

The Kyoto  
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Side Event:  
THE RULE OF  
LAW AND  
INTERNATIONAL  
ARBITRATION /  
MEDIATION

# The Rule of Law and International Arbitration / Mediation

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## 1. Struggles in History at the National Level

- People in many countries have achieved the rule of law after long and fierce struggles.

People there enjoy sustainable development under the rule of law.

- However, there are still many other countries where the rule of law has not yet been secured.

1. Struggles in  
History at the  
National Level

■ **SDGs, Goal 16.3:**

**“Promote the rule of law ... and ensure equal access to justice for all.”**

1. Struggles in  
History at the  
National Level

■ **SDGs, Goal 16.3:**

**“Promote the rule of law at the national and international levels and ensure equal access to justice for all.”**

## 2. At the International Level

- The rule of law has not yet been achieved at the international level.
- Arbitration and mediation are essential for the benefit of international trade and investment, even between countries where the rule of law has been achieved at domestic level.

### 3. The World in Chaos in Terms of Judicial System

- National court systems are independent from foreign counterparts.
  - Judges of Country A are in principle nationals of Country A.
  - Court proceedings there are conducted in the language of Country A and are in accordance with the procedural law of Country A.
  - The judgment of Country B is not necessarily recognized or enforced in Country A.

### 3. The World in Chaos in Terms of Judicial System

- The world judicial system is **just an aggregation of such national judicial systems.**



### 3. The World in Chaos in Terms of Judicial System

- **From a viewpoint of foreigners and foreign companies**, in theory, it is not justified at all for them to be subject to the judgment rendered under the national judicial system to which they have **no democratic participation**.

In addition, the judicial system of Country A can be **disadvantageous** to foreigners in terms of nationality of judges, language and procedural law.

### 3. The World in Chaos in Terms of Judicial System

- The rules of law achieved at the national level does not sustain the rule of law at the international level.

**The international society is still  
in chaos in terms of judicial  
system.**

#### 4. Call for International Arbitration and Mediation

- It was natural for international merchants to manage to create their own dispute resolution mechanism.

Historically, the origin of business arbitration was born in a course of Mediterranean trade in the Middle age.

- Nowadays, arbitration plays a very important role in the resolution of international business disputes, because **it ensures a level playing field for both parties.**

#### 4. Call for International Arbitration and Mediation

- When three arbitrators are to be appointed, each party appoint one arbitrator and these party-appointed arbitrators agree on the third arbitrator.

It is usually observed practice that the nationality of each party-appointed arbitrator is the same as the of the appointing party, and **the nationality of the third arbitrator is different from that of any of the party-appointed arbitrators.**

#### 4. Call for International Arbitration and Mediation

- The arbitral proceedings are conducted **in a party-agreed language pursuant to the party-agreed rules.**

#### 4. Call for International Arbitration and Mediation

- In respect of mediation, thanks to **Singapore Convention on Mediation of 2018** which gives enforceability to written agreements resulting from mediation, international mediation is now more used as a tool to resolve international business disputes.

It is fair to say that **international mediation** plays an increasingly important role to promote **amicable settlements made out of national courts.**

## 5. Conclusion

- **International arbitration and mediation fill gaps existed in the aggregation of national judicial systems** and perform the function of resolution of international business disputes.

Accordingly, **international arbitration and mediation are indispensable to promote the rule of law at the international level.**

Thank you.

If you are interested in arbitration and mediation of Japan, please visit the following website:

<https://www.jcaa.or.jp/en/>

