

# A Study on the Linkage Between China's Commercial Mediation System and the Singapore Mediation Convention

Lufan He \*

Zhongnan University of Economics and Law Wuhan China

\* Corresponding Author Email: tututori0419@gmail.com

**Abstract.** In order to establish a unified and effective cross-border enforcement mechanism to promote the efficient development of international commercial activities, the United Nations Convention on International Settlement Agreements Resulting from Mediation (the “Singapore Mediation Convention” or “The Convention”) officially entered into force on September 12th, 2020. The Convention for the first time explicitly provides for the direct enforceability of settlement agreements, addressing the issue of cross-border enforcement of such agreements. It improves the system of diversified dispute resolution mechanisms including litigation, arbitration, and mediation. As one of the first signatory countries of the Convention, China has expressed its goal and determination to establish an international commercial mediation system. In recent years, Chinese scholars have made rich research achievements on this subject, but China lacks legal norms for commercial mediation and corresponding mediation procedures still need to be developed. The implementation and enforcement of the Convention will pose new challenges to the legislation and institutional construction of commercial mediation in China. This article starts from the current status of the commercial mediation system and the Convention, combines the difficulties of China's existing mediation system, and puts forward reflections and suggestions on the institutional linkage of the Convention. This article is divided into five parts: the first part analyzes the current status of the commercial mediation system, summarizes its origin and development, studies the characteristics of the Convention, and discusses the significance of China's signature of the Convention. The second part summarizes the current status of commercial mediation in China and analyzes the issues of inconsistency and difficulty in aligning China's current commercial mediation system with the Singapore Mediation Convention. The third part explains the necessity and legitimacy of aligning China's current system with the Convention. The fourth part points out the realistic dilemmas of aligning the Convention based on the current development status of China's commercial mediation system. The fifth part presents reflections and suggestions on the dilemmas.

**Keywords:** Singapore Mediation Convention; commercial mediation; settlement agreement.

## 1. Introduction

As is known to all, there are three main ways to resolve international commercial disputes: litigation, arbitration, and mediation. Among them, the signing of the 1958 New York Convention ensures the enforceability of arbitral awards worldwide, safeguarding the parties' legitimate rights and interests and promoting the development of international economic trade. Even after more than sixty years, it still possesses strong vitality and plays an extremely important role in international commercial intercourse. Before the signing of the Singapore Mediation Convention on 7th August 2019, mediation, unlike litigation and arbitration, did not have as much influence, and its legal basis was limited to domestic laws of each country. The enforceability of mediated settlement agreements was far from being guaranteed like that provided by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Hague Convention on Choice of Court Agreements, lacking a basis for mandatory enforcement in other countries. Therefore, mediation has been applied to a very limited extent in the resolution of international commercial disputes.

However, in the context of “economic globalization”, international commercial intercourse is becoming increasingly close, and businessmen are seeking more convenient and faster ways to resolve disputes. Among all third-party dispute resolution mechanisms, mediation, with its flexibility, high efficiency, and low cost, has been attracting increasing attention from the international

community, especially the international business community. The significance of the birth of the Singapore Mediation Convention lies in its provision of enforceability to settlement agreements arising from mediation conducted under the Convention's conditions. It fundamentally addresses the weaknesses of commercial mediation compared to arbitration and litigation, addresses practical pain points, and marks the true arrival of commercial mediation on the stage of dispute resolution systems.

It can be foreseen that the application of mediation as an international commercial dispute solution will continue to increase in the future. China, as one of the first signatory countries of the Convention, has demonstrated its emphasis on the commercial mediation system and its determination to align with international norms. Therefore, the study of the Convention holds dual significance both in theory and practice.

## **2. On the development of China's commercial mediation system**

### **2.1. Origin and development**

The mediation system has an ancient historical background, which is reflected in traditional ideologies such as Roman law, sociology, philosophy, and jurisprudence. It was also a means of resolving commercial disputes between ancient Greek city-states.

Similarly, in ancient China, influenced by Confucian Thought of Rule of Virtue (CTRV), mediation not only resolved social conflicts but also satisfied the rulers' need to consolidate their power. The process of mediation was more like a homiletic process. Furthermore, influenced by the ideology of "no litigation", ancient Chinese people believed that participating in litigation was detrimental to etiquette, so mediation was widely used in daily life. "When officials or elders mediate, they play the role of spokesperson for socially recognized values, aiming to awaken the parties' conscience under the influence of these values" [1].

Compared to ancient mediation, modern mediation has distinct differences. Under the background of a rule of law society, "traditional mediation emphasizes the harmony of national and community order, prioritizing it over individual needs; it values the personal charisma of the mediator, placing less emphasis on systems and management. In contrast, modern mediation, which started several decades ago in Western countries, focuses more on individual rights and needs, with the state's authority emphasizing advocacy instead of intervention; it values regulation and education, relying not solely on the mediator's individual efforts" [2]. In addition, traditional mediation and modern mediation show significant differences in their relationship with litigation, mediation principles, and basis for mediation. Furthermore, commercial mediation differs from court mediation and arbitration mediation. "Court mediation and arbitration mediation are no longer pure forms of mediation, but rather the combination of mediation with litigation and arbitration procedures" [3].

Nowadays, commercial mediation is a method for resolving disputes arising in commercial intercourse through friendly negotiation and compromise with the assistance of a third-party mediator. It has become increasingly important as international communications become more frequent, the demand for mediation in commercial intercourse grows, and its application becomes more widespread.

### **2.2. Characteristics**

Compared to litigation and arbitration, modern commercial mediation has the following characteristics: voluntary participation, paid services, flexible procedures, confidentiality, low cost, and the sole purpose of reaching a settlement.

Firstly, in terms of voluntary participation, mediation exhibits a higher degree of voluntariness compared to litigation and arbitration procedures. Every step of the mediation process, including its initiation, the selection of a mediator, the progress of the mediation process, and the outcome, respects the parties' willingness of intention and gives them more comprehensive autonomy. "In international commercial mediation, the parties themselves are the decision-makers in dispute resolution, playing the dual roles of 'judge' and 'player' [4]". As long as it does not violate mandatory legal provisions,

mediation is not subject to the mandatory control of a third-party mediator and can even make flexible adjustments under rigid substantive and procedural rules.

Secondly, flexibility is demonstrated in many aspects of mediation. The flexibility of mediation is reflected in the acceptance conditions, which do not necessarily require a mediation agreement or application from both parties. It only requires a consensus and mutual agreement to engage in mediation. In terms of procedure, the time, place, and progress of mediation can be determined by the parties themselves. Mediation can also take various forms, such as written or oral. It is clearly different from arbitration and litigation that have defined procedural rules that must be followed once commenced.

Non-adversarial nature is another important characteristic of commercial mediation. Compared to arbitration and litigation procedures, commercial mediation resembles negotiation and consultation, emphasizing non-adversarial features. Under the guidance of a third-party mediation institution or mediator, the disputing parties consider their own interests while also taking into account the reasonable needs of the other party. They engage in friendly consultations and reach certain understandings and compromises, making reasonable concessions. This mediation process significantly reduces the adversarial consciousness and psychological aspects present in litigation proceedings, making the process gentler and exhibiting non-adversarial characteristics. It also avoids the negative consequences, such as prolonged and combative disputes, often seen in litigation and arbitration procedures.

Confidentiality principle, as one of the fundamental principles of commercial mediation is consistently observed in international commercial mediation. It is an important principle of the mediation system and finds universal compliance in the international community. Confidentiality in international commercial mediation extends to both the specific content and procedures. It includes keeping the dispute details confidential, as well as maintaining the confidentiality of the parties involved. Even if the mediation has ended and a settlement agreement has been reached, any confidential information from the mediation process will remain confidential if new disputes arise due to non-compliance. In commercial intercourse, commercial secrets or company confidential information may be involved. Certain public procedures in litigation and arbitration can cause unnecessary trouble for companies. The confidentiality characteristic of commercial mediation provides a relatively secure environment for the parties to negotiate their commercial secrets, facilitating a safe and harmonious resolution of disputes.

### **3. Analysis on the Singapore Mediation Convention**

Based on the analysis above, it can be seen that “non-litigation” has always been the concept of dispute resolution in China since ancient times. Today, there are various types of mediation, such as litigation mediation, arbitration mediation, people's mediation, and labor mediation, which are innovative mediation practices in China. However, it must be clarified that the adjustment objects and legal effects of the Singapore Mediation Convention differ from China's mediation system [5].

#### **3.1. Characteristics of system**

The scope of application is stipulated in the first article of the convention, which intuitively indicates that the convention applies to international cases, while excluding personal, family and family-purpose, employment, inheritance, judicial, and arbitration matters. Although the application of judicial and arbitration matters is excluded, in order to prevent the exclusion of cases involving certain arbitration and litigation factors from the convention, the convention strengthens its enforceability through the provisions in this article. According to Article 1, Paragraph 3 of the convention, agreements approved by the court and agreements enforced by the competent authority of the place of enforcement as court judgments or arbitration awards do not fall within the scope of this convention. This ensures that the execution process of mediation agreements does not conflict with litigation and arbitration, but also ensures that there are no gaps.

Firstly, it is international. In the convention, in addition to stipulating that the applicable objects are “international”, further explanations are provided. The “international nature” is defined as “the settlement agreement has at least two parties having their places of business in different States; or the State in which the party(ies) that is/are to perform the obligations under the settlement agreement have their places of business is different from either the State where the parties have their places of business or the State that the parties have agreed to be the place of effective performance of a substantial part of the obligations under the settlement agreement; or the State in which the subject matter most closely connected to the settlement agreement is significantly more related to another State.” That is, the business places of the parties to the settlement agreement are located in different countries, or the main obligations of the settlement agreement are performed in different countries. This means that when the places of business of the parties are located in different countries, or when the place of performance of the settlement agreement is different from the places of business and is in a different country, it meets the “international” standard.

Secondly, it is independent. In terms of the mediation process, the Convention highlights the independence of the procedure. In the past, mediation was often connected to litigation and arbitration, forming models such as arbitration-mediation or litigation-mediation. In practice, mediators in independent arbitration procedures do not have the authority to enforce decisions; only judges and arbitrators have the authority to make judgments on disputed issues. When mediation is part of a court or arbitration procedure, if the two parties have not reached a valid mediation agreement, the confidentiality of mediation proceedings in the subsequent procedure may easily affect the fairness of the case. The Singapore Mediation Convention grants enforceability to international commercial settlement agreements, providing guarantees for the finality of mediation and also reflecting the independence of the mediation process. Furthermore, the exclusion clause in the Singapore Mediation Convention emphasizes the independence of the mediation process, requiring international commercial settlement agreements to originate from independent mediation processes, highlighting the value of mediation itself, rather than just being part of litigation and arbitration procedures.

Thirdly, in terms of enforcement, compared to the New York Convention and the Hague Convention on Choice of Court Agreements, the Mediation Convention does not have a similar recognition procedure. Instead, it replaces “recognition and enforcement” with the parties “seeking relief” from the competent authorities at the place of enforcement and the competent authorities “granting relief”. Over the years, parties involved in commercial mediation have enjoyed the advantages of a highly autonomous and flexible mediation process, but have also faced the drawback of unclear enforceability of mediation agreements. This has greatly hindered the development of commercial mediation in international commercial disputes resolution [5]. The Mediation Convention makes a significant breakthrough in this aspect. Article 3 of the Convention stipulates that, under the supervision of a third-party mediator, the disputing parties reach a voluntary agreement and form a settlement agreement. It introduces the innovative provision of direct enforcement, allowing the parties to directly seek relief from the courts of Contracting States based on the settlement agreement. Without specifying a recognition procedure for the settlement agreement, this directly governs the enforcement process.

### **3.2. Significance of system**

In terms of the international nature of the Convention, adopting a mixed standard for international connection factors demonstrates the flexibility of the commercial mediation system, making the international aspect more mature and minimizing obstacles that may be encountered in cross-border enforcement of international commercial settlement agreements. Secondly, the independence of the commercial mediation process better highlights the independent value of mediation and guarantees the advantages of the mediation process. Finally, in terms of enforcement, granting direct enforceability to settlement agreements marks a substantial difference and breakthrough compared to merely recognizing the contractual effect of settlement agreements. It reduces the procedural steps

from dispute resolution to final enforcement, as well as the time and cost of enforcing settlement agreements, thus improving efficiency.

In the current era, with mediation being increasingly widely used in commercial disputes resolution, the Singapore Mediation Convention establishes and supplements the framework for the enforcement of international commercial mediation, providing safeguards for the enforcement of mediation agreements and filling the gaps in the international commercial mediation enforcement mechanism. It is conducive to protecting the legitimate rights and interests of the parties, promoting harmonious business relationships, and providing a favorable business environment for the development of international economic trade. The comprehensive provisions of the Convention encourage parties involved in international commercial transactions to use mediation to resolve international commercial disputes. It also to a certain extent eases the pressure of arbitration and litigation, speeds up dispute's resolution, enhances efficiency, and facilitates more efficient and faster and commercial intercourse.

## **4. An analysis of the legitimacy of China's commercial mediation system linking with Singapore Mediation Convention**

### **4.1. Necessity of linking**

The effectiveness of settlement agreements reached through mediation can mainly be classified into three categories: a new contract, convertible into a civil and commercial judgment, and convertible into an arbitral award. Court judgments and arbitral awards can be enforced internationally through the New York Convention and the Convention on the Recognition and Enforcement of Foreign Civil and Commercial Judgments. The Singapore Mediation Convention fills this gap by enabling the enforcement of cross-border settlement agreements.

Firstly, it provides legal protection for international business communications. With the backdrop of economic globalization, China's reform and opening-up policies and the Belt and Road Initiative have strengthened its connections with the international community. Foreign trade and investment activities have become increasingly frequent, making China the world's second largest recipient of foreign direct investment and the largest investor globally [6]. Joining the Convention not only meets the practical needs of China's development of cross-border commercial exchanges and reduces the burden of litigation and arbitration, but also represents an important step in promoting global economic governance reform.

Secondly, it is conducive to improving diversified dispute resolution mechanisms. The Convention adjusts and complements the existing shortcomings of commercial mediation, facilitating the development of a diversified dispute resolution mechanism that integrates litigation, arbitration, and mediation. China should take the signing of the Convention as an opportunity to vigorously develop our commercial mediation system, adjust its outdated systems, and improve its diversified dispute resolution mechanisms. In 2016, the Supreme People's Court issued Opinions on Deepening the Reform of Diversified Dispute Resolution Mechanisms, emphasizing the need to fully enhance the development of mediation, arbitration, and litigation, and ensure the connections among settlement, mediation, arbitration, and litigation. These opinions have confirmed the necessity of improving this mechanism.

Lastly, it is beneficial to improving China's commercial mediation system. The emergence of the international commercial mediation system significantly compensates for the drawbacks of high costs, long durations, and low confidentiality and flexibility in litigation and arbitration procedures. The Convention provides strong support for the advantages of the commercial mediation system. Currently, China lacks a modern commercial mediation system that aligns with the Convention. Its signing not only adjusts the shortcomings of China's existing system but also fills in the blank in China's commercial mediation system, playing an important role in enhancing and improving our country's system. Furthermore, from the perspective of the mediation market, as international commercial disputes increase, more parties are choosing to resolve disputes through mediation based

on the Convention. This implies that there will be an accelerated demand in the market for international commercial mediation institutions that can provide high-quality and efficient services, which in turn will encourage the establishment and improvement of China's commercial mediation institutions [7].

#### **4.2. Feasibility of linking**

Although China has a long tradition of mediation, which has played a role in maintaining social order in ancient times, it is fundamentally different from the modern commercial mediation system. In modern times, the mediation system has gone through various stages, including the "settlement Conference" and "Mediation Committee" during the Republic of China period, the parallel mediation by courts, the people's mediation work during the revolutionary bases, and the turbulent development period after 1949[8]. China currently has a wide range of mediation types, including people's mediation, administrative mediation, industry-specific mediation, commercial mediation, litigation (arbitration) mediation, lawyer mediation, etc. There are more than 40 judicial interpretations and nearly 90 normative documents issued by various ministries and commissions related to mediation, such as People's Mediation Law, Law on Mediation and Arbitration of Disputes over Contracted Management of Rural Land, Law on Mediation of Labor Disputes and Regulations on the Organization of People's Mediation Committees. As of 2019, China International Chamber of Commerce Mediation Center has 52 branch mediation centers nationwide, handling more than 4,000 cases annually with a success rate of over 70%.

It can be seen that China has a wide range of mediation types, but it has not formed a systematic and organic integral mediation system. "Moreover, fundamentally, they all belong to the policy-oriented mediation that involves deep intervention and extensive intervention of public power.[9]" The foundation of mediation is extensive, but China's main people's mediation system is not a commercial mediation system in the international sense. China's commercial mediation is small in scale, lacks independence, and despite the numerous commercial mediation institutions, they handle very few cases. There is a lack of legal supervision and fragmentation in commercial mediation, and there is a lack of a real commercial mediation legal system. The "People's Mediation Law" enacted in 2010, although to some extent fills the gaps in China's specialized legislation on mediation, its main regulatory target is the "semi-official" people's mediation, and its regulation on commercial mediation is limited. Although the opinions on promoting diversified dispute resolution issued by the Supreme People's Court in 2009 and 2016 have certain guiding significance for commercial mediation, they still lack legal nature and are difficult to effectively apply in judicial practice.

### **5. The realistic dilemmas of China's commercial mediation system linking Singapore Mediation Convention**

Currently, China's commercial mediation system is still immature, facing challenges such as the absence of a fully developed legal framework for commercial mediation. This not only hinders the slow development of China's commercial mediation system but also poses significant difficulties in the alignment of laws after joining the "Singapore Mediation Convention".

#### **5.1. Lack of basic legislation on commercial mediation.**

Currently, the legal regulations on civil and commercial mediation in China are mainly composed of the Law of the People's Republic of China on Mediation (hereinafter referred to as the "People's Mediation Law") and judicial interpretations issued by the Supreme People's Court, such as the "Several Opinions of the Supreme People's Court on Establishing and Improving the Mechanism of Linking Litigation and Non-litigation Dispute Resolution" issued in 2009. Existing mediation laws and normative documents are unable to meet the shortcomings of the increasingly developing commercial mediation system, and they are fragmented and lack consistency.

The lack of legislation has resulted in problems in the practice of commercial mediation. Firstly, in terms of mediation institutions, it not only involves government agencies but also various types of mediation organizations, lacking unified effective constraint and management, and the division of organizational management scope is unclear with overlapping management areas. Secondly, in terms of the application scope of commercial mediation, Chinese law does not specify the scope of application or exclusion for mediation, only explicitly excluding cases related to marriage, identity, and adoption in certain documents.

## **5.2. Current mediation model system is backward**

The current mediation model in China is mainly the people's mediation model. The "Regulations on the Organization of People's Mediation Committees" promulgated in 1989 and the "People's Mediation Law" promulgated in 2010 have provided the basic framework for China's mediation system. In addition to people's mediation, there are also various mediation models such as lawyer-mediated mediation, court-mediated mediation, lawyer-mediated mediation, labor mediation, and commercial mediation.

The people's mediation committees are grassroots autonomous organizations with a remedial nature [10]. The promulgation of the "People's Mediation Law" has made people's mediation the only statutory form among non-litigation mediation methods and has had a certain impact on China's commercial mediation and other mediation work [11]. The People's Mediation Committees are organizations of mass autonomy, and their work scope is civil disputes involving personal and property rights between individuals, between individuals and legal persons or other organizations. Therefore, the People's Mediation Committees are not competent for commercial issues requiring a higher level of expertise.

As for the overlapping use of various types of mediation models, it may also lead to confusion in specific practices. According to China's classification by different mediation subjects, people's mediation, industry mediation, and lawyer-mediated mediation may all apply to the scope of commercial mediation under the "Singapore Mediation Convention", this confusion in application not only results in conflicts in legal application but also hinders the refined and specialized development of China's multi-faceted dispute resolution mechanisms.

## **5.3. Confusion in applicability scope**

The previous text pointed out the lack of proper legislation in commercial mediation in China. However, in practice, there are still many commercial mediation centers that handle mediation cases. The applicability scope of commercial mediation in China is imperfect, and different mediation institutions have different scopes of mediation, resulting in confusion in practice.

Article 1 of the Convention specifies the scope of application of the Convention, namely international settlement agreements resulting from mediation, and defines the international nature of the settlement agreements based on the parties' place of business, place of performance, and closest connection principles. However, China's commercial mediation lacks a definition of internationality. If we follow the interpretation of "foreign-related factors" in China's judicial interpretation I of the Law on Jurisdiction over Foreign-related Civil Relations, the internationality defined by the Convention will differ, leading to an imperfection in the definition of internationality.

## **5.4. The Convention lacks enforceability in China**

According to existing laws, a mediated settlement agreement is of a contractual nature. The parties can jointly apply to the people's court for the confirmation of the validity of the settlement agreement, and after judicial confirmation, the settlement agreement can be enforced by the court. In other words, the validity of a settlement agreement needs to be confirmed by the judiciary, and without this procedure, it lacks enforceability and carries significant risks in commercial intercourse. Moreover, this enforcement path requires initiating litigation and undergoing substantive examination by the court, reducing the attractiveness of mediation to parties involved in international commercial

disputes. Although according to the “Several Opinions of Supreme People Court’s on Establishing and Improving the Mechanism for Resolving Contradictions and Disputes between Litigation and Non-litigation Proceedings,” the judicial confirmation procedure has been expanded to include chambers of commerce mediation and lawyer-mediated mediation [12]. However, a settlement agreement reached through mediation still needs to go through a certain judicial review procedure to be enforceable. This is different from what the Convention stipulates, that a mediated settlement agreement can have direct enforceability under the Convention without a similar “recognition” process. Therefore, the Convention currently lacks executability in China.

### **5.5. China individual mediator lacks legal basis**

For a long time, China has implemented an exclusive institutional management model. “The judicial confirmation of mediation agreements occurring within China must be endorsed by mediation institutions, and China has relatively strict admission requirements for mediators”. When establishing individual mediator studios, the system does not actually involve individual mediators in the true sense. Instead, it names people’s mediators under individual names. Individual mediation only exists in individual practices such as the invited mediators of the People’s Court and lawyer-mediated mediation. According to the Convention, individual mediators are equally important as institutional conditions and have the same regulatory effectiveness. China has not yet established a system for individual mediators. Although the “Guiding Opinions on Promoting the Construction of Individual Mediator Studios” was issued in 2018, the “individual mediator studios” mentioned in the document are not genuine individual mediation and are essentially mediation organizations operating under the name of individual mediators. However, according to the Convention, the lack of relevant domestic systems cannot refuse the enforcement of mediation agreements reached through individual mediators by foreign parties in China. It is urgent to cultivate individual mediators and establish an individual dispute resolution system.

From the above analysis, it can be seen that there are still many imperfections in the connection between Chinese law and the Convention, whether it is from the perspective of promoting Chinese legislation on commercial mediation, improving the integrated dispute resolution mechanism, adjusting the scope of application of existing laws and regulations, or adjusting procedures to ensure the implementation of the Convention, and cultivating individual mediators to improve the conditions for implementing the Convention, joining the Convention is on the whole more advantageous than disadvantageous. For China, commercial mediation is not the main means of dispute solution, and there are many shortcomings in the institutional system. The Convention is the crystallization of relevant systems in various countries and can serve as an important reference for China in improving its commercial mediation system. To enjoy the benefits of the mediation system for the Chinese business sector, it is necessary to expedite the improvement of its own system, align with international conventions, and truly integrate the Chinese commercial mediation market into the international market, making sufficient preparations for raising its level of internationalization.

## **6. Path analysis of China’s commercial mediation system linking Singapore Mediation Convention**

### **6.1. Gradually improve the legislation of commercial mediation system**

From an international perspective, Singapore has enacted the Singapore Mediation Convention to apply the convention. For China, the commercial mediation system is still in its nascent stage, with an underdeveloped market and limited legal awareness of mediation. Therefore, it will take time to enact such laws because there is currently no universally recognized theory or practice for mediation, making it difficult to establish a comprehensive legal framework for commercial mediation [14]. However, to ensure the enforceability of the Convention in China, international mediation agreements that meet the requirements can be recognized as “enforceable legal documents” within the framework

of civil litigation law. In the long term, it is necessary to establish separate rules for enforcing international mediation agreements to achieve the goal of scientific legislation in the field of commercial mediation whether it is the need of the development of commercial organizations or the need of promoting the perfection of commercial mediation system.

### **6.2. Learn from the relevant provisions of the Convention on the application scope**

As mentioned earlier, China's judicial interpretation of "foreign-related elements" in the Law on the Application of Foreign Civil Relations differs from the international definition in the Convention. It is important to distinguish between domestic and international commercial mediation, especially when it involves the issue of enforceability in mediation execution that concerns public interests. In such cases, the provisions on the scope of application in the Convention can be referenced, along with Article 1, Paragraphs 4 and 5 of the Model Commercial Mediation Law, which determine jurisdiction based on the place of business, habitual residence, and closest connection principles, supplemented by appropriate fallback provisions. This can expand the scope of commercial mediation cases and to some extent relieve the burden on the courts, fully utilizing the role of mediation.

### **6.3. Recognizing and effective mediation agreement has direct enforceability**

The Convention stipulates that a legal and effective settlement agreement reached through mediation has direct enforceability to prevent the parties from denying the agreement and restarting related litigation or arbitration proceedings. In China, both parties can jointly apply to the People's Court to confirm the enforceability of the mediation agreement, and it can only be enforced after judicial confirmation. Considering the practice of commercial mediation and the advantages of the mediation system itself, such as high compliance rates and flexibility, granting direct enforceability to effective mediation agreements can fully utilize these advantages without excessively burdening the courts or creating a high risk of false mediation. Moreover, while recognizing the direct enforceability of a settlement agreement, it is still necessary for the judicial authority to review the execution process to some extent in order to better leverage the advantages of mediation.

### **6.4. Establish a system for individual mediation**

China lacks standardized and professional commercial mediation models, and the organization of commercial mediation institutions is in a state of chaotic development, especially the system of individual mediators, which has long been without a clear framework. According to the convention, the effectiveness of individual mediation and institutional mediation is the same, so it is crucial to expedite the establishment of a system for individual mediation. In commercial mediation, the mediator is a core factor that directly affects the quality, development, and reputation of mediation. To ensure that the settlement agreement has the enforceability required by the Convention, the primary task is to ensure the legality of the agreement, which inevitably requires improving the professionalism of mediators. Mediators should balance the parties' views based on their professional competence, but they do not make decisions and place more emphasis on the parties' self-determination, which places different demands on mediators compared to arbitrators and judges. In individual mediation, the self-restraint of mediators reflects their professional ethics. Currently, our regulations do not allow for individual mediation, which undoubtedly imposes a secondary restriction in the application of the convention. However, according to the provisions of the Convention, the settlement agreement reached through individual mediation is legally valid and enforceable. At the same time, our country cannot refuse to enforce international mediation agreements reached through individual mediation abroad. Based on this, it is necessary to establish a system for individual mediation in our country, and legislate to regulate the conduct of individual mediators and promote the development of the system.

## 7. Conclusion

The important characteristics and trends of contemporary international law are moving away from confrontation, constraint, coercion, and zero-sum outcomes, towards cooperation, inclusiveness, equality, and mutual benefit. In today's increasingly interconnected international economic exchanges, dispute solution mechanisms undoubtedly play a crucial role in supporting commercial development. The study of the "Singapore Mediation Convention" is of great significance for improving our own mediation system. While studying and researching international systems, we should also align our existing mediation system with international standards, cultivate professional legal talents for international commercial mediation, and apply the "Singapore Mediation Convention" more quickly and efficiently, promoting the internationalization of our country's commercial field.

## References

- [1] Chen Hongyi. Mediation, Litigation and Justice: Confucian Reflections in a Modern Liberal Society. *Modern Law Science*.2001.23(3):3-14
- [2] Shi Changqing. Modern Mediation's Vital Principle: Self-Determination. *Legal Forum*.2011(02):147-153.
- [3] Ma Sai. On the Characteristics, Natures and Significance of China's Foreign-related Commercial Mediation [J]. *Journal of Zhejiang University of Political Science and Law Management*,1999(02):68-72.
- [4] Fei Xiuyan. Legal Character on the International Commercial Conciliation and Its Construction [J]. *Jiangnan Tribune*,2022(11):123-129.
- [5] Song Lianbin, Xu Yanran. Studies on the Enforceability of Commercial Mediated Settlement Agreements in China: In the Background of the Enforcement of the Singapore Convention [J]. *Journal of Northwest University (Philosophy and Social Sciences Edition)*,2021,51(01): 21-32.DOI: 10.16152/j.cnki.xdxbsk.2021-01-002.
- [6] Sun Nanxiang. Ratification and Implementation of the Singapore Mediation Convention in China [J]. *Chinese Journal of Law*,2021,43(02):156-173.
- [7] Zhang Sheng. THE SINGAPORE CONVENTION ON MEDIATION AND CHINA'S COMMERCIAL MEDIATION: TOWARD A FULL-FLEDGED REGIME [J]. *China Legal Science*.2023,11(01):82-109.
- [8] Yang Anqi, Yang Shudong. The Docking Dilemma and its Crack Path of China's Mediation Mechanism with Singapore Convention on Mediation [J]. *Journal of Henan University of Economics and Law*.2022,37(02):75-84.
- [9] Li Ruichang. *People's Mediation*. Law Press China, 2020 (45-75).
- [10] Qiu Xingmei, Wang Qiulan, Wang Li and Liu Jinhua. *Research on Legislation, Theory and Practice of Mediation in China*, China University of Political Science and Law Press, 2014(97)
- [11] Wang Yuqing. Analysis on the Perfection of China's Commercial Mediation System from the Singapore Mediation Convention [D]. *Jiangxi University of Finance and Economics*, 2022.DOI: 10.27175/d.cnki.gjxcu.2022.000886.
- [12] Several Opinions of the Supreme People's Court on Establishing a Sound Mechanism for Resolving Contradictions and Disputes between Litigation and Non-litigation (Fa Fa [2009] No. 45), Article 10; Several Provisions of the Supreme People's Court on the Judicial Confirmation Procedure of People's Mediation Agreements (Fa Shi [2011] No. 5), Article 1.
- [13] CAI Wei. The Implications of Singapore Mediation Convention for the Reform of China's International Commercial Mediation [J]. *Journal of Anhui University*,2021,45(02): 114-122.DOI: 10.13796/j.cnki.1001-5019.2021.02.014.