

## Tips for lawyers working in international mediation

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### 1. Introduction

Research with in-house lawyers of multi-national companies has revealed a lack of knowledge about the use of mediation for resolving international commercial disputes. It therefore seemed sensible to share with the international lawyers' and managers' practical experiences so far gained in the field and turn this into **practical guidance to allow parties to make the best use of the process.**

Uptake of the mediation for resolving *domestic* disputes has been growing rapidly. The same degree of attention has not been given to *international* commercial mediation, the use of a trained third party to facilitate and assist international negotiations. This matters because it is in the international arena that mediation has the potential to make the biggest difference:

**Resolution of complex commercial problems requires many layers of understanding and approach. The more complex the problem, the greater the need for a broader and flexible approach to solutions.**

International disputes are often complicated by long distances, cultural misunderstanding, political intervention and shifting commercial agendas. The strength of mediation lies in its combination of 'form and flexibility'. A structured blueprint is followed, yet it is possible to incorporate and address the different dimensions of dispute - legal, technical, commercial, political - so vital for a resolution.

International commercial mediation is still in its infancy, but recent growth trends suggest that it will play a vital role in the activities of international managers and professional advisors. Use of mediation across the range of business sectors and for case values as high as \$1 billion has already provided evidence to demonstrate its effectiveness.

### 2. Pre-mediation

#### A. Selling the benefits of mediation

Mediation might be treated by inexperienced advisers and managers as a last resort, so the first task of the advocate is to sell the process to in-house colleagues. Try presenting the following benefits to support the argument for international mediation:

- Preservation of business relationships.
- Business reputation and face-saving, confidentiality and avoiding loss of face (a key goal in some cultures).

- Savings on transaction costs. The direct and indirect costs of litigation and arbitration are multiplied by a factor of at least 1.5 in international cases.
- Concentrated negotiating focus. The particular problems in international business of distance, fragmented communications, separation of management layers - all give greater justification to the adoption of a formal negotiating 'summit'.
- A fresh mind/objectivity. Mediation offers the best feature of litigation/arbitration - a third party neutral - but does so within a framework of greater flexibility for the neutral and greater safety and control for the parties. The normal sensitivities of the parties in negotiation may be multiplied at an international level by an additional level of cross-cultural suspicions or misunderstandings. Mediator neutrality is therefore an even more valuable commodity, although may also be more difficult to achieve in international cases.
- Holistic approach. Effective mediation requires giving attention to all of the dimensions of a dispute (legal, technical, commercial etc) - conducting a 'dispute diagnosis'. Particularly important in complex international disputes.
- Neutral project management of communications. Due to the inherent complexity of international disputes, negotiation in the international context lends itself more readily to the concept of a project management approach. Mediation is particularly helpful because of the project manager role which mediators must adopt in order to structure progress towards settlement.
- A complimentary tool. Mediation can be woven into other dispute resolution approaches, or be used as a parallel process alongside existing arbitration or litigation proceedings.

## B. The particular procedural requirements of international mediation

- The difficulties of long distance shuttle diplomacy mean that a **concentrated time-frame** and **joint meeting** may be the most appropriate format for a final resolution, rather than a series of separate meetings with each party.
- Use **long-distance communications technology** with care. Mediation relies for its effectiveness on intense personal communication and this benefit can be lost with the use of communications equipment. The technology can still be very useful for preliminary matters - such as preliminary meetings by videoconference.
- In pre-mediation preparation, mediators should ensure that **appropriate personnel** are going to be engaged in the mediation dialogue. The idea is to create a 'mediation melting pot' by blending the best of commercial, financial, legal and cultural brains in each organisation.
- Give the commercial people an opportunity to be briefed not only by their own team but also by those representing other teams so they get a full picture of the issues in a dispute resolution context.
- Tailor the process to achieve a solution that is **incisive** and considers commercial and technical outcomes rather than isolating the problem to process, result and remedies.

## C. How to select suitable cases and mediators

### I. Suitable cases

- Ask whether the case theoretically could reach a negotiated settlement before trial
- Ask whether current negotiations are making limited progress. If yes to

both, mediation can add value to the negotiation project.

i. *Timing and approach*

- Mediation may be applied successfully at **many different stages** of cases. It has been used many times when litigation was still not in prospect, right through to cases where the judgement has been handed down but the parties wished to avoid the time and cost of appellate proceedings
- The various **ways in which parties have come to mediation**: Court-referred, frustration with court blockages, preventive procedural lawyering, contract clauses and industry scheme cases, brokered cases etc.
- Guidelines for **assessing cases for suitability** and timing of mediation offers:
  - Consider whether you have enough information to negotiate effectively. If not, is this information more easily obtained by litigation or consensual exploration?
  - Are negotiations constructive or blocked? If blocked, what is the most critical leverage to improve negotiations that an independent third party process could provide?
  - Consider the likely costs of legal proceedings, compared to best and worst outcomes. What would be added to cost/risk of future proceedings if you went to an unsuccessful mediation? How could you reduce such cost/risk?
  - Would there be benefit in convening a forum for a non-obligatory exploration of the issues and negotiation positions of all parties, before taking further steps in the proceedings?
  - Assess the likelihood of damage resulting from an exploration of the idea of mediation with another party who then refused. Consider how to offset any risk.
  - Has your organisation got much to lose by stating that it is your policy to seek, where possible, to settle cases at their appropriate level, with minimal external cost or damage to business relations?

ii. *How to approach the other side with a mediation proposal*

- Find the best point of communication contact available and use this as a vehicle.
- Make mediation proposals restrained and exploratory in tone.
- Recommendations of appropriate mediators and process details are best discussed jointly.
- **Consider the entry to mediation as a mediation process in its own right.**
- Options for entering mediation without losing face are:
  - Use previous negotiating efforts, business relationships and other contracts as an informal platform for exploration of the proposal.
  - Acknowledge that there is stalemate so third party involvement looks inevitable.
  - Stress your interest in positive negotiation and your belief

that your case is a valid.

- Note the possibility of forthcoming court-directed ADR.
- Refer to contract provisions which require ADR or imply it.
- Ask a neutral organization or mediator to talk to both sides.
- Re-label the process in terms that are more likely to appeal to the other party.
- Offer to hold all meetings in the other party's country, to accept a qualified mediator of their choice - or any other tactical offer which overcomes specific objections raised by the other side.

## II. Mediator Selection

- As an advisor, ensure you have **some mediators to offer as candidates** and can speak of their track record, or have an organisation which can supply such references.
- Look for mediators who have a **history of success** in helping parties who are deeply entrenched in an adversarial process and procedure.
- Good mediators can come from a range of backgrounds. It is often said that **you want an expert mediator**. There is only a real need for an expert as mediator where the technical issues really are the stumbling block to settlement. More important are the neutral negotiator project management skills learned in intense mediation practice.
- Consider appointing a **mediation team**, one reflecting process skills, the other expertise in subject matter or culture or preferably having both these attributes. Complex mediations justify appointment of two mediators.

In an international setting, the co-mediation model offers particular opportunities since one is able to address the broader requirements of international mediation in terms of language, culture and expertise. In a multi-party situation, the mediators can work with the different teams and split roles. This can be a considerable advantage, given the intensity and energy required for a complex multi-party dispute.

- In order to **select** a mediator, try:
  - Contacting an organization with a track record in international mediations
  - 'Beauty parades' with all parties forming part of the interview panel.
  - Face to face meetings with potential mediators
  - Personal recommendations from other mediation users.

## D. Negotiating the mediation process/procedure (legal and procedural framework)

A mediation organization will have a blueprint and guidelines for the mediation process. In more complex, international and multi-party cases there may be a need to **negotiate** process design.

### I. Confidentiality

In jurisdictions that do not protect compromise negotiations from disclosure, parties should consider whether this precludes them from having the

negotiations has the legal protection afforded to the direct negotiators.

Parties should consider whether they want to opt for a mediation agreement governed by the law of a jurisdiction that protects confidentiality. If so, they should ensure that the mediation takes place in that favourable jurisdiction.

Select a mediator whose training and professional code of ethics supports adherence to mediation confidentiality.

*Documents:* Distinguish between those documents created specifically for the mediation (protected from later disclosure in legal proceedings) and those contemporaneous to the dispute which evidence factual and technical issues (not protected). If in doubt, use the protection of mediation confidentiality to disclose a document to the mediator only.

## II. Law of the mediation agreement

The law of substantive contract may be deemed to govern the mediation agreement, unless otherwise specified. It is often simpler to have the same governing law, but consider if this will have any undesirable results in relation to confidentiality.

A mediation agreement should normally provide that any settlement will not be legally binding unless it is reduced to writing and signed.

- Termination of the mediation. Mediation agreement should provide for termination under various circumstances.
- Stay of legal proceedings. Parties can agree to stay further legal proceedings during the course of the mediation.
- Record/transcript of mediation/outcome. Transcript of mediation proceedings generally inappropriate, but if there is a settlement, a written agreement should be prepared. Where no settlement, parties can request the mediator prepares a non-binding written recommendation on terms of settlement.

## III. Basic mediation structure

- Venue. Location is important for international cases, but do not be overly concerned about neutrality of venue. There may be benefit in locating the mediation where the project is. Mediators should be willing to accommodate the parties and travel to countries of the parties' choice.
- Time and duration. Assess carefully in international cases. Preference to engage with the parties before main mediation needs to be balanced with benefits of not protracting the process. Typical mediation event, even with parties lasts 2-5 days.
- Length of mediation day is flexible. Some mediators work into the small hours of the night if this is likely to benefit the process. This may not always be sensible or appropriate and one has to be aware of the **cultural expectations** of all parties involved.
- Participants. However strong the back up team, there will be need for core commercial negotiating team at some point. In international cases, consider whether there is need for local **advisors** on the situation, or local agents who can explore the wider implications and attitudes

blocking/facilitating the negotiations.

- In international mediation, where parties have to travel considerable distances, it is important for each team to be satisfied that they have right personnel and that other parties bring key decision makers to the mediation table. Mediators can play a key role in facilitating this.
- Authority to settle. Parties and particularly the mediator should be clear about **constraints on decision-makers**, preferably in advance of the mediation. In international cases, it is often only by working closely with the teams that the mediator gets a clearer picture of what can be achieved and the limits on authority. This should be factored into negotiations and mediation efforts.
- Mediation costs. Comparison of costs/value for money with international arbitration.

#### E. Preparation for mediation

- Analyse dispute from a broad perspective.
- A starting point in preparing formally for any large international case could involve a project management approach. Time, cost, quality measure of success.
- Role of mediator (often co-mediation team in international disputes). Watch for tendency of parties in international cases to view mediators as international arbitrators, seeking to strike out other party's selection or seek to nominate their own favoured candidate.

Consider influence of mediator/s on all parties and negotiators in the team. NB: style/chemistry, ability to work with wide range of people, language and cross-cultural skills. These are important in international disputes.

- Role of advisor. Key opening presentation may be given by external/private practice lawyer who will be employing skills of **mediation advocacy** (focus of Participation workshop at CJA conference). His/her task is to facilitate a well thought out and thorough approach to mediation, stressing non-adversarial stance and inviting helpful examination of the legal, financial, commercial, emotional and political issues that underpin the case.

If a key opening presentation is not given by lead commercial negotiator, he/she should also make some opening remarks to help begin the process and climate of dialogue.

- Negotiating programme and use of mediators and facilitators to help.

#### F. Overview of pre-mediation stage

Even in the simpler international cases, a **significant amount of preliminary work is needed**. Mediator will usually have prior contact with lead players/their advisors in order to set the scene, establish relationships and check that all administrative arrangements are in place. He/she should also 'gently coach' each team on the most productive approach to mediation, focusing on opening presentations and the role of principals/advisors in the mediation.

In many international cases, the preparatory mediation work undertaken by an ADR case manager and mediators could be in order of 20 hours.

### 3. The mediation process

#### I. Opening plenary session: exchange of views/information

##### i. Mediator introduction

###### ■ Seating arrangements

It is usual for the mediator to invite parties to take certain seating arrangements. Bear in mind the advantages of having some of the core commercial team near to the mediators and able to make useful eye contact with each other.

###### ■ Mediator's opening statement

The mediator will welcome and may congratulate the parties on making the attempt to mediate their dispute. Consider the effect of such comments on the parties: some will expect it as a necessary part of opening ceremony, others will regard it as patronising.

It is a good idea for a mediator to give some information about him/herself, explain that the mediation will proceed as a structured series of open and private meetings (and any logistical details) and what his/her own role will be. It is also important to emphasise the voluntary nature of the proceedings, and the fact that any of the parties are free to walk if necessary. Parties should be re-assured that they have signed an agreement to mediate which protects the privileged and confidential nature of the discussions.

Take care also to emphasise the benefits, opportunities and serious nature of the process.

Mediators will usually explain the great potential for the process to resolve difficulties between the parties. They will alert parties to the tough demands of the process, its effect as a 'pressure chamber' for negotiations and the need to persist in times of difficulty. The process will require patience and persistence from the parties as well as the mediator. Participants should be aware that a long day may await them and care should be taken to ascertain whether there are any constraints on their time. By doing this in advance, there is a greater chance of avoiding early tactical departures.

Participants should be encouraged to make recommendations to the mediator, in order to move discussions forward. The mediator also needs to facilitate dialogue between selected members of each team (especially commercial members) rather than simply engaging in dialogue between the teams.

Mediators will then want to take control, stamping their authority and chemistry on the process in order to give parties confidence that they are in safe, experienced hands. In international cases, it is important to be aware of the particular concerns of overseas parties; still more so if they are experiencing mediation for the first time. Remember that the intervention of a third party negotiator may be met with scepticism,

most notably if they have been persuaded to mediate by local court.

## ii. Presentations

**Starting order:** It is normal to ask the claimant team to start the round of presentations, followed by the other parties.

**Length:** Encourage parties to make their opening presentations short, perhaps around 20-30 minutes, but allow up to an hour if they feel it is important to set the scene. Longer than that, the presentation is likely to have limited additional impact and may even be counterproductive. If necessary, information exchange can be re-visited at a later stage. Mediators can interrupt presentations that last too long and suggest a shortening, but care should be taken (particularly amongst other cultures) not to inflame the situation.

**Content:** Presentations should cover the range of issues facing the parties. This means commercial, legal, financial, political, personal/emotional issues, and any others that are relevant.

Avoid focusing on pleaded claims and re-iterating the issues in a primarily legal framework, even if it is a legal dispute.

**Style:** The presentation should be in business style and concise so that it attracts everyone's attention. It is good practice to acknowledge the other parties' concerns whilst also protecting the integrity of one's own constituents.

**Personnel:** Normally presentations are done by the lawyer, and this is followed by views and comments from the principle client. Client presentations are more appropriate if there is a strong business relationship and dimension to the dispute, or if the presentation will help the other side get a measure of the client's personality.

## iii. Menu of options

Once the presentations are over, the mediator can do a number of things. His/her choice should depend on what seems most likely to help the parties understand their differences and create a base for moving onto exploration of positions in caucus (private session).

Some options are:

- Open up the dialogue, encouraging broader discussion and exchange views
- Chair a question and answer session, recognising that a party can reject requests for further information
- Allow parties to respond more fully to other presentations
- Adjourn for parties to reflect on what they have heard, reconvening for one of the above
- Proceed to caucus/private sessions immediately.

## iv. Strategy

There is a tendency for less experienced mediators to separate hostile parties. In international cases with more experienced mediators, parties can expect

greater allowance for an airing of views. If mediators close down plenary too early, they deprive themselves and the parties of the chance to learn more about the real issues at stake and to observe the nature of the relationships between the parties.

When deciding what to do, mediators should remember that their role is to give the parties confidence that the procedure is properly controlled, and to inject trust, energy and a sense of structure into the search for a solution. A mediator's task is to facilitate dialogue in which the parties can re-evaluate all issues. To do this well, those core issues have to be identified. This is part of mediation 'due diligence'.

One eye should be kept on the roles of adviser and principal. The adviser or mediator-advocate is there to give/ensure a measured and sound presentation that engages the other parties' attention and ascertains new information to assist the process. Advisers usually welcome the opportunity to address principals on the other side who up until that point may only have been exposed to their own team's partial viewpoint.

The principal should set down the standard that ownership of the solution rest with the corporation that they represent.

Once the mediator forms the view that plenary sessions have exhausted their value at least for the time being (he may reconvene the parties at a later stage), he will ask each team to retire to their rooms and start the round of private meetings with them.

## **II. Caucus/private sessions**

Before the private sessions, the mediator should give some indication of how long he will be with each group and set some sort of timetable for the day. He may ask those teams he is not meeting with immediately to review certain issues or find out pieces of information. This will depend on whether issues have emerged in the plenaries which could usefully be explored.

### **i. Exploration phase**

The mediator will visit each team to develop an interactive process of case review and discussion of options for negotiations. He/she should initially expect to gauge the parties' reactions to what they have heard in plenaries and to hear what the parties did not want to talk about or did not reveal in the open sessions.

It is very important for the parties to open up in the private meetings as this gives the mediator clues as to how best to facilitate productive discussions.

At this stage, the mediator will probably not want to spend too extensive a period with any one party, particularly if there are multiple parties to visit. He/she may explore breaking down the negotiating teams into information sub-groups and try to ascertain the appropriate spokesmen for smaller meetings with other parties. Mediators should also check status and power balances in the group, and language facility since this may influence the choice of negotiating sub groups.

a. **Time/pace:**

Commercial managers can be impatient and want things to move at a faster pace. Mediators will have to judge whether an accelerated approach from exploration to the negotiation phase is likely to cause a breakdown and premature fixation on positions. Often, if a mediator tries to accelerate the pace too far, parties can retrench and go backwards. A balance should be struck between investigation and the need to move on to looking at solutions and engaging parties in solid negotiations. In experienced or over-evaluative mediators often put too much weight on the former.

Advisers have a role play here. They should keep their team engaged and help the mediator to help them. One possibility is to send messages to "absent mediators" if an unhelpful dynamic develops in their team. Mediators will have asked advisers to work with clients on their best and worst cases scenarios and this helps principals re-assess their understanding and priorities in negotiation.

Sometimes parties will hint that they are willing to acknowledge problems in their cases. More often, they regard it as the other team's role to take the first step forward. "Talks about talks" are often necessary to get the parties actively engaged.

b. **Special problems with international mediations:**

Mediators should be sensitive to the parties' cultural customs and concern over issues of acknowledgement and apology. One tactic is to stress that discussions and proposals in caucus will not be communicated to the other team unless the climate is right for it. Another tactic is to brainstorm with the parties and advisers - seeking their views and solutions to the impasse.

If the parties decide to negotiate in their native tongue, the mediator may need an interpreter. This is never as satisfactory as witnessing the subtleties of the dialogue first hand. A mediator or co-mediator with appropriate language skills will often help considerably if such a dynamic is likely to develop in mediation.

c. **Other issues**

Mediators have to balance how much to intervene. Principals may ask the mediator to leave them to talk privately one to one. Generally, mediators will not get in the way of such dialogue, but if further impasse occurs he/she will not have witnessed how and why. This makes it harder to recover negotiation momentum, but patience and re-engagement with the principals normally gets them back on track.

A balance needs to be struck between facilitation and unblocking deadlock by "robust intervention". A range of intervention tactics can be employed to shift parties into better dialogue and away from intransigence. In many cases, the least helpful tactic is for the mediator to give a view of the merits of the case. However, there are no absolute rules in mediation, and there are certainly cases where mediators have

deployed expertise at an appropriate time to assist appropriate re-evaluation by a party of its substantive case.

## ii. **Bargaining phase**

In most mediation, a time comes when parties move at least a degree closer and settlement begins to look a distinct possibility. Parties move from reviewing and attacking/justifying historical events, to exploring options for present or future settlement terms. Mediators often have to gear up their 'bottom line' positions which may be some distance apart.

To keep the parties working together, the mediator can use a number of techniques:

- Shuttle diplomacy, to ease communication of options and positions.
- Testing the basis for settlement vis-à-vis merits or BATNA/WATNA, or against commercial interests
- Absorbing and defusing negative reaction
- Reframing offers, to make them more acceptable (using the mediator's deeper knowledge of the other party's interests.)
- Giving reassurance of bona fides
- Chairing and managing commercial dialogue
- Keeping dialogue moving
- Preventing impasse
- Brainstorming ways out of impasse
- Challenging impasse or providing reassurance/confidence that ways forward can be found
- Interpreting how each party perceives the other's position
- Giving parties a fair assessment of each other's positions
- Reminding parties of their progress in the negotiations to date
- Challenging the parties' bottom line and commitment to settlement
- Managing relationships within and across teams.

Above all, remember that mediators cannot impose settlements and should never bully parties.

However, firm handling of difficult situations is very much the order of the day during the low point of negotiation deadlock. Good mediators will maintain optimism even if an end point seems impossible. Focus on the underlying problem and the solutions will emerge. In addition, keep the parties focused and steer them away from premature outcomes and set positions. With skill, patience and perseverance, mediators can help parties to reach agreements they had never felt possible.

## iii. **Working towards offers and settlements**

Parties normally use the mediator to test positions in the relative safety of the caucus. The mediator will assess whether an offer is likely to have a different effect to that anticipated. A mediator may decide that a party is taking a very unrealistic position or using the mediator in an inappropriate manner. If this happens, he/she may suggest that the parties make their own offers directly to each other, and oversee the process.

Mediators cannot and should not take all responsibility for a settlement. Their

goal should be to ensure that the parties have been given every opportunity to confront their differences, understand them and make every attempt to resolve them. The mediator's role is not to own the problem or solution but to design and manage a process where all parties feel they have given every opportunity to find a solution, if one exists.

### III. Issues of time and pacing

In most international mediations there will be pressure for closure at the end of the allotted time because parties will be leaving the neutral venue and travelling long distances. The opportunity to continue the dialogue face to face will diminish or close. This tends to concentrate the minds of parties but can also make the issue of timing of offers and deadlock a critical one for the parties and mediator. Parties should avoid over-reliance on the deadline as a bargaining lever as this can inhibit effective time for exploration of the critical final bargaining zone between parties.

Be aware that in international mediations, parties from different parts of the world - for example West v East - may have very different perceptions of pace and momentum. There is often considerable mismatching which presents mediators with the task of handling this different expectation sensitively.

The mediator and parties should use time well and wisely. However, if the parties cannot resolve all the issues, they should be encouraged to continue after a short break - a gap of some weeks may be all that is needed. This is not uncommon in international cases where the problems of negotiations are exacerbated by factors such as time difference, travel, long distances and need for extensive review and consultation over decisions.

If the mediator or parties suspect that the process will have an approval and consultation phase before final agreement, it is wise to plan for it. A provisional follow-up date to the mediation can be agreed in the preliminary stage, ensuring a managed timescale and a real deadline. Balance this techniques against the risk that the negotiating stage may be merely extended into the time available for meetings.

### 4. Achieving and implementing mediation settlements/agreements

*"Eighty five per cent of disputes referred to mediation result in settlement...[this indicates] that mediation has a significant role to play in international disputes"* (Hans von Linde ) [1]

*"Working on developing a solid, mutually beneficial relationship is a better approach to a dynamic global environment than trying to craft a series of "air-tight" agreements reflecting interests at a single static point in time"* (Griffin & Daggatt, The Global Negotiator ) [2]

If the agreement will take hours to design when parties are tired (e.g. in complex international disputes) it makes sense to allow enough time in mediation planning to give participants a chance to get the agreements right.

If parties have truly reached an accord then broking the right framework should not be too difficult. It is preferable to have a written accord as soon as possible. If the proceedings are to be suspended, a memorandum of understanding, and clear timetable and direction for the next steps to reach a conclusion should be planned and agreed.

The mediator should help the parties find creative solutions to designing workable settlements.

## 1. Enforceability of settlements/agreements

Avoid confusing two separate aspects of the mediation process: its non-binding nature as a process, and the legal status of binding mediation agreements. The mediation process aims for a consensual settlement so an outcome from the process is not guaranteed.

However, if an agreement is achieved, it would as a minimum have the equivalent binding character of a commercial contract.

Mediation settlement can take two forms:

- Binding commercial contract
- Consent award/court order.

The technical question of legal enforcement is perhaps less important than whether an agreement is 'workable' (the parties having confidence that the actions and commitments agreed can and will be performed).

The phase of concluding settlement terms should not be short-circuited or underestimated. Parties and mediators should prepare for last-minute hitches as details get worked out. Time-zone differences may prolong problems of necessary consultation with directors back home.

The nature of the settlement will depend on whether the parties are

- terminating the relationship
- continuing the relationship on similar terms
- transforming the relationship.

It is the mediator's role to examine with each party the best way to structure the agreement so that it stands a real chance of working. The mediator should take shared responsibility to ensure that the agreement terms achieve what the commercial parties believe has been achieved.

## 5. Conclusion

International mediation offers the global business community a vital tool for resolving commercial disputes and offers a bridge between formal legal cultures and the fluid forms of negotiated rule-making that will be necessary to support the global marketplace of the 21st century. The task is now to ensure sufficient supply of high quality international commercial mediators to meet the demands of the future.

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*This article is abstracted from "International Mediation - The Art of Business Diplomacy"[3], Kluwer 2000, Eileen Carroll and Karl Mackie. For expanded material see, Second edition published September 2006*

**End notes:**

[1] Quoted from pg 85 of *International Mediation - The Art of Business Diplomacy*, Kluwer 2000, Eileen Carroll and Karl Mackie. .

[2] Quoted from pg 85 of *International Mediation - The Art of Business Diplomacy*, Kluwer 2000, Eileen Carroll and Karl Mackie

[3] Real case summaries appear in Appendix V of *International Mediation - The Art of Business Diplomacy* Kluwer 2000, Eileen Carroll and Karl Mackie. See now Second edition published September 2006.