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Historical perspectives in ADR

Nothing new in ADR

George Fox

Those with an historical bent may be interested in the following extract from *The Saga of Harald Hadrade*,¹ illustrating the long and honourable use of ADR in the resolution of international disputes.

Harald, aka Harald the Viking, was better known as a proponent of the 'sword and shield wall' method of dispute resolution, which he used effectively in his business of murder, mayhem, rape and pillage in the 11th century.

At this time he was doing some consultancy work for Empress Zoe of Constantinople. It seems she had given him an early version of James Bond's 'licence to kill' and he and his happy band of followers, 'The Varings', spent a number of years wreaking havoc throughout North Africa, Sicily and the Middle East. He was nominally under the command of Gyrger, commander of the Empress Zoe's armies.

There did, however, seem to be some workplace issues between them:

It happened once that Gyrger and the Varings were going through the country, and they resolved to take their night quarters in a wood; and as the Varings came first to the ground, they chose the place which was best for pitching their tents upon, which was the highest ground; for it is the nature of the land there to be soft when rain falls, and therefore it is bad to choose a low situation for your tents.

Now when Gyrger, the chief of the army, came up, and saw where the Varings had set up their tents, he told them to remove, and pitch their tents elsewhere, saying he would himself pitch his tents on their ground. Harald replies, 'If ye come first to the night quarter, ye take up your ground, and we must go pitch our tents at some other place where we best can. Now do ye so, in the same way, and find a place where ye will. It is, I think, the privilege of us Varings here in the dominions of the Greek emperor to be

free, and independent of all but their own commanders, and bound only to serve the emperor and empress.

They disputed long and hotly about this, and both sides armed themselves, and were on the way to fight for it; but men of understanding came between and separated them. They said it would be better to come to an agreement about such questions, so that in future no dispute could arise. It came thus to an arbitration between them, at which the best and most sagacious men should give their judgment in the case. At this arbitration it was determined, with the consent of all parties, that lots should be thrown into a box, and the Greeks and Varings should draw which was first to ride, or to row, or to take place in a harbour, or to choose tent ground; and each side should be satisfied with what the drawing of the lots gave them.

Accordingly the lots were made and marked. Harald said to Gyrger, 'Let me see what mark thou hast put upon thy lot, that we may not both mark our lots in the same way.' He did so. Then Harald marked his lot, and put it into the box along with the other. The man who was to draw out the lots then took up one of the lots between his fingers, held it up in the air, and said, 'This lot shall be the first to ride, and to row, and to take place in harbour and on the tent field.' Harald seized his band, snatched the die, and threw it into the sea, and called out, 'That was our lot!' Gyrger said, 'Why did you not let other people see it?'. Harald replies, 'Look at the one remaining in the box, ... there you see your own mark upon it.' Accordingly the lot which was left behind was examined, and all men saw that Gyrger's mark was upon it, and accordingly the judgment was given that the Varings had gained the first choice in all they had been quarrelling about. There were many things they quarrelled about, but the end always was that Harald got his own way.

Ironically a failed mediation was to

bring about Harald's downfall. In 1066 he had a dispute with King Harold Godwinson about who should be king of England.

He turned up with 300 longships as part of his negotiating team and Godwinson's brother Tostig acted as mediator.

King Harold made his famous 'take it or leave it' offer to Hadrade (Harald) of seven feet of English soil. Hadrade decided to litigate in the traditional manner (bad call) and was killed with his men at Stamford Bridge. In an excessive display of contrition for a

failed mediation, Tostig elected to die in Hadrade's shield wall.

King Harold paid the usual price for deciding resolution by litigation rather than mediation. He had just finished polishing off Hadrade and Tostig when someone turned up yelling, 'William the Bastard has landed at Dover'. (Unlike the present, the English Crown was considered worth having at that time).

King Harold then galloped off to Hastings to meet his maker.

Had he not been so 'gung-ho' at the mediation, or had Tostig been a better mediator, he would have arrived with

his army fresh and intact and should have been able to give William the Conqueror a flogging. ●

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Endnotes

1. The Saga of Harald Hadrade, from the Heimskringla (Chronicle of the Kings of Norway) as published at <www.sunsite.Berkeley.edu/OMAC/hadrade>.