

USE ALTERNATIVE MEANS SUCH AS MEDIATION AND ELECTRONIC NEGOTIATIONS TO SOLVE INTERNATIONAL ELECTRONIC TRADE CONTRACT DISPUTES

INTRODUCTION

International trade in most countries of the world depended on the development of their national economies, which flourished because of the increase in economic and trade relations, the exchange of investments, the transfer of capital, and the large number of international trade contracts concluded by those countries. It has become a new trend, because of the development in the field of technology and communications and the use of electronic computers and other electronic means, which led to these countries signing many international trade contracts. After that, what is known as electronic international commerce emerged, in which all procedures are carried out, starting from the stage of negotiating the contract and ending with the settlement of the dispute and the implementation of the contract, in an electronic virtual world that does not require the physical presence of the parties to the dispute.

As a result of the efforts of many of these countries concluding and implementing many of these contracts, whether at the level of traditional or electronic international trade, and the large number of disputes over them, which prompted merchants, businessmen, project owners, and companies, to search for other ways to settle their disputes that are less costly and more expeditious and flexibility, far from resorting to the ordinary courts whose procedures are long and complex, and which are no longer compatible with the procedures of international electronic commerce and the desires of merchants. Therefore, the thinking tended to search for simple, flexible, uncomplicated judicial and even arbitral means, in line with the development-taking place

SUMMARY

The aim of this study is to define electronic mediation and negotiations as alternative means for resolving electronic commerce disputes, the aspects of agreement and differences between them, the advantages they achieve, and a statement of the effects of electronic mediation and negotiations. The problem is raised in terms of the role of mediation and electronic negotiations in resolving international trade contract disputes. The study relied on the analytical approach, through analysis of the nature of electronic mediation and negotiations, and an indication of their implications.

Keywords: electronic transactions, electronic mediation, electronic negotiations, disputes, contract, international trade

¹ University "Union – Nikola Tesla", Faculty of Information Technology and Engineering, Belgrade.

² University "Union – Nikola Tesla", Faculty of Information Technology and Engineering, Belgrade.

³ University "Union – Nikola Tesla", Faculty of Business Studies and Law, Belgrade.

⁴ University "Union – Nikola Tesla", Faculty of Information Technology and Engineering, Belgrade.

⁵ University "Union – Nikola Tesla", Faculty of Information Technology and Engineering, Belgrade.

* Corresponding author: e_muftah@yahoo.com

in the field of international electronic commerce, including even developed countries such as Japan, America, China and others, which its judicial system is easy. That encouraged legal jurisprudence to resort to alternative peaceful means that are more developed and fit the nature and the characteristics of those contracts and they are capable of settling the dispute quickly, so electronic mediation, negotiations, conciliation and electronic arbitration have emerged as alternative means for resolving international electronic commerce disputes. Perhaps the technological developments witnessed by the countries of the world, the transformation of international trade into international electronic trade, and the large number of international disputes have given an impetus towards the adoption of Arab and international national legislation, electronic mediation, negotiations and arbitration.

From the above, this study sheds light on some of these means, including mediation and electronic negotiations as alternative means to the judiciary. It explains the advantages that these means achieve, and the effects that result from those Means for resolving disputes in international electronic trade contracts, as electronic legal means used Through the Internet to resolve disputes that arise because of merchants, businesspersons, and some companies concluding and implementing many international electronic trade contracts between them.

The importance of this study lies in highlighting the importance of mediation and electronic negotiations as alternative means of resolving international electronic trade disputes through advanced, simple, non-judicial electronic methods that preserve the integrity of commercial relations between countries. Keeping pace with technological and technical achievements from a legal standpoint was imposed by economic conditions and technological developments, especially in the field of international electronic commerce. The increasing interest in various legal and judicial systems in mediation and negotiations comes because of the flexibility and speed it provides in deciding matters, and the required participation of the parties in finding solutions to their disputes. Therefore, this study contributes to motivating countries, merchants, businessmen, and companies to use these means and to remove any fears they have regarding the conclusion and execution of their contracts by electronic means, and to simplify the procedures for resolving any disputes that arise or may arise after using the information and communication technology that is fast and reduces effort and expenses, this helps achieve economic growth.

THE NATURE OF ELECTRONIC MEDIATION AND NEGOTIATIONS AS ALTERNATIVE MEANS FOR RESOLVING INTERNATIONAL TRADE CONTRACT DISPUTES

Mediation, electronic negotiations, and other alternative means, such as electronic arbitration, appeared at the beginning of the nineties, when resorting to the judiciary became an unacceptable way to settle disputes arising from the international electronic commerce disputes that were distinguished. With flexibility and speed in procedures (1,183).

Mediation and negotiations occupied a prominent place in legal and economic thought at the global level, because these means represent an effective act at the level of litigation. It was natural for states to work hard to find a appropriate framework to codify it, and then apply it to be an effective tool for achieving and establishing justice and preserving rights. (2, 29).

Due to their effectiveness as alternative means in resolving many commercial disputes, they have received great attention from organizations and countries, because of the flexibility and speed they provide in resolving disputes and finding solutions to them. It has enjoyed a high status at the level of international law, which is confirmed by the United Nations Charter (3,118).

Regional charters, such as the Charter of the African Union, the Charter of the League of Arab States, and the Arab Investment Guarantee Corporation Agreement, were established as mediation and negotiations as means of resolving disputes, which are intended to resolve the dispute before resorting to arbitration (8,232).

The World Bank's agreement on settling investment disputes was also enacted, in addition to the reconciliation and arbitration system of the International Chamber of Commerce, which provided for a voluntary reconciliation system. Likewise, UNCITRAL stipulated the "United Nations Commission on International Trade Law" on conciliation rules, which had a positive impact in international disputes, as well as the impact of spreading conciliation as a means of settling international disputes (4, 75).

These agreements and charters explicitly stipulate the effectiveness of these means, and to find amicable and just solutions to any international disputes that arise, as the need for these means arises when the situation between the conflicting parties becomes difficult (5, 61). If mediation and negotiations are exceptional means to resolve disputes of international electronic trade contracts, it is expected that

these disputes will be resolved satisfactorily, and to benefit from the advantages it enjoys. This part of the research discusses the following questions: what is electronic mediation as an alternative means for resolving disputes in international trade contracts, and what electronic negotiation is as an alternative means for resolving disputes in international trade contracts.

The Nature of Electronic Mediation as an Alternative Means of Resolving Disputes in International Trade Contracts

Electronic mediation is considered one of the most important alternative means of resolving disputes that arise in electronic space, as it is compatible with the nature of electronic commerce and It contributes more effectively to alleviating the steady increase in disputes in a way that achieves the required success in resolving them (9, 61). To talk about the concept of electronic mediation requires first looking at it through two terms, the first is traditional, and the second is electronic, and then reviewing the advantages and disadvantages of electronic mediation.

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The Concept of Traditional Mediation

Mediation between disputants means the intervention of a party between two disputing parties to end the dispute between them reconcilably. That is, mediation is mediation between two matters or two people to resolve a negotiated dispute between them. According to jurists, the term mediation comes in word and meaning with the same contemporary concept, as it is: "A means of achieving reconciliation and consensual settlement between disputing parties".

One side of jurisprudence defined it as: "A method of alternative solutions to dispute resolution, carried out by a neutral person, aimed at assisting the conflicting parties for dialogue and bringing points of view closer together in an attempt to reach a compromise acceptable to both parties" (12, 25).

The jurists of international law enumerated for the mediator or the mediating party conditions and specifications that must be met in order to succeed in his mission, we explain them as follows: (6, 34).

- That the mediator or mediating parties be neutral between the two disputing parties and acceptable to them, and have the desire to conduct mediation by an agreed party.
- That the mediator offers his mediation of his own free will, without being forced to do so.
- That the mediator, the state, or the party involved in the dispute be free to accept or reject mediation.
- The result of mediation is not obligatory and cannot be imposed on the two disputing parties.
- The mediator should seek to calm matters down, bringing the divergent points of view of the two parties closer together, and presenting solutions that the two parties may accept without pressure or coercion, leaving them the freedom to agree to them (7, 103).

From the foregoing, the concept of mediation crystallizes in that it is: "A voluntary process based on the will of the two parties to the conflict to resort to it, in which the parties work with a third person called the mediator, who has the characteristics of integrity and impartiality to find an acceptable solution to the conflict." Therefore, it cannot be a very effective means of resolving disputes unless both parties to the dispute participate in the equality procedure and are truly willing to reach a compromise solution that ends the dispute.

The Concept of Electronic Mediation

The concept of electronic mediation is: "A process that takes place directly on the Internet and aims to facilitate cooperation and negotiation between the disputing parties to reach a just solution acceptable to the parties to the dispute" (10, 141). Despite the difference of jurisprudence in defining electronic mediation, most of it stems from the interference and use of electronic means, as one part of jurisprudence defined it as: "Communication of a neutral third party with the parties to the dispute on the Internet to reach a final settlement of this dispute" (11, 218). It is also defined as: "A process that takes place immediately and directly on the Internet, and aims to facilitate cooperation and negotiation between the parties to the dispute, in order to reach a just solution acceptable to the parties to the dispute".

It is a method of alternative means based on providing an electronic forum for the conflicting parties to meet, dialogue, and bring points of view closer together with the help of a neutral person, to try to reach an amicable settlement acceptable to the parties to the conflict. That means that the mediator intervenes on his own initiative or at the request of the parties, which shows that Mediation is an advanced stage of electronic negotiation.

The mediator works to find the most appreciated points, compares them with the most important points, and tries to compare them with the aim of reaching a solution that satisfies the disputants (13, 96). Mediation differs from arbitration in that the arbitrator issues a final and binding decision and the disputants are subject to its implementation, while the mediator does not have the authority to issue a decision. The authority of the mediator is a moral authority and is embodied in urging the disputing parties to accept his suggestions and recommendations, which constitute an entry point for resolving the existing dispute. (3, 64-65).

ADVANTAGES AND DISADVANTAGES OF ELECTRONIC MEDIATION

Electronic mediation provides a set of advantages used by modern technology and instant means of communication, but it is not without disadvantages, the most prominent of which are presented as follows:

Advantages of Electronic Mediation

- Saving time and effort because mediation sessions take place via the Internet, so the parties to the conflict do not have to go through the trouble of moving from one place to another, which saves a lot of effort and time.
- Lack of costs, the financial costs incurred by the parties when resorting to mediation are very small, when compared to the judicial or arbitration costs. They are shared by the disputants if there is an agreement to resort to mediation, and in the event of a disagreement, the costs will be borne by the party who initiated mediation. (14,148).
- Mediation is characterized by the flexibility of procedures and complete confidentiality, as all matters that are discussed in mediation and all documents and oral and written statements that are exchanged

and presented during the mediation process are of a confidential nature, it is a confidential process. It is safeguarded and maintains friendly relations between the parties.

- Mediation is characterized by the presence of a neutral, fair third party who seeks to reach a final settlement by trying to bring points of view closer together, by supervising mediation sessions via the Internet or by using his skill and experience to reach a solution and come up with reconciliation that eliminates all differences, and the parties are free to withdraw and return to adhering to all rights and legal defenses in court.

Disadvantages of Electronic Mediation

Despite the advantages of electronic mediation, it is not without drawbacks, perhaps the most important of which are the following:

- Mediation is not obligatory, as the parties always have the right to reject the proposals made by the mediator, which could be a reason for prolonging the conflict and preventing reaching a settlement (15, 26).
- The impact of technical risks that take various forms through the Internet, from the manipulation of the contents of the programs used in the mediation mechanisms, whether intentionally or unintentionally, in addition to the digital divide that exists within the same country, not to mention international communications, and this affects the right to confrontation and hearing, in addition to the need of Linguistic studies, piracy, and hacking of websites.

Despite these shortcomings, electronic mediation remains an effective and reliable means in resolving any commercial disputes that arise, as it is a non-binding method for the parties and maintains relations between the parties if a settlement agreement is not concluded. However, if an agreement is reached on the settlement and the contract proceeds, it becomes binding on both parties. As for the digital divide, it can be bridged by using various modern programs that combat the penetration of sites and centers for the settlement of these disputes.

CONCLUSION

Electronic mediation and negotiations have emerged as an alternative means of resolving international trade disputes as a natural and logical development because of the tremendous development in various fields of social, economic and cultural life. The Electronic Mediation and Arbitration Center turned to it as a means of settling disputes that arise from remote contracts in international trade operations in private electronic mechanisms, and it found great interest among contractors via the Internet and the resulting development in its protection. Electronic mediation is defined as one of the methods of alternative means of settling disputes via the Internet, which is based on providing an electronic forum for the disputing parties to meet, dialogue, and bring points of view together with the help of a neutral person and in complete confidentiality in order to try to reach an amicable settlement accepted by the parties to the dispute. Electronic negotiations are defined as a preliminary discussion between the international negotiating parties via electronic media for the fundamental issues related to international electronic trade contracts to be concluded in the future. Electronic mediation and electronic negotiation as means of settling disputes do not differ from the traditional alternative means of resolving such disputes except that they are done by using one of the electronic means of communication.

Electronic mediation and negotiation as an alternative means of resolving international e-commerce disputes has several important advantages such as the speed and flexibility of its procedures, its preservation of the confidentiality of the dispute resolution process, as it is carried out through special procedures, and its preservation of commercial relations between the conflicting parties.

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UPOTREBA ALTERNATIVNIH SREDSTAVA ELEKTRONSKOG POSREDOVANJA ZA PORAVNANJE MEĐUNARODNIH UGOVORA ELEKTRONSKE TRGOVINE

REZIME

Cilj ove studije je da definiše pojam elektronske medijacije i pregovora kao alternativnih sredstava za rešavanje sporova u elektronskoj trgovini, aspekti sporazuma i razlike među njima, prednosti koje ostvaruju, kao i efekte elektronske medijacije i pregovora. Problem je povezan sa ulogom posredovanja i elektronskih pregovora u rešavanju sporova u međunarodnoj trgovini. Studija se oslanja na analitički pristup, analizu prirode elektronske medijacije i pregovora, i ukazivanje na implikacije elektronske medijacije i pregovora.

Ključne reči: elektronske transakcije, elektronska medijacija, elektronsko pregovaranje, rasprave, ugovori, međunarodna trgovina