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# Kluwer Mediation Blog

## Time for Another Big Bang in Alternative Dispute Resolution: The World Needs a Global Pound Conference

Deborah Masucci (International Mediation Institute) · Tuesday, February 18th, 2014

ADR is sleepwalking globally. It needs to be shaken out of its slumber. There is a way to do it. A truly Global Pound Conference!

### **Mediation growth has stalled.**

Mediation is established as part of its dispute resolution structure in a few countries like the U.S., Canada, the Netherlands, Singapore and the U.K., but even in these countries the use of mediation is not endemic and there is a huge opportunity for expansion and more effective use of the process. An uncomfortably high proportion of litigation and arbitration lawyers favor mediation only at the end of a dispute's life cycle or, in common law countries, after extensive discovery is completed, protecting against what ADR means to them: *Alarming Drop in Revenue*. Mediation is almost never used in Investor-State cases, international trade disputes, class actions or other cross-border commercial, community and family disputes, and is imperfectly applied in world peace issues. Mediation is available under international arbitration rules, but rarely triggered.

Many countries and their courts have adopted rules supporting mediation but there is a gap between adoption and implementation. Most mediation service providers survive by training, often funded by governmental bodies advancing opportunities for access to justice, but there is little evidence that many trainees mature into mediators. As a result, global companies seek dispute resolution mechanisms worldwide to manage their legal risks and costs, but outside the countries mentioned above often cannot find credible structures supporting mediation, so are faced with creating often sub-optimal solutions on a country-by-country basis.

Another factor impacting the growth of mediation is that there are no widely-accepted mediation quality standards. Although there are codes of professional conduct for mediation, there are few disciplinary processes to apply and enforce them. These factors have resulted in stagnation that has robbed mediation of inspiration and momentum. There needs to be convincing global leadership to remove the defects and propel the use of mediation.

### **History repeating itself**

Although modern mediation originated during America's Great Depression in the 1930s as a way of resolving chronic family, employment and industrial relations conflicts, it did not start to gain recognition until after the 1976 Pound Conference. On that seminal occasion in St Paul, Minnesota, many leading American educators and jurists addressed *the causes and remedies of popular dissatisfaction with the administration of justice* in the US, recognising what Dean Roscoe Pound had, years earlier, pithily described as *tinkering where comprehensive reform was needed*, a classic remark politely reframed by Chief Justice Warren E. Burger as *deferred maintenance*. The 1976 Pound Conference was the Big Bang that ignited the explosion of new ideas that kick-started mediation. In many respects, the explosion was fostered in the U.S. by increasing costs of litigation and delays in judicial resolution. Today we have reached the point where mediation, throughout the world, needs another kick-start to re-fire the engine of growth, a *Global Pound Conference on the Causes and Remedies of Popular Dissatisfaction with Cross-Border Dispute Resolution*. This kick-start needs to occur before litigation expenses reach breaking point, but this time on a global scale.

### **Why a Global Pound Conference (GPC)?**

A single event, a second Big Bang, planned and executed with the active involvement of users and all other stakeholders, could instantly identify and accelerate evolutionary change in the resolution of cross-border disputes. Placing *cross-border* dispute resolution at the centre of attention would help maintain focus on issues that are widespread internationally rather than on those of a local or national nature that may have little relevance elsewhere. Since we live in the *Internet Age*, such an event can include diverse voices by leveraging massive stakeholder crowd-sourcing on a global scale, led by some 15 or more physical gatherings in different countries. On a single day, or perhaps two days, across 20 time zones, starting in Australasia and Japan and ending in the Americas, the GPC could instantaneously identify the prevailing needs of disputants, the positives and shortcomings of the status quo, debate the options for creating change, and end with a collective action plan that secures stakeholder buy-in. That would replace what Dean Pound described as *tinkering with inspiration*.

### **How the GPC could work**

The format of the sessions and the nature of participation would be radically different from anything that has been staged previously in the dispute resolution field, or in any other field, nationally or internationally. There would be a common format, addressing common issues in cross-border dispute resolution, but with the flexibility to embrace local and regional issues and cultural considerations.

The event would be interlinked by live webinar to registered participants worldwide, some choosing to gather in smaller, ad hoc groups. Delegates attending the 15 or so locations in person would each have devices enabled for use in sessions so that they could be asked to vote on propositions, some of them spontaneous, and to offer remarks and comments that could be instantly clustered and projected onto a shared screen as well as the individual screens of participants everywhere. Those participating by live Internet feed would be able to vote electronically if they have

registered for that capability, and contribute comments onto the collective screens. In a matter of seconds, thousands of informed opinions could be electronically harvested, segmented by stakeholder group, geography, culture and other categories, assembled by subject matter and agglomerated into mass opinions portrayed in numbers and graphs. Golden data.

### **What the GPC could deliver**

In a word, change. Positive change that would help to express what users and dispute resolvers need and why, and how all stakeholders, including professional advisers, mediators, ADR service providers, educators, adjudicators and governments adapt to deliver those needs.

Users are rarely asked about their developing needs in dispute management, which is widely acknowledged as becoming increasingly challenging and complex. As a result, although certain assumptions and deductions can be made from the few international user surveys that have been conducted, most do not address the issues of greatest concern to users, and there is a serious lack of solid and reliable data. It would be a prime task of the GPC to correct this shortcoming in one international event.

The main challenge of the GPC would be to identify and ask the right questions and to enable all participants, whether attending in person or online, to express their individual views using live Internet technology.

The GPC would be the first time that most participants would have an opportunity to express their views on the efficiency and conduct of cross-border dispute resolution (and, for that matter, national dispute resolution). Although an immediate reaction to the data could be given by speakers, panelists and commentators, the most useful and change-creating initiatives would likely emerge from post-GPC reflection and discussion, unbiased review of all the data, and consequential conclusions and action.

An international group of ADR professors and other independent thought leaders in dispute resolution could be convened subsequently to analyze and interpret all data generated, and to prepare a comprehensive summary and conclusions in a Report to be made directly available to all GPC participants and then published. The data would assist disputants and negotiators, professional firms that service them, government policy makers, NGOs, dispute resolution providers and others in a wide variety of ways.

A dedicated web portal could be established to collect all post-GPC comments and create an international GPC cross-constituency professional network. Individual online and physical publications would be able to build on the GPC.

### **Implementation**

To stage the GPC properly would require stakeholders, and there are many around the world, to invest something in the future. An initial cost estimate by the international congress organizers, [MCI Group](#), envisages a budget of about US\$4 million. This could be financed through donations from private philanthropic foundations, professional bodies and government institutions, sponsorships at various levels and delegate

participation fees, many of them tax deductible as the organizer would be a registered charity. A GPC Leadership Group comprised of international leaders in the ADR field would plan the details in collaboration with professionals like MCI having experience of the appropriate state-of-art communications. This GPC Leadership Group needs to be convened under the auspices of one or more non-ADR service provider entities, such as the [International Mediation Institute](#), as well as several internationally prominent educational and professional institutions. The GPC Leadership Group would prepare a Funding Prospectus and budget to cover the costs and generate participation. The Spring of 2015 may be the perfect time to execute the GPC.

A GPC would put *inspiration* back into mediation and stimulate real growth, worldwide.

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