

## Editorial

Apresentamos, com muito orgulho, o número 9 da *Revista Brasileira de Alternative Dispute Resolution – RBADR*. Trata-se de um número especialmente dedicado à mediação na Ásia.

Vinicius de Moraes (1913-1980), poeta carioca, afirma em seu poema “Carne”, de 1933: “Que importa se a distância estende entre nós léguas e léguas./Que importa se existe entre nós muitas montanhas?/O mesmo céu nos cobre e a mesma terra liga nossos pés.”<sup>1</sup> É exatamente esse o objetivo da cultura da paz: unir os povos. Tal cultura conseguiu reunir Brasil e Singapura por meio do Centro Brasileiro de Mediação e Arbitragem (CBMA) e do Singapore International Mediation Centre (SIMC). O presente número é verdadeiro exemplo de cooperação internacional entre duas instituições de *alternative dispute resolution* de referência.

As portas do sistema de tribunais multiportas estão se abrindo por toda parte, e esta edição da revista é uma evidência robusta. Nosso agradecimento ao presidente do SIMC, George Lim; ao CEO do SIMC, Chuan Wee Meng; a Siddharth Jha, conselheiro de Parcerias Internacionais do SIMC, e ao editor convidado, Benatt Beng Tat Lee, secretário-geral da SIMC. Esta edição não seria uma realidade sem seu incrível trabalho e contatos na Ásia.

O número é composto por quatorze artigos. Onze deles são sobre o status da mediação em países asiáticos específicos ou regiões: Hong Kong, China, Sri Lanka, Camboja, Indonésia, Japão, Malásia, Cingapura, Coreia do Sul, Tailândia e Vietnã. Um dos artigos é sobre mediação na República da Bielorrússia, outro sobre arbitragem na China, e também há uma resenha do livro *Dispute Board Manual: A Guide to Best Practices and Procedures*, escrito pela Dispute Resolution Board Foundation (DRBF).

Agradecemos a todos os autores e leitores da revista. O intercâmbio das melhores práticas em ADR é vital para o desenvolvimento doméstico e internacional da cultura de paz.

**Daniel Brantes Ferreira, Ph.D.**

Editor-in-Chief

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<sup>1</sup> Veja-se o poema completo: “Carne/Que importa se a distância estende entre nós léguas e léguas/Que importa se existe entre nós muitas montanhas?/O mesmo céu nos cobre/E a mesma terra liga nossos pés./No céu e na terra é tua carne que palpita/Em tudo eu sinto o teu olhar se desdobrando/Na carícia violenta do teu beijo./Que importa a distância e que importa a montanha/Se tu és a extensão da carne/Sempre presente? (MORAES, Vinicius. Carne. In: MORAES, Vinicius. *O caminho para a distância*. [S. l.]: [s. n.], 1933. p. 27. Disponível em: <http://cabana-on.com/Ler/wp-content/uploads/2017/09/Vinicius-de-Moraes-O-Caminho-para-a-Distancia.pdf>. Acesso: 13 jun. 2023).

## Editorial

We proudly present the Brazilian Journal for *Alternative Dispute Resolution* – *RBADR*, Issue 9. It is a special issue dedicated to mediation in Asia.

Vinicius de Moraes (1913-1980), a poet from Rio de Janeiro, states in one of his poems, entitled “Flesh” (*Carne*), written in 1933: “What does it matter if the distance stretches between us leagues and leagues?/What does it matter if there are many mountains between us?/The same sky covers us, and the same earth connects our feet.”<sup>1</sup> The purpose of the culture of peace is to unite people. Thus, such culture has joined Brazil through the Brazilian Centre for Mediation and Arbitration (CBMA), and Singapore through the Singapore International Mediation Centre (SIMC). This issue is a true example of international cooperation between leading alternative dispute resolution institutions.

The doors of the multi-door courthouse system are opening all around, and this issue is robust evidence. We must show our appreciation to SIMC’s President, George Lim; SIMC’s CEO, Chuan Wee Meng; Siddharth Jha, SIMC’s International Partnerships Counsel; and to this issue’s guest editor, Benatt Beng Tat Lee, SIMC’s Registrar. This issue would not be a reality without their incredible work and network in Asia.

The issue is composed of fourteen papers. Eleven papers are about the mediation status in specific Asian countries or regions: Hong Kong, China, Sri Lanka, Cambodia, Indonesia, Japan, Malaysia, Singapore, South Korea, Thailand, and Vietnam. One paper is on mediation in the Republic of Belarus; another piece is on arbitration in China, and there is also a book review on the *Dispute Board Manual: A Guide to Best Practices and Procedures*, written by the Dispute Resolution Board Foundation (DRBF).

We thank all the authors and journal readers. The exchange of the best ADR practices is vital for the domestic and international development of the peace culture.

**Daniel Brantes Ferreira, Ph.D.**

Editor-in-Chief

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<sup>1</sup> See the full poem in Portuguese: Carne - Que importa se a distância estende entre nós léguas e léguas Que importa se existe entre nós muitas montanhas? O mesmo céu nos cobre E a mesma terra liga nossos pés. No céu e na terra é tua carne que palpita Em tudo eu sinto o teu olhar se desdobrando Na carícia violenta do teu beijo. Que importa a distância e que importa a montanha Se tu és a extensão da carne Sempre presente? (MORAES, Vinicius. *Carne*. In *O caminho para a distância*. [S.l.]: [s.n.], 1933. p. 27. Available at: <http://cabana-on.com/Ler/wp-content/uploads/2017/09/Vinicius-de-Moraes-O-Caminho-para-a-Distancia.pdf>. Accessed on: 13 Jul. 2023).

## Guest Editor's Note

When the Singapore International Mediation Centre (SIMC) was invited to put together a series of papers on the mediation scene across Asia, we saw it as an opportunity to present to a global readership, a panoramic snapshot of the state of mediation in Asia. These series of papers present mediation “as-is” in respect of each jurisdiction, ranging from those with far-developed mediation eco-systems to those where the use of mediation is still at a nascent stage.

From the outset, we did not feel that we would be able to add much to the large number of academic papers already published on mediation, nor were we best qualified to do so. However, as a major mediation service provider to an international clientele, we work hand-in-hand with many mediation practitioners in various countries who are well placed to present mediation from their viewpoint as practitioners. We therefore sought their collaboration, to present mediation from a ground-level perspective in their respective jurisdictions. As such, the primary focus of these series of papers is not on mediation concepts or principles but on the current state of mediation in each jurisdiction, as seen through the eyes of these practitioners.

Working with mediation practitioners as opposed to academic scholars on a project of this nature poses its own unique characteristics and challenges. Professionals in the academic field are accustomed to living under the yoke of a “publish or perish” mandate. Industry practitioners are under no such pressure. On the contrary, writing papers of such nature imposes a strain on the time they have to devote to their daily professional responsibilities to their constituents. As a result, managing their compliance to set publication milestones and deadlines, can be challenging. A few practitioners slated to write papers for their jurisdictions, had expressed strong enthusiasm to contribute to the project, but eventually, had to regretfully withdraw their participation due to work commitments or other reasons. This is however, par for the course in a project of this nature.

While some suggestions were given to the mediation practitioners on the topics that they might consider covering in their contributions to this edition of the Journal, they each had their own perception of what the most essential aspects of mediation that they should focus on were in relation to their respective jurisdictions. Given that they are closer to the on-the-ground pulse of mediation in their respective jurisdictions, we did not think it appropriate to insist that they fit their contribution into any prescribed, straight-jacketed format. They were therefore given essentially a free rein in this respect and to adopt their own styles of presentation, which are

inevitably nuanced by their different cultural backgrounds. Hence readers will find that the scope, focus and style of presentation in each paper varies.

Nevertheless, despite these challenges, through sheer dogged persistence and the good-spirited endeavour on the part of all the contributing practitioners, we managed to cobble together this series of papers. As I read the papers, I certainly found them enriching my understanding of mediation as practised in these various jurisdictions and I hope the readers will similarly find them enlightening and useful. Most of all, I have enjoyed my interactions with the various practitioners who have contributed these papers and wish to use this opportunity to thank them for their generous participation in this project.

**Benatt B.T. Lee, CFA**

Registrar

Singapore International Mediation Centre

## Introduction to Singapore International Mediation Centre – SIMC

Mediation is about collaboration: SIMC is pleased to collaborate with the Brazilian Centre for Mediation and Arbitration – CBMA to collate this special series of articles dedicated to Mediation in Asia for the *Brazilian Journal for Alternative Dispute Resolution – RBADR*, Issue 9. This would not be possible without the hard work and dedication of SIMC Registrar, Mr Benatt Lee, as the General Editor, together with all the contributors to this special edition, many of whom are our partners and friends in Asia, and the strong support of Dr Daniel Bantes Ferreira, Ph.D., as the Editor-in-Chief and the CEO of CBMA.

SIMC was set up in 2014 as a not-for-profit organisation that offers professional dispute resolution services tailored to the evolving needs of businesses, working across multiple jurisdictions covering both common and civil law traditions. Our panel of over 70 international independent mediators have extensive experience resolving cross-border disputes and are highly regarded for delivering successful outcomes in complex, high-stakes commercial disputes.

Over the last 9 years, SIMC has seen its caseload grow by multiple folds to a total of more than 300 case filings with a total dispute value of US\$15.6 billion. The parties are from more than 50 countries. These disputes arise from various industries and specialty areas: construction, shipping, energy, intellectual property and most recently from investor-state disputes and cryptocurrency disputes. We have disputes ranging from US\$200,000 to the largest dispute value to date at US\$4 billion. On average, the value of the disputes are about US\$53 million. The settlement rate at SIMC remains at about 70% despite the growth in case numbers, complexity and types of disputes.

We have also been organising mediation workshops in various cities to train mediators from China, India, Japan, South Korea, Sri Lanka, Maldives, Philippines, Pakistan, Mongolia, Nepal and other Asian countries. In August 2023, we will hold a workshop in Costa Rica with participants from the Latin American region representing countries such as Costa Rica, Mexico, Colombia, Peru, Brazil and the Bahamas. We are helping to build a global community of experienced and passionate mediators to support counsel and parties to resolve disputes in a professional, creative and cost-effective way. As an organisation, we believe that a diversity of perspectives, language, culture, expertise and strengths is essential to success, and we are committed to supporting our talent base and communities that share our values and vision for a more peaceable world.

With the signing of the Singapore Convention on Mediation in 2019 and its coming into force in 2020, we expect to see many more countries sign and ratify the Convention in the years ahead. We are privileged to be at this juncture in history to witness and participate in the growth of mediation globally.

We invite you to join us on this exciting journey.

**Chuan Wee Meng, CEO**

Singapore International Mediation Centre