



SINGAPORE CONVENTION ON MEDIATION
PANEL SESSION REPORT

Title of Panel: The Rise of Mediation: Bridging Differences for Tomorrow

Date/Time: 7 August 2019, 3.20pm

Venue: Island Ballroom, Shangri-La Hotel, Singapore

Speakers:

- Ambassador Iftekhar Ahmed CHOWDHURY, Principal Research Fellow, Institute of South Asian Studies, and Former Foreign Advisor (Foreign Minister), Bangladesh (“**Amb Chowdhury**”)
- Dr Aimé Muyoboke KARIMUNDA, President of the Court of Appeal, Republic of Rwanda (“**Dr Karimunda**”)
- Professor Thomas J. STIPANOWICH, William H. Webster Chair in Dispute Resolution and Professor of Law, Pepperdine University (“**Prof Stipanowich**”)

Moderator:

- Professor Lucy REED, Director, Centre for International Law, National University of Singapore (“**Prof Reed**”)

Report on Panel

Main Themes

The last panel session explored the following key themes:

- (a) The value that mediation brings to the existing modes of international dispute settlement, namely, litigation, arbitration and negotiation;
- (b) The impact that the Singapore Convention is likely to have on the value and use of mediation globally.

Arguments

Amb Chowdhury mentioned that other forms of dispute settlement, arbitration and mediation, have gained traction over time as litigation has evolved into an expensive and arduous process. Over time, given Asia’s culture and ethos, mediation has gained salience in Asia. Amb Chowdhury gave four reasons for this – first, mediation is less costly; second, mediation is seen as more confidential; third, the parties could communicate privately; and finally, the heavy caseload in many courts meant that it would take a very long time to resolve disputes through the courts. Many Asian states, such as China, India and Bangladesh, have also incorporated mediation into their court legal processes. That being said, arbitration remains the preferred mode of dispute resolution in Asia due to the enforceability of arbitral awards under the New York Convention, and the Singapore Convention would be of pertinence for mediation, as its chief purpose is to provide for the enforceability of settlement agreements.

Dr Karimunda highlighted that given the limited judicial resources and increasing caseload, mediation should be adopted as a complementary and alternative dispute mechanism to court litigation.

In Prof Stipanowich's words, the lengthy time required to resolve disputes through court litigation was "the inception of the quiet revolution in dispute resolution", and mediation is at the centre of this revolution. Among other things, mediation has the potential to save significant time and costs, and it provides the opportunity to bring parties back into the picture – parties become part of the tailored solution as they control the process and the outcome, and are able to maintain, restore or even improve their relationships. Prof Stipanowich said that in his view, the Singapore Convention creates a platform for discussion and provides an opportunity for further multilateral collaboration on procedures for mediation and soft law, for example, codes of conduct and codes on mediator's disclosure, similar to what has happened in international arbitration.

In response to Prof Reed's question regarding the use of mediation by multinational corporations ("MNCs") and small companies, Prof Stipanowich observed that the MNCs by and large appreciate that mediation is a significant part of the legal landscape. The MNCs already conceive litigation as "litigation" with the adjudicated process as the backdrop for the negotiated resolution, and this creates opportunities for mediation. While the small companies may not have the legal expertise and experience, the opportunity to mediate is still there, and the courts should serve as the back-stop where mediation is unsuccessful. In response to Prof Reed's question as to whether artificial intelligence ("AI") and online dispute resolution would help the small companies, Prof Stipanowich highlighted that online dispute resolution already exists in many different ways today, and there are quite a number of pilot programs in the United States Courts for smaller claims, so as to provide greater access to parties of limited means and ways to overcome barriers of time and costs.

Dr Karimunda observed that in the last 2 decades, there have been tremendous efforts among African countries to promote mediation. Even though mediation is being used frequently for domestic cases, there is potential for mediation to be extended to international trade.

In response to Prof Reed's query as to whether a State making reservations under Article 8 of the Singapore Convention would have an impact on the prospect of mediation of investor-state disputes, Prof Stipanowich highlighted some of the major concerns and barriers that need to be overcome for inroads to be made into this area. Prof Stipanowich observed that in the context of investor-state disputes, the mediation procedure and mechanism must be tailored to take into account certain specific concerns, for example, corruption and transparency. While confidentiality is seen as a positive element of mediation, this may present an issue, as it is important for a state to be able to demonstrate that no one is profiting from the settlement and that there is no corruption. The choice of mediator is also critical – not only is the mediator to be neutral, the mediator also needs to be facilitative, directive and cloaked with institutional authority, in order to gain the approval of states.

Dr Karimunda shared that from *Gacaca* (which means "justice amongst the grass" and was used by Rwanda as an alternative and informal way to administer justice post-genocide in view of the huge caseload), Rwanda has created a new institution and mind-set where people in the community mediate their problems before they go to court.

In response to a question from the audience on how to bridge gaps in cultures and behavioural norms between different countries, Prof Stipanowich said that there needs to be more dialogue in the mediation arena in order to bring about greater harmonisation as mediation may be conceived differently by people in different places. That being said, it is important to preserve the inherent flexibility in mediation, and not affect that with the weight of regulation.



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In response to questions from the audience relating to the costs of mediation, Prof Reed expressed her view that the responsibility for controlling the costs of mediation may lie with the mediator and the institution.

As to whether the privatisation of justice dispensation by the rise of alternative dispute resolution, including mediation, would lead to problems, Prof Stipanowich emphasised that mediation is not a substitute for a court system and independent and impartial courts, but is simply a complementary mode of dispute resolution. Dr Karimunda expressed his view that mediation is not about privatisation of justice, but is simply providing an alternative to parties to resolve their disputes.

Conclusions

There is definitely a rise of mediation as a mode of international dispute resolution, and this is further enhanced by the Singapore Convention. Mediation would certainly serve its role as being complementary to the other existing modes of dispute resolution for international disputes.

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