



## Mediating Legal Disputes: Implementing The Singapore Convention in The Middle East and Central Asia

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### Abstract

The signing of the Singapore Convention in 2019 represents a significant international development in the resolution of disputes. For the first time, businesses will benefit from legal certainty surrounding the enforcement of mediation agreements. Such agreements now have the potential to propel in importance alongside arbitration agreements which have typically been the mainstay for commercial dispute settlements. Countries in the Middle East have been among those at the forefront of the ratification process in 2020, cementing their pivotal role in this development. This article argues that countries in Central Asia and the Middle East ought to take the lead in signing the Convention and ratifying it. It is also proposed that there should be a common and robust legislative framework in the countries analysed. By signing the Convention and creating the necessary legal structures for successful implementation, businesses can derive greater legal certainty in the region to the benefit of regional trade.

**Keywords:** Mediation, ADR, Disputes, Law, Middle East, Central Asia

**JEL Codes:** K1, K10, K12, K15, K2, K4

### 1. INTRODUCTION

This article explores new ground by examining the development of mediation in both the Middle East and Central Asia. It closes a gap in the literature that has not afforded due attention to these regions which have substantial geographic and economic importance. In the Middle East, particular focus will be given to countries that have ratified the Singapore Convention, alongside those where alternative dispute resolution (ADR) infrastructures and networks have expanded rapidly. The Central Asian countries of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan have also seen an expanding capacity for ADR.<sup>1</sup>

<sup>1</sup> The analysis of Central Asian countries in this article is limited by space. Future research ought to analyse other countries in the region such as those of the Eurasian Customs Union. This article refers to primary case law provisions where possible. However, where English language versions of laws are not available, it refers to secondary sources which have translated or disseminated the information contained from those laws in English. Care was taken to ensure that the secondary sources relied upon were either legal updates by lawyers

The potential for mediation is significant. Disputes are an inevitable risk in business agreements, but adjudication and arbitration create a risk of animosity between the parties which can harm future relations between the parties – not to mention significant legal costs. Mediation sidesteps these risks by offering a low-cost option for resolving disputes with a single mediator at a venue chosen by the parties. It is confidential, designed to preserve business relationships and produces quick outcomes. It is argued that other countries in the Middle East and Central Asia ought to follow the lead of those which have invested significantly in mediation, by developing their infrastructure both practically and legally. Once in place, those countries can ratify the Singapore Convention to provide greater certainty for commercial entities engaging in regional trade where disputes arise.

To examine these issues, this article is structured in four parts. First, it analyses the Singapore Convention and its ramifications for alternative dispute resolution (ADR). Second, it identifies which countries in the region have ratified the Convention and how they achieved such ratification. Third, there is an evaluation of the mediation infrastructure of countries in the Middle East which have yet to join the Convention. Fourth, there is a parallel evaluation of countries in Central Asia. Those countries are categorised between those which are more likely to be able to join the Convention in the near future (based on their existing infrastructure) versus those which are unlikely to be able to join in the near future. From that evaluation, the next steps are highlighted for those countries seeking to incorporate mediation into their ADR infrastructure.

## 2. CODIFYING MEDIATION

The United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention), was adopted on 20 December 2018 and signed on 7 August 2019 in Singapore.<sup>2</sup> The purpose of the Convention is for the cross-border recognition of mediation settlement agreements. As of November 2020, the Convention has been entered into force in six countries and signed by fifty-three countries. Of relevance to this article, Kazakhstan, Qatar, Saudi Arabia, Jordan and Israel have signed the Convention. Although, it has only been entered into force in Qatar and Saudi Arabia.

It will take a number of years for all countries to ratify the Singapore Convention and enter it into force domestically. It is also likely that additional countries will sign up to the Convention as it grows in prevalence. Indeed, it would be unsurprising if major economies such as the United Kingdom or countries in the European Union join in the future because the ramifications of mediation for commercial entities will increase. Entities entering into contracts, may be influenced by the opportunity to resolve disputes arising from complex cross-border contractual arrangements. It is, therefore, critical for countries in Central Asia and the Middle East who have yet to join, to consider the potential benefits.

The Convention applies to agreements involving two or more parties with their place of business in different states.<sup>3</sup> In so doing, it is intended to formalise the mediation process which may precede arbitration or litigation proceedings. Courts have long required that parties attempt mediation first before matters progress to the courtroom. It is a requirement in

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practising in those countries or international organisations involved in mediation developments in those countries that have reported developments on mediation. Further, this article covers countries where English language academic articles on the topic are yet to be written. Therefore, it is intended for this article to provide a foundation for future research concerning mediation in the countries analysed.

<sup>2</sup> Resolution Adopted by the General Assembly on 20 December 2018 [on the report of the Sixth committee (A/73/496) 73/198.

<sup>3</sup> Article 1(1) (a) Singapore Convention.

the civil procedure codes of some countries that mediation must be attempted before litigation. Parties that are unwilling to participate in good faith, may be penalised at the compensation stage later in the litigation process. As such, parties cannot rely on the Convention for the enforcement of agreements approved by a court or which are enforceable as an arbitral award.<sup>4</sup>

Prior to the Convention, a significant barrier for encouraging the use of mediation was the enforcement of settlement agreements. Mediation has long been unregulated, and parties have lacked any overarching mechanism to enforce their agreements across borders. The risk from a commercial perspective is for a commercial entity to waste time mediating, in good faith, on a dispute and signing an agreement which another party does not honour. Attaining recourse in such circumstances has proved difficult. This is in contrast to arbitration which has offered a concrete means of enforcement through the New York Convention. As countries begin to ratify the Convention and as it begins to spread, mediation will become a viable process for settlement agreements which have the necessary institutional powers of enforcement where parties renege.

To rely on a settlement agreement under the Convention, a party must present a settlement agreement signed by the parties and produce evidence that the agreement arose from mediation. This requirement can simply be satisfied by the mediator's signature on the agreement, a document signed by the mediator stating that mediation was undertaken, an attestation by the institution that administered the mediation or any other evidence acceptable to the competent authority.<sup>5</sup> Electronic communications are admissible for the purposes of these requirements.<sup>6</sup>

While translations are permitted, the official languages automatically permissible for submission are Arabic, Chinese, English, French, Russian and Spanish. This is a minor consideration for parties, but it is worth noting that the pathway to recognition will be easier where an official language under the Convention is used for mediation. Although, of course, the greatest concern for parties will be ensuring that the mediation should be conducted in a language that will be conducive to a fair and fully informed process.<sup>7</sup>

The relevant competent authority may refuse to grant relief where evidence is furnished demonstrating that a party was under some incapacity, where the agreement is inoperable or incapable of being performed under the law, is not binding, has been subsequently modified, where the obligations have been performed or are not comprehensible, where granting relief would be contrary to the terms of the settlement, where there was a serious breach of the mediation process which means the party would not have entered into the agreement, where a mediator did not declare relevant matters regarding their impartiality or independence, or where granting the relief would be contrary to public policy.<sup>8</sup>

The aspiration of all countries in the Middle East and Central Asia should be to eventually join and ratify this Convention. It provides a foundation for enforcing cross-border disputes which can give commercial certainty to the entities involved. At the same time, other laborious and costly dispute resolution mechanisms (such as the courts or arbitration) can be avoided. It is important to note that countries in the region do recognise this opportunity and have sought to be among the first to join the Convention.

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<sup>4</sup> Article 1(3) Singapore Convention.

<sup>5</sup> Article 4 (1), Singapore Convention.

<sup>6</sup> Article 4 (2), Singapore Convention.

<sup>7</sup> Articles 4 (3) and 16, Singapore Convention.

<sup>8</sup> Article 5, Singapore Convention.

### 3. COUNTRIES THAT HAVE SIGNED THE CONVENTION

So far, two countries subject to analysis in this paper have ratified and enforced the Convention; Qatar and Saudi Arabia. Several others in the region have signed it but are yet to ratify it.

Qatar has played a key role in bringing the Singapore Convention into force. It became the third country to ratify the Convention (following Singapore and Fiji). This ratification was essential owing to the requirement that three countries ratify the Convention for it to come into force. As such, Qatar was one of the key enablers of mediation being a more viable means of resolving disputes. The Minister of Justice noted that the country's efforts were intended to keep pace with rapid developments in international trade while reducing the burden on courts and providing prompt justice.<sup>9</sup> Another facet to this approach has been the efforts of the Qatar International Center for Conciliation and Arbitration (QICCA) to encourage parties to resolve disputes through mediation.<sup>10</sup>

It has been noted that these moves will encourage the use of mediation clauses in contracts owing to the certainty that will arise by virtue of the Convention.<sup>11</sup> Mediation also offers a cheaper and quicker alternative to arbitration and litigation which will likely influence business dispute decisions domestically in the country.<sup>12</sup> The hope from Qatar's perspective is to encourage mediation in the Arab World.<sup>13</sup> As noted by Abuwasel, parties in Qatar now have the opportunity to enforce settlements arising out of mediations in the same manner as they would be able to enforce an arbitral award.<sup>14</sup> The significance of this crosses borders because parties will be able to enforce agreements in any state that is a signatory to the Convention. It has also been noted how the Convention can be used as a defence by parties to challenge the jurisdiction of a court where a matter has been resolved by mediation under the Convention in the respective state.<sup>15</sup>

These efforts by Qatar align with its focus on encouraging international investment and trade. The Qatar Financial Centre (QFC) is an onshore business and financial centre with a business community valued at over \$20 billion operating with internationally recognised legal standards deriving from common law systems.<sup>16</sup> Overseeing disputes of entities within the QFC is the Qatar International Court and Dispute Resolution Center (QICDRC).<sup>17</sup> The QICDRC is tasked with hearing appeals from the QFC Authority, QFC Regulatory Authority

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<sup>9</sup> Qatar Hails Singapore Convention on Mediation Entering into Force' *Gulf Times* (13 September 2020) available at <<https://m.gulf-times.com/story/672767/Qatar-hails-Singapore-Convention-on-Mediation-entering-into-force>> last accessed 15 October 2020.

<sup>10</sup> 'Sheikh Khalifa: Qatar is at the Forefront of Signatories of Singapore Convention on Mediation' *Gulf Times* (16 September 2020) available at <<https://m.gulf-times.com/story/673029/Sheikh-Khalifa-Qatar-is-at-the-forefront-of-signatories-of-Singapore-Convention-on-Mediation>> lased accessed 15 Oct 2020.

<sup>11</sup> Pamela McDonald, 'Qatar Sparks Singapore Mediation Convention Countdown' *Pinsent Masons* (29 Apr 2020) available at <https://www.pinsentmasons.com/out-law/analysis/qatar-singapore-mediation-convention-countdown> last accessed 14 Oct 2020.

<sup>12</sup> Id.

<sup>13</sup> Sheikh Khalifa (n 11)

<sup>14</sup> Mahmoud Abuwasel, 'Qatar of First Signatories to the Singapore Convention on Mediation' *Lexology* (4 September 2019) available at <<https://www.lexology.com/library/detail.aspx?g=74858f7d-0915-4936-b12c-d5450b7cc6fe>> accessed on 15 Oct 2020.

<sup>15</sup> Id.

<sup>16</sup> 'about the QFC' *QFC* (2020) available at <<https://www.qfc.qa/en/about/qfc>> last accessed 15 October 2020

<sup>17</sup> Established by QFC Law No.2 of 2009 (Qatar).

and other institutions in the QFC.<sup>18</sup> Significantly, the QICDRC is giving greater attention to mediation which will undoubtedly increase further owing to Qatar signing the Singapore Convention. The Court has specific Mediation Rules published in March 2020. A mediation can be initiated by the Court or Regulatory Tribunal with agreement of the parties, by a contractual provision or at the voluntary request of one or more of the parties.<sup>19</sup> The parties are able to select from a panel of recommended mediators and have the mediation conducted within the facilities provided by the QICDRC. In this manner, mediation is garnering greater prominence. Settlement agreements arising from this process will now benefit from the added protections given by the Singapore Convention.

Following Qatar, the next country to ratify the Singapore Convention was Saudi Arabia. Part of this eagerness is related to Saudi Arabia's ambition of becoming an investment centre as it seeks to open up its economy.<sup>20</sup> This builds on the country's efforts on mediation through the Saudi Center for Commercial Arbitration (SCCA). Prior to the Convention, the SCCA had implemented the International Center for Dispute Resolution rules on mediation under the American Arbitration Association (ICDR-AAA).<sup>21</sup> The Arbitration and Mediation rules of the SCCA encourage parties to first attempt settling a dispute by mediation.<sup>22</sup> Following ratification of the Convention, it will be easier to enforce those agreements.

Other countries in the Middle East have also signed the convention (although, they are yet to ratify it). The countries are Iran, Israel, Jordan and Turkey. It is worth beginning with Jordan owing to their long legislative history on mediation stretching back to 2006. The Mediation in Resolving Civil Dispute Act 2006 (MRCDA) was designed to bring some formality to the mediation process.<sup>23</sup> In practice, the Court's Registrar recommends parties to refer their disputes to the Mediation Management Centre. The Centre falls under the rubric of the Court of First Instance. Mediation 'judges' sit on the Centre from both the Court of First Instance and the Magistrate Court.<sup>24</sup> Parties may appoint their own mediators arising outside the judiciary but this option requires approval from a judge.<sup>25</sup> Private appointments, however, lack the same enforcement powers as under the court-based mediation.<sup>26</sup> Where parties reach a settlement through mediation, the mediator submits that agreement to a Case Management Judge or to a Magistrate Judge. The agreement is considered final.<sup>27</sup>

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<sup>18</sup> 'History – The Origins of the Court' QFC (2020) available at < <https://www.qicdrc.gov.qa/history-origins-court> > last accessed 15 Oct 2020.

<sup>19</sup> Article 3, Mediation Rules, QICDRC (Version 1, March 2020) available at <[https://www.qicdrc.gov.qa/sites/default/files/s3/wysiwyg/mediation\\_booklet\\_english.pdf](https://www.qicdrc.gov.qa/sites/default/files/s3/wysiwyg/mediation_booklet_english.pdf)> accessed 15 October 2020.

<sup>20</sup> Seema Bono, 'Saudi Arabia is Fourth Country to Ratify Singapore Mediation Convention' *Pinsent Masons* (4 June 2020) available at <https://www.pinsentmasons.com/out-law/news/saudi-arabia-ratify-singapore-mediation-convention> last accessed 15 October 2020.

<sup>21</sup> 'Mediation Rules' *Saudi Center for Commercial Arbitration*, available at <https://sadr.org/ADRService-mediation-mediation-rules?lang=en> last accessed 16 October 2020.

<sup>22</sup> 'Arbitration Rules, Mediation Rules' SCCA (October 2018) 76 available at <[https://sadr.org/assets/uploads/download\\_file/Arbitration\\_Rules\\_2018\\_-\\_English.pdf](https://sadr.org/assets/uploads/download_file/Arbitration_Rules_2018_-_English.pdf)> last accessed 16 October 2020..

<sup>23</sup> Alaa Al Bataineh, 'Mediation in Jordan' *Al Tamimi & Co* (November 2012) available at <<https://www.tamimi.com/law-update-articles/mediation-in-jordan/>> last accessed 15 October 2020.

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> Id.



Another signatory is Israel where mediation is often the most discussed ADR process.<sup>28</sup> Since the 1950s, mandatory mediation was provided for in relation to labour disputes.<sup>29</sup> In the 1990s, mediation gained particular prominence as a dispute resolution mechanism in civil disputes.<sup>30</sup> Despite this history, the number of cases referred to mediation by the courts in Israel remain small.<sup>31</sup> This is predicted to change in the coming years. A pilot has been conducted for some years which requires parties to attempt mediation in disputes under the jurisdiction of a number of civil courts.<sup>32</sup> In the future, this program will be expanded to all civil courts in Israel. Once ratified, the Singapore Convention is likely to underpin national efforts to encourage mediation and enforce agreements.

Turkey has also given significant attention to ADR. Several laws have governed the use of mediation in recent years covering voluntary mediation for civil disputes (the Mediation Code),<sup>33</sup> mandatory mediation for labour disputes,<sup>34</sup> and mandatory mediation for commercial disputes.<sup>35</sup> Thus, under the latter law, disputing parties must initiate mediation before being able to make an application to the commercial courts.<sup>36</sup> Following the introduction of the mandatory mediation regime, it has become widespread practice for parties to mediate to resolve their disputes.<sup>37</sup> Hundreds of thousands of cases were assigned to mediators within the first year of the mandatory regime, and there was a 70% reduction in employment related court cases.<sup>38</sup> This has led to the argument that mandatory mediation has promoted a culture of resolution (which is clear to see from the statistics).<sup>39</sup> While this is true domestically, it has not typically been the case for cross-border disputes.<sup>40</sup> Thus, it would appear that, in signing the Singapore Convention, Turkey is seeking to eventually rectify that gap by also encouraging the use of mediation for disputes between parties in different jurisdictions.

Finally, Iran has signed the Convention which is a curious development. Dispute resolution mechanisms for arbitration already exist, but mediation does not enjoy the same statutory regulation nor institutional structure (except within the field of family disputes).<sup>41</sup> Nevertheless, mediated settlement agreements are considered to be binding upon the parties and are enforced by the courts. However, there does appear to be a dichotomy in the

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<sup>28</sup> Omer Shapira, 'Israeli Perspectives on Alternative Dispute Resolution and Justice' 19(3) *Pepperdine Dispute Resolution Journal* 273, 276 (2019).

<sup>29</sup> *Id.*, 279.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*, 304.

<sup>32</sup> *Id.*

<sup>33</sup> Law 6325 of 2012 (Turkey).

<sup>34</sup> Law 7036 of 2017 (Turkey).

<sup>35</sup> Law 7155 of 19 Dec 2018 (Turkey).

<sup>36</sup> Article 20 of Law 7155 (Turkey).

<sup>37</sup> Rafal Morek, 'To Compel or Not to Compel : Is Mandatory Mediation Becoming "Popular"?' *Kluwer Mediation Blog* (Nov 19 2018) available at <http://mediationblog.kluwerarbitration.com/2018/11/19/to-compel-or-not-to-compel-is-mandatory-mediation-becoming-popular/> last accessed 19 October 2020; 'The Mediation Scene in Turkey' *SAGE Mediation* (2020) available at <https://sagemediation.sg/blog/the-mediation-scene-in-turkey/> accessed on 19 Oct 2020.

<sup>38</sup> Tuba Bilecik, 'Turkish Mandatory Mediation Expands into Commercial Disputes' *Kluwer Mediation Blog* (30 Jan 2019) available at <http://mediationblog.kluwerarbitration.com/2019/01/30/turkish-mandatory-mediation-expands-into-commercial-disputes/> last accessed 19 October 2020.

<sup>39</sup> *Id.*

<sup>40</sup> 'The Mediation Scene in Turkey' (n 38).

<sup>41</sup> Behnam Khatami and Masoomeh Salimi, 'Iran: Litigation & Dispute Resolution Laws and Regulations 2020' *ICLG* (17 Feb 2020) available at <https://iclg.com/practice-areas/litigation-and-dispute-resolution-laws-and-regulations/iran> accessed on 19 October 2020.

approaches of the courts in Iran. Some courts view mediation as an equivalent to arbitration and even apply arbitration rules where parties have agreed to mediate. Other courts view mediation entirely separately and without binding rules.<sup>42</sup> How the Singapore Convention will sit alongside this dichotomous picture is yet to be determined, but courts will have to develop a coherent and consistent strategy regarding the enforcement of mediated agreements.

In Central Asia, Kazakhstan has been the only country to sign the Singapore Convention so far. Kazakhstan has seen economic development in recent years. Like its regional neighbours, it has also sought to develop ADR infrastructure. However, there have been barriers to the implementation of ADR caused by several laws which have lacked a legal definition of mediation. Related to this is the debate among scholars in Kazakhstan about the meaning of ADR and how one ought to distinguish arbitration, negotiation, mediation and the judicial system.<sup>43</sup> The problem appears to be one of delineating the scope of ADR services, and where they fit into the overall dispute resolution landscape. To help rectify these matters, the Law on Mediation was enacted in 2011. At the same time, the Supreme Court and People's Assembly of Kazakhstan have sought to encourage greater use of mediation.<sup>44</sup> Despite these efforts, there have been barriers preventing the application of the mediation law in practice.<sup>45</sup>

After the passage of the mediation law in Kazakhstan, there were lots of attempts to increase mediation capacity, such as the creation of the Integrated Center of Mediation and Peacemaking "Mediation", the Kazakhstan Center of Mediation and the Kazakhstan International Arbitrage.<sup>46</sup> Mediators have been trained and certified from such programs. There has been progress in terms of the number of mediations undertaken and the subsequent settlement agreements. However, there have been some hurdles. There were concerns that the mediation process and its benefits have not been explained to citizens.<sup>47</sup> Additionally (and especially during the early years of the Mediation Law), there was little mediation infrastructure developed nor available mediators. Filing a claim in the courts remained the most efficient and convenient method of dispute resolution.<sup>48</sup> More significant concerns arise with regard to enforceability of settlement agreements.

A successful mediation in Kazakhstan will involve a settlement agreement as per Article 26 of the Mediation Law. The agreement must be in writing and signed by the parties and will usually come into effect the day after it has been signed (Article 27 of the Mediation Law). If the mediation agreement has been reached in the course of judicial proceedings, then it must be approved by the judge in the case.<sup>49</sup> As with other jurisdictions, the greatest challenge is enforcing such agreements once they are effective – with the most significant hurdle being cross-border settlements. The laws in Kazakhstan appear to be conflicting in this regard for the enforcement of mediation agreements agreed both domestically and internationally. Domestically, Article 27(3) of the Mediation Law notes that the implementation of settlement

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<sup>42</sup> Id.

<sup>43</sup> Farkhad Karagussov, 'The Legal Framework for Mediation in Kazakhstan: Current State, Expectations of Public Recognition and Perspectives for Development' in Carlos Esplugues and Louis Marquis, *New Developments in Civil and Commercial Mediation: Global Comparative Perspectives* (6th edn, Springer 2015) 395.

<sup>44</sup> 'Arbitration and Mediation Developments in Kazakhstan' *Weinstein International Foundation*, available at <https://weinsteininternational.org/kazakhstan/kazakhstan-bio/> last accessed 19 October 2020.

<sup>45</sup> Saida Assanova, Almas Serikuly and Arhat Abikenov, 'A Comparative Analysis of the Mediation in Kazakhstan and States of Victoria and New South Wales' 29 *ADRJ* 289, 290 (2019).

<sup>46</sup> Karagussov (n 44) 401-402.

<sup>47</sup> Id, 404.

<sup>48</sup> Id.

<sup>49</sup> Id, 424.

agreements is merely voluntary. However, where the agreement is settled through the court system, then a new relationship is said to arise between the parties based on the settlement agreement. Therefore, future adjudication in relation to the same dispute would begin from the premise of the settlement agreement.<sup>50</sup> Article 27 also states that parties who violate the mediation agreement shall be liable to judicial proceedings.<sup>51</sup>

It appears that the law is creating a distinction between mediations conducted independently of the court system and those conducted within it. Those outside the court system are to be enforced voluntarily by the parties. However, where a judge approves a mediation settlement, and the parties fail to enforce it, then liability may follow. It has been argued that legislators made a 'mistake' in legislating for mediation by covering two separate phenomena in the Mediation Law which would benefit from separate regulations.<sup>52</sup> For cross-border disputes, there has been no mechanism for enforcement. This gap has been well noted and discussed by scholars in the country.<sup>53</sup> Enforcing out-of-court mediation agreements concluded outside the country may be possible indirectly, but would require the parties to choose Kazakhstan law as the governing law of the agreement.<sup>54</sup> If the parties choose to seek enforcement of a settlement agreement from a foreign court, the recognition of that ruling by Kazakhstan would depend on whether there is a governing international treaty (and, therefore, the principle of mutuality would come into play), or if there existed a bilateral treaty between Kazakhstan and the country where the decision arises from.<sup>55</sup> None of these mechanisms, however, deal specifically with mediation agreements.

Three conclusions can be drawn from this analysis. First, having two countries from the Middle East make a significant commitment to mediation is globally significant. As noted by Bono, mediation is under-utilised in the Middle East, and these moves can be seen as a greater effort to close that gap. The moves are also timely when considered in the context of the COVID-19 Pandemic in 2020. Establishing the legal foundations for a fast and efficient means of resolving disputes that is grounded in legal certainty will allow for the preservation of important commercial relationships at a time when commercial entities are threatened by a global crisis.<sup>56</sup>

Second, several other countries in the region have also joined the Convention. Once ratified in those countries, a substantial number of jurisdictions in the region will be operating from the same playing field with regard to the resolution of disputes. The potential for commercial entities is significant because they will be able to conclude agreements that account for the resolution of disputes quickly, privately and cheaply. Most importantly, those agreements will be enforceable by regional courts which should encourage trade and commerce between neighbours.

Finally, despite that potential, the analysis highlights how there is some way to go for that potential to be realised. In some countries, there is a strong history and tradition of mediation used to settle disputes domestically. Yet, in others, there are problems with the domestic mediation infrastructure that exists. Those problems include the inconsistency of application,

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<sup>50</sup> Id, 425-426.

<sup>51</sup> Id, 426.

<sup>52</sup> Id, 426. For this argument, Karagussov refers to uleimenov and Duisenova, Razvitie arbitrazha i mediacii v Kazahstane (Development of Arbitration and Mediation in Kazakhstan) (file 15), *Kazakhstan International Arbitrage* (2014) available at [www.arbitrage.kz/461](http://www.arbitrage.kz/461), accessed 25 October 2020.

<sup>53</sup> Karagussov (n 44) 428.

<sup>54</sup> Karagussov (n 44) 428.

<sup>55</sup> Karagussov (n 44) 429.

<sup>56</sup> Seema Bono (n 21).



a lack of understanding about what mediation is, and concerns about delineating between dispute resolution by the courts versus mediation. Further, there is a lack of infrastructure, experience and know-how for the implementation of mediation agreements pertaining to cross-border commercial disputes. Thus, there is a dual challenge of upscaling domestic infrastructure while enhancing provision for enforcing cross-border disputes. This must occur before countries join the Convention and are realistically able to realise its aims. Some countries (which have yet to sign the Convention) appear to be already well-positioned to realise these aims.

#### 4. Mediation in Other Middle Eastern Countries

There is likely to be a great focus on cross-border mediation in some countries that have yet to sign the Singapore Convention. Here, there is a focus on countries in the Middle East with existing mediation laws because there is greater potential of them signing the Convention owing to existing investments in mediation infrastructure. In the Middle East, the United Arab Emirates (UAE), Lebanon, Bahrain and Oman demonstrate potential in this area.

Bahrain enacted Royal Decree No. 22 of 2019 which, for the first time in the country, introduced mediation in the court system. The provisions of the law are similar to those typically found in other mediation laws on the agreement to mediate and the selection of mediators.<sup>57</sup> In addition to the recent national law, mediation has also existed in Bahrain under the auspices of the Bahrain Chamber for Dispute Resolution established in 2009 which operates in partnership with the American Arbitration Association (BCDR-AAA). The Chamber has offered mediation to commercial and governmental entities, and its Mediation Rules were updated in response to the Singapore Convention.<sup>58</sup> The changes included greater clarity on mediation procedures, simplification of the appointment of mediators, and the option for parties to commence parallel arbitral or judicial proceedings.<sup>59</sup> The amendments to the rules in light of the Singapore Convention suggests that Bahrain is making changes with a view to possibly joining the Convention in the future.

In the UAE, there has been an ability to enforce mediation agreements through specific avenues. Conciliation and arbitration committees have been established at the Federal Courts since 1999. Any agreements reached through that process in the courts are treated as an enforceable writ of execution.<sup>60</sup> In Dubai, the Centre for Amicable Resolution of Disputes was created by Dubai Law Number 16 of 2009.<sup>61</sup> It has seen good success in mediating civil and commercial disputes under the supervision of a judge before a dispute is referred to the courts.<sup>62</sup> Settlement agreements are enforceable through the Execution Courts.<sup>63</sup> Mediation is

<sup>57</sup> Muneera Al-Khalifa, 'Court Based Mediation in Bahrain: Will It Alleviate the Burden on Courts?' *Lexology* (19 June 2020) available at <https://www.lexology.com/library/detail.aspx?g=e0a643ad-975b-4328-ab6c-f83f74451a75> last accessed 29 Oct 2020.

<sup>58</sup> Sara Koleilat-Aranjo and Aishwarya Nair, 'Mediation in the Middle East: Before and After the Singapore Convention' *Al-Tamimi & Co* (October 2019) available at <https://www.tamimi.com/law-update-articles/mediation-in-the-middle-east-before-and-after-the-singapore-convention/> accessed on 29 October 2020.

<sup>59</sup> 'BCDR-AAA Launches New Mediation Rules' *BCDR-AAA* (1 July 2019) available at <https://www.bcdr-aaa.org/bcdr-aaa-launches-new-mediation-rules/> accessed 29 October 2020.

<sup>60</sup> Sara Koleilat-Aranjo (n 59); Federal Law No 26 of 1999 Concerning the Establishment of Conciliation and Arbitration Committees at Federal Courts (UAE).

<sup>61</sup> See also, Abigail Powell, 'The Centre for Amicable Resolution of Disputes in Dubai' *Al Tamimi & Co* (Feb 2013) available at <https://www.tamimi.com/law-update-articles/the-centre-for-amicable-resolution-of-disputes-in-dubai/> last accessed 30 Oct 2020.

<sup>62</sup> Sara Koleilat-Aranjo (n 59).

also possible through the Dubai International Financial Centre (DIFC). Like other such centres, the DIFC has specific Mediation Rules. Parties are not compelled to attempt mediation, but it is promoted as an alternative means of dispute resolution.<sup>64</sup> Additionally, the Abu Dhabi Global Market Courts (ADGM) has launched a court-annexed mediation service.<sup>65</sup> Both parties in a dispute may voluntarily agree to undertake mediation or it may be ordered by the Court. The Court also expects that parties will have considered undertaking mediation before bringing a dispute.<sup>66</sup> This brings the Court into line with other such courts offering mediation services. It would not be surprising to see the UAE follow its neighbours in joining the Singapore Convention in the future.

For Lebanon, it is important to note both historic and recent developments. Mediation has been practiced in the country for years. Mediation centres have been established for a while governed by their own mediation rules.<sup>67</sup> There was previously little recognition of mediation in the law. It was not mentioned in the Lebanese Code of Civil Procedure but was mentioned in specific regulations such as the Consumer Protection Law.<sup>68</sup> More recently, Lebanon has taken steps to codify and recognise mediation as a serious form of dispute resolution recognised under the law. Following the enactment of Law No.82 of 2018, disputing parties may have access to mediation at any time during court proceedings.<sup>69</sup> There is also the Lebanese Arbitration and Mediation Center (LAMC). The Mediation Center within the LAMC was founded in 2012 to help those in the business community resolve disputes.<sup>70</sup> The Procedure Rules state that a referral of a dispute to a mediator can be a voluntary undertaking of the parties, by a court order or recommendation or by a contractual clause.<sup>71</sup> A mediation agreement arising from the Center may be enforced by the parties where the parties so intended and drafted the agreement in such a manner.<sup>72</sup> Through the rules of LAMC, Lebanon has established a degree of parity with other such centres in the region. Although, it is unclear whether such infrastructure can translate into a desire to upscale the use of mediation for cross-border disputes.

It is also worth mentioning Egypt and Oman which have seen some development. In Egypt, the International Finance Corporation (IFC) has been seeking to encourage disputing parties to use mediation by training judges to undertake mediations.<sup>73</sup> The project has seen hundreds

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<sup>63</sup> Id.

<sup>64</sup> Id; 'DIFC-LCIA Mediation Rules' (1 August 2012) available at <http://www.difc-lcia.org/mediation.aspx#7> accessed 30 October 2020.

<sup>65</sup> ADGM, 'Abu Dhabi Global Market Courts Launch Court-Annexed Mediation Service' *ADGM Courts* (21 April 2019) available at <https://www.adgm.com/media/announcements/adgm-courts-launch-court-annexed-mediation-service> last accessed 30 October 2020.

<sup>66</sup> ADGM Courts Procedure Rules 2016, Part 36, Court-Annexed Mediation.

<sup>67</sup> Jalal El-Ahdab and Myram Eid, 'Mediating in Lebanon: From Old to New?' in Carlos Esplugues and Louis Marquis, *New Developments in Civil and Commercial Mediation: Global Comparative Perspectives* (6th edn, Springer 2015) 433.

<sup>68</sup> Id, 434.

<sup>69</sup> Sara Koleilat-Aranjo (n 59).

<sup>70</sup> Lebanese Arbitration and Mediation Center (LAMC), About Mediation, available at <https://lamc.org.lb/mediation/#mediation> accessed 30 October 2020.

<sup>71</sup> Lebanese Mediation Center (LMC), LMC Mediation Procedure, Rule 2 (2011) available at [https://lamc.org.lb/assets/frontend/img/pdf/Mediation\\_Procedure1.pdf](https://lamc.org.lb/assets/frontend/img/pdf/Mediation_Procedure1.pdf) last accessed 30 October 2020.

<sup>72</sup> Id, Rule 9.

<sup>73</sup> 'IFC Backs Mediation in Egypt, Helps Expedite Commercial Justice' *International Finance Corporation (IFC) World Bank Group*, available at [https://www.ifc.org/wps/wcm/connect/news\\_ext\\_content/ifc\\_external\\_corporate\\_site/news+and+events/news/ifc+backs+mediation+in+egypt%2C+helps+expedite+commercial+justice](https://www.ifc.org/wps/wcm/connect/news_ext_content/ifc_external_corporate_site/news+and+events/news/ifc+backs+mediation+in+egypt%2C+helps+expedite+commercial+justice) last accessed 30 October 2020.

of mediation cases brought to settlement. The success has led to calls for a mediation law to be introduced.<sup>74</sup> Scholars have called for the introduction of mandatory mediation to the Egyptian Administrative Courts. It has been argued that this would be possible either by restructuring the currently existing conciliation committees or by repealing those existing committees and replacing them with mandatory mediation conducted by judges.<sup>75</sup> Oman has also launched the Oman Commercial Arbitration Centre (OCAC) which is expected to offer mediation services within the Centre.<sup>76</sup> This is a recent development, so the implications for its introduction on practice are yet to be determined. Much like Lebanon, there is a foray by these countries into greater mediation use. These efforts do seem to be in their infancy though. It is not anticipated that joining the Singapore Convention is a policy priority in the near future.

Ultimately, of the countries where mediation infrastructure is developing, there is a divergence regarding their likelihood of becoming signatories to the Singapore Convention. Countries with international financial centres such as the UAE, Bahrain and Lebanon may be in a better position than others to broaden mediation capacity. Those financial centres are informed by international best practices and there have been some steps taken to introduce mediation within the domestic courts. However, significant effort will be required to develop the necessary mediation infrastructure and wherewithal internally so that it becomes embedded in the alternative dispute resolution architecture. Doing so will give those countries greater confidence to deal with the enforcement of cross-border mediated settlement agreements operating under the Singapore Convention should they choose to become signatories. It would be to the benefit of the region if those countries continued their investment in this area. Growing their mediation infrastructure in the domestic courts, international courts and signing the Singapore Convention will introduce a significant degree of congruence and certainty for trade and commerce in the region.

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<sup>74</sup> Id.

<sup>75</sup> Mahmoud Elsaman, 'Introducing Mandatory Mediation to Egypt's Administrative Courts: Two Feasible Approaches', 2(1) Courts & Justice Law Journal 54, 55 (2020).

<sup>76</sup> Sara Koleilat-Aranjo (n 59).

## 5. Mediation in Other Central Asian Countries

Kazakhstan is ahead of its neighbours in Central Asia by already signing the Singapore Convention. For Kyrgyzstan, Uzbekistan, Tajikistan and Turkmenistan the benefits of developing mediation infrastructure could be significant for commerce and trade in the long-term. This article is focussed on the commercial potential between countries in the Middle East and Central Asia. However, for Central Asian countries, there is the additional consideration of China's One Belt One Road (OBOR) initiative. The OBOR directly implicates these countries and having robust dispute resolution mechanisms will be important for dealing with the increased commercial activities. Indeed, the International Chamber of Commerce (ICC) offers Belt and Road Dispute Resolution. It suggests the use of mediation clauses in contracts for the resolution of related disputes through its auspices.<sup>77</sup>

In Kyrgyzstan, the Law of the Kyrgyz Republic 'On Mediation' 2017 was a critical step in the development of its mediation architecture. The Law mainly applies to disputes concerning family, employment and civil disputes.<sup>78</sup> The agreements arising from such disputes are voluntarily enforced as expressly stated in the Law.<sup>79</sup> Disputes that have been mediated domestically are, therefore, not supported by any enforcement mechanism.<sup>80</sup> To realise the aims of the Law, separate working spaces for mediators have been arranged in each courthouse. The aim appears to be for judges to recommend that parties in dispute, first speak with the mediators onsite. The aim is to reduce the number of cases and thereby alleviate the burden on the court system. So far, uptake has been very low by disputing parties.<sup>81</sup> This has been explained by a lack of information and education regarding the benefits of the service. As such, these developments represent the beginnings of formal mediation infrastructure in the country. There is still significant education and growth to establish before the country is likely to even consider the Singapore Convention for the enforcement of cross-border mediation settlement agreements.

Uzbekistan has taken significant steps in its endeavours on mediation. It enacted the Law On Mediation in 2018 for dealing with domestic civil, labour and family disputes.<sup>82</sup> The Law contains provisions that one would expect to find in other such mediation laws on confidentiality, mediator qualifications, time limits, conflict of interests and others.<sup>83</sup>

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<sup>77</sup> ICC, 'Guidance Notes on Resolving Belt and Road Disputes Using Mediation and Arbitration' *International Chamber of Commerce*, available at <https://iccwbo.org/content/uploads/sites/3/2019/02/icc-guidance-notes-belt-and-road-disputes-pdf.pdf> last accessed 10 Nov 2020.

<sup>78</sup> Article 1, Law of the Kyrgyz Republic 'On Mediation' 2017.

<sup>79</sup> Article 4.3, Law of the Kyrgyz Republic 'On Mediation' 2017.

<sup>80</sup> Samara Dumanaeva, 'Mediation in the Kyrgyz Republic: some issues' *Lorenz*, available at [http://www.lorenz-law.com/wp-content/uploads/Mediation\\_application.pdf](http://www.lorenz-law.com/wp-content/uploads/Mediation_application.pdf) accessed on 10 Nov 2020.

<sup>81</sup> Dilbara Maksimbekova and Gulsina Kojoyarova, 'Particularities of the Kyrgyz Republic's Law on Mediation – BBC' *Danker* (14 March 2019) available at <https://danaker.org/en/2019/peculiarities-of-the-kyrgyz-republic-s-law-on-mediation-bbc/> last accessed 19 October 2020.

<sup>82</sup> Law of the Republic of Uzbekistan On Mediation (2018); Eldor Mannopov, Fayoziddin Kamalov, Madina Hamidova and Yakub Sharipov, 'In Review: Resolving Project and Construction Disputes in Uzbekistan' *Lexology* (10 July 2020) available at <https://www.lexology.com/library/detail.aspx?g=f67a9f86-306c-4efa-a4d4-2fdecd397b11> last accessed 10 Nov 2020.

<sup>83</sup> Arts 5 & 6, Law of the Republic of Uzbekistan On Mediation (2018); Sherdozbek Masadikov, 'Mediation in Uzbekistan' *Kluwer Mediation Blog* (10 Feb 2020) available at <http://mediationblog.kluwerarbitration.com/2020/02/10/mediation-in-uzbekistan/#:~:text=Law%20on%20Mediation,defined%20its%20scope%20of%20application.> last accessed 10 Nov 2020.

Mediation settlement agreements are to be executed by the parties voluntarily, although the Law does state that a party can apply for a court enforcement where the other party defaults.<sup>84</sup> An interesting feature of the law which is intended to encourage the use of mediation relates to the refunding of court costs. Thus, parties who agree to mediate and negotiate a successful settlement agreement can be reimbursed for the costs paid to initiate court proceedings.<sup>85</sup> Finally, it is also worth noting some concern about the requirement for mandatory mediation for investment disputes under a new Investment Law in 2020.<sup>86</sup> It has been argued that mandating mediation is antithetical to the principles of mediation premised on a voluntary and consensual agreement between the parties to resolve a dispute.<sup>87</sup>

The Investment Law aside, there appears to be good potential for Uzbekistan moving forward. It has enacted a robust mediation law which lays the foundation for the necessary mediation infrastructure as it pertains to domestic disputes. Efforts have already been made to encourage students and trainers to become mediators through educational programs.<sup>88</sup> Joining the Singapore Convention would augment that foundation, enabling the country to enforce agreements pertaining to cross-border disputes.

In Tajikistan, there have been discussions about the creation of a mediation law in the country but one is yet to arise.<sup>89</sup> Nevertheless, the civil procedure rules do require the courts to recommend mediation for disputing parties.<sup>90</sup> Further, in 2017, a Center for Mediation under the Chamber of Commerce and Industry was established through a project by the International Development Law Organization (IDLO) and the European Bank for Reconstruction and Development (EBRD).<sup>91</sup> While the establishment of the mediation centre is an important step, a law is needed to provide legitimacy to this form of ADR for businesses, the judiciary and lawyers.<sup>92</sup> For now, the aim of the EBRD is to strengthen the Mediation Center and the training of mediators.<sup>93</sup> Therefore, there is much development needed if the country is to benefit from the commercial opportunities which arise from having a reputable ADR system.

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<sup>84</sup> Art 29 Law of the Republic of Uzbekistan On Mediation (2018); Sherdozbek (n 84).

<sup>85</sup> Art 17 Law of the Republic of Uzbekistan On Mediation (2018); Sherdozbek (n 84).

<sup>86</sup> Eldor Mannopov (n 83).

<sup>87</sup> Eldor Mannopov (n 83).

<sup>88</sup> UNDP Uzbekistan, 'Summer School on Mediation Law for Students and Trainers of the TSLU and UWED Legal Clinics' (22 Augst 2019) available at <https://www.uz.undp.org/content/uzbekistan/en/home/presscenter/pressreleases/2019/08/22/summer-school-on-mediation-law-for-students-and-trainers-of-the-.html> accessed 10 Nov 2020.

<sup>89</sup> Asia-Plus, 'Tajikistan Elaborates Law to Keep Commercial Disputes with Foreigners Out of Court', *Asia-Plus* (1 May 2018) available at <https://asiaplustj.info/en/news/tajikistan/economic/20180501/tajikistan-elaborates-law-to-keep-commercial-disputes-with-foreigners-out-of-court> last accessed 10 Nov 2020.

<sup>90</sup> Marie-Anne Birken and Kim O'Sullivan, 'The Evolution of Mediation in Central Asia: The Perspective of the European Bank for Reconstruction and Development' in Peter Quayle and Xuan Gao, *International Organizations and the Promotion of Effective Dispute Resolution: AIB Yearbook of International Law 2019* (Brill 2019) 215.

<sup>91</sup> Mediation Europe-Asia, 'About Mediation in Tajikistan', available at <https://en.mediation-eurasia.pro/mediacija-v-strane/tadzhikistan> last accessed 10 Nov 2020; IDLO, 'Capacity Building of the Mediation Center in Tajikistan', available at <https://www.idlo.int/what-we-do/initiatives/capacity-building-mediation-center-tajikistan> accessed 10 Nov 2020.

<sup>92</sup> Marie-Anne Birken (n 91) 215.

<sup>93</sup> Marie-Anne Birken (n 91) 216.



In Turkmenistan, mediation is not yet part of the dispute resolution landscape. In recent years, attention has been given to arbitration for the first time.<sup>94</sup> Further, forms of reconciliation exist as required by the labour code for disputing employers and employees. Such forms also exist for family law matters.<sup>95</sup> Attention is given to mediation through educational events by international organisations, but those appear to be limited. Therefore, the first step for Turkmenistan is to establish some mediation infrastructure and a domestic law.

Overall, the countries analysed above present diverging trends on mediation. A consistent prerequisite for any country considering joining the Singapore Convention in the future, is to have the requisite mediation infrastructure and experience for dealing with domestic matters. From that foundation, countries may develop more robust mediation infrastructure for enforcing settlement agreements arising from complex cross-border commercial disputes. In Central Asia, as noted above, Kazakhstan leads the way having signed the Convention (although, it is yet to ratify it). While it has taken longer for its neighbours to develop laws in this area, they are progressing. In particular, Kyrgyzstan and Uzbekistan have enacted legislation on mediation in recent years. These are significant strides for those countries because that crucial experience and infrastructure can lay a pathway towards the Convention in the future. Tajikistan is further back on the development pathway but is making progress with the launch of its mediation centre.

## 6. Conclusion

Significant economic investment has already existed between the countries analysed in this paper. This can be seen in Turkey's rapidly developing relations with the Central Asian countries, as well as nations in the Persian Gulf seeking to diversify their economic investments through ventures into energy projects, cargo facilities and others.<sup>96</sup> There has also been a large rise in tourism between the nations, with citizens of countries in the Middle East travelling to Central Asian countries and vice versa. Other key areas of investment have been identified for the future such as transportation infrastructure, an integrated regional energy market and more.<sup>97</sup> Those relationships will be critical not only between the Middle East and Central Asia, but also between countries within those regions. For example, Turkey already has significant trade with Qatar and Israel. Persian Gulf countries have strong economic links. Ties between countries can be seen in a multitude of ways.

Such relations are even more critical at this time. The Covid-19 Pandemic in 2020 has placed a significant strain on the global economy including those analysed here. It will be more imperative than ever for these countries to forge a path of economic recovery together in mutually beneficial ways rather than acting in isolation. Removing barriers to trade, commerce and business will be crucial for future economic development. Mediation is a small piece in that much larger and complex economic paradigm, but it is a crucial piece. Disputes will inevitably rise between commercial entities and having a robust yet efficient dispute

<sup>94</sup> Hannepes Taychayev, 'Law of Foreign Arbitration in Turkmenistan: An Introduction', *Kluwer Arbitration Blog* (15 Dec 2017) available at <http://arbitrationblog.kluwerarbitration.com/2017/12/15/law-foreign-arbitration-turkmenistan-introduction/> accessed 10 Nov 2020.

<sup>95</sup> Mediation Europe-Asia, 'About Mediation in Turkmenistan', available at <https://en.mediation-eurasia.pro/mediacija-v-strane/turkmenistan> accessed 10 Nov 2020.

<sup>96</sup> Ministry of Foreign Affairs (Turkey), 'Turkey's Relations With Central Asian Republics' (2020) available at [http://www.mfa.gov.tr/turkey\\_s-relations-with-central-asian-republics.en.mfa](http://www.mfa.gov.tr/turkey_s-relations-with-central-asian-republics.en.mfa) last accessed 10 Nov 2020; Rauf Mammadov, 'Why the Gulf States are Investing in Central Asia and the South Caucasus' *Middle East Institute* (25 Nov 2019) available at <https://www.mei.edu/publications/why-gulf-states-are-investing-central-asia-and-south-caucasus> last accessed 10 Nov 2020.

<sup>97</sup> Id.

resolution mechanism could make the difference. Rather than being dissuaded by provisions mandating resolutions in court or through arbitration, parties will be encouraged by the opportunity to settle agreements amicably, privately, efficiently and cost-effectively.

Reaching that stage requires robust mediation infrastructure and know-how in each country. Many of the countries analysed in this article are developing that infrastructure for domestic disputes. There has been a proliferation of mediation laws, mediation centres, training and education in this area. For regional trade and commerce, it is the enforcement of agreements arising from cross-border disputes that will be most crucial – a factor that the Singapore Convention seeks to rectify. A handful of nations have taken the bold step to sign the Singapore Convention and some have ratified it. Ratification of the Convention will ensure that important trading relationships have the opportunity to be maintained through amicable dispute resolution settlement agreements arising from mediations.<sup>98</sup> As such, it ought to be a serious contemplation of every country to eventually ratify the convention.

In some countries that have yet to partake in the Convention, the path will be straightforward. Several nations have the local know-how and domestic experience to take that necessary step. For others, focus is needed on developing the fundamentals first, before dealing with the enforcement of international disputes. Local expertise surrounding mediation will be necessary to give such agreements the due care they require. It would be concerning if a local court was tasked with enforcing a mediation agreement when those very courts cannot agree on what mediation means. Establishing that foundation will be crucial and doing so could open up a plethora of new commercial opportunities for the region and its citizens.

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<sup>98</sup> Ismail G. Esin, Koray Sogut and Ali Selim Demirel, 'Turkey Signs Singapore Convention on Cross-Border Mediations' *Lexology* (21 October 2019) available at <https://www.lexology.com/library/detail.aspx?g=4badcf6c-283c-49c5-96e2-5e0d43ff33f8> last accessed 19 October 2020.