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CONTENTS

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EDITOR'S NOTE

It seems the present trend is for law reforms in the ADR sector! Radical changes are being proposed by the Law Ministry of India for the Arbitration & Conciliation Act, 1996. Mediation Reforms are being proposed in Russia and Italy. New legislation for arbitration is on the pipeline in Australia. May be the governments have realized the need for fine-tuning the ADR process for making the respective counties ADR-friendly to cater the needs of international business community. Incidentally, in this edition we have an article on the possible view-point of an international arbitration customer.

IIAM has given its comments and suggestions on the proposed changes in the Indian Arbitration Act. We look forward to your views and comments on the same.

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The View from an International Arbitration Customer:
In Dire Need of Early Resolution (Part - I)

: MICHAEL MCILWRATH AND ROLAND SCHROEDER

1. INTRODUCTION

In-house lawyers live in a world where every day the practice of law directly interfaces with the operation of a business. Within this world, the focus is not just on winning but on advancing the overall commercial needs and objectives. If the company prevails in a dispute but the commercial goals are not advanced – and advanced in a timely fashion – then we have still fallen short in the eyes of the business. The same lesson applies to our outside counsel and to the institutions who oversee the arbitration process. As a consequence, we believe that international arbitration institutions and professionals should be more mindful of the goals and objectives of businesses that are the customers of dispute resolution services.

From the business perspective, there is clearly room for improvement in international arbitration, and addressing the need for earlier resolution may be the lowest of the low hanging fruit.

Any business lawyer knows that even the most complex disputes usually boil down to one or two critical issues that, once decided, will either determine the lion's share of the dispute or encourage the parties to settle. And yet, the experience of many companies, including our own, is that tribunals in international commercial arbitrations, whether out of a concern for due process or other reasons, are rarely willing to grant such relief in the early stages of a proceeding when doing so would have the greatest impact and benefit for the parties[1]. We believe there is no denying the gap that exists today between the time generally taken in arbitration to reach decisions and the needs and objectives of businesses to assess exposure quickly and resolve disputes expeditiously.

General Electric is a large transnational company spanning the breadth of industrial activities and financial services. Although the company's corporate headquarters are in the United States, it has business division headquarters and operations in many different countries. It takes steps wherever possible to avoid disputes or settle them early, but recognises that a cost of doing business is that some disputes will not settle and will require binding adjudication. That is to say, across the company and in the aggregate, we have our fair share of international arbitration experience.

In October 2006, we informally surveyed our litigation colleagues in the company on the subject of early disposition of issues and gathered some "war stories" of instances in which an early decision on a critical issue would have made a significant difference in the business' general satisfaction with the international arbitration process. We will avoid creating any suspense and give away the ending to our story now: our colleagues were unanimously – and enthusiastically – in favour of measures that would encourage early resolution of issues in international arbitration and they have asked us to endorse any efforts in this direction. They were quick to point out also that their feelings are widely shared by in-house lawyers from other companies with whom they routinely

(Footnotes)

[1] Our focus in this article is limited to the practice of international commercial arbitration, although we believe the views expressed are equally relevant to domestic arbitration practice in many countries.

interact, i.e. that this is not just a GE view but the view of the business community more generally, particularly those businesses that are intent on managing conflicts in a measured and sensible way.

From the business perspective, there is clearly room for improvement in international arbitration, and addressing the need for earlier resolution may be the lowest of the low hanging fruit. Yet it is a high priority for businesses, the true customers of international arbitration.

We provide below a summary of the primary objectives businesses seek when choosing dispute resolution processes in their contracts, our recognition of the advantages of international arbitration in many circumstances, and then we provide some experiences from our different business units that highlight frustration with current practice and the importance of the topic for businesses. We note that the presently available means of obtaining early resolution of issues – whether through greater party control or the availability of partial awards – are illusory and in any event have not achieved the desired results. We conclude by noting that a procedure for the early resolution of issues would offer a significant step forward, but only if arbitrators and arbitration institutions are willing to ensure that such a procedure is dutifully applied. We believe this would lead to increased satisfaction among the consumers of dispute resolution services.

Successful businesses revolve around good planning, and business leaders value resolution because it allows them to plan against known outcomes rather than operating under a cloud of uncertainty.

2. BUSINESS NEEDS AND OBJECTIVES FOR DISPUTE RESOLUTION

There are no great surprises in what motivates the business community when choosing an appropriate forum and procedure for resolving disputes. The overriding objectives generally advanced are fairness, efficiency (including speed and cost) and certainty in the enforcement of contractual rights and protections. These are complementary objectives, and to focus on one at the expense of the others leads to a result inconsistent with the expectations of the business world and denies basic commercial needs. Too often the practice of international arbitration has done just that, by focusing on perceived concepts of due process to the detriment of efficiency, resolution and certainty.

This is unfortunate, as fairness is no longer the main feature to distinguish international arbitration from court litigation in many countries. Indeed, in many international transactions, choices will exist between competing public and private adjudication systems, each of which satisfy fairness concerns. Therefore, let us revisit for a moment the other key objectives:

Efficiency: Time and cost

There is no need to explain why businesses like speed, are impatient with delay, and abhor unnecessary cost. The duration of a financial dispute can have direct economic consequences for a business, whether in terms of delay in the collection of amounts owed, or the setting of financial reserves that must be posted under accounting rules and which impair the reporting of profits until the final resolution of the dispute. And time has a direct and negative impact on the cost of adjudication, as businesses know from experience that the longer it takes to resolve a dispute, the more effort and resources that will inevitably be expended on it.[2]

Thus, when businesses pay for private adjudication, they rightly expect speed and efficiency from the process, just as they expect these qualities from other service providers. And that is where business expectations too often run into harsh conflict with international arbitration, as, realistically, it is difficult to comfortably predict an arbitration of any commercial complexity ending in fewer than two or three years.[3] Although there

(Footnotes)

[2] Ironically, in a recent dispute of one of our businesses, the contract's dispute resolution clause required the tribunal to render an award within nine months from the chairman's appointment, roughly the same time (actually a little longer) than the rules of the arbitration institution named in the clause. In a decision that clearly irritated both parties, the institution determined that this was equivalent to imposing a "fast track" arbitration requirement and, as a result, doubled the advance on fees. Such was the parties' irritation with the institution that it exceeded their enmity towards each other, and they agreed to a momentary ceasefire in order to amend their contract to provide for an ad hoc arbitration. The experience suggested the institution had little respect for its own rule requiring arbitrations to be concluded in a shorter period, nor an awareness of the real cost of disputes, which generally increases as proceedings get longer. (Notwithstanding complex and heated proceedings, the ad hoc tribunal presented the parties with an award 10 months after the chairman accepted his appointment, at a pre-established arbitration fee that was half what the institution was requiring.)

are still courts in the world in which the resolution of a dispute can take considerably longer, there are also many that do not and where litigation is conducted with reasonable efficiency. In the business world, a time frame of two to three years is simply too long, particularly for a private process paid for by the parties, in which any right to appeal is largely given up.

Resolution and certainty of contractual rights

Successful businesses revolve around good planning, and business leaders value resolution because it allows them to plan against known outcomes rather than operating under a cloud of uncertainty. In our world, decisions are made on a daily basis of where, how, and what types of transactions to pursue and accept, and every international contract is assessed by its likely benefit measured against the risk and associated cost. Litigation, by contrast, whether in court or in arbitration, entails significant uncertainty, and this uncertainty is anathema to most businesses. If the meaning of a contractual term can remain in doubt for years pending adjudication, then the assessment and rationale for making such contracts is also called into question, and this is not conducive to good business. While business leaders also expect a fair resolution, taking excessive time can often be just as damaging as a wrong decision. Win, lose or draw, businesses want – and need – to be able to address and plan against the fallout of a decision, in terms of the financial ramifications, the manner in which they conduct business or negotiate agreements, their relationship with the opponent, and their relationship with other parties where similar issues may be presented.

These are among the key values and needs faced by the in-house lawyer. When a dispute arises, the first questions posed are likely to be efficiency and certainty: how long will the arbitration take, how much will it cost, and what will the likely outcome of the key issues be. Not surprisingly, the answers in-house lawyers feel compelled to give – based on our own experiences and those of our colleagues at other companies – often disappoint business leaders. It is no surprise to us that frustration with international arbitration is leading some well-known companies to favour dispute resolution in the courts. While there are many instances in which litigation will offer a superior alternative for any number of good reasons (not always related to complaints about arbitration), such a draconian step may be unnecessarily throwing the baby out with the bath water when improvement remains possible.

3. THE UNDENIABLE VALUE OF INTERNATIONAL ARBITRATION

In the increasingly globalised world, which the US journalist Thomas Friedman has termed as being so interconnected that it is "flat", international arbitration continues to be a viable and important partner for businesses expanding internationally, particularly in novel markets and emerging countries. Notwithstanding the defects, there are still good reasons that can make it preferable to litigation in many circumstances, and we do not deny them here. The international enforceability of awards is one such advantage, and the neutrality of process in comparison with the courts of less developed legal systems is another. And, although it is easy to complain about how long arbitrations take to conclude, there are still countries where lawsuits may take a decade or longer to resolve. Finally, even an imperfect international arbitration may have its value simply because it is often easier to deal with the devil you know than the devil you do not.

Having said that, neutrality is becoming less of a factor as businesses become increasingly globalised. Not only are transnational companies necessarily more comfortable with other legal systems, they have also come to establish a presence in countries other than their headquarters location, thereby diminishing concerns about an opponent's perceived "home town" advantage.

Moreover, arbitrators and arbitration institutions should not (and, we are confident, do not) content themselves with comparisons to undeveloped legal systems or other forms of adjudication that suffer from greater or different problems. As demonstrated through the examples below, whatever other advantages arbitration may offer, it is not fulfilling one of the basic needs of its business customers: the need for early resolution. One of the most potent advantages of arbitration is that its institutions and constituencies have the power to change the manner in which it is conducted in order to meet the needs of the parties, and thereby to close the gap in customer expectations. We are confident that the international arbitration constituencies possess the ability to adapt to new challenges, so that experiences like the ones described below can be avoided.

4. EXAMPLES FROM GE OF THE DISCONNECT BETWEEN INTERNATIONAL ARBITRATION AND INTERNATIONAL BUSINESS

(Footnotes)

[3] Some institutions have published claims of purportedly shorter periods of the average time to render an award. We have not seen any of the underlying data in order to know what types of disputes this includes. Certainly, a short time frame for the completion of proceedings is inconsistent with the general experiences of large companies that have been involved in international arbitration.

As noted at the outset, we recently surveyed our litigation colleagues within GE about their experiences in international arbitration. The examples below were among the stories we collected, all involving relatively large amounts in dispute or important business issues and conducted before tribunals consisting of prominent and well-regarded international arbitrators from many different legal backgrounds. We submit that it will be self-explanatory why our colleagues so quickly and easily reached the conclusion that a provision for resolving issues early should be a high priority for international arbitration.

Justice delayed is justice denied: Business settlements reached out of frustration with the arbitration process

The failure of arbitral tribunals to decide issues early in the proceedings can often lead the parties to settle their dispute, not because they believe their case is strong or weak but because they have become frustrated with the arbitration process and require resolution for business and financial reasons. We have two recent examples that illustrate this problem and why a mechanism for the early resolution of issues would help avoid such frustration.

An example from a South American project dispute

One of our litigation specialists not long ago was involved in a series of disputes relating to a large construction project in South America, which generated separate claims before the same tribunal for substantial sums. Both parties had a need for prompt resolution. The claims were of sufficient size that one of the parties had to report on them in its financial statements, creating pressure on its finances and stock price; the other party simply needed financial closure with its lenders, which could not be done with unresolved claims still pending.

Although the claims and counterclaims presented complex factual issues, there were certain central issues and defences that could (and should) have been addressed early in the proceedings. For example:

- The parties had differing interpretations of key contract provisions. An early interpretation of these provisions would have eliminated the need for complex evidence, briefing and hearings on numerous factual matters, and avoided the need for the parties to present time-consuming and costly alternative hypotheses and supporting evidence.

- The admissibility of a certain type of evidence was a major issue. Had the tribunal ruled in the early stage of the arbitration that the evidence was not admissible, this would have avoided the need to present voluminous and contentious evidence of this nature in the parties' briefing, argument and hearings.

The efficiency implications of an early resolution of these issues were obvious. At a minimum, it would have led to a more streamlined and timely resolution of the entire arbitration. More likely, the resolution of key points by the tribunal would have given the parties the certainty they needed in order to settle the entire dispute based upon a rational assessment of their likely exposure. Instead of resolving key matters early, however, the tribunal postponed addressing them, and, as a result, quickly became buried in a morass of documentary evidence, witness testimony, thousands of exhibits, and hundreds of pages of submissions, all of which cost the parties many millions of dollars. Ironically, leaving the legal and evidentiary issues for decision in the award did not facilitate the tribunal's ability to fairly resolve the dispute. Instead, what had now become the sheer mass and complexity of the claims understandably paralysed the tribunal, which seemed to be getting progressively farther away from reaching any type of decision. In more than three years of proceedings, the tribunal managed to issue a partial award on only one of five claims.

The parties, having spent millions of dollars with no end in sight, and needing closure for financial reasons, ultimately settled, not because the arbitration had helped them resolve their issues, but because they concluded that the process was incapable of providing any meaningful resolution within the reasonable expectations of their companies and their shareholders.

An example from a European project dispute

A European division of one of GE's infrastructure businesses reported an analogous situation with a large construction arbitration between an owner and contractor consortia (four parties) under the auspices of a major international arbitration institution, this time in continental Europe. As with the example above in South America, with multiple claims and counterclaims there was no denying the factual complexity of the dispute but, again, there were common issues that could have been decided at the outset, simplifying the proceedings. Instead, the beginning phase of this arbitration lasted three years, during which only two procedural hearings were held, and evidentiary hearings were not contemplated for at least another year.

All four parties, the direst of enemies during the proceedings, found common frustration with the lack of resolution in arbitration and chose to settle.[4] In the

eyes of the business managers involved on both sides, the settlement was a consequence of the failure of the arbitral process to provide a timely and cost-effective resolution to their dispute. At the time of the settlement, the project (a power plant) had been in operation for two years, and the parties – all large companies engaged in developing other projects – needed resolution in order to move on to other opportunities.

Single-issue disputes that take many years to conclude: An example from an arbitration over whether the contract was a licensing agreement or sale of technology

Perhaps the most common complaint we have registered internally about international arbitration involves the relatively straightforward disputes that could easily have been resolved or settled if the key issue or issues had been addressed head-on at the beginning. The company's experience is that, unlike the judges of many different court systems, arbitral tribunals are willing to allow issues deserving of a quick death to remain alive, often painfully so, for many years.

In one example, a European manufacturing division of GE was involved in an arbitration under the auspices of a major international institution. The dispute was whether there had been a breach of contract, and specifically whether certain restrictions remained in force after the agreement had expired. The only issues for determination by the tribunal were whether the contract was a sale of technology agreement or a licensing agreement (the latter meaning restrictions survived expiration of the contract) and, if a licence, whether its restrictions on sales were legally enforceable in the first place. While the proceedings were pending, both parties remained in doubt as to the right of one of them to offer the technology as its own, which led to significant uncertainty in both of the businesses, no small amount of confusion among prospective customers in several countries, and nettlesome merger and acquisition problems for each party when, at different times during the arbitration, both the claimant and respondent decided to sell the respective business units, each with undecided claims to the use of technology in certain markets.

Although the disputed matters appeared straightforward and amenable to resolution within a relatively short period of time, the arbitration took over four years. A single evidentiary hearing was held, more than a year before the conclusion of the proceedings, and it lasted less than a morning. When the arbitration institution eventually pushed to conclude the proceedings, the tribunal hurriedly issued a solomonic award of a third of what the claimant sought. The award could equally have been for zero or 10 or 100 per cent under the same reasoning, since it made no mention of actual damages – not surprisingly since, even after four years, the tribunal had not yet taken any evidence on the quantum of damages.[5] Furthermore, by the time the tribunal issued its award, the core dispute over rights to commercialise the technology had become moot as during the lapse of time all relevant patents had expired.[6]

We could cite other examples, but these are sufficient to illustrate the important – in some cases, critical – role that the early resolution of key issues can play in ensuring an effective and timely arbitration process.

to be continued....

(Author: Michael McIlwrath is senior counsel for litigation for GE Oil & Gas, a division of the General Electric Company headquartered in Florence, Italy. Roland Schroeder is senior litigation counsel at the Corporate headquarters of the General Electric Company in Connecticut, United States. A draft of this article was initially presented at an IAI Paris conference on the early disposition of issues in international arbitration. Reprinted from (2008) 74 Arbitration 3–11)

(Footnotes)

[4] Following settlement, the chairman of the tribunal sent a letter to the arbitration institution claiming that the substantial lapse of time was evidence of substantial work having been performed by the arbitrators, and claimed for full payment of the advance on fees paid by the parties. The parties objected and the institution, to its credit, rejected the chairman's request.

[5] Enforcement of the award was stalled in the courts for another three years even though no challenge had been lodged at the place of arbitration. Both parties recognised that this delay was created by the fact the award was so hastily and incompletely drafted that its enforcement presented novel legal issues that could only be decided by an appeals court (in a pro-arbitration jurisdiction).

[6] Another GE business was recently involved in an arbitration where the tribunal, after substantial submissions and evidentiary hearings over a two-year period, issued a final award that did not address the core dispute between the parties over a matter of contract interpretation that was essential for their future business dealings. This led to a subsequent arbitration, before a different tribunal, over what was essentially the same dispute.

Never argue with an idiot.
For someone may pass by,
and see you arguing,
and not know which one is the idiot.

The NYPD & The Three C's: Communication, Community & Cricket

An ADR Advocate using Cricket & Soccer as the bridge to bring the NYPD & Community together

: JEFF THOMPSON

To have genuine peace, you need understanding. In order to have understanding, you must have communication.

Often when I speak about conflict and dispute resolution I mention three words that I consider to be my mantra in regards to Alternative Dispute Resolution (ADR). Communication, Understanding and Peace are what I strive to create in all my interactions, be it as a mediator, conflict coach, consultant, or as a police officer in the New York City Police Department.

As a NYPD police officer working in the Special Projects Unit of the Community Affairs Bureau, my job is basically to make sure people are happy. Specifically, I try to make sure people are happy with the NYPD. I look at individuals, groups, community organizations and private businesses to see if the NYPD has already established a relationship with them. If the answer is yes, I see if there is a way to improve the relationship and if the answer is no, I analyze why that is the case and then try to figure out how to establish a line of communication based on understanding.

Police Commissioner Raymond W. Kelly realized that our relationship was lacking genuine lines of communication with members of certain communities. This context led me back to the mantra of Communication, Understanding and Peace.

To understand the mantra, start in reverse. To have genuine peace, you need understanding. In order to have understanding, you must have communication. Last year, when Commissioner Kelly tasked the Bureau I work in with designing an effective program to reach out to these communities, I was assigned as the coordinator.

First, the Commissioner believed the best way to reach out to the immigrant communities, specifically the Arab, Muslim and South Asian communities was to look at what the young men do. What better way to reach out then by putting together something that they already do, right?

Commissioner Kelly wanted to create a soccer competition as it is the world's game. With that directive,we created NYPD UNITED Soccer. NYPD UNITED was designed to do just what the title says- uniting the police department with communities using soccer (or football to most of the world) as a bridge to bring us together.

NYPD UNITED was not created to just have some young men play soccer. Yet, that is precisely what it is, 'just playing soccer'. There are no hidden agendas or some secret plan. The goal is transparent in that we want everyone to know that, whatever you think of the police, we cannot not change your past experiences. What we can do and are striving to do is to create a positive view

and understanding of the police from this moment forward. Many of these young men never had any interaction with the police before this competition. By putting together a free soccer competition, the police are not only providing something for these young males to do while school is out for the summer but also since it is organized by cops, the participants get to interact with them as well. They get to see the officers in another light- as regular people who also love the sport. How do the participants find this out? The answer is by practicing and playing cricket alongside the officers and by having the opportunity to talk to them in an informal setting.

Before discussing the outreach efforts in greater detail, I want to mention a crucial moment in the designing stage of the program. A few weeks after NYPD UNITED began, Commissioner Kelly realized two things- one the program was already an overwhelming success. Second, and perhaps more importantly, it was still not enough. There was an entire group we were trying to reach, primarily the South Asian community, that was not participating. How could we reach out to them using the ideals of creating Communication to generate Understanding in hopes of the result being Peace?

Cricket.

Yes, cricket. Not the little green insects but rather that seemingly odd-like sport that sort of looks like baseball. This 'odd sport' is played by millions of people and happens to be the passion of these young men in the community we were looking to reach out to. In the hierarchical structure of the NYPD, the Commissioner called the Chief of the Community Affairs, Douglas Zeigler, who then called the Deputy Inspector of Special Projects, Amin Kosseim (the director of NYPD UNITED), who then told me we were now going to put together a cricket competition. It is under the Chief, Deputy Inspector as well as Sergeant Jamel Hodges leadership that allows the competition to flourish.

As a quick aside, what are the chances a white male, born and raised in Queens of Irish and German descent would not only have experience in playing and putting together soccer events but also be an avid cricket player who also happens to have organized cricket events too?

Who knows what the odds were in this happening, but also add to that equation that I am a person who firmly believes in the merits of trying to incorporate the skills of conflict resolution such as collaboration, consensus building, and active listening into everything I do.

NYPD Cricket was created using the same model of NYPD UNITED. As I stated above, the purpose of the programs was simple- create a line of communication to generate understanding using soccer and cricket as the bridge to bring us together. This is simply stated but complex to implement. Many officers of varying ranks (from the Chief down to the police officers) have done incredible work in making sure it all went smoothly in the first installment last year.

Specifically, people like Detective Nasser and Officer Rana are two individuals who worked countless hours and had already created incredible bonds and relationships with many people in these communities. This outreach was responsible for getting such an overwhelming response from prospective participants.

Now in year two, which just got underway, we analyzed what worked and what needed to be improved. In brief, the competition is bigger and better. For those who know me, for better or worse, I pay great attention to all the details. 100 random examples are (really only six):

- Personally redesigning the cricket logo with the help of a graphic artist to make it look more like a Twenty/20 cricket logo
- Putting our logo put on each of the cricket balls
- Making the United logo look more like a traditional soccer/football crest
- Making sure each professional quality uniform was unique from all the others
- Getting each coach a collared shirt since not getting a shirt was a complaint last year
- Instituting a bonus point system in the cricket competition to ensure each match was competitive

Other less appealing but important tasks I had were drafting waivers, purchasing ALL the equipment (from water bottles to nets with everything in between), hiring umpires and referees, obtaining field permits (yes, the police have to get permits!), coordinating transportation and putting together the schedules (think it is easy, try it!).

When designing of the competition, I referred to Ury, Brett and Goldberg's book, Getting Disputes Resolved:

Designing Systems to Cut the Costs of Conflict. I knew my unit would be able to design both programs on our own, but that would not be in line with the programs' intention to reach out to the communities. What we did was consult and reach out to various groups at each stage of the design process. In designing the competition we checked with local leagues and asked for their input. When reaching out for teams and players, we contacted community groups, religious centers and teams. Many people from various communities were instrumental in the cricket and soccer competition's success. This had multiple benefits- 1) as already stated, it helped add to the success 2) it helped to generate interest in the community in the early stage and 3) in the spirit of ADR work, it provided buy-in for many as they became part of the process.

The third point benefit listed above is important as it helped smooth out the "us" and "them" mentality that could be perceived on both sides. Of course people would be skeptical. Including the community in the design and each successive stage was integral to breaking down that barrier.

One of the last stages was to get media coverage. The coverage by the media in local and ethnic communities was astounding but what exceeded our expectations was the coverage the programs garnered nationally and internationally. NYPD Cricket was covered by major news outlets in India, Pakistan and the United Kingdom.

This year's Cricket program was mentioned on the front page of the NY Times (June 29, 2009) with an article and a corresponding video segment on their website. CNN also did a report which aired on CNN, CNN international and their website.

As mentioned earlier, for the second season we wanted to increase the good while fix the bad. An important question included asking, what did we not do last year that would improve things this year? When I looked at the age of the participants, 15 to 19 years old, I asked, what do they do and what do they use? The result was not only acknowledging the role of the internet but embracing it.

For the second season, the method of embracing the internet was fourfold. Twitter, the official NYPD website, YouTube and a blog-type site are all being utilized. Admittedly I was unsure of the purpose of twitter but approximately 100 people are now following my 'tweets'.

The official NYPD website, specifically the Community Affairs section, has the logos and information for both competitions. It provides visitors with information about both programs and how to learn more about them.

Last year I had taken various digital videos from a few matches. During the off season I was able to edit them and I put them on YouTube without announcing it. Positive feedback started to come in and now people are already asking, where are this year's highlight clips? For this season, we plan to include new clips each week.

By creating a separate site on BlogSpot, I am able to update the competitions with news, video, pictures and results from any computer. Because of the ease of using the site, anyone can work on the site besides me and it is easy to navigate for visitors. The site also allows visitors to go to other sites including the official NYPD site.

Using this new technology which the participants use not only helps the NYPD communicate with them on familiar platforms but it also gives the Department and the programs greater exposure to others not involved. The mantra of Communication, Understanding and Peace is not limited to the participants and their communities. Its benefits can and should go beyond the participants to people everywhere.

NYPD UNITED Soccer and NYPD Cricket were not only created as ways to create new relationships, but to explore valid learning experiences. It is important to emphasize the learning experiences occurred not only in the communities and with the participants but with the NYPD. All the police personnel involved directly and indirectly have gained a deeper understanding of the communities which we serve. The best way to serve others is by getting to know them.

(Author: Jeff Thompson is a conflict specialist based in New York City and is a certified mediator with Safe Horizon and the International Institute of Mediation (IMI). Jeff is also currently enrolled in the Masters Program in Negotiation and Dispute Resolution at Creighton University. Jeff's blog, Enjoy Mediation (http://www.enjoymediation.com/) is a featured blog at Mediate.com and IMImediation.org. Note: this is not an official NYPD document.

Q: Why doesn't law permit a man to marry a second woman?

A: Because as per law you cannot be punished twice for the same offence!

Radical Arbitration Reforms in India

India's law ministry has proposed to nullify the controversial Supreme Court judgment of "Venture Global Engineering Vs. Satyam Computers Services" by amending the Arbitration & Conciliation Act, 1996 and preventing Indian courts from challenging international arbitral awards. Other proposals include making institutional arbitration mandatory for disputes over Rs 5 crores and narrowing "public policy" in light of the "ONGC v Saw Pipes" case. Amendments to the Arbitration & Conciliation Act, 1996 – A Consultation Paper has been published by the Ministry of Law & Justice, Government of India on April 2010. Comments were invited on the proposed amendments.

IIAM has sent its comments & suggestions to the Ministry of Law & Justice. To know more about the Consultation Paper, see; http://www.arbitrationindia.com/pdf/arbitration_amendment_2010.pdf. To get the details of comments and suggestions given by IIAM, see; http://www.arbitrationindia.com/pdf/suggestions_arbitrationamendment_2010.pdf

Mediation Procedure in Russia

Draft regulations establishing mediation as alternative procedure for the settlement of disputes were introduced to the Russian Parliament. Mediation has not previously been expressly provided for in Russian legislation nor has any law contained a detailed description or procedure for it.

The draft regulations contain complex and detailed legal mechanism for mediation, as well as various amendments and additions to civil law, civil procedural law and arbitration procedural law. The draft regulations also contain certain quality requirements and procedures for the provision of mediation services, as well as some features of mediation in the course of initiated proceedings in arbitration tribunals and courts of common jurisdiction. Assuming they are accepted, they will come into force on 1 January 2011.

Interested to contribute Articles?

We would like to have your contributions. Articles should be in English. Please take care that quotations, references and footnotes are accurate and complete. Submissions may be made to the Journals Division, Indian Institute of Arbitration & Mediation, G-209, Main Avenue, Panampilly Nagar, Cochin - 682 036 or editor@arbitrationindia.com.

Publication of the Article will be the discretion of IIAM and submissions made indicates that the author consents, in the event of publication, to automatically transfer this one time use to publish the copyrighted material to the publisher of the IIAM Journal.

You will either have the pain of discipline
...or the pain of regret.

New Law in Italy requiring compulsory attempt at Mediation

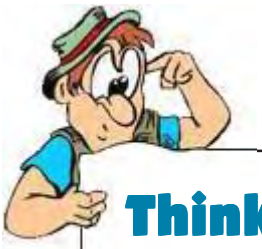
Italy has recently introduced new legislation requiring parties to civil and commercial disputes to attempt to resolve their differences through mediation before the matter can be heard before a judge in a civil court of law.

This will have important consequences for the insurance industry, as the mediation procedure is mandatory for disputes arising from insurance contracts. The new law will enter into force in March 2011. It is anticipated that the introduction of compulsory mediation will provide a commercially realistic alternative for insurers to the traditional approach of litigating disputes in Italy, with significant cost savings. It should also reduce the volume of lengthy and protracted proceedings which are a common feature of Italy's overburdened judicial system.

Judge or Arbitrator?

The U.S. Supreme Court heard is to decide whether a court or an arbitrator decides if an arbitration agreement was entered into under duress. The issue is particularly relevant to employment contracts, which often have clauses that say an arbitrator will decide any claim, including any concerning the enforceability of the arbitration agreement. The case, "Rent-A-Center West Inc. vs. Antonio Jackson", according to groups such as Public Citizen and Public Justice, could "radically alter" access to the civil justice system. The case asks the justices whether a federal judge or an arbitrator should decide if an arbitration agreement is "unconscionable" where the parties specifically assigned that issue to the arbitrator. According to Jackson's counsel, the Federal Arbitration Act does not always require arbitration clauses to be enforced according to their terms. It is contented that courts have a "fundamental, statutorily required and time-honored role" of determining whether arbitration clauses meet the requirement of the act before enforcing them. If corporations can place their arbitration systems beyond the reach of any substantive judicial evaluation of their fairness, there will be nothing to prevent the arbitration system from devolving into a wild state of lawlessness.

A district court ruled in the employer's favor and dismissed the case. Mr. Jackson appealed to the 9th U.S. Circuit Court of Appeals in San Francisco, which reversed the district court last September and held the lower court was required to determine if the arbitration agreement was unconscionable.



Think ... Attachment to results!

Achievement is stressful only if you assume it to be. Ambition creates anxiety only when you are overly attached to the results. Achievement is something you do. It is not who you are.

If you fail to attain the results you seek, that does not make you any less of a person. Certainly your aim is to be successful, yet it is much more effective to choose success than to need it.

Expect the best, and give your very best to the effort. Then be willing to accept the results, whatever they may be.

Care intensely about what you intend and what you do. But don't worry or obsess about what you get.

Your most effective efforts come from who you are, not from what you need. Let go of your attachment to the results, and you'll get the best ones ever.

Australia prepares new Arbitration legislation

Australia is set to harmonise its domestic and international arbitration laws, introducing a new arbitration Act based on the UNCITRAL Model Law.

New avatar for cops: Mediators

Soon, the policemen of Punjab and Haryana, India will be seen donning the cap of mediators and conciliators to solve disputes between two parties. Rather than registering cases and FIRs and entangling people in unending litigations, police officers will be trained by a Punjab and Haryana High Court panel to act as mediators.

A new online system for legal mediation has been developed

The SEMADISC (Electronic System for Mediation and Arbitration for Disabled Persons) project seeks to offer a software tool for intermediation and arbitration focused on individuals with limited mobility or with some sort of disability. This project is designed by UC3M Colmenarejo Campus, in which professors and researchers from different areas of knowledge work together Specifically, this multi-disciplinary project, halfway between law and computing engineering, was created by researchers from the Artificial and Applied Intelligence Group (GIAA) and the UC3M 'Bartolome de Las Casas' Institute of Human Rights. The principal idea of the system is to offer the adequate means so that any person, especially individuals with a disability, can access a free and universal service with which they can resolve and discuss their problems in a comfortable and pacific way.

The researchers have already achieved the first online platform prototype, accessible from any web navigator, and adapted to the special needs of the users, which allows the mediation process steps to be carried out, such as setting up a case, providing a report indicating the progress of the mediation process, or facilitating the communication between those involved through updates by different media

Certificate in Dispute Management (CDM)

CDM is a distance learning course of IIAM, 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.

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