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LIDW 2025: The Strategic Turn From Conflict to Consensus

Silvia Lamprinopoulou and Ariane Fuller (Queen Mary University of London) · Wednesday, June 11th, 2025

The role of mediation as a dispute resolution mechanism was featured in various discussions during this year's London International Dispute Week ("LIDW"). Across several sessions, panellists explored mediation's potential in a range of contexts—from commercial disputes to investor-State conflicts—and considered its growing appeal, including its ability to reduce enforcement risks through tailored, mutually agreed solutions. This post offers a selective overview of sessions that addressed this topic.

No Judge, No Courtroom: Defining Advocacy in Mediation

IPOS Mediation and 3 Hare Court co-hosted a panel titled "Bridging Differences: The Role of Mediation Advocacy in Conflict Resolution" at the International Dispute Resolution Centre. The session brought together Henrietta Jackson-Stops (IPOS Mediation), Jon Lang (IPOS Mediation), Charlotte Pope-Williams (3 Hare Court), Nikki Edwards (Howard Kennedy, LSLA) and David Owen (Barclays), who explored how mediation advocacy can empower parties to advance their interests.

Jon Lang opened the discussion by defining mediation as a court-less, judge-less process with no real guardrails. This, he argued, enables direct engagement with the other side – it is all about taking them along on the journey. Charlotte Pope-Williams drew a parallel between mediation and examination-in-chief: broad, open-ended questions help parties reveal perceptions, underlying interests, and what they may be planning.

Preparation: An Underrated Advantage

All speakers agreed on one key point: effective mediation starts long before parties enter the room. Nikki Edwards stressed that lawyers often underprepare for mediation. Too often, counsel prepare clients on procedural issues alone, neglecting substance. Cost discussions, for example, are typically mentioned but not explored in sufficient detail. Equally overlooked is early communication with the mediator, which she sees as a missed opportunity to shape the session—"mediators are there to be used," she added.

David Owen offered the in-house perspective, noting that internal preparation within the business is just as important as working with external counsel. Advocating for mediation internally is also

part of the legal team's job, since even when counsel sees its benefits, it is often not the default option for stakeholders. Pope-Williams highlighted that preparation includes selecting the right format (written, oral, hybrid) and preparing tone and presentation. While the law matters, she said, mediation often turns on commercial realities and flexibility.

Process Design

Building on the theme of preparation, Edwards emphasized the importance of early contact and process design. She is a proponent of pre-session contact and believes that parties should share even the most basic logistical information in advance. In her experience, lack of early engagement is a red flag. She also favours private, strategic conversations with mediators to help them ask the right questions, without revealing privileged information.

Pope-Williams shared an example where early coordination with the mediator and opposing counsel led to a successful settlement in just a few hours. These opportunities, she stressed, are often lost when everything begins only once parties enter the room. "Know your opponent," Lang warned, and do your homework—effective advocacy relies on relational intelligence as much as legal strength.

Building Awareness and Trust

The panel also posed the question of how the effectiveness of mediation can be better understood, both inside and outside the legal community. For Edwards and Pope-Williams, the answer is education: forms of alternative dispute resolution ("ADR") should be integrated into curricula and professional training. In terms of clients, Owen argued that they need a clearer picture of the alternative: knowing what litigation costs or how long it takes can make mediation more appealing. Internally, Edwards observed that business leaders often want the problem to "go away without paying." Mediation can help bring businesspeople ex ante into the decision-making process and confront the real costs of proceeding or settling.

Lang turned to the issue of numbers: "Never tell me the final figure you're willing to accept." There is no adrenaline in that. Instead, he described his approach as one that builds momentum through conversation. Pope-Williams described mediation as a cost-benefit analysis, requiring full awareness of legal, commercial, and procedural elements. Henrietta Jackson-Stops stated that mediation advocacy is no longer optional for litigators. It is a core skill—and the mindset must shift accordingly. As Lang put it, the true success of mediation is not when the lawyers talk, but when the clients begin speaking directly to one another.

Mediation of Investor-State Disputes and Its Benefits, Challenges and Solutions

The "Mediation of Investor-State Disputes: Opportunities, Challenges and Future Prospects" panel, hosted by Freshfields, was moderated by Will Thomas KC (Freshfields). The panel featured as panellists James South (CEDR), who provided the institutional perspective; Laura Hickman (De Beers Group), who offered the client's perspective; and Birgit Sambeth (Altenburger), along with Wolf von Kumberg (CEDR), who shared the practitioner's perspective.

Transferable Benefits of General Mediation to Investor-State Mediation

As with the previous panel, this discussion began by acknowledging that, although investor-State mediation is an established mechanism, it remains infrequently used. Despite its limited application, the panel considered mediation an effective method of dispute resolution, particularly within the investor-State context.

Firstly, investors often seek to preserve relationships with host States, especially after making substantial investments. Mediation serves not only as a tool to prevent disputes altogether but also as a means to resolve them in innovative, business-oriented ways that can be mutually beneficial for both investors and States.

Secondly, mediation allows for the inclusion of additional stakeholders—such as insurers or government agencies—who are typically excluded from investor-State arbitration proceedings. This broader participation can contribute to more comprehensive and sustainable outcomes.

Finally, mediation serves as a valuable mechanism for encouraging compliance and supporting the enforcement of agreements and awards—both of which are vital for fostering trust between States and current as well as prospective investors.

Addressing Specific Challenges in Mediation in Investor-State Disputes

Despite its benefits, mediation involving investor-State disputes has some specific challenges that might not be present in a commercial mediation:

- Challenge 1: Identifying competent authorities.Investor-State disputes often involve multiple government bodies, making it unclear who is authorized to participate or sign agreements.
- Challenge 2: Balancing confidentiality and transparency. Investor-State mediation involves a conflict between two important principles: confidentiality, which is essential for effective mediation, and transparency, which is necessary to ensure accountability for State actions.
- Challenge 3: Selecting mediators. Choosing mediators in an investor-State dispute involves may involve additional considerations besides the legal and technical expertise, such as higher level of cultural awareness.

Some challenges stem from the complexity and sensitivity of investor-State disputes. However, the panel agreed that certain issues could be managed through a “mediation within the mediation”—an early agreement on process elements such as participants, authority to sign, ratification steps, and information-sharing. Governments should also adopt internal mediation guidelines to ensure legal compliance and equip officials with the clarity and confidence to fulfil their roles effectively.”

The panel highlighted some of the existing frameworks such as the ICSID Mediation Rules, the ECT Mediation Protocol, UNCITRAL Working Group III and its discussions regarding a model mediation provision and Netherlands model BIT (Article 17.1). While some of these already address transparency (e.g., Rule 10 of the ICSID Mediation Rules), the panellists emphasised the need for parties to tailor the rules to their specific dispute.

Mediation with Enforcement in Mind

Another panel, hosted by CEDR and 39 Essex Chambers with support from the Civil Mediation Council and the International Mediation Institute, examined the role of strategic mediation design

in cross-border disputes. The discussion featured insights from Mr Justice Waksman (Technology and Construction Court, Commercial Court), Andy Rogers (CEDR), and practitioners Sarah Ellington (Watson Farley Williams) and Wolf Von Kumberg (CEDR). Institutional perspectives were also shared by Tat Lim (International Mediation Institute) and Kelly Stricklin-Coutinho (CMC, 39 Essex Chambers). Together, the panel explored how strategic mediation design can pre-empt enforcement risks and support durable, cross-border outcomes.

Mr Justice Waksman opened the discussion by framing mediation's role in the post-*Churchill* era, where courts can strongly encourage—but not compel—parties to pursue ADR. He highlighted the inefficiency of last-minute mediations and endorsed structured "mediation windows" within litigation timelines. While most claims in the Technology and Construction Court settle (over 80%), such resolutions often occur too late in the process. Waksman advocated greater use of Early Neutral Evaluation to address legal impasses that stall mediations. Though enforcement actions are rare, he stressed that process design is crucial, referencing Tomlin orders as a practical tool, and clarified that "*mediation privilege*" (as raised in *Pentagon Food Group Ltd and others v B Cadman Ltd* [2024]) has yet to take shape as a distinct doctrine. Andy Rogers reinforced that most disputes arriving in London are likely to settle, and mediation remains a powerful driver of that outcome. Citing high voluntary settlement rates—nearly 90%—he noted that even in jurisdictions with mandatory mediation, such as Poland or Ontario, settlement rates remain strong (often above 50%).

Kelly Stricklin-Coutinho called for a mindset shift: mediation must be treated as part of the legal infrastructure, not a fallback. She highlighted the unique value of mediation in enabling creative, relationship-sensitive outcomes such as apologies and future commitments—remedies that are beyond the scope of court orders.

Tat Lim reframed the Singapore Convention as more than a tool for enforcement—he presented it as a standard-setting milestone. Its real value, he argued, lies in fostering early settlement thinking, setting global expectations for mediator conduct, and regulating ethical practice. He also underscored the neuroscience of mediation, noting that it succeeds because it activates innate trust building mechanisms in human decision-making.

Wolf von Kumberg called for enforceability to be built in from the start. Cross-border settlements, he argued, require careful drafting of applicable law, jurisdiction, and procedural structure. He highlighted ongoing institutional innovation, including the International Chamber of Commerce's efforts to integrate mediation into arbitration frameworks. Sarah Ellington tied theory to practice: parties are increasingly combining prevention mechanisms, such as conflict management committees, with settlement terms tailored to the real risks at stake.

Mediation, when thoughtfully executed, is not just a resolution tool—it is a mechanism for avoiding disputes altogether.

Conclusion

Three key conclusions arose from the mediation discussions at LIDW. First, while mediation is not a new concept, it remains underutilized. Second, successful mediation requires a level of preparation that both public and private parties may still be unaccustomed to. Third, although often seen solely as a dispute resolution tool, mediation can also serve to prevent conflicts and support compliance strategies in the post-dispute phase.

This post is part of Kluwer Arbitration Blog's coverage of London International Disputes Week 2025.

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