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BOOK REVIEW

THE SINGAPORE CONVENTION ON MEDIATION: A COMMENTARY ON THE UNITED NATIONS CONVENTION ON INTERNATIONAL SETTLEMENT AGREEMENTS RESULTING FROM MEDIATION EDITED BY GUILLERMO PALAO

Reviewed by Denise Ereka Peterson, FCIArb

I. INTRODUCTION

Concerns about cross-border dispute resolution options often focus on the enforceability of those options. Before the Singapore Convention on Mediation (the "Convention"), arbitration was the primary, non-litigation option utilized. The success of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention") created a framework by which the UNCITRAL established a formal Working Group to evaluate and, if possible, create a framework similar to that of the New York Convention.

The complexity of creating the Convention and the work necessary to develop the consensus to ratify it form the opening of *The Singapore Convention on Mediation: A Commentary on the United Nations Convention on International Settlement Agreements Resulting from Mediation* (the "Commentary").[1]

The substantive part of this book unfolds a nuanced analysis of each segment of the text of the Convention, roadmapping the thought processes and global involvement behind its creation. Beginning with the Preamble, each Article of the Convention is covered in its own section. A typical section has a mini table of contents for that Article, the text of the Article itself, usually introductory remarks for the section, and then a thorough discussion of each phrase.

What makes this book uniquely valuable is its examination of the thought processes of the Working Group and its intent for implementing the Convention's

[1] THE SINGAPORE CONVENTION ON MEDIATION: A COMMENTARY ON THE UNITED NATIONS CONVENTION ON INTERNATIONAL SETTLEMENT AGREEMENTS RESULTING FROM MEDIATION (Guillermo Palao ed., 2022) [hereinafter THE SINGAPORE CONVENTION ON MEDIATION: A COMMENTARY].

enforcement requirements. The various sections are authored by individuals directly involved in the discussions, working groups, or interested states and stakeholders. The authors are all distinguished experts in law and dispute resolution, with Guillermo Palao's editing seamlessly combining all sections.

While the book itself is not formally divided into parts, this review has taken the liberty of creating rough groupings to highlight each section appropriately.

II. THE BOOK

A. *Part One: Chronicles of the Singapore Convention – An Insider's View*

Itai Apter and Roni Ben David bring us both the why and the how of the Convention in this section, setting the stage for a deeper understanding of the process underlying the Articles of the Convention itself. Extensively footnoted, Apter and Ben David lay out the historical foundations of the Convention, from the critical work done by S.I. Strong in analyzing "the legal framework leading to the limited use of mediation to resolve cross-border commercial disputes compared to more traditional mechanisms,"[2] to how her presentation of that work in 2014 connected her study to UNCITRAL Working Group II, whose remit is dispute resolution.[3]

The authors of this chapter then fold in the various other players and their roles, dubbed "experts meeting diplomats."[4] With the cast of characters established, they explain the procedural steps, discussions, formal deliberations, critical buy-in, and consensus-building vital to the Convention's successful creation. While this section may appear on the surface merely as a historical perspective, it also neatly roadmaps how the work was accomplished, creating a future model.

B. *Part Two: The Preamble*

Preambles set the tone for the underlying document and can "also be extremely helpful when courts and tribunals are seeking to interpret and apply treaty provisions."[5] S.I. Strong, the author of this section of the Commentary, "was a non-

[2] *Id.* at 5.

[3] *Id.* at 6.

[4] *Id.* at 7.

[5] *Id.* at 43.

governmental observer at UNCITRAL and Working Group II during the drafting"[6] of the Convention, providing a unique insight into the drafters' intent for the four clauses of the Preamble.

Strong states that there is "a complex history behind each of the four elements of the preamble."[7] For each element, she discusses whether the language was factual compared to aspirational and which underlying prior treaties, agreements, or studies drove her conclusions. This complex history is reflected in the role the author played by responding to the Working Group's request for a better understanding of the current state of mediation in cross-border disputes. Indeed, her discussion of how the study came about and its impact on the Convention are notable.

Strong opines that when a judicial body finds it necessary to interpret the Convention, "courts would do well to consider the genesis and evolution of the various provisions to gain a complete understanding of the language in question."[8] Strong's nuanced analysis of the Preamble enables such considerations.

C. Part Three: The Articles

The Convention features 16 Articles from "Scope of Application" ("Scope") to "Denunciations," which results in a total of 16 chapters. By looking into the first chapter with some depth, the usefulness of this Commentary for legal practitioners, scholars, and jurists is evident.

The Scope chapter, authored by Pablo Cortés,[9] delves into the impact of specific verbiage choices in the Scope Article. On its surface, this Article merely limits the application of the Convention with such factors as the minimum requirements on the number of parties, the situs of the parties, and the types of cases to which this Convention applies, *e.g.*, not family law. However, while the Scope Article is seemingly straightforward, Cortés shows how those who work in collaborative or hybrid ADR practices may be impacted by how specific terms, such as mediation, are defined in

[6] *Id.* at 41.

[7] *Id.* at 45.

[8] *Id.* at 62.

[9] Pablo Cortés is the Professor of Civil Justice at the University of Leicester (United Kingdom).

Article 2, "Definitions."

Mediations under the Convention are limited to cases where the mediator "does not have the authority to impose upon the parties a solution to the dispute."[10] This potentially excludes med-arb and mediator's proposals from being covered by the Convention. This article-overlapping analysis by Cortés exemplifies a critical approach by the authors of each chapter. They do not limit their work to their specific Article but rather how it integrates into the Convention, making this Commentary a handbook for mediators, legal practitioners, and jurists.

III. CONCLUSION

The book's overall structure is excellent for its use as a quick reference, research guide, and textbook. The editor, Guillermo Palao's, decision to include both a conventional, bird's-eye view "Contents" section and an "Extended Contents" section minimizes the need for scrambling through the index for an entry. The Table of Abbreviations assures readers of consistent usage by all contributors. The Table of Cases and the Table of Legislation neatly cross-reference the sections where they are discussed. Each chapter's paragraphs are clearly identified with a margin number indicating chapter and paragraph number, making internal indexing simple. As shown by some recent publishing failures by popular legal guides, the importance of clarity and ease of access to information cannot be over-emphasized.

While domestic mediators and legal professionals may not immediately see the usefulness of this Commentary, it is still a text that should be strongly considered as commercial and legal markets become increasingly globalized. COVID has increasingly moved parties to online and more remote deal-making, increasing the need for an enforceable cross-border dispute resolution process. From a historical perspective, or for those working in or with governments to improve access to justice and resolution systems, this book provides an excellent roadmap of how the Convention's agreements were reached in a relatively short time frame.

[10] THE SINGAPORE CONVENTION ON MEDIATION: A COMMENTARY, *supra* note 1, at 68.

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INSTITUTE FOR TRANSNATIONAL ARBITRATION
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Founded in 1986 as a division of The Center for American and International Law, the Institute was created to promote global adherence to the world's principal arbitration treaties and to educate business executives, government officials and lawyers about arbitration as a means of resolving transnational business disputes.

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Advisory Board members also have the opportunity to participate in the work of the Institute's practice committees and a variety of other free professional and social membership activities throughout the year. Advisory Board Members also receive a

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The Institute for Transnational Arbitration publishes its acclaimed Scoreboard of Adherence to Transnational Arbitration Treaties, a comprehensive, regularly-updated report on the status of every country's adherence to the primary international arbitration treaties, in ITA's quarterly newsletter, News and Notes. All ITA members also receive a free subscription to ITA's World Arbitration and Mediation Review, a law journal edited by ITA's Board of Editors and published in four

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