

## Mediation is Developing Around the World

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### Yesterday

Yesterday, mediation already developed rapidly in the East. In the West, it developed slowly, with the exception of the United States.

#### Eastern countries influenced by the common law system:

India	Mediation is already common but no complete mediation law exists.
Pakistan	Similar to India.
Bengal	Similar to Pakistan.
Sri Lanka	Similar to India.
Myanmar	Though mediation is popular, no complete mediation law exists.
Philippines	Similar to Myanmar.
Thailand	The practice of mediation exists, but no legislation exists to support it.
Malaysia	Similar to Thailand.
Singapore	Little development has occurred with regard to mediation legislation and practice.
Hong Kong SAR	Has begun to adopt practices different from Britain's; has begun to emphasize mediation but still lacks the mediation legislation and institutions that it should have.

#### Eastern countries influenced by the continental legal system:

Japan	Dislikes both litigation and arbitration; prefers consultation and <i>woxuan</i> (a practice similar to mediation).
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South Korea	Shares some similarities with Japan but is not as adverse to litigation.
China	Possesses a highly developed mediation system and a long historical tradition of mediation but lacks a complete mediation law. For a detailed explanation of mediation in China, please consult Mr. Yu Jianlong's speech.
Vietnam	Emphasizes mediation, but the practice lacks legal support.
Laos	Similar to Vietnam.
Cambodia	Similar to Vietnam.
Arab Nations	Mediation is emphasized but lacks legal support. The practice relies on the support of religious teachings.

Western nations influenced by common law system or continental legal system:

Britain	Emphasizes litigation and arbitration but resists mediation; one of the leading countries in Europe opposed to mediation and all other ADR procedures.  Twenty years ago, an international arbitration seminar was held in London. During the seminar, the former president of the American Arbitration Association, Mr. Robert Coulson, forcefully championed the advantages of ADR, particularly mediation, but not a single member of the audience supported his speech. Only the speech I delivered at the seminar supported Mr. Coulson.
France	Has not emphasized mediation as it should; mediation is occasionally practiced but lacks legal support.
Germany	Neither mediation legislation nor practice of mediation has received support.
Italy	Mediation has not developed as it should.
Netherlands	Mediation has begun to develop but lacks sufficient legal support.
Sweden	Similar to Netherlands.
Switzerland	Similar to Sweden.

Austria	Similar to Switzerland.
Croatia	Mediation has yet to attract interest.
Slovenia	Similar to Croatia.
Hungary	Similar to Croatia.
Russia	Opposes mediation.
Canada	Mediation is not uncommon in some provinces but lacks sufficient legal support.
Australia	Mediation is not uncommon but lacks sufficient legal support.
United States	ADR, particularly mediation, is highly developed.
Latin America	All countries in the region emphasize mediation, but they lack complete mediation laws and rules necessary to provide legal support for mediation.

Analysis of the above list suggests that the majority of countries in the East that emphasize mediation have been influenced by Confucian philosophy, while those countries that do not emphasize mediation have been influenced by the ideology of the common law system. In the West, with the exception of the United States, the majority of countries do not approve of mediation. This is mainly the result of the influence in these countries of an "Ivory Tower" academic mentality that values only litigation.

### Today

In both the East and the West, mediation is developing with fast speed of historical significance. The main reason for this rapid growth is that Eastern nations' experiences with the practice of mediation have proven that, in comparison to litigation, it is a cheaper, faster, energy-saving and more efficient form of dispute resolution. In the West, a number of people, particularly businessmen and some judges and scholars, have already recognized the unnecessary complications and difficulties caused by litigation. Not only does litigation not ensure "Natural Justice" and "Due Process"; it is, in reality, diametrically opposed to them. As a result, ADR, particularly mediation, has begun to attract more and more attention.

As an example, the internationally renowned and respected scholar Sir Michael

Kerr, in his lecture, "Reflection on 50 Years' Involvement in Dispute Resolution" (see the document distributed at this conference), noted that in the past he had respected only litigation and had disregarded mediation and other ADR procedures. Later, his attitude changed completely, and he declared, "The future belongs to ADR!"

In his promotion of legal reforms, Britain's Lord Woolf also emphasized ADR, particularly mediation. Currently, mediation is attracting an unprecedented level of interest in Britain. This trend has had a positive effect on other western countries as well. European Union has issued a "Green Paper" and a "Directive" on ADR, and its members are now discussing implementing the practice. Mediation has already begun to take off in the West.

#### Current Situation in the East:

India	Demonstrated strong support for the development of mediation by implementing its Arbitration and Conciliation Act enacted in 1996. India's mediation institutions are now doing an outstanding job.
Pakistan	Has already passed mediation legislation, and its practice of mediation is developing.
Bengal	Similar to Pakistan.
Myanmar	Similar to Pakistan.
Philippines	Similar to Pakistan.
Thailand	Has already established arbitration and mediation institutions and developed legal support for both arbitration and mediation.
Malaysia	Has developed the practice of mediation and developed legislation to support mediation.
Singapore	Established the Singapore Mediation Center in 1997. It successfully resolves 75% of the cases it accepts. According to Singapore's laws, the country's courts support the right of parties to resolve disputes through mediation. 40% of the mediation cases dealt with by the Singapore Mediation Center are assigned by the Singapore Court.
Hong Kong SAR	In 1999, the Hong Kong International Arbitration Center and the Hong Kong Mediation Council, with the support of Hong Kong's laws, published a set of mediation rules, spurring the development of mediation in the region. Civil Proceeding Reform is now being carried

out, emphasizing, among others, the use of mediation to resolve disputes.

The CI Arb Eastern Branch located in Hong Kong has been exerting its efforts to popularize mediation in the region.

Japan            Legislation and arbitration rules now support mediation. Most of Japan's arbitral decisions are achieved through mediation. Of the 330,000 cases accepted by Japan's courts in 1992, 100,000 were resolved through mediation.

South Korea    In 2000, South Korea's Board of Arbitration implemented a mediation procedure and began accepting cases for mediation.

China            Mediation developed further. For more detailed information, please consult Mr. Yu Jianlong's presentation at this conference.

In 2006, Lord Woolf, the former Lord Chief Justice of England and chair of CEDR's International Advisory Council, and Mr. Dong Songgen, the vice-chairman of CCPIT, launched a landmark international mediation centre alliance to assist foreign and Chinese business resolve disputes without going to court.

Vietnam        Enacted an arbitration law and established an arbitration institution that accepts mediation cases.

Laos            Has considered developing arbitration and mediation industries.

Cambodia      Similar to Laos.

Lebanon        Has begun to have organization for resolving disputes by mediation.

Arab Nations    Have established an arbitration institution in Dubai that accepts mediation cases.

#### Current Situation in the West:

Britain         Since 1999 Reform, has begun to forcefully advocate mediation, particularly Court Annexed Mediation. Britain's arbitration institutions also accept mediation cases. Organizations offering mediation services have appeared, such as the CEDR, which accepts over seven hundred mediation cases per year. CI Arb has been doing its best to popularize ADR particularly mediation. LCIA accepts

mediation cases.

- France            The French Committee of the ICC has established a special committee to research the possibility of France adopting the major ADR methods. French courts are required to carefully consider emphasizing the use of mediation to resolve disputes. In fact, the French courts have already used mediation to resolve civil disputes.
- Germany            Germany's legislation and arbitration rules already encourage parties to employ mediation to resolve disputes and permit arbitrators to make arbitral awards based on a successful mediation achieved by the parties during the course of arbitration, granting legal force to the outcome of the mediation.
- The Civil Code amended in 2002 has urged the court to mediate disputes and Mediation Tribunal has been set up within some of the German courts.
- Italy                Italy has not only developed its own mediation industry; it has also cooperated with other countries to promote the practice of mediation. For example, Italy and China have jointly established an Italy-China mediation center and announced a set of mediation rules for joint mediation. An ADR Center is now existing in Italy.
- Netherlands            An Arbitration Law has been enacted. The Law clearly stipulates that arbitrators, during the course of arbitration, may encourage parties to resolve their dispute through mediation.
- Sweden              Has already passed legislation supporting mediation and has established a mediation institute.
- Switzerland            The Arbitration Rules of the Geneva Chamber of Commerce and Industry support mediation. Article 21 of these rules states, "Mediation-upon the request of the parties, the arbitral tribunal may conduct mediation at any point during the course of the arbitral proceedings." The Rules for Arbitrators of the Zurich Chamber of Commerce support Geneva's practice.
- Austria              Austria's rules encourage mediation and stipulate that if the parties achieve reconciliation, a note should be made of it, and it should be signed by the parties...if so requested by the parties, an arbitral award should be made on the basis of the outcome of the reconciliation.
- Eastern Euro-            Are being advised by the "Conflict Management International" in

pean Countries	respect of ADR.
Croatia	The rules of Croatia's Chamber of Commerce promote mediation and state that if parties achieve reconciliation, the arbitral tribunal should make a record of the outcome and have the parties sign it. If the parties so request, the chairman of the chamber of commerce should recognize the mediator in this case as an arbitrator, who shall, at the request of the parties, make the award by consent.
Slovenia	Slovenia's Arbitration Rules follow those of Croatia. Slovenia is now introducing mediation into its civil and criminal legal system.
Hungary	Hungary's Arbitration Rules follow those of Croatia.
Russia	Has begun to think of mediation.
Canada	Canada's Arbitration Act not only supports mediation; it also supports combining mediation with arbitration.
Australia	Australia's laws are similar to Canada's Arbitration Act; they support both mediation and the combination of arbitration with mediation.
United States	The practice and legislation of ADR, particularly that of mediation, advanced another step. Each state has passed legislation supporting mediation, and the number of mediation cases is steadily increasing.
Latin America	All Latin American nations emphasize mediation, but they still have no complete laws supporting mediation, with the exception of a few countries such as Argentina, etc.
ICC	Had already issued a set of mediation rules at an early date and has strongly advocated the development of the mediation industry. Recently, ICC has held several international mediation moot court competitions to educate people to use mediation for resolving their disputes.
UNCITRAL	Has made a set of mediation rules and a "Model Law on International Commercial Mediation", promoting the unification of mediation legislation and the development of the mediation industry.
WIPO	Has established an arbitration and mediation center and issued a set of arbitration and mediation rules, playing a positive role in the resolution of intellectual property disputes through mediation.

The emergence of the national and international mediation legislation and institutions noted above has not only promoted the development of the mediation industry; it has also helped to resolve numerous international commercial disputes and has played a positive role in the growth of the international economy.

Mediation is, without a doubt, advancing around the world.

### Tomorrow

Sir Michael Kerr said, "The future belongs to ADR!"

I agree with his statement, but I would say, "The near-future will belong to mediation, but in the long term, the future will belong to other ADR procedures."

### Closing Remarks

Mediation is spreading around the world, but the following problems are obstructing the practice's smooth development:

1. The outcome of a successful mediation still lacks the protection of court enforcement.
2. UNCITRAL still has a long road to travel in its efforts to develop and unify international mediation legislation. UNCITRAL's "Model Law on International Commercial Mediation" leaves the choice of whether or not to grant enforcement to the outcome of a successful mediation to national courts, which is disappointing, particularly the business community.
3. The draft of UNCITRAL's "Model Law on International Commercial Mediation" originally contained an article that approved of the combination of mediation and arbitration. This article was later removed on the alleged ground that, as a problem related to arbitrators and not mediators, this issue should have been decided during the revision of the "UNCITRAL International Commercial Arbitration Rules" or the "UNCITRAL Model Law on International Commercial Arbitration". UNCITRAL is now discussing an amendment to its "International Commercial Arbitration Rules", so we hope that UNCITRAL will discuss the issue of combined mediation-arbitration and include in its amended Rules an article endorses the combination of arbitration and mediation.

Today, mediation is developing around the world. However, if we hope to realize a "future that belongs to ADR", especially to mediation, we must all continue to work still more diligently!

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