
Kluwer Mediation Blog

More on the Global Pound Conference

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In this blog, I'll follow up on Deborah Masucci's overview, and in doing so I'll offer a three observations about technology and one about a very non-technological aspect of mediation.

First, on the technology: as those who were there will know only too well, and those who have followed at arm's length will appreciate, the GPC is very tech-heavy. The whole process of gathering, assimilating and sharing responses to the series of questions about access to justice is wholly dependent on participants having access to mobile digital technology – typically a tablet or smart phone, or for some, a laptop. Despite my long involvement in online dispute resolution and a reasonable appreciation of the technology, my pre-GPC apprehension was that there would be glitches, there would be uneven levels of tech familiarity and competence, and there would be a degree of resistance. On the first point, it was a wise choice to have the inaugural GPC in Singapore as the infrastructure is very well-established, WiFi speeds are good, and the level of backup support was extraordinary. A note to future GPC organisers: getting this part right is essential as the risk of “losing” people is too great if the technology gets in the way.

I have to say, too, that the prospect of getting 400 people up to speed on the technology was a considerable challenge but this was handled superbly – and above all calmly – by Danielle and Emma-May. This GPC attracted an audience of widely varied experience in mediation; and we can be sure that the levels of IT competence were equally widely distributed, though these days we can safely assume a reasonable level of experience with the basic capacities of smart devices. There was also – as you'd hope – a pretty high level of “peer assisted” tech access going on in the audience, even if at times it might have been an exercise in shared incomprehension. Still, it's imperative that we were ‘walked’ through both the interface with the GPC web site and the process of answering questions. It may be a mark of our world of instant gratification, but there's something quite pleasing about seeing the results of a poll appearing on the screen – and of course seeing whether others in the room “got it right” according to our own responses.

On a non-tech aspect of the questions, my impression is that there will still need to be some refinement of the questions, given the conversation at least in our row on the interpretation of some – but only a few – of the questions. For example, if we're asked a question that seeks a response in relation to both “access to justice” and “dispute resolution”, this might not lend itself readily to a single preference, and as has been discussed in several earlier Kluwer blogs, both functionally and critically these might not mean the same. Dame Hazel Genn would certainly insist that the former is not necessarily achieved by the latter.

My second passing observation about the technology is about a “soft” aspect of technology. Conversations with several local participants after the GPC revealed, on the one hand, considerable interest in and appreciation for the process and, on the other, an abiding puzzlement about the process. At its simplest, the puzzle seemed to be this: if you go to a “conference”, the expectation is that you’re there to hear experts telling you about some aspect of the field; and there is less expectation that there will be such a high level of substantive input into the outcomes and conclusions. On the first aspect of this, the panels and plenaries worked very well – all the more so when there was a live feed of questions streaming on the screen behind the panellists. But, in the same way that I’ve found a reluctance in seminar audiences to engage in a “Q & A” session, there was at least an initial misapprehension as to what a conference was meant to offer. Given the consideration of cultural questions as part of the overall agenda of the GPC, it’s worth reflecting on the impact of high power distance in those regions where expectations of hierarchy and influence shape expectations of participation. And given the fact that this process is, by its very title, “global”, I simply raise a general question about “fitting the forum to the folks” (with apologies to Frank Sander).

The third and final point about technology is not about the role of technology at GPC but about the expanding and inevitable role of technology in dispute resolution. There’s no need to explore the nature and process of ODR here – that has been dealt with in a rich and growing body of literature and practice. But I can applaud the GPC organisers for including a session on ODR in this conference. I was fortunate to convene that session and had two excellent speakers: Jeffrey Chan SC, Deputy Solicitor General of Singapore and, more to the point here, Chairman of UNCITRAL’s Working Group III on ODR; and Colin Rule, formally Director of ODR for eBay and PayPal, currently founder and COO of modria.com, an online private provider for ODR services. We also had an oversubscribed workshop – literally standing room only for the last 20+ people to arrive. We’d expected 80, and had over 100. In the two speakers we had two important “voices” about the development and management of ODR, looking at regulatory and enforcement issues, and at the scope and provision of accessible online services. To add an appropriately technological note, Colin was “present” by Skype, beamed in from New York and appearing on a large screen for the audience. Again, the technology was seamless – but it’s always the source of a moment or two of apprehension, for anyone who has used any online video conferencing technology and been plagued by dropped calls, or poor sound or picture quality. Given the level of interest and the significant growth of this area of access to justice, I trust the theme will reappear at later GPCs.

One final non-technological note: in the opening addresses to the conference, one word kept reappearing and that was conversation. I want simply to reinforce two aspects of that word in relation to our field. First, as Tom Stipanowich has urged in his recent paper, “The International Evolution of Mediation: A Call for Dialogue and Deliberation” (available online at SSRN), it’s imperative that those of us the the various roles identified by the GPC – providers, advisers, users, and teachers/researchers – stay in conversation about the trends, pitfalls, potential and distractions in the field. It’s that kind of conversation that the GPC is designed to be part of – though we do need a cautionary note as to whether tablet-based voting is conversation or just contribution to aggregated conclusions. Crowd sourcing is not necessarily conversation, nor is dialling-in necessarily deliberation.

The second aspect of “conversation” worth holding onto goes back to what is fundamental in this line of work: while we might have important debates about technology, enforceability, the role of lawyers, the liability of mediators, the regulation (or not) of mediation, the challenges of cross-border work in a globalised world, it was useful to have the occasional reminder of what it is that

mediation can really do: foster a civil conversation, whether between commercial partners, or separating spouses, or competing users of natural resources. This, to go back to the aspirational work of Robert Baruch Bush and Joseph Folger in *The Promise of Mediation*, is what mediation is really good at. For the growing world of online dispute resolution and e-governance, the imperative is that “digital citizens need to develop a new rhetoric of participatory discourse.” [Stephen Coleman & John Götze, “Bowling Together: Online Public Engagement in Policy Deliberation” (Hansard Society)]. And, as Eli Wiesel reminds us:

“Our lives are rooted in story. Our stories are our lives. We find out who we are by the stories we tell and are told. The lives we live and the conflicts we embrace are held together by motif and myth. If we are to gain a sense of who we are, where we stand in the world, what our relationship in and with the world is to be, then we must see how our story works. A story is a way to articulate what it is we are living through and how the world lives in us as we live in it ... Stories give meaning to common and shared experience.” [Eli Wiesel, quoted in J. Elkins, “The quest for meaning: narrative accounts of legal education,” *Jnl of Legal Education*, v. 38 (Dec. '88) p. 577-98]


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