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A matter of interpretation? Understanding and applying mediation standards for the cross-border enforcement of mediated settlement agreements

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Abstract

This article focuses on the future role to be played by mediation standards in view of the signing of the Singapore Convention on Mediation. It argues that the convention has elevated the standing of mediation standards from soft regulatory codes to quasi-legal grounds impacting the enforcement of mediated settlements. However, the inherently generalized nature of mediation standards does not render them amenable to contextualized interpretation. More significantly, the courts may adopt the wrong frame when construing mediation standards. It is therefore imperative that the mediation community find ways to bridge frames and facilitate the cross-border understanding of standards.

1 | INTRODUCTION

In late 2018, the United Nations General Assembly passed a resolution to adopt the UN Convention on International Settlement Agreements Resulting from Mediation and to make corresponding amendments to the Model Law on International Commercial Conciliation (A/Res.73/198). This development is the culmination of several years of work by the UN Commission on International Trade Law ("UNCITRAL") to create a multilateral instrument facilitating the cross-border enforcement of mediated settlement agreements. The convention was named the Singapore Convention on Mediation when it was signed by 46 countries on August 7, 2019. Six additional countries have signed the convention, bringing the total number of signatories to 52 (Tham, 2019; UNCITRAL, 2020). The convention will enter into force on September 12, 2020 (United Nations, 2020).

The Singapore Convention on Mediation ("Singapore Convention") is meant to achieve for mediation what the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention") has done for international arbitration. The widespread support of the New York Convention—starting from 10 states in 1958 and increasing to the current number of 161 states—attests to the popularity of arbitration as a mode of dispute resolution. By comparison, the high level of preliminary support for the Singapore Convention within merely a few months attests to the common sentiment across the globe on the need for a uniform enforcement regime for mediation, and the desire to place the mediation process on equal standing with arbitration in terms of competitive advantages (Strong, 2016; UNCITRAL, 2015a). More importantly, it reflects the substantial growth of mediation that has fueled international efforts to develop a harmonized legal framework to support agreements resulting from mediation.

Although the Singapore Convention drew inspiration from the New York Convention, the corresponding grounds for non-enforcement of the mediated settlement must necessarily reflect the distinctive features of the mediation process. In this regard, a contracting state is allowed to decline enforcement in the event of a "serious breach...of standards applicable to the mediator or mediation" (article 5(1)(e)). This article focuses on the future role to be played by domestic and international mediation standards in view of this provision, and the challenges arising from interpreting standards across different perspectives. It will be argued that the provision has effectively endowed mediation standards with an unprecedented level of significance. The standing of these mediation standards has been strengthened from soft regulatory codes that were previously connected only with disciplinary action of mediators to quasi-legal grounds impacting the enforcement of mediated settlements. Given the critical function accorded to mediation standards, it is imperative to facilitate an accurate and context-specific understanding of mediation standards so as to ensure the sound application of the Singapore Convention across different countries.

The discussion will be done in four sections. First, the role of the mediation standards will be examined in light of the grounds for non-enforcement in the Singapore Convention. It is argued that the relevant standards that apply to the mediation will assume much greater prominence than domestic mediation requirements in the state where mediation takes place or in the state deciding on enforcement. This development, coupled with how mediation standards now directly impinge on the enforceability of a mediated settlement, will result in greater significance being assumed by mediation standards in the future. The next section examines the nature of mediation standards. It will be demonstrated that the inherently generalized nature of codes of ethics and the inability to consider different contexts render them less amenable than legal rules to sound interpretation.

The third section discusses an additional difficulty in interpreting standards—the plethora of frames that could be adopted by the courts. Mediation standards may be construed according to the "adjudication", "arbitration", "default mediation tradition" and "international mediation" frames, leading to misapprehension of the relevant mediation standards. The fourth section explores the "default mediation tradition" frame in greater detail, illustrating how the principle of self-determination could be understood differently under the Singapore and Australian mediation standards. The final section proposes ways to assist the courts to bridge the plurality of frames so as to help them accurately situate the interpretation of mediation standards in the relevant context. A failure to do so potentially leads to the courts' misinterpretation of well-established mediation standards, and the mediation profession falling into disrepute based on misguided application of mediation standards.

2 | THE FUTURE SIGNIFICANCE OF MEDIATION STANDARDS

Article 5 of the Singapore Convention sets out the grounds for non-enforcement of the mediated agreement. Several of these grounds are synonymous with the equivalent provisions in the New York Convention, including a lack of capacity, a conflict with the enforcing state's public policies and the subject matter not being capable of settlement by mediation. The more unique grounds are contained in article 5(1)(e) and (f), which provide that:

5(1). The competent authority of the Party to the Convention where relief is sought under article 4 may refuse to grant relief at the request of the party against whom the relief is sought only if that party furnishes to the competent authority proof that:

...

(e) There was a serious breach by the mediator of standards applicable to the mediator or the mediation without which breach that party would not have entered into the settlement agreement; or

(f) There was a failure by the mediator to disclose to the parties circumstances that raise justifiable doubts as to the mediator's impartiality or independence and such failure to disclose had a material impact or undue influence on a party without which failure that party would not have entered into the settlement agreement.

There were strong views within the UNCITRAL Working Group that professional mediation rules apart from party autonomy should be endorsed as due process principles within the mediation process (UNCITRAL, 2015b). Consequently, the Working Group agreed to include a ground relating to fair treatment according to "standards applicable to the mediation or mediator", and another ground relating to the mediator's failure to disclose information that was likely to "raise justifiable doubts as to the mediator's impartiality or independence" (UNCITRAL, 2016). A high threshold was further created by requiring a "serious breach" of mediation standards in article 5(1)(e), and a failure to disclose information that "had a material impact or undue influence on a party" in article 5(1)(f). In addition, a strong causative requirement was introduced to these provisions; the misconduct had to be sufficiently serious, "without which failure (or breach) that party would not have entered into the settlement agreement".

Article 5(1)(e) refers to "standards applicable to the mediator or mediation". Mediation standards usually stipulate guidelines on a range of issues, including the mediator's professional qualifications, measures of mediator competence and guidelines for the practice of mediation. This article focuses on the latter aspect—guidelines on how mediation should be conducted ("mediation standards") (Australia National Mediation Accreditation Standards, 2015). Most agreements to mediate cross-border disputes specify the relevant standards that apply to the mediation. Mediation standards in nation-wide accreditation systems usually take the form of codes of conduct highlighting salient ethical principles. For instance, the mediation standards in Australia's National Mediator Accreditation System ("NMAS") identify principles including accountability, self-determination, informed consent and safety. They also elaborate on how the mediation process should be conducted based on these principles. A similar standards-setting body in Singapore, the Singapore International Mediation Institute ("SIMI"), has established a code of professional conduct alluding to principles such as diligence, impartiality, fairness and voluntariness. Mediation standards have also been created by private providers of mediation services including JAMS Mediation, Arbitration and ADR Services, the American Arbitration Association, the International Mediation Institution, and the Centre for Effective Dispute Resolution.

Regardless of their scope, mediation standards are not intended to have the same binding effect as formal legislation. They have, after all, been created principally for self-regulation of the mediation profession. In this regard, Spencer and Brogan (2006a, 2006b) noted that professional codes of conduct may be aspirational, educational or regulatory in purpose. The aspirational code articulates ideals that mediators should strive to adhere to, while the educational code seeks to provide guidance to the mediation profession. JAMS' Mediators Ethics Guidelines provide an illustration of educational standards aiming to "provide basic guidance to...mediators regarding ethical issues that may arise during...the mediation process" (JAMS Mediation, Arbitration, ADR Services, n.d.). Breaches of these guidelines do not necessarily result in disciplinary action. The JAMS mediators are merely encouraged to confront ethical issues as soon as they become apparent and to seek guidance from the organization.

By comparison, regulatory mediation standards that feature in many national accreditation systems have more detailed guidelines to serve as a basis for adjudicating grievances (Spencer & Brogan, 2006a, 2006b). Crowe (2017a, 2017b) described the regulatory model of professional ethics as being endorsed by the mediation community, taught as part of an accreditation process and often linked to licensing and adjudication of formal complaints about breaches. Despite the disciplinary function of regulatory standards, they lack the uniform applicability to all mediators within the jurisdiction. Accreditation under national systems such as NMAS is usually done on a voluntary basis. The mediators who do not seek accreditation will not be subject to adjudication of complaints based on the relevant mediation standards. Hence, even if mediation standards were associated with disciplinary action, they do not have the similar breadth of applicability as formal legislation. In sum, mediation standards, as soft forms of regulation, have never assumed the traditional functions and coercive effect of legislation.

However, the introduction of article 5 of the Singapore Convention arguably transforms and elevates the above functions played by domestic and international mediation standards. First, the standing of mediation standards has been strengthened from soft regulatory codes hitherto connected only with disciplinary action of mediators or educational standards, to quasi-legal standards impacting the cross-border enforcement of mediated settlement agreements. A serious breach of the principle of impartiality under the NMAS Mediation Standards may result not only in sanctions being imposed on the mediator under the NMAS system, but also in the denial of the legal effect of mediated settlement terms in another country. The specific principles articulated in mediation standards thus gain a status almost akin to procedural law, for they now constitute substantive grounds to disallow the enforcement of mediated settlements.

Furthermore, the bases for non-enforcement of a mediated settlement have been enlarged beyond the Singapore Convention to include external mediation standards drafted by mediation organizations and mediation regulatory bodies. This situation stands in contrast to Article V of the New York Convention, that has exhaustively listed all grounds for non-enforcement such as the failure to give notice of the appointment of the arbitrator. In contrast, external mediation standards are invariably mutable, being subject to potential revision by the relevant drafting bodies. Hence, the grounds for non-enforcement of mediated settlements are effectively open-ended.

On a related point, individual states where the mediation takes place have very little control over the applicable mediation standards under the Singapore Convention. Under the conventional practice of international arbitration, there is usually a clear nexus between the seat or location of arbitration and the law governing the arbitration. The arbitration will be governed by the law of the place where it is held, and the parties may rely on the state to support the arbitral process. In stark contrast, under the Singapore Convention, the mediation standards of the

relevant mediation institution or accreditation body assume much greater importance than the domestic requirements of the state where the mediation takes place. The state where the mediation occurs is unable to impose its mediation standards and is consequently unable to exert control over the enforceability of the settlement. Schnabel (2019) has thus commented that the Singapore Convention has made the mediated agreement "a stateless instrument that is generally not subject to domestic law requirements". Furthermore, the relevant mediation may not only be different from the location of the mediation, but also have transnational application. Consider for instance the International Mediation Institution ("IMI). The IMI Code of Mediator Conduct could constitute the applicable mediation standards used to consider whether a mediated agreement is enforceable. Yet this code of conduct is not associated with any one country's law because its mediators come from a wide range of countries; it is a transnational set of standards traversing many countries. Consequently, the enforcement of a mediated agreement under the Singapore Convention is dissociated from the location of the mediation, and correspondingly more intimately connected with the mediation institutions that the mediator is linked to.

In summary, the Singapore Convention has endowed mediation standards with an unprecedented level of significance. Where they used to provide guidance to mediators or educate the public, they are now potentially grounds used to determine the enforceability of mediated agreements. The content of the applicable standards is not necessarily determined by states, but principally by mediation institutions and professional bodies that have the freedom to amend the standards as they deem fit. In addition, the relevant standards that apply to the mediator assume much greater prominence than domestic mediation requirements existing in the state where mediation takes place.

Given the critical role that will be accorded to mediation standards, it is vital to ensure that contracting states of the Singapore Convention have an accurate and context-specific understanding of domestic and international mediation standards. It is particularly important to understand what type of breaches of mediation standards constitute "serious breach[es]" that could undermine the enforceability of the mediated agreements. The next section turns to discuss the nature of mediation standards which will impinge on the accuracy in the courts' interpretation of them.

3 | THE NATURE OF MEDIATION STANDARDS

The preceding section alluded to the multiple functions of mediation standards, ranging from regulatory to educational purposes. Arguably, a code of conduct underpinned by a regulatory goal should provide minimal standards and detailed guiding principles that will assist a court deciding whether there are serious breaches of mediation standards under article 5 of the Singapore Convention. By contrast, the aspirational code of conduct may contain additional principles exceeding the minimal standards that are used to deal with complaints. Nonetheless, in practice most mediation codes of conduct are likely to amalgamate several purposes. MacFarlane (2002) noted in this regard that codes of conduct exert moral and political significance by setting benchmarks for appropriate conduct, provide a means to ascertain a mediator's commitment to a set of values, deal with complaints, and provide the trappings of respectability for the profession. Unlike formal legislation, the multiple functions of mediation standards could be fundamentally misaligned with the primary purpose of the Singapore Convention to delineate the circumstances for enforcement of a mediated agreement.

More significantly, mediation standards are subject to two limitations that collectively result in substantial difficulties in application by the courts. First, the inherent generality of the principles articulated means that "no code of conduct can provide full answers for all the situations that may transpire in a mediation" (Astor & Chinkin, 1991). Expressing the same sentiments, Boulle and Field (2017), quoting Grebe, Irvin, and Lang (1989), commented that "the best code of professional conduct can provide only partial direction" and "do not (and cannot) provide definitive answers". Elaborating on this limitation, MacFarlane (2002) noted that codes of conduct only offer general guidance for selected issues, but that the application of these principles requires the exercise of personal discretion within an organic and dynamic mediation process. Honoroff and Opotow (2007) further observed that many codes of conduct begin with abstract principles, proceeding from a conception of the mediator's role before deducing the ethical mandates from this conception. In sum, the generalized nature of the ethical principles does not make them amenable to application to specific circumstances. If mediators themselves face considerable difficulty in applying the current standards, the courts will *a fortiori* find it much more challenging to decide whether the applicable mediation standards were breached under the Singapore Convention.

Second, mediation standards based on general principles are unable to take into account the different contexts in which mediation takes place. Cooks and Hale (1994) have asserted that ethical choices in mediation take place "as part of the sense making in everyday, mundane experience". Many commentators have therefore advocated for a contextual approach to applying mediation ethics. In support of Cooks' discursive ethics, MacFarlane (2002) suggested a reflexive approach in analyzing outcomes of ethical judgments based on the mediator's contextual perspective. In the same vein, Field (2017) suggested a contextual ethical method to mediation that would respond to the unique character of the mediation process, be sensitive to the particular circumstances of the parties and the dispute, and accommodate a wide variety of mediation styles. Crowe (2015) has advocated a practice model of ethics, which regards ethical discourse as being shaped by normative pre-reflective judgments emerging through repeated engagement with situations. Similarly, Waldman (2011) has proposed the approach of "ethical intuitionism", which is drawn from philosopher Ross's approach of weighing and balancing competing values in a fluid and intuitive way.

While a contextual approach may assist mediators in overcoming the limitations of ethical codes, it is questionable whether the court deciding on enforcement of a mediated settlement is able to adopt such a nuanced approach in interpreting mediation standards. The courts, being an external party that has not participated in the mediation, is understandably disadvantaged in terms of grasping the nuances of the mediation context. These difficulties could be further aggravated by the multiple frames through which the courts may interpret the relevant mediation standards. The next section elaborates further on the potential frames that the courts may mistakenly adopt.

4 | INTERPRETING MEDIATION STANDARDS: A PLETHORA OF FRAMES OF REFERENCE

As discussed above, article 5(1)(e) of the Singapore Convention empowers the court in a signatory state to refuse enforcement of a mediated settlement agreement if it is satisfied that there was a serious breach of mediation standards. The court would be required to analyze standards that are unfamiliar because they could be drafted by external mediation organizations or other countries' mediation regulatory systems. Admittedly, the courts are gaining more experience in interpreting and applying external law. For instance, parties involved in legal proceedings in

the Singapore International Commercial Court may agree to apply English law to their dispute, and the lawyers would then make submissions to apprise the court on the English position of the relevant area of law (Order 110, Rules of Court) (Singapore Rules of Court, n.d.). Nonetheless, the interpretation of mediation standards presents new and greater difficulties because of the high likelihood of the courts interpreting the standards from different frames of reference as it seeks to accurately understand the mediation process. As will be explained below, the adoption of any one of these frames will severely distort the understanding of mediation standards and have significant ramifications on the mediation profession.

4.1 | The "adjudication" frame

The default perspective that courts may readily adopt relates to the adjudication mode of resolving disputes. Under the "adjudication" frame, mediation is likely to be perceived from the conventional principles of justice, resulting in misapprehended assessments of whether the relevant standards have been breached. By way of illustration, it is common for mediation standards to refer to principles of fairness ("SIMI Code"). However, a court's conceptualization of fairness differs vastly from how justice is understood within consensual processes. The historical debates concerning the benefits of settlement ultimately stem from an appraisal of mediation from a predominant "adjudication" frame linked to legal rights. The oft-cited criticisms of Fiss and Genn have portrayed mediation as settlement endeavors devoid of any considerations of justice. Genn (2012) noted that "mediation requires the parties to relinquish ideas of legal rights during mediation and focus, instead, on problem-solving". Hence, using this frame, the courts are likely to assess the mediation outcome as unfair because the mediated agreement is assessed based on its conformity with legal norms.

Although some concerns raised by the critics—such as the need to deal with pronounced power imbalances—warrant attention, it is essential that the courts do not evaluate the fairness of the mediation outcome based merely on a narrow application of legal principles. The mediation process is meant to allow the discussion of the parties' interests, which may be much broader than legal principles. Legal principles are part and parcel of the broad milieu of concerns that are brought to the mediation table. Hyman (2005) stated in this regard that the parties' sense of fairness and justice is placed on equal footing with the various other interests. Unlike in adjudication, the legal principles may not eventually be given precedence because the parties balance them against other more pressing needs. Menkel-Meadow (1995) highlighted that there are many other components to the achievement of justice, including consensus and party empowerment. Settlement, in her view, considers many other non-legal principles affecting decision-making, and is often more "just" and responsive to the parties' needs than a litigated outcome with binary win-lose results.

Hence, there is a grave danger of the courts adopting the "adjudication" frame due to a lack of understanding of the fundamental differences between adjudicatory and consensual dispute resolution processes. As a result, the mediated outcome may run the risk of being evaluated against the courts' conceptualizations of substantive fairness.

4.2 | The "arbitration" frame

Although arbitration is also an adjudicatory dispute resolution process, the "arbitration" frame raises unique issues in the interpretation of mediation standards. One such issue relates to how

procedural fairness within mediation is understood. Because an arbitral award is premised on due process in decision-making by the arbitrator, the aspects of due process involve procedural matters such as proper notice of the appointment of the arbitrator, opportunity to present one's case and the arbitral tribunal having a composition reflecting the parties' agreement (articles V (1)(b) and (d), New York Convention). By contrast, due process within mediation relates to more intangible principles such as giving parties equal treatment and ensuring that the parties reach an agreement based on informed consent. Mediation focuses principally on the parties' decision-making process instead of the procedures impacting the decision made by the neutral.

The UNCITRAL working group discussions reflect palpable tensions between the "mediation" and "arbitration" frames. Some delegates argued that mediator misconduct should taint the entire mediation process, similar to how a failure to comply with the agreed arbitral procedure was a specific reason to disallow enforcement under article V(1)(d) of the New York Convention (UNCITRAL, 2016). In response, other delegates stated that mediator misconduct should not have an impact on the enforcement of the settlement agreement because the parties were free to withdraw from the mediation at any time if they believed that they were being treated unfairly. The Working Group reached a compromise by including mediator misconduct as a ground for non-enforcement under article 5, but requiring such misconduct to cause the relevant party to agree to the settlement terms. A breach of mediation standards *per se* is insufficient to fulfill article 5(1)(e). It is therefore possible that the court adopting an "arbitration" frame may focus unduly on the breach of standards alone, and neglect the need under the Singapore Convention to assess whether the breach had exerted a great impact on the parties' decision-making capacity.

Another issue arises from the Singapore Convention's borrowing of language from the New York Convention. Article 5(1)(b) of the Singapore Convention does not allow enforcement of an MSA that is "null and void, inoperative or incapable of being performed under the law parties have validly subjected [the mediation] or...under the law deemed applicable by the competent authority". The Working Group drew this language from articles II(3) and V(1)(a) of the New York Convention that referred to when agreements to arbitrate would be deprived of legal effect (UNCITRAL, 2015b). The contractual framework in analyzing the validity of an arbitration agreement was effectively transplanted into the Singapore Convention to form grounds of non-enforcement of the mediated settlement agreement. The Working Group explained that this "generic nature" of analyzing agreements, which has been interpreted by several jurisdictions in a harmonized fashion, could be relied on to determine whether there was a valid mediated settlement agreement. As such, the common grounds rendering a contract void or voidable, such as duress and fraud, could invalidate the mediated settlement under article 5(1)(b) (UNCITRAL, 2016).

Article 5(1)(b) of the Singapore Convention, which mirrors the corresponding text in the New York Convention, ostensibly contains a ground that is separate from article 5(1)(e) concerning the serious breach of mediation standards. However, they are overlapping grounds. The existence of vitiating factors in contract law effectively means that the parties' autonomy has been undermined. The court's finding of undue influence resulting in an invalid mediated agreement will probably correspond with a finding that there is serious breach of mediation standards relating to the mediator respecting the parties' right of self-determination. Because of the close connection between these two grounds of non-enforcement, it is not inconceivable for the courts to strictly apply contractual principles to determine whether there have been serious breaches of mediation standards under article 5(1)(e). Its analysis will then be limited to determining whether the elements of duress, undue influence etc. have been fulfilled.

Although contractual principles may shed some light on the interpretation of mediation standards, they cannot replace a context-specific interpretation of mediation standards.

4.3 | The "default mediation tradition" frame

Another frame which may result in misapprehension of mediation standards relates to the enforcing country's mediation tradition. As explained above, the applicable mediation standards under article 5(1)(e) may not necessarily correspond with the domestic mediation standards in the enforcing country. Consequently, the courts have to understand the external mediation organization's or country's views on the standards. Nevertheless, the plurality of mediation practices across jurisdictions potentially poses an obstacle to the court attaining an accurate understanding of these standards. There is naturally a high tendency to construe the standards according to one's own mediation tradition. Common mediation nomenclature could be ascribed different meanings under different mediation traditions. Boulle observed that the notions of independence, neutrality and the principle of self-determination "are regarded as axiomatic to mediation systems in many western contexts" but these concepts "can be alien and inappropriate in some mediation contexts, both traditional and contemporary, in Africa, Asia, Australia and the Pacific" (Boulle, 2014, p. 52, 58). Notably, some UNCITRAL working group delegates stressed that mediators were not subject to the same impartiality requirements as arbitrators and judges (UNCITRAL, 2016). They were more inclined to conclude that a lack of partiality did not amount to a serious breach of mediation standards as long as the parties themselves had no objections to the lack of neutrality. In a similar vein, some scholars have argued that neutrality—in terms of a lack of relationship between the mediator and the parties—is perceived differently in the Chinese context. They have pointed out that the concept of *guanxi* (interconnectedness and relationships) in China results in a preference for a mediator with some connection with the disputants. Such a person is more likely to be trusted by the parties (Law, 2011). Hence, although the same mediation term may be used in several mediation codes of conduct, the concept may be construed quite differently across varied mediation traditions.

An apt illustration relates to a prominent international mediation center in China—the CCPIT/CCOIC Mediation Centre—that has cooperated with more than 10 countries to set up cross-border mediation schemes. The center's mediation rules oblige the mediator to "disclose any circumstances likely to affect his or her independence and impartiality as a mediator in the case" (article 21, CCPIT/CCOIC Mediation Rules) (CCPIT/CCOIC Mediation Center, n.d.). There is no further elaboration on these circumstances. Suppose that these rules were applicable to a mediated settlement that the parties seek to enforce under the Singapore Convention, and it turns out that the mediator had previous business dealings with both parties. Will a strict or lenient threshold be used to determine whether the non-disclosure would raise justifiable doubts about the mediator's independence under article 5(1)(f)? It is likely that a stricter standard would be used if the enforcing state is more familiar with another mediation tradition that views mediator neutrality as a sacrosanct principle of mediation. Hence, the diversity of mediation standards could pose considerable challenges to the accurate application of the mediation standards.

The uncertainty caused by the adoption of the "default mediation tradition" frame could be more pronounced when the enforcing state is interpreting mediation codes of conduct that have transnational application. For instance, a cross-border mediation that is conducted by an

American mediator under the auspices of CEDR will be subject to the CEDR Code of Conduct for Neutrals read in conjunction with the Model CEDR Mediation Procedure (Centre for Effective Dispute Resolution, 2019). The question may arise as to whether the mediator's pressurizing of parties to settle amounts to a breach of the applicable mediation standards. The CEDR Code of Conduct makes no express reference to the principle of party self-determination, but the CEDR Model Procedure obliges the mediator to determine the procedure "in consultation with the parties". Suppose that the enforcing state is the USA, and the court is most familiar with the US Model Standards for Mediators. These national recommended standards were jointly created by the American Bar Association, the American Arbitration Association and Association for Conflict Resolution. They have specified self-determination as a primary guiding principle (Standard I). The court will probably face considerable ambivalence about whether to interpret the CEDR Code of Conduct in a more American-centric manner, given that the code has transnational application to CEDR mediators. As such, the application of international mediation standards will pose no small challenge to the state deciding on enforcement under the Singapore Convention.

4.4 | The "international mediation" frame

Apart from the courts adopting the default mediation tradition frame, the converse could also occur—the courts using an "international mediation" frame to interpret ethical standards governing a domestic mediation. By way of illustration, two disputing parties from China could have agreed that the CCPIT/CCOIC Mediation Rules applied to their mediation, and one of them subsequently seeks enforcement of the mediated settlement agreement in the US. The US courts will probably be aware of the UNCITRAL Model Law on International Commercial Mediation that stresses the importance of mediator impartiality (UNCITRAL, 2018b). Article 6 states that the mediator has a continuing obligation to disclose any circumstances "likely to give rise to justifiable doubts as to his or her impartiality or independence". The courts could be readily influenced by this international instrument to hold the mediator to a very stringent standard of disclosure of any matter likely to constitute a conflict of interests. In other words, the courts will be interpreting the relevant Chinese ethical standards predominantly through the "international mediation" frame and may consequently neglect the Chinese context of the relevant standards. Suppose that the mediator did not disclose that he is personal friend of one of the disputants' close relative. While this circumstance may readily raise doubts about the mediator's neutrality under the UNCITRAL Model Law, there may well be a different threshold of conflict of interests according to the local interpretation of the CCPIT/CCOIC Mediation Rules. Hence, international instruments present yet another frame of reference that could unduly influence domestic courts in accurately understanding local ethical standards.

5 | THE POTENTIAL CLASHES OF FRAMES: EXAMINING SINGAPORE'S AND AUSTRALIA'S MEDIATION STANDARDS

Evidently, the enforcing state could adopt a plethora of perspectives in interpreting the relevant mediation standards under article 5. Any one of the above frames run the risk of deviating from a contextualized interpretation of the standards that is informed by the relevant jurisdiction's or organization's mediation traditions. This section illustrates the potential challenges arising from

adopting the "default mediation tradition" frame in Singapore and Australia in interpreting mediation standards.

Australia's mediation standards under the National Mediation Accreditation System ("NMAS") are rooted in a much longer history than the mediation standards promulgated by Singapore International Mediation Institute ("SIMI"). The standards were introduced in 2008 after an eight-year period of consultation, and revised in 2012 and 2015. While individual states within Australia have mediation regulations, the NMAS provides a nation-wide platform for all Australian mediators to seek voluntary accreditation. SIMI, a national mediation standards body formed in 2014, similarly introduced a voluntary accreditation scheme for Singapore mediators (Singapore International Mediation Institute, 2017). Accredited mediators are obliged to comply with SIMI's Code of Professional Conduct, and breaches of the codes will be reviewed by SIMI's Assessment of Professional Conduct process. Using International Mediation Institute's Code of Conduct as a starting point, SIMI consulted with mediation organizations in Singapore before introducing the code in 2017 (Lee & Lim, 2017).

Both sets of standards aim to educate mediators on their minimum practice requirements and ethical obligations, inform participants about what to expect in mediation, and regulate the mediation profession by using the standards as a basis to assess complaints lodged against mediators (section 1.2, NMAS Standards; Introduction, SIMI Code). In terms of topics discussed, there are substantial areas of overlap as illustrated in Table 1.

Suppose that a mediation was conducted in Singapore by a mediator certified under NMAS. The parties may agree that the applicable standards are the Australian NMAS standards. One party is from Australia and the other from Singapore. In addition, the mediated settlement agreement fulfills the formality requirements of the Singapore Convention, and the parties are now seeking enforcement in the Singapore courts under the Singapore Convention. The issue confronting the Singapore courts is whether the mediator's suggestion of solutions and giving of opinions have seriously breached the principle of self-determination. The ensuing discussion will highlight the potential clashes between the Singapore and Australian mediation traditions in interpreting this principle in the NMAS standards.

Self-determination is indubitably a foundational guiding principle of the modern mediation movement. The emphasis on party autonomy—and conversely the lack of mediator input on the content of the mediation—has permeated many a mediation model, including the facilitative and transformative models. According to this philosophy of party empowerment and exercise of autonomy, the parties delimit their own agenda and fashion their agreements (Douglas, 2012). Welsh (2000) elaborated that this principle results in the parties being at the center of the mediation process, actively participating in the negotiation, choosing the norms to guide them in decision-making, creating options, and deciding whether or not to settle. The relevance of self-determination in all mediation processes is undisputed. It is, after all, a feature that distinguishes mediation from adjudicatory processes. Nevertheless, the thornier questions relate to the degree of prominence of self-determination within different mediation traditions.

5.1 | Australia NMAS mediation standards

The NMAS practice standards stress the pre-eminence of self-determination, stating at the outset that mediation "promotes the self-determination of participants" and the mediator supports the parties in engaging in negotiation, communication, identifying and clarifying interests, considering alternatives, generating options and reaching their own decisions (section 2.2, NMAS

TABLE 1 A Comparison of the NMAS Practice Standards and SIMI Code of Professional Conduct

	NMAS practice standards	SIMI code of conduct
Key features of mediation	Promotes self-determination; mediator supports parties	Third-party neutral assists parties in a dialogue oriented toward managing conflict or resolving a dispute
The mediation process		
Pre-mediation	Recommends areas to be covered in intake process	Mediator to ensure parties understand process, roles, and consent to specific process
Mediation process	Refers to ordinary inclusion of joint session, and possibility of separate sessions	No reference to recommended joint sessions or private session
Termination	Terminate mediation if mediation not productive or suitable (e.g., misuse of process, no good faith, safety at risk)	Terminate mediation if mediation likely to assume unconscionable or illegal character, or result in settlement infringing public policy
Charging for services and promotion of services	Agreement to be obtained on fee arrangements; fee structure cannot be based on mediation outcome	Agreement to be obtained on fee arrangements; fee structure cannot be based on mediation outcome
Ethical principles		
Impartiality and no conflict of interests	Impartiality and procedural fairness • Duty to disclose potential grounds of bias of conflict of interest before and during process; • Mediator must not mediate case involving conflict without informed consent and only if conflict will not impair impartial conduct	Impartiality, neutrality and independence • Must disclose information that will materially affect the above principles or place mediator in conflict with any parties, before and throughout process • Must treat all parties with fairness, equality and respect • Give equal opportunity to parties for private sessions; to raise issues and be heard, and to seek legal advice
Confidentiality	• General duty to respect confidentiality arrangements, subject to exceptions • Obliged to informed participants of confidentiality before holding separate sessions • Mediator not required to retain documents relating to mediation, but should take care in storage and disposal of records	General duty to respect confidentiality arrangements, subject to exceptions
Self-determination/ voluntariness	• Mediation promotes the self-determination of parties • Mediator does not evaluate or advise on merits of the dispute	Mediator will ensure that in the event the parties arrive at an agreement or settlement, that this is done voluntarily and with the consent of all parties

TABLE 1 (Continued)

	NMAS practice standards	SIMI code of conduct
	• Mediator must support participants to reach agreements freely, voluntarily, without undue influence and on the basis of informed consent	
Power and safety	• Mediator must be alert to changing balances of power and manage mediation accordingly • Must consider safety and comfort of participants and take recommended steps	• No reference to power imbalances • Mediator will take reasonable steps to prevent any conduct that may invalidate an agreement, or create or aggravate a hostile environment at the mediation

Standards). This description strikingly mirrors Welsh's depiction of the participants being at the center of the mediation process. Douglas (2017) noted that the decision to highlight this principle in the 2015 practice standards as an ethical standard confirms the understanding of self-determination as the defining feature of mediation.

Self-determination appears to be closely connected with the concept of voluntariness in arriving at a final decision in the mediation, without being pressurized by the mediator. Wolski (2017, p 64) suggests that the definition of self-determination is found in section 7.4 which obliges mediator to "support participants to reach agreements *freely*, *voluntarily*, *without undue influence* and on the basis of informed consent" (emphasis added). Wolski (2017, p 71) also notes how the current standards closely resemble the definition of self-determination in US Model Standards of Conduct for Mediators as "the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome". Similarly, Noone and Ojelabi (2014) observe that a clear links exists between self-determination and voluntariness; the terms of agreement are not to be imposed on the participants in order for the mediation to conform to the spirit of self-determination.

The NMAS standards have commented on the mediator practice of giving advice in light of the above principle of self-determination. Such advice is allowed in a blended process when the participants have consented to the use of such a process, and the advice "is provided in a manner that maintains and respects the principle of self-determination" (section 10.2). It is noteworthy that the 2012 standards stressed that the primary responsibility to resolve the dispute rests with the participants, and that the mediator should therefore not pressure them into an agreement or make a substantive decision on behalf of any participant (section 9.8). Hence, there is a palpable emphasis on subjecting the mediator's advice or any other evaluative techniques to the views of the participants; their actions should not be perceived as applying undue pressure on them such that their freedom to decide is diminished. The repeated references to consent and self-determination within the standards indicate an unequivocal emphasis on the parties, rather than the mediator, as the center of the process. In this connection, Field has proposed an ethical paradigm that centralizes self-determination as the aim of mediation practice. She proposed analyzing the mediator's situational interventions through the lenses of whether self-determination is supported, and subject to the overriding principle that mediators do not impose decisions (Field, 2011).

Turning then to examine the alleged expression of opinions by the mediator, it is highly likely that the mediator's actions will be evaluated holistically under the Australian standards, taking into account the overall context and the cumulative impact of the mediator's suggestions on the participants. Because the standards expressly subordinate the mediator's interventions to the overarching principle of self-determination, the participants' assessment on whether they felt unduly pressured will probably be given considerable weight.

5.2 | Singapore's mediation standards

Nevertheless, the same approach may not necessarily be adopted once the frame shifts from the Australian to the Singaporean mediation tradition. The principle of self-determination is not explicitly mentioned in the SIMI code. Section 5.8 does allude to the principle by stating that the mediator will ensure that the agreement is arrived at "voluntarily and with the consent of all parties". This appears to resemble section 7.4 of the NMAS standards that also refers to the idea of participants arriving at a voluntarily settlement with informed consent. Nonetheless, there is no equivalent elevation of the principle of self-determination in other parts of the SIMI code. The introductory portion highlights the importance of trust in the mediator's integrity "in terms of competence, diligence, neutrality, independence, impartiality, fairness and the ability to respect confidences". There is a conspicuous absence of the principles of self-determination, voluntariness or consent. Hence, unlike the NMAS standards, the pre-eminence of self-determination within mediation is not clearly established.

Despite the equivocal emphasis on self-determination as the defining feature of mediation, the SIMI code does ascribe significant weight to this principle when describing the use of evaluative practices. Although the code allows mediators to "draw on their expertise and experience to assist the parties in developing sustainable settlements", the principle of party autonomy takes precedence (paragraph 5.10). The parties must consent to this approach and the mediator is warned against "prescribing solutions or offering any statement, suggestion, or value judgment which may create an undue influence on any one party towards accepting a specific outcome". It therefore appears that the SIMI code adopts the same approach as the NMAS standards in subordinating the practices of blended processes to the principle of self-determination.

Be that as it may, it is highly unlikely that the parties' subjective assessments concerning the lack of voluntariness will be given the same weight under the SIMI code as the NMAS standards. Although the text of the SIMI code gives precedence to the concept of party autonomy, it is crucial to note how self-determination has been understood within the Singapore mediation tradition. While the mediation movement started in Singapore in the courts and in the community with the call to embrace a less confrontational way of resolving disputes, it is noteworthy that the overriding emphasis was more on preserving harmony than on maximizing party autonomy. The former Chief Justice Yong Pung How, when introducing court-connected mediation, stressed that Singapore was developing mediation as a non-confrontational way of resolving disputes to preserve relationships. He suggested that preserving relationships was an important value in an Asian society like Singapore. CJ Yong saw the promotion of mediation as a means to revive the historical ways of dealing with conflicts by relying on community elders and clans (Yong, 1996, 1997). Similarly, community mediation centres were established because of the observation of the general reluctance of Singaporeans to litigate. Community Mediation Centres were set up to foster social cohesion and revive the traditional approach of resolving

disputes through informal channels in decentralized systems. The same sentiments were expressed before the creation of the Singapore Mediation Centre, a commercial organization providing paid mediation services. This development found its genesis in a call by former Attorney General Chan Sek Keong to resolve disputes amicably because litigation, being a zero-sum game with some degree of animosity, frequently affected harmonious relationships (Chan, 1996). Undoubtedly, the origins of the mediation movement in Singapore were premised more on consensus and amicable resolution of conflicts than the exercise of self-determination.

The initial sentiments of reviving indigenous forms of justice subsequently culminated in concrete efforts to develop a mediation model that was more attuned to Asian culture. In 2002, CJ Yong commented that it was ironic that "we had to relearn mediation from the West". He stated that the facilitative model of mediation that was transplanted into Singapore might benefit from an infusion of Asian perspectives, including considerations of "face" and the expectation that the mediator provided input and guidance on substantive matters (Yong, 2002). Following these comments, the Singapore Mediation Centre convened a working group to study how an Asian model of mediation could be developed. Their efforts culminated in the publication of an influential book, *An Asian Perspective on Mediation*, which offered a methodology of contextualizing the interest-based and facilitative mediation model to suit more Asian-oriented assumptions. The authors Teh and Lee suggested that many Asian societies tend to place great importance on hierarchical relationships and more weight on the collective rather than the individual interests, as evidenced by the high power-distance index and the low individualism–collectivism score in Geert Hofstede's Cultural Dimensions (Lee & Teh, 2009). Many of the cultural assumptions underlying the facilitative mediation model are therefore incompatible with Asian preferences. Notably, general expectations about individual autonomy stand in stark contrast with the primacy of social hierarchy in some Asian societies. Because of these tensions, they suggested that a more Asian-oriented approach requires the mediator, and not the parties, to be at the heart of the mediation. The primacy of social hierarchy in some Asian societies may lead to parties to expect guidance from the mediator in the form of giving input and expressing opinions. The disputing parties, who may not be accustomed to being the sole locus of decision-making, may be frustrated when prompted by the mediator to make their own decisions (Lee & Teh, 2009, pp. 12–13).

The above discourse within the Singapore mediation community strongly suggests that self-determination may not be as prominent a concept for mediations within Singapore in comparison to Australia. These views appear slightly incongruous with the SIMI code's exhortation to give deference to the principle of self-determination and avoid undue influence. The Asian approach, which puts the mediator at the heart of the mediation, is premised on the assumption that the parties do not value self-determination as highly as their western counterparts. Can the mediator who utilizes a more evaluative approach assume that the parties have consented to this approach, or does he or she have to specifically obtain the parties' consent? The SIMI code seems to suggest that consent must be expressly obtained. Furthermore, even if the parties gave their consent to this approach, is there still the possibility that the mediator's directive and evaluative interventions will be deemed to have undermined the participants' voluntariness in arriving at a settlement? There are evidently difficulties in interpreting the SIMI code consistently with the "Asian" approach. The prominent motif of an Asian approach within the Singapore mediation tradition strongly suggests that self-determination may not be given as much weight under the SIMI code compared to the NMAS standards.

We return now to the hypothetical scenario of a mediation conducted in Singapore by a mediator certified under the NMAS scheme, involving participants from Australia and

Singapore. The Singapore courts will have to determine under the Singapore Convention whether there was a serious breach of mediation standards. However, it may readily use its default "Singapore mediation tradition" frame to interpret the Australian standards and consequently fail to give due weight to the pre-eminence of self-determination within Australia. It is plausible that the mediator's evaluations or suggestions may be less readily deemed by the Singapore courts as infringing the parties' right of self-determination. The adoption of the "default mediation tradition" frame will therefore lead to immense difficulties in applying external mediation standards accurately with awareness of the relevant state's mediation traditions.

6 | THE CRITICAL IMPORTANCE OF BRIDGING FRAMES FOR THE POST-SINGAPORE CONVENTION WORLD

Given the integral role that will be played by mediation standards in the post-convention world, it is crucial to facilitate accurate understanding of the existing mediation standards across different states. The mediation communities have to devise ways to bridge frames to assist courts to situate their interpretation of mediation standards in the relevant context. A failure to do so potentially leads to the courts' misinterpretation of well-established mediation standards, and the mediation community falling into disrepute based on inaccurate application of mediation standards.

The current forms of mediation standards suffer from several limitations that render it exceedingly challenging for courts to bridge frames and contexts. Unlike the situation when evidence of foreign law can be given in court, there is sparse evidence of how mediation standards have been interpreted. Additionally, there is generally a lack of guiding notes on mediation standards, such as *travaux preparatoires*, to guide the court in interpreting the standards. The lack of detailed elaboration on mediation standards will exacerbate the difficulty enforcing states may face in applying the grounds of non-enforcement in the Singapore Convention.

To facilitate greater understanding of how different mediation standards are to be properly interpreted, it will be beneficial for mediation codes of conduct to be accompanied by detailed explanatory notes or commentaries. For example, the reporter notes accompanying the 2005 US Model Code of Conduct for Mediators contain substantial information on the background prompting the amendment of the code and the rationale underlying the modification of each principle (American Bar Association, 2005). The notes also outline the public feedback given on the earlier version and explain how the amended code has addressed these concerns. Another case in point is a commentary to the Australian National Mediation Standards. This official commentary also summarized the feedback given on the draft standards, and provided explanations on each of the finalized standards (Sourdin, 2007). There are existing domestic and international mediation bodies that will have the capability to provide similar explanatory notes to their mediation standards. It will be in the interest of each mediation organization or state to provide commentaries on their respective codes of conduct to ensure that their standards are properly interpreted by other states.

Apart from providing commentaries, mediation organizations could also draft their standards in a more detailed manner. A bare reference to concepts such as neutrality and confidentiality, without the provision of specific illustrations showing when these concepts are breached, is hardly beneficial to the mediator, much less the courts that are interpreting the standards when applying the Singapore Convention. The Australian Mediation Standards provide an apt illustration of providing ample details. It has elaborated on the types of mediation

behavior that promote the parties' exercise of self-determination, and how blended processes may be properly conducted. Likewise, the CEDR Code of Conduct, read in conjunction with the Model Mediation Procedure, highlights the primary mediation ethical standards and also shows how the recommended best practices further these standards. Another example is the specific illustrations in the European Code of Conduct on the types of information impinging on impartiality that the mediator should disclose to the parties.

In addition, it will be prudent for parties who wish to rely on the Singapore Convention to specify which set of mediation standards apply to their cross-border mediation. It is common for professional mediators to be accredited under multiple accreditation systems and mediation organizations across different countries. Several mediation codes of conduct would then concurrently apply to the mediation, resulting in ambiguity concerning the "applicable" set of mediation standards to be used under article 5(1)(e). It will therefore be good practice for parties to stipulate prior to the mediation the specific set of mediation standards that apply.

As the Singapore Convention enlarges the role played by mediation standards, it is crucial to acknowledge that mediation standards will no longer remain as soft forms of regulation. They now have the additional function of impacting the enforceability of the mediated settlement agreement. The elevation of their status necessitates the refinement of mediation standards to resemble legal rules in degree of clarity. Granted that ethical codes may never be drafted with the same exactitude as legislation, there are many ways to facilitate the understanding of the general principles articulated. It is hoped that external commentaries and notes on existing mediation standards will be more common in the future. These resources will be helpful in elucidating how mediation concepts may be interpreted differently across diverse frames, and facilitate the building of jurisprudence across different states on the application of the Singapore Convention. They will help prevent courts from adopting the wrong frame when construing external mediation standards and consequently further the underlying goals of many mediation organizations in promulgating standards. Apart from helping to bridge frames, these measures could also provide a much-needed catalyst to harmonize mediation standards across jurisdictions and institutions and gain a deeper understanding of inherent differences. The signing of the Singapore Convention has marked a significant milestone in the development of cross-border mediation. Its effectiveness has to be ensured in the future through cross-border understanding and elucidation of mediation standards.

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REFERENCES

American Bar Association. (2005). *Reporters' notes on the US model standards of conduct for mediators*, New York, NY: American Arbitration Association. Retrieved from https://www.americanbar.org/content/dam/aba/administrative/dispute_resolution/dispute_resolution/mscm_reporternotes.pdf

Astor, H., & Chinkin, C. (1991). Mediation training and ethics. *Australian Dispute Resolution Journal*, *2*(3), 205–223.

Australia National Mediation Accreditation Standards. (2015). Practice standards (July 1, 2015). Retrieved from https://msb.org.au/themes/msb/assets/documents/practice-standards.pdf.

Boulle. (2014). International enforceability of mediated settlement agreements: Developing the conceptual framework. *Contemporary Asia Arbitration Journal*, *7*, 35–68 52, 58.

Boulle, L., & Field, R. (2017). *Australian dispute resolution and practice*. Chatswood, Australia: LexisNexis.

CCPIT/CCOIC Mediation Center. (n.d.) *Mediation rules, article 21*. China: China Council for Promotion of International Trade. Retrieved from https://adr.ccpit.org

Centre for Effective Dispute Resolution. (2019). *Code of conduct for third party neutrals; model mediation procedure*. London, UK: Centre for Effective Dispute Resolution. Retrieved from https://www.cedr.com/commercial/resources/

Chan, S. K. (1996). Speech at opening of legal year 1996. Retrieved from https://www.agc.gov.sg/docs/default-source/speeches/2010-1992/speech-1996.pdf.

Cooks, L. M., & Hale, C. L. (1994). The construction of ethics in mediation. *Mediation Quarterly*, *12*(1), 55–76 72. They drew guidance from Habermas, *Moral Consciousness and Communicative Action* (MIT Press, 1983), who suggested that sense making and moral interpretation take place in light of the context and socializing processes of everyday life.

Crowe, J. (2015). Ethics and the mediation community. *Australasian Dispute Resolution Journal*, *22*, 20–25.

Crowe, J. (2017a). Two models of mediation ethics. *Sydney Law Review*, *39*, 147–165 149–152.

Crowe, J. (2017b). Mediation ethics and professionalisation. *Bond Law Review*, *29*(1), 5–14 7.

Douglas, S. (2012). Neutrality, self-determination, fairness and differing models of mediation. *James Cook University Law Review*, *19*, 19–40 22–23, (describing how mediation practice has largely focused on fisher and Ury's mode of interest-based and integrative bargaining).

Douglas, S. (2017). Ethics in mediation: Centralising relationships of trust. *Law in Context*, *35*(1), 44–63 55.

Field, R. (2011). Rethinking mediation ethics: A contextual method to support party self-determination. *Australasian Dispute Resolution Journal*, *22*(1), 8–15 9.

Field, R. (2017). Proposing a system of contextual ethics for mediation for a range of mediation models and in both ad hoc and institutional environments. *Contemporary Asia Arbitration Journal*, *10*(2), 293–319 306.

Genn, H. (2012). What is civil justice for? Reform, ADR, and access to justice. *Yale Journal of Law and the Humanities*, *24*, 397–418.

Grebe, S. C., Irvin, K., & Lang, M. (1989). A model for ethical decision making in mediation. *Mediation Quarterly*, *7*(2), 133–148, 146.

Honoroff, B., & Opotow, S. (2007). Mediation ethics: A grounded approach. *Negotiation Journal*, *23*(2), 155–172, 157.

Hyman, J. (2005). Swimming in the deep end: Dealing with justice in mediation. *Cardozo Journal of Conflict Resolution*, *6*, 19–56 39–40 (stating that "mediators should take the parties' interests as they find them, including interests in fairness and justice.".

JAMS Mediation, Arbitration, ADR Services. (n.d.). Mediation ethics guidelines. Retrieved from https://www.jamsadr.com/mediators-ethics/.

Law, S. F. (2011). The construct of neutrality and impartiality in Chinese mediation. *Australasian Dispute Resolution Journal*, *22*, 118–124 121.

Lee, J., & Lim, M. (2017). Singapore international mediation institute. In D. McFadden & G./. Lim (Eds.), *Mediation in Singapore: A practical guide (paragraphs 11.048–11.052)*. Singapore: Thomson Reuters.

Lee, J., & Teh, H. H. (2009). *An Asian perspective on mediation*. Singapore: Academy Publishing.

Macfarlane, J. (2002). Mediating ethically: The limits of codes of conduct and the potential of a reflective practice model. *Osgood Hall Law Journal*, *40*(49–87), 55.

Menkel-Meadow, C. (1995). Whose dispute is it anyway?: A philosophical and democratic defense of settlement (in some cases). *Georgetown Law Journal*, *83*(2663–2696), 2672.

Noone, M. A., & Ojelabi, L. A. (2014). Ethical challenges for mediators around the globe: An Australian perspective. *Washington University Journal of Law and Policy*, *45*, 145–193 168.

Schnabel, T. (2019). The Singapore convention on mediation: A framework for the cross-border recognition and enforcement of mediated settlements. *Pepperdine Dispute Resolution Law Journal*, *19*(1), 1–60 17.

Singapore International Mediation Institute. (2017). Code of professional conduct. Retrieved from https://www.simi.org.sg/What-We-Offer/Mediators/Code-of-Professional-Conduct.

Singapore Rules of Court. n.d.. (Chapter 322, Section 80). Order 110 Rule 25 (The Court may, on the application of a party, order that any question of foreign law be determined on the basis of submissions (which may be oral or written or both) instead of proof).

Sourdin, T. (2007). *Australia National Mediator Standards: Commentary on approval standards*. Retrieved from https://bond.edu.au/files/15/Commentary.

Spencer, D., & Brogan, M. (2006a). *Mediation law and practice*. New York, NY: Cambridge University Press p. 219, 220.

Spencer, D., & Brogan, M. (2006b). *Mediation law and practice* (p. 215). New York, NY: Cambridge University Press.

Strong, S. I. (2016). Realizing rationality: An empirical assessment of international commercial mediation. *Washington and Lee Law Review*, *73*(1973–2085), 2055.

Tham, Y. C. (2019). Five more countries sign UN treaty on mediation. *The Straits Times* (November 21, 2019). Retrieved from https://www.straitstimes.com/politics/five-more-countries-sign-un-treaty-on-mediation.

UNCITRAL. (2015a). Report of Working Group II (Arbitration and Conciliation) on the work of its sixty-second session (New York, 2–6 February 2015). UN Doc A/CN.9/832 (February 11, 2015), 5 (stating that a convention would encourage parties to consider investing resources in conciliation, by providing greater certainty that any resulting settlement agreements could be relied on and easily enforced, and that the preparation of a convention would itself encourage the use of conciliation).

UNCITRAL. (2015b). Report of Working Group II (Arbitration and Conciliation) on the work of its sixty-third session (Vienna, 7–11 September 2015). UN Doc A/CN.9/861, (September 17, 2015), 17.

UNCITRAL. (2016). Report of Working Group II (Arbitration and Conciliation) on the work of its sixty-fourth session (New York, 1–5 February 2016). UN Doc A/CN.9/867 (February 10, 2016), 27–28.

UNCITRAL. (2018b). Model law on international commercial mediation and international settlement agreements resulting from mediation.

United Nations Commission on International Trade Law. (2020). Rwanda Signs the United Nations "Singapore Convention on Mediation. Retrieved from https://uncitral.un.org/en/30012020.

United Nations Treaty Collection. (2020). United Nations Convention on International Settlement Agreements Resulting from Mediation. Retrieved from https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXII-4&chapter=22&clang=_en.

Waldman, E. (2011). *Mediation ethics: Cases and commentaries* (pp. 7–9). San Francisco, CA: Jossey-Bass.

Welsh, N. (2000). The thinning vision of self-determination in court-connected mediation: The inevitable Price of institutionalization? *Harvard Negotiation Law Review*, *6*(1–96), 8.

Wolski, B. (2017). An ethical evaluation process for mediators: A preliminary exploration of factors which impact ethical decision making. *Law in Context*, *35*(1), 64–83 71.

Yong, P. H. (1996). Speech at the opening of the legal year 1996. In H. S. Peng (Ed.), *(1996) Speeches and Judgments of Chief Justice Yong Pung How*. Singapore: FT Law & Tax Asia Pacific.

Yong, P. H. (1997). Speech at the official opening of the Singapore Mediation Centre (August 16, 1997). In H. S. Peng (Ed.), *(1996) Speeches and Judgments of Chief Justice Yong Pung How*. Singapore: FT Law & Tax Asia Pacific.

Yong, P. H. (2002). Speech at the launch of DisputeManager.com at the international mediation conference (July 31, 2002). Retrieved from https://www.supremecourt.gov.sg/news/speeches/launch-of-disputemanagercom-speech-by-the-honourable-the-chief-justice-yong-pung-how.

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