

Note from the General Editor

The Online Dispute Resolution (ODR) landscape is fertile. New concepts appear, their benefits are harvested, and their seeds generate further creative applications and tools. There has been a quantum leap from the introduction of virtual arbitration hearings and electronic filing of documents to the ubiquitous presence of Artificial Intelligence (AI) as a research and drafting tool, and even sometimes as a decision-maker, and the emergence of a dynamic new perspective in the “metaverse.” These accelerating developments and the many facets of ODR have motivated the swift publication of “Online Dispute Resolution Part II” as an important supplementary and complementary issue to “Online Dispute Resolution Part I.”

Guy Pendell and Iain Quirk KC focus their article around an “inclusive” definition of ODR, encompassing mediation, adjudication, arbitration and state-provided ODR courts, but excluding the incorporation of simple electronic processes. They examine the drivers that have encouraged the use of ODR and set out several key advantages as well as potential disadvantages of their adoption. Case studies illustrated by the practice and procedure of “pinqDR,” together with innovations in, among others, the UK court system and the banking system in India lead to their confident conclusion that ODR will play an increasingly central role in the global justice system.

Priyanka Shetty and Aditya Singh Chauhan examine the fundamental aspects of AI, both theoretical and practical, in their analysis of how the application of AI could be transforming arbitration. They provide an informative “non-technical” introduction to AI and identify its inherent risks and limitations in the context of arbitration, highlighting such issues as data protection, algorithmic bias and the use of “predictive justice” tools, and observing that there is currently no legal framework for the use of AI in international arbitration. On a positive note, they suggest that AI can be used for the selection of arbitrators, automating the arbitral process, providing a highly efficient e-discovery process and carrying out legal research. With an eye to the future, the authors refer to a study that has, perhaps unsurprisingly, shown that younger age groups seem more sympathetic and neutral toward the use of AI in ODR than older age groups.

The risks, challenges and opportunities of AI in alternative dispute resolution (ADR) are addressed by Ryan Abbott. While there are few laws specifically

targeting AI, many more general laws related to data privacy, confidentiality, practitioner duties and intellectual property also apply to AI and its use in ADR, and users of AI are cautioned to be aware of the requirements of these laws and regulations. The author uses the example of JAMS' "Artificial Intelligence Disputes Clause, Rules and Protective Order" to illustrate one method of dealing with AI-based disputes.

Whilst acknowledging that online digital dispute resolution platforms may offer speed, simplicity, flexibility and lower cost, Samaa Haridi and Kateryna Frolova question whether these platforms can in fact facilitate access to justice if the parties do not have equal access to the online platform. Difficulty in accessing the internet and digital and technological "illiteracy" constitute, in their opinion, a "digital divide," which until eliminated, prevents ODR from being the one-size-fits-all solution for access to justice that many commentators claim it to be.

Ana Lombardía Villalba and Rafael Carlos del Rosal Carmona provide an outline of the metaverse: large scale, persistent and interoperable virtual landscapes which are rendered in real time, in 3D, to create immersive digital experiences for users. These authors illustrate the different types of disputes that may arise as a result of the development and increasing use of the metaverse and the related legal questions that may have an impact on arbitration, concluding that the technology of the metaverse offers both an opportunity and a challenge for the international arbitration sector.

Sara Hourani introduces the reader to blockchain-based dispute resolution, focusing on several current blockchain platforms and illustrating how these differ from the traditional concept of arbitration and other methods of dispute resolution. The author identifies two distinct governance structures around blockchain platforms: off-chain governance which includes state law and other external factors that affect the regulation of blockchain-based transactions; and on-chain governance, referred to as the *lex cryptographia*, which consists of rules that are encoded directly into the blockchain-based network, guaranteeing their secure and decentralized execution. While most of the court cases cited by the author have rejected the validity of blockchain-based dispute resolution or the imposition of arbitration for the resolution of crypto disputes involving consumers, it is posited that, in the future, case law will recognize this type of dispute resolution as a validly formed arbitration procedure.

Comparing practical measures adopted by arbitral institutions to facilitate arbitration proceedings by introducing rules and practices for the use of technological means in arbitral proceedings, Fatema Al Zayed Al Jalahma highlights how the rules of the Bahrain Chamber for Dispute Resolution allow for the use of technological or online means of communication, from the filing of the request for arbitration to the issuance of the award. Joining other contributors

to this issue, the author notes both the relative advantages and challenges of ODR procedures and characterizes online arbitration as a “can-be process” rather than a “must-be process” that should encourage parties further to utilize technology in arbitration.

The advantages and risks of ODR along with the safeguards of a secure and fair virtual mediation platform offered by JAMS are examined by Kim Taylor and Clifford Bloomfield. These authors examine empirical research on the attitude of courts as to whether due process rights are compromised by the absence of an in-person hearing, concluding that courts have rarely vacated awards on these grounds.

The Silicon Valley Arbitration and Mediation Centre has “broken new ground” with the promulgation of its “Guidelines on the Use of Artificial Intelligence in Arbitration.” Soham Panchamiya, Pankhuri Malhotra and Subha Chugh analyze these novel guidelines in light of their application and binding nature. The authors underscore the emphasis in the guidelines on the prohibition of the delegation of decision-making responsibilities by the tribunal to AI tools and the mandated transparency and disclosure of AI-generated information introduced during proceedings.

The usability, reliability and accessibility of online mediation providers are analyzed by Clarissa Chern and Nadja Alexander who compare in detail two providers – the general social communication platform Zoom, which has become a popular platform to host video conferencing mediation, and the dedicated ODR platform, the Singapore-based Electronic Business-Related Arbitration and Mediation International Online Dispute Resolution Centre Limited (eBRAM). The authors argue that general social communication platforms lack the structure found in specialized platforms that provide for important features and safeguards of mediation around such issues as impartiality and confidentiality.

Chen Chen, Colin Rule and Sharon Mathew examine how aggregated intelligence in the form of crowdsourced dispute resolution can be applied as a means for resolving disputes. The authors extrapolate the decision-making capacity of a panel of three or five arbitrators, taking it to the next level of a multiplicity of arbitrators. They illustrate the advantages and challenges of each system with studies of three platforms employing crowdsourcing and conclude that crowdsourced processes offer great potential for expanding the reach and effectiveness of arbitration in the future.

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