

# International Trends in Mediation

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I once had the honour to meet the first woman in Space, Valentina Tereshkova. She said something that has always stuck in my mind: "Once you have been in Space you appreciate how small and fragile the earth is". She meant that Space is a good place to be if you want put things into perspective. So that's where I went, in an imaginary Sputnik, when I was asked to present some thoughts on international trends in mediation at the 2012 Asian Mediation Association Annual Meeting.

From the higher vantage point, I quickly found that there are established trends, emerging trends and fads, and that no trends are established everywhere. Likewise, some emerging trends are nowhere in most places but closer to being established in others. And fads, the trends of the future, may already have achieved trend status somewhere.

Here's a summary of my view from space and I would very much welcome your views! It is an important subject. Trend analysis is used for future-spotting and to inspire new thinking and developments. Trends keep us a step ahead, positive, young at heart.

Established trends

Of course, mediation is itself an established trend - a prevailing tendency that is gaining momentum. But what are the established trends within that established trend?

\* First, I see a clear awakening of the user - especially the repeat user. It is starting to dawn on them that mediation can help get what they need: achieve goals, reduce risk, secure certainty, take less time, cost less, save face and preserve reputation. This is leading to a slow but steady shift from a supply-led field to a demand led profession.

\* Second, I see a trend from passive forms of mediation to assertive practices, and from facilitative mediation to the more evaluative style.

\* Third, arbitration institutions embracing mediation more enthusiastically. A quick glance at the 2012 ICC Rules of Arbitration proves the point, and there are many other examples.

Emerging Trends

Peering down at earth from orbit:

\* One can see governments readying themselves for regulating this field. They are doing so because mediators and providers do not self-regulate convincingly on quality. Training and education are at sophisticated levels and the field is now starting to credential knowledge, skills and experience - some of it transparent and credible, but some of it opaque and lacking conviction. This emerging trend toward proper credentialing needs to be more sustained and established, more international and more serious and credible, to head off government regulation.

From the Sputnik, I perceived other emerging trends:

\* A trend from voluntary to increasingly "mandatory" mediation, or at least, as some would say, being "robustly encouraged". Court annexed and connected programs are increasingly common.

\* Mediation advocacy skills are now becoming a clear focus area based on training.

\* There are emerging trends towards hybrid forms of mediation and arbitration and a greater demand for innovative tailored processes - rather than just practicing what was originally taught.

\* Collaborative law is giving new credence to the expression Amicable Dispute Resolution, a practice area where contentious resolution forms are not even considered (at least not by the professionals in the room).

\* There is an emerging trend towards deal mediation - that is, using mediators to help parties make a deal even where there is not dispute, just a desire for a better and more sustainable deal. A new notion of "counsel to the deal" is emerging.

\* And I see a clear emerging trend towards gradually higher success rates as mediators become more skilled and experienced.

Fads

Fads are a bit harder to see from space because they are less widespread. A fad is more of a burst of interest, a localised bandwagon that can, perhaps, morph into a trend. Among the fads I noticed were:

\* ADR providers collaborating with one another, often for the first time on a sincere, added value level.

\* There is a fad for young mediator initiatives.

\* Ethical codes that are backed up by enforcement mechanisms having real teeth (such as the withdrawal of credentialing in severe cases) is an encouraging fad.

\* Online dispute resolution is also a fad and may well become a trend.

\* Another fad, hopefully one that will quickly turn into a proper trend, is for professional mediation bodies on a national and regional basis. MSB in Australia, HKMAAL in Hong Kong, SPIDR in Nigeria, the APFM in the US - these are all the start of professional bodies at national level. The Asian Mediation Association and the European Mediation Network Initiative are examples of something similar happening regionally, inspiring the birth of the African Mediation Association

Conclusion

This trip in orbit photographing the trends is clearly all very encouraging. Mediation is maturing, and as it does so it experiments more, becomes more versatile, more credible, more respected, more trusted, and at the same time is building the foundations of a properly recognized independent profession. We need to share and develop these ideas because, by surfacing them, we build a better future for all mediation stakeholders, as well as ourselves.