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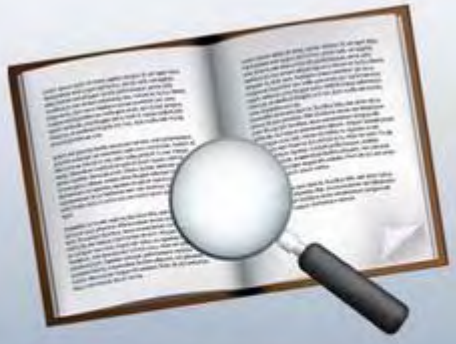

IN THIS ISSUE .....

EDITOR'S NOTE

Every New Year is the time to make new resolutions, a pledge to spread peace and happiness. Being an organization which promotes amicable settlement of disputes, I should wish you strength to deal with your problems. As someone has said, understand that problems are a good sign. Problems indicate that progress is being made, wheels are turning, you are moving toward your goals. Beware when you have no problems. Then you've really got problems. Problems are like landmarks of progress. Wishing all the readers a very happy and prosperous year ahead.

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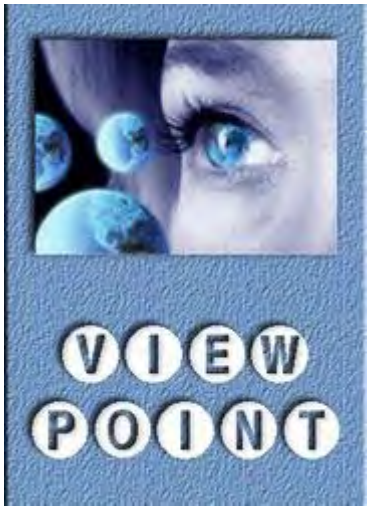
INTERVENTION OF COURTS – A NECESSARY EVIL

SHWETA SHARMA & VISHAL THAKUR



The purpose of Alternative Dispute Resolution is to overcome the interminable, time consuming, complex, expensive and overburdened court proceedings. But recently we have come across many situations where ADR has become ineffective due to court interventions. It is seen that court intervention, though a necessary activity, eventually has become evil due to overburdened and ineffective judiciary. The authors by this article propose that such interventions by the court, need to be regulated by the way of Arbitration Courts.

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The sole purpose of introducing arbitration in the realm of dispute resolution was to find an alternative to the interminable, time consuming, complex, expensive and overburdened court proceedings.

But *Whites Industries Australia Limited v. The Republic of India* in 2011, proved contrary to the very purpose of arbitration as an alternate dispute resolution. "*…no difficulty in concluding that the Indian judicial system's inability to deal with White's case amounts to undue delay…*"[1]

The ineffective condition in dispute resolution caused due to court intervention was highlighted in the case. But what needs to be kept in mind is that the intervention of court is not been questioned, the delay caused by the intervention is perhaps obnoxious. Wherein in one side the court intervention was stated to be obnoxious in nature, in the case of *Lavalin SA/N.V v. Ken Ren Chemicals and Fertilizers Ltd. (in Liquidation)*[2] the intervention of the court was stated to be a necessary evil. Wherein a perfect balance between the International arbitration and national courts was suggested as the Courts intervention in some matter was highly beneficial.

The above case read along with the South African Law Commission report on the Question of striking a balance between court intervention and independence of arbitration proceedings, "*….In exchange for its supportive powers, the court also has the power to supervise the arbitral process by setting aside the award in certain circumstances….*"[3]

(Footnotes)

[1] Feridich Sandra, "International Arbitration: *Whites Industries v. India Investment Arbitration Last Resort to Overcome Hurdles in Enforcing Arbitral Awards*." (2012): Accessed May 4, 2013

[2] 1994 (2) All ER 449 at 446 (HC)

[3] South African Law Commission, Project 94, Arbitration: An International Arbitration Act for South Africa, http://www.justice.gov.za/salrc/reports/r_prj94_july1998.pdf : Accessed June, 2012.

It can be observed that court intervention was though regarded as a necessary activity, eventually became an evil due to overburdened and ineffective judiciary.

The authors by this paper propose that such interventions by the court, which are in fact the necessary evil in the matters of arbitration, need to be regulated by the way of Arbitration Courts.

However paradoxical the name sounds, the authors suggests having an efficient model in the judiciary which can consistently regulate the arbitration related matters approaching various High Courts and appealed to the Hon'ble Supreme Court.

The suggested structure is as follows:

a) Create a special list of all the arbitration related matters pending in the court.[4]
b) Formulation of an Specialized Court (Arbitration Court) which would deal with[5] –
   1. Applications under Interim relief,
   2. Application for assistance with the taking of evidence,
   3. The recognition and enforcement of awards, and
   4. Appointment of arbitrators.

In 2003 Arbitration and Conciliation (Amendment) Bill 2003, a special Division at all the High Court was suggested and the High Court Bill, 2009 had provisions for transfer of such cases to these commercial divisions.[6] Though the paper suggests that the number of Arbitration Courts should (preferably one) be kept to bare minimum, to maintain the consistency in interpretation of the Arbitration and Conciliation Act, 1996.

(Footnotes)

[4] Warren AC, Marilyn. "*The Court and Arbitration in Victoria*." Supreme Court of Victoria. Last modified 30, 2011. http://www.supremecourt.vic.gov.au/resources/0a446c89-0be8-4c13-8dd5-5ff09b6eef25/speech%2Bfinal%2B30.11.11.pdf. Accessed May 7, 2013.

[5] "*Transnational Notes » A New Specialised Arbitration Court and Judiciary for Madrid*." Last modified March 23, 2011. http://blogs.law.nyu.edu/transnational/2011/03/a-new-specialised-arbitration-court-and-judiciary-for-madrid/: Accessed May 7, 2013

[6] Dedicated Arbitration Courts in India: India Transforming into Jurisdiction of Specialized Arbitration, February 1, 2011http://www.singhanialaw.com/images/Lex%20Arbitrax.pdf: Accessed May 31, 2012.

The structure of the panel of the judges in Arbitration Court is suggested to be same as that of the model adopted by the *National Company Law Tribunal*.

While analysing the case of *Union of India v. R Gandhi, President, Madras Bar Association*,[7] the Supreme Court outlined some differences between a specialized court and ordinary courts –

a) Courts are established by the State and are entrusted with the State's inherent judicial power where as specific tribunals are established under a statue to adjudicate upon disputes arising under the said statute.

b) Courts are manned by judges, whereas the tribunals may have a combination of a Judicial Member and a Technical Member who is an 'expert' in the related dispute.

c) Courts are governed by detailed statutory procedural rules, whereas, tribunals generally are regulated by their own procedures.

Thereby understanding the importance of a specific tribunal over the courts read along with the amendment suggested in 2003 Amendment Bill (intention of the legislature to have a specific court / Division specifically dealing in the matters related to arbitration), it can be easily stated that not only was there a need to formulate an Arbitration Court but also the drafters of the Bill, 2003 suggested the same.

THE CONSTITUTIONAL VALIDITY OF THE ARBITRATION COURT

In *S.P. Sampath Kumar v. Union of India*[8], the Supreme Court laid down that the Parliament can without violating the basic structure constitute a tribunal and make alternative institutional mechanism.

The Parliament and the State Legislatures possess legislative competence to effect changes in the original jurisdiction of the Supreme Court and High Court apart from the authorization that flows from Article 323-A and 323-B in terms of Entries 77. 78. 79 and 95 of List I; Entry 65 of the List II and Entry 46 of List III .[9]

While the Articles 323-A and 323-B specifically enable the legislatures to enact laws for the establishment of tribunals, the power of the parliament to enact a law constituting a Tribunal, which are not covered by any of the matters specified in the Article 323-A and 323-B, is not taken away. With regard to the entries specified in List I, the exclusive jurisdiction to make laws with respect to any of the matters enumerated in List I is with the parliament. The power conferred by Article 246(1) is notwithstanding the existence of Article 323-A and 323-B of the Constitution.[10]

Therefore, in the light of above mentioned articles and cases it can be concluded that arbitration is covered under Entry 13 of the Concurrent List, the parliament would have the legislative competency to constitute specialized arbitration courts and transfer the power to perform the functions performed by the traditional judiciary to these specialized courts.

AMENDMENTS REQUIRED IN THE PRESENT CASE

Section 2(e) of the Act, 1996, defines the term "court". It is suggested that the word "court" may be replaced to "Arbitration Court" constituted for hearing appeals from disputes arising out of the decisions of arbitral tribunals constituted in pursuance of the present act.

(Footnotes)

[7] (2010) 11 SCC 1

[8] (1987) 1 SCC 124

[9] *State of Karnataka v. Vishwabharati House Building* AIR 2003 SC 104.

[10] *Union of India and Anrs. v. Delhi High Court Bar Association and Ors*. 2002 (4) SCC 275.

However, it is suggested that these courts work more as a *court of review* rather than a court of appeal and for this we propose to amend the provisions of section 35 of the Arbitration and Conciliation Act, 1996.

CONCLUSION

188th Law Commission Report[11] on *Need to Remove delays in resolving Commercial Disputes*, observed that due to change in governmental policies in 1991, encouraging privatisation, liberalization and globalization led to enormous growth in the commercial sectors of India.

It is suggested that with such rapid increase in commerce and trade, there is a need of an effective mechanism for resolving disputes speedily. Foreign investors in India must be assured that the Indian Courts are as fast as the Courts in the most developed countries and there are no longer any 'long' delays in the judicial process.

(Footnotes)

[11] Power to refer parties to arbitration where there is an arbitration agreement.

RECIPE FOR A HAPPY NEW YEAR

Take twelve fine, full-grown months; see that these are thoroughly free from old memories of bitterness, rancor and hate.

Cleanse them completely from every clinging spite; pick off all specks of pettiness and littleness; in short, see that these months are freed from all the past. Have them fresh and clean as when they first came from the great storehouse of Time.

Cut these months into thirty or thirty-one equal parts. Do not attempt to make up the whole batch at one time (so many persons spoil the entire lot this way) but prepare one day at a time.

Into each day put equal parts of faith, patience, courage, work (some people omit this ingredient and so spoil the flavor of the rest), hope, fidelity, liberality, kindness, rest (leaving this out is like leaving the oil out of the salad dressing—don't do it), prayer, meditation, and one well-selected resolution. Put in about one teaspoonful of good spirits, a dash of fun, a pinch of folly, a sprinkling of play, and a heaping cupful of good humor.

LAW RELATING TO THEORY AND PRACTICE OF ODR IN INDIA – A STUDY

DR. N. VENKATESHWARLU

Online Dispute Resolution (ODR) is a branch of dispute resolution which uses technology to facilitate the resolution of disputes. ODR system is the same as the traditional dispute resolution model. The key difference in the two concepts lies not in the substance of their concept but in the mode or medium of practice. Alternative resolution techniques, viz. negotiation, mediation and arbitration are complemented with the Internet Communication and Technology in ODR to carry out most of the dispute resolution procedure online. Author analyses the different processes under ODR.

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INTRODUCTION TO THEORY OF ODR

Online Dispute Resolution (ODR) is a branch of dispute resolution which uses technology to facilitate the resolution of disputes between the parties. It primarily involves arbitration, mediation, and negotiation or a combination of all three. In this respect it is often seen as being online equivalent of Alternative Dispute Resolution[1]. ODR is a dispute resolution that takes advantage of the internet. The attraction of the cyber space is that one can engage activities at a distance than previously required physical presence, things can be done quickly if not instantaneously, that might have been inconvenient or not doable at all previously and one can acquire information processing capabilities that move beyond human capabilities in someway.

Alternative resolution techniques, viz. negotiation, mediation and arbitration are complemented with the Internet Communication and Technology in ODR to carry out most of the dispute resolution procedure online including the initial filing, the neutral appointment, evidentiary process, oral hearing if needed online discussion and even the rendering of binding settlement.

In the traditional ADR process of arbitrations and mediation there are usually three parties i.e. the two disputants and the third party neutral. Even when there is multi party dispute with many disputants, ADR is still commonly thought to be three sided, with all disputants grouped as two parties and the neutral as the third party. Ethan Katsh and Janet Rifkin[2] referred to ODR having four parties as being a 'square' or 'rectangle' instead of

(Footnotes)

[1] Arthur M.Monthy Ahalt (Ret), What you should know about online Dispute Resolution. The Practical litigator, March 2009

[2] Ethan Katsh and Janet Rifkin, Online Dispute Resolution Revolving Conflicts in Cyber space, Jossey-Bass, San Fransisco USA,2001, P.93

triangle , i.e. three parties in ADR system, The 'Fourth party ' is the technology that works with the mediator or arbitrator. The fourth party embodies a range of capabilities in the same manner that the third party does. It may do many things such as organize information, send automotive responses, shaping writing communications in a more polite and constructive manner such as blocking foul languages, maintaining the performance, schedule meetings, clarifying interest and priorities and so on.

The assistance of fourth party will increase the more technology advances, thus reducing the role of the third neutral party. The fourth party may not be coequal in influence to the third neutral Party, but it can be an ally, collaborator and partner to the third party. The manner in which the third and fourth parties interact with each other will effect many parts of dispute resolution process. Further ICT advance which occurs exponentially speeds up over the time and as a result ODR processes are increasing in efficiency, providing their disputants with the greater advantages in terms of time saving and cost reduction.

Ethen Kasth and Janet Rifkin[3] focuses three fundamental features or building blocks of any ODR system. They are convenience, Trust and Expertise. According to them, no ODR system will be successful unless it is convenient to use, provides a sense of trust and confidence in its use and it delivers expertise. In other words, such systems need to facilitate access and participation, have legitimacy and provide value. The challenge of ODR is not simplify to provide some level of convenience, trust and expertise, but to provide the right mix of these features. According to the authors, the relationship between these factors can be compared to the relationship between the three sides of triangle. In this triangle, the length of each side represents how high a level of the factor is present. The above said three factors are not mutually exclusive. If the level of one of the factor is changed, the level of some other factors may be affected.

CONVENIENCE

The convenience element includes logistics and financial factors, which affects access to and participation in the process. The threshold level for convenience is the lowest common denominator and hence the lowest level of sophistication by an anticipated user must be adhered for the system to work. However, an individual without an Internet access would not meet this or any other threshold for convenience, ODR system will be ineffective. For disputes occurring off line, therefore, ODR will not be the exclusive option until a much longer percentage of population has easy and fast Internet access. Another challenge for the convenience level may occur if third party and one disputant is highly sophisticated, but the other disputant is relatively new to the Internet. In this, convenience level must be set at the lowest common denominator unless the disputant is willing for some reason to work to raise his skill level. The reason for this that there should not be a power imbalance between the parties, and technological and equipment that affects ability to participate can create a power imbalance. In addition to being affected by the equipment and skill required to participate, cost and other factors related to who the individual is, will be important. Convenient systems that are not trustworthy will not be used nor will trustworthy systems that are not convenient to be used.

(Footnotes)
[3] Supra 1, pp.73, 74

It is easier to perceive error than to find truth,
for the former lies on the surface and is easily seen,
while the latter lies in the depth,
where few are willing to search for it.

~Johann Wolfgang von Goethe~

The system need not be the most convenient of all possible systems, but it must be convenient enough so that the value provided justifies the effort made to use it. What is needed by any system designer is an understanding of the user base because at every step in the online process the participants are evaluating the process, finding it convenient or not, trustworthy or not and of value or not.

TRUST

The element of trust generally deals with amount of risk the user feels in using the system or website. Trust is a very different realm from convenience physical or virtual, is inherently trustworthy. In physical world it is possible to evaluate what level of trust is present by experience, however when the parties are not encountering physically the usual cues available in face to face situation is not available and therefore new cues or techniques are needed that provide the same level of trust that the usual cues provide. Building trust online involves providing information to customers that tells them something about the party they are dealing with. Trust comes therefore from information on the third party site and the reputation of the third parties. Similarly the website owner shall provide information about his reputation. It is no surprise that the logos for square Trade includes the phrase 'Building trust in Transaction' and e- resolution uses the phrase "Integrity online"

In traditional mediation and arbitration, taking same action to build trust is usually at the top of the mediator's or arbitrators agenda when the parties first meet. In ODR process, building trust is a key concern in the design of website. Potential users of ODR will begin making judgments about the value of the service the first time they see the opening screen of the ODR site.

Attempts to build trust in ODR system is by presenting information about how much benefit can be gained from using the site, how the site has been successfully used in the past and how successful the founders or managers of the site are. Such data is really data about expertise. The differences between the trust and expertise is that the trust is about whether what is being promised will be delivered and about whether or not what the site is saying about itself and its expertise can be believed, where as the expertise concerns whether the site has the resources and skills to successfully resolve the problem.

EXPERTISE

The expertise element requires an interactive information process, where the website receives information from a user, process it some way, provides same analysis and result to the users and perhaps then begins the process again. Expertise is delivered as part of process. The user of an ODR process will receive an enhanced impression of expertise if they not only find experienced and trained third party but also the technological participant in the guise of fourth party.

Therefore, the expertise is concerned with whether the third party and fourth party have the resources and skill to successfully resolve the problems.

INTRODUCTION TO PRACTISE OF ODR

ODR system is the same as the traditional dispute resolution model. The key difference in the two concepts lies not in the substance of their concept but in the mode or medium of practice. ODR system is entirely internet based, meaning that the users may conduct the proceedings through a website or that of service or content provider. Digital communication tools allow the parties to file request by completing electronic forms and to exchange information online through secure channels. The parties and neutral communicate electronically and also through audio and video facilities. The system includes such functions as automatic notifications. The ODR systems have been developed for negotiation, mediation arbitration or administration of justice.

ONLINE NEGOTIATION:

From a technical perspective, Negotiation is the most challenging ODR procedure. In other procedures, a third neutral third party either guides the process (mediation) or actually decides (litigation and arbitration). Negotiation is the only process in which the parties try to settle the dispute on their own. In online negotiation there is no independent third party other than the technologies supporting the parties to the dispute.

The right support of technology is therefore crucial. Accurate support by the technology can make the difference between settling the dispute or not. The technology does not, however, decide the disputes but support goes as far as suggesting solutions to the conflict.

The legal principles aim to guarantee a fair procedure which can be enforced, apart from the parties, solely by the technology. This means while drafting new or analysing existing principles, the enforceability of the principles by technology must be taken in to account.

There are two main forms of negotiation available for settling disputes on the internet – Automated and Assisted negotiation. Automated negotiation is a product of the medium used where the liability is undisputed and the only issue is to determine the amount. The Assisted negotiation is more sophisticated because it can handle all types of settlements, terms and conditions, not restricting to payments only.

Automated Negotiation

Automated negotiation relates to those methods in which the technology takes over aspect of negotiation. Most of the ODR services in the area are so called 'blind bidding' services. This is a negotiation process designed to determine economic settlements for claims in which liability is not challenged.

The blind bidding services may be thought as a type of auction mechanism where some or all information about the players bids is hidden. There are two forms of automated registration viz. Double Blind Bidding and Visual Blind Bidding.

No matter which girl he brought home, this bachelor had disapproval from his mother. A friend advised him:

"Find a girl just like your mother, then she is bound to like her."

Thus the bachelor tried and finally found the "GIRL."

So he told his friend: "As advised by you, I found a girl who looked, talked, walked and even cooked just like my mother. As you predicted, my Mother loved her!"

"So" asked the friend, "What happened?"

"My father disapproved of her!" replied the bachelor.

- **Double Blind Bidding**

Double blind bidding is a negotiation method for single monetary issues between two parties. First the party jointly determine the range or spread within which they agree to settle. For instance they agree that they settle if their offers are within 10% of each other. Each Party then makes an offer unaware of its opponents offer. If the offer is with the agreed spread of 10% the computer calculates the mean value and dispute is settled with that amount. If the offers are outside the spread then no settlement is reached and the computer invites the parties to new round of blind bids. The process is very simple and efficient but very basic. There are about twenty dispute resolution provides active in this field. The spread usually range from 5% to 30% depending upon the provisions made in their system by the service providers and the parties can agree to any percentage within these range[4].

- **Visual Blind Bidding**

The primary distinction of visual blind bidding is in what is kept hidden from the other parties. In contrast to double blind bidding where the offers and demands are kept hidden, in the visual blind bidding what is kept hidden is what each party are willing to accept[5].

Visual Blind Bidding commences when all parties agree to negotiate with one another. They start the process by exchanging visible optimistic proposals which defines the bargaining ranges. The system then generates suggestions that fall within the bargaining ranges. Parties may continue to exchange visible proposals or contribute their own suggestions to the mix. Suggestions contributed by the parties remain anonymous, thus avoiding the face saving problem of accepting a suggestion made by another party[6].

A resolution is declared by the system at the end of a negotiating session if all parties have accepted one or more packages (of one or more proposed decisions values) at the end of that session. Which of those packages becomes the agreement may be determined by algorithm that rewards the party that moves sooner into the zone of agreement.

This algorithm is thought to encourage concessions and quickly indicate that they are willing to accept a fair outcome. This is in contrast with to the chilling effect that occurs with the more common split the difference algorithm[7]. This method can be effectively applied to the simplest single value negotiations or the most complex negotiations between any member of parties and issues.

Automated negotiation has proven to be particularly successful with insurance compensations and commercial activities. It is also a valuable tool for lawyers because they too can use it without revealing what they are willing to accept and more importantly without waiving their right to access the count, in case the negotiation is unsuccessful.

This method is most useful for resolving brick and mortar dispute that arise in business, insurance companies' and B2C disputes as it saves money and time considerably[8].

Assisted Negotiation

Assisted negotiation is essentially negotiation between two parties without the involvement of third neutral, but with the assistance of a computer. The technology has a similar role as the mediator in mediation. The role of the

(Footnotes)

[4] http://en.wikipedia.org/wiki/Online dispute resolution>last accessed 26-1-2011

[5] E.Thiessen and P.Miniato, "Uncovering Hidden Value in a Clean Water Act Negotiation – Smartsettle Infinity Simulation" (Smartsettle,2008) http://www.odrforum2008.org/Program.

[6] E.Thiessen etal, "Rewarding Good Negotiating behaviour with smart settle" (2008)

[7] D.Larson "Artificial intelligence: Robots Avathars, and the Demise of Human Mediator" Ohio State Journal on Dispute Resolution.

[8] J.Krause "Settling it on the web New technology, lower costs enable growth of ODR". American Bar Association Journal, October-2007.

technology is to provide a certain process and/or to provide the parties with specific evaluative advice. This procedure is designed to improve parties' communication through the assistance of software. The major advantages of this process are their informality, simplicity and user friendliness. The process is also known as computer mediated communication. The term for assisted negotiation is also known as Electronic negotiation (e-negotiation) and the system used for this type of negotiation is called "Negotiation Supports System" (NSS), or "Decision Support System" (DSS).

- **Decision Support System (DSS)**

The Electronic negotiations (e-negotiation) are negotiations between two parties, who cannot achieve their objectives through unilateral actions, exchange information, compromising offers and agreement, deal with inter dependent tasks, and search for a consensus which is a comprising decision.

The conflict is an interaction between individuals, groups or organisations in which at least one party has a different perception, thinking, feeling and will than the counterpart. This difference in feeling, thinking and will leads an interference with the other party. Within e-negotiation, the conflict behaviour is different compared to face to face negotiations. Through the restriction of the electronic medium the negotiations focus on selected aspect. Normally gesture, tone of the voice and mimics can increase or decrease the perceived level of conflict during the communication process. These visuals and acoustics attractions are missing during electronic negotiations. The negotiators have to rely on the written messages and the information provided by the NSS.

- **Negotiation Support System (NSS)**

NSS aims to support the users in their decision and argument and do not automate the negotiation process. The negotiators exchange messages with arguments for their positions, formal offers or counter offers, informal questions, clarifications, greetings etc. with the goal of creating a common background and of building a relationship between them. During these process different types of dynamic conflicts, apart from the initial conflict, can occur and escalate. In turn, this can lead to a rejection of the negotiation and as a consequence try to additional cost for parties. Therefore the negotiators try to minimise conflict in order to reach an agreement. A good NSS provider must offer conflict management support to help parties to resolve their dynamic conflicts during the process.

A negotiation support system is a software system which implements models and procedures, has communication and coordination facilities and is designed to support two or more parties in their negotiation activities. In contrast to e-mail, the system supports the parties in a different ways, namely, by means of communication support the decision support and document management. The level of information an NSS can offer has different levels. Kersten et al[9] introduced the following stages.

1) The first stage is passive involvement. The NSS supports the interaction between the negotiators located at different places. Additionally it offers calculative support to help the negotiators to make a decision as utility function. Different visualisations of the negotiation data help the negotiators to keep the process transparent.

2) The second stage is active involvement. It is so called facilitation-mediation system, helps parties to create offers. It advises for formulation of messages or possible new concession help to find solutions for the given problem.

3) The third stage is proactive involvement. This stage of NSS has a same function as in second stage, but provides the possibility of proactive mediation intervention. The system has a certain artificial intelligence and monitors the whole negotiation process. It can evaluate the current status of the negotiation and provide specific advice like whether a negotiator should accept an offer or criticise their activities. The main difference between active and proactive system is that the negotiator asks in active systems for an advice while in proactive stage. NSS makes suggestions and critiques without any request, based on an expert system or artificial intelligence components.

Electronic negotiations realised with NSS can allow on the one hand better outcome than face to face negotiation and improve the exchange of multiple issue offers, but on the other hand they might need more time and can often end with impasse between the negotiators.

There are many system existing like Negoisst, Smart settle and Inspire, which have there main focus on different components. Smart settle and Inspire belong to the decision support school. They focus on quantitative support with the objective to push the negotiators to a more optional agreement. Negoisst provide a more holistic support for all relevant phases of the negotiation process. Especially the communication process is supported in several stages which is a key aspect in conflict management. Negoisst therefore provide the most sophisticated support for all three negotiation phases pre-negotiation, negotiation and post settlement, to reduce initial and dynamic conflicts.

There are three components of negotiation support namely, decision support, communication management and document management. An integrated and holistic approach combines all three components. Negoisst provides these components as explained below.

1) Decision Support: Concepts for supporting the decision making process are essential in supporting electronic negotiations. The main objective is not only to offer negotiators, individuals or joint advices to evaluate offers during the process, but also to measure the negotiators preference structures. In the case of B2B negotiations, the question is which kind of model should be used to solve the initial conflict in the context of the current business situation. Choosing the wrong model could lead to a high initial level of conflict. The model guide helps negotiators on basis of recommended system to choose the right one.

   Negotiation parties can use methods of dynamic preference elicitation to redefine their preference within the process when new information is available or when their preference changes. A valid preference model is the

(Footnotes)

[9] Kestern G.., Lai H Negotiation support and E-negotiation system, an overview Hand Book of Group Discussion and Negotiation sprunger Science–Business Medic, Dordrecht, B.V 16, 2007

basic for the analytical support during the process. It offers numerical indicators like the utility range of received offers or suggestions for possible new offers. Additionally a graphical representation of the negotiation history can display the progress of the negotiation and integrative activities on negotiation side. All these functions allow to disclose concessions, as a sign of cooperation and to evaluate the dynamic conflict behaviour.

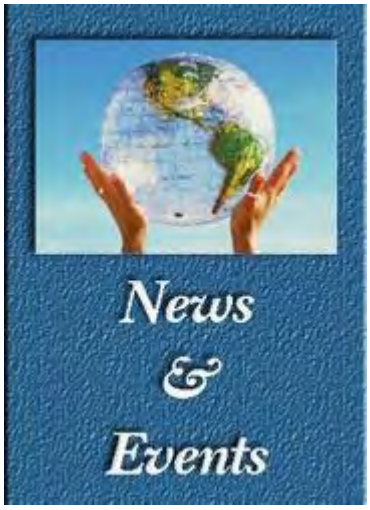
2) Communication Support: Communication is an essential part in this bargaining process. Communication problems can be caused by missing cues due to the medium used for negotiation. The objective is it reduces these possible dynamic conflict aspects to a minimum. Communication does not describe something, it can also have a performative role. As a consequence, Negoisst supports communication with the objective to structure the negotiation process, to create a joint understanding and to show the intentions of messages. All three aspects have in common, that they should prevent misunderstandings and in turn frustration level prevents misunderstandings and in turn frustration level of conflicts. The semantic support declares signs and rules for the communication process.

   A strictly alternating negotiation protocol prohibits belated changes or deletion of messages. The negotiation process becomes more transparent and future steps are clear. The semantic support reduces possible misunderstanding through the definition of the meanings of negotiation issues. Semantic enrichment, based on ontology, connect the written communication with the agenda items and their values. The pragmatic support transmits intention to make clear how a message is meant to be understood.

3) Document Support: To build up trust between the negotiators and provide traceability is indispensable to reduce the level of conflict within the process. Document management in Negoisst links manages and documents by automatically creating a new contract version from each message. No modifications are possible thereby enhancing trust in the system and in the partner.

We will look at the advanced conflict management including online mediation and arbitration in the next issue.

NEWS & EVENTS



AMA CONFERENCE "MEDIATION: NEW ERA - LEGAL FRAMEWORK AND SOCIAL CHANGE" 3-4 APRIL 2014, HONG KONG

The 3rd AMA Conference, which adopts the theme "**Mediation: New Era - Legal Framework and Social Change",** will be held in the Sheraton Hong Kong Hotel & Tower, Hong Kong on 3 & 4 April 2014.

The Keynote Speakers are Mr. Rimsky YUEN Kwok-Keung SC, JP, Secretary for Justice of HKSAR, Justice Barnabas FUNG Wah, Judge of the Court of First Instance of the High Court of HKSAR and Mr. Michael LEATHES, Director of the International Mediation Institute (IMI). There are 36 renowned speakers from worldwide famous international mediation organizations like International Mediation Institute (IMI), Mediation Centre of China Council for the Promotion of International Trade (CCPIT) and all members of the Asian Mediation Association will present their unparalleled knowledge and expertise in the field of mediation in the Conference.

A wide variety of topics will be covered including but not limited to Civil Justice Reforms and Mediation; Mediation in Asia - Challenges and Opportunities; Court Roles in Mediation; Legal Perspectives of Mediation Standards and Practices; Emerging Thoughts on Mediation Theories; Cultural and Social Factors in Mediation Practice; Cultural Factors in Family Mediation and Best Practices in using mediation in the Asia and other place.

For more details about the conference and for registration, please visit www.amaconference2014.org.hk

APPLE, SAMSUNG CEO'S AGREE TO MEDIATION

Apple and Samsung have agreed to attend a mediation session to be held on or before February 19, as they prepare to clash in court in March over smartphone patents. Apple CEO Tim Cook and Samsung CEO Oh-Hyun Kwon will attend the session.

Apple and Samsung are embroiled in a legal battle over patents across several countries that mirrors their global battle for supremacy in the mobile device market. The rivals are facing a March trial date in the US over Apple's claims that Samsung infringed its patents.

Upcoming Training Programs from

INDIAN INSTITUTE OF ARBITRATION & MEDIATION
institution for dispute resolution & management

MEDIATION TRAINING PROGRAM

IIAM will be conducting a commercial Mediation Training Program from 28th April to 2nd May 2014. The program is designed for 5 days – 40 hours. The training program combines the theory of ADR through highly interactive, skill-based courses in negotiation and mediation. The program will enhance the understanding and ability to negotiate and resolve conflicts, as well as provide a solid foundation in ADR processes and to serve as ADR practitioners and neutrals. Through discussion, simulations, exercises and role-plays, the program will focus on the structure and goals of the mediation process and the skills and techniques mediators use to aid parties in overcoming barriers to dispute resolution. The training also gives emphasis on the code and ethical standards of mediation. As per IIAM Mediator Accreditation System, based on the International Mediation Institute, The Hague (IMI) standards, a candidate having successfully completed Mediation Training Program will be categorized as Grade B Mediator and eligible for empanelment with IIAM.

CERTIFICATE IN ARBITRATION LAW (CAL)

IIAM will be conducting a Certificate Program in Arbitration Law at Kochi, India on 7th and 8th February 2014. The program is designed for 2 days – 15 hours. The program offers the participants to know the underlying theory of arbitration law and practice, with emphasis of the Indian law, drafting of arbitration clauses and agreements, procedure of arbitration, important case laws and institutional arbitration methods. The program will provide a solid foundation in the ADR process of arbitration and to serve as an arbitrator or arbitration counsel.

CERTIFICATE IN DISPUTE MANAGEMENT (CDM)

CDM is an ongoing 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. For more details mail to training@arbitrationindia.com

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A bone to the dog is not charity.
Charity is the bone shared with the dog,
when you are just as hungry as the dog.
~Jack London~