

LATEST NEWS ON MEDIATION¹

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On March 8 and 9, the **International Association of Lawyers** held its **26th World Forum of Mediation Centers** in Zurich, Switzerland. The forum gathered hundreds of specialists from all around the globe to exchange views on the development of alternative dispute resolution mechanisms, particularly, mediation.

I attended the conference on behalf of Mexico in my capacity as President of the **Mediation Committee of the International Chamber of Commerce Mexico, together with** my colleague **Francisco González de Cossío**, President of the **Mexican Mediation Institute**.

The main conclusion of the Mediation Forum is that Mediation, as the most civilized dispute resolution mechanism, is being underutilized due to a lack of familiarity with the mechanism in society and within the legal community.

It is therefore very important to understand that Mediation is a procedure in which parties who are involved in a conflict of any nature try to reach a friendly settlement of the controversy with the aid of one or more neutral and independent third-parties, commonly referred as mediators, who lack the authority to impose or enforce a solution.

One of the main differences between the work performed by judges and arbitrators in the delivery of justice, and the labour performed by mediators in facilitating the parties' construction of settlement agreements of their disputes, is that the former judge what the parties have done according to the applicable legislation or to the signed contracts; whereas the latter do not judge the parties, nor are they focused on the controversy's origin. Rather, by facilitating communication between parties, mediators help them to reach a settlement agreement that can enable them to build a better future.

Thus, unlike what happens in litigation where relationships may be destroyed, in Mediation, the relationship between conflicted parties is reestablished, enabling them to maintain close and stable family, business or other relationships.

Another vital conclusion drawn from the Forum was that one of the main concerns among Mediation users is the issue of enforcement – specifically, ensuring that a settlement agreement reached by the parties with the assistance of the mediator can be enforced in the case that is not voluntarily fulfilled by one of the parties in conflict.

¹ Original article available on:

<https://elsemanario.com/colaboradores/antonio-m-prida/305985/ultimas-noticias-sobre-mediacion/>

Although hard data obtained in various countries was shared regarding the high percentage of voluntarily fulfilment of the settlement agreements resulting from mediation, the importance of the Convention on International Settlement Agreements Resulting from Mediation, known as the Singapore Convention on Mediation, was analyzed and put to the consideration of UN Member States by the United Nations Commission on International Trade Law (UNCITRAL).

This Convention, which may be signed by countries as of next August, sets the subscribed nations' obligation to have their respective courts and tribunals enforce the international settlement agreements resulting from Mediation, just as if they were a judicial resolution or an arbitral award.

To that end, the Convention requires minimum formalities, such as that the agreement must be in writing, be signed by the parties and be verified that it was constructed during Mediation process. The convention also includes a restrictive list of justified motives for a Tribunal to refuse to enforce a settlement agreement.

We are in favour of Mexico being one of the first countries to sign the Singapore Convention on Mediation, in order to continue contributing to the effectiveness of the noble institution of Mediation.