The 2nd KIMC International Seminar

"Understanding and Utilization of
the Singapore Convention on Mediation"

Dec. 3, 2021

Korea International
Mediation Centre

Edited & Designed by Dr. Sang Hyuck LEE

Date December 3, 2021 (Friday), 9:00-17:30

Venue Room 2402, Trade Tower, Gangnam-gu, Seoul, Korea

Online Zoom

Sponsors

United Nations UNCITRAL Regional Centre for Asia and the Pacific

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APCAM Asia Pacific Centre for Arbitration & Mediation

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법률신문사

THE Consulting Group

Host

KIMC | Korea International Mediation Centre

Invitation Letter

I am delighted to invite you to "The 2nd KIMC International Seminar" hosted by the Korea International Mediation Centre (KIMC) and sponsored by the UNCITRAL RCAP, the Ministry of Trade, Industry and Energy, the Korean Society of Mediation Studies, the Asia Pacific Centre for Arbitration and Mediation (APCAM), the Korea International Trade Association, the Korean Commercial Arbitration Board, the Korea Chamber of Commerce and Industry, the Korea In-house Counsel Association, the Law Times and THE Consulting Group. The importance and usefulness of international commercial mediation based on the Singapore Convention on Mediation and the Convention's critical provisions will be discussed in the seminar. This seminar will be a great opportunity for those who conduct businesses as well as for attorneys, professors and researchers who are interested in alternative dispute resolutions including mediation. I appreciate your interest in this seminar and anticipate your participation. For those who wish to attend this seminar, please register by November 30th (Tuesday).

KIMC Korea International Mediation Centre

Chairman Nohyoung PARK

Program Schedule

프로그램 일정

Master of Ceremony 전체 사회 — **Sang Hyuck LEE** 이상혁
Director, KIMC; Director, Institute for Liberty
KIMC 총무이사, 연구공간 자유 대표

09:00 – 09:20	**Registration** 등록	

Welcoming Session
환영 세션

09:20 – 09:50	**Welcoming Remark** 환영사	**Nohyoung PARK** 박노형 Chairman, KIMC; Professor, Korea Univ. Law School KIMC 이사장, 고려대학교 법학전문대학원 교수
	Congratulatory Remark 축사	**Gu-Wuck BU** 부구욱 President, Youngsan University 영산대학교 총장
		Sangsoo JUN 전상수 Deputy Secretary-General for Legislative Affairs, National Assembly of Korea 대한민국 국회 입법차장
		Yoon Jong CHUN 전윤종 Deputy Minister for Trade Negotiations, MOTIE 산업통상자원부 통상교섭실장
09:50 – 10:00	**Group Photo** 기념촬영	

Session 1 — Understanding of the Singapore Convention on Mediation
싱가포르조정협약의 이해

10:00 – 11:30	**Moderator** 사회자	**Yun Young LEE** 이윤영 Professor, Korea National University of Transportation; Honorary Professor, ROK MOFA; Former Ambassador to Netherlands 한국교통대학교 초빙교수, 대한민국 외교부 명예교수, 전 네덜란드 대사
	Speakers 발표자	**Jae Min LEE** 이재민 Professor, Seoul National Univ. Law School 서울대학교 법학전문대학원 교수
		Jae Sung LEE 이재성 Legal Officer (Secretary of Working Group II), UNCITRAL UN국제상거래법위원회 법률담당관
		Nohyoung PARK 박노형 Chairman, KIMC; Professor, Korea Univ. Law School KIMC 이사장, 고려대학교 법학전문대학원 교수
	Discussants 토론자	**Youngil KIM** 김영일 Senior Legislative Counsel, National Assembly of Korea 대한민국 국회 법제실 법제심의관
		Scott Sung-kyu LEE 이성규 Senior Partner, KIM & Chang 김앤장 법률사무소 씨니어파트너 변호사

Book Launch Session
출간 기념 세션

11:30 – 12:00

Congratulatory Remark 축사

Anna JOUBIN-BRET 안나 주빈-브레
Secretary, UNCITRAL
UN국제상거래법위원회 사무국장

Yong-sup KIM 김용섭
President, KSMS; Professor, Jeonbuk National Univ. Law School
한국조정학회 회장, 전북대학교 법학전문대학원 교수, KIMC 자문위원

Remark by the Author 저자 인사

Nohyoung PARK 박노형
Chairman, KIMC; Professor, Korea Univ. Law School
KIMC 이사장, 고려대학교 법학전문대학원 교수

Book Launch

International Commercial Mediation System
: Focusing on the Singapore Convention on Mediation

12:00 – 13:30 **Lunch Break** 점심식사

Session 2 — Domestic Implementation of the Singapore Convention on Mediation
싱가포르조정협약의 국내 이행

13:30 – 15:00

Moderator 사회자

Anil XAVIER 아닐 자비에
Chairman, Asia Pacific Centre for Arbitration & Mediation
APCAM 이사장

Speakers 발표자

Nadja ALEXANDER 나드자 알렉산더
Director, Singapore International Dispute Resolution Academy;
Professor, Singapore Management University
SIDRA 소장, SMU 교수

Discussants 토론자

Jae Seog CHOI 최재석
Standing Mediator, Korea Legal Aid Corporation (KLAC)
대한법률구조공단 상임조정위원, KIMC 이사

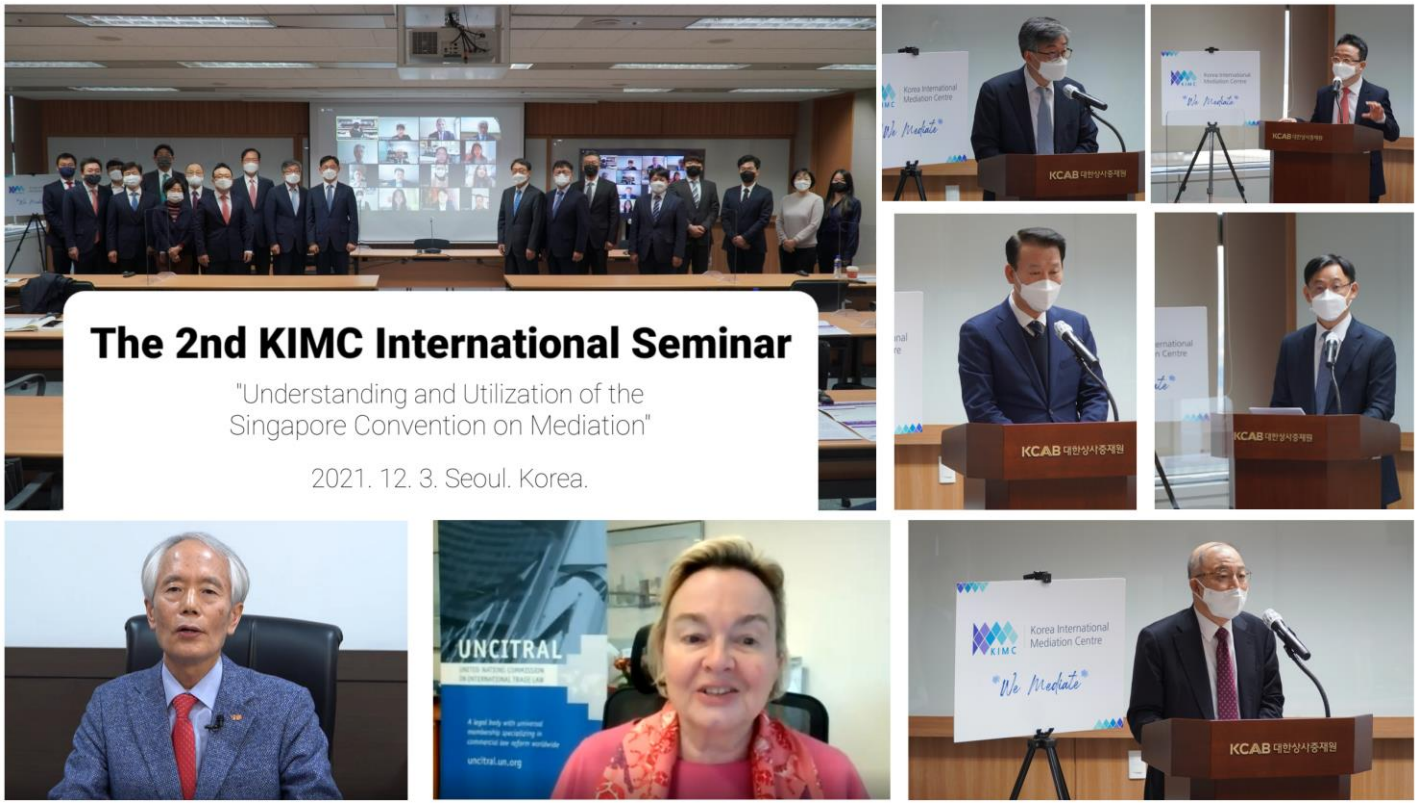
Athita KOMINDR 아티타 코민드르
Head, UNCITRAL Regional Centre for Asia and the Pacific (RCAP)
UN국제상거래법위원회 아·태지역사무소 대표

Natalia LYKOVA 나탈리아 리코바
President, Association of Mediators and Intermediaries of the APR
AMI 회장

Lori YI 이로리
Professor, Keimyung University
계명대학교 교수

15:00 – 15:15 **Coffee Break** 휴식

Session 3	Critical Provisions of the Singapore Convention on Mediation 싱가포르조정협약의 주요 규정	
15:15 – 17:30	**Moderator** 사회자	**Guiguo WANG** 구이궈 왕 President, Zhejiang University Academy of International Strategy and Law; University Professor of Zhejiang University 중국 절강대학교 국제전략법아카데미 원장, 절강대학교 석좌교수, KIMC 자문위원
	Speakers 발표자	**Delcy LAGONES DE ANGLIM** 델시 라고네스 드 앙글림 International Dispute Resolution Consultant with the World Bank, Head of LAWASIA delegation to the UNICTRAL negotiations which drafted the Singapore Convention on Mediation 세계은행 국제분쟁해결 컨설턴트, UN국제상거래법위원회 협상 LAWASIA 대표단 대표
		Francis LAW 프란시스 로 Founding Chairman, Mainland-Hong Kong Joint Mediation Centre; President, Hong Kong Mediation Centre MHJMC 초대 이사장, HKMC 이사장, KIMC 자문위원
		Giovanni MATTEUCCI 지오반니 마테우치 Mediator, ADR Maremma, Italy ADR Maremma 조정인, KIMC 자문위원
		Rajesh SHARMA 라제쉬 샤마 Senior Lecturer, RMIT University, Melbourne, Australia RMIT University 교수, KIMC 자문위원
		Harald SIPPEL 하랄드 지펠 Arbitrator and Mediator, sippel.legal, Malaysia sippel.legal 중재인/조정인, 말레이시아
15:15 – 17:30	**Discussants** 토론자	**Yun Jae BAEK** 백윤제 Chair, International Dispute Resolution Team at Yulchon 법무법인 율촌 국제중재/소송팀 팀장, KIMC 이사
		Han Ahrum Liz CHONG 정한아름 Research Lawyer, KIMC; US Lawyer (CA) KIMC 미국 변호사
		Kyongwha CHUNG 정경화 Of Counsel, Covington & Burling LLP Covington & Burling LLP 변호사, KIMC 이사
		Jiyong JANG 장지용 High Court Judge, Suwon High Court 수원고등법원 고법판사
Closing 폐회		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UNCITRAL
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Singapore Convention of 2019
KCAB 대한상사중재원
Korea International
Mediation Centre
"We Mediate"








"We Mediate"

Congratulatory Remarks

축 사

Good Morning, distinguished scholars, experts, ladies and gentlemen,

I would like to express my appreciation and give applause to all organizing the 2021 KIMC (Korea International Mediation Center) International Seminar. This seminar is hosted by the KIMC and sponsored by the UN Commission on International Trade Law Asia Pacific Regional Office, Korean Ministry of Trade, Industry and Energy, Korean Society of Mediation Studies, APCAM (Asia Pacific Centre for Arbitration & Mediation), Korean International Trade Association, KCAB (Korean Commercial Arbitration Board), KCCI (Korea Chamber of Commerce and Industry), Korean In-House Counsel Association, The Law Times Company, and The Consulting Group.

The main theme of the 2021 seminar is the international commercial mediation system based on the United Nations Convention on International Settlement Agreements Resulting from Mediation, or more commonly known as the "Singapore Mediation Convention." Forty-six countries, including Korea, the United States, and China, participated in the signing ceremony of the convention held in Singapore on August 7, 2019. We expect the convention to have great influence as the signatory states represent more than half of the world's population.

The Singapore Mediation Convention's main purpose is to empower international commercial mediation, which is a more effective way of resolving international commercial disputes. The mediation is faster and more economical than litigation and arbitration. Despite the advantages of mediation, it has been difficult to enforce the agreement across international borders, especially if concerned parties did not comply with the mediation ruling. The Singapore Mediation Convention has been proposed to solve such problem.

Whereas the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, or the so-called "New York Convention," was a mechanism for the enforcement of arbitral awards, the Singapore Mediation Convention is a device for enforcing agreements

reached through mediations. Therefore, the Singapore Mediation Convention is an effort to expand the international use of the Alternative Dispute Resolution procedures.

For the Convention to be effective, the signatory countries must take follow-up measures, such as enacting domestic laws and regulations. This will benefit corporations doing international transactions, as it will reduce the massive time and cost spent on dispute resolution processes.

We need a new perspective on the role of mediation in dispute resolution that can be understood as an "extended negotiation." The parties to the dispute still play a central role in the mediation process, and they will pursue a win-win rather than a win-lose relationship. In this sense, the mediation is an effective dispute resolution method based on the principle of private autonomy. It would thus be necessary to organize a system that can facilitate domestic and international mediation.

In this seminar, there will be presentations and discussions on the following topics: the understanding of the Singapore Mediation Convention, main provisions of the convention, and domestic implementation of the convention. I expect these discussions will contribute to promotion of international commercial mediation and enhancement of the status of the mediation system. These discussions will no doubt provide many insights for business executives and legal experts actively involved in international commercial disputes, and for government officials and scholars in the field. Thank you for listening.

2021년 12월 3일

와이즈유 영산대학교 총장 부구욱

“The 2nd KIMC International Seminar” 祝辭

존경하는 내외 귀빈 여러분!

국회 입법차장 전상수입니다. “싱가포르조정협약의 이해와 활용”을 주제로 국제세미나를 개최하게 된 것을 진심으로 축하드립니다. 코로나19 시국이라는 어려운 여건에도 불구하고 국제세미나의 개최를 준비하여 주신 박노형 국제조정센터 이사장님을 비롯하여 발제와 토론에 참여하시는 여러분들께 감사의 말씀을 드립니다.

오늘날 국가 간 통상을 비롯한 국제교류의 증대와 정보통신 기술의 발전은 복잡하고 다양한 국제분쟁을 야기하고 있습니다. 지난한 절차를 거쳐야 하는 소송과 같은 전통적 분쟁해결 제도와 달리, 대체적 분쟁해결 절차 중 하나인 조정(mediation)은 당사자 간 대화를 통해 분쟁을 민주적·자율적으로 해결함으로써 경제성·효율성을 확보할 수 있어 꾸준히 각광받았습니다. 이러한 장점에도 불구하고 당사자 간 합의결과에 대한 집행가능성이 보장되어 있지 않아 법적 안정성 측면에서 취약성이 언급되어 왔습니다. 이에 2020년 9월 발효된 이른바 “싱가포르조정협약”은 국제무역으로 발생한 분쟁에서 당사자 간 합의결과를 체약국에서 집행할 수 있도록 하여 국제상사분쟁을 보다 효율적으로 해결할 수 있는 발판을 마련하였습니다. 싱가포르조정협약의 당사국이 되려면 국내법에 따른 절차적 규칙, 즉 조정절차 등에 관한 법률의 제·개정이 필요합니다. 법무부는 금년 3월부터 관련 전문가로 구성된 태스크포스를 발족하여 싱가포르조정협약의 이행을 위한 입법을 연구·준비하고 있습니다. 국회에서는 2013년 대체적 분쟁해결 기본법안, 2018년 조정산업 진흥에 관한 법률안이 각각 발의되었으나 입법화되지는 못하였고, 제21대국회에서는 싱가포르조정협약의 국내 이행에 관한 후속법안의 논의가 있을 것으로 예상됩니다.

이러한 상황에서 싱가포르조정협약의 국내 이행을 위한 과제와 협약의 주요 규정에 관해 심도 있게 논의하는 이번 세미나는 매우 시의적절하다고 생각합니다. 정부·학계·법조계 등 관련 전문가들의 유기적 연계의 장인 오늘 세미나가 우리나라 조정제도 발전의 마중물이 될 것으로 확신합니다.

앞으로 우리 기업이 조정을 통해 국제상사분쟁을 보다 적은 비용으로 신속하게 해결할 수 있도록 우리 국회도 싱가포르조정협약과 관련된 제도적 기반을 마련하는 데 필요한 입법적 지원과 관심을 아끼지 않겠습니다.

대단히 감사합니다.

2021년 12월 3일

국회 입법차장 전 상 수

출간 기념 축사

I. 머리말

국내외 저명한 국제조정의 전문가들이 현장과 줌(Zoom)의 병행 방식으로 참석하여 개최되는 제2회 국제조정센터(KIMC) 국제세미나는 국제조정의 활성화를 위한 의미 있는 진전이라고 할 수 있습니다. 이러한 뜻깊은 자리에서 KIMC 이사장인 박노형 고려대 법학전문대학원 교수님(이하 '박 이사장님')께서 싱가포르조정협약을 중심으로 저술한『국제상사조정체제: 싱가포르조정협약을 중심으로』출판 기념 행사의 축사를 하게 되어 개인적으로 영광이며 매우 기쁘게 생각합니다.

동양사회에서 책을 출간하는 것은 입덕(立德), 입공(立功)과 더불어 입언(立言)으로 영원히 썩지 않을 3가지인 삼불후(三不朽)의 하나로 여겨졌습니다. 박 이사장님은 덕을 세웠을 뿐만 아니라 국가사회에 큰 공헌을 하였고, 책을 발간하는 입언을 실천하였습니다. 무엇보다 새 책을 세상에 내는 것은 출산에 비유할 수 있습니다. 박 이사장님은 지난 해에도『개인정보보호법』이라는 600페이지가 넘는 방대한 분량의 전문 학술서를 박영사에서 발간하여 금년에 대한민국 학술원 우수도서로 추천되기도 하였습니다. 싱가포르조정협약을 중심으로 한『국제상사조정체제』라는 200페이지 분량의 전문학술 저서를 새롭게 출간하면서 연이은 산고(産苦)의 고통을 즐거운 마음으로 이겨내신 박 이사장님께 진심으로 축하드립니다.

제가 출판기념 축사의 요청을 받고 과연 축사를 할 역량을 갖춘 군번인지 잠시 망설였습니다. 이번 KIMC 국제세미나에 한국조정학회가 후원기관으로 참여하게 되었고, 12년 전 한국조정학회의 창립 당시부터 박 이사장님과의 학문적 유대관계로 조정분야의 발전을 위해 함께 노력해온 처지에서 흔쾌히 축하해 드려야겠다고 생각하였습니다. 박 이사장님께서 신간 저서를 선물로 주셔서 공부할 겸 읽어볼 수 있게 되어 축사의 수락을 잘했다는 생각이 들었습니다.

저는 3가지 차원에서 간략히 출간 기념의 축사를 하려고 합니다. 먼저 싱가포르조정협약을 중심으로 국제상사조정체제에 관하여 저술한 박노형 교수님의 그동안의 학술적 활동과 축사의 연결점으로서의 한국조정학회를 소개하고, 새로 발간한 책자의 내용과 특징 및 의미를 비평적 관점에서 살펴보도록 하겠습니다.

II. 3가지 차원(Dimension)

1. 저자 박노형 교수의 학술적 활동

박 이사장님은 1977년 고려대 법과대학에 입학하여, 학부과정과 대학원을 수료하고 1983년 법학석사를 받은 후 1985년 미국 하버드(Havard) 로스쿨에서 LL.M과 1990년 1월 영국 캠브리지(Cambridge) 대학에서 법학박사학위를 취득하였습니다.

1990년 9월부터 현재까지 그의 모교(母校)인 고려대에서 국제법, 국제경제법, EU법, 협상론, 개인정보보호법 등의 강의를 하면서 30여 년의 기간 동안 후학을 양성하며 현재 고려대 로스쿨의 최고 선임교수로 봉직하고 있습니다. 책자의 머리말을 읽어 보면 알 수 있듯이, 박 이사장님은 국제경제법과 통상법을 전공으로 하면서 협상, 조정, 국제조정으로 연구의 관심 영역을 발전시켜 왔습니다. 다른 한편으로는 개인정보, 사이버안전, 디지털 통상을 공부하는 등 학문적 호기심을 넘어 다양한 분야를 천착하고 있습니다.

저서로는 『새유럽의 도전: EC통합의 올바른 이해』(1991, 매일경제신문사), 『GATT의 분쟁해결사례연구』(1995 박영사), 『WTO체제의 분쟁해결제도연구』(1995, 박영사), 『국제법 I』(1999, 공저), 『국제법 II』(2000, 공저), 『국제통상론』(2000, 공저), 『국제경제법』(2006, 공저), 『협상교과서』(2007, 랜덤하우스코리아), 『신 국제경제법』(2012, 공저), 『EU 개인정보보호법-GDPR을 중심으로』 (2017, 공저), 『개인정보보호법』(2020, 박영사), 『국제상사조정체제』(2021, 박영사) 등과 다수의 주목할 만한 논문을 발표하였습니다.

박 이사장님은 격식을 크게 따지지 않으시면서 단골식당을 오랜 기간 다니시는 점에 비추어 사람들과 처음에는 쉽게 사귀지 않지만 교류를 통해 신뢰가 형성되면 오랜 기간 변함없는 우정을 보내는 분으로 알고 있습니다. 생활이 소탈하면서도 실질적이며 학문에 있어서는 명징한 논리를, 삶에 있어서는 겸허한 자세를 견지하고 있으며, 2018년 러시아 극동연방대학교에서 명예법학박사학위를 취득한 세계적인 수준의 실천형 학자라고 할 것입니다.

박 이사장님은 그 동안 대한국제법학회 부회장, 협상학회 회장, 동해연구회 회장, 한국국제경제법학회 초대 회장, 한국조정학회 회장 등을 역임하셨습니다. 아울러 고려대학교에 재직하면서 본부의 기획처장, 교무처장의 보직을 맡았고, 법학전문대학원장도 역임하셨습니다. 산업통상자원부, 외교부 등 다수의 정부 부처 및 기관에서 자문위원과 조정위원, 중재인 등으로 활동하고 계시며 고려대 EU법센터 소장, 통상법연구센터 소장, 사이버법센터 소장 및 한국통상법제연구소 소장을 맡고 계시는 등 다방면에 걸쳐 왕성한 활동을 수행하고 계십니다.

우리나라의 대학은 한 분야의 전공 과목만 가르쳐서 칸막이가 심하지만 유럽이나 미국의 대학은 다양한 분야를 동시에 전공하고 이를 가르치기도 합니다. 이처럼 박 이사장님은 다양한 분야를 가르치시며 학생 지도에 대한 열정과 애교심에 더해 평소 고대에 대한 자부심이 강한 것을 느낄 수 있었습니다. 박 이사장님께서 지난해 10월에 박영사에서 『개인정보보호법』이라는 방대한 내용의 책자를 출간하여 저에게 선물을 하면서 카드에 “가르치면서 배운다는 것을 실감하고 공부하는 것이 즐겁다는 것을 깨닫고

있다."고 말씀하고 있습니다. 이는 가르치면서 연구하는 교수가 모토로 삼을 만한 '교학상장(教學相長)'과 논어 맨 앞에 나오는 '학이시습지 불역열호(學而時習之 不亦悅乎)"라는 문구를 연상하는 대목이라고 할 것입니다.

2. 축사의 연결점으로서의 사단법인 한국조정학회

2009년 9월에 창립한 사단법인 한국조정학회는 영산대 부구욱 총장님과 박 이사장님이 중심이 되어 발족한 후 현재 200명 정도의 학자와 실무가들이 조정에 관한 이론과 제도에 관한 연구와 학술활동을 하는 모임으로 법원행정처에 사단법인으로 등록된 학술단체입니다. 초대 부구욱 회장 시절 박 이사장님은 부회장, 저는 연구이사로 출발하였고, 박 이사장님이 회장이던 시절에는 저는 부회장으로 박 이사장님을 보필하였습니다. 당시 박 이사장님은 학회의 중요한 일이 있을 때마다 의논을 하며 중론을 모아 합리적으로 의사결정을 하는 편이었고, 특히 아태조정컨퍼런스의 3차례 개최와 영문학술지를 3차례 발간하는 등 한국조정학회의 국제적 위상의 제고에 큰 기여를 하였습니다.

저는 박 이사장님께서 주도하여 설립한 국제조정센터의 자문위원으로 되어 있어 한국조정학회의 인연이 국제조정센터로 이어지고 있습니다. 지난 해 겨울에 한국조정학회는 국제조정센터와 업무협의(MOU)를 체결하기도 하였습니다. 양 기관은 한국의 조정문화 확산 및 조정제도 발전을 위해 긴밀하게 협력하고 있습니다. 지난달 15일 서울글로벌센터 국제회의실에서 개최된 제6회 아시아태평양조정컨퍼런스에서 박 이사장님은 "국제상사조정의 활성화를 위한 조정제도의 디자인"이라는 주제로 훌륭한 내용의 기조발제를 해 주셨습니다. 한국조정학회 임원으로 활동하는 최재석 감사와 백윤재, 이성규 부회장 및 이로리 교육이사가 이번 KIMC 국제세미나에 토론으로 참여하고, 저도 한국조정학회를 대표하여 축하의 말씀을 전하는 것이 양 기관의 협력에 큰 의미가 있다고 생각하여 기쁜 마음으로 참여하게 되었습니다.

3. 박노형 저『국제상사조정체제』에 대한 비평(Rezension)

박 이사장님의 역작인『국제상사조정체제』를 정독하다 보니 알기 쉬우면서 핵심적 내용을 기술하고 있어 싱가포르조정협약에 관한 이해가 깊어졌습니다. 이 책에는 싱가포르조정협약의 분석, 조정모델법의 이해, UNCITRAL 조정노트를 중심으로 조정의 이해 그리고 싱가포르조정협약의 국내이행법률의 제정과 국제조정 활성화를 위한 정부의 역할에 대한 제언 등 싱가포르조정협약 이후의 제도설계의 방향을 담고 있어 정부의 지침서 역할을 하고 있다고 생각합니다.

박 이사장님께서 새로 발간한 저서에는 중요한 내용이 많이 담겨져 있으나, 특히 제 관심을 끄는 대목은 조정인의 행위기준과 구제부여의 거부사유 중 조정인의 행위와 관련된 부분입니다. 이른바 조정윤리와 행위규범 준칙의 제정 필요성과 연관된 부분입니다. 박 이사장님은 조정인의 행위기준(10-14면)

중에서 가장 중요하다고 고려되는 공개의무, 공평의무, 비밀유지의무 및 특정 상황에서 조정의 종료를 고려할 의무를 상세하게 다루고 있습니다. 아울러 조정인의 행위에 관련된 거부사유(73-75면)에서 조정인 등에 적용가능한 기준의 심각한 위반, 조정인의 공평성 등의 상황의 비공개 등에 관한 사항은 우리에게 적지 않은 통찰력을 제공하고 있다고 할 것입니다.

앞으로 국내에서도 조정윤리와 행위규범의 준칙을 제정할 필요가 있다고 생각합니다. 민사조정법, 의료분쟁조정법, 콘텐츠산업진흥법 등 개별법에 조정위원의 비밀유지의무, 비공개의무, 고지의무 등에 관하여 규율하고 있습니다. 그러나 싱가포르조정협약이 발효되어 국내이행법률이 만들어 진다면 조정인의 윤리규범이나 행위의무 준칙의 마련은 조정의 신뢰성을 확보하는데 매우 중요하고, 이와 같은 조정인의 비윤리적인 행위는 집행력의 확보를 위한 구제의 거부사유로 기능하기 때문입니다.

특히 싱가포르 조정협약 제5조 구제허용의 거부사유로 조정인의 윤리성과 관련하여 (e)와 (f)가 중요합니다. 즉, "(e) 조정인이 자신 또는 조정에 적용 가능한 기준을 심각하게 위반하였고, 만약 그 심각한 위반이 아니었다면 동 당사자가 화해합의를 하지 않았을 경우 또는 (f) 조정인이 공정성이나 독립성에 관하여 정당한 의심이 제기되는 상황을 당사자에게 공개하지 아니하였고, 그러한 비공개가 당사자에게 중대한 효과나 부당한 영향을 미쳐 만약 공개하였다면 당사자가 화해합의를 하지 않았을 경우"에 해당하는지 여부가 중요합니다. 박 이사장님도 적절히 지적하고 있는 바와 같이 (e)의 기준을 적용하여 집행의 거부사유로 되려면 조정인이나 조정에 적용가능한 기준(applicable standards)이 마련되어야 하고, (f)의 기준과 관련하여 비공개로 합리적인 사람이라면 화해합의를 하지 않았을 객관성이 존재하여야 할 것입니다.

이와 관련하여, 대한상사중재원에서 중재인 윤리강령이 제정되어 운영되고 있으나, 조정인의 윤리강령은 별도로 마련되어 있지 않은 실정입니다. 외국의 입법례 특히 미국에서 제정된 2005년 조정인을 위한 윤리규범(The Model Standards of Conduct for Mediators), 2018년 JAMS 조정인 윤리가이드라인(JAMS Mediators Ehics Guidelines) 및 2004년 유럽연합에서 제시한 유럽조정인행동장전(European Code of Conduct for Mediators) 등을 참고하여 우리도 조속히 조정윤리와 행위규범을 마련할 필요가 있습니다.

조정제도의 신뢰성 확보를 위해 조정윤리와 행위규범을 마련한 후에 이에 대한 교육의 실시가 이루어 질 필요가 있습니다. 향후 조정윤리 및 행위규범에 포함되어야 할 사항으로는, 공정성과 중립성 및 독립성, 비공개성과 비밀유지의무, 자발성의 존중과 자기책임성의 인식, 고지의무, 이해충돌방지의무, 청탁금지의무 및 신의성실의무, 전문적 능력 보유, 절차의 질 확보, 당사자에게 정보의 공유 보장, 법적 조언 억제, 제척· 기피· 회피, 당사자와의 교신, 과장 광고와 부당 비용징수 금지 등을 들 수 있습니다. 박 이사장님께서 강조한 특정상황에서 조정의 종료를 고려할 의무는 제가 미처 생각하지 못한 부분으로 이 부분도 심도 있게 검토되어야 할 것으로 평가됩니다.

다른 하나는 싱가포르조정협약의 국내이행법률 제정과 관련하여, 박 이사장님은 동 법률의 내용과

형식은 다음과 같이 예상할 수 있다고 전제하고, 첫째, 싱가포르조정협약의 원래 취지인 국제상사분쟁의 조정을 통한 화해합의의 집행 등에 관한 내용에 국한하여 소극적으로 접근하는 방식으로, 법률 제목은 가칭 '싱가포르조정협약에 관한 법률'이 될 것을 들고 있습니다. 둘째, 싱가포르조정협약의 이행은 물론 동 협약과 함께 UNCITRAL 조정모델법 및 UNCITRAL 조정규칙에 규정된 조정에 관한 국제적 기준을 수용하여 보다 적극적으로 접근하는 방식으로, 법률 제목은 가칭 '상사조정기본법'이 될 것을 내다보고 있습니다. 이처럼 상사중재에 적용되는 중재법에 유사한 조정에 관한 기본법이 될 것으로 파악하면서 이를 통하여 민간조정이 활성화 될 것이라고 평가하고 있습니다. 기본적으로 박 이사장님의 견해에 공감하면서 일각에서 조정절차기본법의 주장도 있는데, 법률 제목에 기본법이라는 명칭이 반드시 들어가야 하는 것이 적절한지는 다소 의문입니다. 박 이사장님도 가칭으로 하였기 때문에 법률명은 탄력적으로 정하는 것이 불가능한 것은 아닙니다. 민간조정 활성화를 도모하는 내용의 법률이라면 그 명칭은 큰 문제가 없다고 봅니다.

싱가포르조정협약의 국내이행에 관한 법제도의 마련이 시급한 국가적 과제인 현실에서, 이에 관한 몇 편의 논문은 있으나, 박 이사장님의 저서는 그 방향성을 모색한 최초의 저술로서 의미가 크다고 할 것입니다. 따라서 정부가 싱가포르조정협약을 비준하고 국내이행법률을 제정하게 될 경우 박 이사장님의 저서가 중요한 나침반의 역할을 할 것이라는 점에서 그 학술적 가치가 매우 크다고 평가됩니다.

III. 맺음말

어느 시대나 학문의 길은 머나먼 길이고 외롭고 힘든 고난의 과정이 함께합니다. 그럼에도 박 이사장님께서는 학자적 소명으로 상아탑에서 오랜 수행의 과정으로 30여 년 넘는 기간 동안 학문연구와 후학양성, 대외적 봉사활동을 하면서 올곧은 선비형 학자이자 교수로 활동해 왔습니다. 사회 변화에 따라 직업의 변천이 용이한 우리 사회에서 한 직장에서 평생 봉직한다는 것은 성실하지 않고는 결코 쉬운 일이 아닙니다.

박 이사장님은 국제법, 국제경제법, 협상론, 개인정보보호법, 사이버안전 등 다양한 법학 분야에 관심을 넘어 깊이 있는 천착을 하면서도 조정과 국제조정 분야에 심혈을 기울이는 열정에 경의를 표합니다. 저와는 전공이나 학연이 달라 한국조정학회 창립 이전에는 박 이사장님과 교류할 기회가 없었으나, 2009년 한국조정학회 창립 이후 의기투합으로 학회 활동의 고락을 함께 하면서 크고 작은 일을 의논하는 등 의사결정을 합리적으로 진행하시고 학회에 대한 책임감과 열정을 갖고 최선을 다하는 모습을 곁에서 지켜보았습니다.

무엇보다 박 이사장님은 제2대 한국조정학회 회장으로 4년 간 봉사하면서 아시아태평양 조정컨퍼런스의 개최가 필요하다고 판단하시어 이를 실행에 옮기셨습니다. 이 자리에서 우리나라 조정제도의 발전과 국제조정의 활성화에 초석을 놓으신 박 이사장님께 심심한 감사의 말씀을 드립니다. 박 이사장님의

조정에 대한 깊은 이해와 열정에 기반하여 출간된 전문학술서가 국제상사조정체제를 이해하고 발전방향을 모색하는데 길라잡이 역할을 하리라고 봅니다.

끝으로, 이번에 출간된 박 이사장님의 저서가 앞으로 싱가포르조정협약에 따른 국제적 상사거래의 발전에 크게 기여하고, 실무계나 변호사 및 조정을 연구하는 사람들에게 밑거름이 되며, 국내이행 법률을 제정하는 과정에 어둠을 밝히는 등대와 같은 역할을 하리라고 확신합니다. 경청해 주셔서 감사합니다.

2021. 12. 3.

사단법인 한국조정학회 회장 김 용 섭

Presentation & Discussion

Papers

Singapore Convention of 2019: What Does It Mean for Us?

2nd KIMC International Seminar on Mediation

December 3, 2021

Jaemin Lee

School of Law, Seoul National University

[아래 발표문은 2018년 11월 비교사법 제25권 4호에 게재된 "국제 조정을 통한 합의서 집행협약의 도입과 법적 쟁점"이라는 제목의 논문을 이번 12월 3일 세미나 발표를 위하여 요약, 정리하였음을 밝혀 둡니다.]

I. 들어가는 말 - 싱가포르 협약 서명

거래 또는 계약 당사자간 분쟁을 '조정' (mediation)을 통하여 해결하고자 하는 움직임이 국제적으로 확산되고 있다. 조정은 법원을 통한 사법적 절차에 비하여 유연한 적용이 가능하며 상대적으로 신속하게 진행될 수 있어 비용이 경감되고 당사자 자치 측면에서도 장점을 갖기 때문이다. 조정이 그 목적을 달성하기 위하여는 조정절차 결과 도출된 '당사자간 합의'가 효과적으로 집행 (enforce)되는 것이 필요하다. 원칙적으로 이러한 합의는 당사자의 국내 관할지에서 집행되어야 한다. 만약 이러한 합의를 당사자의 국내 관할지를 넘어 제3국에서도 집행할 수 있도록 한다면 그러한 합의의 효력은 배가될 것이다. 바로 이러한 효과를 달성하고자 UN 국제상거래법위원회(United Nations Commission on International Trade Law, 이하 'UNCITRAL')는 새로운 국제협약을 2018년 7월 마무리하였다. 이 최종안은 2018년 12월 UN 총회에서 채택되었고 2019년 8월 7일 싱가포르에서 서명되었다. 우리나라를 포함 모두 46개국이 이날 서명식에 참석하였고, 이후 추가로 5개국이 서명하여 2019년 11월 21일 현재 모두 51개국이 서명하였다. 아직 갈 길이 멀지만 예상하지 못한 성공적인 출발로 일단 평가되고 있다.

물론 이러한 당사자간 합의를 일종의 계약으로 파악하여 관할권 있는 제3국 법원에서 집행하는 것도 가능하다. 그러나 이 경우 해당국 법원의 민사절차 전체를 거쳐야 한다는 어려움이 있으며 여기에는 적지

않은 시간과 비용이 소요된다. 따라서 계약 이행 문제가 아닌 조정의 결과라는 그 자체에 대하여 집행력을 확보하는 방안이 2015년부터 적극적으로 모색되기에 이르렀다. 특히 당사자간 국적을 달리하는 국제적 성격을 갖는 조정이 확산됨에 따라 이에 대하여 집행력을 부여하는 방안이 적극적으로 검토되고 있다. 최근 국제사회에서 확산되고 있는 디지털 경제 및 4차 산업혁명은 이러한 방식의 분쟁해결을 더욱 요구하고 있기도 하다.

UNCITRAL은 조정 분야 규범으로 1980년 'UNCITRAL 조정규칙'과 2002년 'UNCITRAL 국제상사조정 모델법'(이하 '모델조정법')을 각각 채택한 바 있다. 모델조정법 제14조는 조정 절차를 통해 도출된 당사자들의 '합의 (화해합의)'에 법적 구속력과 집행력을 부여한다고 규정할 뿐, 구체적인 집행방법은 각국이 정하도록 남겨두었다. 이러한 모델조정법의 한계를 보충하고 국제적 성격을 갖는 상사분야 조정의 활성화를 위해 이러한 합의에 집행력을 부여하는 국제규범을 성안하기 위해 2015년부터 2018년까지 UNCITRAL 중재•조정 실무작업반(Working Group II)의 검토 및 준비작업이 진행되었다. 3년에 걸친 실무작업반의 작업을 거쳐 2018년 2월 개최된 제68차 실무작업반 회의에서 새로운 국제규범의 최종안이 준비되었고, 이 중 국제협약은 2019년 8월 서명되었다. 이 새로운 국제협약의 명칭은 "조정으로부터 도출된 국제적 화해합의에 관한 유엔 협약 (*United Nations Convention on International Settlement Agreements Resulting from Mediation*; 이하에서는 '국제 조정을 통한 합의서 집행협약')"이다. 아래에서는 이 협약의 주요 내용을 검토한 후, 그 법적 쟁점을 살펴보기로 한다. 이를 바탕으로 우리나라 법제에 대한 함의를 논해보고자 한다.

3년에 걸친 작업반 논의과정에서 거의 대부분의 참여국이 새로운 협약 도입의 필요성과 UNCITRAL이 이에 대한 적절한 토론의 장이라는 것에는 별다른 이견이 없었다. 그러나 구체적인 이슈에 대하여는 적지 않은 이견을 보이기도 하였다. 국제 조정의 결과인 화해합의를 제3국에서 집행한다는 것은 최초의 시도이며 그 선례가 없기 때문이다. 여러 가지 의문점과 다양한 법적 쟁점이 제기되었다. 이들 의문점과 쟁점에 대한 최종적인 결론은 아직은 불투명하다. 사실 여전히 미지수인 부분이 적지 않다. 그럼에도 불구하고 여러 국가들이 이러한 협약을 도입하는 데에 적극적으로 나선 배경에는 올해로 발효 61년을 맞는 1958년 '외국 중재판정의 승인 및 집행에 관한 협약 (*Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, '뉴욕협약')'의 성과가 상당히 중요하게 작용하였다. 뉴욕협약에 상응하는 협약을 조정 분야에도 한번 도입하여 보자는 것이다. 그러나 중재와 조정은 엄연히 다른 절차이므로 이 둘을 같은 평면에서 다룰 수 있을지는 앞으로도 살펴보아야 할 문제이다. 어쨌든 이러한 우려를 불식시키며 일단 협약 문안이 최종적으로 확정되어 서명되었다. 이제 이 협약이 발효 이후 실제 어떻게 움직이는지 여부를 자세히 살펴보고 필요한 대로 우리 국내법제를 정비하는 일이 남겨진 과제이다.

II. 국가간 이견과 'Two Track' 방식의 채택

'국제 조정을 통한 합의서 집행협약'에 대한 국가들의 입장은 처음부터 상당히 대립되었다. 대표적으로 미국, 캐나다, 멕시코 등은 이러한 새로운 제도 도입에 적극적인 입장을 취하였다. 아시아 지역 국가 중에서는 특히 중국이 긍정적 입장이었다. 이들은 화해 및 조정에 대한 자국 기업들의 의존도가 높아짐에 따라 이를 반영한 보다 체계적인 국제체제 도입의 필요성을 지속적으로 언급하였다. 이 논의를 주도한 미국은 집요하게 여러 국가들을 설득하였다. 이에 반해 EU, 일본, 한국 등의 국가들은 신중한 입장을 취하였다. 이들은 조정은 중재와 다르며, 조정 그 자체는 전통적으로 집행과 친한 개념이 아니라고 본다. 특히 이러한 협약은 국내법 및 국내법원의 권한과의 충돌이 문제될 수 있으므로, 전체적인 국내 반응을 확인하며 조심스럽게 접근할 필요가 있다는 것이다.

작업반 내 3년의 논의 기간 동안 이러한 기본적인 입장 차이를 좁히기 위하여 노력하였으나 여의치 않았다. 그 결과 이들 이견을 해소하는데 주력하는 것 보다는 이 문제를 다루는 협약과 모델법을 동시에 채택하는 것으로 정리하였다. 요컨대 협약 체결에 적극적인 국가들은 먼저 협약 방식으로 진행하고, 반면에 다소 신중한 입장을 취하는 국가들은 우선 모델법을 통한 국내 법제 개선을 모색한 후 구체적인 진행 방향에 대하여 선택의 기회를 제공하자는 것이 그 골자이다. 일종의 "Two Track" 제도를 도입한 것이다. 그 결과 조심스러운 입장을 취하는 국가들은 새로운 협약이 채택되더라도 먼저 모델법의 내용을 참고하여 국내 입법조치를 진행하고, 그 이후 상황을 보고 협약 가입 여부를 결정할 수 있는 길이 열렸다. 미국, 싱가포르 등 적극적인 국가들은 협약 서명과 비준을 조속히 마무리하여 협약을 조기 발효시킬 수 있는 길이 역시 열리게 되었다.

이 협약은 국제분쟁 해결에 상당한 파급효과를 내포하고 있으므로 우리도 이 새로운 흐름의 진행을 면밀히 살펴보아야 할 것이다. 일단 우리나라는 이 협약에 서명하였으나 당장은 비준 계획은 없는 것으로 알려지고 있다. 추측컨대 우리나라도 일단 모델법의 일부 내용을 먼저 도입하여 한번 시험적으로 적용하는 단계를 거치지 않을까 예측된다. 이 협약이 최초의 시도이며 여러 불확실한 부분들이 남아 있다는 점 등 여러 가지 사정을 고려하면 이러한 방식이 합리적일 것으로 사료된다.

국제적 성격을 갖는 조정을 통하여 도출된 합의의 제3국에서의 집행 문제는 시장과 기업의 강한요구에서 출발하였다. 이러한 점을 감안하면 이 협약이 궁극적으로는 국제적으로 확산되고 적극 활용될 가능성이 높다. 아마 최초 도입 단계에서는 여러 혼돈이 있겠으나 점차 경험이 축적되며 세부적인 조정 내지 명확화 작업이 이루어질 것으로 기대된다.

III. '국제 조정을 통한 합의서 집행협약'의 주요 내용

2018년 7월 개최된 UNCITRAL 제51차 본 회의는 협약과 모델법을 동시에 확정하였다. 이 글에서는

이 중 협약을 중심으로 살펴보도록 한다. 모델법에 포함된 내용은 협약과 대동소이하고 기존의 모델법과의 통일성 확보를 위한 세부적인 정리내용이 포함되었을 따름이기 때문이다.

먼저 이 협약의 핵심은 앞에서도 살펴본 바와 같이 제3자의 개입으로 진행된 국제적 성격의 조정의 결과 도출된 당사자간 문서의 합의를 이 협약의 체약 당사국인 제3국에서 집행하는 것을 그 목적으로 한다. 모두 16개 조항으로 이루어진 동 협약의 주요 조항에는 ▲적용범위, ▲기본원칙, ▲정의, ▲협약의 적용, ▲신청거부사유, ▲동시신청의 경우, ▲기타 법률 및 조약과의 관계, ▲유보, ▲수탁처, ▲서명 및 비준 ▲지역경제기구의 참여, ▲국내 지역단위에서의 효력, ▲발효, ▲개정, ▲폐기, ▲탈퇴에 대한 규정이 각각 포함되어 있다.

A. 협약 주요 내용

i. 적용범위 (제1조)

제1조 적용범위

1. 이 협약은 그 체결 당시에 다음의 측면에서 국제적인 성격을 띠는 상사분쟁 해결을 위하여 조정으로부터 도출되고 당사자간에 서면으로 체결된 합의 ('화해합의'[1])에 적용된다.
(a) 적어도 화해합의의 두 당사자들은 서로 다른 국가에 사업 소재지를 갖는다.
(b) 화해합의의 당사자들이 사업 소재지를 갖는 국가가 다음의 국가와 다르다.
  (i) 화해합의에 따른 의무의 상당부분이 이행되는 국가, 혹은
  (ii) 화해합의의 주제와 가장 긴밀하게 관련되어 있는 국가.

2. 이 협약은 다음 화해합의에는 적용되지 아니한다.
(a) 당사자 중 일방이 개인이나 가족 혹은 가계상 목적으로 참여한 (소비자) 거래에서 발생한 분쟁을 해결하기 위하여 체결되거나,
(b) 가족법, 상속법, 노동법과 관련된 경우

3. 이 협약은 다음 화해합의에는 적용되지 아니한다.
(a) (ⅰ) 법원이 승인하였거나 법원의 소송절차에서 체결된 화해합의

[1] 분쟁해결과정에서의 합의를 '분쟁해결합의'와 '분쟁타결합의'로 나누어 설명하기도 한다. '분쟁해결합의(dispute resolution agreement)'라 함은 당사자 간에 발생하는 분쟁의 해결절차에 관한 합의를 말한다. 중재합의, 조정합의 등이 이에 포함되며 국제분쟁에 있어서는 분쟁에 적용될 준거법합의도 이에 포함된다. '분쟁타결합의(dispute settlement agreement)"는 당사자 간에 실체법적인 권리의무를 발생시키는데 그 주안점이 있다는 점에서 절차법적 또는 저촉법적 효력발생을 주안점으로 하는 분쟁해결합의와는 그 법률효과 면에서 차이가 있다. 손경한 (註5), 43면 참조. 위 협약 상 '화해합의'란 후자인 분쟁타결합의를 뜻하는 것으로 볼 수 있을 것이다.

(ii) 법정지에서 판결로서 집행력이 부여된 화해합의 (b) 공식 기록되었고 중재판정을 통해 집행력이 부여된 화해합의

동 협약은 비정부기관의 상사분쟁을 해결하기 위하여 진행된 조정에 적용된다. 정부기관이 상업적 활동의 주체로서 상사분쟁의 당사자가 되는 경우도 있을 수 있으나 원칙적으로 본 협약의 주된 목표는 아니다. 마찬가지로 상사분쟁이 아닌 여타 분쟁도 이 협약의 적용을 받지 아니한다. 동 협약의 적용범위와 관련하여 여기에서 말하는 '조정(mediation)'은 실제 분쟁해결절차에 사용된 구체적 명칭이 무엇이었는지 또는 여기에 관여한 제3자의 명칭이 무엇이었는지 상관없이 특정 결과를 당사자에게 강제할 권한이 없는 제3자가 관여하여 진행된 분쟁해결절차를 통칭한다.

특히 법원에 의해 승인되거나 법원의 개입으로 진행된 조정, 그리고 판결 또는 중재판정으로 집행될 수 있는 조정은 이 협약의 적용에서 배제된다. 헤이그 국제사법회의의 '외국판결의 승인과 집행에 관한 프로젝트'나 뉴욕협약과 적용 범위가 중복될 수 있기 때문이다. 일부 국가에서는 사법•중재절차 진행 중에 조정이 개시되어 당사자간 화해합의가 도출되면 판결 혹은 중재판정과 동일한 효력을 부여한다는 점도[2] 이러한 형태의 조정은 이 협약의 적용 범위에서는 제외시켜야 한다는 주장의 근거로 제시되었다. 반면, 조정이 사법•중재절차 중에 개시되는 경우가 많은 상사실무를 감안하여 일단 이러한 조정도 적용범위에 포함시키되 이를 통해 도출된 합의가 판결이나 중재판정과 동일한 효력을 갖지 않는 경우로 제한하자는 의견이 제기되었다. 결국 2017년 9월 제67차 작업반 회의에서 '재판절차' 또는 '중재절차'와 연관되어 도출된 당사자간 합의라 하더라도, 그 합의가 제3자의 조정을 통해 도출되었고, 그 합의가 판결 또는 판정으로 명시적으로 체화되지 않은 경우에는 이 협약이 적용되는 것으로 정리되었다.

그리고 이 협약은 서로 국적을 달리하는 당사자간 진행된 조정 또는 이에 준하는 경우에 적용된다. 이를 표현하기 위하여 "국제"라는 용어가 사용되었다. 최초 논의 시 협약 내지 모델법의 적용범위와 관련하여 '국제적 성격'의 상사분야 조정이 무엇을 의미하는지 의견대립이 있었다. 본질적으로 '국내적 성격'을 보유하는 조정이 이 새로운 기제를 통하여 외국에서 집행이 추구될 수도 있다는 우려가 제기되었기 때문이다. 그러나 작업반 회의를 거치며 그 구체적 범위를 명확히 하여, 현재 문언으로는 명백히 국제적 성격을 갖는 경우에만 새로운 집행제도의 적용을 받도록 정리가 되었다.

ii. 정의 (제2조)

제2조 정의

[2] 예컨대 우리 민사조정법상 조정은 재판상 화해와 동일한 효력을 가지며 이는 확정판결과 동일한 효력을 의미한다. 민사조정법 제6조 및 제29조, 민사소송법 제220조 참조.

1. 제1조 제1항의 목적상:
   (a) 만약 어느 당사자가 하나 이상의 사업 소재지를 갖는다면 관련된 사업 소재지는 화해합의의 체결 당시에 당사자들에게 알려지거나 고려된 상황을 참작하여, 화해합의에 의해 해결된 분쟁과 가장 긴밀한 관련을 갖는 곳을 의미한다.
   (b) 만약 한 당사자에게 사업 소재지가 없다면, 당사자의 거주지를 기준으로 한다.

2. 화해합의는 그 내용이 어떤 형태로든 기록된다면 '서면' 합의가 된다. 화해합의의 서면성 요건은 거기에 포함된 정보가 향후 참조를 위해 이용가능 하도록 접근할 수 있다면 전기 통신에 의하여 충족될 수 있다. '전기 통신'은 당사자들이 데이터 메시지를 수단으로 하여 하는 통신을 의미한다. '데이터 메시지'는 전자적 데이터 교환(EDI), 전자메일, 텔레그램, 텔렉스 혹은 팩스 등을 포함하여 전기, 자기, 광학 혹은 유사한 수단에 의해 발생, 전송, 수령 및 저장되는 정보를 의미한다.

3. '조정'은 사용되는 표현이나 그 과정이 진행된 근거와 상관없이, 당사자들이 제3자 혹은 분쟁당사자들에게 해결방안을 강제할 권한이 없는 자('조정인')의 조력을 얻어 분쟁의 원만한 해결에 이르기 위해 시도하는 과정을 의미한다.

제2조는 동 협약에 사용되는 용어를 명확히 규정하고 있다. 예컨대 당사자의 사업 소재지가 두 개 이상일 경우, 분쟁과 가장 관련이 높은 소재지가 그 기준이 되며, 사업 소재지가 없는 경우 당사자의 거주지가 대신 적용된다. '서면(in writing)' 합의에는 전자적 데이터 전송(electronic data interchange), 이메일, 텔레그램, 텔렉스 등을 비롯한 전기통신에 의한 합의도 포함된다.

iii. 기본원칙 (제3조)

이 협약의 체약 당사국은 동 협약에 규정된 적용절차에 따라 당사자간 조정 합의서를 자국 영역에서 집행할 것을 약속한다. 만약 집행의 상대방인 합의의 당사자가 이미 해당 분쟁이 해결되었음을 주장하는 경우 이 당사자에게 이러한 사실을 입증할 기회가 제공되어야 한다.

iv. 협약의 적용 (제4조)

동 협약이 적용되기 위한 조정을 통한 분쟁 당사자간 합의는 최소한 다음의 요건을 충족하여야 한다. 먼저 여기에서 말하는 합의는 당사자의 서명이 포함된 문서에 의한 합의에 국한되며, 그러한 합의가 '조정의 결과물'이어야 한다. 당사자의 서명과 합의서는 전자적 형태로 이루어질 수도 있다. 또한 이러한 문서에는 이 합의에 구속되고자 하는 당사자의 의도가 명확히 포함되어야 한다. 또한 합의는

해당 분쟁을 전부 또는 일부 '해결'하는 내용을 포함해야 한다. '해결'이 포함되지 않은 합의 역시 이 협약의 적용대상에서 배제된다. 그리고 당사자간 합의 도출은 분쟁 발생 이전 또는 이후 모두 가능하다. 그러한 합의는 양 당사자의 진정한 의도를 반영하고 있음이 확인되어야 하고, 합의의 진정성이 의심되는 경우에는 협약 적용의 대상에서 배제된다.

v. 항변사유 (제5조)

제5조 구제허용 거부사유

1. 제4조에 따라 구제가 이루어지는 협약당사국의 권한있는 당국은 그에 대해 구제가 추구된 당사자의 요청에 따라 그 당사자가 권한있는 당국에게 다음 각 호의 증거를 제출한 경우에만 구제허용을 거부할 수 있다:
   (a) 화해합의 당사자가 법률행위능력이 결여된 경우
   (b) 근거가 되는 화해합의가,
      (i) 당연무효이거나, 당사자들에게 유효하게 적용되는 법에 따라 적용불능 혹은 이행불능이거나 혹은 제4조에 따라 구제가 추구되는 협약당사국의 권한있는 당국에 의해 적용가능한 것으로 간주된 법에 따라 어떠한 흠결이 있는 경우
      (ii) 문서 자체의 조건에 따라 구속력이 없거나 최종적이지 아니한 경우
      (iii) 이후 변경된 경우
   (c) 화해합의에 따른 의무가,
      (i) 이미 이행되었거나
      (ii) 명백하지 않거나 이해할 수 없는 경우
   (d) 구제 허용이 화해합의의 조건에 위배될 경우
   (e) 조정인이 조정인이나 조정에 적용되는 기준을 중대하게 위반하였고, 그러한 위반이 없었다면 당사자가 화해합의를 체결하지 아니하였을 경우; 혹은
   (f) 조정인이 조정인의 공평성이나 독립성에 관해 정당한 의심을 제기하는 사정을 당사자에게 공개하지 아니하였고, 그러한 미공개가 없었다면 당사자가 화해합의를 체결하지 않았을 정도로 어느 당사자에게 중대한 영향이나 부당한 영향을 끼쳤을 경우.

2. 제4조에 따라 구제가 이루어지는 협약당사국의 권한당국은 다음의 사실을 확인하였다면 구제를 거절할 수 있다:
   (a) 구제 허용이 당사국의 공공정책에 위배되는 경우; 혹은
   (b) 분쟁의 대상이 당사국 법에 따라 조정으로 해결될 수 없는 경우.

조정을 통한 당사자간 합의의 제3국 집행시 별도의 '승인(recognition)' 절차가 필요한지 여부에 대해 의견 대립이 있었지만, 결국 이에 관한 각국의 법제가 상이하다는 이유로 승인을 규정하지 않는 방향으

로 정리되었다. 결국 항변사유는 열거적으로 규정하되, 일반적인 표현을 사용하여 체약 당사국의 집행기관이 유연하게 해석하도록 하는 조문을 도입하였다. 항변 사유에는 ▲조정을 통해 도출된 합의에 대한 당사자 의사의 진실성 내지 정확성을 의심할 수 있는 상황, ▲조정인의 중립성이 의심되는 상황, ▲집행국 국내법상 조정으로 문제를 해결하는 것이 불가능한 내용이 집행대상인 상황, ▲형식적 요건에 중요한 흠결이 있는 상황, ▲최종적인 합의내용을 담고 있는 것으로 보기 어려운 상황, ▲집행국의 공서양속에 반하는 내용을 담고 있는 상황 등이 포함되었다. 즉 항변사유 조항을 통해 형식적, 실질적 흠결이 있는 국제적 조정 합의서에 대한 집행을 거부할 수 있게 되었다. 여기에 포함된 내용이 불명확하고 불투명하여 실제 어떻게 적용될 것인지 의문스럽다는 주장은 지금도 지속적으로 제기되고 있다. 제5조가 가장 중요하게 다루어지는 조항이다.

vi. 동시신청 (제6조)

협약 제6조는 제3국 집행기관에 제출된 당사자간 합의서가 다른 법원 내지 중재절차에도 제출되었거나 다른 법원 및 중재판정부에 의하여 이미 심리 중인 경우에 적용되는 조항이다. 특히 합의의 당사자가 각각 자신이 유리하다고 판단하는 국가의 법원에 해당 합의의 집행을 위하여 회부하는 상황이 우려되었기 때문이다. 가령 조정을 통한 합의의 일방 당사자가 그 집행을 위하여 특정 체약 당사국의 법원에 이를 회부하면, 해당 합의의 반대 당사자가 동일한 합의의 집행을 다른 체약 당사국의 법원에 회부할 가능성도 제기되었다. 또한 합의의 일방 당사자는 집행을 위하여 특정국가의 법원에 그 합의서를 제출하였으나, 반대 당사자는 해당 합의서의 무효 내지 집행 거부사유가 있음을 다른 국가의 법원에서 주장하는 상황도 상정 가능하다. 따라서 협약 제6조는 동일한 합의에 대하여 이러한 복수의 절차가 국제적으로 진행되는 상황을 상정하고 있다. 이 조항에 따라 이 경우 해당 합의의 집행을 요청 받은 법원은 일단 그 절차를 중단하여 다른 법원에서의 절차 진행 상황을 파악하거나 또는 종료를 기다릴 수 있다. 또는 이 법원은 집행을 구하는 당사자에 대하여 집행을 부여하는 반대급부로 다른 법원에서 진행 중인 절차의 결과에 따라 새로운 상황이 발생할 경우 그로 인해 타방 당사자에 초래되는 손해를 전보하기 위한 보증금 공탁을 요구할 수도 있다.

vii. 유보 (제8조)

대부분의 회원국이 유보를 허용하는 것이 필요하다는 원칙에 대하여는 동의하였지만 그 구체적 내용에 대하여는 다양한 의견이 제시되었다. 오랜 논의를 거쳐, (i) 체약 당사국 정부가 스스로 당사자인 계약은 이 협약의 적용 대상에서 배제하고, (ii) 이 협약은 조정의 당사자가 이 협약의 적용에 구체적으로 합의하는 경우에 한하여 적용하는 것으로 한다는 취지의 두 가지 유보를 체약 당사국에 허용하는 것으로 최종적으로 정리되었다. 전자의 경우, 체약 당사국 정부가 체결하는 계약이 그 상대방에 의하여 제3국에서 집행이 추구되는 상황을 배제하는 것이 필요하다는 정책적 필요에 의하여 도입되었다. 이러한 상황

은 국제법상 국가면제 (state immunity) 법리에 따라 그 합의가 기본적으로 타국 국내법원에서 집행되기 힘들다는 법리적 한계도 동시에 고려한 결과이다.

후자의 경우, 이 협약의 적용은 특정 국가가 이 협약에 가입하는 것만으로 자동적으로 이루어지는 것이 아니라, 이에 더하여 구체적인 사안에서 특정 합의의 당사자들이 이 협약의 적용에 별도로 합의하는 경우에 국한한다는 취지를 체약 당사국이 선언할 수 있도록 허용하는 것이다. 이에 따라 우리나라가 향후 이 협약에 가입한다 하더라도 실제 이 협약의 적용은 합의의 당사자들이 자신들의 합의문(계약서)에 이 협약이 규정하는 바에 따른 집행을 허용하기로 합의한다는 취지의 문구를 구체적으로 기입하여야만 가능하도록 선택할 수 있는 길이 열려 있게 되었다.

한편 여러 검토 끝에 이러한 두 가지 구체적 유보를 제외한 다른 사유에 기초한 유보는 허용하지 않는 것으로 결정하였다. 이 협약의 목적상 상기 두 유보 이외의 여타 유보(가령 국가안보를 이유로 하는 유보 등)는 이 협약의 목적 및 대상에 부합하지 않는 성격을 갖게 되므로 허용하지 않는 것이 유보에 관한 국제법상 기본원칙에도 부합한다는 의견이 설득력 있게 제시되었기 때문이다.

viii. 발효 (제14조)

이 협약은 3개국의 비준으로 발효한다. 협약의 조기 발효를 도모하는 국가들의 입장이 적극 반영된 결과이다. 그러나 협약이 새로운 국제규범으로 자리 잡기 위해서는 3개국을 상당히 상회하는 비준국의 확보가 필요할 것이다. 현재 추세로는 2020년 상반기 중 발효할 것으로 예측하는 시각이 다수이다.

B. 모델법

한편 금번에 동시에 확정된 모델법의 정식 명칭은 "2018년 개정사항을 포함하는 국제상사조정 UNCITRAL 모델법 (*UNCITRAL Model Law on International Commercial Mediation (2002) with Amendments as Adopted in 2018*)" 이다. 모델법은 협약에 비해 유연성이 높으며, 각 국가는 모델법을 자국의 국내 사정에 따라 자유롭게 변형하여 도입할 수 있다. 기본적으로 기존 2002년 모델법에 새로운 조항을 삽입, 개정하는 방식으로 운용되며, 기본 구조는 Section 1 – 일반조항 (일부개정), Section 2 – 조정 (일부개정), 그리고 Section 3 – 국제 조정합의의 집행(신규도입)의 형태로 이루어져 있다.

IV. 향후 전망 및 과제

국제 조정을 통한 합의서 집행협약은 선례가 없는 새로운 조약으로, 조정 및 ADR 관련 민간 전문가 및 실무가들의 높은 참여와 관여를 통해 탄생하였다. 함께 성안된 모델법도 마찬가지이다. 이는 UNCITRAL의 장점을 보여준 대표적인 사례로 평가할 만하다. 민관영역을 아우르는 전문가들을 참여시

키고 이들간 적극적인 논의를 통한 합의물을 비교적 신속하게 도출하였다. 어떻게 보면 UNCITRAL이 국제거래법·국제통상법의 발전에 기여할 수 있는 고유의 방식을 보여주었다.

2019년 11월 21일 현재 51개국이 서명하여 당초 예상을 뛰어 넘는 속도를 보여주고 있다. 아마ADR에 대한 국제사회의 전반적인 관심을 반영하고 있는 것이 아닌가 사료된다. 이 협약 성안과정에서 주도적 역할을 담당한 싱가포르는 이 협약을 자국에서 서명하고자 상당한 노력을 경주하였다.[3] 그 결과 이 협약은 이제 "싱가포르 협약"으로 불리게 되었다. 싱가포르가 중재에 이어 조정 분야에서도 세계적인 중심국가로 자리잡을 수 있는 기회라는 점이 적극 고려된 까닭이다. 이에 더하여 오랜 논의 끝에 발효를 위한 비준국가의 수를 3개국으로 규정하여 두어 조만간 협약의 발효가 예상된다. 3개국은 국제협약에 통상적으로 요구되는 최소한의 발효 국가 숫자이다. 일부 국가에서 비준이 추진 중인지라 2020년 상반기 발효할 것으로 예상되고 있다.

일단 예상외의 성과에도 불구하고 아직 이 새로운 제도에 대하여 의문점을 가진 국가들도 적지 않다. 이들 국가들은 이 협약이 발효한 이후 여러 조항들이 실제 어떻게 적용되는지를 면밀히 주시할 것으로 보인다. 이 협약에 대하여 일본이 상대적으로 소극적인 입장을 띠고 있으며, EU 역시 조심스러운 기조를 유지하고 있다. 우리나라와 여러 공통점이 있는 이들 국가들의 입장은 우리도 예의주시할 필요가 있다. 이 협약이 현재 국제사회의 기업들이 요구하는 부분을 반영하고 있는 것은 분명하나, 그렇다고 하여 이 협약이 뉴욕협약에 버금가는 새로운 국제분쟁해결제도로 자리를 잡을 것인지는 아직은 불투명하다. 그러나 일단 올바른 방향으로의 새로운 중요한 시도임에는 틀림없다.

한편 법원 중심의 조정이 주로 이루어지고 순수한 민간주체간 조정의 비중이 상대적으로 적은 우리나라 상황에서는 이 협약이 어떠한 파급효과를 가지고 올 지 면밀히 검토하여야 한다. 현재 협약 문안대로면 외국에서 이루어진 조정은 우리 법원을 통하여 집행되는 대상에 포함되는 반면, 우리나라에서 이루어진 조정의 상당 부분은 제3국에서의 집행 대상에서 배제되는 상황이 될 것이다. 또한 외국에서 진행된 조정이 필요한 기준과 요건을 충족하였는지를 판단하는 것은 실제 사안에서는 상당히 어려운 작업이 될 가능성이 높다. 여러 형식적 요건을 구체적으로 두고 있는 중재와 달리 탄력성과 유연성을 기조로 하는 조정에서는 특히 이러한 부분이 문제가 될 개연성이 높다. 이 부분이 어떻게 해석되고 또 적용되는지 여부에 따라 이 협약의 장기적 성패가 달려 있다. 이러한 부분은 앞으로 우리 법원이 부딪히게 될 과제이기도 하다.

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[3] 작업반 회의를 이끌어 온 의장은 자국 싱가포르에서 이 협약의 서명식을 갖기를 희망한다는 입장을 표명하였고, Commission Session이 이를 수용하였다. 싱가포르의 이러한 입장 표명은 이 협약을 "Singapore Convention"으로 이름을 부여하기 위한 준비작업의 일환인 것으로 사료된다. Report of Working Group II (Dispute Settlement) on the work of its sixty-eighth session (New York, 5–9 February 2018), A/CN.9/934, p.15. 참조.

어쨌든 이 협약의 도입은 국제 조정의 유용성과 앞으로의 활용 가능성을 국제사회가 높게 평가하고 있음을 보여주고 있다. 그리고 이 제도가 국경을 넘어 활용될 수도 있는 새로운 메커니즘을 희망하는 산업계와 시장의 목소리도 점차 커지고 있음을 시사하고 있다. 일단 이 협약이 표방하는 바는 현재 우리 법제와는 부합하지 않는 부분도 있으나 만약 국제거래에 나서는 우리나라의 개인 및 기업도 이러한 새로운 제도의 도입을 적극 요구하는 상황이라면 우리 법제도 이에 맞추어 변경 내지 발전시킬 필요가 있을 것이다. 일단은 향후 수년간 이 협약의 구체적 해석과 적용 상황을 지켜보고 그 의미와 범위를 정확히 확인하는 작업이 그 첫 걸음이 될 것이다.

[첨부]

United Nations Convention on International Settlement Agreements Resulting from Mediation

Preamble

The Parties to this Convention,

Recognizing the value for international trade of mediation as a method for settling commercial disputes in which the parties in dispute request a third person or persons to assist them in their attempt to settle the dispute amicably,

Noting that mediation is increasingly used in international and domestic commercial practice as an alternative to litigation,

Considering that the use of mediation results in significant benefits, such as reducing the instances where a dispute leads to the termination of a commercial relationship, facilitating the administration of international transactions by commercial parties and producing savings in the administration of justice by States,

Convinced that the establishment of a framework for international settlement agreements resulting from mediation that is acceptable to States with different legal, social and economic systems would contribute to the development of harmonious international economic relations,

Have agreed as follows:

Article 1. Scope of application

1. This 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.

2. This Convention does not apply to settlement agreements:

(a) Concluded to resolve a dispute arising from transactions engaged in by one of the parties (a consumer) for personal, family or household purposes;

(b) Relating to family, inheritance or employment law.

3. This Convention does not apply to:

(a) Settlement agreements:

(i) That have been approved by a court or concluded in the course of proceedings before a court; and

(ii) That are enforceable as a judgment in the State of that court;

(b) Settlement agreements that have been recorded and are

enforceable as an arbitral award.

Article 2. Definitions

1. For the purposes of article 1, paragraph 1:

(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.

2. A settlement agreement is 'in writing' if its content is recorded in any form. The requirement that a settlement agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference; 'electronic communication' means any communication that the parties make by means of data messages; 'data message' means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy.

3. 'Mediation' means 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.

Article 3. General principles

1. Each Party to the Convention shall enforce a settlement agreement in accordance with its rules of procedure and under the conditions laid down in this Convention.

2. If a dispute arises concerning a matter that a party claims was already resolved by a settlement agreement, a Party to the Convention shall allow the party to invoke the settlement agreement in accordance with its rules of procedure and under the conditions laid down in this Convention, in order to prove that the matter has already been resolved.

Article 4. Requirements for reliance on settlement agreements

1. A party relying on a settlement agreement under this Convention shall supply to the competent authority of the Party to the Convention where relief is sought:

(a) The settlement agreement signed by the parties;

(b) Evidence that the settlement agreement resulted from mediation, such as:

(i) 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.

2. The requirement that a settlement agreement shall be signed by the parties or, where applicable, the mediator is met in relation to an electronic communication if:

(a) A method is used to identify the parties or the mediator and to indicate the parties' or mediator's intention in respect of the information contained in the electronic communication; and

(b) The method used is either:

(i) As reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or

(ii) Proven in fact to have fulfilled the functions described in subparagraph (a) above, by itself or together with further evidence.

3. If the settlement agreement is not in an official language of the Party to the Convention where relief is sought, the competent authority may request a translation thereof into such language.

4. The competent authority may require any necessary document in order to verify that the requirements of the Convention have been complied with.

5. When considering the request for relief, the competent authority shall act expeditiously.

Article 5. Grounds for refusing to grant relief

1. The competent authority of the Party to the Convention where relief is sought under article 4 may refuse to grant relief at the request of the party against whom the relief is sought only if that party furnishes

to the competent authority proof that:

(a) A party to the settlement agreement was under some incapacity;

(b) The settlement agreement sought to be relied upon:

(i) Is null and void, inoperative or incapable of being performed under the law to which the parties have validly subjected it or, failing any indication thereon, under the law deemed applicable by the competent authority of the Party to the Convention where relief is sought under article 4;

(ii) Is not binding, or is not final, according to its terms; or

(iii) Has been subsequently modified;

(c) The obligations in the settlement agreement:

(i) Have been performed; or

(ii) Are not clear or comprehensible;

(d) Granting relief would be contrary to the terms of the settlement agreement;

(e) 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; or

(f) 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.

2. The competent authority of the Party to the Convention where relief is sought under article 4 may also refuse to grant relief if it finds that:

(a) Granting relief would be contrary to the public policy of that Party; or

(b) The subject matter of the dispute is not capable of settlement by mediation under the law of that Party.

Article 6. Parallel applications or claims

If an application or a claim relating to a settlement agreement has been made to a court, an arbitral tribunal or any other competent authority which may affect the relief being sought under article 4, the competent authority of the Party to the Convention where such relief is sought may, if it considers it proper, adjourn the decision and may also, on the request of a party, order the other party to give suitable security.

Article 7. Other laws or treaties

This Convention shall not deprive any interested party of any right it may have to avail itself of a settlement agreement in the manner and to the extent allowed by the law or the treaties of the Party to the Convention where such settlement agreement is sought to be relied upon.

Article 8. Reservations

1. A Party to the Convention may declare that:

(a) It 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;

(b) It shall apply this Convention only to the extent that the parties to the settlement agreement have agreed to the application of the

Convention.

2. No reservations are permitted except those expressly authorized in this article.

3. Reservations may be made by a Party to the Convention at any time. Reservations made at the time of signature shall be subject to confirmation upon ratification, acceptance or approval. Such reservations shall take effect simultaneously with the entry into force of this Convention in respect of the Party to the Convention concerned. Reservations made at the time of ratification, acceptance or approval of this Convention or accession thereto, or at the time of making a declaration under article 13 shall take effect simultaneously with the entry into force of this Convention in respect of the Party to the Convention concerned. Reservations deposited after the entry into force of the Convention for that Party to the Convention shall take effect six months after the date of the deposit.

4. Reservations and their confirmations shall be deposited with the depositary.

5. Any Party to the Convention that makes a reservation under this Convention may withdraw it at any time. Such withdrawals are to be deposited with the depositary, and shall take effect six months after deposit.

Article 9. Effect on settlement agreements

The Convention and any reservation or withdrawal thereof shall

apply only to settlement agreements concluded after the date when the Convention, reservation or withdrawal thereof enters into force for the Party to the Convention concerned.

Article 10. Depositary

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

Article 11. Signature, ratification, acceptance, approval, accession

1. This Convention is open for signature by all States in [...] on [...], and thereafter at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval by the signatories.

3. This Convention is open for accession by all States that are not signatories as from the date it is open for signature.

4. Instruments of ratification, acceptance, approval or accession are to be deposited with the depositary.

Article 12. Participation by regional economic integration organizations

1. A regional economic integration organization that is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, ratify, accept, approve or accede

to this Convention. The regional economic integration organization shall in that case have the rights and obligations of a Party to the Convention, to the extent that that organization has competence over matters governed by this Convention. Where the number of Parties to the Convention is relevant in this Convention, the regional economic integration organization shall not count as a Party to the Convention in addition to its member States that are Parties to the Convention.

2. The regional economic integration organization shall, at the time of signature, ratification, acceptance, approval or accession, make a declaration to the depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that organization by its member States. The regional economic integration organization shall promptly notify the depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a 'Party to the Convention', 'Parties to the Convention', a 'State' or 'States' in this Convention applies equally to a regional economic integration organization where the context so requires.

4. This Convention shall not prevail over conflicting rules of a regional economic integration organization, whether such rules were adopted or entered into force before or after this Convention: (a) if, under article 4, relief is sought in a State that is member of such an organization and all the States relevant under article 1(1) are members of such an organization; or (b) as concerns the recognition or enforcement of judgments between member States of such an

organization.

Article 13. Non-unified legal systems

1. If a Party to the Convention has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

2. These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

3. If a Party to the Convention has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention,

(a) Any reference to the law or rule of procedure of a State shall be construed as referring, where appropriate, to the law or rule of procedure in force in the relevant territorial unit;

(b) Any reference to the place of business in a State shall be construed as referring, where appropriate, to the place of business in the relevant territorial unit;

(c) Any reference to the competent authority of the State shall be construed as referring, where appropriate, to the competent authority in the relevant territorial unit.

4. If a Party to the Convention makes no declaration under

paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

Article 14. Entry into force

1. This Convention shall enter into force six months after deposit of the third instrument of ratification, acceptance, approval, or accession.

2. When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the third instrument of ratification, acceptance, approval or accession, this Convention shall enter into force in respect of that State six months after the date of the deposit of its instrument of ratification, acceptance, approval or accession. The Convention shall enter into force for a territorial unit to which this Convention has been extended in accordance with article 13 six months after the notification of the declaration referred to in that article.

Article 15. Amendment

1. Any Party to the Convention may propose an amendment to the present Convention by submitting it to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the Parties to the Convention with a request that they indicate whether they favour a conference of Parties to the Convention for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the Parties to the Convention favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations.

2. The conference of Parties to the Convention shall make every effort to achieve consensus on each amendment. If all efforts at consensus are exhausted and no consensus is reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the Parties to the Convention present and voting at the conference.

3. An adopted amendment shall be submitted by the depositary to all the Parties to the Convention for ratification, acceptance or approval.

4. An adopted amendment shall enter into force six months after the date of deposit of the third instrument of ratification, acceptance or approval. When an amendment enters into force, it shall be binding on those Parties to the Convention that have expressed consent to be bound by it.

5. When a Party to the Convention ratifies, accepts or approves an amendment following the deposit of the third instrument of ratification, acceptance or approval, the amendment shall enter into force in respect of that Party to the Convention six months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 16. Denunciations

1. A Party to the Convention may denounce this Convention by a formal notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units of a non-unified legal system to which this Convention applies.

2. The denunciation shall take effect twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the notification is received by the depositary. The Convention shall continue to apply to settlement agreements concluded before the denunciation takes effect.

Singapore Convention of 2019
- What does it mean for us?

2nd KIMC International Seminar on Mediation

December 3, 2021
School of Law, Seoul National University
Jaemin Lee

논의 배경

- Increasing Use of Conciliation and Mediation
  - Fast
  - Flexible
  - Low-cost
  - Party-autonomous
- Global trend
  - Similar Phenomenon for “International” Conciliation & Mediation
- Outcome of Conciliation or Mediation
  - Settlement Agreements between the parties
  - Needs to be enforced in domestic jurisdiction of parties

논의 배경 - 2

- The Last Part – Enforcement – Is Now Missing
- Enforceable as a Contract?
  - Possible
  - But must go through the whole civil proceedings
  - Time-consuming
  - Costly
  - Defeat the very idea of Mediation
- So, a New Mechanism for Enforcement is Being Demanded
  - By industries & businesses
  - By ADR users & experts

논의 배경 - 2

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  - By industries & businesses
  - By ADR users & experts

3

싱가포르 협약

- *United Nations Convention on International Settlement Agreements Resulting from Mediation*
- The Term Chosen: Mediation
  - Broadly defined and regardless of actual terms used
  - 3rd person involved with no authority to impose an outcome
- The Convention Applies to:
  - International agreements resulting from mediation and concluded in writing by parties to resolve commercial dispute
- The Convention Does Not Apply to:
  - Court-approved or court-facilitated mediation
  - Mediation enforceable as judgment or arbitral award

싱가포르 협약 주요 조항

- Scope of application
- General principles
- Definitions
- Application
- Grounds for refusing to grant relief
- Parallel application or claims
- Other laws or treaties
- Reservations
- Depository
- Signature, ratification, acceptance, approval, accession
- Participation by regional economic integration organization
- Effect in domestic territorial units
- Entry into force
- Amendment
- Denunciation

향후 과제

- First attempt and no precedent
- Mediation is different from arbitration
- Mediation's core feature lies in flexibility
- How to (not) oversee mediation proceedings
- How to (not) oversee mediators
- How to accommodate widely varied domestic legal systems

고맙습니다

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싱가포르조정협약의 활용을 위한 제언

박노형 (고대 법전원 교수)

2019년 8월 7일 싱가포르에서 공식 서명된 싱가포르조정협약이 2020년 9월 12일 발효하였다. 협약 당사국은 국제상사분쟁의 조정에 의한 화해합의를 당사자가 이행하지 않는 경우 법원 등을 통하여 동 합의를 집행할 의무를 가진다. 싱가포르조정협약은 외국 중재판정의 승인과 집행에 관한 뉴욕중재협약과 유사하게 국제상사분쟁의 조정을 통한 해결에 대하여 법적 안정성과 예측 가능성을 제공한다. 싱가포르조정협약의 적용을 받는 화해합의는 당사자들의 입장이 충분히 반영될 수 있는 유연한 조정절차에 따르면서 뉴욕중재협약에 따른 중재판정과 같이 협약 당사국에서 효과적으로 집행될 수 있는 점에서, 조정과 중재의 장점을 결합한 것으로서 이해할 수 있다.

싱가포르조정협약의 이행은 협약 당사국들 사이의 상호성을 따르지 않는다. 즉, 동 협약에 따라 집행될 수 있는 화해합의는 반드시 협약 당사국에서 결과할 필요가 없다. 또한, 싱가포르조정협약에 따른 화해합의는 그 불이행에 대하여 협약 당사국 법원에서 집행될 수 있는 점에서 조정을 통하여 이루어진 합의로서 일반적인 계약은 아니고, 또한 조정절차를 통하여 합의되었기에 일반적인 중재판정도 아니다. 특히 미국과 중국 등 국제경제 비중이 큰 국가들이 싱가포르조정협약의 당사국이 되면, 국제상사조정은 국제상사중재와 함께 분쟁의 효과적인 해결에서 중요한 역할을 하게 될 것이다.

1. 국제분쟁에서 조정의 유용성

조정은 중재와 함께 재판의 시간과 비용의 부담을 덜기 위하여 고안된 '대체적 분쟁 해결 수단' (alternative dispute resolution, ADR)의 대표적 유형이다. 조정에서 제3자인 조정인이 분쟁 당사자들의 협상을 통한 해결을 도와주는 점에서, 조정은 '확대된 협상' (extended negotiation)으로서 이해할 수 있다. 협상이 조정의 중심인 점에서, 조정인이나 분쟁 당사자와 그 대리인은 'win-win 협상'의 기본 개념과 원칙을 올바로 이해하는 것이 필요하다. 재판과 중재와 달리, 조정절차에서 분쟁당사자들이 주역이 되고 조정인은 조역이 된다고 볼 수 있다. 2020년 '싱가포르 국제분쟁 해결 아카데미' (Singapore

International Dispute Resolution Academy)의 분석에 따르면, 분쟁 해결제도의 이용자들 중에서 변호사 등 법적 이용자 (legal user)와 기업 이용자 (client user)는 조정의 비용에 가장 크게 만족하였다. 즉, 법적 이용자의 62%와 기업 이용자의 72%가 조정 비용에서 크게 만족하였다. 법적 이용자의 51%와 기업 이용자의 39%는 소송에서의 비용에 크게 만족하였고, 법적 이용자의 23%와 기업 이용자의 31%는 중재의 비용에 크게 만족하였다. 따라서, 기업 이용자의 편에서 조정은 특히 비용에 관하여 가장 좋은 분쟁 해결방법으로 볼 수 있다.[4] 또한, 조정의 해결 속도 (이용자의 68%)와 비용 (이용자의 65%)에서 보다 높게 만족하였는데, 소송의 속도 (이용자의 45%)와 비용 (이용자의 48%) 및 중재의 속도 (이용자의 30%)와 비용 (이용자의 25%)에 비교하여 조정은 월등히 높은 만족도를 보였다.[5] 이러한 차이에도 불구하고, 조정을 통하여 분쟁이 해결되지 못하면, 법적 구속력을 가진 결과를 도출하는 중재나 재판이 활용될 수 있는 점에서, 조정은 중재와 재판에 대하여 보완적인 관계에 있다.

2. 싱가포르조정협약의 국내이행법률 제정

싱가포르조정협약의 당사국이 되면, '자신의 절차규칙에 따라 및 동 협약에 규정된 조건으로' 국제상사분쟁의 조정에 의한 화해합의를 집행하고 그 원용을 허용하여야 한다. 한국이 싱가포르조정협약을 비준하여 당사국이 되려면, 관련 절차규칙이 필요하다. 마침 법무부는 2021년 3월 싱가포르조정협약의 이행을 위한 법률 제정을 연구하고 준비하는 태스크포스 (TF)를 출범하였다. 동 이행법률의 내용과 형식은 다음과 같이 예상할 수 있다. 첫째, 싱가포르조정협약의 원래 취지인 국제상사분쟁의 조정을 통한 화해합의의 집행 등에 관한 내용에 국한하여 소극적으로 접근하는 것이다. 법률 제목은 가칭 '싱가포르조정협약에 관한 법률'이 될 수 있다. 둘째, 싱가포르조정협약의 이행은 물론 동 협약과 함께 UNCITRAL 조정모델법 및 UNCITRAL 조정규칙에 규정된 조정에 관한 국제적 기준을 수용하여 보다 적극적으로 접근하는 것이다. 법률 제목은 가칭 '상사조정기본법'이 될 수 있는데, 상사중재에 적용되는 중재법에 유사한 조정에 관한 기본법이 될 것이다. 동 법은 싱가포르조정협약에 따른 국제상사분쟁의 조정을 통한 합의의 집행을 규정함과 동시에, 조정절차의 국제기준을 수용하여 조정의 개념, 조정절차, 조정인의 역할, 조정의 효력 등을 규정함으로써, 궁극적으로 국내에서 올바른 조정이 확산하는 기폭제가 될 수 있다. '중재산업 진흥에 관한 법률'의 예에 따라 동 법은 국내조정의 활성화를 위한 정부의 지원 등을 규

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[4] Singapore International Dispute Resolution Academy, SIDRA Survey 2020, para. 4.2.13.

[5] Singapore International Dispute Resolution Academy, SIDRA Survey 2020, para. 4.2.10.

정할 수 있다. 동 법의 제정으로 현재 법원이 관장하는 민사조정과 충돌하지 않으면서, 소위 민간형 조정이 활성화될 수 있을 것이다.

3. 국제조정의 활성화를 위한 정부의 역할

싱가포르조정협약의 이행을 위한 국내법의 제정에서 중요한 문제는 국제조정의 수행에 관련된 정부의 역할이다. '국제조정의 허브'가 된다는 명목으로 정부 주도로 국제조정을 전담하는 기관을 설립하는 것이 검토될 수 있다. 그런데, 정부의 전적인 지원은 반드시 능사가 아닐 것이다. 모름지기 국제조정기관은 국제조정을 수행하는데 필요한 조정절차에 관한 규칙을 구비하고, 국제경쟁력을 가지는 조정인 명부를 비치하며, 해외의 유사 국제조정기관과 협력과 경쟁을 할 수 있는 등 국제조정이 가능하도록 '촉진하는' (facilitate) 역할을 해야 할 것이다. 이러한 국제조정의 촉진적 역할에는 상시적으로 많은 인력과 재원이 굳이 필요하지 않을 것이다. 특히, 법적 근거에 기반하고 법적 구속력을 부과하는 중재와 달리 당사자들의 이해관계를 충족시키는 협상을 도와주는 조정의 자율적 성격을 고려할 때 조정의 활용과 경쟁력 제고에 정부의 직접적 개입은 바람직하지 않다.

싱가포르조정협약의 이행법률이 어떤 내용과 형식이 되더라도, 형식적이거나 실질적으로 법원의 민사조정, 행정형 조정 및 형사조정과 같은 정부가 개입하는 '관제'가 되어서는 아니 될 것이다. 현재 국내에서 시행 중인 조정을 포함한 분쟁 해결제도는 공공재로서 간주하여 이용자인 국민의 접근 문턱을 낮추려고 한다. 그러나, 조정인에 대한 대우가 현실적이지 않은 등의 문제로 이용자인 국민에게 실제로 도움이 되도록 신뢰할 만한 조정제도가 운영되고 있다고 보기는 어렵다. 사건의 규모나 성격, 당사자들의 지위 등을 고려하여 이에 맞는 조정인에 의한 조정이 가능해야 한다. 즉, 조정의 수행에서 자율성과 독립성을 보장함으로써, 조정을 통한 성공적인 분쟁 해결이 가능해야 이용자의 신뢰가 높아진다. 특히 국제경쟁력과 국제적 평판이 중요한 국제상사분쟁의 조정에서는 더욱 그러하다.

조정은 당사자들이 스스로 분쟁을 해결하게 도와주는 점에서 풀뿌리 민주주의에 부합하는 것이고, 기업들의 국제상사분쟁은 기본적으로 자유시장질서를 존중하여 해결되어야 한다. 이를 반영한 싱가포르조정협약체제에서 한국이 '국제조정의 허브'가 되려고 한다면, 국제적 평판과 신뢰를 가지고, 자율적 경쟁을 할 수 있는 독립적인 국제조정기관이 활동하여야 한다. 물론 조정이 당사자들의 자율적 분쟁 해결이라는 합의적 성격을 가진 점에서, 특히 한국의 국제경쟁력을 고려할 때, 다수의 국제조정기관이 국내에 설립되어도 좋을 것이다. 다만, 정부는 윤리적 기준을 포함한 일정한 기준에 부합하는 국내 국제조정기관이 국제경쟁력을 갖출 수 있도록 필요한 시설과 설비의 이용을 지원하는 등 제한적이지만 효과적이고

충실한 지원을 하는 것이 바람직하다.

4. 결어

싱가포르조정협약은 공식 서명의 개시 후 약 1년 만에 발효하였지만, 미국과 중국은 물론 한국과 일본 등 국제경제적 활동이 큰 국가들이 당사국이 되어야 한다. 동 협약이 실제로 유용하려면 화해합의의 구제가 부여될 수 있는 보다 많은 협약당사국들이 있어야 하기 때문이다. 싱가포르조정협약은 국제상사분쟁의 조정에 의한 화해합의가 효과적으로 집행될 수 있게 하지만, 보다 근본적인 목적은 국제상사분쟁의 조정에 의한 해결의 촉진이다. 협약 당사국으로서 국가는 싱가포르조정협약의 이행에 있어서 특히 적용 범위, 집행과 원용 및 구제 거부 등에 관하여 국내법에서 구체적 기준을 채택하고 시행해야 할 것이다. 이 점에서 싱가포르조정협약의 적용을 받는 화해합의의 이행에 관한 국가실행 (State practice)이 집적될 필요가 있다.

싱가포르조정협약이 추구하는 국제상사분쟁의 조정에 의한 해결을 위하여 국제상사분쟁의 당사자인 기업이 조정의 유용성을 인식해야 하고, 국제계약에 싱가포르조정협약에 따라 조정에 의하여 분쟁을 해결한다는 조정조항이 포함되어야 한다. 조정조항은 조정을 통하여 해결되지 않는 분쟁은 중재 등을 통하여 해결한다는 내용을 포함하면 된다. 이와 관련하여 기업의 자문을 하는 사내외 변호사들의 적극적이고 올바른 역할이 요구된다. 특히 우리 기업이 국제상사분쟁을 조정에 의하여 해결하려는 의지가 없으면 싱가포르조정협약의 이행법률 제정 등 국제상사조정을 위한 국내 인프라 구축은 의미가 없게 된다. 우리 기업 오너가 협상과 조정을 올바로 이해하여 기업 활동에서 활용하려는 노력도 필요하다. 전문경영인이 국제상사분쟁을 조정을 통하여 해결할 때 경영판단의 원칙에 따라 부당한 책임의 불이익을 받지 않는 합리적 경영 활동이 존중되어야 한다. 이와 함께 변호사 등 법조인의 협상과 조정의 올바른 이해도 필요하다. 분쟁에서 조정을 포함한 어떠한 방식의 해결이 사건 의뢰인에게 유리한 것인지 파악하여 올바른 자문을 줄 수 있어야 한다. 국내 대부분의 로스쿨에서 협상과 조정 교육이 이루어지지 않는 현실이지만 법조인은 협상과 조정 기법을 열심히 익혀야 한다. 우리 법조인의 협상과 조정의 올바른 이해와 우리 기업의 협상과 조정 능력의 제고를 바탕으로, 국제경쟁력을 갖춘 국내 국제조정기관의 자율적 활동이 보장되면 싱가포르조정협약체제에서 한국은 적어도 아시아에서 '국제조정의 허브'로 도약할 수 있을 것이다. 법원 등 정부와 변호사와 기업 등 민간 부문의 싱가포르조정협약의 올바른 이해와 활용으로 기업 간 국제상거래는 물론 국가 간 통상관계의 우호적 발전도 기대된다.

[제1세션 토론문]

국회 법제실 정치행정법제심의관 김영일

1. 싱가포르조정협약의 의미

오늘날 국제상거래가 증가하고 그 규모가 대형화, 복잡화 됨에 따라 관련 분쟁도 크게 증가하고 있다. 그리고 이와 같은 분쟁의 전통적 해결수단인 법원의 재판은 분쟁의 해결까지 소요되는 시간과 비용이 과다하여 일정한 한계를 드러내고 있는바, 그 대안으로 주목받고 있는 것이 바로 조정, 중재와 같은 대체적 분쟁해결제도(Alternative Dispute Resolution; ADR)이다.

사법자원의 확충만으로는 나날이 증가하는 수많은 분쟁사건에 효과적으로 대처할 수 없는 한계가 있고, 사법자원의 효율적인 배분과 쉽게 접근할 수 있는 권리구제수단이 필요하다는 측면에서 대체적 분쟁해결제도에 대한 관심이 증가하고 있다.

현행법상 「중재법」과 「민사조정법」이 마련되어 있고, 그 밖에 대체적 분쟁해결과 관련된 조항을 포함하고 있는 개별법도 존재하지만, 조정 등 민간형 대체적 분쟁해결을 규율한 일반법이 없고 각종 행정형 대체적 분쟁해결은 개별법에 분산되어 그 절차와 효력 등에 일관성이 없으므로 조정 등 대체적 분쟁해결제도의 기본체계를 구축하여 분쟁을 적정·공평·신속하게 해결하려는 노력이 필요하다.

이와 관련하여 현재 활용되고 있는 중재(Arbitration)는 중재절차의 지연과 높은 비용의 문제 등으로 인해 기업들에게 또 다른 분쟁해결수단을 모색하도록 하였고, 그에 따라 조정(Mediation)이 새로운 대안으로서 주목받기 시작하였다.

이러한 상황에서 조정의 단점으로 지적되는 집행력 확보와 관련하여서 많은 논의가 진행되었고, 2018년 12월 UN총회에서 채택되어 현재 우리나라를 포함한 53개국이 서명한 '조정에 의한 국제화해합의에 관한 UN협약(United Nations Convention on International Settlement Agreements Resulting from Mediation, 이하 '싱가포르조정협약'이라 한다)'이 탄생하였고, 우리나라는 향후 동 협약의 국내이행법률 제정과 국회 비준 절차를 준비하고 있는 바, 새로운 제도적 틀을 만들기 위해 다양한 이해관계자들의 의견청취와 전문가들의 참여를 통해 우리나라에 적합한 법률체계를 만들어 나가야 할 필요가 있다.

2. 대체적 분쟁해결 관련 입법동향

대체적 분쟁해결의 한 방법으로 현재 활용되고 있는 중재는 기본법인 「중재법」이 1966년 제정되었고, 중재산업을 육성하고 지원하기 위한 「중재산업 진흥에 관한 법률」이 2016년에 제정되어 시행되고 있다.

특히 조정제도의 경우 「민사조정법」과 일부 개별법의 행정형 조정제도를 통해 활용되고 있으나 국제상사분쟁과 관련해서는 관련 법률이 마련되어 있지 않아 활용되지 못하고 있는 실정으로 이번 싱가포르조정협약을 계기로 상사분쟁조정의 제도적 틀을 마련하는 것이 중요하다.

이와 관련하여 그 동안 국회에서는 조정제도 활성화를 위해 다양한 입법을 추진해 바, 제19대 국회에서는 중재와 조정 절차에 대해 전반적으로 규율하는 「대체적 분쟁해결 기본법안(우윤근 의원 대표발의)」이 발의되었고, 제20대 국회에서는 조정산업의 진흥과 전문인력 양성을 위해 「조정산업 진흥에 관한 법률안(정갑윤 의원 대표발의)」이 되었으나, 당시에는 공감대 부족, 현행 법체계와의 정합성 등을 이유로 통과되지 못한 바 있다.

그러나 현재 우리나라는 국제상사분쟁에 대한 조정의 제도적 틀을 마련한 싱가포르조정협약에 서명하였고 이를 집행하기 위해 법무부를 중심으로 국내이행법률안을 마련하고 동 협약의 국회비준을 준비하고 있는 바, 이르면 21대 국회 후반기 국회인 내년 하반기 중에는 관련 입법이 국회에서 논의될 수 있을 것으로 기대된다.

3. 싱가포르조정협약 국내이행법률 제정시 고려사항

향후 법무부를 중심으로 마련하게 될 싱가포르조정협약 국내이행법률의 구체적이고 전문적인 내용은 다양하고 심도있는 논의를 거쳐 마련될 필요가 있는 바, 국내이행법률 제정과 관련해서 다음과 같은 기본방향에 대한 고려가 있을 필요가 있다고 보여진다.

첫째, 법률의 적용 범위과 형식과 관련하여, 국내이행법률의 적용범위를 싱가포르조정협약의 이행을 위한 국제상사분쟁에 한하여 적용할지, 아니면 국제 및 국내 조정분야를 아우르는 전반적인 조정제도에 대한 기본법으로 제정할 지에 대한 논의가 필요하다고 보여진다. 또한 중재제도와 같이 기본법인 「중재법」과 육성법인 「중재산업 진흥에 관한 법률」을 별도로 구분하여 제정하는 방안과 조정에 대한 기본법

을 제정하면서 조정산업 진흥에 관한 내용도 포괄하여 반영시키는 방안도 함께 고민할 필요가 있다.

둘째, 법률의 전반적인 내용은 당사자의 자율성을 기본으로 하는 조정제도의 성격을 고려하여 법원의 관여를 최소화하고 정부의 개입도 조정산업 지원에 한정하는 것이 필요하며 전체적으로 자율성을 확보할 수 있는 가능한 한 필요최소한의 절차규정 중심으로 마련할 필요가 있다. 조정절차의 실효성을 확보하기 위한 집행력 부여 등 일부 적법적차 보장을 위한 실체적인 규정도 반영되어야 하겠지만 논의의 중심은 자율성을 바탕으로 효율적인 조정이 이루어질 수 있도록 절차규정에 두어야 할 필요가 있다.

셋째, 조정제도를 운영하는 주체와 관련하여, 앞에서 서술한 바와 같이 정부의 개입은 최소화할 필요가 있다는 논의와 연관되어 독립적이고 자율성을 가진 국제상사분쟁조정기구가 필요하다고 보이고, 중재와 조정을 하나의 기구에서 수행할지, 중재와 달리 조정만을 담당하는 별도의 기구나 기관을 육성해야 할지에 대한 논의도 필요할 것으로 보인다. 아울러 실제 조정 역할을 수행할 조정인의 경우에도 그 자격요건 등을 어떻게 설정할 지에 대해서도 심도있는 논의가 있어야 할 것으로 보인다.

4. 마무리하며

싱가포르조정협약 가입은 그 동안 여러 유용성에도 불구하고 제대로 활용되지 못하고 있던 조정제도가 활성화되고 발전할 수 있는 기폭제가 될 수 있을 것으로 보인다. 이 과정에서 다양한 이해관계자들과 전문가의 의견을 충분히 수렴하고 토론회, 세미나 등을 통해 세부내용에 대한 합의를 이루어나가고 여론을 환기시켜 나가야 할 것이다.

공감대 없이 합의없이 마련된 국내이행법률안이 국회에 제출될 경우 그 법안이 이념적, 정파적 논란이 없는 것이라 할 지라도 국회에서도 그 논의과정에서 지난한 시간이 허비될 가능성이 크다고 할 수 있다.

그러한 의미에서 국제조정센터 주관으로 마련된 이번 국제세미나는 싱가포르조정협약의 내용과 의미를 이해하고, 향후 국내이행법률 제정에 필요한 다양한 논점에 대해 토론함으로써 의견을 모을 수 있는 유의미한 행사이며, 향후 이러한 세미나를 통해 합의되고 완성도 있는 국내이행법률이 성안되어 국회에 제출되고, 국회 심의 과정을 거쳐 제정될 수 있을 것으로 기대된다.

Implementation of the Singapore Convention on Mediation

PRESENTED BY NADJA ALEXANDER

SINGAPORE CONVENTION ON MEDIATION

Program Overview

1. Joining the Singapore Convention on Mediation
2. Implementation Approaches
3. Special Points of Interest
4. A Broader Mediation Eco-System

SMU SINGAPORE MANAGEMENT UNIVERSITY | Singapore International Dispute Resolution Academy

Joining the Singapore Convention on Mediation

Article 11 of the Singapore Convention:

1. This Convention is open for signature by all States in Singapore, on 7 August 2019, and thereafter at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval by the signatories.

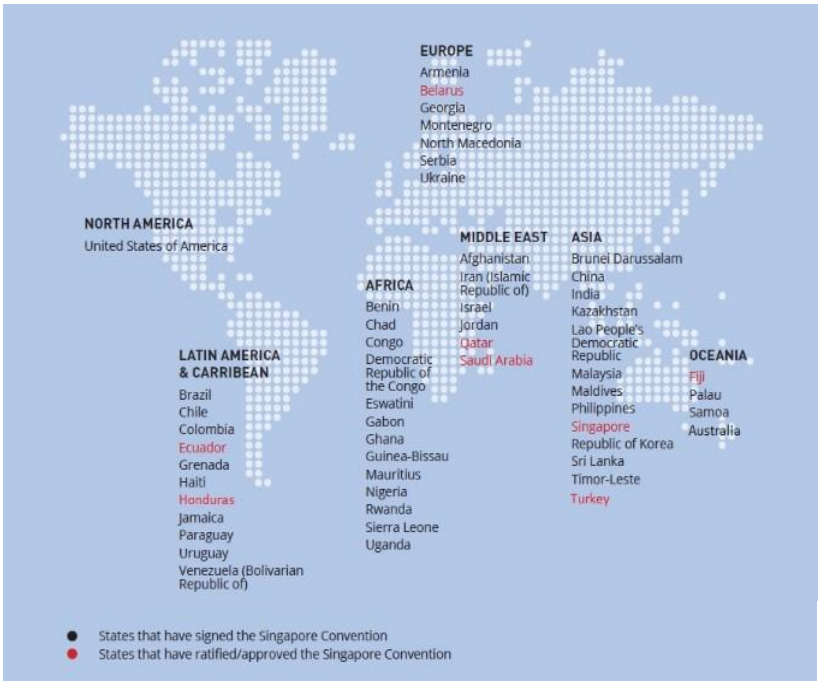
3. This Convention is open for accession by all States that are not signatories as from the date it is open for signature.

SMU Classification : Restricted

SMU SINGAPORE MANAGEMENT UNIVERSITY | Singapore International Dispute Resolution Academy

Status of the Singapore Convention on Mediation

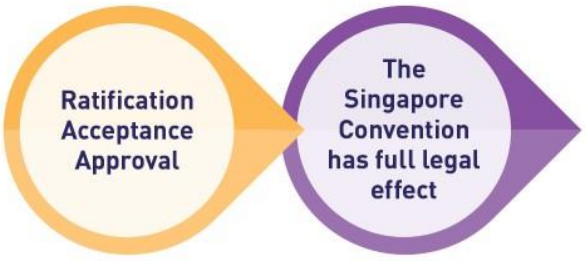
	Ratification	Acceptance	Approval
Belarus			✓
Ecuador	✓		
Fiji	✓		
Honduras	✓		
Qatar	✓		
Saudi Arabia	✓		
Singapore	✓		
Turkey	✓		



A Total of 55 Signatories and 8 Contracting Parties

SMU SINGAPORE MANAGEMENT UNIVERSITY | Singapore International Dispute Resolution Academy

Implementation Approaches– Monist



An illustration: Georgia

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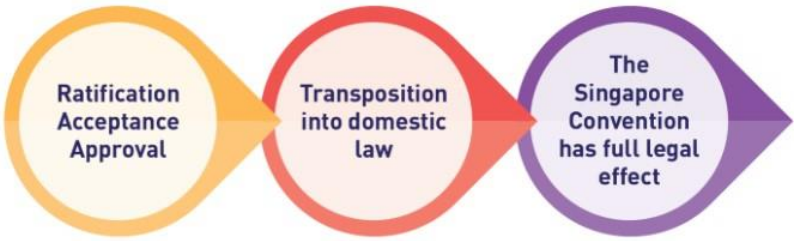
Implementation Approaches- Dualist



An illustration: Singapore

SMU Classification: Restricted

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Implementation Approaches- Mix

An illustration: The United States of America

There are three main ways that the Singapore Convention on Mediation can be implemented in the United States:

I. Self-execution
II. Federal implementing legislation
III. Cooperative federalism approach

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Point of Interest: rules of procedure

Article 3

1. Each Party to the Convention shall enforce a settlement agreement in accordance with its rules of procedure and under the conditions laid down in this Convention.

Illustrations: Singapore and Georgia

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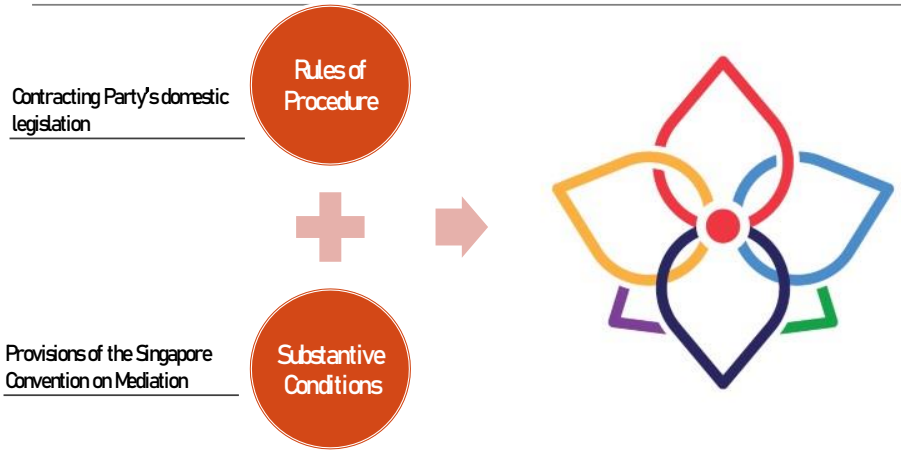
SMU Classification : Restricted

Point of Interest : rules of procedure



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But there is more to implementation

The Singapore Convention is a critical piece in a larger jigsaw puzzle...

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A Broader Mediation Eco-System

1. Comprehensive and congruent law of cross-border mediation
2. Mediation infrastructure and services: quality and access
3. Access to internationally recognised skilled local and foreign mediators
4. Enforceability of mediated settlement agreements, international mediated settlement agreements, and mediation and multi -tiered dispute resolution clauses
5. Appropriate regulation of confidentiality
6. Impact of commencement of mediation on litigation limitation periods
7. Courts' attitude to, and relationship with mediation
8. Regulatory incentives for legal advisers to engage in mediation
9. Interconnection between mediation and the broader eco-system of international dispute resolution
10. Ongoing monitoring, review and improvement.

Domestic Implementation of the Singapore Convention on Mediation
(싱가포르조정협약의 국내 이행)

Discussant(토론자): CHOI, Jae Seog(최재석)

1. Ratification of the Convention, Entering into force in Korea

2. Reorganization of domestic mediation laws

a. Enactment of Mediation Act:

Mediation procedure and mediation method,

qualifications and registration of mediators(mediation agency),

temporary measures during mediation(court's involvement),

effect of domestic and/or international 'Mediated Settlement Agreement(MSA)',

judicial involvement on MSA(confirmation, approval or registration, invalidation method such as cancellation of MSA),

correction, change or addition of MSA

b. Revision of Civil Law:

stipulation on MSA in addition to ordinary 'Settlement Agreement',

regulations on suspension or renewal of statute of limitations b/o mediation process

c. Revision of the Civil Procedure Act:

New regulations for judicial mediation and referral to extra-court mediation, provision of "pre-mediation(mediation-prepositive) principle",

new regulations for suspension of litigation procedures based on 'Mediation Agreement'(applications and orders for suspension)

d. Revision of the Civil Execution Act:

Recognition of the right to execute MSA,

new regulations on enforcement methods (granting of 'execution text', etc.)

e. Revision of Civil Mediation Act:

Renamed to ‘Court Conciliation Act’,

linkage to External Court mediation

f. Reorganization of laws related to the Administrative Mediation Committees: Consolidation of laws(organizations),
establishment of linkage regulations with (private) Mediation Act
g. Amendment to the Attorney Act:
Establishment of immunity for non-attorney mediators
3. Creation of domestic Mediation environment
a. Promote the mediation system and raise awareness(Responsibility of governmental institutions for operating the mediation system)
b. Expansion and reinforcement of mediation education(school and society. Specialized education and universal education)
c. Mediators training

[국문 Korean]

1. 협약 비준, 국내 발효
2. 국내 조정법제 정비
가. 조정법 제정: 조정절차 및 조정방식, 조정인(조정기관) 자격. 등록, 조정 중 임시조치(법원 원조), 국내 및 국제 조정화해합의(조정을 통한 화해계약)의 효력, 조정화해합의에 대한 법원의 관여방법(확인, 승인 또는 등록 여부, 취소 등 무효화 방식), 조정화해합의의 정정. 변경. 추가
나. 민법 개정: 화해계약 외 '조정을 통한 화해계약(Mediated Settlement Agreement)' 규정, 조정신청 시 소멸시효 중단 규정 신설
다. 민사소송법 개정: 재판상 화해 조문 외 재판상 조정 및 법원외 조정 회부 규정 신설, 조정전치주의 규정 신설, 조정합의(Mediation Agreement)에 근거한 소송진행정지(신청 및 정지명령) 규정 신설
라. 민사집행법 개정: 조정화해합의의 집행권원 인정, 집행방식(집행문 부여 등) 규정 신설
마. 민사조정법 개정: '법원조정법'으로 개칭, 법원외부연계조정 신설
바. 행정형 조정위원회 관련 법률 정비: 법률 통폐합, (민간)조정법과의 연계 규정 신설
사. 변호사법 개정: 비변호사 조정인에 대한 면책 규정 신설
3. 국내 조정환경 조성
가. 조정제도 홍보, 인식 제고(국가기관의 조정제도 운영 책임 부여)
나. 조정 교육 확대. 강화(학교 및 사회. 전문화 교육 및 보편화 교육)
다. 조정인 양성

Regional Updates on Mediation

UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

REGIONAL CENTRE FOR THE ASIA PACIFIC

2nd KIMC International Seminar
3 December 2021

The core legal body of the United Nations system in the field of international trade law
국제무역·통상·상거래법 분야의 유엔시스템 내 핵심법률기구

Established by United Nations General Assembly in 1966
1966년 유엔총회에 의해 설립됨

MANDATE:
Progressive harmonization and modernization of international trade law by preparing and promoting the use of legislative instruments in key areas of commercial law
목적:
상법 주요분야에서의 입법규범 활용 준비와 촉진을 통한 국제상거래법의 점진적 조화 및 현대화

About UNCITRAL

UNCITRAL.UN.ORG

Regional Updates on Mediation
각국의 조정 관련 현황

- Singapore 싱가포르
- Fiji 피지
- Australia 호주
- China 중국
- India 인도
- Maldives 몰디브
- Philippines 필리핀
- Japan 일본
- Thailand 태국

Image: http://asiapacificnazarene.org/wp-content/uploads/satellite-map-of-asia-pacific-region.jpg

Singapore 싱가포르

- Singapore Convention on Mediation Act and Rules
싱가포르협약 조정법
- Investor-State Mediation
투자자-국가 조정
- Awareness Raising and Capacity-Building
인식제고와 역량강화

Fiji 피지

International Mediation Bill 국제 조정법안	Amendments to High Court Rules 고등법원규칙 제정	Pacific International Mediation and Arbitration Centre 태평양국제조정중재센터
• Drafting in progress 법안 성안	• Similar to arbitration amendments 중재 개정안과 유사 • Expected to be done after the International Mediation Bill is passed 국제조정법안 통과후 개정 예상	• Establishment in progress 설립 진행중

Australia 호주

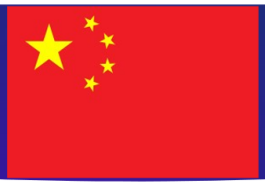
Considerations of the Australian Government호주 정부의 고려사항

Opinion of the Law Council of Australia호주법률위원회의 견해

Signing the Singapore Convention in September 2021
2021년 9월 싱가포르협약 서명

Domestic implementation in progress 국내 도입 진행중

China 중국



2018 launching of People's Mediation Court platform 2018 년 인민조정법 원시스템 구축

2019 signing of the Singapore Convention on Mediation 2019 년 싱가포르협약 서명

Recent developments 최근 동향

- Closely considering ratification 비준을 신중히 고려
- Various legislative proposals relating to domestic implementation 국내도입 관련 다양한 입법 제안들

India 인도

- Draft Mediation Bill 2021
- Section 89 of the Civil Procedure Code
- Party to the Singapore Convention on Mediation

Maldives 몰디브

Signed the Singapore Convention
싱가포르협약가입

2019

2021

Currently drafting a national Mediation Bill
현재 국가조정법 성안 중

Philippines 필리핀

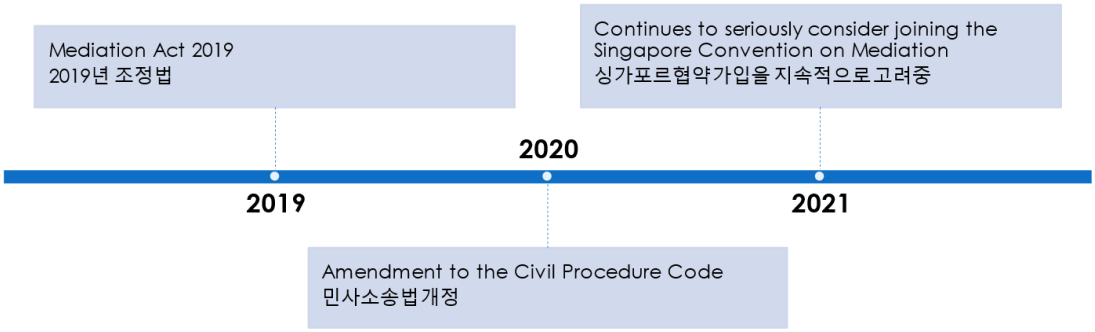
- Original signatory of the Singapore Convention on Mediation
  싱가포르협약의 최초 서명국들 중 하나
- Considering ratification
  비준 고려 중

Philippines' Success Indicators of ADR Programs of OADR in 2021 2021 년 필리핀의 OADR, 대안적분쟁해결 (ADR) 프로그램의 성공사례	Target 목표	Total 결과
number of ADR practitioners trained ADR 교육을 받은 전문인의 수	1,100	1,056
percentage of participants with at least very satisfactory overall rating for the capacity building activities 매우 만족스러움이라고 답한 참가자들의 비율	85%	96%
percentage of applicants for accreditation and approval of ADR training program acted upon ADR 훈련 프로그램에 참여하여 승인을 받은 지원자들의 비율	93%	100%
number of participants in ADR information/advocacy activities ADR 정보 또는 변호활동에 참여한 사람의 수	1,000	35,007

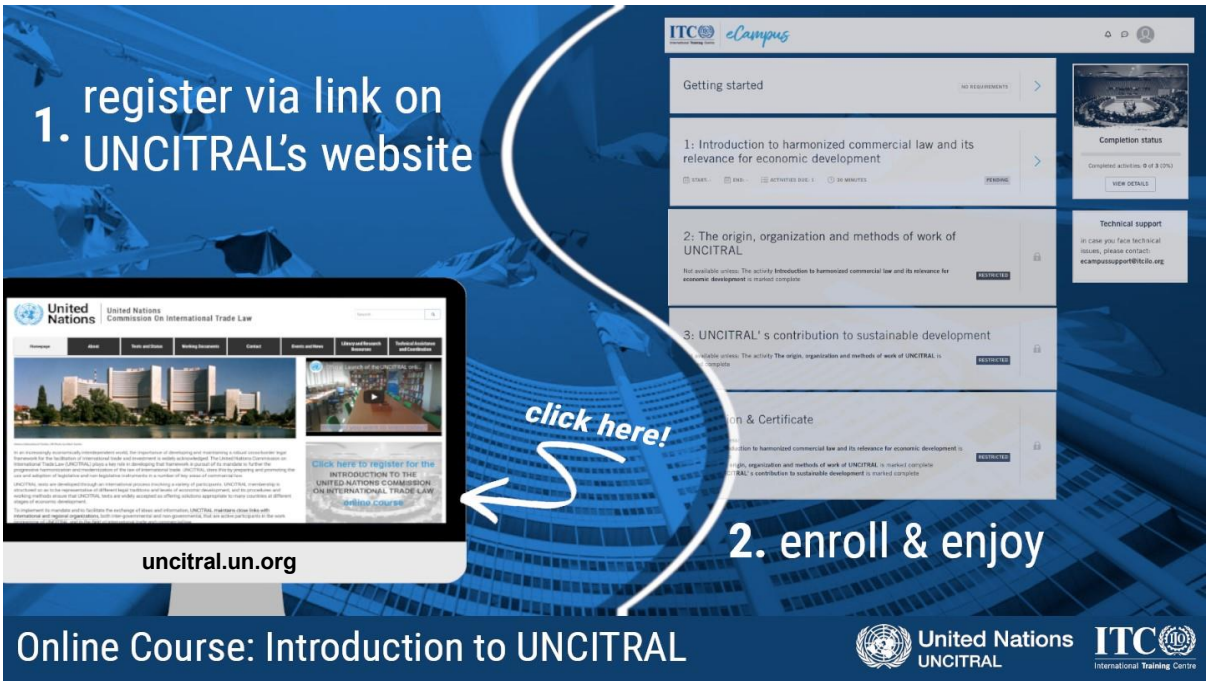
Japan 일본

- Closely considering the Singapore Convention on Mediation
  싱가포르협약가입 고려 중
- Ministry of Justice working to identify inconsistencies between the Japanese domestic legal system and the Convention
  일본 법무부는 일본 자국 법체계와 싱가포르협약의모순을 규명 중

Thailand 태국



The 2nd KIMC International Seminar (Dec. 3, 2021)



Discussion Paper in Session 2

Natalia LYKOVA

Good afternoon. Dear participants of the conference. First of all, I would like to express my gratitude and appreciation to outstanding Professor Park and KIMC for their assistance in organizing the international scientific and practical conference of mediators, which was held in October 2021 in Vladivostok. This mediation conference has become the largest as per scope of foreign participants throughout Russia. The conference raised interesting questions regarding the possibility of using mediation, ranging from those related to politics to economic issues, for example, to resolve the Kashmir issue or resolve disputes over government contracts and military acquisitions. Thank you very much.

I would like to express my gratitude to Professor Nadja Alexander for an interesting and informative presentation. It should be noted that in the report, speaking about a Broader mediation Eco-System and providing examples of it, Professor Nadja Alexander actually set before all mediators a kind of roadmap and tasks that all mediators and authorized interested organizations, states should work out and resolve. This is an interesting and difficult task, but I think it is possible to solve these tasks with joint efforts. For example, the task of adopting a comprehensive and congruent law on cross-border mediation is already in the process of resolving.

I was asked to briefly describe how things are going with the accession to the Singapore Convention on Mediation in Russia. In 2020, there was a strong political will among the authorized structures to join the Singapore Mediation Convention. For these purposes, large-scale transformations of the current system of dispute resolution services through mediation, as well as the legislation of the Russian Federation, have begun in order to prepare our legal system for accession and ratification of the Singapore Convention on Mediation.

Thus, the activities of the Federal Institute of Mediation, which was created with the aim of

developing, improving and spreading mediation in Russia and on the international arena, carrying out scientific activities in the field of mediation, were suspended. In the same year, the Ministry of Justice of the Russian Federation, in order to fulfill the list of instructions of the President of the Russian Federation and the legislative activity of the Government of the Russian Federation, prepared a draft of federal law "On dispute settlement with the participation of an intermediary (mediator) in the Russian Federation", which framework implied a number of significant changes to the current law №193-FZ of 27.07.2010.

As an example. I will not list everything, the legal regulation was big. 1. The Ministry of Justice of the Russian Federation was proposed to be the body to supervise the activities of mediators or organizations that ensure the conduct of mediation procedures. I would like to note that now, after the suspension of the activities of the Federal Institute of Mediation, mediators have anarchy and impunity in this regard. This exists unless, of course, the mediator or the organization will not commit any crime or offense.

2. It was proposed to create a qualified commission for the certification of mediators under the Ministry of Justice of the Russian Federation, which was supposed to consist, oddly enough, of anyone but mediators, such as civil servants, judges, attorneys, lawyers, representatives of the public and law enforcement agencies. It was assumed that as the result of the certification, by analogy with the certification of lawyers, the Ministry of Justice of the Russian Federation would issue state-certified certificates to mediators and enter mediators in the state register.

Now, according to the law, any person who has reached the age prescribed by law, meets the requirements established by law, who has received additional professional education on the application of mediation procedures, can become a mediator. That is, it doesn't matter if you clean the house, work in a store as a salesman, or you are an entrepreneur, it doesn't matter if you have a law degree. If you comply with all the requirements of the law, you can freely become a mediator and work privately or become a member and employee of a commercial or non-profit organization.

3. It was proposed to introduce a Code of Professional Ethics for Mediators in Russia, which also, for some reason, had to be developed and adopted by the Ministry of Justice of the Russian Federation. It has not been introduced yet.

4. It was proposed to limit by age the opportunity to become a mediator and conduct mediation procedures – the age limit was set starting from 30 years. I would like to note that now any person who has reached the age of 18 and meets the requirements specified in the law can become a mediator by law. Moreover, the legislation of Russia distinguishes between mediators depending on the age and divides them into non-professional mediators - this is the age from 18 to 25 years and professional mediators - the age of 25 years and up.

5. It was proposed to prohibit attorneys, notaries and other persons, except lawyers, retired judges, teachers, to work as mediators.

6. It was proposed to introduce mandatory mediation in a number of categories of disputes (for example, family, labor disputes, consumer protection disputes), as well as to allow mediation procedures in criminal disputes. There were many other proposals.

I would like to note that this law was very negatively met by the entire legal and business community and criticized. For example, attorneys and notaries were very indignant why the state forbids them to carry out the duties of a mediator.

At first, it was assumed that the draft law would be finalized in 2021.

However, in 2021, the working group on the draft law under the Ministry of Justice of the Russian Federation was dissolved and, to date, no one knows when work will continue on reforming the mediation system in Russia and the legislation regulating it. Even employees of the Ministry itself. It is assumed that work may resume in 2022.

Despite this, everyone from federal government agencies to local governments is actively working on the development of the mediation system in Russia – a very large role is being given to the development of school mediation, there is an active introduction of alternative online dispute resolution mechanisms (for example, special online platforms and a unified identification and authentication system), there is an introduction of a system of access to mediator services on state portals – for example, such as "my business", "state. services", separate amendments to the laws regulating mediation issues are being adopted – for example, amendments have been made to a number of orders and regulations governing the certification of mediation agreements by notaries adopted by the Federal Notary Chamber and the Ministry

of Justice of the Russian Federation. The amendments were aimed at preventing the commission of offenses, crimes, and pursuing anti-money laundering and terrorism financing.

These amendments were very important not only for internal application in Russia, but were also aimed at bringing the legislation and the system into a position so that it would be possible for Russia to join the Singapore Mediation Convention in the future.

By the way, I worked on these amendments representing Primorsky Krai together with the Notary Chamber of Primorsky Krai. We have developed more than twenty provisions that notaries need to pay attention to when mediators and parties approach them in order to notarize a mediation agreement in order to avoid involving notaries in the criminal activities of mediators and parties to the transaction. Some of the amendments that I have proposed have been included in the federal internal recommendations and requirements that are already mandatory for notaries throughout Russia. Many other things are also being done.

To summarize, at the moment, Russia is undergoing a process of reforming the dispute resolution system through mediation and the current legislation of the Russian Federation as a stage of preparation for subsequent accession to the Convention. However, it is not yet known in what part whether Russia will sign and ratify the Convention. I think that everything will depend on the current international situation and the attitude of the international community and states towards Russia, its citizens, business, state power structures, so that there is a political will to join the Convention.

By the way, today it became known that the Supreme Court of the Russian Federation has begun to consider options for optimizing and developing mediation in Russia. Therefore, we are waiting for their proposals of the Supreme Court.

Since there is not much time left, I will say a few words about the Convention itself. I will immediately make a reservation that I will talk about the Convention based on the current legislation of the Russian Federation. In the wording in which the Convention is currently adopted, Russia will not be able to sign and ratify it by all means. I am sure that the authorized structures, if they join the Convention, will do so only with large reservations and clarifications, because the formulations available in the convention are very vague, and Russian legislation is based on precise formulations and categories in order to avoid corruption and situations that would allow the laws to be used to commit offenses and crimes, for example, to withdraw cash

and property assets from the country. There are a lot of issues in the convention from the point of view of Russian legislation that are not regulated, are not clear and require appropriate explanations for the system of Russian law, the convention contains contradictions in the provisions among themselves, as well as provisions that contradict the legislation of Russia. The convention contains provisions that can unambiguously become the basis for the legalization, laundering and withdrawal of property and money from our country. In this regard, the amendments adopted by the Federal Notary Chamber and the Ministry of Justice of the Russian Federation regarding the certification of a mediation agreement by a notary are relevant, and it is also expected to be introduced into the current legislation of the Russian Federation. The convention also contains provisions that introduce for the authorized bodies of States the possibility of making value judgments, unequal approaches to the parties to the agreement depending on various circumstances, as well as the possibility of using the convention as a political tool.

If the representatives of UNCITRAL, KIMC or Singapore would be interested in detailed descriptions of all the aspects of the convention that I have given with a view to its further elaboration, then I make a separate written statement.

Convention, without reservations or explanations, because for Russian law it is important what the procedure is called and the basis on which it is carried out. I do not think that the federal authorities will allow a situation where, taking advantage of the Convention, particularly active entrepreneurs withdraw money from Russia. In Russia, the mediation procedure is strictly procedurally regulated, in contrast to the uncontrolled conclusion of agreements through simple mediation.

I want to thank KIMC and Professor Park for the opportunity to speak at the seminar today. Goodbye.

Session 2.

Domestic Implementation of the Singapore Convention on Mediation

Prof. LORI YI (Keimyung University)

안녕하십니까? 토론자로 참여하는 이로리입니다.

오늘 제2회 KIMC의 국제컨퍼런스 개최를 축하드리고, 컨퍼런스를 통해 배움과 교류의 기회를 가질 수 있어서 기쁘게 생각합니다. 저는 대학원 시절에 KIMC이사장님이신 박노형교수님께 협상과 조정을 통한 분쟁 해결의 의미와 가치를 배웠고, 이후 박교수님을 따라서 협상, 조정제도와 기법에 관한 교육과 연구 활동을 해 왔습니다.

2012년부터 박교수님의 제안으로 한국조정학회가 대한상사중재원(KCAB)과 공동으로 조정전문가 교육 프로그램을 운영하기 시작했는데, 그때부터 올해까지 9년간 각 분야의 많은 전문가들이 조정 교육을 이수하였습니다. 이 프로그램은 한국에서 최초의 조정전문가를 양성하는 교육프로그램이었고, 한국조정학회와 협력하여 대한상사중재원의 주관 하에 계속하여 실시되고 있습니다.

저희가 하는 조정 교육은 조정인의 지원으로 당사자들이 합의에 이를 수 있도록 하는 소위 촉진적 조정(facilitative mediation), 당사자 중심의 조정절차에 기반 한 내용인데, 싱가포르조정협약에서 규정하고 있는 '조정'의 정의에 바로 부합하는 내용입니다. 그러나 한국의 국내 조정제도, 즉 민사조정이나 행정형 조정의 근거가 되는 법률의 내용과 조정 관행이 평가적 조정(evaluative mediation), 조정부 중심의 조정절차여서 조정 교육을 이수하고 실제 조정 실무에서 그 내용을 활용하고 싶어도 기존 절차의 법적, 구조적, 시간적 한계를 이야기 하는 분들이 많이 계셨습니다.

그런데, 한국이 싱가포르조정협약을 비준한다면 국가적 차원에서도 기존의 법원, 행정형 기관 중심의 국내 조정제도의 틀에서 벗어나 민간분야에서 진정한 의미에서 '조정'을 통한 분쟁 해결제도를 정착시키고, 발전시킬 수 있는 계기가 될 수 있을 것이며, 그간의 조정 교육을 이수했던 전문가들도 국제상사조정 분야에서 조정역량을 펼 칠 수 있을 것으로 기대합니다.

오늘 발제와 관련하여 싱가포르조정협약의 국내 이행과제 네 가지와 기업 및 산업계의 조정에 대한 인식을 높이고, 국제상사조정제도의 활용 가능성을 높일 수 있는 방법에 대해 발표자께 질문하고자 합니다.

협약이행과 관련된 과제로는 첫째, 법적 과제로서 싱가포르조정협약이행을 위한 국내법의 정비 및 개정,

2018년 UNCITRAL조정모델법의 내용을 반영한 가칭 상사조정기본법의 입법, 조정인 및 조정서비스제공기관이 자발적으로 준수할 수 있는 행위준칙 내지 규범(code of conduct)의 채택이 필요합니다.

둘째, 싱가포르조정협약의 '조정'(mediation)의 정의에 부합하는 국제상사조정을 수행할 수 있도록 정부는 민간조정제도의 구축에 장애가 되는 국내 규제를 철폐하고, 민간조정의 인프라가 구축될 수 있도록 법적, 제도적, 재정적 지원을 해야 합니다. 한국에서 상사분쟁은 주로 법원이나 법원연계형 조정기관의 민사조정을 통해 해결될 수 있는데, 재판상 화해의 효력을 갖는 그러한 조정은 싱가포르조정협약의 적용대상이 아닙니다. 한국에서 조정제도에 적용되는 민사조정법, 각종 행정형 조정의 근거가 되는 개별법에서 규정하는 조정절차, 조정부의 구성, 조정인의 역할도 싱가포르조정협약에서 정의하고 있는 당사자 중심의 조정과는 약간 다릅니다. 따라서 법원이나 정부가 주도하는 조정이 아닌 민간분야의 조정제도가 자리 잡을 수 있도록 법적, 제도적, 재정적 지원을 하여야 합니다. 특히 법조인만 국제상사조정을 할 수 있는 것은 아니므로, 이와 관련한 변호사법 관련 규정의 위반문제를 해결해야 할 것입니다.

셋째, 국제상사조정제도가 기업, 산업의 신뢰를 얻고, 정착되기 위해서는 조정의 질(quality)을 확보할 수 있어야 합니다. 조정의 질은 대학과 학회, 분쟁해결기관이 협력하여 실무적인 조정교육프로그램을 개발, 제공하고, 조정인의 자격요건을 일정시간의 조정교육 이수를 의무화 하는 것입니다. 국제조정인으로 활동하고자 하는 전문가들에 대해서 이미 국내외에서 시행되고 있는 조정교육 프로그램의 네트워크를 구성하여 활용할 수 도 있을 것입니다. 국내 조정제도에서는 조정인의 자격으로 조정교육 이수를 명시하지 않고 있고, 조정인이 봉사의 개념으로 조정을 수행하고 있으므로 조정의 질은 조정인의 개인역량에 따라 그 편차가 매우 클 수 있습니다.

마지막으로, 국제상사분쟁조정이 활성화되려면 기업 및 산업계의 참여가 필수적입니다. 기업 및 산업계의 국제상사분쟁조정 활용을 높이는 조치들이 실시되어야 합니다. 상사분쟁의 당사자인 기업이 조정의 장점을 잘 활용할 수 있도록 조정캠페인을 통해 조정에 대한 인식과 이해도를 높이고, 계약서에 분쟁조정 조항을 삽입하는 표준문구를 홍보하고, 국제상사조정제도 및 기관에 대한 정보들이 효과적으로 제공될 수 있는 방법들을 고민해야 합니다. 이러한 점에서 정부, 산업계, 분쟁해결기관, 법조계 그리고 한국조정학회가 적극적으로 협력할 필요가 있습니다.

이러한 점에서 발제자이신 Alexander교수님께 싱가포르에서는 기업 및 산업계의 조정에 대한 인식 수준과 국제상사분쟁조정의 활용을 장려하기 위해 싱가포르에서는 어떤 조치들이 활용되고 있는 지에 대해 의견을 듣고자 합니다.

The Singapore Convention on Mediation
: why it was drafted and why countries should sign it

Delcy Lagones de Anglim

In Singapore, on 7 August 2019, 46 countries signed the United Nations Convention on International Settlement Agreements Resulting from Mediation.

Since then, a total of 55 countries have signed and 8 countries have ratified the Convention.

The UNCITRAL instrument, which was named the Singapore Convention on Mediation, was drafted and negotiated over three years in New York and Vienna from 2015 until 2018. Why is the Singapore Convention on Mediation important?

As the Prime Minister of Singapore, Mr Lee Hsien Loong, said at the signing ceremony:" the Singapore Convention on Mediation allows parties to enforce their agreements in the courts of the signatory countries. This will help advance international trade, commerce and investments. Lengthy commercial disputes can severely disrupt normal business operations. They damage reputations, hurt share prices and make it harder for companies to raise capital. They also dampen the morale of employees, shareholders and other stakeholders".

Mediation was already becoming the dispute resolution process of choice for international trade disputes. However, the enforceability of settlement agreements reached by mediation was complicated. In some jurisdictions, as in Korea (Korean Commercial Arbitration Board) and Sweden (Arbitration Institute of the Stockholm Chamber of Commerce), mediated settlement agreements have been made equivalent to arbitral awards even if arbitral proceedings were not conducted, in order to avoid litigation to enforce the conciliated/mediated settlement.

It was evident that a robust framework for enforceability of mediated agreements was needed. There were already two sides of the Enforceability Triangle in place - the New York Convention for Arbitration and the Hague Convention for Litigation – but the third side was missing - a Convention for Mediation.

This work started with a proposal to the United Nations Commission on International Trade Law (UNCITRAL) by the Government of the United States of America in 2014 (a).

This proposal stated that "the use of conciliation/mediation results in significant benefits, such

as reducing the instances where a dispute leads to the termination of a commercial relationship, facilitating the administration of international transactions by commercial parties and producing savings in the administration of justice by States". It also stated that "consultations with the private sector have indicated strong support for further efforts by UNCITRAL to facilitate the enforceability of conciliated settlement agreements".

It is important to note that the 2002 Model Law on International Commercial Conciliation was redrafted concurrently with the Convention to accommodate the needs of some countries and it was renamed the Model Law on International Commercial Mediation.

The issue of definitions regarding conciliation and mediation was addressed at the 2017 UNCITRAL meetings in Vienna, and it was agreed to replace "conciliation" with "mediation".

(a)The United States government proposed the development of a multilateral convention on the enforceability of international commercial settlement agreements reached through conciliation. (A/CN.9/822 UN General Assembly, 2 June 2014, UNCITRAL 47th session, New York 7-18 July 2014).

One of the most important articles of the convention, Article 5, which deals with grounds for refusing to grant relief, was successfully negotiated at the New York meetings of February 2018. The sub-committee tasked with negotiating this article took into consideration the constraints and challenges that delegates faced within their own legal systems and with their governments' policies. Under the Chatham Rule a compromise was achieved.

The United Nations General Assembly adopted the Singapore Convention on Mediation on 20 December 2018.

The Enforceability Triangle was complete.

On 12 September 2020, the Singapore Convention entered into force.

Why countries need to sign and ratify this convention?

In international trade, preserving commercial relationships is extremely important. Resolving disputes amicably and cost-efficiently is paramount to successful trade and to develop a vibrant economy. The repair or preservation of these relationships are some of the benefits of mediation. If you add confidentiality, party autonomy in appointing the mediator or mediators and, most importantly, the parties deciding the content of the settlement, mediation indeed offers significant advantages to businesses in the resolution of their disputes.

For lawyers, mediation affords the opportunity to help their clients maintain long-term relationships and address disputes and conflicts creatively. A former judge noted that, by

reducing the number of judicial cases, mediation can free-up judges to concentrate on more complex matters.

There is a benefit for the society at large when people learn to resolve disputes amicably and a "habit" of dialogue is established. Furthermore, when combined with the general increment in cross-border transactions, the current pandemic has given rise to an increasing number of disputes relating to cross-border transactions, particularly in the areas of contract implementation. A cost-efficient method to resolve these disputes is paramount to the global and domestic economies.

Trading nations must be prepared to provide or facilitate dispute resolution processes that are fast, cost-efficient and enforceable, in order to provide peace of mind to parties who enter a commercial international mediation process. As a side benefit, these countries will enhance their reputation as a country that offers a strong legal international framework to deal with international trade disputes, a framework that is attractive to international businesses and investors.

Traditionally arbitration and judicial processes have been utilised to resolve international trade disputes. However, in the last ten years these methods have become increasingly expensive and arbitration proceedings have become as long and complex as judicial proceedings.

Business owners understand the benefit of a dispute resolution process that gives them control of the outcome and gets them back to business, restores or maintains business relationships and limits cost. Mediation is such a method. It is also confidential, allowing businesses to save face and protect their image.

The Singapore Convention provides certainty for the enforcement of the settlement agreements if one of the parties refuses to implement it

Countries with major economies, including the USA, China and India, have signed the Singapore Convention.

Countries which sign the Convention will allow businesses to save money and time when instigating legal proceedings to request the enforcement of a settlement agreement resulting from mediation.

Therefore, states which are Parties to the Convention can become credible seats for international mediation, an advantage already enjoyed by Singapore.

It is important to remember that parties involved in a mediation process are in control of the outcome. They are not forced to agree on a settlement that does not protect their interests. The

parties themselves develop options to resolve their dispute with the assistance of the mediator. The mediator has no authority to impose a decision or solution upon the parties as defined in Article 2.1.3 of the convention. The Courts would be enforcing voluntary agreements, not imposing new decisions.

This Convention is an international instrument and had to consider the different needs and interests of all countries/delegations present at the negotiations.

In some jurisdictions, certain words or concepts were not applicable therefore we had to negotiate instances applicable for most countries. It was about reconciling both civil and common law legal systems.

It was a complex task to draft a multilateral convention, not only considering diverse legal and cultural systems but also language challenges. What made sense in French had no meaning in Mandarin and so forth.

It is crucial for countries in our region to sign and ratify the Singapore Convention on Mediation.

Ms Delcy Lagones de Anglim,

Founder and Executive Director, Australasian Dispute Resolution Centre

Session 3 : Critical Provisions of the Singapore Convention on Mediation

Achieving a high standard of the International Mediation under the Singapore Convention

Prof Dr. Francis Law
President of Hong Kong Mediation Centre
Chairman of International Dispute Resolution & Risk Management Institute

Enforceability of Settlement Agreements under the Convention

Only international commercial settlement agreements resulting from mediation can be enforced under the SCM.

- The mediation settlement agreement must be international in character (Art 1(1) SCM)
- The mediation settlement agreement must be commercial. This excludes disputes arising from transactions by consumers for personal, family, or household purposes, or relating to family, inheritance, or employment law (Art 1(2) SCM)
- The Convention does not apply to settlement agreements that are enforceable as a judgement or arbitral award (Art 1(3)(b) SCM).

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A settlement agreement has a dual function under the SCM.

- Settlement agreements can be directly enforced in the competent authority of a Party state, in accordance with its rules of procedure and under the conditions laid down in the Convention. (Art 3(1) SCM)
- Where a dispute arises) relating to a matter which has already been resolved by the settlement agreement, the agreement can be invoked to prove that the matter has been resolved. (Art 3(2) SCM)

The competent authority of a Party state to the SCM may refuse to grant relief on the grounds laid down in the SCM, including:

- If a party to the settlement agreement was under incapacity. (Art 5(1)(a) SCM)
- If the settlement agreement is not binding, null and void, inoperative or incapable of being performed under the law to which it is subjected, or has been subsequently modified. (Art 5(1)(b) SCM)
- If there was a serious breach by the mediator in terms of applicable mediator standards (Art 5(1)(e) SCM), or failure to disclose circumstances that raise doubts as to mediator impartiality or independence (Art 5(1)(f) SCM), without which the party would not have entered into the agreement.
- If granting relief would be contrary to the public policy of the Party state. (Art 5(2)(a) SCM)

PARTIES TO THE SCM HAVE BEEN GIVEN THE OPTION TO MAKE THE FOLLOWING RESERVATIONS WHEN SIGNING THE SCM:

- To qualify that the Convention would not be applicable to settlement agreements to which its government or other public entities are a party. (Art 8(1)(a) SCM)
- To adopt an opt-in approach which provides that the Convention only applies to the extent that the disputing parties agree to its application. (Art 8(1)(b) SCM

QUALITY ASSURANCE BY THE MEDIATION INSTITUTES

Mediation Instutes should have a system Institutes should

1. Establish well designed rules, regulations, procedures and mechanisms for organizing high quality international mediation.
2. Make reference to the List of matters for possible consideration in organizing a mediation in the Notes on Mediation

3. Institutes should provide institutional support which may include:

   a. Providing guidance on the organization of the mediation (for example on procedural steps and costs);

   b. Helping select and appoint a mediator;

   c. Assisting with logistical matters (for example, reserving conference facilities and translation services);

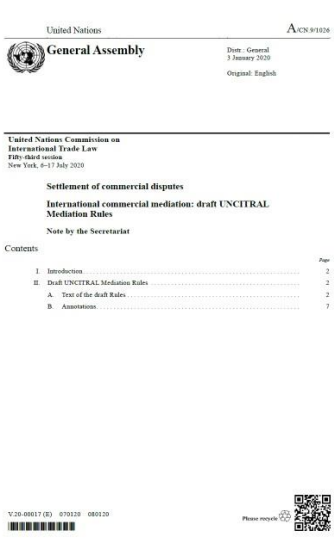
   d. Providing data protection or cybersecurity measures (in particular for online mediation); and

   e. Certifying that a mediation took place.

- Providing the list of qualified mediators in handling mediation generally or be specialized in certain types of disputes, such as construction, infrastructure, intellectual property disputes, or certain mode of settlement, such as online dispute resolution.
- Quality assurance mechanism to ensure the mediation is conduct in accordance with SCM or in case if SCM is not applicable, the relevant international dispute resolution and enforcement mechanism

CODE AND PRACTICE OF INTERNATIONAL MEDIATORS

- Conversant to international mediation legal framework, mechanism and procedures
- Conversant to the UNCITRAL Mediation Rules
- Conversant to the UNCITRAL Notes on Mediation
- Proficient in application of mediation knowledge and skills
- Avoid conflict of interest
- Maintain Confidentiality
- Mediate in neutral and fair manner
- Protect the interests of all parties involved
- Ensure the MSA is enforceable to the place of performance



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Fifty-third session
New York, 6–17 July 2020

Settlement of commercial disputes

International commercial mediation: draft UNCITRAL Mediation Rules

Note by the Secretariat

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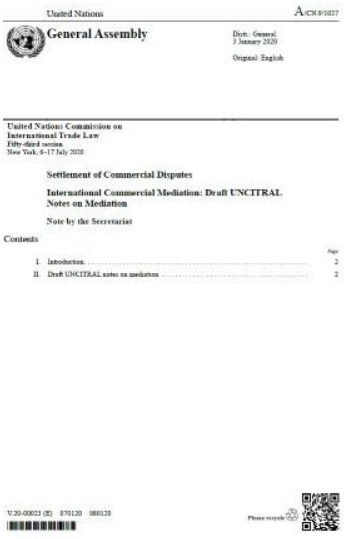

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Note by the Secretariat

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BUILDING THE CONFIDENCE ON INTERNATIONAL MEDIATION

Development of International Mediation Professional across the globe

The Academy of International Dispute Resolution & Professional Negotiation (AIDRN) offers training programsfor dispute resolution, risk management and negotiation.

Fundamental	Advanced	Continuing development	Institutional
International Mediator	Specialized Experts in Mediation, Arbitration, Adjunction, Negotiation and Risk Management	Coaches, Trainers, Assessors and CPD programs Application of mediation under Singapore Mediation Convention	Mediation Procedurals
International Arbitrator			Case management procedural
Professional Adjudicator			Assessment procedures
Risk Managers			Corporate Criss Management and Risk Prevention

1. Establish well designed rules, regulations, procedures and mechanisms for dispute resolution institutes;

2. Coordinate and design mechanism for the effective integration of International Dispute Resolution and Business development

3. Administer highly recognized international qualification accreditation including

   a. International Professional Mediator accreditation
   b. International Arbitrator accreditation
   c. Professional Adjudicator Accreditation
   d. Professional Risk Manager Accreditation
   e. Dispute Resolution case Manager Accreditation
   f. International Dispute Resolution Training specialist Accreditation
   g. Dispute Resolution Training course Accreditation
   h. International Dispute Resolution Trainer Qualification Certification

Asian Pacific Center for Arbitration and Mediation
established in 2020 9 members covering Australia, Hong Kong China, India, Indonesia, Korea, Malaysia, Nepal, Thailand

The administration of APCAM is done by an independent Governing Board comprising of nominee Board members from each constituent institutions, who are some of the best arbitrators, mediators or ADR professionals from the AsiaPacific region. The Board is also supported by a team of experienced lawyers, ADR professionals and academics from diverse jurisdictions, under different Committees. APCAM also has an Advisory Board, comprising of the most experienced and credible names in the field from all over the world. They guide the Institution on procedural and ethical aspects concerning ADR.

APCAM Certified Mediation Trainers Training Program : 20
an21 January 2022 online.

Alliance for Mediation Standards

Established in April 2021, including professional organizations in Hong Kong China, Singapore, Malaysia, France, Brazil, Angola, Portugal, Mozambique, Guinea-Bissau

Mission:

1. Promote the use of high quality international mediation services;
2. Explore collaboration among international mediation centers to recognize and advance the international mediation practices;
3. Set standards and recognition to mediation accreditation and assessment standards among members;

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Critical Provisions of the Singapore Convention on Mediation

International commercial mediation, what kind of proceeding?

Giovanni Matteucci [6]

According to a 352 enterprises survey on commercial mediation and dispute resolution methods in Vietnam, conducted by the Vietnam International Arbitration Center (VIAC) and International Finance Company (I FC) in 2015, "*78%* -of enterprises- *are willing to try mediation; .... 79% preferred the evaluative style of mediation with the mediator actively guiding the parties, compared to the supportive mediation style*". [i]

In 2020, the Singapore International Dispute Resolution Academy conducted the 2020 International Dispute Resolution Survey (2020 SIDRA Survey); 304 respondents (64% legal users and legal advisers and 36% client users) from 45 countries:

"*International commercial arbitration remained the dispute resolution mechanism of choice among respondent users, ... more popular among legal users than client users.*

"*respondents ranked enforceability, neutrality/impartiality and cost as the top three most important factors in their choice of a dispute resolution mechanism;*

" *. ... a larger proportion of mediation users were satisfied with speed and cost, as compared to arbitration and litigation users*". [ii]

In the international commercial disputes, after the Second World War, arbitration was - and still is - the most widely followed out-of-court procedure, thanks to the New York Convention (1948), many treaties among states to recognise the effectiveness of arbitral awards and the inherent techniques, particularly ap preciated by lawyers. Only in recent decades mediation started to gain importance [iii] in the internation al context, [iv] leading to the signing of the Singapore Convention on Mediation in 2019. [v]

The Convention focuses on the enforceability of agreements reached in mediation. But, there are still discussions and concerns on

- the harmonization of the proceeding;
- the mediator's code of conduct;
- the use of technology.

Harmonization of the proceedings

The Uncitral Model Law on mediation, 2018, [vi] provides the essential principals, but according to the **Note** of the Uncitral Secretariat, 2020, [vii] "B.15 - … *Uniformity on such topics helps to provide greater integrity and certainty in the mediation process and its outcome".*

[6] JD, B&ED, Diploma in Economics, IAPMMHJMC, professional commercial mediator and trainer in mediation; advisor in small/medium firm financial crisis prevention adrmaremma@gmail.com https://www.linkedin.com/in/giovanni-matteucci-58352226/

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The proceedings, the paradigms shared in the various countries differ from each other, and not a little: in Western countries the facilitative method is mostly followed, in Eastern regions the evaluative one. And the hybrid proceedings are spreading.

According to IMI, "*perceptions and practices regarding the mixing of modes in domestic and international dispute resolution are often heavily influenced by one or more of the following: national culture(s) and legal tradition(s); the local legal profession; practices in specific areas of conflict; and party priorities in specific transactions or circumstances*". [ix]

Cultural diversities are likely overwhelming.

In western societies the individual is the fulcrum around which the whole revolves, his/her interest is relevant. According to Adam Smith, the 18th century Scottish economist, the so-called "the father of capitalism", "*It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest*". [x] The eastern societies, on the contrary, underline the importance of the community (family, clan, caste) and controversies should be avoided because they would undermine the armony of the group.

Scholars underline the differences between individualistic and collectivist cultures. [xi]

In Western Countries, in the last fifty years, the approach to mediation has been based on the Harvard model, according to which the facilitative mediation is the traditional one [xii] (but evaluative, transformative and hybrid proceedings are well known; and mandatory mediation is also making its appearance) [xiii] . In Singapore, from 2014, the arb-med-arb protocol is used.

Nevertheless, the differencies in proceedings in different areas of the world are decreasing. The hybrid, multi-tiered, integrated dispute resolution systems are spreading. But which prevails: the spirit of arbitration or that of mediation?

Already in 2010 Nolan Haley wrote the article "*Mediation: the New Arbitration*". [xiv]

Harald Sipple expressed his concerns in an article published in the Asia Pacific Mediation Journal, 2019 [xv] , summarized in a later post, "*Singapore Convention: game on or game over for mediation?*": "*I fear that as a result of the Singapore Convention, mediation .. will change fundamentally to the worse: mediations will last longer, ... will become more costly ... and success rates will drop substantially*". In other words, the *"lawyerization' of mediation*" ! [xvi]

Hybrid proceedings are becoming more and more widespread. But should / can they be handled by the same professional or by two different ones?

According to The Model Law, Article 13. Mediator acting as arbitrator – "*Unless otherwise agreed by the parties, the mediator shall not act as an arbitrator in respect of a dispute that was or is the subject of the mediation proceedings ….*" .

"*Unless otherwise agreed by the parties*" - To save time and, may be, money, a single professional often plays the role of arbitrator and mediator (the "*lawyerization of mediation*" !). But are the conflicting parties, at the mediation stage, willing to discover the real underlying problems of the conflict? Or will they fear that these information will be used to their harm in the arbitration phase?

According to my opinion, there should be two different professionals.

Nadja Alexander, Samantha Clare Goh and Ryce Lee : "*One key concern* -related to the hybrid process- *is that … one party being more forthcoming during settlement negotiations, might impact the impartiality of the neutral who is later tasked to decide the arbitral stage of proceedings as well. … that these issues put awards at risk of being overturned, particularly where the hybrid clauses were poorly drafted*".[xvii]

The topic has been widely analysed also by the IMI/CCA/Strauss Institute Mixed Mode Task Force. [xviii]

Another element to consider, when analyzing the mediation proceeding, is prior to it: the mediation clauses. At the international level the mediation or arbitration *"only clauses*" are well known, but "*multi step / hybrid clauses*" are more widspread. [xix] And they do not always support the use of mediation.

Can technical expert opinion be used in mediation? Mediation is an informal and flexible proceeding, so technical expertise is not excluded (the Italian mediation law provides for it), as long as the cross-examination is guaranteed.

The European Union, and no member state, has so far signed the text of the Singapore Convention. But the EU has issued many rules on mediation [xx] and the CEPEJ Working Group on mediation (CEPEJ-GT-MED) has been working on developing shared practices in Europe for the last fifteen years.[xxi]

According to Thomas Stipanowich, "*Today as never before, commercial dispute processing is 'mixed mo de', with business parties and counsel employing a variety of diverse approaches in order to promote th eir priorities in resolving conflict. … However, … effective guidance for legal counselors and advocates, arbitrators, and mediators is woefully inadequate in light of the special challenges they present*." [xxii]

Mediator's code of conduct

At international level there are no shared rules not only on the mediation proceeding, but also on the criteria of conduct of mediators. An issue taken into account by the Singapore Convention, but only indirectly, and with possible relevant consequences.

The Singapore Convention, article 5 . Grounds for refusing to grant relief

"1. *The competent authority of the Party to the Convention where relief is sought under article 4 may refuse to grant relief … if that party furnishes to the competent authority proof that: …..*

"(f) *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*".

According to the SIDRA 2020 Survey, "*A majority (87%) of respondents ranked good ethics as an 'absolutely crucial' or 'important' in their choice of mediator, followed closely by dispute resolution experience (86%) and language (83%)*". [xxiii]

In USA the first Model Standards of Conduct for Mediators was promulgated in 1994 and revised in 2005. In Europe, in 2014. [xxiv]

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[i] Dat Phan Trong, "*An overview of commercial arbitration in Vietnam*".

[ii] SIDRA, "*International Dispute Resolution Survey, 2020 Final Report*"

https://sidra.smu.edu.sg/sites/sidra.smu.edu.sg/files/survey/12/index.html

Nadja Alexander and Allison Goh, "*According to the 2020 SIDRA Survey, international commercial arbitration remains the dispute resolution of choice (used by 74% of respondents), followed by litigation (49%), hybrid mechanisms (27%) and mediation (26%). Notably, when mediation within hybrid dispute resolution mechanisms is taken into account, the use of mediation increases (53%) and comes closer to litigation in terms of usage, albeit still behind arbitration*", in *Why and how users make choices in international Disputes resolution: 2020 SIDRA Survey*, Kluwer Mediation Blog, 16.7.2020
http://mediationblog.kluwerarbitration.com/2020/07/16/why-and-how-users-make-choices-in-international-dispute-resolution-2020-sidra-survey/

[iii] International Finance Corporation, "*Alternative Dispute Resolution Platform. Pilot Project Management Manual for Court-Referred Mediation*", 2005

https://www.cicr-icrc.ca/images/articles/adr_manual.pdf

World Bank, "*Alternative Dispute Resolution Center Manual*", 2011

https://web.worldbank.org/archive/website01553/archived/www.wbginvestmentclimate.org/uploads/15322_MGPEI_Web.pdf

[iv] S.I. Strong - "*Although the number of recent developments in the field may make international commercial mediation sound as if it is a novel concept, the idea of using consensus-based mechanisms to resolve transnational business disputes is not new. In fact, mediation and conciliation were often the preferred means of resolving international commercial conflicts in the first half of the twentieth century. It was only in the years following World War II that arbitration became the more popular method of addressing cross-border business disputes.*

"*The reason for this shift in emphasis is unclear, since institutional support for consensus-based dispute resolution remained in effect throughout the twentieth and early twenty-first century. For example, one of the world's leading private dispute resolution providers, the International Chamber of Commerce (ICC), has had rules on international commercial conciliation and mediation continuously in place since 1923, with the most recent version having gone into effect on January 1, 2014. The United Nations Commission on International Trade Law (UNCITRAL) has had its own set of rules in place since 1980 ("UNCITRAL Conciliation Rules"), although those provisions have not been adopted by private parties nearly as often as UNCITRAL's rules on international commercial arbitration ("UNCITRAL Arbitration Rules") have. Thus, the preference for arbitration cannot be the result of a lack of institutional or structural support, at least at the level of individual disputes.*

"*However, there may be larger factors at play. For example, international commercial arbitration has undoubtedly benefitted from the extensive system of international treaties designed to promote international commercial arbitration in the years following World War II. International commercial mediation, on the other hand, has primarily existed as a form of 'soft law'. Another issue may be a cultural predisposition towards adjudicative means of dispute resolution, at least in Western legal systems. While many scholars may prefer consensus-based methods of dispute resolution, there may be something about international commercial disputes that leads parties and practitioners to prefer arbitration*", in "*Beyond International Commercial Arbitration? The Promise of International Commercial Mediation*", University of Missouri School of Law, Legal Studies Research Paper Series no.2013-21

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2363149

[v] Giovanni Matteucci, "*Enforceability of international commercial mediation agreement, the Singapore Convention*" in Asia Pacific Mediation Journal Vol. 2, No. 1, March 2020, page 11

http://www.mediate.or.kr/base/data/APMJ.php

[vi] Uncitral, "*Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018 (amending the UNCITRAL Model Law on International Commercial Conciliation, 2002)*"

https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/annex_ii.pdf

[vii] Uncitral, "*Note by the Secretariat on thedraft Guide to Enactment and Use of the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (2018)*", 2020

https://documents-dds-ny.un.org/doc/UNDOC/GEN/V20/020/57/PDF/V2002057.pdf?OpenElement

[viii] Shaung Leong and Rachel Koh, *"'I promise not to promise' - International Mediation and measures to safeguard against Guerrilla tactics*, in Lexology, 16.11.2021

https://www.lexology.com/library/detail.aspx?g=522cf41d-7599-4546-b870-964a9cfe68bb&utm_source=Lexology+Daily+Newsfeed&utm_medium=HTML+email+-+Body+-+General+section&utm_campaign=Lexology+subscriber+daily+feed&utm_content=Lexology+Daily+Newsfeed+2021-11-16&utm_term=

[ix] IMI's Mixed Mode Task Force, 2018

https://imimediation.org/about/who-are-imi/mixed-mode-task-force/

[x] Adam Smith, *Wealth of Nations*, volume I

http://geolib.com/smith.adam/won1-02.html

[xi] Izor Sean,"*Selling mediation in the East*", Asian Journal Mediation 2013

http://hsfnotes.com/asiadisputes/2014/03/03/selling-mediation-in-the-east/

Lucke Kai and Rigaut Aloys, "*Cultural issues in Iternational Mediation*", University of Nottingham 2002 https://www.nottingham.ac.uk/research/groups/ctccs/projects/translating-cultures/documents/journals/cultural-issues-mediation.pdf

Stefano Schembri, "*East meets West*", 2016 - East /*West*

Approach : indirect / *direct* ; collaborative / *confidential* ; win-win / *win-lose*

Decision making: consensual / *individual*; relation focus / *text focus* ; bottom-up / *top-down*

Goals: long-term / *short-term* ; trust relation / *legal contract* ; pie expansion / *pie division*.

[xii] Katie Shonk, "*Types of Mediation: Choose the Type Best Suited to Your Conflict*", Harvard Law School, Program on Negotiation, 9.8.2011

https://www.pon.harvard.edu/daily/mediation/types-mediation-choose-type-best-suited-conflict/

[xiii] Italy, Greece, Turkey. Uk and India are beginning to considering it.

[xiv] Jacqueline M. Nolan-Haley, "*Mediation once offered disputing parties a refuge from the courts. Today i t offers them a surrogate for arbitration. As lawyers become increasingly involved representing parties i n mediation, the boundaries between mediation and arbitration are blurring. Lawyers generally control t he mediation process, considering it the functional equivalent of a private judicial settlement conference*" in "*Mediation: the New Arbitration"*, Harvard Negotiation Law Review, 2010.

https://www.hnlr.org/wp-content/uploads/sites/22/2012/09/61-96.pdf

[xv] Harald Sippel, *The Singapore Convention on Mediation: a overview of the key features and a review of critiques to date*, in Asia Pacific Mediation Journal, Vol.1, no.1, page 63, 29.3.2019

http://www.mediate.or.kr/base/data/APMJ.php?com_board_basic=read_form&com_board_idx=6&&com_board_search_code=&com_board_search_value1=&com_board_search_value2=&com_board_page=&&com_board_id=10&&com_board_id=10

[xvi] Harald Sippel, *Singapore Convention: game on or game over for mediation?*, in Linkedin 5.8.2019

https://www.linkedin.com/pulse/singapore-convention-game-over-mediation-harald-sippel/

[xvii] Nadja Alexander, Samantha Clare Goh and Ryce Lee, "*What's happening in International Mediation in 2021, in Kluwer Mediation Blog*", 17.03.2021

http://mediationblog.kluwerarbitration.com/2021/03/17/whats-happening-in-international-mediation-in-2021/

[xviii] Jeremy Lack, "*The Mixed Mode Task Force is a combined effort by the College of Commercial Arbitrators (CCA), the International Mediation Institute (IMI) and the Straus Institute for Dispute Resolution, Pepperdine School of Law. The term "mixed mode" refers to combinations of different dispute resolution processes (e.g., adjudicative processes, such as litigation and arbitration with non-adjudicative processes, such as conciliation or mediation). Well known examples are MED-ARB (mediation follow by arbitration), ARB-MED (arbitration followed by mediation), Dispute Resolution Boards and MEDOLOA (mediation followed by last-offer arbitration).1 They have existed for many decades, if not centuries. However, process combinations have varied greatly depending on local cultural influences, from country to country, within countries, and within different types of practices. The Task Force was set up in April 2016 to generate discussion, dialogue and deliberation among dispute resolution practitioners and thinkers from different cultures and legal systems regarding how mixed modes might better be used in both public and private, domestic and international spheres to improve access to justice and stimulate faster, cheaper and better ways of reaching resolution*", in "*Introduction to the Series of Articles on the Mixed Mode Task Force*", IMI 04.05.2021, in https://imimediation.org/2021/05/04/introduction-to-the-series-of-articles-on-the-mixed-mode-task-force/

[xix] *Med-Arb (Pure)* : mediation first and, if not all disputes are solved, for the remaining ones, arbitration; the same professional manages both proceedings;

Med-Arb (Diff) : the mediator and the arbitrator are different ;

Med-Arb-Opt-Out : mediation starts; during the proceeding any party may request to proceed to arbitration;

Med-Arb Diff-Recommendation : mediator and arbitrator are different professional but, if mediation does not succeed, the former makes suggestions to the latter;

Non-binding Med-Arb : mediator and arbitrator are the same person but, if the agreement is not reached, the professional makes a non-binding proposal (a proceedings not very different from the "*evaluative-narrow mediation*")

Med-Arb-Show Cause : mediator and arbitrator are the same person, who -in case of disagreement- makes an interim proposal for a solution, asking the parties for possible reasons of disagreement; if parties show the faults, the professional rectifies the proposal;

MEDALOA (Mediation and Last Offer Arbitration) : parties try to reach an agreement thorugh the mediation; if they do not succeed, they apply to an arbitrator, present their proposals for solutions and the professionals chooses one of them;

Plenary Med-Arb: mediator and arbitrator are the same person; caucuses are not allowed and mediator can use only documents and informations provided at the joint meetings; the award is not influenced by confidential elements but mediation loses much of its effectiveness;

Braided Med-Arb: mediator and arbitrator are the same person; mediation than arbitration, parties can ask to revert to mediation; in such a case the 'mediator' can excercise a too strong influence to reach the agreement;

Optional Withdrawal Med-Arb: mediator and arbitrator are the same person, but parties can withdraw from the proceeding; voluntariness is saved, but the controversy is still pending;

AMA Arbitration-Mediation-Arbitration (Singapore) : the disputing parties turn to an arbitration institution, which stops the proceeding and transfers it to a mediation provider; if the agreement is reached, it is returned to the arbitration tribunal, which changes the agreement into an award, enforceable

Ross Donna: "*On the international front, the use of same neutral Med-Arb/Arb-Med has been predominantly in the Far East. Today, with the increasing importance of Asia as an arbitral and ADR hub, these processes, used domestically in specific sectors in many countries, are experiencing a renaissance. As a result, institutions and countries, even those that do not actively promote or agree with these techniques, are adapting their rules and laws to grant parties the flexibility to adopt them as appropriate. …. That said, these hybrid dispute resolution methods are hardly new: they date back to the ancient Greeks, were even codified by the Ottoman Empire and have been traditionally used in Latin America. (See Alan L. Limbury, 'Getting the best of both worlds with Med-Arb', Law Society of NSW Journal, September 2010, Vol. 48 No. 8, 62-65; Amadou Dieng, 'Approche culturelle des ADR en Ohada'*

https://search.informit.org/doi/10.3316/agispt.20104047

http://www.jadaf.fr/fichiers_site/a1585jad/contenu_pages/graphisme_global/jada2011_1.pdf *#page=24 ;*

M. Tarrazón, *'Arb.Med: A Reflection à Propos of a Bolivian Experience', NYSBA New York Dispute Resolution Lawyer 2, no. 1 (Spring 2009), 87-88.* The articles cited in this paper from the NYSBA New York Dispute Resolution Lawyer 2, No. 1

Ross Donna in "*Med-Arb/Arb-Med: A more efficient ADR process or an invitation to a potential ethical disaster?*" in *Contemporary issues in international arbitration and mediation – The Fordham Papers 2012*, Leidne.Boston 2013, page 352

http://www.donnarossdisputeresolution.com/wp-content/uploads/2012/04/A1-Fordham-Papers-Med-Arb-Ross.pdf

Giovanni Matteucci, "*Maritime international commercial mediation clauses, enforceability from 2019: will it work?*", Altalex 2018

https://www.altalex.com/documents/news/2018/11/23/maritime-international-commercial-mediation-clauses

[xx] Academy of European Law, "*Mediation in the EU: Language, Law & Practice*", 2018
https://era-comm.eu/Language_Mediation/wp-content/uploads/2018/07/118DT101_docu.pdf

[xxi] Council of Europe, European Commission for the Efficiency of Justice (CEPEJ)
https://www.coe.int/en/web/cepej/mediation-tools

[xxii] Thomas Stipanowich ,"*Arbitration, Mediation and Mixed Modes: Seeking Workable Solutions and Co mmon Ground on Med-Arb, Arb-Med and Settlement-Oriented Activities by Arbitrators*", in Harvard Negotiation Law Review, vol. 26:265, Spring 2021

https://www.hnlr.org/wp-content/uploads/sites/22/26-HNLR-265-Stipanowich.pdf

[xxiii] Nadja Alexander and Allison Goh, "*What users say about international mediators and mediation institutions: Part 2*" in Kluwer Mediation Blog, 28.7.2020
http://mediationblog.kluwerarbitration.com/2020/07/28/what-users-say-about-international-mediators-and-mediation-institutions-part-2/

Lushna Godhia, "*The ideal global mediator Standard – Minimum, Aspirational, or neither*" in Kluwer Mediation Blog, 12.10.2020

http://mediationblog.kluwerarbitration.com/2020/10/12/the-ideal-global-mediator-standard-minimum-aspirational-or-neither/

IMI , "*Create a Universal Code of Disclosure*" 9.7.2020
https://imimediation.org/2020/07/09/7-keys-profession-create-a-universal-code-of-disclosure/

[xxiv] ABA, *Model Standards of Conduct for Mediators*, 2005

https://www.cadreworks.org/resources/model-standards-conduct-mediators

European code of conduct of mediators, 2014

https://www.kearns.co.uk/wp-content/uploads/2017/06/European-code-of-conduct-for-mediators.pdf

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Nadja Alexander, Samantha Clare Goh and Ryce Lee : "*One key concern* -related to the hybrid process- *is that ... one party being more forthcoming during settlement negotiations,might impact the impartiality of the neutral who is later tasked to decide the arbitral stage of proceedings as well. ... that these issues put awards at risk of being overturned, particularly where the hybrid clauses were poorly drafted*"

The topic has been widely analysed also by the IMI/CCA/Strauss Institute Mixed Mode Task Force.

Another element to consider, when analyzing the mediation proceeding, is prior to it: the mediation clauses. At the international level the mediation or arbitration *"only clauses*" are well known, but "*multi step / hybrid clauses*" are more widspread. And they do not always support the use of mediation.

Can technical expert opinion be used in mediation? Mediation is an informal and flexible proceeding, so technical expertise is not excluded (the Italian mediation law provides for it), as long as the cross-examination is guaranteed.

The European Union, and member state, has so far not signed the text of the Singapore Convention. But the EU has issued many rules on mediation and the CEPEJ Working Group on mediation (CEPEJ -GT-MED) has been working on developing shared practices in Europe for the last fifteen years.

According to Thomas Stipanowich, "*Today as never before, commercial dispute processing is 'mixed mode', with business parties and counsel employing a variety of diverse approaches in order to promote their priorities in resolving conflict. ... However, ... effective guidance for legal counselors and advocates, arbitrators, and mediators is woefully inadequate in light of the special challenges they present*"

Mediator's code of conduct

At international level there are no shared rules not only on the mediation proceeding, but also on the criteria of conduct of mediators. An issue take into account by the Singapore Convention, but only indirectly, and with possible relevant consequences.

The Singapore Convention, article 5 . Grounds for refusing to grant relief

"1. *The competent authority of the Party to the Convention where relief is sought under article 4 may refuse to grant relief ... if that party furnishes to the competent authority proof that:…..*

"(f) *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*".

According to the SIDRA 2020 Survey, "*A majority (87%) of respondents ranked good ethics as an 'absolutely crucial' or 'important' in their choice of mediator, followed closely by dispute resolution experience (86%) and language (83%)*".

In USA the first Model Standards of Conduct for Mediators was promulgated in 1994 and revised in 2005 . In Europe, in 2014.

ODR Online Dispute Resolution

The problem of ethics is also present, and under discussion, in relation to Online Dispute Resolution. In 2021 the National Center for Technology & Dispute Resolution NCTDR listed the principles in eleven headings: accessible, accountable, competent, confidential, equal, fair/impartial/neutral, legal, secure, transparent.

After the Covid 19 pandemia (which is not ended at all), online sessions are becoming the "new normal".

At the beginning, there were many doubts and criticisms " *... to facilitative mediators, who try to re-establish communication, who work with empathy and non-verbal communication, everything is very difficult through a screen; ... it is likely easier for evaluative mediators: they express their ideas until they formulate one or more proposals for the agreement ...*"

But in online proceedings, the ability of the experienced mediator emerges, as well as in in-presence ones.

According to the 2020 SIDRA Survey, there is a significant use and appreciation of ODR, and "*client Users were more likely to recognise specific technology as 'extremely useful' or 'useful' as compared to Legal Users*".

Anyway, Singapore Convention on Mediation - Article 18.

Requirements for reliance on settlement agreements – "… 2. *The requirement that a settlement agreement shall be signed by the parties or, where applicable, themediator, is met in relation to an electronic communication if:*

(a) *A method is used to identify the parties or the mediator and to indicate the parties' or mediator's intention in respect of the information contained in the electronic communication; and*

.....

(b) *The method used is either:*

- (i) *As reliable as appropriate for the purpose for which the electronic communication was generated ...; or*
- (ii) *Proven in fact to have fulfilled the functions described in subparagraph (a) above, by itself or together with further evidence*".

The use of blockchain and smart contracts is gaining ground in the field of ODR. But, according to some scholars, blockchain is not entirely secure and smart contracts are neither "smart" nor "contracts".

There will be a lot of work to be done on all these matters.

Noteworthy, the experience made in Hong Kong on the e.Bram IT platform.

April 13, 2020 the Government of Hong Kong announced the "COVID - 19 Online Dispute Resolution (ODR) Scheme", which aimed to provide speedy and cost-effective means to resolve business to business cross border disputes, especially for those concerning micro, small and medium-sized enterprises, involving less than US$ 64,432 .

Later on, the parties were also able to access the procedure for disputes involving more than US$ 64,432 .

The process is a multi-tiered dispute resolution mechanism where the parties will first attempt to negotiate their disputes, followed by mediation and if that does not result in settlement, then subsequently to arbitration for a final and binding award.

The international commercial mediation, up to now, has mainly been used to handle large amount disputes. In the near future, it will also be used for disputes among small and medium-sized enterprises and in the area of insolvency.

Many organizations are working on the above challenges.
On April 28, 2021, five mediation providers, covering four continents, **AMC** (Malaysia), **IDRRMI** (Hong Kong/China), **SIMI** (Singapore), **IFCM** (France), **ICFML** (Brazil, Portugal, Angola, Mozambique and Guinea-Bissau) signed an international Memorandum of Understanding, for the harmonisation of mediation standards and cross-recognition of mediator accreditation. It will be interesting to know the results of the joint work.

The more complicated the problems, the simplest the solutions must be. In the North-West of Scotland, in Glencoe, there is a very tiny island, named the

ISLAND OF DISCUSSION

(officially named Eilean a' Chomhraidh), only covered by trees and grass. When local people had arguments, they were put on the island together, with cheese, oatcakes and whiskey, to sort out their problems. They couldn't leave until they came to a mutual agreement. The result, in over 1,500 years, only 1 murder in the area.

An example to be taken into account !

Many thanks for watching.

Giovanni Matteucci

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Finding Place of Business for the Purpose of the Singapore Convention: "Finding Nemo" or Playing "Squid Game"

Dr. Rajesh Sharma, RMIT University, Melbourne

In the Singapore Convention, the place of business concept has been included for the purpose categorizing a settlement agreement an international one so that the Convention may apply.

Place of business in the Convention appears in the very first article of the Convention i.e. Article 1 which deals with the Scope of application of the Convention and it states:

1. This 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.*

Immediately after Article 1, there is a definition article i.e. Article 2 (Definitions) which includes:

"1. For the purposes of article 1, paragraph 1:

(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."

It is important to note that up until the last sessions of the Working Group II, the draft circulated on 23 Nov 2017 (WP 205 add-1) of the instrument which later became the Singapore Convention the provisions related to places of business were included in the definition section. In the meeting in New York, 5-9 Feb 2018, members raised concern about using "international" and "agreement" together in the then Article 1 (Scope of application) which read as follows:

"Article 1. Scope of application

"1. This Convention applies to international agreements resulting from mediation and concluded in writing by parties to resolve a commercial dispute ("settlement agreements").

This provision was supposed to be read with the then Article 3 (Definitions) which has the starting line:

"For the purposes of this Convention:

"1. A settlement agreement is 'international' if, at the time of the conclusion of that agreement: -------*"* The current provisions related to place of business as currently found in Art. 1 of the Convention were included here.

At the very last moment comments were made that "the term "international agreements" in article 1(1) of the draft convention could raise confusion as that expression often referred to agreements between States or other international legal persons binding under international law." Based on the shared understanding it was agreed to avoid use of term like "international agreement" in the Convention. At the same time, it was suggested to merge the then Articles 1(1) and 3 (1) and form a single paragraph and no reference to "international" be given before "agreement". As this suggestions was widely supported, the final text of the Convention came out as we see now. However, it is to note that the provisions relating to multiple places of business or no place of business was left at the definition the then Article 3 which is Article 2 in the final text of the Convention.

Nevertheless, one group of members kept insisting of using some kind of refence of "international" in Article 1 particularly when the title of the Convention includes "International Settlement Agreement". After gathering a general support behind this proposal it was agreed to include the term "international" in Article 1 but not together with the term agreement. The drafting technique of the secretariate balanced these two proposals and added the term "international" at the end of the chapeau which states "----an agreement -------which, at the time of its conclusion, is international in that -------".

Right from the beginning ie. way back in 2015, it was agreed that the instrument should focus on international settlement agreements. It was also suggested that the determination of the international element of settlement agreements should be considered in a broad manner and

other possible approaches such as a territorial or a personal approach as well as private international law criteria. It was mentioned that such criteria should be objective and relevant to achieving the purpose of the instrument. It was natural for the members to draw inspiration from the existing UNCITRAL documents eg the Model Law on Conciliation, Article 1(4)(a) and conceptualising that "a settlement agreement would be considered international where at least two parties to the settlement agreement had their places of business in different States at the time of the conclusion of the settlement agreement." Modelled on the Article 1(4)(a), the Secretariate presented a draft for the consideration which states:

"**A settlement agreement is international if**:

(a) [The parties] [at least two parties] to the settlement agreement have, at the time of the conclusion of that agreement, their places of business in different States; or

(b) The State in which the parties have their places of business is different from:

(i) The State in which [a substantial part of] the obligation is to be performed under the settlement agreement;
(ii) The State with which [the subject matter of] the dispute is most closely connected; or
(iii) The State in which [recognition and] enforcement of the settlement agreement is sought."

At that time it was decided whether the instrument will take the form of a convention or a model law, it was also proposed that if the instrument take the form of a Convention then following Article 1(1) the Convention on Contracts for International Sale of Goods,1980 (CISG) a draft was proposed like this:

"This Convention applies to the [recognition and] enforcement of settlement agreements concluded by parties whose places of business are (i) in different States or (ii) in a State

different from the State where [recognition and] enforcement of settlement agreements is sought provided that:

a. The State where [recognition and] enforcement is sought is a Contracting State; or

b. The rules of private international law lead to the application of the law of a Contracting State."

Irrespective of which draft would be finally accepted, it was suggested by the secretariat that to provide guidance with regard to the determination of a party's place of business the following should be considered:

"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][or any other criteria], having regard to the circumstances known to, or contemplated by, the parties at the time of the conclusion of the settlement agreement. If a party does not have a place of business, reference is to be made to the party's habitual residence."

It is no doubt that this draft proposal was based on Article 10 of the CISG.

During the discussion, the draft based on the Model Law on Conciliation got the support as it met the criteria of "clear, simple and objective" which is needed for the Convention. It was also suggested that the concept of "habitual residence" could be further developed based on the statutory seat, the law of incorporation, the place of central administration, or the principal place of business.

In the next attempt, the Secretariate drafted a definition of international based on Article 4 of the Model Law on Conciliation, Article 1 (3) of the Model on Arbitration and Article 10 of CISG. That draft read like this:

"Draft provision 2 (International)

A settlement agreement is international if:

(1) At least two parties to a settlement agreement have, at the time of the conclusion of that agreement, their places of business in different States; or

(2) [The State in which the parties have their places of business is different from]/[One of the following places is situated outside the State in which the parties have their places of business]:

(a) The [State][place] where a substantial part of the obligation under the settlement agreement is to be performed; or

(b) The [State][place] with which the subject matter of the [dispute][settlement agreement] is most closely connected; or

[(c) [This State][The [State][place] where enforcement of the settlement agreement is sought]].

(3) The parties to a settlement agreement have expressly agreed that [the subject matter of the agreement relates to more than one State][the settlement agreement is international].

(4) For the purpose of this article:

(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.

By that time momentum of agreement generated in support "for a clear criteria of the notion of "international" by referring to situations where the places of business of the parties were in

different States."

An attempt was made to define "place of business" "possibly referring to the place where the party had substantive physical or economic presence or conducted substantial economic activity." However, it was suggested that "there was no need for further guidance as the term was well-known and often used in the commercial law context and one that was acceptable in different legal traditions. It was also mentioned that it would be for the competent enforcing authority to determine the place of business and not for the instrument to elaborate further. It was also said that defining the "place of business" would fall outside the scope of the instrument."

Thus like any other instruments of UNCITRAL eg CISG, Model Law on Arbitration and the Model Law on Conciliation, the term "place of business" is not defined in the Singapore Convention.

What is not Considered in the place of business?

Whilst a consensus was building to use "place of business" to decide the internationality of the settlement agreement another consensus was working towards filtering out unnecessary link of place of business with other element or factors which could unnecessarily make the application of the Conventions broad or unintended for. For example:

A consensus also built in support that "the instrument should not apply to the enforcement of a settlement agreement concluded by parties that had their places of business in the same State, even if the enforcement were sought in another State."

In the same meeting, it was also agreed to discard proposals such as a settlement agreement or a conciliation would be international: (i) if the location of the conciliation institution where the

settlement was reached was different from the places of business of the parties; or (ii) where the settlement agreement dealt with matters of international trade. Such proposals did not receive support for the reasons that they would unnecessarily broaden the scope of application of the instrument and create uncertainty.

In the context of the preparation of the instrument, concerns were expressed that parties should not be in a position to determine whether or not the settlement agreement or the conciliation process was international, in particular if the instrument were to take the form of a convention.

It was also agreed that an international conciliation process would not make a settlement agreement international. It was agreed "to address the internationality of "settlement agreements" and not of the "conciliation process", which shall be determined by reference to mainly the place of business of parties at the time of conclusion of the settlement agreement. Moreover, focus on settlement agreement rather than on internationality of the conciliation will be appropriate because "(i) there were situations where a settlement agreement would be reached without necessarily an agreement to conciliate in the first place; (ii) the parties to the agreement to conciliate might be different from the parties to the settlement agreement; and (iii) places of business of parties might differ at the time of conclusion of the agreement to conciliate and at the time of conclusion of the settlement agreement."

The modern day business realities and complex business structure were also considered in locating the place of business. It was suggested that " the definition of "international" settlement agreements might need to be expanded to also cover situations where parties would have their places of business in the same State, but the settlement agreement would nevertheless contain an international element, for instance, where the parties' parent company or shareholders were located in different States." And on that basis a draft provision was formulated for the consideration by members that reads:

"(c) The parties to the settlement agreement have their place of business in the same State, but at least one of the parties is [wholly owned][controlled] by an entity having its place of

business in a different State and that entity participated in the mediation process that led to the settlement agreement."

On this proposal it was generally felt that it would not be feasible to agree on a simple and clear formulation that would be generally acceptable in different jurisdictions. It was also mentioned that introducing such an expansion could unduly burden the competent authority as it would have to assess the corporate structure of the parties. Furthermore, it was mentioned that introducing such language could pose conflicts with relevant domestic laws and regulations. And therefore such definition of internationality based on modern corporate structure was rejected if the parties of the settlement agreement have the places of business in the same country.

In the same vain, the shareholding of parties is also not considered in determining the place of business for the Convention as it may attempt to define "parties" and also broaden the scope of the Convention. Therefore such approach should be avoided.

A settlement agreement concluded by parties that had their places of business in the same State, even if the enforcement were sought in another State would not be qualified as international and therefore the Singapore Convention will not apply.

Place of Business in Other Instruments

In CISG place of business is mentioned in Articles 1 and 10 which makes a sales contract international. In line with the general view a 'place of business' exists, if a party uses it openly to participate in trade and if it displays a certain degree of duration, stability, and independence.

According to several courts, "place of business" can be defined as "the place from which a business activity is de facto carried out [...]; this requires a certain duration and stability as well as a certain amount of autonomy". A place of business where there is "a permanent and stable

business organisation" or "there exists an organization of certain continuance" or in simple terms where is "the actual place of business".

In cases of corporations the place of business is its administrative centre. A branch office is generally considered a place of business. However, a liaison office is not a place of business.

Similarly, a factory premises where a contract is negotiated or signed, exhibition booths or trade fair and location of server for online contract are not considered as place of business.

If a parent company and their subsidiaries have their place of businesses in different countries then an agreement between them could be international.

If a party has more than one places of business then factors like the place of sending invoice, language used in invoice (French or Belgian), country which has closer connection with the contract in terms of production of goods, which countries standards has been applied, where the goods were delivered on the ship) which are known to the parties at the time of conclusion of the contract or before. In one case a construction site of party was considered as the place of business as construction equipment were sold from there and they were supposed to be picked up from the construction site. Thus the location of the construction site (country) was considered as a place of business. In these cases closest connect tests related to contract were used and also the knowledge of parties. If a party has multiple places of business then it is not necessary to locate the principle place of business.

A point of Caution

For the purpose of the Singapore Convention, the focus should be on the settlement agreement. Therefore the concept of place of business or internationality based on place of business must not be borrowed or applied from other instruments eg CISG, or the Model Law on Arbitration or even the Model Law on Mediation. Article 1 of the Convention is based on the Model Law on Mediation and to some extent on Model Law on Arbitration and CISG, during the deliberations many times it was emphasised that the focus in those documents are different from the Singapore Convention. For example an arbitration agreement is connected to seat, but

a settlement agreement is not connected to a seat. An international contract may be closely connected to a place which is a party to CISG so that CISG could apply. A place where goods are simply stored may not qualify as the place of business in CISG but it may not be case for the settlement agreement as a storage place may be a part of the settlement agreement. Also in CISG the time of making the contract is important but in the Singapore Convention time of making the settlement agreement is important and not the time of making contract or even the time of making agreement to mediate. The determination of place of business must be conducted at the time of making settlement agreement. Therefore, it may be possible that at the time of agreement to mediate parties could be domestic but at the time of settlement agreement one party may have place of business in different state or vice-versa. Once it is established that a party has place of business in another state at the time of making the settlement agreement thus making it international after that it does not matter if a party changes back its place of business in the same state.

As the Singapore Convention will be used by lawyers and judges who are trained in litigation, and arbitration and carry to baggage of their pre-notion or borrow the concept from other instruments and using it to interpret the Singapore Convention then the whole purpose of the Singapore Convention will be frustrated. Therefore, it is important that an uniform judicial culture of governance for the Singapore Convention be developed from the beginning.

The position of the EU and EU Member States on the Singapore Convention: what's going (wr)on(g)?

Harald SIPPEL

The EU and EU Members States are usually strong supporters of international conventions that facilitate international trade.

Hague Conference on Private International Law (HCCH) is prime example

- E.g. "Apostille Treaty"
- E.g. "Hague Service Convention"
- E.g. "Hague Evidence Convention"
- E.g. "Hague Choice of Court Convention"

EU (its Member States) were always at the forefront.

This is all different for the Singapore Convention.

- The EU is an empty spot on the global map
- Other countries in Europe: Belarus, Montenegro, Serbia, North Macedonia, Ukraine, Turkey (signed/ratified)

There is a legal instrument similar to the Singapore Convention, the EU Mediation

Directive 2008

- Does not apply directly, implemented through act of national law by May 2011
- Objective is "to facilitate access to dispute resolution and to promote the amicable settlement of disputes by encouraging the use of mediation and by ensuring a balanced relationship between mediation and judicial proceedings"
- Requirements:
  - two or more parties
  - to a cross-border dispute
  - of a civil or commercial nature
  - voluntarily attempt to reach an amicable settlement
  - with the assistance of a mediator.

From 2008-2013, the impact of the EU Mediation Directive was underwhelming

- in about half of the EU Member States there were only 500 mediations annually (no. of mediations overall, not cross-border only)
- 10,000+ mediations only in four countries
- 200,000+ mediations in Italy (compulsory mediation)

In 2015, a "Reboot" of the EU Mediation Directive was proposed and in 2017, the EU Parliament adopted a Resolution aimed at promoting the use of mediation.

- The results are still underwhelming
- When looking at ADR as a whole, it must be mentioned, however, that the Consumer ADR Directive and Online Disputes Resolution Regulation resulted in a large number of settlements before the court stage was reached.
- However, this does not include commercial mediation, the use of which remains rather low.

→ When looking at the EU objectives and goals, it should embrace the Singapore Convention!

There is not one single position in the EU. Also, at least officially, the EU is not against the Singapore Convention. It was stated repeatedly that the EU wants to wait and see what happens. But there were repeated points of criticism. They include:

- There is no need for the Singapore Convention when parties could request an award on agreed terms
- It is not clear what the difference between a mediation and a conciliation is
- When the mediators have no legal knowledge, problems are bound to arise
- There are no clear standards of impartiality and independence
- No differentiation should be made between merely settlement agreements and mediated settlement agreements
    - ◆ There is no guarantee that there will be a fair and highly reliable/legally impeccable outcome.

We should not pretend that the Singapore Convention is perfect. But no one pretends it is. It is something that aims at making mediation more attractive. The New York Convention is far from perfect either and although – contrary to the Singapore Convention – we can say that it has served the world of international dispute resolution well for many decades, there are issues that remain. The question of the enforcement of awards set aside at the seat and the different wording between the French and other versions of the New York Convention are just two examples. Yet, despite these issues, hardly anyone would say that we should abolish the New York Convention.

In the same line, it appears as though those critical of the Singapore Convention within the EU are aiming for a perfect convention – which there can never be. If we have the choice between a fairly good innovation or no innovation at all, we should go with the fairly good innovation. At the end of the day, this will serve us much better.

Is Singapore Convention applicable to an investment treaty arbitration?

Yun Jae Baek

YULCHON LLC

1. With the coming into force of the Singapore Mediation Convention on September 12, 2020, mediation has been given new credibility as one of the international methods for dispute resolution.

2. Now, we have to think about mediation can play a role in the area of investor states disputes. In the past, there was a reluctance to use mediation in investor states disputes. However, there is a change in this area. As we can see, there are efforts to incorporate mediation in the investor-state dispute such as the proposed ICSID Mediation Rules. This change means that States recognize the use of mediation as a legitimate instrument for resolving investor-state disputes.

3. CETA, the free trade agreement between Canada and the EU, includes the option to mediate the investor-state dispute before initiating arbitration. Since 2015, the Energy Charter Treaty Secretariat has worked to include mediation into its Rules. This has been finally succeeded through the publication of a Mediation Guide and a Model Instrument on Management of Investment Disputes. ICSID, has provided its support by proposing its own Investor-State mediation rules in December 2019. This clearly shows that mediation is a reliable dispute resolution instrument so that investors, states, and their counsel may use mediation for their dispute resolution.

4. Then, my question follows: Can Singapore Convention apply to investor-state disputes?

5. Let's look at Article 1, Paragraph 1 of the Singapore Convention. It provides as follows:

   "This Convention applies to an agreement resulting from mediation and concluded in writing by parties to resolve a ***commercial dispute*** which, at the time of its conclusion, is international…."

6. Is investor-state dispute "commercial dispute" or not? Does Singapore Convention need to amend to include investor-state disputes?

7. I would like to listen to opinions of our esteemed speakers.

KIMC International Webinar (December 3, 2021)

Kyongwha CHUNG

Introduction

- Good afternoon. I am Kyongwha Chung from Covington & Burling LLP

- First of all, I would like to express my gratitude to the KIMC for inviting me. It's my great privilege and honor to participate in this panel today.

- Among the various topics discussed by presenters today, I would like to focus on the scope of the Singapore Mediation Convention, in particular those that are not explicitly stated in the text of the Convention.

Scope of the Convention

- First issue is whether the Convention should be applicable to mediated settlements that provide for **non-monetary relief**. As we have seen from our speakers' presentation today, the Convention does not differentiate between the types of obligations that may be included within a mediated settlement. This issue was debated among the states at sessions held by the UNCITRAL Working Group II
    - The European Union wanted to restrict the relief in the mediated settlements to only monetary relief;
    - The Working Group, however, ultimately decided not to restrict to monetary relief because:
        - (a) mediation is favored for providing a setting for parties to come up with **innovative and creative** solutions;
        - (b) mediated settlement is essentially a result of **terms agreed** by the parties; and
        - (c) monetary aspects of the settlement might not be enforced in isolation as they are **intertwined with** non-monetary relief.
    - Hence, Parties may agree to include non-monetary relief in the mediated settlement, but are exposed to the risk of the relief not being enforced as the courts of a state where enforcement is sought might find it difficult to issue appropriate orders.

- Second, the Convention requires that the "settlement" to **be result of "mediation**" (Art 1(1).
    - The Contention makes clear that the **basis** upon which mediation is carried out is **irrelevant** (Art 2(3)).
        - Hence, the mediation can be based on a legal obligation, a suggestion or direction from a court or arbitral tribunal, or on agreement between the parties before or after the dispute.

- Also, the parties could have been mandated to mediate but voluntarily reached a settlement or they could have entered mediation voluntarily.
- An institution administering the mediation is not required.

- Then, what about **"non-mediated"** settlement?
  - It was debated at the Working Group sessions, and some states advocated for the coverage of all settlements, mediated or not.
  - And others wanted to have states to choose through a declaration mechanism (Mexico, US, Cameroon).
  - However, the Working Group decided to cover only mediated settlements.
  - This does not mean that non-mediated settlements cannot receive identical treatment under domestic law.
    - **Art 7** of the Convention provides that: " *This Convention shall not deprive any interested party of any right it may have to avail itself of a settlement agreement in the manner and to the extent allowed by the law or the treaties of the Party to the Convention where such settlement agreement is sought to be relied upon*."
    - Hence, state parties can provide non-mediated settlements with identical treatment under their **domestic law.**

- Third issue related to the scope of the Convention is mediated settlements enforceable as **judgments and awards,** which are excluded from the Convention (Art 1(3)).
  - The exclusion of mediated settlements enforceable as **judgments** is based on the reason that (a) parties should not have two bites at the apple and (b) foreign judgment can be enforced through the 2005 Choice of Court Agreements Convention (the so-called "Hague Convention") among the state parties to the Hague Convention.

  - However, as of today, there are only 32 parties to the Hague Convention (which are mostly European states), and states such as China and the United States signed the convention, but did not ratify. Also, no Asian states, except for Singapore, are parties to the convention.

  - In this regard, the current text of the Singapore Mediation Convention creates a gap. Art 1(3)(a) excludes "settlement agreements that are enforceable as a judgment in the State of that court", meaning the **state of origin.**

    - Hence, if the settlement agreement is enforceable as a judgment in the state of origin but not in the state where enforcement is sought, a gap is created. Parties won't be able to enforce the settlement agreement as a judgment in the receiving state under its domestic law and nor would the parties be able to enforce the agreement through this Convention.

    - Some states (such as US) sought to eliminate such gap or at least give states flexibility in dealing with the issue (states such as Israel, Switzerland and Singapore) but the European Union was opposed to it; the European Union wanted to ensure that, even if a gap were created, settlements would not be covered by this Convention if they were covered by the Hague Convention.

- In contrast to judgments, exclusion of **arbitral awards** must be analyzed from the perspective of the **state where relief is being sought**, rather than from the perspective of the seat of the arbitration.

  - Such interpretation prevents a gap being created by some states' different approaches to a consent award. There are debates over whether a consent award (which is an award that records parties' settlement) is qualified as an "award" under the New York Convention.

  - Hence, if enforceability of an arbitral award were to be decided from the state where the arbitration was seated, then there could be a gap in the enforcement of such an award.

  - In order for the Singapore Convention to avoid not only the overlap with the New York Convention but also a gap, the enforceability of an arbitral award should be decided from the perspective of **the state where enforcement is sought.**

CVs or Bios of Participants

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Chairman, Asia Pacific Centre for Arbitration & Mediation

APCAM 이사장

Mr. Anil Xavier is the President of Indian Institute of Arbitration & Mediation (IIAM) and Chairman of the Asia Pacific Centre for Arbitration & Mediation (APCAM). He is a practicing lawyer since 1991 and involved in multi-party complex civil / business / commercial / corporate mediations and arbitrations. He is an APCAM International Certified Arbitrator, APCAM International Certified Mediator and an IMI Certified Mediator.

Xavier was a member of the Independent Standards Commission and Ethics Committee of International Mediation Institute (IMI), at the Hague, Netherlands and a Senior Fellow of the Dispute Resolution Institute of the Hamline University School of Law, USA. He is the Chairman of the Accreditation Integration Committee of the Asian Mediation Association, to prepare mediation guidelines for AMA Member countries. He was nominated as member of the 3-member Mediator Certification Committee of the Mediation and Conciliation Project Committee of the Supreme Court of India – Committee was chaired by Mr. Justice R.F. Nariman and the other member was Ms. Justice Indu Malhotra, Judges of the Supreme Court. He is the Vice President of the India International ADR Association (IIADRA) and Executive Committee member of the ADR Law Section of the Indian National Bar Association (INBA). He has been a resource person at the National Judicial Academy, Bhopal, India for continuing legal education for judges.

Xavier is an International Accredited Negotiator and Mediator of ADR Chambers UK, affiliated with the Civil Mediation Council (UK). He is empanelled as International Accredited Mediator of the Singapore International Mediation Centre (SIMC), Singapore and the Florence International Mediation Chamber (FIMC) of the Chamber of Commerce, Italy. Empanelled as Senior Mediation Expert (International Mediator & Trainer) with the Mainland Hong Kong Joint Mediation Center, set up by the China Council for the Promotion of International Trade (CCPIT) and Hong Kong Mediation Centre (HKMC) and Japan International Mediation Center in Kyoto, Japan, as Senior International Mediation Expert with the International Dispute Resolution & Risk Management Institute, Hong Kong and as Mediator with ADGM Arbitration Centre, Abu Dhabi, UAE. He is empanelled as International certified arbitrator and mediator with APCAM Centres in Malaysia, Indonesia, Thailand, Hong Kong, Australia and Nepal. He is empanelled as an International Arbitrator with Newton Arbitration, London and as an Arbitrator with the High Court of Kerala, India. He is nominated as one of the world's leading practitioner in the field of ADR by Who's Who Legal, London, UK, consecutively from 2016 onwards.

Anna Joubin-Bret 안나 주빈-브래

The Secretary, UNCITRAL

UN 국제상거래법위원회 사무국장

Anna Joubin-Bret is the Secretary of the United Nations Commission on International Trade Law and Director of the Division on International Trade Law in the Office of Legal Affairs of the United Nations. She was appointed on 24 November 2017.

Prior to her appointment, Mrs. Joubin-Bret was a practicing Attorney-at-law of the Paris Bar. She specialized in International Investment Law and Investment Dispute Resolution. She focused on serving as counsel, arbitrator, mediator and conciliator in international investment disputes. She served as arbitrator in several ICSID, UNCITRAL and ICC disputes. Prior to 2011 and for 15 years, Anna was the Senior Legal Adviser for the United Nations Conference on Trade and Development (UNCTAD). In this capacity, she managed the research and advisory work on international investment law issues as well as the technical assistance program on international investment agreements (IIAs). During her tenure, Anna assisted countries and governments in the formulation of investment policies and frameworks and the management of investor-State disputes. Anna has edited and authored seminal research and publications on international commercial law and international investment law, notably the Sequels to UNCTAD IIA Series. She co-edited with Jean Kalicki a book on Reform of Investor-State Dispute Settlement in 2015. She lectured on international investment law in various universities and institutes all over the world. She holds a post-graduate degree (DEA) in Private International Law from the University of Paris I, Panthéon-Sorbonne, a Master's Degree in International Economic Law from the University Paris I, a Bachelor's Degree of Arts in Political Science from the Institut d'Etudes Politiques and a Bachelor's Degree of Arts in Private Law from the Université Jean Moulin (Lyon III). She has been Legal Counsel in the legal department of the Schneider Group, General Counsel of the formerly French KIS Group and Director-Export of Pomagalski S.A. She has been appointed judge at the Commercial Court in Grenoble (France) and was elected Regional Counsellor of the Rhône-Alpes Region in 1998.

Athita KOMINDR 아티타 코민드르

Head, UNCITRAL Regional Centre for Asia and the Pacific (RCAP)

UN 국제상거래법위원회 아·태지역사무소 대표

Athita is Head of the UNCITRAL Regional Centre for Asia and the Pacific (UNCITRAL RCAP), managing technical assistance and capacity building programming available to over 50 States in Asia and the Pacific in key areas of commercial law, including dispute resolution, MSMEs, international contract practices, sale of goods, electronic commerce, transport, insolvency, international payments, secured transactions, and procurement. In that capacity, she coordinates with Governments and international and regional organizations with respect to trade law reform activities aimed at achieving the Sustainable Development Goals. Athita has over a decade of experience in the fields of international trade and economic law, arbitration, multilateral dispute resolution, and the rule of law and development. Prior to joining the United Nations, Athita mainly advised and worked with numerous Thai agencies, including the Thailand Institute of Justice, the Thai Ministry of Science and Technology, and the Thailand Arbitration Center where she managed the Arbitration and Legal Affairs Divisions. She also worked for the Thai Ministry of Commerce in Bangkok (2002-2005) and Geneva (2005-2010), representing Thailand in bilateral, regional, and multilateral trade negotiations, WTO dispute settlement, and treaty drafting. Admitted to the New York Bar since 2002, Athita has experience in both common and civil law traditions in the public and private sectors, and holds degrees from Harvard College, Georgetown University Law Center, and Harvard Law School. Email: uncitral.rcap@un.org UNCITRAL RCAP 3 rd Floor, 175 Art Center-daero, Yeonsu-gu, Incheon, Republic of Korea 22004 Website: uncitral.un.or

Delcy LAGONES DE ANGLIM

델시 라고네스 드 앙글림

International Dispute Resolution Consultant with the World Bank, Head of LAWASIA delegation to the UNICTRAL negotiations which drafted the Singapore Convention on Mediation

세계은행 국제분쟁해결 컨설턴트, UN 국제상거래법위원회 협상 LAWASIA 대표단 대표

Delcy Lagones de Anglim is one of the leading international mediators and Alternative Dispute Resolution practitioners in the Asia Pacific region and globally.
She has more than 27 years experience in mediation. She is one of few trained co-mediators internationally. Co-mediation is the best model for most mediations but particularly for commercial mediations.
Delcy started her legal career in 1988 in her native Peru. She offers a wealth of experience in international trade law, commercial, investment and environment mediations, obtained during her work in South America, Europe, Asia and Australia.
Delcy works currently as a Dispute Resolution consultant with the World Bank. She has worked previously with the United Nations in Cambodia.
Delcy represented LAWASIA as Head of Delegation to the UNCITRAL meetings in New York and Vienna. She was an active participant of the group which successfully drafted the Singapore Convention. Delcy is a Fellow and Founding Director of the UNCITRAL Coordination Committee Australia.
She is an advanced mediator with many organizations and an international certified mediator. She is the Founder of the Australasian Dispute Resolution Centre, ADRC, based in Canberra and APCAM.
She has won multiple awards in recognition to her contribution to mediation around the world, among them Best International Mediator and Excellence in the practice of Dispute Resolution
She is a native speaker of Spanish, fluent in English, working level in French, and Italian, basic Khmer, Quechua and Portuguese.

Francis LAW 프란시스 로

Founding Chairman, Mainland-Hong Kong Joint Mediation Centre; President, Hong Kong Mediation Centre; Foreign Advisor, KIMC

MHJMC 초대 이사장, HKMC 이사장, KIMC 해외 자문위원

Dr. Francis Law President, Hong Kong Mediation Centre President, Academy of International Dispute Resolution and Professional Negotiation Founding Chairman, Mainland - Hong Kong Joint Mediation Center Dr. Francis Law is the President of Hong Kong Mediation Centre (HKMC), President of the Academy of International Dispute Resolution and Professional Negotiation (AIDRN), Founding Chairman of Mainland - Hong Kong Joint Mediation Center (MHJMC), Founding Chairman of the International Dispute Resolution and Risk Management Institute (IDRRMI), Chairman of the Hong Kong International Mediation Centre (HKIMC) and the Chairman of the Hong Kong Centre of International Commercial Arbitration (HKCICA), Vice-Chairman of the Asia Pacific Centre for Arbitration and Mediation (APCAM). Past Chairman of Asian Mediation Association (AMA), Vice-Chairman of Guangdong, Hong Kong and Macau Mediation Alliance (GHMMA), Chairman of the National Copyright Protection (Hong Kong) Centre.

Dr. Law is serving on the mediator and arbitrator panels of over 30 regions/countries. From 2012 to 2018, he was appointed by the Secretary of Justice of Hong Kong as the member of the Steering Committee on Mediation, Accreditation Sub-committee, Regulatory Framework Sub-committee and Public Education and Publicity Sub-committee. He is the Lead Trainer and the Lead Assessor of the Dispute Resolution profession in Hong Kong, China and other Asia countries and had trained over 3000 mediators, 150 Assessors, International Risk Managers, Advocates, Coaches and Trainers globally. Dr. Law has participated in over 350 forums, seminars and international conferences as a guest speaker. He assists in establishing several Arbitration and Mediation Institutions in Asia and help them to set up mediation policy, design mediation training and formulating the assessment and disciplinary mechanism. Dr. Law is a columnist publishing articles in commercial and workplace disputes resolution in newspaper/ magazines. Since 2016, he has been leading delegations to attend the United Nation Commission of International Trade Law Sessions and was invited to be the observer of the United National Committee of International Trade Law. Dr. Law was actively involved in the drafting of the Singapore Mediation Convention and was a member of the UN Singapore Mediation Convention Promotional Group Experts Representatives. Dr. Law was awarded a Certificate of Commendation by the Secretary of Home Affairs to command for his dedicated services and outstanding contribution to the promotion of mediation professional services. He is also the representative of the WTO accredited Non-Government Organization.

Giovanni MATTEUCCI 지오반니 마테우치

Mediator, ADR Maremma, Italy; Foreign Advisor, KIMC

ADR Maremma 조정인, KIMC 해외 자문위원

Commerce at "La Sapienza" University of Rome (Italy) and earned a "Diploma in Economics" from the University of York (UK). He attended the postgraduate specialization courses in "Alternative Dispute Resolution techniques" and “Bankruptcy law” at the University of Siena (Italy). He worked as a bank officer, specialized in assessing and managing risk, especially the uncertainly realized. He has been a civil mediator certified by the Italian Ministry of Justice since 2006 and a trainer since 2011; he operates as a mediator at the Chamber of Commerce of Maremma and Tirreno and MedyaPro (Italy); MHJMC Mainland - Hong Kong Joint Mediation Center and KIMC Korea International Mediation Center. He specializes in the use of mediation to prevent conflict in the event of corporate financial crisis. He is advisor in over-indebtedness proceedings.

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Guiguo WANG 구이궈 왕

President, Zhejiang University Academy of International Strategy and Law; University Professor of Zhejiang University; Foreign Advisor, KIMC

중국 절강대학교 국제전략법아카데미 원장, 절강대학교 석좌교수, KIMC 해외 자문위원

Guiguo WANG is President of Zhejiang University Academy of International Strategy and Law and University Professor of Law, Zhejiang University, Hangzhou, China; President of International Academy of the Belt and Road; Member of the International Commercial Expert Committee of the Supreme People's Court of China; Chair and Member of the International Commercial Expert Committee of the Intermediate People's Court of Suzhou, China; Eason-Weinmann Chair of International and Comparative Law Emeritus, School of Law, Tulane University, New Orleans, USA.

Professor Wang worked at City University of Hong Kong for more than 25 years serving as Dean of School of Law, Chair Professor of Chinese and Comparative Law, and Director of the Centre for Judicial Education and Research at different time.

Professor Wang also worked at School of Law, Tulane University in the United States serving as Eason-Weinmann Chair of International and Comparative Law.

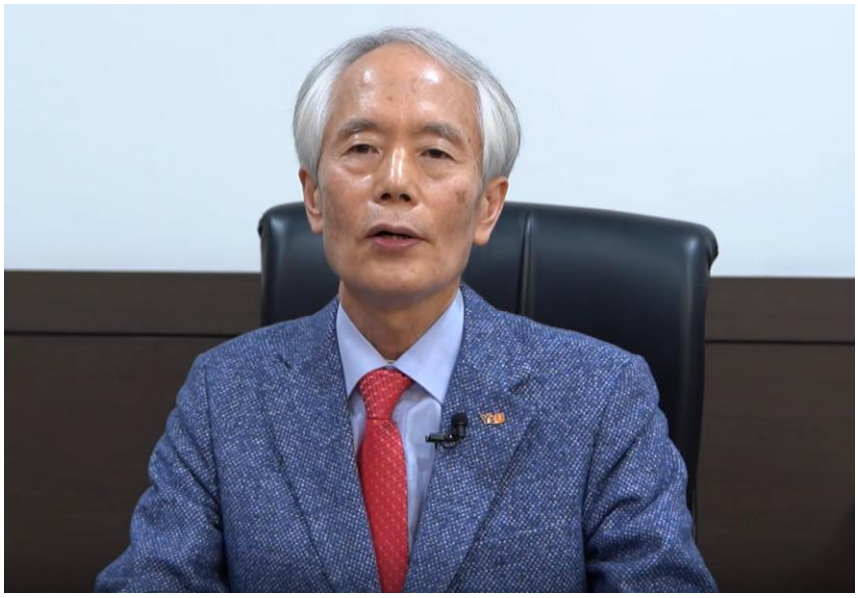
Professor Wang is Chairman of the Hong Kong WTO Research Institute, Chairman of the National Committee (HK) and Titular Member of the International Academy of Comparative Law, Vice President of the Chinese Society of International Economic Law, and an arbitrator of China International Economic and Trade Arbitration Commission, Beijing Arbitration Commission, Hong Kong International Arbitration Centre, Panel of Arbitrators of Korean Commercial Arbitration Board and Chinese Arbitration Association, Taipei.

Professor Wang, holder of the JSD degree from Yale Law School and LL.M. degree from Columbia Law School, is the first person from the mainland of China to obtain the JSD degree from Yale Law School since 1949.

Professor Wang is also the first Chinese recipient of the fellowship of United Nations Institute for Training and Research which enabled him to participate in the seminars offered by the International Court of Justice and to study at The Hague Academy of International Law, the United Nations Legal Affairs Office and the World Bank.

In the summer of 2010, Professor Wang served as a special lecturer at The Hague Academy of International Law and gave a series of lectures on Radiating Impact of WTO on Its Members' Legal System: The Chinese Perspective.

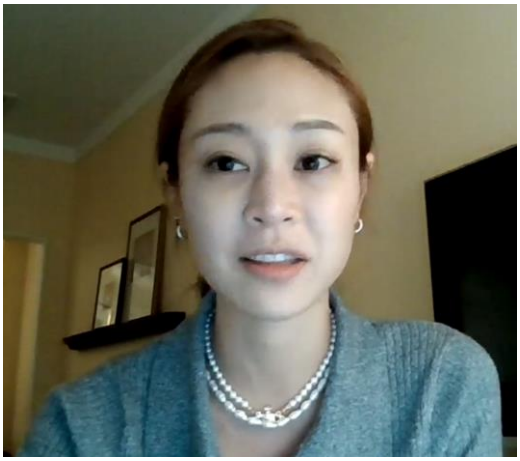
Professor Wang has published more than 20 books in both Chinese and English. Professor Wang has also published more than 100 academic articles in both Chinese and English languages.



Gu-Wuck BU 부구욱

President, Youngsan University

영산대학교 총장



Han Ahrum Liz CHONG

정한아름

Research Lawyer, KIMC; US Lawyer (CA)

KIMC 미국 변호사

Han Ahrum Chong (Liz) is currently a U.S. attorney, licensed in California and Massachusetts. She is also a Ph.D candidate at the Korea University Graduate School Department of Law, International Law. She received her J.D. from Washing University in St. Louis School of Law and B.A. in political science from UCLA. She held the position of executive assistant for a year at Korean Society of Mediation Studies and has also provided assistance in organization of the Korea International Mediation Centre.

Harald SIPPEL 하랄드 지펠

Arbitrator and Mediator, sippel.legal, Malaysia

sippel.legal 중재인/조정인, 말레이시아

Working from Jakarta/Kuala Lumpur, Dr. Harald Sippel, MBA SFBiam FCIArb is the founder of sippel.legal, an international boutique firm. He primarily deals with matters of international dispute resolution (arbitration, mediation, adjudication), often resulting out of disputes from within the region or East-West business dealings. His emphasis is on dispute avoidance.

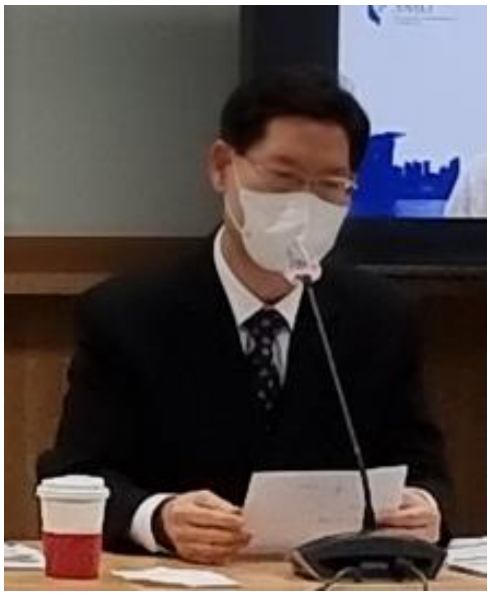
Prior to setting up his own firm, Harald held executive-level positions with the Asian International Arbitration Centre (AIAC) and the Bali International Arbitration Center (BIAMC), where he among others oversaw the administration of mediation proceedings.

Harald is accredited as a Specialist Mediator with the Singapore International Mediation Centre.

Jae Min LEE 이재민

Professor, Seoul National University Law School

서울대학교 법학전문대학원 교수



Jae Seog CHOI 최재석

Standing Mediator, Korea Legal Aid Corporation (KLAC); Director, KIMC

대한법률구조공단 상임조정위원, KIMC 이사

(currently) Standing Mediator, KLAC
(former) Standing Mediator, Seoul Southern District Court
(former) Managing Partner, Hanshin Law Firm
(former) Partner, Logos Law Firm LLC
(former) Chief, Court of Appeals for the Armed Forces

(현) 대한법률구조공단 상임조정위원
(전) 서울남부지방법원 상임조정위원
(전) 법무법인 한신 대표변호사
(전) 법무법인 로고스 구성원변호사
(전) 고등군사법원장

Jae Sung LEE 이재성

Legal Officer (Secretary of Working Group II), UNCITRAL

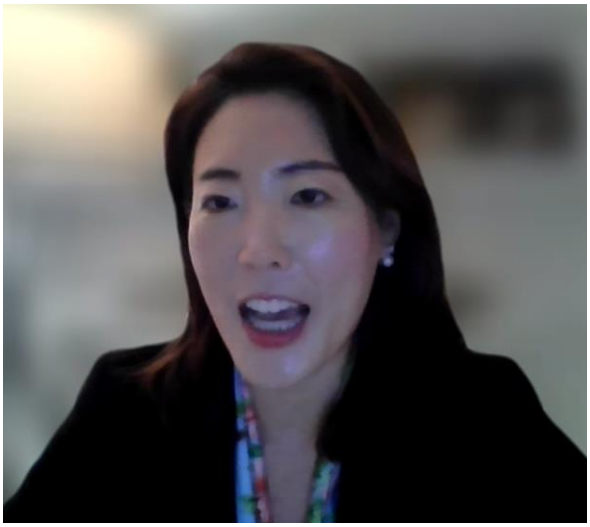
UN 국제상거래법위원회 법률담당관

Jae Sung Lee is a legal officer at the International Trade Law Division (ITLD) of the United Nations Office of Legal Affairs, which functions as the substantive secretariat for the United Nations Commission on International Trade Law (UNCITRAL). He currently functions as the Secretary of the Working Group on Dispute Settlement (II), which prepared the Expedited Arbitration Rules and will look into issues relating to dispute resolution in the digital economy. He further services the Working Group on Investor-State Dispute Settlement Reform (III) and has previously functioned as the Secretary of the Working Groups on Secured Transactions (VI) preparing the Practice Guide to the Model Law on Secured Transactions and on Electronic Commerce (IV) preparing the Model Law on Electronic Transferable Records. Before joining the United Nations in 2007, Jae Sung served in the Korean Ministry of Foreign Affairs.

Jiyong JANG 장지용

High Court Judge, Suwon High Court

수원고등법원 고법판사



Kyongwha CHUNG 정경화

Of Counsel, Covington & Burling LLP; Director, KIMC

Covington & Burling LLP 변호사, KIMC 이사

Kyongwha Chung is an Of Counsel of Covington's International Arbitration Practice Group. Ms. Chung represents both states and corporate clients in complex international disputes, drawing upon her expertise in public international law, international investment law, and international trade. She serves as counsel before numerous tribunals and advises on commercial and investment treaty cases. She has represented clients in international arbitrations under the ICC, HKIAC, SIAC, KCAB, JCAA, ICSID, and UNCITRAL rules. Her practice spans a range of jurisdictions and industries. Ms. Chung is dual-qualified as a Korea attorney and a United States (New York) attorney. She received her law degrees (B.A. and M.A.) from Korea University and an LL.M. from Harvard Law School where she received Roger Fisher and Frank E.A. Sander prize for her thesis.

Ms. Chung is a regular speaker and writer on various topics in international arbitration, mediation, investment treaty disputes and international trade. She authored the Korea chapter in International Handbook on Commercial Arbitration edited by ICCA (2018), participated in the drafting process of the Korea chapter in the Asia Arbitration Handbook edited by Michael Moser (2011) and the full-length treatise on arbitration in Korea, Arbitration Law of Korea: Practice and Procedure (Juris Publishing, 2012).

Lori YI 이로리

Professor, Keimyung University
계명대학교 교수

Educational Background

Year	
1992- 1997	Hankuk University of Foreign Studies, Department of French, Korea (BA)
1997- 1999	Graduate School of Korea University, International Law, (Master in Law)
1999- 2002	Graduate School of Korea University, International Law (Ph. D. in Law)

Professional Background (from a College/University)

Year	
1999 – 2002	International Trade Law Center of Korea University (Researcher)
2003 – 2005	Dispute Resolution Research Institute of Korea (Senior Researcher)
2005 – 2007	Full-time Lecturer, Keimyung University (Daegu, Korea)
2007-2011	Assistant Professor, Keimyung University (Daegu, Korea)
2011-2017	Associate Professor, Keimyung University (Daegu, Korea)
2017- Present	Professor, Keimyung University (Daegu, Korea)
2009-2011	Mediator, Criminal Mediation Committee, Daegu Prosecutor's Office
2016-2018	Member, Mediation Advisory Committee, Child Support Agency, Ministry of Gender Equality and Family
2018 -2020	Member, Central Apartment Houses and Management Disputes Mediation Committee, Ministry of Land, Infrastructure and Transport
2019 - 2020	Vice- President, Korean Association of Negotiation Studies
2009- Present	Executive Director (in Mediation Training) of Korean Society of Mediation Studies
2012-Present	Lecturer, Mediation Expert Training Program (Basic, Advanced Course), Korean Commercial Arbitration Board (KCAB)
2016- Present	Member of Administrative Appeals Committee of Geographical Indications Registration, Korea Ministry of Agriculture, Food and Rural Affairs
2017 - Present	Mediator, Medical Disputes Mediation Committee, Korea Medical Dispute Mediation and Arbitration Agency, Ministry of Health and Welfare
2019 - Present	Member, Conflict Management Committee of Daegu Metropolitan City
2020 -Present	Member, Content Dispute Mediation Committee, Korean Creative Content Agency
2020 - Present	Member of Korea International Mediation Center(KIMC)

Nadja Alexander 나드자 알렉산더

Director, Singapore International Dispute Resolution Academy; Professor, Singapore Management University

SIDRA 소장, SMU 교수

Dr. Nadja Alexander has been engaged in diverse dispute resolution settings in more than 40 countries. An award-winning author and educator, she is consistently recognized as a global thought leader in the field of mediation (*Who's Who Legal*).

Nadja is Professor of Law and Director of the Singapore International Dispute Resolution Academy at Singapore Management University. She holds honorary academic appointments in Australia and the United States.

Nadja is a member of the International Advisory Board of the UN Office of the Ombudsman and the APEC academic working group for Online Dispute Resolution. Nadja's expertise has directly contributed to the design and drafting of dispute resolution legislation in numerous jurisdictions across Asia, Oceania and Europe.

Nadja is the primary investigator of SIDRA's International Dispute Resolution Empirical Research Programme – a user-centric international survey on cross-border mediation, arbitration, litigation and mixed mode processes. In 2020 her peer reviewed article, '10 Trends in International Mediation' won an international award (Institution for Conflict Prevention and Resolution, New York). Her books include *International and Comparative Mediation*, *The Singapore Convention on Mediation: A Commentary*, *the EU Mediation Law Handbook*, *The Hong Kong Mediation Manual*, and *The Singapore Mediation Handbook.*

Natalia LYKOVA 나탈리아 리코바

President, Association of Mediators and Intermediaries of the APR

AMI 회장

Lykova Natalia Andreevna – Russia, Vladivostok (President of the Association of Mediators and Intermediaries of the Asia-Pacific Region, General Director of Vincere LLC, KIMC mediator, arbitrator of the Russian Arbitration Center of the Russian Institute of Modern Arbitration, arbitrator of the fifth Harbin Arbitration Commission, professional mediator, expert of the Office of the Commissioner for the Protection of Entrepreneurs ' Rights in the Primorsky Territory, member of the Mediation Commission of the Primorsky Regional Branch of the Association of Lawyers of Russia, a teacher of mediation and negotiation processes in the far Eastern Federal University, Lecturer in mediation training programs at the Far Eastern Federal University, School of Law, The founder of the award and the city action of school mediation services "Vladivostok-the city of Peace and Kindness".).

Nohyoung PARK 박노형

Chairman, KIMC; Professor, Korea University Law School

KIMC 이사장, 고려대학교 법학전문대학원 교수

Nohyoung Park is a professor of law at Korea University Law School since 1990. His original specialty is international economic law focusing on the WTO, but he has also been studying cybersecurity and data privacy, and negotiation and mediation.

He is currently director of Cyber Law Centre at Korea University, president of the International Cyber Law Studies in Korea, and founding chairman of the Korea International Mediation Centre (KIMC). He was president of the Korean Society of Mediation Studies which has been focusing on the research and study on mediation in Korea. He served vice-president for academic affairs for Korea Univ. and dean for Korea Univ. Law School.

While being president of the Korean Society of Mediation Studies, he led the publication of the Asia Pacific Mediation Journal in English, whose first issue was published in March 2019. He has also organized the Asia Pacific Mediation Conferences since 2017. He also led the specialized mediation education in cooperation with the Korean Commercial Arbitration Board for many years. His publications include '협상교과서' (Negotiation Textbook) published in Korean in 2007 and '국제상사조정체제: 싱가포르조정협약을 중심으로' (International Commercial Mediation System: Focusing on the Singapore Convention on Mediation) published in Korean in 2021.

He has advised governments and businesses on various international legal matters, including by participating in the negotiation of the Korean first free trade agreement (Korea-Chile FTA) and by recently attending the meetings of 4th and 5th UNGGEs in information security between 2014 and 2017. He has pursued international research cooperation with various academic institutions in China, the EU, Japan, Russia, the UK and the US over cybersecurity, data privacy, digital trade, mediation, the Belt & Road, and the Nagoya Protocol.

He graduated from College of Law, Korea University (LL.B., 1981), Graduate School, Korea University (LL.M., 1983), Harvard Law School (LL.M., 1985), and University of Cambridge (Ph.D. in International Law, 1990). He was awarded the honorary doctoral degree in law by the Far Eastern Federal University in Vladivostok, Russia in October 2018.

O-Gon KWON 권오곤

President, Korean Society of Law; President, Assembly of States Parties (ASP) of the International Criminal Court (ICC); Advisor, KIMC

한국법학원 원장, 국제형사재판소 당사국총회 의장, KIMC 고문

Mr. O-Gon Kwon currently serves as Advisor of the KIMC. Mr. Kwon also serves as President of the Korean Society of Law, an association of all jurists, *i.e.*, judges, prosecutors, attorneys and law professors, in South Korea and as President of the International Law Institute of Kim & Chang.

Previously, Mr. Kwon worked as one of the permanent judges of the International Criminal Tribunal for the former Yugoslavia for 15 years from 2001 until 2016. Afterwards, Kwon served as the President of the Assembly of States Parties of the International Criminal Court from December 2017 until February 2021.

Prior to his service with the international tribunal, Kwon was a member of the judiciary of the Republic of Korea for 22 years as a judge in various courts.

Kwon holds an LL.B. (1976) from Seoul National University College of Law and an LL.M. (1983) from the Graduate School of Seoul National University. He also holds an LL.M. (1985) from Harvard Law School, U.S.A.

Rajesh SHARMA 라제쉬 샤마

Senior Lecturer, RMIT University, Melbourne, Australia; Advisor, KIMC

RMIT University 교수, KIMC 해외 자문위원

Senior Lecturer, Legal and Dispute Studies, Criminology and Justice, RMIT University, Melbourne, Australia, Adjunct Professor at Academy of International Dispute Resolution and Professional Negotiation (AIDRN).

Dr. Rajesh Sharma is currently teaching at RMIT University, Melbourne, Australia. Before coming to Australia, he was Assistant Professor at School of Law, City University of Hong Kong. Dr. Sharma has given training and taught courses on arbitration, mediation, negotiation, foreign investment arbitration, WTO Law, international trade, banking law, foreign investment in Hong Kong, Macao, India, Australia, China, Myanmar, Thailand, Vietnam, Indonesia, Malaysia, Singapore, Papua New Guinea, Nepal and Africa (where he is associated with the African Centre for Legal Excellence in Uganda). He has served as the Legal Advisor to the Macau University of Science and Technology. He has advised transnational companies on trade and investment policy in China and has done training courses with and for the WTO and UNITAR. Dr. Sharma is the Finalists for the ADR Teacher Award 2019 in Australia.

Dr. Sharma is the first Indian to hold PhD in Law from China. He holds PhD from the Chinese University of Political Science and Law, Beijing, a Master of Business Law from Monash University, Australia, an M.Phil from City University of Hong Kong and the Bachelor of Laws from the University of Delhi. He has received training for arbitrators from the World Intellectual Property Organization (WIPO), Geneva; and International Chamber of Commerce and Chartered Institute of Arbitrators. Dr. Sharma has received training of a mediator for community conflict resolution by the Plowshares Institute, USA and the Accord Group of Australia. He has also obtained professional training in negotiation at Harvard Law School. He has received training for teachers of WTO organized by UNU-IAS.

Dr. Sharma has researched extensively on the arbitration laws of China and India and other Asian countries, Investment Arbitration, Dispute Settlement in FTAs, WTO related issues, investment law and mediation. He has publications in the areas of WTO law, international trade, arbitration and dispute resolution, commercial law, and banking law. He has published a book with Wolters Kluwer titled “Dispute Settlement Mechanism in the FTAs of Asia”. Dr. Sharma has also conducted research and provided expert comments to UNCITRAL on mediation and conciliation. These works include conducting “An Evaluation of Mediation Law in Asia”, provided expert comments on “Draft Instrument on Enforcement of Settlement Agreement Across-boarder” and reported on “Possible Amendments in UNCITRAL Model Law on International Commercial Conciliations”. Currently, Dr. Sharma is working on the preparation of commentary on the Singapore Convention.

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Education

- Bachelor's Degree in English Literatur, Korea University, Seoul, Korea (1997)
- Master's Degree in International Law, Korea Univeristy, Seoul, Korea (2003)
- Ph.D. in International Law, Korea University, Seoul, Korea (2006)
- MBA, McCombs School of Business, The University of Texas at Austin, USA (2018)

Career

- Director at The Institute for Liberty
- Director of General Affairs at the KIMC
- Director at the Korean Society of Mediation Studies
- Lecturer of International Trade Law at Sungshin Women's University
- (former) Founder / CEO of KP Education Group, Inc.
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- (former) Lecturer of Law at Korea Univ., Kwangwoon Univ., Daejin Univ.
- (former) Researcher at the World Economic Law Research Centre
- (former) Teaching Officer (1st Lieut.) at Air Force Education & Training Command

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Sung-Kyu (Scott) Lee is an attorney in Kim & Chang's Corporate Investigations & White Collar Defense Practice. Mr. Lee joined the firm after his distinguished 20-year career as a prosecutor where he handled a broad range of legal disputes including white collar crimes. Mr. Lee was the first ever prosecutor to be named as a legal counsel for the Korean Mission to the United Nations. He was also appointed as an arbitrator for the Permanent Court of Arbitration in the Hague. He is currently the conciliator of ICSID under the World Bank and is also the Mediator of Seoul Southern District Court. He is mediating lots of cases referred from the Patent Court. He is currently the vice president of the Korean Society of Mediation Studies. He also gives lectures in various Mediation classes.

Seok-young OH 오석영

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Education

- Seoul Foreign-language high school, Seoul, Korea (Majored in Chinese)
- Sung Kyun Kwan University, Seoul, Korea (Bachelor of Chinese literature and language, Bachelor of Administration, August 2003)
- Graduate School of law, Korea University, Seoul, Korea (Master's degree in International Economic Law, February 2019)
- Graduate School of law, Korea University, Seoul, Korea (Doctor's course in International Economic Law)

Career

- January 2018 ~ Current: CEO & Representative Customs Attorney, THE Consulting Group
- March 2006 ~ December 2017: Director & Customs Attorney, A-One Customs and Trade Service
- July 2003 ~ September 2004: Sales Account Representative, Samsung Networks
- 2019~ Current: Visiting Instructor, Korea Customs Border Control Training Institute
- 2018~2019: Visiting Instructor, KOICA
- 2017~ 2019: Visiting Instructor, KOTRA
- 2016~ 2018: Visiting Instructor, Woori Bank Finance Institute
- 2014~ 2018: Visiting Instructor, KOTRA Global Academy
- 2005~2013: Visiting Instructor, Customs Broker Academy

Publication

- Trade and Customs for Foreign Exchange Expert (2017, 2018, 2019)
- Customs Act of Korea (2012, 2013, 2014)
- FTA Law (2013, 2014)
- Foreign Exchange Act of Korea (2006, 2007, 2008)
- Foreign Exchange Act & Foreign Trade Act of Korea (2010, 2012)

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Education

2014 Master's degree in Public Administration, University of Missouri, United States
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Career

2021.7-Present Senior Legislative Counsel, National Assembly of Korea
2018.7-2021.7 Legislative Attache, Embassy of the Republic of Korea (Minister-Counselor).
2017.1-2018.7 Director of Land, Infrastructure and Transport Legislation Division
2016.1-2017.1 Director of Human Resources Division
2014.7-2016.1 Director of Management Division
2009.2-2012.7 Legislative Researcher of the Public Administration and Security Committee
2007.1-2009.2 Deputy director of Education and Training Division
2004.8-2007.1 Legislative Researcher of the Construction and Transportation Committee
2001.12.-2004.8 Deputy director of Public Relations Office

2014 미국 미주리주립대 행정학 석사
2001 서울대학교 사회학과 학사
2021.7-Present 국회 법제실 심의관
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2017.1-2018.7 국회 법제실 국토교통법제과장
2016.1-2017.1 국회 인사과장
2014.7-2016.1 국회 관리국 관리과장
2009.2-2012.7 행정안정위원회 입법조사관
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EDUCATION

(1993) Harvard Law School, LL.M.
(1985) Seoul National University Graduate School of Law, Completed Master's Coursework (1984)
Judicial Research and Training Institute, Supreme Court of Korea
(1982) Seoul National University, LL.B.

PROFESSIONAL CAREER

(2018-present)	Yulchon LLC, Attorney	Korea
(2013-present)	Korean Commercial Arbitration Board *Director*	Korea
(1995-present)	Korean Commercial Arbitration Board Director, *Arbitrator*	Korea
(2007-present)	National Committee Member of ICC Korea (International), *Arbitrator*	Korea
(2013-present)	Seoul IDRC, *Auditor*	
(2012-present)	Korea Medical Dispute Mediation & Abitration Agency, *Arbitrator*	Korea
(2012-present)	Korea Media Dispute Mediation & Arbitration, *Arbitrator*	Korea
(2010-present)	Korean Council for Internatioinal Arbitration, *Vice President*	Korea
(2005-present)	Committee *Member* for State Liability Commiittee of MOJ	Korea
(2008-present)	The Cairo Regional Centre for International, *Arbitrator*	Cairo
(2006-present)	Arbitration Board of Dalian, *Arbitrator*	China
(2016-present)	Shanghai International Arbitration Center, *Arbigtraors & Mediators*	Shanghai
(2013-present)	Kuala Lumpur Arbitration Center, *Arbitrator*	Malysia
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Feb. 1981	B.S. in Economics, Sungkyunkwan University, Seoul, Korea
Sep. 1985	M.A. In Economics, Seoul National University, Seoul, Korea
Sep. 1990	M.S. in Economics and M.Phil in European Politics, the London School of Economics and Political Science(LSE), London, UK
Aug. 2012	Completed the Ph.D course in International Law, Sungkyunkwan University, Seoul, Korea

□ **CAREER :**

Sep. 1985	Researcher, Korea Development Institute (KDI)
Jun. 1987	After joining the Ministry of Foreign Affairs (MOFA), served as a diplomat in in the United States of America, the Republic of Cote d'Ivoire, the Kingdom of Belgium and to the European Union until Feb. 2009.
Feb.2001	Assistant Secretary, Office of the President
Feb. 2003	Director of Trade Policy Planning
Mar. 2004	Director of FTA(Free Trade Agreement) & of FTA Policy Division
Mar.2008	Advisor to Minister for Trade
Aug.2009	Deputy Director-General, FTA Policy Bureau
May 2011	Director-General for FTA Negotiations
Sep. 2012	Ambassador Extraordinary and Plenipotentiary to the People's Republic of Bangladesh & Bhutan
Sep. 2015	Senior Advisor for Foreign Affairs Committee, National Assembly
Apr. 2017	Ambassador Extraordinary and Plenipotentiary to the Kingdom of the Netherlands until Nov. 2019

□ **MAJOR DIPLOMATIC ACTIVITIES :**

2009-12	Chief Negotiator, FTA negotiations with Colombia, Vietnam, ASEAN, India, EFTA, New Zealand, Chile, Japan
2018-19	Chairperson, Conference of States Parties, OPCW, The Hague
2018-19	Vice Chairperson, Executive Council, OPCW, The Hague
2018-19	Co-Facilitator, Universality, ICC(International Criminal Court), The Hague

□ **AWARDS :** Three Foreign Minister's Prizes, The Best Ambassador's Merit(2014)

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