

# Wa And The Japan International Mediation Centre - Kyoto

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More than 1,400 years ago, Japan codified Confucian and Buddhist approaches to governing in Prince Shotoku's Constitution, whose first article provides that "[h]armony should be valued, and quarrels should be avoided." The underlying principle, *wa* (harmony), was promoted and reflected in the fabric of Japanese society and may have contributed to a persistent preference for non-adversarial means of settling disagreements. Mediation, in particular, has a storied history in Japan and continues to play an important role in the resolution of disputes. But most mediation services have been provided by the government or courts, despite a 2004 statute encouraging certification and expansion of privately-supplied Alternative Dispute Resolution (ADR) services, as part of a broader suite of justice system reforms to make Japan's legal system more tangible in everyday life.

It is in the context of that contemporary challenge as well as the longer-standing spirit of *wa* that the Japan International Mediation Centre-Kyoto (JIMC-Kyoto) will soon begin operations. The JIMC-Kyoto is part of a broader initiative to breath fresh life into international disputes services in Japan (see Luke Nottage & James Claxton, "'Japan is Back' - for International Arbitration and Dispute Resolution Services?", *Kluwer Arbitration Blog*, 29 January 2018). The official start of business awaits final governmental approval, which should come early this year.

The idea for JIMC-Kyoto can be traced back to a mediation seminar in Osaka in 2015 where discussants considered the importance of the place of mediation and environmental impacts on settlement. Some participants agreed that Kyoto would be a particularly attractive place for international mediation. The capital of Japan for more than a millennium, Kyoto is known for its traditional architecture and peaceful atmosphere of religious monuments, teahouses, and gardens. Logistically speaking, as a popular tourist destination the city has reliable transportation (lying two hours by bullet train from Tokyo), hotels and other services.

## Management and governance

The JIMC-Kyoto initiative is closely linked with the Japan Association of Arbitrators (JAA), a non-profit organization originally established to provide training to arbitrators and to promote alternative dispute resolution. A JIMC-Kyoto organizing committee, comprising JAA members, is presently establishing a board of directors and an advisory board that will be directly responsible for governance of the center.

JIMC-Kyoto operations will be based at the wooded main campus of Doshisha University in central Kyoto. The university will provide both staff and facilities. In parallel, Doshisha University will establish a center to support the work of JIMC-Kyoto and foster research and scholarship in the area of international mediation.

## Mediation services

JIMC-Kyoto will focus on international commercial mediations by offering various types of support to include proposing and appointing mediators, providing facilities for *ad hoc* mediations, and administering mediations. A division of the organizing committee is currently drafting procedural rules for mediations to clarify the role of the center in administered proceedings. The rules are expected to follow the standards of other international institutions, such as the rules of the Singapore International Mediation Centre (SIMC).

Doshisha University will provide rooms for the parties and mediation proceedings, equipped with interpretation booths. The fees for the use of these facilities will be included in a lodging or administration fee paid to the center by parties to mediations. Users of the center's services will also have access to computers, printers, and videoconferencing equipment. JIMC-Kyoto will additionally help parties to arrange alternative venues in Kyoto and elsewhere. In this connection, the center is currently in negotiations with a temple in Kyoto to provide space to hold mediations (and perhaps meditations!).

## International panel of mediators

The organizing committee of JIMC-Kyoto is also working with the SIMC to complete a JIMC-Kyoto panel of mediators. The aim is to include experienced mediators from a variety of jurisdictions. While court-annexed mediation and ADR in domestic cases in Japan largely follow the evaluative model, JIMC-Kyoto will not favor or proscribe any particular style of mediation - and in fact may highlight and promote more facilitative approaches. Its panel of mediators, which will contain at least 50 members employing various methodologies, will be available to potential users and for the center when making mediator appointments.

## Outreach

JIMC-Kyoto formally announced its creation at events in late 2017 that included mediation practice seminars and a symposium with speakers from the Japanese government, academia, and legal practice. The center has signed a memorandum of understanding to collaborate with the SIMC and plans to conclude similar agreements with other dispute-resolution centers. The planned collaboration between JIMC-Kyoto and the SIMC will include co-hosting events and organizing trainings of international mediators in Japan.

## Growth of international mediation

JIMC-Kyoto will begin operations at a time when international commercial mediation is receiving greater attention. A survey published by the International Mediation Institute in 2016 found that across the globe, interest in international mediation is growing and business advisors and potential users understand mediation better. Likewise, a survey of participants at the 2016 Global Pound Conference found they believed that prioritizing collaborative over adversarial processes is central to the future of commercial dispute resolution.

Meanwhile, there is some progress towards closing the enforcement gap between international mediation and international arbitration. The UNCITRAL Working Group II is considering the promulgation of an instrument for the enforcement of international commercial settlement agreements resulting from mediation and possibly amending the Model Law on International Commercial Conciliation adopted in 2002. While there is no clear sense of whether and when these efforts might bear fruit, draft provisions have been completed and are the subject of current negotiations.

## Attracting international mediations

In the short term, JIMC-Kyoto will focus on assuring that the involvement of the center, including mediator appointment and case management, adds appreciable value to users of its services. Working with leading international mediators should facilitate growth. Arbitration institutions in Asia that have risen to global prominence include leading international arbitration figures as executives, in management, and as consultants on "executive committees" and "advisory boards". The use of such experts not only benefits an institution at the levels of operations and governance but also amounts to international marketing.

JIMC-Kyoto would also benefit from additional support from the Japanese government. The Singapore government actively promotes the SIMC as an integrated and necessary part of international dispute resolution services, along with the Singapore International Arbitration Centre and the Singapore International Commercial Court. JIMC-Kyoto could likewise be bundled in promotions with the proposed Tokyo Centre for International Dispute Resolution (link to Luke Nottage & James Claxton, "'Japan is Back' - for International Arbitration and Dispute Resolution Services?", *Kluwer Arbitration Blog*, 29 January 2018).

## Will it work?

Could JIMC-Kyoto emerge as a leading center for international mediation services? There are elements that should work to its favor. Japan is well placed geographically for disputes between parties from the Americas and Asia, or between parties within Asia. There are no other dedicated mediation centers in the Asia-Pacific region, apart from SIMC, and Japan may be perceived as neutral place to mediate with reliable and distinctive services to support the process.

There are also growing opportunities for mediation services. These include, for example, disputes arising out of the 2020 Tokyo Olympics, China's 'Belt and Road' Initiative, and possibly international investment disputes more generally. The SIMC, for its part, has already announced that it will collaborate with the Mediation Center of the China Council for the Promotion of International Trade / China Chamber of International Commerce to mediate disputes that arise out of Belt and Road transactions.

At the JIMC-Kyoto symposium last December, participants heard from Antonio Piazza, a leading international mediator known for successfully mediating the dispute over the genesis of Facebook and a dispute between Intel and Advanced Micro Devices that reportedly settled for 1.25 billion USD. Mr. Piazza regularly holds high-value international commercial mediations in Maui, Hawaii, because he believes that the natural environment is conducive to mediations and that the travel to Hawaii encourages parties to send representatives who will be engaged in the process and who have the authority and discretion to settle. It is not difficult to imagine that these same factors might attract some mediators and parties to Kyoto.