

1er Symposium sobre Mediación y Arbitraje en Chamonix, Francia

Los pasados 1, 2 y 3 de septiembre se llevó a cabo el "1st Symposium on Strengthening Mediation and Arbitration Centres", en Chamonix, Francia, organizado impecablemente por el *Internacional Trade Center (ITC)*.

Sin duda alguna este evento ha sido el primero en su especie, al haber asistido alrededor de 70 representantes de 57 instituciones arbitrales de 50 países, entre los que destacan Alemania, Algeria, Argentina, Bangladesh, Brasil, Burkina Faso, Cambodia, China, Colombia, Congo, Costa Rica, República Checa, República Dominicana, Egipto, Estonia, Etiopía, Francia, Ghana Madagascar, Algeria, Burkina, Cambodia, Etiopía, Hungría, la India, Italia, Kasajastán, Líbano, Lituania, Madagascar, Malasia, Mongolia, los países bajos, Palestina, Polonia, Senegal, Serbia, España, Sudáfrica, los Emiratos Árabes, el Reino Unido, Estados Unidos y por supuesto, México. Por parte de México fue invitado el Centro de Arbitraje de México (CAM), a quien tuve la satisfacción de representar.

Como podrán observar en la nota informativa que más abajo se transcribe, la diversidad fue sumamente notable y el intercambio de experiencias de los representantes de los Centros de Mediación y/o Arbitraje de estos países fue por demás enriquecedor y satisfactorio. Ello, aunado a una muy agradable convivencia a las faldas del Mont Blanc que surgió naturalmente entre todos los que asistimos, dio como resultado un evento de primera.

Carolina Castellanos López
Secretariado General
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International Trade Centre



Managing Out-of-Court Business Dispute Resolution Services

Settling business disputes in court can be expensive, lengthy and embarrassingly public. Even though arbitration and mediation centres can offer firms a faster, confidential solution, these centres have their own problems, particularly in developing economies.

In a first for arbitration and mediation centres, the International Trade Centre (ITC) brought together more than 60 directors of centres from 50 developing and developed countries at a symposium on how to strengthen their services, in Chamonix, France (2 to 3 September 2004). In addition to many new centres some of the world's foremost institutions in the field were present, including the International Chamber of Commerce; the International Federation of Commercial

Arbitration Institutions; and the UN Commission on International Trade Law, whose model law on arbitration forms the basis of national legislation in more than 40 countries.

A learning opportunity

The meeting allowed new centres, especially in the developing economies, to benefit from the experience of well-established centres in the efficient management of commercial disputes. Yet even experienced arbitration and mediation centres can suffer from isolation, noted Myriam Bacqué of the *Centre de Médiation et d'Arbitrage de Paris*. "Learning about new centres can call into question our established practices," she said.

For ITC, settling business disputes rapidly and efficiently is an essential link in the chain tying suppliers and buyers together. "Mediation and arbitration centres of developing and emerging economies have a unique role to play to help their countries join in the world economy," said ITC's Executive Director, J. Denis Bélisle. "Not only do they provide methods for solving the disputes that arise inevitably from trade," he continued, "but they can promote ways to prevent commercial disputes and provide direct support to the business community at the operational level."

The meeting looked particularly at the managerial and operational challenges of running a centre.

High and rising demand for services

The sheer volume of cases in an era of increased trade is one important factor. Moreover, some centres from the South have gained a greater practical experience than those of the North due to the huge demand for dispute resolution services. South Africa's Commission for Conciliation, Mediation and Arbitration, for example, has settled some 340,000 cases since January 2000. The centre handles 500 cases on a daily basis. This means that case managers need excellent organizational skills, on a par with their knowledge of arbitration.

Few trained staff

Among newly-created centres, the lack of a skilled staff for the secretariat, not to mention for the pool of arbitrators, was a pressing concern. "Informal systems for alternative dispute resolution are deeply rooted in the community, but there is a lack of specifically-trained senior and junior professional staff," said Lubnah Katbeh of the Tahkeem Center for Settlement of Commercial Disputes, which serves Palestinian businesses. To survive, centres must engage in training themselves – they can't rely just on providing arbitration or mediation services.

Training and education are important activities for many centres, accounting for around two-thirds of their income. Creating an association for young lawyers, especially women, has helped Germany's arbitration institution boost numbers of trained arbitrators.

Changing mindsets

What also became clear during the meeting is the diplomatic and awareness-building skills required of the head of an arbitration or mediation centre. "The manager is the face of the centre," said Marcela Filloy of the centre for conciliation and arbitration of Costa Rica's chamber of commerce. "It's crucial to appoint someone who has the ability to handle relations with staff and the judiciary, and not just legal skills." Frequently, he or she has to overcome skepticism or downright hostility from the rest of the legal profession, as well as to raise the profile of arbitration and mediation services with the business sector. "We had to convince the judiciary and lawyers that we weren't competing with them, but on the contrary, that magistrates can also be arbitrators," said Babacar Diouf of the five-year-old arbitration and mediation centre of Dakar, Senegal.

To help ingrain arbitration and mediation in the national legal culture, centres "have to network with legislators, link up with courts and propose their services to the judiciary," suggested Mark Appel of the American Arbitration Association. Participants learned that similar efforts have

paid off in the United Kingdom, where the Centre for Effective Dispute Resolution now receives referrals through the court system, which encourages claimants to negotiate a settlement through mediation rather than get involved in long-drawn-out and costly court cases.

Drawing in clients

Arbitration and mediation may not be well known or understood among the business community either. Various centres explained how they are working to implant these services in the local business culture – some on their own, but most often working through the national chamber of commerce.

In Madagascar's duty-free zones ("*zones franches*"), it is a legal obligation to settle disputes by arbitration, said Raphael Jakoba of the national centre for arbitration and mediation. He also suggested using foreign arbitrators to build credibility when starting up a centre. In Burkina Faso, the Ouagadougou arbitration, mediation and conciliation centre, linked to the chamber of commerce, provides free services to small firms that cannot afford the costs of a trial. "It helps build recognition," said the head of the legal service, Boly Bintou. "Be versatile," suggested Dharmasinh Popat of the Indian Council of Arbitration. "Organize activities such as conferences, which build visibility and confidence."

Specializing in solving the disputes of particular sectors or industries is a very effective way to build a solid client base. Mathieu Reeb of the Lausanne-based Court of Arbitration for Sport, explained how the sports industry now generates hundreds of arbitration cases. Consumer disputes – even over funeral services – generate a heavy caseload, according to Gregory Hunt of the Chartered Institute of Arbitrators in London. Meanwhile, in Cambodia, the textile industry – a major economic force employing more than 260,000 workers – was becoming paralysed due to frequent strikes. An arbitration centre set up to resolve labour disputes in the sector has helped reduce the number of strikes almost by half.

In everything they do, dispute resolution centres need to keep in mind the sensitive nature of their work. "As the service is essentially based on trust, it may take at least six years to build confidence with the business community and only six months to bungle it," cautioned Giorgio Schiavoni of the Chamber of National and International Arbitration of Milan.

From competition to collaboration

Another recurring challenge is competing for business with a multitude of other centres in one country, creating confusion in the minds of users. In Latvia, for instance, over a hundred centres offer dispute resolution services. Participants proposed two solutions to this problem. Centres can merge, as happened with the two in neighbouring Lithuania. Another approach, adopted by the 25 new centres in Argentina and six in Switzerland, is harmonization. Agreeing to use the same procedural rules and undertaking a collective "branding" effort helped raise the profile of all their centres, nationally and internationally. "The quality of services improves too, as arbitrators in each centre acquire access to the expertise of specialists from other centres in the network," commented Daniela Jobin-Chabudini of Geneva's chamber of commerce and industry, a leading member of the Swiss network.

Linking up centres on a regional and international basis makes sense too. Giving support to client companies where their business activities take them is clearly a growing trend, reflected by the large numbers of cooperative agreements that the larger arbitration centres have reached with counterparts around the world. "We believe that creating or reinforcing our ties with the arbitration centres of the 14 member states of the Southern Africa Development Community is important because South African companies are conducting business and investing in these countries," said Danie van Wyk of the Arbitration Foundation of South Africa.

Part of the changing business landscape

Out-of-court dispute resolution services have brought new and innovative concepts – from partners to processes, techniques and attitudes – into the legal and business landscape. For instance, the percentage of women managing arbitration and mediation centres came as an eye-opener to many at the meeting.

It is no longer in question that providing such services contributes to a competitive business environment. “If you want to do business in Mauritius, you know that you will be subjected to international arbitration rules,” said Barnen Pillay of the Permanent Arbitration Court of the Mauritius Chamber of Commerce and Industry. An efficient dispute resolution system is a factor that will attract investors and business people to a country, in the same manner as its transport systems, macro-economic and fiscal policies.

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