
NADJA ALEXANDER AND SHOUYU CHONG (2019)
THE SINGAPORE CONVENTION ON MEDIATION
—A COMMENTARY

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Adopted in December 2019, the United Nations (UN) Convention on International Settlement Agreements resulting from Mediation (also known as the Singapore Convention on Mediation—the ‘Convention’) applies to international settlement agreements resulting from mediation (‘settlement agreement’). By 12 September 2020 it had been signed by 53 states and entered into force. States signatories to the Convention include two with the largest economies in the world, namely the United States and China. The fact of the Convention will likely encourage global attention on Singapore, and the accession to the Convention of China and the United States in particular will very probably enhance Singapore’s profile as a major international dispute resolution centre in the Asia-Pacific region.

Although not an official commentary, the examination and explanation of the Convention in the excellent book (2019) *The Singapore Convention on Mediation—A Commentary* by Professor Nadja Alexander and Shouyu

Chong comes close to being such a document (especially with its endorsement by Anna Joubin-Bret, The Secretary, UN Commission on International Trade Law (UNCITRAL), and Director, International Trade Law Division, UNCITRAL) and certainly will assist lawyers and parties engaged in international commercial transactions in drafting dispute resolution clauses and in handling disputes which have already arisen where the parties are inclined to seek to conclude their disagreement with an international mediated settlement agreement. The book shows how the 2018 Convention builds on the work of UNCITRAL over a period of some four decades in seeking the better handling of international commercial disputes and enforcement of mediation agreements. The 1980 UNCITRAL rules on conciliation were followed, after some two decades' experience, by the introduction in 2002 of the Model Law in International Commercial Conciliation, and then, after another nearly two more decades of experience, the Singapore Convention was introduced. The latter is characterized as a product of negotiation and consensual decision-making, following a proposal by the United States delegation at UNCITRAL. The Convention aims at providing an international framework for mediation of commercial disputes that would be appropriate for party-states regardless of their legal cultures and degree of economic development.

The study by Alexander and Chong provides a detailed (article by article) and insightful commentary on the Convention. The authors encourage us to see the Convention as offering a framework that will encourage greater use of mediation in international commercial dealings, as well as an understanding of key provisions that will assist legal practitioners and parties in dispute. The authors provide, in a substantial opening chapter, an exploration of the context within which the Convention emerged and was drafted by Working Party II within UNCITRAL. It also provides a concise and helpful explanation of the nature and role of UNCITRAL, as an international agency set up in 1966 as a subsidiary body of the UN General Assembly, and intended as a mechanism for unifying and harmonizing international trade law, and status and diffusion of its model normative documents.

An insightful commentary is also provided in the introductory chapter on the 'Object and Purpose of the Convention' and the international law context of the Convention, as well as issues of enforcement (considered to be important worries that have helped to create the Convention) and future development. Thus, attention is given to issues arising from several provisions in Article 5, dealing with mediator (mis)conduct as a ground for refusal of relief, and suggestions are made on how the Convention might serve as an important template for states looking to adopt effective

and comprehensive mediation systems for commercial disputes. The text of the Convention itself is provided at Appendix A, and at Appendix B is the revised UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018 (amending the UNCITRAL Model Law on International Commercial Conciliation, 2002). The heart of the book is, however, an examination of the specific provisions of the Convention—for most of the 16 articles in the Convention a whole Chapter is in effect provided. The exception is Article 5, concerning Grounds for Refusing to Grant Relief. This is dealt with in four separate entries and, at over 60 pages in length, may be seen as the core element in the book. Strong analysis is accompanied by illustrative case materials. It examines enforcement mechanisms and the bases for refusal to allow relief: contract-related, mediator (mis)conduct, public policy and subject-matter related reasons. More generally, issues covered include: international mediated settlement agreements as an innovative form of legal instrument in international law; the bearing of the Convention on private international law; the meaning of ‘international’ in the types of dispute covered by the Convention; the kinds of settlement agreements that may be characterized as within the scope of the Convention; the possibilities for contracting states to declare reservations; the enforcement processes that may be used under the provisions of the Convention; the absence of a seat of mediation; the approach taken to recognition and enforcement of international mediated settlement agreements by the Convention; and the latter’s connection to other international instruments such as the UN Model Law on International Commercial Mediation and the New York Convention on Arbitration.

As the authors point out on their first page, the Singapore Convention has the capacity to enhance the attractiveness of mediation within regional initiatives, such as China’s Belt and Road Initiative. With the development of the Belt and Road, Singapore has been able to push its own professional service strengths in Southeast Asia in the fields of finance, trade and legal affairs. As a place of choice for dispute resolution, Singapore has been increasingly favoured by international commercial entities. Thus, for example, the Singapore International Arbitration Centre (SIAC) is now one of the world’s most important arbitration institutions. To support the development of mediation in the commercial field, Singapore established the Singapore International Mediation Center (SIMC) in 2014. This is in effect a supplement to the SIAC and the Singapore International Commercial Court. Through the establishment of these three entities, Singapore provides a robust set of dispute resolution solutions for parties involved in cross-border disputes. The introduction of the Singapore

Convention will likely further Singapore's strengths, especially in relation to its rivalry with Hong Kong, which has also been attempting to promote itself over the past decade or so as an international centre for dispute resolution. And yet, Hong Kong too may be strengthened by the Convention and China's participation in the Convention, as Hong Kong is drawn in increasingly to the planning and development of the Greater Bay Area in Guangdong Province. The area's development plans include the creation of a diversified ('multi-door') dispute resolution mechanism in the Greater Bay Area, giving Hong Kong greater access to legal services in the mainland. This is in turn likely to assist Hong Kong to maintain a strong position as an international legal and dispute resolution service centre in the Asia-Pacific region. China's signing and accession to the Singapore Convention means that China will recognize and implement settlement agreements generated through commercial mediation, including a large number of settlement agreements for various commercial disputes brought about by the investment and construction of the Belt and Road Initiative, and the mainland authorities are likely to prefer Hong Kong to Singapore as a centre for resolving such disputes, especially where Hong Kong has collaborative projects for dispute resolution with closely neighbouring Shenzhen.

The Singapore Convention is an innovation in international commercial dispute resolution, and the excellent examination offered in the Alexander and Chong book will doubtless assist dispute resolution professionals and others in understanding the workings of the Convention. The book is also a major step forward in the academic analysis and discourse of international commercial mediation and, therefore, an important contribution to the study of ADR processes.