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Editorial

Mediation in a Multistep Process

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It is not uncommon for mediation to be part of a multi-tiered process. Generally, such processes provide for two or three steps. The two-step process provides for mediation, if unsuccessful, to be followed by arbitration or litigation. The three-step process would add negotiations directly between the parties as the initiating dispute resolution mechanism. The fact that cases that go to arbitration tend to settle shortly before or even at the evidentiary hearing – either after a failed mediation or not – gives rise to the question whether it would be possible for parties to agree on conducting arbitration and mediation procedures in parallel.

The idea of combining mediation and arbitration into a true mixed-mode dispute resolution mechanism is not new. The concept is explored in a 2017 article by Thomas J. Stipanowich and Véronique Fraser, *Exploring the Interplay between Mediation, Evaluation and Arbitration in Commercial Cases.*[1] A parallel mediation and arbitration procedure was, however, suggested as early as 1995 at the ICCA Conference in Seoul[2] in connection with investor–state arbitration[3] and by Jeremy Lack, in his article *Appropriate Dispute Resolution (ADR): The Spectrum of Hybrid Techniques Available to the Parties*.[4]

In addition, there are a number of existing rule sets that provide for parallel procedures. I point to the procedure developed by the Centre de Médiation et d'Arbitrage de Paris, the mediation and arbitration centre of the Paris Chamber of Commerce. Also, the Commercial Rules of the American Arbitration Association (AAA) have a mandatory mediation that also takes place in parallel with the arbitration process. The parallel approach to the traditionally sequentially organised multi-tier dispute resolution mechanisms fits with contemporary ideas of appropriate dispute resolution (ADR) as a collection of ADR tools can be used in any order or combination, dependent on the parties' circumstances and needs.

After this introduction of recent developments in mixed-mode dispute resolution, it seems only fitting for this double issue of CMJ to proceed with a discussion of one of the most pressing current issues of mediation: diversity. Judith Meyer, Esq., FCIArb opines on the topic from a US perspective. Adding to her discussion in the field of mediation, I take the liberty to point the reader to the Equal Representation in Arbitration Pledge,[5] which seeks to promote equal opportunity in international arbitration.

Subsequently, Dr Martin Brink investigates why people tend to fight before considering reconciliation. Drawing on an analysis of historical international political conflict, Brink seeks to promote the teaching of mediation skills, starting as early as kindergarten. Against this background, in her response to Brink's article, Anna Doyle stresses the need for mediators, for peace brokers, capable of mitigating these intrinsic vices of human operation. These analyses fit well with the stories on mediation so kindly shared by Louis Buchman.

Other than these highly topical reflections on mediation at large, this issue has a lot on offer for the 'black letter mediator', if that could ever exist. The submissions of

1. Stipanowich, T.J. & Fraser, V. (2017). The International Task Force on Mixed Mode Dispute Resolution: Exploring the Interplay between Mediation, Evaluation and Arbitration in Commercial Cases. *Fordham International Law Journal*, *40*.
2. Schneider, M.E., Combining Arbitration with Conciliation. Retrieved from: www.lalive.ch/data/publications/mes_combining_arbitration_with_conciliation.pdf.
3. Van Ginkel, E. (April 2006). Toward Mandatory ICSID Conciliation? Reflections on Professor Coe's Article on Investor-State Conciliation. *Mealey's International Arbitration Report*, *21*(4), 1.
4. Lack, J. (2010). Appropriate dispute resolution (ADR): the spectrum of hybrid techniques available to the parties, II. In A. Ingen-Housz (Ed.), *ADR in Business: Practice and Issues across Countries and Cultures* 339, 371.
5. Retrieved from: http://www.arbitrationpledge.com/.

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Laurence Katz and Prof. Niek Peters provide key insights into the relevance of the Singapore Convention on the enforcement of mediated settlement agreements. Subsequently, Pierre Kirch offers practical reflections on the application to competition disputes.

Lastly, we're happy to publish an interview with Marijke Wolfs, Secretary-General of the International Chamber of Commerce Netherlands' branch. She discusses the current status and current developments in ICC mediation in the Netherlands, noting the difficulty of finding international business mediators with the right experience and intercultural sensitivity, both in the Netherlands and abroad. This only further amplifies the need for a proper education of those interested in mediation, both on the supply and the demand side.

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