Innovation in Dispute Management, Prevention and Resolution Systems

"The highest and best form of dispute resolution is the prevention of disputes"

Federation of Integrated Conflict Management
One World, One Organization

Global Business Compliance Council
Prevent Global Trade Law Compliance Failures

International Commercial Disputes Tribunal - ICDT
Prevent Damaging Conflicts in International Cross Border Transactions

GBCC+ICDT is constituted with a new Approach to Address Conflicts with a Framework for Proactive Prevention, Control, De-escalation and Real Time Resolution of Disputes.

The GBCC+ICDT preventive approach is the action of “minimizing potential areas of dispute through extensive planning in order to reduce the number of conflicts that escalate or crystallize into formal disputes.

Dispute Prevention Systems

From a Reactive Dispute Resolution to Proactive Dispute Anticipation and Prevention

After decades of experience with arbitration, international commerce can no longer afford to leave all problems arising between trading partners to be exclusively addressed through the conventional dispute resolution procedures, including arbitration in its present form.

It is necessary to have effective conflict management mechanisms and an ecosystem where parties to effectively prevent their problems from escalating into full-blown disputes.

1. Prevent problems from occurring, and control problems and differences of opinion so they don’t escalate into disputes, conflict and legal action.

The institutional infrastructure required to enable such conflict management mechanisms has been practically nonexistent for a century.

Dispute prevention is still not the core of law practice and relatively unexplored idea as the legal ecosystem around the world is practicing dispute resolution, instead of prevention.

The use of GBCC+ICDT proactive contracting techniques and dispute prevention processes help accomplish two purposes:

2. At the same time, improve communications and create good relationships among the contracting parties, thus enhancing performance

.

Lawyers as Preventers of Disputes

“An Ounce of Prevention is Worth a Pound of Cure. - Reducing Disputes through wise Prevention Practices.”

GBCC+ICDT ecosystem promotes the use of strategies and systems for proactively anticipating, preventing, de-escalating, controlling and managing problems that might otherwise escalate into disputes. Problems which are not immediately solved continue to escalate, resulting in increasing hostility, cost and time to achieve resolution.

GBCC ICDT prescribes appropriate tools for dealing with those problems through the escalating stages.

Operating as a part of GBCC+ICDT ecosystem, lawyers find greater value in the practice of preventive jurisprudence. Clients and other stakeholders, all become aware of the value of preventive advice and welcome lawyers to work and deliver, mostly by preventing, instead waiting for disputes to occur and responding to them.

The Smart Contract Protocols

From a substantive point of view, prevention of disputes has a lot to do with the level of clarity and precision of provisions in commercial contracts.

Simply stated, the more clear and precise the obligations of contract agreements are, the less need for the parties applying the agreement to elucidate their application in specific practical situations. The problem is that in the context of contract agreements, several rights and obligations are drafted in terms that are too general and vague.

1. Dispute Prevention Policies (DPPs) are designed by GBCC+ICDT for specific transactions and adopted and implemented by trading partners specifically aimed at preventing conflicts arising from escalating into full-blown disputes under those agreements.
2. Dispute Prevention Mechanisms (DPMs) are procedural mechanisms, established either by institutional rules or contract, to enable parties to early manage conflicts and prevent dispute escalation. DPMs can be resulting from the direct negotiation by the parties involved in given relationship, and thus called as contractual DPMs. In addition to contractual DPMs, a second category of DPMs would comprise conflict management mechanisms embedded within the rules and procedures of GBCC+ICDT. Contractual DPMs would have to be negotiated by the parties well before any conflict arose, most

probably in the context of the negotiation of a contract. Contractual DPMs have the advantage of enabling the parties involved in the potential conflict to tailor-made the mechanisms to the particular needs of their specific relationship. Institutional DPMs would in principle apply horizontally to all transactions and contracts having GBCC+ICDT preventive provisions in their contracts, regardless of whether or not they are governed by a contract

.

Making Trade Dispute Settlement More Accessible and Inclusive

Most experienced business leaders and contract professionals proudly possess such core skills as defining scope and responsibility and articulating key business and financial terms such as service levels and payment and delivery terms.

They are also aware of the standard alternative dispute resolution ("ADR") procedures of mediation and arbitration. Yet what they may not have thought about is that ADR **"reactively"** deals with only the symptoms of disputes that have already developed and need to be resolved.

Few business leaders and professionals are aware of how to prevent disputes and at the same time enhance relationships through "proactive/preventive contractual care" with the use of "Smart Contract Protocols" - Innovative contracting techniques and tools that not only proactively prevent and control disputes, but also help to improve performance.

"Smart Contract Protocols' offer several advantages. They avoid deadlock between parties trying to agree on ad hoc arrangements in specific disputes. As agreements on specific issues, among subsets of members and set out in discrete instruments that can be abandoned more easily, they allow for low-risk experimentation that will build confidence in new approaches. They are also more transparent and predictable than the current approach of new practices emerging from ad hoc bilateral procedural agreements..

Beyond the institutional constraints, any step that depends upon decisions of individual GBCC ICDT members could conceivably be altered and governed by a agreement. Innovations that deviate from mandatory provisions of the GBCC ICDT could be agreed on the basis of principles of waiver and consent to non-performance.

“Prioritizing” Dispute Resolution Clauses - at the stage of contract negotiations.

In the journey from negotiating a business deal to bringing in lawyers to formalize legal agreements, most often than not, discussions about predicting potential business conflicts and looking into a dispute resolution system ends up being one of the least emphasized events leading up to finalizing a business deal.

Corporations have long accepted the value and importance of dispute management to address disputes that arise. However, the dispute resolution clause is the most neglected part of drafting an agreement for future business. Such clauses are often added at the **last minute** and addressed at the end of contract negotiations with very little thought and consideration given to the consequences and intricacies of the clause,

The excuse for this late consideration by some is fear that negotiations will break down by damaging the optimistic structuring of a deal by introducing the idea that something might go wrong.

As a result, dispute resolution clauses are simply recognized as standardized, boilerplate clauses just added into the agreement at the end.

However, businesses are realizing that adding standardized boiler-plate dispute resolution clauses into business agreements could actually act against the interest of the company by creating unintended consequences when triggered.

The GBCC+ICDT ecosystem prompts the parties to invest time and resources into drafting an effective dispute resolution clause early and building a dispute prevention system after carefully taking into consideration the culture and practices of the company.

Establishing this process into the fabric of the company’s dispute management system will not just help resolve disputes but will also preserve the company’s brand, improve profits, and attract investors to the company.

Unfortunately, in today's business climate, when parties enter into a relationship, most fail to make such a choice at all; and later, when problems do arise, many of them instinctively and reactively decide to fix the blame. This choice initiates a process in which the solution to the problem is postponed, and the parties engage in an adversarial dance of confrontation and blame. The problem then escalates into a difference of opinion, then an argument, and ultimately an intractable dispute that has to be referred to the conventional dispute resolution system for ultimate resolution in some form of mediation, arbitration, or litigation.

Innovation in Dispute Resolution Systems

Disrupting the status quo - Redefining the International dispute resolution

The present arbitration systems are plagued with extreme procedural issues and the overall trust of parties on conventional arbitration is eroding.

"Cost" continues to be seen as arbitration's worst feature, followed by "lack of effective sanctions during the arbitral process", "lack of power in relation to third parties" and "lack of speed".

Arbitral institutions are still lagging behind to ensure greater diversity across tribunals. Diversity in geography, location, age, culture, cast, creed, race, ethnicity, gender etc. Diversity in terms of expertise and experience of Neutrals and fee range is also always an issue. Oftentimes, parties do not get the best choice of Neutrals or tribunals best suited for the case.

Access to enough information to make an informed choice about the appointment of arbitrators is also marred by several operational issues. The most used sources of information about arbitrators include "word of mouth", "internal colleagues" and "publicly available information".

"Due process paranoia" continues to be one of the main issues that users believe is preventing arbitral proceedings from being more efficient.

GBCC ICDT systems, Rules and Procedures help parties secure fast, inexpensive, and enforceable redress with the use of intertwined, hybrid approach that includes several innovative and integrated processes to take care of the interests of all parties involved.

The international law of dispute settlement under the GBCC+ICDT ecosystem is transcending the phase of cooperation and is displaying characteristics of a network, framework or an ecosystem where competition and cooperation co-exists. It means. Proactively working together, operating under uniform code, principles and practices, and serving objectives that cannot be attained by a single actor.

GBCC+ICDT
Your partner in international Business

GBCC+ICDT innovations

Social facilitator

Selection and use of a facilitator well-socialized in the cultures of each of the disputants leads to greater success of any transaction and in the management and resolution of conflicts.

"Socialization" is the systematic means by which new members are brought into a culture. Thus, regardless of the nationality of the individual chosen, a "well-socialized" facilitator possesses enough experience and familiarity with the cultures of the parties/ disputants to be able to

(1) Comprehend their norms and values and

(2) Perform appropriate role behaviors.

International contracts, that combine GBCC+ICDT rules and procedures, include advance dispute resolution provisions that specify both the use of a **"conjoined ADR process"** and the selection of a facilitator well-socialized in the cultures of the disputants to assure the speedy, amicable resolution of international commercial disputes.

Safe Seat of Arbitration

A safe seat of arbitration is one where the legal framework and practice of the courts support recourse to arbitration as a fair, just and cost-effective binding dispute resolution mechanism.

Conversely, a place of arbitration that does not qualify as a 'safe seat' by GBCC+ICDT standards are one that materially increases the cost and other enforceability issues of arbitrating disputes in that place.

A seat may be 'GBCC+ICDT safe' in spite of the fact that it does not possess all of the hallmarks of today's all-round world-class most popular arbitration seats. It is necessary and sufficient for a seat to be 'GBCC+ICDT safe' that it meet the standards of the CIArb principles, which may be summarized as a pro-arbitration legal framework,

When these characteristics are found together, parties, arbitral tribunals and arbitral institutions can take comfort that their arbitrations will be seated in a modern, stable, predictable and supportive legal place where, notably, the threshold for annulment of awards will be high and the risk of court intervention low.

In support of the efficiency of arbitration, GBCC+ICDT has provided model arbitration clauses that provide for the designation of a seat of arbitration, in the same manner as do other arbitral institutions. However the GBCC+ICDT model arbitration clauses invite parties to choose one seat from among the recommended safe seats listed in Schedule. Should the parties prefer to opt for another seat, GBCC+ICDT Rules draw their attention to the fact that GBCC+ICDT may exercise its discretion to apply any time and costs scale to the parties' dispute and/or to vary the dispute timetable, as necessary.

"GBCC+ICDT will exercise its discretion, as informed by the principal purpose of the Rules, in fixing the arbitration costs where: […] the

parties have agreed to arbitration under the Rules but have used a different arbitration clause from the GBCC+ICDT model clause or have modified the same." Finally, the GBCC+ICDT Rules provides for "Singapore" or "London" or "New Delhi" as the default place of arbitration in the absence of any agreement by the parties or determination by the arbitral tribunal.

The pre-arbitration negotiation

Once a dispute has arisen, parties will usually first seek to resolve it among themselves, as this is the most time- and cost-efficient approach and helps to preserve the relationship.

GBCC+ICDT rules recommend a **pre-arbitration negotiation period** and provide contractual language to this effect. There is a time and cost price to this cooling-off phase in consideration of its importance to the efficient resolution of the parties' dispute. This time is precious for parties to assess their positions carefully as it may assist them with settling their dispute and, once proceedings have begun, with engaging in an efficient proceeding (and therefore save time and cost later on).

Active conduct of proceedings by arbitrators

Arbitrators are encouraged to (i) make early efforts at identifying the key issues in dispute and anticipate the post-hearing phase of the case, (ii) tailor the procedure accordingly, (iii) be proactive during the arbitration and (iv) make use, where appropriate, of interim decisions on the allocation of costs.

In doing so, arbitrators must take account of (i) the value of the dispute, (ii) the complexity of the issues, (iii) the importance of the dispute to any ongoing relationship between the parties and (iv) the time-limit set by GBCC+ICDT for submitting a draft of their award (be it interim, partial or final), known as a Time Notice.

Active engagement of tribunals

GBCC+ICDT Identifies seats or places of arbitration considered to be safe for the efficient and, if necessary, firm conduct of arbitrations, and which do not materially increase the cost of arbitrating disputes there.

This helps to address one of the contemporary issues in international arbitration described as 'Due Process Paranoia'.

Pragmatism in the formation of tribunals

For disputes with a value below USD 5 million, preference is given to the appointment of a sole arbitrator. The parties are given about 10 days in disputes with a value below USD 200,000 and about 17 days in disputes with a value of up to USD 5 million to agree on a joint nomination, failing which GBCC+ICDT will make the appointment. GBCC+ICDT maintain a network of potential arbitrators, but no closed list.

For disputes with a value greater than USD 5 million, parties may select a three-member tribunal, with co-arbitrators to be designated within about 2.5-3.5 weeks from the start of the arbitration. If either party fails to nominate a co-arbitrator, GBCC+ICDT will designate the entire panel.

The GBCC+ICDT approach to the formation of tribunals aims at encouraging early cooperation between the parties, as part of setting the tone for the proactive resolution of their dispute

Incentivizing parties to anticipate disputes early

At the contract formation stage, GBCC+ICDT provide model clauses, including language for the governing law of the contract and the confidentiality of any arbitration. GBCC+ICDT also encourages users to register their contracts by simply e-mailing them to GBCC+ICDT, (i) as a means to ensure contracts are finalized and not subsequently lost, and (ii) for the network benefit of GBCC+ICDT being able to anticipate needs and ensure access to suitable arbitrators. In return, GBCC+ICDT offer parties a reduced cost schedule in the event of arbitration.

In case of dispute, the GBCC+ICDT model clause provides for pre-arbitration negotiation. To ensure that parties invest the necessary resources into dialogue and preparing their cases, the Rules provide (i) that the costs incurred at this stage can be recovered in case of arbitration, and (ii) for a short time limit, once an arbitration has started, for the respondent to answer the claimant's notice of arbitration and for the parties to nominate the members of the tribunal.

Finally, the Rules provide model notices of arbitration, of defense (and counterclaim) and of reply, with page and exhibit limits, and a requirement to indicate whether any witness and/or expert evidence is to be anticipated. In this manner, GBCC+ICDT seeks to streamline the initial steps of the arbitration while providing the tribunal with the key information required to take charge of the case efficiently from the start.

Incentives for time saving and efficient resolution

Anticipating the preparation of an arbitration can be costly in terms of management time, for example to conduct fact-finding with the key people involved in the dispute and to retrieve relevant documents, and costly as a result of instructing counsel early. These costs, which benefit both the pre-arbitration negotiations and, in the absence of a settlement, the likely ensuing arbitration, are recoverable in a GBCC+ICDT arbitration through the express power given to arbitral tribunals to allocate the costs incurred by the parties “in connection” with the arbitration; arbitral tribunals may thus allocate parties’ internal and legal costs of pre-arbitration negotiations. Parties should accordingly invest in preparing their cases at the latest upon issuing/receiving a notice of dispute, and keep a clear record of the costs incurred as a result.

The GBCC+ICDT Rules provide that, “[f]rom the date of (deemed) receipt by Respondent of the Notice of Arbitration and of the Filing Fee payment receipt, whichever is latest, Respondent will have seven days to submit a “Notice of Defense” or a “Notice of Defense and Counterclaim””. In order for respondents to be in a position to comply with this time-limit and not delay the proceedings from the very start, it is necessary that they and their counsel have a good understanding of their position ahead of time. In practice, defending counsel is not infrequently selected and instructed until after the start of proceedings, and therefore starts learning and assessing the case as it prepares the response to the notice of arbitration.

It follows from the above that it is in the interest of claimants seeking an efficient resolution of

their dispute to ensure that, prior to the start of proceedings; they have given the opposing side adequate notice and time to develop their position on the dispute.

In this respect, the language proposed by GBCC+ICDT for a pre-arbitration negotiation period provides both disputing sides with certainty as to when the 'preparation clock' starts at the latest, while allowing any future claimant a legitimate expectation that the future respondent has had a contractually agreed reasonable amount of time to prepare for any efficient proceeding.

This time-period should accordingly be defined carefully by both sides at the time of concluding their contract (Smart Contract), where at least one party begins an arbitration unprepared, all of the parties take the risk discussed above in relation to GBCC+ICDT Principle that they will not be able to nominate the members of the arbitral tribunal.

While the premise of the GBCC+ICDT cost schedules is to provide parties with a measure of predictability, the rules state that, "[a]t any stage prior to the delivery of the final Award, GBCC+ICDT may adjust the arbitration costs to take into account (a) any significant change in the claims of the parties, the complexity of the dispute, the anticipated time and expenses incurred by the Tribunal and/or the conduct of the arbitration, and/or (b) the termination of the arbitration, including by processing reimbursements to the parties in proportion of their respective payments."

In other words, parties who come to arbitration unprepared to an extent that materially undermines the efficiency of the proceeding should be ready to bear the cost of such inefficiency (and the same applies where such inefficiency results from strategic choices made by the parties). Conversely, parties who handle the arbitration as one route to resolving their dispute may reduce the arbitration costs by obtaining a partial refund thereof in case of settlement prior to the rendering of a final award.

Finally, while the GBCC+ICDT Rules are also intended to provide parties with a measure of time predictability, it states that the GBCC+ICDT Time Notice may be modified "by agreement of the parties". Exceptional circumstances aside, this option lays ultimate responsibility with the parties for the overall efficiency they expect of their arbitration: in an environment that requires proactivity by the arbitrators, extensions of the GBCC+ICDT Time Notice without negative impact on the arbitrators' fees reflects the inability of parties to participate in efficient proceedings, or their positive choice for less efficient proceedings.

Redefining the International dispute resolution

Network Partnerships and Collaboration

The partnerships and collaborations with lawyers, law firms legal service providers, institutions, universities, business councils, firms, and other stakeholders is the key feature of GBCC+ICDT global ecosystem.

The immediate step is to connect with, and communicating its benefits to, a broader group of stakeholders, some of which may include: financial institutions, SMEs, business councils, universities, and other small-scale business associations. Allowing these stakeholders to take an active role in the development of international arbitration is crucial.

Increasing the access to International Dispute Resolution / Arbitration

International arbitration is seen as a specialized area of law, and for ages it has remained exclusive domain of few.

The immediate step is to connect with, and communicate its benefits to, a broader group of stakeholders including law firms and lawyers, financial institutions, SMEs, business councils, universities, and other small-scale business associations. Allowing these stakeholders to take an active role in the development of modern international dispute resolution systems.

Training, Educating and Empowering a New Generation of Practitioners

One of the most overlooked areas which must be addressed, as international arbitration evolves, is the importance of educating and empowering a new generation of emerging practitioners.

We are forming more meaningful partnerships with academic institutions, and encourage the emerging generation of practitioners to form and lead new societies and associations, particularly ones with a cross-border mandate.

The further growth of arbitration depends greatly on collaboration, interdependence and genuine reform at a grassroots level.

A Voice for Regional Players

These partnerships are essentially not limited to the scope of only delivering services, but also in the overall development of systems, resources and other network tools that strengthens the ecosystem for a competitive and cooperative environment that helps all stakeholders to survive and thrive regionally as well as globally.

Innovation

GBCC+ICDT is first of its kind system that promotes innovation at every step. GBCC+ICDT maintains and invites regular innovation ideas from its members, besides having its own “Innovation Think Tank” formed collectively from members representing various regions, specializations and expertise.

Technology

The rules and procedures permit and encourage the use of technology by the parties and the neutrals and incentives are designed for parties and neutrals who use technology to make the process more efficient.

A lot of technology providers like artificial intelligence, cloud-based storage, hearing room technologies, videoconferencing, and virtual hearing rooms are taken on board to assist all stakeholders of GBCC+ICDT in the better and frequent use of technology for various purposes.

- assist conduct hearings more efficiently;
- improve security, data breaches, and privacy for parties;
- enhance online repositories, databases and statistics;
- help parties overcome geographic constraints; and
- assist stakeholders to interpret big data via artificial intelligence.

The GBCC+ICDT Dispute Resolution System Design Principles

Our dispute resolution systems, rules and procedures incorporate many design principles including -

Putting the focus on interests

This means any dispute resolution should start with a process (either direct negotiation or mediation) where the parties try to solve the problem using interest-based bargaining. This is the best way to find a solution that satisfies everyone. Only when this doesn't work, do you move on to rights-based processes (such as arbitration).

Providing low-cost rights and power backups

Arbitration, voting, and protests are low-cost alternatives to rights and power contests. Although they are higher in cost than negotiation, they are less costly than adjudication or violent force.

Build in "loop-backs" to negotiation.

Rights-based and power-based strategies for resolving disputes seldom need to be played out to the end. Rather, as soon as it is clear who is going to "win," parties can return to negotiation to develop a solution which best meets their needs and interests, as well as their rights. A common example of such a "loopback" process is when parties settle a lawsuit out of court. As soon as it becomes clear who is likely to win, it is advantageous for both sides to avoid the costs and uncertainty of further litigation, and negotiate a solution to their dispute.

Build in consultation before, feedback after

Increasing shared information is a basic strategy in ameliorating all conflicts. Consultation and feedback mechanisms between parties provide a consistent and reliable method of sharing information.

Arrange procedures in a low-to-high-cost sequence

By arranging dispute-resolution procedures in a low-to-high-cost sequence one can reduce the probability of rapid escalation. Minimizing this tendency toward rapid escalation has an added benefit of reducing enmity and increasing faith in the ability of the system to resolve basic disputes.

Provide the necessary motivation, skills, and resources

An alternative system can function only if people buy into it. People are creatures of habit, and this is the greatest limit to broad-based systemic change. While there may be active resistance from some groups to new dispute-resolution systems, the greater problem is spreading the skills, knowledge, and habits that reinforce the new system.