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Equal Access to Information & Justice: The Huge Potential of Online Dispute Resolution Greatly Underexplored (II)

Mirèze Philippe · Tuesday, September 12th, 2017 · ArbitralWomen

As mentioned in Part I, a two-day conference on "Equal Access to Information & Justice, Online Dispute Resolution", organised by the ICC took place in Paris on 12-13 June. Over 160 lawyers, magistrates, academics, researchers, dispute resolution organisations and online dispute resolution providers, from over 30 countries and representing each continent attended.

The first panel chaired by ambassador Zimeray explored how "Promoting the use of ICTs in the face of Justice, violence, discrimination and denial of human rights" can be translated into opportunities to reduce injustice as well as prevent and resolve conflicts. Three programmes were presented: "Everywoman Everywhere", a programme for refugees in Greece and a programme to give access to justice to those suffering from homelessness and poverty in Argentina. Using devices in these programmes has allowed them to learn about their rights and accessing such rights.

In recent years there have also been notable achievements in courts using ODR. Graham Ross, chair of the panel on "Why are certain courts living the ODR revolution and what will it take to get the courts and the legal profession to engage?", identified ways in which change can be accelerated. He said that online court processes should not try to emulate existing processes that often tend to be designed for use mainly by lawyers, but be novel, simple and intuitive for self-represented parties. Ross advised to involve judges in system designs and encourage courts to speed up implementation, by using existing technology and services rather than feeding an army of developers to build from scratch. This panel also shared the experience of digitised courts in France, Jordan and the Netherlands.

The following panel conducted by Fabien Gélinas addressed issues related to "Government and public-sector platforms in civil conflicts" and presented public sector's programmes from Brazil, China and the U.S. The panel explored the potentials and the challenges of government-sponsored ODR. Procedural laws are increasingly favourable to ADR in many jurisdictions such as in Canada, said Gélinas, but they also tend to emphasise private initiatives and the importance of private innovations. We see a lot of public-private partnerships on the horizon, he added. Gélinas presented programmes mixing private initiatives and public services to settle consumer disputes and co-ownership disputes; the platforms are provided by the Cyberjustice Laboratory that he co-founded.

The following panel chaired by Abdel Wahab, on "Corporate in-house legal process innovation to default ODR policies and practices", discussed what corporate in-house currently do with the

means available to them to resolve disputes, and whether they see online dispute services as a useful tool and why? Three corporate in-house counsel from Cisco, Airbus and Cofco presented the users' experience and agreed that online tools to settle disputes became indispensable. They need processes which are swift and much less costly, while concentrating their efforts on their businesses as opposed to wasting time and energy on resolving disputes through traditional processes. It was also recognised that ODR may help addressing misunderstandings before they escalate to disputes. Ebay's very successful dispute resolution merchant service was built on and following a pilot project led by the Massachusetts university. Therefore, pilot projects may be the way forward to build platforms in cooperation with corporates so that both expertise join forces to offer a service which is still missing on the market. ODR will allow saving money and making money.

Benjamin Davis moderated the panel on "Consumer and civil disputes: do the existing systems offer means of free access to justice or access at low-cost?", and presented the experience of consumer ODR in the EU which benefits from an ADR directive. The panel also discussed the ODR regulation which complements the ADR directive, and which is meant to put in place an European ODR platform which allows consumers and merchants from EU countries to settle disputes online. It was noted that there is a clear institutionalisation of the process of consumer ODR in the EU and an increasing deployment of public function that goes beyond private dispute resolution; cooperation between the industry and public regulators is expected.

The last panel of the first day on "Technology used by dispute resolution organisations" shared the experience of the ICC, CEDR, the Camera Arbitrale di Milano and the Russian Arbitration Association. The chair Mark Appel noted that institutions are uniquely qualified and are in an ideal position to make ODR work. They listen to parties and respond with systems that are efficient, and they maintain the quality and the competency. The problems regarding ODR are that successful implementation requires organisational leadership and behavioural change, he said. Systems also need to be as easy as picking up a pen. The panel also noted that everything is online except justice. Building platforms is not rocket-science, it requires expertise in the mechanism of the service to be offered, competent engineers, and realism and pragmatism are the order of the day. It also requires dedication, patience, and to take risks without which no progress can happen. There is a real expectation that technology should be used for any business including dispute resolution. Without an efficient case management system it would be impossible to deliver the work in most organisations. It was also noted that using online platforms for mediation was boosted by the EU directive. Finally, ODR implementation requires feedback and education.

The next morning was dedicated to ethics and standards and started with a panel on "Ethics and ODR systems design" chaired by Leah Wing, co-Director of the National Center for Technology and Dispute Resolution. The panel explored ethical principles and standards for ODR and specific challenges and opportunities created by the application of Artificial Intelligence ('AI') to dispute resolution. AI and big data magnify challenges and opportunities for access to justice through ODR, said Wing. Multidisciplinary collaboration and stakeholder engagement will enhance creation of ethical and transparent monitoring and accountability mechanisms, she added. There are too many people who cannot afford lawyers and would like to be able to use legal services but there are not enough resources to provide legal services for everyone, so technology is a solution. Given that ODR encompasses a broad range of technology, methods, purposes, and applications, we need to consider what types of ethical guidance may be universal, and what is the best way to provide ethical guidance for particular forms of ODR.

The panel on "Artificial intelligence and expert systems in ODR, predictive justice, data collection and analysis, privacy, cyber security" was chaired by Catherine Rogers and presented an innovation on data collection with the 'Arbitrator Intelligence' project highlighting the role of information and technology in improving the arbitrator selection process. Like fellow panelist, Debbie Slate of Dispute Resolution Data, Rogers' project was short-listed for the GAR Awards in March 2017. The panel also explored the topic of predictive justice which is a promise for predictability, transparency and to have more equality before the law.

"Governing the field of ODR, standards, practices" was the last panel addressing issues related to regulation of the field of ODR as these issues are becoming one of the focus of attention. What these standards should be and how they might differ with the ethics of the ADR field were discussed. The moderator Daniel Rainey addressed the difficulty of implementing standards for ODR in legal environments, outlined the benefits of creating ODR standards for business process improvement, and noted the potential differences in creating standards for e-commerce systems and standards for use by practitioners engaged in more traditional ADR work. The panel raised concerns about introducing ODR into court systems and indicated that people engaging in such work should be prepared for strong resistance. There is a need to take advantage of intelligence systems whether they are systems which decide or assist the parties in making a decision.

After having discussed access to justice and redress systems during the first day and a half, the next panel presented "Online dispute resolution platforms, providers and mechanisms". The panel moderated by Jeff Aresty presented various platforms to demonstrate that ODR is possible for any type of dispute: Modria provides services to public organizations and dispute resolution organisations; e-just provides online settlement to commercial disputes; AnOliveBranch offers a friendly mediation process; and HiiL which mission is to sustainably improve the justice journeys experienced by users of the justice.

"Challenges facing ODR and future application of ODR" was the topic of the next panel chaired by Andy Lee. ODR has ambitious goals but also faces a number of challenges from established institutions and approaches. One panel discussed how these obstacles can be overcome. ODR has quickly become an important venue to settle various disputes. In e-commerce ODR is a standard tool for consumer disputes and cross-border transactions. ODR is also used in community, medical, traffic disputes and many new applications are emerging. The panel also explained where things stand with the use of paperless procedures and said that arbitrators and lawyers should give more consideration to such issues from the outset of the case. An innovative concept was also presented about reputational feedback mechanisms and black-listing and blocking on the internet. This tool is enhancing voluntary compliance by traders and increasing the number of transactions. They are also enhancing justice by preventing conflicts.

2017 has already been an exciting year due to the publication of three books about ODR: *Digital Justice: Technology and the Internet of Disputes, The New Handshake and Dealing with Disputes in the Digital Age*. This session moderated by Ethan Katsh explored the themes present in the three books.

The final panel on "Lightening rounds on evolution or revolution and pilot projects in ODR" chaired by Mirèze Philippe presented some projects undertaken around the world. Technology in India is so advanced that it exports experienced engineers, undertakes many projects, build platforms, firms from around the world subcontract projects to Indian high-tech companies, and some universities are putting in place pilot projects for resolving disputes online and for proposing

to the government an institutionalised system. In the US and Canada where most platforms and pilot projects were born, others have been developed and are perfect examples to build on, such as the Florida Justice Technology Center. A family law platform has been put in place in Canada. A project is currently being undertaken in Spain to resolve conflicts within the tourism sector. Finally, a speaker shared her experience when contributing to build a platform and analysing the needs of the clients, that allowed them to learn about the state of mind which can prevent or facilitate the transition from the traditional to the digital world.

"So much was covered over the course of two days, the ideas, inspiring individuals and innovative projects are too much to list in a single article" said Natasha Mellersh in her GPC Blog. The papers of the two-day conference will be published in the Journal of Online Dispute Resolution (see odr.info).

Mirèze Philippe is a special counsel at the Secretariat of the ICC International Court of Arbitration. She is founding co-president of ArbitralWomen, member of the Steering Committee of the Equal Representation in Arbitration Pledge, member of the Board of Advisors of Arbitrator Intelligence, member of the Advisory Board of Association Arbitri, and fellow of the National Center for Technology and Dispute Resolution.

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