Editorial

When It Comes to Conflict Resolution – Are We Ready to Deploy Hybrid Solutions?

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There appears to be a broad consensus that the arbitrator's central obligation, vis-à-vis the parties in an arbitration, is to 'adjudicate' the dispute brought before him or her.[1] An eminent author observes, however, that 'there is a remarkable lack of authority concerning even the general nature of' the obligations of (individual) arbitrators.[2] In other words, exactly what this act of *adjudication* is has remained mostly unresolved in academic writing and in court decisions. It has been suggested that arbitrators tend to be hesitant in making attempts to conciliate the cases they are adjudicating, 'apparently out of a fear that the conciliation attempt could somehow dilute their judicial power'.[3] It is for this exact reason that eminent arbitration practitioners take the view that 'arbitrators are to adjudicate disputes through rendering awards, rather than facilitating settlement (negotiations)'.[4]

Conversely, Kaufman-Kohler submits that an arbitrator, becoming involved in settlement facilitation, can actually help to promote efficiency in the dispute settlement process, which positive outcome should prevail over any potential threat to the impartiality of the arbitrator, should the settlement fail.[5] She advocates the emergence of a transnational standard to help increase dispute resolution efficiency and mitigate concerns pertaining to the impartiality and independence of arbitrators actively seeking to help settle a case.

These initiatives deserve both praise and support. Although, of course, concerns over impartiality and independence of (presiding) arbitrators applying a hybrid approach – *i.e.*, facilitating settlement in the context of the conduct of arbitral proceedings – are to be taken seriously, arbitration is not about going through the motions of the arbitral process, just for the sake of it. It is, rather, a tool aimed at resolving disputes between parties. This objective, to achieve the swift and efficient resolution of disputes, should, therefore, be the central focus in assessing what can, and what cannot, be realised in the context of arbitration. It would be wasteful not to avail of an arbitrator's familiarity with the case, in order to help resolve the dispute with – rather than between – the parties, if the opportunity to do so should arise.

This discussion ties in with Dr. Martin Brink's article on evaluative mediation. Having investigated whether or not evaluative mediation is to be considered as a working method in itself,[6] in the second part of his analysis, Brink investigates methods of deployment of evaluation in mediation and carefully considers what are the do's and don'ts. It is this thorough analysis – and the pro-

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1 See: Alessi, who submits that 'the arbitrator's function is not judicial, it is adjudicatory'. Alessi D. (2014). Enforcing Arbitrator's Obligations: Rethinking International Commercial Arbitrators' Liability. *Journal of International Arbitration*, 31(6), 735-784, at 754.

2 Born G. (2021). *International Commercial Arbitration* (3rd ed.). Alphen aan den Rijn: Kluwer Law International, p. 2129.

3 Kaufmann-Kohler G. (2009). When Arbitrators Facilitate Settlement: Towards a Transnational Standard. *Arbitration International*, 25(2), 187-205, at 190.

4 See Collins M. (2003, September 1). Do International Arbitral Tribunals have any Obligations to Encourage Settlement of the Disputes Before Them? *Arbitration International*, 19(3), 333-343.

5 Kaufmann-Kohler G. (2009). When Arbitrators Facilitate Settlement: Towards a Transnational Standard. *Arbitration International*, 25(2), 187-205, at 187.

6 In *CMJ* 2020/No. 1, pp. 12-20.

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posed working methods – that could also greatly benefit the efficient conduct of arbitration, through the involvement of arbitrators in the facilitation of settlement.

Formal and informal types of dispute settlement – in particular in the context of mediation – are also the central tenet of Dimitris Emvalomenos' contribution to the architecture of mediation in Greece. Offering a comprehensive overview of the relevant fields in which mediation is applied, he notes a shift towards a culture of mediation, especially online mediation, in the Hellenic Republic.

In her article, Henneke Brink discusses the central position of mediation in the Chinese Belt and Road Initiative (BRI). Brink observes that the BRI may be best viewed as a field lab for international commercial dispute resolution, which deserves to be monitored with great interest.

An overarching tenet of all three articles in this edition of CMJ is to encourage new thinking, bold action and appropriateness of response, in ways that not only transcend boundaries but also reach out beyond traditional zones of professional competence. When it comes to the long and winding road of conflict resolution, are we ready to deploy hybrid solutions?

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