

1ST ASIAN MEDIATION ASSOCIATION CONFERENCE

“MEDIATION DIVERSITY – ASIA & BEYOND” 4 – 5 JUNE 2009

CHIEF RAPPORTEUR REPORT

1. The 1st Asian Mediation Association Conference was held from 4 - 5 June 2009 at Marina Mandarin Singapore. The theme of the conference was “Mediation Diversity – Asia and Beyond”.
2. The Conference was attended by over 300 participants from more than 19 countries. It began on the morning of 4 June 2009 with a Welcome Address by Justice Andrew Ang, Chairman of the Singapore Mediation Centre. Justice Ang gave a special welcome to the many overseas participants and underscored the theme of the Conference.
3. He announced that there were over 30 speakers from a wide diversity of backgrounds and that the Conference programme and schedule were such that participants had adequate opportunities to build or renew many friendships, and to experience the many events that were taking place in Singapore.
4. The Conference was officially opened by Mr K Shanmugum, Minister for Law and Second Minister for Home Affairs of the Republic of Singapore. In his Opening Remarks, the Minister outlined Singapore’s efforts to build a holistic and sophisticated dispute resolution centre. Much progress had been made in improving the processes as well as the infrastructure for litigation and for arbitration. Mediation was a crucial facet of these efforts as mediation mitigated the costs and risks involved in litigation and arbitration. It thus increased access to justice for the man in the street. Being private, non-confrontational and non-intimidating, mediation would be ideal for Singapore where there was an underlying ethos of maintaining harmony. Mediation, with its strong social focus, complemented litigation and arbitration, both of which had a strong economic focus.
5. The Minister noted that mediation had proven to be a vital part of the Singapore legal system. The Government would continue to support the use of mediation and encourage efforts to develop mediation and alternate dispute resolution through research, studies and training.

6. The Keynote Speaker of the Conference was President Martti Ahtisaari, former President of Finland. President Ahtisaari was conferred the Nobel Peace Prize in 2008 for his efforts in mediating complex international conflicts.

7. In his Keynote Address, President Ahtisaari focused on 3 international situations which had or might involve peace mediation, viz. in Aceh, in Myanmar and in Sri Lanka. In Aceh, the peace agreement which he mediated would not have been possible without the combined efforts of the international community. The peace process in Aceh also showed the importance of commitment by the political leadership to finding a solution to an internal conflict. The case of Myanmar indicated that the international community must have a principled strategic direction for the conflict there to be resolved. That included supporting dialogues between the Government and other groups in that nation. In Sri Lanka, notwithstanding its military success, the Government must start a reconciliation process, otherwise the situation would slip back to armed struggle.

8. President Ahtisaari stressed that when engaged in peace mediation, the mediator was only one part of the process. It was a process that could potentially take a very long time. The peace must be owned by the parties. To succeed, a mediator must rely on his own values. Some such values were culturally bound. But many were universal. He stressed that there was a need to cultivate future generations of mediators. Mediation was a skill which involved many technical aspects. Future mediators must be given opportunities to practise their skills. There was a need for mediators to be much more result-oriented, and not just focused on the process of the mediation. He was confident that all conflicts could be resolved and political leaders should be required to act accordingly.

9. During the Gala Lunch that followed, the Honourable the Chief Justice Chan Sek Keong launched a book published by Academy Publishing, the publishing arm of the Singapore Academy of Law. The book was entitled *An Asian Perspective on Mediation*. In his speech, the Chief Justice noted that the success of any mediation model must take into account the cultural sensitivities not only of the subject matter of the dispute but also those of the parties involved. Western thinking, for example, considered conflict as positive in certain circumstances. Thus western thinking believed that open advocacy of positions would lead to viable solutions being developed. The Chinese, however, focused on preservation of harmony, goodwill and 'face'. They thus preferred avoidance of overt disagreements or any show of displeasure. So mediators should structure processes that would enable parties to communicate in ways that were less face-threatening, such as earlier and more

frequent private sessions. The book highlighted that there was a preferred Asian approach to mediation in Singapore and provided an essential guide to mediators to think Asian when they mediate in this part of the world. Otherwise mediation, at least mediation in Singapore, would be fraught with difficulties.

10. The Opening Plenary of the Conference, held in the afternoon of 4 June, featured a presentation on “Cultures and Perspective” by Mr Ong Keng Yong, Director of the Institute of Policy Studies and former Secretary-General of ASEAN. Mr Ong drew on his experience as ASEAN’s Secretary-General to speak about the way disputes were resolved within ASEAN. ASEAN held very dear to the concept of decision-making by consensus. It was thus a pity that when the ASEAN Charter was being drawn up, a proposal supported by Singapore for the Chairman of ASEAN or the Secretary-General to offer good offices, conciliation or mediation to resolve disputes between ASEAN states without being asked was not accepted. ASEAN was a very diverse community and these differences complicated its operating environment.

11. The ASEAN Charter provided for a rules-based Dispute Settlement Mechanism (“DSM”). But many states still preferred to use informal methods to resolve disputes. Until all ASEAN states were comfortable with a rules-based DSM, mediation, which drew on applicable cultural values of ASEAN, would be an important means of resolving disputes.

12. The next event was a Panel Discussion on “Mediation: The Asian Experience”. At this discussion, panellists from Hong Kong, India, Indonesia, Malaysia, the Philippines and Singapore shared significant developments in mediation practices in their respective countries. A particularly noteworthy point that emerged was the importance of support from the courts to the development of mediation as a means of resolving disputes. Even though mediation in different forms was an established Asian mode for resolving disputes, its rapid use in the present time emerged largely after courts began incentivising its use for matters that were being litigated. Now many jurisdictions have written mediation into their court processes, even for cases pending before appellate courts. Whilst initially the Western model of “interest-based” mediation was adopted, over time experience showed that here, unlike in the West, parties often expected mediators to be more evaluative and proactive. Also, factors unique to the Asian environment, such as allowing room for parties to settle without suggesting that they were more keen than the other to settle, were important if a successful settlement was to be reached.

13. The final session of the first day of the Conference featured a very entertaining yet educational mock mediation session concerning a medico-legal claim for an outrageous amount of damages.

14. The second and final day of the Conference featured a series of concurrent breakout sessions which were grouped under a number of themes.

15. In the sessions in the "Sector-Specific Mediation" track, the speakers touched on the use of institutional mediation to resolve disputes in various sectors. These included, disputes over the inappropriate selling of complex financial products that led to the present financial crisis; building and construction disputes and disputes over banking and financial transactions. One issue of interest was transactions governed by Islamic law where judges could take on the role of both mediator as well as adjudicator. The sessions also discussed community mediation in Australia, China, Indonesia and Singapore, the techniques used, the issues encountered and how these could be addressed. The importance of promoting awareness of mediation to potential beneficiaries was underscored.

16. The sessions in the "Law and Mediation" track had as their primary focus the use of mediation as part of the judicial process. These included court-annexed mediations and other levels of dispute resolution mechanisms which while not formally "court-annexed", were strongly encouraged and incentivised by the courts. The development of such processes and the many issues that emerged as a result of these were discussed. Also discussed were the role of lawyers in mediation, effective mediation techniques in medico-legal claims and the benefits of mediation for Asian companies.

17. In the sessions in the "Aspects of International Mediation" track, issues considered included the impact of different cultures on mediation. Examples were given on how the same words or actions might express different intentions in different cultures. Also addressed was the concept of 'face' and how this affected mediation proceedings. Mediators needed to be sensitive to all these factors. Other issues discussed included the use of mediation to avoid costly and protracted arbitral proceedings, and developments in the mediation sector in India, the United Kingdom and the Philippines. In addition, participants were informed of various aspects of the 2008 EU Directive on Mediation which harmonised the mediation laws of EU Member States.

18. Finally, the sessions in the "Mediation Skills and Practice" track, focussed on techniques and other factors for effective mediation, such as reflection and

self-questioning by mediators, and challenges faced by mediators. In some jurisdictions, the current preference was for mediators to “shuttle” between parties rather than engage in Joint Sessions. Techniques used by parties in order to obtain the mediator’s assistance for outcomes desired by them were exposed, and how mediators could be sensitised to and respond to these were discussed. An important factor highlighted in these sessions was the importance of training for mediators and the content of such training.

19. The Final Session of the Conference Programme was the Closing Plenary. The speaker was Mr Geoff Sharp, Vice-Chair, International Standards Commission of the International Mediation Institute who read a paper by Mr Micheal Leathes, Executive Director of the Institute. Mr Leathes opined that the growth of mediation globally would depend largely on quality. Factors that would affect quality were qualifications, understanding and acceptance, leadership and inspiration, as well as transparency and yardsticks to measure quality. Mediators would need to be trained and accredited through independent assessors applying high standards. The Asian Mediation Association, which was the first mediation body to be organised regionally on this scale, was well placed to promote mediation in this region. The International Mediation Institute would be promoting the Asian Mediation Association as an inspiration for similar initiatives elsewhere in the world.

20. In summary, the declared objective of the 1st Asian Mediation Association Conference was to broaden and deepen understanding of dispute resolution cultures and practices in this part of the world. Thus the Conference featured many speakers from the various countries of Asia who shared the mediation experiences of their respective jurisdictions. These included the structures for mediation practices, the disputes mediated, the mediation techniques used to enable disputing parties to come to a successful settlement of the dispute and, most importantly, the factors that would lead to such a settlement. Many factors important to a successful mediation in Asia are uniquely Asian, such as the concept of ‘face’. An example of this would be where the mediator asked parties to consider his reputation and move from their positions in order to settle for his sake. This enabled the parties to move towards settlement without being seen as being the weaker party. An understanding of such unique factors in Asian society was important for a successful mediation.

21. As declared in its objectives, the 1st Asian Mediation Association Conference had enabled all participants to obtain a better understanding of the mediation structures, issues, practices and considerations for success of mediating in Asia in general, and South-East Asia, in particular. In addition, the Conference had provided

all participants with a platform and a venue for sharing, networking and also for identifying talents in the mediation sector in Asia.

22. A most satisfying outcome of this 1st Asian Mediation Association Conference would be if the learning obtained and the many friendships forged or renewed during this Conference would contribute to the successful growth of mediation as a preferred means for dispute resolution in this region. This would benefit not only the participants and the mediation industry of the region but, most importantly, all disputants who could look forward to more understanding and effective mediators to assist them in resolving their disputes.

Ladies and Gentlemen, friends,

That was my report as the Chief Rapporteur of the Conference. May I, at this time, take this opportunity to thank the Head Rapporteur, Mr Aloysius Goh, and his team of talented, hardworking and enthusiastic young lawyers and students who worked so hard as rapporteurs of the various sessions. Given the very tight time-lines and the numerous numbers of sessions at this conference, especially the many concurrent sessions, this Report would not have been possible without their efforts.

The papers presented and the discussions at this Conference had been extremely rich in information, experiences and ideas. As with all Reports of events such as this, little justice can be done to all those who have contributed so much to the proceedings. I would like to apologise to all those whose work this report fails to adequately capture. I hope you will forgive us on the understanding that given the time constraints, much though we would like to ensure that all the tremendously valuable thoughts presented at this conference were acknowledged in the Report, this was just not possible. We hope that the fact that the proceedings will be compiled, and in the case of many of the papers presented had already been compiled in a compact disc, would go some way to ensuring that the work that you had put in for this conference would extend and be acknowledged beyond the temporal limits of this event.

The Chief Rapporteur is traditionally the voice of the Conference, expressed at the very end of the proceedings. As your voice, I would indeed be remiss if I failed to acknowledge the efforts of the many who contributed so much to ensure the success of this Conference. These include the officers and staff of the Singapore Mediation Centre and its many volunteers, the Singapore Academy of Law, which supported this event, the many sponsors, and the management and staff of this hotel. Of course, we

must acknowledge the Asian Mediation Association and its officers for their foresight in organising this Conference and for bringing us all together for not only a very educational and intellectually stimulating experience, but also one that is rich with fellowship and enjoyment.

Would you all join me in thanking them all.

Having successfully completed the 1st Asian Mediation Association Conference, I am sure we all are looking forward to the 2nd Asian Mediation Association Conference to continue the enthusiasm and momentum that this conference in Singapore has generated.

Thank you very much.

**JEFFREY CHAN WAH TECK, S.C.
DEPUTY SOLICITOR GENERAL**

**CHIEF RAPPORTEUR
1st Asian Mediation Association Conference 2009**

*SINGAPORE
5 June 2009*