NUS National University of Singapore | ISAS Institute of South Asian Studies

ISAS Brief
No. 694 – 27 August 2019

Singapore Mediation Conference: Off to a Good Start

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Summary

The Singapore Mediation Convention attracted 46 signatories in the signing ceremony in Singapore on 7 August 2019. It is likely to benefit all trading nations, including those from South Asia. Countries who have not signed it might find it useful and rewarding to do so.

Introduction to the Convention

On 7 August 2019, Singapore hosted the signing ceremony of a United Nations (UN) Instrument which its negotiators succeeded in bringing to fruition after months of painstaking negotiations at the UN headquarters in New York. The Chairman of the Working Group at the UN Commission on International Trade Law was a Singaporean, and the island state's delegation played a key role in the deliberations. The UN General Assembly adopted it on 20 December 2018. The document bears the name of the Republic, and has been called the Singapore Convention on Mediation.

At the ceremony, 46 countries put their signature to the agreement, starting with K Shanmugam, Singapore's Law Minister. The signatory nations included economic superpowers like the United States and China, as well as Asian heavy weights like India and South Korea. Speakers on that occasion played glowing tributes to Singapore, and viewed this outcome as a success-story of Singapore's diplomacy. The country is already seen as a small-state often punching above its weight in the global arena, thus heightening its relevance and importance to the international community.

Arbitration and Mediation

The background to the Convention is as follows. Since the dawn of humanity's political and social history, the need to preserve law and order, the collection of revenue to meet common public costs and the meting out of justice remained the most fundamental tools of State power. Hence of governance as well. Over time, litigation for justice became arduous and expensive. The result was a quest for other forms of dispute settlement. That is how attention turned towards arbitration and mediation.

There were differences between the two processes. One, usually the result of arbitration, was 'binding' on the parties, and that of mediation, 'non-binding'. Two, arbitration could be conducted by multiple agents, and mediation by a single entity. Three, arbitration tended to judge the issue, while mediation facilitated dialogue and deliberation. Because of mainly three other factors, which could also be counted as differences, mediation gradually began to find greater resonance in Asia, given the region's culture and ethos. This was because mediation was seen as less costly, more confidential and with possibilities of private

communication among protagonists. These were viewed as being more in line with Asian values.

Mediation in Asia

Some examples would be in order to make this point. In China, the 2012 amendment to the Civil Procedure Code adopted the principle of 'mediation first'. The Singapore Mediation Act of 2017 was purported to provide 'certainty' to the method. In South Asia, the 1996 Arbitration and Conciliation Act in India encouraged the arbitral tribunal to use the mediation process as well. In Bangladesh, in 2003, the Civil Procedure Code was amended to introduce mediation as a part of general civil dispute.

However, international 'commercial' mediation tended to trail in Asia, though. Here, arbitration remained the preferred mode of alternative dispute settlement, mainly because of the factor of 'enforceability' it possessed. This is where the Singapore Convention finds its relevance, since its purpose is to bridge that very gap, as well as promote and buttress enforceability. This is just what the New York Convention had done for arbitration awards in 1958. The Singapore Convention fills that void for mediation. However according to its Article 1 (1), the agreement would have to have three features for it to be considered for mediation. It had to be 'in writing', should be 'international' and commercial. The first two terms are defined in the Convention itself, and the third in an accompanying 'Model Law'.

Relevance to South Asia

With regard to State parties, the negotiators were very circumspect. According to Article 8 of the Convention, it would only apply, if the parties agreed. Also, they could exclude themselves at any time by entering 'declarations' or 'reservations'. Countries uncomfortable with dangers of intrusion into their sovereignty by external mediating entities, including some articulate post-colonial countries such as in South Asia, can find necessary protection under this clause.

For the South Asian countries, while the practice of *village panchayats, salishes* and *jirgas* have been traditional alternatives to formal litigation, commercial mediation has not been popular. It is mainly due to the lack of enforceability, which the Convention provides. Also, the 'Model Law', drafted by the negotiators to guide parliaments, can be a good frame of reference for their legislation. For South Asian corporate sectors, it could be a great boon. Three potential causes of most disputes in transnational business are: one, unpaid accounts; two, missed deadlines; and three, increased cost from changes. The Convention will facilitate dealings of South Asian countries with the rest of the world.

According to the Asian Development Bank estimates, Asia will need over US$1.7 trillion (S$2.36 trillion) annually for infrastructural investments. A large portion of it will be spent in South Asia. China is pumping in enormous amounts under its Belt and Road Initiative, particularly in Pakistan, Bangladesh, Sri Lanka and Nepal. Naturally there could be potentials for disputes, requiring resolutions. For those who are yet to sign on, like Bangladesh, it should merit reconsideration.

Of course, the proof of the pudding will be in the eating. But as of now, it is safe to assume that the Convention is a dessert fairly well baked!

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