

Online Arbitration:
A Vehicle for Dispute
Resolution in Electronic
Commerce

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In recent years, the importance of electronic trade in digital content has become evident. However, this new phenomenon has brought new challenges with itself in various areas, which demands fast and efficient responses. While litigation has lots of limitations and deficiencies, alternative means have been suggested and formulated to complement the dispute resolution system. Among (ADR) systems, Arbitration is the most widely used (ADR) mechanism for resolving disputes in electronic commercial matters. Online arbitration is fully admissible and effective under the current legal framework of many countries, provided that certain requirements are met. This paper examines the advantages of online arbitration and methods of its performance in cyberspace. It concludes that online arbitration is a valid and effective method of dispute resolution and the arbitral awards given by online arbitration are enforceable under the rules of New York Convention.

KEYWORDS: Arbitration, New York convention, online arbitration, dispute resolution, online arbitral awards.

Introduction

In recent years, the importance of electronic trade has become evident¹. It is not exactly clear when the electronic systems entered the commercial world. We may consider the commercial usage of the internet as an onset point for this industry. However, electronic commerce does not change the basic purpose of business transactions, which is to gain profits; the difference lies in the new mode of communication. When it comes to making profits, different parties have divergent objectives, which can easily lead to disputes².

Nowadays, there are varying kinds of dispute resolution. Although Litigation is the most common and widely used method which exists in many legal regimes, a few problems of litigation and courts such as: the length of time needed for the whole process of litigation which does not suit the present pace of business, the high cost of litigation, the issues of jurisdiction and choice of laws which become particularly complicated at an international level, and the atmosphere of litigation which could be destructive to the future relationship of transacting parties³, have made merchants and jurists to explore for alternative methods.

Even though some experts have cited a long history for extra-judicial methods⁴, the methods which we know today as alternative dispute resolution methods are declared by an American lawyer named “Eric Green” in 1978.

Theory of resolution of cyberspace disputes doesn't have a long history. While the litigation has lots of problems, the experts of this context have attempted to apply alternative methods in the internet and called this: “online dispute resolution”. The first experiments in ODR were made during 1996 and 1997 in the US and Canada.

¹ . Sacha Wunsch-vincent , the WTO, the internet and trade in digital product, edition 1, USA, oxford and Portland, Oregon, 2006, p 1.

² . yun zhao, dispute resolution in electronic commerce, volume 9, Boston, Martinus Nijhoff publisher ,2005, p 25.

³ . Ibid, p 31

⁴ . (In 1800 B.c. Mari Kingdom (in modern Syria) uses mediation and arbitration in dispute with other kingdoms.) Jerome T.Barrett & Joseph P. Barrett, A History of Alternative Dispute Resolution, San Francisco, Jossey-Bass, 2004, p xxv.

Based on a recent survey, the numbers of institutes which have this service have reached 115 by 2004⁵.

Among the alternative methods, arbitration has a special place. The power of electing arbitrators and governing law, and binding awards which can enforce easily in many countries, give a particular importance to this method in electronic disputes as well. Electronic arbitration has a similar notion with other arbitration, except using specific communication tools such as: email and online conferences⁶. In this paper, different aspects of online arbitration such as: conclusion of arbitration contracts in the cyberspace, procedure of arbitration, seat of arbitration, applicable law, establishment of awards, and enforcement of awards, will be explored.

⁵. Julia Hornle, *Cross-Border Internet Dispute Resolution*, edition 1, USA, Cambridge University Press, 2009, p 75.

⁶. . Armagan Ebru Bozkurt Yuksel, *Online International Arbitration*, Ankara Law Review, Vol.1, No.1, 2007, p 84.

Chapter I: conclusion of arbitration contracts in the cyberspace

Any kind of arbitration roots in the arbitration contract which is concluded between parties. The arbitration agreement can be formed in separate contract or in the form of a clause in another contract. In most Arbitration Acts around the world, the method which is cited in the UNCITRAL Modal Law (reference method) is recognized⁷.

A: Various kinds of arbitration contract in the cyberspace and their validity

Although opposite parties can compromise out of cyberspace and settle their disputes in written form in the cyberspace, the main argument is about where the arbitration contract forms in the cyberspace. The arbitration agreement can be concluded in three forms in the cyberspace:

1. Opposite parties announce their consent by referring their dispute to arbitration by email.
2. The second approach, which is more common nowadays, is that websites which sell goods and services put an arbitration clause in the “terms and conditions” section of their web sites. In this part consumers can declare their consent by clicking “I agree” or “I accept” button in a pop-up box on computer screen⁸.
3. The third approach is what is cited in the UNCITRAL Modal Law, in which parties in the cyberspace, refer their dispute to a document containing an arbitration clause.

The onset point of arguments about the validity of arbitration contract is where many arbitration codes declare “in written form” as a necessary issue⁹. Therefore,

⁷. “The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement... “Article 7(2), UNCITRAL Modal LAW on international commercial arbitration.

⁸. yun zhao, Op.cit, p 2 \ 4

⁹. See, e.g. Article. 178 of the Swiss Act on Private International Law, Article 1443 of French Code of Civil Procedure, and also Article 1449; Article 1677 of the Belgian Judicial Code, Section

this question is posed whether an arbitration contract which is made in the cyberspace and doesn't have the traditional concept of "writing", is valid or not?

These arguments become more intensive where the New York Convention, which has the worldwide fame on enforcement of foreign arbitration awards, provides in the Article II that "Each contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship".

In the second part of Article II, this Convention cites "The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement signed by the parties or contained in an exchange of letters or telegrams". In another word, this convention has not implied to electronic form as a method of concluding an arbitration contract.

Different kinds of solutions have been expressed for this problem:

1. As what was said before, one method for concluding the arbitration contract is referring to another document which contains an arbitration clause. Some experts believe that one way for solving "in written form" problem of electronic contract is using this method. In other words, parties just declare their reference electronically and main document which contains arbitration clause is in writing¹⁰. This method can mostly solve the problem and can be useful in business to business relationships; however, this style needs previous agreement between parties which is not common in the contemporary commercial world and in business to consumer relationships.

2. Another resolution says that New York Convention is an old document and communication devices which are cited in it fits with that time. Therefore, the argument about this convention which doesn't contain electronic communication is

2 of the US Federal Arbitration Act; and Article 16 of the Arbitrations Law of the People's Republic of China 1995.

¹⁰ . O. Cachard, course on electronic arbitration, at the request of the United Nations Conference on Trade and Development (UNCTAD), 2003, p 24, available at: (http://www.unctad.org/en/docs/edmmisc232add20_en.pdf).

pointless¹¹. On the other hand, the many countries' Code in which electronic contracts are valid, do not imply the electronic method directly¹².

3. Some other experts think that clicking "I agree with arbitration clause" button in web sites which sells goods is like transferring information by letter or telegram. Therefore, they believe that using this method can secure New York Convention purpose¹³.

4. Dependency of this issue on contracting states is another theory which is said for solving this problem. In the other words, if the country which is asked for enforcing arbitration award has recognized electronic contracts, these contracts is valid there otherwise they are not¹⁴.

Generally speaking, we can say that in a few countries, adopting these kinds of contract needs modern legislation and in some others needs free interpretation. About New York Convention we should say that, methods which are cited in it are not limited, and it is possible to accept the validity of electronic contracts by a more flexible interpretation.

B: consent and security in electronic arbitration contract

Another issue which is emerged in the context of electronic arbitration contract is consent of parties in arbitration clause and security of these kinds of contracts.

¹¹ . Ijljana Biukovic, international commercial arbitration in cyber space: recent development, northwest journal of international law & business, 2002, p 347.

¹² . e.g. Article 7(2) of UNCITRAL Modal Law " an agreement is in written if it is contain in a document signed by the parties or in an exchange of letter, telex, telegrams, or other means of telecommunication which provide e record of the agreement... . "

¹³ . (That it is about the flow of bits. A bit is an indivisible unit of information stored or transmitted by electronic means. For example, if the seller's offer contains an arbitration clause and the buyer clicks on submit button on the computer screen, then the bit stream comprising the offer and resident in buyer's computer, is modified by buyer and the modified version is transmitted back to seller .). Richard Hill, "On-line Arbitration: Issues and Solutions, p 202-203 available at: <http://www.umass.edu/dispute/hill.htm>.

¹⁴ . Jana Herbockova, certain aspects of online arbitration, Journal of American Arbitration, Vol. 1, No. 1, 2001, p 5.

Some experts believe that New York Convention did not imply to electronic method because not only other methods for declaration of consent in order to refer of disputes to arbitration is not precise but also these kinds of contracts are not secure enough.

So the question which is posed in this field is how a person can announce his consent for concluding an arbitration contract just by sending an email or clicking one button?!

To answer this question we should say that, nowadays electronic signature which is adopted in many countries is a sign for parties' consent in arbitration contract or arbitration clause. When a person adds electronic signature into an email, his consent is obvious and it's not different mostly by the time that he signs a deed by his hand¹⁵. However, this issue is a bit more complex when a contract is concluded in commercial web sites. In (*ILan systems, Inc. v. Netscout Service Level Corp*) on 2 January 2002, judge of a court in the United States decided that clicking "I agree with contract" button when a software is bought in the internet is like accepting arbitration when the contract is contained that clause. He was cited that choosing this option has the same meaning with accepting this kind of arbitration behalf of the buyer¹⁶. In another case (*Lieschke, Jackson & Simon v. Realnetworks Inc*) the claimants maintained that they had not been able to consent to an arbitral clause buried among the general conditions posted on the computer screen. The judge refused this claim and cited that the arbitration clause was perceptible and it didn't need to be highlighted¹⁷. However, some experts are still worried and believe that buyers may lose lots of their legal rights by choosing "I agree" option because of being unknown about arbitration clause¹⁸.

Another issue is security of these contracts. Some believe that security of email and web sites is less than letters or telegrams; therefore, the legislator should not admit these contracts. Nevertheless security systems and electronic cryptography

¹⁵ . See e.g. Article 6(1), UNCITRAL Model Law on Electronic Signatures, 2001.

¹⁶ . O. Cachard, *Ibid*, p 27

¹⁷ .*Ibid*. p 27

¹⁸ . Rafal Morek, *Online Arbitration: Admissibility within the current legal framework*, p 18, available at: www.odr.info/Re%20greetings.doc.

result in increasing security in these methods, on the other hand, security risk in these contracts cannot be an obstacle for their validity¹⁹.

Chapter II: Arbitration Proceeding

Traditional arbitrations form by the three parties (plaintiff, defendant, and arbitrators) and face to face discussion is a fundamental factor in them. By emergence of technology as a fourth party in the online arbitrations and elimination of face to face discussion, significant changes have occurred in these arbitrations²⁰. Although some believe that the lack of face to face communications would not allow the development of ODR, development of techs and possibility of talking simultaneously which is companied by voice and picture, make these kinds of prediction unreliable²¹.

A: process of online arbitration

A dispute which is appeared between two merchants may root in transactions in the cyberspace or out of it. In both circumstances, parties can settle their dispute by online arbitration. From the beginning of this arbitration until issuing an award, a few processes should be taken. We are inquiring them as far as possible.

1. Beginning of arbitration: if the parties have compromised on the online arbitration, after arising of dispute, the parties may act in two forms. The first method is that one party informs another by email to select his arbitrator, or if the parties have compromised on solo arbitrator, suggest his preferable arbitrator. The second method, which many arbitration institutes use it, is a web-based arbitration. In this style, plaintiff refers to the website of arbitration institute and registers his request. After registration of an arbitration request, that institute informs defendant and set an opportunity for sending documents and evidences.

¹⁹ . Ibid. p 14

²⁰ . Pablo Cortes, The potential of online dispute resolution as a consumer redress mechanism, 2007, p 13, available at: <http://ssrn.com/abstract=998865>

²¹ . Ibid. p 14

2. Sending evidences: if disputes arose out of transactions which were taking place in the cyberspace, evidences can easily transfer electronically to arbitration institute or arbitrators, otherwise, evidences should be converted into electronic form. Due to only few arbitration institutes adopt send of evidences electronically²², sometimes it encounters legal problems as well. If it is impossible to send evidences electronically, documents should be sent by mail. Sending documents to internet web site of arbitration institute is another method which is common in this stage. Even though using of this method has the less security than using of email, it makes the documents more ordered²³ and makes their revision possible for a certain time. Other evidences such as legal oath and expert opinion can be used by arbitrators in this stage.

While many codes recognized the validity of electronic evidences and documents²⁴, in some legal systems there are some limitations for evidences which are presented by the parties²⁵. This circumstance makes special educations necessary for arbitrators to enable them for extracting usable evidences from parties' transactions. On the other hand, this may result in increasing costs and decreasing in parties' incentive for such arbitration.

3. Arbitration procedure: despite development of information technology which eliminated most of the obstacles and paved the way of online arbitration, arbitration procedure is still the most difficult part of this kind of arbitration. The first challenge which arbitrators face it is choosing of appropriate techs for this stage, because each available device has some advantages and limitations²⁶. Use of these techs become more intense when the parties or one of them lives in a country

²² . Article 3(2) of the ICC Rules authorizes electronic communication.

²³ . Pablo Cortes, Op.cit, p 14

²⁴ .See, e.g. Article 5 of UNCITRAL Model Law on Electronic Commerce, Article 1326 (3) France Civil Code, Article 3(2) of ICC Rules & Article 1(6) of Uniform Arbitration Act.

²⁵ . "In France, for example, the Court of Cassation recalls the principle that: no- one can constitute evidence for himself." O. Cachard, Op.cit, p 40

²⁶ . Pablo Cortes, Ibid, p 14

in which such techs are less accessible, or because of different language and time-zone, using of some techs is impossible²⁷.

Use of the video-conference is the most common method in this field. By this device, not only parties can be heard and seen easily but also testimonies of witnesses can be taken. Moreover, this device is more secure than other tools. Nevertheless, interruption in transferring of sounds and pictures and disability in watching all manners of parties and witnesses because of differences in the accessibility of techs, and as what is said before, different language and time-zone, cause some problems with this device. Utilizing of email, chat rooms and word-processing software is common in the online arbitration as well, although everyone has some sort of limitations²⁸.

Another method which is suggested for solving techs problem is document-only arbitration. In addition to codes of some countries like England in which this kind of arbitration has been recognized²⁹, UNCITRAL Model Law has implied this method in 1985³⁰. It seems that using of this kind of arbitration makes circumstances in which taking a decision is very hard. Because not only deprives parties from citing their claim or appropriate defend but also it makes some kinds of evidences such as testimony and legal oath unprofitable. Therefore, this kind of arbitration cannot be a good solution for problems which is raised out of techs.

Jeopardize of contradiction, which is the main principle in commercial arbitration, is another result of different accessibility to the different techs³¹. Therefore, arbitrators by decent expertise and education can choose the best device according the conditions of disputes so that they can diminish deficiency of current techs.

²⁷ . Tomas Schultz, Online Dispute Resolution: an overview and selected issues, research project of the University of Geneva, 2002, p 14.

²⁸ . "Online chat is not a real alternative to an oral or visual hearing and Emails in most cases are not encrypted" Julia Hornle, Online Dispute Resolution- the emperor's new clothes, International review of law, computers and technology, Volume 17, Number 1, 2003, p 5

²⁹ . Section 34 of the Arbitration Act 1996 "gives neither party a right to an oral hearing unless the parties have agreed to an oral hearing or the tribunal orders a hearing".

³⁰ . Article 24 (1)

³¹ . O. Cachard, Op.cit, p 35

4. Arbitrators' discussion and issuing awards: since there isn't any hint in arbitration codes of most countries about form of arbitrators' discussion, to reach a complete online arbitration, arbitrators' discussion can be done online when they aren't in one place. Using of telephone, fax or video conference is a common method in this stage³².

Few institutions providing online arbitration set time limits for awards which are variable from 4 hours to 30 days³³. After ending discussion and issuing an award, parties are informed about that award. This notice can be sent to parties by cryptographic email, or if the operation of an arbitral institution is a web-based, award will be putting on the web site for a specific time in a way that it will be accessible just for parties so as to safeguard the confidentiality of the award. Some arbitration codes like the Code of ICC, in addition to the publication of the award on the website of the case at hand within 60 days, make a hard copy of the electronic award necessary for more security³⁴.

B: *security in the online arbitration proceeding*

When the online arbitration has emerged, the experts of this context have concentrated on the functional capability of available devices in the online arbitration. However, it seems that this concentrate is changing and security of these devices becomes more prominent³⁵. Even some believe that the security issue is the biggest pit in this field³⁶. Lack of security not only weaken the confidentiality, which is one of the main principle of arbitration, but also makes people reluctant for using this kind of dispute resolution. To overcome this problem, few suggestions have posed such as using electronic signature, cryptographic emails and using local networks instead of internet. International Chamber of Commerce has designed a management system for more security in

³² . Ibid, p 34

³³ . T. SCHULTZ, G. KAUFMANN-KOHLER, D. LANGER, V. BONNET, Online Dispute Resolution: The state of the art and the issues, E-Com Research Project of the University of Geneva, Geneva, 2001, p 69, available at: www.online-adr.org

³⁴ . O. Cachard, Op.cit, p 34

³⁵ . T. SCHULTZ, et al., Op.cit, p 45

³⁶ . Julia Hornle, Op.cit, p 5

the online arbitration in 2001, entitled “Netcase”. In this system, accessibility of documents and arbitration proceeding is just possible for parties and members of arbitral institution. At the same time, the accessibility of parties and members is different with each other based on their positions.

Although security systems have improved, still a comprehensive solution doesn’t exist. As what “T. Schultz” said: emails and electronic communication have as the same security as postcards!³⁷. It may claim that there is not a complete security in all kinds of arbitrations and this is true about online arbitration as well³⁸. Nevertheless, some believe that people who refer to this kind of arbitration expect more security than conventional ones. However, this fact that using lots of security systems makes some problems like increasing expenses and complexity of the procedure is undeniable.

It seems that proper education for all people who relate to the online arbitration such as arbitrators, attorneys and even judges and also a decent accordance among various branches of law and information technology can reduce these problems.

Chapter III: Seat of Arbitration

Seat of arbitration is important from various aspects. According one opinion, seat of arbitration determines the applicable law in arbitrations. On the other side, in many arbitration codes, supervision on awards is allocated to courts of arbitration seat, and base on New York Convention, recognition and enforcement of the award may be refused if the award has been set aside by a competent authority of the country in which that award was made³⁹.

In the online arbitration, the obvious multiple location is an obstacle to determine the place of arbitration⁴⁰. In this kind of arbitration, not only parties may present in different countries, but also arbitrators may attend and discuss from different

³⁷ . T. SCHULTZ, et al., Op.cit, p 46

³⁸ .Julia Hornle, Op.cit, p 6

³⁹ .Article V (1) (e) of New York Convention.

⁴⁰ .O. Cachard, Op.cit , p 47

countries. On the other hand, in comparative law there is a tendency not to use the operator's electronic presence or technical equipment to determine location. The determination of the place of arbitration must therefore rest on legal criteria⁴¹. This problem led some scholars to conclude that “virtual arbitration has no sits”, or at least “no identifiable seat of arbitration”⁴². However, modern views about the determination of arbitration place have mostly solved this problem.

Nowadays there isn't any trend to determine location of arbitration base on “where the arbitration took place” or “where the award was made”⁴³ or “the place of the situation of the establishment that has made the arbitration agreement”⁴⁴ But based on the new codes, seat of arbitration is mostly excluded from its geographical notion and became selective. The seat is now defined as the place agreed to be the seat by the parties or by the arbitrators or an arbitral institution if such a power is nominated by the parties⁴⁵.

Article 20 (1) of UNCITRAL Modal Law, article 15 of the Uniform Arbitration Act, article 14 (1) of ICC arbitration rules and many other arbitration codes have accepted this approach.

As a result, the admissibility of the free choice of the seat of arbitration by the parties or arbitrators results in the conclusion that the physical place, or perhaps – more accurately – lack of the physical place, of arbitral hearings and other procedural acts, is irrelevant⁴⁶.

Chapter IV: applicable law

The issue of applicable law is posed in the main parts of the arbitration proceeding. (i) The law of the submission agreement or arbitration clause. (ii) The law which provides the procedural framework for the arbitration; and (iii) the law applicable

⁴¹. Ibid, p ٤٨

⁴². Quoted by: Rafal Morek, Op.cit, p 35

⁴³ . New York Convention, Article V (1) (a) & (d)

⁴⁴ . Article I (2) (c) Geneva Convention

⁴⁵ . Georgios I. Zekos, International Commercial and Marine Arbitration, England, Routledge-Cavendish publication, 2008, p 24

⁴⁶ . Rafal Morek, Op.cit, p 35

to the substantive issues between the parties. We will survey these three stages as far as possible.

A: *the law of the submission agreement or arbitration clause*

Nowadays, dependence of the law of arbitration agreement or an arbitration clause on the consensus of the parties is a clear and noncontroversial issue⁴⁷. Based on international practice, in the absence of party autonomy, arbitrator or arbitrators are responsible to choose appropriate law. Nevertheless, article 5 (1) (a) of New York Convention implied that arbitration agreement depends on the law which parties have indicated it, otherwise, it is depend on the law of the country where award was made. As a result, lots of national courts, in their decisions, prefer law of the country where the award was made⁴⁸.

As what we have cited in the chapter one, arbitration agreements can be formed by sending email, selecting “I agree” button or by referring to a document containing an arbitration clause. The common approach in these kinds of contracts is selecting the applicable law by one party and adoption of another. And also we should pay attention that, in the online arbitration, seat of arbitration is selective; therefore, if parties want to follow New York Convention method, choosing of arbitration place has the same meaning as choosing the law of their arbitration contract.

B: *The law which provides the procedural framework for the arbitration*

Like the law of arbitration contract, party autonomy is preferred in this part as well. In the absence of parties’ selection, two main approaches have been cited. The first approach is choosing the law of arbitration place⁴⁹ and the second one is delocalized arbitral procedure. In the online arbitration, due to some special conditions and use of special devices, determination of the law of arbitral procedure is very important.

According to article 5 (1) (d) of New York Convention, in the absence of parties’ selection, the law of arbitration place will be governed on procedure. In this

⁴⁷ . Laya Joneydi, *Applicable Law in International Commercial Arbitration*, first edition, Dadgostar publication, Tehran, 1997. P 27

⁴⁸ . W.L.Craig & W.W Park & J.Paulsson, *International Chamber of commerce Arbitration*, Oceana Publication, 1990, p 74

⁴⁹ . *Lex Loci Arbirti*

circumstance, for instance, if the law of arbitration place has made the physical presence of the parties necessary in arbitration or if it has not recognized digital signatures, online arbitration will be faced lots of difficulties⁵⁰. Therefore, parties should be careful in their selection and choose codes which are more flexible, especially when some of these issues are related to public policy of countries and not eliminable.

C: the law applicable to the substantive issues

The traditional view in the determination of the law applicable to the substantive issues, is selecting the law of arbitration seat which is set aside in many countries and replaced by the principle of party autonomy. In the absence of parties' indication, the national law of most countries provide for the arbitrator to choose.

In the United States' law, a few states impose limits on the enforceability of private choice-of-law agreements. These states usually avoid exercising of parties' selection in two situations. Firstly when the chosen law lacks a reasonable relationship to the parties' transaction; or secondly when the chosen law is contrary to some fundamental public policy of the forum, or, less clearly, another state⁵¹. However, neither the NYC nor the FAA expressly permits non-recognition of an arbitral award because parties or arbitrators erred in their choice of law analysis.

In the online arbitration, two opposite views have been cited about applicable law especially about the law applicable to substantive issues. One group advocates the application of traditional rules. They claim that nature of the transactions and possible disputes resulting therefrom do not differ in purpose from real transactions and disputes. On the other hand, there is a group of those who propose a creation of separate set of rules⁵² adapted to the specifics of e-commerce⁵³. This group believes that traditional rules which are intensive and slow cannot keep track with new and fast developments, especially in the online segment.

⁵⁰ . Jana Herboczkova, Op.cit . , p 8

⁵¹ . Georgios I. Zekos, Op.cit., p 121

⁵² . lex cyberalty

⁵³ . Jana Herboczkova, Op.cit., p 8

Generally, Party autonomy should be more strongly encouraged in the case of electronic commerce because of these two key factors: the possibility of doing business on the Internet without knowing the other party's physical location; and the simultaneous presentation of information on the Internet to all jurisdictions⁵⁴.

Chapter V: issue and enforcement of award

The point that separates arbitration from other alternative dispute resolution methods is enforceability of awards. Thanks to the various conventions in this context, nowadays enforcing of foreign arbitration awards is easier than enforcing of foreign court sentences⁵⁵. National and international arbitration codes do not have any consensus about necessary points in an award. However, necessity of arbitrators' signature and necessity of being in written are the only issues which are cited in many arbitration codes⁵⁶ and may cause problems in the online arbitration awards. On the other hand, some codes show more flexibility and believe that digital signature or record of an award will be adequate⁵⁷.

Another concern which seems more important is article 4 of New York convention which cites that "the duly authenticated original award or duly certified copy" is necessary for recognition and enforcement of awards. If the original is not produced, the successful party in the arbitration will not be able to invoke the New York Convention system, and will therefore not be able to have the award enforced⁵⁸. Although this Convention does not imply directly to the necessity of being in written or arbitrators' signature, strict interpretation of this article can makes a few problems for online awards.

⁵⁴ . yun zhao, Op.cit., p 141.

⁵⁵ .Armagan Ebru Bozkurt Yuksel, Op.cit., p 90

⁵⁶ . e.g. Article 31 (1) of Canadian Commercial Arbitration Act, Article 1057 (2) of Dutch Code of Civil Procedure, or Article 1473 of French New Civil Procedure Code; also Article 32(2) of the UNCITRAL Arbitration Rules states that "*the award shall be made in writing*".

⁵⁷ . According to English Arbitration Act 1996 "*the parties are free to agree on the form of the award*" & Section 52 (1). In the United States, the Revised Uniform Arbitration Act of 2000 provides for the use of electronic signatures by arbitrators. According to its Article 19, "*an arbitrator shall make a record of an award*".

⁵⁸ . O. Cachard, Op.cit, p 51

Two solutions have been cited for this problem:

1. Some believe that article 4 of New York Convention should be interpreted by considering of article 3 of this convention. Article 3 cites “Each contracting state shall recognize arbitral awards as binding and enforce them in accordance with the rules of the procedure of the territory where award is relied upon” This means that if the state of enforcement accepts an electronic form of writing there should be no barrier to the enforcement of the electronic award⁵⁹.

2. Others believe that if we inquire the reason of this necessity, another solution will be discovered for us. According to this idea, “the role of the original is essentially to be a point of reference and a means of measuring the fidelity of the copies”. In these circumstances an electronic document, the integrity of which is guaranteed by third parties and by technology, can be considered an original⁶⁰.

While some experts still argued that the arbitral awards, whether final or provisional, must be written on paper and be signed in ink and by hand of arbitrators, these solutions don't seem to be satisfiable⁶¹. Others, who recognize the validity of electronic awards, recommend the handy signature of arbitrators and procuring hard copy of awards to prevent any obstacle which may stop enforcing awards⁶². At the same time, sending the printed version of the award to the arbitrators to sign or use a trusted third party to confirm that the digital signatures belong to the arbitrators, has been addressed as a practical solution by the doctrine⁶³.

Although legal obstacles which electronic awards are encountered them sound solvable, hesitations and fears which have arisen out of different interpretations in the national courts is still a huge impediment in total adoption of electronic awards.

⁵⁹ . Jana Herboczkova, Op.cit., p 10

⁶⁰ . O. Cachard, Op.cit, p 51

⁶¹ . Richard Hill, Op.cit., p 203

⁶² . Ijiljana Biukovic, Op.cit., p 350

⁶³ . Armagan Ebru Bozkurt Yuksel, Op.cit., p 90

Conclusion

Problems of litigation in the commercial disputes have made the alternative dispute resolution promote day by day. Arbitration is one of these methods which have found international popularity due to accurate codes and enforceable awards. Using of arbitration in the cyberspace has become prominent because of its acceleration and decreasing expenses. It will simply be a matter of time before the use of online arbitration will become more pervasive.

Expansion of using online arbitration makes lots of questions pose about the validity of various aspects of it in the conventional framework of national and international law. Virtual arbitration agreement, devices of this kind of arbitration and also security concerns in this context have made a few so-call obstacles in the way of its progression. However, as what we have inquired in this paper, most of these problems are solvable. At the same time, a few articles of New York Convention make some potholes in the ODR field, nevertheless, more flexible interpretation or, base on another opinion, the amendment of this convention, can pave the way of these alternative methods.

On the other hand, some practical problems have made online arbitration as a combination of traditional and virtual arbitration, although, it seems that it won't take a long time to reach a complete online arbitration.

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