

Editorial

The T-Shaped Mediator

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It is safe to say that the dispute resolution landscape has expanded significantly over the past decade. Examples are numerous. We have seen an increased number of states acceding to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.¹ At the same time, we have seen a substantive increase in the number of mediated investor-state and state-state disputes.² In fact, mediation now has its own convention – the Singapore Convention.³ In addition, the Hague Convention on Choice of Court Agreements came into force on 1 October 2015.⁴

Apart from these advances in more traditional fields of dispute resolution, we have seen the further diversification of alternative dispute resolution mechanisms, as reflected by the developments in the field of Med-Arb/Arb-Med/Arb-Med-Arb,⁵ expert determination⁶ and ear-

ly neutral evaluation.⁷ One such development that is particularly notable is the introduction of the so-called ‘Express Rules’ of the Stockholm Chamber of Commerce’s arbitration institute.⁸ The SCC Express Rules aim to resolve disputes between parties without a full-length arbitration for the sake of time and cost efficiency. Proceedings will be conducted by a neutral legal expert appointed by the SCC who will play an active role during the assessment of a dispute by requesting the necessary information and documents from the parties.⁹

It appears that the introduction/promotion of available mechanisms for the resolution of disputes – and the methods referenced previously are only a few – stirs up doctrinal debates on what constitutes what specific type of dispute resolution (and what does not). Perhaps the most striking example of this is that of the ongoing discussion between evaluative and facilitatory/transformational mediation. In an earlier contribution, Brink investigated exactly this issue. He notes that ‘(...) a reluctance on the part of the mediation community to challenge claims of brand distinction emerging in the mediation field’.¹⁰ In a follow-up piece on evaluative mediation, Brink reiterated that ‘(...) doctrine will not be able to prevent that mediation will continue to occur in all kinds of shapes and forms’.¹¹

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1 See: https://newyorkconvention1958.org/index.php?lvl=cmsspage&pageid=10&menu=674&opac_view=-1.

2 See: www.biicl.org/blog/17/investor-state-mediation-trends-risks-and-opportunities.

3 On which, elaborately; Peters, N. (2019). The Enforcement of Mediation Agreements and Settlement Agreements Resulting from Mediation. *Corporate Mediation Journal*, 1, 13-19; Katz, L. (2019). The Singapore Convention. *Corporate Mediation Journal*, 1, 20-21.

4 Beaumont, P. (2009). Hague Choice of Court Agreements Convention 2005: Background, Negotiations, Analysis and Current Status. *Journal of Private International Law*, 5, 125; Schulz, A. (2006). The Hague Convention of 30 June 2005 on Choice of Court Agreements. *Journal of Private International Law*, 2, 243; Hartley, T. (2006). The Hague Choice of Court Convention. *European Law Review*, 31, 414; Thiele, C. (2007). The Hague convention on choice of court agreements: was it worth the effort? In E. Gottschalk, R. Michaels, G. Rühl & J. von Hein (Eds.), *Conflict of Laws in a Globalized World*. CUP, p. 63.

5 Van Zelst, B. (2018). European Perspectives on Enforcement of Med-Arb Clauses and Med-Arb. *Corporate Mediation Journal*, 1, 12-19.

6 This – judging by the publication of the leading work by John Kendall in 1992 (‘Dispute Resolution: Expert Determination’) – has been around for

some time, yet appears to be on the rise as a tool for the resolution of disputes.

7 On which, generally; Brazil, W.D. (2007). Early Neutral Evaluation or Mediation – When Might ENE Delivery More Value. *Dispute Resolution Magazine*, 14, 10.

8 https://sccinstitute.com/media/1800128/scc-express-guidelines_2021.pdf.

9 See: <https://iclg.com/briefing/16569-stockholm-chamber-of-commerce-launches-new-express-dispute-resolution-mechanism-sweden>.

10 Brink, M. (2018). A Definition of Mediation? *Corporate Mediation Journal*, 2, 40-45.

11 Brink, M. (2021). Evaluative Mediation (Part I). *An Analysis Corporate Mediation Journal*, 1, 12-19.

These analyses remain current. There appears a concerning hesitation with dispute resolution professionals to take an integrated and multifaceted approach towards the settlement of claims and controversies focused on the clients' actual needs. In other words, mediators should offer the resolution of disputes rather than mediation by a certain doctrinal standard. In fact, the ability to leave aside dogmas in favour of a pragmatic approach, starting from the core value of party autonomy, is the central *unique selling proposition (USP)* of mediation. Delivering solutions in that vein would require a more diversified approach, perhaps even envisaging the emergence of a multidisciplinary dispute resolution professional – a kind of 'T-shaped mediator', capable of the cross-skilled application of various elements of appropriate and timely dispute resolution mechanisms.

It is exactly this development towards which this journal seeks to contribute. To this end, this first issue of 2022 offers an analysis of constructive confrontation in the airline industry by Eva van der Fluit. In her contribution, based on her doctoral research and numerous workshops, Van der Fluit distinguishes three universal mediating skills that may more generally be advantageous for work settings. These are working with reality, working with emotions and working with power. Van der Fluit convincingly assesses and submits how these skills can inspire business mediators to reflect on, and update, their own skill set.

2 Secondly, Anna Doyle investigates the Mediators' Green Pledge, which strives to encourage mediators around the world to proactively mitigate the effects of climate change and to work in a more environmentally friendly manner. The Mediators' Green Pledge has its pendant in the Arbitrator's Green Pledge.¹² Doyle raises awareness about these developments and invites individual mediators around the world to sign the Mediators' Green Pledge and to promote more environmentally friendly mediation services.

We conclude with a review of Julie Battilana and Tiziana Casciaro's book *Power for All, How It Really Works and Why It's Everyone's Business*, which, as Martin Brink notes, adds insights that are new and support what mediators will need to know about power mechanics.

Fast-changing times call for the emergence of a new breed of conflict resolution professional – the time has come for the T-shaped Mediator.

12 www.greenerarbitrations.com/greenpledge.