DS Journal of Multidisciplinary
Volume 2 Issue 1, 16-27, Jan - Mar 2025
ISSN: 3048-4561 / https://doi.org/10.59232/DSM-V2I1P103

Review Article

The Role of Arbitration and Mediation In Business Disputes

Baylar Suleymanli

International Business Law and Arbitration, University of Silesia, Katowice, Poland.

studentportal88@yahoo.com

Received: 08 January 2025; Revised: 10 February 2025; Accepted: 17 March 2025; Published: 31 March 2025

Abstract - Arbitration and mediation are very important in solving business disputes since they consume help and offer alternatives to traditional litigation in the process. Both of them are forms of Alternative Dispute Resolution (ADR), an alternative process in which the litigation is less rigid, less expensive, and more confidential. The two have different but equally important functions in business disputes as they meet various needs and want to resolve issues arising between the parties involved. This article aims to give primary knowledge about arbitration and mediation in business disputes and explore the functions and roles of arbitration and mediation in business dispute solving. The two main forms of Alternative Dispute Resolution (ADR) arbitration and mediation, are efficient, less expensive, and discreet alternatives to the litigation process. These methods have proved to be versatile as they relate to the evolution of these methods from the early days of commerce in trade to the present-day practices in international commerce. This paper discusses arbitration as a binding and versatile procedure with strong worldwide recognition, especially for difficult and transnational disputes. It also discusses mediation as a consensus-oriented, relationship-sustaining, and problem-solving approach, thus suitable for congenial dispute-solving. The article compares the two and highlights how they work in conjunction with each other in multi-tiered dispute resolution systems to promote fairness without necessarily hindering business activities. This comprehensive overview also focuses on the role of arbitration and mediation in defining the contemporary approaches to business dispute resolution.

Keywords - Arbitration, Business disputes, Mediation, Dispute resolution, International commerce.

1. Introduction

Commercial practice in modern conditions gives rise to rather complex disputes, the resolution of which requires the appropriate specialization of judges in arbitration courts, which, of course, is not always feasible in practice. Due to the lack of such specialization, the legal and factual complexity of commercial disputes, the territorial remoteness of commercial entities from the location of the arbitration court, and numerous other subjective reasons, the time required to consider commercial disputes in state arbitration courts increases. This negatively affects commercial turnover: the prolonged period of legal uncertainty in commercial relationships leads to various negative consequences for their participants, including both property-related (monetary and other financial losses, etc.) and non-property-related (breakdown of business ties, loss of trust in clients, damage to "goodwill," harm to business reputation, etc.). Of course, this situation does not satisfy businesspeople (hereinafter understood as both legal entities and individuals engaged in entrepreneurial activities). Under these circumstances, the opportunity for organizations and entrepreneurial citizens to resolve commercial disputes through an arbitration court (arbitral tribunal)-a court that resolves disputes with sufficient competence, speed, and efficiency-has become more relevant than ever before. Arbitration proceedings, which were already permitted under domestic

legislation, have been gaining increasing popularity year by year. The resolution of international commercial disputes is one of the most complex and contentious issues in the doctrine of commercial law and, more broadly, civil-law regulation of property relations complicated by the "presence" of a foreign element. A rational resolution of this issue would strengthen international commercial turnover, ensure the rights and legitimate interests of its participants, provide timely compensation for damages, and, in this regard, foster sustainable civil-law transactions and reinforce the rule of law as a whole.

The unique features inherent in the procedure for resolving commercial disputes, the sources of legal regulation for the establishment and functioning of international arbitrations, their types and legal nature, the theories of commercial arbitration formulated in the field of legal science, the role and significance of arbitration (arbitral) agreements and their legal nature, the types and procedures of international commercial arbitration, arbitration awards and their enforcement, the legal framework of mediation and the sources of its legal regulation, the principles governing mediation, and the legal nature of conciliation or settlement agreements-all constitute a range of theoretically and practically significant issues that continually attract the attention of researchers.

2. Commercial Disputes by International Commercial Arbitrations

The traditional method of resolving disputes arising in international commercial relations is international commercial arbitration. This institution has established a strong foothold in the sphere of international jurisdiction for commercial disputes. The resolution of commercial disputes by international commercial arbitration is characterized by several significant features. These features arise from the fact that the legal regulation of international commercial arbitration operates on three levels of normative regulation systems: (1) rules of private international law, (2) national legislation, and (3) agreements concluded by the parties submitting the dispute to arbitration. These sources of international commercial arbitration activity are not autonomous. As the literature notes, “... these components interact with each other, resulting in the unification of the fundamental principles of international commercial arbitration's functioning” (Bingham, 2004; Drahozal, 2000).

The multi-tiered nature of normative systems governing international commercial arbitration has led to the development of the concept of international interaction between national legal systems. The essence of this concept lies in recognising two legal regimes for commercial arbitration: international and domestic. Nevertheless, international legal instruments are the primary sources of legal regulation for international commercial arbitration. National legal acts regulating international commercial arbitration are generally subordinate to international sources of law, although often with significant reservations, particularly regarding the recognition and enforcement of international arbitration awards. International instruments are divided into three types: (1) international conventions, (2) bilateral international treaties, and (3) international documents of a non-binding nature (Zimmerman & Jauer, 2021).

Among the most significant international conventions are (Rogers & Wynn-Moylan, 2022): (1) The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958; (2) The European Convention on a Uniform Law on Arbitration of 1966; (3) The European Convention on International Commercial Arbitration of 1961; (4) The Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965 (Washington Convention); (5) The Convention Establishing the Multilateral Investment Guarantee Agency of 1985 (Seoul Convention), and others.

The regulation of international commercial arbitration is also carried out through the conclusion of bilateral treaties between states on the resolution of disputes between entrepreneurs from the contracting parties. As a general rule, such treaties establish (1) the scope of application of international commercial arbitration, (2) the principles of arbitral proceedings, (3) the main issues of commercial arbitration, (4) matters of mutual recognition and enforcement of decisions made by international commercial arbitral tribunals (Kurkela & Turunen, 2010).

Non-binding international sources in the field of international commercial arbitration primarily include documents developed by the United Nations Commission on International Trade Law (UNCITRAL). Notable examples include the UNCITRAL Arbitration Rules (adopted on April 28, 1976), which were revised in 2010 and came into effect on August 15, 2010. The revisions aimed to enhance the efficiency of arbitration based on the Rules without altering the text's original structure, spirit, or style (Croft et al., 2013).

Other significant documents include: (1) the UNCITRAL Conciliation Rules (1980) (Sanders, 2004); (2) the UNCITRAL Model Law on International Commercial Conciliation (2002) (Dobbins, 2002); (3) the UNCITRAL Notes on Organizing Arbitral Proceedings (1996) (Bainter, 2016); (4) the UNCITRAL Recommendations to assist arbitration institutions and other relevant bodies regarding arbitration under the UNCITRAL Arbitration Rules (adopted in 1982) (Sarmiento & Fach Gómez, 2023); (5) the UNCITRAL Model Law on International Commercial Arbitration (adopted on June 21, 1985, in New York, with amendments introduced in 2006) (Bachand & Gélinas, 2013).

While the UNCITRAL Model Law on International Commercial Arbitration is not an international treaty and does not possess legal force, it was designed to achieve uniformity in arbitration laws through incorporation into national legal systems. Its adoption by many countries has significantly harmonized international arbitration practices worldwide.

The aforementioned documents are not binding. However, they significantly influence the development of international commercial arbitration, effectively serving as model acts recommended by the United Nations. Many arbitration institutions refer to these documents when developing their own rules. This has largely contributed to the unification of national legal norms regulating the procedure and processes for resolving disputes in commercial courts.

3. International Commercial Arbitration

The legal nature of international commercial arbitration and the related concept of an "arbitration agreement" is a subject of scholarly debate. In legal theory, the following doctrines have been formulated to explain the legal nature of international commercial arbitration:

- Contractual (Consensual) Theory
- Procedural Theory
- Mixed (Hybrid) Theory
- Autonomous Theory

This view treats arbitration as an independent legal institution, distinct from contractual and procedural frameworks, with a unique legal nature and principles. The essence of the contractual theory lies in recognising arbitration (commercial arbitration) as a contractual-legal institution whose purpose is to organize the resolution of civil disputes based on the parties' authorisation. This theory views international arbitration as a unified process comprising several stages: the arbitration agreement, the procedure for selecting arbitrators, the arbitration proceedings, the arbitral award, and its enforcement. The foundation of this process is the will of the parties who have entered into an agreement to submit their dispute to arbitration (Fried, 2015). An arbitration agreement is recognized as a civil-law contract concluded between equal parties in the sphere of civil transactions. By entering into this agreement, the parties are obliged to abide by the decision made by the international commercial arbitration. The presence of a foreign element serves merely as a basis for raising a conflict-of-law issue, which is resolved on the general principles governing conflicts in contractual obligations. The contractual theory of commercial arbitration is actively criticized in the literature. One of the main arguments of its critics is the claim that this theory does not take into account the procedural aspects of an arbitration agreement and, as a result, fails

to describe the phenomenon under study fully. Moreover, considering that arbitrators, when rendering a decision, do not act as authorized representatives of the disputing parties, the unity of will-which is undoubtedly the essence of any contract-finds no expression in either the arbitration procedure or the arbitral award (Hillman, 2012). An attempt to overcome the shortcomings of the contractual theory created the procedural theory, which views commercial arbitration as a form of state justice. According to this theory, an arbitration agreement is a legal act aimed at excluding the jurisdiction of a state court in a specific dispute, granting arbitrators the authority to act independently once empowered. This authority initiates the arbitration process, which is regarded as a type of civil procedure and falls within the scope of civil procedural law. An arbitral award, in terms of its legal force, is equated to a state court decision (Bone, 2008).

The primary criticism of this theory is its failure to account for the fact that commercial arbitration arises solely from the will of the parties, placing it firmly within the realm of private law. Moreover, the assertion that arbitration possesses a state-like character and equates the resolution of commercial disputes with state justice is widely considered an overstatement (Escandell-Vidal, 2017). Another attempt to overcome these shortcomings is the mixed theory of the legal nature of commercial arbitration. According to this theory, commercial arbitration institutions represent a complex combination of substantive law (arbitration agreement) and procedural law (jurisdictional) elements. The essence of this theory lies in the understanding that an arbitration agreement, as a civil-law contract, has procedural consequences. These include altering the jurisdiction for resolving the dispute by removing it from the competence of a state court and transferring it to commercial arbitration (Blair, 2019). The mixed theory attempts to integrate the approaches of both the contractual and procedural theories, offering a more comprehensive explanation of the dual nature of arbitration as both a private agreement and a mechanism with procedural implications. The autonomous theory of commercial arbitration emerged as a rejection of all the aforementioned theories. The essence of this theory lies in the view that commercial arbitration is considered an independent phenomenon ("sui generis") whose legal nature is best explained by practical considerations of the speed and convenience of dispute resolution. This theory emphasizes arbitration as a unique and self-contained institution, distinct from both contractual and procedural frameworks, designed to meet the specific needs of modern commercial practices (Kyprinaou, 2023).

Depending on the nature of commercial arbitration, two main types are distinguished:

- Institutional Arbitration
- Ad Hoc Arbitration

Institutional arbitration refers to permanent institutions that handle disputes between entrepreneurs from different countries. These institutions have become the most widely used in practice. Institutional arbitrations operate based on their own regulations and rules, which are developed in accordance with the model rules recommended by the United Nations Commission on International Trade Law (UNCITRAL).

Among the most well-known and reputable international commercial arbitration institutions are (1) the International Court of Arbitration of the International Chamber of Commerce (ICC) in Paris; (2) the London Court of International Arbitration (LCIA); (3) the Arbitration Institute of the Stockholm Chamber of Commerce (SCC); (4) the International Centre for Settlement of Investment Disputes (ICSID), established under the World Bank; (5) the WIPO Arbitration and Mediation Center, under the World Intellectual Property Organization; (6) the American Arbitration Association (AAA); (7) the Arbitration Commission at the Central Chamber of Commerce of Finland; and many others.

These institutions are globally recognized for their expertise and efficiency in resolving international commercial disputes.

Ad Hoc Arbitration refers to arbitration panels formed specifically to resolve a single dispute. Unlike institutional arbitration, these are "one-time" arbitrations and do not have a permanent organizational structure. This creates the challenge of determining the rules under which such arbitration should resolve the submitted dispute. The parties must establish the rules, although it is often simpler and more practical to adopt the rules of a well-known arbitration institution.

For such arbitrations, specially developed model rules are increasingly used. Notable examples include: (1) the Arbitration Rules of the Economic Commission for Europe (1966); (2) the Rules of International Commercial Arbitration, developed by the United Nations Economic Commission for Asia and the Far East (1966); (3) the UNCITRAL Arbitration Rules, approved by the United Nations General Assembly on December 15, 1976.

These model rules provide a standardized framework for ad hoc arbitrations, offering greater consistency and efficiency in resolving disputes while preserving the flexibility inherent in the ad hoc approach.

An arbitration agreement is a contract between the interested parties to submit a dispute arising between them to international commercial arbitration for resolution. The arbitration agreement is the starting point of the arbitration process. Without an arbitration agreement, arbitration proceedings cannot begin. The arbitration agreement serves as the basis for the emergence of procedural legal relations between the parties to the arbitration proceedings.

Under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, June 10, 1958), an arbitration agreement is defined as a "written agreement by which the parties undertake to submit to arbitration all or any disputes that have arisen or may arise between them in respect of a defined legal relationship, whether contractual or not" (Drees, 1960).

The arbitration agreement, in relation to the international commercial contract, is independent and autonomous in nature. If an international commercial contract is declared null and void or terminated, the arbitration agreement is not automatically deemed invalid or terminated.

An interesting point is that the international commercial contract and the arbitration clause may be subject to different national legal systems.

The rules and regulations of the respective institutional arbitration bodies regulate the procedures governing the activities of international commercial arbitrations. By submitting a dispute to a specific international arbitration, the parties agree to adhere to the regulations and rules established by that arbitration institution. However, this does not prevent them from defining their own arbitration procedures through a corresponding agreement. In other words, the rules and regulations established by these institutions, which govern the activities of international commercial arbitrations, are generally not mandatory for the parties, with some exceptions. This allows the parties flexibility to tailor the arbitration process to their specific needs, provided that any modifications do not conflict with mandatory legal provisions or the principles of arbitration (Ashford, 2014).

The situation is different with ad hoc arbitrations, as they do not have pre-established procedures for arbitration proceedings. In such cases, the burden of adopting appropriate rules falls on the disputing parties. However, even in ad hoc arbitrations, the parties may choose to adopt the arbitration procedure used by an institutional arbitration body. Despite the differences in the rules and regulations governing dispute resolution and the procedural distinctions between arbitrations, certain stages of the arbitration process are characteristic of all arbitral tribunals. These stages form the fundamental structure of arbitration proceedings, ensuring consistency and predictability in resolving disputes (Bookman & Noll, 2017).

The initiation of arbitration proceedings is determined by submitting a statement of claim by the interested party to the relevant international commercial arbitration. The statement of claim must comply in form and content with the requirements set forth in the regulations and rules of the respective international commercial arbitration institution.

The statement of claim must be accompanied by payment documents confirming the payment of arbitration fees according to the rates specified in the rules of the particular institutional international commercial arbitration. This ensures that the procedural and financial prerequisites for commencing the arbitration are met.

The composition of an international commercial arbitration tribunal is determined at the discretion of the disputing parties, which is one of the clear advantages of arbitration. One of the most common methods of forming the tribunal involves each party selecting one arbitrator, usually but not necessarily from the list of arbitrators provided by the specific international commercial arbitration institution. The two selected arbitrators are then typically authorized to choose a third arbitrator, or the third arbitrator, often serving as the presiding arbitrator, may be appointed according to the rules of the arbitration institution.

Disputes may also be resolved by a sole arbitrator if agreed upon by the parties. Most institutional arbitration regulations stipulate that the number of arbitrators must be odd, ensuring there is no deadlock in decision-making. This flexibility in determining the tribunal's composition allows parties to tailor the process to their specific needs while ensuring neutrality and expertise in the arbitration panel.

The procedure for resolving disputes in international commercial arbitration is characterized by flexibility. In practice, this means that the arbitration process can be structured in various ways, such as (1) based on the principle of orality or the principle of written submissions; (2) with or without the direct participation of representatives of the disputing parties (subject to their consent); (3) allowing for the inclusion of a wide range of evidence or strictly defined forms of proof necessary for a proper resolution of the dispute, among other options (Vynokurova, 2011).

However, the flexibility of arbitration rules does not exempt international commercial arbitration from adhering to fundamental dispute resolution principles and ensuring the parties' rights. These mandatory procedural principles include (1) notifying the parties about the time and place of the arbitration proceedings; (2) granting the parties the right to be heard by the arbitration tribunal; (3) determining the language of the arbitration proceedings; (4) ensuring the proper formation and legality of the arbitration tribunal (Friedland, 2007).

Failure to comply with these essential principles renders the decision of international commercial arbitration invalid and unenforceable through the coercive measures of state judicial authorities. These safeguards maintain the integrity and legitimacy of the arbitration process, ensuring it meets the standards of fairness and procedural justice.

An international commercial arbitration tribunal makes its decision by a majority vote of the arbitrators, which comprises the tribunal handling and resolving the dispute. An arbitrator who disagrees with the tribunal's opinion cannot refuse to sign the decision but has the right to attach a separate written opinion, which must be communicated to the parties involved in the dispute.

The tribunal's decision is final according to the universally accepted principles of international commercial arbitration. However, this does not mean that the decision is beyond the control of the state in whose territory it is to be enforced. The main features of state control over arbitration tribunal decisions are: (1) granting oversight functions to state courts within limits established by law; (2) restricting the grounds for review, primarily to formal matters (state courts, as a general rule, are prohibited from reviewing the merits of decisions made by commercial

arbitration tribunals, but they may refuse to recognize such decisions only on formal procedural grounds or in cases of significant violations of legal norms, the rights of the participants, or third parties); (3) oversight of commercial arbitration decisions by state courts is primarily carried out within the framework of applications for the enforcement of arbitral awards (Moses, 2017).

The review of state courts' arbitration tribunal decisions fundamentally differs from appellate, cassation, supervisory, or revision proceedings (reviews). If a state court establishes the illegality of a decision made by an arbitration tribunal, it is not authorized to issue a new decision in the case. It may only declare the decision illegal and deny the issuance of a writ of execution or, in some cases, refer the case back to the same arbitration tribunal for reconsideration.

The legislation of some countries contains provisions allowing the parties to agree that the decision of a commercial arbitration tribunal is final and not subject to review by state courts. In Russia, both the Law on International Commercial Arbitration and the Law on Domestic Arbitration provide that parties can agree to waive the right to set aside an arbitral award, rendering it final and not subject to annulment by state courts. In England, under Section 69(1) of the Arbitration Act 1996, parties may exclude the right of appeal on a point of law, thereby limiting judicial review of arbitral awards. However, most states allow annulment or refusal to enforce such decisions if they conflict with the "public policy" or "fundamental legal principles" of the respective state.

4. Mediation in International Commercial Disputes

In recent years, alongside resolving international commercial disputes, international commercial arbitration tribunals have increasingly utilized mediation and conciliation procedures in international commercial practice. These procedures, often referred to in legal literature as Alternative Dispute Resolution (ADR), are seen as an alternative to state and arbitral (tribunal) court proceedings (Menkel-Meadow, 2015).

Mediation, conducted to resolve disagreements between participants in economic relations, is commonly referred to as "mediation" in international legal literature, and mediators are referred to as "mediators." The term "international commercial conciliation procedure" is also used in official international documents. Mediation can, in principle, be used to settle any commercial (economic) dispute. The universality of mediation is complemented by its relative simplicity and cost-effectiveness (Bercovitch, 2009).

Mediation shares certain features with judicial and arbitration procedures: it often concludes with adopting a settlement agreement. Mediation is also similar to ad hoc arbitration: both ad hoc arbitration tribunals and mediators are not institutions with jurisdictional authority to resolve civil-law disputes, unlike institutional arbitration tribunals.

At the same time, there are significant differences between them: (1) an ad hoc arbitration tribunal comes into existence only when a participant in the dispute refers the matter to it, whereas a mediator is a mediator even before being approached by the participants in the dispute, as they offer their services as a mediator to any commercial entity. The mediator is one of the professional participants in the legal services market; (2) an ad hoc arbitration tribunal is tasked with resolving a commercial dispute, while a mediator seeks to achieve reconciliation between the participants in the dispute to avoid resorting to a court or arbitration tribunal.

Thus, mediation in commercial disputes is an activity conducted outside any institutional organizational-legal forms by individuals called mediators, who do not have jurisdictional powers and whose aim is to settle disagreements arising between participants in commercial transactions by reconciling the disputing parties and reaching a settlement (conciliation) agreement.

A number of international institutions, such as the London Court of International Arbitration (LCIA), the American Arbitration Association (AAA), the SCC Mediation Institute of the Stockholm Chamber of Commerce, and the WIPO Arbitration and Mediation Center, have adopted internal mediation regulations. These institutions' documents are normative and, unlike the UNCITRAL Model Law, reflect mediation's national and subject-specific features.

According to the Directive 2008/52/EC of the European Parliament and the Council of the European Union of May 21, 2008, "on certain aspects of mediation in civil and commercial matters", mediation is defined as "any process, however, named or referred to, in which two or more parties to a dispute are assisted by a third party to reach an agreement on the resolution of the dispute, whether the parties initiate the process, suggested, or ordered by a court or prescribed by the national law of a Member State". In the same document, the term "mediator" refers to any third-party conducting mediation, regardless of their title or profession in the respective Member State or the method of their appointment to conduct the mediation. There are other forms of legal conflict resolution (Dąbrowski, 2022).

Mediation is not a specific type of civil or judicial-arbitral process. However, mediators in their activities must adhere to the requirements of general and special norms, and the decisions they develop must not contradict public order or violate the rights and legitimate interests of third parties.

Objectively, legal mediation does not require special legal regulation, yet attempts at such regulation are being made both internationally and domestically. For instance, as early as 1980, the United Nations Commission on International Trade Law (UNCITRAL) developed the Conciliation Rules, which were recommended for arbitration and other institutions specializing in various alternative methods of dispute resolution (Sarmiento & Fach Gómez, 2023). Later, the UNCITRAL Model Law on International Commercial Conciliation was prepared, and in 2002, the Draft Guide on the Adoption and Application of this document (hereinafter referred to as the Model Law) was approved (Strong, 2014).

The provisions of the Model Law are not legal norms. Therefore, even when parties agree to subject their dispute resolution procedure to the provisions of the Model Law, they can modify any of its provisions by agreement, except for those related to interpretation (Article 2) and the principle of impartiality of the mediator toward the parties (Paragraph 3 of Article 7). In this regard, the Model Law can be seen as a set of standard norms that mediators may use as guidance. The UNCITRAL Secretariat recommends the Model Law to states for incorporation into national legislation (McIlwrath & Savage, 2009).

Mediation procedures can be divided into several stages. The conciliation procedure begins when the disputing parties agree to involve a mediator. In the first stage, the parties select a mediator (or a panel of mediators). In the second stage, the mediator examines the documents and materials submitted by the parties, analyses the evidence and arguments they provide, formulate their own position on the essence of the dispute, and determines a strategy that, in their opinion, should lead to an agreement.

The third (central) stage involves the mediator meeting with the disputing parties, discussing the contentious situation, identifying the parties' proposals, and clarifying the terms of a settlement agreement formulated by them. The fourth stage begins when the parties' positions align. During this stage, the mediator prepares and presents a draft settlement agreement for the parties' consideration. Mediation concludes with the parties signing the settlement agreement. A new phase then begins—the phase of compliance with the settlement agreement terms. During this phase, the relationship between the parties may develop without the mediator's involvement (Moore, 2014).

Article 7 of the UNCITRAL Conciliation Rules and Articles 9 and 10 of the Model Law contain fundamental standard provisions of key significance. These include (Knieper & Haddad, 2023): (1) the mediator independently and impartially assists the parties in their efforts to achieve an amicable resolution of the dispute; (2) the mediator is guided by the principles of objectivity, impartiality, and fairness, taking into account the rights and obligations of the parties, relevant trade customs, and circumstances related to the dispute, including the established business practices between the parties; (3) the mediator may conduct the conciliation procedure in such ways as they deem appropriate, considering the circumstances of the case, the wishes of the parties (including a request to hear oral statements), and the need for a prompt resolution of the dispute; (4) the mediator may, at any stage of the conciliation procedure, propose solutions to the dispute. Such proposals are not required to be made in writing or accompanied by explanations; (5) the parties and the mediator must maintain the confidentiality of all information related to the conciliation procedure, except in cases where disclosure is required by law or necessary for enforcing or implementing a settlement agreement.

A settlement agreement concluded with the assistance of a mediator is, in its legal nature, similar to a settlement agreement reached in court or arbitration. Therefore, international documents often refer to it as a settlement agreement, but it is more appropriately called a conciliation agreement or mediation agreement. The content of a settlement agreement is determined by the subject of the dispute and the nature of the disagreements arising between the parties or partners.

For example, if the subject of the agreement is debt obligations, the conciliation agreement may provide for a debt restructuring procedure (deferment or instalment payment). A compromise between the parties may be achieved by waiving claims, reducing the volume of demands, providing counter-satisfaction, etc. In most cases, a conciliation agreement is concluded to amend the terms of an existing obligation or to terminate it.

As a rule, the conclusion of a settlement agreement signifies the novation of the obligation that gave rise to the dispute—this obligation is terminated, and as a result of the novation, a new obligation arises based on the conciliation agreement. A settlement agreement must not contradict the requirements of the state's national legislation in which it is concluded nor violate the rights and interests of third parties. Otherwise, it may be contested by interested parties in court.

A settlement agreement is typically concluded in writing. It usually specifies the mediator who assisted in reaching the agreement. At the parties' request, the mediator may endorse the settlement agreement. Like any other agreement, a settlement agreement has legal force and must be voluntarily observed and implemented by the parties. If one party fails to fulfil the agreement, the other party has the right to file a lawsuit in court for its enforcement.

5. Results and Discussion

5.1. Effectiveness of Arbitration in Business Disputes

Arbitration has been established as an effective method of resolving business disputes, particularly in international commerce. The study confirms that arbitration provides a legally binding resolution process that is more efficient and cost-effective than traditional litigation. The analysis of various arbitration theories-contractual, procedural, mixed, and autonomous-demonstrates that arbitration is both a private and procedural mechanism that ensures compliance with legal norms.

One of the key findings is that institutional arbitration, facilitated by organizations such as the International Chamber of Commerce (ICC), London Court of International Arbitration (LCIA), and the Arbitration Institute of the Stockholm Chamber of Commerce (SCC), offers structured and predictable dispute resolution processes. Institutional arbitration ensures that cases are handled by experts familiar with commercial and international law,

reducing uncertainty and delays in dispute resolution. On the other hand, ad hoc arbitration, while more flexible, faces challenges due to the absence of a predefined legal framework, often leading to procedural inconsistencies.

Another important result is that arbitration agreements hold autonomy from the underlying commercial contract. This means that even if the main contract is void or terminated, the arbitration clause remains valid, ensuring disputes are resolved according to agreed terms. However, enforcement remains a critical challenge, as different national legal systems have varying approaches to recognizing arbitral awards. The New York Convention (1958) has significantly improved international enforceability, but exceptions persist, particularly regarding public policy considerations.

5.2. The Role of Mediation in Business Dispute Resolution

Mediation has emerged as a complementary mechanism to arbitration, providing a non-binding, relationship-sustaining, and consensus-driven dispute resolution approach. The study highlights that mediation is particularly beneficial for disputes where preserving business relationships is a priority, such as joint ventures, supply chain disagreements, and partnership conflicts.

The findings indicate that mediation is an informal and cost-effective alternative to arbitration and litigation, offering parties greater control over the outcome. Unlike arbitration, where a third party imposes a decision, mediation allows disputing parties to craft mutually acceptable solutions. This voluntary nature increases the likelihood of compliance with settlement agreements, as both parties have contributed to the resolution process.

Furthermore, institutions like the American Arbitration Association (AAA), the World Intellectual Property Organization (WIPO), and the SCC Mediation Institute have developed structured mediation frameworks, ensuring the credibility and enforceability of mediated settlements. However, mediation lacks a universal enforcement mechanism similar to the New York Convention for arbitration, making enforcement dependent on national legal systems.

5.3. Comparing Arbitration and Mediation

The study underscores that arbitration and mediation serve different purposes but are often combined in multi-tiered dispute resolution systems. Mediation is particularly useful in the early stages of a dispute, fostering communication and reducing hostility, while arbitration provides a conclusive resolution when mediation fails. Many commercial contracts now include escalation clauses, requiring mediation as a prerequisite to arbitration or litigation. A critical observation is that arbitration is final and enforceable but may lead to adversarial relationships, whereas mediation preserves business ties but lacks binding authority. Additionally, arbitration is more formal and governed by procedural rules, whereas mediation offers flexibility and confidentiality, making it suitable for sensitive disputes.

6. Conclusion

Arbitration and mediation are very important in solving commercial disputes since they provide out of court means of solving the disputes. Both have their strengths, and if both are used together, it is possible to come up with a package that will address the needs of the parties in dispute. Arbitration is a more formalized and organized approach that results in enforceable awards, such as decisions of an arbitral award through conventions like the New York Convention. It provides certainty and efficiency through arbitrators often well-versed in certain industries. This is because arbitration offers parties the opportunity to set their own rules as to how they want the procedure to be conducted, and since it is a private settlement, sensitive business information is not exposed. However, arbitration is an expensive and time-consuming process, and enforcement may be difficult. Where it can be enforced, obstacles such as stringent public policy rules in the target jurisdiction may exist. On the other hand, mediation is a process that focuses on the process of negotiation and resolution and, therefore, ensures that business

relationships are not compromised. It is also faster and cheaper than arbitration or litigation and provides a flexible forum for the parties to negotiate their way to a settlement. Mediators assist in shaping conversations in order to arrive at solutions that are practical given the commerce environment, not the law. Mediation is also confidential thus, all the discussions are protected. However, mediation as a method has one major weakness: it is not compulsory on the part of the two parties in dispute, and this may be a problem where one party is not ready to bend to the other's wish.

Arbitration and mediation are complementary. Arbitration ensures enforceable outcomes in contentious disputes, while mediation promotes negotiation and understanding, often preventing disputes from escalating. The emergence of hybrid models, such as mediation-arbitration (med-arb), demonstrates how these methods can be integrated to address diverse needs. In this approach, parties attempt mediation first, and if it fails, arbitration is used to render a binding decision, combining the strengths of both methods.To maximize the effectiveness of arbitration and mediation in commercial disputes, parties should be proactive in their use. Contracts should include clear arbitration and mediation clauses outlining procedures, applicable laws, and venues. Education and training for legal professionals and business leaders are essential to ensure informed choices when selecting dispute-resolution mechanisms. Businesses and states should also consider adopting UNCITRAL guidelines to promote uniformity and reliability in practices and support hybrid models that blend flexibility with enforceability.

Arbitration and mediation are indispensable tools for resolving commercial disputes, providing mechanisms that uphold efficiency, confidentiality, and fairness. Their combined application offers businesses a strategic advantage, allowing them to resolve conflicts effectively while preserving relationships and fostering long-term commercial stability.

Data Availability

Due to the nature of this research, no proprietary or confidential data has been used. All referenced materials are publicly accessible through official legal databases, institutional websites, and academic publications.

References

[1] Peter Ashford, *Handbook on International Commercial Arbitration*, 2nd ed., Juris LLC, New York, USA, 2014. [Google Scholar] [Publisher Link]

[2] Frédéric Bachand, and Fabien Gélinas, *The Uncitral Model Law After Twenty-Five Years: Global Perspectives on International Commercial Arbitration*, JurisNet LLC, 2013. [Google Scholar] [Publisher Link]

[3] Richard Bainter, "UNCITRAL Notes on Organizing Arbitral Proceedings Get a Modern Makeover," 45 Int'l L. News 4, 2017. [Google Scholar] [Publisher Link]

[4] Jacob Bercovitch, I. William Zartman, and Victor Kremenyuk, *Mediation and Conflict Resolution*, Sage Publications, pp. 340-357, 2009. [CrossRef] [Google Scholar] [Publisher Link]

[5] Lisa Blomgren Amsler, "Control Over Dispute-System Design and Mandatory Commercial Arbitration," *Law and Contemporary Problems*, vol. 67, pp. 221-251, 2004. [Google Scholar] [Publisher Link]

[6] Henry Allen Blair, "Anticipating Procedural Innovation: How and When Parties Calibrate Procedure through Contract," *Oklahoma Law Review*, vol. 72, no. 4, pp. 797-855, 2020 [Google Scholar] [Publisher Link]

[7] Robert G. Bone, "Making Effective Rules: the Need for Procedure Theory," *Oklahoma Law Review*, vol. 61, pp. 319-340, 2008. [Google Scholar] [Publisher Link]

[8] Pamela K. Bookman, and David L. Noll, "Ad Hoc Procedure," New York University Law Review, vol. 92, no. 4, pp. 767-845, 2017. [Google Scholar] [Publisher Link]

[9] Clyde Croft, Christopher Kee, and Jeff Waincymer, *A Guide to the UNCITRAL Arbitration Rules*, Cambridge University Press, 2013. [CrossRef] [Google Scholar] [Publisher Link]

[10] Marek Dąbrowski, "Assessment of the Correct Implementation of Article 4 of Directive 2008/52/Ec of 21 May 2008 on Some Aspects of Mediation in Civil and Commercial Matters in the Polish Legal System," *Krytyka Prawa*, vol. 14, no. 3, pp. 5-19, 2022. [Google Scholar] [Publisher Link]

[11] Robert N. Dobbins, "UNCITRAL Model Law on International Commercial Conciliation: from a Topic of Possible Discussion to Approval by the General Assembly," *Pepperdine Dispute Resolution Law Journal*, vol. 3, no. 3, pp. 529-538, 2003. [Google Scholar] [Publisher Link]

[12] Christopher R. Drahozal, "Commercial Norms, Commercial Codes, and International Commercial Arbitration," *Vanderbilt Journal of Transnational Law*, vol. 33, no. 1, pp. 79-146, 2000. [Google Scholar] [Publisher Link]

[13] W. Drees, "Convention on the Recognition and Enforcement of Foreign Arbitral Awards," *Arbitrage International Commercial/International Commercial Arbitration, A World Handbook*, vol. 2, pp. 278-289, 1958. [CrossRef] [Google Scholar] [Publisher Link]

[14] Victoria Escandell-Vidal, "Notes for a Restrictive Theory of Procedural Meaning," *Doing Pragmatics Interculturally: Cognitive, Philosophical, and Sociopragmatic Perspectives*, pp. 79-96, 2017. [CrossRef] [Google Scholar] [Publisher Link]

[15] Charles Fried, *Contract as Promise: a Theory of Contractual Obligation*, 2nd ed., Oxford University Press, USA, 2015. [Google Scholar] [Publisher Link]

[16] Paul D. Friedland, *Arbitration Clauses for International Contracts*, 2nd ed., Juris Publishing, USA, 2007. [Google Scholar] [Publisher Link]

[17] Robert A. Hillman, *The Richness of Contract Law: An Analysis and Critique of Contemporary Theories of Contract Law*, Springer Dordrecht, 2012. [CrossRef] [Google Scholar] [Publisher Link]

[18] Judith Knieper, and Jonathan Haddad, *The History, Evolution, and Future of the Uncitral Mediation Framework*, In the Elgar Companion to UNCITRAL, Edward Elgar Publishing, pp. 216-241, 2023. [CrossRef] [Google Scholar] [Publisher Link]

[19] Matti S. Kurkela, and Santtu Turunen, *Due Process in International Commercial Arbitration*, 2nd ed., Oxford University Press, 2010. [Google Scholar] [Publisher Link]

[20] Anna L. Kyprianou, "The Autonomous Theory of International Commercial Arbitration: An Autopoietic Perspective," Thesis, University of Leicester, pp. 1-243, 2023. [CrossRef] [Google Scholar] [Publisher Link]

[21] Michael McIlwrath, and John Savage, *International Arbitration and Mediation: a Practical Guide*, Kluwer Law International, pp. 1-530, 2009. [CrossRef] [Google Scholar] [Publisher Link]

[22] Carrie Menkel-Meadow, "Mediation, Arbitration, and Alternative Dispute Resolution," *International Encyclopedia of the Social and Behavioral Sciences*, pp. 1-16, 2015. [Google Scholar] [Publisher Link]

[23] Margaret L. Moses, *The Principles and Practice of International Commercial Arbitration*, 3nd ed., Cambridge University Press, 2017. [CrossRef] [Google Scholar] [Publisher Link]

[24] Tony Rogers, and Peter Wynn-Moylan, *Conferences and Conventions: A Global Industry*, 4th ed., London, Routledge, 2022. [CrossRef] [Google Scholar] [Publisher Link]

[25] Pieter Sanders, *The Work of UNCITRAL on Arbitration and Conciliation*, Kluwer Law International, Expanded Edition, 2004. [Google Scholar] [Publisher Link]

[26] Maria Gabriela Sarmiento, and Katia Fach Gómez, *The United Nations Commission on International Trade Law*, The International Law of Economic Integration, Oxford University Press, Draft Pre-Print, Forthcoming, 2024. [CrossRef] [Google Scholar] [Publisher Link]

[27] S.I. Strong, "*Use and Perception of International Commercial Mediation and Conciliation: a Preliminary Report on Issues Relating to the Proposed Uncitral Convention on International Commercial Mediation and Conciliatio*," University of Missouri School of Law Legal Studies Research Paper, pp. 1-54, 2014. [Google Scholar] [Publisher Link]

[28] L. Vynokurova, Procedure for Dispute Resolution in the International Commercial Arbitration Court, *Law of Ukraine*, 2011. [Google Scholar] [Publisher Link]

[29] Andreas J. Zimmermann, and Nora Jauer, *Possible Indirect Legal Effects under International Law of Non-Legally Binding Instruments*, 2021. [CrossRef] [Google Scholar] [Publisher Link]