

Singapore Chamber of Maritime Arbitration

Networking Reception 2022

Opening Address¹

Tuesday, 15 November 2022

Justice S Mohan

Supreme Court of Singapore

Chairman of the SCMA Board of Directors and until not too long ago, my dear and esteemed colleague on the Supreme Court bench Mr. Chao Hick Tin SC, SCMA Vice-Chairpersons Mr. Jaya Prakash and Ms. Corina Song, members of the SCMA Board of Directors, SCMA members and friends

1. A very good evening to everyone! It is indeed my pleasure to join you today. It's so wonderful and refreshing that after what seemed an eternity, we are able to meet in-person again, in the company of friends and familiar faces.

¹ I am grateful to my Justices' Law Clerk, Mr Ong Kye Jing, for his research and invaluable assistance rendered to me in the preparation of this opening address. All views expressed are personal to me and do not represent those of the Supreme Court of Singapore. All errors are entirely mine.

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2. I am deeply conscious that I stand between you and drinks, and shall therefore endeavour to keep brevity my best friend. I am grateful for the opportunity to spend this time to take stock of recent developments in the maritime arbitration space, and to share some of my reflections on where Singapore and the SCMA might go next as a dispute resolution hub.

Making waves as a maritime and arbitration hub

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3. Over the past 3 years or so, the shipping community has had to battle waves of disruption, from the Covid-19 pandemic to the ongoing Ukraine crisis. Against this context, it's heartening to see that Singapore has defended her position both as a leading maritime hub and trusted arbitration hub.
4. A recent publication by Menon Economics and DNV ranks Singapore as *the* leading maritime city of the world for 2022, and their experts continue to be optimistic of our outlook for the next five years.ⁱ
5. On the arbitration front, we now rank alongside London as the world's most preferred arbitral seat, based on the 2021 Queen Mary arbitration survey.ⁱⁱ Regionally, Singapore continues to dominate the

regional rankings, with three in four respondents naming her in their top five preferred seats. Holman Fenwick Willan's 2020 study titled 'The Maritime Arbitration Universe in Numbers' places Singapore right behind London. It described 2019 as "a bumper year" for our maritime arbitration caseload.ⁱⁱⁱ The SIAC and SCMA saw case numbers rise, and a healthy number of LMAA arbitrations were seated in Singapore. These developments position Singapore as the strongest contender for maritime arbitration work among Asian capitals.

6. The Singapore success story has not been defined by geography or history, but rather, shaped by careful and thoughtful design, persistent engineering and serious ambition. Many here would recall 2012 fondly as the year when BIMCO included Singapore as 1 of 3 arbitral seat choices in its Dispute Resolution Clause. We were only the third jurisdiction to be added, and the first since 1991.^{iv} That shot to the arm was the result of much difficult but rewarding work. The next shot to the arm was having Singapore included as an arbitral seat choice in the NYPE Time Charterparty Form 2015, the first addition since the form's creation in 1913.^v

7. The SCMA has itself also come a long way since its humble beginnings in 2004 as a department within the SIAC.^{vi} Since its reconstitution in 2009, SCMA's principally self-administered model of arbitration has become a mainstay in our institutional arbitration landscape.^{vii} Parties are given all the tools they need to self-administer their arbitration, thereby producing flexibility and cost savings. Yet, should they require, parties know they can always turn to a dedicated, full-time Secretariat for help.^{viii} Last I checked, 90% of arbitrator appointments are made within just two business days.^{ix}

8. This spirit of innovation and bespoke design is also seen in the SCMA's expedited and tailored procedures. For example, a reasoned award resolving bunkering disputes can generally be expected within 30 days under the Singapore bunker claims (SBC) procedure, and within 5 months under the SEADOCC procedure for minor ship collisions.^x

9. More recently, the 4th edition of the SCMA Rules came into effect this January, following extensive consultations from 2020.^{xi} Many users celebrate the changes to the Rules, for example:

- a. Rule 33.2 which promotes the tribunal's effectiveness by empowering two arbitrators to act when the third is not yet appointed; and
 - b. Significantly, the new rule 25.1 empowers a tribunal to proceed on a documents-only basis. I would venture to suggest, perhaps somewhat controversially, that this new rule will likely boost the SCMA's competitiveness with other maritime arbitration bodies such as the LMAA in particular, where, as of 2019, about 80% of cases were conducted as documents-only arbitrations.^{xii}
10. These are all welcome developments that exemplify the agile and responsive organisation that the SCMA is. And as we sail into 2023, the question arises as to how the SCMA might next make its mark.

Setting sail as a full-suite dispute resolution hub

11. On this note, it would be remiss for me not to mention mediation and the Singapore Convention. In recent years, Singapore has rebranded herself not only as an arbitration hub, but as a holistic "cross-border dispute resolution centre" that provides "a comprehensive suite of international dispute resolution services".^{xiii} In other words, the mantra is 'don't just come to Singapore to fight

out your disputes but come here to have them resolved one way or another'. Our efforts at spearheading and galvanising support for the Singapore Convention are a testament to this.

12. These efforts neatly coincide with a growing view that ADR is best seen as *appropriate* dispute resolution. Surveys like the 2018 Global Pound Conference Report show increasing support for “preventative pre-dispute and pre-escalation processes” and for “combining [dispute resolution] processes”.^{xiv} The 2021 Queen Mary survey showed 59% of respondents supporting the pairing of arbitration with other forms of ADR – a rise from 34% in 2015.^{xv}
13. In his keynote address at the SCMA’s 10th anniversary conference in 2019,^{xvi} Chief Justice Sundaresh Menon highlighted how mediation is distinctly suited to the maritime sector, where time is often of the essence, and where maintaining positive business and commercial relations as well as “face-saving” are critical, particularly in our regional context.
14. The SCMA is of course not a newcomer to the ADR scene and has its model Arb-med-arb clause and the SCMA AMA protocol.

15. The SCMA thus already stands on strong foundations. As it continues to expand its footprint regionally and globally, I would suggest three possible options for the SCMA to explore to build upon those foundations.

Widening the range of arb-med permutations

16. First, the SCMA could support and encourage a wider range of arb-med permutations. Mediation and arbitration are not mutually exclusive alternatives, and may be combined in complementary ways.

17. To this end, the International Mediation Institute's Mixed Mode Task Force has done interesting work on hybrid dispute resolution models. In the interests of time, I share just two examples.

18. First, arbitrators could be encouraged to build in "mediation windows" into their arbitration timetable. In a mediation window, the arbitration is effectively paused, and parties focus on whether pursuing mediation or negotiation at that juncture would be useful, having regard to how the arbitration has developed. Because these windows are already built into the timetable, this addresses a

common concern that initiating mediation is a “show of weakness” and “damages [one’s] negotiating position”.^{xvii}

19. A second and more ambitious example involves concurrent arb-med through “shadow mediation”. In shadow mediation, the arbitrator takes the lead on matters to achieve an enforceable arbitral award. A mediator observes the proceedings and is updated on their progress. Crucially, the tribunal may rope in the mediator to assist on discrete issues that might be better addressed without the tribunal’s presence, or for which the mediation process may be more productive.

Giving more visibility to mediation and mediators

20. Secondly, the SCMA could consider giving more visibility to *mediation* and *mediators*.
21. Giving visibility to *mediation* entails packaging it as a serious endeavour. On this note, for example, the BIMCO Alternative Dispute Resolution Clause 2021 makes explicit:^{xviii}
 - a. That parties should make good faith efforts to progress the ADR procedure, and do so without undue delay (clause (c));

- b. That a party declining to participate should give reasons for this (clause (b)); and
- c. That non-participation may affect the determination of costs (clause (g)).

22. Further, greater visibility could be given to *mediators*. For example, specialist mediators from the SMC and SIMC panels could be cross listed on the SCMA website. This would rival how the LMAA, HKIAC and HKMAG websites feature both arbitrator and mediator panels.^{xix} In addition, members on the SCMA's panel of arbitrators with mediation experience could have their dual expertise highlighted. This would, I suggest, give users clarity and confidence when choosing an arbitrator, should they be seeking someone familiar with the benefits and techniques of amicable dispute resolution, and who may be more inclined to suggest mediation at the appropriate juncture in proceedings.

Exploring other modes of ADR apart from settlement-oriented mediation

23. The third suggestion is to pair arbitration with modes of ADR aside from mediation, such as neutral evaluation. This recognises that

parties come to ADR at different stages of their dispute requiring different forms of guidance.

24. Notably, following limited market acceptance of the BIMCO Mediation Clause 2002, BIMCO updated its ADR Clause 2020 to be an all-encompassing ADR clause, not confined to mediation.^{xx} The LMAA has similarly introduced an early neutral evaluation scheme in January 2022, under which parties can generally obtain a non-binding evaluation of their cases within a month, in a 'without prejudice' and confidential process.

Concluding remarks

25. Singapore and the SCMA have undoubtedly come a long way. Faced with evolving needs and growing competition, the SCMA has always risen to the occasion with agility and innovation and I am confident that it will continue on that course. As a maritime lawyer and arbitrator in my previous avatar, I am unashamed to say that I am excited to see where the SCMA's next port of call will be. But for now, the drinks beckon. Thank you and I wish everyone an enjoyable evening.

- ⁱ Menon Economics and DNV, *The Leading Maritime Cities of the World 2022*, online at: <https://www.menon.no/wp-content/uploads/2022/13-oppdatert.pdf>
- ⁱⁱ White & Case International Arbitration Survey 2021, chapter on 'Current choices and future adaptations', 6 May 2021, online at: <https://www.whitecase.com/insight-our-thinking/current-choices-and-future-adaptations>
- ⁱⁱⁱ HFW, 'The maritime arbitration universe in numbers: London remains every dominant', July 2020, online at: <https://www.hfw.com/The-Maritime-Arbitration-Universe-in-Numbers-London-remains-ever-dominant-July-2020>
- ^{iv} Søren Larsen, 'BIMCO – taking contracts and clauses to the next level', presented at the International Congress of Maritime Arbitrators 2020 (held in Rio from 8-13 March 2020).
- ^v Singapore Maritime Foundation, 'Launch of NYPE 2015 – A Joint Effort by ASBA, BIMCO and SMF on the Industry's Most Widely Used Standard Form of Dry Cargo Time Charterparty', online at: <https://www.smf.com.sg/storage/2021/12/52-20151016-press-releases-launch-of-nype-2015.pdf>; The Business Times, 'Singapore named arbitrator in time charter party', 26 April 2016, online at: <https://www.businesstimes.com.sg/transport/singapore-named-arbitrator-in-time-charter-party>
- ^{vi} Singapore Maritime Foundation, 'Over 300 maritime leaders joined the Guest-of-Honour, Mr Lui Tuck Yew, Minister for Transport, at the Singapore Maritime Foundation (SMF) New Year Cocktail Reception 2015 at Conrad Centennial Singapore to usher in the new year', 16 January 2015, online at: <https://www.smf.com.sg/over-300-maritime-leaders-joined-guest-of-honour-mr-lui-tuck-yew-minister-for-transport-at-the-singapore-maritime-foundation-smf-new-year-cocktail-reception-2015-at-conrad-centennial-singapore-t/>
- ^{vii} Corina Song, 'Maritime Arbitration in Singapore and Proposed Changes to the International Arbitration Act', presented at the International Congress of Maritime Arbitrators 2020 (held in Rio from 8-13 March 2020).
- ^{viii} Damien Glenn Yeo, 'Choosing an arbitration model – why flexibility is key' in Global Arbitration Review, *The Asia-Pacific Arbitration Review 2022*, 7 July 2021, online at: <https://globalarbitrationreview.com/review/the-asia-pacific-arbitration-review/2022/article/choosing-arbitration-model-why-flexibility-key>; Kaili Ang and Arie C Eernisse, 'A Tale of Two Maritime Hubs: The Rise of Regional Maritime Arbitration Centres in Asia', Kluwer Arbitration Blog, 9 November 2021, online at: <http://www.arbitrationblog.kluwerarbitration.com/2021/11/09/a-tale-of-two-maritime-hubs-the-rise-of-regional-maritime-arbitration-centers-in-asia/>
- ^{ix} Damien Glenn Yeo, 'Choosing an arbitration model – why flexibility is key' in Global Arbitration Review, *The Asia-Pacific Arbitration Review 2022*, 7 July 2021, online at: <https://globalarbitrationreview.com/review/the-asia-pacific-arbitration-review/2022/article/choosing-arbitration-model-why-flexibility-key>
- ^x Singapore Expedited Arbitral Determination of Collision Claims terms, online at: <https://www.scma.org.sg/Rules>
- ^{xi} <https://www.scma.org.sg/Rules>; see also SCMA, 'Launch of SCMA Rules 4th edition', online at: <https://www.scma.org.sg/SiteFolders/scma/Documents/LAUNCH%20OF%20SCMA%20RULES%20TH%20EDITION.pdf>; Punit Oza, 'What's in it for me? SCMA 4th Edition Rules from a practical user's viewpoint', 21 December 2021, online at: <https://www.scma.org.sg/SiteFolders/scma/387/Articles/SCMA%204th%20Edition%20Rules.pdf>
- ^{xii} HFW, 'The maritime arbitration universe in numbers: London remains every dominant', July 2020, online at: <https://www.hfw.com/The-Maritime-Arbitration-Universe-in-Numbers-London-remains-ever-dominant-July-2020>
- ^{xiii} *Singapore Parliamentary Debates, Official Report* (3 February 2020) vol 94 (Edwin Tong Chun Fai, Senior Minister of State for Law).
- ^{xiv} International Mediation Institute, Herbert Smith Freehills and PricewaterhouseCoopers, *Global Pound Conference Series: Global Data Trends and Regional Differences*, 2018, online at: <https://www.pwc.com/gx/en/forensics/gpc-2018-pwc.pdf>
- ^{xv} White & Case International Arbitration Survey 2021, chapter on 'Current choices and future adaptations', 6 May 2021, online at: <https://www.whitecase.com/insight-our-thinking/current-choices-and-future-adaptations>
- ^{xvi} Chief Justice Sundaresh Menon, 'The Race to Relevance', keynote address delivered at the SCMA's 10th anniversary conference (held on 4 October 2019), online at: <https://www.judiciary.gov.sg/docs/default-source/news-docs/keynote-address-by-cj---the-race-to-relevance.pdf>

^{xvii} Working Paper of the Mixed Mode IMI/SI/CCA Taskforce, on Arbitrator Techniques and their (Direct or Potential) Effect on Settlement, online at: <https://imimediation.org/wp-content/uploads/2021/11/WG-4-Arbitrators-and-settlement-16-Nov-2021.pdf>

^{xviii} BIMCO Mediation / Alternative Dispute Resolution Clause 2021, online at: <https://www.bimco.org/contracts-and-clauses/bimco-clauses/current/mediation-clause-2021>

^{xix} Online at: <https://lmaa.london/lmaa-mediation-panel/> (LMAA);
<https://www.hkiac.org/mediation/mediators/hkiac-panel-of-mediators> (HKIAC);
<https://www.hkmag.org.hk/mediators> (HKMAG).

^{xx} BIMCO Mediation / Alternative Dispute Resolution Clause 2021, online at: <https://www.bimco.org/contracts-and-clauses/bimco-clauses/current/mediation-clause-2021>

Note: All websites were last accessed on about 7 November 2022, unless otherwise indicated.