Forum: Legal Committee (GA6)

Issue: Promoting Alternative Dispute Resolution (ADR) Measures

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Position: Co-Chair

PERSONAL INTRODUCTION

Dear delegates of the Legal Committee,

My name is Stefi Gkania and I am a 10th grade student at Platon School. I am honoured to serve as a co-chair for this year's PSMUN conference in the Legal Committee. I am excited about the opportunity to collaborate with you, my fellow co-chairs, and to benefit from the guidance of the esteemed Secretariat members as I learn and grow from their experience.

My MUN journey began in 7th grade, and I am immensely grateful to have come this far. I encourage each of you to pursue your goals and aspirations, overcoming any obstacles that may lie ahead. I have chosen to chair in the Legal Committee, recognizing its advanced nature, as I believe this will provide me with the chance to be a role model and guide you through this challenging, yet, memorable experience. This marks my fourth conference in GA6, so I understand first-hand that it might be overwhelming. That is why I will be present to encourage and help you find your voice, be confident in yourself, and represent your country with pride.

The Legal Committee aims to tackle global issues regarding the law. The committee's primary goal is to implement article 13 of the UN Charter concerning 'the development and codification of international law by drafting legal tools and treaties.' The Legal Committee controls the reports of the United Nations Commission on International Trade Law (UNCITRAL), an essential UN organisation that strengthens International Law.[1]

I want to clarify that this study guide is for introductory purposes only and should not be used as your sole source of information. It may not cover all required knowledge but serves to assist you at the beginning of your research. If you have any questions or need clarifications, do not hesitate to contact me at gania.stefania@platon.gr.

I cannot wait to meet you all in person in March 2024!

Yours truly,
Stefi

[1] "Legal: United Nations Legal Committee: Imuna: NHSMUN: Model UN." *IMUNA*, www.imuna.org/nhsmun/nyc/committees/legal-committee/#:~:text=The%20Legal%20Committee%20is%20a%20primary%20forum%20that,international%20law%20by%20drafting%20legal%20tools%20and%20treaties.

INTRODUCTION

Alternative Dispute Resolution (ADR), as its name suggests, comprises methods alternative to traditional litigation, aiming to resolve disputes before parties resort to court. In other words, it provides both parties the opportunity to settle their disagreements without filing a lawsuit. Rather than opting for traditional litigation, parties could engage in an ADR process. According to an educational media platform, only 5% of civil cases ever reach court when utilizing ADR, effectively resolving disputes before formal hearings, thereby, prioritizing significant conflicts over less consequential ones.[2]

Arbitration, Conciliation, Collaborative Law, Mediation, and Negotiation are the five methods for settling disputes through ADR, with the most common being Arbitration, Mediation, and Negotiation.

Figure 1 The five types of ADR briefly explained[3]

[2] "Introduction to Alternative Dispute Resolution." *YouTube*, 24 Mar. 2020, www.youtube.com/watch?v=tGFijuVyzyQ.

[3] "The Five Types of ADR - an Explanation of the Different Types of Alternative Dispute Resolution ...: Alternative Dispute Resolution, Conflict Resolution, Resolutions." *Pinterest*, 20 Jan. 2015, www.pinterest.com.mx/pin/564427765774516461/.

Nowadays, ADR is a far more widely adopted global approach for dispute resolution compared to when it was initially introduced. It is preferred due to its rapidity, confidentiality and flexibility as ADR processes are restricted to unwelcome audiences, and easily accessible and implementable.[4]

Resolving a dispute through ADR offers an almost guaranteed fair hearing, given that arbitrators and mediators are expected to be independent and neutral third parties seeking a resolution that equally benefits both disputants. However, certain factors, such as bribery and coercion, threaten the plausibility and security of these methods. It is undeniable that ADR brings immense benefits to both the legal system and the parties seeking justice when executed properly. Therefore, it is crucial to explore ways to promote ADR measures while addressing the existing flaws in its system.

'The more society moves forward; the more problems are created,'[5] is the underlying message of the Paradox of Progress, the PSMUN 2024 theme. ADR represented a significant leap in the realm of law, allowing citizens to move from mandatory public court trials dictated by the government or monarch to choosing between informal and formal trial methods based on terms they define. However, substantial changes often come with consequences, and the overlooked flaws in ADR require attention. Instead of merely spreading ADR, efforts should be focused on addressing its inherent problems. Measures like Online Dispute Resolution (ODR) have been introduced, but the challenge lies in not letting the expansion of ADR methods overshadow the unresolved issues, making them more difficult to tackle with each step forward.

DEFINITION OF KEY TERMS

Alternative Dispute Resolution (ADR)

'Alternative Dispute Resolution (ADR) refers to any methods of resolving a dispute without traditional litigation or any governmental interference through informal measures that aim to reach a resolution that favours both parties.'[6]

Appeal

'A request made to a court of law to someone in authority to change a previous decision.'[7]

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[4] "Alternative Dispute Resolution." *Legal Information Institute*, www.law.cornell.edu/wex/alternative_dispute_resolution.

[5] "Take Online Courses. Earn College Credit. Research Schools, Degrees & Careers." Study.Com, homework.study.com/explanation/what-is-the-paradox-of-progress.html#:~:text=The%20paradox%20of%20progress%20is,often%20have%20the%20opposite%20effect.

[6] "Alternative Dispute Resolution." *Legal Information Institute*, www.law.cornell.edu/wex/alternative_dispute_resolution.

[7] "Appeal." *Cambridge Dictionary*, dictionary.cambridge.org/dictionary/english/appeal.

Collaborative Law

Collaborative Law is usually engaged in divorce proceedings. It is an ADR method designed to address aspects such as the mental health of the disputants, often overlooked in traditional court proceedings. Each party engages an attorney who works to reach a mutually beneficial agreement. A crucial element in resolving a collaborative law dispute is the establishment of a contractual agreement. Both parties sign this agreement, committing to the disclosure of documents, mutual respect, safeguarding the mental well-being of children, sharing expert opinions, seeking an impartial solution, and, notably, avoiding court proceedings.[8] The stipulation of "no court" holds significant weight because any participant resorting to court action during this process is subsequently disqualified from the collaborative law approach. The primary challenge to this ADR method arises when the parties involved are unwilling to collaborate in good faith, a common occurrence given the likelihood of existing conflicts.

Conciliation

Conciliation typically involves employers and employees. It is a voluntary process sought when initial attempts at resolution have failed. Similar to mediation, conciliation employs a neutral third party to assist disputants in reaching an agreement. However, in contrast to mediation, the third party in conciliation aims to persuade the parties toward a resolution rather than assisting them in finding one.

Consultation Paper

'A document containing ideas for changes in the law'[9]

Dispute

'An argument or disagreement, especially an official one between, for example, workers and employers or two countries with a common border.'[10]

Entity

'Something that has separate and distinct existence and objective or conceptual reality.'[11]

Impartial

'Equal and unbiased treatment to all parties.'

[8] Beaulier, Maury. "What Is Collaborative Law?" *Mediate.Com*, 7 Apr. 2001, mediate.com/what-is-collaborative-law/.

[9] *Consultation Definition and Meaning | Collins English Dictionary*, www.collinsdictionary.com/dictionary/english/consultation.

[10] "Dispute." *Cambridge Dictionary*, dictionary.cambridge.org/dictionary/english/dispute.

[11] "Entity Definition & Meaning." *Merriam-Webster*, www.merriam-webster.com/dictionary/entity.

Injunction

'An injunction is a court order requiring a person to do or cease doing a specific action.'[12]

Online Dispute Resolution

'Online dispute resolution, or ODR, refers to a broad set of technologies meant to either supplement or replace ways in which people have traditionally resolved their disputes. ODR shares and builds upon the foundational characteristics of alternative dispute resolution, or ADR, emphasising easier and more efficient methods of addressing conflict.'[13]

Party

'In legal parlance, a party is a person or entity who takes part in a legal transaction. For example, a person with an immediate interest in an agreement or deed, or a plaintiff or a defendant in a lawsuit. A "third party" is a person who is a stranger to a transaction, contract, or proceeding. Parties in a lawsuit are the plaintiff or petitioner bringing the case, or the defendant or respondent defending against one.'[14]

Traditional Litigation

Traditional litigation involves a lawsuit, with the outcome typically resulting in one of two verdicts: the respondent party is either found guilty or innocent. This formal and intensive legal procedure demands significant time, financial resources, and involves numerous individuals. Therefore, promoting Alternative Dispute Resolution (ADR) methods is crucial to avoiding chaos within the court system.

BACKGROUND INFORMATION

Historical Background

The earliest instances of Alternative Dispute Resolution (ADR) methods can be traced back to ancient Greece, many centuries ago. Its origins are rooted in the strong desire of citizens to have a private and impartial trial, free from governmental interference, and to reach a resolution that benefits both parties. Soon after, ADR practices were implemented in Rome, where mediation emerged as the first recognized modern ADR method, dating back to Justinian's Digest 530-533 CE in Roman Law. Mediators and

[12] "Injunction." *Legal Information Institute*, www.law.cornell.edu/wex/injunction.

[13] "Online Dispute Resolution." *Resolution Systems Institute*, www.aboutrsi.org/special-topics/online-dispute-resolution.

[14] "Party." *Legal Information Institute*, www.law.cornell.edu/wex/party.

arbitrators held esteemed positions, being considered wise and sacred individuals. ADR methods were primarily initiated in communities of Confucians and Buddhists.[15]

The influence of ADR spread across Europe, finding roots in England. The Anglo-Saxon period, starting in A.D. 601, marked an intense chapter in English history that prompted significant legal action. With the rise of ADR, multiple demands were met. Even after the Normans freed the English in A.D. 1066, methods like mediation, arbitration, and negotiation continued to play a crucial role in dispute resolution, influencing legislation. However, due to the king's court, citizens found it challenging to engage in these informal methods. To address this issue, kings adopted ADR by allowing citizens to choose between a king's court and an out-of-court settlement. This marked one of the early forms of ADR presented to citizens.[16]

Methods of ADR

Negotiation

Negotiation requires both parties to be willing to cooperate in good faith and is the only Alternative Dispute Resolution (ADR) method that does not involve a third party. Typically, it is the first method attempted to resolve a dispute. Due to the absence of a mediator or arbitrator, the parties have the freedom to negotiate through informal means using a series of offers and counteroffers. Negotiation commonly occurs in criminal cases, particularly in plea bargaining.[17]

Negotiation has the potential to either resolve a dispute or exacerbate it. A friendly and comfortable discussion without supervision has proven very helpful in reaching resolutions, contributing to the success of negotiation. However, the absence of a neutral third party can sometimes lead to heated debates and foster more negative feelings between the disputants. This occurs because not all disputants seek what is best for the opposing party, and without guidance from an impartial body, unprofessionalism may not be in the best interest of resolving the dispute.

[15] "A Brief History of Alternative Dispute Resolution (ADR)." *DRS*, www.drsofks.com/a-brief-history-of-alternative-dispute-resolution-adr/.
[16] "About Alternative Dispute Resolution." *UNF Deanofstudents*, www.unf.edu/deanofstudents/resolution/about-adr.html#:~:text=History%20of%20ADR,male%20members%20of%20the%20community.
[17] "Introduction to Alternative Dispute Resolution." *YouTube*, 24 Mar. 2020, www.youtube.com/watch?v=tGFijuVyzyQ.

Mediation

Mediation closely resembles the procedure of negotiation, with the key distinction being the involvement of a third party, unlike negotiation. The neutral third party in mediation, known as the mediator, is an expert in legal disputes. The mediator's role is to guide the parties towards reaching an agreement by collecting any essential information that the parties are reluctant to share, fostering conversation between disputants, and identifying compromises that benefit both parties. It is crucial to note that while mediators play a role in facilitating the resolution of the dispute, they do not have the final say.

There are three types of mediators: those who remain diplomatic and neutral, refraining from sharing personal opinions (facilitative mediation), and those who engage with the issue through logic and experience (evaluative mediation). Both approaches are equally beneficial, but "the most skilled mediators blend the two techniques according to the nature of the problem and the stage of the mediation."[18]

Mediation is particularly suitable for complex cases, making it preferable to court proceedings. Despite being generally a voluntary process, it is sometimes ordered to parties prior to trial. Its success rate is higher than other Alternative Dispute Resolution (ADR) methods due to its high compliance rate. Parties often trust the mediator's suggestions as they aim to be as beneficial as possible to both parties, and it is in everyone's best interest to avoid the expenses associated with traditional litigation. This contrasts with negotiation, where trust is rarely established between opponents, making it more challenging to reach a final decision.

Arbitration

Arbitration is an out-of-court trial resembling conventional trials but is faster and less formal. It involves a neutral third party (arbitrator) specifically trained for this role. Arbitrators replace appellate courts and litigation bodies (jury, judge, court staff) and handle disputes independently. While most cases require one arbitrator, there are instances where three are necessary. In the former, the arbitrator is chosen by both parties, while in the latter, two arbitrators are selected by each disputant, and the final one is chosen by those two arbitrators. The disputants, then, present evidence and arguments to the arbitrators or arbitrator who reaches a verdict.

[18] Shonk, Katie. "What Is Alternative Dispute Resolution?" *PON*, 9 Apr. 2023, www.pon.harvard.edu/daily/dispute-resolution/what-is-alternative-dispute-resolution/.

> "Arbitration happens in a wide range of settings, both domestic and international, from family law and rent reviews, through commodity trades and shipping, to international commercial contracts and investor claims against states."[19]

Unlike mediation and negotiation, arbitration involves a binding agreement, meaning that the parties determine the terms of the procedure, including expenses, confidentiality, and the entities involved. However, a binding agreement comes with risks. For instance, if the parties initially consent, the arbitrator issues a final ruling that they do not have to agree upon. Having one person wield all the power over a resolution could be unsettling, especially if influenced in favour of one of the parties. With that said, it is crucial to ensure that a binding agreement is appropriately executed for each case, emphasizing the distinction between disputes that can go through Alternative Dispute Resolution (ADR) and those that cannot.

Traditional litigation vs ADR

Advantages of ADR vis-à-vis Traditional Litigation

Public sentiment towards trials has become increasingly heated in recent times. However, the attendance of court bodies (parties, jury, lawyers, judge, witnesses, and others) is often challenging due to inflexible schedules, especially for trials of lower significance. The high demand in the court system and its inefficiency lead many to resolve disputes through Alternative Dispute Resolution (ADR). Arbitrators and mediators, specifically trained for this task, provide devoted attention. This is evident in the fact that many courts strongly encourage or even demand that disputants seek resolution through mediation first, and only resort to traditional litigation as a last option.

Not everyone possesses the economic flexibility to adhere to the expenses of a traditional litigation trial, especially those from Less Economically Developed Countries (LEDCs) or living in poverty. Therefore, an alternative way to solve disputes and avoid a court trial is essential in certain circumstances. Although ADR does not necessarily mean lower costs, it usually isn't prohibitively expensive, as it is open to compromises.

The ADR system is confidential and restricted to the public, while court trials are open to the media and anyone interested in specific court proceedings. This openness can take a toll on people's personal lives, privacy, and reputation. Public trials carry various risks, especially for public figures. Spectated by thousands, parties may refrain from sharing evidence or testimonies that could prove useful. Additionally, if a public figure is wrongly found guilty, they may face negative spotlight, including harassment, threats,

[19] "Review of the Arbitration Act 1996." *Law Commission*, 24 Aug. 2023, www.lawcom.gov.uk/project/review-of-the-arbitration-act-1996/#:~:text=Industry%20estimates%20suggest%20that%20international,and%20Wales%20and%20Northern%20Ireland.

and verbal abuse, impacting their mental health even after justice is served. Therefore, most disputants prefer to keep their legal affairs private through ADR methods to avoid exposing sensitive information.

Due to the limited court bodies compared to the number of trial demands and prioritization of complex cases, traditional litigation is a slow and lengthy process. Multiple legal steps are required before parties attend a trial, causing disputes to become tiresome and lawsuits to spiral out of control. ADR, on the other hand, has proven to be a faster procedure, resulting in a quicker resolution.

Disadvantages of ADR vis-à-vis Traditional Litigation

Traditional litigation guarantees a resolution. In disputes requiring a final verdict and strict results, ADR cannot be implemented because it simply does not guarantee a resolution. While parties attending ADR usually seek to cooperate and reach an agreement that favours both, it does not necessarily guarantee success. That is why for a small number of cases, ADR methods may prove to be ineffective, and the cases have to proceed with traditional litigation.

ADR has no appeal if a binding agreement is not signed from the start, meaning that if an arbitrator does not show up or a mediator does not execute their position correctly, it is difficult to mend any flaw, and the money and time spent go to waste. Additionally, due to the lack of binding, the disputants can retreat at any time. On the other hand, a court trial is more professional and requires the correct assistance and execution of the lawsuit due to the signed contract demanding it and the audience reviewing it.

As mentioned, ADR cannot be implemented in every dispute. More specifically, 'ADR is not appropriate where the client needs an injunction, where there is no dispute to resolve and where the client needs a ruling on a point of law.'[20] Consequently, traditional litigation is in some cases the only option.

In some ADR methods, such as arbitration, not all information on cases might be granted or revealed. With that said, the resolution of the case might be based on misinformation. In contrast, traditional litigation, as a formal and professional procedure, covers all aspects of the cases and reaches a conclusion based on various thorough facts and testimonies.

The power a party wields can be a threat to the resolution. If one party has much more power than the opposing one, it can bring the result to its favour. For instance, in arbitration, coercion and bribery are stated to be common issues. This is very difficult to occur in a court trial because of the multiple bodies involved and the strict protocol each of them follows. That is why, as of

[20] Coyle, Michael. "What Are the Disadvantages of ADR? - Lawdit Solicitors UK." *Lawdit Solicitors*, 18 July 2022, lawdit.co.uk/readingroom/adr-disadvantages.

recently, the Congress banned obligatory arbitration in sexual assault cases. Due to victims usually being in a vulnerable position, and perpetrators being in a high-ranking position that they take advantage of the victim's vulnerable state. Furthermore, it is difficult for parties to cooperate in goodwill in such sensitive cases with seriously intense allegations, a factor highly recommended in ADR.[21]

Not everyone has access to ADR or is even familiar with it. Some vulnerable countries with strict legislations and regulations do not allow their inhabitants to use informal measures to resolve their disputes, mainly because ADR has no governmental interference. Less Economically Developed Countries (LEDCs) might not be familiar with ADR and may not be able to provide their citizens with arbitrators and mediators. Attempts to regulate the lack of ADR have been witnessed within organizations such as the European Union (EU), but international willingness has yet to arise.

Ombudsman institutions

Ombudsman institutions are entities comprising specifically selected individuals that generally assist private sector schemes in resolving disputes through methods similar to those used in ADR. The Ombudsman is known to approach each dispute as a unique and separate case from others. They function as an impartial body, aiming to reach a resolution that favours both parties, akin to the goals of ADR.

The relationship between Ombudsman and ADR lies in their shared categorization. Ombudsman has access to various ADR methods and, to a certain extent, shares the same goal as ADR. Ombudsman are authorized to conduct investigations using methods such as mediation and arbitration, provide opinions, and make recommendations to resolve disputes. They have demonstrated remarkable effectiveness, handling thousands of cases every year.[22]

What differentiates Ombudsman from ADR is their unique perspective in each case and how they provide feedback, training, and identify themes. Ombudsman has been hailed as a 'gold-plated service,' showcasing their effectiveness, speed, and success as they adhere to their five basic principles: legality, flexibility, transparency, fairness, and accountability. [23] These principles are regarded as “the necessary ingredients of good administration.” Ombudsmen are well-organized, punctual, and prepared to

[21] Walsh, Deirdre. “Congress Approves Bill to End Forced Arbitration in Sexual Assault Cases.” *NPR*, 10 Feb. 2022, www.npr.org/2022/02/10/1079843645/congress-approves-bill-to-end-forced-arbitration-in-sexual-assault-cases.

[22] “Ombudsman.” *YouTube*, www.youtube.com/watch?v=8KMjStnYZk0.

[23] “The Difference between an Ombudsman and Other Alternative Dispute Resolution (ADR) Schemes.” *The Furniture & Home Improvement Ombudsman*, www.fhio.org/blogs/the-difference-between-an-ombudsman-and-other-adr-schemes#:~:text=An%20Ombudsman%E2%80%99s%20remit%20is%20wider%20than%20the%20dispute,jurisdiction%20by%20providing%20feedback%2C%20training%20and%20identifying%20themes.

efficiently and professionally resolve disputes, despite their typically informal methods.

MAJOR COUNTRIES AND ORGANISATIONS INVOLVED

China

China has experienced an evolving relationship with ADR methods, as illustrated by three recent reports. In 2018, the Real World Law Construction report stated that ADR methods were not commonly used in China and were not required by state law. This suggests that many Chinese citizens were not aware of ADR or the fact that it could be enforced in some cases. Later, in August 2019, China formally signed the Convention on International Settlement Agreements Resulting from Mediation, marking the implementation of ADR in their legal system and a gradual increase in awareness among citizens. After two years, on September 7th, 2022, the China Debriefing elaborated on how ADR use was changing due to the COVID-19 Pandemic. Intense levels of uncertainty were being created for businesses due to geopolitical and economic headwinds, causing parties to lose the criteria needed to proceed with a court trial. As a result, citizens began using ADR more frequently, with the most common methods being litigation, mediation, and arbitration. Nowadays, ADR has naturally spread throughout all of China and is utilized by countless individuals seeking its results.

Nigeria

The continent of Africa has been observed to face a significant lack of justice and dispute resolution. The consequence of this deficiency is, in many cases, violence and a sense of hopeless resistance. Unfortunately, the majority of citizens have come to accept their nation's inability to provide a fair and efficient trial. For instance, in Nigeria, in May 2009, when inhabitants complained about village-hired watchmen harassing, assaulting, and torturing citizens, they were denied a fair hearing. Subsequently, approximately 100 youths took matters into their own hands and decided to confront the watchmen, resulting in loss of life. When seeking further justice from the authorities, they did not find it, and the circumstances worsened, leaving the suffering of many unresolved. Although this is a rare occurrence, it exemplifies that had ADR existed, the incident might have been resolved without bloodshed. ADR is, thus, necessary for Nigeria to move forward and for citizens to have a chance at security and safety rather than vulnerability.

United Kingdom (UK)

The UK is among the few countries that had already established regulations for ADR methods and actively distributed them before the European Union attempted to encourage its countries to participate and promote it further. Additionally, as mentioned before, England has a significant history with ADR methods, and its compliance with it is worth noting. Due to the European Directive, the United Kingdom enacted two sets of resolutions in Parliament. One in March 2015 and the other in June 2015, altering its laws regarding ADR. Thus, naturally, the number of ADR schemes and participants is expected to further increase.

United States of America (USA)

The USA is one of the most active countries in Alternative Dispute Resolution (ADR). ADR has been integrated into its legal systems, and the majority of its citizens seeking to resolve disputes are familiar with it.

The USA has actively worked to address some of the flaws in ADR. A notable example of such efforts is when Congress decided to ban mandatory arbitration as designated by an employment contract in sexual assault cases through a bill. Since February 2022, the Congress has approved the bill to ban forced arbitration in the USA due to concerns about its perceived bias. One fault of arbitration is how an arbitrator can be coerced by a powerful party, a situation that has long been criticized in the USA. The current President, Joe Biden, has also expressed his disapproval of such procedures. Hence, Congress deemed it necessary to approve this bill to protect the sensitive cases of sexual assault.

Judicial Arbitration and Mediation Services (JAMS) is a United States organization, specifically the largest private ADR resource supplier globally. This organization provides its services globally, based on the experience each of their arbitrators or mediators has in specific cases and the geographic demand. JAMS has practice areas for its employees and raises awareness of ADR through its platform, allowing disputants to research their background and success. Consequently, its services are beneficial worldwide, especially in areas that do not have strong access to ADR.

European Union (EU)

ADR originated in Europe, so naturally, the European Union has made multiple attempts to promote ADR in recent years but has not yet achieved its initial goal. In May 2008, it implemented the Mediation Directive, and on July 9th, 2013, it filed a report on ADR along with Online Dispute Resolution (ODR). The EU has extensively encouraged its Member States to incorporate ADR into their legal frameworks and to encourage the courts to entertain such measures, all while working alongside the Treaty on the Functioning of the European Union (TFEU).

International Centre for Dispute Resolution (ICDR)

The ICDR is an organization that provides international resources and includes other divisions such as the American Arbitration Association (AAA) and AAA Mediation. These are associations of arbitrators and mediators dedicated to assisting parties and

other arbitrators. The ICDR platform offers support, awareness/education on ADR, resources, and cases. A recent event worth mentioning is the ICDR Americas Conference, which was held in Mexico on September 27-28, 2023, which covered topics related to ADR risks, costs, processes, and the impact of advancements in technology.

United Nations Internal Justice System

The United Nations Internal Justice System oversees the administration of justice within the UN. This organization has a significant impact on UN Member States, encouraging them to utilize informal means such as mediation, arbitration, negotiation, and even Ombudsman. Through the United Nations Ombudsman Mediation Services (UNOMS), it provides highly trained mediators to address issues that take a toll on people's lives. Furthermore, the United Nations Internal Justice System has established an online platform that includes all the information one needs to participate in informal methods of settling a dispute.

TIMELINE OF EVENTS

DATE	DESCRIPTION OF EVENT
12 February 1995	Through the Federal Arbitration Act 1995 the USA acts to promote ADR through a legal framework.
1996	The Arbitration Act 1996 is enacted in the UK.
January 1 2000	Legislation making the use of ADR by Federal Agencies mandatory is implemented.
21 May 2008	The mediation Directive is the EU's first attempt to encourage its Member States to implement legislations and a legal framework.
23 September 2009	The UN creates a dispute resolution mechanism for its country teams.
8 July 2013	A report following the mediation Directive, with similar goals, is implemented by the EU.
18 July 2018	The Arbitration and Conciliation (amendment) Bill 2018, an amended version of the Arbitration and Conciliation Act 1996 is introduced in India.
August 2019	China signs the Convention on International Settlements Agreements Resulting from Mediation, marking its first formal implementation of ADR.
September 2022	The first consultation paper of the Arbitration Act 1996 is completed.
February 10 2022	Congress approves a bill to end forced arbitration under employment contracts in cases of sexual assault.

27 March 2023	The second consultation paper of the Arbitration Act 1996 is completed.

PREVIOUS ATTEMPTS TO SOLVE THE ISSUE

Directive 2008/52/EC (Mediation Directive)

The European Union promotes the use of ADR methods, especially mediation, through the Mediation Directive implemented in May 2008. The Mediation Directive primarily consists of five principles. Through it, the EU strongly urges each Member State to take action and create legislation and a legal framework in favour of mediation. However, this did not go as planned due to the freedom the EU granted to each of its Member States to adapt the law as they wished and the collision between countries that already had ADR measures and those that did not. This is illustrated by how, in 2018, the European Parliament themselves recognized the Mediation Directive as unsuccessful, formally announcing that "it remains very far from reaching its stated goals of encouraging the use of mediation."[24]

Report 2013/11/EU

Since July 8, 2013, the European Union has filed a report regarding ADR and ODR, emphasizing the significance of their use and ensuring direct and easy access for consumers to out-of-court mechanisms through a legal framework applicable to European countries. Due to the failure of its previous attempt (the Mediation Directive), the EU aims to succeed through this report, having added renewed, stricter, and altered legislations. However, given that this report was based on circumstances approximately ten years ago, a new and improved report is mandatory to address today's needs, rather than those of a decade ago, especially since the Paradox of Progress has taken a toll on ADR. Additionally, a further problem with this report is that it is intended for a specific audience, the European countries, and although it's a good start, ADR measures should be promoted worldwide.

Dispute Resolution Mechanism for United Nation Country Teams (UNCTs)

The Sustainable Development Goals (SDGs) mandated the creation of UN Country Teams as an essential part of the cooperation and improvement of UN Member States to progress towards the achievement of the SDGs by 2030. Through UNCTs, the UN organizes and guides its Member States. On December 21, 2016, the renewed resolution (71/243) from 2016-2020 was adopted by the General Assembly to align with the UN Sustainable Development Goals (UNSDGs). This resolution emphasizes the significance of UNCTs' development.

[24] "The European Mediation Directive: Commercial Mediation – A Global Review." *Linklaters*, www.linklaters.com/en/insights/publications/commercial-mediation-a-global-review/commercial-mediation-a-global-review/eu-commercial-mediation.

As ADR is a major part of the justice system, in September 2009, the United Nations created a mechanism concerning dispute resolution specifically and solely for its Country Teams. Through this mechanism, the UN focuses on its audience and certain necessary principles and procedures. These principles pertain to the mandatory use of informal measures, preferable methods, ownership status, and limits. The procedures establish the rules, use, alternatives, and generally, all information regarding the procedure.

Although this mechanism could be helpful to UNCTs, there are members who might not be willing to collaborate with the opposing party or not wish to resolve their dispute through informal means. The dispute resolution mechanism for UNCTs is of great assistance but very strict. If this mechanism is to succeed, it must be flexible and available to all audiences.

Arbitration Act 1996 (UK)

The Arbitration Act 1996, applicable in England, Wales, and Northern Ireland, recognizes the significance of measures to ensure arbitration is executed appropriately and effectively. However, the lack of a legal framework was naturally taking a toll on its stability, order, and plausibility. Hence, the Arbitration Act of 1996 was created, providing a legal framework for these three countries.

It is estimated that arbitration has grown internationally by approximately 26% between the years 2016-2020. The Arbitration Act 1996 has proven to have significantly contributed to these statistics due to London being the most popular arbitration area in the world.

Twenty-five years since the Act's inception, the UK government proposed a review of the Arbitration Act 1996 with the aim of ensuring its continued success. Following this review, the Law Commission concluded that amendments were necessary. The final report is in the works, as the two consultation papers that will be included in it have already been enacted. The first consultation paper dates back to September 2022, addressing topics regarding the Act that were in desperate need of adjustments. Additionally, through this paper, arose a question, asking consultees whether there are other topics worth reviewing further. Following the first consultation paper, the second one was completed recently, on March 27, 2023. This paper concerns a few of the topics mentioned in the first consultation paper and specific topics that were proposed by countless individuals as issues, highlighting the demand that the arbitration law is to be reconsidered after the establishment of the Supreme Court decision in Enka v Chubb, a controversial legislation.

Equal Employment Opportunity Commission (EEOC)

The EEOC ensures that all employees have equal opportunities, regardless of their race, gender, colour, religion, or sexuality, by eliminating discrimination in workplaces. In 1998, the EEOC studied ADR and reported that more than half of federal agencies

had access to it, however, a notable percentage did not.[25] Taking this into account, the EEOC made it mandatory for federal agencies to seek ADR and provided them with resources. This legislation began on January 1, 2000. The reason behind this decision is that to promote ADR measures in the USA, the federal sector should participate in them more freely. Since then, the circumstances have improved, and the federal sector has familiarized itself with Alternative Dispute Resolution (ADR) methods.

Federal Arbitration Act (FAA) 1995

Recognizing the potential challenges of an arbitration procedure, the Federal sector decided to take steps to minimize them. The FAA has three chapters. The first chapter discusses the principles of the FAA. The second chapter incorporates the 1958 New York Convention into United States law, marking a significant development in arbitration awards while excluding discrimination and supporting the prevention of ADR. The third chapter adds the Panama Convention into United States law, emphasizing the ethical considerations of each party, once again, concerning the arbitration awards. The Federal Arbitration Act 1995 strongly urges each party to thoroughly review the terms of their binding agreement, ensuring a fair hearing through them. Besides the FAA, all fifty states of the USA actively participate in arbitral methods, promoting and sustaining them.

Arbitration and Conciliation (Amendment) Bill 2018

The Arbitration and Conciliation Act 1996 encompassed international and domestic legislations, arbitration procedures, and conciliation definitions. The revised version is the Arbitration and Conciliation (Amendment) Bill 2018, introduced on July 18, 2018, in Lok Sabha, India, and implemented on August 10, 2018.

The bill has introduced bodies such as the Arbitration Council of India (ACI), an independent body that deliberates and agrees upon the best ways to enhance and maintain order in arbitration by implementing certain principles, mechanisms, entities, and rules. It has also modified previous requirements, such as parties no longer being obligated to choose an arbitrator themselves; instead, they now have the freedom to seek assistance from any member of the institution in the selection process. Lastly, it has eliminated past regulations, such as the time deadline of 12 months for an arbitral tribunal's award in all cases. Through these amendments, India has succeeded in promoting ADR measures and strengthening its legal framework.

[25] "Federal Sector Alternative Dispute Resolution Fact Sheet." *US EEOC*, www.eeoc.gov/federal-sector/federal-sector-alternative-dispute-resolution-fact-sheet.

POSSIBLE SOLUTIONS

International Legal Framework

The absence of an international legal framework is adversely impacting the stability of ADR. Many countries lack access to informal dispute resolution methods despite prior efforts to promote ADR, leading to violence and injustice. Recognizing that Member States differ in policies and ethics, the assistance of the United Nations (UN) becomes crucial, given its international scope for regulating and promoting ADR. Additionally, a collaboration between the EU and the UN would be highly beneficial, combining UN resources with the EU's experience in ADR regulation.

A discussion involving all 193 UN Member States must be hosted by the UN to reach an agreement on legislations, regulations, and rules concerning this legal framework. This will help better understand each country's beliefs, strengthening the legal framework by incorporating the viewpoints of all Member States. It is advisable to request Josep Borrell, the current EU representative, to present the flaws and strengths of the EU's previous attempts to regulate ADR in Europe. This will guide the international legal framework to avoid such mistakes and ensure success.

Access to ADR for LEDCs

For the global promotion of ADR measures, it is crucial that every country has access to them. However, it's important to recognize that many Less Economically Developed Countries (LEDCs) currently lack such access due to constraints in resources, funding, and support. To address this issue, these countries should seek collaboration with organizations that can offer support and fill the gaps in their capabilities.

Three specific organizations well-suited for facilitating this solution include the World Bank Group, the Judicial Arbitration and Mediation Services (JAMS), and the International Court of Justice (ICJ). This choice is strategic as it aligns with the unique strengths of each organization. The World Bank Group can provide financial support to LEDCs, JAMS offers ADR resources such as arbitrators, mediators, training, manuals, and public access, while the ICJ can offer expertise on improving ADR-related laws.

An essential aspect that these organizations collectively contribute is education and awareness for the public. Through their initiatives, access to ADR in LEDCs will gradually familiarize citizens with the process, educating them on how to navigate disputes effectively. Most importantly, public awareness campaigns will highlight the benefits of ADR, encouraging individuals to consider alternative dispute resolution methods, thus, avoiding the complexities of traditional litigation courts and distinguishing between cases of varying priority.

United Nations (UN) Supervisory Body

It has been recognized that ADR methods possess certain flaws, which can jeopardize the fairness of the procedure. Given its informal nature, lacking centralized authority and a sense of professionalism, it becomes imperative to establish a supervisory body to ensure the proper implementation of ADR on a global scale.

A UN Oversight Committee, comprising a group of seasoned individuals, would be tasked with overseeing ADR operations, organizations, agencies, and projects to ensure their effective functioning within the bounds of the law. This oversight process is particularly well-suited to handle such responsibilities.

This annual oversight would span two weeks in each country adhering to the international legal framework. It would involve specific tests to verify participants' adherence to binding agreements and protocols, assessments of arbitrators and mediators to ensure their competence, thorough reviews of past cases, a one-week training session to keep practitioners updated on legal system changes, and supervised ADR cases to anticipate and address potential dissatisfactions. At the conclusion of the oversight, the committee would draw conclusions and implement necessary measures to sustain the appropriate international use of ADR.

Training Program for Arbitrators and Mediators

The majority of the challenges associated with ADR's effectiveness often trace back to the arbitrators or mediators involved in a case. Therefore, it is essential to ensure that these professionals undergo precise training conducted by experienced individuals. The training program should encompass both practical and ethical aspects. Upon completing the training, arbitrators and mediators should have comprehensive familiarity with ADR and an understanding of the policies governing it. This knowledge will equip them to execute their roles fairly, serving as independent and impartial third parties. They should possess the skills to overcome obstacles and provide the utmost precision in their work.

Recognizing the natural evolution of ADR methods over time, ongoing education is crucial. The trainees' knowledge should be regularly updated and their progress reapplied and re-evaluated to ensure a consistently high standard of education. The European Union's Council of Europe Joint Project is well-suited for this purpose, given its ability to provide experienced professionals capable of imparting their knowledge to the trainees.

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