Kluwer Mediation Blog

A Coffee with Ati Alipour

Andrea Maia (Mediar360 – Dispute Resolution) and Ahdieh (Ati) Alipour Herisi (Attorney at Law (New York Bar)) · Wednesday, May 8th, 2019

Last month, we had the presence of Ahdieh (Ati) Alipour Herisi in Brazil as a judge for the occasion of the CPR International Mediation Competition . Ati is a young, enthusiastic and brilliant lawyer and mediator who was born in Iran and lived, studied and worked in many different places such as Los Angeles, New York, as well as Middle East and Europe.

I was very happy when a mutual friend introduced us and she accepted my invitation for a coffee and a speech for the Young Mediators Committee from CBMA – Brazilian Center for Arbitration and Mediation.

During that event, which was followed by a Q&A session, we had a very fruitful conversation and enriching afternoon. Thus, I decided to co-author this month's blog with her and share some of the featured questions and answers that we found most interesting. Some of the questions entailed the most-cutting edge issues of international mediation, which is summarized here.

1. **How was it different to study law in different countries and different languages?**

Despite its challenges, I find it a great experience. Law is intertwined with culture and understanding legal regime of a country requires understanding more than just the statutes and codes. I believe for an international attorney, understanding and knowing the law and language of a different country can be a very strong tool to understand multiculturality of the clients who are from different countries, cultures or religions.

2. **How would you consider familiarity with different legal regime is helpful in international mediation?**

In mediation one of the key concepts is communication. If parties are being represented by or consulting an attorney throughout their mediation, it is going to make a big difference in scenarios where the attorney understands different cultures of legal practice. For example, when an attorney from a Civil law jurisdiction understands common law principles, s/he will be able to interpret the approach of the colleague who is assisting the other party in a more appropriate context and this will directly help effective counseling. Even though those legal regimes might not be directly related to the mediation, it will facilitate mutual understanding and effective communication.

3. **You have a lot experience in the International settings. I am very curious about how do you imagine the future of international mediation in resolving commercial disputes? and how**

is it different than arbitration?

Mediation has the potential of becoming the mainstream dispute resolution method for international commercial disputes. In order to protect trade secrets and Intellectual Property-related information and data that parties prefer not to reveal in an arbitration or court proceeding, confidentiality can be a main advantage that mediation provides. As the parties are the decision-makers in a mediation, they will be in a better position to come up with creative solutions. In complex international commercial disputes, parties are equipped with knowledge of the subject matter as well as facts of the case. Thus, mediation will be the empowering process that can help the parties with resolving the matter in a way that is agreeable to the both of them.

I believe since parties have control over the process, mediation entails more party-autonomy compared to arbitration. The only aspect that arbitration is in advantage, is the enforcement that can be cured with the Singapore Convention in the near future (hopefully! I am an optimist!)

4. **What do you think of the role of the Singapore Convention in the future of mediation?**

Singapore Convention in mediation can be considered as equivalent of the New York Convention in arbitration. The scope of the Singapore Convention is relatively broad and it applies to "international" settlement agreements as opposed to "foreign" arbitral awards subject to the New York Convention. For that reason and lack of seat requirement, it leaves parties will more freedom and is a more flexible dispute resolution choice. The only concern is how many states will join and how many of them will use the reservations subject to Article 8 of the Convention. I am working on a paper on the Singapore Convention and I am taking a comparative approach between mediation and arbitration. The future of Mixed-Mode dispute resolution will be another interesting topic that will be discussed in light of the Singapore Convention. I will happily share that with you once I am done with my research.

5. **Tell us about mediating in USA courts. Is it mandatory for parties in the US to mediate when they go to court?**

Generally speaking, mediation is not mandatory, but parties are highly encouraged to take advantage of this service that is sometimes provided free of charge by the court. I Personally, think that parties are willing to settle in many cases even when they believe they are in good position to litigate the matter before a judge. Although when parties file their case in court they are not voluntarily initiating mediation, meaning their initial decision was not mediation, we see they are still collaborating to save time and costs by using mediation.

6. **In Brazil some people doubt that co-mediation is effective. How is your experience with co-mediation?**

Co-mediation, if used properly, can be a very strong tool in assisting parties to use mediation effectively. However, smart choices make a significant difference in the quality of the process. For instance, co-mediation of mediators from different genders or races in a matter that involves parties who represent various genders or races can be a very effective tool to assist parties to gain equal control over the process. It also can help mediators to check in with one another and make sure they have similar understanding of the process.

It was a great afternoon sharing experiences and knowing a little bit more about multiculturalism and mediation around the world !!

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