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THE SINGAPORE CONVENTION ON INTERNATIONAL MEDIATED SETTLEMENT AGREEMENTS: A NEW STATUS FOR PARTY AUTONOMY IN THE NON-ADJUDICATIVE PROCESS

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PART I

Introductory Remarks

Adopted on 20 December 2018 in the framework of the United Nations Commission on International Trade Law (UNCITRAL) Working Group II (Dispute Settlement) ('WGII') and opened for signature on 7 August 2019, the United Nations Convention on International Settlement Agreements Resulting from Mediation (the 'Singapore Convention' or 'Convention') is a multilateral treaty de-

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signed to offer a uniform and efficient framework for the enforcement and invocation of international settlement agreements resulting from mediation. ([1])

In keeping with the general mandate of UNCITRAL to further the progressive harmonization and unification of the law of international trade, ([2]) the Convention is intended to facilitate international trade and commerce in particular by enabling disputing parties to enforce and invoke mediated settlement agreements across borders. Notably, the Convention applies to international mediated settlement agreements ('IMSAs') concluded by parties to resolve a commercial dispute and is designed to set up a system in accord-

([1]) At its forty-seventh session in July 2014, the UNCITRAL Commission agreed that the Working Group II (Dispute Settlement) should consider the issue of enforcement of international settlement agreements resulting from conciliation proceedings, and report to the Commission at its forty-eighth session, in 2015, on the feasibility and possible form of work in that area. In July 2015, the Commission took note of the consideration of the topic by WGII, and agreed that WGII should commence work to identify relevant issues and develop possible solutions, including the preparation of a convention, model provisions, or guidance texts. The Commission also agreed that the mandate of WGII with respect to the topic should be broad, to take into account the various approaches and concerns. Eighty-five Member States and thirty-five non-governmental organisations participated in the deliberations, which took place over six sessions. The Commission expressed support for WGII to finalise its work by preparing: a draft convention on international settlement agreements resulting from mediation, as well as a draft amendment to the UNCITRAL Model Law on International Commercial Conciliation (2002). The Singapore Convention was finalised at the fifty-first UNCITRAL Commission session, in July 2018. See the Resolution adopted by the UN General Assembly on 20 December 2018 [on the report of the Sixth Committee (A/73/496)], accessible at <https://daccess-ods.un.org/tmp/7313504.21905518.html>. More information on the history of the Convention is available at <www.singaporeconvention.org/convention/about>. The amended Model Law (the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (2018)) was adopted at the same session. On the Model Law see, esp., I. BANTEKAS, P. ORTOLANI, S. ALI, M.A. GOMEZ, M. POLKINGHORNE, *UNCITRAL Model Law on International Commercial Arbitration: A Commentary*, Cambridge University Press, 2020.

([2]) See UNITED NATIONS GENERAL ASSEMBLY, Resolution 2205 (XXI) of 17 December 1966. Section I.

ance to which commercial IMSAs are enforceable without going through the cumbersome and potentially uncertain conversion of the settlement into a judgment or an award.

Forty-six States, including the United States of America and the People's Republic of China, signed the Convention on the very day it opened for signature. Another twenty-four States attended the signing ceremony in Singapore to convey their support for the Convention. On 25 February 2020, Singapore and Fiji became the first two States to deposit their respective instruments of ratification of the Convention at the United Nations Headquarters in New York. Subsequently to the deposition of the third instrument of ratification by Qatar on 12 March 2020, the Convention entered into force on 12 September 2020. As of 30 November 2021, the Convention counts fifty-five signatories, eight of which are also Parties to the Convention. ([3])

The notion that mediation is gaining momentum in the cross-border setting seems to find strength and support also in the responses that international institutions offering mediation services have put in place and the services that they are in the process of offering in the aftermath of the adoption of the Convention. For instance, the London Court of International Arbitration (LCIA) has recently modernized its LCIA Mediation Rules, which became effective on 1 October 2020. ([4]) Similarly, on 18 May 2020, the Singapore International Mediation Centre (SIMC) launched the SIMC

([3]) The full list of signatories and Parties to the Convention is available at <www.singaporeconvention.org/jurisdictions>. It is worth to remind that, by signing the Singapore Convention, a State merely expresses its intention to comply with the treaty, which is not binding in itself. Only once it is ratified, accepted, acceded to, approved under the State's internal procedure, does the treaty formally become binding on that State. See Article 14 of the Convention and Articles 2 and 11 et seq, of the U.N. Convention on the Law of Treaties, done at Vienna on 23 May 1969 and entered into force on 27 January 1980, UNITED NATIONS, *Treaty Series*, vol. 1155, 331.

([4]) <https://www.acerislaw.com/wp-content/uploads/2020/12/LCIA-Mediation-Rules-Effective-1-October-2020.pdf>.

COVID-19 Protocol, offering expedited mediation in response to the pressing need to resolve cross-border disputes in a swift and inexpensive manner, in light of the COVID-19 pandemic. ([5])

Against this background, this article offers an overview of the critical provisions and underlying rationale of the newly adopted Convention, before delving into the relationship of the Singapore Convention with existing treaties on the cross-border circulation of judgments and awards in civil and commercial matters. Focus will be placed, in particular, on illustrating the complementarity of these instruments as well as on demonstrating how, with the adoption and entry into force of the Singapore Convention, commercial IMSAs are warranted a new formal status in the realm of cross-border dispute resolution systems.

PART II

The Singapore Convention: Core Features

By laying down the framework for the enforcement of IMSAs, the Singapore Convention may be construed, to some extent, as parallel and complementary to the 1958 UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards ('New York Convention') ([6]) and the 2005 HCCH Convention on Choice of Courts Agreements ('Choice of Court Convention'). ([7]) The Singa-

([5]) <https://www.acerislaw.com/wp-content/uploads/2020/12/2020-Press-Release-SIMC-COVID-19-Protocol.pdf>.

([6]) See, esp., G.B. BORN, *International Commercial Arbitration*, 2nd ed., Wolters Kluwer, 2014; R. WOLFF, *New York Convention: Article-by-Article Commentary*, 2nd ed., Verlag C.H. Beck, 2019.

([7]) T. HARTLEY, M. DOGAUCHI, *Convention of 30 June 2005 on Choice of Court Agreements. Explanatory Report*, in *Proceedings of the Twentieth Session (2005)*, Tome III, *Choice of Court Agreements*, Intersentia, 2010; R.A. BRAND, P.M. HERRUP, *The 2005 Hague Convention on Choice of Court Agreements: Commentary and Documents*, Cambridge University Press, 2008.

pore Convention, the New York Convention and the Choice of Court Convention are, in fact, all premised on party autonomy, the full effectiveness of which they pursue as their ultimate goal. ([8])

1. *Scope of Application.* – The Singapore Convention unifies, in particular, the framework for enforcing mediated settlement agreements connected to international commercial matters. In accordance with Article 1(1), the Convention applies to settlement agreements 'resulting from mediation and concluded in writing by parties to resolve a commercial dispute,' which are 'international' in nature at the time of their conclusion.

The requirement that the settlement agreement be 'international' is satisfied provided at least two parties to the settlement agreement have their places of business in different States or, alternatively, 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. However, unlike what occurs with arbitration in accordance with the New York Convention, under the Singapore Convention the seat of mediation is irrelevant: it follows that no single jurisdiction has the power to vacate or set aside a commercial IMSA under the Convention.

As set out at Article 1(2), the material scope of application of the Convention is limited to commercial disputes: consequently, the

([8]) In this respect, it should however be noted that, unlike in choice of court instruments – where party autonomy plays a role solely within the limits of the designation of a court as the one having jurisdiction to rule on certain disputes that may arise in connection with a given relationship –, under the Singapore Convention and the New York Convention party autonomy permeates the whole procedure and, to the extent that the interface with national procedure permits it, its outcome. See C.M. MARIOTTINI, B. HESS, *The Notion of 'Arbitral Award'*, in F. FERRARI, F. ROSENFELD (eds.), *Autonomous versus Domestic Concepts under the New York Convention*, Kluwer Law International, 2020, 27-54, esp. 54.

Convention does not apply to settlement agreements arising out of transactions for family, personal or household purposes or relating to family, inheritance or employment law, nor to court-approved settlement agreements enforceable as a court judgment or arbitral awards.

Finally, within the meaning of Article 2(3) the term 'mediation' is defined as '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.'

2. *The Obligation to Enforce an IMSA.* – Article 3 embodies the main obligation established under the Convention, i.e., that Contracting Parties enforce (para. 1) and recognize (para. 2) ([9]) IMSAs that fall within the scope of the Convention. Minimal procedural requirements for the enforcement of a commercial IMSA are then set out at Article 4. Such requirements, which are akin to the formalities that govern court enforcement procedures, are designed to satisfy the need for some form of verification, in light of the fact that the settlement agreement is going to be enforced without any scrutiny by a court. Such requirements, although minimal, are meant to ensure that the settlement agreement has been reached in a legal framework characterized by general fairness and cognition by

([9]) The provision avoids using the terms 'recognition' or 'recognize': the inclusion of such terms, as commonly understood in private international law, was opposed by some delegations that argued that the notion of *res judicata* should be used only in regards to matters stemming from acts of States, e.g., court judgments. See WORKING GROUP II, SIXTY-FOURTH SESSION, 4 February 2016, audio-recording available at <www.uncitral.org/uncitral/audio/meetings.jsp>, at 10.00-13.00. See also N. ROSNER, *The New UNCITRAL Instruments on International Commercial Settlement Agreements Resulting from Mediation – An Insider's View*, in *22(4) Nederlands-Vlaams tijdschrift voor mediation en conflict management* 30, 33 (2018).

the parties to the dispute of the consequences of their actions. It follows that agreements negotiated outside of mediation do not fall within the scope of the Convention.

Against this backdrop, it should be noted that the requirement that a mediator participate in the process is particularly flexible, as evidenced by the broad notion of mediator under Article 2(3). In particular, the requirement that a mediated settlement be reached with the assistance of a third party who lacked the authority to impose a solution (the mediator) does not define the level and depth of involvement of such party: for instance, such requirement may be deemed to be satisfied also in case the mediator assists the parties overcome a contentious aspect and then leaves the parties to sort out the remaining issues arisen as between them. ([10])

Furthermore, while the participation of a mediator in the dispute resolution process is paramount in the general scheme of the Singapore Convention and it amounts to the fundamental (albeit broadly framed) element on which the benefits that arise from the Convention are premised, additional flexibility in this respect is brought forth by the 2018 UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation which, in defining its scope of application, opens to the possibility that a State may consider (subject to the necessary adjustments of the relevant articles) enacting the Model Law to apply to agreements settling a dispute, irrespective of whether they resulted from mediation. ([11])

([10]) T. SCHNABEL, *The Singapore Convention on Mediation: A Framework for the Cross-Border Recognition and Enforcement of Mediated Settlements*, in *19(1) Pepperdine. Disp. Resol. L.J.* 1, 17 (2019); N. ALEXANDER, S. CHONG, *The Singapore Convention on Mediation. A Commentary*, Wolters Kluwer, 2019, 79.

([11]) See Section 3, note 5, 2018 UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation. For a comment on this Section of the 2018 Model Law see, in part., I. BANTEKAS, P. ORTOLANI, S. ALI, M.A. GOMEZ, and M. POLKINGHORNE, *UNCITRAL Model Law on International Commercial Arbitration: A Commentary*, Cambridge University Press, 2020.

The requirements under Article 4 are exclusive, in the sense that additional requirements (e.g., notarization) may not be imposed either by Contracting States under their national law or by the court seised with a request for enforcement. Notably, a party seeking to enforce a settlement agreement must produce to the competent authority the settlement agreement signed by the parties and evidence that the settlement agreement resulted from mediation. Such evidentiary requirement may be satisfied, for instance, by means of the mediator's signature on the settlement agreement; by a document signed by the mediator indicating that the mediation was carried out; via an attestation by the institution that administered the mediation; or, absent these evidentiary means, by any other evidence acceptable to the competent authority.

A translation of the settlement agreement or 'any necessary document in order to verify that the requirements of the Convention have been complied with' may be requested by the competent national court (Article 4(3) and (4) of the Convention). Also, all national enforcement courts 'shall act expeditiously' when considering the request for relief (Article 4(5) of the Convention).

3. *Grounds for Refusal of Enforcement.* – Provided the IMSA satisfies the requirements at Article 4, it is deemed to be binding on the parties and eligible for enforcement, in accordance with Article 3, unless an interested party succeeds in rebutting this presumption. Article 5 lays down the limited defences that may be invoked against enforcement. Such defences may be grouped in two main categories: defences that may be invoked and proven by a party (Article 5(1)) and defences that may be taken into account by the competent court on its own motion (Article 5(2)).

Defences relating to incapacity (Article 5(1)(a)), illegality (Article 5(1)(b)(i)), lack of finality and unenforceability (Article 5(1)(b)(ii) and (iii)), satisfaction (Article 5(1)(c)), conflict with the public policy of the State addressed (Article 5(2)(a)) and eligibility

of the matter for settlement (Article 5(2)(b)) are customary in the area of enforcement law. However, more remarkable and less traditional defences are those found in Article 5(1) paragraphs (d), (e) and (f).

Notably, Article 5(1)(d) of the Convention permits an objection on the grounds that 'granting relief would be contrary to the terms of the settlement agreement': consequently, in line with the underlying principle of enhancing and implementing party autonomy, this provision allows commercial parties to expressly opt-out of the Singapore Convention. Furthermore, mirroring – but also partly departing from – the approach adopted internationally in respect of arbitral awards where allegations of impropriety or bias by the arbitrator called the validity of an award into question, Article 5(1)(e) of the Singapore Convention provides for a defence where there was a serious breach by the mediator of standards applicable to the mediator or the mediation without which breach that party would not have entered into the settlement agreement.

On similar premises, Article 5(1)(f) provides for a defence where there was a failure by the mediator to disclose to the parties circumstances that raise justifiable doubts as to the mediator's impartiality or independence and such failure to disclose had a material impact or undue influence on a party without which failure that party would not have entered into the settlement agreement.

While these provisions partly take inspiration from Article V of the New York Convention, they also rely on and underscore the fundamental distinction between mediation and arbitration whereby a mediator facilitates the parties to achieve their consensual solution whereas an arbitrator decides, with binding character, the issues between parties. Notably, in this framework the Singapore Convention takes into account that, while bias, improper behaviour, or a non-disclosed personal interest may affect an arbitrator's decision to the detriment of one party, such behaviour by a mediator can only be relevant provided it vitiates a party's consent to a settlement. Article 5(1)(e), in particular, demands cumulative proof

by the party seeking to recede from the IMSA that a serious breach by the mediator of standards applicable to the mediator or the mediation occurred, without which breach that party would not have entered into the settlement agreement.

Conversely, to succeed under Article 5(1)(f) the party has to satisfy – again, by means of cumulative requirements – the court that there was a failure by the mediator to disclose to the parties circumstances that raise justifiable doubts as to the mediator's impartiality or independence and such failure to disclose had a material impact or undue influence on a party without which failure that party would not have entered into the settlement agreement. By relying on 'justifiable' doubts, the provision rules out arguments based on a subjective assessment by the party seeking to raise it and, by mandating that the failure to disclose have 'material' impact impact or undue influence on the party, the provision denies any relevance to trivial effects.

4. *Modelling the Application of the Convention.* – Pursuant to Article 8 of the Singapore Convention, Contracting Parties have the possibility to make two reservations, i.e., that a State: (a) 'shall not apply this Convention to 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, to the extent specified in the declaration;' and/or (b) 'shall apply this Convention only to the extent that the parties to the settlement agreement have agreed to the application of the Convention.' No other reservations are permitted, except the two specified above. States are allowed to make reservations at any time, i.e., upon the signature, the ratification or after the ratification of the Singapore Convention. ([12])

([12]) Belarus, Iran and Saudi Arabia have made reservations under Article 8 of the Singapore Convention (the Convention status as of December 2021 is available at <https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements/status>).

Quite interestingly – and to a certain degree in contrast with the underlying notion of enhancing party autonomy – the opportunity to influence, to some extent, the application of the Convention is limited to Contracting Parties. In fact, while at Article 8(b) the Convention warrants Contracting Parties the opportunity to declare that they will subject the application of the Singapore Convention to the parties' agreement that their IMSA be regulated and ultimately circulate in accordance with the Convention, no comparable authority is granted to the parties to the dispute themselves. Ultimately – unlike, for example, what is established under Article 6 of the 1980 Vienna Convention on Contracts for the International Sale of Goods (CISG) – the Singapore Convention does not give the parties the possibility to exclude the application of the Convention or derogate from, or vary the effect of, any of its provisions. ([13])

Finally, departing from the 1958 New York Convention, the 2005 HCCH Choice of Court Convention and the 2019 HCCH Convention on the Recognition and Enforcement of Foreign Judgments on Civil or Commercial Matters ('Judgments Convention'), the Singapore Convention is not based on reciprocity. It follows that the settlement agreement reached in the context of a mediation situated anywhere in the world could be recognized and enforced in a Contracting State, subject to the requirements laid out under the Convention.

([13]) See in part. G. CARDUCCI, *La Convention de Singapour des Nations-Unies sur l'efficacité des accords en matière de médiation internationale – Débats*, in *Travaux du comité français de droit international privé*, séance du 5 octobre 2019, 2018-2019, 2019-2020, Éditions Pedone, 2021, 51.

PART III

Filling the Gap in International Consent-Based Dispute Resolution Mechanisms

1. *The Singapore Convention as the New 'Piece of the Puzzle' in Cross-Border Dispute Resolution Mechanisms...* – As pertains to scope, the relationship between the Singapore Convention, on the one hand, and the New York Convention and the Judgments Convention, on the other hand, has been taken into careful consideration by the negotiators. In fact, in order to foster predictability and uniform interpretation, ([14]) the negotiators of these instruments, and notably of the Singapore, Choice of Court and Judgments Conventions, have strived to ensure complementarity and prevent overlapping at once in the scope of application of the Conventions.

This objective has materialised in a series of provisions. On the one hand, the Singapore Convention provides at Article 1(3) that it shall not apply to settlement agreements that are enforceable as a court judgment or as an arbitral award: in fact, enforcement in those two scenarios would normally fall under the scope of the Judgments Convention (for a court judgment or a judicial settlement) or the New York Convention (for an arbitral award). On the other hand, Article 1(3) of the Singapore Convention is wholly consistent with and complementary to Article 12 of the Choice of Court Convention and Article 11 of the Judgments Convention, according to which judicial settlements (*transactions judiciaires*) which a court of a Contracting State has approved, or which have been concluded in the course of proceedings before a court of a Contracting State, and which are enforceable in the same manner as

([14]) On the pivotal role of uniform treaty interpretation see recently J. RIBEIRO-BIDAOUI, *The International Obligation of the Uniform and Autonomous Interpretation of Private Law Conventions: Consequences for Domestic Courts and International Organisations*, in *67 Netherlands International Law Review* 139-168 (2020).

a judgment in the State of origin, shall be enforced under the Choice of Court or Judgments Convention, respectively, in the same manner as a judgment. ([15])

The mechanism whereby each Convention defers to the others on the grounds of their respective scopes of application is to be embraced as fostering predictability and advancing each Convention as the international instrument of reference which is more highly specialized and appropriately framed to treat and govern each different instance.

2. *... and in the Framework of Party Autonomy.* – Among the reasons for which the adoption of the Singapore Convention is to be welcomed is also the fact that this Convention closes a gap in the context of consent-based dispute resolution mechanisms. Party autonomy has garnered remarkable appreciation in the past decades and even more so in recent years: this is evidenced, in particular, by the striking success of the New York Convention which ensures the effectiveness as between Contracting Parties of arbitration clauses and arbitral awards in cross-border commercial contracts and which currently counts as many as 168 Contracting Parties. ([16])

Designed to translate into the realm of litigation the system established for arbitration with the New York Convention, the 2005 HCCH Choice of Court Convention creates the premises to ensure the effectiveness of choice of court agreements both at the litigation and at the recognition and enforcement phases. However, subject to a declaration made by a Contracting Party in accordance

([15]) See F. GARCIMARTÍN ALFÉREZ, G. SAUMIER, *Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters: Explanatory Report*, The Hague Conference on Private International Law – HCCH Permanent Bureau, 2020, sub Article 11.

([16]) <https://uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards/status2>.

with Article 22, the Choice of Court Convention applies to exclusive choice of court agreements, only.

Against this backdrop and limitedly to the recognition and enforcement phases, the 2019 HCCH Judgments Convention regulates indirect jurisdiction based on consent in its remaining variations in a manner that may be described as perfectly complementary to the Choice of Court Convention. Notably, Article 5(1)(e) of the Judgments Convention governs recognition and enforcement of judgments based on express consent given during the course of the proceedings before the court of origin; subparagraph (f) of the same provision regulates cases where the same occurrence arises as a result of implicit consent; the claimant's implicit consent is also the rationale for the recognition and enforcement basis of the provision at sub-paragraph (c); finally, the recognition and enforcement of judgments based on non-exclusive choice of court agreements are regulated at sub-paragraph (m). ([17]) Conversely, and to avoid any overlaps in the scope of application of the Conventions, exclusive choice-of-court agreements do not constitute a basis for recognition and enforcement of a foreign judgment under the Judgments Convention, the regulation of such agreements being purposely left entirely to the Choice of Court Convention.

In this framework, the Singapore Convention designs a new non-adjudicative, party-autonomy based asset in the context of cross-border dispute resolution. On the one hand, the Convention creates a system in accordance to which agreements that would otherwise amount to a private contractual act are converted into an instrument eligible for cross-border circulation in Contracting States (similarly to a judgment or an arbitral award); on the other

([17]) A. BONOMI, C.M. MARIOTTINI, *A Game Changer in International Litigation? Roadmap to the 2019 Hague Judgments Convention*, in *Yearbook of Private International Law*, Otto Schmidt, vol. XX, 2018/2019, 537-567, esp. 554 et seq. Some restrictions apply to the relevance of jurisdiction based on party autonomy, notably vis-à-vis the circulation of, on the one hand, judgments rendered against a consumer or an employee (Article 5(2) of the Judgments Convention) and, on the other hand, judgments on rights *in rem* in immovable property (Article 6).

hand, it sets up an international, legally binding and partly harmonized system for such circulation. ([18])

The desirability and likelihood of concrete success of such an instrument stems from the fact that mediation is increasingly used in international and domestic commercial practice as an alternative to litigation. ([19]) In particular, the use of mediation in the cross-border setting results in meaningful benefits to commercial disputes: on the one hand, it reduces costs related to dispute resolution, on the other hand, it facilitates the prosecution of harmonious relations, both as between the commercial parties involved in a dispute and as between States. ([20])

Prior to the adoption of the Singapore Convention (and, to date, outside the geographical scope of the Convention), commercial IMSAs were not enforceable by their own nature. Consequently, the case where a settlement debtor refused to comply with the outcome of a mediation entailed (and still entails, outside of the territorial scope of application of the Convention) that the settlement creditor should resort to arbitration or court proceedings for breach of contract, and should subsequently enforce the resulting arbitral award or judgment to seek concrete satisfaction of its claim.

([18]) For a detailed report on the negotiations that led to the adoption of the Convention, see T. SCHNABEL, *The Singapore Convention on Mediation: A Framework for the Cross-Border Recognition and Enforcement of Mediated Settlements*, in *19(1) Pepperdine. Disp. Resol. L.J.* 1-60 (2019). On the general issue of enforcement of mediated settlement agreements see: G. PALAO MORENO, *Enforcement of Foreign Mediation Agreements within the European Union,* in J.S. BERGÉ, S. FRANCQ and M. GARDEÑES SANTIAGO (eds.), Bruylant, 2015, 79 et seq.; F. OSMAN (dir.), *La médiation en matière civile et commerciale*, Larcier, 2013; X. VUITTON, *Quelques réflexions sur l'office du juge de l'homologation dans le livre V du code de procédure civile*, in *Revue trimestrelle de droit civil*, 771 et seq. (2019).

([19]) With respect to the prospects of success of the Convention in particular in Asia, where mediation is traditionally viewed as a valuable tool to solve commercial disputes, see esp. E. CHUA, *The Singapore Convention on Mediation. A Brighter Future for Asian Dispute Resolution*, in *9 Asian Journal of International Law* 195-205 (2019).

([20]) In this regard, see also the Preamble to the Convention.

Conversely, with the ratification and entry into force of the Singapore Convention, enforcement of such settlement agreements is ensured in Contracting States, to the benefit of predictability and a smooth (and less costly) administration of justice. By joining the Convention, Contracting States are in fact bound to enforce settlement agreements resulting from mediation via a simplified procedure, as set out in the Convention. Accordingly, by means of the Singapore Convention the traditional hesitancy of commercial parties towards mediation may be overcome and mediation becomes an effective and entrusted dispute resolution system in commercial matters, alongside arbitration and litigation.

PART IV

Concluding Remarks

The benefits that stem from the Singapore Convention may be described as twofold: on the one hand, the Convention has succeeded in elevating the outcome of a non-adjudicative process to a new formal status acknowledged in accordance with international law; on the other hand, it has ensured the circulation of such outcome, subject to minimal formal and substantial requirements. ([21])

While the ultimate success of this recently enacted instrument remains to be verified, the Singapore Convention's adoption and entry into force should overall be welcomed in that the Convention contributes to a smooth, and time and cost efficient cross-border dispute resolution system whilst also creating the premises for the parties involved to maintain a reasonably good relationship, as well as for reducing the burden on the judicial systems of States.

Against this background, in the forthcoming future it shall be interesting to see how the national courts of the Contracting Parties

([21]) See N. ALEXANDER, S. CHONG, *The Singapore Convention on Mediation. A Commentary*, Wolters Kluwer, 2019, 74.

acknowledge and enforce commercial IMSAs in accordance with the Convention in light of the interplay of domestic and international provisions.

Abstract

The United Nations Convention on International Settlement Agreements Resulting from Mediation (the 'Singapore Convention'), adopted in 2018 and entered into force in 2020, is designed to facilitate cross-border trade and commerce, in particular by enabling disputing parties to enforce and invoke settlement agreements in the cross-border setting without going through the cumbersome and potentially uncertain conversion of the settlement into a court judgment or an arbitral award. Against this background, the Convention frames a new status for mediated settlements: namely, on the one hand it converts agreements that would otherwise amount to a private contractual act into an instrument eligible for cross-border circulation in Contracting States and, on the other hand, it sets up an international, legally binding and partly harmonized system for such circulation. After providing an overview of the defining features of this new international treaty, this article contextualizes the Singapore Convention in the realm of international consent-based dispute resolution mechanisms.