Page 1327 - 1347 **DOI:** *https://doij.org/10.10000/IJLMH.118624*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 6

2024

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The Evolution and Impact of Multilateral Arbitration Conventions: A Critical Analysis of the New York and Singapore Conventions in Enforcing Awards

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ABSTRACT

This paper critically analyses two pivotal multilateral conventions shaping the landscape of international dispute resolution, i.e., the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the 2019 Singapore Convention on Mediation. The New York Convention, ratified by over 170 countries, has been instrumental in standardizing the enforcement of arbitral awards across borders, promoting arbitration as the preferred method for resolving international commercial disputes. The Singapore Convention, although newer, introduces a framework for the recognition and enforcement of mediated settlement agreements, highlighting mediation as a viable, amicable alternative to arbitration. By comparing their scope, enforcement mechanisms, and defenses against enforcement, this paper evaluates the impact of both conventions on global commerce and legal systems. The analysis explores their respective contributions to predictability, efficiency, and fairness in cross-border dispute resolution while also addressing criticisms, such as the inconsistent application of public policy exceptions and challenges in implementation. The paper concludes by discussing potential reforms and the future interplay between arbitration and mediation, considering emerging trends and the evolving role of these conventions in promoting effective and accessible international dispute resolution mechanisms.

Keywords*: New York Convention, Singapore Convention, Multilateral arbitral conventions, International Dispute Resolution, Arbitration and mediation.*

I. INTRODUCTION

International arbitration has emerged as a crucial mechanism for resolving cross-border business disputes, offering parties a neutral, efficient, and private forum to address their disagreements. Unlike litigation, which can be constrained by the peculiarities of national legal systems, arbitration allows disputing parties to bypass unfamiliar courts and legal procedures,

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reducing uncertainty and delays. Over the past few decades, arbitration has become the preferred method of dispute resolution for international commercial contracts, construction projects, investment treaties, and even in sports law and intellectual property disputes.

The New York Convention, formally known as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, has been instrumental in providing a uniform framework that ensures arbitral awards can be recognized and enforced across borders. Signed by over 170 countries, the New York Convention has facilitated global trade and investment by reducing the risk that a successful party in arbitration would be unable to enforce its award in another country.

The Singapore Convention on Mediation, officially known as the United Nations Convention on International Settlement Agreements Resulting from Mediation, serves a similar function for mediated settlements. Before its adoption, parties to a mediated agreement often faced challenges in enforcing their settlements, especially when one party was based in a foreign jurisdiction. The Singapore Convention provides a unified legal mechanism for enforcing such agreements, giving mediation an international legal framework comparable to arbitration under the New York Convention.

(A) Research Objective

The primary objective of this paper is to examine the role of the New York Convention and the Singapore Convention in promoting international arbitration and mediation as effective tools for cross-border dispute resolution. By exploring the historical context, key provisions, and practical impacts of these conventions, the paper seeks to provide a comprehensive analysis of how they have transformed the global legal landscape.

(B) Research Problem

The New York and Singapore Conventions have done much to encourage international arbitration and mediation as a mode of cross-border resolution of disputes. Successful as this has been, though, there are challenges in the consistent enforcement and interpretation of awards across borders, mostly because of differences in national implementations and public policy exceptions. This research is important in the context of these conventions' ability to appropriately serve the intention of forming a uniform framework for international awards and their actual implementation. It also identifies the issue that whether there is a further need to refine the same so as to be more effective globally.

(C) Research Hypothesis

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Central hypothesis of this paper holds the belief that despite the New York and Singapore Conventions significantly having advanced topics of international arbitration and mediation through the establishment of overarching frameworks for enforcing awards, the inconsistencies in national implementations together with varied interpretations of public policy exceptions do prevent their application at all times. Therefore, further refinements along these lines must be pursued in earnest - further establishment of more precise guidelines for national judiciary bodies and promotion of more enhanced harmonization initiatives, the latter towards easing more effective and predictable enforcement of international awards.

(D) Research Questions

1. How have the New York and Singapore Conventions evolved in terms of their provisions and global acceptance?

2. What are the key differences and similarities between the enforcement mechanisms of the New York and Singapore Conventions?

3. How do these conventions influence the effectiveness of international arbitration in different jurisdictions?

(E) Research Methodology

The analysis framework lends the research a qualitative and comparative approach on the New York Convention (1958) and the Singapore Convention (2019). This will involve the examination of historical development and how key provisions of the fundamental legal tenets form part of these conventions. In this regard, there will also be analysis concerning how their application is varied across jurisdictions. It will engage empirical case studies, judicial precedents as well as academic discourses to take a closer look at how the enforcement mechanisms are applied both by conventions as well as on how discrepancies may exist in their implementations.

(F) Literature review

1. *K., W., Patchett. (1981). The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Available from: 10.14217/9781848593244-EN*

For instance, this 1958 landmark treaty conditions mutual obligation on Contracting States for the execution of foreign arbitral awards, as in Article I(3) of the NYC. Literature shows that though still an essential requirement in keeping trust in international arbitration, there is nevertheless a declining role for reservations, which actually implies a shift toward streamlined execution. The advantages of the NYC include enhanced trans-border enforcement as well as

increased legal certainty for parties engaged in international trade. However, in procedure norms that can work to impede enforcement and reliance on reciprocity, which often results in contradictory application of the convention by the different countries, procedural norms sometimes obstruct the way to enforcement, and reliance on reciprocity has been proven to have contradictions between countries' application of the convention. To combat these situations, it is necessary to adopt a level of harmonization of arbitration laws by the Contracting States. It can be accomplished through international cooperation on best practices, changing the NYC to redefine some of its core principles, or even professional training of legal practitioners in the understanding of the principles of international arbitration. The strategies suggested here will put the international community in a position to move toward the more effective application of the NYC along the lines of standardization that would allow for even greater international trade and accompanying arbitration practices.

2. Eunice, Chua. (2019). The Singapore Convention on Mediation a Brighter Future for Asian Dispute Resolution. Social Science Research Network,

The Singapore Convention on Mediation approved by UNCITRAL in 2018 is an important step forward in the area of international dispute resolution, especially for Asian countries where mediation is considered an acceptable cultural practice. Its intent is that settlement agreements reached through mediation in international commercial disputes will gain more enforceability than any similar arbitration agreement, under the proposed Convention. This legal framework may build more confidence in mediation procedures and reduce litigation cost drastically while supporting a harmonious conflict approach toward resolution. But some challenges can hinder its effectiveness. It will also face problems in countries where mediation is not heavily integrated into the legal system, thus having the possibility of inconsistent enforcement between countries. Moreover, a lack of awareness and understanding of the Convention among practitioners in the law and businesses can further impede its adoption. Efforts can be supplemented by education and training on the Singapore Convention to stakeholders. Workshops and training programs may be held in order to familiarize practitioners and businesses with the benefits and procedures. Its proper, consistent application should also come from the harmonization of domestic laws in each country. Thus, the regional collaboration between the Asian countries could unlock the maximum potential of the Singapore Convention to guarantee a brighter, more promising future for dispute resolution across this vast land.

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II. ANALYSIS

1. Historical Context and Evolution of Arbitration Conventions

Arbitration conventions have served as a pivotal element in navigating the intricate challenges inherent in transnational dispute resolution. As global commercial interactions grow progressively intertwined, the architecture for the enforcement of arbitral awards demands a mechanism that is both efficient and dependable, as well as consistent. The establishment of two seminal conventions the 1958 New York Convention and the 2019 Singapore Convention has fostered an international milieu that engenders the essential predictability and efficiency required in global trade.

(A) Early Struggles of International Arbitration: Pre-New York Convention

Before the advent of New York Convention, enforcing a foreign arbitral award was quite difficult for businesses because they were easily exposed to the wide differences in national laws and judicial reluctance to accept foreign decisions. This was a beginning with the Geneva Protocol of 1923 and the Geneva Convention of 1927, though these were automatically only confirmed through the country's courts where the arbitration occurred. This is demonstrated in the fact that the domestic courts, for instance in cases like Putrabali v. Rena Holding, refused to enforce foreign awards for having been held against local public policy. This dictates the need to uniformly hold thus[2].

(B) The New York Convention: Revolutionizing the Enforceability of Arbitral Awards

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, that is, the New York Convention of 1958, came into existence to address these drawbacks. This multilateral convention established a doctrine according to which arbitral judgments given in one signatory state must be recognized as well as executed by the courts of other signatory states, but only under extraordinary circumstances[3]. Article V of the convention curtails refusal to enforce on grounds of public policy or procedural defects.

The revolutionary impact of the convention is told in the case of Parsons & Whittemore Overseas Co. v. Societe Generale de l'Industrie du Papier [4], where it was found the U.S. courts will enforce an arbitral award even when attacked for its violation of public policy. The courts stated that public policy defenses should be strictly construed so as not to dilute the pro-

[2] Born, G. (2015). *International Arbitration: Law and Practice*. Kluwer Law International, p. 113.
[3] Van den Berg, A.J. (1981). *The New York Arbitration Convention of 1958: Towards a Uniform Judicial Interpretation*. Kluwer, p. 47.
[4] *Parsons & Whittemore Overseas Co. v. Société Générale de l'Industrie du Papier (RAKTA)*, 508 F.2d 969 (2d Cir. 1974).

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enforcement bias of the New York Convention[5]. This uniformity has significantly improved arbitration as a means of solving international disputes.

(C) Rise of Mediation and the Singapore Convention

While arbitration was gaining speed with the New York Convention, mediation as a dispute resolution process brought along with it a new challenge. Mediation, unlike arbitration, did not have an international enforcement; thus, its adoption in cross-border disputes was very minimal[6]. To bridge this gap, the Singapore Convention on Mediation was adopted in 2019. This convention was modeled on the New York Convention, and like this, it lays a framework for cross border enforcement of mediated settlement agreements[7]

The Singapore Convention was of utmost importance for the Asia continents, where mediation has been the preferred means of resolving disputes. The convention provides businesses with assurance that settled mediation shall be enforceable in signatory states, making it encourage mediation as a viable alternative form of arbitration, especially commercial disputes, which parties want expedited and amicable resolution of disputes [8].

(D) Impact of Multilateral Arbitration Conventions

The New York Convention and the Singapore Convention have immensely impacted international dispute resolution. The New York Convention standardized arbitral awards enforcement by removing much of the ambiguity of cross-border disputes. The Singapore Convention extends the same principles to mediation. These conventions, together, have created a reliable framework for enforcing dispute resolutions, thus fostering global trade by offering predictability and efficiency[9].

III. COMPARISON BETWEEN THE NEW YORK AND SINGAPORE CONVENTIONS

New York Convention 1958 and Singapore Convention 2019 are two landmarks in international dispute resolution with an aim to achieve different forms of settlement across borders. New York is organized based on the strong infrastructure for enforcing awards through arbitration, while the Singapore Convention centers on mediated settlements. Arbitration and mediation

[5] *Parsons & Whittemore Overseas Co. v. Société Générale de l'Industrie du Papier (RAKTA)*, 508 F.2d 969 (2d Cir. 1974).
[6] Alexander, N. (2009). *International and Comparative Mediation: Legal Perspectives*. Kluwer Law International, p. 122.
[7] Lew, J.D.M., Mistelis, L.A., et al. (2003). *Comparative International Commercial Arbitration*. Kluwer Law International, p. 89.
[8] United Nations. (2018). *Convention on International Settlement Agreements Resulting from Mediation*. Adopted December 20, 2018. Singapore Convention on Mediation.
[9] Born, G. (2015). *International Arbitration: Law and Practice*. Kluwer Law International, p. 113.

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have traditionally played complementary roles as two forms of alternative dispute resolution. Their conventions significantly shape the international legal landscape. The scope of application, enforcement measures, and defenses against enforcement under both conventions will be compared to examine the effectiveness of these alternatives in creating international commerce as well as resolving disputes.

(A) Scope Of Application

New York Convention:

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards broadly applies to awards that are given in relation to commercial or contractual disputes. Such arbitration is generally employed across sectors where disputes typically emerge as complex, high-value, and international. Construction, energy, finance, and maritime industries rely heavily on arbitration because of its structured and formalized nature which is apt for complicated legal and factual issues. It is highly effective for a long-term international contract, such as energy exploration projects or large-scale infrastructure deals, when parties would like to obtain a neutral forum and avoid the unpredictability of their domestic courts[10].

The New York Convention is remarkable in its wide geographic reach and has been ratified by more than 170 countries. Broad application ensures that businesses can have confidence in conducting international trade and investment because the arbitral awards will be enforceable in most jurisdictions. The convention applies both to domestic and foreign arbitral awards if arbitration takes place in a contracting state; hence, there exists a global mechanism to settle cross-border disputes It is important to highlight that the spectrum of application is not confined to certain industries, and it can be implemented in almost every industry, including finance, technology, construction, and manufacturing[11].

Singapore Convention:

Focus on Mediation Compared to Singapore Convention on Mediation, Singapore Convention has limited the application to mediated settlements as one form of ADR. A mediation is generally a less formal process and usually faster than arbitration. The process focuses on cooperation between parties to reach a settlement acceptable to both. Mediation often is used in smaller or relatively low-complexity commercial disputes where the parties prefer a more amicable, non-adversarial style of dispute resolution. The sectors in which mediation is

[10] Born, Gary B. *International Commercial Arbitration*. 2nd ed., Kluwer Law International, 2014, p. 213.
[11] van den Berg, Albert Jan. *The New York Arbitration Convention of 1958: Towards a Uniform Judicial Interpretation*. Kluwer Law International, 1981, pp. 45-48.

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generally employed are family-owned enterprises, joint ventures, partnerships, and any dispute where relationship would be significantly important to business; however, with the development of mediation in Asia and commercial industry within Europe, influence on international trade may raise highly within the convention. Traditionally, mediation has been underutilized in high-value and complex disputes due to the formalization and binding process associated with arbitrations by parties. However, this gap is precisely what the Singapore Convention aims to fill with a legally recognized mechanism to effect cross-border enforcement of mediated settlements[12]. In the Asian region where mediation has local sense and popularity, the convention might form the bedrock of international commercial dispute resolution when mediation continues to grow. Its introduction heralds a much wider trend toward flexibility in ADR process, further providing businesses with a useful tool to settle disputes amicably and efficiently without litigation or arbitration[13].

IV. ENFORCEMENT MECHANISM

(A) New York Convention: Onerous conditions for enforcement

One important feature of the New York Convention is its simple but strong mechanism for the enforcement of arbitral awards. According to the convention, the party seeking recognition and/or enforcement has to submit an authenticated original award or a certified copy, as well as the original arbitration agreement, to the courts of a state signatory to the convention[14]. The convention requires courts of the contracting states to recognize and enforce the arbitral awards as final except where one of the limited defenses under Article V applies[15]. This, therefore, creates an assumed pro-enforcement bias in ensuring that arbitral awards are normally upheld thus encouraging reliance on arbitration as a sure dispute resolution mechanism[16].

It makes the process of enforcement authentic because the original or certified copies of the arbitral award and arbitration agreement are presented[17]. This can be very problematic if the originals do not exist or if the arbitral process was informal or expedited, and thus, it is hard to come up with all the documents. However, the convention has largely been successful in making

[12] Sussman, Edna. "The Singapore Convention on Mediation: The Next Step in the Evolution of International Dispute Resolution." *Journal of International Arbitration*, vol. 36, no. 2, 2019, pp. 221-235.
[13] Strong, SI. *Beyond International Commercial Arbitration? The Promise of International Commercial Mediation*. Cambridge University Press, 2014, pp. 96-98.
[14] Born, Gary B. *International Commercial Arbitration*. 2nd ed., Kluwer Law International, 2014, p. 923.
[15] van den Berg, Albert Jan. *The New York Arbitration Convention of 1958: Towards a Uniform Judicial Interpretation*. Kluwer Law International, 1981, p. 265.
[16] Girsberger, Daniel, and Christian Hausmaninger. "The New York Convention and the Enforcement of Arbitration Agreements in International Commercial Arbitration." *American Review of International Arbitration*, vol. 25, no. 2, 2013, pp. 200-204.
[17] Park, William W. "The New York Convention at Age 40: More Questions than Answers." *Journal of International Arbitration*, vol. 14, no. 1, 1997, pp. 77-79.

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the process of its enforcement simplified, thus cutting down on the long-winded litigation process concerning the validity of the arbitral award[18]. This makes the courts in contracting states uphold the awards unless the respondent can demonstrate any of the narrow grounds of refusal, hence making it one of the most successful treaties in international law[19].

(B) ***Singapore Convention: Simpler Enforcement for Mediated Settlements:***

The Singapore Convention also offers a similarly streamlined mechanism for the enforcement of mediated settlement agreements8. It imposes an obligation on signatory states to enforce settlements that are the result of mediation, upon the parties submitting that settlement to a court in a contracting state. Its drafting avoided the conversion complexities of a mediated settlement into a judgment or arbitral award preceding enforcement. This is important because mediation tends to be less formal than arbitration, and if the additional steps to enforce the mediation agreement are included, it would defeat the flexibility and effectiveness of the process[20].

The mechanism of enforcement under the Singapore Convention is often simpler in many ways but may also prove to be challenging. Mediation is unlike arbitration in that it does not necessarily come to a clear, ultimate agreement. Settlements can at times contain ambiguous and vague provisions that may present difficulties when enforcing if there is a dispute arising from the interpretation[21]. National courts may need to decide whether the terms used by the mediated settlement are sufficiently clear to be implemented; hence, different judgments may be delivered in different jurisdictions[22]. Though the facility of enforcement yields to the real objective of the convention-that of promoting mediation as an efficient alternative to arbitration, especially in international commercial disputes.

V. DEFENSES TO ENFORCEMENT

(A) New York Convention: Article V

The New York Convention provides for limited defenses to the enforcement of arbitral awards under Article V [23]. These include defects in the arbitration agreement, failure to give proper

[18] Paulsson, Jan. *The Idea of Arbitration*. Oxford University Press, 2013, p. 183.
[19] Redfern, Alan, and Martin Hunter. *Law and Practice of International Commercial Arbitration*. 6th ed., Oxford University Press, 2015, pp. 622-623.
[20] Sussman, Edna. "The Singapore Convention on Mediation: The Next Step in the Evolution of International Dispute Resolution." *Journal of International Arbitration*, vol. 36, no. 2, 2019, pp. 235-240
[21] Singh, Tan Sri Datuk Seri Ahmad Zaki. "Practical Issues in the Enforcement of Mediated Settlements under the Singapore Convention." *International Journal of Arbitration, Mediation, and Dispute Management*, vol. 86, no. 3, 2020, pp. 256-257
[22] Stipanowich, Thomas. "The Singapore Convention and the Changing Face of International Mediation." *Pepperdine Dispute Resolution Law Journal*, vol. 20, no. 1, 2020, pp. 82-86.
[23] Born, Gary B. *International Commercial Arbitration*. 2nd ed., Kluwer Law International, 2014, p. 1092.

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notice to parties, procedural irregularity, or violation of public policy [24]. Public policy has proved to be the most controversial of these defenses since national courts have construed it in very different manners, which led to inconsistent enforcement results. But in certain cases, courts have refused to enforce awards on the basis that they violate some domestic public policy, and such a violation will typically be established even if an award otherwise satisfies the threshold of international law [25].

This is, for instance, the case with Parsons & Whittemore Overseas Co. v. Société Générale de l'Industrie du Papier (RAKTA), where defense under public policy was argued against the enforcement of an arbitral award on account of its contravention to the public policy of the courts in the United States of America wherein they declined to enforce the said award. However, the Second Circuit reversed this decision, and declared that public policy defenses under the New York Convention have to be construed narrowly to preserve pro-enforcement bias of the convention itself. This case is very typical of the tensions in an attempt at applying domestic legal principles when national courts deal with international arbitration; it also denotes the need for consistency in the interpretation of defenses under Article V in a more positive way.

(B) Singapore Convention: Fairness and Consent

It is important that all parties who participate in arbitration know their rights and share fairly in the aim of equity and mutual consent with utmost fairness and respect for one another. The Singapore Convention gives the same sort of defenses against enforcement but gives more stress to the fairness of the process of mediation and the parties' consent[26]. As mediation is founded on agreement, the effectiveness of the process takes precedence. Indeed, there is a likelihood that courts will not allow its enforcement if it appears to result from lack of voluntary consent in its making or where one of the parties lacked capacity to contract. This emphasis on consent is particularly relevant to mediation. The willingness of the parties to settle the dispute is a key element of mediation processes.

The Singapore Convention also provides provisions by which parties are allowed to challenge enforcement if the mediated settlement is inconsistent with public policy or was obtained through fraud, coercion, or undue influence[27]. Such defenses reveal a stress on maintaining the

[24] Paulsson, Jan. *The Idea of Arbitration*. Oxford University Press, 2013, p. 205.
[25] *Parsons & Whittemore Overseas Co. v. Société Générale de l'Industrie du Papier (RAKTA)*, 508 F.2d 969 (2nd Cir. 1974).
[26] Stipanowich, Thomas. "The Singapore Convention and the Changing Face of International Mediation." *Pepperdine Dispute Resolution Law Journal*, vol. 20, no. 1, 2020, pp. 91-93
[27] Sussman, Edna. "The Singapore Convention on Mediation: The Next Step in the Evolution of International

integrity of the mediation process[28]. Unlike arbitration, where the parties agree to be bound by the decision of a neutral arbitrator, mediation relies upon active participation and agreement between the parties. Thus, the courts may scrutinize circumstances of settlement to ensure that it came about in good faith and without improper influence in the decision-making process.

VI. COMPARATIVE EFFECTIVENESS AND CHALLENGES

(A) Consistency and Predictability:

The New York Convention has major strengths in general consistency and predictability in the enforcement of arbitral awards. Due to more than 170 signatory states, the convention provides an assured framework for businesses engaging in international commerce to resolve disputes, expecting their awards to be enforceable in most countries[29]. But the interpretation of defenses, especially public policy, varies from country to country, and, therefore, enforcement is somewhat sporadic. This is most apparent where the courts of a country are reluctant to enforce awards that run counter to the prevailing national interests or values[30].

By the stretch of promises in its scope, the Singapore Convention may not quite enjoy the similar degree of consistency of the New York Convention[31]. Mediation, by nature, is less formal than arbitration and may face disputes over the interpretation and enforceability of settlements[32]. In addition, since mediation is not as common with international disputes, more so on those with high values and complexities, it will be seen long-term success of this convention based on how well it gets implemented and how it is applied uniformly by national courts[33].

(B) Flexibility and Accessibility

In contrast, the Singapore Convention is noted for its flexibility as well as accessibility in the resolution of disputes. Mediation is accessed far much more easily than arbitration; hence viewed as less costly, especially when cross-border disputes involve SMEs. The convention

Dispute Resolution." *Journal of International Arbitration*, vol. 36, no. 2, 2019, pp. 245-248.

[28] Singh, Tan Sri Datuk Seri Ahmad Zaki. "Practical Issues in the Enforcement of Mediated Settlements under the Singapore Convention." *International Journal of Arbitration, Mediation, and Dispute Management*, vol. 86, no. 3, 2020, pp. 263-265

[29] Born, Gary B. *International Commercial Arbitration*. 2nd ed., Kluwer Law International, 2014, p. 941.

[30] Gaillard, Emmanuel, and Yas Banifatemi. "Public Policy in International Arbitration." *ICSID Review-Foreign Investment Law Journal*, vol. 26, no. 2, 2011, pp. 325-327.

[31] Menon, Sundaresh. "The Singapore Convention on Mediation: A Welcome Response to the Needs of International Commerce." *Asian International Arbitration Journal*, vol. 15, no. 1, 2019, pp. 29-30.

[32] Stipanowich, Thomas. "The Singapore Convention and the Changing Face of International Mediation." *Pepperdine Dispute Resolution Law Journal*, vol. 20, no. 1, 2020, pp. 86-88.

[33] Strong, SI. *Beyond International Commercial Arbitration? The Promise of International Commercial Mediation*. Cambridge University Press, 2014, pp. 105-106.

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equips businesses with a tool that could enforce mediated settlements, which otherwise would have been avoided due to the high cost of arbitration or litigation. Its focus on voluntary settlement and mutual agreement gives parties more control over the outcomes, which can be particularly helpful in keeping commercial relationships[34].

In response, whereas the New York Convention provides predictability, arbitration is a costly and time-consuming exercise. For most business setups in high-value intricate disputes, arbitration remains to be the method of dispute resolution[35]. However, where preserving the relationship between the parties forms the core concern of each party, then arbitration turns out to be too formal for minor disputes or issues[36].

VII. ROLE OF NATIONAL COURTS IN ARBITRATION AND MEDIATION

(A) *A Comparative Analysis under the New York and Singapore Conventions*

National courts are admitted gatekeepers playing a pivotal role in the enforcement of international dispute resolution mechanisms. Decisions may be made about enforcing arbitral awards or mediated settlements. The intervention of national courts, as a precondition for the enforcement of such agreements is subject to the risk of judicial activism or incoherent interpretations that could jeopardize the very objectives of international conventions like the New York Convention (1958) and the Singapore Convention (2019)[37]. This section expands the participation of national courts in arbitration and mediation with respect to problematization and impact on their efficacious application..

(B) *National Courts in Arbitration: the New York Convention Framework Enforcement Obligations.*

Under the New York Convention, national courts of contracting states are tasked to implement foreign arbitral awards, hence giving businesses an assurance that their arbitration agreements would be enforced throughout the world[38]. The convention compels national courts to recognize and enforce arbitral awards except for specific grounds for refusal, which are identified under Article V[39]. Grounds include the invalidity of the arbitration agreement, procedural

[34] Stipanowich, Thomas. "The Singapore Convention and the Changing Face of International Mediation." *Pepperdine Dispute Resolution Law Journal*, vol. 20, no. 1, 2020, pp. 93-95.
[35] Redfern, Alan, and Martin Hunter. *Law and Practice of International Commercial Arbitration*. 6th ed., Oxford University Press, 2015, pp. 633-634.
[36] Sussman, Edna. "The Singapore Convention on Mediation: The Next Step in the Evolution of International Dispute Resolution." *Journal of International Arbitration*, vol. 36, no. 2, 2019, pp. 242-243.
[37] van den Berg, Albert Jan. *The New York Arbitration Convention of 1958: Towards a Uniform Judicial Interpretation*. Kluwer Law International, 1981, pp. 288-289.
[38] Born, Gary B. *International Commercial Arbitration*. 2nd ed., Kluwer Law International, 2014, pp. 1005-1006.
[39] van den Berg, Albert Jan. *The New York Arbitration Convention of 1958: Towards a Uniform Judicial Interpretation*. Kluwer Law International, 1981, p. 276.

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irregularities, lack of proper notice to one party, and public policy concerns.

It expects the national courts to decide whether an arbitral award should not be enforced based on such defenses. For example, in Parsons & Whittemore Overseas Co. v. Société Générale de l'Industrie du Papier (RAKTA), the US courts refused to enforce an arbitral award based on the ground of public policy[40]. However, the Court of Appeals soon reversed this decision, holding that public policy defenses must be construed narrowly as well to avoid undermining the purpose of New York Convention-which is to recognize and enforce arbitral awards across borders with minimal judicial interference. This case is an example where the courts are sandwiched between the broader theme of fulfilling national laws and policies and the pro-enforcement bias in the New York Convention.

VIII. JUDICIAL ACTIVISM AND INFLUENCE ON ARBITRATION

Involving the national court to intervene in arbitration poses some challenges associated with judicial activism. When the courts introduce requirements that go beyond the expectations of the New York Convention through the act of an insertion, they are capable of creating tremendous disruption in arbitration. This is often seen in protectionist jurisdictions in which national courts may be reluctant to enforce foreign arbitral awards when they seem not to align with local interests[41]. In some cases, for instance, courts have imposed requirements such as further reviewing the merit of the award, though the New York Convention does not allow a merits review at the enforcement stage [42].

Judicial activism is more conspicuous in those countries where the national courts ensure that the protection of local businesses or public interests precedes international legal standards. Here, in India, for example, courts were seen as interfering very heavily in the arbitration process, often under the disguise of a public policy defense[43]. Another well-known case is ONGC v. Saw Pipes Ltd., where the Indian Supreme Court set aside an award on grounds that it was "patently illegal" and went on to expand the scope of public policy under the Arbitration and Conciliation Act. Interventions of this nature were likely to destroy the efficiency of the New York Convention, making the process unpredictable and, hence, arbitration less predictable and less attractive for international businesses[44].

[40] Parsons & Whittemore Overseas Co. v. Société Générale de l'Industrie du Papier (RAKTA), 508 F.2d 969 (2d Cir. 1974).
[41] Gaillard, Emmanuel, and Yas Banifatemi. "Public Policy in International Arbitration." *ICSID Review-Foreign Investment Law Journal*, vol. 26, no. 2, 2011, pp. 319-321.
[42] Redfern, Alan, and Martin Hunter. *Law and Practice of International Commercial Arbitration*. 6th ed., Oxford University Press, 2015, pp. 678-680.
[43] ONGC v. Saw Pipes Ltd., AIR 2003 SC 2629.
[44] Redfern, Alan, and Martin Hunter. *Law and Practice of International Commercial Arbitration*. 6th ed., Oxford

(A) Court Support in Arbitration

Whereas significant questions of judicial activism are posed, national courts also play a supportive role in arbitration by helping parties at specific junctures, such as in obtaining court assistance for the appointment of arbitrators, provision of interim relief, and seeking enforcement of arbitration agreements. It is expected in the New York Convention that courts defer to the autonomy of arbitration agreements so as to not to hear disputes against arbitration unless any special circumstances apply. Courts may be compelled to enforce arbitration when one party attempts to flee it through the raising of a litigation case or otherwise.

Courts also are involved in implementing provisional orders granted by arbitration tribunals, such as freezing bank accounts or preserving evidence[45]. Such provisional orders are necessary so that an act of one party does not sink the arbitration when the arbitral proceeding remains pending. However, national courts are a disruptive influence on the arbitration process, yet they are similarly an integral part of that process, which is essential to support and make arbitration possible should they move according to international standards.

IX. NATIONAL COURTS IN MEDIATION: THE SINGAPORE CONVENTION FRAMEWORK

(A) Enforcement Responsibilities

The Singapore Convention establishes the obligation of national courts of signatory states to enforce mediated settlement agreements that originate from international commercial disputes. Similar to the New York Convention, the Singapore Convention seeks to bring an uniform framework to enforcement regarding the outcome of ADR so that mediated settlements obtain recognition and are enforced across borders[46]. However, implementing mediated settlement has very different problems because mediation is a form of arbitration which has its less formal character than arbitration and may have the form of very flexible or even not binding negotiations[47].

(B) Application for enforcement

Courts of every state shall determine, in accordance with the rules of their national laws,

University Press, 2015, p. 694.

[45] Menon, Sundaresh. "The Role of National Courts in International Arbitration." *Singapore Journal of Legal Studies*, 2015, pp. 214-217.

[46] Stipanowich, Thomas. "The Singapore Convention and the Changing Face of International Mediation." *Pepperdine Dispute Resolution Law Journal*, vol. 20, no. 1, 2020, pp. 77-79.

[47] Strong, SI. *Beyond International Commercial Arbitration? The Promise of International Commercial Mediation*. Cambridge University Press, 2014, pp. 63-65.

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whether a settlement agreement under this Convention meets the requirements of this Convention. Article 4 of the convention prescribes what papers for enforcement would entail; first, that is the settlement agreement supported by evidence that it emanates from mediation, for instance, with a signature of mediator and or a mediation clause[48]. Then, the courts determine if any of the grounds for refusal, according to Article 5, applies. Some of the grounds include incapacity of the parties, violation of public policy, or situations where the terms of the contract are ambiguous or vague[49].

(C) Difficulties in Settlement-Interpreted Mediation

One of the significant challenges facing a national court in interpreting mediated settlements is that it may not always come in as crisp and clear as an arbitral award[50]. Given that mediation leans towards flexibility and cooperation, the agreements reached under mediation are likely to contain provisions that are ambiguous and susceptible to various meanings. This can make enforcement more complicated because the courts will have to pierce deeply into the parties' intent and the situation surrounding the mediation to establish whether settlement is enforceable[51].

In other jurisdictions, courts may take a more interventionist approach when enforcing mediated settlements when scrutinizing whether the agreement was reached voluntarily and fairly[52]. For instance, the court may ask whether one party harbored undue influence or whether the settlement is inherently one-sided in that it seems to favor one party at the expense of the other. This line of questioning is consistent with the fundamentally consensual nature of mediation, whose validity relies on the fact that it is a process that is voluntary and participated in by the parties involved as the determining factor for whether the settlement can be entertained and enforced[53].

(D) Risk of Inconsistent Interpretations

A great challenge with the application of the Singapore Convention is that it may face inconsistent interpretations by national courts[54]. The application and laws of mediation differ

[48] Singapore Convention on Mediation, Article 4 (2019).
[49] Singapore Convention on Mediation, Article 5 (2019).
[50] Gaillard, Emmanuel. "The Urgency of Mediation: The Case for the Singapore Convention." *Journal of International Arbitration*, vol. 37, no. 2, 2020, pp. 215-217.
[51] Gaillard, Emmanuel. "The Urgency of Mediation: The Case for the Singapore Convention." *Journal of International Arbitration*, vol. 37, no. 2, 2020, pp. 215-217.
[52] Strong, SI. *Beyond International Commercial Arbitration? The Promise of International Commercial Mediation*. Cambridge University Press, 2014, pp. 108-109.
[53] Sussman, Edna. "The Singapore Convention on Mediation: A New Way Forward for Cross-Border Commercial Disputes." *Journal of International Arbitration*, vol. 36, no. 5, 2019, pp. 473-475.
[54] aillard, Emmanuel. "The Urgency of Mediation: The Case for the Singapore Convention." *Journal of*

drastically across the various jurisdictions, and thus, the courts in these different countries may apply the provisions of the convention differently, which may result in uneven enforcement outcomes. For example, the notion of public policy is considered a ground for refusal of enforcement under the New York as well as the Singapore Conventions. In some countries, this notion can be interpreted much broader than that in other countries[55]. It may even lead to inconsistent outcomes in some cases, where in one country an obligation is enforced as mediated or compromised between the parties, but refused in another[56].

It is, however more critical in places where mediation has yet to be publicized or gained much popularity[57]. There is a likelihood that judges in such jurisdictions may not be well versed with international mediation cases. There is an increased chance of judicial mistakes or excessive interpretive orders of the convention's provisions.This calls for ongoing judicial education and capacity building to empower national courts to enforce mediated settlements under the Singapore Convention[58].

(E) Judicial Activism in Mediation: Courts Prefer More Involvement

Since mediation is a more informal process, there is a threat to judicial activism-the possibility that national courts would be involved at a higher level of judicial activism when enforcing mediated settlements than arbitral awards[59]. Since mediation is dependant on the willing participation of the parties involved, courts are likely to scrutinize and inquire into the fairness and equity of a settlement more than usual and might thus revisit issues that were settled during the mediation process[60]. This would thus lead to a rise in court interventions, especially in jurisdictions where judges are more used to the adversarial nature of litigation and arbitration.

For example, courts may question whether the settlement was indeed voluntary, or one party was coerced into agreeing to unfavorable terms. This would emphasis procedural fairness at a cost. It could add yet another barrier to the enforcement of mediated settlements rather than helping in rendering an efficient and expeditious mediation process[61]. The risk that is being

International Arbitration, vol. 37, no. 2, 2020, pp. 220-222.

[55] Menon, Sundaresh. "The Singapore Convention on Mediation: The Future of Cross-Border Commercial Dispute Resolution." *Asian International Arbitration Journal*, vol. 16, no. 2, 2019, pp. 35-37.

[56] Strong, SI. *Beyond International Commercial Arbitration? The Promise of International Commercial Mediation*. Cambridge University Press, 2014, pp. 151-153.

[57] Stipanowich, Thomas. "The Singapore Convention and the Changing Face of International Mediation." *Pepperdine Dispute Resolution Law Journal*, vol. 20, no. 1, 2020, pp. 89-91.

[58] Menon, Sundaresh. "The Singapore Convention on Mediation: The Future of Cross-Border Commercial Dispute Resolution." *Asian International Arbitration Journal*, vol. 16, no. 2, 2019, pp. 44-45.

[59] Strong, SI. *Beyond International Commercial Arbitration? The Promise of International Commercial Mediation*. Cambridge University Press, 2014, pp. 160-162.

[60] Sussman, Edna. "The Singapore Convention on Mediation: A New Way Forward for Cross-Border Commercial Disputes." *Journal of International Arbitration*, vol. 36, no. 5, 2019, pp. 478-480.

[61] Stipanowich, Thomas. "The Singapore Convention and the Changing Face of International Mediation."

addressed by the Singapore Convention is then limited to grounds for refusal of enforcement, but judicial activism may still be a concern to jurisdictions less accustomed to mediation practices[62].

(F) Balancing Judicial Oversight and International Standards

The national courts' role in enforcing arbitral awards and mediated settlements is a crucially important piece for the success of both New York and Singapore Conventions[63]. Courts fill in the juridical gap only partially, but undue judicial intervention upsets the very purpose of these conventions and brings uncertainties and inconsistency to the enforcement of outcomes of arbitration or other forms of ADR. The correct balance has, therefore, to be struck at the level of national courts between adherence to the narrow, circumscribed grounds for refusal provided under both conventions, while paying due regard to the autonomy of parties and the integrity of arbitration or mediation process[64].

Thus, courts should not stray too far into the merits of the arbitration case or subject the parties to additional procedural requirements beyond the scope of the New York Convention[65]. In mediation, courts should walk a delicate balance between procedural fairness and the need to give effect to agreements considered truly reflective of mutual undertakings between parties. The role of national courts will always be essential to the further development of international mechanisms of dispute resolution because it will continue to provide mechanisms by which such processes work so that global commerce is encouraged, and the need for protracted litigation reduced[66].

(G) Implication on International Arbitration and Mediation:

The New York Convention and the Singapore Convention are two foundational instruments that form the contours of the international landscape of dispute resolution. Besides facilitating arbitration and mediation, these two frameworks have also given much-needed thrust to their growth as alternatives for international commercial disputes. This has further enabled businesses and lawyers to be more confident and secure about cross-border transactions. Despite this success, both conventions present challenges and need to remain under continuous

Pepperdine Dispute Resolution Law Journal, vol. 20, no. 1, 2020, pp. 96-98.

[62] Strong, SI. *Beyond International Commercial Arbitration? The Promise of International Commercial Mediation*. Cambridge University Press, 2014, pp. 170-172

[63] Gaillard, Emmanuel. "The Urgency of Mediation: The Case for the Singapore Convention." *Journal of International Arbitration*, vol. 37, no. 2, 2020, pp. 229-230.

[64] United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 1958

[65] Stipanowich, Thomas. "The Singapore Convention and the Changing Face of International Mediation." *Pepperdine Dispute Resolution Law Journal*, vol. 20, no. 1, 2020, pp. 104-105.

[66] Strong, SI. *Beyond International Commercial Arbitration? The Promise of International Commercial Mediation*. Cambridge University Press, 2014, pp. 180-182.

reform and modernization as their institutions try to adapt to the increasingly lively needs of international business[67].

X. ROLE OF THE NEW YORK CONVENTION IN PROMOTION OF ARBITRATION

The New York Convention of 1958 has been the cornerstone on the growth of international arbitration that provided a strong framework for the recognition and enforcement of awards issued during arbitration. It instils confidence in businesses to undertake cross-border deals since a foreign arbitral award issued in one signatory state is enforceable in another[68]. This is key for business since it reduces the risk associated with international trade where most concerns emanate from local courts and legal systems.

Predictability is also a key feature of the appeal of the New York Convention. For example, the Convention elaborates on when an arbitral award can be enforced and in which limited circumstances enforcement can be refused, a violation of public policy of the enforcing state or failure to provide notice of the proceedings to the defendant[69]. It is for these reasons that institutions such as the International Chamber of Commerce and the London Court of International Arbitration witnessed tremendous growth in the last decades and have, in practice, become de facto platforms of choice for mega complex disputes.

Further, the Convention has been ratified by 172 countries, thereby demonstrating its near-universal acceptance[70]. This wider ratification has even increased arbitration as the desired form of dispute resolution, where the course of litigation may be marred by jurisdictional difficulties. But despite its manifold successes, arbitration under the New York Convention is not without its critics. Costs and delay are often spoken about as challenges, particularly when there are multiple jurisdictions or parties[71]. The confidentiality and transparency of arbitration have also been a concern.

(A) *Emerging Influence of the Singapore Convention on Mediation*

While arbitration has been the leading mechanism for international trade dispute resolution for quite some time, mediation is growing in recognition with the Singapore Convention on Mediation that came into effect in 2019[72]. They include fewer costs, quicker resolution, and even an opportunity to preserve relations between the disputing parties. It was not really popular

[67] New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.
[68] Born, Gary B. *International Commercial Arbitration*, 3rd ed., Kluwer Law International, 2021, pp. 105-106.
[69] New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, Article V.
[70] International Chamber of Commerce (ICC) Arbitration Rules, 2021.
[71] Born, Gary B. *International Commercial Arbitration*, 3rd ed., Kluwer Law International, 2021, pp. 460-462.
[72] Singapore Convention on Mediation, United Nations, 2019.

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for businesses to use mediation in international disputes in the past for fear about the enforceability of settled medial results across borders.

Singapore Convention The problem is addressed by introducing a framework for the enforcement of mediated settlement agreements in much the same way as did the New York Convention facilitate the enforcement of arbitral awards[73]. Under the Convention, a mediated settlement agreement may be presented before a competent court in a signatory country and be enforced as if it were a judgment of such court.

Although promising, the Singapore Convention is at a nascent stage. To date, a few countries have ratified the Convention, which somehow restricts its current impact. However, as more and more countries sign on and implement the provisions of this Convention, it is likely that mediation will increasingly be used as a favored form of settling international disputes[74].

XI. CHALLENGES AND POTENTIAL REFORMS

(A) Innovating the New York Convention:

Despite these successes, however, the New York Convention still poses a number of challenges. The lack of provisions regarding interim measures on the Convention list is one of them. For instance, parties that want to enforce interim measures like injunctions or freezing orders often need to apply to the local courts. Amendment to the New York Convention to include provisions for the recognition and enforcement of interim measures will always improve and streamline arbitration and enhance its efficiency.

Another vital challenge would be public policy defense. Under the Convention, signatory states may refuse enforcement of an arbitral award if it offends their national public policy. Again, the meaning of public policy differs from one jurisdiction to another. Hence, the extension of the public policy defense in future reform will be much more predictable and consistent.

(B) Expanding the Scope of the Singapore Convention

To make the Convention fully effective, wide ratification and consistent application across jurisdictions are necessary. As of now, no country has ratified the Convention except Singapore, therefore limiting its effectiveness to be an effective cross border mediation vehicle. The mediated settlement agreement is another avenue for potential reform. Courts ought to be told exactly how they should interpret and enforce mediated settlements for better predictability over

[73] Singapore Convention on Mediation, United Nations, 2019, Article 3
[74] Sussman, Edna. "The Singapore Convention on Mediation: A New Avenue for Resolving International Commercial Disputes." *Journal of International Arbitration*, vol. 36, no. 5, 2019, pp. 555-557.

them.

(C) Other reforms:

The national laws need more harmonization. Even though they have been ratified by most nations, the interpretation and application of these conventions across different nations produces variance in enforcing awards. This can be streamlined with an internationally coordinated effort aimed at developing clear policy guidelines and standardized practice for courts across nations. This will make the system more predictable for businesspeople and instill faith in it.

There is a need to modify the public policy exception provision under the New York Convention. This provision allows a court not to give effect to an award where it is contrary to a country's public policy. Hence, this provision is worded in such a manner as to grant excessive discretion that ends up defeating the very object for which this convention was mooted. More specific definitions of what constitutes a contravention of the public policy could stop its abuse as an alibi of State sovereignty.

Third, education and training on the Singapore Convention by businesses, legal practitioners, and courts would further boost the use of mediated settlements and facilitate easier implementation. Mediation as a primary cross-border dispute-resolution tool is relatively new, and its adoption may be promoted by practical workshops, international forums, and further knowledge of the benefits it provides compared to arbitration.

Finally, closer cooperation between arbitration institutions and courts around the world would facilitate smoother enforcement processes. Cooperation in areas such as training, shared resources, and the use of modern technology for award recognition can strengthen the global arbitration ecosystem and the final move forward to grapple with these issues is more dialogue and cooperation among governments, institutions of law, and international trade bodies that will ensure that both conventions retain their effectiveness in an evolving global economy.

XII. CONCLUSION

The multilateral conventions in the evolution of arbitration, in particular, have dramatically shifted the global landscape of enforcing arbitral awards, especially the New York Convention of 1958 and the Singapore Convention of 2019. Certainly, the New York Convention represents a significant pivot establishment of an urgently needed framework regarding the recognition and enforcement of foreign arbitral awards- and stands as one such critical foundation of cross-border commercial arbitration. The success of its occurrence is based in the fact that it has spread across more than 160 countries, which allows for international trade as it offers a reliable

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mechanism by which disputes arising outside the national courts can be resolved.

On the other hand, the Singapore Convention addresses a relatively new concern in the realm of international dispute resolution, namely mediation. The convention is meant to strengthen the enforcement of mediated settlement agreements involving cross-border disputes in order to fill in the gap left open by the New York Convention. This newer treaty reflects the increased role of mediation as a cost-efficient and flexible alternative to arbitration.

Critically, the two conventions have ensured international dispute resolution by enhancing the cause of legal certainty and predictability. However further problems have been developed, for example, inconsistency in national implementation, and the enforceability of award issues due to public policy exemptions. Despite these many problems both conventions remain as a commitment towards the creation of a stable and harmonized international legal framework that is very essential for continued growth of global commerce.

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