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MEDIATION FOR SETTLING CLIMATE DISPUTES BETWEEN INDIVIDUALS AND STATES

Cross-border enforcement of mediated settlement agreements

Strategies to deal with climate litigation are still surrounded by uncertainties and challenges. Other than initiating legal or arbitral proceedings against the liable State, an interesting option for individuals having suffered climate-related human rights violations deriving from States' failures to comply with international climate duties could be to rely on mediation. In this regard, individuals and States (including, in particular, state-owned companies) may conclude mediated settlement agreements to settle climate disputes. The cross-border enforcement of such agreements could therefore represent for victims of climate-related human rights breaches a further necessary step towards the effectiveness of access to justice and redress. Against this backdrop, this paper aims to examine the European and international standards on the cross-border enforcement of mediated settled agreements between individuals and States in the area of climate litigation. In particular, the outcome of this analysis is to determine whether and how this type of settled agreement resulting from mediation can be recognised and enforced around the world.

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I. Introduction

1 Mediation is becoming more and more attractive as an alternative dispute resolution mechanism for settling international commercial disputes in a cross-border scenario.[2] This trend is further accentuated both by the rising costs, excessive duration and procedural obstacles of

1 The views expressed in the paper are personal to the author and do not represent the official position of the Court of Justice of the European Union.

2 This is certainly reflected by the signing on 30 May 2025 of the Convention on the Establishment of the International Organization for Mediation ("IOMed") which entered into force on 29 August 2025. This marked an advancement in the field of international commercial mediation.

adversarial dispute resolution processes and the general "disenchantment"[3] of the international corporate community with arbitration.[4] So far, the institutional European and international framework on mediation in civil and commercial law can be summarised as follows.

2 On the one hand, Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters[5] applies at the European Union ("EU") level. This Directive aims to create a reliable and predictable cross-border legal framework for mediation in the EU by addressing, in particular, key aspects of civil procedure in order to promote better access to justice and guarantee a balanced relationship between judicial and extrajudicial dispute resolution methods which should alleviate the burden of overcrowded court systems.

3 On the other hand, the two more relevant international instruments are:

(a) the 2018 UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation[6] ("UNCITRAL Model Law on International Commercial Mediation"), which is designed to assist States in reforming and modernising their laws on mediation procedure;

(b) the United Nations Convention on International Settlement Agreements Resulting from Mediation[7] ("Singapore Convention") promoting the easy and fast cross-border enforcement of settlement agreements; and

(c) the 2025 Convention on the Establishment of the International Organization for Mediation[8] ("2025 IOMed Convention") providing a multilateral legal framework aimed at enhancing the accessibility, efficiency, and reliability of

3 See Stacie I Strong, "Beyond International Commercial Arbitration? The Promise of International Commercial Mediation" (2014) 45 *Washington University Journal of Law and Policy* 11 at 39.

4 See Anne-Karin Grill & Emanuela Martin, "The Impact of EU Law on International Commercial Mediation" in *International Arbitration and EU Law* (José R Mata Dona & Nikos Lavranos eds) (Edward Elgar, 2021) at para 17.01.

5 Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on Certain Aspects of Mediation in Civil and Commercial Matters [2008] OJ L 136/24.

6 (2018) (amending 2002 version) ("UNCITRAL Model Law on International Commercial Mediation").

7 (20 December 2018), 3360 UNTS 1 (entered into force 12 September 2020) ("Singapore Convention").

8 (30 May 2025) (entered into force 29 August 2025) ("IOMed Convention").

mediation in settling international disputes within a permanent intergovernmental dispute settlement organisation.

4 Against this backdrop, this paper will address the topical issue as to how mediated settlement agreements, more specifically mediated settlement agreements concluded between individuals and States, can be enforced cross border.

II. Cross-border enforcement of mediated settlement agreements

5 Ensuring an efficient framework for the cross-border enforcement of mediated settlement agreements is indeed crucial for encouraging mediation as an alternative dispute resolution mean used instead of litigation and arbitration. Bolstering enforceability of such agreements across borders promotes finality in settling cross-border disputes, as it reduces the possibility of parties pursuing duplicative litigation in other jurisdictions in order to enforce their agreements.

6 Currently, the following instruments govern the cross-border enforcement of mediated settled agreements at European and international level.

A. Brussels Ibis Regulation

7 Regulation No 1215/2012 ("Brussels Ibis Regulation")[9] applies at the EU level. In particular, Art 59 of the Brussels Ibis Regulation regulates the cross-border enforcement of court settlements falling under the scope of the Regulation, *ie*, according to the definition laid down in Art 2(b), those "approved by a court of a Member State or concluded before a court of a Member State in the course of proceedings".[10]

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9 Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (recast) [2012] OJ L 351 ("Brussels Ibis Regulation").

10 In particular, according to this definition:

> … both a settlement that has been concluded before a court, usually as a result of a judicial attempt to settle a case brought before the court, and the prior settlement between parties that is in accordance with domestic law formally approved by the court qualify as a court settlement. Evidently, the settlement must relate to a case that falls within the scope of the Regulation, meaning that it shall deal with a civil or commercial matter. …

See Xandra Kramer, "Art. 59" in *Commentary Brussels I bis Regulation* (Ulrich Magnus & Peter Mankowski eds) (Ottoschmidt, 2nd Ed, 2023) at para 4. For further analysis, see also Louise Merret, "Art. 2" in *Commentary Brussels I bis Regulation*

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8 Notably, the latter regime provides that a court settlement that is enforceable in the Member State of origin shall be enforceable in the other Member States without a declaration of enforceability (*exequatur*) being required;[11] enforcement may be refused only if this is manifestly contrary to public policy in the Member State addressed.[12]

9 This definition excludes from the scope of the Brussels Ibis Regulation out-of-court settlements, which are the most developed in the international arena to settle commercial disputes. One may therefore argue that the impact of the Brussels Ibis Regulation on the cross-border enforcement of mediated settled agreements across the EU is very limited, as it refers only to in-court settlement agreements.

B. Singapore Convention

10 The 2018 UN Singapore Convention is a multilateral treaty that provides a legal framework that facilitates the circulation of international mediated settlement agreements.

11 The rationale behind the drafting of the Convention was the acknowledgment that international settlements are more difficult to enforce than domestic ones; this difficulty was said to disincentivise the use of mediation for cross-border disputes.[13]

(Ulrich Magnus & Peter Mankowski eds) (Ottoschmidt, 2nd Ed, 2023) at paras 33–38; Marlene Brosch & Martina Mantovani, "Art. 2" in *Brussels I Bis. A Commentary on Regulation (EU) No 1215/2012* (Marta Requejo Isidro ed) (Edward Elgar, 2022) at paras 2.35–2.37.

11 For more details on this regime, see, *inter alia*, Marlene Brosch, "Art. 59" in *Brussels I Bis. A Commentary on Regulation (EU) No 1215/2012* (Marta Requejo Isidro ed) (Edward Elgar, 2022).

12 In this regard, see Art 58 of the Brussels Ibis Regulation as recalled by Art 59.

13 For an overview on this instrument see, *ex multis*, Timothy Schnabel, "The Singapore Convention on Mediation: A Framework for the Cross-Border Recognition and Enforcement of Mediated Settlements" (2018) 19(1) *Pepperdine Dispute Resolution Law Journal* 1 at 59; Christina G Hioureas, "The Singapore Convention on International Settlement Agreements Resulting from Mediation: A New Way Forward?" 37 *Berkeley Journal of International Law* 215 at 224; Elisabetta Silvestri, "The Singapore Convention on Mediated Settlement Agreements: A New String to the Bow of International Mediation?" (2019) *Access to Justice in Eastern Europe* 5 at 11; Itai Apter, "The Singapore Convention on Mediation: The Right Instrument at the Right Time" (2020) 114 *American Society of International Law Proceedings* 120 at 123; David Tan, "Prolegomena to the UN Convention on International Mediated Settlement Agreements Resulting from Mediation" (2022) 27(1) *Uniform Law Review* 37 at 63; Nadja Alexander & Shouyu Chong, "Leading the Way for the Recognition and Enforcement of International Mediated Settlement Agreements: The Singapore Convention on Mediation Act 2020" (2022) 34 SAcLJ 1 at 50; Nadja Alexander & Shouyu Chong, *The Singapore Convention on Mediation.*

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12 The Convention thus establishes an efficient framework where mediated settlement agreements can be enforced in a signatory State if the other party fails to comply with the settlement, obviating the need to start over in litigation or arbitration. This regime contributes to fostering confidence in the mediation process and to elevating the status of mediation to that of a reliable alternative dispute resolution tool,[14] which could facilitate the development of harmonious international economic relations between contracting parties.

13 So far, the Singapore Convention has 58 signatories (including the US and China) and 19 ratifications;[15] no EU Member State nor the EU[16] itself has yet signed the Convention.

14 As provided for in Art 1, the Convention applies to:

> … an agreement resulting from mediation and concluded in writing by parties to resolve a commercial dispute ("settlement agreement") which, at the time of its conclusion, is international in that:
>
> > (*a*) At least two parties to the settlement agreement have their places of business in different States; or
> >
> > (*b*) The State in which the parties to the settlement agreement have their places of business is different from either:
> >
> > > (i) The State in which a substantial part of the obligations under the settlement agreement is performed; or
> > >
> > > (ii) The State with which the subject matter of the settlement agreement is most closely connected.

15 The following elements, read in conjunction with the elements provided for by the UNCITRAL Model Law on International Commercial

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A Commentary (Kluwer, 2022); Guillermo Palao, *The Singapore Convention on Mediation: A Commentary on the United Nations Convention on International Settlement Agreements Resulting from Mediation* (Edward Elgar, 2022).

14 Shouyu Chong & Felix Steffek, "Enforcement of International Settlement Agreements Resulting from Mediation under the Singapore Convention: Private International Law Issues in Perspective" (2019) 31 SAcLJ 450 at 451.

15 This information reflects the status as at 18 November 2025.

16 "The EU's hesitancy in joining the Convention might be attributed to the fear of risk of abuse of process by one of the parties against the other when applying to the competent authority to give effect to the mediated settlement agreement": see Itai Apter & Roni Ben David, "Chronicles of the Singapore Convention – An Insider View", in *The Singapore Convention on Mediation: A Commentary on the United Nations Convention on International Settlement Agreements Resulting from Mediation* (Guillermo Palao ed) (Edward Elgar, 2022) at para 119.

Mediation, arise from the text of Art 1 for identifying agreements falling within the scope of the Convention.

16 Firstly, Art 1 requires that settlement agreements are reached in a mediation process. The Convention provides its own definition of mediation. According to Art 2(3), the term mediation refers indeed to:[17]

> … 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 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.

Based on this definition, the three constitutive elements of mediation are:[18] (a) a dispute; (b) the intention of the parties to seek an amicable settlement; and (c) an independent and impartial third-party neutral (the mediator)[19] that assists the parties to reach a consensual settlement, without imposing it.

17 Secondly, Art 1 states that the agreement must be concluded in writing and is completed in this respect by Art 4 which affirms that the agreement shall be signed by the parties and accompanied by evidence that the mediation took place.[20]

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17 Mediation is defined in a broad and flexible way. For further details, see Nuria González Martín, "Art. 2" in *The Singapore Convention on Mediation: A Commentary on the United Nations Convention on International Settlement Agreements Resulting from Mediation* (Guillermo Palao ed) (Edward Elgar, 2022) at paras 2.52–2.62.

18 See Pablo Cortés, "Art. 1" in *The Singapore Convention on Mediation: A Commentary on the United Nations Convention on International Settlement Agreements Resulting from Mediation* (Guillermo Palao ed) (Edward Elgar, 2022) at para 1.11.

19 It should be noted that a judge cannot act as a mediator for settling a dispute within the scope of the Singapore Convention in order to avoid situations in which he could pressure the parties; see Pablo Cortés, "Art. 1" in *The Singapore Convention on Mediation: A Commentary on the United Nations Convention on International Settlement Agreements Resulting from Mediation* (Guillermo Palao ed) (Edward Elgar, 2022) at para 1.11.

20 According to Art 4 of the Singapore Convention, evidence that mediation took place may result, for instance, from:

> …
>
> The mediator's signature on the settlement agreement;
>
> (ii) A document signed by the mediator indicating that the mediation was carried out;
>
> (iii) An attestation by the institution that administered the mediation; or
>
> (iv) In the absence of (i), (ii) or (iii), any other evidence acceptable to the competent authority.

In this regard, see Mark K Kawakami, "Art. 4", in *The Singapore Convention on Mediation: A Commentary on the United Nations Convention on International Settlement Agreements Resulting from Mediation* (Guillermo Palao ed) (Edward Elgar, 2022) at para 4.05.

18 Thirdly, according to Art 1, to be covered by the Singapore Convention, settlement agreements must be international at the time of their conclusion.[21] The time to establish whether a settlement is or is not international, is when the settlement is concluded. If an international element arises after the conclusion of the agreement (*eg*, because one of the parties changes its place of business), thus creating cross-border implications for its enforcement, this would not impact the national character of the settlement agreement originally concluded which prevents, as such, the application of the Singapore Convention.[22]

19 The internationality of the settlement agreement depends either on the locations of the parties at the time of settlement when each has its place of business in a different State, or on the presence of a foreign element in the agreement – the State where the obligations of the mediated settlement are to be performed or the State with which the subject matter of the mediated settlement is most closely connected – if both parties have their places of business in one State.[23]

20 Fourthly, it arises from Art 1 that agreements shall resolve a commercial dispute, *ie*, they shall be settlement agreements. The Singapore Convention does not provide a definition of commercial disputes, nor does it offer a list of an indicative set of transactions falling

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21 In this respect, the UNCITRAL Model Law on International Commercial Mediation in Arts 16(4) and (5) also gives relevant indications as to how to qualify the international element of settlement agreements:

> 4. A settlement agreement is "international" if, at the time of the conclusion of the settlement agreement:
>
> (*a*) At least two parties to the settlement agreement have their places of business in different States; or
>
> (*b*) The State in which the parties to the settlement agreement have their places of business is different from either:
>
> (i) The State in which a substantial part of the obligations under the settlement agreement is to be performed; or
>
> (ii) The State with which the subject matter of the settlement agreement is most closely connected.
>
> 5. For the purposes of paragraph 4:
>
> (*a*) If a party has more than one place of business, the relevant place of business is that which has the closest relationship to the dispute resolved by the settlement agreement, having regard to the circumstances known to, or contemplated by, the parties at the time of the conclusion of the settlement agreement;
>
> (*b*) If a party does not have a place of business, reference is to be made to the party's habitual residence.

22 Nadja Alexander & Shouyu Chong, *The Singapore Convention on Mediation. A Commentary* (Kluwer, 2022) at p 30.

23 See Pablo Cortés, "Art. 1" in *The Singapore Convention on Mediation: A Commentary on the United Nations Convention on International Settlement Agreements Resulting from Mediation* (Guillermo Palao ed) (Edward Elgar, 2022) at para 1.31.

within this category. Useful indications on the definition of commercial disputes can be found in the UNCITRAL Model Law on International Commercial Mediation that includes an open-ended list of relationships that might be considered commercial in nature. In particular, Art 1 of the Model Law affirms that:

> … the term 'commercial' should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; and carriage of goods or passengers by air, sea, rail or road.

21 One may therefore argue that the term "commercial" refers to "conflicts that arise between two businesses or traders which are operating within the remit of their profession".[24] In spite of some discussions raised during the negotiations of the Convention, commercial transactions are deemed to also cover investor-State matters.[25] Indeed, when looking at the definition set out in the Model Law on International Commercial Mediation, it clearly emerges that States may be parties to mediated settlement agreements under the Convention. Further, had the drafters of the Singapore Convention intended to exclude the coverage of investor-State dispute resolution outcomes, they would have explicitly provided for it.

22 Finally, Art 8 makes clear that the convention applies to investor-State disputes in the absence of a reservation to the contrary.

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24 See Pablo Cortés, "Art. 1" in *The Singapore Convention on Mediation: A Commentary on the United Nations Convention on International Settlement Agreements Resulting from Mediation* (Guillermo Palao ed) (Edward Elgar, 2022) at para 1.25.

25 Nadja Alexander & Shouyu Chong, *The Singapore Convention on Mediation. A Commentary* (Kluwer, 2022) at p 39; Nadja Alexander & Shouyu Chong, "The Singapore Convention on Mediation: Origins and Application to Investor-State Disputes" in *The Asian Turn in Foreign Investment* (Mahdev Mohan & Chester Brown eds) (Cambridge University Press, 2021) at p 340.

23 In particular, Art 8(1)(*a*) provides for a permissible reservation allowing parties to the Convention to declare that the Convention does not apply to international mediated settlement agreements to which a State is a party, or of which its government agencies or any person acting on behalf of its government agency is a party.[26]

24 It should be noted that the latter provision does not make any reference to state-owned companies, thus leaving open to question their inclusion in the reservation. As pointed out in academic literature, Art 8 is not meant to enable States to exempt state-owned companies from coverage under the Convention;[27] however, it cannot be excluded that some States might adopt a broad definition of government agency under national law which might include state-owned companies.[28]

25 Thus, in principle, state-owned companies may not exclude the Convention's applicability under the Art 8 reservation.

C. 2025 IOMed Convention

26 The 2025 IOMed Convention introduces a structured treaty-based institutional framework to promote the use of mediation for settling international disputes as a useful complement to existing international dispute settlement mechanisms.[29] Leveraging the unique advantages of mediation as a more flexible, cost-effective, convenient and well-implemented means, the Convention lays down the procedural background necessary for the conduct of mediation and offers a new

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26 This reservation may be made if parties to the Convention wish to carve out civil immunities for their respective government or government agencies, in so far as the Convention applies, possibly for national security or fundamental domestic public policy reasons, see Nadja Alexander & Shouyu Chong, *The Singapore Convention on Mediation. A Commentary* (Kluwer, 2022) at p 263.

27 Timothy Schnabel, "The Singapore Convention on Mediation: A Framework for the Cross-Border Recognition and Enforcement of Mediated Settlements" (2018) 19(1) *Pepperdine Dispute Resolution Law Journal* 1 at 56.

28 Ximena Bustamante & Gabriela Balseca, "Art. 8", in *The Singapore Convention on Mediation: A Commentary on the United Nations Convention on International Settlement Agreements Resulting from Mediation* (Guillermo Palao ed) (Edward Elgar, 2022) at para 8.16.

29 For an overview on the main features of the Convention, see Cristina Mariottini, "The Establishment of the International Organization for Mediation (IOMed)", *ConflictofLaws.net* (3 July 2025) <https://conflictoflaws.net/2025/the-establishment-of-the-international-organization-for-mediation-iomed/> (accessed 25 November 2025); Bajar Scharaw, "Thirty-three Countries sign Convention to Launch the International Organization for Mediation in Hong Kong", *CMS Law-Now* (4 June 2025) <https://cms-lawnow.com/en/ealerts/2025/06/thirty-three-countries-sign-convention-to-launch-the-international-organization-for-mediation-in-hong-kong> (accessed 25 November 2025).

option to all countries for party-owned and efficient resolution of international disputes.

27 The IOMed Convention currently includes 36 signatories (China is also a party to it); no EU Member State nor the EU itself has yet signed the Convention.

28 Notably, in accordance with Art 27, mediation services are available to solve, *inter alia*, commercial or investment disputes between a contracting State (a non-contracting State can also be involved if the parties wish to submit their dispute to the IOMed) and a national of another State submitted by parties' mutual consent before or after a dispute arises.

29 For the purposes of this Convention, as stated in Art 27(3), reference to a State includes a constituent subdivision or agency of the State. One may argue that, depending on the *in concreto* designation made to the IOMed, States might eventually endorse a broad definition of government agency including state-owned companies, although this will probably not be the general situation.

30 The legal effect and enforceability of mediated settlement agreements resulting from the IOMed-facilitated mediation service are also regulated under the Convention: any settlement agreement concluded between parties has a binding nature (Art 40) and can be enforced in the territory of any contracting State (Art 41).

III. Assessing impact of the Singapore Convention on climate litigation between individuals and States[30]

A. Vertical and horizontal climate litigation

31 States and companies are increasingly bound to comply with international, European and national rules on climate aimed at

30 Based on the premises discussed above, only the Singapore Convention will be taken into account in this section as long as the cross-border enforcement of mediated settlement agreements concluded between States (in particular, state-owned companies) and individuals in the field of climate litigation will likely not occur under the Brussels Ibis Regulation (out-of-court settlements which are the most common type of settlement agreements for solving climate disputes are indeed excluded from the scope of the Brussels Ibis Regulation) and IOMed Convention (depending on the designations made by different States to the IOMed, the Convention can in principle apply with respect to state-owned companies; however, this will hardly be the general case).

protecting the global environment. The frequency of climate suits[31] filed by individuals – generally supported by non-governmental organisations and activists[32] – against States and companies for failing to comply with such rules has increased in recent times.

32 On the one hand, vertical climate litigation concerns the relationship between private individuals and States, and addresses the question of sufficient state climate policy.[33] Plaintiffs generally file complaints against public authorities for non-compliance with international climate obligations (*eg*, the limits set out by the 2015 Paris Agreement[34] with respect to CO_2 emissions) in order to compel concrete action to cease the alleged climate violations and protect the environment.

33 These claims generally also have implications for the protection of human rights as long as the lack of compliance with climate obligations might entail actual damages to individuals. For example, not reducing CO_2 emissions might have temporary and permanent effects on people and the environment which lead, as such, to relevant human rights violations under the Convention for the Protection of Human Rights and

31 On the phenomenon of climate change litigation see, *inter alia*, *Climate Change Litigation: A Handbook* (Wolfgang Kahl & Marc-Philippe Weller eds) (Bloomsbury Publishing, 2021); Jacqueline Peel & Hari M Osofsky, *Climate Change Litigation* (Cambridge University Press, 2015); Hari M Osofsky, "The Continuing Importance of Climate Change Litigation" (2010) 1 *Climate Law* 3 at 29; *The Oxford Handbook of Climate Change and Society* (John S Dryzek, Richard B Norgaard & David Schlosberg eds) (Oxford Academic, 2011); *Routledge Handbook of Climate Justice* (Tahseen Jafry ed) (Routledge, 2018); Sandrine Maljean-Dubois, "Climate Change Litigation" (2018) *MPEiPro* 1 at 25; *Reports & Essays on Climate Change Litigation* (Elena D'Alessandro & Davide Castagno eds) (Università di Torino, 2024).

32 This is the so-called strategic litigation which can be described as the phenomenon of lawsuits brought by civil society actors (activists and non-governmental organisations) in order to promote legal, political or social change. For more details see, *ex multis*, Burkhard Hess, "Strategic Litigation: A New Phenomenon in Dispute Resolution?" (2022) 3 MPILux Working Paper Series 1 at 36; Ornella Feraci, *Contenzioso Climatico e Diritto Internazionale Private Dell'Unione Europea* (Giappichelli, 2025) 45 at 48; Jacqueline Peel & Rebekkah Markey-Towler, "Recipe for Success? Lessons for Strategic Climate Litigation from the Sharma, Neubauer, and Shell Cases" (2021) *German Law Journal* 1484 at 1498; Riccardo Luporini, "Strategic Litigation at the Domestic and International Levels as a Tool to Advance Climate Change Adaptation? Challenges and Prospects" (2023) *Yearbook of International Disaster Law* 202 at 236.

33 For instance, see the following cases: *Urgenda v Government of the Netherlands* (20 December 2019, Supreme Court of the Netherlands); *VZW Klimaatzaak v Kingdom of Belgium* (30 November 2023, Court of Appeal of Brussels); *Notre Affaire à Tous v France* (14 October 2021, Administrative Court of Paris); *Neubauer v Germany*, (24 March 2021, Federal Constitutional Court).

34 (12 December 2015), 3156 UNTS 79 (entered into force 4 November 2016).

Fundamental Freedoms[35] ("European Convention on Human Rights"), *eg*, violations of the right to life (Art 2) and of the right to respect for private and family life (Art 8).[36]

34 Based on the international principle of absolute state immunity[37] from foreign jurisdiction – which applies to national policies in the field of climate litigation – it should be noted that vertical climate suits cannot be brought other than in the *forum* State, meaning that they cannot be directed against other States responsible of climate violations.[38]

35 Horizontal climate litigation, meanwhile, deals with suits brought by individuals against companies for contributing to global climate change, *eg*, by producing CO_2 emissions.[39] This kind of litigation is linked to the development of new duties of care of companies to protect the climate.[40] These duties of care find their rationale, in particular, in environment, social and governance principles which relate to the role of corporations in protecting human rights and the environment with a view to preventing, mitigating and accounting for the human rights and

35 (4 November 1950), 213 UNTS 221 (entered into force 3 September 1953).

36 See in this regard the following cases rendered by European Court of Human Rights: *Klima Seniorinnen Schweiz v Switzerland* App no 53600/20 (9 April 2024, ECtHR); *Duarte Agostinho v Portugal* App no 39371/20 (9 April 2024, ECtHR).

37 In this regard, see Antonio Leandro, "State Immunity from Execution of Foreign Judgments: Making Sense of Jurisdictional Issues in the Requested State" (2023) 23 *Rivista di Diritto Internazionale* 655 at 672.

38 Ornella Feraci, *Contenzioso Climatico e Diritto Internazionale Privato Dell'Unione Europea* (Giappichelli, 2025) at p 61.

39 See, *eg*, *Milieudefensie v Royal Dutch Shell plc* (26 May 2021, District Court of The Hague; 12 November 2024, Court of Appeal of The Hague); *Luciano Lliuya v RWE AG* (15 December 2016, District Court of Essen; 28 May 2025, Higher Regional Court of Hamm); the Belgian pending case of *Hugues Falys v TotalEnergies*; and the Swiss pending case of *Asmania vs Holcim*.

40 These duties arise from several measures implemented at the international, European and domestic levels as follows:

(a) *International*: *Tripartite Declaration of Principles Concerning Multinational Enterprises* (International Labour Office, 6th Ed, 2022); *Organisation for Economic Co-operation and Development* ("OECD") *Guidelines on Multinational Enterprises* (OECD Publishing, 1976); United Nations Global Compact (United Nations, 2000); and *United Nations Guiding Principles on Business and Human Rights* (United Nations, 2011).

(b) *European*: Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on Corporate Sustainability Due Diligence and Amending Directive (EU) 2019/1937; and Regulation (EU) 2023/2859 [2024] OJ L 2024/1760.

(c) *Domestic*: Due Diligence Obligation Law (28 March 2017) (France); Child Labour Due Diligence Law (24 October 2019) (Netherlands); and Supply Chain Due Diligence Act (16 July 2021) (Germany).

environmental impacts at the level of the company, at the consolidated level of the group, and beyond the group in the supply chain.

36 A cross-border dimension often characterises horizontal climate litigation, as the elements of the dispute are generally fragmented across different States. Notably, the international element[41] can arise either from the fact that the conduct that gives rise to the climate damage happens in a place different from the one where the damage produces its effects (objective cross-border claim),[42] or from the circumstance that plaintiffs and defendants are located in two different States (subjective cross-border claim).[43]

37 Against this backdrop, it should be noted that States may be involved in horizontal climate litigation[44] as long as the conduct of certain companies, whose activities are influenced and controlled in different ways by States,[45] can under certain specific conditions set out by European[46] and international[47] law be attributed to them. It is indeed

41 Ornella Feraci, *Contenzioso Climatico e Diritto Internazionale Privato Dell'Unione Europea* (Giappichelli, 2025); Olivia Lopes Pegna, "La Nozione di Controversia "Transfrontaliera" nel Processo di Armonizzazione delle Norme di Procedura Civile degli Stati Membri dell'Unione Europea" (2018) *Rivista di Diritto Internazionale Privato e Processuale* 922 at 943.

42 See, *eg*, *Milieudefensie v Royal Dutch Shell plc* (26 May 2021, District Court of The Hague; 12 November 2024, Court of Appeal of The Hague).

43 See, *eg*, *Luciano Lliuya v RWE AG* (15 December 2016, District Court of Essen; 28 May 2025, Higher Regional Court of Hamm).

44 See, *eg*, the pending case of *Greenpeace Italy v ENI SpA*.

45 For instance, States can exercise different forms of economic influence over various multinational enterprises, *eg*, by owning some of the capital or by acquiring their equity stakes through sovereign wealth funds or through holding companies and development banks; see Deborah Russo, "The Attribution to States of the Conduct of Public Enterprises in the Fields of Investment and Human Rights Law" (2019) 29 *Italian Yearbook of International Law* 93 at 95.

46 In this regard, see the following judgments rendered by the Court of Justice of the European Union: *Foster v British Gas plc* Case C-188/89, EU:C:1990:313; *Farrell v Whitty* Case C-413/15, EU:C:2017:745. According to this settled case law, individuals may rely directly on provisions of a Directive that are unconditional and sufficiently precise not only against Member States and their organs in the strict sense, but also, in particular, against organisations which are subject to the authority or control of a public body and perform a task in the public interest and possess special powers beyond those which result from the normal rules applicable to relations between individuals. Such organisations or bodies can be distinguished from individuals and must be treated as comparable to the State, either because they are legal persons governed by public law that are part of the State in the broad sense, or because they are subject to the authority or control of a public body, or because they have been required, by such a body, to perform a task in the public interest and have been given, for that purpose, such special powers.

47 Important indications on the definition of state-owned companies at the international level come both from the general rules codified by the *International*

(cont'd on the next page)

widely accepted that state-owned companies, irrespective of their formal characterisation in the national legal orders, can be defined under European and international law as "public enterprises" based on an alleged State-business nexus.[48]

B. Mediation to settle climate disputes between individuals and States

38 Other than initiating legal or arbitral proceedings,[49] an interesting option for individuals having suffered human rights violations resulting from States or state-owned companies' failures to comply with climate duties could be to rely on mediation.

39 Mediation has indeed a lot to offer for settling climate disputes between individuals and States, such as:[50]

(a) flexibility, both in terms of time frames and procedure;

(b) confidentiality;

(c) affordability and cost-effectiveness, as it is generally less expensive than litigation; and

(d) the benefit of full party autonomy, from the initiation of the process up until its termination, ideally by an amicable solution crafted by the parties themselves to the specific needs of the climate dispute at hand.

Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts, UN GAOR, 56th Sess, Supp No 10 at p 43, UN Doc A/56/10 (2001) (in particular Arts 4, 5 and 8), and the *Guidelines on Corporate Governance of State-Owned Enterprises* (OECD Publishing, 2024).

48 For further details see Deborah Russo, *L'impresa come Organo o Agente di uno Stato nel Diritto Internazionale* (Editoriale Scientifica, 2023) at p 102.

49 In recent years, arbitration also gained a lot of momentum in the field of climate change-related disputes; see Kathrin Asschenfeldt & Lisa-Marie Ross, "The Role of International Commercial Arbitration in Mastering Climate Change Disputes: Initiatives, Advantages, and Challenges" (2024) 41(3) *Journal of International Arbitration* 317 at 344; Georges Affaki, "Arbitration in Climate Change Finance" in René Smits, *Sustainable Finance and Climate Change* (Edward Elgar, 2024) at p 291.

50 See Romesh Weeramantry, Brian Chang & Joel Sherard-Chow, "Conciliation and Mediation in Investor-State Dispute Settlement Provisions: A Quantitative and Qualitative Analysis" (2022) 38 *ICSID Review* 201 at 237 Christine Sim, "Conciliation of Investor-State Disputes, Arb-Con-Arb, and the Singapore Convention" (2019) 31 SAcLJ 670 at 712.

40 In the field of climate litigation, where case law is constantly evolving, parties should also consider the advantage (mainly for States) or disadvantage (mainly for individuals) of concluding a mediated settlement agreement in that it may prevent the establishment of settled case law that may have important implications for future similar disputes involving the same parties.

C. Cross-border enforcement of settlement agreements mediated between individuals and States

41 A relevant issue that arises with respect to settlement agreements mediated between individuals and States in climate litigation deals with their eventual cross-border enforcement.

42 On the one hand, the enforcement of mediated settlement agreements in vertical climate disputes between individuals and States would be purely domestic, as it would be carried out only in the State that participated in the mediation process.

43 Indeed, it would not be possible to seek enforcement of such agreements in *another* State as it is the State responsible for climate violations that should implement policy measures for complying with *its* climate duties and it is in *that* State that the goods to be seized are located.

44 For instance, a mediated settlement agreement between the Belgian State and individuals, stating that Belgium did not comply with its positive obligation to take reasonable and suitable measures to reduce CO_2 emissions and violated the individuals' human rights, would be enforced in the Belgian territory where climate policy measures should be implemented and the goods to be seized are located.

45 One may theoretically wonder about an actual interest in seeking cross-border enforcement of settlement agreements mediated between individuals and States in climate litigation cases where the State's goods subject to enforcement are covered by State immunity. Individuals may then consider seizing State properties not covered by State immunity in another State.

46 Nevertheless, this situation is only theoretical, as it presupposes the conclusion of a mediated settlement agreement between an individual and a State, which declares a third State that was not involved in the mediation process responsible for climate violations; this is contrary to the international principle of absolute State immunity from foreign

jurisdiction, which applies to national policies in the field of climate litigation.[51]

47 On the other hand, cross-border enforcement of settlement agreements mediated between individuals and States in horizontal climate disputes could become relevant when referring to state-owned companies.

48 As referred to above,[52] an international element usually exists in horizontal climate disputes. Enforcing in a foreign country an agreement settled with a state-owned company could therefore represent for victims of climate-human rights breaches a further necessary step towards the effectiveness of access to justice and redress.

D. Potential benefits of the Singapore Convention

49 Under these circumstances, one may wonder about the application of the rules of the Singapore Convention if victims of climate-related human rights violations seek enforcement of settlement agreements mediated with state-owned companies in other countries.

50 For instance,[53] imagine the case of an Italian state-owned company operating in Madagascar through a subsidiary which benefits from the funding of two state-owned development banks located in Finland and Belgium.

51 In this scenario, some associations have accused the Italian state-owned company of not complying with either the climate commitments provided for in the 2015 Paris Agreement (imposed on the Italian State both as signatory to the agreement and as a part of the EU) or the 1976 *Organisation for Economic Co-operation and Development* ("OECD") *Guidelines for Multinational Corporations*.

52 This conduct violated numerous human rights of individuals affected by the company's activities, resulting in temporary and permanent effects on people, livelihoods and the environment.

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51 See para 34.

52 See para 36.

53 This example takes inspiration from the facts at hand in the petition filed before the OECD Italian Contact Point by some associations against the Italian company JTF Tozzi Green for its activities in Madagascar with the support of Belgian and Finnish state-owned development banks; see <https://www.oecdwatch.org/complaint/actionaid-italy-et-al-vs-jtf-tozzi-green/> (accessed 26 November 2025).

53 The associations requested for the company to cease its operations in Madagascar and provide compensation for damages arising from the alleged violations of human rights.

54 Using the OECD's mediation services, the Italian state-owned company and the associations then concluded an agreement before the Italian OECD National Contact Point. According to the agreement, the company was required to cease its operations in Madagascar and provide compensation for damages caused to the individuals.

55 In this regard, one may wonder about the possible application of the rules of the Singapore Convention on mediation if the parties chose to seek enforcement of the mediated settlement agreement in a country other than Italy (where the mediated settlement agreement had been concluded) *eg*, Finland or Belgium, where some assets of the subsidiary might be located, or Madagascar, where some of the installations of the company are based.

56 The Singapore Convention would, *ratione materiae*, in principle, be applicable to the above-mentioned case: this would grant mediated settlement agreements direct enforceability in other countries (*eg*, Belgium, Finland and Madagascar) without the parties having to go through a procedure before national courts. Nevertheless, Belgium and Finland did not ratify such an instrument, and Madagascar did not even sign it. Hence, this certainly prevents its use in these countries.

IV. Concluding remarks

57 The main obstacle to overcome in order to give full effect to the Singapore Convention is the low number of ratifying countries. If more countries sign and ratify it, the Convention could reach its full potential and become a pivotal instrument in the field of cross-border enforcement of mediated settled agreements worldwide in the same way that the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards[54] became a pivotal instrument in the field of arbitration.

58 Once this obstacle has been overcome, the Singapore Convention could be used for obtaining cross-border enforcement of mediated settlement agreements resolving disputes between individuals and state-owned companies. Its impact could potentially be even greater

54 (10 June 1958), 330 UNTS 3 (entered into force 7 June 1959).

with respect to private climate disputes given that litigation between individuals and companies is becoming more and more common.[55]

55 This contribution finds its origin in the presentation "Mediation for Settling Climate Disputes between Individuals and States: The Issue of Cross-Border Enforcement of Mediated Settlement Agreements" made at the conference organised by the International Law Association Committee on Alternate Dispute Resolution in International Law "Shaping Appropriate ADR in International Law" – 7 April 2025, Florence, Italy.