BOOK REVIEW

SINGAPORE ACADEMY OF LAW JOURNAL SPECIAL ISSUE 2019: INTERNATIONAL COMMERCIAL MEDIATION*  
Joel Lee & Nadja Alexander guest eds

LUM Kit-Wye  
LLB (Hons) (National University of Singapore),  
LLM (National University of Singapore);  
Advocate and Solicitor (Singapore);  
Associate Professor, Nanyang Business School,  
Nanyang Technological University, Singapore.

1 In the introduction to this special issue on international commercial mediation, the editors Joel Lee and Nadja Alexander explain that the contributions to the journal were selected to represent a range of matters that drew from law, neuroscience, culture and international mediation practice. True to this intention, this journal is a veritable treasure trove of scholarly work on mediation that ranges from domestic to international perspectives, from legal musings to practical lessons, from the question of how to get to the mediation table to how to enforce the outcome of a mediated settlement, and much more.

2 The journal kicks off with an article that focuses primarily on the Singapore experience. In this article, Gloria Lim traces the development of mediation in Singapore from its early beginnings in the mid-1990s to the present day. Lim's article showcases the careful thought and planning that have gone into the design of Singapore's international commercial mediation system. It looks at diverse factors that have contributed to the flourishing of mediation in Singapore, including the unflagging support from the Judiciary to more mundane but equally important considerations such as purpose-built infrastructure and facilities.

3 From this close-up view of the local mediation landscape, the journal steps back to view mediation from a much broader perspective with an article by Alexander on current trends in international mediation that span many countries and continents. This article gives the reader an exciting peek into what is happening across the globe and what new trends can be discerned in the fast-developing international mediation landscape.

4 Aside from covering mediation in terms of domestic and international overviews, this journal also looks at issues that arise at the various stages of the mediation journey – getting to mediation, during mediation, and after mediation. For example, Maryam Salehijam's

contribution relates to the very beginning of the journey itself. This article discusses the effectiveness of mediation clauses in getting parties to mediation by way of an international comparative analysis of when and how mediation clauses are enforced in various jurisdictions around the world. Not only is the scope of the article ambitious in that it examines the treatment of mediation clauses in many civil and common law jurisdictions, but it is also impressive in its meticulous analysis of the available remedies for breach of mediation clauses in these very varied jurisdictions.

5 The contributions from Paul Gibson, Joanna Kalowski and Dorcas Quek Anderson consider issues relevant to the conduct of mediation itself, albeit in relation to very different aspects. The introduction of the journal states that the intended reader is not just the practising mediator but also includes others such as mediation advocates and anyone interested in discovering more about international mediation. Nonetheless, Gibson's and Kalowski's contributions will perhaps be of most interest to practising mediators in so far as they pertain to two of the most challenging issues at the very heart of mediation practice, that is, how to facilitate conflict resolution in the presence of strong emotions or differing cultures. The other commonality of these two authors is that both their articles deal with non-legal matters. Instead, the former uses brain science to explain certain well-accepted beliefs about conflict and its resolution, and in doing so draws from various disciplines including the broad fields of neuroscience, neurobiology, neurophysiology and neuropsychology. Gibson's contribution also includes useful techniques for utilising brain science to aid in conflict resolution and ends with the regret (which might also perhaps be taken as a call to action) that “current mediator training is woefully inadequate for mediators to achieve any level of workable competence in integrating brain science into their professional practice”.

6 While Gibson takes a cross-disciplinary approach to mediation, Kalowski looks at the challenges of cross-cultural mediation. Her article starts off by stating that it is “essentially a practitioner’s compendium of useful learnings and tools”, and indeed, it lives up to this promise with a wealth of tips and reminders on how to handle mediation in a cross-cultural situation. A piece of advice that stands out is one that, on the surface, is very simple but, at the same time, is particularly apt in today’s complex and uncertain world: “Presume nothing, question everything.” It serves as an important reminder to mediators that there is no such thing as “auto-pilot” in cross-cultural mediations.

7 Quek Anderson’s article also relates to the matters arising from the conduct of mediation, but hers focuses on the legal issue of confidentiality in mediation and its impact on the question of enforcing good faith participation in mediation. Its analysis includes tracing the legal basis of confidentiality, examining the legal position on “good faith” obligations in negotiation and mediation as well questioning the utility and practical enforceability of such obligations. It concludes with an interesting suggestion for a multi-pronged approach as a possible solution to this controversial issue.

8 As can be expected, many of the contributions to the journal relate to the United Nations Convention on International Settlement Agreements Resulting from Mediation, or as it is more commonly known, the Singapore Convention on Mediation. Of the three articles that deal directly with the Singapore Convention, one explores it from the more conventional angle of its legal and practical implications on the enforcement of international settlement agreements. This article by Shouyu Chong and Felix Steffek discusses in detail many important issues such as its scope of application, and the requirements as well as grounds of refusal for enforcement.

9 The other two articles look at the Singapore Convention from angles that might perhaps be of less practical use, but which are arguably more interesting, that is, from the perspectives of delegates and the chairperson of the United Nations Commission on International Trade Law Working Group II that was responsible for the Singapore Convention. The delegate’s perspective is found in the contribution by Khory McCormick and Sharon Ong, the Australian and the Singapore delegates respectively, while the chairperson’s perspective is provided in the article by Natalie Morris-Sharma. In essence, both these articles represent a rare behind-the-scenes view of the deliberations and intense negotiations that had to take place in order that a consensus outcome in the form of two instruments on international commercial mediation (a convention as well as a model law) could be achieved. Although the different perspectives of these two articles necessarily mean that their discussions have different emphasis and focus, one common observation that comes through very strongly is that regarding the attitude and spirit with which the participants approached the negotiations. McCormick and Ong noted:

> There was a heightened applied spirit of goodwill within the Working Group. An objective reasonable bystander could not but be impressed by the open-minded and constructive way in which both general sessions and delegation consultations were universally conducted.

One likely reason for this comes from Morris-Sharma’s explanation of what she, as chairperson, saw as the way forward for the Working Group’s deliberations – open dialogue in the search of possible compromise in a process where everyone would be heard and would feel that they were heard. It scarcely needs to be pointed out that one would be hard put to find a more fitting way in which to conduct the facilitation of negotiations to reach an agreement relating to mediation issues.

10 The remaining two articles in the journal do not deal directly with Singapore Convention but nevertheless do still make reference to it. The contribution by Christine Sim explores the topic of investor-State disputes, and more specifically the question of conciliation as a dispute resolution method for such disputes. Amongst other issues, it also discusses the possibility of enforcing settlement agreements arising from conciliation under the Singapore Convention and gives recommendations on how to structure the dispute resolution process so as to encourage the use of conciliation for investor-State disputes while reducing any attendant risks.

11 The final article by Eunice Chua plugs the gap in the discussion relating to the enforcement of mediated settlement agreements by examining how such agreements may be enforced without the Singapore Convention. After a detailed analysis of alternatives such as domestic court orders, consent arbitral awards and notarisation, she then compares them to enforcement under the Singapore Convention.

12 All in all, the articles in this special issue on international commercial mediation are very welcome and timely additions to the academic literature on mediation, containing as they do a wide variety of viewpoints and perspectives covering local and international outlooks, and encompassing legal discussions on current issues as well as professional insights on mediator skillsets and tools. The impressive scholarship and optimism evident in the contributions, together with the recent exciting developments in the international mediation landscape, augur well for the future of mediation in Singapore and abroad.