in mediation practice, much effective practice is based on 'art'. The timing of the intervention is crucial and no amount of theory can substitute for a good mixture of training, supervised practice, and plenty of face to face experience.

No one of the ideas in this article of themselves is likely to ensure effective conflict management or safe practice. If, however, some points are allocated to each of them, this can begin significantly to improve the management of conflict practice and increase the prospect of harnessing its positive potential.

(Author: Tony Whatling, Trainer, Mediator, Professional Practice Consultant - First published in UK College of Family Mediation Journal [Vol. 1 No. 2 Spring 2001])



How to draft an International Arbitration Clause

: ROBERT E. CROTTY AND JACLYN M. METZINGER

Failing to carefully consider the arbitration clause may result in lengthy negotiations (and perhaps litigation) about the arbitrability of a dispute and can eliminate the efficiency benefits that parties expect to realize from arbitration.

Introduction

When entering into an international business agreement, one or both parties may want to consider arbitration as a potential method of dispute resolution. The parties will usually view arbitration in a neutral country as more fair than litigation in the other party's country. In addition, arbitration is generally considered to be faster, less expensive and more confidential than litigation. In order to realize these benefits, however, it is important to draft an arbitration clause that adequately sets out what arbitral organization, if any, the parties will use, what disputes the parties agree to arbitrate, how the parties will choose the arbitrators, what law will be applied to the arbitration, what rules of procedure will be applied and other matters that, if properly considered when drafting the arbitration clause, will allow the arbitration to proceed smoothly.

Failing to carefully consider the arbitration clause may result in lengthy negotiations (and perhaps litigation) about the arbitrability of a dispute and can eliminate the efficiency benefits that parties expect to realize from arbitration. A thoughtful and comprehensive arbitration clause can insure that the arbitration proceeds smoothly without attempts to litigate arbitrability or to initiate proceedings to affect the venue, arbitration procedures, enforceability of the award and the like. Parties, therefore, should consult with their litigators to draft a clear and binding arbitration clause that will best serve their interests in the event of a future dispute. The discussion below deals with some of the important issues to consider when drafting an international arbitration clause.

International Arbitral Associations

Contracting parties from different countries should agree that arbitration be governed by an international arbitral association, such as the International Chamber of Commerce (ICC) Court of Arbitration, the London Court of International Arbitration (LCIA) or the American Arbitration Association's International Centre for Dispute Resolution. Each association has a standard arbitration clause and well-established procedures that the parties can adopt - or adapt - to increase the predictability of their dispute resolution. Furthermore, the arbitral associations administer the arbitration so that disputes are resolved in an orderly and prompt manner.

The Scope of the Arbitration Clause

One of the first things to consider is the scope of the arbitration clause. What kinds of disputes are you willing to arbitrate? Do you want to arbitrate any and all disputes arising under the business agreement or do you want to limit arbitration to particular types of disputes? Standard arbitration clauses are very broad and are intended to cover all disputes that arise out of the business agreement and the arbitration clause. Less broad clauses may lead to litigation over what disputes the parties agreed to arbitrate.

The best way to achieve clarity is to adopt an existing arbitration clause from the governing arbitral association. These standard clauses have well-understood language whose meaning has been established through - or in response to - litigation. These clauses can be incorporated into a business agreement "as is" or can be used as a starting point to draft a clause that is tailored to the needs of the parties and to the specific business agreement.

Venue

The venue of the arbitration is another fundamental consideration in drafting an international arbitration clause. Often, each party is wary of arbitrating where the other party is located due to unfamiliarity with foreign law and procedures and fear of bias.[1] Therefore, the parties should agree on a neutral venue where both can expect to achieve a fair and just result. Before choosing a venue, you should familiarize yourself with the law of that venue and how it might interact with your arbitration clause, procedural rules and any arbitration award. Other concerns may be travel restrictions, cost of travel, language, and the like.

Requiring pre-arbitration attempts to resolve disputes may allow the parties to avoid the time and expense of arbitration, especially where the parties are willing to settle but need the help of a neutral mediator to bring them to a final settlement.

Language

The arbitration clause should state the language to be used in conducting the arbitration.

Choice of Law

An international arbitration clause should also include a choice of law provision. Absent such an agreement, different bodies of law could apply to different stages of the arbitration proceeding. For example, Argentine law could apply to the validity of the arbitration clause, Italian law to the business agreement itself, and English law to the enforceability of the award. To avoid such convoluted results, you should consider the various bodies of law (and ethical rules) that could apply to the arbitration and agree upon one that will apply to the entire proceeding.

Pre-Arbitration Dispute Resolution

An arbitration clause may also require pre-arbitration dispute resolution efforts before commencing arbitration. This can include a meeting at the business level in an attempt to informally resolve the dispute or a more structured mediation program. Most arbitration associations have rules and procedures for mediation. Requiring pre-arbitration attempts to resolve disputes may allow the parties to avoid the time and expense of arbitration, especially where the parties are willing to settle but need the help of a neutral mediator to bring them to a final settlement.

Choosing the Arbitrators

Contracting parties can also control the number and appointment of their arbitrators. The arbitration clause can designate a specific person or persons to serve as arbitrators, can select a method of appointment, or incorporate an arbitration association's rules of appointment. The ability to choose your arbitrator is an advantage over litigation, where you have no control over the judge assigned to your case. The parties can also decide if they want to have one or three arbitrators resolve their dispute. Although a single arbitrator is less expensive, a panel of three arbitrators reduces the risk that a single arbitrator may not reach a sound result. In short, three heads may be better than one.

Procedural Rules

It is also important to decide on the procedural rules that will govern the arbitration. It is almost always preferable to adopt the procedural rules of an arbitral association, at least as a starting point. These rules usually have well-understood meanings, and in some cases (e.g., the ICC), have very substantial published commentaries.[2] The United Nations Commission on International Trade Law (UNCITRAL) has published procedural rules for arbitration which parties may adopt. The UNCITRAL rules are not specific, however, to any arbitral association.

Contracting parties should consider whether the arbitral association's rules adequately consider the extent of motion practice that will be allowed, the availability of

(Footnotes)

[1] W. Laurence Craig, William W. Park, & Jan Paulson, International Chamber of Commerce Arbitration, 16 (Oceana Publications, Inc., 2nd ed. 1990) (1984).

[2] See, e.g., W. Laurence Craig, William W. Park, & Jan Paulson, International Chamber of Commerce Arbitration, 16 (Oceana Publications, Inc., 2nd ed. 1990) (1984).

preliminary relief and dispositive motions, the arbitrator's power to impose sanctions on the parties, including awards of costs and attorneys' fees, and whether a written award will be issued at the end of the hearing.

Preliminary Relief

Parties should consider the availability of preliminary relief, such as temporary restraining orders, preliminary injunctions, attachments, or receiverships, and at what point in the proceedings the arbitrator may issue such relief. If given this authority, the arbitrator can protect the parties' ability to recover upon the ultimate resolution of the dispute, for example, by depositing funds in an escrow account or through the appointment of a receiver.

Dispositive Motions

A provision for dispositive motions might also be included in your arbitration clause. Motions to dismiss and motions for summary judgment may help to limit frivolous claims or prevent claims that are not factually driven from proceeding through discovery to a full hearing. If a party is concerned that submitting a dispute to arbitration will foster frivolous claims by the other party, the availability of dispositive motions (along with the arbitrator's ability to sanction the parties and make an award of attorneys' fees) is likely to discourage such claims.

Discovery

Contracting parties can also control the extent of discovery in their arbitration. This is extremely important in the international context, as different countries have different views on the proper scope of discovery. Once again, the parties can adopt the discovery rules of the governing arbitral association or they can draft their own procedures. Although the trend seems to be in favor of broad discovery, resulting in arbitrations that look more and more like litigation, this is not necessarily the most effective way to conduct an arbitration. Electronic discovery can make discovery much more expensive and time consuming. The efficiency benefits of arbitration support a shorter, less extensive, and less expensive discovery period than is typical in litigation. On the other hand, discovery should not be so limited that it prevents you from obtaining the facts necessary to prove your case or disprove your adversary's case. It is also important to be aware of artificial limits on discovery, as this may encourage frivolous claims without giving you the ability to adequately defend against those claims.

Sanctions

The parties should consider whether they want to give the arbitrators the express authority to impose sanctions for frivolous claims or procedural maneuvers. The arbitration clause may also provide for sanctions to be awarded by a court where a party frivolously attempts to vacate the award. A threat of sanctions should discourage frivolous claims and frivolous challenges to the scope of the arbitration clause, procedural rules or other matters. Sanctions can include an award of attorneys' fees, costs of the arbitration, and additional monetary sanctions.

Enforcement of International Arbitral Awards

The ability to enforce the arbitral award is a key element of the arbitration clause. International arbitral awards are enforceable through various international treaties and conventions such as the United Nations' Convention on the Recognition and Enforcement of Foreign Arbitral Awards (also known as the New York Convention) and the Inter-American Convention on International Commercial Arbitration, both of which have been codified in the United States Code.[3] These conventions provide for the recognition of arbitration agreements (and the enforcement of arbitral awards) among citizens whose countries have adopted the conventions. You should consider whether to make enforceability a specific part of your arbitration clause.

A Caution

International arbitration has become a well-accepted method of dispute resolution, and arbitral associations are generally responsive to making sure that arbitration is conducted efficiently and fairly. While parties should carefully consider all the issues outlined above, parties should not assume that they should write new rules and new procedures unless the need to do so is clear.

Conclusion

A well-considered and well-drafted arbitration clause can add a great deal of control and predictability to the resolution of your dispute and will enhance your ability to achieve the benefits of arbitration.

(Footnotes)

[3] See Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, codified at 9 U.S.C. §§ 201-298. See also Inter-American Convention on International Commercial Arbitration, codified at 9 U.S.C. §§ 301-307.

(Author: Robert E. Crotty is a Partner in the New York office of Kelley Drye & Warren and Jaclyn M. Metzinger is an Associate in the firm's New York office. This article was originally published in The Metropolitan Corporate Counsel, Vol. 17, No. 8 (August 2009))

Amendment to Arbitration Act

Indian government is contemplating effecting an amendment to Arbitration and Conciliation Act 1996 in view of the delay in arbitration, India's Minister for Law and Parliamentary Affairs M Veerappa Moily said. A committee will be constituted to look into this.

Kenya is planning to amend the Arbitration Act 1995. The attorney general has proposed the Arbitration (Amendment) Bill 2009, which aims to facilitate cost-effective and expeditious conduct of arbitration proceedings by dealing with matters relating to arbitration proceedings which are unclear in the existing legislation.

Supreme Court of India suggests mediation to Ambanis for settlement

The Supreme Court of India asked the Ambani brothers' group firms RIL and RNRL why they cannot settle their gas supply dispute through arbitration or mediation. During hearing of the dispute over supply of gas by RIL to RNRL, the bench headed by Chief Justice K.G. Balakrishnan said the two parties could arrive at a "suitable arrangement" through arbitration or mediation.

Think ...

There are three things you need to do.

#1 Repent

#2 And this is important, forgive yourself

#3 Move on with your life.

Repent, forgive yourself and move on with your life.

We have to realize that we can't change our past, but we can certainly do something about our present and our future.

Yesterday ended last night!

Few men have virtue to withstand the highest bidder.
~George Washington~

ICC-IBA Conference on Arbitration

The International Bar Association and the ICC International Court of Arbitration are delighted to announce the details of the upcoming conference: Arbitration in the 21st century: Making it Work, which will take place in New Delhi, India on 4-6 December 2009.

Topics include:

- International commercial arbitration in the 21st century: concepts, instruments and techniques
- Overview on international commercial arbitration in the 21st century: getting the best out of the process
- Transnational issues: the role of the judiciary
- Transnational issues: from theory to practice
- Tool Box for the 21st Century: how to get ahead using amicable methods, dispute boards and expertise

This timely and highly relevant programme, which includes a mock case on the Sunday morning, is backed by an impressive array of experienced speakers from a range of international jurisdictions including India, France, Germany, the UK and USA, Singapore, Australia, and New Zealand. The conference will be opened by The Hon Justice K G Balakrishnan, Chief Justice of India.

For Program Brochure:
http://www.int-bar.org/conferences/conf274/binary/New%20Delhi%20Arbitration%20programme.pdf

Certificate in Dispute Management (CDM)

CDM is a distance learning course valid for six months from the date of enrolment. You can enroll at any time of year and you study entirely at your own pace, submitting your assignments when you are ready. Your tutor will be available to mark your assignments and give feedback on your progress for a period of six months from the date of enrolment.

You will be sent four 'reading and study assignments' with your course materials, and these form an essential part of your distance learning course. They are designed to help you to work through the course manual and understand the concepts. The course will provide a good basic knowledge of ADR – Negotiation, Mediation & Arbitration – in theory and practice. On successfully completing the assignments included in the course a certificate will be awarded.

For details on courses and training programs; mail to: training@arbitrationindia.com

Interested to start ADR Centre?

Indian Institute of Arbitration & Mediation is looking for parties interested to start IIAM Chapters in various states and cities.

If you have a passion for dispute resolution and you are interested to start a Dispute Resolution Centre, please mail your details to: dir@arbitrationindia.com

For details of IIAM activities visit website