President's Message

Modern and Efficient Communication
(or: "*If you can't beat 'em, join 'em*")

Recent events demonstrate (as if this were needed) that communication techniques have undergone a Copernican revolution of incredible magnitude. One evolution has left many of us incredulous, punch-drunk, disoriented and either jubilant or furious, all at once. At the same time, youngsters in our midst (and even the not-so-young) prove again and again that modern communication can also be a marvellous opportunity for levity, jocularity and healthy irreverence, even in relation to the most serious topics.

The author is referring, of course, to the Tweet and to the emoji, respectively.

The former has taken political discourse to new levels. (New levels of what? The reader is left to complete the blank.)

The latter is now a regular fixture of today's life: regardless of relevance, these jolly little images adorn (some would say pollute) nearly each and every electronic message we receive.

Arbitration is advocacy; it is persuasion; it is pedagogy; it is reason. It cannot pooh-pooh these wondrous, these incredible, these fantastic tools (the author nearly wrote "new tools" and realised at the last instant that this would have exposed him to universal ridicule). No: it has already been demonstrated that arbitration needs to remain abreast of and even anticipate the benefits of modern technology.[1] Let us now examine the obvious benefits of true modern communication.

The Tweet in arbitration (a.k.a. "arbitweeter")

The online Cambridge Dictionary defines a "tweet" first as "*a short, high sound made by a bird*". In second place, one sees the following definition of a "*tweet*": "*a short remark or piece of information made on Twitter*™". For those readers who have spent the past decade or so resolving disputes in the constellation of Orion, a "tweet" is limited to 140 characters. Yes, "characters", not words.

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[1] See *Beam Me Up, ~~Scotty~~ Mr Chairman*, President's Message in 33 ASA Bulletin 3/2015 (September).

The devastating efficiency of the tweet as a means of communication, especially when issued (like arbitration memorials) in the wee hours of the night, is beyond doubt.

Why, then, has the tweet made no known inroads into international arbitration? If the tweet can propel a person to high office, why can it not serve the more pedestrian purposes of arbitration? After all, users complain, for instance, about overlong memorials, overlong witness statements, overlong expert reports, overlong procedural requests and correspondence and, importantly, overlong awards. The ordinary recipient of these materials can count him- or herself lucky to receive something shorter than 140 pages. So just imagine the joy of receiving only 140 characters (and 140 maximum, at that!).

For example, why would a Statement of Claim need to be long, technical and boring when it could be formulated in a pithy and punchy way? Practitioners should consider something more like this:

> Respondent promises to build plant and nothing happens!
> SO UNFAIR! Believe us, they're real creeps.
> Gotta pay up 50 million!!!

Not to be outdone, the Respondent could fire back with something no less snappy:

> Claimant spreads yuge fake news! SO DISHONEST!
> Gotta dismiss and whack them with costs!!!
> TRUST YOU ARBS TO DO THE RIGHT THING.

Having duly considered these carefully considered and devilishly well-argued submissions, the Arbitral Tribunal's award could fit neatly into 140 characters (including spaces):

> Procedural history all fair and no complaints.
> Merits: Respondent didn't deliver.
> Has to pay 50 mil to Claimant and 3 mil in costs.
> SO JUST!

The author could go on like this over many more pages, but the reader has probably understood by now that this way of handling proceedings is the most tremendous progress in the history of arbitration. Practitioners should pause to consider the real benefits. The whole thing is over in the shortest time ever heard of. Money is saved. Businesses can move on.

The emoji in arbitration

It is sometimes said that there are only two truly universal "languages": music and mathematics. This is no longer true, since another, much easier-to-learn "language" now spans the world, the emoji.

International arbitration aspires to universality. Why then should it not use universal languages?

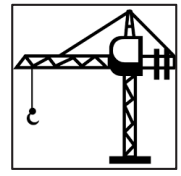
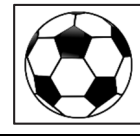
Granted, the use solfeggio as a means of communication in our trade raises significant challenges. First of all, solfeggio is fiendishly difficult to learn, and once learned it is swiftly forgotten. Moreover, the scope for dispute would be endless. One can imagine difficult parties arguing whether Terms of Reference should be in C-major or A-minor; the smallest 5th-diminished could give rise to offence, and the claimant will insist that the score be all *prestissimo* whilst the respondent will adopt a tempo closer to *largo*.

As for the generalised use of mathematics, one shudders at the thought. There is usually a reason why lawyers became lawyers, and that reason is an aversion to, rooted in complete incompetence in, mathematics. Whether we like it or not, the arbitration world is still populated by cohorts of lawyers. In such an environment, the adoption of mathematics as a means of communication is a recipe for pandemonium.

Not so the emoji. Truly, the author cannot believe that there is a single person in the world who could fail to grasp the message conveyed by this happy little fellow:

Conversely, it would take an obtuse arbitration practitioner indeed to not take the hint when receiving something like this:

The following chart provides some further thoughts on the possible uses of emojis in arbitration (these are only a few selected examples):

The Arbitral Tribunal believes that a site visit is appropriate	
Claimant / Respondent will be assisted by its expert	
Counsel are on their way; slight delay expected	
The hearing of this Wednesday must end at 6:00 pm, latest	
The Arbitral Tribunal is not available on those dates (winter)	
The Arbitral Tribunal is not available on those dates (summer)	
The Arbitral Tribunal is not available on those dates (summer / alternative option)	

The tweet and the emoji combined: a case study

All of this may sound somewhat theoretical. Let us make our point by way of a case study based on that most-maligned creature in international arbitration: document production.

The parties' requests would of course take the form of the tweet. Let us assume that the Claimant is the requesting party.

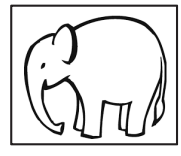
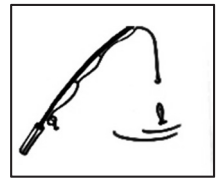
The Claimant's requests would read something like this:

1.	Respondent so dishonest. Just deliver the steering committee meeting minutes 2016-2017 and we can PROVE!!
2.	Respondent has so much stuff on that Board meeting. Minutes, notes and all. Believe me. HAS TO GIVE IT ALL!!!
3.	A lot of people agree with Claimant that Respondent has all the documents, including bla-bla-bla, you name it, on that topic. WE NEED!!!

The Respondent's replies would look like this:

1.	Steering committee meetings so private. Claimant's just prying. SO INDISCREET! REJECT!!!
2.	Claimant wants "so much stuff": doesn't mean anything. So pathetic so-called lawyers. REJECT!!!
3.	A lot of people agree with Respondent that that this request is just so broad nobody can even understand it. ARBS: BE FAIR AND REJECT!!!

Let us now weigh the advantages of the emoji as a vector for the arbitral tribunal's ruling, in the form of a double-column chart. The left-hand column reflects the old-fashioned way of communicating, using actual words. The right-hand column uses emojis.

1. Request granted. The Arbitral Tribunal does not believe that the Respondent's concerns for confidentiality outweigh the Claimant's legitimate interest in obtaining the documents requested, subject to appropriate measures being taken to prevent undue dissemination of the documents and/or the information contained therein	 
2. Request denied. Although the Arbitral Tribunal does not consider the request to be unclear or lacking in specificity, the request is overly burdensome to the Respondent.	 
3. Request denied because it is unclear and lacks specificity. Also, the Claimant has not shown to the Arbitral Tribunal's satisfaction that the documents sought could be relevant and material to the outcome of the claims.	 

The reader is invited to compare the time it takes to draft, read and understand the content of the left-hand column with the time it takes to copy-paste, read and understand the content of the left-hand column. The conclusion is obvious. On that note the author rests his case.

Perhaps this President's Message has generated amusement and even elicited a few chuckles from the reader. The author does not know whether to laugh or to weep.

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