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Ways to resolve international trade disputes

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Abstract :

International commercial disputes are a significant result of economic globalization, raising legal challenges related to legal certainty and economic stability for contracting parties. This study analyzes the effectiveness of dispute resolution mechanisms in the cross-border commercial context, with particular emphasis on international commercial arbitration and modern electronic methods. It evaluates the role of national courts, especially regarding jurisdiction and enforcement of foreign judgments, and examines the effectiveness of arbitration under the 1958 New York Convention. The study also addresses alternative mechanisms such as conciliation, mediation, and online dispute resolution (ODR). The findings show that national courts face practical limitations, while international commercial arbitration remains relatively the most effective mechanism, despite concerns related to sovereignty and public policy. Modern mechanisms represent a promising direction that requires further international regulation

Keywords: International Commercial Disputes, International Commercial Arbitration, National Courts, the 1958 New York Convention, Alternative Dispute Resolution (ADR).

Introduction:

International commercial transactions have witnessed steady development over recent decades, in line with the imperatives of economic globalization, market liberalization, and the growing movement of investment and trade exchange among states. This development has given rise to cross-border legal relationships characterized by complexity and by the multiplicity of legal systems governing them. With this expanding scope, international commercial disputes have become an almost inevitable outcome, requiring the establishment of effective mechanisms for their settlement in a manner that ensures justice and consolidates the stability of commercial transactions.

Importance of the Topic:

The importance of the topic of methods for resolving disputes arising from international commercial transactions lies in its close connection to the consolidation of legal certainty and the strengthening of confidence in the international investment environment, as the effectiveness of the dispute settlement system constitutes a fundamental pillar in attracting investment and ensuring the continuity of commercial relations, since it is difficult to envisage a stable economic environment in the absence of clear and efficient mechanisms for resolving the disputes that arise therefrom, this issue also acquires particular significance in light of the existing interaction between national laws and international conventions and the legal problems this raises with regard to judicial jurisdiction and the enforcement of judgments.

Reasons for Choosing the Topic:

The choice of this topic is grounded in the remarkable development witnessed in the methods of resolving international commercial disputes, particularly in light of the steadily growing role of international commercial arbitration and its adoption as the preferred mechanism among economic actors, alongside the emergence of new methods such as electronic dispute resolution, it is also prompted by the evident differences between national courts and arbitration in terms of speed, flexibility, and the guarantee of international enforcement, which give rise to fundamental questions worthy of study and analysis.

Research Problem:

This study is based on the following main research problem, to what extent do the mechanisms for the settlement of disputes arising from international commercial transactions contribute to the achievement of legal certainty and economic stability for the parties, and which of these mechanisms is considered more effective in light of the cross-border nature of commercial relations

Sub-questions:

A number of subsidiary questions arise from this main research problem, the most important of which are:

1. To what extent is the national judiciary effective in resolving commercial disputes of an international nature?
2. Does international commercial arbitration constitute a genuine guarantee of the swift settlement of disputes?
3. To what extent do international conventions, particularly the 1958 New York Convention, contribute to facilitating the enforcement of arbitral awards?
4. Do modern alternative methods, such as mediation and online dispute resolution (ODR), represent a real development, or do they still remain limited in their effectiveness?

Research Hypotheses:

In seeking to answer these questions, the study proceeds from the following hypotheses

1. National courts encounter practical and legal difficulties in resolving disputes arising from international commercial transactions, particularly with regard to conflicts of jurisdiction and the enforcement of foreign judgments
2. International commercial arbitration is the most effective mechanism for the settlement of such disputes, given its flexibility, its consensual nature, and the relative ease of enforcing its awards under international conventions
3. International conventions contribute to enhancing the effectiveness of dispute settlement, but they do not eliminate the challenges associated with the principle of national sovereignty and public policy
4. Modern alternative methods represent a promising future trend, yet they still require further legal framing and regulation at the international level

Methodology and Structure of the Study:

This study is based on the comparative analytical method through the analysis of relevant legal texts and international conventions and through examining the effectiveness of national courts in comparison with international commercial arbitration and modern dispute resolution methods, this article is also organized into two chapters, the first is devoted to the examination of traditional and judicial methods of dispute resolution, while the second is concerned with the study of alternative and modern methods, foremost among them international commercial arbitration

Chapter One: Traditional and Judicial Methods for the Resolution of International Commercial Transaction Disputes

Recourse to traditional and judicial methods constitutes one of the oldest approaches adopted for the settlement of disputes arising from international commercial transactions, as national courts have long served as the original framework for adjudicating disputes alongside amicable methods based on negotiation and consensual settlement, the importance of examining these methods lies in the fact that they continue to retain a practical role in dispute resolution, particularly in the absence of an arbitration agreement or where the parties prefer recourse to litigation in view of the procedural guarantees it provides, however, the cross-border nature that characterizes these transactions gives rise to precise legal issues relating to the determination of international judicial jurisdiction and conflicts of jurisdiction between courts, in addition to the complexities associated with the recognition and enforcement of foreign judgments outside the state in which they were issued, accordingly, this chapter seeks to clarify the limits of the effectiveness of national courts and negotiated methods and the extent of their capacity to promote legal certainty and reinforce the economic stability of the parties within an international commercial environment marked by legal overlap and plurality.

Section One : National Courts

National courts constitute the traditional and original framework for the settlement of disputes, including those of an international dimension, as they exercise their jurisdiction on the basis of the rules of judicial competence established in each state, yet the cross-border nature that characterizes international commercial transactions gives rise to precise legal issues relating to the determination of the competent judicial authority and the enforcement of judgments beyond the territory of the state in which they were rendered, this makes it necessary to examine both the rules governing jurisdiction and the problem of enforcing foreign judgments

Subsection One : International Judicial Jurisdiction

Consideration in any dispute involving a foreign element begins with the issue of international judicial jurisdiction, as it constitutes the necessary starting point before addressing the substance of the dispute, since it is first required to ascertain whether the national court is competent to hear and determine the matter, the rules governing jurisdiction in this field are based on the requirements of judicial sovereignty, the preservation of the proper administration of justice, and the

establishment of a genuine connection between the dispute and the state before whose courts it is brought.

First Branch : Rules of Jurisdiction

International judicial jurisdiction is concerned with defining the limits of the authority of national courts in hearing disputes involving a foreign element, whether this relates to the nationality of the parties, the place where the contract was concluded, or the place of performance of the obligation, its regulation seeks to reconcile the requirements of the state's judicial sovereignty with the need to ensure effective judicial protection for the parties within the framework of commercial relations characterized by their cross-border scope¹. The rules of jurisdiction in prevailing practice are founded upon traditional connecting factors that reinforce procedural stability, foremost among them the domicile or residence of the defendant as a criterion consistent with the logic of the natural forum, reducing the element of surprise in litigation and ensuring the effective exercise of the right of defense, jurisdiction in contractual disputes is likewise based on the criterion of the place of performance of the obligation as an objective connecting factor that justifies the intervention of the courts of the state in which performance takes place in view of the practical link between the dispute and the environment in which the contract is performed and its requirements.² The importance of these connecting factors also becomes evident from a subsequent perspective related to the stage of recognition and enforcement of foreign judgments, since the acceptance of the enforcement of a judgment rendered by a foreign court presupposes in principle that such court validly assumed jurisdiction on the basis of a recognized criterion, this indicates that the rules of jurisdiction do not merely perform the function of identifying the competent judge, but also extend to supporting the judgment's capacity to circulate and be enforced beyond the state in which it was issued.³ With the development of digital transactions, the limits of traditional connecting factors have become apparent, particularly in disputes relating to electronic commerce, where it is sometimes difficult to determine with precision the place of conclusion or the place of performance, or where the places in which the effects of the contract arise become intertwined, accordingly, some approaches have moved toward the adoption of more flexible criteria that take into account the particular nature of the digital environment and the multiplicity of connecting points, thereby allowing jurisdiction to be conferred upon a court that has a genuine connection with the dispute, free from the formalism of the place criterion in cyberspace⁴. The rules of jurisdiction in many legal systems are also regarded as forming part of public policy whenever they concern the allocation of judicial authority among courts or the protection of fundamental considerations, which limits the freedom of the parties to agree otherwise and reflects the close connection between jurisdiction, the limits of judicial sovereignty, and the state's conception of its internal legal order⁵.

Second Branch : Conflict of Jurisdiction

A conflict of international judicial jurisdiction arises whenever the connecting factors within a single dispute are multiple in such a way as to justify the assumption of jurisdiction by more than one national court at the same time, in such a situation the parties are confronted with a potential plurality of forums, which in practice leads them to choose between courts on the basis of procedural convenience, speed, cost, and the prospects of enforcement, this may also result in forum shopping in search of the court that is more favorable to the interests of one of the parties.

This conflict of jurisdiction is closely related to the particular nature of international commercial relations, whose elements are often distributed across more than one state, as where the dispute is connected to the domicile of one party in one state, the place of performance of the obligation in another state, and the conclusion of the contract or its effects in a third state, such multiplicity may lead to overlapping jurisdictions, thereby raising issues relating to the proper administration of justice, increasing the likelihood of parallel proceedings, and limiting the predictability of the outcome of the dispute, in addition to the possibility of conflicting judgments concerning the same facts or obligations⁶.

The conflict of jurisdiction is also intrinsically linked to the issue of the enforcement of foreign judgments, since the acceptance of a judgment rendered by a foreign court presupposes that such court exercised jurisdiction in accordance with criteria recognized by the state of enforcement, which is commonly referred to as indirect jurisdiction, accordingly, the conflict of jurisdiction is not confined to the stage of bringing the action alone, but extends beyond the issuance of the judgment, where the question of jurisdiction becomes a necessary condition for recognition and enforcement.

In response to these difficulties, certain international instruments have sought to establish clearer standards of indirect jurisdiction with a view to reducing divergence among national legal systems and facilitating the circulation of judgments, in this context, the 2019 Hague Convention reflects an approach based on linking recognition and enforcement to the existence of predetermined jurisdictional grounds, with the aim of reducing conflict and limiting the uncertainty generated by differences among states in their conceptions of acceptable jurisdiction⁷.

Third Branch: Choice of Jurisdiction

An agreement on jurisdiction stands as a manifestation of party autonomy in the sphere of international procedural law, as it allows the parties, within the limits prescribed by law, to designate the court competent to hear the dispute or to confer exclusive jurisdiction upon a specific judicial authority, the importance of such an agreement in international commercial contracts lies in its role as a preventive mechanism for avoiding conflicts of jurisdiction and reducing the risks associated with multiple proceedings, thereby promoting procedural certainty and making the outcome of the dispute more predictable.⁸ However, the freedom of the parties

in this field is not absolute, but is constrained by mandatory rules derived from public policy, particularly where exclusive jurisdiction or fundamental rules governing the allocation of judicial authority or safeguarding a public interest are concerned, on this basis, an agreement on jurisdiction produces its legal effects only if it is clearly expressed and does not conflict with mandatory jurisdictional rules established by national law, thus reflecting the balance between party autonomy and the limits of judicial sovereignty⁹. In the field of international arbitration, the agreement on the body competent to resolve the dispute assumes a more structured form through the arbitration agreement, as this agreement establishes the jurisdiction of the arbitral tribunal and defines its limits, this in turn enables the tribunal to rule on its own jurisdiction on the basis of the principle of competence-competence, which requires an examination of the validity of the arbitration agreement and the extent to which it applies to the dispute, while reducing the intervention of national courts at the preliminary stage, thereby reinforcing the independence of the arbitral process and preventing its obstruction through procedural objections used as a means of delay.

Accordingly, an agreement on jurisdiction, whether judicial or arbitral in nature, performs an essential organizational function in international commercial disputes because it limits the overlap of jurisdictions and renders the settlement process more consistent with the requirements of legal certainty, while mandatory restrictions remain in place as a safeguard for the protection of the fundamental considerations of the national judicial order.

Subsection Two: The Problem of Enforcing Foreign Judgments

The issue of enforcing foreign judgments stands as one of the most delicate matters in international commercial disputes because the practical effect of a judicial decision is not secured merely by its issuance, but rather depends on its enforceability outside the state of origin where the assets of the judgment debtor are located or where the effects of the obligation must be completed, this issue reflects a delicate balance between the sovereignty of the state over its judicial sphere on the one hand and the requirements of stability in international transactions and the protection of the legitimate expectations of those engaged in them on the other, which makes the enforcement stage a practical measure of the effectiveness of national courts in an environment characterized by its cross-border nature.

First Branch: Conditions for Recognition and Enforcement

The system governing the enforcement of foreign judgments is based on the principle of prior recognition of a judgment rendered by a foreign court whenever it satisfies conditions intended to ensure a minimum standard of sound jurisdiction and procedural regularity and to protect the internal legal order of the state in which enforcement is sought, among the most important of these conditions is that the foreign court must have exercised international judicial jurisdiction according to accepted criteria, which is expressed through the notion of indirect jurisdiction, accordingly, it is not sufficient that the judgment merely emanates from a foreign authority, rather, that authority must have exercised its jurisdiction

on the basis of a relevant connection with the dispute according to the perspective of the enforcing state or according to an internationally accepted standard, the judgment whose enforcement is sought must also be final and enforceable in the state in which it was rendered, since enforcement in the requested state presupposes that the judgment has acquired stability in terms of its essential effects within its original legal order, thereby reducing the likelihood that enforcement may conflict with legal positions that have not yet fully matured, in this respect, the finality of the judgment operates as a guarantee of the stability of legal positions and as a marker of the moment at which the dispute passes from the stage of litigation to that of the actual realization of the right¹⁰.

The requirement that the foreign judgment must not contravene public policy in the state of enforcement constitutes one of the principal limitations through which the state protects the fundamental pillars of its legal order, since public policy performs a preventive function by limiting the extent to which the state is prepared to accept foreign judgments whenever such a judgment affects basic principles upon which its legal system is founded, accordingly, this condition remains in place as a safety valve within the framework of recognition and enforcement, confirming that international judicial cooperation cannot be detached from considerations of sovereignty and the legal identity of the state.¹¹ It follows that the public policy defense is not intended to serve as a means of reviewing the merits of the foreign judgment or of reassessing the facts or reconsidering the application of the law as determined by the foreign court, rather, its scope remains confined to verifying whether the content or effects of the judgment are incompatible with the fundamental principles of the national legal order, accordingly, this condition performs a protective function that safeguards essential legal constants while keeping the door open to the recognition of foreign judgments and the production of their legal effects whenever those constants remain unaffected, thereby reinforcing the balance between the requirements of international judicial cooperation and the protection of the legal identity of the state.

Second Branch: Practical Difficulties in the Enforcement of Foreign Judgments

Despite the existence of a legal framework governing the recognition of foreign judgments, enforcement in practice continues to face difficulties resulting from the diversity of legal systems and the variation in jurisdictional standards and enforcement conditions from one state to another, which renders the fate of a judgment outside the state in which it was issued less predictable, this divergence is reflected in relation to the contracting parties in the form of procedural and enforcement uncertainty, particularly in international commercial transactions that are founded on speed and good faith and depend to a large extent on the effectiveness of adjudication and the efficiency of enforcement rather than on adjudication in the abstract¹². An additional difficulty becomes apparent where certain courts adopt an expansive interpretation of the concept of public policy, thereby leading to the refusal of enforcement on grounds that go beyond the narrow scope allocated to the protection of fundamental principles, this approach

results in a practical restriction of the sphere of recognition and enforcement, thereby weakening confidence in the cross-border circulation of judgments and adversely affecting the stability of commercial transactions by undermining the parties' expectations regarding the possibility of securing their rights outside the state in which the judgment was rendered¹³. These difficulties are further aggravated by the multiplicity of the legal connections of the dispute, as this may give rise to a plurality of judicial forums or to differences in the assessment of jurisdiction among national courts, thereby creating the possibility of conflicting judgments concerning the same legal relationship, such a situation results in the destabilization of the parties' legal positions and complicates the enforcement stage, whether with regard to determining which judgment is to be relied upon for recognition or to avoiding the effects of conflict when enforcement is sought in another state, which directly affects legal certainty in cross-border disputes¹⁴.

Third Branch: The Role of International Conventions

In the face of these difficulties, international conventions have emerged as an instrument for reducing the scope of divergence among national legal systems through the establishment of common rules for the recognition and enforcement of foreign judgments, foremost among these instruments is the 2019 Hague Convention, which is based on an approach that links the recognition and enforcement of judgments to the existence of specific jurisdictional grounds, thereby promoting the circulation of judgments and limiting differences among states in the assessment of indirect jurisdiction.

International conventions also play an important role in strengthening legal certainty by establishing clearer and more stable rules in the field of enforcement, which reduces the uncertainties of the recognition stage and increases the predictability of the fate of a judgment outside the state in which it was rendered, this is reflected in practice by fostering confidence among those engaged in international dealings that a judicially established right is capable of producing enforceable effects across borders under defined and known conditions, which in turn has a positive impact on the stability of international commercial transactions¹⁵. Accordingly, the enforcement of foreign judgments constitutes a decisive stage in measuring the effectiveness of national courts in resolving disputes arising from international commercial transactions, as its success remains dependent on the extent to which national rules are consistent with the relevant conventional frameworks and on the sound balancing between the protection of public policy as an exceptional limitation and the assurance of the cross-border effectiveness of judicial decisions, in a manner that enhances legal certainty and economic stability for the parties

Section Two: Diplomatic and Negotiated Methods

Diplomatic and negotiated methods fall within the flexible mechanisms of dispute settlement, as they are founded upon the autonomy of the parties in managing the

dispute outside the binding framework that characterizes litigation or arbitration, their importance in international commercial disputes lies in the fact that they allow a considerable degree of speed and confidentiality and contribute to preserving the continuity of contractual relations between commercial parties.

Subsection One: Amicable Negotiations

Amicable negotiations rank among the primary and simplest methods of dispute settlement, as they are based on direct dialogue between the parties without the intervention of a binding authority, their importance in international commercial transactions lies in the flexibility and speed they provide and in their ability to contain the dispute before it moves to the stage of litigation or arbitration

First Branch: Characteristics of Amicable Negotiations

The process of amicable negotiations is characterized by a clear voluntary nature, as it is initiated by the will of the parties and continues on the basis of their mutual consent without the intervention of a third party empowered to impose a binding solution, the consensual dimension likewise constitutes the foundation of this method since no solution is imposed upon either party, but is instead based on mutual acceptance.

Amicable negotiations are also distinguished by a considerable degree of procedural flexibility, since they are not subject to specific formal procedures or strict rules of evidence, which allows the parties broader freedom to present their positions and formulate their proposals without being constrained by formal requirements, this dimension becomes particularly evident in international commercial disputes where the nature of the transaction may call for practical solutions that do not remain confined within the limits of a purely legal framework, this method also embodies an element of confidentiality, which is of great importance in international commercial relations given the concern of commercial actors to avoid publicity because of its possible impact on commercial reputation or on the stability of future dealings, this confidential character also contributes to strengthening mutual trust and creating an environment conducive to reaching a settlement

Another of its characteristics is that it often performs a preliminary role preceding recourse to more formal mechanisms, whether before national courts or within the framework of arbitration, which makes it an initial means of preventing the escalation of the dispute¹⁶.

Second Branch: Advantages and Disadvantages of Amicable Negotiations

The principal advantages of amicable negotiations are reflected in the speed with which they may resolve a dispute and the economy of expense they offer, since they do not require judicial fees nor entail complex procedures, which makes them a practical and suitable means for settling disputes, they also play an important role in preserving commercial relations between the parties, a matter of particular significance in international transactions founded on continuity and mutual trust, in addition, they promote a degree of legal certainty by enabling the parties to formulate a settlement consistent with their reciprocal interests rather than being confined to a judgment that may serve only the interest of one of them, in a manner

consistent with the requirements of legal certainty in the international commercial environment¹⁷. However, this method is not free from shortcomings, as its success remains dependent on the good faith of the parties and the extent of their willingness to make mutual concessions, an imbalance in bargaining power between the negotiating parties may also result in unequal terms, particularly in relationships involving parties that differ in economic or legal strength, moreover, failure to reach an agreement returns the dispute to its starting point and may prolong its duration before recourse is made to litigation or arbitration .

On this basis, amicable negotiations emerge as an effective method for the settlement of disputes arising from international commercial transactions in view of the flexibility and speed they offer and the continuity they help preserve in contractual relations, yet their effectiveness remains contingent upon the degree of cooperation between the parties and the balance of their legal positions, which in many cases makes them a preliminary step preceding recourse to more binding methods¹⁸.

Subsection Two: Mediation and Conciliation

Mediation and conciliation represent a more advanced stage among amicable methods of dispute settlement, as the dispute is no longer managed solely through direct negotiation between the parties themselves, but rather through the intervention of a neutral third party whose role is to facilitate dialogue and bridge the gap between them without extending to the imposition of a binding solution, the importance of these mechanisms in international commercial disputes lies in their ability to reduce the adversarial nature of the dispute while preserving the prospects for the continuation of the contractual relationship, which is a practical advantage not achieved to the same degree in binding methods of adjudication where the dispute may end by creating lasting tension between the commercial parties.

First Branch: The Concept of Mediation

Mediation is based on the intervention of a neutral third party known as the mediator, who undertakes to facilitate communication between the disputing parties with the aim of assisting them in reaching a consensual settlement of the dispute, the mediator's role consists in organizing discussion sessions, defining the elements of disagreement, and reformulating the parties' positions in a manner that allows them to be brought closer together, the mediator may also propose alternatives or possible avenues for settlement without having the power to impose them upon the parties, as the final decision remains dependent on their will, this means that mediation is directed not toward resolving the dispute through a decision, but toward creating a climate of consensus around a settlement acceptable to both parties. ¹⁹Mediation is distinguished by a voluntary character that governs all its stages, since it comes into existence only through the consent of the parties, who also retain the right to continue it or withdraw from it whenever agreement proves unattainable, it follows that its strength does not derive from compulsion so much as from the fact that it provides an organized framework enabling the parties to formulate a self-determined solution within a structured

process, which makes it closer to a consensual settlement assisted by a third party than to a binding mechanism for the determination of the dispute, this voluntariness may also be understood as an extension of party autonomy in the contractual sphere in its procedural form, one that gives primacy to the possibility of terminating the dispute without transferring the center of decision to an adjudicatory authority.

Mediation acquires particular importance in international commercial disputes because it operates within a non-adversarial setting aimed at reducing tension and restoring contractual trust to the widest extent possible, the practical dimension of this mechanism becomes evident in a commercial environment founded on continuity and good faith, since the value of the settlement does not stop at the legal effect it ultimately produces, but extends beyond that to its capacity to preserve the economic relationship that forms the subject of the dispute or to reorganize it without rupture²⁰.

Second Branch: The Legal Nature of Mediation and Conciliation

Mediation and conciliation fall within the category of non-judicial methods of dispute settlement and are founded upon mutual consent, such that they do not in themselves produce a binding effect equivalent to that resulting from a judicial decision or an arbitral award, indeed, the outcome reached through mediation initially takes the form of an agreement between the parties and acquires enforceable force only when it is embodied in a written instrument satisfying the required conditions, at that point, the general rules governing the validity of legal acts and their effects become applicable in terms of consent, subject matter, and cause, together with the legal consequences arising therefrom .

This legal nature appears with greater clarity in judicial mediation, where the mediation record serves to document the agreement of the parties within a judicial framework, thereby allowing it, in accordance with the procedural rules established by the legal system, to be granted enforceable force, in this way, the mediation record becomes an intermediary between consensual settlement and the requirements of enforcement, without altering the fact that the source of the solution remains the will of the parties and that the function of the judicial framework is confined to confirming the agreement and conferring enforceable effect upon it in accordance with the prescribed conditions²¹. As for conciliation, its distinctive feature lies in the broader scope of the conciliator's participation in shaping the solution in a more direct manner, since the conciliator may propose a settlement after examining the elements of the dispute, yet such a proposal produces no effect unless it is accepted by the parties, accordingly, conciliation shares with mediation its consensual character and the absence of direct binding force, while differing from it in the extent of the third party's involvement in formulating the proposal, which makes it closer to a proposed settlement within a structured consensual framework²².

Third Branch: The Distinction Between Mediation and Arbitration

The essential distinction between mediation and arbitration lies in the nature of the outcome and the legal effects it produces, arbitration culminates in a binding

award rendered by an arbitral tribunal chosen in advance, whereas mediation, when successfully concluded, results in a consensual settlement formulated by the parties with the assistance of the mediator, accordingly, arbitration embodies resolution through a binding decision, while mediation is based on a form of resolution grounded in consent and agreement, this difference reveals the distinct place occupied by party autonomy in each of the two processes, since in arbitration the parties' will establishes the process without constituting the source of the award, whereas in mediation it is the parties' will that both initiates the process and shapes the outcome²³.

The distinction also extends to the procedural structure of each, as arbitration is based on an organized adversarial process and structured procedures that culminate in an award, which brings it closer to judicial adjudication in terms of outcome while it still retains the particular flexibility that characterizes it, mediation, by contrast, rests on lighter procedures in terms of form and allows a broader degree of flexibility, being founded on the management of dialogue rather than the management of adversarial proceedings, which makes it more suitable for cases in which the prospects of settlement are strong or in which the continuation of the contractual relationship constitutes an interest parallel to the resolution of the dispute.

The difference also becomes evident at the practical level in relation to enforcement, since the arbitral award is supported by an international framework governing recognition and enforcement, foremost among which is the 1958 New York Convention with regard to foreign arbitral awards, whereas a settlement agreement reached through mediation acquires enforceable force only through the legal form recognized by the applicable legal system in accordance with the rules governing settlement records and the conditions of their enforcement, this accordingly leads to a clear divergence in the degree of enforcement security between the two processes, notwithstanding the fact that both constitute alternatives to litigation.²⁴

Fourth Branch: Their Effectiveness in International Commercial Disputes

The effectiveness of mediation and conciliation becomes particularly evident in international commercial disputes founded on continuing contractual relationships, as both create room for addressing the disagreement within a framework that preserves the prospects of future cooperation between the parties, their relative speed and lower cost in comparison with litigation or arbitration also constitute two decisive factors in a commercial environment that calls for practical solutions suited to the nature of the risks involved and capable of preventing the prolongation of the dispute in a manner that may affect the performance or continuation of the contract.²⁵ Mediation also plays an important role in supporting legal certainty from a practical perspective based on reducing the duration of the dispute and limiting the effects of uncertainty associated with prolonged proceedings, especially in disputes where recourse to binding methods of adjudication may not constitute an appropriate option from an economic or strategic standpoint, it should also be added that the adoption of institutional rules

governing mediation, such as the mediation rules endorsed by the International Chamber of Commerce, introduces a greater degree of order into the procedure and enhances the prospects of its success through a clear framework for managing the process without detracting from its consensual nature.²⁶ However, the effectiveness of mediation and conciliation can only be sustained where the parties possess a genuine willingness to reach a settlement and where there exists a reasonable degree of balance between their legal and economic positions, since the foundation upon which these mechanisms rest is consent rather than compulsion, whenever that balance is disturbed or such willingness is absent, the prospects of reaching a fair solution are weakened and recourse to more binding methods such as arbitration or litigation becomes justified in order to ensure a decisive resolution, accordingly, mediation and conciliation occupy an important place within the system of resolving disputes arising from international commercial transactions, although their effectiveness remains determined by the extent to which the dispute is amenable to consensual settlement and by the ability to embody that settlement in a form capable of enforcement where necessary²⁷.

Chapter Two: Modern Alternative Methods for the Settlement of International Commercial Disputes

International commercial arbitration occupies a prominent position among modern alternative methods for the settlement of disputes arising from international commercial transactions because of the procedural flexibility it offers, the neutrality and independence from national courts that it guarantees, and its ability to secure considerable effectiveness in international enforcement, its prominence has further increased as a result of the development of international conventions and the growing reliance placed upon it as the mechanism most suited to resolving disputes of a cross-border nature, alongside the emergence within the contemporary legal environment of electronic and institutional mechanisms that support it.

Section One: International Commercial Arbitration

International commercial arbitration occupies a leading position among modern alternative methods of dispute settlement by virtue of the independence it enjoys from national courts and the procedural flexibility it offers in a manner suited to the nature of international commercial transactions, accordingly, its examination requires an explanation of its concept and legal nature before proceeding to outline its procedures and effects with a view to assessing the extent of its effectiveness in consolidating legal certainty and ensuring the cross-border enforcement of awards.

Subsection One: The Concept of Arbitration and Its Legal Nature

Assessing international commercial arbitration as an effective mechanism for the settlement of disputes arising from international commercial transactions requires first examining its concept and determining its legal nature, since its effectiveness derives not merely from being a procedural alternative, but from being a system of adjudication founded on the agreement of the parties and culminating in a binding award, on this basis, this subsection focuses on defining arbitration, explaining the consensual foundation from which its jurisdiction arises, and

clarifying the principle of the separability of the arbitration clause as a safeguard for the continuity of the arbitral process and for preventing its obstruction through challenges directed at the underlying contract

First Branch: Definition of Arbitration

Arbitration refers to the agreement of the parties to submit an existing or potential dispute to a neutral individual or tribunal empowered to decide it by means of a binding decision instead of bringing it before the national courts, it follows from this meaning that arbitration rests upon two inseparable foundations, the first consists in the consensual will that creates the arbitrator's jurisdiction and defines its limits, while the second lies in the binding character of the decision rendered, which makes it a means of resolving the dispute rather than a mere proposal or amicable settlement, accordingly, arbitration becomes a method of adjudication that produces a final legal effect aimed at bringing the dispute to an end and preventing its continuation or its reintroduction within the same framework²⁸. It is understood from the regulation of arbitration in the international framework, particularly under the UNCITRAL Model Law, that arbitration is founded upon an agreement conferring upon the arbitral tribunal the authority to decide the dispute within a structured procedural framework while recognizing the legal effect of the arbitration agreement and the consequences flowing from it, the importance of this regulation lies in the fact that it establishes arbitration as a legally organized process rather than a mere incidental contractual option, as it contributes to facilitating its use in disputes arising from international trade contracts through an approach aimed at legislative harmonization and at reducing procedural divergence that might undermine the effectiveness of cross-border adjudication.²⁹ It follows from this that arbitration is not confined to being merely an alternative to litigation, but is instead understood as a system of adjudication founded upon the consent of the parties while nevertheless culminating in a final award that secures a decisive resolution and promotes legal stability in international commercial relations, its particularity also does not lie in the automatic exclusion of national courts so much as in allowing a degree of procedural adaptation suited to the nature of international commerce, whether in terms of the flexibility with which the proceedings are managed or in the adjustment of procedure to the nature of the dispute, without prejudice to the binding effect that characterizes the arbitral award³⁰.

Second Branch: The Consensual Basis of Arbitration

Arbitration is fundamentally grounded in the agreement of the parties, whether it takes the form of an arbitration clause incorporated into the original contract before the dispute arises or a submission agreement concluded after the dispute has already emerged, this agreement constitutes the source of the arbitral tribunal's jurisdiction and the framework within which its competence is confined, since the arbitrator has no authority to decide except within the limits expressly stated by the will of the parties or implicitly derived from it, accordingly, the agreement represents the jurisdictional foundation upon which the legitimacy of arbitration rests and determines from the outset the scope of the

dispute that may be submitted to arbitral proceedings.³¹ The UNCITRAL Model Law underscores the importance of the agreement as the foundation from which the scope of arbitration is determined and through which the parties express their intention to prefer the arbitral process over recourse to national courts, accordingly, the role of the agreement is not confined to the creation of arbitration, but extends to the performance of an organizational function that frames the proceedings within clear limits, thereby reducing the likelihood of disputes concerning the tribunal's jurisdiction and enhancing the legal certainty associated with the course of the dispute from its very outset, the precision of the agreement also clearly affects the stability of the proceedings at later stages because it limits procedural objections relating to the boundaries of jurisdiction or to the extension of that jurisdiction to disputes that were not intended³². The consensual basis of arbitration also reflects the extension of freedom of contract into the procedural sphere, as it enables the parties, within the necessary limits, to arrange essential elements of the structure of the proceedings such as the number of arbitrators, the manner of their appointment, and the rules governing the conduct of the process, in a way that achieves a greater degree of suitability to the nature of the international commercial relationship when compared with ordinary judicial procedures, the importance of this dimension becomes even more evident where the dispute is technical or specialized in character, since the parties are then able to shape the appointment process and the procedural framework in a manner that enhances the effectiveness of adjudication without prejudice to fundamental guarantees³³.

Third Branch: The Separability of the Arbitration Clause

The principle of the separability of the arbitration clause occupies a fundamental position in the structure of international commercial arbitration, as it means that the arbitration clause does not merge into the underlying contract but is instead treated as an agreement independent from it, consequently, a plea that the contract is void, terminated, or ineffective does not automatically lead to the extinction of the arbitration clause or the neutralization of its effects unless the defect relates to the arbitration agreement itself, the value of this principle lies in the fact that it prevents the arbitral process from being deprived of its substance through challenges directed at the underlying contract and ensures that the tribunal remains competent to examine defenses relating to the contract within the framework accepted by the parties

This principle also contributes to shielding the arbitral process from procedural maneuvers aimed at obstructing it, since the arbitral tribunal remains vested with authority to examine objections connected with the contract without prejudice to its jurisdiction in principle, in this context, the separability of the arbitration clause is linked to the principle of competence-competence, which confers upon the tribunal the power to rule on its own jurisdiction, including objections relating to the existence or validity of the arbitration agreement, thereby reinforcing the autonomy of the arbitral process and reducing early judicial intervention that may be used as a means of disrupting the ordinary course of the proceedings³⁴. On

this basis, the separability of the arbitration clause constitutes a procedural safeguard of fundamental significance in enhancing the effectiveness of international commercial arbitration, since it ensures the continuity of the proceedings and provides the parties with a more stable framework for the resolution of the dispute, it also strengthens the capacity of arbitration to perform its original function of bringing the dispute to an end within a framework accepted by the parties, which is consistent with the requirements of international commerce that call for decisive solutions capable of being relied upon ³⁵.

Subsection Two: Arbitral Procedures and Their Effects

The regulation of arbitral procedures and their effects concerns the practical dimension through which the effectiveness of international commercial arbitration in resolving disputes arising from cross-border transactions is measured, since a mere agreement to resort to arbitration is not sufficient unless it gives rise to a well-structured procedural framework that ensures the neutrality of the adjudicating body, determines the law governing the dispute in a manner that prevents uncertainty, and culminates in an award possessing binding force and capable of enforcement, at this level, arbitration appears to combine the flexibility required by the particular nature of international commerce with the necessary degree of procedural safeguards that confer practical value upon the arbitral decision.

First Branch: Constitution of the Arbitral Tribunal

The constitution of the arbitral tribunal represents the actual beginning of the arbitral process because the soundness of its composition confers legitimacy upon all subsequent proceedings and is directly reflected in the parties' confidence in the integrity and neutrality of the process, moreover, empowering the parties to determine the number of arbitrators and the manner of their appointment expresses the very essence of the consensual foundation of arbitration, since the formation of the adjudicating body remains part of the will that originally brought arbitration into existence, whether the matter concerns a sole arbitrator or a multi-member tribunal according to the nature of the dispute and the degree of its complexity³⁶. Granting unrestricted freedom in appointment requires the establishment of mechanisms capable of addressing the risk of obstruction, such as where one party refuses to participate in the appointment process or where agreement on the presiding arbitrator cannot be reached, in this regard, the framework adopted by the UNCITRAL Model Law becomes apparent in that it gives precedence to party agreement while providing procedural alternatives where consensus proves impossible, thereby preserving the continuity of the arbitral proceedings and preventing the issue of appointment from turning into a means of undermining the substance of the arbitration agreement.³⁷ Independence and impartiality likewise remain essential conditions in the constitution of the tribunal, since the arbitrator is required to disclose any circumstance that may raise serious doubts as to his or her impartiality, thereby safeguarding the integrity of the final award and reducing the likelihood of subsequent challenges or refusals of enforcement, the importance of this issue stems from the fact that defects in the

composition of the tribunal are not merely formal matters, but may extend beyond that to the post-award stage where they become grounds for setting aside the award or objecting to its enforcement, which makes the sound constitution of the tribunal a primary guarantee of the effectiveness of arbitration in cross-border disputes.

First Branch: Constitution of the Arbitral Tribunal

International commercial arbitration is distinguished by a greater degree of flexibility in comparison with national courts with regard to the determination of the law applicable to the substance of the dispute, since the parties in principle enjoy the freedom to designate the law governing their contract or the legal relationship forming the subject matter of the dispute, this choice performs a protective function in international transactions in that it reduces the element of legal surprise and makes the dispute more closely aligned with the parties' expectations regarding the legal framework by reference to which rights and obligations are to be assessed³⁸.

In the absence of an express agreement, the arbitral tribunal may determine the applicable law according to an approach that takes into account the nature of the dispute and the multiplicity of its connecting factors, as recognized by the UNCITRAL Model Law when it granted arbitrators the authority to adopt the rules they consider most appropriate for designating the applicable law in international disputes, the importance of this framework lies in the fact that it limits the rigidity inherent in strict adherence to national conflict-of-laws rules that may not respond adequately to the multiplicity of connections in an international contract and grants arbitration a greater capacity to reach a solution suited to the particular nature of cross-border commercial dealings.³⁹ However, the flexibility involved in the choice of law does not mean that arbitration is free from substantive constraints, since the law chosen by the parties or designated by the tribunal remains, where necessary, subject to the limits of public policy as a controlling standard that prevents the outcomes of arbitration from conflicting with fundamental principles of the legal order concerned, whether at the stage of judicial review or when enforcement is sought, accordingly, a balance arises between party autonomy in the designation of the applicable law and the mandatory requirements that ensure the protection of essential values and prevent the use of legal choice as a means of producing effects that the legal order would not accept at the stage of recognition and enforcement⁴⁰.

Third Branch: The Authority of the Arbitral Award

Arbitration culminates in the rendering of an award that brings the dispute to an end and binds the parties to its content, as a result, it acquires an authoritative effect that precludes the revival of the same dispute whenever there is identity of parties, subject matter, and cause, this authority performs a fundamental role in international commerce because it puts an end to uncertainty and provides the legal relationship with a point of stability that allows commercial dealings either to continue or to be reorganized on a clear basis

The force of the arbitral award rests on the conjunction of two elements, the first is the consensual foundation embodied in the will of the parties who established the arbitration and accepted its outcome, while the second is the legal foundation based on the recognition by the legal order of the arbitral award as a final means of resolution, thereby requiring respect for it and preventing the resubmission of its subject matter before the courts except within the limits prescribed by law, this conjunction reveals the composite nature of the arbitral award, it is consensual in origin, yet it acquires a judicial character in terms of its binding effect and authoritative force.⁴¹ Judicial review of the arbitral award does not extend to reopening the facts or reconsidering the arbitral tribunal's assessment of the merits of the dispute, since such an approach would deprive arbitration of its function as a final means of resolution, accordingly, any review that is undertaken remains confined to fundamental defects affecting the validity of the agreement, the regularity of the proceedings, essential guarantees, or public policy, thereby preserving the balance between the finality of the award and the necessary degree of procedural legitimacy, these limits also have a positive impact on legal certainty in international transactions because they reinforce the parties' confidence that the award will not become merely a preliminary stage followed by a new litigation on the merits before national courts ⁴².

On this basis, the authoritative force of the arbitral award occupies a fundamental place among the outcomes of international commercial arbitration, as it consolidates legal stability, reduces the likelihood of duplicative proceedings, and lays the foundation for the enforcement stage in which the award acquires its practical effect, thus making such authority a necessary link between the fairness of the process and the effectiveness of the outcome in the environment of international commerce.

Fourth Branch: Enforcement of Arbitral Awards, The 1958 New York Convention

The enforcement stage becomes the decisive link in the effectiveness of international commercial arbitration, since the practical purpose of the arbitral award is not fulfilled merely by its issuance, but by its capacity to be enforced outside the state in which it was rendered, particularly where the assets of the losing party or the place of enforcement are located in another state, on this basis, enforcement assumes a central position as a practical criterion for measuring the utility of arbitration in cross-border commercial disputes .

The 1958 New York Convention established a unified international framework for the recognition and enforcement of foreign arbitral awards by requiring contracting states to recognize and enforce such awards under defined conditions, thereby reducing divergence among national legal systems and affirming the cross-border circulation of the arbitral award, the Convention also rests on the logic that enforcement is the rule, while subjecting it only to limited and narrowly confined review so as to prevent the enforcement stage from turning into a reconsideration of the merits of the dispute⁴³. The Convention has specified the grounds for refusing enforcement as exceptional cases, including the invalidity of

the arbitration agreement, the denial of the right of defense, and the contravention of public policy, thereby reflecting an international approach aimed at limiting obstacles to enforcement and confining them to a narrow scope connected with fundamental guarantees, such specification serves to strengthen confidence in arbitration as an effective mechanism, since the parties do not encounter at the enforcement stage a broad range of obstacles that may vary from one state to another in the absence of a clear standard⁴⁴.

The wide acceptance of this Convention and its adoption by a large number of states constitute one of the principal reasons for preferring arbitration in international commercial disputes, given the greater degree of legal certainty it provides in comparison with foreign judicial decisions, particularly in terms of the clarity of the enforcement process and the defined limits of review exercised over it, accordingly, the enforcement of arbitral awards performs a fundamental role in consolidating legal certainty and stability within international commercial relations, because the economic value of international transactions depends directly on the injured party's ability to obtain the effective realization of its right across borders.⁴⁵

Section Two: Modern Electronic and Institutional Methods

The rapid digital development of international commercial transactions has been accompanied by the emergence of modern methods of dispute settlement, foremost among them settlement through electronic means, which has arisen in response to the particular nature of the digital environment and the accelerated pace of its transactions, within this context, the growing role of international organizations is likewise confirmed in shaping normative and institutional frameworks capable of supporting the effectiveness of these methods and consolidating their capacity to resolve disputes of a cross-border nature

Subsection One: Online Dispute Resolution (ODR)

Online dispute resolution represents a contemporary extension of alternative dispute settlement mechanisms, as it transfers the procedures of negotiation, mediation, and arbitration into a digital environment suited to the particular nature of electronic transactions, this mechanism derives its importance from its responsiveness to the logic of electronic commerce, which is characterized by speed, multiplicity of parties, and the absence of clearly defined territorial boundaries, factors that often reduce the suitability of traditional solutions and make recourse to digital settlement more closely aligned with the nature and origin of the dispute

First Branch: The Concept of ODR

The concept of online dispute resolution refers to the use of communication and information technologies in conducting dispute settlement procedures remotely, including electronic negotiation, electronic mediation, and online arbitration, this approach is based on transferring alternative dispute settlement mechanisms into a digital space within which settlement procedures and the exchange of documents and communications between the parties are conducted through the network without requiring physical presence, which makes this model more compatible

with the nature of contractual relationships that arise and are performed in the electronic environment.⁴⁶ ODR is not confined to being a mere technical tool, but rather forms part of a digital procedural framework that reconstructs the settlement process according to the logic of electronic platforms, thereby allowing the management of the dispute, the exchange of submissions, the attachment of documents, the scheduling of remote hearings, and the monitoring of the progress of the dispute in an electronic form that approximates the functions traditionally carried out in a physical setting, the value of this procedural dimension becomes even greater where the dispute concerns digital evidence or transactions conducted entirely online, since in such cases it becomes appropriate for the settlement to take place within the same environment in which the dispute itself arose.⁴⁷ It follows that ODR does not represent a single uniform method so much as it constitutes a framework encompassing mechanisms that differ according to the degree of third-party intervention and the nature of the effect they produce, electronic negotiation remains the closest to direct interaction between the parties through digital means, while electronic mediation adds the element of a neutral third party for the purpose of managing dialogue and narrowing the gap between them within an electronic platform, online arbitration, by contrast, assumes a more formal character and culminates in a binding decision rendered by an arbitral tribunal conducting its procedures in the digital sphere, accordingly, the choice of the appropriate mechanism within ODR depends on the nature of the dispute, the level of its complexity, and the extent to which the parties require a final binding resolution or a consensual settlement characterized by a greater degree of flexibility.⁴⁸

Second Branch: The Importance of ODR in Electronic Commerce

ODR derives its importance from its structural connection to the reality of electronic commerce, which is characterized by its cross-border reach, the difficulty of identifying the geographical location of the transaction, its reliance on digital evidence, and the rapid pace at which obligations are concluded and performed, this reality has revealed the limitations of certain traditional mechanisms in accommodating digital disputes, whether in terms of issues of jurisdiction and enforcement or in terms of the cost of time and procedure, which has made digital settlement methods more suited to the particular nature of the electronic environment⁴⁹. The practical value of ODR is reflected in its ability to reduce procedural costs associated with travel and physical attendance and to allow disputes to be handled within a shorter time frame, while also making it possible to draw upon technical experts or specialists where necessary without encountering the usual spatial constraints, this appears even more clearly in electronic arbitration, which is conducted within a virtual environment and enables the parties to manage the dispute file, submit documents, and follow the proceedings in digital form, thereby promoting procedural efficiency and bringing the settlement process closer to the logic of the electronic transaction itself⁵⁰. ODR also contributes to consolidating legal certainty in the field of electronic commerce from a practical perspective founded on the provision of a settlement process that can be predicted and managed remotely, particularly in low-value or

repetitive disputes where the cost of the traditional process, by reason of its duration, may become higher than the value of the dispute itself, on this basis, the acceleration of settlement and the reduction of its cost within the digital environment do not represent merely a technical feature, but rather produce a direct effect on the stability of electronic dealings and on the continuity of trust in platforms and cross-border transactions⁵¹.

Third Branch: The Legal Challenges of ODR

Online dispute resolution faces legal challenges foremost among which is the issue of procedural safeguards in the digital environment, particularly the protection of the rights of defense, the achievement of equality between the parties, and the assurance of a sufficient degree of transparency in the conduct of proceedings by electronic means, the sensitivity of these issues becomes even greater in cross-border disputes because of the diversity of the parties' legal reference systems and the differences in their expectations regarding the form of the procedure and the requirements of a fair hearing

⁵². Challenges also arise in relation to the protection of privacy and the confidentiality of the data exchanged, given that the management of the dispute takes place through the network and by means of technological tools that require a high level of information security, especially where the dispute concerns sensitive commercial data or contractual information of economic value, accordingly, the effectiveness of ODR remains dependent on the existence of technical and procedural safeguards capable of ensuring the confidentiality of communications and documents and of reducing the risks of unauthorized access or disclosure

⁵³. Among the practical challenges with legal implications is the issue of the technical and procedural infrastructure through which the dispute is managed electronically, particularly the need for a dedicated platform that enables the parties and the dispute resolution body to submit documents, exchange pleadings, and monitor the proceedings within a reliable framework, regulating these aspects becomes a necessary condition for preserving the integrity of the procedure and strengthening the evidentiary value of digital documents, in a manner that supports acceptance of the settlement outcomes and reduces the likelihood that the dispute will shift toward the procedures themselves rather than remain focused on its substantive origin. ⁵⁴ ODR also raises a delicate issue concerning the enforceable force of the outcome reached through the electronic process, particularly where that outcome takes the form of a consensual agreement as in electronic mediation, in such a case the value of the result becomes dependent on the manner in which it is drafted and documented and on the extent to which it is subjected to procedures capable of conferring enforceable effect upon it under the applicable legal system, this aspect constitutes a fundamental determinant of the extent to which ODR can establish legal certainty, because a settlement that cannot be translated into an enforceable effect in the event of non-compliance is clearly diminished in its practical value.⁵⁵ Accordingly, ODR falls within the category of promising modern trends in the settlement of electronic commerce

disputes, yet its acquisition of the status of an effective alternative remains dependent on the extent to which its legal, procedural, and technical challenges are properly addressed in a manner that ensures procedural fairness, preserves confidentiality, and secures the enforceability of its outcomes, which makes it a manifestation of the evolution of the system of international commercial dispute settlement rather than a mere formal transfer of procedures into the digital sphere.

Subsection Two: The Role of International Organizations in Dispute Settlement

International organizations of a commercial and institutional character play a fundamental role in enhancing the effectiveness of cross-border dispute settlement through two interconnected functions, the first consists in the development of unified or quasi-unified procedural rules capable of limiting the effects of differences among national laws, while the second is reflected in the provision of an organized administrative and procedural framework for the management of the dispute in a manner that reduces arbitrariness and promotes predictability in the settlement process, these two dimensions directly affect legal certainty in international transactions because the parties do not seek merely a mechanism for resolving the dispute, but rather a clear process that ensures procedural regularity and makes its outcomes more capable of practical enforcement.

First Branch: The International Chamber of Commerce (ICC)

The International Chamber of Commerce constitutes an institutional framework that enjoys a practical presence in international commercial disputes through the rules and procedures it establishes, to which the parties may refer in their contracts or adopt once the dispute has arisen, thereby ensuring a clear procedural path suited to the particular nature of cross-border transactions, the value of this role lies in the fact that the ICC does not stand in the place of national courts, but rather performs an organizational function by providing a structured procedural framework that prevents the regulatory vacuum which might otherwise lead to the obstruction of the proceedings or to the emergence of subsidiary disputes concerning procedural matters⁵⁶. The contribution of the ICC to the support of dispute settlement is manifested through two categories of instruments, namely the Rules of Arbitration and the Mediation Rules, under the Rules of Arbitration, the proceedings are conducted within an institutional framework that determines the essential stages relating to the commencement of the claim, the constitution of the tribunal, the organization of written submissions, the management of hearings, and the rendering of the decision, thereby reinforcing the orderly conduct of the process and limiting the procedural disparities that may arise from the diversity of the parties' legal backgrounds, accordingly, institutional arbitration under the ICC acquires a practical value that goes beyond arbitration in its abstract form because it adds an organizational dimension that ensures the proper conduct of the proceedings and reduces the likelihood of their obstruction⁵⁷. Under the ICC Rules, mediation is also conducted within a structured process aimed at reaching a consensual settlement with the assistance of a neutral third party, while granting the parties a considerable margin in

organizing the manner in which the process is to be managed without prejudice to its nature, the importance of these rules lies in the fact that they provide mediation with a disciplined procedural framework that facilitates the guidance of negotiations, dispels ambiguity as to the roles of the participants, and reduces the likelihood that mediation will fail for formal reasons, which makes it a practical means of exhausting the possibilities of amicable settlement before resorting to binding adjudication⁵⁸. Practice also reveals a growing tendency to adopt contractual arrangements based on a graduated approach to dispute settlement, whereby the process begins with organized mediation and, if settlement proves unattainable, proceeds to arbitration, the value of this graduated structure lies in the fact that it reconciles two interests, the first is to provide an opportunity for an amicable solution whenever its conditions are met, while the second is to ensure a final and decisive resolution through arbitration when mediation proves ineffective, this in turn promotes legal certainty by establishing a predictable and sequential process instead of an arbitrary movement between multiple mechanisms

Second Branch: The International Centre for Settlement of Investment Disputes (ICSID / CIRDI)

The International Centre for Settlement of Investment Disputes possesses a specialized institutional character, and its contribution to supporting cross-border dispute settlement lies in the fact that it provides an institutional arbitral framework based on specific jurisdictional requirements connected to the nature of the dispute, the status of the parties, and their consent to resort to it, it follows from this that the function of ICSID does not stop at merely providing a framework for arbitration, but extends to establishing a specialized procedural system for investment disputes that structures the procedural relationship between the investor and the state according to clear substantive and procedural conditions, thereby reducing the uncertainty that may arise from submitting the dispute to a national court in which the state itself is one of the parties.⁵⁹ The particularity of this framework is reflected in the fact that consent constitutes the decisive gateway to the commencement of the proceedings, which in turn affects the determination of the scope of jurisdiction and the verification of the jurisdictional requirements before entering into the merits, this structure reinforces the idea that the resolution of investment disputes cannot be separated from the proper structuring of the procedural relationship from the very outset, because this type of dispute often produces economic and sovereign effects, making clarity of jurisdiction and the precise determination of its conditions essential elements of procedural stability.⁶⁰ The issue of consent also gives rise in practice to problems relating to the forms in which acceptance may be expressed and the limits governing it, together with the effects that may result therefrom on the balance of the procedural relationship between the two parties, the importance of this aspect lies in the fact that it influences the assessment of the effectiveness of the institutional framework itself, since the expansion or restriction of the scope of consent is reflected in the nature of the disputes that may fall within the

jurisdiction and in the stability of the parties' expectations regarding the possibility of pursuing this course⁶¹.

Third Branch: The Role of UNCITRAL

The most prominent role of UNCITRAL is reflected in the development of normative instruments aimed at bringing legal systems closer together in the field of international trade, which has a direct impact on the settlement of international commercial disputes, the importance of this role stems from the fact that the effectiveness of cross-border dispute settlement remains closely connected to the degree of convergence among the national rules governing arbitration, since legislative divergence gives rise to uncertainty in fundamental matters relating to the validity of the arbitration agreement, the limits of judicial review, and the effects arising from the arbitral award. The impact of this role is evident through the UNCITRAL Model Law on International Commercial Arbitration, which constitutes a reference point in the modernization or reconstruction of national legislation because it provides a comprehensive regulation of the arbitral process that does not stop at affirming the principle or explaining the concept, but also extends to central procedural matters relating to the arbitration agreement, the constitution of the arbitral tribunal, the conduct of the proceedings, and the limits within which judicial review may be exercised, accordingly, the Model Law enhances the predictability of the course of arbitration within the state that adopts its provisions and reduces the procedural surprises that may weaken the effectiveness of arbitration in cross-border disputes.⁶² Accordingly, UNCITRAL contributes to the development of a more coherent legal environment for the settlement of international commercial disputes through a legislative model capable of national adoption, thereby supporting the stability of transactions and strengthening the position of arbitration as a principal mechanism of adjudication, this value becomes even more apparent when arbitration is viewed as a process whose success is complete only through the harmony of two interconnected stages, the first being the procedural stage within the state of the seat, while the second is embodied in the enforcement stage when recognition of the award is sought abroad, thus legislative harmonization becomes a supporting element of legal certainty within the system of cross-border dispute settlement⁶³

Conclusion

This article has shown that the effectiveness of mechanisms for resolving disputes arising from international commercial transactions depends not merely on the existence of a legal means of adjudication, but on its ability to secure legal certainty in practice through the prompt resolution of disputes and the cross-border enforceability of decisions. In this regard, national courts, despite their procedural guarantees, remain less suited to cross-border disputes because of the complexity of jurisdiction, conflicts of jurisdiction, and the difficulties surrounding the recognition and enforcement of foreign judgments, particularly where public policy is invoked too broadly. By contrast, amicable methods such as negotiation, mediation, and conciliation offer clear practical value where the parties genuinely seek settlement and maintain a reasonable balance in their

positions, as they reduce cost and time while preserving contractual relations, although their effectiveness remains dependent on the proper formulation and enforceability of the settlement. International commercial arbitration, however, has confirmed its position as the most effective mechanism in terms of flexibility, neutrality, and decisiveness, especially given the enforcement framework established by the 1958 New York Convention, which strengthens confidence in the cross-border effectiveness of arbitral awards. The article also finds that online dispute resolution represents a promising modern path suited to electronic commerce, although its success remains dependent on stronger procedural safeguards, data confidentiality, and clearer rules on recognition and enforcement. Accordingly, the most appropriate approach is not an absolute preference for one mechanism over all others, but an integrated approach in which each method is employed according to the nature of the dispute, its complexity, and the interests of the parties. On this basis, international commercial arbitration, supported by an effective enforcement framework, remains the most reliable means of achieving legal certainty and economic stability in most cross-border commercial disputes, while amicable and electronic methods continue to serve as useful preliminary avenues whenever the conditions for their success are present .

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⁶ Ikram Ibrahim Badr Yahya, *op. cit.*, p. 538.

⁷ Ikram Ibrahim Badr Yahya, *op. cit.*, pp. 429–444.

⁸ Yamina Kahloula, *op. cit.*, pp. 430–451.

⁹ Yusri Awad Abdullah Abdulqadir, *op. cit.*, pp. 528–535.

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¹⁴ Yamina Kahloula, *op. cit.*, pp. 364–387.

¹⁵ Wojciech Konaszczuk, *op. cit.*, pp. 102–105.

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