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EDITORIAL

Everybody seems to know the recipe for efficient, successful arbitration, so why is it so hard to actually run a case efficiently? Despite numerous guides to best practice that suggest the answer is simply to hold a casemanagement meeting early, tailor make each arbitral process, remember state-of-the-art techniques - and so on - anecdotal evidence suggests that cases still run longer than they should. At least if you talk to the end users of arbitration: major corporations.

But if the formula is correct, then why don't arbitrators simply apply it?

To explore exactly that conundrum, GAR convened a round table that would bring representatives of the three key groups in any arbitration - users, advocates and arbitrators - together in "teams" to find out where the chain breaks down. We had in-house counsel from Exxon, Thales and Siemens representing users; figures such as Nathalie Voser, Anne-Véronique Schlaepfer and Emmanuel Gaillard among the advocates; and leading chairmen such as Wolfgang Peter, Serge Lazareff, Alexis Moure opposite. Each team started by outlining the issues - as they see them from where they sit in a hearing - before moving to solutions and floor debate. As you might expect, it's a fascinating read.

As you also might expect, the day didn't discover anything "new". (That would be a surprise given the august groups that have already tackled the subject.) What it helped to foreground, those who took part say, is that arbitration goes awry for more complicated reasons than the billable hour. Arbitral procedure is a dynamic process and therefore an individual who is keen to improve things can't do so alone. At one point, an arbitrator explains, for example, that he would always propose sharper timetables, or bifurcation, in an ideal world. His difficulty arises when advocates deliver a fait accompli timetable, or when his co-arbitrators are nervous about challenges. Similarly an advocate admits that he layers in extra time into his cases because he suspects others will be less than perfectly efficient. (The inefficient party may be his own client, who might not organise access to key witnesses or documents fast enough.) So everybody has their part to play.

The Heidelberg Report is another long-running saga, at least in Europe. The report, when it was issued back in 2005, produced a howl from many national bars, including a French ICC group who said it represented a "conceptual regression", and a threat to *kompetenz-kompetenz*. The report proposes putting all challenges to an arbitration agreement before the courts of the seat. Since then, the European Court of Justice has produced a decision on anti-suit injunctions that changes the backdrop and makes aspects of the report's proposal more palatable. Soon the European Commission will outline its preliminary view. Ahead of that, we have a paper by the eminent Professor Schlosser, one of the report's three writers, correcting what he sees as certain misconceptions about the report and defending its scheme.

We'll have an interview with Professor Schlosser in a future edition.

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