

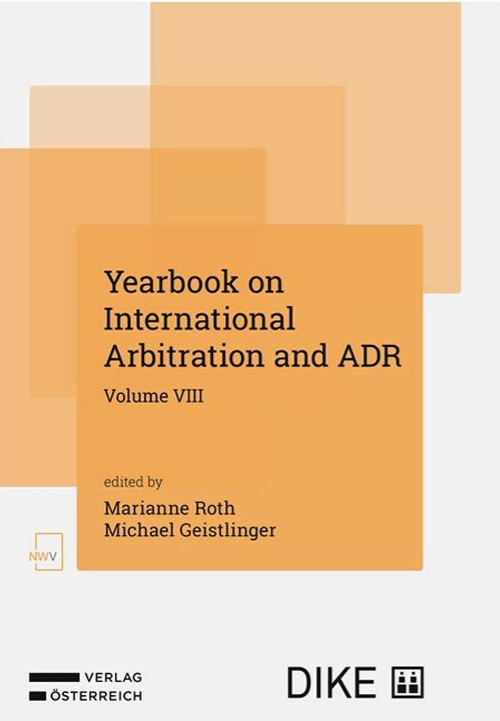


SALZBURG SYMPOSIUM

Striking the Right Balance in Arbitration and ADR

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Human Rights and Mediation

Prof. Dr. Renate Dendorfer-Ditges LL.M. MBA

Function of Human Rights as **negative „defensive rights“ against the state.**

Human Rights positively constitute an **area of individual and social freedom for a liberal democracy.**

Protection and promotion of Human Rights by **conflict resolution methods.**

Even in a state governed by the rule of law, overcoming an initially contentious problem situation by means of an amicable solution is generally preferable to a judicial decision in dispute.

Federal Constitutional Court (Bundesverfassungsgericht), 14.02.2007 – 1 BvR 1351/01

Universal, Indivisible and Inalienable Values

Fundamental **principles of dignity, equality and freedom** of every human being, regardless of origin, gender, religion or social status.

Foundation of a **just and peaceful coexistence** in all areas of life.

Not only **legal entitlements**, but also **moral obligations for self-determination and autonomy of life**.

Anchored in international treaties,

such as the Universal Declaration of Human Rights of the UN or the EU Charter of Fundamental Rights or the European Convention on Human Rights

and in national basic/constitutional law,

e.g. the German Grundgesetz or the Federal Constitutional Law of the Republic of Austria.

Fundamental values of Human Rights goes hand in hand with Mediation

Mediation regularly promoted with: time saving, cost saving, preservation of relationship, better image for companies.

Structured process, but also an **interpersonal attitude** and an **image of humankind**.

Mediator as **impartial, independent and neutral person** with **no substantive decision-making power**, supporting the parties to find an **independent, self-reliant, interest-oriented solution**.

Mediation in accordance with **principles of voluntariness, confidentiality, information and personal responsibility**.

Fundamental values of Human Rights goes hand in hand with Mediation

Non-violent communication in mediation in order to address illegitimate rhetoric as use of freedom of speech and expression.

Impartiality and independence of neutrals in ADR proceedings as part of **enforceable human rights**

For example see: ECtHR, Judgement of 20 May 2021, ECLI:CE:ECHR:2021:0520JUD000531211 (Beg S.P.A. v. Italy), available at <https://hudoc.echr.coe.int/>

Parties take responsibility for resolving their conflicts instead of delegating it to third parties, such as lawyers or courts.

Mediation in the Political Context

Peace Mediation

Mediation and Human Rights often **linked to political conflicts.**

Examples:

Camp David negotiation Israel and Egypt
in 1978 with Jimmy Carter as
„mediator and active negotiator“.



Peace process in Columbia from 2012 to 2016 supported by Cuba,
Norway and United Nations

„**For Colombians, by Colombians**“ – victims were actively included
directly by the negotiators in Havana, Cuba

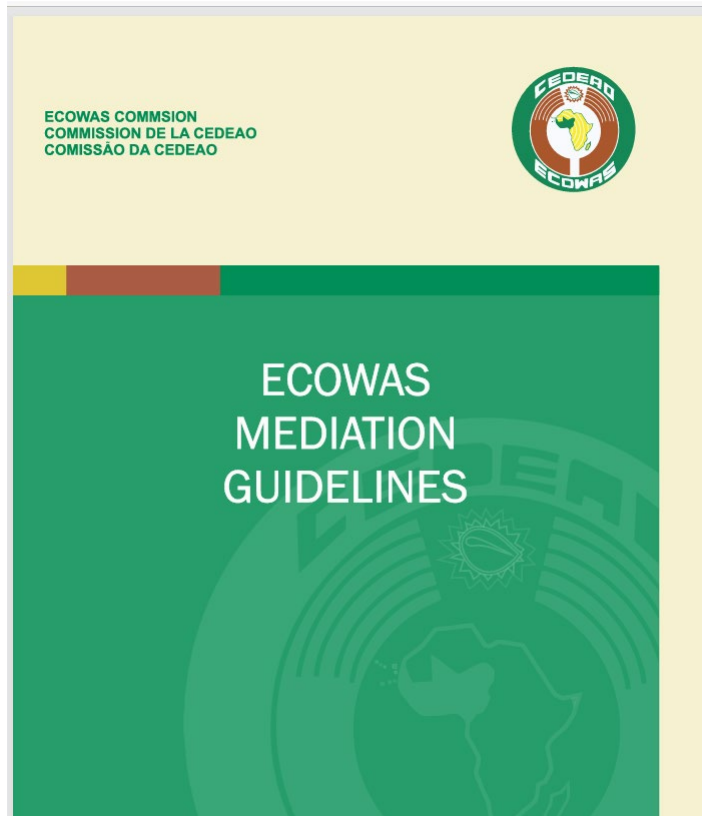
For further information: Katarina Mansson, Human rights in mediation, published by Berghof
Foundation, download under [https://berghof-foundation.org/library/human-rights-in-
mediation](https://berghof-foundation.org/library/human-rights-in-mediation)

Mediation in the Political Context

Peace Mediation

ECOWAS Mediation Guidelines

- ⇒ Transformation of formerly regionally oriented African states to an engagement in preventive diplomacy, peace making and mediation.
- ⇒ 2008-2010 crisis in Guinea.



ECOWAS GUIDING PRINCIPLES FOR MEDIATION

PRINCIPLE 1 EARLY AND TIMELY INTERVENTIONS:
PRIORITISING PREVENTIVE ACTION

PRINCIPLE 2 COMPREHENSIVE AND INTEGRATED INTERVENTIONS:
AN ECOWAS PREVENTIVE DIPLOMACY AND MEDIATION SYSTEM

PRINCIPLE 3 THE PROFILE OF THE MEDIATOR:
PROFESSIONALISM AND SKILLS

PRINCIPLE 4 PREPARADNESS AT ALL STAGES OF MEDIATION:
PROFESSIONAL MEDIATION SUPPORT, EXPERTISE AND CAPACITY

PRINCIPLE 5 CONSENT

PRINCIPLE 6 CULTURALLY GROUNDED MEDIATION

PRINCIPLE 7 IMPARTIALITY AND NEUTRALITY

PRINCIPLE 8 GENDER SENSITIVITY AND ENGENDERED MEDIATION

PRINCIPLE 9 INCLUSIVITY AND PARTICIPATION

PRINCIPLE 10 COHERENCE WITH ECOWAS AND INTERNATIONAL NORMS

PRINCIPLE 11 SUBSIDIARITY, COLLABORATION, COMPLEMENTARITY AND
COMPARATIVE ADVANTAGE

Human Rights in Private and Commercial Context

„Where, after all, do universal human rights begin?

[. . .] they are the world of the individual person; the neighborhood he lives in; the school or college he attends; the factory, farm or office where he works.

Such are the places where every man, woman, and child seek equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. [. . .].”

Eleanore Roosevelt, remarks at the United Nations on 27 March 1953

cited from Anne Dieter, Menschenrechte und Mediation – Wege zur Verwirklichung menschenwürdigen Lebens, Universitätsverlag Potsdam, 2007

Human Rights in Private and Commercial Context

UN Guiding Principles on Business and Human Rights

by the UN Human Rights Council by Resolution 17/4 on 16 June 2011

Download under <https://www.ohchr.org/en/publications/reference-publications/guiding-principles-business-and-human-rights>

⇒ Multinational companies are accountable for respecting and protecting human rights.

EU Corporate Sustainability Due Diligence Directive 2024/1760 into force on 25 July 2024

⇒ Protection of human rights is mandatory, including labor rights, environmental sustainability for present and future generations, building trust in businesses, promoting transparency for informed choice and ensuring better access to justice for victims.

Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (Whistleblowing Directive) and national whistleblowing codification

Human Rights and Conflicts in the Workplace

Conflicts in the workplace can lead to **violations of human dignity, personal rights or discrimination.**

For example:

- ⇒ Bullying as psychological violence.
- ⇒ Supervision of employees by technical or other means.
- ⇒ Discrimination on the grounds of sex, ethnic origin, disability or religion.

Access to effective remedy => human rights concept

(Articles 25 to 31 UN Guiding Principles on Business and Human Rights)

- ⇒ Article 28: *States should consider ways to facilitate access to effective non-State based grievance mechanisms dealing with business-related human rights harms.*
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Human Rights and Conflicts in the Workplace

Research project 2019 – 2021:

“Non-judicial Grievance Mechanisms in Global Supply Chains: Recommendations for Institutionalisation, Implementation and Procedural Design” (commissioned by the Federal Ministry of Justice, 2019 – 2021)

European University Viadrina Frankfurt (Oder) led by Prof. Dr. Ulla Gläßer commissioned by the Federal Ministry of Justice to investigate the potential of Alternative Dispute Resolution (ADR) regarding the design of non-state non-judicial grievance mechanisms for those affected by human rights violations in global supply chains.

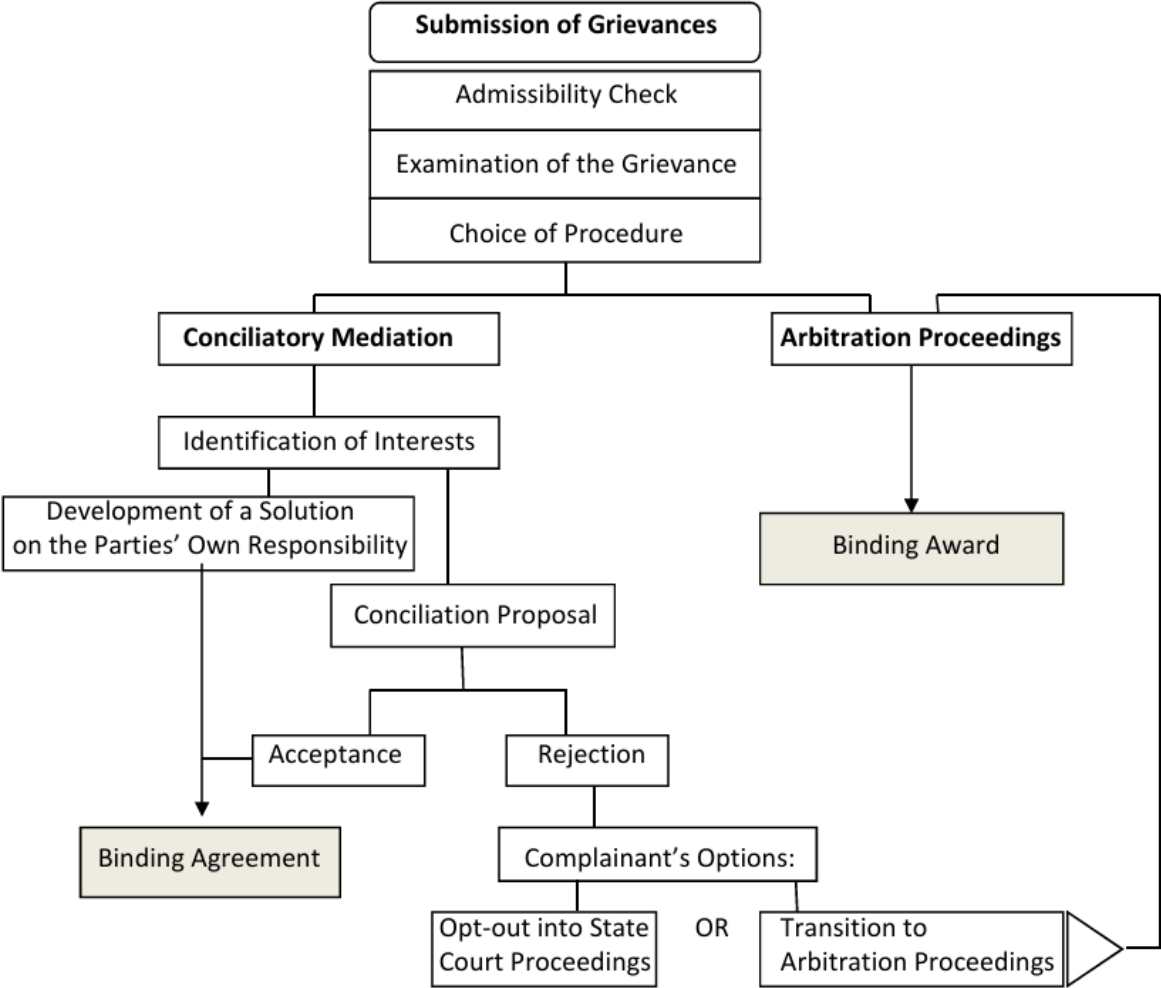
Integrative Grievance System (IGS) as a prototypical model with two types of procedure: Dialogue- and interest-based mediative conciliation (hybrid procedure that combines elements of mediation and conciliation) and arbitration proceedings.

First step is carried out locally, if parties fail to reach an agreement, as a second step arbitration proceedings are conducted to resolve the conflict.

Download under

https://www.bmj.de/SharedDocs/Downloads/DE/Themen/Nav_Themen/Executive_Summary__engl_Non-judicial_Grievance_Mechanisms__Final.pdf?__blob=publicationFile&v=1

Model of Integrative Grievance System



- ❖ Interaction of mediation and human rights require **further theoretical and scholarly consideration.**
 - ❖ **Mediators must be trained** and made **aware of complex issues of human rights.**
 - ❖ Process of mediation must **not lead to perpetuation of existing inequalities** or **further violation of human rights.**
 - ❖ Mediator not only as a neutral but as an **organizer of active mediation dynamic** including all stakeholders necessary for resolving the conflict.
 - ❖ Essential to **strengthen the legal framework for mediation** – nationally and internationally.
 - ❖ **Mediation is** not only a tool, but an **attitude**, respecting the dignity of the individuals and creating protected space for mutual understanding.
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Thank you very much for your kind attention.

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