NJ Offers New Model for International Dispute Resolution

By Laura A. Kaster and Robert E. Margulies

Rule of law in the United States is often viewed through the lens of the Constitution and its guarantees of separated powers, due process, and judicial review.[1] Yet the concept is broader and more universal, encompassing the expectation that relationships will be governed by fair rules and orderly, predictable procedures.[2] In the commercial sphere, this universal dimension of the rule of law is expressed in rules-based regimes that allow parties to express their expectations at the outset, so they can structure transactions, allocate risk, and plan for inevitable disagreements with confidence that any dispute will be decided according to agreed norms rather than raw power or local favoritism.[3]

LAURA A. KASTER *is a full-time mediator and arbitrator in Princeton. She is a fellow of the College of Commercial Arbitrators, member and former president of the Justice Marie L. Garibaldi American Inn of Court for Alternative Dispute Resolution, and recipient of the Richard K. Jeydel Award for Excellence in ADR and the NJSBA James Boskey Award as ADR Practitioner of the Year. She is a longtime member of the NJSBA Dispute Resolution Section, serving as chair in 2011–2013.*

ROBERT E. MARGULIES *practices mediation, law and arbitration as a principal of Schumann Hanlon Margulies, LLC and is executive director of the Garibaldi Inn of Court for ADR, former chair of the NJSBA Dispute Resolution Section and accredited as a mediator by CEDR and IMI.*

One assurance of predictable outcomes in commercial transactions has been arbitration by independent neutrals.[4] Early 20th-century jurists like Roscoe Pound and William Howard Taft saw international arbitration as a civilizing mechanism that could channel conflict away from force and toward law.[5] Pound's sociological jurisprudence insisted that law in action must secure social interests, promote cooperation, and provide reliable channels for resolving disputes in a way that parties experience as legitimate.[6] Taft advocated general arbitration treaties and international adjudicatory mechanisms as part of a broader project to replace power politics with adjudication by impartial tribunals, believing that peaceful, rules-based dispute resolution would stabilize international affairs and create an environment in which commerce and individual enterprise could flourish.[7] That vision animates the modern system of international commercial arbitration, in which neutral arbitrators apply a party-chosen law, follow agreed-upon procedures, and issue awards that states commit to recognize and enforce.[8]

The business consequences of this development have been profound.[9] Under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), arbitral awards are enforceable in national courts of more than 170 contracting states, subject only to limited defenses.[10] This regime mitigates the problem of "home court advantage," reduces fears of local bias or dysfunction, and allows companies to enter cross-border contracts confident that disputes will be decided in a neutral forum and that any award can be converted into real relief.[11] Empirical and doctrinal work shows that party autonomy, limited court interference, and broad enforceability have made international arbitration the default method for resolving cross-border commercial disputes, supporting the growth of global trade, foreign direct investment, and complex supply chains.[12] In the digital era, this infrastructure increasingly underpins cross-border online transactions for goods and services—business-to-business platforms, SaaS agreements, cloud services, and other internet-based contracts that require predictable enforcement far beyond national borders.[13]

However, success has produced new challenges that threaten access to justice, especially for small and medium-sized enterprises.[14] Many international arbitrations now resemble full-blown litigation, with extensive disclosure, multiple experts, and elaborate jurisdictional and procedural battles that drive up costs and prolong proceedings.[15] For smaller businesses or individual transactions that nevertheless may be commercially significant, claims arising from cross-border sales of goods or services, tribunal fees, institutional charges, and international counsel can easily exceed the amount in dispute or simply be unjustified, effectively closing the door to meaningful redress.[16] The adversarial intensity of such proceedings can also erode ongoing commercial relationships, contrary to the original promise that arbitration would both resolve disputes and preserve cooperation.[17] These realities have generated a widespread desire in the international commercial community for processes that integrate mediation into the dispute resolution framework rather than forcing parties into siloed choices among litigation, arbitration, or mediation.[18]

That preference has been documented in both institutional innovation and academic work.[19] The Global Pound Conference series held in 26 cities around the world, for example, found that corporate users tend to prioritize efficient, relationship-preserving resolution and enforceable outcomes over the label attached to the process, whereas lawyers often focus on whether a matter is "in arbitration" or "in mediation."[20] In a parallel development, UNCITRAL responded to the multinational corporate desires by drafting the United Nations Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention on Mediation).[21] The Singapore Convention reflects this shift by seeking to provide mediated settlement agreements with a cross-border enforcement regime analogous to that of the New York Convention.[22] Cost effectiveness, speed, preservation of relationships and, importantly, enforceability are central to users' concerns.[23] However, the Singapore Convention has so far been ratified by a relatively limited number of states, and its enforcement machinery is not yet globally available.[24] In practice, parties continue to look for mechanisms that incorporate mediation while still delivering the robust, widely accepted enforceability associated with arbitral awards.[25]

Many international arbitrations now resemble full-blown litigation, with extensive disclosure, multiple experts, and elaborate jurisdictional and procedural battles that drive up costs and prolong proceedings.

Viewed through a rule-of-law lens, this "New Jersey solution" advances several core values at once. It promotes fairness and party autonomy by allowing businesses to use a process that includes both consensual problem-solving and binding adjudication, rather than forcing an all-or-nothing choice.

The New Jersey International Arbitration, Mediation, and Conciliation Act offers a uniquely structured, rule-of-law–oriented solution.[26] Codified at N.J. Stat. Ann. §§ 2A:23E-1–18, the statute creates an international framework that allows disputes to be commenced as arbitrations, then shifted into mediation or conciliation—potentially before the same neutral—without losing the protective envelope of the arbitration.[27] If mediation succeeds, the settlement can be embodied in an arbitral consent award, which is treated as an arbitral award for purposes of recognition and enforcement and thus falls within the well-developed New York Convention regime adopted by more than 170 states.[28]

Importantly, the act is not parochial: it applies to international disputes so long as there is at least one U.S. party, without requiring any party to be a New Jersey resident or to maintain a place of business in the state, and it was expressly designed to reduce the cost and duration of international proceedings, promote mediation, and attract cross-border business by making sophisticated dispute resolution accessible beyond the largest multinational corporations.[29] The New Jersey act is administered online and with video-conferenced mediations by GMXC Resolutions.[30]

The GMXC enforcement of mediated settlements solution is a "mixed mode" procedure. The parties either include a clause in their contract designating it or the parties with a legal disagreement chose it as a first step to resolution. Once a claim is made to GMXC and a response is submitted, an arbitration is convened by video-conference. The neutral is chosen from a panel of experienced arbitrators/mediator neutrals. The arbitration immediately converts the proceeding to a mediation, which, if successful, results in the neutral changing their hat back to arbitrator who enters a consent arbitral award, enforceable under the New York Convention.

Viewed through a rule-of-law lens, this "New Jersey solution" advances several core values at once.[31] It promotes fairness and party autonomy by allowing businesses to use a process that includes both consensual problem-solving and binding adjudication, rather than forcing an all-or-nothing choice.[32] It enhances predictability and enforceability by anchoring mediated outcomes in arbitral consent awards that are recognizable and enforceable under a mature, globally accepted treaty regime rather than a still-nascent one.[33] It improves access to justice for small and medium-sized enterprises, and for the vast universe of cross-border internet-based sales and service transactions, by lowering procedural costs and providing a structured pathway from negotiation to enforceable outcome.[34] And it carries forward the insight of Pound and Taft that peaceful, rules-based dispute mechanisms are not peripheral to the rule of law but central to it: they are the practical means by which law becomes a credible alternative to power, enabling commerce to flourish on a foundation of fairness, order, and respect for binding commitments.[35] ■

Endnotes

1. See generally Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory* 114–18 (Cambridge Univ. Press 2004) (discussing rule-of-law concepts beyond constitutional structure).
2. See Lon L. Fuller, *The Morality of Law* 39–41 (rev. ed. 1969).
3. See Thomas H. Moran, *The Rule of Law in Commercial Arbitration*, 32 Arb. Int'l 1, 5–7 (2016).
4. See Gary B. Born, *International Commercial Arbitration* 90–96 (3d ed. 2021).
5. See Roscoe Pound, *Law in Books and Law in Action*, 44 Am. L. Rev. 12, 18–20 (1910); William Howard Taft, *The United States and Peace*, 6 Am. J. Int'l L. 789, 790–93 (1912) (linking arbitration to peaceful settlement of international disputes).
6. See Roscoe Pound, *An Introduction to the Philosophy of Law* 98–105 (1922)
7. See John J. Noyes, *William Howard Taft and the Taft Arbitration Treaties*, 56 Vill. L. Rev. 535, 540–47 (2011).
8. See Born, *supra* note 4, at 365–70 (explaining modern practice of party-chosen law, consensual procedures, and state recognition of awards under international instruments).
9. See *id.* at 75–79 (describing economic significance of

international commercial arbitration).

10. Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. I, June 10, 1958, 330 U.N.T.S. 3 (New York Convention).
11. See New York Convention, *supra* note 10, arts. III–V; Jan Paulsson, *Enforcing Arbitral Awards Notwithstanding Local Standard Annulment*, 9 ICSID Rev. 1, 1–4 (1994) (discussing mitigation of "home-court advantage").
12. See Born, *supra* note 4, at 75–79, 212–14
13. See Daniel Kalderimis, *Arbitration and Online Commerce*, 36 J. Int'l Arb. 1, 2–6 (2019).
14. See Catherine A. Rogers, *The Politics of International Investment Arbitration* 7–10 (2014) (noting concerns about cost and access to justice).
15. See Susan D. Franck, *Rationalizing Costs in Investment Treaty Arbitration*, 88 Wash. U. L. Rev. 769, 773–79 (2011).
16. See Stavros Brekoulakis, *Third Parties in International Commercial Arbitration* 11–15 (2010) (observing that cost can deter smaller claims and parties).
17. See Thomas J. Stipanowich, *Arbitration: The "New Litigation,"* 2010 U. Ill. L. Rev. 1, 10–14 (discussing effects of adversarial procedures on relationships).
18. See Thomas J. Stipanowich & Zachary P. Ulrich, *Arbitration and Mediation in the Age of "Integration,"* 2014 J. Disp. Resol. 1, 4–9 (reporting corporate preference for mixed-mode processes).
19. See *id.* at 6–9; S.I. Strong, *Realizing Rationality: Cost–Benefit Analysis in International Arbitration*, 16 Cardozo J. Conflict Resol. 547, 551–54 (2015).
20. See Deborah Masucci & Ethan Katsh, *The Global Pound Conference Series: What We Learned, What We Still Need to Learn, and Why It Matters for Dispute Resolution*, Fed. Law., Mar./Apr. 2018, at 32, 33–35 (summarizing GPC user data).
21. United Nations Convention on International Settlement Agreements Resulting from Mediation, Dec. 20, 2018, 58 I.L.M. 701 (2019) (Singapore Convention on Mediation).
22. See *id.* arts. 3–5; U.N. Comm'n on Int'l Trade Law, *UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation*, U.N. Doc. A/73/17 (2018).
23. See Nadja Alexander, *The Singapore Convention on Mediation: A Framework for the Cross-Border Enforcement of Mediated Settlement Agreements*, 22 Cardozo J. Conflict Resol. 1, 5–9 (2020) (highlighting users' focus on cost, speed, relationships, and enforceability).
24. See Status of United Nations Convention on International Settlement Agreements Resulting from Mediation, U.N. Treaty Collection (listing ratifications and accessions).
25. See Stipanowich & Ulrich, *supra* note 18, at 10–13 .
26. New Jersey International Arbitration, Mediation, and Conciliation Act, N.J. Stat. Ann. §§ 2A:23E-1 to -18 (West 2025).
27. See *id.* §§ 2A:23E-2, -3.
28. See *id.* § 2A:23E-3(f) (treating settlement recorded as an arbitral award); New York Convention, *supra* note 10, arts. I, III.
29. See N.J. Stat. Ann. §§ 2A:23E-2(a), -3(a), -4; Lauren E. Koster, The New Jersey International Arbitration, Mediation, and Conciliation Act: A New Model for International Mixed-Mode Dispute Resolution, Seton Hall L. Rev. (student note, forthcoming) (manuscript at 4–8) (on file with author)
30. See GMXC Resolutions, *GMXC Rules*, gmxcresolutions.com/gmxc-rules (last visited Dec. 11, 2025).
31. See Tamanaha, *supra* note 1, at 114–18 (connecting institutional design to rule-of-law values).
32. See Stipanowich & Ulrich, *supra* note 18, at 4–9 (describing integrated processes combining mediation and arbitration).
33. See New York Convention, *supra* note 10, arts. III–V; Singapore Convention on Mediation, *supra* note 21, arts. 3–5 (contrasting maturity and breadth of enforcement regimes).
34. See Koster, *supra* note 29, at 8–13 (arguing that the New Jersey Act expands access to international dispute resolution for smaller enterprises and lower-value transactions).
35. See Pound, *Law in Books and Law in Action*, *supra* note 5, at 18–20; Noyes, *supra* note 7, at 540–47 (linking peaceful, rules-based dispute mechanisms to a robust conception of the rule of law).