

COMPARATIVE ANALYSIS OF INTERNATIONAL ARBITRATION AND OTHER ALTERNATIVE DISPUTE RESOLUTION MECHANISMS IN CROSS-BORDER COMMERCIAL DISPUTES

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Abstract

Cross-border commercial disputes have increased with globalization, presenting challenges including conflicting legal systems, jurisdictional uncertainty, high litigation costs, and lengthy court proceedings. Traditional court litigation is often slow and inefficient for resolving international disputes. As a result, international arbitration and other Alternative Dispute Resolution (ADR) mechanisms have assumed a central role in international commercial practice. They offer flexible, faster, neutrality, and more cost-effective methods of resolving disputes outside national courts. While adopting doctrinal method of legal research, this paper provides a comparative examination of international arbitration alongside other ADR processes in cross-border commercial disputes. It analyses their legal foundations, procedural structures, and normative objectives, with particular attention to party autonomy, enforceability, confidentiality, finality, and institutional support. Beyond their advantages, the study critically evaluates persistent challenges affecting these mechanisms, including high costs, procedural delays, enforcement limitations, restricted review of arbitral awards, jurisdictional conflicts, and tensions between confidentiality and transparency. The paper further explores contemporary developments shaping the field, including reform debates surrounding Investor–State Dispute Settlement (ISDS), the integration of technology and online dispute resolution (ODR), and the growing emphasis on diversity and inclusion in arbitral appointments. Through structured comparison, the paper argues that while international arbitration remains central to cross-border dispute resolution, its effectiveness depends on addressing structural limitations and adapting to evolving global expectations. Effective dispute resolution in international commerce therefore requires not the dominance of a single mechanism, but a coherent and context-sensitive integration of arbitration and other ADR processes within the modern architecture of global commercial law. The paper concludes by recommending measures to enhance the efficiency, accessibility, and fairness of dispute resolution mechanisms in an increasingly interconnected global economy.

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1.0: Introduction

Disputes are an unavoidable part of human interaction. Whether in commerce, trade, investment, property, or personal relationships, disagreements arise whenever parties pursue competing interests.¹ Because conflict is inevitable, every legal system must provide effective mechanisms for resolving disputes in a manner that supports social order, economic stability, and continued cooperation.² Dispute resolution is therefore not merely a procedural matter; it is central to the functioning of any organized society.³

With the rapid growth of international trade and cross-border investment, disputes have become more complex. Transactions now frequently involve parties from different jurisdictions, operating under different legal systems and regulatory frameworks.⁴ Traditional court litigation, although authoritative and enforceable within domestic systems, often proves slow, expensive, and procedurally rigid in the international context. Jurisdictional challenges, difficulties in enforcing foreign judgments, and prolonged proceedings⁵ can undermine commercial relationships and discourage international business cooperation.

Consequently, these limitations have contributed to the increasing reliance on Alternative Dispute Resolution (ADR). ADR refers to a range of processes that enable parties to resolve disputes outside national courts. Common methods include negotiation, mediation, conciliation, and arbitration.⁶ These mechanisms generally offer greater flexibility, procedural autonomy, confidentiality, and efficiency. In many cases, they also allow parties

¹ B Ore-Adebiyi, 'A Comparative Critical Appraisal of Alternative Dispute Resolution (ADR) as a Strategy for Effective Dispute Resolution in Nigeria and Select Jurisdictions' <https://www.academia.edu/28032198/a_comparative_critical_appraisal_of_alternative_dispute_resolution_ad_r_as_a_strategy_for_effective_dispute_resolution_in_nigeria_and_select_jurisdictions_u_k_and_u_s_> accessed on 25 February, 2025.

² L A Ayinle and Others, 'A Appraisal of the Nexus and Disparities between Arbitration and Alternative Dispute Resolution (ADR)' *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, [2017] (8) (1) 183.

³ Global Law Experts, 'The Rise of Alternative Resolution Mechanisms in Nigeria' (2017) <<https://globallawexperts.com/the-rise-of-alternative-resolution-mechanisms-in-nigeria/>> accessed on 25 February, 2026.

⁴ J A Faris, *An Analysis of the Theory and Principles of Alternative Dispute Resolution* (University of South Africa, South Africa 1995) 13.

⁵ Ore-Adebiyi (n 1).

⁶ I Banerjee, 'An Introduction to Alternative Dispute Resolution' [2020] <<https://blog.ipleaders.in/an-introduction-to-alternative-dispute-resolution>> accessed on 25 February, 2026.

to preserve ongoing business relationships by reducing the adversarial nature of formal litigation.⁷

Among ADR mechanisms, international arbitration has emerged as the leading method for resolving cross-border commercial disputes.⁸ It allows parties to submit their dispute to a neutral tribunal whose decision is binding and widely enforceable. Its appeal lies in party autonomy, neutrality, confidentiality, and the relative ease with which arbitral awards can be recognized and enforced across jurisdictions.⁹ At the same time, other ADR processes such as mediation and negotiation continue to play an important role, particularly where parties prioritize cost control, speed, and the preservation of commercial relationships.¹⁰

However, the increasing reliance on arbitration and ADR does not eliminate structural concerns. Despite their advantages, these mechanisms face significant challenges that can undermine their effectiveness. These include high costs, procedural delays, enforcement difficulties, limited grounds for review, jurisdictional conflicts, and tensions between confidentiality and transparency.¹¹ At the same time, the landscape of international dispute resolution is undergoing transformation. Reform efforts in investor–state dispute settlement (ISDS) questions the legitimacy and structure of existing arbitration models.¹² Technological innovation, including online dispute resolution and artificial intelligence-assisted procedures, is reshaping how disputes are administered and decided.¹³

Against this backdrop, this paper offers a comparative examination of international arbitration and other ADR mechanisms in cross-border commercial disputes. It analyses their legal foundations, procedural frameworks, and normative objectives, with particular attention to enforceability, neutrality, confidentiality, finality, and institutional support. The

⁷ P H Pandya and R Dave, 'Investigating the Jurisprudential Aspects of ADR' *Journal of Pharmaceutical Negative Results*, [2023] (14) (1) 1306.

⁸ A Horacio and G Naón, 'The Settlement of Investment Disputes between States and Private Parties: An Overview from the Perspective of the ICC' *Articles in Law Reviews and Other Academic Journals*, [2000] 60-62.

⁹ *ibid.*

¹⁰ K Shonk, 'International Arbitration: What It is and How it Works' (2024) < <https://www.pon.harvard.edu/daily/international-negotiation-daily/internationalarbitration-what-it-is-and-how-it-works> > accessed on 25 February, 2026.

¹¹ Kellam and Others, 'Maintaining and Enhancing the Integrity of ADR Processes: From Principles to Practice through People' (2011) < https://ink.library.smu.edu.sg/sol_research/3373 > accessed on 25 February, 2026.

¹² *ibid.*

¹³ *ibid.*

study critically evaluates their challenges, highlights contemporary developments, and compares arbitration with non-binding ADR processes to clarify their relative strengths and limitations. By doing so, the paper seeks to clarify how and why parties strategically select dispute resolution methods and to assess the evolving role of ADR in promoting efficient and sustainable dispute resolution in the global economy.

2.0: Overview of International Arbitration

International arbitration is a private adjudicatory process grounded in party consent and typically established through a contractual arbitration agreement.¹⁴ As a binding method of resolving disputes, it allows parties to submit their disagreements to an independent tribunal rather than a national court.¹⁵ This process may be institutional, where it is administered by recognized bodies such as the International Chamber of Commerce (ICC) or the London Court of International Arbitration (LCIA), or it may be *ad hoc*, where parties conduct the proceedings independently under agreed rules like those provided by United Nation Commission on International Trade Law (UNCITRAL) Arbitration Rules.¹⁶

The term ‘international’ distinguishes arbitrations that transcend national boundaries from those that are purely domestic.¹⁷ Although every arbitration is legally anchored to a specific jurisdiction known as the seat of arbitration; the parties in international arbitration often have no substantive connection to that seat.¹⁸ It is deliberately selected for neutrality and a supportive legal framework.¹⁹ This differs from domestic arbitration, which typically involves parties and disputes closely linked to a single jurisdiction.²⁰ International

¹⁴ Maritime Arbitration, ‘An Introduction’ < <https://www.lexisnexis.co.uk/legal/guidance/maritime-arbitration-an-introduction> > accessed on 25 February, 2026.

¹⁵ K Al-Zarraa, ‘Recognition and Enforcement of Foreign Arbitral Awards: Case Study on the State of Qatar’ *Dispute Resolution Journal*, [2015] (70) (3) 61.

¹⁶ Kellam and Others (n 11).

¹⁷ F Honig, ‘Transnational Law: Storrs Lectures on Jurisprudence’ *International Affairs*, [1958] 34 (1) 78-79 < <https://doi.org/10.2307/2605888> > accessed on 25 February, 2026.

¹⁸ *ibid*.

¹⁹ M M Meza-Salas, ‘Importance of the Law Applicable to the Arbitration Agreement in International Commercial Arbitration’ < <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1077&context=ab> > accessed on 25 February, 2026.

²⁰ *ibid*

arbitration also tends to involve corporations, states, or state entities, and frequently concerns high-value commercial or investment disputes.²¹

International commercial arbitration is widely used to resolve cross-border business disputes. Most international contracts contain arbitration clauses to ensure that disputes are handled through a neutral and enforceable process.²² The legal framework is strongly influenced by the UNCITRAL Model Law and national implementing legislation.²³ Leading institutions include the International Centre for Dispute Resolution (ICDR), the Singapore International Arbitration Centre (SIAC), the Hong Kong International Arbitration Centre (HKIAC), and the World Intellectual Property Organization (WIPO) Arbitration and Mediation Centre for intellectual property disputes.²⁴

State-to-state arbitration, often referred to as inter-state arbitration, addresses disputes between sovereign states, typically involving issues of public international law such as territorial boundaries or treaty interpretation.²⁵ The Permanent Court of Arbitration (PCA) frequently administers such cases under UNCITRAL or specially agreed procedures.²⁶ Enforcement of inter-state awards can be more complex than commercial awards, particularly where political considerations arise.²⁷

While investor–state arbitration represents another distinct category. It enables foreign investors to bring claims directly against host states under bilateral or multilateral investment treaties.²⁸ The establishment of the International Centre for Settlement of Investment Dispute (ICSID) Convention in 1965 provided a dedicated forum for these disputes, though its jurisdiction depends on explicit state consent. Initially underutilized,

²¹ N Blackaby and Others, *An Overview of International Arbitration in Constantine Partasides* (Oxford University Press 2009) 81.

²² J Lew and Others, *Comparative International Commercial Arbitration* (Kluwer Law International 2003) 3.

²³ S Brekoulakis, 'Arbitrability: Persisting Misconceptions and New Areas of Concern' in L Mistelis and S L Brekoulakis (eds), *Arbitrability: International & Comparative Perspectives* (Kluwer law international, 2009) 25.

²⁴ Markus Petsche, *The Growing Autonomy of International Commercial Arbitration* (Sellier European Law Publisher 2005) 10.

²⁵ S Asaf, 'Framework of Analysis: The Arbitration of Interstate Territorial Disputes', *The International Arbitration of Territorial Disputes* (Oxford, 2024) < <https://doi.org/10.1093/oso/9780198870203.003.0003> > accessed on 25 February, 2026.

²⁶ *ibid*

²⁷ C L Lim, 'Inter-State Arbitration and the Pursuit of Peace', in *the Cambridge Companion to International Arbitration* (Cambridge University Press, Cambridge 2021) 310.

²⁸ Wanli Ma and M Faure, 'Is Investment Arbitration an Effective Alternative to Court Litigation? Towards a Smart Mix of Litigation and Arbitration in Resolving Investment Disputes' *Brook. Journal Int'l Law*, (2022) (4) (1) 48. < <https://brooklynworks.brooklaw.edu/bjil/vol48/iss1/1> > accessed 25 February, 2026.

ICSID arbitration gained prominence with the proliferation of Bilateral Investment Treaties (BITs).²⁹ By 2021, investors had initiated over 1,100 cases against 124 governments, with some awards reaching hundreds of millions of dollars.³⁰ This mechanism reflects a significant development in international dispute resolution, balancing investor protection with state regulatory authority.

The arbitration process generally begins with an arbitration agreement.³¹ Arbitrators are then appointed, either by the parties or through institutional mechanisms. Preliminary procedures follow, including the exchange of written submissions and the organization of hearings.³² During the hearing stage, parties present arguments, evidence, and witness testimony. The tribunal subsequently issues a final and binding award. Enforcement of arbitral awards is primarily governed by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which facilitates recognition and enforcement across many jurisdictions.³³

Moreover, international arbitration offers several advantages. It provides neutrality, procedural flexibility, confidentiality, and a high degree of enforceability.³⁴ Arbitrators are often selected for their technical or industry expertise, making arbitration suitable for complex commercial disputes.³⁵ However, arbitration is not without limitations. It can be expensive, particularly in high-value disputes, and proceedings may become lengthy.³⁶ In addition, review of arbitral awards is limited, meaning that errors of law or fact are rarely subject to appeal.³⁷

²⁹ C F Rozas, and Others, *Principios Generales del Arbitraje* (Tirant lo Blanch, 2018) 25.

³⁰ *ibid.*

³¹ *ibid.*

³² *ibid.*, 27.

³³ A Henderson, 'Lex Arbitri, Procedure Law and the Seat of Arbitration: Unravelling the Laws of the Arbitration Process' (2014) (26) *SacLJ*, 12. <
<https://journalonline.academypublishing.org.sg/Journals/Singapore-Academy-of-Law-Journal-Special-Issue/e-Archive/ctl/eFirstSALPDFJournalView/mid/513/ArticleId/335/Citation/JournalsOnlinePDF>>
 accessed on 25 February, 2026.

³⁴ Latham and Watkins, 'Guide to International Arbitration' <
<https://www.lw.com/admin/Upload/Documents/Guide-to-International-Arbitration-May-2014.pdf> >
 accessed on 25 February, 2026.

³⁵ *ibid.*

³⁶ C E-Umegbolu., 'The Workings of International Commercial Arbitration (ICA)' *E Journal of Law*, (2021) (1) (7) 89

³⁷ A Idigbe *Arbitration Practice in Nigeria* (Distinct Universal Limited, Lagos 2010) 3.

3.0: Overview of Alternative Dispute Resolution (ADR) Mechanisms

Alternative Dispute Resolution (ADR) Mechanisms refers to a range of processes used to resolve disputes outside traditional court litigation.³⁸ These mechanisms are designed to provide parties with more flexible, efficient, and often less adversarial methods of settling conflicts.³⁹ While ADR is commonly described as an alternative to litigation, it may also function alongside court proceedings, either to narrow issues or to encourage settlement at different stages of a dispute.⁴⁰

At its core, ADR is a structured process in which disputing parties attempt to resolve their differences voluntarily, sometimes with the assistance of a neutral third party.⁴¹ The neutral such as a mediator or conciliator does not usually impose a binding decision (except in arbitration), but instead facilitates dialogue, promotes understanding, and assists the parties in reaching a mutually acceptable outcome. In some instances, ADR may occur without third-party involvement, as in negotiation, where parties communicate directly to settle their dispute.⁴²

ADR processes are generally valued for their speed, lower cost, confidentiality, and flexibility when compared with litigation.⁴³ They are frequently used in commercial, labor, family, and contractual disputes particularly where parties seek to preserve ongoing relationships. In many commercial agreements, parties are contractually bound to attempt a specified ADR process before initiating formal litigation or arbitration. Such clauses reflect the growing preference for consensual settlement mechanisms in both domestic and international practice.⁴⁴

³⁸ Ore-Adebiyi (n 1) 15.

³⁹ Adebayo and Ahmad, 'An Appraisal of the Nexus and Disparities between Arbitration and Alternative Dispute Resolution (ADR)' *NAUJILJ*, (2017) (8) (1) 184.

⁴⁰ J. D Pretorius, 'The Concept of Alternative Dispute Resolution (ADR)' (2019) <https://www.linkedin.com/pulse/concept-alternative-dispute-resolution-adr-jd-pretorius/?trk=articles_directory> accessed on 25 February, 2026.

⁴¹ F Sander and S Goldberg, 'Fitting the Forum to the Fuss: A User-Friendly Guide to Selecting an ADR Procedure' *Negotiation Journal* (2020) (10) 50.

⁴² *ibid.*

⁴³ R Delgado and Others, 'Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution' *Wisconsin Law Review*, (2017) (85) 1359.

⁴⁴ M. E Katsh and J Rifkin, 'Online Dispute Resolution: Resolving Conflicts in Cyberspace' (2001) <<http://ci.nii.ac.jp/ncid/BA53132965>> accessed on 25 February, 2026.

The various ADR mechanisms differ in structure, level of formality, and legal effect. A key distinction lies between binding and non-binding processes.⁴⁵ Arbitration results in a binding decision enforceable by law, whereas mediation, conciliation, and negotiation typically produce outcomes that become binding only if the parties formalize their agreement.⁴⁶ ADR mechanisms also differ in the degree of third-party control. In mediation, the neutral facilitates discussion without deciding the outcome; in conciliation, the neutral may propose solutions; in arbitration, the tribunal renders a binding award.⁴⁷

Similarly, in recent years, ADR has expanded beyond simple two-party disputes to address complex, multi-party and policy-related conflicts. Hybrid processes such as med-arb (a combination of mediation and arbitration) and consensus-building models—have emerged to manage disputes involving technical, commercial, or regulatory issues.⁴⁸ These developments reflect the adaptability of ADR to evolving commercial and social realities.

By and large, the suitability of a particular ADR mechanism depends on the nature of the dispute, the relationship between the parties, the need for confidentiality or enforceability, and the broader legal context. ADR does not replace courts entirely; rather, it complements formal adjudication by offering alternative pathways to efficient and practical dispute resolution.⁴⁹

The various types of ADR mechanisms available to parties are explored below:

1. Negotiation

Negotiation is a voluntary problem-solving process where two or more parties discuss their differences to reach a mutually acceptable agreement.⁵⁰ It involves interaction aimed at resolving conflicts based on common interests, despite existing divisions.⁵¹ Essentially,

⁴⁵ N Akhtar and Others, 'Alternative Dispute Resolution' (2023) 5(2) *Global Legal Studies Review*, 37.

⁴⁶ *ibid.*

⁴⁷ Delgado and Others (n 43) 1360.

⁴⁸ *ibid.*

⁴⁹ *ibid.*

⁵⁰ M H Bazerman and M A Neale, *Negotiating Rationally* (Free Press, New York 1992) 3.

⁵¹ V J D Pienaar and H I J Spoelstra, *Negotiation* (Cape Town, Juta and Co Ltd, 1991) 3.

negotiation seeks to adjust differences through compromise, balancing legal, economic, psychological, and social interests to establish a more desirable relationship.⁵²

A vital and recurrent element of this mechanism is that it is a continuous process characterized by distinct phases, leading either to agreement or failure to settle. Its duration, whether brief or prolonged, is immaterial compared to its essential continuity.⁵³ While not identical to legal proceedings, negotiation follows structured phases: preparation, opening, bargaining, and closing or agreement phase.⁵⁴ While generally consensual, it is not always voluntary, as it may be mandated or influenced by external pressures. Litigation can also prompt negotiation, but parties retain the right to withdraw at any time.⁵⁵

Another the distinguishing features of negotiation are that it is based solely upon the bilateral interaction of the disputants. This indicates that the process is dyadic in the sense that a neutral third party is not involved. The disputants themselves fill the role of advocate and decision maker: the disputants determine the rules that will govern the form of the proceedings, identify and argue the facts in issue, control the process and determine its outcome.⁵⁶ However, the bilateral nature of the process does not mean that only two disputants are involved.⁵⁷

Also, characteristic of negotiation lies in its purpose of attempting to resolve a dispute relating to interests or rights. The very purpose of negotiation in this instance is to create future rights or interests.⁵⁸ In the same vein, another element of negotiation is to reconcile interests or to settle a dispute by joint decision making.⁵⁹ The notion of joint decision making is generally alien to common notions about negotiation. This attitude may be attributed to the adversarial culture instilled by the process of litigation.⁶⁰

⁵² *ibid.*

⁵³ P H Gulliver, *Dispute and Negotiations: A Cross-Cultural Perspective* (Academic Press, London 1979) 180-186.

⁵⁴ A T Bello, 'Negotiation as a Tool for Dispute Resolution and Conflict Management in a Changing World' <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3010144> accessed on 26 February, 2026.

⁵⁵ S M Leeson and B M Johnston, *Ending It Dispute Resolution in America* (Cincinnati, Anderson Publishing Co. 1988), 104.

⁵⁶ H Astor and C M Chinkin, *Dispute Resolution in Australia* (Sydney, Butterworths, London 1992), 80.

⁵⁷ D G Gifford, *Legal Negotiation* (West Publishing Co, St Paul Minn, London 1989), 175-179.

⁵⁸ M A Eisenberg, 'Private Ordering through Negotiation: Dispute Settlement and Rule Making' *Harvard Law Review*, (1976) 665-668.

⁵⁹ J H Hartje, 'Lawyer's Skills in Negotiations: Justice in Unseen hands' *Journal of Dispute Resolution*, (1984) (119) 138-139.

⁶⁰ M C Menkel, 'For and Against Settlement: Uses and Abuses of the Mandatory Settlement Conference' *University of California in Los Angeles Law Review*, (1985/1986) (485) 755.

Furthermore, considering these features emerge the importance and benefits of negotiation as a mechanism of alternative dispute resolution. Negotiation is valuable in ADR as it preserves relationships, fosters trust, and promotes collaboration. Unlike litigation, it avoids a win-lose outcome, allowing for mutually beneficial solutions.⁶¹ It is also a cost-effective alternative, saving time, resources, and emotional strain compared to legal proceedings.⁶²

Nevertheless, negotiation can be problematic when power imbalances favour one party, leading to unfair outcomes. The lack of a neutral mediator may result in failed agreements, wasted resources, or exploitation, especially if one party is unaware of their rights.⁶³ Additionally, if a party withdraws from negotiations after initiation, it can render the time and resources invested in the negotiation futile.⁶⁴

2. Mediation

The term mediation broadly refers to any instance in which a third party helps others reach an agreement.⁶⁵ Mediation is a process in which a third party (usually neutral and unbiased) facilitates a negotiated consensual agreement among parties, without rendering a formal decision.⁶⁶ In other words, it is an ADR method in which third party natural assists conflicting parties in order to reach a mutually dreamed agreement. Whether an agreement results or not, and whatever the content of that agreement, if any, the parties themselves determine rather than accepting something imposed by a third party.⁶⁷

An element of mediation as ADR mechanism lies in its voluntary process in which a trained neutral third party facilitates a binding settlement between disputing parties.⁶⁸ The parties control the resolution and may exit the process at any time, as can the mediator for ethical reasons. While the agreement is voluntarily reached, it is ultimately validated and

⁶¹ G Kaushik, *'Negotiation as A Mode of ADR'* (2023) <<https://blog.iplayers.in/negotiation-as-a-mode-of-adr/>> accessed on 26 February, 2026.

⁶² *ibid.*

⁶³ K Jensen, *'Creativity is More Important Than Knowledge in Negotiations'* (2017) <<https://www.forbes.com/sites/keldjensen/2017/05/30/creativity-is-more-important-than-knowledge-in-negotiations/>> accessed on 26 February, 2026.

⁶⁴ Menkel (n 60) 755.

⁶⁵ *ibid.*

⁶⁶ L M Ponte, *Alternative Dispute Resolution in Business* (West Educational Publishing Company, Canada 1991) 90.

⁶⁷ *ibid.*

⁶⁸ *ibid.*, 92.

ratified by the courts.⁶⁹ From past to present scholars and researchers have developed distinctive forms of mediation to describe and compare approaches of mediation. These includes facilitative, evaluative and transformative mediation⁷⁰ Facilitative mediation implies the instance where the mediator manages the process by which the parties negotiate their case.⁷¹ This approach is based on three principles: parties are best suited to determine their own outcomes, neutrality fosters trust, and the mediator's focus enhances intervention effectiveness.⁷²

On the other hand, evaluative mediations focus primarily on the parties' alternatives to settlement, with the mediator—often a legal expert—providing insights without making judgments.⁷³ While both facilitative and evaluative mediation aim to resolve disputes, transformative mediation focuses on improving the parties' interactions and personal growth rather than just settling the conflict.⁷⁴

More so, mediation is particularly beneficial when parties have ongoing relationships, as it fosters mutual agreement without winners or losers. It allows parties to tailor the process to their needs, including location, timeframe, and participants.⁷⁵ Mediation is also faster than adjudicative methods since mediators manage negotiations rather than prepare legal arguments.⁷⁶ Additionally, it offers flexible settlement options beyond litigation, including structured payment plans. Importantly, mediation does not preclude parties from pursuing arbitration or litigation if a settlement is not reached.⁷⁷ However, mediation faces challenges such as its non-binding nature, power imbalances, unpredictability, and reliance

⁶⁹ Y Shamir, 'Alternative Dispute Resolution Approaches and Their Application' (2002) <[https://www.researchgate.net/publication/251855496_Alternative_Dispute_Resolution_Approaches_and_their_Application#:~:text=Shamir%20\(2011\)%20posits%20that%2C,arbitration%20and%20adjudication.%20..](https://www.researchgate.net/publication/251855496_Alternative_Dispute_Resolution_Approaches_and_their_Application#:~:text=Shamir%20(2011)%20posits%20that%2C,arbitration%20and%20adjudication.%20..)> Accessed on 28th March 2025.

⁷⁰ Ponte (n 66) 93.

⁷¹ *ibid.*

⁷² *ibid.*

⁷³ N. S Şimşek and K Bölten 'Mediation as a Charming Dispute Resolution Mechanism' <<https://www.gsg hukuk.com/en/publications-bulletins/articles/mediation-as-a-charming-dispute-resolution-mechanism-gsg.pdf>> accessed 26 February, 2026. .

⁷⁴ *ibid.*

⁷⁵ *ibid.*

⁷⁶ *ibid.*

⁷⁷ M F Radford, 'Advantages and Disadvantages of Mediation in Probate, Trust, and Guardianship Matters' (2000) 34 *ABA REAL PROP. PROB. & TR. Journal*, 242.

on party cooperation. Additionally, its confidentiality may hinder accountability in certain cases.⁷⁸

3. Conciliation

Conciliation is a voluntary dispute resolution process where a neutral third party, known as the conciliator, assists disputing parties in reaching a mutually acceptable settlement.⁷⁹ It is an informal and flexible mechanism aimed at fostering dialogue and understanding between conflicting parties.⁸⁰ Unlike litigation, which imposes binding decisions, conciliation focuses on guiding parties towards a consensual resolution by clarifying issues, identifying interests, and suggesting possible solutions.⁸¹

A crucial characteristic of conciliation is its structured yet adaptable process, comprising various phases that facilitate resolution.⁸² It typically begins with an introductory phase where the conciliator sets the ground rules, followed by information gathering, issue identification, exploration of settlement options, and, if successful, an agreement phase.⁸³ The conciliator plays an active role in steering discussions and proposing solutions, but the final decision remains with the disputing parties. While primarily voluntary, conciliation may be mandated in some legal and institutional frameworks, such as labour disputes or commercial disagreements.⁸⁴

Another distinguishing feature of conciliation is the involvement of a neutral third party who does not impose a decision but facilitates dialogue.⁸⁵ The conciliator assists by fostering open communication, reducing tensions, and ensuring fairness, making the process particularly useful where power imbalances exist, or parties struggle to communicate effectively. Furthermore, conciliation aims not only to resolve disputes but

⁷⁸ Sikubwabo, 'The perceptions and challenges of a holistic aspect of mediation for effective conflict resolution' (2024) < <https://worldmediation.org/journal/> > accessed 26 February, 2026

⁷⁹ M Bauckmann, 'What is Conciliation?' < <https://www.dispute-resolution-hamburg.com/information/conciliation> > accessed 26 February, 2026.

⁸⁰ *ibid*

⁸¹ R A Hunter and Others, *Law and Practice of International Commercial Arbitration* (4th edn, Sweet and Maxwell, London 2004) 24.

⁸² L C Rei, 'Conciliation as A Mechanism for the Resolution of International Economic and Business Disputes' *Fordham International Law Journal* (1990) (14) (3) 3.

⁸³ Bilder, 'International Third Party Dispute Settlement' *DEN. UJ. INT'L L. & POL'Y*, (1989) (17) 481.

⁸⁴ D Spencer, *Essential Dispute Resolution*, (Cavendish Publishers, Sydney, Australia 2002) 23.

⁸⁵ *ibid*,

also to preserve relationships and foster long-term cooperation. Its primary purpose is to reconcile interests by encouraging parties to collaboratively craft solutions.⁸⁶

Given these characteristics, conciliation offers several benefits as an alternative dispute resolution (ADR) mechanism.⁸⁷ It provides a confidential, cost-effective, and less adversarial means of resolving disputes compared to litigation. By preserving relationships, it is particularly valuable in commercial, family, and workplace conflicts where ongoing interaction is essential. Additionally, conciliation reduces court congestion by offering a faster and more amicable settlement method.⁸⁸

Despite its advantages, conciliation also presents challenges. The non-binding nature of the conciliator's suggestions means that parties may reject proposed settlements, prolonging disputes.⁸⁹ Furthermore, if one party lacks good faith or abuses the process to delay resolution, conciliation may become ineffective. Power imbalances may also impact fairness, as a weaker party might feel pressured into accepting an unfavourable outcome.⁹⁰ Nonetheless, with a skilled conciliator and a cooperative approach, conciliation remains a powerful tool for resolving disputes amicably and efficiently.

4. Expert Determination

Expert determination is a procedure in which a dispute or a difference between the parties is submitted, by agreement of the parties, to one or more experts who make a determination on the matter referred to it.⁹¹ It is a contractual form of dispute resolution, so parties to a contract agree that certain disputes that may arise in connection with their contract will be referred to an expert.⁹² This agreement must be in a written form; the expert who conducts

⁸⁶ *ibid*, 24.

⁸⁷ I Dore, 'Arbitration And Conciliation Under The Uncitral Rules: A Textual Analysis' (1986) 7-8

⁸⁸ *ibid*

⁸⁹ N G Partner, 'Adjudication and ADR: an Overview' <https://www.fenwickelliott.com/sites/default/files/nick_gould_-_adjudication_and_adr_-_an_overview_matrices_paper.indd_.pdf 7 > accessed 26 February, 2026.

⁹⁰ *ibid*.

⁹¹ WIPO, 'Expert Determination' <<https://www.wipo.int/amc/en/expert-determination/what-is-exp.html>> accessed 26 February, 2026.

⁹² L Arshus, 'A Consideration of Expert Determination on Energy and Resources Projects' (2015) <www.ashurst.com> accessed on 26 February, 2026.

the process is independent and most of the times chosen by the parties or he/she can be nominated from a professional institute.⁹³

Expert determination is a mechanism used in a few commercial agreements. For example, it may be used in share purchase agreements to resolve disputes in relation to completion accounts.⁹⁴ Also, expert determination is said to be best suited for disputes concerning valuation or defined technical issues, where the relevant facts are not significantly contested and can be ascertained from documentary evidence.⁹⁵

In addition, parties usually, choose to refer the dispute to an expert due to a very specific reason that is the reason why such expert determination clauses could require the expert to have specific technical or industrial experience in this particular subject matter of the dispute.⁹⁶ Unlike litigation or arbitration, the expert is allowed to apply its personal expertise to the determination.⁹⁷

Moreover, the expert determination process offers flexibility, enabling parties to autonomously select a third party to adjudicate their dispute.⁹⁸ It allows parties to autonomously select an expert for adjudication.⁹⁹ However, the process lacks certain procedural formalities, may involve high expert fees, and faces enforcement challenges if parties fail to comply.¹⁰⁰

5. Hybrid ADR Mechanisms

Hybrid dispute resolution processes bring together the elements of both mediation and arbitration. The nature of the hybrid process can be both flexible and varied. Common examples are a mediation followed by arbitration (‘_med-arb’) or an arbitration followed by mediation (‘_arb-med’)

⁹³ R M Young, ‘_Expert Determination’ (2001) <www.findlaw.com> accessed 26 February, 2026.

⁹⁴ *ibid.*

⁹⁵ Birketts, ‘_Expert Determination’ (2022) <<https://www.birketts.co.uk/legal-update/expert-determination/>> accessed 26 February, 2026.

⁹⁶ R King, ‘_Dispute Resolution in the Energy Sector a Practitioner’s Handbook’ (2012) *Globe Law and Business*, 102.

⁹⁷ *ibid.*

⁹⁸ T Uher, *Fundamentals of Building Contract Management* (University of NSW Press, Canada 2008), 23.

⁹⁹ A Saeb and Others, ‘_A Mechanism for Dispute Resolution in the Iranian Construction Industry’ *Journal of Construction in Developing Countries*, (2021) (26) (1) 205-226.

¹⁰⁰ *ibid.*, 206.

a. **Med-Arb (Mediation-Arbitration)**

Med-Arb combines mediation and arbitration, offering both collaboration and finality in dispute resolution.¹⁰¹ The process begins with mediation, where a neutral facilitator helps parties reach a voluntary settlement. If unresolved issues remain, arbitration follows, where a final decision is imposed. This hybrid approach ensures efficiency, cost savings, and enforceability.¹⁰² However, concerns arise over fairness, as private caucusing in mediation may bias the arbitration phase.¹⁰³ Critics argue that the fusion of these distinct processes risks ethical conflicts, potential coercion, and strategic manipulation by parties. Despite its benefits, Med-Arb remains a debated ADR mechanism.¹⁰⁴

b. **Arb-Med (Arbitration-Mediation)**

Arb-Med is the reverse of Med-Arb, starting with arbitration before proceeding to mediation. It is a hybrid dispute resolution process that combines the benefits of arbitration and mediation, including speed, procedural flexibility, confidentiality, and choice of decision maker, ease of access to the tribunal, continuity, finality, and enforceability of the outcome. If the mediation is successful, the agreement between the parties governs the resolution of the dispute and the arbitral award is never unsealed.¹⁰⁵ The primary objective of Arb-Med is the informed good faith negotiation and settlement of the dispute by the parties, with the initial assistance and efficiency of the Arbitral Tribunal's information gathering powers, in the context of a formal arbitration process that will immediately resume if the mediation that follows is not successful.¹⁰⁶

3.0: Comparison of International Arbitration with Other ADR Mechanisms

Alternative Dispute Resolution (ADR) encompasses various mechanisms for resolving disputes outside traditional court litigation. While international arbitration remains a

¹⁰¹ K M Blankley, 'Keeping a Secret from Yourself? Confidentiality when the same Neutral serves both as Mediator and as Arbitrator in the same case' *Baylor Law Review*, (63) (2)145.

¹⁰² O Akpata, 'The Place of Med-Arb in the Resolution of Commercial Disputes' <<https://www.patrelipartners.com/wp-content/uploads/2016/03/place-of-med-arb.pdf>> accessed 26 February, 2026.

¹⁰³ T J Stipanowich, 'Arbitration, Mediation, and Mixed Modes: Seeking Workable Solutions and Common Ground on MedArb, Arb-Med, and Settlement Oriented Activities Arbitrators' *Harvard Negotiation Law Review* (2017) 26 265-6.

¹⁰⁴ *ibid.*

¹⁰⁵ New Zealand International Arbitration Centre, 'Arbitration-Mediation' <<https://nziac.com/arb-med/>> accessed 26 February, 2026.

¹⁰⁶ *ibid.*

dominant ADR method, it differs significantly from other mechanisms such as mediation, conciliation, and negotiation in terms of procedure, enforceability, and finality. Each method offers distinct advantages and drawbacks, influencing the choice of dispute resolution based on the nature of the conflict, the relationship between parties, and the desired outcome:

3.1: International Arbitration vs. Mediation

International arbitration and mediation both provide alternatives to court litigation, but they differ fundamentally in their nature and outcome. International arbitration is a formal and binding process in which an arbitral tribunal renders a final and enforceable decision, akin to a court judgment. In contrast, mediation is a non-binding process where a neutral mediator facilitates discussions between the disputing parties, helping them reach a mutually agreed settlement. Mediation relies on the willingness of the parties to compromise, making it a more collaborative approach. However, unless the mediated agreement is formalized into a contract or recognized under legal frameworks such as the Singapore Convention on Mediation, it lacks enforceability. International arbitration, by contrast, provides a definitive resolution, which is particularly crucial for complex commercial and cross-border disputes requiring certainty and finality.

3.2: International Arbitration vs. Negotiation

Negotiation is the most informal ADR method, wherein parties engage directly to resolve their disputes without third-party intervention. It provides maximum flexibility but lacks the structure, neutrality, and enforceability of international arbitration. Unlike international arbitration, where an independent third party decides the outcome based on legal arguments and evidence, negotiation depends entirely on the bargaining power and willingness of the parties. While negotiation is often the first step in dispute resolution, it may fail when parties have significant power imbalances or when complex legal and factual disputes require third-party adjudication. In such cases, international arbitration serves as a more structured and enforceable alternative.

3.3: International Arbitration and Conciliation

International arbitration and conciliation are both alternative dispute resolution mechanisms, but they differ significantly in structure and outcome. International arbitration

is a formal, binding process where an arbitral tribunal renders a final and enforceable decision. In contrast, conciliation is a non-binding process where a neutral conciliator facilitates discussions and helps parties reach a voluntary settlement. The conciliator facilitates dialogue and suggests solutions, but parties retain control over the outcome. Arbitration ensures legal certainty under treaties like the New York Convention, making it ideal for complex disputes requiring finality. Conciliation, on the other hand, promotes cooperation and relationship preservation. The choice between them depends on the dispute's nature, enforceability needs, and parties' willingness to settle voluntarily.

4.4: International Arbitration vs. Hybrid ADR Mechanisms (Med-Arb and Arb-Med)

Hybrid ADR mechanisms such as Med-Arb and Arb-Med combine elements of mediation and arbitration to optimize efficiency and flexibility. Med-Arb starts with mediation, and if unresolved issues remain, arbitration follows to provide a binding resolution. Arb-Med, on the other hand, begins with arbitration, but the arbitral award is kept confidential while mediation is attempted. If mediation succeeds, the award remains unenforced; if mediation fails, the arbitrator's decision is made final. International arbitration differs from these hybrids as it maintains a clear separation between negotiation and adjudication, ensuring that the decision-making process is not influenced by prior settlement discussions. Hybrid mechanisms are particularly useful when parties seek amicable solutions but also require a fall-back mechanism to prevent prolonged disputes.

Above all, while all ADR mechanisms aim to provide efficient and cost-effective dispute resolution, international arbitration stands out for its binding nature, procedural structure, and international enforceability under treaties such as the New York Convention. However, international arbitration may be more expensive and time-consuming than mediation or conciliation. The choice between international arbitration and other ADR methods depends on multiple factors, including the complexity of the dispute, the relationship between the parties, and the necessity of a legally binding outcome. Ultimately, selecting the most appropriate ADR mechanism requires a careful balance between efficiency, cost, enforceability, and party autonomy.

4.0: Challenges in International Arbitration and ADR Mechanisms

Despite the advantages of international arbitration and other ADR mechanisms, several challenges hinder their effectiveness. These challenges stem from legal, procedural, and practical concerns that impact the efficiency and fairness of dispute resolution¹⁰⁷:

- a. **High Costs and Expenses:** One of the major challenges in international arbitration is the high cost associated with the process. Arbitration fees, administrative costs, legal representation, and expert witnesses can make arbitration expensive, sometimes exceeding the costs of litigation.¹⁰⁸ Similarly, mediation and conciliation, though generally cheaper, may still incur substantial expenses, especially when conducted across multiple jurisdictions.
- b. **Procedural Delays:** Although arbitration is often preferred for its speed and efficiency, it can still suffer from delays due to complex procedural rules, voluminous evidence, and scheduling conflicts between arbitrators and parties.¹⁰⁹ In comparison, mediation and conciliation typically offer quicker resolution, but their voluntary nature means disputes may drag on if parties do not reach an agreement.
- c. **Enforceability Issues:** While arbitration awards are widely enforceable under the New York Convention, enforcement can still be challenging if the losing party resists compliance or if the award conflicts with local public policy. Mediation and conciliation settlements, unless formally recognized in a contract, lack automatic enforceability, making it difficult to ensure compliance in cross-border disputes.¹¹⁰
- d. **Lack of Appeal and Review Mechanisms:** Unlike court judgments, arbitral awards are final and binding with limited grounds for appeal or annulment. This finality, while beneficial for certainty, can be problematic if errors occur in the decision-

¹⁰⁷ M Patoari and Others, 'Legal and Administrative Challenges of Alternative Dispute Resolution (ADR)', *Beijing Law Review*, (2020) (11) 415.

¹⁰⁸ Ng'etich, Raphael, 'The Current Trend of Costs in Arbitration: Implications on Access to Justice and the Attractiveness of Arbitration', *Alternative Dispute Resolution*, (2017) (5) (2) 111-12. < <https://ssrn.com/abstract=3644333> > accessed 27 February, 2026.

¹⁰⁹ Broderick, 'Combatting Delays in Arbitration: Expediting the Process' (2023) < <https://broderickbozimo.com/combating-delays-in-arbitration-expediting-the-process/> > accessed 27 February, 2026

¹¹⁰ O Marsden and R Zard, 'Challenging and Enforcing Arbitration Awards: United Kingdom - England & Wales

Freshfields' (2024) < <https://globalarbitrationreview.com/insight/know-how/challenging-and-enforcing-arbitration-awards/report/united-kingdom> > accessed 27 February, 2026

making process.¹¹¹ In contrast, mediation and conciliation allow parties to retain control over the outcome, but their non-binding nature may lead to unresolved disputes.

- e. **Jurisdictional and Legal Conflicts:** International arbitration often involves parties from different legal systems, leading to conflicts in governing laws, seat of arbitration, and applicable procedures. Some jurisdictions impose restrictions on arbitration for certain disputes, while others may have inconsistent enforcement standards. Similarly, mediation and conciliation may face cultural and legal barriers, making consensus difficult.¹¹²
- f. **Confidentiality vs. Transparency:** Confidentiality is a key feature of arbitration and mediation, protecting sensitive business information. However, this secrecy can lead to concerns about lack of transparency, especially in investor-state disputes, where public interest is involved.¹¹³ In contrast, litigation provides a transparent and accountable process but at the cost of privacy.

5.0: Contemporary Issues and Developments in ADR

Alternative Dispute Resolution (ADR) continues to evolve in response to global economic, technological, and legal changes. As international commerce expands and disputes become more complex, several key developments have shaped the landscape of ADR.¹¹⁴ These include the rise of Investor-State Dispute Settlement (ISDS), the integration of technology into dispute resolution, and the push for greater diversity and inclusion in ADR processes:

5.1: The Rise of Investor-State Dispute Settlement (ISDS)

Investor-State Dispute Settlement (ISDS) has emerged as a crucial mechanism for resolving disputes between foreign investors and host states.¹¹⁵ While ISDS provides legal protection for investors, ensuring fair treatment and safeguarding against expropriation, it

¹¹¹ C Russell, 'Arbitral Awards – How Final Are They?' (2023) <<https://www.charlesrussellspeechlys.com/en/insights/expert-insights/dispute-resolution/2023/arbitral-awards-how-final-are-they/>> accessed 27 February, 2026.

¹¹² B E Umukoro, 'The Choice Of Foreign Law In International Commercial Arbitration: Issues And Problems' *The Gravitas Review Of Business & Property Law*, (2016) (7) 3.

¹¹³ R Schidt, 'Confidentiality v, Transparency in international Arbitration- A Budapest Conference Recap' (2023) <<https://arbitrationblog.kluwerarbitration.com/2023/07/06/confidentiality-v-transparency-in-international-arbitration-a-budapest-conference-recap/>> accessed 27 February, 2026

¹¹⁴ S Khan., 'Contemporary Issues in Alternative Dispute Resolution' *Ile Journal of Alternative Dispute Resolution Law Review*, (2023) (1) (1) 1.

¹¹⁵ S C Cesar, 'Investor-State Dispute Settlement: An Analysis of the Reform Proposals on Its Institutional Structure' (2017) <SSRN: <https://ssrn.com/abstract=2984581>> accessed 27 February, 2026

has faced significant criticism and calls for reform.¹¹⁶ ISDS has been criticized for its lack of transparency, the high costs associated with arbitration proceedings, and concerns over arbitrator impartiality. Critics argue that ISDS disproportionately favours multinational corporations over sovereign states, limiting governments' ability to regulate in the public interest.¹¹⁷ Additionally, inconsistent arbitral decisions and the lack of an appellate mechanism have fuelled debates on the fairness and legitimacy of ISDS.¹¹⁸ In response to the concerns surrounding ISDS, several stakeholders have proposed the establishment of a multilateral investment court.¹¹⁹ The European Union has championed the idea of a standing investment court with permanent judges and an appellate mechanism to ensure consistency in investment dispute rulings. Such a court would address issues of arbitrator bias and provide a more structured framework for investor-state disputes, enhancing legal certainty and fairness.¹²⁰

5.2: Technology and ADR

Technology has significantly transformed the field of ADR, streamlined dispute resolution processes and improved efficiency.¹²¹ Innovations such as Online Dispute Resolution (ODR) and artificial intelligence (AI) have enhanced access to justice and are expected to play an even greater role in the future.¹²² ODR involves the use of digital platforms to resolve disputes without the need for physical meetings. It has become particularly relevant

¹¹⁶ *ibid*

¹¹⁷ G K Kohler and M Potestà, 'Can the Mauritius Convention Serve as a Model for the Reform of Investor-State Arbitration in Connection with the Introduction of a Permanent Investment Tribunal or an Appeal Mechanism?' < http://www.uncitral.org/pdf/english/commission/sessions/unc/unc-49/CIDS_Research_Paper_-_Can_the_Mauritius_Convention_serve_as_a_model.pdf > accessed 27 February, 2026

¹¹⁸ UNCTAD, 'Transforming the IIA Regime: Exiting the Unnecessary, Damaging Investor-State Dispute Settlement System' <http://unctad-worldinvestmentforum.org/wp-content/uploads/2015/05/Public-CitizenDraft.pdf> 15 > accessed 27 February, 2026.

¹¹⁹ Council of Australian Law Deans, 'Statement on the Nature of Legal Research' (2005) < <http://www.cald.asn.au/docs/cald%20statement%20on%20the%20nature%20of%20legal%20research%20-%202005> > accessed 27 February, 2026.

¹²⁰ European Commission, 'Investor-to-State Dispute Settlement (ISDS): Some Facts and Figures' < http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153046.pdf > accessed 27 February, 2026.

¹²¹ United Nations, 'What Does —Sustaining Peace Mean? General Assembly and Security Council Resolutions A/RES/70/262 and S/RES/2282' (2016) < https://unsdg.un.org/sites/default/files/Guidance-on-SustainingPeace.170117.final_.pdf > accessed 27 February, 2026.

¹²² S Salter, 'Online Dispute Resolution and Justice System Integration: British Columbia Civil Resolution Tribunal' *Windsor Yearbook of Access to Justice/Recueil annuel de Windsor d'accès à la justice* (2017) (34) (1), 115. < <https://doi.org/10.22329/wyaj.v34i1.5008> > accessed 27 February, 2026.

in e-commerce, consumer protection cases, and cross-border disputes.¹²³ The COVID-19 pandemic accelerated the adoption of ODR, highlighting its cost-effectiveness, speed, and accessibility. Many arbitral institutions now offer virtual hearings, electronic submissions, and AI-assisted case management tools to facilitate dispute resolution.¹²⁴ AI is being integrated into ADR through predictive analytics, automated legal research, and AI-powered decision-making models. AI can assist arbitrators and mediators by analysing vast amounts of case law, identifying precedents, and even suggesting settlement options based on historical data.¹²⁵ While AI enhances efficiency, concerns remain about the ethical implications of machine-driven dispute resolution, particularly regarding accountability and fairness in decision-making.¹²⁶

6.3: Diversity and Inclusion in ADR

The call for greater diversity and inclusion in ADR has gained momentum as stakeholders recognize the need for a more representative and impartial dispute resolution system.¹²⁷ Traditionally, arbitration panels and mediation appointments have been dominated by arbitrators from Western jurisdictions, raising concerns about bias and a lack of diverse perspectives.

There is a growing demand for increased representation of arbitrators and mediators from different cultural, professional, and legal backgrounds.¹²⁸ Institutions such as the ICC, LCIA, and ICSID have implemented policies to promote diversity by encouraging the appointment of arbitrators from underrepresented regions. Diverse decision-makers can bring fresh perspectives and enhance the legitimacy of ADR proceedings. Gender disparity remains a significant issue in ADR, with women historically underrepresented in arbitration panels. Initiatives such as the Equal Representation in Arbitration Pledge aim to increase

¹²³ N Ebner, and E E Greenberg, 'Strengthening Online Dispute Resolution Justice' *WASH. U. J. L. & POL.* 63 (2020) 63. < https://openscholarship.wustl.edu/law_journal_law_policy/vol63/iss1/9 > accessed 27 February, 2026.

¹²⁴ *ibid*

¹²⁵ A M Ahalt, 'What You Should Know about Online Dispute Resolution' (2016) <https://www.virtualcourthouse.com/index.cfm/feature/1_7/what-you-should-know-aboutonline-dispute-resolution.cfm> accessed 27 February, 2026.

¹²⁶ M Begum, and Others, 'Alternative Dispute Resolution in the Contemporary World' *Global International Relations Review*, (2022) (5) (3) 12. < <https://www.girjournal.com/papers/jqoWMhWAJo.pdf> > 12 accessed 27 February, 2026

¹²⁷ *ibid*.

¹²⁸ *ibid*.

the number of female arbitrators.¹²⁹ Similarly, geographic imbalances in ADR appointments disadvantage arbitrators from developing countries. Efforts to broaden arbitrator selection and training programs can help address these disparities and create a more equitable ADR landscape.¹³⁰

To this end, the future of ADR is being shaped by technological advancements, legal reforms, and a growing emphasis on efficiency and inclusivity. As ADR continues to evolve, stakeholders must embrace technological innovations, address systemic biases, and implement reforms that enhance the legitimacy and effectiveness of dispute resolution processes. By doing so, ADR will remain a cornerstone of international dispute resolution, adapting to meet the demands of an increasingly interconnected world.

6.0: Conclusion and Recommendations

The expanding nature of cross-border commerce demands a dispute resolution system that combines flexibility with legal certainty. This study has examined the structure, operational challenges, and evolving trends within international arbitration and alternative dispute resolution mechanisms. It finds that these mechanisms are no longer mere alternatives to domestic litigation but have developed into an independent framework essential to global commercial stability. The legitimacy of international arbitration rests on the balance between party autonomy and state-backed enforceability. Although parties rely on contractual consent to avoid the procedural limitations of domestic courts, the effectiveness of arbitral awards still depends heavily on national courts and international instruments such as the United Nations Commission on International Trade Law Model Law and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Arbitration therefore operates within a cooperative relationship with domestic legal systems rather than in complete independence from them.

The study further reveals a clear distinction between the binding nature of arbitration and the consensual structure of negotiation, mediation, and conciliation. While arbitration often

¹²⁹ International Chamber of Commerce (ICC), ‘ICC Acts to Encourage Diversity in Selection of Arbitrators’ {2020} <<https://iccwbo.org/news-publications/news/icc-acts-to-encourage-diversity-in-selection-of-arbitrators/>> accessed 27 February, 2026.

¹³⁰ A Marrett and Others, ‘Diversity in institutional arbitration: what does the data say and what next?’ (2024) <<https://www.dlapiper.com/en/insights/publications/arbitration-matters/2024/diversity-in-institutional-arbitration-what-does-the-data-say-and-what-next>> accessed 27 February, 2026.

mirrors litigation through adversarial procedures, rising costs, and delays, mediation and conciliation focus more on preserving commercial relationships and achieving mutually beneficial outcomes. However, the absence of a universally enforceable execution framework remains a major limitation of non-binding ADR processes. The study also finds that hybrid mechanisms such as Med-Arb and Arb-Med attempt to combine consensual settlement with adjudicatory finality. Despite their practical advantages, these mechanisms raise concerns about due process and impartiality, particularly where confidential information disclosed during mediation may affect the neutrality of the arbitrator in subsequent proceedings.

The study additionally finds that international dispute resolution is undergoing significant transformation through technological advancement and increasing criticism of institutional legitimacy. The rise of Online Dispute Resolution and Artificial Intelligence has improved efficiency and access to justice, but it has also introduced concerns relating to algorithmic bias, transparency, data protection, and the preservation of fairness in decision-making. At the same time, growing criticism of Investor-State Dispute Settlement reflects the tension between protecting foreign investment and preserving the regulatory authority of sovereign states.

These findings carry important implications for states, commercial actors, and arbitral institutions. Domestic legal systems must continue to reform arbitration laws in line with contemporary transnational standards to reduce unnecessary judicial interference and ensure predictable enforcement procedures. Corporate actors should move beyond routine arbitration clauses by adopting multi-tiered dispute resolution provisions that encourage negotiation or mediation before formal arbitration. Arbitral institutions must also address concerns relating to diversity, representation, and transparency by broadening the participation of professionals from developing jurisdictions and underrepresented groups. In addition, clear ethical guidelines are necessary to regulate the growing use of AI-assisted processes in dispute resolution.

Although this study provides a broad comparative analysis of international arbitration and ADR, the field continues to evolve rapidly. Future research should therefore examine the feasibility of the proposed Multilateral Investment Court and assess whether a permanent

appellate structure can balance consistency in international investment law with state sovereignty. Further inquiry is also needed into the legal and ethical implications of predictive AI and automated decision-making within Online Dispute Resolution, particularly regarding due process and algorithmic bias. Finally, there is a need for uniform codes of conduct governing neutrals operating within Med-Arb and Arb-Med frameworks in order to strengthen procedural integrity and protect fairness in hybrid dispute resolution processes.

To address the operational vulnerabilities identified across international arbitration and alternative dispute resolution mechanisms, the following measures are proposed:

- i. Fixed-fee structures for smaller claims and expedited arbitration procedures should be adopted to address the challenge of high arbitration costs.
- ii. Strict case management techniques, including firm deadlines for different arbitration stages, should be introduced to minimize delays in arbitration proceedings, while technological solutions such as virtual hearings and electronic document submissions should be leveraged.
- iii. Governments should strengthen domestic legal frameworks to ensure seamless enforcement of arbitral awards in compliance with international arbitration standards, while also recognizing mediation and conciliation agreements.
- iv. Investor-state arbitrations should incorporate limited transparency measures to balance confidentiality with fairness, and arbitrators should be subject to strict ethical guidelines, including mandatory disclosure of conflicts of interest, to enhance trust in the arbitration process.
- v. Greater efforts should be made to promote awareness and capacity-building in arbitration and ADR by integrating arbitration training into legal education, conducting awareness campaigns, and incentivizing businesses to adopt alternative dispute resolution mechanisms.