

INTRODUCTION

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1 It has been more than two decades since the modern mediation movement took hold in Singapore. In that time, mediation has taken root and branched out into various legal and social areas including, *inter alia*, community, family and commercial disputes.

2 In recent years, and in line with Singapore's aspirations of being a premier hub for legal services, there has also been an increasing focus on international commercial mediation. This manifested in 2014 with the Ministry of Law's Working Group Report on International Commercial Mediation, and the establishment of the Singapore International Mediation Centre (as a service provider of mediation services for international commercial disputes) and the Singapore International Mediation Institute (as a standards-setting and accreditation body for the mediation industry both domestically and internationally). The establishment of the Singapore International Dispute Resolution Academy (as a think-tank and thought leader for mediation) and the passing of the Mediation Act 2017¹ continued this trend.

3 This year will be the next milestone with the signing of the Convention on International Settlement Agreements Resulting from Mediation² ("Singapore Convention") in August 2019. This is significant because the Singapore Convention seeks to address one of the strongest criticisms of mediation, namely that mediated settlements are not easily enforceable internationally. Put simply, the Singapore Convention seeks to do for mediation what the Convention on the Recognition and

1 Act 1 of 2017.

2 GA Res 73/198, adopted at the United Nations General Assembly, 73rd Session (20 December 2018).

Enforcement of Foreign Arbitral Awards³ did for arbitration. To be sure, it will be some time before the effects of the Singapore Convention will be felt. This is in the nature of international instruments and is to be expected. It will take time for countries to sign on and implement the Convention such that a critical mass is attained. And of course, there will be the naysayers, some of whom will make constructive points, while others will speak from a place that fails to appreciate the nature of mediation and its fundamental differences compared to processes like arbitration and litigation; yet others will criticise from a place of self-interest. This is to be expected. Those who have championed mediation know that it is and continues to be a long game, and patience and persistence is in order.

4 For these reasons this edition on international commercial mediation is a significant and timely one. Not only is it an acknowledgment of how far mediation has come; it also provides an opportunity to bring to readers some of the developments in international commercial mediation. The contributions to this edition have been selected to represent a range of matters from the Singapore Convention to diverse aspects of mediation drawing from law, neuroscience, culture, and international mediation practice. Together the essays in this special edition reflect the developing multi- and inter-disciplinary nature of the mediation field. They are not intended for a readership of practising mediators only. Rather they are written also for lawyers who have to advise and represent their clients on and in mediation as well as for anyone seeking a starting point to further explore international commercial mediation.

5 There are four broad themes to the topics in these articles.

6 The first theme offers a big-picture perspective to mediation in Singapore and internationally. Lim's article on "International Commercial Mediation – The Singapore Model" provides valuable context and background to the development of mediation in Singapore and its transformation into an international commercial mediation hub. In it, she explores the thinking behind and curation of the mediation movement in Singapore, and provides a useful snapshot of the landscape of mediation in Singapore. Alexander draws on her international expertise and explores "Ten Trends in International Mediation". While it is important to understand the nuts and bolts of the subject matter, it is also important to understand its developmental trends so that we can be guided by past wisdom even as we predict and influence how the industry develops. Alexander's article looks at, *inter alia*, international legal frameworks for mediation, the professionalisation of mediation

3 330 UNTS 3 (10 June 1958; entry into force 7 June 1959).

and mediators, the increasing prevalence of online dispute resolution, and third-party funding of mediation. These first two articles provide the context within which all other articles in this edition are considered.

7 The second theme is the Singapore Convention. Chong and Steffek's article on the "Enforcement of International Settlement Agreements Resulting from Mediation under the Singapore Convention – Private International Law Issues in Perspective" examines, *inter alia*, the workings of the Singapore Convention, in particular, the requirements of the enforcement and refusal of enforcement of international mediated settlements under the Convention. Of note are the questions raised about the interaction between the Singapore Convention and aspects of private international law. This analysis is important from an academic and practice perspective. In addition, we considered it important to provide an insider's view on the Singapore Convention. McCormick and Ong's "Through the Looking Glass: An Insider's Perspective into the Making of the Singapore Convention on Mediation" and Morris-Sharma's "Constructing the Convention on Mediation: The Chairperson's Perspective" provide these perspectives. The former presents the perspective of two delegates participating in the United Nations Commission on International Trade Law Working Group sessions while the latter provides the perspective of the chair who had to skilfully guide the sessions through various challenges to the Convention's final form. While both these articles cover similar ground, the difference in perspectives is instructive both historically and in terms of implementation of the Convention. Finally, Sim's article on "Conciliation of Investor-State Disputes, Arb-Con-Arb, and the Singapore Convention" considers the use of conciliation in conjunction with arbitration to resolve investor-State disputes and also examines the prospects of the Singapore Convention for conciliation.

8 The third theme focuses on two non-legal areas which are particularly important for mediators, parties and representatives in international commercial mediations: the impact of culture and neuroscience on managing mediation processes. International mediations inevitably involve the interaction of different cultures. Kowalski's "Mediating across Cultures: Some Practical Lessons" provides useful insights from an experienced international mediator on recognising and managing cross- and inter-cultural disputes. Peppered with illustrative case studies, this article discusses frameworks and provides tools that expand our understanding and abilities. In a similar way, Gibson's "The Impact of Brain Science on Conflict and Its Resolution" draws from the latest research and developments of neuroscience to provide insights on how to manage parties and design processes that increase the chances of resolution. While these two articles may seem out of place in a legal journal, they are no less relevant

than any article discussing the law because at a fundamental level, amicable dispute resolution is about dealing with people.

9 The fourth and final theme deals with non-Convention legal topics. It encompasses three articles that focus on topical aspects of mediation that are important whether within or without the context of the Singapore Convention. These will be of particular interest to legal practitioners who must deal with the practical aspects of mediation lawyering. Chua's "The Enforcement of International Mediated Settlements Without the Singapore Convention on Mediation" is significant because until the Singapore Convention gains traction, one still has to look at more conventional means of enforcing mediated settlements. Chua covers the range of enforcement methods from court orders to arbitration awards. Salehijam's article on "Mediation Clauses: Enforceability and Impact" explores the validity and effect of agreements to mediate, whether by way of a separate agreement or as a clause as part of a larger agreement. In this article, she explores the policy reasons in favour of enforcement, reasons for refusal of enforcement and remedies available in case of a breach. Quek-Anderson's "Piercing the Veil of Confidentiality in Mediation to Ensure Good Faith Participation – An Untenable Position?" examines the tension between maintaining confidentiality in mediation and requiring parties to act in good faith. With the goal of promoting both objectives, she looks at various approaches to confidentiality and considers the articulation of a good faith obligation and when breaches should be remedied.

10 We hope that the articles in this special edition on international commercial mediation will offer something for every reader. While other topics certainly could have been included, care has been taken to ensure a coverage that is broad and topical.
