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SINGAPORE CONVENTION ON MEDIATION
BREAKOUT SESSION REPORT

Title of Breakout Session: Efficiencies and Alliances in Partnerships
Date/Time: 7 August 2019, 3.20pm
Location: Hibiscus Room III, Shangri-La Hotel, Singapore

Speakers:

- Professor Zachary CALO, Professor of Law, Hamad Bin Khalifa University ("**Prof Calo**")
- Ms Christina HIOUREAS, Counsel, International Litigation & Arbitration, Foley Hoag LLP ("**Ms Hioureas**")
- Professor Martin LAU, School of Law, SOAS, University of London ("**Prof Lau**")

Moderators:

- Professor Nadja ALEXANDER, School of Law, Singapore Management University ("**Prof Alexander**")
- Associate Professor Pasha HSIEH, School of Law, Singapore Management University ("**Prof Hsieh**")

Report on Breakout Session

Main Themes

There is a difference between establishing dispute resolution norms at the international level and establishing dispute resolution norms at the national or practice level, and it is overly simplistic to assume that simply signing on to an international Convention can change or improve outcomes at the local or national level.

- As an example, in Qatar there is no pre-existing context for mediation. The local culture does not enshrine a practice of mediation, and domestic courts have no familiarity with enforcing mediated outcomes.
- Therefore, counsel are hesitant to suggest mediation to clients in context in which enforceability is questionable at best.
- In Qatar, there is also a unique issue, which is that the entire country is essentially a rental state in that most enterprises are underwritten, heavily subsidized, or outright owned by the government, blurring the lines between public and private entities.
- Within this context, you have state-owned entities entering into contracts with private international firms for development. Arising out of this context, there is an issue as to how to conduct dispute resolution between a state-owned entity which has very little interest or capacity to mediate, and an international firm which has a great deal of interest and capacity to mediate. Whichever party holds the bargaining power will be the one to decide.
- As it is in Qatar, almost all investment in dispute resolution has flowed towards arbitration and mediation has been mostly neglected.
- Now that Qatar has signed the Convention, how shall they turn this into workaday practice?
- A top-down approach will not be good enough and a bottom-up approach is necessary. As a baseline, parties must find it to be within their own self-interest to change their practices.

Relatedly, there is no one-size-fits-all solution to disparate levels of capacity for dispute resolution from jurisdiction to jurisdiction, which are impacted by underlying cultural practices and norms, and legal and regulatory conditions which cannot be changed overnight, and which differ depending on context.

- For example, there is a huge difference between a country like Singapore, which has a highly-functional judiciary and policy-making unit of government and has used an integrationist approach to build its legal system, and a country like Pakistan, which has a barely-functional system. How are these countries to jump into mediation?
- Singapore's approach (integrationist) is very difficult to replicate elsewhere. In fact, in many other emerging dispute resolution centres (Dubai, for example) the approach can be considered "externalization" – they have imported legal expertise from foreign markets, and established carve-out practice zones which imitate free trade zones for foreign qualified lawyers to practice dispute resolution. This is the opposite from integrationism – it creates a miniature ecosystem for international dispute resolution separate from the domestic legal framework.
- Could the externalization model work for a country like Pakistan? Unfortunately, this model doesn't in fact work so well. There are a number of inefficiencies and difficulties between the disparate systems which create difficult enforcement issues. There is also the domestic legal market to consider, which can take an understandably protectionist view of the foreign legal practitioners in carve-out zones.
- So, what might be the solution for developing legal frameworks?

Norms and efficiencies/alliances which have been established exist in the context of a growing number of regional hubs for dispute resolution, but these may only be successful where certain factors advance them, or 'track has been laid,' so to speak.

- Public/private partnerships offer a model for success in making certain markets a draw for users around the world.
- There are three main elements for these regional hubs to become successful:
  - A predictable legal framework that makes the jurisdiction attractive;
  - Signalling the stability and predictability of the regime by signing and ratifying international instruments like the Singapore Convention; and
  - Educating the practice and user community through ADR centres which engage the private sector.
- At all times, efforts to promote reform should be driven by market preferences.

Arguments and Conclusions

More and more often, international donors and the donor community place greater emphasis on strengthening ADR frameworks as a means of assisting economic growth. But this has led to a mistaken understanding that by simply building an arbitration centre, economic growth will follow. This is of course a fallacy. Part of the problem is that in many developing countries, the underlying conditions for ADR – such as security of contract – are not present. Are there better prospects for using mediation as a development tool? Why or why not?

There should be mechanisms for measuring efficiencies in place; otherwise, there is no way of knowing whether the success of ADR centres or mediation centres has led to economic growth.

There should be less emphasis on the legal frameworks necessary for conducting mediation and more on the business case for it; and in that sense, the community should bypass training lawyers to be mediators and focus on training business people.

When ADR is seen as a means of attracting global business, the goal should be wider than attracting purely dispute resolution business – it should be to attract general business to that legal framework.

Privatising access to justice through ADR has been a priority for the development industry for a long time, but this does not bypass underlying issues in the legal framework and serves more as a Band-Aid than a cure.

Written by: Ms Janet Checkley, Research Associate, Singapore International Dispute Resolution Academy (SIDRA), School of Law, Singapore Management University

Date: 13 August 2019