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International Commercial Mediation: An Emerging Mechanism for Dispute Resolution

Prashant Kumar Kapila
(LL.B 5th Semester,Department of Laws, Panjab University, India)
prashantkapila94@gmail.com

Abstract:

The popularity of international commercial mediation is increasing as parties look to the advantages of decreased costs, time savings and the less formal nature of mediation. This is also due to the concern over the increasing expenses, delays and procedural formalities of arbitration. While mediation has been growing in popularity, it can achieve parity with arbitration only if there are mechanisms to enforce the mediation agreement and the settlement agreement. The UNCITRAL Model Law on Conciliation has not been successful in this aspect. The paper studies the existing international and domestic mechanisms to enforce mediation agreements and settlement agreements and proposes that parties may consider reducing settlement agreements to a "consent award" which is enforceable under the New York Convention on Arbitration. It is further suggested that the New York Convention be interpreted (or its scope expanded) to include awards made by an arbitrator appointed after settlement of the dispute through mediation. The paper also proposes the drafting of an international convention on mediation similar to the New York Convention on Arbitration.

Keywords- *UNCITRAL, New York Convention, ICC, Model Law, Conciliation Rules.*

1.Introduction

While International Commercial Arbitration has long enjoyed a primacy as a dispute resolution mechanism, there is a growing concern over problems such as increasing expenses, delays and procedural formalities, all of which are problems which companies have sought to avoid or minimize by shunning traditional dispute resolution mechanisms. The popularity of arbitration is stated to be fading[1]by many experts. Mediation is emerging as a mechanism of choice for parties to international commercial disputes.

The International Chamber of Commerce(ICC)[2]has compared the costs of arbitration and mediation in 2010 and reported that the average cost for arbitration of a dispute having a value of $25 million was US$2,836,000.00[3], while for mediation it was US$120,000.00[4]. Mediation on an average costs 5% of the total average costs of arbitration of a dispute of the same value.[5] Time overruns are another factor dissuading companies from arbitration, and as noted by the ICC in 2010, the average time for resolution of disputes through international arbitration is 18 to 24 months, which in many cases may not save much time from litigation. If the possible costs and time of litigation for enforcement or setting aside an award are added, arbitration becomes even less appealing.

The high settlement rates of mediation reported to be at 85 % -90% are another factor adding to the appeal of mediation. Mediation occurs in a "less-

confrontational setting" with the benefits of the parties having control over the process as well as retaining the benefits of confidentiality.[6]

This rise in popularity should not be surprising. The preference for arbitration rose in the period post world-war II[7]. Additionally, consensual dispute resolution mechanisms have enjoyed institutional support since the twentieth century. For instance, the International Commercial Council first formulated it's conciliation and mediation rules in 1923. The UNCITRAL[8]first set out its Conciliation Rules in 1980. This makes it clear that the current preference for arbitration over mediation is not because of lack of institutional support.[9]

The preference of arbitration has been attributed to the system of international treaties that were adopted post World War II. Another reason given is the cultural preference towards adjudicative dispute resolution systems.[10]

Notwithstanding the above reasons, the demand for mediation has been certainly increasing. International organizations such as the World Bank are promoting international commercial mediation. There is a trend in some countries such as England, which have sought to make mediation obligatory for parties,the Court of Appeal has held that costs can be denied to a party for an "unreasonable refusal to recognize a request to mediate"[11]. Lord Justice Briggs held "*that silence in the face of an invitation to participate in ADR is, as a general rule, of itself unreasonable*…"[12]. Over 4000 companies have signed a pledge[13] to first seek dispute resolution via negotiation among other ADR mechanisms, as a pre-condition to initiating litigation[14].

This paper seeks to determine what matters are amenable to mediation, and the situations in which mediation is an alternative to arbitration for international commercial disputes. The paper also studies how instruments of public international law may be used to develop the potential of international commercial mediation(ICM) and the direction mediation needs to take to avoid facing the same problems arbitration is facing now.

It may be noted that the terms mediation and conciliation have been used synonymously.

2. Suitability of Disputes for International Commercial Mediation

Various indicators have designed to ascertain whether a dispute is amenable to mediation or not. One such is given below:

1. The Parties have a history of cooperation and successful problem solving.

2. The number of parties to the dispute is limited (i.e. four or less)

3. Issues in dispute are not overwhelming in number and nature and the parties have been able to agree on some issues:

4. The hostility of both sides to the dispute is moderate or low

5. The parties desire for settlement is high

6. There is external pressure to settle (time, money, unpredictable outcomes, etc.)

7. There is a possibility of an ongoing relationship among the parties.[15]

However, most of such indicators have been designed for domestic disputes. The Parties'(to the dispute) behaviour in domestic and international arbitration may

be at variance.[16] For instance, parties may participate in international proceedings with an adversarial outlook, similar to that of litigation.[17]

Another feature of international disputes which relates to the suitability or otherwise of such disputes is the complexity involved, particularly that of the number of participants. The dispute may involve "single contract multiparty relationships"[18], or "multi-contract multiparty relationships"[19] or "multi-contract bilateral relationships"[20]. The prevalence of multiparty and multi-contract disputes is increasing and these have caused problems in international arbitration. While there is a viewpoint that multiparty disputes are not suited to mediation, it is possible to resolve such disputes through the adoption of good mediation procedures[21]. There are other factors such as cultural differences, varying enforcement mechanisms and jurisdictional complexities which may pose problems. The success of international commercial arbitration however shows that while ICM may not always live up to the rhetoric of being quick, easy and cheap, such challenges can be overcome and the parties can be encouraged to mediate through other advantages which mediation offers. It is interesting to note that even though international arbitration is criticised for being formal, slow and expensive, it is still the preferred mode of international dispute resolution. This is because, as noted by Born, it offers advantages over litigation. These advantages include the negation of bias which a national court may have, the parties' ability to choose the substantive law governing the dispute and to choose expert arbitrators.[22]

All these advantages are available in mediation as well which leads to a conclusion that moot point which makes parties choose arbitration over mediation is the treaties to enforce arbitral awards. Furthermore, the judicial system has also embraced a positive outlook to the enforcement of arbitral awards. If a similar international mechanism for enforcement of mediated settlements is developed, mediation is likely to become equally attractive to parties. Thus, a key point of consideration is to develop a multi-lateral system for enforcement of mediation settlements

3. Preferring Mediation Over Arbitration

The popularity of arbitration is now diminishing, and arbitration has been described to be in a "crisis mode".[23] Internationally, the growing Americanization of Arbitration, with the adoption of an adversarial outlook, American style litigation procedures such as discovery, calling for expert witnesses and adoption of litigation strategies such as "guerilla tactics"[24] have led to the fading popularity of arbitration and to arbitration being termed as the "new litigation"[25]. Increasing costs also contribute to dissuading parties from arbitration.

Mediation on the other hand is associated with voluntary participation and self-determination throughout the whole process. It assists parties in achieving a sense of peace by reconciliation and maintenance of business relationships and by offering parties the opportunity to reflect on the role played by them in the creation of the conflict. This further allows for a mutually satisfactory resolution of conflicts. The problems associated with arbitration have led to greater prominence of mediation in the international arena. Sixteen states have adopted laws based on or influenced by the UNCITRAL Model Law on International Commercial Conciliation[26]. The World

Trade Organization[27] and the World Intellectual Property Organization[28]. The European Union has issued a Mediation Directive to promote the use of mediation[29]"in civil and commercial matters".

What is equally significant is the fact that most institutions offering international arbitration services now offer international mediation as well. All Eleven of the largest arbitral institutions[30] offer both arbitration and mediation services and have rules for both, which may be attributed to the criticism of arbitration as has been discussed in the paper. In this regard, it may be noted that the ADR Rules of the ICC, the largest arbitral provider, provide for mediation as the default dispute resolution mode in case the agreement does not specify a method[31].

4. Developing an International Regime to Promote International Commercial Mediation

For ICM to achieve parity with international commercial arbitration in terms of usage and popularity, the instrumentality of public international law will have to be used.It must be noted that there are several "structural similarities" between ICM and international commercial arbitration.[32]Both are governed by rules of bodies such as UNCITRAL.

The UNCITRAL ("United Nations Commission on International Trade Law") has rules for both mediation ("UNCITRAL Conciliation Rules") and International Arbitration ("UNCITRAL Arbitration Rules"). UNCITRAL has also framed model laws for both ICM("UNCITRAL Model Law on International Commercial Conciliation (2002)") and International Commercial Arbitration ("UNCITRAL Model Law on International Commercial Arbitration (1985)"), with amendments as adopted in 2006).

The object behind both these model laws is the "establishment of a harmonized legal framework for the fair and efficient settlement of disputes"[33]. The model laws are a suggestion which countries may consider for adopting as domestic legislation[34] so as to ensure uniformity in treatment of matters among different jurisdictions. Thus, while the model laws are not binding, it is the discretion of the states to incorporate it into domestic law.The difference in the acceptance of both these model laws lies in the fact that while the UNCITRAL model law on arbitration has been adopted by 100 countries, the Model Conciliation Law has only been adopted by 16 nations and only 12 of the states of the United States. As such the UNCITRAL model laws and Conciliation Rules have not achieved their objectives.

The lack of success of ICM can be ascribed to the absence of treaties, both multi-lateral and bi-lateral, supporting the enforcement of mediated settlements. It is therefore suggested that international conventions must be adopted to support the use of ICM. Though multi-lateral treaties may be more effective, the success of international investment arbitration shows that a network of "bilateral treaties" can provide the same outcomes[35]. The experience of international commercial arbitration also suggests two basic elements for a successful treaty on ICM: firstly, the enforceability of the agreement to enter into a mediation and secondly, the enforceability of the outcome, if any, of the mediation.[36]

4.1 Enforcement of the Mediation Agreement

The enforceability of an agreement to mediate should be the primary issue to be addressed by any convention on international commercial arbitration. For drafting rules regarding this, the proposed Convention may take the aid of conventions on international

arbitration such as the NY Convention which deals with the enforcement of arbitration agreements. Inspiration may be drawn from Article 11 of the NY Convention. This convention has been ratified by 157 state parties[37] and is as such the most successful international arbitration instrument[38].

The Model Conciliation Law is to be consulted also. For instance, article 4(2) to rules regarding the "rejection of the invitation to conciliate". It provides that:mediation "commences when the parties to a dispute agree to engage in such a proceeding."[39] The provision of a specific timeline ensures that the offering party is not left at the mercy of the other party as this is a default provision and applies automatically on non-communication of acceptance within 30 days.

Article 11 provides for the manner in which conciliation proceedings may be terminated. However, it does not provide for cases where parties may be under a "good faith" obligation "to commence and participate" in mediation proceedings. Such obligations may be derived from an agreement, a statutory provision or under a judicial order. As the Model Law does not provide for these, there is lack of uniformity among even the countries which have legislations based on the model law and so the sources of such obligation vary among countries.[40] The model law does not make provisions for non-compliance with such obligations.[41] This is left to the general law of obligations.[42]It is suggested that any Convention on International Mediation make clear provisions for where parties are under good faith obligation. It should also provide for consequences of a failure to comply with such an obligation.

Article 13 relates to a multi-tiered dispute resolution clause[43] and is based on the rationale that concurrent initiation of arbitral or judicial proceedings at the same time as mediation proceedings would adversely impact the possibility of a settlement.[44] However, completely restricting parties' right to initiate such proceedings would deter parties from entering into a mediation agreement. Further, there is a possibility of such a restriction being deemed to be an infringement of fundamental and inalienable rights, thus void in relation to the constitution of certain jurisdictions.[45] Thus, the Model Law has limited itself to situations where the parties renounce their rights to initiate arbitral or judicial proceedings while mediation proceedings are underway as provided for by the mediation agreement. In such a case, there would a bar on such proceedings except where in the opinion of the parties, the proceedings are necessary "to preserve its rights".

4.2 Enforcement of a Settlement Agreement

The question of enforcement of mediated settlement agreements naturally perturbs parties as enforcing settlements on the basis of a breach of contract is expensive, time consuming and is a less reliable mode of enforcement.[46]On the other hand, the compliance rate of mediated settlement agreements may be greater than that of court decrees since the settlement takes into account the interest of both parties and is voluntarily decided by the parties.

A convention on mediation would be required to have provisions for enforcement of a settlement agreement, similar to those that exist in conventions on international commercial arbitration. The expansion of international commercial arbitration can be credited to the existence of a legal right to enforce the arbitral award. The experience of international commercial arbitration indicates that consistency between international and national rules is a keystone for achieving practical success. It has been noted that there have been problems in the United States as the Federal Arbitration Act is inconsistent with the

international standards of arbitration.[47] It is well advised that drafters may consider the success, or lack thereof the current enforcement provisions, such as the Model Law, which in spite of it's aspirations has failed to provide a uniform enforcement mechanism. For instance, Article 14 provides for the enforcement of settlement agreements but is constrained in so far as it does not prescribe any procedural or substantive rules for enforcement of settlement agreements. This has been criticised as a "major failing" of the model law[48].This approach of the Model Law may be contrasted with international arbitration conventions which even while permitting variations in enforcement procedures, nevertheless provide guidance as to the conditions, fee and charges and " recognition or enforcement" of arbitral awards[49], the "application for recognition and enforcement"[50], the grounds on which "recognition and enforcement may be refused"[51] and the process for adjournment of the enforcement of the award[52]. Drafters will have to propose similar procedural rules for ICM. Such rules will have to permit adequate flexibility for local practices, but domestic legislations will have to be consistent with the international practices so as to achieve parity in usage of arbitration and mediation. It has been suggested that the settlement reached by a conciliation agreement be subject to a "regime of expedited enforcement" or be treated similarly to an arbitral award[53]. The reasons for this are clear, firstly, to make mediation more attractive and to avoid delay in enforcing settlements through the court[54].

UNCITRAL has itself admitted that Article 14 is a representation of the "smallest common denominator" of different legal systems.[55] It has been stated by the Commission that the achievement of a uniform legislation is hampered by the differences in methods of enforcement between different legal systems and the "technicalities of domestic procedural law".[56] While it is true that the above grounds pose difficulty, it is indeed possible to achieve a harmonised legislation, as proved by the Conventions on international arbitration.

The EU Mediation Directive also calls for mediated settlement agreements to be made enforceable. However, it has also not prescribed a manner of enforcement and stated that member states may make it "enforceable by a court or other competent authority accordance with the law of the Member State."[57]

The model law has given states the discretion to decide the form requirements and enforcement mechanisms through domestic law or enacting legislations. The "Guide to enactment of the UNCITRAL Model Law" has given examples of the treatment of enforcement in various jurisdictions to enable drafters of domestic legislations to frame similar provisions. These are discussed hereunder:

4.2.1 Settlement Agreement Enforceable as a Contract

Some states hold that settlement agreements are enforceable as "any contract between parties".[58] This is the case in the United States and England among other jurisdictions. There are no special laws relating to mediation agreements though this general principle has been included in some laws on mediation[59]. This mechanism may be seen as not being feasible as it leaves parties in the same position as they were in the pre-mediation stage, with a contract whose enforcement is sought. While in the United States, the mediation agreement is generally enforced by the courts[60], this is not a fixed principle and litigation for enforcing a MSA defeats the very purpose of mediation.

4.2.2 Courts to Register or Make Orders Based on Settlement

In some jurisdictions, settlement arising out of mediation commenced after starting of litigation may be enforced as a consent decree by the Court. In Australia, only settlements arrived at through court annexed mediations are enforceable through

courts. Settlements reached at conciliations which are not "court annexed" cannot be registered if there is no concurrent litigation on the same matter [61].

The EU Mediation Directive provides that member states shall ensure that the "content(s) of the agreement may be made enforceable by a court or other competent authority in a judgment or decision or in an authentic instrument."

In some jurisdictions, it is possible to have the Courts pass a decree on the basis of a MSA. The Colorado International Dispute Resolution Act provides that "the agreement may be presented to the court by any party or their attorneys, if any, as a stipulation and, if approved by the court, shall be enforceable as an order of the court."[62] However, enforcing a judgment in a foreign jurisdiction is bound to create constitutional problems which means that the utility of such judgments is "diminished"[63].In such a case, Parties would be better suited by entering the judgment as an arbitral award and enforcing it through the New York Convention[64].

4.2.3 Award to be Based on Settlement Agreement

In certain countries, the parties who have reached a settlement agreement by way of mediation can appoint an arbitrator who then issues an award based on the settlement agreement. In Hungary, if the parties to an arbitration settle the dispute, the arbitral tribunal shall on request of the parties record the settlement as an "award on agreed terms" which shall have the "same effect as any other award made by the arbitration tribunal". The settlement should however conform to the relevant laws [65]. In Korea, mediation is popular despite the fact that there is no separate law for mediation[66]. The Arbitration Rules[67] provide that parties may request for conciliation before arbitration proceedings commence[68] . In case the conciliation proceedings succeed, the conciliator is deemed to be an arbitrator appointed by the parties and the result of the conciliation are treated in the same manner as an arbitral award based on settlement[69] as given in Article 53[70]. Germany has similar provisions in the Zivilprozeßordnung (Code of Civil Procedure) whereby in case of settlement of disputes during arbitration proceedings, the arbitral tribunal "shall record the settlement in the form of an arbitral award on agreed terms" on the request of the parties and "such an award shall have the same effect as any other award"[71]. The Mediation Rules of the Arbitration Institute of the Stockholm Chamber of Commerce likewise provide:

"In case of settlement, the parties may, subject to the consent of the Mediator, agree to appoint the Mediator as an Arbitrator and request him/her to confirm the settlement agreement in an arbitral award."[72]Similar provisions exist in some states in the United States such as in California.[73]

However, it may not be possible to introduce such a provision in an international instrument as in some jurisdictions such as England the arbitration agreement must pertain to present or future disputes[74]. In such jurisdictions, the consent award issued by the arbitrator will be anullity since there no dispute remains after settlement. In such a case, the arbitrator can be appointed before the commencement of mediation and the mediation can be conducted as an "arb-med"(where the arbitrator issues a "non-binding" after which a mediation proceedings are conducted[75]), either by the appointed arbitrator or by a mediator appointed specially for this purpose. However, it has to be kept in mind that certain parties may wish to go for litigation rather than arbitration after unsuccessful resolution via mediation as failure of one ADR mechanism may dissuade them from pursuing

another. Such parties may not wish to sign an "arb-med" agreement. Another point of contention is whether the arbitrator in the above case can be both a mediator and arbitrator as the consent of the parties to such an arrangement may be challenged as a violation of "due process" in certain jurisdictions.[76]

It has been argued that in such a case, it is possible to have the arbitration agreement should specify that it is governed by the jurisdiction where appointment of arbitrator after settlement is allowed[77]. Such consent awards, or awards based on settlements are recognised under the ICC[78] and ICSID[79] arbitration rules also. In China, the arbitral tribunal may conduct conciliation and make a arbitral award conforming to the settlement agreement. A conciliation agreement and an arbitration award issued as above have the same legal status[80].Furthermore, certain jurisdictions such as Brazil and China encourage the arbitrator to attempt mediation and only then to proceed to arbitration.

The Hong Kong Arbitration Ordinance makes express provisions for both 'med-arb' (where a mediator is appointed resolve the dispute before initiation of arbitration proceedings) and 'arb-med' (where the arbitral tribunal tries to resolve disputes through mediation). The Ordinance allows arbitrators to act as mediators prior to(med-arb) or following an arbitration(arb-med). In the event of such a mediation, the arbitration proceedings are to be stayed so as to encourage settlement through mediation. However, in the event a settlement is not reached, any material confidential information must be disclosed to all parties to the arbitration. This requirement on the mediator may prevent parties appointing an arbitrator as a mediator, or disclosing confidential details during caucus[81]. This may detract from the effectiveness of the mediation process[82].

There is a general consensus that the NY Convention permits enforcement of consent awars. However, the opinion regarding the enforcement of awards by arbitrators appointed after the settlement of dispute is varied. While the rules in Korea, California and Stockholm allow for enforcement of such awards, in other jurisdictions it has been opined that such awards are not enforceable[83], or that they are[84], or that it is unclear[85].

The New York Convention is stated to apply to "differences" arising between persons. However, the period of appointment of the arbitrator with respect to the time of the "differences" is not specified[86]. This ambiguity has left scope for multiple interpretations and it may well be possible, and advisable to interpret it in a manner which allows for enforcement of awards issued by arbitrators appointed after settlement of disputes. Such an interpretation may be useful in providing courts in local jurisdictions and a mass of scholarly opinion may prove to be a catalyst for change in domestic arbitration acts as well as in the Conventions governing international arbitration and mediation.

A mechanism to clarify this aspect would be the UNCITRAL recommendations on the interpretation of the New York Convention[87]. Such recommendations have been made for other articles of the New York Conventions[88] and a recommendation widening the scope of the Convention may encourage states to adopt the provisions suggested, without going through the tedious process of amending the Convention. This will not be a perfect solution, parties will have to entail the increased costs and delays posed by appointing an arbitrator, and arbitrators may not be keen to simply sign of a agreement they have not had a role in supervising. However, this is the best approach for parties in the current legal framework.

It is clear that there are wide differences in national practices with regard to the execution of settlement agreements and the language of the Model Law is

"ambiguous" and can be subject to a range of interpretations as either requiring strict enforceability or merely stating the obvious that settlement agreements can be enforced through appropriate procedures[89]. Drafters will therefore have to look at the best national practices on mediation as well as on arbitration to come up with an effective enforcement mechanism.

It will also be important for drafters to give as much importance to enforcement of the mediation agreement as is paid to the execution of the settlement agreement. Because of the voluntary nature of the mediation agreement, parties expect that if there is submission to the mediation agreement, the parties will comply with the outcome of the settlement. So, the enforcement of the initial stage of the dispute resolution is as important as enforcement of the final outcome.

Further, to prevent any possible abusive mediation agreements, provisions will have to be made to allow for objections on the grounds of "core procedural issues"[90], such as incapacity of parties[91], lack of notice[92], or arbitrators overstepping their authority[93], and for violation of public policy[94].

UNCITRAL has already initiated steps through its Working Group II which has held meetings to have a convention modelled New York Convention to enforce both the settlement agreement and the mediation award[95]. The Working Group has stated that for now, the terms mediation and conciliation may be treated synonymously and that whatever definition is given to the terms should be a broad and a general one. The Working Group has concluded that any Convention should focus on international commercial settlements only and not on domestic settlements or matters involving labour or family issues. Further, the Working Group has broadly coalesced support for having limited defences like there are in the NY Convention. The author supports having limited grounds for defence as such a system given in the NY Convention has clearly been positive in the case of international arbitration. A simple approach similar to that of the New York Convention may be adopted which despite only consisting of 16 Articles has been one of the most successful United Nationasinsturments[96].

5. Conclusion

Mediation is an increasingly popular form of dispute resolution. It is certainly poised to stand on the same footing as arbitration both in terms of it's international legal institutional support and it's popularity. Depending on the case, it will either be an alternative to arbitration or will be used along with arbitration such as a med-arb or arb-med mechanism. Savings of time, cost and less formality will remain the primary motivation for parties to choose mediation. However, depending upon the complexity of the case this may not always be possible. In such a scenario, other non-quantifiable parameters such as preservation of business relationships will still help in ensuring the importance of mediation in resolution of disputes. The paper has also proposed that parties are more likely to adopt mediation if appropriate international and domestic legal regimes for enforcement of mediation agreements and settlement agreements are put in place. The paper has discussed the current international and domestic framework for enforcement and to analyze the diversity in national practices. It has been proposed to develop an International Convention on Mediation on the lines of the New York Convention on Arbitration. The drafters of a future international treaty will need to consider the benefits of each mechanism. As such, it is recommended that

the instrumentalities of both mediation and arbitration need to be changed in view of its increasing relevance, the changes in the business environment and the ambiguities and complexities that have arisen in practice. It is strongly suggested to recommend an interpretation and possibly, an amendment to the New York Convention which allows for enforceability of an award issued by an arbitrator appointed after the settlement of disputes through mediation. Another point of consideration is the increasingly blurring lines between arbitration and mediation. Indeed, mediation is sometimes defined as the "surrogate" of arbitration[97] and sometimes as the "new arbitration"[98]. While blending as arb-med and med-arb are gaining popularity internationally, it has to be ensured that mediation does not get caught up in the same problems of legalism and formality and loose its own identity.

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[63]Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, Article 6
[64]Colorado Dispute Resolution Act, Colorado R.S.A. § 13-22-308 "Settlement of disputes [i]f the parties involved in a dispute reach a full or partial agreement…If reduced to writing and signed by the parties, the agreement may be presented to the court by any party or their attorneys, if any, as a stipulation and, if approved by the court, shall be enforceable as an order of the court."
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[67]In Hungary, section 39 of Act LXXI, of 8 November 1994 provides that:" (a) If during the arbitral proceedings the parties settle the dispute, the arbitral tribunal shall terminate the proceedings by an order. (b) If requested by the parties, the arbitral tribunal shall record the settlement in the form of an award on agreed terms, provided that it considers the settlement as being in accordance with the law. (c) An award on agreed terms has the same effect as that of any other award made by the arbitral tribunal."
[68]UNCITRAL, UNCITRAL Model Law on International Commercial Conciliation with Guide to Enactment and Use 2002, *note 51, page 56*
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[70]Korean Commercial Arbitration Board, Domestic Arbitration Rules
"Article 18. Settlement through Conciliation
1. Upon the receipt of a conciliation request from both parties within 15 days from the Reference Date the Secretariat shall refer the dispute to conciliation proceedings before arbitration procedures commence."
[71]Korean Commercial Arbitration Board, Domestic Arbitration Rules

Article 18(3) “If the conciliation proceeding succeeds in settling the dispute, the conciliator shall be deemed to be the arbitrator appointed under the agreement of the parties, and the result of the conciliation shall be treated in the same manner as an award given and rendered upon settlement by compromise under the provisions of Article 53 and shall have the same effect as such an award.”

[72]Korean Commercial Arbitration Board, Domestic Arbitration Rules

“Article 53. Arbitral Award based on Settlement

If the parties reach a settlement during the course of the arbitration proceedings, the Tribunal may, upon request from the parties, record the agreed settlement in the form of an award.”

[73]Germany, Zivilprozessordnung, tenth book, sect. 1053.

[74]THE MEDIATION RULES OF THE ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE, Article 14

[75]California Code of Civil Proc. Title 9.3. Arbitration and Conciliation of International Commercial Disputes, § 1297.401

[76]English Arbitration Act of 1996, Section 6(1)

"In Part 1 of the Act, an "arbitration agreement" means “an agreement to submit to arbitration present or future disputes (whether they are contractual or not)."

[77]Franklin County Law Library, Alternative Dispute Resolution Research: Med-Arb or Arb-Med, *https://fclawlib.libguides.com/adr/medarb*

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[81] ICC Rules of Arbitration, Article 33: Award by Consent

[82] CSID Convention, Regulation and Rules,RULES OF PROCEDURE FOR ARBITRATION PROCEEDINGS (ARBITRATION RULES), Chapter V, Rule 43, Settlement and Discontinuance

[83] Arbitration Law of the People’s Republic of China, article 51

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[95] UNCITRAL, Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), Article V(1)(b)
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[98]L Brennan, 'Do We Need a New York Convention on Mediation/Conciliation?', <http://www.mediate.com/articles/BrennanLbl20150227.cfm>
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