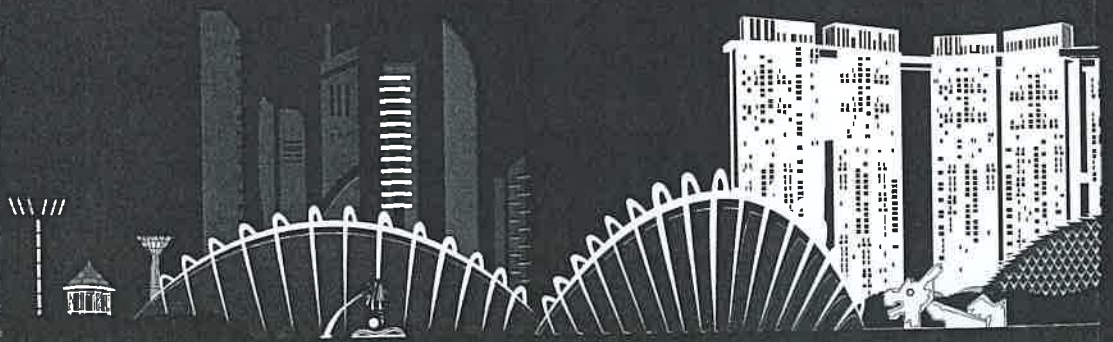


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FIFTY SECRETS OF SINGAPORE'S SUCCESS



THE SINGAPORE CONVENTION ON MEDIATION

Natalie Y. Morris-Sharma

In 2015, Singapore's history was marked by the year-long celebration of its 50th year of independence, SG50. That year, negotiations commenced on what eventually became another historic achievement for Singapore: the first United Nations (UN) treaty named after the republic. The Singapore Convention on Mediation provides an efficient and harmonised approach to cross-border reliance on mediated settlement agreements.

In an interconnected world, where business arrangements are increasingly international in nature, more disputes can be expected to take place across borders. The less time and money spent on such business obstacles, the better. Better still if business partners can emerge from a dispute with their relationship intact, rather than frayed and fraught. Mediation offers this. Mediation has been proven to be a cost- and time-effective form of dispute resolution. In addition, mediation is conciliatory in nature, unlike litigation and arbitration, which are fundamentally adversarial. With mediation, disputing parties can agree on how to resolve their dispute, taking holistic account of and preserving their business relationship. These factors are important in complex business relationships, especially those with long tails and cross-border structures.

Yet, in the cross-border context, the use of mediation was stymied by uncertainties over the outcomes of mediated settlements. Could they be efficiently and effectively enforced? This open question prevented business users from relying on mediation. Instead, they turned to litigation and arbitration, the outcomes of which benefit from the enforcement frameworks of treaties such as the Hague Convention on Choice of Court Agreements and the New York Convention.

With the Singapore Convention on Mediation, mediated settlement agreements are no longer orphaned in this respect. The Convention has thus been called “the missing piece” and “a game changer” in the landscape of international dispute resolution. The convention will promote not only the flexible and conciliatory approach to dispute resolution that mediation proffers, but also international trade and commerce. The convention has additionally been celebrated as a means of promoting access to justice and the rule of law, in support of the UN Sustainable Development Goals, in particular Goal 16 on peace, justice and strong institutions.

Against a wider backdrop, the Singapore Convention on Mediation stands as a beacon of dialogue and the peaceful settlement of disputes. Further, in a darkened period where the death of multilateralism has been proclaimed, it is a signal that multilateralism is still alive.

In hindsight, it seems obvious that the world would benefit from a treaty like the Singapore Convention on Mediation. However, this clarity took time to crystallise.

The United States had, in 2014, put forward a proposal to the UN to develop a treaty that recognised and enforced settlement agreements reached through mediation. Earlier work, more than 10 years before, had not succeeded in developing an international mechanism for enforcing mediated settlement agreements. For this reason, the United Nations Commission on International Trade Law (UNCITRAL) assessed that consensus on the proposal might not be possible, but eventually decided to proceed with the task. I had been involved in UNCITRAL since 2010, and was approached to lead the process as the chairperson. I knew that discussions on the topic had been dominated by scepticism. The work was cut out for us. However, it was an opportunity to be useful to Singapore and the international community. Singapore’s interests in the project were represented by Mr Leong Kwang Ian and later by Ms Sharon Ong, with expert guidance from the renowned mediator, Senior Counsel George Lim. Their contributions, together with others, ensured that Singapore could subscribe to the eventual outcome of the UNCITRAL project.

When we started, we did not know if consensus was possible, and if it could be achieved, what the outcome would be. We eventually

developed, in parallel, both a convention and an amended model law. Having the dual tracks in this one UNCITRAL process was unprecedented, and a key reason for its success.

INCLUSIVITY AND ADAPTABILITY

Three key lessons drawn from the negotiations over the Singapore Convention on Mediation, which could also apply to other contexts, are worth highlighting: everyone matters; difficult situations are defining; and leadership development is a long runway.

First, everyone matters. In the negotiations, we were committed to decision-making by consensus. We had more than 100 delegations representing not only different countries and continents, but also dispute resolution institutions and business associations, amongst others. This could have easily led to a cacophony of different opinions! However, we were able to harness the panoply of perspectives for a richer and more robust outcome.

In everything that individuals or countries do, the results are only meaningful and effective when all parties are ready to acknowledge that everyone matters. Everyone has value to bring to the table and should be engaged. This speaks for the pursuit of multilateralism by countries. Multilateralism offers a stable means of structuring international relations and producing solutions to global problems, by engaging and catering to the broad community of states. Building consensus is not easy, but countries should still keep at it.

Second, difficult situations are defining. How individuals and countries deal with challenging situations define who they are. Many times during the negotiations, there were disagreements, and the negotiators had to decide whether to insist on their positions, or search for a compromise — hopefully, with some creativity, a win-win outcome. Choosing to do the latter turned even the most challenging situations, which could have sounded the death knell for our work, into stories of success.

As the chairperson, I had to earn the trust of the negotiators. I had to feel the pulse of the room and declare when consensus had been reached and what that consensus was; or when further work on a particular issue was required; or when further work should be

abandoned because all opportunity for agreement had been exhausted. This was often a judgment call. It was important that the negotiators could trust and support the calls that I made. In an early part of the process, I had to rule against the Singapore delegation. It turned out to be a defining moment for me as the chairperson, and my commitment to chairing neutrally, without fear or favour.

There is a clarity that is afforded by the pressure of a challenging situation. In those moments, people, countries, and futures, are defined, even if by accretion. In Singapore's own history, difficult decisions have had to be made. For countries, what international initiatives to support, or measures to take with or against other countries, amongst others, can be difficult decisions. Singapore is respected for being objective, pragmatic, and reliable. We can be proud of that international reputation, but we must continue to steer the course in order to maintain it.

BUILDING ON FIRM FOUNDATIONS

Third, leadership development is a long runway. The chairing of the negotiations over the Singapore Convention on Mediation and the hosting of its signing ceremony were built on the shoulders of other efforts. Singapore, as a dispute resolution hub, was able to appreciate what a convention on mediation had to offer to the world and was therefore ready to support it. Singapore's hub status leverages its connectivity and geographical location, but is otherwise by design. Over more than a decade, Singapore has sought to nurture an ecosystem for effective dispute resolution services, founded upon a trusted legal system, with strong institutions, grounded in the rule of law. Widely recognised as the leading arbitration hub in Asia, Singapore is well placed to become a focal point for dispute resolution internationally, especially with the establishment of institutions to set standards, provide services, and promote thought leadership in the mediation and dispute resolution space.

The hosting of the signing ceremony entailed months of working closely with the UN and UNCITRAL, engaging stakeholders, and building awareness and understanding of the Singapore Convention on Mediation internationally. It was a whole-of-Singapore effort,



Minister for Law and Home Affairs K. Shanmugam and Prime Minister Lee Hsien Loong, with UN Assistant Secretary-General for Legal Affairs Stephen Mathias (first row, seventh, eighth and ninth respectively from the left), signatories and heads of delegations after the signing of the UN Convention on International Settlement Agreements Resulting from Mediation, also known as the Singapore Convention on Mediation. The ceremony was held at the Shangri-La Hotel, Singapore, on 7 August 2019. Picture: Courtesy of the Ministry of Law

involving ministries and agencies, the private sector and academia. Led by Han Kok Juan, the Ministry of Law's Deputy Secretary then, 400 officers and volunteers were involved in ensuring that the signing ceremony and surrounding events, attended by 70 country delegations and more than 1,600 participants overall, ran smoothly.

I am honoured to have been elected to chair the UNCITRAL negotiations, which eventually led to the acceptance of Singapore's offer to host the signing ceremony and the naming of the Convention after Singapore. The privilege of chairing was possible because of the long history of Singapore's valued contributions to UNCITRAL and the UN. It is the stellar line-up of diplomats and international lawyers, such as Ambassador Tommy Koh, who have nurtured Singapore's reputation into what it is today.

Each generation benefits from the foundations laid by the ones who come before. The success that is being reaped today is from seeds sown and nurtured before. Similarly, Singapore's leadership in the

international arena, including in the area of dispute resolution, is from dedicated years of visioning and implementation.

The Singapore Convention on Mediation took off to a flying start when it opened for signature on 7 August 2019. In a show of strength, 46 countries signed the new treaty, and a further 24 countries attended the signing ceremony to show their support for it. Since 7 August 2019, a further five countries have signed the convention. Hopefully, it will become a truly global convention soon.

While the work does not end here, the Singapore Convention on Mediation has already placed Singapore on the international map, and sealed its association with the values of the Convention — multilateralism and the rule of law.

Mrs Natalie Y. Morris-Sharma currently serves as Director of the International Legal Division of the Ministry of Law. She has represented Singapore in several bilateral and multilateral negotiations. She has also chaired and facilitated meetings at the United Nations. In addition to chairing the UNCITRAL negotiations that led to the Singapore Convention on Mediation, she served as Vice-Chairperson of the Sixth Committee Bureau and facilitator for the UN General Assembly's omnibus resolution on oceans and the law of the sea.
