

REPORT ON INTERNATIONAL MEDIATION AND ENFORCEMENT

MECHANISMS:

Issued by the Institute for Dispute Resolution (IDR) NJCU School of Business to the International Mediation Institute for the benefit of delegates attending the UNCITRAL Working Group II (Dispute Settlement) 67th Session

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I. Abstract

The continued rise of globalization has allowed nations and business to expand their access to resources, goods, culture, services, and markets that far exceed the perimeters of a national border. A direct result of globalization is the deepening of relationships and interdependencies between nations and its impact on international commerce. This includes all aspects of life, from people to organizations, governments, and most directly, to businesses. These interdependencies have caused nations and businesses to be affected by events outside of

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their traditional borders. Particularly susceptible to international events are the businesses that have been thrust into an environment that is more complex and diverse than a domestic market to be competitive. One risk when engaging in business in the international arena is exposure to domestic law in foreign jurisdictions and ensuring access to justice outside of a business's home nation in the event of a dispute between parties cross border. Wherefore innovative ways to improve access to justice and new methodologies to manage conflict resolution are an integral part of the trading system.

Policy Stakeholders need to find visionary paradigms to aide business to find improved methods of both access to justice and efficient processes to resolve their disputes. The Global Pound Conference Series (GPC) has become a steward for this important objective. Governments alongside their private marketplace partners are necessary agents to aid international commerce. Through policies that promote a more cogent and efficient conflict mitigation process, the business community will have increased confidence when taking risk. Mediation is one such methodical approach to create confidence between parties seeking ways to resolve their conflicts that result from commercial activity. However, as this report will show, predictability and certainty are important factors to consider when parties desire to adopt mediation as a tool for risk mitigation. Without these tools available, agents are left to traditional means of conflict resolution such as arbitration and litigation. Policy makers should assess how the process for enforcement of mediation agreements can be improved to bolster confidence in using mediation similar to how enforcement of arbitration awards have changed the international trading system for efficiency and near equilibrium for the business community.

The goal of this report is to gather the opinions of those who are mostly likely affected by the adoption of any prospective drafts or proposals by Working Group II (Dispute Settlement) with emphasis on the users. This report will also extract the views of the wider business community, their advisors, providers, and those that may influence the mediation space.

Ultimately, this report will examine user's perspective in international mediation processes and provide concluding remarks from the data analyzed.

II. Introduction

This report seeks to present the research gathered by an international quantitative-qualitative study of users' assessments of the enforcement of international commercial settlement agreements resulting from conciliation.³ This report found that the majority of users and stakeholders in this survey and the GPC believe that a uniform global mechanism to enforce mediation settlements would improve commercial dispute resolution. This study was created by the International Mediation Institute ("IMI")⁴ and the New Jersey City University Institute for Dispute Resolution ("NJCU IDR")⁵, in order to assist the United Nations Commission on International Trade Law ("UNCITRAL") and UNCITRAL Working Group II (Dispute Settlement), in particular, to address questions raised in the Report of Working Group II (Dispute Settlement) on the work of its sixty-sixth session.⁶ This report will additionally analyze responses on the desirability for a Convention for the enforcement of mediated settlements from the Global Pound Conference Survey Data Results from March 2016 - September 2017 ("GPC Survey").⁷ This report seeks to further the objectives of the research conducted by Dr. S.I. Strong

³ The use of conciliation in report is mutually inclusive with mediation.

⁴ See International Mediation Institute, <https://imimediation.org/>

⁵ See NJCU School of Business Institute For Dispute Resolution, <http://www.njcu.edu/academics/institute-dispute-resolution-idr>

⁶ See Report of Working Group II (Dispute Settlement) on the Work of Its Sixty-Sixth Session, U.N. Doc. A/CN.9/901 (February 16, 2017).

⁷ Global Pound Conference 2016-2017, Cumulated Data Results March 2016 - September 2017, <http://globalpoundconference.org/>. For the most recent data from the GPC please visit the website at <http://globalpoundconference.org/>.

on the use and perception of international commercial mediation and conciliation in the international legal and business communities.⁸

This report will proceed as follows: Section II describes the methodology of the IMI and NJCU IDR study in conjunction with analyzing the GPC Survey, Section III provides basic information of the demographics of the users, their sectors of business, and other pertinent data that can be useful for further academic scholarly review. Section IV analyzes the user's response to the surveys, Section V will analyze pertinent questions from the GPC Survey, and Section VI provides concluding thoughts on the results of this report.

The responses to the survey questions will be provided if requested with personal identifying information removed for confidentially purposes.⁹

III. Methodology

This report follows the pedagogical and methodological process as reflected in the report issued by Dr. S.I Strong, titled *Use and Perception of International Commercial Mediation and Conciliation: A Preliminary Report on Issues Relating to the Proposed UNCITRAL Convention on International Commercial Mediation and Conciliation* (November 17, 2014), which this report adopts.¹⁰ Empirical studies concerning international law is an emerging field which creates and records valuable information allowing for informed assessments and advocacy by interested parties. Past studies have established that international commercial mediation and conciliation can form the basis of an empirical study when the study's methodology is in

⁸ Strong, S.I., *Use and Perception of International Commercial Mediation and Conciliation: A Preliminary Report on Issues Relating to the Proposed UNCITRAL Convention on International Commercial Mediation and Conciliation* (November 17, 2014). University of Missouri School of Law Legal Studies Research Paper No. 2014-28. Available at SSRN: <https://ssrn.com/abstract=2526302>

⁹ The NJCU IDR/IMI Survey was launched online between June 2016 and up until March 4, 2017. This data was collected using Survey Monkey Analytics and was disseminated through the International Mediation Institute platform, various international chambers of commerce, and targeted stakeholders through the IDR platform.

¹⁰ For a complete review of methodology concerning gathering data from a survey, please *see Id.*

compliance with the social science research norms.¹¹ This report has used prior international law empirical research and the guiding principles of social science research as the foundation for the drafting of survey questions more fully explored *infra*.

This report will reflect the increase in mediation interest from the business sector and a need for policy stakeholders to provide support to foster growth and clarity of process in this field. One of the key elements for adopting mediation for the business community is enforceability of international commercial settlement agreements.¹² This report seeks to gather the opinions of those who would mostly likely be affected by the adoption of any prospective drafts or proposals by Working Group II (Dispute Settlement) with emphasis on the users. This report seeks to extract the views of the wider business community, their advisors, providers, and those that may influence the mediation space because there currently is no convention for the enforcement of cross border mediated settlements by seeking responses to questions concerning:

- The extent commercial users use or were advised to use mediation in a cross-border dispute.
- The reasoning as to why parties do not seek to solve cross-border disputes through mediation.
- The consideration of including a mediation clause in a cross-border contract.
- Potential methods which would increase the use of mediation clauses in cross-border contracts, and mediation in cross-border disputes.
- The user's experience finding qualified mediators.
- Opt In/Opt Out opinion of a universal mediation instrument.
- Negative Effects of including various types of defenses under such mediation instruments.
- Whether legislation or conventions that promote recognition and enforcement of settlements reached in mediation, would improve future of commercial dispute resolution.
- Where should policy makers, governments and administrators focus their attention to promote better access to justice for those involved in commercial disputes?

¹¹ See *Id.* at 4-5 and Note 8.

¹² See David Weiss and Brian Hodgkinson, *Adoptive Arbitration: An Alternative Approach to Enforcing Cross-Border Mediation Settlement Agreements*, 25 *Am. Rev. Int'l Arb.* 275 (2014).

The GPC provided twenty “Core Questions”¹³ that were asked to stakeholders during the conference with five core questions asked in the beginning of each session.¹⁴ The “Core Questions” were created with input from representatives of all stakeholders’ groups and members of the GPC’s Academic Committee.¹⁵

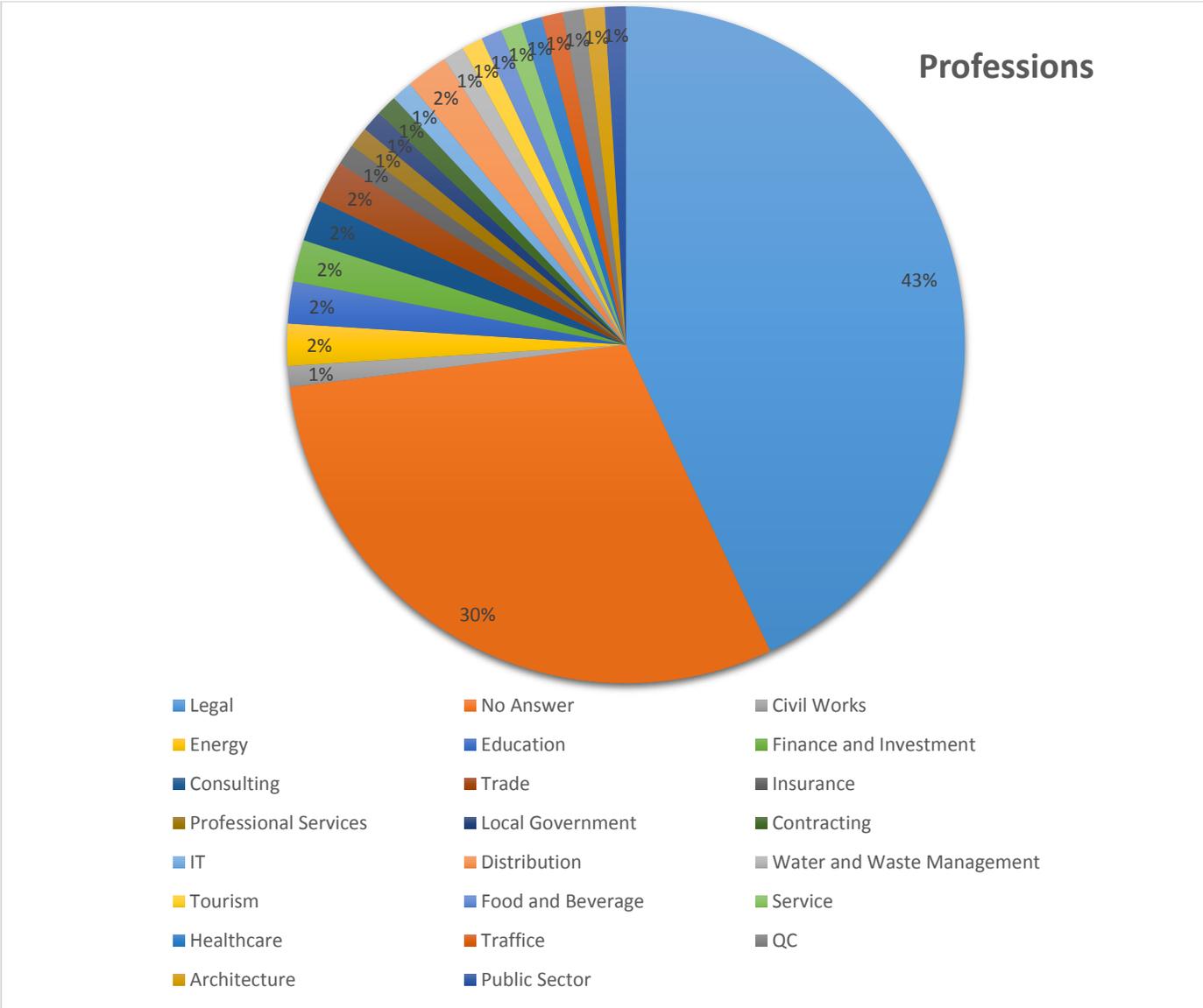
IV. Demographics

The IMI and NJCU IDR survey was composed of a wide variety of users from the international arena. Of those users who chose to identify their location, the IMI and NJCU IDR survey received responses from users from Ghana(1), Australia (3), Mexico (1), Italy (3), Luxemburg (1), Ireland (6), United Kingdom (4), China (9), USA (6), Switzerland (7), Spain (1), Afghanistan (1), Germany (4), Jordan (6), Turkey (2), Kenya (1), Portugal (3), Austria (2), Guyana (1), Sweden (1), France (2), Slovenia (4), Serbia (2), and Slovakia(1).

¹³ *GPC Series 2016-17 Core Questions For Commercial Disputes To Be Used At All GPC Events*, GLOBAL POUND CONFERENCE SERIES 2016-17, [http://www.globalpoundconference.org/Documents/GPC%20Series%202016-17%20--%20Core%20Questions%20--%20Publication%20Copy%20\(March%206%202016\).pdf](http://www.globalpoundconference.org/Documents/GPC%20Series%202016-17%20--%20Core%20Questions%20--%20Publication%20Copy%20(March%206%202016).pdf) (last visited September 13, 2017). GPC defines commercial disputes in its introduction to the core questions, “For the purposes of the GPC Series, ‘commercial disputes’ includes disputes between business entities, business partners, or business entities and public sector entities, whether arising from contract, tort or any other grounds. They include disputes between individual entrepreneurs, small and medium-size enterprises, multinationals and state-owned enterprises.”

¹⁴ For a complete overview of the GPC methodology, see Jeremy Lack, *A Summary of the Preliminary Global Pound Conference (GPC) Date in 2016: Trends and Themes*, at <http://globalpoundconference.org/Documents/GPC%20Series%20-%20A%20Preliminary%20Summary%20of%20the%20GPC%20Results%20in%202016%20by%20Jeremy%20Lack.pdf>.

¹⁵ *Id.*



Twenty Eight GPC events were held across 22 countries in Africa, the Americas, Asia, Europe and the Middle East, and additional votes were also collected by online voting.¹⁶ Approximately 2,500 stakeholders having a wide range of expertise involved in the prevention and resolution of commercial disputes shared their votes to explore possible ways of shaping the future of dispute resolution and improving access to justice in the 21st century who worked both domestically and internationally.¹⁷

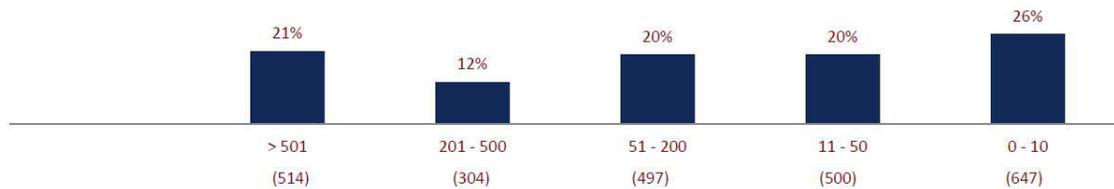
¹⁶ See footnote 7, *supra* at slide 2.

¹⁷ See Footnote 7 *supra*, at slides 9-11.



Q1. Delegate Information

Approximately how many times have you been involved in any dispute resolution proceedings (i.e., litigation, arbitration, conciliation and/or mediation)?
(2464 voters)



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The mix of voters varied slightly from session to session, but on average was comprised of: 15% users; 26% advisors; 14% adjudicative providers, 30% non-adjudicative providers; and 15% influencers.¹⁸

Users (also referred to as “Parties” in the GPC Series) are defined as those who are involved in disputes and benefit from commercial dispute resolution services.¹⁹ Advisors are defined as those who assist users/parties in managing their disputes, such as lawyers, experts, and forensic accountants.²⁰ Adjudicative providers are defined as those who provide adjudicative commercial or civil dispute resolution services or organizations providing such services (e.g., judges or arbitrators).²¹ Non-Adjudicative providers are defined as those who provide non-adjudicative commercial or civil dispute resolution such as conciliators,

¹⁸ *Id.* These numbers are taken from the demographic results for Session 1 at slide 15.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

mediators, or ombudsmen.²² Influencers are defined as people who do not participate, but are influential in commercial disputes, such as academics, government officials, educators, and policy advisors.²³

V. Users' Responses to Survey Questions

- a. This Section of the Report will more fully analyze the questions and answers to the IMI and NJCU IDR Survey. Subsections a-k focus on the IMI and NJCU IDR Survey. As a Commercial User, how often have you used or were advised to use mediation in a cross-border dispute as a best practice in business?

Of the 103 possible responses, 99 users answered the question with 4 users choosing to skip this question. Users had the option of answering: “Always”, “Frequently”, “Infrequently”, or “Not at all”. The most commonly selected answer was “Infrequently” with 40% (40 responses) of users selecting this option. The second and third most popular selections were “Frequently” with 26% (26 responses) and “Not at all” with 24% (24 responses), a narrow margin. The least chosen answer was “Always” with 9% (9 responses) of users selecting this option.

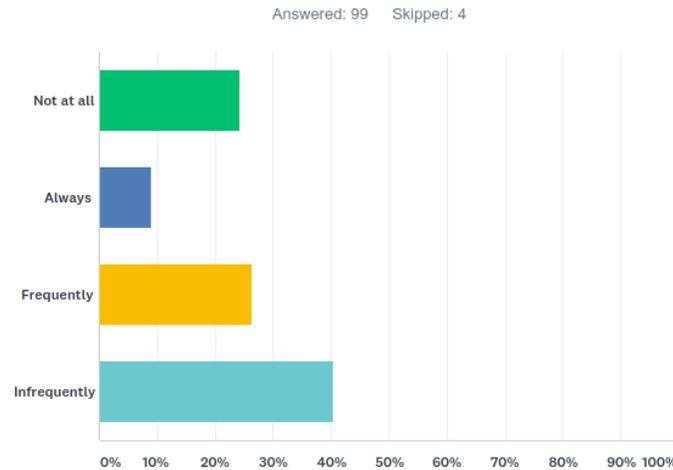
A surprisingly low number of users are being advised to use mediation in a cross-border dispute. Perhaps even more eye-opening is that 24% of respondents selected “not at all”, meaning they have received no advisement about using mediation. Further, in the GPC data we find that advisors are the primary stakeholders responsible for ensuring parties involved in commercial disputes understand their process options and the possible consequences of each process before deciding which process to adopt.²⁴ This may be a failure of both educating lawyers and business leaders about the mediation process.

²² *Id.*

²³ *Id.*

²⁴ See Session 2 Question 4 of the GPC Survey, where “external lawyers” and “in-house lawyers” were the parties primarily responsible for educating stakeholders about dispute resolution. See Footnote 7 *supra* at slide 34.

Q1 As a commercial user, how often have you used or were advised to use mediation in a cross-border dispute as a best practice in business? (Cross-border dispute is defined as one where the parties to the dispute reside in different countries)



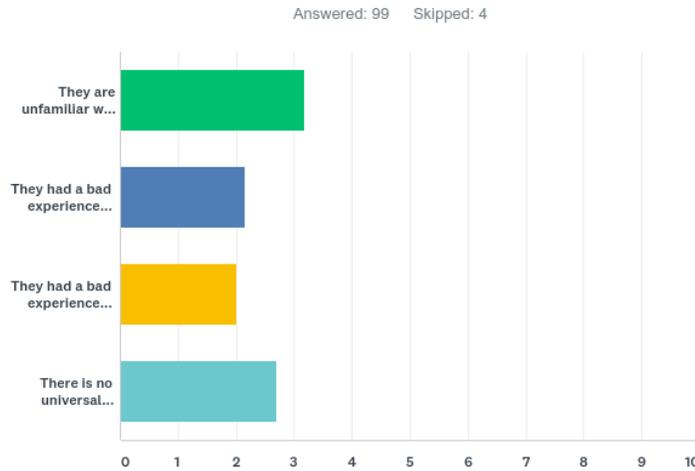
b. Please rank the reasons why you believe parties do not try to solve their commercial cross-border dispute through mediation? (1 is the most frequent reason 4 is the least frequent experience).

Of the 103 possible responses, 99 users answered the question with 4 users choosing to skip this question. Each answer could be ranked by the users by selecting a number 1 and 4 with 1 representing the most frequent reason and 4 representing the least frequent reason. The following answers were available to be ranked: “They are unfamiliar with mediation”, “They had a bad experience previously with mediation”, “They had a bad experience previously with arbitration” and “There is no universal mechanism to enforce a mediated settlement”. The results of this survey are given in the table below.

This question further solidifies the conclusion that there a surprisingly lack of knowledge about mediation amongst users. 57.14% of users responded that being unfamiliar with mediation was the most frequent reason that they believed parties do not try to solve their commercial cross-border dispute through mediation. As knowledge about mediation expands, we would expect to see this number rise. Also of note is the second highest ranked reason that respondents listed was that there is no universal mechanism to enforce a mediated settlement. A lack of a

universal enforcement mechanism may drive parties to other dispute resolution processes that users know have a guaranteed enforcement manner, providing certainty to the outcome of the dispute.

Q2 Please rank the reasons why you believe parties do not try to solve their commercial cross-border dispute through mediation? (1 is the most frequent reason 4 is the least frequent experience)



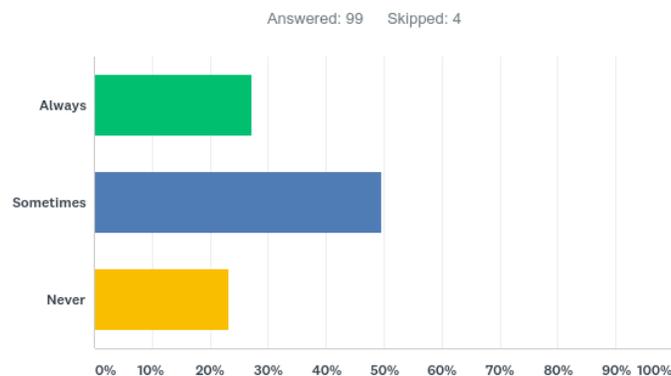
	1	2	3	4	TOTAL	SCORE
They are unfamiliar with mediation	57.14% 48	17.86% 15	10.71% 9	14.29% 12	84	3.18
They had a bad experience previously with mediation	10.81% 8	27.03% 20	29.73% 22	32.43% 24	74	2.16
They had a bad experience previously with arbitration	7.89% 6	21.05% 16	34.21% 26	36.84% 28	76	2.00
There is no universal mechanism to enforce a mediated settlement	28.09% 25	32.58% 29	20.22% 18	19.10% 17	89	2.70

- c. How often does your business consider including a mediation clause in a cross-border contract between you and a counterparty?

Of the 103 possible responses, 99 users answered the question with 4 users choosing to skip this question. Users had the option of answering: “Always”, “Sometimes”, and “Never”. The most common answer was “Sometimes” with 49% (49 responses) of users selecting this option. The second most common answer was “Always” with 27% (27 responses) of users selecting this choice and the least selected answer was “never” with 23% (23 responses) of users selecting this choice.

This survey shows a general positive direction of users to incorporate mediation clauses into cross-border contracts, though as time progresses and parties become more knowledgeable about mediation this number should increase. If there was a universal enforcement mechanism, one would expect the numbers to shift towards an increase in “always” answers, because more certainty of outcome would be provided. Though more research should be conducted into why 23% of respondents never consider including a mediation clause in a cross-border contract.

Q3 How often does your business consider including a mediation clause in a cross-border contract between you and a counterparty?



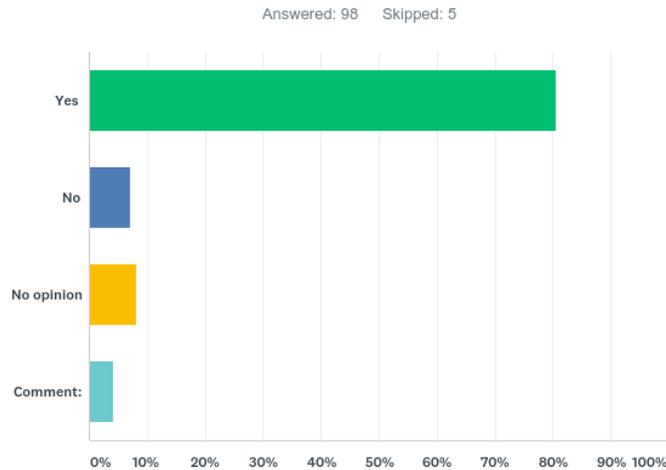
- d. Would you be more likely to include a mediation clause, if there were a uniform global mechanism to enforce mediation settlements i.e. similar to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”)?

Of the 103 possible responses, 98 users answered the question with 5 users choosing to skip this question. Users had the option of answering: “Yes”, “No”, “No opinion”, or “Comment”. By far the most common choice was an answer of “Yes” with 80% (79 responses) of User’s selecting this choice. The second most common choice was “No opinion” with 8% (8 responses) of users selecting this choice. “No” was selected by 7% (7 responses) of users, and 4 users commented on the question. Comments appear to synchronize with the possible selected answers with three comments aligning with a “yes” answer and four comments aligning with a “no” or “no opinion” answer.

Two comments stood out, with a user commenting “Lack of uniform enforcement mechanism is a problem” and another commenting that a global enforcement mechanism would not increase their use of mediation clauses because “Clients are afraid because of corruption, influence etc....” Ensuring users have faith and trust in the process is critical for parties to be able to engage in good-faith mediation. It may be that as more countries adopt mediation as a viable dispute resolution process, there is a growing period, where confidence in the process needs to be built, which will come with time as more users engage in mediation.

The high majority response of “yes” to this question strongly supports the proposition that a uniform global mechanism to enforce mediation settlements will increase the number of mediation clauses included in contracts. This may be because of the added certainty of being able to enforce a mediated settlement agreement where currently there is no such guarantee.

Q4 Would you be more likely to include a mediation clause, if there were a uniform global mechanism to enforce mediation settlements i.e. similar to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention")?

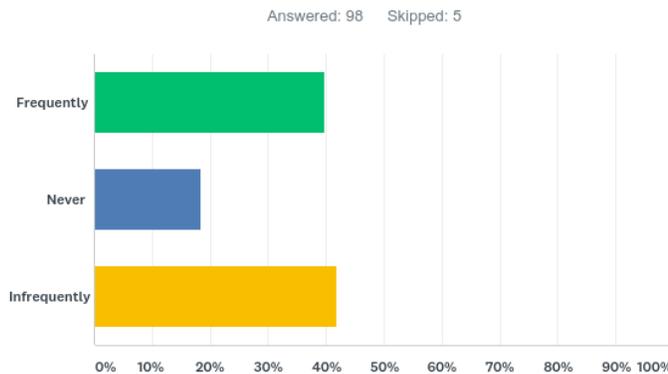


e. How often is the inability of the parties to find a qualified mediator an impediment to mediation?

Of the 103 possible responses, 98 users answered the question with 5 users choosing to skip this question. Users had the option of answering: “Frequently”, “Infrequently” or “Never”. The most common answer was “Infrequently” with 41% (41 responses) of users selecting this answer, by a narrow margin compared to the 39% (39 responses) of users who selected “Frequently”. The least common answer was “never” with 18% (18 responses) of users selecting this option.

The question reflects a lack of available qualified mediators as 39% of users responded that they are frequently unable to find a qualified mediator. While it is generally positive that 61% of users are generally able to find qualified mediators, there a vast amount of room for improvement. The inability to find a qualified mediator has an impact on use of mediation, and guaranteeing a level of “quality control” of mediators will likely help to promote mediation and increase its advancement.

Q5 How often is the inability of the parties to find a qualified mediator an impediment to mediation?

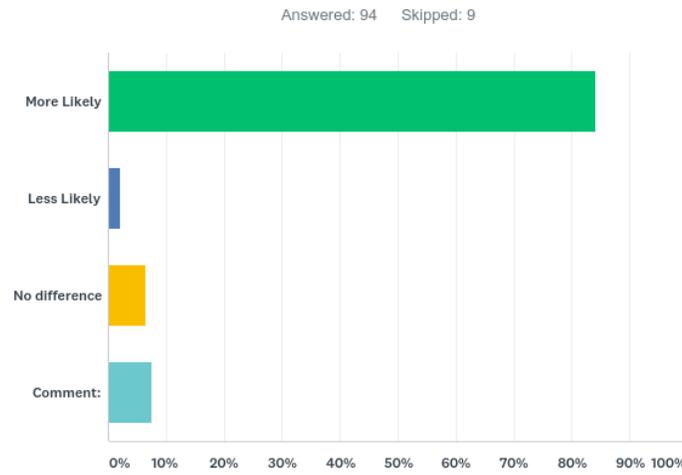


- f. Would you be more likely to use or increase your use of mediation in a cross border dispute with another party or multiple parties of different jurisdictions if a uniform global mechanism was in place similar to the New York Convention to enforce a settlement agreement reached in the mediation process?

Of the 103 possible responses, 94 users answered the question with 9 users choosing to skip this question. Users had the option of answering: “More Likely”, “Less Likely”, “No difference”, or “Comment.” By far the most selected answer was “More likely” with 84% (79 responses) of users selecting this option. The second highest selected answer was “No difference” with 6% (6 responses) of users selecting this choice. 2% (2 responses) of users choosing “Less likely”. 7 users chose to comment on this question.

Much like question 4, the overwhelming majority of users answered that a global enforcement mechanism would increase their use of mediation. A global mediation enforcement agreement would promote and increase the use of mediation in cross-border disputes.

Q6 Would you be more likely to use or increase your use of mediation in a cross border dispute with another party or multiple parties of different jurisdictions if a uniform global mechanism was in place similar to the New York Convention to enforce a settlement agreement reached in the mediation process?

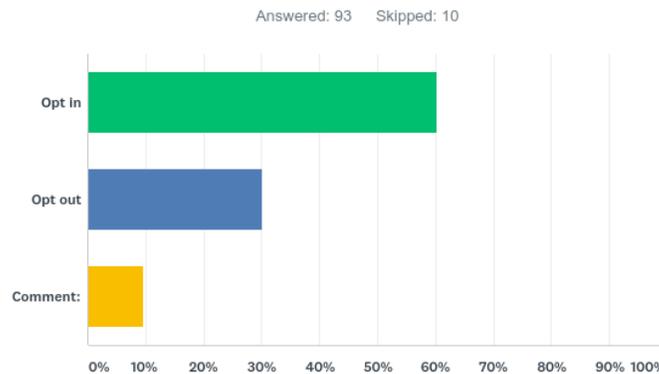


g. If there was a uniform global mechanism for enforcement of a mediated settlement should the parties have the chance to: (opt-in, opt-out, comment).

Of the 103 possible responses, 93 users answered the question with 10 users choosing to skip this question. Users had the option of answering: “Opt-in”, “Opt-out”, or “Comment”. The most selected answer was “Opt-in” with 60% (56 responses) of users choosing this selection. 30% (28 responses) of users chose the selection of “Opt-out”. 9 users chose to comment on this question. Four users commented, in favor of an opt-out provision. While one user believes it should be an “opt-in” system.

Here the majority of users support creating an “opt-in” system. This could be because parties would like to use this as a bargaining chip, or a negotiation tactic as parties draft contracts.

Q7 If there was a uniform global mechanism for enforcement of a mediated settlement should the parties have the chance to:



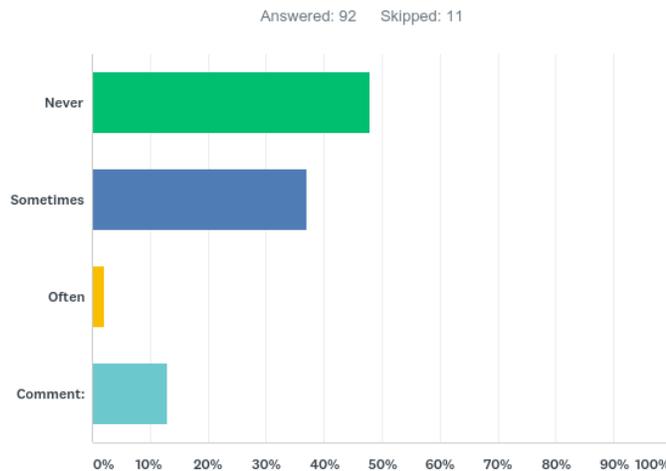
h. How often do you face post mediation challenges to a mediated settlement agreement in a cross-border dispute on the grounds of capacity, duress, or fraud?

Of the 103 possible responses, 92 users answered the question with 11 users choosing to skip this question. Users had the option of answering, “Often”, “Sometimes”, “Never”, or “Comment”. The most common answer was “Never” which 47% (44 responses) of users selected. The second most common answer was “Sometimes” which 36% (34 responses) of users selected. Only 2% (2 responses) of users selected “Often” while 13% (12 responses) of users chose to comment on this question.

One user commented, “I haven't come across this personally, but I know it exists, as with arbitrary awards.” Four users commented a variation of, “I have not experienced that situation.” Another user echoed a similar sentiment with, “Very rarely”.

It appears from the answers provided in the comment section as well as the majority of responses to the survey that parties are not facing the challenges of fraud, duress, or lack of capacity when a mediated settlement agreement is challenged. As mediation grows it is possible or more probable for more users to face an increase of challenges of these defenses to their mediated settlement agreements.

Q8 How often do you face post mediation challenges to a mediated settlement agreement in a cross-border dispute on the grounds of capacity, duress or fraud ?



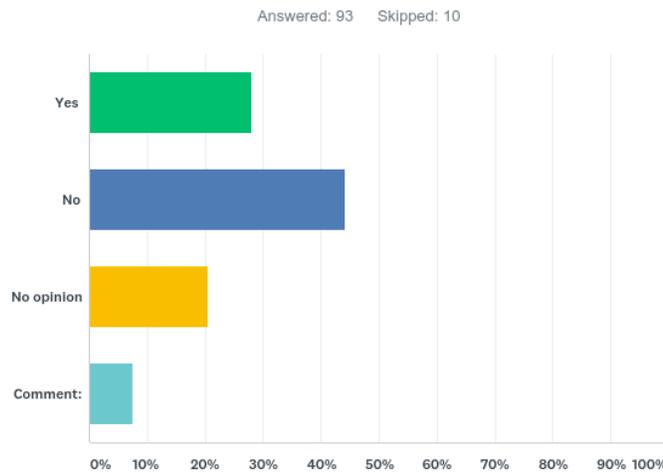
- i. Would you be less likely to use mediation if a Uniform Global Mechanism of Enforcement of mediation settlements included any defenses?

Of the 103 possible responses, 93 users answered the question with 10 users choosing to skip this question. Users had the option of answering, “Yes”, “No”, “No opinion” or “Comment”. The most common selected answer was “No” with 44% (41 responses) of users selecting this option. The second most commonly selected answer was “Yes” with 27% (26 responses) of users selecting this choice. 20% (19 responses) of users had no opinion. 7.5% (7 responses) of users chose to comment on this question.

Three users commented no, so long as the defenses were limited to the New York Convention, while another user provided that it depends on how the relevant rules are structured. Another user commented, “Everything helps which encourages the parties to find a negotiated/mediated settlement of their dispute.”

The user comment seems to be crucial here, as ultimately the goal is to help parties resolve their disputes. Defenses do not appear to particularly limit the willingness of users to engage in mediation.

Q9 Would you be less likely to use mediation if a Uniform Global Mechanism of Enforcement of mediation settlements included any defenses?



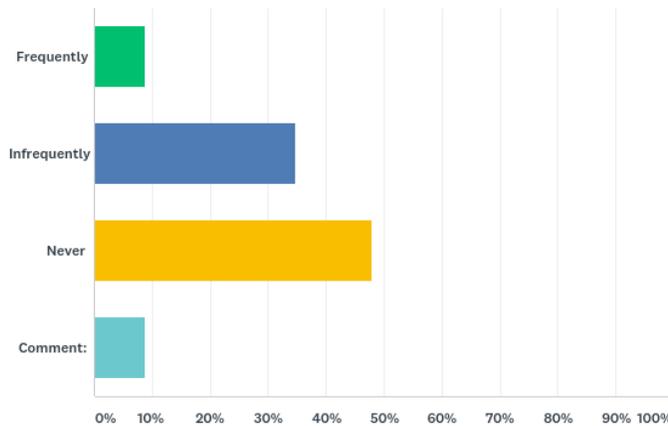
- j. How you ever reached a mediated settlement agreement that was not honored therefore requiring you to re-litigate the enforcement of the agreement in national court based on general contract defenses?

Of the 103 possible responses, 92 users answered the question with 11 users choosing to skip this question. Users had the option of answering, “Frequently”, “Infrequently”, “Never” or “Comment”. The most frequently selected answer was “Never” with 48% (44 responses) of users selecting this option. The second most selected choice was “Infrequently” with 35% (32 responses) of users selecting this choice. 9% (8 responses) of user selected “Frequently” and 9% (8 responses) commented on this question. All eight comments expressed that this event had not occurred to them personally.

Surprisingly, 35% of users selected infrequently, which provides that this is an occurrence that is impacting users. This means that 44% of users have had a mediated settlement agreement that was not honored and they were required to re-litigate the enforcement of the agreement in a national court. If this was not a problem, we would expect to see user’s answering “infrequently” at a much lower percentage.

Q10 Have you ever reached a mediated settlement agreement that was not honored therefore requiring you to re-litigate the enforcement of the agreement in national court based on general contract defenses?

Answered: 92 Skipped: 11



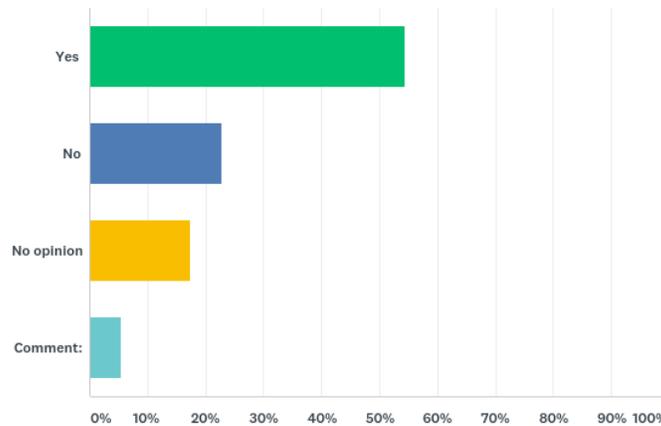
- k. Would you prefer that a Uniform Global Mechanism for Enforcement of mediation settlement include limited defenses similar to Article V of the New York Convention such as invalidity of the award under the law or incapacity?

Of the 103 possible responses, 92 users answered the question with 11 users choosing to skip this question. Users had the option of answering, “Yes”, “No”, “No Opinion” or “Comment”. The most common selected answer was “Yes” with 54% (50 responses) from users. The second most common selection was “No” with 22% (21 responses) of users selecting this choice. 17% (16 responses) of users had no opinion on this question, while five users commented on the question.

Here it is expected that users would support similar defenses as to that of the New York Convention as the users experience with the New York Convention allows them to be familiar with process, and would provide a degree of familiarity to a global mediation enforcement convention.

Q11 Would you prefer that a Uniform Global Mechanism for Enforcement of mediation settlement include limited defenses similar to Article V of the New York Convention such as invalidity of the award under the law or incapacity? [see <http://interarb.com/vl/p967047127>]

Answered: 92 Skipped: 11



A uniform global mechanism to enforce mediation settlements would provide a strong increase in the use of mediation in cross border disputes and an increase of mediation clauses in contracts. In the questions asked about a uniform global mechanism to enforce mediation settlements, users overwhelmingly answered that such a mechanism would encourage users to mediate. Further, this result can be seen in the GPC survey as well.

VI. GPC Series Questions

- a. GPC Session 3 Question 3: Which of the following areas would most improve commercial dispute resolution? (Please rank your 3 preferred answers in order of priority: ‘1st choice’= 3 points, ‘2nd choice’= 2 points, ‘3rd choice’ = 1 point)

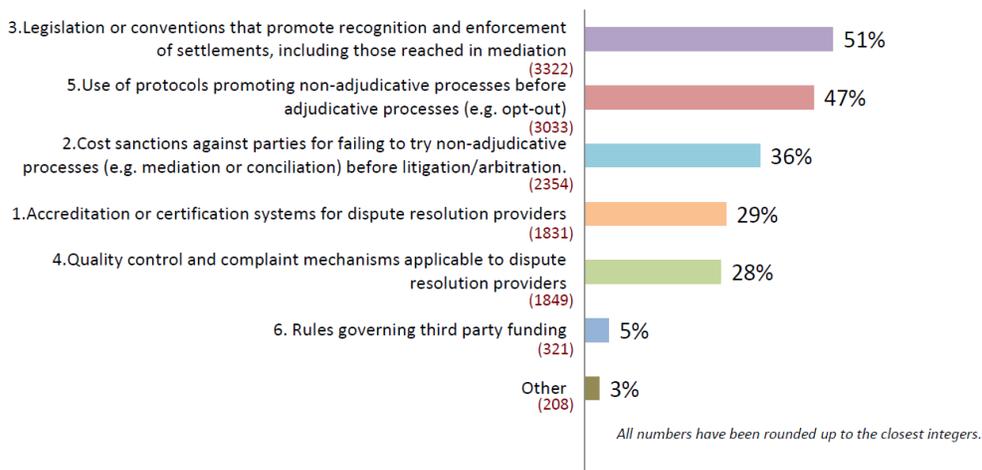


Session 3 Question 3: Global Results

Which of the following areas would most improve commercial dispute resolution?

(Please rank your 3 preferred answers in order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' = 1 point)

(12710 points; 2159 voters; total possible points per answer = 3 x 2159 = 6477)



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Stakeholders had seven choices to select: (1) accreditation or certification systems for dispute resolution providers; (2) cost sanctions against parties for failing to try non-adjudicative processes (e.g. mediation or conciliation) before litigation/arbitration; (3) legislation or conventions that promote recognition and enforcement of settlements; (4) including those reached in mediation; (5) quality control and complaint mechanisms applicable to dispute resolution providers; (6) rules governing third party funding; and (7) other. The most common first choice was Answer option 1 with a 51% average popularity ranking (3322/6477 possible points): “legislation or conventions that promote recognition and enforcement of settlements, including those reached in mediation”. The second most popular choice was Answer option 5, with a 47% average popularity ranking (3033/6477 possible points): “use of protocols promoting non-adjudicative processes before adjudicative processes (e.g. opt-out). The third most common choice was Answer option 2, with a 36% average popularity ranking (2354/6477 possible points): “cost sanctions against parties for failing to try non-adjudicative processes (e.g. mediation or conciliation) before litigation/arbitration”. The next most common selection was

Answer option 1: “Accreditation or certification systems for dispute resolution providers” (with a 29% popularity ranking); followed by Answer option 4: “quality control and complaint mechanisms applicable to dispute solution providers” (with a 28% popularity ranking). Answer option 6: “Rules governing third party funding”, received a 5% ranking (321/6477 possible points). Answer option 7 “Other” received 3% (208 points).

The majority of the stakeholders in the GPC believe that a uniform global mechanism to enforce mediation settlements would improve commercial dispute resolution, with 51% of users clearly supporting a uniform global mechanism to enforce mediation settlements as their first preference. This is consistent with the findings of the IMI and NJCU IDR survey where users overwhelming voted that such an agreement would increase their use of mediation.

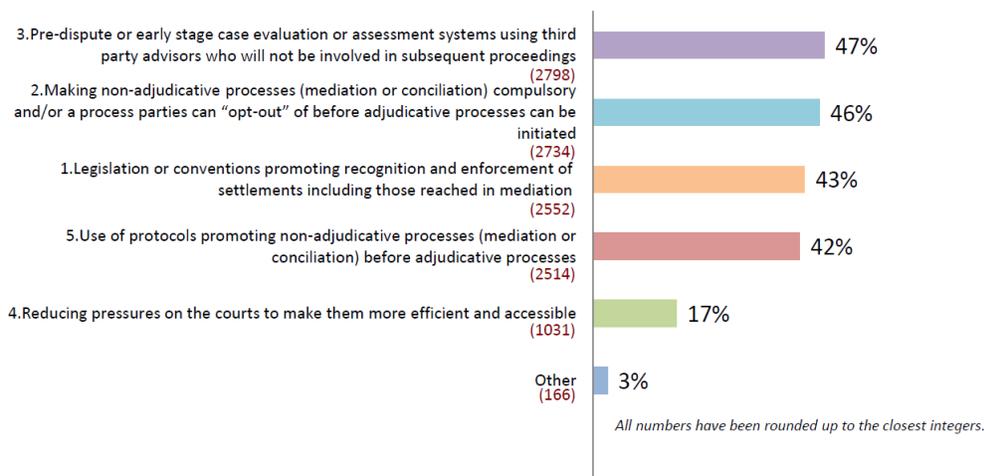
- b. Session 4 Question 3: To promote better access to justice for those involved in commercial disputes, where should policy makers, governments and administrators focus their attention? (Please rank your 3 preferred answers in order of priority: ‘1st choice’= 3 points, ‘2nd choice’= 2 points, ‘3rd choice’ = 1 point)



Session 4 Question 3: Global Results

To promote better access to justice for those involved in commercial disputes, where should policy makers, governments and administrators focus their attention?

(Please rank your 3 preferred answers in order of priority: ‘1st choice’= 3 points, ‘2nd choice’= 2 points, ‘3rd choice’ = 1 point) (11795 points; 1972 voters; total possible points per answer = 3 x 1972 = 5916)

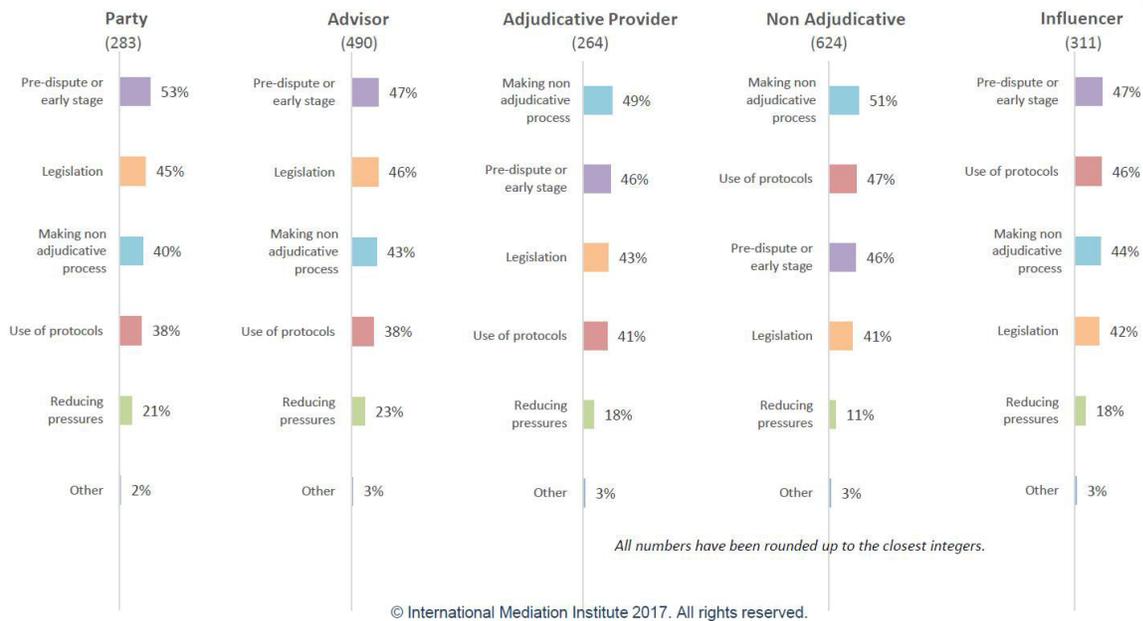


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Stakeholders had 6 options to select: (1) legislation or conventions promoting recognition and enforcement of settlements including those reached in mediation; (2) making non-adjudicative processes (mediation or conciliation) compulsory and/or a process parties can “opt-out” of before adjudicative processes can be initiated; (3) pre-dispute or early stage case evaluation or assessment systems using third party advisors who will not be involved in subsequent proceedings; (4) Reducing pressures on the courts to make them more efficient and accessible; (5) Use of protocols promoting non-adjudicative processes (mediation or conciliation) before adjudicative processes; and (6) other: (please specify). Interestingly the first four most options scored almost equally. Answer option 3 “Pre-dispute or early stage case evaluation or assessment systems using third party advisors who will not be involved in subsequent proceedings” was the most popular with 47% percent of possible votes (2798/5916 points). Answer option 2 “Making non-adjudicative processes (mediation or conciliation) compulsory and/or a process parties can “opt-out” of before adjudicative processes can be initiated” received 46% (2734/59916 possible points). Answer option 1, with a 43% popularity ranking (2552/5916 points) came in 3rd place for “Legislation or conventions promoting recognition and enforcement of settlements including those reached in mediation”. The fourth most popular choice was Answer option 5 “Use of protocols promoting non-adjudicative processes (mediation or conciliation) before adjudicative processes” with a 42% ranking (2514/5916 points). Answer option 4 was distinctly less popular, with a 17% popularity ranking (1031/5916 possible points). Answer option 6 “Other” received 3% (166/5916 points).

While the global results ranked Answer option 1 in 3rd place with an average 43% popularity ranking, this choice was the second most popular option for Parties and Advisors. The average was interestingly brought down by the votes of non-adjudicative providers (e.g., conciliators and mediators) and influencers (e.g., academics), who only ranked this option in 4 place. A break-down of the cross-sorted results for the answers to this question are given below.

Session 4 Question 3: Cross-Sorted Results (1972 voters)



This supports the proposition that Parties want legislation that allows for the enforcement of mediated settlements.

VII. Concluding Thoughts

The global enforcement of a mediated settlement agreement is not just visionary, but a necessary tool for encouraging mediation, as this report reflects. Leadership promulgated by policy stakeholders, providing for practical certainty of mediated settlement agreements will improve access to justice and increase efficiency for the wider international business community. Mediation is now a modernization and advancement feature in the field of law as much as it is an important asset for global trade.

In order to advance trading systems and aide businesses, certainty and predictability are important factors for both risk mitigation and dispute resolution. Users need an international mechanism congruent with the methodological approach that was adopted by the arbitration community through the New York Convention. This enforcement treaty of arbitral awards is an internationally recognized enforcement mechanism aiding global trade for more than sixty years.

The pioneering field of dispute resolution now expands in the direction of non-adversarial modalities, inclusive of mediation which necessitates a similar measure for enforcement purposes. This report is an attempt to aid the business community through empirical research to find solutions and policy to improve mediation. As the mediation field continues to develop, more scholarly work will necessitate further evaluation of mediation as a tool for advancement and promotion of international commerce.