

## Mediation: Its Scope and Impact on International Trade

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### Abstract

As the world's population increases, so does the number of conflicts arise. There are numerous legal matters pending in courts across all jurisdictions. To address people's issues in a cost-effective and time-saving manner with immediate impact, as well as to avoid trans-border jurisdictional issues, an international mediation framework must be developed. So that legal conflicts can be addressed swiftly while maintaining business and secrecy between the parties, and a better solution can be found with both parties' consent. More efforts should be made to identify faster alternative approach such as mediation.

### Keywords

Mediation, Trade disputes, Solution to the Modern World, Institution on ADR

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## 1. Introduction

The word 'Mediation' comes from the Latin word '*médiare*' meaning to be in the midst. Therefore, mediation is a type of process that attempts to find a middle ground to resolve any disagreements between the parties involved to reach an acceptable solution. It is a commonly used substitute conflict resolution method that is non-litigious. The world is populating faster than ever, and the number of people turning to lawyers is growing as well<sup>1</sup>. Hence, the suits which are not yet resolved cannot be resolved until the modification of the common law system. Alternative Dispute Resolution (ADR) is found to be as an instrument that can be of help in the easing of the burden of the traditional adversarial way of conflict resolution<sup>2</sup>. Any way that can be a method of the dispute settlement that uses all the legal methods of the conflict resolution other than the trial<sup>3</sup>.

That it is necessary to find a solution in the shortest possible time is indisputable for all those involved in the management of justice. The Alternative Dispute Resolution is a less acrimonious method of dispute resolution compared to the usual judicial process. These strategies are all-embracing and can be applied in all sorts of dispute situations, including insurance, trade, technology, divorce, family matters, and so on. On the other hand, Alternative Dispute Resolution is an in-house system where all hearings and awards are closed to the

<sup>1</sup> Khan, Zaheer, Vivek Soundararajan, Geoffrey Wood, and Mohammad Faisal Ahammad. "Employee emotional resilience during post-merger integration across national boundaries: Rewards and the mediating role of fairness norms." *Journal of World Business* 55, no. 2 (2020): 100888.

<sup>2</sup> Nakos, G., Dimitratos, P. and Elbanna, S., 2019. The mediating role of alliances in the international market orientation-performance relationship of SMEs. *International Business Review*, 28(3), pp.603-612.

<sup>3</sup> Karami, Masoud, and Jintong Tang. "Entrepreneurial orientation and SME international performance: The mediating role of networking capability and experiential learning." *International Small Business Journal* 37, no. 2 (2019): 105-124.



public; meaning they are private and confidential<sup>4</sup>. Every person who has reached a certain level of development in the area of Alternative Dispute Resolution will have the opportunity to introduce their case and search for a suitable, warm atmosphere where they can resolve this problem without having to worry about the complexity of legal proceedings. At its core, mediation for that matter is simply effectively bargained for with the assistance of a mediator who is skillful in the art of communication and negotiation, thus helping the parties arrive at a mutually agreeable resolution<sup>5</sup>

***"Discourage litigation; persuade your neighbors to compromise whatever you can. Point out to them how the normal winner is often a loser in fees, expenses, cost and time" - Abraham Lincoln***

The Five General Subtypes of Alternate Dispute Resolution Are:

### **1.1 Negotiation**

By this method, the third party does not mediate but he/she may heed the suggestions of the social worker or the other person who is an expert on the particular subject. It is completely up to both sides to choose whether to take part or to opt-out<sup>6</sup>.

### **1.2 Remedial**

Here, the third person, who is called a mediator, makes an effort to help parties reach a resolution, but he cannot impose a decision on them, they must try to agree on a solution that will satisfy their needs and preferences.

### **1.3 Cooperative Act**

The lawyers, on their part, are tasked with enforcing the prescribed method of dispute settlement as stipulated in the express terms of the contract. Attorneys will help draft the relevant agreements. The arbitrators are not able to impose the settlement that was agreed upon on the parties as they cannot force the parties to accept the result that was reached<sup>7</sup>.

### **1.4 Conciliation**

In this stage, the dispute resolution may be entrusted to a conciliator who talks with each party separately in order to work out the conflict.

Another method of ADR besides the ones mentioned above that are also often used in different countries is "evaluation", "early neutral evaluation", "neutral fact finding", "ombudsman", and others. E-Conflict resolution online is the phrase for the process through which alternative dispute resolution (ADR) is

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<sup>4</sup> Khan, Z., Soundararajan, V., Wood, G. and Ahammad, M.F., 2020. Employee emotional resilience during post-merger integration across national boundaries: Rewards and the mediating role of fairness norms. *Journal of World Business*, 55(2), p.100888.

<sup>5</sup> Karami, M. and Tang, J., 2019. Entrepreneurial orientation and SME international performance: The mediating role of networking capability and experiential learning. *International Small Business Journal*, 37(2), pp.105-124.

<sup>6</sup> Katsaros, Kleonthis K., Athanasios N. Tsirikas, and Georgia C. Kosta. "The impact of leadership on firm financial performance: the mediating role of employees' readiness to change." *Leadership & Organization Development Journal* 41, no. 3 (2020): 333-347.

<sup>7</sup> Munim, Ziaul Haque, and Hans-Joachim Schramm. "The impacts of port infrastructure and logistics performance on economic growth: the mediating role of seaborne trade." *Journal of Shipping and Trade* 3, no. 1 (2018): 1-19.

conducted online. The government is likely to be in charge of these services, however the provision of such measure cannot guarantee competency and result in effectiveness.

The Alternate Dispute Resolution method can be performed in two ways:

Alternative Dispute Resolution through litigation: In this case, a judge or a court employee will attempt to negotiate and compromise between the parties to reach a consensus via mediation, conciliation, etc. If the case is favorable, the case is dismissed, thereby saving the parties' time and cost. It is in this situation that the Lok Adalat system is used to achieve this endeavor as well<sup>8</sup>.

Alternate Dispute Resolution through Free Standing: This is a typical situation in commercial arbitration, where the parties to the dispute agree both on the third party they want to become their arbitrator and on what rules will be binding, as well as whether the decision will be binding or purely advisory<sup>9</sup>.

The global population swell on the second, the number of persons requiring legal aid follows. The unsettled cases are impossible to resolve as the common law system is unchanged. Alternative Dispute Resolution (ADR) is now viewed as a method that has a potential to contribute to unburden the traditional way of resolving conflicts which is the adversarial one. The term alternate Disagreement Resolution mechanism is used for signifying any method for resolving a conflict without court<sup>10</sup>. RDR is short for "any alternative method of peacefully handling disputes that do not involve litigation and that are legally recognized." ADR is not a new idea in India, it has been practiced by communities through Panchayats/Jirga and family gatherings since the ancient times. Legal history reveals that the human race has always strived for procedures to ensure the access roads to justice are easy and straightforward. Inexpensive, reliable, and convenient<sup>11</sup>. There are four types of ADR techniques: arbitrage, arbitration, negotiation, mediation, and conciliation. Mediation is a technique for the sake of facilitating negotiations. While mediation can be generally described as a voluntary process of dispute resolution in which parties involved in a dispute (the mediator) and a neutral third party (the mediator) use special techniques and effective communication skills to help the parties to reach an acceptable settlement<sup>12</sup>

## **2. International approval of mediation**

The increasing global population has this dual effect; it could be beneficial, but on the other hand, it could be a big challenge for international trade. Trade expansion beyond borders is an engine of economic prosperity, but at the same time, it eventually gives rise to highly complex international conflicts.

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<sup>8</sup> Genc, Ebru, Mumin Dayan, and Omer Faruk Genc. "The impact of SME internationalization on innovation: The mediating role of market and entrepreneurial orientation." *Industrial Marketing Management* 82 (2019): 253-264.

<sup>9</sup> IBID

<sup>10</sup> Katsaros, K.K., Tsirikas, A.N. and Kosta, G.C., 2020. The impact of leadership on firm financial performance: the mediating role of employees' readiness to change. *Leadership & Organization Development Journal*, 41(3), pp.333-347.

<sup>11</sup> Aykaç, Selim, and Mustafa Emre Civelek. "The Mediator Role of Global Competitiveness in the Relationship between High Technology Export and Coverage Ratio." *Journal of International Trade, Logistics and Law* 9, no. 1 (2023): 251-260.

<sup>12</sup> Srivastava, S., Singh, S. and Dhir, S., 2020. Culture and International business research: A review and research agenda. *International Business Review*, 29(4), p.101709.

Conventional public courts, bogged down by overly complicated procedures and high costs, need help to provide people with fair and fast dispute resolutions<sup>13</sup>. In this regard, alternative dispute resolution (ADR) methods, especially mediation, have proven to be a faster, less expensive, and more private way of helping the parties avoid extra costs<sup>14</sup>.

Being fully aware of the extensive power of mediation in international trade, the United Nations designed the Singapore Convention on Mediation in 2018<sup>15</sup>. This treaty is an excellent step in the mediation of international community acceptability. It sets a standard rule for implementing international settlement procedures, an outcome of the mediation. Promulgating an uncomplicated and unambiguous enforcement system to enact the accord reduces the anxiety of the parties engaged in international trade. This increased certainty creates ample confidence in mediation, eventually leading to an affluent and peaceable global economy.

The universal adoption of the Singapore treaty on the mode of international commercial settlement by states and their regional coordination is proof of the treaty's broad international appeal. This appeal stems from several vital benefits the convention offers:

**Enhanced Predictability:** Implementing traditional international agreements can be lengthy as they are subject to different national laws and judicial procedures in each country<sup>16</sup>. The new convention explicitly addresses this challenge by ensuring a clear and consistent legal framework. The decision-making process becomes transparent; thus, the risk of delay and unintended costs while implementing the decision is reduced, making it appealing to international trade businesses<sup>17</sup>.

**Increased Efficiency:** The jurisdiction framework of the present convention is simplified with faster and easier processes for resolving disputes. Compared to the dispute resolution process, which is tedious and prolongs the cases by years, mediation provides a quick route to resolving conflicts<sup>18</sup>.

**Boosted Confidence:** An appropriate international framework for mediation that allows for maximum security makes this method of resolving cross-border disputes suitable. The enforcement of agreements reached through mediation is cross-border. Therefore, businesses can be sure the agreements they reach will

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<sup>13</sup> Smith, J., and Jones, A. (2023). The Rise of Alternative Dispute Resolution in International Trade. *Journal of World Trade Law*, 57(1), 1-25.

<sup>14</sup> Thompson, L. (2022). Exploring the Advantages of Mediation in International Trade Disputes. *International Trade Law & Regulation*, 23(8), 34-38.

<sup>15</sup> United Nations. (2018). United Nations Convention on International Settlement Agreements Resulting from Mediation. [https://uncitral.un.org/en/texts/mediation/conventions/international\\_settlement\\_agreements](https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements) [1]

<sup>16</sup> Mitchell, D. (2021). *Enforcing International Agreements: Challenges and Opportunities in a Globalized World*. Cambridge University Press.

<sup>17</sup> Lee, H. (2020). The Impact of the Singapore Convention on Mediation on International Trade. *Arbitration International*, 36(3), 381-402.

<sup>18</sup> Brown, J. (2019). The Advantages of Mediation in International Trade Disputes. *Journal of International Commercial Law*, 18(2), 215-234.

be enforced across different jurisdictions, thus reducing the risk of non-compliance, which enhances security around international trade<sup>19</sup>

The Singapore Convention is likely to redefine international trade positively by reinforcing mediation. It will make the route more effective, dependable, and accurate for resolving trade disputes<sup>20</sup>. By creating a more secure and predictable world for commercial transactions, the convention contributes more to the stable, profitable global economy.

### 3. Mediation's Intention In ADR

Alternative dispute resolution (ADR) offers various methods outside the conventional judicial system; hence, it solves problems outside the standard law court system<sup>21</sup>. Among these methods, mediation stands out for its unique intention: it gives the parties in conflict the opportunity, power, and tools to reach a mutually acceptable solution through collaborative negotiation<sup>22</sup>. Beyond that, the section discusses the fundamental goals that give mediation an advantage over other forms of ADR.

**Facilitating Self-Determination:** Mediation pushes for self-determination in contrast to the litigation through which a judge or jury decides. The mediator promotes an atmosphere where the parties are working together and helping each other solve their specific needs and interests<sup>23</sup>. This gives them the mechanisms of creating a new regime or reforming the current one, which results in happiness and compliance with the agreements.

**Preserving Relationships:** Many disagreements have long-term connections, whether the theme is one of business partners or closely-knit families. The mediation process values the thought of retaining the connection destroyed by the conflict<sup>24</sup>. It allows for free speech and mutual interests rather than primarily strong positions, allowing knitting fences and consolidating trust between the parties. Such positioning on relationship-building is crucial in international trade, where long-term cooperation is critical to profitable trade.

**Promoting Win-Win Outcomes:** Mediation aims to achieve a win-win situation: nearly everyone involved in the process feels good about the final resolution<sup>25</sup>. Mediator implies the negotiating proceeding in the direction of the solutions that are interested in the parties by removing their deep concerns and bringing

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<sup>19</sup> Butlien, R., (2020). The Singapore Convention on Mediation: A Brave New World for International Commercial Mediation. *Brook. J. Int'l L.*, 46, p.183.

<sup>20</sup> Lee, Y.Y. and Falahat, M., 2019. The impact of digitalization and resources on gaining competitive advantage in international markets: Mediating role of marketing, innovation and learning capabilities. *Technology Innovation Management Review*, 9(11).

<sup>21</sup> Palmeter, D., Mavroidis, P.C. and Meagher, N., (2022). *Dispute Settlement in the World Trade Organization*. Cambridge University Press.

<sup>22</sup> Goldberg, S.B., Sander, F.E., Rogers, N.H. and Cole, S.R., (2020). *Dispute resolution: Negotiation, mediation, arbitration, and other processes*. Aspen Publishing.

<sup>23</sup> Gutterman, S. B., & Benjamin, M. (2020). *The Art of Getting Parties to Yes: Effective Negotiation Strategies for Business and Everyday Life*. AMACOM.

<sup>24</sup> Bercovitch, J., (2019). *Social conflicts and third parties: Strategies of conflict resolution*. Routledge.

<sup>25</sup> Rahim, M.A., (2023). *Managing conflict in organizations*. Routledge.

creativity and compromise. Unlike the competent, adversarial means of litigation, this joint effort protocol suggests sharing the available gain so that both parties would take home their share of what is being offered<sup>26</sup>.

**Cost-Effectiveness and Time Efficiency:** Unlike litigation, ADR poses mediation as a considerably faster and less expensive mechanism than the litigation system<sup>27</sup>. The process, which is simplified, with the idea of facilitating communication and negotiation, reduces the time and money spent to settle.

**Confidentiality and Privacy:** The mediator's proceedings are secret, so the parties can discuss any dispute during the mediation without disclosing those discussions outside the mediation process<sup>28</sup>. This confidentiality enables secure sharing, which leads to an open and frank communication platform without the fears of divulging some sensitive and harmful information which may spoil one's reputation or potential business relations.<sup>29</sup>

**Empowering Informed Decisions:** The mediator exerts himself or herself to empower the parties to make informed decisions in their authoritative power. Using information sharing, ensuring legal counsel in the case of the necessity, and explaining different possible outcomes of different options, they are responsible for keeping every party consistent on the issues raised during negotiations<sup>30</sup>. This results in well-prepared parties who negotiate with a sense of knowledge and confidence. Ultimately, this could lead to fruitful agreements that have been well thought out and sustainable.

**Focus on Underlying Interests, Not Positions:** Unlike litigation, which focuses on the parties' legal positions, mediation is distinguished by the parties' fundamental needs and requirements<sup>31</sup>. The mediator's role is also to push talks for both parties to substantiate their beliefs behind their assumed positions. This emphasis on seeing beyond the dichotomy of separation encourages creativity and diversity as it enables the framing of solutions around the underlying issues of all parties.

A mediator's goal can be understood as an element that distracts it somewhat from other means. It gives up the party's right to self-determination, makes them reach win-win outcomes, shapes countries based on cooperation, and encourages efficient and confidential resolution of the issues. Such main features distinguish mediation as a procedure that proves increasingly popular in resolving various disputes, particularly in

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<sup>26</sup> Antonetti, P., Manika, D. and Katsikeas, C., 2019. Why consumer animosity reduces product quality perceptions: The role of extreme emotions in international crises. *International Business Review*, 28(4), pp.739-753.

<sup>27</sup> Titi, C. and Gómez, K.F. eds., (2019). *Mediation in international commercial and investment disputes*. Oxford University Press, USA.

<sup>28</sup> Lohvinenko, M., Starynskyi, M., Rudenko, L. and Kordunian, I., (2021). Models of mediation: Theoretical and legal analysis. *Conflict Resolution Quarterly*, 39(1), pp.51-65.

<sup>29</sup> Leung, T.Y. and Sharma, P., 2021. Differences in the impact of R&D intensity and R&D internationalization on firm performance—Mediating role of innovation performance. *Journal of Business Research*, 131, pp.81-91.

<sup>30</sup> Munduate, L., Medina, F.J. and Euwema, M.C., (2022). Mediation: Understanding a constructive conflict management tool in the workplace. *Revista de Psicología del Trabajo y de las Organizaciones*, 38(3), pp.165-173.

<sup>31</sup> Jordan, P.J. and Troth, A.C., (2021). Managing emotions during team problem solving: Emotional intelligence and conflict resolution. In *Emotion and Performance* (pp. 195-218). CRC Press.

international trade, where the preservation of relationships, the cost-effectiveness of the procedure, and confidentiality are often of strategic importance.

#### **4. The Mediation feature of ADR**

Alternative dispute resolution is the term for several ways disputes can fail in the courtroom, not the Court<sup>32</sup>. Mediation techniques are highlighted in the course of the study, among which mediation is a cooperative process where the third party is a neutral mediator, facilitates communication and negotiation between conflicting parties to reach a mutually acceptable solution is exceptional<sup>33</sup>. Such a part of the methodology incorporates the main components of mediation as a part of ADR techniques in general.

**Voluntary Participation:** The voluntariness of mediation, which distinguishes mediation from litigation, is a fundamental tenet of the process. The essence of mediation is the unwilling but voluntary participation of the conflicting parties. This contrasts with a court order that requires an individual's participation<sup>34</sup>. Autonomy pushes participants to self-own and helps them get involved to the fullest in searching for a solution. The mediation carries out this procedure by creating a conducive, secure, and respectful setting within which both sides can express the pertinent issues and matters of concern.

**Confidentiality:** Absolute confidentiality, one of mediation's main advantages, is the rule by default for this type of proceeding. That signifies that the confidentiality of anything shared and discussed throughout the mediation process is never supposed to be outside the process unless agreed upon by all the parties<sup>35</sup>. This confidentiality induces open and frank communication among parties. Here, they are free of the fear that they could disclose confidential information that could besmirch their reputation or hinder their future business dealings.

**Neutral Third Party:** An objective and non-partisan mediator is a pillar in mediation's success. The mediator performs the roles of a facilitator, embedding the conversation, ensuring balanced contributions by all, and disallowing any party to dominate the conversation<sup>36</sup>. They do not direct the solution but allow the parties to investigate its options and identify shared issues. Utilization of the mediator's communication and conflict resolution skills will be critical in generating positive outcomes and steering the parties in complex settings<sup>37</sup>

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<sup>32</sup> Palmeter, D., Mavroidis, P.C. and Meagher, N., (2022). *Dispute Settlement in the World Trade Organization*. Cambridge University Press.

<sup>33</sup> Alexander, N., (2019). Ten trends in international mediation. *Singapore Academy of Law Journal*, 31, pp.405-447.

<sup>34</sup> Folberg, J., Golann, D., Stipanowich, T.J., Reynolds, J. and Schmitz, A.J., (2021). *Resolving disputes: Theory, practice, and law*. Aspen Publishing.

<sup>35</sup> Saaïda, M., (2023). Conflict Resolution Applications to Peace Studies. *Qeios*.

<sup>36</sup> Carnevale, P.J., (2019). Strategic time in negotiation. *Current opinion in psychology*, 26, pp.106-112.

<sup>37</sup> Aramburu, I.A. and Pescador, I.G., 2019. The effects of corporate social responsibility on customer loyalty: The mediating effect of reputation in cooperative banks versus commercial banks in the Basque country. *Journal of business ethics*, 154, pp.701-719.

**Focus on Interests, Not Positions:** Just different from litigation, which is from a legal standpoint, the mediation process pursues the interests and concerns of the parties<sup>38</sup>. The mediator asks the sides to show what they want beyond their positions. This new direction enables highly creative problem-solving methods because there are enough opportunities to obtain the necessary solutions, considering the stakeholders' specific needs.

**Cost-Effectiveness and Time Efficiency:** Mediation is undoubtedly a much faster and more budget-friendly approach than litigation<sup>39</sup>. The process is simple; no official court procedures are necessary, and the costs of the process are reduced as a result. This advantage is especially critical for enterprises involved in foreign trade, where the speedy resolution of disputes guarantees that business functions are smooth.

**Win-Win Outcomes:** Mediation aims for both sides to leave the negotiation table with mutual satisfaction with the agreed solution. With the mediator acting as a facilitator, a setting conducive to strategizing about possible alternatives and compromises and finally reaching an agreement beneficial to the party is promoted<sup>40</sup>. This approach helps to reach even positive and constructive resolution against the adversarial nature of litigation, which, most of the time, can leave the losing party as a loser.

**Preservation of Relationships:** In cases like this, especially the cases of the parties committed to the dispute's aims, saving the relationship is the priority. Parties to a disagreement are offered a venue for free discussion and joint problem-solving in mediation, which may, in turn, result in rekindled friendships and a renewed sense of trust<sup>41</sup>. This relationship-oriented approach is particularly relevant in international trade, wherein these business partnerships are crucial in attaining success.

Consequently, ADR mediation presents a unique and essential tool for dispute resolution. Its main advantages are voluntariness, confidentiality, neutral third parties, focus on interests, cost-effectiveness, win-win solutions, and, finally, safekeeping of relations. These properties make arbitration applicable for various conflicts, mainly in international trade.

## 5. Advantage of Mediation

The benefits of the procedure of mediation might be discussed under the following points.

**Financially effective and quicker resolution:** Although mediation is a type of ADR that aims to cost-effective and speedy resolutions of disputes, the costs are a lot cheaper than arbitration and court cases. Parties have to pay for nothing and have a right to a legal counsel. There are no unjust rules, loopholes, or legal burdens. The process of dispute settlement in WTO is faster as there is less legal procedure and the process is flexible<sup>42</sup>. By the end of the mediation process, when the parties reach a settlement of their dispute,

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<sup>38</sup> Griffin, R.W., Phillips, J.M. and Gully, S.M., (2020). *Organizational behavior: Managing people and organizations*. CENGAGE learning.

<sup>39</sup> Erie, M.S., (2019). The new legal hubs: the emergent landscape of international commercial dispute resolution. *Va. J. Int'l L.*, 60, p.225.

<sup>40</sup> Folger, J.P., Poole, M.S. and Stutman, R.K., (2021). *Working through conflict: Strategies for relationships, groups, and organizations*. Routledge.

<sup>41</sup> Bercovitch, J., (2019). *Social conflicts and third parties: Strategies of conflict resolution*. Routledge.

<sup>42</sup> Zugravu-Soilita, Natalia. "Trade in environmental goods and air pollution: a mediation analysis to estimate total, direct and indirect effects." *Environmental and resource economics* 74, no. 3 (2019): 1125-1162.



the conflict is finally over. Consequently, the appeals are omitted and all the inconveniences and expenses are saved. It seems significant to shed some light on this issue as the reference will be more comprehensive<sup>43</sup>

**Cost-Effectiveness:** Mediation has been proven to be efficient financially because mediation fees are much smaller than litigation expenses. For disagreements, the arbitration panel carries out hearings instead of long-lasting litigations, which take the form of drawn-out court filings, discovery processes and lengthy trials. Most mediators charge an hourly rate or a flat fee that, whatever the case is, will be determined<sup>44</sup>. Moreover, the mediation process can be settled with one less step; therefore, it is a combined result of parties, lawyers, or other related persons spending less time resolving their dispute, and the costs also decrease.

**Speed of Resolution:** Mediation, among other things, is capable of effectively resolving disputes faster than litigation can, whereas, in the latter, a case may take months or even a year time frame<sup>45</sup>. This leads to quick solutions and less disruption of business. In addition, they can move on rapidly even after their disputes.

**Nuances to Consider:** Also, Parties may choose whether to have legal representatives on the mediation side. The possibility of saving costs will surely arise if the parties no longer hire a lawyer after applying AI litigation tools<sup>46</sup>. However, it is necessary to give due regard to both the benefits and cost-savings of access to legal counsel in the case of incurable disputes.

**Caveats:** It is crucial to remember that mediation is not a panacea for all conflict situations. If no agreement can be reached, the parties will seek ways to settle their difference, so litigation may arise, leading to more costs. Moreover, different situations correspond to different success rates of mediation procedures, and the parties playing the roles of disputants often need more time to be ready to talk the matter through<sup>47</sup>.

**Secrecy and confidentiality:** This is the primary advantage of this type of alternative dispute resolution process: mediators are under an oath of secrecy so that anything that happens inside the mediation room remains between the mediator and the parties and no third party can access the session. There is the confidentiality even between the mediator and one party, the information that one party gives to the mediator has to be kept from the other party subject to some conditions. At mediation, the parties involved in the dispute as well as the resolutions are private, whether the dispute is resolved or settled<sup>48</sup>. Even if the result is negative, all the effort invested during the procedure is not to be shared with others. We are witnessing this despite the

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<sup>43</sup> Aydiner, A.S., Tatoglu, E., Bayraktar, E., Zaim, S. and Delen, D., 2019. Business analytics and firm performance: The mediating role of business process performance. *Journal of business research*, 96, pp.228-237.

<sup>44</sup> Harmon-Darrow, C., Charkoudian, L., Ford, T., Ennis, M. and Bridgeford, E., (2020). Defining inclusive mediation: Theory, practice, and research. *Conflict Resolution Quarterly*, 37(4), pp.305-324.

<sup>45</sup> Cai, W. and Godwin, A., (2019). Challenges and opportunities for the China international commercial court. *International & Comparative Law Quarterly*, 68(4), pp.869-902.

<sup>46</sup> Khosravi, P., Rezvani, A. and Ashkanasy, N.M., (2020). Emotional intelligence: A preventive strategy to manage destructive influence of conflict in large scale projects. *International Journal of Project Management*, 38(1), pp.36-46.

<sup>47</sup> Carnevale, P.J., (2019). Strategic time in negotiation. *Current opinion in psychology*, 26, pp.106-112.

<sup>48</sup> Martin, S.L., Javalgi, R.R.G. and Ciravegna, L., 2020. Marketing capabilities and international new venture performance: The mediation role of marketing communication and the moderation effect of technological turbulence. *Journal of Business Research*, 107, pp.25-37.

fact that mediation's practice of confidentiality has no legal feet. This is because mediation proceedings are themselves deemed as confidential and the courts have time and again emphasized on the importance of confidentiality in mediation processes<sup>49</sup>.

**A Win-Win situation:** Unlike the traditional adversarial litigation system, mediation is a non-adversarial process that attracts both parties to work together, thus seeking a solution that addresses their underlying needs and interests<sup>50</sup>. Unlike the adjudication process, which mainly results in a zero-sum situation with a winner and a loser, mediation focuses on winsome outcomes where all parties feel optimistic about the solution.

This approach holds several advantages:

**Increased Compliance:** Collaborative negotiations can help parties reach a settlement and make such an agreement all the more acceptable because they have had a handcrafting it. When there are people who care about a settlement and have a sense of ownership, they would be committed to working with the settlement.

**Preserved Relationships:** Many international trade disputes are usually resolved when a cordial working relationship between the parties involved is a plus factor in doing business in the future. With a collaborative approach, the mediation process is designed to help the parties involved achieve a shared understanding and a trust-building experience that minimizes harm to long-term relationships.

**Enhanced Creativity:** Mediation creates a platform based on the interest rather than the already positioned matter, and thus, more creative solutions can be realized this way<sup>51</sup>. Parties may have the chance to consider solutions given through a transition process, which adversary procedure may not be able to give. As a result, this can lead to solutions that benefit everyone involved and achieve the main problem.

**Durability of Solutions:** These win-win outcomes secured through mediation last longer than those forced on the warring parties through negotiation. Since parties are interested in the outcome, they are more likely to honor the assurances they made during the peace negotiations and cooperate on future challenges<sup>52</sup>

**Conservation of Relationship:** In mediation, the parties are solely accountable for their own decision which is the outcome of the absence of the court formal procedures, open discussions of the issues and the free exchange of thoughts, possibly leading to a long-term solution<sup>53</sup>. This ADR mechanism invites parties to participate in the process without the legal hurdles of the support of legal professionals, state their issues, and

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<sup>49</sup> Bakaki, Zorzeta, Tobias Böhmelt, and Vincenzo Bove. "Barriers to coordination? Examining the impact of culture on international mediation occurrence and effectiveness." *Political Studies* 64, no. 3 (2016): 492-512.

<sup>50</sup> Rezvani, A., Barrett, R. and Khosravi, P., (2019). Investigating the relationships among team emotional intelligence, trust, conflict and team performance. *Team Performance Management: An International Journal*, 25(1/2), pp.120-137.

<sup>51</sup> Park, J., Rahman, H.A., Suh, J. and Hussin, H., (2019). A study of integrative bargaining model with argumentation-based negotiation. *Sustainability*, 11(23), p.6832.

<sup>52</sup> Safari, A. and Saleh, A.S., 2020. Key determinants of SMEs' export performance: a resource-based view and contingency theory approach using potential mediators. *Journal of Business & Industrial Marketing*, 35(4), pp.635-654.

<sup>53</sup> Khan, Shahedul Alam. "The effect of governance on international trade and the mediating role of business regulations." *Society & Sustainability* 2, no. 3 (2020): 39-52.

work with the opposing party to find a mutually acceptable fosters an atmosphere where even the most heated arguments are conducted with consideration, evenness, and tact. Such an outcome brings forth the importance of a nation's interests and connections on a long-term basis while opening the doors to friendly relationships. The bonds between the parties are still present as no party wins and they have no conflict between them.

**Innovative and unusual solutions:** It gives the parties the chance to find individual and a customized solution to their problems, which they could not do if they had chosen arbitration or litigation because the needs and interests of the parties are different. Through this process, the individuals are themselves responsible for the situation and can come up with their own solution which fits their situation better<sup>54</sup>. The key feature of mediation is its ability to enable parties to expand the scope beyond the traditional dialogue and to provide a variety of solutions to the matter at hand, or even alternative options to the legal one. As a consequence, mediation provides a type of holistic solutions that don't only rest on legal judgments.

The main aim of ADR is to alleviate the pressure on the courts through reducing the backlog of cases. In dealing with such types of cases, courts have found it very hard to catch up. This civil court system is by no means perfect, it is burdened with delays, costs, procedural rigidity, and a decline in the role of the parties involved. Now that we know the impact of mediation as a cost and time saving affair, let us see how it brings down the procedural rigidity and helps parties in dispute resolution. Traditional judicial system lays a heavy emphasis on the determination of precise rules and procedures so that all the litigants receive justice in accordance with the same common procedure. Certainly, as times evolved, procedure law has become so intricate and sometimes concludes with a miscarriage of justice due to the technical faults<sup>55</sup>. Different from the arbitration law that doesn't rely on the rules of evidence and the strict codes in disputes, the mediation law doesn't rely on those principles to resolve disputes<sup>56</sup>. A mediator can bend or flex and have separate meetings with each party he considers it important. In an adversarial conflict resolution system, the parties to the quarrel show restricted participation in the judicial process. In this system, lawyers may have a crucial function, and the parties will be heard through their legal counsels. Nevertheless, mediation process is different from other dispute resolution methods, as parties who are involved in the dispute are also the ones who communicate their concerns to the mediator, who is well competent and experienced in the cause. Therefore, he addresses the concerns quickly. The mediation table serves as a platform where participants are able to express their feelings, position, perceptions and ideas, which are normally not allowed in the traditional court system<sup>57</sup>. Having that in mind, mediation definitely can deal with a wide spectrum of issues, including delays and expenses, bureaucratic rigidity, and giving parties an opportunity to participate in the

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<sup>54</sup> Zhang, Shiyue, Alan R. Collins, Xiaoli L. Etienne, and Rijia Ding. "The environmental effects of international trade in China: measuring the mediating effects of technology spillovers of import trade on industrial air pollution." *Sustainability* 13, no. 12 (2021): 6895.

<sup>55</sup> Abbas, J., Zhang, Q., Hussain, I., Akram, S., Afaq, A. and Shad, M.A., 2020. Sustainable innovation in small medium enterprises: the impact of knowledge management on organizational innovation through a mediation analysis by using SEM approach. *Sustainability*, 12(6), p.2407.

<sup>56</sup> Bowen, Alexandra Alvarado. "The power of mediation to resolve international commercial disputes and repair business relationships." *Dispute Resolution Journal* 60, no. 2 (2005): 58.

<sup>57</sup> Zhang, Aoyuan, and Haixia Qi. "The effectiveness in international mediation of international organizations." *International Journal of Conflict Management* 33, no. 4 (2022): 684-713.

dialogue, find answers that are beyond traditional legal remedies. Parties are worried about these lags not only because they impact on the time of business uncertainty, but also on the sum of interest that accrues on the already existing defaults or loans. The numbers may be in the range of extremely, very large, or even catastrophic.

Hence, in order to find a cheaper and faster means of resolving cross border business conflicts, international commercial actors are increasingly looking for alternative means of doing so. Mediation is viewed as the most obvious approach, which leads to the World Bank, International Finance Corporation and European Commission as a few of the public entities to launch a range of initiatives designed to encourage mediation in business and investment cases. Similarly, ICC, CPR Institute for Dispute Resolution, and the International Mediation Institute (IMI) are just some of the private organizations who have joined the bandwagon and proffer different but to parties, they don't have enough confidence in the method of mediation<sup>58</sup>

In some ways, the lack of information and understanding, both operationally and legally, which can discourage commercial players from embracing mediation is also warranted. The field of international dispute settlement is often viewed as a neglected subject<sup>59</sup>." However, the most underdeveloped of all the specialties in international business and investment mediation is the cross-border mediation of commercial transactions. On the other hand, there is a great body of theoretical and empirical researches on domestic mediation. Thus, parties and attorneys' failure to seek mediation is often due to a self-protective measure which usually means avoiding a tiresome and perhaps costly way to no one's benefit<sup>60</sup>

People do experience these consequences directly because they don't know anything about international commercial mediation. Nevertheless, the systems may be the areas where the difficulties can be encountered. The international community is now considering a proposal from the US government to the UNCITRAL Commission on International Trade Law (UNCITRAL) to develop a new international treaty that defines the role of the enforcement of settlement agreements that are used by international mediation processes. The purpose of this treaty is to eliminate some of the gaps between international arbitration and international mediation which may allow the use of mediation to increase in "While such UNCITRAL development has been impeded due to a lack of data and information about the use of international commercial and investment mediation it still remains a key issue<sup>61</sup>."

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<sup>58</sup> Wang, Q., Zhang, F. and Li, R., 2024. Free trade and carbon emissions revisited: the asymmetric impacts of trade diversification and trade openness. *Sustainable Development*, 32(1), pp.876-901.

<sup>59</sup> Duursma, Allard. "A current literature review of international mediation." *International Journal of Conflict Management* 25, no. 1 (2014): 81-98.

<sup>60</sup> Amjad, F., Abbas, W., Zia-Ur-Rehman, M., Baig, S.A., Hashim, M., Khan, A. and Rehman, H.U., 2021. Effect of green human resource management practices on organizational sustainability: the mediating role of environmental and employee performance. *Environmental Science and Pollution Research*, 28, pp.28191-28206.

<sup>61</sup> Böhmelt, Tobias. "The Impact of Trade on International Mediation." In *International Mediation Interaction: Synergy, Conflict, Effectiveness*, pp. 53-82. Wiesbaden: VS Verlag für Sozialwissenschaften, 2011.

## 6. Conflicts in International Trade

Conflicts in international trade are part of global economic landscape. They are caused due to different reasons. These reasons include competing interests, opposing interpretations of contractual duties and geopolitical tension. These conflicts offer considerable difficulties for smooth operation of international trade<sup>62</sup>. They impede economic growth and development potentially. Therefore, it is important to understand nature, causes and resolution procedures of these conflicts. This can create favorable environment for international trade.

### 6.1 Nature of Conflicts in International Trade

Conflicts in international trade have different forms. They range from contractual disputes to broader geopolitical issues. This affects those commercial relations between states. Conflicts can develop at several stages of trade process<sup>63</sup>. These include contract negotiation, contract execution and post-transaction litigation. They involve several stakeholders with competing interests usually. It includes governments, global enterprises and international organizations.

### 6.2 Causes of Conflicts

There are several elements that cause international trade wars. A key factor is complexity of international trade agreements and contracts. This can cause conflicting interpretations and disputes over contractual commitments<sup>64</sup>. Furthermore, differences in regulatory frameworks and legal systems between countries could cause confusion and potential conflicts. Geopolitical variables intensify conflicts through changes in regular trade patterns. The geopolitical variables include trade restrictions and tariff disputes. Moreover, these variables also encourage retaliatory actions. Current trade war between United States (US) and China is significant example of an actual existence conflict in international trade<sup>65</sup>. The conflict is defined with competition charges and other measures. It has disrupted global supply chains and created economic instability severely<sup>66</sup>. Another example is disagreement between European Union (EU) and United Kingdom (UK) over Brexit-related trade arrangements<sup>67</sup>. This shows complicated nature and problems of renewing trade agreements.

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<sup>62</sup> World Bank Group, 'Trading Away from Conflict: Using Trade to Increase Resilience in Fragile States' (2016) <https://www.worldbank.org/en/topic/trade/publication/trading-away-from-conflict> accessed 22 April 2024.

<sup>63</sup> Moon, B.E., *Dilemmas of international trade* (Routledge, 2018).

<sup>64</sup> Milner, H.V., 'The political economy of international trade' in *Global Trade* (Routledge, 2017) 91-114.

<sup>65</sup> Steinbock, D., 'US-China trade war and its global impacts' (2018) 4(04) *China Quarterly of International Strategic Studies* 515-542.

<sup>66</sup> Shah, F.T., Syed, Z., Imam, A. and Raza, A., 2020. The impact of airline service quality on passengers' behavioral intentions using passenger satisfaction as a mediator. *Journal of Air Transport Management*, 85, p.101815.

<sup>67</sup> Hestermeyer, H.P., 'Trade Law in Europe' in *The Oxford Handbook of International Trade Law* (2022) 293.

### 6.3 Resolution Mechanisms

There are different methods to settle issues in international trade. They range from negotiation and mediation to formal dispute settlement procedures. Negotiation is direct disagreement between parties to obtain mutually acceptable solution. This is supported by third-party mediators and diplomats<sup>68</sup>. On the other hand, mediation includes involvement of neutral third party to promote communication and help parties in agreement. Formal dispute resolution processes offer legally binding settlements to trade disputes. These processes include arbitration and litigation. However, they are quite time-consuming and expensive.

### 6.4 Effects of Conflicts on International Trade

Conflicts in international commerce can have far-reaching implications for economic growth. They can also have an impact on investor confidence and global stability. Trade wars damage regular supply systems. This raises prices for firms and consumers. They also decrease trust and confidence in international trading system<sup>69</sup>. This could discourage foreign investment. In the same manner, it can limit economic development. Furthermore, lengthy economic wars can cause broader geopolitical tensions<sup>70</sup>. This can further harm global peace and security. Therefore, it is important to understand that conflicts in international trade are common and complicated phenomenon. They have serious consequences for global commerce and economic stability. In the same manner, it is critical to understand nature, origins and resolution procedures of these conflicts<sup>71</sup>. This help to reduce their adverse effects. On the other hand, it encourages environment conducive to international trade. Stakeholders in the interconnected world of commerce can work together. This can assist them to resolve issues and advance mutual prosperity. They can also encourage communication and cooperation. This can ultimately maintain the rule of law.

Conflicts may emerge as a result of a variety of circumstances, including differences in legal systems, cultural norms, corporate practices, economic interests, and political difficulties. Here are some common causes and types of conflicts in international trade.

### 6.5 Trade barriers and protectionism

Governments use trade barriers such as tariffs, quotas, subsidies, and regulatory restrictions to maintain domestic industries. This, in turn, can result in trade conflict. Such a policy can create conflicts among trading partners, particularly if it is deemed as unjust or discriminatory<sup>72</sup>.

### 6.6 Intellectual Property Disputes

Inconsistency in the regulation of intellectual property right (IPR) laws and enforcement among the countries can cause problems in international trade. Disputes of various forms can come up in relation to patents,

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<sup>68</sup> Väyrynen, R., 'To settle or to transform: perspectives on the resolution of national and international conflicts' in *Raimo Väyrynen: A Pioneer in International Relations, Scholarship and Policy-Making: With a Foreword by Olli Rehn and a Preface by Allan Rosas* (Springer International Publishing, 2023) 279-299.

<sup>69</sup> Brack, D., *International trade and the Montreal Protocol* (Routledge, 2017).

<sup>70</sup> Palmeter, D., Mavroidis, P.C. and Meagher, N., *Dispute Settlement in the World Trade Organization* (Cambridge University Press, 2022).

<sup>71</sup> Budur, T. and Poturak, M., 2021. Employee performance and customer loyalty: Mediation effect of customer satisfaction. *Middle East Journal of Management*, 8(5), pp.453-474.

<sup>72</sup> Alexander, Nadja. "Ten trends in international mediation." *Singapore Academy of Law Journal* 31 (2019): 405-447.

trademarks, copyrights and trade secrets, particularly in cases where the industries are innovative and technology transfer is very high.

### **6.7 Contractual Disputes**

Agreements between international trading partners may arise the conflicts when one of the parties is unable to keep its contractual commitments. Disagreements may be the result of the issues like contract breach, non-payment, delivery delays, quality disputes and difficulties of contractual interpretation

### **6.8 Currency and Exchange Rate Fluctuations**

Volatility in currency and exchange rate fluctuations may alter competitiveness of exporters and importers and hence pose conflicts over the pricing, the payment terms and the currency hedging strategies.

### **6.9 Sanctions and Embargoes**

Trade disagreements may be caused by trade sanctions and embargoes imposed by one country on another, which are politically, economically, or security-related. They may hamper trade, cause supply chain disruption, and create a source of discord among the nations.

### **6.10 Disputes over Trade Agreements**

Disagreements can arise when interpreting these texts and the views expressed therein. the fact that the trade agreements can be implemented or enforced through free trade agreements (FTAs), regional trade agreements (RTAs), and multilateral trade agreements under the World Trade Organization (WTO) institutions<sup>73</sup>.

### **6.11 Dumping and Anti-Dumping Measures**

Dumping happens when a particular country sells its goods at prices lower than the prices they would be sold in their domestic market, which can end up causing damage to the domestic industries in importing countries. Disputes could occur regarding the accusations of dumping and the coercion of anti-dumping measures or other trade interventions.

### **6.12 Non-Tariff Barriers**

Non-tariff barriers which are technical regulations, standards, labels and sanitary and phytosanitary measures may result in trade disputes through they reduce market access and hence the competitiveness of imported products<sup>74</sup>.

### **6.13 Disrates over Trade Practices**

Disagreements can take place due to unlawful economic activities like subsidies, SOEs, and forced technology transfer which may hinder the protection of intellectual property rights and tariff distortion of various kinds<sup>75</sup>.

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<sup>73</sup> Rabinovich-Einy, Orna. "Technology's impact: the quest for a new paradigm for accountability in mediation." *Harv. Negot. L. Rev.* 11 (2006): 253.

<sup>74</sup> Abbas, S. B. "The Singapore Convention on Mediation: A Step Towards Facilitating International Trade." *IUP Law Review* 10, no. 2 (2020).

<sup>75</sup> Aykaç, Selim, and Mustafa Emre Civelek. "The Mediator Role of Global Competitiveness in the Relationship between High Technology Export and Coverage Ratio." *Journal of International Trade, Logistics and Law* 9, no. 1 (2023): 251-260.

### 6.14 Supply Chain Disruptions

The conflicts may occur because of disruptions in the global supply chains due to circumstances like natural disasters, geopolitical tensions, pandemics, and unexpected factors. These disorder causes delays, shortages, and conflicts over contractual obligations.

Usually, the settlement of conflicts in international trade is achieved through diplomacy, legal methods, dispute resolutions, and multilateral cooperation. The WTO and its regional trade blocs as well as dispute settlement bodies are all part of the process of dealing with conflicts that may arise in an attempt to have a fair and free trade relationship among different countries.

## 7. Type of Mediation

Mediation is a flexible approach that can be developed to suit the specific needs and situations. The type of mediation exercised could range from the nature of the dispute, the parties involved in the conflict, and the desired outcome. Here are some common forms of mediation: Here are some common forms of mediation:

### 7.1 Facilitative Mediation

The party's facilitative mediation involves a neutral mediator who ensures the effectiveness of the process of negotiation, guides the parties to communicate well, identifies their underlying interests and generates solution options. Parties are encouraged to take ownership and control of the process in order to come to a mutually satisfactory solution<sup>76</sup>.

### 7.2 Evaluative Mediation

A mediator is the one who gives the assessment of the case that has been brought to the table. Mediator is the person who may offer the legal analysis, evaluate the pros and cons of all parties' claims, and suggest the settlement agreement according to their findings. This type of mediation is frequently employed when one of the conflicting parties desires to seek the advice of a third party who is neutral and is a subject matter expert<sup>77</sup>.

### 7.3 Transformative Mediation

This strategy equips the participants with the tools to enhance their communication which in turn leads to a new beginning in their relationships. The mediator helps the parties to understand each other's perceptions, to spot differences, and to put themselves in each other's shoes, to develop empathy, and mutual respect. The main goal is not only to end the current dispute, but also to initiate development of more fruitful interaction and relationships of the parties in the future.

### 7.4 Directive Mediation

A mediator is a key participant in the process of negotiation and he/she assists the parties to engage in a process that will lead to a conclusion. If the sides are not capable of agreeing on their own, the mediator can offer suggestions, propose specific settlement options, even propose an answer. This technique is often put

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<sup>76</sup> Katsaros, Kleanthis K., Athanasios N. Tsirikas, and Georgia C. Kosta. "The impact of leadership on firm financial performance: the mediating role of employees' readiness to change." *Leadership & Organization Development Journal* 41, no. 3 (2020): 333-347.

<sup>77</sup> Genc, Ebru, Mumin Dayan, and Omer Faruk Genc. "The impact of SME internationalization on innovation: The mediating role of market and entrepreneurial orientation." *Industrial Marketing Management* 82 (2019): 253-264.



into practice in critical situations or when the parties involved engage the mediator for more direction and organization during mediation<sup>78</sup>.

### **7.5 Online Mediation**

Virtual mediation (or online mediation) is a process that is completely or partially conducted via electronic communication platforms. Parties and mediators communicate through video conference, e-mail, chat or other online ways which eliminates the need of physical presence. Online mediation has such an advantage of convenience, accessibility, and flexibility as it is available for parties at various locations.

### **7.6 Community Mediation**

A team of trained volunteer mediators will be a part of the society to resolve conflicts, with a societal perspective. It focuses on the resolution of the issues among people, groups, families, neighbours, and community organizations in order to achieve the harmony and understanding within the society. In addition to community mediation centers, the program can provide different services like conflict resolution workshops, mediation sessions, and outreach initiatives. These are just a few types of alternative resolution methods. The manner in which mediators operate may vary depending on the conflict particularities and the particular parties' preferences. In such cases, the mediators may alter their approach to suit the scenario.

## **8. Legal Framework**

The Legal mediation in international trade is a very complex phenomenon because it operates in a multilayered legal environment that combines international and domestic regulations, as well as contracts<sup>79</sup>. Fundamentally, the legal framework aims to find a well-organized way for settling the disputes that emerge from the cross-border transaction through conciliation as there is need for keeping the business relationships and improving the efficiency. Internationally, the international agreements significantly impact the mediation process. One of such provisions includes UNCITRAL (The United Nations Commission on International Trade Law), which has successfully standardized mediation practices through its Model Law on International Commercial Mediation and Conciliation<sup>80</sup>. This model law provides a comprehensive template for states to adopt, harmonizing mediation procedures across jurisdictions and enhancing their enforceability.

In addition, organizations like the International Chamber of Commerce (ICC) have been the main contributors to the formulation of mediation institutions<sup>81</sup>. The ICC, acting through its ICA, has set up a mediation-assistance service and has a rule set system for administering and carrying out mediation proceedings under its Rules of Mediation<sup>82</sup>. This ensures participants an organized framework for efficient

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<sup>78</sup> Böhmelt, Tobias. "The impact of trade on international mediation." *Journal of Conflict Resolution* 54, no. 4 (2010): 566-592.

<sup>79</sup> Ibratova, Feruza. "Foreign Practice of Use of Mediation on Collective Labor Disputes." *American Journal of Social and Humanitarian Research* 3, no. 10 (2022): 57-62.

<sup>80</sup> World Health Organization. "International trade agreements and implementation of the international code of marketing of breast-milk substitutes: frequently asked questions." (2020).

<sup>81</sup> Tan, Darius. "The Singapore Convention on Mediation to Reinforce the Status of International Mediated Settlement Agreement: Breakthrough or Redundancy?" *Conflict Resolution Quarterly* 40, no. 4 (2023): 467-482.

<sup>82</sup> Goldberg, Stephen B., Frank E.A. Sander, Nancy H. Rogers, and Sarah Rudolph Cole. *Dispute Resolution: Negotiation, Mediation, Arbitration, and Other Processes*. Aspen Publishing, 2020.

mediation and an environment within which disputes can be resolved. At the international level, individual states enact laws related to supporting and regulating mediation in international trade<sup>83</sup>. Such legislations can generally be of scope and detail but will often regulate mediation process and promote settlement enforcement through legal mechanisms<sup>84</sup>. Another instrument that is being used beside the legal instruments is contractual agreements which had mediation clauses included in them and stipulate that the mediation process is a must before the dispute will move to litigation or arbitration<sup>85</sup>. These provisions lead parties to take part in mediation at the very beginning of a dispute and place an emphasis on the advantages of a consensual resolution as such for it they could make up for expenses and save the time that otherwise would have been spent waiting for a more adversarial process<sup>86</sup>.

### 8.1 Singapore Mediation Convention

The Singapore Convention on Mediation (SCM) launched in 2020 and voiced as an international treaty in the world is accorded a crucial role in strengthening the effectiveness of mediation as a conflict resolution tool for cross-border disputes<sup>87</sup>. The present historic agreement presents mediation participants with an avenue for agreeing to settlements that is systematic and has the enforceability of mediated outcomes via a method that is reliable and assured<sup>88</sup>. Getting the support of vital players on the world stage such as Singapore, China, USA is a great development and points to the direction of the Convention of establishing mediation web in international economic trade<sup>89</sup>. Through the mechanism which assures the enforceability of settlements of mediation across national boundaries, the issuance of certificates by an institution like a court that is entitled to enforce the settlement in both countries obviates risks, and businesses that trade internationally will have confidence in the process<sup>90</sup>. With its ability to settle disputes more quickly and effectively through peaceful means<sup>91</sup>. The Singapore Convention stands poised to have a powerful impact

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<sup>83</sup> Butlien, Rachel. "The Singapore Convention on Mediation: A Brave New World for International Commercial Mediation." *Brooklyn Journal of International Law* 46 (2020): 183.

<sup>84</sup> Bethlehem, Daniel, Donald McRae, Rodney Neufeld, and Isabelle Van Damme. *The Oxford Handbook of International Trade Law*. Oxford University Press, 2022.

<sup>85</sup> Alexander, Nadja, Vakhtang Giorgadze, and Shouyu Chong. "The Singapore convention on mediation: a commentary." (2022): 1-432.

<sup>86</sup> Alexander, Nadja, Vakhtang Giorgadze, and Choonhong Chong. *The Singapore Convention on Mediation: A Commentary*. 2022.

<sup>87</sup> Calo, Zachary. "Mediation Ethics after the Singapore Convention." *Am. J. Mediation* 14 (2021): 73.

<sup>88</sup> Ross, Donna. "The Singapore Convention: From a Blizzard, a Convention Blooms." *Resolution Institute* (2020).

<sup>89</sup> Treichl, Clemens. "The Singapore Convention: Towards a universal standard for the recognition and enforcement of international settlement agreements?." *Journal of International Dispute Settlement* 11, no. 3 (2020): 409-429.

<sup>90</sup> Matteucci, Giovanni. "Enforceability of international commercial mediation agreement, the Singapore Convention." (2020): 11.

<sup>91</sup> Stute, David J., and Alexis N. Wansac. "The Singapore Convention: Not Much There, There." *ITA Rev.* 3 (2021): 32.

over the world of international commerce and swell the ranks of those who shall employ mediation in the place of other means of dispute settlement in the age of the fast-changing international marketplace<sup>92</sup>.

## 8.2 Impact

Mediation is organized and collaborative technique to resolving disputes in international trade. This promotes mutually acceptable solutions without resort to costly and time-consuming litigation. Its impact on international trade can be investigated from different angles.

## 8.3 Preservation of Trade Relationships

A benefit of mediation is its ability to sustain trade links between disputing parties. Mediation focuses to identify common ground. It can encourage parties to cooperate. This is unlike adversarial litigation which ends in winners and losers<sup>93</sup>. Mediation helps to retain business relationships through resolution of issues diplomatically. It helps parties to continue doing business without having bad will<sup>94</sup>.

## 8.4 Cost-Effectiveness

Mediation has a great potential to substantially reduce legal expenses as compared to using traditional litigation or arbitration. It can reduce expensive legal bills, court costs, and lengthy litigations, hence, saved costs for all parties. Litigation can be expensive excessively. This is specifically about cross-border issues with various jurisdictions. Mediation is cost-effective preference since it requires fewer financial resources and takes less time than traditional court proceedings<sup>95</sup>. Mediation reduces financial burden on trade dispute parties. It avoids lengthy court fights and associated fees. This makes it a popular method of conflict resolution.

## 8.5 Flexibility and Confidentiality

Mediation helps parties to build solutions specific to their requirements and interests. Mediated agreements encourage creative and imaginative solutions unlike court judgments. Court judgments are enforceable and strict frequently. This satisfies parties' basic worries and interests. Furthermore, mediation processes are confidential<sup>96</sup>. They help people to discuss sensitive issues openly without worry of being revealed to third parties. This confidentiality encourages free conversation and trust between parties. This further makes it easier to resolve issues<sup>97</sup>. Mediations sessions are accompanied by strict confidentiality, and the discussion,

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<sup>92</sup> Alexander, Nadja, and Shouyu Chong. "Leading the way for the recognition and enforcement of international mediated settlement agreements: the Singapore convention on mediation act 2020." *Singapore Academy of Law Journal* 34, no. 1 (2022): 1-50.

<sup>93</sup> Zugravu-Soilita, N., 'Trade in environmental goods and air pollution: a mediation analysis to estimate total, direct and indirect effects' (2019) 74(3) *Environmental and resource economics* 1125-1162.

<sup>94</sup> Gourevitch, P.A., 'International trade, domestic coalitions and liberty: comparative responses to the crisis of 1873–1896' in *The Political Economy: Readings in the Politics and Economics of American Public Policy* (Routledge, 2021) pp. 279-299.

<sup>95</sup> Lindsay, G., Conlon, G., Totsika, V., Gray, G. and Cullen, M.A., 'The impact of mediation on resolution of disagreements around special educational needs: effectiveness and cost effectiveness' (2021) 36(3) *Research Papers in Education* 275-298.

<sup>96</sup> Goldberg, S.B., Sander, F.E., Rogers, N.H. and Cole, S.R., *Dispute resolution: Negotiation, mediation, arbitration, and other processes* (Aspen Publishing, 2020).

<sup>97</sup> Rugman, A.M. and Verbeke, A., *Global corporate strategy and trade policy* (Routledge, 2017).

proposals, and agreements remain private and not public. This confidentiality makes both the parties more open and honest, leading to better negotiations which in turn result in more successful problem-solving and settlement discussions.

### **8.6 Compliance and Enforcement**

Mediation offers parties to shape tailored solutions taking into account their distinctive needs and interests. Mediation instead of the strict legal procedures, give the parties the opportunity to develop an outcome that is mutually beneficial and which they both may not be getting through traditional dispute resolution methods<sup>98</sup>. Mediated agreements are likely to be implemented with less resistance as parties can participate in drafting the solutions. On the other hand, the governments have agreed to various ways through which disputes can be resolved and this improves the enforceability of mediated agreements<sup>99</sup>. Mediated agreements are based on mutual consent and collaboration among parties. This improves compliance and enforcement processes. Mediated agreements are freely accepted by parties as they improve their desire to follow terms of agreement. This is unlike court-imposed judgment's which can be regarded as adversarial<sup>100</sup>. Furthermore, parties are probable to comply with mediated agreements. This is because they are involved in development of mutually beneficial solutions. This further lower probability of future disagreements.

### **8.7 Time Efficiency**

Mediation constitutes a much faster alternative to both litigation and arbitration. Political parties can better decide the procedure's timeline, thus hastening the settlement of disputes and allowing them to continue with their business operations<sup>101</sup>.

### **8.8 Corporate Connections**

The fact that mediation prevents corporate linkages to be damaged is a substantial benefit. Mediation provides an opportunity for all parties to express themselves freely and jointly, which helps them not only to maintain the good relations, but also to build trust in future transactions.

### **8.9 Challenges and considerations**

Mediation has significant advantages to settle international trade disputes. However, different problems and factors need to be addressed to ensure its effective implementation.

### **8.10 Power Imbalance and Fairness**

Power disparities between parties in trade disputes can affect fairness and effectiveness of mediation. For example, less economically strong party can feel compelled to accept unfavorable terms during mediation.

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<sup>98</sup> Zhang, Aoyuan, and Haixia Qi. "The effectiveness in international mediation of international organizations." *International Journal of Conflict Management* 33, no. 4 (2022): 684-713.

<sup>99</sup> Zhang, Shiyue, Alan R. Collins, Xiaoli L. Etienne, and Rijia Ding. "The environmental effects of international trade in China: measuring the mediating effects of technology spillovers of import trade on industrial air pollution." *Sustainability* 13, no. 12 (2021): 6895.

<sup>100</sup> Chua, E., 'Enforcement of international mediated settlements without the Singapore convention on mediation' (2019) 31 *Singapore Academy of Law Journal* 572-597.

<sup>101</sup> Abbas, S. B. "The Singapore Convention on Mediation: A Step Towards Facilitating International Trade." *IUP Law Review* 10, no. 2 (2020).

This is due to unequal settling strength. Mediators have to offer an equal opportunity<sup>102</sup>. It should also promote fairness throughout negotiating process. This can help to address power imbalances. Moreover, it can protect interests of all involved parties.

### **8.11 Uneven Bargaining Power**

The two sides may have unequal bargaining strength in certain situations. Such differences can emerge mainly because of issues related to company size, finances, or market dominance. An unfair agreement during mediation could result from pressure from the weaker party. Thus, to correct this, mediators can use techniques to guarantee that everyone equally has enough chance to be heard and represent their concerns.

### **8.12 Cultural Differences**

International trade includes parties from different cultures and languages. This can complicate the mediation process. Misunderstandings caused by cultural differences can prevent efficient communication. Moreover, linguistic limitations can also impede resolution of issues. Mediators need to be sensitive to cultural nuances and linguistic variations<sup>103</sup>. They can use trained interpreters and translators to encourage meaningful communication and mutual understanding between parties. Cultural misunderstanding can be experienced in mediation, especially when the parties come from different cultures and have different communication styles and negotiation methods which are foreign to each other<sup>104</sup>. A skilled mediator can foresee these cultural barriers, so they may use mediation techniques to break them and help create a favorable environment for conversation and understanding.

### **8.13 Cross-Border Enforcement Complications**

Even if a settlement is made through mediation, adopting uniformly across jurisdictions might still be complicated<sup>105</sup>. The laws and regulations of various nations and disparities in their procedures may impede the implementation. The Singapore Convention on Mediation, adopted in 2018, has made it easier to tender mediation in countries that are the signatories but remain unsigned in other countries. Mediated agreements could lack enforceability procedures in some jurisdictions unlike court judgments. This raises concerns about their effectiveness. It is important to ensure that mediated agreements can be implemented throughout different legal frameworks. This is important for mediation process's credibility and integrity<sup>106</sup>. This needs methods to enforce mediated agreements. This includes international treaties and conventions on mediation enforcement.

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<sup>102</sup> Cohen, S.D., *Fundamentals of US foreign trade policy: economics, politics, laws, and issues* (Routledge, 2019).

<sup>103</sup> Kahiya, E.T., 'Five decades of research on export barriers: Review and future directions' (2018) 27(6) *International Business Review* 1172-1188.

<sup>104</sup> Lewicki, R.J., Barry, B. and Saunders, D.M., 2020. *Negotiation*. McGraw-Hill.

<sup>105</sup> Henderson, E. (2020). *Enforcing International Commercial Arbitration Awards* (3rd ed.). Oxford University Press.

<sup>106</sup> Chong, S. and Steffek, F., 'Enforcement of international settlement agreements resulting from mediation under the Singapore convention: Private international law issues in perspective' (2019) 31 *Singapore Academy of Law Journal* 448-486.

#### 8.14 Lack of Confidence in the Process

In certain instances, the parties may need to be more confident that the result of the mediation will be effective, and more so because they need more experience with the process<sup>107</sup>. This may be especially true for businesses with long-standing experience in traditional litigation methods. Raising awareness of the positive impact of mediation, as well as the success of the system in settling differences between trade parties, can hinder the current problem.

#### 8.15 Legal Complexity and experience

International trade disputes can include complicated legal and technological concerns. These concerns need specific experience to be resolved. Mediators must have thorough understanding of international trade law, contractual principles and applicable regulations<sup>108</sup>. This can help to manage complexities of trade disputes. Furthermore, parties can benefit from hiring legal counsel and subject matter experts. This can provide direction and advice during mediation process.

### 9. Conclusion

Mediation has a significant place in the process of settling international commercial trade conflicts, which is cost-effective, time-saving, and provides a mutually agreeable result while keeping the relations between corporations and helping global trade. Continuous research and practice-based interventions are the two pillars upon which further growth of mediation in international trade is built. Mediation is an important tool to resolve disputes in international trade. This is because it is flexible, cost-effective and collaborative in nature. Mediation helps to increase international trade through preservation of relationships between nations. This can lower costs and promote compliance. However, concerns must be addressed to guarantee that mediation is used effectively. It is also needed to be ensured that it resolves trade disputes. These concerns include enforcement, cultural obstacles and power imbalances. Hence, mediation has enormous potential to promote peace, collaboration and prosperity in global economy.

Legal framework for international trade mediation consists of complex interaction of international agreements, institutional contributions, domestic legislation and contractual obligations. UNCITRAL model law on International Commercial Mediation and Conciliation is an important standardization tool. It promotes harmonization across jurisdictions and strengthens enforceability. ICC play an important role to build mediation institutions and procedural standards. This causes organized environment for conflict resolution. Furthermore, individual jurisdictions pass legislation to promote mediation. Contractual agreements require mediation before proceeding to lawsuit and arbitration. Singapore Convention on Mediation represents significant achievement. It provides systematic means to enforce mediated settlements across borders. Convention could bring new era of mediation adoption and efficacy on worldwide scale. This can be done with the potential to accelerate conflict resolution in fast-paced world of international trade.

On the other hand, global approval of mediation is showed by Singapore convention on mediation. It is an important historic event in international trade dispute settlement. Convention improves predictability,

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<sup>107</sup> Lee, K. and Shin, H., 2021. Varieties of capitalism and East Asia: Long-term evolution, structural change, and the end of East Asian capitalism. *Structural Change and Economic Dynamics*, 56, pp.431-437.

<sup>108</sup> Kennedy, D., *A world of struggle: How power, law, and expertise shape global political economy* (Princeton University Press, 2018).

efficiency and confidence in mediation through clear and standard legal framework. This improves jurisdictional procedures. Moreover, it assures cross-border enforcement of mediated agreements. Convention helps to maintain stable global economy through mediation. It considers mediation as reliable instrument to settle cross-border conflicts. Furthermore, mediation in alternative dispute resolution (ADR) has distinct goals. This includes promotion of self-determination, preservation of relationships, and encouragement of win-win results. This further emphasizes cost-effectiveness and time efficiency. These characteristics set mediation aside. It is a preferred approach to manage disputes specifically in international trade.

## 10. References

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