

Is Electronic Arbitration the Future of Effective Dispute Resolution in the Digital Era ?

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المستخلص

يتناول هذا البحث التحكيم الإلكتروني كوسيلة لحل النزاعات. يناقش مفهوم التحكيم الإلكتروني ويقارن بينه وبين قوانين التحكيم التقليدي (ADR). يتم استخدام وسائل حل النزاعات البديلة (ADR) عبر الإنترنت من خلال نماذج تم تطويرها سابقاً لتستخدم في الفضاء الإلكتروني. ظهر التحكيم الإلكتروني في منتصف التسعينيات استجابةً للتحديات التي واجهت التوسع في التجارة الإلكترونية. بينما الدول الغربية المتقدمة في أوروبا هي التي تبنت هذا النهج بسرعة، إلا أنه تمت إضافات حديثة على قوانين التحكيم في دول الخليج العربي والإمارات لتشمل التحكيم الإلكتروني.

يستعرض البحث مزايا التحكيم الإلكتروني مثل المرونة، التكلفة المنخفضة، تحسينات في مسألة الاختصاص القضائي، والسرعة في حل النزاعات، بالإضافة إلى تحديات تتعلق بالشرعية، قوانين الملكية الفكرية، وتنفيذ الأحكام على المستوى العالمي.

النتيجة الرئيسية للبحث هي أن التحكيم الإلكتروني يُعد خطوة مستقبلية ضرورية مع التقدم التكنولوجي وتوسع التجارة الإلكترونية، حيث يمكن للشركات والمستهلكين إتمام التعاملات عبر الإنترنت دون الاهتمام بالقيود الجغرافية. بناءً

على ذلك، هناك حاجة متزايدة لخدمات حل النزاعات عبر الإنترنت (ODR). يتطرق البحث أيضًا إلى تحسينات في التحكيم الإلكتروني باستثناء دور المحكم البشري المؤهل الذي يصدر الحكم النهائي. في الختام، يُقدم البحث توصيات لتطوير إجراءات التحكيم الإلكتروني، مؤكدًا أن التكنولوجيا توفر تحسينات كبيرة في السرعة والتكلفة والمرونة مقارنةً بالتحكيم التقليدي، ولكنها تواجه تحديات تتطلب معالجات إضافية. الكلمات المفتاحية: تحكيم إلكتروني، حل النزاعات عبر الإنترنت (ODR)، التجارة الإلكترونية، قوانين التحكيم، التنفيذ العالمي.

Abstract: This paper discusses electronic arbitration as a means of dispute resolution. It describes what electronic arbitration refers to and its comparison to arbitration law (ADR). Electronic dispute resolution implements pre-existing ADR models that enable its use online. Further, the origin of online dispute resolution is said to be the middle of the 1990s in response to issues caused by the expansion of eCommerce. While the countries that have embraced e-ADR are said to be major, Westernized developed countries in the European continent. In the UAE and the Arab Gulf States, there have been recent inclusions in arbitration laws to govern electronic arbitration. Hence, many areas have embraced conducting arbitration procedures online. The advantages of improved flexibility, cost, jurisdiction, and time are discussed, while the challenges associated with legality, intellectual property laws, and global enforceability are also mentioned. This paper concludes that with the development of technology and the expanding e-commerce era, e-arbitration is the way of the future. Hence, because the internet has made it possible for businesses and consumers to conduct transactions anywhere in the world without regard to geographical restrictions, there is more need for online dispute resolution (ODR) service providers than ever before. Therefore, through

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technology throughout ODR procedures, except for the qualified human arbitrator who renders the arbitral judgment, factors including time, flexibility, jurisdiction, and cost are improved. E-arbitration in the context of dispute resolution becomes necessary at this point. Lastly, this paper provides recommendations to improve electronic arbitration procedures.

***Key words:** Electronic Arbitration, Online Dispute Resolution (ODR), E-commerce, Arbitration Laws, Global Enforceability.*

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Keywords: human trafficking, combating, means of justice, a crime, international trafficking, international organizations

1.0 Electronic Arbitration

1.1 Introduction

The internet has permanently altered the way the human race conducts business. This is not surprising, given the rising popularity of online communication. The use of an online facility for dispute resolution is on the rise. Online dispute resolution (ODR) which is a type of alternative dispute resolution (ADR), has so shown the capability of technology, as demonstrated by online shopping, banking, and online financial trading (Paul, 2021)¹. ODR, the cutting edge of conflict resolution, has been utilized by certain multinational corporations. This is evident on websites like PayPal, eBay, and Amazon. In order to arbitrate, facilitate, negotiate, mediate, and conciliate online, information must be communicated and processed. ODR is a type of dispute resolution that uses technology to speed up the settlement of disagreements between parties. The parties may participate in online negotiation, arbitration, and mediation. The internet and web-based technology may be used by the parties in a variety of ways. ODR can be carried out entirely online or "online" via videoconference, email, or both (Balcha, 2022)². ODR refers to online dispute resolution procedures or can also be seen as a field of dispute resolution that uses technology to make it easier for parties to resolve their differences. Through the internet, relationships, transactions, and disagreements between individuals and groups of entities have been made possible. Because a specific body of law does not bind ODR, neither party needs to hire a costly attorney to become familiar with the legal system of the other party's nation. When used appropriately, ODR can result in customer satisfaction by

¹ Paul, B. J. (2021). Online Dispute Resolution : Its Prospects and Potential for Cameroon. *Zien Journal of Social Sciences and Humanities*, 1(1), 86-95.

² Badr, A. A. (2019). *Jurisdictional challenges and enforceability of arbitration awards in the UAE* (Doctoral dissertation, Université Paris Cité).

quickly resolving issues. However, the challenge with ODR is defining the level of online contact required for a dispute resolution procedure to be labeled as ODR. This is especially important since if all we know is that an award was delivered via mail, we cannot claim that this type of communication constitutes ODR.

1.2 What is electronic arbitration?

Electronic arbitration (E-arbitration) is a key feature of online dispute resolution (also known as "ODR"), which enables parties to settle any disagreement originating from their contractual relationship online (Muhammad & Bakhramova, 2022)¹.

E-arbitration is mostly used to settle cross-border e-commerce issues, Business to Business (or "B2B") and is also occasionally used to settle other types of cross-border business disputes. E-arbitration involves the online conclusion of an arbitration agreement and arbitration proceedings taking place. The entire e-arbitral procedure, including the hearing, is carried out online. Each e-file for an e-commerce dispute is created and maintained by the online service provider for the purposes of this process. The documents supplied by the parties are all included in one e-file, along with any notices and correspondence between the parties and the arbitrator(s).

An award in online arbitration is made online. Unless the parties specifically agree differently prior to the arbitration's start, an e-arbitral award should be legally enforceable. The parties retain the option of taking their issue to court or binding arbitration in the event of non-binding arbitration (Kayisharaza, 2019). A digitally signed email sent to each party's email address by the arbitrator(s) shall serve as notice of the

¹ Muhammad, N., & Bakhramova, M. (2022). PRINCIPLES AND PRACTICE OF DIGITAL ARBITRATION. *Academica Globe : Inderscience Research*, 3(09), 1-5.

arbitral decision. The online arbitral institution must also receive an e-award notification from the arbitrator(s). After informing the parties of the e-award, the institution will seal the electronic copy and request that they abide by it. Additionally, an e-award might be published on the institution's website. After it has been issued and notified, the losing party must willingly abide by the award or seek to have it overturned. Just like with any other standard arbitral judgment, the victorious party could seek to have the decision recognized and upheld.

1.3 Origin of Electronic Arbitration and Countries that recognize Electronic Arbitration

ODR was first developed in the middle of the 1990s in reaction to disputes brought on by the growth of eCommerce. During that period, the web expanded into commercial applications and developed into a vibrant, inventive, expanding, and occasionally profitable space. A setting like this, with a large number of contacts and transactions (where relationships are quickly made and severed), seemed likely to lead to conflicts. However, it was also evident that traditional offline routes could not be used to settle disputes arising from online actions. These new conflicts could only be settled online because the parties were likely to be separated and unable to meet in person (Lane et al., 2017)¹. As a result, new tools and resources that used computer-mediated digital communication and information processing were created.

Online dispute resolution (ODR) has gone through four stages of development. The first, which ran from 1990 to 1996, had been an experimental stage where electronic ideas

¹ Lane, D. S., Kim, D. H., Lee, S. S., Weeks, B. E., & Kwak, N. (2017). From online disagreement to offline action : How diverse motivations for using social media can increase political information sharing and catalyze offline political participation. *Social Media+ Society*, 3(3), 2056305117716274.

were tried (Walia & Kaur, 2012)¹. In the years that followed (1997–1998), ODR underwent a significant expansion, and the first commercial web portals tailored to particular industries were created. The next phase, known as "business," ran from 1999 to 2000. Numerous companies began electronic dispute resolution programs as a result of the good economic environment, notably in the IT services industry. But several of them are no longer in operation. At the start of an institutional period in 2001, ODR practices were embraced by institutions, such as the courts and administrative agencies (Walia & Kaur, 2012).

One of the earliest examples of online dispute resolution concerns a US procedure where the parties involved choose to seek an alternative method of resolving their conflict (Mania, 2015)². The Online Ombuds Office of the University of Massachusetts Center for Information Technology and Dispute Resolution handled the case at the time. Janet Rifkin and Ethan Katsh, the creators and key proponents of the ODR issue, started the mediation procedure utilizing just email conversations. Consequently, a settlement agreement was eventually struck (Katsh, Katsh & Rifkin, 2001)³. Among other online auction houses, the Online Ombuds Office supplied mediation services to eBay. By 1999, this relationship had developed into one of the first commercial ODR service providers in the US market for consumer disputes, the SquareTrade website (Mania, 2015). Online

¹ Walia, J. K., & Kaur, P. (2012). ONLINE DISPUTE RESOLUTION MECHANISM IN A GLOBALISED WORLD : PROBLEMS AND PERSPECTIVES. *Law Review*, 17, 151-171.

² Mania, K. (2015). Online dispute resolution: The future of justice. *International Comparative Jurisprudence*, 1(1), 76-86.

³ Kayisharaza, A. (2019). *Addressing legal issues of challenging arbitral awards under the Rwandan Law* (Doctoral dissertation, University of Rwanda).

mediation, which began with submitting a complaint form listing the possible conflict resolution methods, was one of its most well-known services. After willingly adopting the electronic resolution method, the opposing side would respond by selecting the proper alternative. If a resolution could not be reached, the parties would move on to the bargaining phase. This was supported by the mediator, who engaged them via email as technical communication.

Another pioneering portal that provided automated online mediation was developed in 1998 by the US-based business CyberSettle (Deffains & Gabuthy, 2005)¹. Utilizing a platform and logging in to provide basic details like a first and last name, email address, the date of the event, and the type of case authorized for online conversations. In the event that a settlement was reached, the party would send out an invitation to participate in an "out-of-court blind-bidding process," stating the greatest sum that might be offered. Following the other party's acceptance, a stage where offers were received and their contents were gathered began.

ODR systems were also frequently created in the US. Such services were not readily accepted because they were only available in the early twenty-first century in the European Union. More firms will be providing ODR services in the EU. The ombudspersons in Austria and Germany, as well as the online mediation programs in Italy and the UK, could be replaced by future ODR systems (Gill et al., 2014)². The ODR

¹ Deffains, B., & Gabuthy, Y. (2005). Efficiency of online dispute resolution: a case study. *Communications and Strategies*, 60, 201.

² Gill, C., Williams, J., Brennan, C., & Hirst, C. (2014). Models of alternative dispute resolution (ADR): A report for the legal ombudsman.

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sector is now led by the 2011-founded portal Modria.com, which collaborates with eBay, among other businesses (Mania, 2015)¹.

2.0 Difference between arbitration law ADR & electronic arbitration law

2.1 Arbitration Law ADR

Alternative dispute resolution, refers to a variety of out-of-court dispute resolution techniques. Common ADR practices include mediation, arbitration, and neutral assessment (Zekos, 2022)². Compared to traditional court proceedings, these processes tend to be more private, relaxed, and stress-free. ADR typically decreases expenses and speeds up resolution. In mediation, the parties have a big voice in how their disputes are settled. This typically produces novel answers, greater satisfaction, long-lasting consequences, and better relationships.

2.2 Electronic arbitration law

On the other hand, online dispute resolution (ODR) is a type of online negotiation that makes use of alternative conflict resolution techniques (alternative dispute resolution). It implements pre-existing ADR models that enable its use online (Zekos, 2022). The disagreements begin online but are entirely or partially resolved online, but some come from an offline source. In the pertinent literature, the terms electronic online ADR (oADR), ADR (eADR), and Internet dispute resolution (iDR) are used interchangeably (Poblet & Ross, 2021). E-arbitration and formal arbitration are similar in certain ways

¹ Mania, K. (2015). Online dispute resolution: The future of justice. *International Comparative Jurisprudence*, 1(1), 76-86.

² Zekos, G. I. (2022). From ADR to ODR. In *Advanced Artificial Intelligence and Robo-Justice* (pp. 261-284). Springer, Cham.

since both are alternatives to court procedures. For example, the fundamental tenet of alternative dispute resolution methods, the presence of a third party during the negotiation process, remains valid. Also, the terms and conditions of having a dispute arbitrated online by an e-arbitrator must be mutually agreed upon by the parties (Sela, 2018&Heitkamp)¹. The ability of e-arbitration to overcome the majority of traditional arbitration problems distinguishes it from arbitration law. Through the use of technology throughout the proceedings, except for the qualified human arbitrator who renders the arbitral award, factors like jurisdiction, flexibility, cost, and time are improved. E-arbitration is viewed as a replacement for arbitration in this context.

The technological aspect of electronic dispute resolution is crucial to the process' effectiveness. ODR systems can be categorized based on the kinds of synchronous (Smartsettle) and asynchronous communication (Settle Today) that are used (Callies & Heitkamp, 2019). Using Skype or Messenger, entities using the first kind (synchronous) can communicate with one another in real time. In the asynchronous mode, communication happens at various times, like through email, and is, therefore, less direct. As indicated by the low usage rates of online forms like chat and their persistent concentration on antiquated tactics like forums, ODR systems fail to utilize complex programs effectively' IT potential effectively. Each ODR technique may use a different technological framework, individualizing how a specific process goes. ODR techniques are adaptable and can be used in proceedings.

¹ Sela, A. (2018). Can computers be fair: how automated and human-powered online dispute resolution affect procedural justice in mediation and arbitration. *Ohio St. J. on Disp. Resol.*, 33, 91.

2.3 Electronic arbitration in the Arab Gulf States and Middle East

In the UAE and the neighboring areas, arbitration is a well-liked alternative to other forms of conflict settlement. The fact that there are currently numerous institutions in the UAE that manage commercial arbitrations somewhat reflects the rise of arbitration in the country. Additionally, the UAE introduced Federal Law No. 6/2018 on Arbitration (Arbitration Law), the country's first stand-alone arbitration law, which included modifications to the UAE Code of Civil Procedure to make it simpler to understand and apply foreign arbitral awards as well as a more streamlined procedure for enforcing domestic arbitration awards (Badr, 2019)¹.

Before the COVID-19 outbreak, many arbitration rules published by the top international organizations in the world included clauses that specifically permitted arbitral procedures to use technology, mostly because of considerations related to time and cost-effectiveness (Chan & Yiu, 2020)². Arbitration Rules of 2017, which are frequently used in Middle Eastern disputes, gave arbitral tribunals discretion to decide, in the absence of a parties' agreement, on "using telephone or video conferencing for procedural and other hearings where attendance in person was not essential and use of IT that enabled online communication among the parties (Landicho, 2020)³. Similar to this, many Middle

¹ Badr, A. A. (2019). *Jurisdictional challenges and enforceability of arbitration awards in the UAE* (Doctoral dissertation, Université Paris Cité).

² Chan, E., & Yiu, J. (2020). Zoom to the Future : Are virtual arbitral hearings the new normal ? *Swiss Chinese Law Review*, 1(1).

³ Landicho, R. R. (2020). Young ITA Chair's Report 2020. *ITA Rev.*, 2, 109.

Eastern arbitration centers included the potential of technologically aided arbitral hearings in their arbitration rules. According to Landicho (2020), some of these include:

The "2021 DIFC-LCIA Rules" were published by the DIFC-LCIA Arbitration Centre on January 1, 2021, and they will be used for arbitrations that begin on or after that date. Concerning remote hearings and the use of technology, the updated DIFC-LCIA Rules typically broaden their scope to facilitate better hearings held with parties in various places. According to Article 19.2, "hearings may be held in person or virtually by videoconference, conference call, or using other means of technology with participants in any geographical regions.

The 2016 DIFC-LCIA Rules' Article 19.2 said that hearings might occur in person or through telephone conference or video conference. However, there was no specific reference to online hearings or any communications technology that could be used in such a hearing. Further highlighting the fact that participants may attend the hearing from various locations, the change to Article 19.2 in the 2021 DIFC-LCIA Rules recognizes the potential for a "hybrid form" of an in-person and a virtual hearing.

Dubai International Arbitration Centre (DIAC) arbitrations are still carried in line with 2007 DIAC Regulations. The 2017 rule modification requires the formal approval of the Ruler of Dubai. After consulting with the parties, a tribunal is allowed under Article 20.2 to hold hearings or meetings anywhere it deems fit. The arbitrators can conclude that a virtual setting would be the best place to hold the arbitration. given the very broad discretion allowed to the tribunal by this clause. Such a stance is consistent with Article 33(3) of UAE Federal Law No. 6 of 2018 on arbitration, which applies to onshore Dubai-seated arbitrations.

The 2018 Arbitration Rules of the Saudi Centre for Commercial Arbitration do not explicitly mention distant hearings. In contrast, Article 17(3) stipulates that tribunals may

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convene wherever they deem fit for any purpose, which could refer to hearings that may involve conducting the arbitration virtually.

The Riyadh SCCA also established an "Online Dispute Resolution Protocol" specifically intended for relatively small conflicts with a limit of USD 53,319 (SAR 200,000). Within this protocol, the arbitration will only be conducted online, which would include virtual hearings through the SCCA portal.

Further, the 2017 BCDR-AAA (the Bahrain Chamber for Dispute Resolution and Arbitration and Mediation Center) rules permit the use of video or telephone calling for witness cross-questioning and oral hearings during arbitration.

It also published procedures for setting up and running online hearings on November 24, 2020. These guidelines apply to all arbitrations, whether at the Chamber's offices or involving arbitrators and parties participating virtually from various locations. The recommendations outline several standards and factors relating to scheduling the hearing, lists of participants, and appropriate platform recommendations for efficient hearing.

The procedural guidelines of the Qatar International Centre for Conciliation and Arbitration (QICCA) are primarily based on the United Nations Commission on International Trade Law Arbitration Rules. Article 29.4 of the QICCA Rules permits witness interrogation, including that of expert witnesses, via contemporary audio and video telecommunication without needing physical presence at the hearing. Furthermore, fully virtual hearings are not further described in the QICCA Rules.

3.0 Advantages, Disadvantages, and Challenges of Electronic Arbitration

3.1 Advantages

3.1.1 Flexibility

Online dispute resolution is a flexible, informal, and creative technique of resolving disputes that is unrestricted by strict rules of procedure and proof (Vannieuwnhuysse, 2018)¹. As a result, the parties can participate in a procedure tailored to their requirements. Parties who would be unable to attend an in-person meeting due to a severe disability may be able to participate in ODR.

3.1.2 Cost-effectiveness

Electronic arbitration reduces the expenses associated with dispute resolution because of the speed with which conflicts are resolved, the lower costs involved, and the parties' only partial acceptance of the running costs (Condlin, 2006)².

3.1.2.1 Low costs

Electronic ODR enables the disagreement to be resolved remotely without requiring the actual presence of the parties or their legal representatives (Mania, 2015)³. To transfer documents and data messages for the price of a local phone call, the parties need to establish a connection from their places of business to the location of the selected organization. This is a huge benefit in international cases where one party would typically

¹ Vannieuwenhuysse, G. (2018). Arbitration and new technologies : mutual benefits. *Journal of International Arbitration*, 35(1).

² Condlin, R. J. (2016). Online dispute resolution: stinky, repugnant, or drab. *Cardozo J. Conflict Resol.*, 18, 717.

³ Mania, K. (2015). Online dispute resolution: The future of justice. *International Comparative Jurisprudence*, 1(1), 76-89.

have to travel to appear before the court in the other party's nation. This also applies to more conventional forms of arbitration or ADR, such as mini-trials and fast-track arbitration, which all call for hearings and in-person meetings of the parties. Some online dispute-resolution techniques reduce the need for human intervention in the dispute-handling process, which results in even greater cost savings (Sela, 2018)¹. For instance, in automated settlement assistance systems, the value of the settlement is determined based on the claims made by each party. The costs typically represent a percentage of the dispute's value. Significant cost reduction seems only feasible for disputes that do not involve excessively complex legal questions and do not require the presence of an expert when there is a need for human intervention. A case in point is disputes over the registration of domain names, where the panel members need only confirm that the claimant is the owner of the trademark and that the respondent registered the domain name in bad faith. In some "quality disputes," where one party complains about the breach of a contract, the same is true. The selected third party only needs to validate non-performance. Establishing electronic non-performance can be complicated.

3.1.2.1 Speed of Resolution

The primary benefit of ADR has always been the ability to find a quick resolution without impeding business operations or regular communications between business partners (Vannieuwenhuysse, 2018)². State court cases can drag out for months or even

¹ Sela, A. (2018). Can computers be fair: how automated and human-powered online dispute resolution affect procedural justice in mediation and arbitration. *Ohio St. J. on Disp. Resol.*, 33, 98.

² Vannieuwenhuysse, G. (2018). Arbitration and new technologies : mutual benefits. *Journal of International Arbitration*, 35(1).

years. ADR, on the other hand, expedites the resolution of disagreements. The real benefit of fast-track arbitration systems, which also hold true, is their quickness. E-arbitration is almost instantaneous and reduces the time flow of information even further. Naturally, the arbitrators always need some time to familiarize themselves with the case and come to a decision. It is also true that "quality disputes" are not complicated, which facilitates a swifter process.

3.1.3 Electronic ODR Financing

In some cases, the mechanism for funding online dispute resolution lowers the expenses imposed on Internet users and consumers. The parties to a lawsuit are only sometimes required to split the costs equally. Electronic arbitration or mediation will be free to the claimant if the company is a member of a quality label program. It is paid for by the company's yearly certification program subscription. Another system charges the entire arbitration costs exclusively to the business. Unless the arbitral award specifically states that the losing party is to bear all costs, arbitration costs are typically split equally between the parties. Therefore, these systems initially appear to be very advantageous for the client, who gains free access to extra-judicial means of dispute resolution. However, this unilateral financing necessitates extra caution when it comes to the impartiality of the dispute resolution body, which could be biased in favor of the company. After all, the company might be a "serial litigant," giving the arbitral tribunal consistent cases. This argument should not be overstated, though, as most States will not grant an exequatur to an arbitration award that violates the independent arbitrator principle.

3.1.4 Effectiveness and success of solutions

Online dispute resolution typically has higher success rates, either as a result of the spontaneous implementation or the application of an electronic form of restraint.

Alternative dispute resolution techniques frequently advocate for the parties to implement a solution on their own initiative. The likelihood of implementation of a settlement agreement reached through mediation or conciliation is high. Despite an increase in post-arbitral challenges, the spontaneous implementation of verdicts has prevailed in arbitration. The settlement agreement or award will likely be properly enforced because of the process's electronic nature and the participant's involvement in the electronic market. Online dispute resolution also removes emotion from the conflict because the parties do not physically interact, which encourages logical resolution.

3.2 Disadvantages of Electronic Arbitration

3.2.1 Witness/Expert Testimony

When considering witness or expert testimony, the arbitral tribunal may unintentionally take the disadvantages of virtual hearings into account, which could interfere with the arbitrators' capacity to consider the evidence (Viscasillas, 2022)¹. For instance, under cross-examination, the court's members may want assistance interpreting the replies and body language of the witnesses or experts as they would appear in person. Suppose a witness is unfamiliar with online meeting platforms. In that case, they may not look directly at the questioner (via a computer camera) with enough conviction, unintentionally creating credibility issues where none should exist. In a virtual setting, there is also a possibility that a witness could be reading documents or getting private off-camera instructions without the tribunal or the opposing party knowing. However, with adequate planning and the legal team making sure its witnesses and specialists are as familiar and feasible with what will happen at the virtual hearing, these initial issues with

¹ Valerievich, A. J. (2017). Electronic Arbitration : Legal Issues. *Rom. Arb. J.*, 11, 27.

witness evidence over video conference can be solved (Viscasillas, 2022)¹. The fact that witnesses may be coached to testify at a virtual trial is evidence that this risk exists in all settings. To ensure there was no fraudulent activity, a camera that captured the witness's surroundings accurately may be utilized. Even yet, the challenges that the pandemic hearings brought to light might have aided a panel in a better evaluation of evidence. Even though it is unclear how virtual hearings would affect the judgment of the evidence, online witness presentation and examination differ from in-person witness presentations and examinations.

3.2.2 Uneven Technology Access

Globally dispersed parties participate in international arbitration proceedings. A witness or expert who lives in a developing country in Africa or the Middle East might need access to the same high-speed internet or technological equipment as someone who lives in Europe. Further, the technology used by arbitral tribunals today may be inadequate in some places (Sela, 2018)². The technology used in courtrooms has significantly improved since the days of overhead projectors. It is now a tool that aids presenters in being more persuasive rather than being a hindrance or a distraction. Since thousands of cited exhibits, legal documents, witness statements, and expert reports are instantly accessible through electronic hearing bundles, reviewing submissions is made simpler. Arbitral institutions have established a number of applicable standards and guidelines to guarantee that parties are technologically equal. As is the case with most arbitral processes, the

¹ Viscasillas, P. P. (2022, June). An Arbitrator's Perspective : Online hearings in arbitration : the taking of Evidence. In *Online Dispute Resolution* (pp. 107-132). Nomos Verlagsgesellschaft mbH & Co. KG.

² Sela, A. (2018). Can computers be fair: how automated and human-powered online dispute resolution affect procedural justice in mediation and arbitration. *Ohio St. J. on Disp. Resol.*, 30, 99.

parties should come to an understanding regarding the technology standard prior to the hearing.

3.2.3 Interpreters and Translations

In a virtual setting, issues with translators and interpreters bring additional difficulties. There must be dependable connectivity and speedy transmission in order for a witness to take part in the proceedings (Waincymer, 2020)¹. The risk of an interpreter misinterpreting testimony or imposing his own interpretation on ambiguous language during in-person proceedings is greatly improved when simultaneous (as opposed to consecutive) translation is employed. A "check" interpreter can be used by the opposing party to safeguard its interests. This interpreter will be positioned close to the witness and the primary interpreter so they can communicate any issues they have with the translation (Hierro, 2022). However, implementing this arrangement in a virtual environment would be more difficult due to the quality of the video and sound and any network concerns.

3.2.4 Confidentiality and Security Breach

New privacy and security issues are brought up by virtual hearings. Arbitration is preferred because of its many benefits, primarily the privacy of the procedures. However, when numerous participants, witnesses, and experts use their home networks to participate in online procedural or factual hearings where there may be insufficient security against hackers infiltrating, the possibility of security breaches grows. Hackers could jeopardize the proceedings by breaking into or zoom bombing the arbitral institution's electronic hearing bundle or website. For instance, the Permanent Court of Arbitration was breached in July 2015 during a protracted maritime border conflict

¹ Waincymer, J. M. (2020). Online Arbitration. *Indian J. Arb. L.*, 9, 1.

between the Philippines and China, before the trend of shifting proceedings digitally. Malware that infected users' PCs and put them at risk of data theft was present on the PCA website. Arbitral institutions have been creating rules to effectively address these difficulties despite the new security and secrecy concerns. Best practices recommend that the parties, their attorneys, and the arbitrator come to an agreement on a set of appropriate security, privacy, and data protection protections to be taken before the arbitration ever starts in order to provide an adequate security level for the case.

3.2.5 Possible Differences in Time Zones

Other relatively unimportant difficulties, such as varying time zones, could have a big impact on how things turn out (Abbasli, 2022)¹. Arbitration parties routinely appear in several courts; witnesses, and professionals may be spread out globally. When there are travel considerations, it will take time to find a time that is suitable for everyone. If traveling is involved, it would be possible to account for the time difference by summoning witnesses so that each individual can testify at a specific time during normal business hours wherever they are based. However, finding a time that works for everyone will be challenging when there are no such considerations.

3.3 Challenges facing the electronic arbitration law

3.3.1 Legal obstacles to ODR

ODR is unquestionably a lot more recent than most of the laws in effect today. Whether the current legal system can provide a strong enough legal foundation for disputes resolved by ODR is up for debate (Valerievich, 2017)². The inclusion of safeguards

¹ Abbasli, T. (2022). Can Online Dispute Resolution Prevail over the Traditional Methods of Resolution ? *Baku St. UL Rev.*, 8, 21.

² Valerievich, A. J. (2017). Electronic Arbitration : Legal Issues. *Rom. Arb. J.*, 11, 27.

tailored for contemporary information technology in new laws is also up for debate. The fact is, though, that ODR has already become a reality due to its growing popularity. The legitimacy of electronic arbitration and mediation agreements and the execution of electronic arbitral rulings and settlement agreements are governed by laws that are interpreted differently in different countries. To encourage and enable ODR to proceed, legal obstacles must be removed. The issue of non-localization, which challenges the concepts of "the arbitration agreements," "the site of arbitration," and "the place of arbitral conclusions," is one of the most difficult ODR procedures (Gardner, 2020)¹.

3.3.2 Intellectual Property Laws and ODR

Online dispute resolution procedures may take a lot of time and money to develop for ODR service providers. Therefore, it is plausible for a business to submit a patent application to stop other businesses from blatantly adopting a revolutionary ODR process. However, in these circumstances, the issuance of a patent to a particular organization may hinder ODR from becoming a more widely used technique for resolving disputes originating from e-commerce transactions (Mania, 2015)². For this reason, whenever a new paradigm for resolving disputes online is developed, the necessity of upholding intellectual property laws to safeguard that paradigm must be carefully gauged.

¹ Gardner, M. (2020). Deferring to foreign courts. *U. Pa. L. Rev.*, 169, 2291.

² Mania, K. (2015). Online dispute resolution: The future of justice. *International Comparative Jurisprudence*, 1(1), 76-86.

3.3.3 Global Enforceability and ODR

The enforceability issue in the context of ODR has two parts, one of which is the enforceability of agreements to submit to ODR. The parties to an electronic transaction that has given rise to a dispute must be able to enforce any contractual agreement that may have been reached to submit the dispute to ODR (Koulu, 2016)¹. Parties A and B could agree to abide by the conditions of a settlement reached through the use of an ODR service by signing a contract. Both parties must be able to ensure that the other will abide by the resolution for ODR to be effective. (Schmitz and Rule, 2019)². With ODRs other than online arbitration, there are currently no international instruments in existence that oblige courts to ensure that a party complies with any settlement that declares itself to be binding or any agreement to submit a dispute to an ODR service. This suggests that different legal systems are permitted to employ unique strategies for translating contracts in order to refer disputes to binding ODR.

4.0 Conclusion and Recommendations

4.1 Conclusion

Every year, there are an increasing number of electronic cross-border commercial transactions. New electronic contracting technologies are also being used by businesses all around the world more frequently. With the development of technology and the expanding e-commerce era, e-arbitration is the way of the future. As they are quicker, simpler, and more affordable than traditional methods, these systems are crucial for ensuring a favorable environment for the settlement of online disputes. This creates a

¹ Koulu, R. (2016). Blockchains and online dispute resolution: smart contracts as an alternative to enforcement. *SCRIPTed*, 13, 40.

² Schmitz, A., & Rule, C. (2019). Online dispute resolution for smart contracts. *J. Disp. Resol.*, 103.

favorable environment for the emergence of accepted laws and standards. As a result, the internet has made it possible for businesses and consumers to conduct transactions anywhere in the world without regard to geographical restrictions. The majority of people who use the internet are consumers, and most of these people engage in business-to-business (B2B) transactions. Therefore, there are now more online dispute resolution (ODR) service providers than ever before. The ability of e-arbitration to overcome the majority of traditional arbitration problems distinguishes it from arbitration. Through the use of technology throughout the procedures, except for the qualified human arbitrator who renders the arbitral judgment, factors including time, flexibility, jurisdiction, and cost are improved. E-arbitration is viewed as a replacement for arbitration in this context. Law is a means to an end; in this case, just like with various instruments, a replacement is required in our technologically advanced society to serve our purpose successfully and efficiently. E-arbitration in the context of dispute resolution becomes necessary at this point. However, it can only be successful if there are laws, digital security, court digitization, online paperless judiciary, and codal provisions that are followed; otherwise, there will be an increase in disputes, defeating the fundamental goal of arbitration, and consumers will be denied access to fair justice.

4.2 Recommendations

- Despite being a good conflict resolution mechanism, electronic arbitration has been widely criticized for its inability to resolve business-consumer issues. Since the corporate is perceived to have more influence and control over the consumers, the arbitration's result might only sometimes be fair. As a result, the preferred mechanism for settling business-consumer disputes is through the legal system. Today, a number of electronic arbitration tools and applications are accessible, and

more are being developed daily. Future arbitration hearings involving big firms will probably all be held online. In order to regulate the use of electronic arbitration there, Middle Eastern countries, particularly Saudi Arabia, should develop new regulations.

- Defining and regulating electronic arbitration might broaden prospects and subsequently attract more investors, even though the government has made great steps toward harmonizing its arbitration procedures with international treaties.
- This report also recommends that the UAE's arbitration centers and tribunals try to implement E-Arbitration regulations that are comparable to those for traditional arbitration centers in the US, Canada, the EU, and other nations (such as the main centers in Dubai and Abu Dhabi).
- Given the limited amount of information on E-Arbitration in the UAE, it is recommended that more research in this field be conducted for the benefit of the parties to the arbitration, the legal authorities, the arbitrators, and other interested parties.
- The demand for the creation and ultimate implementation of competent and stringent regulations to meet the requirements of the Convention on International Commercial Arbitration and other international conventions on E-Arbitration.
- It is necessary to update electronic arbitration laws to account for recent technological developments, particularly those involving online virtual technology. It is essential to include provisions that establish the legal standing of the arbitral award through established public policy. This will grant the arbitral award legal standing and prohibit parties from disobeying it in light of legally enforceable legislative decisions.
- There is a need for the active diffusion of educational resources and training based on digital culture.

Resources

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