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THE SINGAPORE CONVENTION - A NEW MECHANISM FOR RESOLVING INTERNATIONAL TRADE DISPUTES

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Abstract

The UN Convention on International Agreements on the Settlement of Disputes by Mediation, better known as the Singapore Convention, was adopted in December 2018, and opened for signature on August 7, 2019. By January 2021, a total of 52 countries have signed the Singapore Convention, including the Republic of Serbia. The Singapore Convention gives international force to agreements reached in the mediation process, which resolve commercial disputes, which represents a significant step forward in the resolution of international trade disputes. For international companies, the adoption of such a legal document is of great interest, given that it provides them with an effective alternative to litigation and arbitration in resolving their cross-border disputes, especially during the global Covid-19 pandemic. The aim of this convention is to promote the execution of international agreements that are the result of the mediation process. Arbitration is considered the most preferred mechanism for solving international trade disputes at the moment, due to the ease of enforcement of arbitration decisions through the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards, better known as the New York Convention. As the New York Convention regulated the area of enforcement of foreign arbitration awards, mediation in this area had a legal gap, which made it impossible for cross-border mediation to take root, which was just removed by the Singapore Convention. Given the large number of signatories to the Singapore Convention in a short time since its adoption, states have shown their willingness to support this type of trade dispute resolution.

Key words: *S*ingapore Convention, mediation, commercial disputes

1. Introduction

International commercial disputes are often high-value and complex disputes, and therefore require more time and expense than domestic commercial disputes. Despite the fact that arbitration remains undisputedly the preferred means of resolving international trade disputes, it also faces strong criticism. International commercial arbitration is said to have become too expensive, too slow and too formalized (Nolan-Haley, 2010). Therefore, parties to complex commercial disputes, including prominent

multinational corporations, are looking for new dispute resolution mechanisms that would be easier, faster and cheaper.

By encouraging the use of mediation as a viable route to resolving commercial disputes, the Singapore Convention reduces costs and eliminates the need for duplicative litigation. The Convention also improves the enforcement process, obliging states to recognize the legal status of any settlement resulting from a mediation process. As a result, the Singapore Convention helps reduce risks when entering into commercial relationships with companies in foreign markets and raises the standards of "fair" trade globally.

The Singapore Convention aims to facilitate international trade by making mediation an effective and trusted method of dispute resolution, in addition to arbitration and litigation.

Until the adoption of the Singapore Convention, parties avoided mediation as a way of resolving disputes, because mediation agreements were not enforceable if one of the parties decided not to act according to the agreement. More precisely, there was no mechanism for the execution of such agreements. The party from the mediation agreement, which properly fulfilled its obligations under the agreement, did not have any mechanism to force the other party to fulfill its obligations, except to initiate proceedings before the court or arbitration. Looking at the overall picture, the parties first conduct long negotiations in order to reach an agreement and peacefully resolve their dispute. In addition to the time invested, the parties also have costs that are reflected in the impossibility of uninterrupted business with the party with whom they are in dispute, then costs in the form of hiring experts who would help the parties to resolve the dispute and other numerous costs, without guaranteeing that the opposite party will act in accordance with this agreement. If, on the other hand, the other party does not respect the agreement reached, the party that is faithful to the agreement is left with the only possibility to initiate court or arbitration proceedings, which further leads to new costs and loss of time. This was the main obstacle for the parties to even consider mediation as an option for dispute resolution.

Taking into account the fact that so far over 50 countries have ratified the Singapore Convention, it is a clear signal that it is an international legal act that deserves the attention of the academic community. A large response of countries to sign the Singapore Conventione Convention could be explained by the exponential growth that alternative dispute resolution methods have shown over the past years, together with the emergence of several sophisticated administrative institutions.

Institutions that offer mediation services respond to current developments in the field of mediation. For example, the London Court of International Arbitration (LCIA) recently updated its LCIA Rules on Mediation, which came into force on 1 October 2020. The Singapore International Mediation Center (SIMC) also launched the SIMC COVID-19 Protocol, on 18 May 2020 by offering expedited mediation in response to the urgent need to resolve cross-border disputes quickly and inexpensively in light of the COVID-19 pandemic.

2. The need for the adoption of the Singapore Convention

In the last two decades, international trade has undergone significant regional changes. More and more important transnational transactions are concluded in Asia or with Asian business partners, and places such as Singapore, Hongkong or Shanghai are today considered new economic hubs (Weixia, 2014). At the same time, Asia is considered a region with a strong cultural aversion to litigation or arbitration, where preference is given to friendly forms of dispute resolution based on consensus (Vanišová, 2019).

In the framework of the Second Working Group of UNCITRAL, various surveys and researches were conducted, and one of them had the task of determining what motivates the parties to decide to settle a commercial dispute by agreement in the mediation process. Lawyers, arbitrators and professors were asked to explain, based on a ranking of nine factors, why, in their experience, parties chose to use mediation to resolve an international trade dispute (Reed, 2019). The desire to preserve an existing commercial relationship was only the fifth reason for parties to try to mediate international trade disputes. The size and complexity of the dispute are ranked as the sixth and seventh reasons. The intuition and expertise of a neutral, non-litigation-oriented mediator were ranked eighth and ninth out of the nine options offered.

The main factors in favor of mediation in international trade disputes were:

1) desire to save costs;
2) the desire to save time;
3) the desire for the most successful process i
4) cultural aversion to litigation or arbitration.

When conducting such research, it must be taken into account whether the respondents had experience with international mediation, and for the reason that there is a difference between domestic and international mediation. In cases of international disputes, third parties are often affected and there are multiple lawyers. There will be more regulations to consider. It often takes more time and there are more negotiation styles. There are certainly multiple languages, which requires both the availability and cost of competent translators. All of the above represents a great challenge for a successful mediation procedure to resolve an international commercial dispute, but it is also not impossible and has much less formality than the procedure before international arbitration and court proceedings to resolve these disputes (Reed, 2019).

The key problem, which is why the parties in international disputes do not opt for the mediation procedure, is the lack of possibility to implement such an agreement, if one of the parties does not fulfill its obligations. In that case, the responsible contracting party has only one option to exercise its rights in a court or arbitration proceeding. The parties to the dispute want to be sure that, after reaching a solution to the conflict and regulating it by agreement, it will be easily implemented. Otherwise, they would basically find themselves in the same position as at the beginning of the procedure. The above applies especially to parties in commercial disputes, because

the basis of thinking of a business entity is predominantly economic efficiency. With the non-binding nature of agreements resulting from mediation, mediation may seem risky, and the motivation to adopt it is weaker (Vanišová, 2019).

The well-known psychological pattern of the prisoner's dilemma can be seen behind this approach (Vanišová, 2019). The prisoner's dilemma is one of the problems of thought. It serves to study the behavioral strategies of two parties, which are in a situation when there is no communication between them and each party has to make a choice, whether to behave cooperatively or to turn against the other party. Even if in a particular case it turns out to be in the interests of the disputing parties to cooperate in order to resolve their dispute amicably, they may rationally choose not to do so. The reasons for this behavior are basically twofold. First, what if one side only pretends to be willing to cooperate so that it can ultimately profit from the best solution only from the point of view of its own interests. Second, even though one party is sincere and really wants to settle the dispute peacefully, what if he changes his mind after concluding the agreement. Until the adoption of the Singapore Convention, there was a lack of certainty regarding the agreements reached in the mediation process. Such agreements could not be implemented, and it can be considered justified that the parties in international commercial disputes did not opt for the mediation procedure, as a way of resolving the dispute. Namely, none of the parties could know how the opposite party would behave, whether they would respect the agreement, and the entire mediation procedure requires an investment of time and resources. As the parties primarily proceed from their own interests, they preferred to opt for other ways of resolving international commercial disputes, the decision of which is enforceable.

With the adoption of the convention, which regulates the area of execution of these agreements, the aforementioned dilemmas have been removed. Also, the convention removed similar obstacles that affect the willingness of business entities to decide to resolve their dispute in the mediation process.

By creating a clear and unified framework for the recognition and implementation of agreements resulting from the mediation process in international disputes, the use of mediation as a way to resolve international disputes can ultimately be increased. The Singapore Mediation Convention provides that framework (Hioureas, 2019).

Mediation, as a dispute resolution mechanism, provides a faster, more cost-effective and more commercial method of dispute resolution than resorting to litigation and arbitration. With the help of neutral and qualified experts, the parties in the mediation process focus on what is really important to them, on the essence of the problem, while preserving the company's reputation and mutual cooperation.

3. Specifics of the Singapore Convention

Before pointing out the main features and specifics of the Singapore Convention, we will briefly outline the field of application of this convention and the reasons for refusing to recognize agreements resulting from the mediation procedure.

In the first place, we point out that the Convention applies to written agreements resulting from mediation (settlement agreements) and concluded with the aim of resolving a trade dispute with a foreign element. Article 2 paragraph 3 of the Convention defines mediation as a procedure by which the parties try to resolve their dispute peacefully with the help of a third party or third parties who are not authorized to impose their solution on the parties to the dispute. Furthermore, Article 1 paragraph 3 of the Convention stipulates that the Convention does not apply to agreements approved by the court, i.e. to judgments made on the basis of settlement, nor to agreements that in the country of conclusion have the enforceable force of a court decision, as well as to arbitration decisions made on the basis of settlement . Family law, inheritance law, labor law and consumer disputes are excluded from the scope of application of the Convention.

The provisions of the Convention prescribe the following obstacles to the recognition of the agreement: conflict of the settlement agreement with the public order of the state of "recognition", the ineligibility of the dispute regarding which the settlement agreement was concluded to be resolved by mediation, if the competent authority finds that the party to the settlement agreement did not have the necessary capacity; that the settlement agreement is void, of no effect, or unenforceable; that it has not yet become final or binding on the parties; that it was later changed; that the obligations from the settlement agreement have already been fulfilled or are unclear, that is, incomprehensible; if giving the required effect to the settlement agreement would be contrary to the provisions of that agreement; if the mediator seriously violated the standards related to the mediator or the mediation procedure, and that violation affected the conclusion of the settlement agreement,

The contribution of this Convention can be seen in two directions. First, the Singapore Convention should regulate one field that has not been subject to international harmonization or unification until now, namely the cross-border effect of settlement agreements. Second, by limiting its field of application to settlement agreements that have not been confirmed by a court or arbitral decision, the Singapore Convention could speed up and make dispute resolution less expensive as parties would no longer have to go to court or arbitration to translate their agreement into an easily enforceable document. Apart from the practical, this contribution also has a theoretical significance, as it additionally affirms mediation as a consensual, non-adjudicative dispute resolution mechanism, the outcome of which does not have to be further "processed" and molded into other acts in order to ensure its enforceability (Schnabel, 2018).

The whole essence of the prescribed procedure for the enforcement of the parties' agreement in the Singapore Convention is reflected in the fact that the courts, when initiating the enforcement procedure, look at the form of the agreement itself, and the main task of the court is to determine whether the settlement agreement is really an expression of freely and validly expressed, faithfully represented and permitted by applicable law autonomy of the will or it is not the case.

In any case, the Singapore Convention has the potential to greatly increase the appeal of mediation as a mechanism for resolving commercial disputes internationally. The Convention ensures that the parties who have settled the dispute by agreement in the mediation process can quickly and efficiently implement that agreement in other jurisdictions. The Convention actually ensures the speedy execution of such agreements. The country that ratified the convention undertakes that its court, or other competent authority, if the execution of the agreement has been initiated there, enables the execution of the agreement in accordance with the rules of the Convention and with the fulfillment of the conditions prescribed by the Convention. In the continuation of the work, we will point out some of the main features of the Singapore Convention.

3.1. The contractual form and finality of the agreement resulting from the mediation procedure

Arbitrators evaluate the law and facts, decide claims, and issue awards that are binding on the disputing parties. Such judgments are reminiscent of court judgments. In contrast, the agreements created in the mediation process are classic contracts. The parties determine the conditions and draw up agreements by themselves or with the help of a lawyer. Although the agreements reached in the mediation process and the arbitration award resolve commercial disputes, mediators, unlike the arbitrator, cannot impose any solution to the dispute on the parties (Claxton, 2019).

The Singapore Convention will be the first treaty at the international level that will enable the unhindered execution of agreements made in the mediation process, which resolves commercial disputes. This means that international law will treat these agreements like arbitral awards for the purposes of recognition and enforcement. An agreement that falls within the scope of the Singapore Convention actually becomes a sui generis instrument that enjoys privileged treatment, in the sense that it has the form of a contract and the force of a judgment.

In terms of the previously mentioned psychological dilemma of prisoners, we conclude that the Singapore Convention has the potential to transform the entire pattern of behavior of potential participants in mediation, in such a way that the new legal status of the agreement encourages the parties to resolve their dispute in the mediation process, protecting their mutual trust and eliminating uncertainty that compliance with the agreement will depend on the goodwill of the other party.

The previous statement is illustrated by the following example, the quarrel between two neighbors about a tree, where both neighbors claim that the tree is on their land, the theme of the conflict is manifested at the moment when each of them begins to tell his story. "I want that tree because I need apples" and "I want that tree because I need the shade it provides" (Hioureas, 2019). The power of narrative is extremely strong because it opens up new horizons and new possibilities that have remained hidden until now. Therefore, the space for creative conflict resolution

is expanded and a framework is created that enables the parties to independently, knowing the circumstances, which are not known as legal facts, find a point where their interests meet and thus successfully resolve the dispute. As one of the possible ways to resolve disputes, it is mediation that focuses most on the power of narrative to drive conflict dynamics. The goal of mediation is such that the mediator encourages the parties to voluntarily disclose the entire context of a particular dispute and arrange an appropriate solution to their dispute on a voluntary basis. Nevertheless, the power of storytelling results in an almost unlimited exercise of party autonomy in the mediation process, in contrast to arbitration, where the parties' autonomy is not so pronounced (Vanišová, 2019).

In the case of an arbitration award, the parties do not have many options for an exit if they are dissatisfied with it. That judgment is binding for the parties. The Singapore Convention actually assigns a new status to the agreements resulting from the mediation process because it transforms a private contract into an instrument that is legally relevant and eligible for implementation within a legally binding international framework (Rutledge, Larsen, 2019). The agreements reached in the mediation process are the result of a party agreement. For parties acting in good faith, this is the best way to resolve a dispute. With the entry into force of the Singapore Convention, the agreement concluded by the parties can be executed, without additional formalities, which provides them with maximum security.

The Singapore Convention refers only to the recognition and enforcement of agreements resulting from successful mediation. This essentially means that the parties managed to resolve the dispute in the mediation process. The parties voluntarily decide on this procedure. If they cannot resolve the dispute in this procedure, they terminate the procedure, and the procedures before the court or arbitration remain at their disposal. The goal is not to impose unnecessary formalities, such as the interpretation of the agreement and the evaluation of compliance with the agreement (Vanišová, 2019).

3.2. Absence of seat regulations

For practitioners familiar with the concept of seat of arbitration under the provisions of the New York Convention, it may come as a surprise that the Singapore Convention contains no provision regarding the "seat" of mediation.

Agreements that were created in the mediation process and that are the subject of the Singapore Convention do not have citizenship. The concept of headquarters was considered and rejected by the working group in order to avoid giving legal weight to one of the several jurisdictions that may be affected by mediation. By separating the mediation procedure from the "venue", the convention exempts any mediation venue from legal requirements. This avoids the double control of agreements, which some argue has harmed the development of international arbitration. It also avoids collateral disputes that arise in arbitration proceedings over issues such as the identity

of the seat, the legal relevance of the seat to the governing law, and whether annulled judgments should be challenged (Claxton, 2019).

The Convention contains no "seat" provisions at all. Through an illustration through a hypothetical case (Chong, Alexander, 2019), it can be seen what the concept of the seat is in international arbitration and practice, on the basis of which it can be concluded why it is good that the provisions on the seat were not found in the Singapore Convention. A company registered in Germany and a company registered in Australia cooperate. Due to the violation of the terms of the contract, and in accordance with the arbitration clause in its contract with the company from Australia, the representatives of the German company are initiating proceedings before the International Arbitration Center in Singapore (SIAC). The contract agreed that the seat of arbitration should be in Singapore, and Singaporean law was agreed upon as the governing law. During the hearing of the case, one of the appointed arbitrators was constantly interrupted by a telephone. A director of an Australian company noted that the arbitrator was using the phone while the lawyers were presenting the facts of the case. When the arbitration judgment was passed in favor of the German company, the representatives noticed that the signature of the above-mentioned arbitrator was missing, i.e. that he did not participate in making the decision. The company from Germany will start enforcement proceedings against the assets of the Australian company in Germany, if that is not enough, then also against the assets in Australia. On the other hand, after seeing the shortcoming, the representatives of the Australian company contested this verdict before the High Court in Singapore, because according to Singaporean law, it is necessary for all arbitrators to state the reasons for the verdict, which they did not in this particular case. If the High Court annuls the verdict, there is a possibility that the German company will not be able to apply the verdict in Germany either.

The roots of the seat of arbitration can be found in what is commonly known as "localization theory". The "locality theory" derives from aligning the law of the "seat" of the arbitration, where the arbitration physically takes place, with the governing law of the arbitration. In other words, the law of the place where the arbitration takes place ultimately governs the arbitration, through the courts of that place. Courts in the seat of arbitration usually review international arbitral awards (Chong, Alexander, 2019b).

In the case of international mediation, the "theory of delocalization" is represented. This theory fits into the procedurally and geographically flexible and fluid process of international mediation. The 'delocalization theory' envisages the separation of mediation from the laws of the geographical location where the mediation takes place (Chong, Alexander, 2019b).

Now let's imagine that a German and an Australian company decided to settle their dispute in mediation, instead of arbitration. The parties have chosen a mediator who knows the culture of both countries and speaks the languages fluently. He conducted the first meeting via video conference, and the second via Skype, in

order to accommodate the travel schedules of the parties and their representatives. Encouraged by the first signs of progress, they decide to meet in Bali to continue the mediation process. International mediation procedures are not limited to one geographical location, but take place in different locations; alternatively, online dispute resolution platforms, video conferencing or other available applications such as Skype, Zoom and even via e-mail can be used for the mediation process.

During the meeting in Bali, the directors and representatives of the German and Australian companies found themselves reflecting on what led to the termination of their business relationship and the resulting legal claims. Both parties agreed that their business relationship was good until the instant dispute arose; they remain open to the possibility of continuing cooperation provided that the resulting dispute is resolved amicably and to mutual satisfaction. As the mediation process progresses, the parties negotiate a solution to the current problem and the business relationship, in order to better achieve each party's business goals. This approach to problem solving sets the parties apart from legal parameters, which was the initial catalyst for dispute resolution. Mediation effectively moves the parties into a negotiation space where they can choose to redefine their legal dispute in a way that reflects commercial realities and other priorities; they can also negotiate the terms of their current contract - in terms of substantive provisions, and can also include choice of law and forum. It is the space in which they will take ultimate responsibility for the substantive outcome of this dispute. In short, mediation is a fundamentally different process from international arbitration and one in which the notion of seat would seem misleading.

The careful language of the Singapore Mediation Convention reflects the fact that it has no place in international mediation - it provides for the enforcement of international agreements whichand are the result of the mediation procedure. The provision formulated in this way differs from a similar provision of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which provides for the enforcement of foreign arbitral awards. For an award to be defined as foreign, it must be foreign in relation to something or somewhere - and this is where the notion of seat of arbitration is useful. On the other hand, Article 1 of the Singapore Convention generally established that the Convention refers to international agreements resulting from mediation where:

(a) At least two parties to the agreement have their headquarters in different countries; or

(b) The country in which the parties to the agreement have their headquarters differs from:

(1) the country in which a significant part of the obligations from the agreement is performed or

(2) The country with which the subject of the agreement isbut most closely related (Chong, Alexander, 2019b).

The absence of the concept of "seat" in international mediation points to the fact that mediation and arbitration are fundamentally different processes, and they should not be equated. As the practice of international mediation increases, lawyers and lawyers in general must be mindful not to assume that the principles applicable to international arbitration will automatically apply to mediation.

2.3. Agreement recognition mechanism and grounds for refusal of execution

The Convention applies to agreements concluded in the mediation procedure, concluded in writing and which resolve a commercial dispute. An agreement will be classified as "international" under the Convention if the parties have their place of business in different countries or the place of business of the parties is different from the country in which a significant part of the obligations under the agreement is performed or with which the subject of the agreement is most closely connected.

According to the Convention, a party that wants to enforce an agreement concluded in mediation will have to prove that it is the result of mediation. The Convention lists a number of ways in which the parties can do this, including providing an agreement signed by the mediator himself or herself or a certificate that mediation has taken place; or the certificate of the institution that conducted the mediation procedure, if that was the case. Where none of these are available, the Convention also allows any other evidence that an agreement has been reached in the mediation process, but it is essential that such evidence is acceptable to the relevant competent authority enforcing the agreement.

The mechanism of recognition and enforcement of agreements under the Singapore Convention is simple. No additional formal requirements can be made. It is sufficient for the party requesting the execution of the agreement to submit the same, signed by the parties and in writing (Vanišová, 2019).

By carefully looking at the reasons that the Singapore Convention prescribes as grounds for refusing to execute an agreement, it is concluded that they are modeled on the reasons for refusing to recognize and enforce an arbitral award prescribed by the New York Convention. Based on these provisions, as well as other provisions of the Singapore Convention, which were written on the model of the New York Convention, it is concluded that these two conventions exist as mutually complementary, which are not mutually exclusive, but complement each other.

Two additional reasons for refusal of recognition are listed in Article 5, Section 2: unlike the others, these reasons can be ex officio examined by the court or other competent authority before which the procedure for the execution of the agreement has been initiated. Therefore, enforcement may be refused when:

(a) approval of the agreement would be contrary to the public policy of the State in which enforcement is sought or

(b) the subject matter of the dispute is not amenable to arbitration under the law of that State.[1]

[1] United Nations Convention on International Settlement Agreements Resulting from Mediation, art. 5 (2).

Furthermore, Article 6 of the Convention gives discretion to the court or other "competent authority" of the state party in which enforcement is sought to postpone proceedings and order security when a judgment of another court or an arbitral award may affect its decision to grant or refuse enforcement.[2]Thus, Article 6 of the Singapore Convention specifically deals with parallel enforcement proceedings. The logical question is whether there is a basis for refusal of execution under the Singapore Convention, which is contained in Article 6.

It can be hypothesized (Chong, Alexander, 2019a) that Germany and Australia ratified the Singapore Convention without declaring any reservations. A company from Germany and a company from Australia concluded an agreement to resolve a disputed issue. The parties have also expressly agreed that the Singapore Arbitration Convention will apply to the implementation of their agreement.

The Australian company's representative in the mediation process was authorized to offer an amount less than one million dollars during negotiations. Unfortunately, the representative misread his client's instructions and offered the representative of the German company $5 million, mistakenly believing that he was authorized to offer less than $10 million during negotiations. The German company was satisfied with the offer of five million dollars, the director agreed to such an offer and both parties signed the agreement. After completing the job, the representative of the Australian company went on vacation and did not return calls. The director of the Australian company realized late that the amount he planned to pay for the license exceeded the amount of one million. On the other hand, the director of the German company initiates the procedure for recognition of the agreement in both Germany and Australia.

Now, when a party wants to challenge the enforceability of an agreement in one jurisdiction and initiate proceedings (eg Germany), the courts of other signatory states (eg Australia) can, in accordance with Article 6, postpone the enforcement proceedings from their jurisdiction. Let's assume that a court in Australia stays the proceedings that have been initiated.

Therefore, Article 6 expressly refers to postponement and security, or rather, based on it, the actual decision is made on whether the postponement of the recognition procedure or the continuation of the hearing will be regulated by the rules of international international law and the procedural rules of the court that received the request. However, the practical effect of Article 6 is not clear from a reading of its terms. The real question that arises here is what can be done by the court that adjourned the proceedings, and in the event that the party, before another court, in the aforementioned hypothetical case the director of the Australian company, succeeded in challenging the enforceability of the concluded agreement, referring to the conditions of Article 5 of the Singapore conventions (Chong, Alexander, 2019a).

This provision was included in the Convention on the model of Article 6 of the New York Convention, which stipulates that the court may refuse recognition and

[2] United Nations Convention on International Settlement Agreements Resulting from Mediation, art. 6.

enforcement of a foreign arbitral award if "...it has not yet become binding on the parties, or the competent authority of the country has postponed or suspended it".[3]In other words, if the parties from the aforementioned hypothetical case had decided on arbitration, the director of the Australian company would first submit a corresponding request to the seat of arbitration, and only then would he submit requests to the courts of Australia and Germany for the postponement of the execution procedure. If the request filed in the seat of arbitration is granted, the other courts before which the proceedings were initiated would refuse to recognize or enforce the foreign arbitral award based on the relevant article of the New York Convention. Unlike the New York Convention, the Singapore Convention does not foresee what the court can do after the implementation of the agreement has been delayed in parallel proceedings, and we are of the opinion that this is another ground for refusing to enforce the agreement. In effect, this would be a default defense based on the fact that the courts of the other contracting state have already refused to enforce the agreement. This should be limited to agreements whose enforcement has been refused, and for the reasons stated in Article 5(1) of the Convention. It should be emphasized that the proposed default defense would not apply to agreements that could not be enforced for the reasons stated in Article 5(2) of the Convention, i.e. for reasons that are contrary to the public policy of the state in which enforcement is sought, i.e. because which is a disputed issue that, according to the laws of that country, cannot be resolved in the mediation process. It may be possible for an agreement to be enforced in one state, but for the courts of another to refuse enforcement on grounds of public policy. In short, the implied ground for refusal of enforcement can be read in Article 6 of the Singapore Convention. It should be emphasized that the proposed default defense would not apply to agreements that could not be enforced for the reasons stated in Article 5(2) of the Convention, i.e. for reasons that are contrary to the public policy of the state in which enforcement is sought, i.e. because which is a disputed issue that, according to the laws of that country, cannot be resolved in the mediation process. It may be possible for an agreement to be enforced in one state, but for the courts of another to refuse enforcement on grounds of public policy.

Referring to the Australian company-German company dispute as an illustration, where the German company continues to enforce the agreement in Germany and Australia, the representatives or director of the Australian company may elect to raise an Article 5 defense first in either Germany or Australia, and in accordance with the advice lawyers, with the aim of achieving a successful defense. If he chooses to file an Article 5 defense in Germany first, he will then apply for a stay of execution in Australia. Based on the above, it is possible that the referring court in Australia will have to recognize the judgment of the German state court on the matter, ie. that the agreement cannot be executed, and based on a successful defense from Article 5 (1) and to end the proceedings initiated before him accordingly (Ghong, Alexander, 2019a).

[3] United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, art.6.

At this point, it is important to mention that the Singapore Convention expressly allows numerous reservations to Article 8, including those related to whether the Convention will apply to the government of the signatory state or not (Alexander, 2018).

4. Conclusion

The entry into force of the Singapore Convention will bring many novelties to the law of settling international trade disputes. This source of international law was created so that it exists in a complementary way with the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Hague Convention on the Judicial Settlement of International Disputes. Of these three sources, the Singapore Convention, without a doubt, contains the most original solutions that were presented and analyzed in this paper.

Although the New York Convention and the Singapore Convention have common provisions, they govern different procedures. The New York Convention was a corrective to the shortcomings of existing treaties for the enforcement and recognition of arbitration agreements and awards, while the Singapore Convention is the first treaty to enforce agreements reached through mediation.

However, arbitration is still the preferred method for resolving international trade disputes, and due to the fact that arbitral awards are easily enforced almost all over the world thanks to the New York Convention, which is one of the most successful international treaties, it seems that international agreements will also result from the mediation process very easily. quickly reach this level by adopting and ratifying the Singapore Convention. The high costs of international arbitration are still a disadvantage, but so is the verdict, which represents a victory for one side and a loss for the other, which in most cases will be answered by the parties from further cooperation. On the contrary, mediation, according to the preamble of the Singapore Convention, brings significant benefits, such as reducing cases where the dispute leads to the termination of the commercial relationship, facilitating the administration of international transactions by commercial parties and creating time savings and cost reductions. It is very important to emphasize that resolving the dispute through mediation allows the parties to maintain positive relations, in order to continue the contractual arrangement or future projects or investments. If this goal is achieved, international mediation will undoubtedly become a fierce competitor to arbitration. As more countries ratify the convention and adopt laws on mediation, an increasing number of parties will become aware of the benefits of resolving their disputes through mediation. The Singapore Convention should create a harmonized and efficient system for the recognition and enforcement of mediation agreements that go beyond certain international trade disputes. It is very important to emphasize that resolving the dispute through mediation allows the parties to maintain positive relations, in order to continue the contractual arrangement or future projects

or investments. If this goal is achieved, international mediation will undoubtedly become a fierce competitor to arbitration. As more countries ratify the convention and adopt laws on mediation, an increasing number of parties will become aware of the benefits of resolving their disputes through mediation.

The basic principle of the Convention – facilitated cross-border execution of the settlement agreement, will probably contribute to the additional affirmation of mediation and make it an even more frequently used method of alternative dispute resolution. Easy execution of an agreement resulting from mediation will contribute to shortening time and saving money, which is very important for parties in commercial disputes.

Taking into account the current challenging climate, the impact of the COVID-19 pandemic, and now the Ukrainian crisis, we can conclude that the adoption of this Convention is timely. Since the first months of 2020, companies have been forced to look for alternative ways to resolve growing disputes.

If we take as criteria the large number of signatories of the Singapore Convention in a short time since its adoption, and then draw a parallel with the New York Convention in terms of promoting arbitration on a global level, things look very positive for the future of mediation and the Singapore Convention. Without a doubt, the Convention is an important step in the growth and development of mediation at the global level and providing a viable alternative to the current deadlock in dispute resolution.

In any case, this Convention will grant a new status to agreements resulting from mediation, as it transforms a private contract into an instrument that can circulate within a legally binding international framework, which will ultimately lead to the popularization of the settlement of international trade disputes through mediation, but also to a significant extent facilitate international business.

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