

**Committee:** Legal Committee (GA6)

**Issue:** Promoting the adoption of United Nations Convention on International Settlement Agreements Resulting from Mediation

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**Position:** Chair

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## **INTRODUCTION**

The “United Nations Convention on International Settlement Agreements Resulting from Mediation” or otherwise called the “Singapore Mediation Convention” was originally adopted by the United Nations General Assembly in December 2018 and it was signed on August 7<sup>th</sup>, 2019 by 46 countries at an official signing ceremony that took place in Singapore. By signing the Convention, these States have to ensure that international commercial settlement agreements are imposed. The Convention entered into force six months after its ratification by the third State (Qatar, 12 March, 2020), on September 12<sup>th</sup> 2020 and, as of March 12, 2020, 52 States have signed the Convention. The Convention aims to promote the use of mediation as an international commercial disputes resolution method on an international framework.

The Singapore Convention on Mediation emphasizes the stage of enforcement and allows the enforcing party to directly enforce the settlement agreement in the courts or by any other authority of the country in which the assets are located. However, many of the domestic legal systems of the countries are still unfamiliar with mediation and they do not have a clear mechanism to enforce the mediated settlement agreements. Thus, the absence of a clear mechanism for the enforcement of mediation creates many problems in jurisdiction and discourages Member States to use it as a method of Alternative Dispute Resolution.



*Image 1: Singapore Mediation Convention Signing Ceremony*

## **DEFINITION OF KEY TERMS**

### **Mediation**

A process that takes place outside the legal system, where different parties try to reach a harmonious settlement of their dispute with the help of a third person(s), called the mediator, who is not authorized to impose a solution upon the dispute of the parties.

### **Convention**

A formal and official agreement between States, country leaders, politicians on matters that involve them all.

### **Settlement Agreement**

An agreement between parties by which each party agrees to a resolution of the underlying dispute.

### **Commercial dispute resolution**

A commercial dispute is any dispute taking place between two business entities and they can happen for several reasons (breach of contract, intellectual property infringement, etc.). If two commercial entities have a dispute, more likely a form of Alternative Dispute Resolution (ADR), like arbitration and mediation, will lead to a solution for the two parties.

### **Arbitration/Arbitral Award:**

Until now an internationally recognized definition for “arbitral award” does not exist. However, it could be defined as a final and binding decision made by an arbitrator, whose role is to resolve disputes submitted to arbitration.

### **Model Law:**

Model Law on International Commercial Conciliation was adopted on 28 June, 2002 by the United Nations Commission on International Trade Law and was proposed by the United Nations General Assembly in Resolution A/RES/57/18 on 19 November, 2002.

## **BACKGROUND INFORMATION**

### **Ways of resolving commercial conflict:**

There are three main methods used to resolve commercial disputes: litigation, arbitration, and Alternative Dispute Resolution (ADR). Mediation is an alternative dispute resolution method.

#### **Litigation**

Litigation is a formal dispute resolution process that takes place in courts if no other contractual resolution can be found via other means. Generally, litigation is used to describe the procedures between two parties to enforce or defend legal rights.

There are three main stages of litigation: discovery, trial, and post-trial. Discovery is the official investigation of the facts of a lawsuit gathered before the trial. During the trial, the parties present the case to the jury or the judge. Then the court decides a solution that is beneficial for the offended party and decides if the contract was breached. Sometimes, because litigation does not always end up following a verdict, a post-trial follows, where the losing party will appeal the decision to a higher court.

It is important to note that litigation is a very time-consuming procedure that can last weeks or even years depending on how complex the case is and the level of collaboration between the parties. It is also an expensive procedure as huge amounts of funds could be spent on court procedures.

#### **Alternative Dispute Resolution (ADR)**

ADR provides a confidential and alternative method for resolving disputes, where the parties compromise by avoiding going to court. It is a process in which an unbiased third party helps the disputing parties come to an agreement. The main reason people use it is that they can avoid the expenses of using the courts and solicitors. Furthermore, coming to a solution before court procedures (litigation) helps maintain healthy commercial and personal relationships. The great advantage of ADR is that it provides four different methods for

resolving disputes: mediation, arbitration, conciliation and negotiation; the main and more common of them being arbitration and mediation.

ADR is usually more cost-effective and less time-consuming than litigation and going to court. Thus, as long as communication and collaboration between the parties have not broken down during the dispute, it should be considered as an effective method of resolving the dispute. However, if communication between the parties has broken down, then ADR should not be considered as an option for resolving disputes between the two parties. ADR is also helpful when it comes to maintaining a certain level of privacy compared to court procedures.

### Arbitration

Arbitration is a formal dispute resolution method as well and falls under the category of Alternative Dispute Resolution (ADR). Unlike litigation, it is a private procedure with high confidentiality unless any court proceedings occur in the next stages of resolving the dispute. More specifically, arbitration is a procedure where a dispute is submitted to one or more arbitrators after both of the parties agree to do so. The arbitrator is responsible for resolving the disputes and making a final decision on the dispute employing the arbitral award.

Arbitration is based on six principal characteristics. Firstly, it is consensual, meaning that there should be a mutual agreement between the parties. Secondly, the parties have the right to choose the arbitrator(s) together. Thirdly, arbitration is neutral, as the arbitrator is independent, ensuring an unbiased dispute resolution. This also means that the parties can choose the law that would be applied, the venue in which the arbitration is going to take place, and the language so that no party has an advantage or disadvantage when it comes to the procedure. Furthermore, arbitration is a confidential and private process. Additionally, the arbitration award is final, with no right of appeal, saving the parties valuable time and finance. Finally, the New York Convention supports the cross-border acceptance of an arbitration award, so that it can easily be enforced internationally.

However, even if arbitration is an effective dispute resolution method, it has many disadvantages. Firstly, the technical aspect of arbitration can result in numerous uncertainties and delays. Secondly, when the losing party does not comply with the arbitral award, enforcement relies on the State courts' help in which case confidentiality and transparency are lost. Thirdly, the fact that the arbitral award is so final means that a wrong decision cannot be corrected or changed. Moreover, arbitration is overall quite expensive if

we take into account the arbitration fees and the expert technical report. Lastly, the arbitration procedure may not be suitable when many different parties are involved in the dispute.

### Mediation

Mediation, as mentioned above, falls under the category of Alternative Dispute Resolution and it is a form of negotiation to try to reach a compromise that involves a third neutral party, the mediator. The mediator works with the parties together or separately and helps them overcome some of the objections they have and reach a point where they can agree on resolving their case. The mediator also tries to assist the conflicted parties by exploring the interests and issues that underlie their positions.

Mediation has many advantages, one of them being that anyone can mediate at any time, before going to court, after filing their case or even after the case has been decided by the jury. Mediation also ensures confidentiality and control. When going to court and having a jury or judge to decide upon the case, the parties lose control. On the contrary, with mediation, the parties have control over the process and the outcome of the case. Mediation is also non-confrontational, as it avoids the arising and escalation of disputes and ensures compromise between the parties, as it offers them an environment where they can communicate and collaborate. Last but not least, mediation, unlike litigation or arbitration, is a cost and time-efficient procedure.

However, being a dispute resolution that is in its initial stages, mediation has some disadvantages as well. One of them is that until now there is not a specific legal framework that supports the implementation and enforcement of mediation. Additionally, many Member States have not ratified the Singapore Mediation Convention and thus have not developed their domestic legal system yet to use mediation as a dispute resolution method. Another key disadvantage of mediation is that with mediation there is a chance that negotiations might fall through. This means that mediation would not be successful in solving the issue and going to court may be needed after all. This has many financial implications, as, while mediation is cost-effective, if going to courts is inevitable, then another cost would be added to the court expenses. Thus, collaboration and communication between the two parties should be established long before mediation is adopted to avoid possible court procedures.

## **United Nations Convention on International Settlement Agreements Resulting from Mediation**

The United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Mediation Convention) has as a primary goal the promotion of mediation as a viable and effective alternative to litigation for cross-border commercial disputes. This is mainly achieved by creating a process for enforcing a resulting settlement agreement. “The Singapore Convention applies only to mediated settlements of international commercial disputes, where the parties involved to the settlement agreement have their places of business in different States or the State in which the parties have their places of business is different from either involved States”.<sup>1</sup> This is a crucial part of the agreement and the obligations under which the settlement agreement is enforced.

The Convention intends to ensure that, with the use of mediation by the parties involved in international commercial disputes, any settlement agreement will be recognized and enforced by the courts of a signatory state, without the need to resort to further litigation and go to court.

A key benefit of the Convention is that it provides the parties involved with a procedure for the direct enforcement of a cross-border settlement agreement resulting from mediation. Thus, a settlement agreement is provided by the Convention that can be directly enforced by the courts of the State. As a result, more complicated procedures can be avoided. However, it should be noted that enforcing cross-border settlement agreements is a more complicated process and some more time may be needed.

Another key point of the Singapore Mediation Convention is that it only applies where a settlement agreement is reached after mediation and only to commercial disputes between international parties. Hence, employment, consumer, inheritance and family matters are excluded.

### **Issues that arise and why countries need to promote it**

Alternative Dispute Resolution (ADR) is a new way of resolving commercial disputes and it is a procedure that is still in its initial stages. Thus, many countries’ legal systems are not accustomed to its processes, and the ways they can implement it.

Mediation, being an ADR method, is still unfamiliar to most of the countries that have signed the Singapore Mediation Convention and they are not aware yet of how settlement

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<sup>1</sup> A/RES/73/198, <https://undocs.org/en/A/res/73/198>

agreements should be enforced. Currently, the Convention is more aspirational than operational, as it has been ratified only by four States: Fiji, Qatar, Saudi Arabia, and Singapore.

However, Member States should promote the use and the implementation of mediation as a method of resolving commercial disputes as it has many advantages (all of them mentioned in the section under “Mediation”). Mediation can benefit the domestic legal system of the countries that ratify it as it provides citizens with more innovative options when it comes to settling their agreements and solving their disputes. Mediation can provide cost and time effective solutions to disputes not only between States, but between businesses and citizens as well. It is also a flexible procedure and it can be used for cross-border enforcement, providing the parties with a suitable environment for communication and cooperation.

## **MAJOR COUNTRIES AND ORGANISATIONS INVOLVED**

### **Iran**

Iran, even though it is one of the countries that has signed the Singapore Mediation Convention, does not have fully legally recognized mediation as a means of dispute resolution. After cases filed in courts started increasing, the Iranian legislature realized that alternative dispute resolution methods are needed. It has now formalized the mediation process for criminal cases in the new criminal procedure code; however, there is a long way to fully establish mediation in the court procedure of the Iranian legal system.

### **Singapore**

Singapore was one of the first two countries that ratified the Convention on February 25th, 2020. It entered into force in the state on September 12<sup>th</sup>, 2020.

### **Fiji**

Fiji was the second member state to ratify the Convention, alongside Singapore. Similarly, the date of entry into force was September 12<sup>th</sup>.

### **Qatar**

Qatar was the third country that ratified the Convention on March 12th, 2020.

### **Saudi Arabia**

Saudi Arabia followed Qatar on the ratification, on May 12th, 2020, with its entry into force being November 5<sup>th</sup>.

These countries are the only ones that have accepted the Convention and are ready to implement it in their domestic legal systems. These countries are paving the way for the acceptance and the implementation of the Convention for the other countries that have already signed it.

Participant	Signature	Ratification, Acceptance(A), Approval(AA), Accession(a)
Afghanistan	7 Aug 2019	
Armenia	26 Sep 2019	
<u>Belarus</u>	7 Aug 2019	15 Jul 2020 AA
Benin	7 Aug 2019	
Brunei Darussalam	7 Aug 2019	
Chad	26 Sep 2019	
Chile	7 Aug 2019	
China	7 Aug 2019	
Colombia	7 Aug 2019	
Congo	7 Aug 2019	
Democratic Republic of the Congo	7 Aug 2019	
Ecuador	25 Sep 2019	
Eswatini	7 Aug 2019	
Fiji	7 Aug 2019	25 Feb 2020
Gabon	25 Sep 2019	
Georgia	7 Aug 2019	
Ghana	22 Jul 2020	
Grenada	7 Aug 2019	
Guinea-Bissau	26 Sep 2019	
Haiti	7 Aug 2019	
Honduras	7 Aug 2019	
India	7 Aug 2019	
<u>Iran (Islamic Republic of)</u>	7 Aug 2019	
Israel	7 Aug 2019	
Jamaica	7 Aug 2019	
Jordan	7 Aug 2019	
Kazakhstan	7 Aug 2019	
Lao People's Democratic Republic	7 Aug 2019	
Malaysia	7 Aug 2019	
Maldives	7 Aug 2019	
Mauritius	7 Aug 2019	
Montenegro	7 Aug 2019	
Nigeria	7 Aug 2019	
North Macedonia	7 Aug 2019	
Palau	7 Aug 2019	
Paraguay	7 Aug 2019	
Philippines	7 Aug 2019	
Qatar	7 Aug 2019	12 Mar 2020
Republic of Korea	7 Aug 2019	
Rwanda	28 Jan 2020	
Samoa	7 Aug 2019	
<u>Saudi Arabia</u>	7 Aug 2019	5 May 2020
Serbia	7 Aug 2019	
Sierra Leone	7 Aug 2019	
Singapore	7 Aug 2019	25 Feb 2020
Sri Lanka	7 Aug 2019	
Timor-Leste	7 Aug 2019	
Turkey	7 Aug 2019	
Uganda	7 Aug 2019	
Ukraine	7 Aug 2019	
United States of America	7 Aug 2019	
Uruguay	7 Aug 2019	
Venezuela (Bolivarian Republic of)	7 Aug 2019	

Image 2: The 52 countries that have signed the Convention

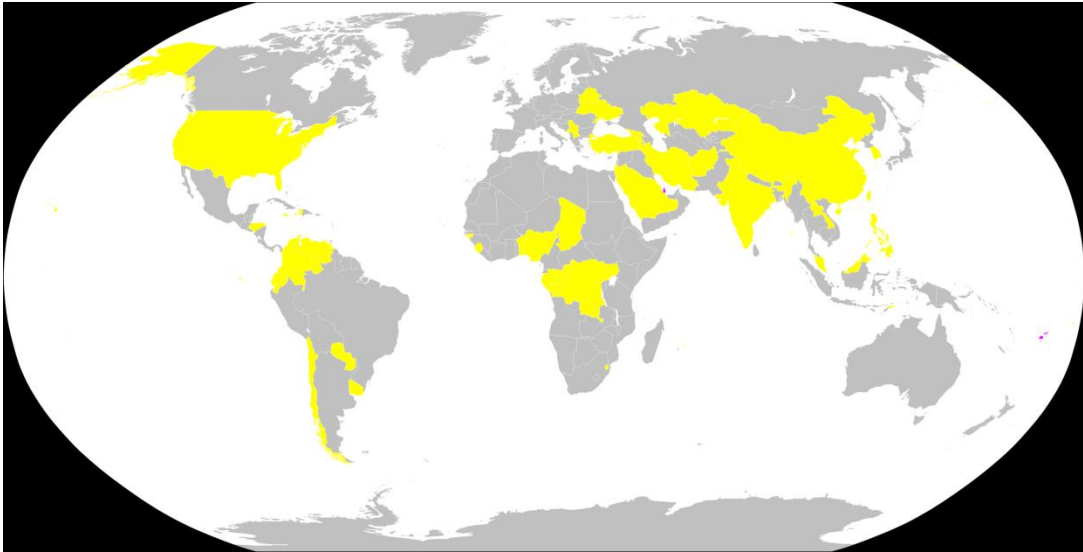


## European Union

The Directive 2008/52/EC of the European Parliament and the Council on Certain Aspects of Mediation in Civil and Commercial Matters (“EU Mediation Directive”) creates a framework for the cross-border enforcement of mediation. It tries to facilitate access to ADR and to promote the harmonious settlement of disputes. This is achieved by encouraging the use of mediation and by making sure a stable relationship between mediation and judicial proceedings exists.

## TIMELINE OF EVENTS

Date	Description of Event
10th June 1958	The New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”) is created
17 December 1996	The United Nations Commission on International Trade Law (UNCITRAL) is established by the General Assembly
May 2000	The European Council adopts Conclusions on alternative methods of settling disputes under civil and commercial law
21 May 2008	Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters is adopted by the European Parliament
December 2018	The “Singapore Mediation Convention” is originally adopted by the United Nations General Assembly
7 August 2019	The “Singapore Mediation Convention” is signed by 46 members
25 February 2020	Singapore and Fiji ratifies the Singapore Mediation Convention
12 March 2020	Qatar ratifies the Singapore Mediation Convention
5 May 2020	Saudi Arabia ratifies the Singapore Mediation Convention
12 September 2020	Singapore, Fiji and Qatar enter the Singapore Mediation Convention into force
5 November	Saudi Arabia bring the Singapore Mediation Convention into force



*Image 3: States that have signed the Singapore Convention (in yellow)*

## **UN INVOLVEMENT: RELEVANT RESOLUTIONS, TREATIES AND EVENTS**

### **United Nations Convention on International Settlement Agreements Resulting from Mediation (New York, 2018) (the "Singapore Convention on Mediation")**

The resolution on the United Nations Convention on International Settlement Agreements Resulting from Mediation ("Singapore Convention on Mediation"), was adopted by the General Assembly on December 20<sup>th</sup>, 2018 on the report of the Sixth Committee (A/73/496).

As stated in the resolution, the General Assembly recognizes “the value of mediation as a method of amicably settling disputes arising in the context of international commercial relations”<sup>2</sup> and is certain that the adoption of the convention that is acceptable to States with different legal, social and economic systems would enhance the current legal framework on international mediation and play a major role in the development of amicable relationships between the countries.

The resolution has adopted the United Nations Convention on International Settlement Agreements Resulting from Mediation and called upon the governments of the various States to become a signatory of the Convention.

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<sup>2</sup> “United Nations Convention on International Settlement Agreements Resulting from Mediation.” UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW, 2019, [https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/EN/Texts/UNCITRAL/Arbitration/mediation\\_convention\\_v1900316\\_eng.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/EN/Texts/UNCITRAL/Arbitration/mediation_convention_v1900316_eng.pdf).

Link to the resolution: [https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/EN/Texts/UNCITRAL/Arbitration/mediation\\_convention\\_v1900316\\_eng.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/EN/Texts/UNCITRAL/Arbitration/mediation_convention_v1900316_eng.pdf)

### **United Nations Commission on International Trade Law (UNCITRAL)**

The United Nations Commission on International Trade Law is the principal legal body of the United Nations system in the aspect of international trade law, which specializes in commercial law reform for over 50 years. The UNCITRAL was one of the co-hosts of the signing ceremony of the Convention in Singapore on August 7<sup>th</sup>, 2019. The UNCITRAL also considers the General Assembly resolutions related to its work, one of these being the General Assembly resolution on the Singapore Mediation Convention.

### **Resolution 57/18 on Model Law on International Commercial Conciliation of the United Nations Commission on International Trade Law**

The resolution on Model Law on International Commercial Conciliation of the United Nations Commission on International Trade Law was adopted by the General Assembly on November 19<sup>th</sup>, 2002 on the report of the Sixth Committee (A/57/562 and Corr.1).

The resolution recognizes the importance of implementing international trade methods for settling disputes, where the parties can request for a third person(s) to help them solve the dispute. They note that such methods, like mediation and conciliation, are used in commercial disputes as an alternative to litigation. Thus, it requests that the Model Law becomes known and available and that all States consider the implementation of the Model Law.

Link to the resolution: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N02/538/98/PDF/N0253898.pdf?OpenElement>

### **UN Standby Team of Senior Mediation Advisers**

The UN Standby Team of Senior Mediation Advisers is supervised by the UN Peacemaker, which is an online mediation support tool that was developed by the Mediation Support Unit (MSU) in the Policy and Mediation Division of the UN Department of Political and Peacebuilding Affairs (DPPA).

The Standby Team consists of world-leading mediation experts who are available to provide advice on issues arising in mediation and preventive diplomacy efforts. Some of them

include: “the design and management of dialogue processes, constitution-making, gender and inclusion issues, natural resources, power-sharing, and security arrangements.”<sup>3</sup>

## **PREVIOUS ATTEMPTS TO SOLVE THE ISSUE**

Because the Singapore Mediation Convention was signed only a year ago and the Alternative Dispute Resolution Methods, like mediation, are fairly new and there is no legal framework or system that can support it yet, little has been done in the past to solve the issue.

### **“Directive 2008/52/EC of the European Parliament and of the Council on Certain Aspects of Mediation in Civil and Commercial Matters”**

The Directive is one of the few things that has been created in the past that provides a framework for cross-border mediation. Its goals are to facilitate the access of parties and Member States to alternative dispute resolution methods like mediation, to promote the harmonious settlement of disputes and to ensure a balanced relationship between mediation and court proceedings.

It provides a framework with 30 key points and rules that the Member States should follow to successfully implement mediation in their legal systems. According to the Directive, to promote the use of mediation and to ensure that the parties can rely on a legal framework, it is essential to introduce framework legislation addressing key aspects of civil procedure. Even though the Directive was created for application in cross-border disputes, Member States are encouraged to apply it to domestic mediation processes.

Link to the Directive: <https://eur-lex.europa.eu/eli/dir/2008/52/oj>

### **United Nations Guidance for Effective Mediation**

The United Nations has developed guidance material to assist mediation actors. The Secretary-General developed the United Nations Guidance for Effective Mediation after it was requested from the General Assembly (A/RES/65/283 - <https://undocs.org/A/RES/65/283>). The Guidance is designed to take into consideration the

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<sup>3</sup> “Standby Team of Senior Mediation Advisers | UN Peacemaker.” United Nations, United Nations, [peacemaker.un.org/mediation-support/stand-by-team](http://peacemaker.un.org/mediation-support/stand-by-team).

experiences of Member States, regional, international and non-governmental organizations, women's and religious groups, the academic community and experts on mediation.

Link to the Guidance:

[https://peacemaker.un.org/sites/peacemaker.un.org/files/GuidanceEffectiveMediation\\_UN\\_DPA2012%28english%29\\_0.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/GuidanceEffectiveMediation_UN_DPA2012%28english%29_0.pdf)

## **POSSIBLE SOLUTIONS**

The most important thing that should be done first is for Member States to be informed about the advantages of Alternative Dispute Resolution methods, like mediation. They should acknowledge the advantages of mediation, why it needs to be a part of their legislation and how it can support their already existing domestic legal system. By acknowledging all these facts, they should realize that mediation is an optimum method for resolving commercial disputes that can replace the time-consuming process of going to court.

Another crucial factor is laying the groundwork through domestic legislation to integrate mediation into the domestic legal systems of each country. The countries that have already signed the Singapore Mediation Convention need to start building their legal framework to implement mediation and develop the framework in which mediation is going to be enforced.

There are two ways with which the countries that have not ratified the Convention yet can implement it into their legal domestic system. The first way is implementing the model mediation law, which countries that do not already have a system of mediation can choose. The main purpose of the Model Law is to help States reform their laws on mediation procedures. It provides them with a set of rules regarding the mediation process and aims to encourage and promote its use by Member States. Parties cannot be expected to mediate if mediation does not have a legal status that is based on confidentiality and the independence of the mediators. The second way is implementing an International System for enforcing settlement agreements reached after mediation on commercial matters. There are conventions for enforcing settlement agreements where there has not been any litigation or arbitration.

Overall, communication between States should be the main priority before enforcing or implementing mediation in the domestic legal systems. Member States should collaborate and establish effective communication to build and develop an effective framework for the

cross-border and international application mediation, so that it can better assist the parties taking place in resolving their disputes, and thus avoiding going to courts.

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