

# THE SINGAPORE CONVENTION ON MEDIATION: UPDATES AND DEVELOPMENTS

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## *I INTRODUCTION*

On 12 September 2020, the United Nations Convention on International Settlement Agreements Resulting from Mediation, or the Singapore Convention on Mediation, entered into force.<sup>1</sup> The Convention's entry into force, happening a little over one year after it first opened for signature, is a remarkable achievement for multilateralism and the United Nations Commission on International Trade Law (UNCITRAL). An astounding 46 States, including the largest economies in the region such as China, India, the Republic of Korea, and half of the ASEAN Member States, signed the

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1 UNCITRAL, United Nations Convention on International Settlement Agreements Resulting from Mediation (New York, 2018) ("Singapore Convention on Mediation") <[https://uncitral.un.org/en/texts/mediation/conventions/international\\_settlement\\_agreements](https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements)> accessed 9 June 2020. See also United Nations Information Service, Vienna (Press release, 2020). "The United Nations Convention on International Settlement Agreements Resulting from Mediation will enter into force following ratification by Singapore, Fiji and Qatar" (Press release, 13 March 2020) UNIS/L/293 <<http://www.unis.unvienna.org/unis/en/pressrels/2020/unisl293.html>> accessed 9 June 2020.

Convention at the Signing Ceremony on 7 August 2019 in Singapore,<sup>2</sup> the highest number of signatories on the opening day of a UNCITRAL Convention, with six additional States in the subsequent months.<sup>3</sup> Then in the first half of 2020, Singapore, Fiji, Qatar, and Saudi Arabia ratified the Convention.<sup>4</sup>

The Singapore Convention on Mediation is a landmark instrument that provides a cross-border enforcement mechanism for settlement agreements that result from mediation for the first time in history. It bridges legal systems reflecting a worldwide consensus beyond cultural differences and perceived challenges because it results from a multilateral process to address the needs of stakeholders. It brings certainty and stability to the international framework on mediation. Moreover, by enhancing the use of mediation, the Convention fosters access to justice, thus promoting more inclusive, prosperous and sustainable international trade relationships among States and regions.

In 2018, UNCITRAL also adopted the Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, amending the previous Model Law on International Commercial Conciliation (2002). The 2018 Model Law aims to encourage the use of mediation and ensure greater predictability and certainty in its use. It is designed to assist States in reforming and modernising their laws on mediation procedures by providing uniform rules regarding the mediation process.<sup>5</sup>

As the Singapore Convention on Mediation and the accompanying 2018 Model Law are the most recent achievements in longstanding involvement by UNCITRAL in international commercial mediation, this article provides a short overview of these two texts. It commences with a synopsis of

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2 Singapore Ministry of Law "46 States signed new international treaty on mediation" (Press release, 7 August 2019) <<https://www.singaporeconvention.org/media/media-release/states-signed-international-treaty>> accessed 18 May 2020.

3 UNCITRAL "Status: United Nations Convention on International Settlement Agreements Resulting from Mediation" <[https://uncitral.un.org/en/texts/mediation/conventions/international\\_settlement\\_agreements/status](https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements/status)> accessed 9 June 2020.

4 Ibid.

5 UNCITRAL "UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation" (2018) <[https://uncitral.un.org/en/texts/mediation/modellaw/commercial\\_conciliation](https://uncitral.un.org/en/texts/mediation/modellaw/commercial_conciliation)> accessed 10 June 2020.

UNCITRAL's longstanding efforts on developing the international mediation framework, introduces some key aspects of the Convention and the Model Law, and ends with a glimpse of the road ahead.

## ***II UNCITRAL LONG-STANDING EFFORTS ON DEVELOPING THE INTERNATIONAL MEDIATION FRAMEWORK***

As the core legal body of the United Nations system in the field of international trade law, the United Nations Commission on International Trade Law, or UNCITRAL established in 1966, has the mandate to further progressive harmonisation and unification of the law of international trade. It has long promoted the use of mediation (which has previously been referred to interchangeably by UNCITRAL as conciliation<sup>6</sup>). It made continued efforts to strengthen the international mediation framework through the adoption of different instruments.

In 1980, UNCITRAL introduced the Conciliation Rules, one of the first international instruments on mediation.<sup>7</sup> Adopted by UNCITRAL on 23 July 1980, the UNCITRAL Conciliation Rules provide a comprehensive set of procedural rules upon which parties may agree to conduct conciliation proceedings arising out of their commercial relationship. The Rules provide a model conciliation clause and address all aspects of the conciliation process, including the commencement of conciliation proceedings, the appointment of conciliators, the role of conciliators, and confidentiality. In recommending the Conciliation Rules, the General Assembly expressed recognition of the value of conciliation as a method of amicably settling disputes arising in the context of international commercial relations. The conviction was that establishing conciliation rules, being acceptable in countries with different

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6 Judith Knieper & Corinne Montineri "UNCITRAL and a New International Legislative Framework on Mediation" (2018) 4 *Nederlands-Vlaams tijdschrift voor mediation en conflictmanagement* 24. The authors note that UNCITRAL decided to use the term "mediation" as the leading term in its recent instruments in an effort to adapt to the actual and practical use of the terms and with the expectation that this change will facilitate the promotion and heighten the visibility of its instruments; however both terms – conciliation and mediation – may still be used interchangeably. This change in terminology does not have any substantive or conceptual implications.

7 UNGA Res 35/52 (4 December 1980) UN doc A/RES/35/52.

legal, social and economic systems, would significantly contribute to the development of harmonious international economic relations.<sup>8</sup>

As mediation was increasingly used in international and domestic commercial practice as an alternative to litigation, it became apparent over the years that contractual solutions were not sufficient. Therefore, UNCITRAL developed a model legislative framework on mediation which was adopted in 2002, the Model Law on International Commercial Conciliation,<sup>9</sup> building on the 1980 Conciliation Rules.<sup>10</sup> The 2002 Model Law was designed to assist States in reforming and modernising their laws on mediation procedure while providing uniform rules regarding the mediation process to encourage the use of mediation and ensure greater predictability and certainty in its use. It was envisaged that the Model Law would strike a balance between protecting the integrity of the conciliation process, for example, by governing the confidentiality of the conciliation process, while also providing maximum flexibility by preserving party autonomy.<sup>11</sup> Currently, legislation based on or influenced by the 2002 Model Law has been adopted in 33 states, in a total of 45 jurisdictions.<sup>12</sup>

### ***III THE SINGAPORE CONVENTION ON MEDIATION***

#### ***A Background***

The use of international commercial mediation has become more popular since the adoption of the 1980 Conciliation Rules and the 2002 Model Law. However, until the adoption of the Singapore Convention, the often-cited challenge to the use of mediation was the lack of an efficient and harmonised framework for cross-border enforcement of settlement agreements resulting from mediation.

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8 Ibid.

9 United Nations *UNCITRAL Model Law on International Commercial Conciliation with Guide to Enactment and Use 2002* (November 2004).

10 UNGA Res 57/18 (19 November 2002) UN doc A/Res/57/18.

11 Above n 9.

12 UNCITRAL "Status: UNCITRAL Model Law on International Commercial Conciliation" (2002) <[https://uncitral.un.org/en/texts/arbitration/modellaw/commercial\\_conciliation/status](https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_conciliation/status)> accessed 18 May 2020.

In 2014, UNCITRAL agreed that Working Group II (Arbitration and Conciliation/Dispute Settlement) was to consider the issue of enforcement of international settlement agreements resulting from conciliation proceedings.<sup>13</sup> In 2015, at the 48<sup>th</sup> session of UNCITRAL, the Commission agreed that Working Group II should commence work on the topic of enforcement of settlement agreements to identify relevant issues and develop possible solutions, including the possible preparation of a convention, model provisions or guidance texts.<sup>14</sup>

Eventually, after rounds of negotiations, a consensus was reached at the 66<sup>th</sup> session of Working Group II in 2017 that a convention and model legislative provisions would be drafted in parallel.<sup>15</sup> Such an unprecedented approach was intended to provide States with flexibility in achieving a comprehensive legal framework on mediation.<sup>16</sup>

The Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, amending the previous Model Law on International Commercial Conciliation (2002), was adopted by UNCITRAL in June 2018. It finalised and approved the Singapore Convention along with a recommendation to the General Assembly that the Convention should be adopted.<sup>17</sup>

In adopting the Convention in December 2018, the General Assembly recognised the value of mediation as a method of amicably settling disputes arising in the context of international commercial relations. It also acknowledged that adopting a convention on international settlement agreements resulting from mediation that is acceptable to States with different

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13 UNGA Report of the United Nations Commission on International Trade Law Forty-seventh session (7-18 July 2014) UNGAOC 69<sup>th</sup> session Supp No 17 UN doc A/69/17 (2014), para 129.

14 UNGA Report of the United Nations Commission on International Trade Law Forty-eighth session (29 June – 16 July 2015) UNGAOC 70<sup>th</sup> session Supp No 17 UN doc A/70/17 (2015), para 142.

15 UNGA Report of Working Group II (Dispute Settlement) on the work of its sixty-sixth session (New York, 6-10 February 2017) UN doc A/CN.9/901 (2017), para 93.

16 Stephen D Mathias, United Nations Assistant Secretary-General for Legal Affairs, address delivered at the Singapore Convention on Mediation Signing Ceremony, 7 August 2019.

17 UNGA Report of the United Nations Commission on International Trade Law Fifty-first session (25 June – 13 July 2018) UNGAOC 73<sup>rd</sup> session Supp No 17 UN doc A/73/17 (2018), paras 49 and 68.

legal, social and economic systems would complement the existing legal framework on international mediation and contribute to the development of harmonious international economic relations. States and regional economic integration organisations are called upon to strengthen the international dispute resolution framework by considering becoming parties to the Convention.<sup>18</sup>

### ***B Overview***

The Singapore Convention provides a uniform and efficient framework for the enforcement of international settlement agreements resulting from mediation and for allowing parties to invoke such agreements, akin to the framework that the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the "New York Convention") provides for arbitral awards. It was prepared with participation from more than 80 States as well as a number of relevant intergovernmental and non-governmental organisations and field experts, ensuring a multilateral, transparent, and consensual negotiation process and compatibility with various legal traditions.

The Convention aims to facilitate international trade and to promote mediation as an effective means of resolving trade disputes, thereby enhancing access to justice and advancing the United Nations Sustainable Development Goal 16 of promoting just, peaceful and inclusive societies. It contributes to the development of a mature, rule-based global commercial system and attests to what can be achieved by UNCITRAL Member States coming together in the new era of global collaboration.

Some of the main provisions of the Convention, which consists of a preamble and 16 articles, are discussed below.

Article 1, read with the definitions in art 2, sets out the scope of application of the Convention, namely that it applies to international agreements resulting from mediation, concluded in writing by parties to resolve a commercial dispute. "Mediation" is defined under art 2(3) to mean:

a process, irrespective of the expression used or the basis upon which the process is carried out, whereby parties attempt to reach an amicable settlement

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18 UNGA Res 73/198 (20 December 2018) UN doc A/RES/73/198. See also UNGA Res 73/199 (20 December 2018) UN doc A/RES/73/199.

of their dispute with the assistance of a third person or persons ("the mediator") lacking the authority to impose a solution upon the parties to the dispute.

The Convention does not apply to disputes arising from consumer, personal, family or household purposes, or to settlement agreements that have been approved or concluded by a court, and settlement agreements recorded and enforceable as an arbitral award. Such exclusion avoids possible overlap with existing and future conventions, namely the New York Convention, the Convention on Choice of Court Agreements (2005), and the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019).<sup>19</sup>

Article 3 sets out the general principles of the Convention and provides for the Convention's expedited enforcement mechanism. Some mediation scholars have noted that in considering the operation of the two provisions under this article, it may be useful to employ the metaphors of "sword" and "shield" to elucidate the operation of arts 3(1) and 3(2).<sup>20</sup> Under art 3(1), each Party to the Convention shall enforce a settlement agreement in accordance with its rules of procedure and under the conditions laid down in this Convention. Under art 3(2), if a dispute arises concerning a matter that a party claims was already resolved by a settlement agreement, a Party to the Convention shall allow that party to invoke the settlement agreement in accordance with its rules of procedure and under the conditions laid down in this Convention, in order to prove that the matter has already been resolved.

Article 4 provides for the formalities required of parties that wish to enforce a settlement agreement. For example, the party shall supply to the competent authority the settlement agreement signed by the parties and evidence that the settlement agreement results from mediation. It also addresses the use of electronic communications in respect of the requirement that a settlement agreement shall be signed by the parties or, where applicable, the mediator.

Article 5 of the Convention provides an exhaustive list of grounds under which a court may refuse to grant enforcement. Such grounds include where a party to the settlement was under some form of incapacity; if granting the

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19 UNCITRAL, above n 1.

20 Nadja Alexander and Shouyu Chong *The Singapore Convention on Mediation: A Commentary* (Kluwer Law International, 2019).

relief would be contrary to the public policy of the enforcing State (which is Party to the Convention) or that the subject matter of the disputes is not capable of settlement by mediation under the law of that Party; or if there has been a serious breach by the mediator of standards applicable to the mediator or the mediation, without which breach the applicable party would not have entered into the settlement agreement.

Article 8 specifies the types of reservations permitted by the Convention. A State Party to the Convention has the flexibility to formulate reservations, thereby excluding settlement agreements to which it is a party, or to which any governmental agencies or any person acting on behalf of a governmental agency is a party. A State may also declare that it shall apply the Convention only to the extent that the parties to the settlement agreement have agreed to the application of the Convention. Reservations can be made and withdrawn at any time. Currently, Belarus and Iran have made or declared reservations upon signature.<sup>21</sup>

### ***C Early Success***

On 7 August 2019, the Singapore Ministry of Law and UNCITRAL jointly organised the Singapore Convention Signing Ceremony and Conference, where the Singapore Convention on Mediation opened for signature. Approximately 1,500 delegates from more than 70 States attended the event.<sup>22</sup> 46 States signed the Convention at the ceremony, making it one of the most successful UNCITRAL conventions in terms of the number of signatories obtained on an opening day. These early signatories span the world from every corner, with diverse legal traditions, and all levels of development, and include the world's two largest economies (the United States and China), three of the four largest economies in Asia (China, India and South Korea), as well as five members of the Association of Southeast Asian Nations (Brunei, Laos, Malaysia, Philippines, and Singapore). Since the opening day, six more States have signed the Convention, bringing the total as of June 2020 to 52 State signatories (Armenia, Chad, Ecuador, Gabon, and Guinea-Bissau signed in

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21 This is the position as of 9 June 2020. See UNCITRAL, above n 3.

22 Singapore Ministry of Law, above n 2.



September 2019<sup>23</sup> and Rwanda in January 2020<sup>24</sup>). Then, by March 2020, 3 States had ratified the Convention: Singapore (25 February 2020), Fiji (25 February 2020), Qatar (12 March 2020).<sup>25</sup> According to art 14, the Convention would enter into force six months after the deposit of the third instrument of ratification, acceptance, approval or accession. The Singapore Convention therefore entered into force on 12 September 2020.<sup>26</sup>

***IV THE UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL MEDIATION AND INTERNATIONAL SETTLEMENT AGREEMENTS RESULTING FROM MEDIATION, 2018 (AMENDING THE MODEL LAW ON INTERNATIONAL COMMERCIAL CONCILIATION, 2002)***

The Singapore Convention on Mediation was prepared in conjunction with the revised UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements resulting from Mediation (2018). It seeks to provide States with flexibility in implementing the cross-border enforcement mechanism and achieving a comprehensive legal framework on mediation.

The 2018 Model Law is designed to facilitate the reform and modernisation of the laws on mediation procedure by States. It can be used as a stand-alone text for enactment of legislation on mediation, or where needed, as legislation for implementing the Singapore Convention.<sup>27</sup> The 2018 Model Law consists of 3 sections and 20 articles. The first section sets out the general principles, the second section places attention on the mediation procedure while incorporating the procedural aspects of the 2002 Model Law, and the third provides for international settlement agreements and includes provisions reflecting the Convention.

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23 UNCITRAL, above n 3.

24 Ibid. See also United Nations Information Service "Rwanda signs the United Nations 'Singapore Convention on Mediation'" (Press release, 29 January 2020) UNIS/L/290 <<http://www.unis.unvienna.org/unis/en/pressrels/2020/unisl290.html>> accessed 18 May 2020.

25 UNCITRAL, above n 3.

26 UNCITRAL, above n 1.

27 UNCITRAL, above n 5; see also Knieper & Montineri, above n 6.

Both the Convention and the 2018 Model Law are complementary in providing a comprehensive international legal framework on mediation. States are recommended to give favourable consideration to the Model Law when revising or adopting legislation relevant to mediation.<sup>28</sup>

## **V THE ROAD AHEAD**

The Singapore Convention on Mediation remains open for signature indefinitely at the United Nations Headquarters in New York. The Convention entered into force on 12 September 2020 for Singapore, Fiji and Qatar. For all other States or regional economic integration organisations that ratify, accept, approve or accede to the Convention thereafter, the Convention will enter into force in respect of that State or organisation six months after the relevant deposit. For example, for Saudi Arabia, which ratified the Convention on 5 May 2020, the Convention entered into force on 5 November 2020. With more States adopting the latest UNCITRAL instruments on international commercial mediation, namely the Singapore Convention and the 2018 Model Law, it is hoped that the use of mediation as an amicable and efficient means to settle international commercial disputes can be further promoted. Moreover, a rule-based, multilateral, open trading system that enhances access to justice can be reinforced.

Considering that the Convention has had a strong and significant kick-off, UNCITRAL is continuing its efforts in providing a comprehensive international mediation framework. The Secretariat is therefore assisting in the preparation of the following instruments:

- (i) the draft UNCITRAL Mediation Rules, which have been prepared with a view to update the UNCITRAL Conciliation Rules (1980) so as to reflect current practice and ensure consistency with the contents of the newly adopted Singapore Convention and the 2018 Model Law;<sup>29</sup>
- (ii) the draft UNCITRAL Notes on Mediation, which list and briefly describe matters relevant to mediation. It seeks to assist parties in better understanding of mediation, including the wide and flexible range of possible outcomes. The Notes have been prepared with a

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28 UNGA Res 73/199 (20 December 2018) UN doc A/RES/73/199.

29 UNGA *Settlement of commercial disputes International commercial mediation: draft UNCITRAL Mediation Rules Note by the Secretariat* UN doc A/CN.9/1026 (2020).

focus on international mediation and they are intended to be used in a general and universal manner by mediation practitioners and parties to a dispute;<sup>30</sup> and

- (iii) the guide to the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018 (amending the Model Law on International Commercial Conciliation, 2002).

UNCITRAL looks forward to continuing transparent and multilateral exchanges with input from State officials, academics, experts, and all other stakeholders on the continuous enhancement of the international mediation framework.

More information on the Singapore Convention on Mediation, the 2018 UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements resulting from Mediation, and other UNCITRAL instruments can be found at: [uncitral.un.org](http://uncitral.un.org).

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30 UNGA *Settlement of Commercial Disputes International Commercial Mediation: Draft UNCITRAL Notes on Mediation Note by the Secretariat* UN doc A/CN.9/1027 (2020).

