The Singapore Convention and the European Reality

Maria João Mimoso[1]

Abstract

Over the last few decades, international trade has been the target of several initiatives concerning the harmonization of its regulations. Several international entities have decisively contributed to greater predictability and security in international trade relations. We are referring to the United Nations Commission for International Commercial Law (UNCITRAL), the UNIDROIT Institute and many other institutions that, although in a sectoral way, have made efforts in the same direction. Parallel to this movement, there has been another, no less important, related to the resolution of disputes arising from this type of international private relations. We cannot fail to emphasize the role of international arbitration, which has greatly contributed to the dynamics of international trade and to the consolidation of some of its rules. In the last 3 years, after the changes caused by Covid-19, there was a need for greater focus on Alternative Conflict Resolution means. In this context, mediation gained a prominent role due to its procedural simplicity, given the self-compositional nature of it, facilitating dialogue between the parties, and a more easily achievable result. However, it is important to bear in mind that this means has revealed, over time, little demand in international trade, due to the lack of harmonized international rules that enhance the extraterritorial effectiveness of the reached mediation agreements. In the wake of this concern, the United Nations Convention on International Arrangements Resulting from Mediation emerged, adopted by the United Nations General Assembly in December 2018 and signed in Singapore on 7 August 2019. Such regulation has not been peacefully accepted, mainly by Europe, given the existence of Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters. To date, no EU State has signed that instrument. We will analyze the two instruments, seeking to highlight the weaknesses of the Convention in the face of European skepticism regarding the solutions advocated therein. We will use the deductive method from the analysis of these instruments, enumerating the main dilemmas of the Singapore Convention.

Keywords: international trade, dispute settlement, mediation agreements, transnational effectiveness

1. Introduction

The internationalization's increase of foreign private relations, especially commercial ones, gave rise, from an early age, to changes in the form of dispute resolution. In parallel with the phenomenon of economic relations' globalization, there was also the globalization of conflicts.

Soon, the need to overcome the obstacles of state justice soon was felt, due to the lack of celerity of the state judicial machine and the little adequacy of the discipline enshrined in national laws. Alongside this realization, alternative proposals emerged, both in terms of the resolution of disputes themselves, as well as in terms of their substantive discipline.

We must emphasize, especially in the last four decades, the exponential development of arbitration as a "normal" way of settling conflicts in international trade. The characteristics of this alternative means to the state courts, which is in fact, the only truly alternative, due to the jurisdictional function recognized to the arbitrators and the force attributed to the respective arbitration verdict, gained particular emphasis.

Arbitration then started to be seen as a substitute for the judicial route, with almost all international contracts having an arbitration clause.

Alongside its success, the significant growth of the number of cases, some of great complexity, became inevitable, giving rise to some procedural slowness.

[1]Portucalense University, Law Department, mjmarbitragem@gmail.com

Many of the issues submitted to arbitration, especially international arbitration, often require precise technical knowledge, execution of diligences located in different places, also implying an overload of documentary evidence analysis, in the hearing of witnesses and experts, among other procedures. All of this definitely contributes to an extension of the deadlines provided for in national voluntary arbitration laws, as well as in the arbitration regulations of the various institutions that administer them (Stromberg, 2007).

It is also important to mention the high costs of arbitration for the parties involved. In addition to the administrative and procedural costs, which are very high in institutionalized international arbitration, especially if we pay attention to the amounts paid *ab inicio*, we must also add the fees of the parties' lawyers, experts, technical assistants and the arbitrators' remuneration. All these factors have made arbitration an inaccessible mechanism, especially for small and medium-sized companies, for less complex disputes. It is urgent to speed up other mechanisms for out-of-court settlement of disputes, due to either its neutrality or the low adaptability of national laws on international contracting[2], and, therefore, the need to apply *lex mercatoria*[3], soft law[4] rules or even the use of equity and balance of interests at stake.

This opens the way for other forms of out-of-court dispute resolution (Stipanowich, 2010), namely mediation (Esplugues, 2018). It is a flexible extrajudicial means of conflict resolution, that operates in the parties involved domain, which is particularly fast, informal, inexpensive and facilitates dialogue and the continuity of contractual relations (Strong, 2014), (Esplugues Mota, 2020).

Even though the parties have the power of the mediation procedure, the mediator, as a third party, chosen by them, will make use of communication and conflict management techniques capable of triggering dialogue, helping them search for fair and balanced solutions (Herrera, 2017).

We cannot fail to mention that this instrument has gained some prominence, in the internal scope, with special emphasis on the scope of family and consumption relationships, also assuming, in some legal systems, a focus on labor relations.

Regarding to international trade, its contribution has proved to be insignificant, although, given the international commercial environment, it presents itself as a challenge for its operators, pacifying their relations and compromising the parties, avoiding contractual fractures. For this purpose, we cannot fail to mention the recent transformation of China, with its growing tendency towards large investments in Latin America, especially through the creation of the

[2] The lack of adaptability of national laws to the regulation of international commercial contractual relations and the little flexibility of the judicial courts regarding the applicable law contributed to the success of arbitration and to the solidification of the uses and customs of international trade, although by market sector, calling early attention, especially after the First World War, to the need for a harmonized discipline for this type of relationship, which increasingly demanded predictability and legal certainty.

[3] By *lex mercatoria*, we should understand a set of customs and good practices, developed spontaneously, applied by the operators of international trade, operating in a sectorial way, overcoming, especially in the international context, the lack of adaptability of state source norms. It emphasized the importance of the principle of autonomy of will in international contracts, demanding the solution of conflicts through equity and amicable composition. See Goldman, B. (1964) Frontieres du Droit et Lex mercatoria. *In* : Archives of Philosophie du Droit, v. 9, no. 9, p. 177-192 ; Gaillard, E. (1995) Trente ans de Lex Mercatoria pour une application sélective de la méthode des principes généraux du droit. In: Journal du Droit international, n. 1, p. 05-30.

[4] S*oft law* comprises, in its modern sense, all flexible, non-binding rules arising from instruments created by international bodies with the aim of harmonizing the discipline of some aspects of international contracting. Due to their clarity and objectivity, they are used by international trade operators, arbitrators and all those who work in this context, constituting a neutral normative body that is adaptable to the dynamics of this type of relationship. No less true, it also ends up influencing national legislators in the framework of normative production in the context of their legislative activity.

Belt and Road Initiative (BRI)[5]. This has proven to be of great importance, both for companies that will benefit from greater flexibility, efficiency and lower costs, as well as for States that can improve access to justice, facilitating the application of mediated agreements (Ross, 2020).

2. Cross-border Mediation in the European Union (EU)

Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008, related to certain aspects of mediation in civil and commercial matters, aims to promote the use of mediation and ensure that parties who do so can rely on a predictable legal framework (Recital 7 of the Directive). It essentially aims to harmonize some aspects of mediation in Member States, promoting greater access to justice and dissemination of this means, also contributing to the proper functioning of the internal market (Matefi, 2015), (Palao, 2021).

Its scope is confined to cross-border disputes and should not prevent Member States from also applying its provisions to internal mediation procedures (Recital 8 of the Directive). Specifically, it applies to cross-border disputes, in civil and commercial matters, in which at least one of the parties has its domicile in a Member State other than the Member State of all the other parties on the date on which they decide, by agreement, to have recourse to the mediation or where mediation is court ordered.

The agreements effectiveness reached through mediation will depend on voluntary compliance by the parties or, if this does not happen, of the established by law for forced execution.

However, the parties may want their agreement to be enforceable, namely, when the time factor affects the fulfillment of the agreed obligations and for reasons of legal certainty, among others (Hopt and Steffek, 2013).

The enforceability of agreements established through the mediation procedure is of particular importance in the context of cross-border relations, *maxime* commercial ones. As we know, failure to comply with an agreement can lead to arbitration or the filing of a lawsuit with all the harmful implications for the relationship between the parties.

In order to avoid resorting to these modes of justice, which presuppose, above all, a dispute, with the ensuing course of a process, with all the required procedural guarantees, with their own procedures, culminating in the delivery of a sentence, and with the time factor interfering in contractual relations (breaking, in most cases, the trust between the parties involved), the Member States, fulfilling the Directive goals, transposed it into their domestic law. However, in view of their respective national specificities, they consecrated, in accordance with their legislative policy options, the possibilities for the agreement reached in mediation to be endowed with enforceability.

EU thus allowed the parties to obtain, through the expression of their will, an effect similar to that of a judicial or even arbitration decision (Article 6, paragraph 1 of the Directive). This effect is not attributed *ex lege*, and Member States must provide for and ensure the procedures to be carried out, be it homologation or notarial acts, or even the conversion of the agreement into an arbitration decision (Lopes and Patrão, 2021). Member States must only prevent such effects if the content of the agreement is contrary to domestic law, including private international law or every time their law does not provide for the enforceability of the content of the agreement (recital 19 of the Directive).

[5] Several countries and international organizations have signed cooperation agreements with the BRI, which has a structure based on the principle of seeking common benefits, in which all participants discuss economic development plans and policies along with economic cooperation measures. In January 2015, the first ministerial meeting of the China-Latin America Forum took place, formalizing the general cooperation between China and Latin America.

It should also be added that, due to the legislative policy options of the States, direct enforcement may be established. We note, however, that most Member States have not consecrated it, apart from Portugal[6] and Hungary (Lopes and Patrão, 2021).

Because it is a Directive, the Member States were able to implement with a certain amount of flexibility the rules to be adopted in their domestic law, indicating the entities and the way to attribute enforceable effectiveness to the agreement reached in mediation.

In fact, in this wake, article 6, paragraph 2 of the Directive provides that " *(t)he content of the agreement may be made enforceable by a court or other competent authority in a judgment or decision or in an authentic instrument in accordance with the law of the Member State where the request is made.*", whereas the content of the agreement reached, if declared enforceable in one Member State, must also be recognized and declared enforceable in the other Member States, in accordance with the applicable Community or domestic law (recital 20 of the Directive).

In short, the EU legislator embodied the possibility of intervention by an authority, not necessarily a judicial one, so that the agreement obtains enforceability.

In the EU context, there is still a question about the applicability of Regulation (EU) nº 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I bis) to the agreements reached through mediation.

This instrument, in its article 39, provides that "(*a) judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required*". As the EU legislator opted for the term decision[7], term decision, it could be thought that the possibility of executing the mediation agreement would be excluded whenever it was not endowed with enforceability through a verdict, decision, or authentic act of a court. In fact, these possibilities are listed in article 6, paragraph 2 of the Directive.

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[6] In this regard, see article 9 of Law no. 29/2013 of 19 April, which establishes the general principles applicable to mediation carried out in Portugal, as well as the legal regimes for civil and commercial mediation, mediators, and public mediation.
Principle of Enforceability
1 - The mediation agreement is enforceable, without the need for judicial approval:
a) Concerning a dispute that may be the subject of mediation and for which the law does not require judicial approval;
b) In which the parties have the capacity for its conclusion;
c) Obtained through mediation carried out under the terms of the law;
d) The content of which does not violate public order; and
e) In which a conflict mediator registered on the list of conflict mediators organized by the Ministry of Justice has participated.
2 - The provisions of sub number e) of the previous number are not applicable to mediations carried out within the scope of a public mediation system.
3 - 3 - Qualifications and other requirements for inscription on the list referred to in sub number e) of number 1, including national mediators from member states of the European Union or the European Economic Area from other member states, as well as the service of the competent Ministry of Justice for the organization of the list and the form of access and dissemination thereof, are defined by an order issued by the member of the Government responsible for the area of justice.
4 - A mediation agreement obtained through mediation carried out in another Member State of the European Union that complies with the provisions of sub numbers a) and d) of number 1 also has executive force, if the legal system of that State also gives it enforceable force.

[7] This means, as provided by article 2, paragraph a) that a *« 'judgment' means any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as a decision on the determination of costs or expenses by an officer of the court»*

However, the Brussels I bis Regulation provides in Article 58 that *"(a)n authentic instrument which is enforceable in the Member State of origin shall be enforceable in the other Member States without any declaration of enforceability being required. Enforcement of the authentic instrument may be refused only if such enforcement is manifestly contrary to public policy (ordre public) in the Member State addressed*". If we pay due attention to the notion of authentic instrument that this Regulation provides in its article 2, paragraph c), we find that " (…) a *document which has been formally drawn up or registered as an authentic instrument in the Member State of origin and the authenticity of which: (i) relates to the signature and the content of the instrument; and (ii) has been established by a public authority or other authority empowered for that purpose*", can, under the Brussels I bis Regulation, be executed an agreement established through mediation as long as the enforceability has been attested by a competent authority other than a court.

It is important to remember that the arbitration mechanism is expressly excluded from the scope of the Brussels I bis Regulation (recital 12). Which is, of course, understandable given the autonomous regulation of arbitration, whether nationally or internationally. We refer to the domestic laws of the States on voluntary arbitration, the Model Law on International Commercial Arbitration (2006 version) of the United Nations Commission on International Trade Law (UNCITRAL) and with regard to the recognition and enforcement of foreign arbitral awards to the New York Convention, 1958.

There are, however, those who believe that the removal of arbitration from the Regulation should cover all means of extrajudicial dispute resolution.

Due to the legislator's silence on the Brussels I bis Regulation, the possibility of its application to agreements obtained through the mediation procedure seems evident to us, although restricted to the means listed in article 6, paragraph 2 of the Mediation Directive. We are talking about the attribution of enforceability derived from a verdict, decision, authentic act of a court or other competent entity.

If the parties, under a certain national law that provides for the direct enforceability of the mediation agreement[8], intend to execute it, we understand that this situation does not fulfill the presuppositions enshrined in the Brussels I bis Regulation to be executed, as it will not be either a decision or an authentic instrument.

In short, the Directive's main goal was, as we have already stated, the implementation of mediation in the Member States. To achieve this goal, some rules were created, of which the training of mediators and the guarantee of high-quality mediation should be highlighted, and in what concerns the subject, the possibility of agreements obtained through mediation being declared enforceable if both the parties so request (as stipulated in each member state) as well as the confidentiality of the mediation.

3. United Nations Convention on International Settlement Agreements Resulting from Mediation - "Singapore Convention on Mediation"

United Nations Convention on International Settlement Agreements Resulting from Mediation, also known as the Singapore Convention on Mediation, hereinafter referred to as the Singapore Convention, applies to international transaction agreements resulting from mediation, with the purpose of ending disputes arising from commercial relationships, thus facilitating international trade.

[8] It should be noted that Portugal and Hungary, in Europe and Brazil, in South America, have established the possibility of attributing enforceability to agreements reached in mediation, underlining the autonomy and responsibility of the parties (Lopes and Patrão, 2021).

The mediation *modus operandi* brings important advantages to the context of international trade, preventing the breach of contractual relations between the parties, reducing the transaction costs involved, *e.g*., economic, financial, and legal, and contributing to social pacification (Wolski 2013), (Moschen, 2021).

The Singapore Convention presents itself as a harmonized legal framework, capable of promoting a balanced and effective solution to disputes, binding the parties that approve and ratify it.

Undoubtedly, mediation is a flexible extrajudicial means of dispute resolution, given the empowerment of the mediation procedure by the parties, in which they are predisposed to achieve a result, the mediation agreement.

We cannot fail to emphasize the poor results of mediation in the context of international trade relations, especially due to the absence of a harmonized regime for the effectiveness of mediation agreements. This climate contributed to underpinning the purpose of UNCITRAL and culminating in the elaboration and approval of the Singapore Convention. Its mentors aspired to follow in the footsteps of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, given its profoundly facilitating character towards the development of arbitration. In this sense, they wanted the new Convention (Singapore) to increase the use of mediation, especially due to the ease of execution of the agreements reached.

However, there is no beauty without but, and, as we will see, this new instrument has some problems that will compromise its acceptance and general approval.

Undoubtedly, it established a drastic change, if we compare with the objective outlined by the EU Directive. The protagonists of a written mediation agreement, which has elements of extraneity, under the terms of article 1, paragraph 1 of the Convention, can now benefit from a delocalized title endowed with direct enforceability in the States that ratify it (Esplugues Mota, 2020).

Let us see the main characteristics of the Convention: it allows, as we have already stated, that the parties who reach a mediation agreement can benefit from a uniform instrument to enforce the terms of that agreement in other States, similar to the New York Convention in terms of recognition and enforcement of foreign arbitral awards. It is important that the State where the agreement is to be implemented has signed and ratified the Convention. It should also be said that the mediation agreement reached must fall within the scope of the Convention; in other words, which does not fit into the provision of the negative delimitation listed in its article 1, paragraphs 2 and 3, namely consumer relations, family law, inheritance law and labor law. Nor can it be applied to settlement agreements approved by a judicial body or reached during a judicial process, through a judgment and to agreements incorporated in an arbitration decision and executed as such.

Article 1, number 1 requires that we are dealing with an international mediation agreement, which, in the Singapore Convention's view, means that at least two of the parties involved must have their establishments in different places; or the State in which the agreement's parties have their establishments is different from the State in which a substantial part of the obligations arising from the settlement agreement is performed; or the State in which the agreement's parties have their establishments is different from the State which has a closer connection with the object of the agreement transaction.

That the mediation agreements arising from international commercial relations have been concluded in writing, this requirement being comprehensive, encompassing electronic means, provided that it is possible to access their content, article 2, paragraph 2.

Whenever one of the parties to the settlement agreement[9] intends to enforce the same, it must provide the competent authority of the State, party to the Singapore Convention, and where it intends to execute it, the settlement agreement signed by the parties and provide evidence that it has reached an agreement. of mediation, namely by displaying the mediator's signature on the settlement agreement; a document signed by the mediator stating that the mediation was actually carried out; a certificate issued by the institution that administered the mediation; and if it is not possible to present this evidence, it may show any other that the competent authority deems acceptable, Article 4, number 1.

Under the terms of article 3, paragraph 2, it is also possible for one of the parties to the settlement agreement to invoke this same agreement as a means of defense to demonstrate that the matter has already been decided.

In the wake of its purpose, the Convention, in its article 5, and similarly to the New York Convention, lists the reasons for non-application, providing the executing entity with some flexibility as to its interpretation (Stute and Wansac, 2021).

4. The Crux of the Effectiveness of International Mediation Agreements

It seems obvious to us that it will not be enough to promote mediation through the possibility of executing mediation agreements cross-border. It is necessary to think about bringing the conditions of execution of the agreements closer together. Without verifying this premise and given the vagueness of the Convention, namely when verifying the requirements established for mediation in the country of origin of the agreement, the absence of a seat for mediation, among other shortcomings, great success is not expected for the applicability of this instrument.

One of the main criticisms leveled at it has to do with the intrinsic nature of mediation. Being a voluntary mechanism, in which the parties are predisposed to reach an amicable solution, it is highly unlikely that they will not comply with what they have agreed (Lo, 2014).

However, if the mediation agreement is not complied with, the central problem of its effectiveness arises.

We cannot forget that the overwhelming majority of States enshrine requirements for a mediation agreement to become enforceable. And everything gets even more complicated when this agreement must be executed in another legal system different from the one where it was reached.

In Latin American countries, the admissibility of the direct enforcement of the mediation agreement or the recognition of the effect of *res judicata* (Esplugues Mota, 2020).

The great diversity of regimes established by States for a mediation agreement to be executed, whether by homologation sentence, notarial act, act of a competent authority, among others, ends up having an impact both on costs and on legal predictability and certainty. (Esplugues Mota, 2020).

[9] The Singapore Convention indiscriminately uses the terms transaction and mediation interchangeably, so we will use them as well. Both presuppose an agreement by which the subjects of a dispute decide to put an end to it, forgiving some of their rights, for the sake of pacifying their relations.

Contrary to the EU Directive, the Singapore Convention focuses solely on implementation, dispensing with any initial control in the agreement's country of origin (Fernández-Samaniego, 2022). It thus allows the party to directly execute the transaction agreement in the courts or by any other competent authority in the country, by hypothesis, where the assets are located.

The Singapore convention manages to erect the mediation agreement reached between the parties to a delocalized title endowed with executive force in its signatory countries (Mehrabi and Sheikhattar, 2019), (Esplugues Mota, 2020), (Moschen, 2021).

It should not be said that the distance from the place where the agreement is reached is completely irrelevant, that its physical location is not expressive, *e.g.*, in online mediation.

After all, mediation is born out of a contract (the parties' agreement to submit their dispute to mediation) and culminates in a contract (mediation agreement reached). Even if the mediation does not take place in a physical location, the parties must be obliged to indicate which law governs the agreement and the jurisdiction to be considered.

The security and predictability of solutions are an attribute of both legal systems and the parties themselves, who are bound by a contract, and which claims those characteristics (UNCITRAL, Report of Working Group II, 2015).

The Singapore Convention also offers no guarantees as to the possible outcome of the challenge of the agreement in the State of origin. If we pay attention to the reasons stated in article 5, we will easily conclude the fragility of the preclusive effect on the request or even on the execution of the agreement reached.

Furthermore, the Convention, in article 8, allows the signatory parties to make reservations, thus diminishing the effectiveness of the cross-border enforcement that it seeks to achieve.

In view of the regime established by the Convention, we can easily say that it is limited to provide general guidelines for a mediation agreement to be executed.

Some skepticism can also be denoted about the need for the mediator's signature, a requirement mentioned in article 4, paragraph 1, sub paragraph b). This may not take place because the mediator refused to sign the agreement or a document certifying the mediation, or there is no mediation administrator. All this can hinder the proving of the agreement. However, it remains to be asked whether the presence of the mediator changes the premises of mediation and whether it has repercussions on the legal nature of the agreement reached?

Undoubtedly, this agreement has a contractual nature, depending strictly on the parties' autonomy of will. The mediator's presence, in his role as a facilitator of communication, does not alter its nature in any way.

In fact, there are several ways of attributing effectiveness to the agreement reached, as mentioned above. However, the Singapore Convention intends to transform the agreement into a title that can be executed, not worrying about the regularity of the mediation - from the clause that foresees it as a way of resolving disputes, normally inserted in the contract, through the process and procedure of mediation, whether it takes place in an institution that manages it or not, with the requirements for exercising the profession of mediator established by the States in their domestic law, with the nature of the disputes that can be the subject of mediation, especially under the law of the place where it took place, the law of the effective or fictional headquarters, and, finally, with the regularity of the agreement itself, result reached by the parties.

It should be noted that the guiding principles of mediation are widely disseminated, and these too can, if violated, jeopardize the validity and effectiveness of the agreement reached.

In short, no importance is attached to recognition and enforcement. The Convention clearly demonstrates the evasion of recognition, which presupposes, as we know, the existence of an enforceable title, in this case, a mediation agreement reached and certified in the country of origin, that the agreement alone cannot aim. In other words, a simple agreement between the parties cannot be considered, without further ado, as an enforceable title. This will always depend on the regime established in the agreement's legal systems of origin, and, subsequently, on the States in which it is invoked. It will be a way of controlling its content, its veracity, certifying the obligations assumed therein.

We can conclude that, under the Singapore Convention, the relocated title shows a greater enforceability than the one attributed to a foreign arbitral award, which, for this purpose, needs to be recognized and enforced under the terms of the New York Convention (Esplugues Mota, 2020).

Since the Singapore Convention has not been ratified by any Member State, although it has established a rule for the participation of regional economic integration organizations, article 12, the problem of its signature and compatibility with the regime established by the EU Directive is posed and discussed.

It has been argued that the Convention should be bloc signed by the European Union, although member states reveal very different positions.

It should be noted the EU importance in the context of international trade and, consequently, the need to resolve disputes arising therefrom. EU is the largest single market in the world.

According to the report by the Queen Mary University of London, Paris, Geneva, Stockholm, and London (before Brexit) were, at the time, the preferred seats of world arbitration, with New York, Singapore and Hong Kong being the remaining cities. (International Arbitration Survey: The Evolution of International Arbitration, 2018).

It was concluded that the method of choice for resolving disputes in international trade is arbitration, although in conjunction with other ADRs, *maxime* mediation.

In view of the World and European scenario, we can say that the ratification of the Singapore Convention by the EU would imply the existence of two legal regimes, although at different levels, the European and the Singapore one, the latter being more flexible. It does not seem credible to me to adopt a regime for sub-community measurement agreements and another for extra-community ones, jeopardizing legal harmony in terms of international mediation.

We believe that the parties' confidence in the institute of international mediation will always involve guaranteeing the effectiveness of the agreement reached, a design that, given the Convention, is weakened.

5. Conclusion

Currently, two paths are outlined for the execution of agreements reached through international mediation.

The European Union Directive 2008/52/EC on Mediation and the Singapore Convention on International Settlement Agreements Resulting from Mediation.

In the EU, the Directive applies to cross-border disputes in civil and commercial matters in which at least one of the parties is domiciled in a Member State other than the Member State of any of the other parties at the date on which they decide, by agreement, to resort to mediation or where mediation is ordered by a court.

The main goal of this legal instrument is to encourage the use of mediation in the Member States.

Alongside this European instrument, it should be noted that there is a set of regulations aimed at replacing the conflict rules of the Member States to harmonize the regulation of international private relations.

In terms of international commercial mediation, the Brussels I bis Regulation is particularly relevant, given its material scope of application, civil and commercial matters, regardless of the jurisdiction's nature, applying to cross-border enforcement, allowing the execution of a mediation agreement reached, whenever it is approved or certified by a competent authority under the terms prescribed in the instrument itself. The direct effect of the agreement is excluded from this possibility.

Article 6 of the Directive does not prevent a Member State from allowing the direct execution of a mediation agreement reached in any state. This will depend on the options of the domestic legislator of each State.

One of the Singapore Convention main goals is to give the parties confidence in the mediation process and ensure the direct execution of mediation agreements in any of its signatory States.

In this context, there is no provision for any control in the agreement's country of origin.

The adoption of the Singapore Convention by the EU will provide for two different regimes, although the scope of the Convention is narrower than that of the Directive.

At this point, only the regime of both instruments in commercial matters will be significant, specifically the international mediation commercial agreements.

A mediation reached can be more efficient, in terms of time and costs, than arbitration or judicial procedures and its self-compositional form will provide for the continuation of commercial relations between the parties, but it will always demand legal certainty.

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