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International Initiatives Towards the Development of Alternative Dispute Resolution

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ABSTRACT

International arbitration has risen in popularity over the last 50 years, yet many people still fail to recognize its significance as the principal way of settling complicated, multinational conflicts (as well as the economic benefits accruing to a country perceived as "arbitration friendly"). The authors, with the help of this article, want to showcase the international initiatives taken globally for the recognition of INTERNATIONAL INITIATIVES TOWARDS THE DEVELOPMENT OF ALTERNATIVE DISPUTE RESOLUTION (ARBITRATION), which help to resolve conflicts and sustain relationships among people. Increasing numbers and a greater degree of complexity have emerged from the growth and globalization of cross-border investment and commerce. After a relationship comes to an end (which is inevitable), it's important for the parties involved to figure out what their best options are for resolving the disagreements that may arise. In the vast majority of cases, parties will settle their differences via arbitration.

I. INTRODUCTION

Increasing numbers and a greater degree of complexity have emerged from the growth and globalization of cross-border investment and commerce. After a relationship comes to an end (which is inevitable), it's important for the parties involved to figure out what their best options are for resolving the disagreements that may arise. In the vast majority of cases, parties will settle their differences via arbitration.[3] As far back as Plato's writings in ancient Greece, arbitration has been utilized as a means of resolving disputes. Recently, arbitration has taken on a more prominent role in some areas, where the technical skill of the arbitrators has been highly regarded (such as in the fields of construction, commodities, shipping, and insurance). International arbitration has risen in popularity over the last 50 years, yet many people still fail

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[3] Laura Nader, A Wide Angle on Dispute Management, Williamete Journal of Law and Dispute Resolution (2002) <https://www.jstor.org/stable/26211206> accessed 9th February 2022.

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to recognize its significance as the principal way of settling complicated, multinational conflicts (as well as the economic benefits accruing to a country perceived as "arbitration friendly").[4] Arbitration may not be the best solution for all parties in all situations. There are pros and cons to arbitration depending on the circumstances and goals of those involved. A sound judgement must thus be made in every circumstance. Since the mandate of the arbitrators is based on this article, it is important to have a simple arbitration clause. In contrast to courts, arbitration panels in commercial disputes lack any inherent power or jurisdiction.[5] Agreement between the parties is the source of their authority (albeit that, once selected by the parties, arbitration has the backing of statutes and treaties). As a consequence, parties should use extraordinary prudence when drafting arbitration agreements. It is common for self-interest to suggest that it is too late to develop further agreement on how a dispute should be resolved if it has already happened.[6]

II. HOW HAS INTERNATIONAL ARBITRATION DEVELOPED AS A BETTER ALTERNATIVE OVER TRADITIONAL LITIGATION?

Even in non-business transactions, the advantages of alternative dispute resolution (ADR) over traditional litigation are ubiquitous, indicating their efficacy. As stimulants for global market activity and efficiency, the following advantages are especially relevant to the international business environment. The simplicity of alternative dispute resolution is one of the most often cited advantages in the international environment. Its fundamental claim to legal preference has always been that it is faster, cheaper, and simpler than litigation. Conventional knowledge holds that a typical judicial system may take up to ten years to completely resolve a dispute between two parties from different countries. Securing jurisdiction over the parties involved and obtaining a judgement that may be given later are two of the most common reasons for a delay in the process.[7] Protracted litigation results in higher court fees and discovery costs for all parties. The realization of these fees may greatly limit the number of risks that a firm organization is willing to take in the future. If the economy has changed dramatically since a dispute was first brought to light, it may have a considerable impact on how parties negotiate over the course of the proceedings. Serious implications may result if a party's willingness to

[4] James R. LaVaute, Alternative Dispute Resolution and Enforcement of Statutory Rights, The Labor Lawyer (1990) <https://www.jstor.org/stable/40862073> accessed 9th and 10th February 2022

[5]Ernest E. Uwaize, Alternative Dispute Resolution in the world (2011) <http://www.jstor.org/stable/resrep19066> accessed 9th February 2022.

[6]Larry Ray and Laurence Freedman, Alternative dispute resolution Complete Lawyer (1986) <https://vdoc.pub/documents/strategy-a-history-4gj6aovpc9m0> accessed 9th February 2022.

[7] Eun-Joo Min, Alternative Dispute-Resolution Procedures: International View (2014) < https://www.coursehero.com/file/110343077/ipHandbook-Ch-15-03-Min-Dispute-Resolutionpdf/> accessed 10th February 2022.

retain the business cooperation is undermined. An alternative dispute resolution (ADR) may be a good solution to these problems.[8] Arbitration expenses are often low and maybe split evenly among the parties involved. In addition, a typical arbitrator's caseload is much less than that of a traditional court. As a consequence, an arbitrator's resolution of a dispute is often more rapid than a court. ADR also offers the advantage of allowing the disputing parties to choose their own arbitrator. Due to the fact that an arbitrator, as opposed to a court, which is typically bound by the procedural rules and substantive law of the country where it sits, can "acknowledge and reconcile different cultural, legal, and social norms in arriving at a decision,"[9] international business disputes benefit greatly from using arbitrators with this skill set. As a result, having the parties agree on an arbitrator reduces the chance of perceived prejudice significantly. An agreement between a Japanese and Mexican corporation to use Japanese arbitration in the case of a dispute would surely raise the Mexican company's perception of cultural discrimination. An arbitrator from the United States may be selected in a routine negotiation to reduce the perception of bias among the parties. As part of an international business dispute resolution procedure, parties might work together to pick an arbitrator and make decisions that are in line with their respective political, social, and economic interests. Because it provides a private setting for resolving disputes, alternative dispute resolution is favoured by most firms. Having anonymity allows parties to manage the flow of information, minimize the unwanted publicity that may arise from an adverse judgement, and lessen the probability of a flood of "copycat" cases in the future.[10] According to Rothman's claim, "Parties may now resolve their differences in private, away from the public eye, and with the guarantee that their conversations would remain confidential." On the other hand, Brown continues, for the purpose of arbitration, the parties have agreed that any materials created or utilized in the arbitration will not be revealed or used for any other reason than the original intent of the agreement. Anonymity is essential in today's global business world when a wide variety of marketability options are accessible. The majority of business organizations want to keep their differences out of the public eye in order to avoid damaging their image or aiding their competitors. The geographical business world has become so symbolically smaller as a result of technological developments in communication that even a

[8] JG Mowatt, Alternative dispute resolution: some points to ponder, The Comparative Law and Journal of Sothern Africa (1992) <https://www.jstor.org/stable/i23248753> accessed 9th February 2022.
[9] Kaja Harter-Uibopuu, Ancient Greek Approaches toward Alternative Dispute Resolution, Willamwete Journal of International Law and Dispute Resolution (2002) <https://www.jstor.org/stable/26211207> accessed 10th February 2022.
[10] James A.R. Nafziger, Comparative Dispute Resolution, Willamwete Journal of International Law and Dispute Resolution (2003) < https://www.jstor.org/stable/26211204> accessed 9th February 2022.

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little bit of bad news may quickly spread.[11] For the sake of maintaining a positive company image, the employment of private dispute resolution becomes an important tool. Alternative conflict resolution has several advantages, not the least of which is its capacity to accommodate the wide range of political, economic, and social backgrounds of the parties involved. When it comes to international business disputes, the advantages of employing alternative dispute resolution (ADR) are clear, but there are some drawbacks. Arbitration in international business disputes may only be successful if the arbitrator is committed to rendering fair and expeditious findings while taking into account the unique social, economic and political interests of each culturally diversified party.[12] Regardless of the outcome, an aggrieved party may see the settlement process as a failure if the arbitrator shows prejudice. Arbitration rulings are not always consistent and are seldom binding in future proceedings, leaving parties with little alternative but to speculate about the chances of prevailing on a similar matter at a later date. This problem is best handled by clearly stating in the contract which substantive and procedural rules would be applied to the transaction at hand. Under this resolution, it is likely that parties with limited bargaining strength may be coerced into risky economic partnerships since their cultural values and aspirations will not be sufficiently safeguarded. For both parties, one of the most pressing issues is whether or not an award can be enforced.[13] "Significant and dependable governmental and intergovernmental assistance" is essential to the success of private international arbitration. To the extent that international commercial arbitration is made ineffective if a national court does not ensure that the award will be enforced by a national court in that area, the government has an important role to play in the ADR process.[14]

III. INDIRECTLY, ARE THE STATES INTERFERING IN INTERNATIONAL ADR?

In terms of worldwide corporate ADR, government support and encouragement has been the most significant booster. Companies may operate with the confidence that their choice to use ADR is recognized, that ADR judgments will be honoured, and if necessary, that national governments would likely enforce ADR awards. Volatility across numerous legal regimes is one of the most concerning aspects of the effort to globalize ADR in cross-cultural economic transactions. According to Stallard, conflict resolution analysis and implementation are often

[11] Ronald E. M. Goodman, Conciliation, Mediation and Dispute Resolution, Proceeding of the Annual Meeting American Society of International of Law (1996) <https://www.jstor.org/stable/i25658987> accessed 10th February 2022.
[12] Id.
[13] Céline Lévesque, Encouraging Greater Use of Alternative Dispute Resolution in Investor-State Dispute Settlement Opportunities and Challenges, Proceeding of the Annual Meeting American Society of International of Law (2013) <https://www.jstor.org/stable/i25658987> accessed 10th February 2022.
[14] Reyburn W Lominack, Examining Alternative Dispute Resolution in the International Business Domain 2003 <https://scholarcommons.sc.edu/cgi/viewcontent.cgi?article=1127&context=scjilb> accessed 9th February 2022.

hampered by shifting national contexts. In transition countries, "institutional issues, particularly the key issue of establishing the rule of law,"[15] abound, and these nations are experiencing "significant economic, political, or social development." Many of these countries will play a significant role in expanding ADR internationally after they have improved their social, economic, and political foundations. To meet the growing demands of the international community, "the administration of international justice, as currently defined, is being integrated and expanded by a system of alternative means."[16] With the backing of both public and private institutions, as well as commercial organizations that are willing to take on hazardous investments, a worldwide ADR system is essential in this process of internationalization. It is understandable why many businesses are reluctant to engage in a dispute resolution process that does not offer any guarantee of success, but this is no longer a significant business concern because of the increased level of consistent enforcement by state and national governments around the industrialized world.[17]

IV. THE CHANGING FACE OF INTERNATIONAL ADR

The existence of the internet and the e-commerce transactions in issue is an essential variable in international alternative dispute resolution. A written agreement including an arbitration or mediation provision has been reached by both parties in the great majority of cases. Therefore, legal counsel must verify that the phrases in question sufficiently address the following issues: (1) location; (2) applicable legislation; (3) selection and a number of arbitrators; (4) language of the procedure; (5) discovery rights and (6) remedies, which may include injunctions, attorneys' fees and court costs. These are just a few of the options available to the parties involved.

If the parties agree to an alternate method of dispute settlement, the Trustmark may be granted. In order to show that a firm is adhering to industry norms, you may use a "trust mark," such as a seal or banner, on its website. As a consequence, it motivates e-commerce sites to enforce their own rules of conduct. EU legislation for e-commerce transactions also promotes the use of alternative dispute resolution techniques, such as mediation and arbitration, in order to avoid costly litigation in the future.[18]

[15] William H. Ross & Donald E. Conlon, Hybrid Forms of Third-Party Dispute Resolution: Theoretical Implications of Combining Mediation and Arbitration, The Academy of Management Review (2000) < https://journals.aom.org/doi/10.5465/AMR.2000.3312927> accessed 10th February 2022.

[16] Mark Fathi Massoud, International Arbitration and Judicial Politics in Authoritarian States, Law and Social Inquiry (2014) <https://www.jstor.org/stable/24545698> accessed 10th February 2022.

[17] M. Scott Donahey, International Commercial Dispute Resolution, The International Lawyer (1997) <https://www.jstor.org/stable/40707307> accessed 9th February 2022.

[18] C. M. Chinkin & Romana Sadurska, Learning about International Law through Dispute Resolution, The

It is clear that there are many options when it comes to alternative dispute resolution (also known as "ADR"). Arbitration is a formal examination of the legal rights of the parties in a formal context. "Mediation," on the other hand, aids formal talks by focusing on the interests of both sides.

Defining "international alternative conflict resolution" is the first step in understanding the distinction between "international litigation" and "international alternative dispute settlement."[19] In international litigation, there are several steps that must be taken before a settlement may be achieved. Before a trial in a court of law is held, the parties may be involved in years of litigation. When it comes to jury selection, there is a chance of an unexpected conclusion for them. On the other hand, participants in a dispute have a greater say in settlement of their differences via alternative dispute resolution methods.[20] With this ability, they are able to choose an unbiased judge and agree to the discovery procedures. Additionally, they may assess whether or not the judgement is binding on the party who brought it.

A wide range of situations lends themselves to the use of international alternative dispute resolution. No matter whether they are business enterprises or consumers, it should not affect whether or not they have access to this option. The bulk of the time, transactions are carried out between companies based in separate countries. A clause requiring alternative dispute resolution procedures should be a part of any agreement between the parties. This is a practical consideration from a legal standpoint.[21]

As a viable alternative to in-person arbitration and mediation, online dispute resolution (often referred to as "ODR") has grown in popularity over the last several years. It allows you to pick an unbiased judge who will examine the relevant documents and provide a decision using the most recent technologies. Unbiased judges may conduct virtual conferences with the parties and render decisions without ever meeting them in person, thanks to modern technology. Before a final judgement is issued, the parties may offer their evidence to the decision-maker (e.g., contract provisions, letters, reports, and witness testimony).[22] A number of critical hurdles

International and Comparative Law Quarterly (1991) <https://www.jstor.org/stable/759800> accessed 9th and 10th February 20922.

[19] Robert A. Holtzman & Jeff Kichaven, Recent Developments in Alternative Dispute Resolution, Tort Trail and Insurance Practice Law Journal (2004) <https://www.jstor.org/stable/25763663> accessed 10th February 2022.

[20] Id.

[21] Recent developments in international commercial arbitration, in International Trade and Legal Law Review (2012), <https://www.taylorfrancis.com/books/9781136025907/chapters/10.4324/9780203060605-8> accessed 10th February 2022.

[22] Rachel Brewster, Rule-Based Dispute Resolution in International Trade Law, Virginia Law Review (2006) <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5318&context=faculty_scholarship> accessed 10th February 2022.

must be surmounted, though. To begin with, building trust between the parties is more challenging. In order to acquire the parties' trust, the arbitrator or mediator must first establish a relationship of trust with them before demonstrating his or her abilities. However, the lack of physical contact in ODR makes it more difficult to build trust. It's possible that confirming the parties' identities a second time may be challenging.[23] Consequently, there must be a way to validate the identities of everyone engaged. The use of digital signatures to authenticate their identity before signing legal documents is an example. It is tough to create data security, but it may be done with the help of dependable technologies. It's possible, for example, to send and receive documents through a Virtual Private Network ("VPN") set up between the parties using encryption technology. As a consequence, encryption may be highly beneficial when it comes to securing private or secret information. Fourth, ensuring the security of one's personal data is an absolute need.[24] As part of the arbitration or mediation process, parties should be given a copy of the impartial arbitrators and mediators' privacy guidelines. It doesn't matter what kind of position you're in; privacy rules need to be established clearly and readily accessible. There must be a way to ensure that the judgement is implemented. You may say it another way: The deal needs a provision stating whether or not a particular judgement is binding and outlining the consequences of failing to comply with it.

The American Arbitration Association has a proposal for dealing with internet commerce transactions. The International Chamber of Commerce has also expressed similar thoughts about e-commerce transactions. The World Intellectual Property Organization has also made many proposals in this regard. International e-commerce transactions are encouraged to use alternative dispute resolution organizations.[25]

V. CONCLUSION

In today's environment, multi-billion-dollar global business deals may be performed with a few mouse clicks. A half-century ago, such ease of worldwide corporate collaboration would have been unimaginable; now, it is the norm. Conflict resolution procedures that are culturally

[23] Ann Black, Survival or Extinction? Animistic Dispute Resolution in Sultanate of Brunie, Willamette Journal of International Law and Dispute Resolution (2005) <https://willamette.edu/law/resources/journals/wjildr/index.html> accessed 9th February 2022.

[24] Joyce G. Mazero & Mark B. Forseth, The ADR Alternatives: Survey of Providers of Alternative Dispute Resolution Services, Franchise Law Journal (1992) <https://www.americanbar.org/content/dam/aba/publications/franchising_law_journal/cumulative_index112520.pdf> accessed 10th February 2022.

[25] Bradley Raboin, The Emergence of Multi-Track Diplomacy in Intranational Dispute Resolution, Willamette Journal of International law and Dispute Resolution (2014) <https://www.iclrs.org/publications-2/articles-of-interest/> accessed 10th February 2022.

sensitive are becoming more crucial as this transactional arena develops in breadth.[26] To keep up with a changing economic climate, alternative dispute resolution (ADR) will continue to adapt to satisfy the needs and expectations of the global business world. Even if cultural dynamics of conflict resolution are complex and vital, Stallard maintains that it is likely to be far easier to study, agree upon, and master before and during cross-cultural business transactions than to rely on foreign court systems after a problem has arisen.[27] A successful global market economy will be built on long-term international commercial partnerships, which companies now understand the necessity of maintaining.[28] In today's global business market, ADR isn't a silver bullet for dealing with the complexities of multiculturalism. However, in the great majority of circumstances, it is preferable to litigation and can typically be arranged in a way that serves everyone's best interests.

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[26] Hugo Siblesz, The Role of International Organizations in Fostering Legitimacy in Dispute Resolution, International Organization and The Promotion of Alternative Dispute Resolution (2019), <http://www.jstor.org/stable/10.1163/j.ctvrxk3sj.8> accessed 9th February 2022.

[27] Omar Husain Qouteshat, The Enforceability of the Unfair Arbitration Agreement in Consumer Disputes before Dubai Courts, Arab Laws Quarterly (2017) <https://www.deepdyve.com/lp/brill/the-enforceability-of-the-unfair-arbitration-agreement-in-consumer-wP8xfbMELi> accessed 10th February 2022.

[28] Peter J. Spiro, The States Take on Inetrnational Law WillametteJ Journal of International Law and Dispute Resolution (2012) <https://willamette.edu/law/resources/journals/wjildr/index.html> accessed 10th February 2022.

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