



The Project MediMARE: Mediation in Maritime Disputes has made several advancements in the month of December. We had the December Workshop and the development of the online course!

PROJECT'S RESEARCH REPORT

The Project MediMARE team is gathering all the research projects reports and compiling it into one Research Project which will shortly be available for consult.

DEVELOPMENT OF THE ONLINE COURSE

The online course is under development by the Project Team. The online course will take place during the months of February and March. Keep posted if you want to participate or refer someone who wishes to participate!

DECEMBER WORKSHOP

The MediMARE's December Workshop happened on December 15th with a communication from Joaquim Simplício, the CEO of Mutua dos Pescadores. Mr. Joaquim Simplício gave a communication on "Mediation in Maritime Disputes as a Safety Tool in a Changing World". Mr. Simplício gave a broad vision of the maritime conflicts, with explanation on its actors, diversity of culture, legislation, States and multijurisdiccional aspects. He also shared his views on the conflicting character of the maritime disputes, which are more regarding different perspectives than of conflict itself. It was a very enriching moment!



JANUARY WORKSHOP

The January workshop will be held on January 30th during the afternoon. There will be an extensive and very interesting program of communications, so please save the date if you wish to participate! More details will follow in the beginning of next month!

HOLIDAYS

The MediMARE Project Team wishes everyone GREAT HOLIDAYS!
Merry Christmas and Happy 2023!

SOCIAL MEDIA

Follow the project at:



medimare.eu

or email us via email medimare@uc.pt

WIKImediMARE

The MediMARE Project Team starts, this month, to publish glossary content related to the project.

Ad hoc arbitration · Ad hoc Arbitrations are arbitrations that happen in a freer format. The Parties will choose the arbitrator, the arbitration rules and procedure, the venue and the location where the arbitration will happen.

Administered arbitration · an arbitration procedure made in an institution with pre-defined procedural rules, a list of arbitrators to indicate for the parties to choose (if they so desire), and the infrastructure for the arbitration procedures. The infrastructure includes the physical location (offices and rooms for the procedure to happen and to accommodate the parties), and administrative services to support the parties during all the procedure and for their communication on the progress of the arbitration. Several are the example of the institutions that make administered arbitration, and we can mention the ICC International Centre for ADR¹ and the London Maritime Arbitrators Association².

Administered mediation · A mediation procedure that happen in one of the institutions that provide specific rules, a list of mediators and all

the infrastructure necessary for the development and progress of the mediation, including physical structure and administrative services. One example of such institutions is the International Chamber of Commerce, which administers mediations through the ICC International Centre for ADR³.

Administration fees · Administration fees are the fees paid to a chamber or association who will be responsible for administering the arbitration or mediation. It will be responsible for providing the physical space, support the parties' communications and make the parties and the arbitrators or mediators aware of all the procedural developments.

Arb/Med Proceeding · The Arb/med proceeding is one in which the neutral third party first conducts an arbitration procedure and, then asks the parties if they want to mediate. That without disclosing the content of the arbitration award. If the parties choose to mediate and the mediation is successful, the content of the arbitration award is not disclosed by the parties⁴.

¹ ICC. **ICC International Centre for ADR**. Available at <https://iccwbo.org/dispute-resolution-services/mediation/icc-international-centre-for-adr/>. Access on November 28th, 2022.

² LMAA. **Notes on London Arbitration and Frequently Asked Questions**. Available at <https://lmaa.london/notes-on-london-arbitration/>. Access on November 28th, 2022.

³ ICC. **ICC International Centre for ADR**. Available at <https://iccwbo.org/dispute-resolution-services/mediation/icc-international-centre-for-adr/>. Access on November 28th, 2022.

⁴ CEBOLA, Cátia Marques. **La Mediación: um nuevo instrumento de la administración de la justicia para la solución de conflictoss**. Tesis Doctoral. Facultad de Derecho, Universidad de Salamanca, 2011. Available at <https://iconline.iplleiria>.

BATNA · Best Alternative to a Negotiated Agreement is a concept introduced by Roger Fisher, William Ury and Bruce Patton in the book *Getting to Yes: Negotiating Agreement Without Giving In*⁵. The process to find your BATNA requires three distinctive operations. First is Inventing. The negotiator has to create a list of possible actions to be taken if no agreement is reached. Second is the check your list on step number one, improve the best of them and turn the “most promising into real alternatives”⁶. And third is to select, among the alternatives you created, the best one. That is the Best Alternative to a Negotiated Agreement, which should be used as a parameter against every offer you receive in the course of a negotiation.

Caucus sections · Caucus sections are private sections conducted by the mediator with the parties of a mediation procedure to

Choice of forum · In an international agreement the parties may choose where they want their dispute to be litigated on. In case of such a decision, they may include in their international contract (ref.) a choice of forum, which will bind the parties to litigate in the venue decide on such clause.

Choice of law · in an international agreement it is very common for the parties to decide what law will be applicable to their contract, since usually they come from different States. In case of such a choice, the parties will include in their international contract (ref.) a choice law refer-

ring all the conflicts which might raise among the parties to be decide according to the legislation of the country they decide one. The choice of law might be chosen also in international contracts where parties refer dispute resolution to arbitration.

Compulsory mediation · In some legal systems, it is mandatory for the parties to attempt to mediate their disputes. In such case, parties will attend before a mediator, but the principle of party autonomy and voluntary is preserved: they can decide to stop the mediation procedure at any point.

Confidentiality · Mediation procedures are, in general, confidential, which means none of the information disclosed between the parties and the mediator, and from the parties to the mediator may be made public. The parties, at the beginning of a mediation procedure, sign non-disclosure agreements (NDA Agreements).

Early Neutral Evaluation (ref. ADR) · Early neutral evaluation is an extrajudicial means of solving disputes, in which a judge, an arbitrator or an independent third party hears the parties for one day and then verifies the written evidence presented by them. Then, he or she gives a non-binding evaluation of the possible outcome of the dispute. For confidentiality and neutrality purposes, the person who gave the non-binding view cannot participate in any proceeding with the same parties⁷.

[pt/bitstream/10400.8/761/1/DDAFP_Marques_Cebola_C_LaMediacion.pdf](https://bitstream/10400.8/761/1/DDAFP_Marques_Cebola_C_LaMediacion.pdf). Access on November 28th, 2022.

⁵ FISHER, Roger, URY, William, PATTON, Bruce. **Getting to Yes: Negotiating Agreement Without Giving In**. Second Edition. United States of America: Penguin Books.

⁶ FISHER, Roger, URY, William, PATTON, Bruce. **Getting to Yes: Negotiating Agreement Without Giving In**. Second Edition. United States of America: Penguin Books, page 104.

⁷ CLIFT, Noel Rhys. **Introduction to Alternative Dispute Resolution: A Comparison between Arbitration and Mediation**. February 1, 2006. Available at SSRN: <https://ssrn.com/abstract=1647627> or <http://dx.doi.org/10.2139/ssrn.1647627>. Ac-

Enforcement · “The act or process of compelling compliance with a law, mandate, command, decree or agreement⁸”.

Equity · “The body of principles constituting what is fair and right: natural law⁹”. Not all legal systems allow State judges to decide based on equity. ADR decisions may be taken based on equity.

Escalated Clauses · Escalated mediation clauses or tiered dispute resolution clauses are used in case the parties want to escalate possible conflict resolution types. There are different types of escalated clauses, and a very good example are the ICC

Evaluative mediation - Evaluative mediation is the mediation procedure in which the mediator is allowed to express his views of what is a fair and just resolution of the dispute, as well as on what are the strengths and weaknesses of the case¹⁰.

Executive Tribunal (ref. ADR) · is an extrajudicial means of solving conflicts which involves a senior manager, who attends the procedure

with the case handlers before a mediator. The case handlers present the case and leave the procedure, and in such moment the mediator and the senior managers discuss how the case can be solved¹¹.

Facilitative Mediation · Facilitative mediation is the type of mediation where “a neutral third party, a mediator, assists the parties to settle their disputes. It is a voluntary process of managed negotiation where the parties negotiate their own deal, but it has a timetable, a structure and dynamics which ‘simple’ negotiation lacks. Mediation issue no judgment or awards. They control the process, not the result¹²”.

Med/Arb Proceedings · the Med/arb proceeding is one in which there is first the possibility of mediation, and, if not successful, parties will start the arbitration¹³.

In case you have suggestions or doubts, do not hesitate on contacting us through our social media.

cess on November, 28th, 2022.

⁸ GARNER, Bryan (editor). **Black’s Law Dictionary**. 9th edition. St.Paul: West, 2009, pág. 608.

⁹ GARNER, Bryan (editor). **Black’s Law Dictionary**. 9th edition. St.Paul: West, 2009, pág. 618.

¹⁰ CLIFT, Noel Rhys. **The Phenomenon of Mediation: Judicial Perspectives and an Eye on the Future**. JIML, 15, 2009. May 3, 2010. Available at SSRN: <https://ssrn.com/abstract=1599420> or <http://dx.doi.org/10.2139/ssrn.1599420>. Access on November 28th, 2022.

¹¹ CLIFT, Noel Rhys. **Introduction to Alternative Dispute Resolution: A Comparison between Arbitration and Mediation**. February 1, 2006. Available at SSRN: <https://ssrn.com/abstract=1647627> or <http://dx.doi.org/10.2139/ssrn.1647627>. Access on November, 28th, 2022.

¹² CLIFT, Noel Rhys. **The Phenomenon of Mediation: Judicial Perspectives and an Eye on the Future**. JIML, 15, 2009. May 3, 2010. Available at SSRN: <https://ssrn.com/abstract=1599420> or <http://dx.doi.org/10.2139/ssrn.1599420>. Access on November 28th, 2022, page 509.

¹³ CEBOLA, Cátia Marques. **La Mediación: um nuevo instrumento de la administración de la justicia para la solución de conflictoss**. Tesis Doctoral. Facultad de Derecho, Universidad de Salamanca, 2011. Available at https://iconline.ipleiria.pt/bitstream/10400.8/761/1/DDAFP_Marques_Cebola_C_LaMediacion.pdf. Access on November 28th, 2022.

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