Kluwer Arbitration Blog

Autonomous Arbitration in the Era of the Metaverse

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In 2005, Julian Lew spoke of his dream of autonomous arbitration – i.e., arbitration that is free from state interference. The theory of autonomous arbitration has remained a much-debated topic, with the most recent observation (by Ralf Michaels) being that autonomous arbitration does not exist and probably could not exist.[1)] However, in the author's view, recent technological developments relating to blockchain technology and the metaverse, along with technology's rapid penetration into the lives of the masses, have now enabled the materialisation of Lew's improbable dream, and autonomous arbitration is already on the road to mass adoption.

Theory of Autonomous Arbitration

According to the autonomous arbitration theory, arbitrations must remain autonomous and free from state interference. Accordingly, international arbitrations must be governed by international rules and practices, and not national laws. However, proponents of this theory have acknowledged that parties must rely on courts for enforcement of arbitral awards. To quote Lew,

> "*inevitably there are tentacles that float down from the international arbitration domain to the national jurisdiction, to assure recognition of agreement to arbitrate, to give effect to awards of international tribunals and to obtain assistance for the international arbitration process when needed*".[2)]

Admittedly, when parties refuse to voluntarily fulfil the terms of an award or directions of the tribunal during the arbitral process, the aggrieved party is constrained to knock on the doors of national courts, primarily those which have jurisdiction over the assets of the defaulting party. Most national courts, when exercising their jurisdiction, apply national law.

Michaels argues that, for arbitration to be totally autonomous, it must not rely on states at all, and must have its own enforcement mechanism.[3)] Whilst there have been considerable impediments to facilitating a totally autonomous arbitration, developments such as distributed ledger technology have changed this for the better. Prior to discussing how arbitral autonomy may be achieved, an understanding of its necessity is warranted.

The influence of arbitral autonomy in promoting commerce, through total party autonomy and procedural flexibility has been widely discussed. However, this article considers the impact of arbitral autonomy in making justice accessible to the masses. Currently, international arbitration mandates an understanding of national laws and state practices, as it continues to be influenced by states. Consequently, parties are constrained to bear the cost of such intervention, including the cost of appointing experts, such as arbitration practitioners familiar with international and national laws. In the absence of an affordable mechanism, parties to international disputes with limited resources remain remediless. To counteract this, the tentacles of state intervention must be slit, and an autonomous mechanism which permits parties to directly resolve disputes with minimal intervention must be formulated. The key to facilitating total arbitral autonomy, and consequently accessible justice, is blockchain technology.

Automating Enforcement via Blockchain Arbitration to Properly Autonomise Arbitration

One significant development which has facilitated arbitral autonomy has been the creation of blockchain arbitration platforms built on the ethos of decentralisation, providing affordable and efficient dispute resolution services to the masses. (The concepts of smart contracts and blockchain arbitration have been covered at length in this blog and can be understood here, here and here.)

Realising blockchain's potential, several platforms have started to provide arbitration services, harnessing this technology, including Kleros, Jur and Aragon. These platforms facilitate automatic enforcement of arbitral decisions by formulating awards as smart contracts on the blockchain. Smart contracts are computer code, drafted as a set of promises to be automatically executed upon certain conditions being fulfilled.

As automation via smart contracts is entirely digital, the remedy stipulated in the award must also be digitally executable. For instance, an award for monetary compensation can be enforced via a smart contract, as money can be digitally represented. This smart contract will direct the digitally represented funds to be transferred to the winning party from an account linked to the said contract.

In most cases, the smart contract is linked to an escrow into which the parties would have transferred a pre-stipulated amount. This makes the scope of autonomous arbitration limited. Unlike conventional awards where parties have the option to approach state courts to attach assets of a defaulting party, here, parties are constrained to rely on the pre-stipulated escrow amount or a personal account with limited funds.

Consequently, if the award mandates a greater sum to be paid than what is available in the escrow or linked accounts, they may be compelled to seek court intervention. However, this issue may be remedied if blockchain arbitration, like conventional arbitration, comes to have the means to control the parties' assets. This may be facilitated by representing assets digitally, which can then be linked to the smart contract. For instance, non-fungible tokens (NFTs) are a class of digital assets, which may be leveraged for blockchain arbitration. They are digital tokens recorded in the blockchain, which represent ownership of unique items.

The NFT boom of 2021 and the rapid growth of the metaverse indicate a future where ownership of digital property will be the norm. Whilst the past has been bleak for autonomous arbitration, the recent technological developments, and predictions on adoption of digital assets by the masses, indicate a positive future. Consequently, by leveraging ownership of virtual assets and currency to

enforce smart contract awards, affordable blockchain arbitration mechanisms could be designed to be the go-to dispute resolution mechanism for the masses.

Metaverse and Autonomous Arbitration

A metaverse is an alternate virtual universe, where users in their digital avatars can interact with other digitally represented persons and items (see example here). Although originally habituated by gamers, metaverses have evolved in the last few years to provide a virtual alternative to human interactions beyond gaming. People can attend concerts, host weddings, or even raise digital pets.

The metaverse opens the door to ownership of a wide range of digital assets, which will include wearables such as clothes and accessories, collectables such as pets and artwork, and even virtual land. Last year, a digital representation of a Gucci bag was sold for over $4000 on Roblox. The smallest parcels of land in Sandbox and Decentraland, can cost over $11,000 and $10,000 respectively. Unlike the Gucci bag in Roblox, blockchain metaverses like Decentraland record digital items, including land, as NFTs. The ownership and usability of these NFT assets are not limited to the platform from which they are obtained. Your NFTs, much like cryptocurrency, are linked to your personal wallets, and can be used on multiple platforms. As our reliance on virtual assets and currencies increase, more parties will be inclined to have their disputes resolved via blockchain arbitration.

As we transform to this new virtual space, the services we currently access via Web 2.0, such as social media and e-commerce, will be replaced with services accessible via Web 3.0. For instance, Zoom meetings may be replaced by virtual meetings in a metaverse, where we would be wearing NFT clothes and renting an NFT boardroom. Consequently, interactions in Web 3.0 will give rise to a new class of commercial disputes, exclusive to this new world, furthering the scope of autonomous arbitration.

Conclusion

International arbitration, although developed to be a cost and time effective alternative to litigation, remains inaccessible to the masses. The 2020 decision of the Canadian Supreme Court,[4)] wherein the majority observed the concerned arbitration agreement to be improvident due to the high cost of arbitration, evidences this. As the metaverse's borders become blurred and cross-border transactions between the masses become the norm, an affordable and efficient dispute resolution mechanism is indispensable. The answer to this is blockchain arbitration, which incidentally is also the key to unlock total autonomous arbitration. Blockchain arbitration platforms, in addition to creating a viable alternative to conventional arbitration, are building self-sufficient commercial arbitration communities, where everyone has the opportunity to deliver justice and engage in promoting commerce.

It has been predicted that a large proportion of people will be in the metaverse by 2030, in some way. Growth of the metaverse indicates the adoption of virtual assets and currencies by the masses. Consequently, parties will be able to access autonomous arbitration without state interference. To facilitate this, it is crucial to contribute to the growth of decentralised arbitration platforms, which

provide affordable services to the masses by leveraging technology and community participation.

Some may continue to argue that the heavily criticised theory of autonomous arbitration remains improbable due to our reliance on intermediaries. However, considering the adoption of decentralised finance, despite our history of reliance on intermediaries, a self-sufficient arbitral mechanism is inevitable.

References

?1 Ralf Michaels, 'Is Arbitration Autonomous' in C. L. Lim (ed) The Cambridge Companion to International Arbitration (CUP, 2021) 115, 137

?2 Julian DM Lew, 'Achieving the Dream: Autonomous Arbitration', (2006) 22(2) Arbitration International 179, 182

?3 Ralf Michaels, 'Is Arbitration Autonomous' in C. L. Lim (ed) The Cambridge Companion to International Arbitration (CUP, 2021) 115, 119

?4 Uber Technologies Inc. v. Heller, 2020 SCC 16 (CanLII)

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