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INTERNATIONAL COMMERCIAL CONTRACT DISPUTE RESOLUTIONS UNDER INTERNATIONAL TREATIES

Nemzetközi kereskedelmi szerződésekkel kapcsolatos viták megoldása nemzetközi szerződések alapján

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Globalization has led to a surge in international commercial contracts, yet their implementation often faces challenges, resulting in disputes. To safeguard global economic interests, the international community has turned to international treaties to shape dispute resolution frameworks. This article underscores the importance of resolving international trade disputes and the role of treaties in this process. It examines various dispute resolution methods, from negotiation to litigation, arbitration, and mediation, while also discussing key treaties like the UNCITRAL Model Law on International Commercial Arbitration, the New York Convention, and the Singapore Mediation Convention.

Keywords: *international commercial contracts, dispute resolution, international treaties, negotiation, litigation, arbitration, mediation, UNCITRAL Model Law, New York Convention, cross-border transactions*

A globalizáció a nemzetközi kereskedelmi szerződések megugrásához vezetett, de végrehajtásuk gyakran kihívásokkal néz szembe, ami vitákat eredményez. A globális gazdasági érdekek védelme érdekében a nemzetközi közösség nemzetközi szerződésekhez fordult a vitarendezési keretek kialakítása érdekében. Ez a cikk hangsúlyozza a nemzetközi kereskedelmi viták megoldásának fontosságát és a szerződések szerepét ebben a folyamatban. Különféle vitarendezési módszereket vizsgál, a tárgyalástól a peres eljárásig, választottbírósági eljárásig és közvetítésig, miközben olyan kulcsszerződéseket is megvitat, mint az UNCITRAL nemzetközi kereskedelmi választottbírósági mintatörvénye, a New York-i egyezmény és a szingapúri közvetítési egyezmény.

Kulcsszavak: *nemzetközi kereskedelmi szerződések, vitarendezés, nemzetközi szerződések, tárgyalás, peres eljárás, választott bíróság, közvetítés, UNCITRAL Model Law, New York-i egyezmény, határon átnyúló ügyletek*

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Introduction

Over the past fifty years, the globalization of commerce has undergone exponential growth, transcending national borders and markets. Businesses have evolved into multinational corporations with expansive international networks encompassing suppliers, customers, employees, and shareholders. Both domestic and multinational enterprises, including state-owned entities, pursue strategic advantages through joint ventures, alliances, and partnerships with foreign counterparts. This expansion of commerce spans diverse industries, ranging from jets to jeans, turbines to telephones, and oil to beans[1].

International trade is an essential aspect of the global economy and involves a complex set of transactions. Disputes are an inevitable aspect of international trade and can arise for various reasons, such as breach of contract, non-payment, or delivery of defective goods. With the complexity of cross-border transactions, different legal systems, and cultural differences, conflicts can arise at any stage of the business process. Therefore, it is crucial to have an effective dispute resolution mechanism to address these issues quickly and efficiently. International treaties play a significant role in shaping the framework for resolving such disputes, providing guidelines and legal mechanisms for dispute resolution among parties from different nations. In this article, we will explore why dispute resolution is important in international trade, the role of international treaties in shaping dispute resolution mechanisms, and the different options available for resolving disputes.

Conflict is an inherent aspect of commercial relations, necessitating a spectrum of dispute resolution techniques. When it comes to resolving disputes in international trade, parties have several avenues to explore, including litigation, negotiation, arbitration, and mediation. Each option presents its own set of advantages and drawbacks.

Traditionally, state judiciaries held jurisdiction over dispute resolution. However, alternative dispute resolution (ADR) mechanisms emerged, offering non-judicial avenues for dispute resolution. ADR, encompassing arbitration and mediation, has gained prominence across legal systems, addressing civil, commercial, family, and even criminal disputes.[2]

We can say that international trade is a complex process that involves multiple parties, and it necessitates extensive coordination and collaboration to achieve success. Despite the best efforts of international treaties, disputes can still occur during international business transactions. In this section, we will concentrate on the most prevalent types of disputes that can emerge in international trade and explore vari-

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1 Eric D. GREEN: International Commercial Dispute Resolution: Courts, Arbitration, and Mediation—Introduction. *Boston University International Law Journal*, Vol. 15, Issue 1, USA, 1997, 175. https://heinonline.org/HOL/Contents?handle=hein.journals/builj15&id=1&size=2&index=&collection=journals, 9 March 2024.

2 Youssef Abdulahadi ALIKIABI: Alternative means of settling disputes, a study in the provisions of mediation. *Legal Journal* Issue 8, Bahrain, 109.

ous methods for resolving them. We will attempt to provide answers to the following questions related to this topic:

What types of disputes commonly arise, potentially obstructing the execution of international commercial contracts?

What strategies or mechanisms exist for effectively resolving disputes in international commerce?

How binding are the decisions rendered by dispute resolution bodies in international commercial disputes?

What avenues are available to compel the defendant to fulfill obligations outlined in an international commercial contract, particularly when subject to foreign legal jurisdiction?

Which international agreements govern the framework for resolving disputes in global trade?

1. Disputes in international trade

International commercial contracts and international investment can be a risky adventure. On the one hand, it may seem alluring, as high profits can easily be gained in a foreign market. On the other hand, multiple types of risks may threaten businessmen.[3]

Disputes arise for various reasons, but payment disputes stand out as one of the most daunting challenges in international trade. Typically, these conflicts arise when buyers fail to meet their obligation to pay sellers for the goods or services provided.

In some situations, an importer might argue that the products or services provided do not meet contractual standards. However, disputes can also arise from delays in contract completion, unauthorized specification changes[4]. For example, a European energy company invests in an oil exploration project in an African country, partnering with the local Oil Corporation. As part of their agreement, the European company undertakes significant financial commitments and begins operations. However, a sudden change in the African country's government results in new laws imposing higher taxes on foreign investments and requiring greater local ownership stakes. These changes severely impact the project's profitability, leading the European company to claim that the new regulations breach the investment contract and demand compensation, while the African corporation argues that the regulations are beyond its control and constitute a force majeure, escalating the dispute to international arbitration.

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[3] Imre MÁTYÁS: The structure of international investment law with a special view to resource nationalism. *Miskolc University Publications* XL/2, Hungary, 2022, 283.

[4] Causes of global business disputes and how to avoid them, 2018, Causes of global business disputes and how to avoid them - Trade Ready May 2024, 29.

2. Litigation

Litigation is the most formal and expensive method of resolving a business dispute. It involves taking the case to court, where a judge issues a legally binding decision. In this process, the judicial system of the country designated by the parties involved is utilized. The parties can choose either one of their national judicial authorities or a judicial authority outside of their jurisdiction. This entails determining which court has jurisdiction over the dispute and following the relevant litigation procedures.[5]

Before choosing a court to resolve a disagreement, the parties involved should have knowledge of the court's procedures. It is crucial to ensure that the court's decision-making process is fair and provides the necessary guarantees for resolving the dispute. If the dispute includes a foreign element, the court's ruling may be difficult to enforce for the awarded party. It is, therefore, necessary to ascertain whether the ruling can be enforced in the country where the parties, their money, and property are located. This will help make the implementation process smoother in such a country.[6] It is crucial to verify the presence of any international agreement requiring the enforcement of judgments across borders among participating nations. This verification is essential to ensure the efficacy of legal verdicts and to prevent situations where a judgment rendered in one country may be rendered ineffective in another jurisdiction. In our subsequent discussion, we will delve into the intricate characteristics and implications of such treaties.

When national courts are used, they generally perform well, especially when the jurisdiction has a specialized commercial court. This is true in many common-law countries but is less common in civil-law countries. In some regions and countries, local courts cannot be relied on to resolve commercial disputes to the high standards required by the global trading community. A prime example can be found in the Central and Eastern European countries of the former Soviet bloc. These countries' judiciaries lacked commercial law training. Their responsibilities included administering criminal justice, resolving matrimonial disputes, and determining citizens' rights and obligations. Commercial disputes were directed to the national chambers of commerce's so-called arbitration courts[7].

For example, a German electronics manufacturer and an Italian distributor enter into a dispute over defective goods. They opt for litigation, but the contract lacks a jurisdiction clause. The German manufacturer prefers German courts for their spe-

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5 Mouka ABDULKAREEM: International trade contract disputes: between the jurisdiction of the national judiciary and arbitration. *Journal of Research in Contracts and Business Law* Vol. 6, No. 4, Alegeria, 2021, 449.

6 Mouka ABDULKAREEM: International trade contract disputes: between the jurisdiction of the national judiciary and arbitration, *Journal of Research in Contracts and Business Law* Vol. 6, No. 4, Alegeria, 2021, 450.

7 Martin HUNTER: International Commercial Dispute Resolution: The Challenge of the Twenty-first Century. *Arbitration International* Vol. 16, Issue 4, 2000, 381. https://doi.org/10.1093/arbitration/16.4.379. 15 March 2014.

cialized commercial expertise, while the Italian distributor insists on Italian courts, believing local laws favor their case and this arise the problem of conflict of law and jurisdiction. Both parties incur high legal costs and face lengthy proceedings to establish jurisdiction. They must also ensure any court ruling is enforceable in the other country, complicating the process further.

When evaluating litigation, it is crucial to understand that the efficiency of commercial dispute resolution varies widely between jurisdictions. Some jurisdictions handle disputes promptly, fairly, and cost-effectively, while others suffer from delays, inefficiency, incompetence, bias, or corruption.[8]

In addition to the complexity and high-cost procedures, the principle of publicity of sessions in litigation constitutes great harm to litigants, as they cannot rule out the principle of publicity whenever they go to the courts, as it does not provide them with any secrecy in the face of competitors, clients, and the public, although some circumstances must be kept in complete secrecy to ensure the interest of litigants, such as manufacturing secrets or problems and financial issues that the company may face[9].

Given the preceding analysis, it is our viewpoint that while litigation may be considered a final recourse in situations where other methods fail or when establishing legal precedent is paramount, it is advisable only if the involved parties possess a comprehensive understanding of court procedures. Nonetheless, we maintain a preference for alternative dispute resolution methods due to the anticipated drawbacks associated with litigation, such as prolonged delays, exorbitant costs, and the inherently adversarial nature of courtroom proceedings.

3. Negotiation

Negotiation is a mechanism for resolving disputes through direct dialogue between the disputing parties, aiming for mutual agreement without the need for a third party. Parties may be represented by lawyers or agents, provided these representatives have decision-making authority, without altering the fundamental nature of negotiation.[10]

Negotiation is often the first step in resolving any business dispute. It involves a discussion between the parties involved, with the aim of finding a mutually acceptable solution. It does not follow a specific form and may involve personal in-

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8 Jens DAMMAN – Henry HANSMANN: *Globalizing commercial litigation*. John M. Olin Center for Studies in Law, Economics, and Public Policy Research Paper No. 357, 2008, Yale Law School,.3.

9 Hussam Sayed Abdulrahim ALI: International trade conflicts between judiciary and arbitration: a comparative study. *Arab journal for security studies* Vol. 35, Issue 2, Saudi Arabia, 2019, 249.

10 Shaimaa AHMAD – Radwan HAMDOUN: *Negotiations are an amicable way to settle commercial disputes, 2022.* Research published in the twelfth annual scientific conference for historical, social and legal studies in Türkiye for the period June 5–7, 2020, 3.

terviews, meetings, the exchange of notes, or a combination of these methods. The process can take place in one session or several sessions.[11]

It is a flexible process that allows for creative solutions when conducted with honesty, good faith, and integrity, without exploiting the other party's weaknesses. According to Article 15 of the UNIDROIT Institute's Unified Principles (2014), negotiations must be conducted in good faith. If conducted in bad faith, the responsible party will bear the consequences and compensate for any losses incurred by the other party. Specifically, bad faith includes entering or continuing negotiations with no intention of reaching an agreement.

However, it may be difficult to reach an agreement if the parties have completely different goals or if there is a significant imbalance of power between them. In such cases, the parties' legal relationship will usually end up in legal proceedings.[12]

From my standpoint, while negotiation is a valuable tool, I prefer it only as a primary method of dispute resolution. This is because, despite the requirement for good faith, there is nothing binding in the negotiation process, making it potentially time-wasting. Furthermore, mediators, who facilitate negotiations, can make mistakes, especially if they are not very knowledgeable or experienced in the relevant subject matter, leading to further complications.

For instance, consider a dispute between a technology company and a software developer over the delivery of a project. The parties engage in negotiation to resolve the issue of delayed delivery and unmet specifications. Despite multiple sessions and attempts to reach a mutually acceptable solution, the negotiation process stalls due to differing goals and expectations. The technology company seeks a complete overhaul of the software, while the developer argues for minor adjustments. The mediator, possibly lacking in-depth technical knowledge and expertise, fails to bridge the gap, leading to prolonged discussions with no resolution. Consequently, both parties end up resorting to legal proceedings, illustrating the potential inefficacy and time-consuming nature of negotiations.

4. Arbitration

Arbitration is defined as an agreement between two parties to remove a dispute from the ordinary judiciary's jurisdiction and entrust it to a body consisting of one or more arbitrators to render a binding decision[13].

Arbitration procedures can be agreed upon before the occurrence of a dispute. This agreement may be included in the commercial contract concluded between the parties, specifying that any future disputes will be resolved through arbitration. This provision is known as the arbitration clause. In some cases, arbitration may

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[11] Youssef Abdulahadi ALIKIABI: Alternative means of settling disputes, a study in the provisions of mediation. *Legal Journal* Issue 8, Bahrain, 108.

[12] Imre MÁTYÁS: The structure of international investment law with a special view to resource nationalism. *Miskolc University Publications* XL/2, Hungary, 2022, 284.

[13] Ahmad Bakri ABD-ALTAWWAB: The legal basis for international commercial arbitration. *The Legal Journal (a magazine specializing in legal studies and research)* 1878.

also be agreed upon during the litigation process, requiring the dispute to be referred to arbitration. Furthermore, any reference in the contract to a document containing an arbitration clause is considered an agreement to arbitrate if it is clear that this condition is part of the contract.[14]

The parties involved in arbitration agree on the rules to be followed in resolving their dispute, and the arbitration tribunal is required to adhere to these agreed-upon rules. If the parties decide to apply the law of a specific country, the tribunal must follow the rules of that law, irrespective of any conflict of law principles. If there is no agreement on which legal rules to apply, the arbitration panel may select the substantive rules of the law it considers most pertinent to the dispute.[15] We can say that the law is meant to serve humanity, rather than humanity serving the law. While lawyers are bound to serve the law, lay arbitrators act as its allies.[16] This arrangement reflects a professional commitment to achieving practical and equitable resolutions.

The main reason for arbitration clauses in international commercial contracts is that corporations and governmental entities involved in international trade are generally unwilling to litigate in the other party's 'home' court. This reluctance is not solely due to a bias on the part of national judges. There are far more practical reasons. For example, all documents and witness testimonies must be translated into the court's official language. Additionally, it may be necessary to hire lawyers with local rights of audience, which means that at least one of the disputing parties will be unable to have its trusted lawyers in the driving seat.[17]

International commercial arbitration has several advantages over traditional litigation. It is quicker because the arbitrators are dedicated to the dispute and the arbitration procedures are carried out directly, which are characterized by simplicity and the uncomplicated conduct of the arbitration process. The arbitrators are committed to issuing their decision within a date specified by the parties to the dispute in the arbitration agreement.[18]

The main differences between arbitration and litigation are as follows: Arbitration is a private process where parties may have a say in selecting decision-makers who will render a verdict based on the evidence; however, they are responsible for paying the decision-makers and administrators. On the other hand, litigation is a public process where parties are not allowed to choose the judge, and it is prohibited to pay

[14] Mahmoud Moustafa NASSEF: *International Commercial Arbitration.* International Academy for Training, Egypt, 2021, 12.

[15] Mahmoud Moustafa NASSEF: *International Commercial Arbitration.* International Academy for Training, Egypt, 2021, 26.

[16] Geoffrey M. Beresford HARTWELL: Arbitration: the commercial way to justice. *Boston University International Law Journal* Vol. 15, Issue 1, 1997, 180. https://heinonline.org/HOL/Contents?handle=hein.journals/builj15&id=1&size=2&index=&collection=journals, 10 March 2024.

[17] Martin HUNTER: International Commercial Dispute Resolution: The Challenge of the Twenty-first Century. *Arbitration International* Vol. 16, Issue 4, 2000, 382. https://doi.org/10.1093/arbitration/16.4.379

[18] Omar Mashhour ALJAZI: *Commercial arbitration.* Jordan, 2021, 8.

them. Another significant distinction is that in arbitration, there is no chance for appeal and hence no judicial review, while in litigation, there is typically one level of review by an appeals court, especially to correct errors at the trial level.[19]

Arbitration is more practical and accurate, because parties can choose an expert arbitrator who understands the dispute's specifics. In commercial matters, where disputes often involve the quality of goods, services provided, or completed work, an expert arbitrator is better suited to resolve issues than a traditional legal judge.[20] For instance, imagine a dispute arises between a construction company and an architectural firm regarding the structural integrity of a building. Instead of pursuing litigation, they agree to arbitration and select an arbitrator with a background in civil engineering and architecture. This expert examines the blueprints, inspects the construction site, and consults with relevant professionals. As a result, a well-informed decision is made, addressing the technical aspects of the dispute effectively and efficiently.

The first international arbitration forum was founded in 1919 and is now known as the Court of Arbitration of the International Chamber of Commerce, headquartered in Paris. Since then, numerous other arbitration centers have been established in cities such as London, Zurich, New York, Hong Kong, and many other capitals worldwide. While many of these institutions have their own rules, in the past two decades, the rules published by UNCITRAL -we will address it separately- have become widely accepted among arbitration centers and practitioners as a set of rules to be incorporated in ad hoc, non-institutionally administered arbitrations[21].

One of the advantages of international arbitration is that the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, established in 1958 requires that arbitration awards be enforced across national borders. In contrast, there are no multilateral treaties accepted worldwide, such as New York Convention, governing the reciprocal enforcement of court decisions, making it difficult to enforce a favorable judgment issued by a national court in another country. As of June 2000, 172 countries had ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and about 30 jurisdictions had passed legislation based on the 1985 UNCITRAL Model Law on

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[19] Eric D. GREEN: International Commercial Dispute Resolution: Courts, Arbitration, and Mediation—Introduction. *Boston University International Law Journal* Vol. 15, Issue 1, USA, 182. https://heinonline.org/HOL/Contents?handle=hein.journals/builj15&id=1&size=2&index=&collection=journals, 9 March 2024.

[20] Hussam Sayed Abdulrahim ALI: International trade conflicts between judiciary and arbitration: a comparative study. *Arab journal for security studies* Vol. 35, Issue 2, Saudi Arabia, 2019, 250.

[21] Eric D. GREEN: International Commercial Dispute Resolution: Courts, Arbitration, and Mediation—Introduction. *Boston University International Law Journal* 252. https://heinonline.org/HOL/Contents?handle=hein.journals/builj15&id=1&size=2&index=&collection=journals, 9 March 2024.

International Commercial Arbitration, which establishes a consistent standard for national legislation governing private arbitration processes.[22].

It is important to understand that arbitration and the judiciary are not entirely separate processes. In fact, arbitration relies on the judiciary to settle international commercial disputes effectively. This relationship can be seen in various aspects[23]. For instance, if the parties involved in the dispute cannot agree on an arbitrator, the court has the power to appoint one.[24]

The arbitration panel also relies on courts to enforce coercive measures, like document submission or witness presence, if necessary. Additionally, arbitration's effectiveness hinges on having an executive formula. Without judicial endorsement, arbitration rulings lack practical or legal enforceability.[25]

As a result of the preceding discussion, it is clear that arbitration occupies a prominent place in economic and legal thought at the global level. It stands out as one of the most important means of resolving disputes arising from international trade operations outside the obligatory framework of state jurisdiction. Arbitration has gained wide resonance in the current era due to its flexibility and less formal nature, which result in reduced time and cost. The ability for parties to choose their arbitrator, who possesses expertise in the subject matter, leads to more informed decisions. Additionally, arbitration provides greater confidentiality, and its awards are easier to enforce across borders. These advantages underscore its significance in the global landscape of dispute resolution.

However, arbitration has some significant drawbacks that you should consider before opting for it as a dispute resolution method. It can be more cost-effective for resolving commercial disputes, it can also become quite expensive, especially if the case is complex and of high value.[26]

For instance, in a complex international contract dispute involving substantial financial stakes and multiple parties, the cost of arbitration can escalate quickly, and coordinating the schedules of arbitrators from different countries can lead to significant delays, making the process more cumbersome than anticipated.

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[22] Martin HUNTER: International Commercial Dispute Resolution: The Challenge of the Twenty-first Century. *Arbitration International* Vol. 16, Issue 4, 1 December 2000, 382, https://doi.org/10.1093/arbitration/16.4.379

[23] Mahmoudsamir ALSHARKAWI: *The creative role of the judiciary in the field of international ongoing arbitration, the sixteenth annual conference, International Commercial Arbitration Conference (the most important alternative solutions for resolving commercial disputes*). Abu Dhabi, 2007, 694.

[24] Art 11/3/b of UNCITRAL Model Law on International Commercial Arbitration 1985 With amendments as adopted in 2006.

[25] Hussam Sayed Abdulrahim ALI: international trade conflicts between judiciary and arbitration: a comparative study. *Arab journal for security studies* Vol. 35, Issue 2, Saudi Arabia, 2019, 255.

[26] Clare FARMER: Advantages and disadvantages for using arbitration for a commercial dispute, Advantages and Disadvantages of Using Arbitration | LegalVision UK. 28 April 2024.

In my view, despite this disadvantage of arbitration, it stands out as an exceptionally effective method for resolving disputes. This is because arbitration offers a distinctive blend of features that provide parties with significant advantages. Specifically, it allows parties the freedom to choose the applicable law and the arbitrator, ensuring a customized and fair resolution process. Additionally, the binding nature of arbitration decisions ensures finality and certainty in resolving contentious issues, making it a preferred option for dispute resolution in various situations.

5. Mediation

It is stated in the UNCITRAL Model Law on International Commercial Conciliation issued in 2002 that it is "any process, whether referred to as conciliation, mediation, or another expression with a similar meaning, in which the two parties request another person or persons (the conciliator) to assist them in seeking to reach an amicable settlement of their emerging dispute of a contractual relationship, a legal relationship, or anything related to that relationship, and the conciliator does not have the authority to impose a solution to the dispute on the two parties".[27]

Here we must note the necessity of distinguishing between conciliation and mediation, as their commonalities have led to confusion between them. Both depend on the desire of the two parties to reach an amicable settlement of the dispute occurring between them, in addition to their reliance on the intervention of a third party to bring viewpoints closer together and end the conflict.

Here a jurisprudential problem arises, there is a side of jurisprudence that believes that mediation is conciliation, and there is another side that says that they are two different systems. The conciliator tries to bring points of view closer together, while the mediator role is more serious by balancing positions, proposing serious solutions, presenting options, and informing the parties of the truth of what they claim and its results. The evidence of this aspect of jurisprudence is that legislators created an independent system for both mediation and conciliation. French legislation allocated in the French code of procedures Articles 113-1 to 131-15 for judicial mediation, while articles 12, 27 and 131 were allocated for judicial conciliation[28].

Mediation comes in different forms: judicial, arbitral, and contractual. In judicial mediation, a judge proposes mediation to resolve a dispute and seeks the parties' input for the process. Arbitral mediation is contractually mandated, where a mediator intervenes initially, and if unsuccessful, an arbitrator steps in.[29] Additionally, there is contract mediation, where parties agree to resolve disputes amicably through mediation. This can occur either before or after the dispute arises. If a dis-

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[27] UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation. *United Nations Publications* 2018, Article 1. https://uncitral.un.org/en/texts/mediation/modellaw/commercial_conciliation.

[28] Marwa Mohammad MOHAMMAD ALISSAWI: Conciliation as an effective mechanism for settling commercial and investment disputes. *Legal Journal* Issue 11, Alqassim, 155.

[29] Youssef Abdulahadi ALIKIABI: Alternative means of settling disputes, a study in the provisions of mediation. *Legal Journal* Issue 8, Bahrain, 107.

pute arises, parties may opt for mediation, seeking the judge's approval. If accepted, they engage in mediation; otherwise, they may proceed to court[30].

Mediation is a process that enables people to find creative solutions to their disputes. During mediation, a wide range of issues can be addressed or uncovered, including past-unresolved matters and even future intentions.[31]

For instance, consider a sales contract dispute between two international technology companies—one based in the United States and the other in Japan. The American company alleges that the Japanese company failed to meet the agreed-upon specifications and delivery timelines for computer hardware. Instead of immediately pursuing litigation, which could be protracted and costly due to differing legal systems and languages, the parties opt for mediation.

During the mediation process, facilitated by a neutral mediator well-versed in international business law, they discover practical legal solutions that serve the contract's objectives. For example, the Japanese company may agree to compensate the American company for any losses incurred due to delayed delivery or non-compliance with specifications. Additionally, the Japanese company could issue a formal apology for any inconvenience caused and reaffirm its commitment to fulfilling the contract terms. Furthermore, the parties explore creative solutions such as modifying the existing hardware specifications to better align with both parties' needs, increasing the quantity of hardware to compensate for any delays, or providing additional technical support or training by sending Japanese experts to train American employees on the use and maintenance of the hardware.

Mediation offers numerous advantages for resolving disputes efficiently. It saves time by often resolving cases within a few days once the session begins and reduces costs by minimizing attorney fees and court expenses, Mediation also empowers parties to craft their own solutions. Unlike litigation, where a judge makes the final decision and parties simply present their arguments, mediation encourages creative resolutions that might not be achievable in court. [32]

However, mediation has its drawbacks. Agreements are not always reached, particularly if one party is uninterested in settling. For instance, if a supplier is unwilling to negotiate terms after repeatedly delivering substandard goods, mediation may fail to resolve the issue. Additionally, mediation may not be suitable for severe disputes that require immediate action[33]. For example, if a business needs to prevent a partner from disclosing trade secrets, they might need to seek an injunction from a court rather than rely on the slower mediation process.

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[30] Qashi ALAL: Judicial mediation as an alternative to resolving civil disputes. *Journal of Law and Political Science* Issue 2, Vol. 6, 2019, Algeria, 159.

[31] Peter FENN: *Commercial conflict management and dispute resolution*. Spon Press, New York, 2012, 17.

[32] Emily HOLLAND: What is mediation? Understanding the ADR process, 2023. What is Mediation? Understanding the ADR Process – ADR Times 29 May 2024.

[33] Clare FARMER: Advantages and disadvantages of using mediation Advantages and Disadvantages of Using Mediation | LegalVision UK. 29 May 2024.

The failure of conciliation may be due to the conciliator personally if he does not have sufficient experience and qualifications to manage conciliation. He may raise problems by hardening the positions of the parties, or he may express an incorrect legal opinion, which leads to a divergence of views. He may fall short in performing his tasks, such as failing to examine and study documents, or he may not have sufficient time to hold dialogue sessions between the parties[34].

Another drawback of mediation is the potential for biases, particularly when there is a power imbalance between the parties involved. This can occur when a more powerful party overpowers a weaker one, leading to challenges for mediators in maintaining impartiality[35].

In international trade disputes, mediators must be skilled at recognizing and addressing power imbalances to ensure a fair and equitable solution. For example, when large corporations negotiate with smaller entities or developing countries, there's a risk of the stronger party exploiting its leverage to impose unfair terms. Mediators play a crucial role in ensuring that all parties are represented fairly and that the negotiation process is conducted with sensitivity to power differentials. However, achieving this balance may not always be easy or successful, requiring mediators to employ creative strategies and persistent efforts to facilitate constructive dialogue and reach mutually acceptable outcomes.

The major international arbitration institutions have been rapidly developing their ADR capabilities due to market demands. The International Chamber of Commerce, International Center for Settlement of Investment Disputes, and World Intellectual Property Organization, all organizations around the world offer mediation services, with many providing mediator training and accreditation opportunities[36].

In essence, litigation is the conventional way of resolving disputes through the court system. However, Alternative Dispute Resolution (ADR) provides parties with alternative avenues for resolving conflicts more efficiently, collaboratively, and flexibly. Each method has its advantages and disadvantages. The choice between litigation and ADR depends on various factors, such as the nature of the dispute, the preferences of the parties, and the desired outcome.

6. Resolving disputes under international treaties

Many international treaties and agreements have been established over the years to provide frameworks for resolving disputes in various commercial contexts. From

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[34] Marwa Mohammad MOHAMMAD ALISSAWI: Conciliation as an effective mechanism for settling commercial and investment disputes. *Legal Journal* Issue 11, Alqassim, 137.

[35] Mary F. RADFORD: Advantages and Disadvantages of Mediation in Probate, Trust, and Guardianship Matters. *Pepperdine Dispute Resolution Law Journal* Vol. 1, Issue 2, 2001, 245.

[36] Martin HUNTER: International Commercial Dispute Resolution: The Challenge of the Twenty-first Century. *Arbitration International* Vol. 16, Issue 4, 2000, 383. https://doi.org/10.1093/arbitration/16.4.379

arbitration to mediation and the recognition of foreign judgments, these instruments serve as pillars supporting the global economy's complex web of transactions.

We will provide a comprehensive introduction to some of the most influential international treaties and agreements on dispute resolution. From The New York Convention of 1958 to modern initiatives like the United Nations Convention on International Settlement Agreements Arising from Mediation, each instrument plays a crucial role in shaping the landscape of international dispute resolution.

6.1. European Convention on International Commercial Arbitration, Geneva, 1961

This Convention is applicable to arbitration agreements that are made to resolve disputes arising from international trade between physical or legal persons who, at the time of agreeing, have their habitual place of residence in different Contracting States. The Convention applies to arbitral procedures and awards that are based on an agreement between parties[37].

This convention defines arbitration agreements, clarifies the concept of arbitration, and specifies the role of courts in dealing with arbitration matters. It also allows parties to determine the law applicable to the substance of the dispute and sets conditions for the recognition and enforcement of arbitral awards. The convention aims to provide a comprehensive framework for international commercial arbitration between European states, balancing the autonomy of parties with necessary legal safeguards and procedural mechanisms.

6.2. The Convention on the Recognition of Foreign Arbitral Awards, New York, 1958

This Convention deals with the recognition and enforcement of awards. These awards should arise from disputes between individuals or legal entities and considered as foreign awards in the state where their recognition and enforcement are sought[38].

It is important to note that the contracting state shall recognize and enforce arbitral awards as binding, following the procedural rules of the territory where the award is relied upon. The recognition or enforcement of arbitral awards under this Convention shall not be subject to more onerous conditions, higher fees, or charges than those imposed on the recognition or enforcement of domestic arbitral awards.[39]

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[37] *European Convention on International Commercial Arbitration*. 1964, Article 1. https://www.jus.uio.no/english/services/library/treaties/11/11-05/european-commercial-arbitration.html, 1 April 2024.

[38] *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.* New York, 1958, Article 1. https://www.newyorkconvention.org/english, 29 March 2024.

[39] *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.* New York, 1958, Article 3. https://www.newyorkconvention.org/english, 29 March 2024.

This agreement also included the conditions and procedures that the applicant must undertake to implement the arbitral award. It also clarified the cases that prevent the implementation of these arbitral awards.

It also permits countries to make a reservation for commercial disputes. This means that if a country chooses to make use of the commercial reservation, they are only required to apply the provisions of the convention to disputes that are recognized as commercial by their internal legal systems[40].

For example, Country A ratifies the New York Convention with a reservation for commercial disputes, meaning it only applies the Convention to disputes deemed commercial under its law, if a company from Country B wins an arbitral award against a company in Country A for a sales contract breach, Country A must enforce it. However, if the award is for a personal employment contract dispute, Country A is not required to enforce it, as it does not consider employment disputes commercial. This allows Country A to apply the Convention selectively based on its legal definitions.

Given that the number of countries participating in this agreement reached 196 countries[41], it is the most important global agreement in the field of alternative solutions to settle disputes, and it gives confidence and importance to the role of arbitration.

6.3. UNCITRAL Model Law on International Commercial Arbitration, 1985

The Model Law is a set of guidelines created to aid States in modernizing their laws on arbitral procedure, specifically for international commercial arbitration. It covers all aspects of the arbitral process, including the arbitration agreement, the composition and jurisdiction of the arbitral tribunal, court intervention, and the recognition and enforcement of the arbitral award. The Model Law has been accepted by States from all regions and different legal or economic systems around the world, reflecting a worldwide consensus on key aspects of international arbitration practice[42].

6.4. Convention on the settlement of investment disputes between states and nationals of other states (Washington convention), 1965

This convention was established to promote international cooperation for economic development, particularly in resolving investment disputes. It underscores the importance of providing mechanisms for international conciliation or arbitration, enabling contracting states and their nationals to settle investment-related conflicts.

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[40] Peter FENN*: Commercial conflict management and dispute resolution*. Spon Press, New York, 2012, 17.

[41] https://www.newyorkconvention.org/countries, 29 March 2024.

[42] https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration, 29 March 2024.

The goal is to create these facilities under the auspices of the International Bank for Reconstruction and Development.[43]

The convention establishes the International Centre for Settlement of Investment Disputes (ICSID). The Center's purpose is to provide facilities for the conciliation and arbitration of investment disputes between contracting states and nationals of other contracting states under the provisions of this Convention.[44]

Additionally, the convention outlines the Centre's jurisdiction over legal disputes arising from investments and clarifies the process and conditions under which disputes can be brought before the Centre for resolution.

6.5. United Nations Convention on International Settlement Agreements Arising from Mediation, New York, 2018, "Singapore Convention on Mediation"

This agreement is a tool to facilitate international trade and promote mediation as an alternative and effective way to settle commercial disputes. As a binding international instrument, it is expected to bring certainty to the private international framework.

This Convention is in line with the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (2018). This approach is intended to give states the option of adopting either the Convention, the Model Law as a standalone text, or both the Convention and the Model Law as complementary instruments of a comprehensive legal framework for mediation[45].

It establishes a procedure by which someone wishing to rely on a mediated settlement agreement can apply directly to the competent authority of a party to the convention to enforce the agreement. How ever it does not apply to mediated settlement agreements: those reached during judicial or arbitral proceedings and enforceable as a court judgment or arbitral award.[46]

6.6. The Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial matters Treaty, 2019

The Hague Convention, which was concluded at the Hague Conference on Private International Law, is a significant achievement in the field of private international law. It is an international agreement that aims to facilitate the implementation of

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[43] *Convention on the settlement of investment disputes between States and nationals of other States.* Washington, 1965, Preamble of the convention. https://sice.oas.org/dispute/comarb/icsid/w_conv1.asp, 1 April 2024.

[44] *Convention on the settlement of investment disputes between States and nationals of other States.* Washington, 1965, Article 1.

[45] https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements, 1 April 2024.

[46] *Consultation on the United Nations Convention on International Settlement Agreements Resulting from Mediation*. New York, 2018, Article 2.3. and 2.6.

foreign judgments in civil and commercial cases. The treaty consists of 32 articles that are compatible with many regional treaties and local legislation of member states. It is considered the most comprehensive treaty in the world for the implementation of foreign rulings. This agreement is an important milestone in the history of private international law. It was reached after significant efforts were made to come to a consensus on the matter[47].

The Convention will require countries to acknowledge and uphold civil and commercial judgments passed by the courts of other countries, without reviewing the details of the underlying dispute. This is similar to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. If the new Convention is widely accepted and implemented with fairness, it could significantly contribute to the stability and predictability of cross-border commercial transactions. This, in turn, can promote trade, investment, and the growth of the global economy[48].

The Convention reduces legal timeframes, costs, and risks in cross-border circumstances. It also supports a positive national and international environment for multilateral trade, investment, and mobility. There are 91 Contracting Parties, including both States and REIOs that are bound as a result of approval[49].

When it comes to resolving commercial disputes, it's important to work with trusted and reliable institutions. Luckily, there are several international centers that specialize in this area. One of the most respected is the International Chamber of Commerce in Paris, which provides efficient and effective arbitration services for commercial disputes. For investment disputes, the International Center for the Settlement of Investment Disputes in Washington is a top choice, it is an arbitration institution established in 1966 for legal disputes resolution and conciliation between international investors[50]. Meanwhile, the WIPO Arbitration and Mediation Center offers a range of affordable and convenient options for settling disputes related to intellectual property and technology. They provide mediation, arbitration, expedited arbitration, and expert award services to help parties avoid costly and time-consuming court battles. Don't let disputes disrupt your business – turn to these trusted institutions for help.

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47 Yahya Ikram IBRAHIM BADR: The 2019 Hague Convention for the Recognition and Enforcement of Foreign Judgments: A Comparative Study. *International Journal of Jurisprudence Judiciary and Legislation* Vol. 2, Issue 2, 2022, Egypt, 429.

48 David P. STEWART: The Hague Conference Adopts a New Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters. *American Journal for International Law* Vol. 113, Issue 4, 2019, 772. https://doi.org/10.1017/ajil.2019.53

49 https://www.hcch.net/en/instruments/conventions/status-table/?cid=137, 3 April 2024.

50 Imre MÁTYÁS: The structure of international investment law with a special view to resource nationalism. *Miskolc University Publications* XL/2, Hungary, 2022, 284.

Conclusion

At the end of this article, we have reached several results

1) The binding nature of rulings in international commercial cases varies depending on the adjudicating body. For instance, judicial rulings from foreign courts are binding on defendants belonging to states party to agreements recognizing the authority of those courts. Take, for example, a company based in France involved in a contractual dispute with a German company. If the French company initiates legal proceedings in a German court, the rulings issued by that court would hold binding authority over the French company, given the mutual recognition agreements between France and Germany.

   Similarly, arbitration awards are binding if the involved parties are bound by agreements to enforce such awards. Let's consider a scenario where two companies, one from the United States and the other from Japan, opt for arbitration to resolve any disputes arising from their contract. In the event of a dispute, if the arbitration panel issues an award in favor of the Japanese company, this award would be legally enforceable on the U.S. company if they are signatories to agreements such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Thus, the U.S. company would be obligated to comply with the arbitration award, exemplifying the binding nature of arbitration rulings.
2) Traditional court procedures may inadequately safeguard confidential information. In contrast, alternative dispute resolution mechanisms, like arbitration and mediation, provide enhanced privacy and confidentiality compared to court proceedings.
3) Enforcing court rulings in international trade can be challenging when parties are in different jurisdictions, especially if they aren't covered by treaties mandating foreign jurisdiction provisions. The Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters has limited reach, covering only 91 nations. In contrast, arbitration provides a more effective solution with enforceable and widely recognized decisions, thanks to the global adoption of the UNCITRAL Model Law and the participation of 196 countries in the New York Convention on the Recognition of Foreign Arbitral Awards.
4) Different cultures and legal systems necessitate diverse approaches to dispute resolution. Parties can choose the most suitable method, whether it is arbitration, mediation, or expert decision, based on the nature and complexity of the dispute.
5) In litigation, parties have limited control over the process and outcome, as decisions are ultimately made by the court. Appeals may prolong the resolution process, and court decisions are subject to judicial review.
6) When parties agree to resolve a dispute through arbitration, they can choose either institutional arbitration or private arbitration. The main difference between the two is that in private arbitration, the parties have the freedom to

select their own arbitrators and the rules that will govern the proceedings. On the other hand, in institutional arbitration, the parties must follow the arbitration rules and regulations set by the relevant arbitration organization or center.

7) ADR processes provide parties with greater control over the process and more opportunity to craft creative solutions tailored to their needs. ADR outcomes are often final and binding especially arbitration, with limited options for appeal.
8) In practice, it is very important to have a clearly defined dispute resolution clause. This clause specifies the method that will be used to resolve any disputes that may arise during the duration of the contract. Neglecting to include a robust dispute resolution clause can lead to expensive legal issues and jeopardize the collaborative partnership between the parties. Conversely, a well-established clause provides clarity and certainty to the parties involved, establishing transparent guidelines for handling any potential disputes.

To summary, effectively dealing with international commerce requires strong mechanisms for dispute resolution and enforcement. This article highlights the crucial role of international treaties in shaping these mechanisms. It emphasizes options such as litigation (the ordinary method) and alternative dispute resolution (ADR) methods such as negotiation, arbitration, and mediation. The article explains the varying nature of rulings across different adjudicating bodies and emphasizes the importance of clear dispute-resolution clauses in contracts to avoid legal complications. Furthermore, the article shows how ADR mechanisms offer advantages over traditional litigation, particularly in safeguarding confidentiality and providing parties with greater control over the resolution process. Ultimately, building trust and stability in the global marketplace requires cooperation, transparency, and a steadfast commitment to upholding mutually agreed-upon terms. By adhering to these principles and embracing effective dispute-resolution practices, parties can navigate international trade disputes efficiently while preserving the integrity of their contractual relationships.

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