SPEECH OF THE SECRETARY GENERAL OF AALCO

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ON

"MEDIATION IN DISPUTES PERTAINING TO MULTINATIONAL CORPORATIONS: CONVENTION ON INTERNATIONAL SETTLEMENT AGREEMENTS RESULTING FROM MEDIATION (THE SINGAPORE CONVENTION)"

AT THE INTERNATIONAL CONFERENCE ON MEDIATION - 2019

Organized by
Law Centre II Faculty of Law University of Delhi,
in association with
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Supreme Court of India,
and
Indian Council of Social Science Research, Government of India.

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General Introduction

- *Hon'ble Mr. Justice G. S. Sistani, Judge, Delhi High Court, and Chair of this Session II,*
- *Hon'ble Ms. Justice Pratibha M. Singh, Judge, Delhi High Court,*
- *Hon. Ljiljana Belojevic, Deputy Head of Mission, Embassy of Republic of Serbia to India representing His Excellency Mr. Vladimir Maric, Ambassador of Serbia to India,*
- *Honourable Justices present,*
- *Senior Government Officials,*
- *Dr. V.K Ahuja, Patron in Chief, In Charge, Law Center-II, Faculty of Law, University of Delhi,*
- *Dr. Ashutosh Mishra, Conference Director and Assistant Professor, Law Centre-II, Faculty of Law, University of Delhi,*
- *Distinguished Experts and Guests,*
- *Ladies and Gentlemen,*

At the outset, I would like to express my gratitude to the organizers of this timely Conference, Law Centre II, Faculty of Law, Delhi University**, in association with Mediation and Conciliation Project Committee, Supreme Court of India and ICSSR, Government of India**, for inviting me to speak on a topic of such contemporary relevance that requires our immediate attention.

I have been invited to talk about *Mediation in Disputes Pertaining to Multinational Corporations,* and in my presentation I will talk about *Mediation in Disputes Pertaining to Multinational Corporations* in the context of the upcoming UNCITRAL **Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention) – open for signatures on 7 August 2019.**

1 The Importance of Mediation in Resolving Disputes Pertaining to Multinational Corporations

The idea of using consensus-based mechanisms, like mediation and conciliation, to resolve transnational business disputes is not new.[1] Although international commercial arbitration has, for quite some time now, been the preferred means of resolving complex business disputes in the cross-border context, it appears that the international corporate community has become somewhat disenchanted with that particular mechanism owing to concerns about rising costs, delays, and procedural formality.[2] No wonder that steps are being taken to refurbish the mechanism of international commercial mediation in resolving disputes pertaining to multinational corporations (MNCs).

MNCs are corporate citizens. They operate across borders and enter into transactions that are multi-contract and multiparty, and could involve a multitude of legal cultures. Inherently, MNCs are interested in insulating themselves from sovereign risks particularly regarding enforcement of their legal rights, almost always in favor of the international enforcement of actionable claims. The unique characteristics of international commercial disputes, especially those pertaining to MNCs, necessitate using a method of dispute resolution, which is expeditious, flexible, independent and above all conducive to the preservation of business and commercial relationship between the parties. Mediation presents itself as the most suitable alternative in this regard, provided certain insufficiencies that may creep in the process are kept at bay, as I shall point out during the course of my presentation.

The advantages of a consensus-based dispute resolution mechanism like mediation include, *inter alia*, the possibility of speedy and informal resolution of disputes; augmented confidentiality, non-disclosure, protection of privileged information and the avoidance of unnecessary publicity of disputes. There also exists a greater chance of better communication between parties thereby preserving pre-existing commercial relationships between parties. A high degree of party control and flexibility also ensures that dispute resolution could be tailored to the needs and underlying concerns of the parties and can address legal and non-legal issues as well as providing for remedies unavailable through adjudicative processes.

[1] Harold I. Abramson (1998), "Time to Try Mediation of International Commercial Disputes", ILSA Journal of International and Comparative Law, 4: 323, 323.
[2] S.I. Strong, 'Increasing Legalism in International Commercial Arbitration: A New Theory of Causes, A New Approach to Cures' (2003) 7 World Arbitration and Mediation Review 117.

High probability of increased satisfaction, compliance with settlements when parties have directly participated in crafting agreements, assistance in clarifying and narrowing issues, and fostering a climate of openness, co-operation are some of the key attractive features. Even if a settlement is not reached its feature of being risk-free, as communications are without prejudice even if no settlement is reached, leaves parties free to pursue other options.

However, the mechanism does suffer from certain disadvantages. The process can be used as stalling tactic. The process does not produce legal precedents, and exclusion of pertinent parties may weaken the final agreement. Parties may have limited bargaining authority, as little or no check exists on power imbalances between the parties. In mediation, a strong-willed or incompetent mediator can exercise too much control defeat the very purpose of this consensus-based mechanism.

Above all, it emerges from empirical data compiled by the UNCITRAL and other institutions employing surveys that the main factor which drives MNC's away from the use of mediation is the lack of certainty of enforcement.[3]

It is in this context that I choose to speak about the upcoming UNCITRAL Singapore Convention as the master key to unlock the use of mediation to resolve international commercial disputes as it provides an enforcement mechanism to the mediation agreements.

2 AALCO's Engagement with UNCITRAL

Before delving into the topic, I wish to share with you in brief, about AALCO's time enduring engagement with the UNCITRAL. The "close and fruitful relationship"[4] maintained

[3] David S. Weiss and Michael R. Griffith, 'Report on International Mediation and Enforcement Mechanisms: Issued by the Institute for Dispute Resolution (IDR) NJCU School of Business to the International Mediation Institute for the benefit of delegates attending the UNCITRAL Working Group II (Dispute Settlement) 67th Session' <https://www.imimediation.org/research/gpc/series-data-and-reports/> accessed 5 April 2019; S.I Strong, 'Use and Perception of International Commercial Mediation and Conciliation: A Preliminary Report on Issues Relating to the Proposed UNCITRAL Convention on International Commercial Mediation and Conciliation' <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2526302> accessed 5 April 2019; For views from the Asia-Pacific region see generally, Changa-FA Lo, 'Desirability of a New international Legal Framework for Cross Border Enforcement of Certain Mediated Settlement Agreements' (2014) 7 Contemporary Asia Arbitration Journal 119; Bobette Wolksi, 'Enforcing MediatedSettlement Agreements (MSAs): Critical Questions and Directions for Future Research' (2014) 7 Contemporary Asia Arbitration Journal 87.

[4] Special Lecture Delivered by H.E. Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO Law Centre II, University of Delhi, 19 March, 2018 ,"The Role of AALCO in the Development of International Law: Recent

by AALCO with the UNCITRAL has mostly pertained to the domain of international commercial arbitration, and has recently expanded to the realm of international commercial mediation as well. International commercial arbitration was included as a priority item in the UNCITRAL's session in 1968 on the suggestion of many Member States, including the Members of AALCO. AALCO has been a regular observer of the work of UNCITRAL since 1970. Similarly, UNCITRAL has also participated in AALCO's sessions, including in the deliberations of AALCO's Trade Law Sub-Committee.

It was during the ALCC's Tokyo Session in 1974 that regionalization of arbitration centers was suggested by the UNCITRAL's Representative to AALCO. Pursuance to this, AALCO in cooperation with its Member States has so far established five institutions namely, Asian International Arbitration Centre (AIAC) (formerly Kuala Lumpur Regional Arbitration Centre) in Malaysia in 1978, Cairo Regional Centre for International Commercial Arbitration (CRCICA) in the Arab Republic of Egypt in 1979, Lagos Regional Centre for International Commercial Arbitration (LRCSCA) in the Federal Republic of Nigeria in 1980, Tehran Regional Arbitration Centre (TRAC) in the Islamic Republic of Iran in 1997, and the Nairobi Regional Arbitration Centre in the Republic of Kenya in 2016.

The significance of mediation in resolving international commercial disputes, especially within the conceived framework of the proposed Convention, had been highlighted by Mr. José Angelo Estrella Faria, Senior Legal Officer and Head, Technical Assistance Section, International Trade Law Division, Office of Legal Affairs, United Nations in his presentation during the Seminar on "Reviewing International Reforms to the Investment Regime and to the Investor-State Dispute Settlement Mechanism: Perspectives from the Asian-African Regions", held on 19 – 21 November 2018 at the International Conference Centre in Arusha, United Republic of Tanzania; and by Ms. Anna Joubin-Bret, Secretary of UNCITRAL at the recently delivered talk at the AALCO Headquarters in New Delhi on 20 March 2019.

3 A Prologue to the Singapore Convention

Mediation has been a valuable and indispensable method of resolution of disputes, commercial or otherwise, in Asia and Africa, owing to the method's consistency with the

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Contributions", available at http://www.aalco.int/SG%20lecture%20for%20Law%20centre%20delhi%20university%20-%20Final%20on%2022.3.2018.pdf, 16.

regions' sensibilities and culture. As regards the preponderance of preference in favour of international commercial arbitration, it might be noted that the process has undoubtedly benefitted from the extensive system of international treaties designed to promote international commercial arbitration in the years following World War II.[5] International commercial mediation, on the other hand, has primarily existed as a form of "soft law."[6] Additionally, there has always existed a cultural predisposition towards adjudicative means of dispute resolution, at least in Western legal systems.[7] Therefore, the proposed Singapore Convention can be hailed as an attempt to formalize the process, thereby seeking to promote the use of international commercial mediation.

On 26 June 2018, the UNCITRAL approved, largely without modification, the final drafts of the Singapore Convention and amendments to the Model Law on International Commercial Conciliation (the Model Law). These instruments were the product of negotiations that began in 2014, following a proposal made by the United States of America to develop a multilateral convention that would promote the enforceability of international commercial settlement agreements reached through mediation in the same way that the New York Convention facilitates the recognition and enforcement of international arbitration awards. The Convention was adopted by the UN General Assembly on 20 December 2018, and will open for signature on 7 August, 2019. The time is, therefore, ripe to peruse the genesis and semantics of the Convention that seeks to promote international commercial mediation, the significance of which in ushering in certainty in business environment needs no reiteration.

4 The Development of the Singapore Convention in Working Group II of UNCITRAL

In the course of this presentation, I firstly seek to delve into the making of the Convention under the auspices of the Working Group II of UNCITRAL, followed by the adoption of the Convention by the UN General Assembly (UNGA).

4.1 The Proposal of the United States of America

[5] S.I. Strong 'Beyond International Commercial Arbitration? The Promise of International Commercial Mediation' (2014) 45 Washington University Journal of Law and Policy 11.
[6] Andrew Guzman & Timothy L. Meyer 'International Soft Law' (2010) 2 Journal of Legal Analysus 117..
[7] Harold I. Abramson, 'Time to Try Mediation of International Commercial Disputes' (1998) 4 ILSA Journal of International and Comparative Law 323.

As the Working Group II of UNCITRAL was nearing the conclusion of its work on the topic "Transparency in treaty-based investor-state arbitration", a proposal was made by the United States of America to commence work on the preparation of a Multilateral Convention for the enforcement of international commercial settlement agreements reached through conciliation.[8] The proposal highlighted a number of goals and principles recognized by UNCITRAL and the UNGA in its previous work limited not only to the promotion of mediation by national courts and government agencies, but receptive to the needs of the international business community and multinational corporations. In all, the proposal aspired to develop a multilateral convention to give an impetus to mediation in the same way as the New York Convention had promoted the use of arbitration.

4.2 The Deliberations in the Working Group II of UNCITRAL

The conclusion arrived at after a brief discussion on the topic was that the matter be deferred for consideration at the following session to be held in New York in February 2015.[9]

At New York, a number of concerns were highlighted *inter alia* not having the requisite consensus in Working Group for the consideration of the topic. Others referred to the fact that the UNCITRAL had already adopted the Model Law on International Commercial Conciliation without having any success at the inclusion of provisions for the enforcement of settlement agreements, in spite of serious attempts. Statistical information as well as the views of the Member States were ascertained, who all supported the general policy that there was a pressing need for easy and quick enforcement of international settlement agreements.

Towards this end a broad consensus emerged that the Working Group would seek a mandate to work on the topic but would not be in a position to reveal the particular form the final product would take.

[8] UNCITRAL, 'Proposal by the Government of the United States of America: future work for Working Group II' (7-18 July 2014) UN Doc A/CN.4/822. See also, S.I. Strong, 'Beyond International Commercial Arbitration? The Promise of International Commercial Mediation (2014) 45 Washington University Journal of Law and Policy, 32.

[9] UNCITRAL, 'Report on the Work of its Forty-Seventh Session' (7-18 July 2014) UN Doc A/68/17.

After the discussion of the topic, the Working Group received a mandate from the Commission to commence work on the topic of enforcement of settlement agreements to identify relevant issues and develop possible solutions, including the possible preparation of a convention, model provisions or guidance texts.

A number of comments were received from States in response to the questions placed before them and it was identified that out of the 100 States that had national or international arbitration institutions 80 of them also provided services for conciliation or mediation.

States such as the US and Israel were in favour of adopting a convention and had even proposed some initial draft provisions, on the other hand the European Union was of the view that the scope of the topic went beyond the decision adopted at the time of the Model Law to leave the issue of enforcement to municipal legal systems.

The Working Group focussed its attention on the subject for six sessions chaired by the representative of the Republic of Singapore, Natalie-Morris Sharma, but the decision that the work product would take the form of a convention could not be arrived at until the sixty-sixth session at New York in 2017.

In fact, one commentator who was present during the deliberations has opined that this session was a key turning point in the negotiations that lead to an important breakthrough. It seemed as though a compromise had been arrived by agreeing on five key issues, as brought to the attention of the Chair of the Working Group by the State of Israel.[10]

4.3 Development of a Packaged Instrument

First, it was decided that in light of varying understandings of the term "recognition", would not be employed in the Convention, instead its functional element would be emphasized i,e., the ability to place reliance on settlement agreement as a complete defence against litigation on the same subject matter.

[10] Statement of the State of Israel, UNCITRAL, 'Audio Recording: Working Group II' (66th session, New York) delivered on 7 February, 2019 at 15:00 pm.

Second, it was agreed that settlement taking the form of arbitral awards of judgments of courts of law would not fall within the scope of the convention particularly due to the reason that other instruments in force already covered them.

Third, an option would be provided to the signing States to make a declaration restricting the scope of the application of the Convention to only those disputes to which the parties themselves choose to apply it to.

Fourth, a serious breach of the standards applicable to mediators that induced a party to conclude the settlement would render the agreement unenforceable as would a breach of the requirement of impartiality and independence.

Fifth, the UNCITRAL would take a novel approach to the topic by recommending a packaged instrument comprising of a Convention as well as a Model Law for those states who did not wish to be bound by international obligations but nonetheless were keen to take voluntary measures. Thus within a year after this ground breaking impasse was overcome in Working Group II, the Commission finalized its work product and prepared the United Nations Convention on International Settlement Agreements resulting from Mediation as well as the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018.

A recommendation was made for its adoption by the General Assembly of the packaged instruments as well as the organization of a signing ceremony to be held on 7 August 2019 at Singapore christening the convention as the 'Singapore Convention on Mediation.'

4.4 The United Nations General Assembly Resolutions

At its 73rd session, the UNGA had before it the report of the Sixth Committee, with the deliberations between the Member States of the UN concerning the adoption of the Singapore Convention on Mediation as well as the Model Law. The UNGA was finally convinced that the adoption of a convention on international settlement agreements resulting from mediation was acceptable to States with different legal and social economic systems.

It also expressed confidence that the instruments would contribute towards complementing the existing legal framework on international mediation and foster harmonious international economic relations.

The preambulatory clauses of the resolution note with satisfaction that in preparation of the work product UNCITRAL had consulted not only States but also intergovernmental and non-governmental organizations; for e.g. the Regional Arbitration Centres established under the auspices of AALCO in Malaysia, Egypt, Iran, Nigeria and Kenya, along with many other arbitral institutions and international bodies, that were active participants in the deliberations.

The resolution also expressed it appreciation to the Government of Singapore for its offer to host a signing ceremony and adopted the Convention calling upon States and Regional Economic Integration Organizations to become a party to the Convention.

A separate resolution, resolution A/RES/73/199 was adopted in the General Assembly, calling upon States to give favourable consideration to the Model Law on International Commercial Mediation and International Settlement Agreements in the revision of adoption of legislation relevant to mediation. States that have used the Model Law were also called upon to provide advice to the Commission based on their experience.

3. Comments on the Provisions of the Singapore Convention

3.1 General Issues Discussed but not Included in the Convention

Several key issues are not explicitly addressed in Singapore Convention although they were discussed in the negotiations.

Firstly, the projected efficacy of the proposed international framework in further promoting mediation was pitted against the scepticism that developing a binding instrument would be premature as mediation was still in its infancy in many States. As discussed, the divergence led to the undertaking of developing two forms of instrument in parallel, *viz.*, both a Convention and a model law, unprecedented in UNCITRAL.

Secondly, rather than forcing disputing parties to "shoehorn their mediated settlements into the existing legal framework governing arbitration"[11]—a possibility debated and still stirring controversy—the Convention accords a new status to mediated settlements in their own right. It converts what would otherwise be seen as purely a private contractual act into an instrument that can circulate under a legally-binding international framework, and provides an entitlement to privileged treatment in other States. Thus, the Convention can be perceived as creating a new category of legal instruments on the international plane, elevating what would otherwise be a mere contract to a *sui generis* status.

Schnabel ably illustrates the point of distinction from arbitration in the following words:

> "…in arbitration, the disputing parties consent only to the process for resolving their dispute, but not to the ultimate outcome, yet the agreement to arbitrate and the arbitral award—which otherwise would only be private acts governed by contract law—are given privileged status under the New York Convention. In mediation, by contrast, the parties have agreed to not only the process for resolving their dispute but also to the ultimate outcome—thus suggesting a far stronger justification for according a privileged status to the mediated settlement agreement."[12]

Thus, the Convention diverges from the New York Convention by only addressing the results of a dispute settlement process (i.e., mediated settlements), rather than also applying to agreements to enter into a dispute settlement process (i.e., agreements to mediate), thereby rendering the scope of any agreement to mediate irrelevant for the application of the Convention.

Thirdly, as regards the question of whether the Convention should cover elements of mediated settlements that provide for more than just monetary relief, the Working Group decided not to distinguish between pecuniary and non-pecuniary obligations that may be

[11] Timothy Schnabel, 'The Singapore Convention on Mediation: A Framework for the Cross-Border Recognition and Enforcement of Mediated Settlements', (2019) 19 Pepperdine Dispute Resolution Law Journal 1, 11.
[12] Ibid.

found in mediated settlements in order to protect the flexibility of mediation and to preserve the settlement agreement in its entirety.[13]

Fourthly, an issue notable only for its omission from the text of the Convention is that of double exequatur.[14] Such omission could be attributed to the desire to avoid replicating the problems that arbitration faced prior to the New York Convention, due to the fear of creating a system that would be so burdensome that parties would not want to use it, as well as the difficulty in identifying a particular State of origin for a mediated settlement today.

3.2 Criteria and Key Terms

The settlement agreement to fall within the ambit of the Convention must be mediated, international, commercial, and must not be the subject of a specific exclusion.

The 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,[15] constitutes mediation. Therefore, despite the use of different terms for the process in different legal cultures, and regardless of such process qualifying as structured/ formal/ organized in conventional sense, and irrespective of such process being resorted to by the parties voluntarily or otherwise, a settlement might be arrived at as a "result" of the mediation.

Additionally, the last element in the definition does not exclude mediation in which the mediator could be converted into an arbitrator, as long as the mediator did not have authority to issue an arbitral award at the time of the mediation. In any dispute regarding the involvement of the mediator in the process or other elements of the Convention's framework, the court where relief is sought would need to protect the confidentiality of the mediation process in accordance with applicable law. As regards the applicability of the Convention to non-mediated settlements, interestingly, no good reason was ever provided by the Working

[13] Statement of the Chairperson, UNCITRAL Audio Recordings: Working Group II (Arbitration and Conciliation), 63rd Session, Sept. 8, 2015, 9:30-12:30.
[14] Double exequatur requires that the award be confirmed by the court of the country where it has been passed, before its enforcement can be sought in another jurisdiction.
[15] Article 2 (3) of the Convention.

Group for not permitting States to extend the Convention via a declaration, particularly given that Article 7 already permits them to provide non-mediated settlements with identical treatment under domestic law.

The Working Group made a pragmatic decision to restrict the scope of the Convention to settlements that are in some sense international at the time of their conclusion, in order to make it easier for countries to join the convention without requiring significant changes to their existing law addressing purely domestic settlements.[16] The international character of a mediation can be ascertained by taking note of the identity of the parties vis-à-vis their place/s of business, the place/s of performance of the substantial part of the obligations of the mediated settlement, etc., without really seeking to identify which State the settlement is "from." In fact, the Working Group expressed a desire to avoid replicating the "artificial" concept of the place of the arbitration and its consequences in terms of applicable law.[17]

Also, an international mediated settlement must also resolve a "commercial" dispute in order to fall within the scope of the Convention, and could therefore include at least some investor-state disputes in areas such as construction or natural resource extraction.

Regardless of whether the other requirements are met, mediated settlements resolving consumer disputes and disputes related to family law, employment law, or inheritance law, and those that are enforceable as judgments, or recorded, and are enforceable, as arbitral awards are excluded from the scope of the Convention.[18] It is also pertinent to note that some jurisdictions allow for treatment of settlement agreements as arbitral awards, for e.g. provisions governing the law of arbitration in India,[19] Bermuda, South Africa, Columbia and Kazakhstan as well as rules of several arbitration institutions. Although those agreements would be treated in their domestic law as awards under the Convention, they would be treated as settlement agreements capable of enforcement.

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[16] Timothy Schnabel, 'The Singapore Convention on Mediation: A Framework for the Cross-Border Recognition and Enforcement of Mediated Settlements', (2019) 19 Pepperdine Dispute Resolution Law Journal 1.

[17] *See, e.g.,* intervention of Bulgaria, in UNCITRAL Audio Recordings: Working Group II (Arbitration and Conciliation), 63rd Session, Sept. 9, 2015, 14:00-17:00, https://icms.unov.org/CarbonWeb/public/uncitral/speakerslog/c0ba5de5-130e-4672-9ab8-2f514121df77.

[18] Article 1, of the Convention.

[19] See for e.g. Section 73 of the Indian Arbitration and Conciliation Act, 1996; Also Arbitration Rules of the Stockholm Chambers of Commerce. See also Arbitration Act, 1986 (Bermuda),

3.3 Procedure of Enforcement and Recognition

The brief and not overly prescriptive formality requirements call for the mediated settlement to be in writing,[20] although not necessarily contained in one document, and to be signed by the parties.[21] Under Article 4(2), a "method" must be used to identify the parties and to indicate their intentions with respect to the information contained in the electronic documents, such as the email coming from the party's account.[22] The method must be either as reliable as appropriate given the circumstances, or be proven to have actually demonstrated the party's identity and intentions.[23]

Although issues regarding signature were not seen as likely to be frequently litigated, these standards were included in the Convention to avoid any possible confusion over whether electronic settlements were covered, per UNCITRAL's view of best practices in drafting instruments. Further, evidence ought to be submitted by a party seeking to rely on a mediated settlement that the settlement indeed resulted from mediation.[24] This requirement aspires to reduce the risk of fraud and make it easier for competent authorities to ensure that the settlement was indeed mediated.[25]

The options available for demonstrating that the settlement resulted from mediation is fourfold: firstly, is to have the mediator's signature on the settlement agreement itself;[26] secondly, the party seeking relief can provide a separate document signed by the mediator, indicating that the mediation was carried out;[27] thirdly, if the mediation was administered by an institution, the party seeking relief can provide an attestation from the institution;[28] and fourthly, if none of those three default options are available, the party seeking relief can submit any other evidence acceptable to the competent authority.[29]

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[20] Article 1 (1).
[21] Article 4(1)(a).
[22] Article 4 (2)(a).
[23] Articles 4(2)(b)(i) and (ii).
[24] Article 4 (1) (b).
[25] Statement of the People's Republic of China, UNCITRAL, 'Audio Recording: Working Group II' (65th Session, 21 September 2016) 09:30 AM.
[26] Article 4(1)(b)(i).
[27] Article 4(1)(b)(ii).
[28] Article 4(1)(b)(iii).
[29] Article 4(1)(b)(iv).

It must always be borne in mind that the innate objective behind the Convention's uniform framework is to pre-empt more burdensome requirements and facilitate circulation of settlements. However, this pre-emption does not prevent a State from applying unrelated form and process requirements for real property transfers: a settlement purporting to transfer real property will suffice to require a party to transfer the property by undertaking any formal requirements related to deeds, but the mediated settlement itself does not replace a need to comply with title transfer requirements under domestic law. This limitation only applies in narrow circumstances such as real property transfer or registration of security interests, where the functioning of public registers cannot be undermined by parties trying to circumvent those registries' requirements via a private settlement.

A competent authority- a court or any other authority empowered by the relevant state to address these issues, including an arbitral tribunal- can also require the submission of "any necessary document in order to verify that the requirements of the Convention have been complied with,"[30] albeit without circumventing the Convention's limitation on formality requirements.

Although no specific timeline is required, the competent authority is obliged to provide relief expeditiously, so as to ensure that the obligation under Article 4(5) is not breached.

3.4 Grounds for Rejection and Adjournment

Following the model of the previous work of the Commission in relation to the arbitration particularly Article 36 of the UNCITRAL Arbitration Rules and Article V of the New York Convention, Article 5 of the Convention provides for certain grounds on which the enforcement of the settlement agreement may be rejected. Apart from retaining the grounds of incapacity, invalidity, lack of finality, arbitrability, and public policy new grounds relating to mediator misconduct enshrining principles of natural justice have been included. One of the controversial areas in the New York Convention, regarding the concept of seat and *lex arbitri* has been avoided in the Convention by explicitly placing reliance on the *lex fori*. Therefore any dispute on whether the subject matter of the agreement is capable of settlement

[30] Article 4(4).

by agreement or whether it violates public policy is to be decided purely by reference to the law of the place of where the agreement is sought to be enforced.

Further Article 6 provides that where parallel proceedings are underway relating to the settlement agreement, the Competent Authority in the State may in its discretion adjourn the proceedings on the receipt of suitable security. This provision mirrors Article VI of the New York Convention and Article 36(2) of the 1985 UNCITRAL Model Law on International Commercial Arbitration, 1985 that provide the competent authority under those instruments with similar discretion to adjourn the enforcement proceedings with or without security.

3.5 The Entry into Force, Amendment and Denunciation of the Convention

The Convention also deals with a number of miscellaneous issues agreement on which was essential for full and proper implementation of the Convention, securing the rights of the parties to the settlement and its cross border enforcement. Article 7 provides that the Convention shall not override any other rights of parties to settlement agreement under laws or treaties in force, thus creating a permissible standard in the nature of a floor not a ceiling on rights.

On the other hand reservations are only permitted to the effect that a State may choose to exclude from the application of this convention certain government agencies specified in declarations and may even choose to subject the application of the convention to choice of the parties to the settlement agreement.

Another concept addressed in Article 12 of the Convention is its applicability to regional economic integration organizations that have the competence according to their own internal law to regulate settlement agreements. The provision provides for the supremacy of the internal law of the organization over the provisions of the settlement as is clear from its content that it was designed primarily keeping the EU in mind. Another situation the Convention regulates is the option for states to apply the Convention to certain territorial units particularly useful for Federal States that do not have a unified legal system.

As regards entry into force, the Convention provides that it shall enter into force six months after the deposit of the third instrument of ratification. Amendment of the Convention shall

only be possible by two-thirds majority where all efforts at arriving at a consensus have been exhausted. Denunciation of the Convention shall only take effect six months post the deposit of a formal notification in writing to the depository but shall not affect the enforcement of settlement agreements entered into before the denunciation takes effect.

4. Conclusion

UNCITRAL has drafted a Convention which has the potential of altering the landscape of international dispute resolution in a manner previously accomplished only by the New York Convention, almost five decades ago.

As a consultative Organization to the Asian and African Member States, AALCO encourages its Member States to give due consideration to this Convention which can bolster the use of mediation as a method for resolving cross-border commercial disputes.

Whether the Convention will live up to this promise will depend on whether a critical mass of States choose to join the Convention, which in turn will depend on whether lawyers (particularly in-house counsel), mediators, and other stakeholders duly consider if the potential/ projected benefits of the Convention make the pursuit of ratification worthwhile.

The incentive for the States lies in an ascent in the World Bank's "ease of doing business" ranking ladder and is in line with Sustainable Development Goal 16 that seeks to aim for peace, justice and institutions.

It is my understanding that the Singapore Convention makes great strides towards the achievement of these goals and promotes the use of mediation which has been used by mankind since time immemorial in order to settle disputes peacefully preserving avenues for future cooperation, what in business terms is cherished as the preservation of a commercial relationship.

Although the Singapore Convention's objective is pragmatic, it is not novel to all jurisdictions, as some of the States have already remedied the lacuna the Convention seeks to address. But nonetheless, it serves the purpose of uniformity with international best practices even in those jurisdictions.